

EMERGENCY PETITION UNDER CIRCUIT RULE 27-3

CASE NO. _____

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

IN RE: DENNIS L. MONTGOMERY

DENNIS L. MONTGOMERY, Intervenor-Petitioner,
v.
UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF ARIZONA, Respondent.

From the United States District Court
For the District of Arizona
The Honorable G. Murray Snow, Presiding
Case No. CV-07-2513

**EMERGENCY PETITION FOR WRIT OF MANDAMUS FOR RECUSAL
PURSUANT TO 28 U.S.C. § 455 AND/OR 28 U.S.C. § 144**

[Ruling And Relief Requested Prior TO 9:30 A.M. May 14, 2015]

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(ii) Facts showing the existence and nature of the claimed emergency; and

A decision by the U.S. Court of Appeals for the Ninth Circuit is requested on May 12, 2015 or May 13, 2015, as the lower Court, as explained below, has set a hearing for 9:30 am on May 14, 2015, during which time it will likely issue further orders irreparably harming Petitioner. Due to unethical misconduct and a conflict of interest by the lower court judge, Petitioner files this petition for writ of mandamus to have him removed immediately from the subject case and his prior order vacated.

(iii) When and how counsel for the other parties were notified and whether they have been served with the motion; or, if not notified and served, why that was not done.

Counsel for the other parties were notified via email on May 11, 2015 of Intervenor Dennis L. Montgomery's intention to file this petition for writ of mandamus. Counsel will be served via email as soon as the petition has been filed with this Court.

EMERGENCY PETITION FOR WRIT OF MANDAMUS FOR RECUSAL
PURSUANT TO 28 U.S.C. § 455 et seq. AND/OR 28 U.S.C. § 144 et seq.

I. INTRODUCTION

A decision by the U.S. Court of Appeals for the Ninth Circuit is requested on May 12, 2015 or May 13, 2015, as the lower Court, as explained below, has set a hearing for 9:30 am on May 14, 2015, during which time it will likely issue further orders irreparably harming Petitioner. This Emergency Petition needs to be considered and ruled upon prior to that date since Judge G. Murray Snow has refused to recuse himself from the subject case. Pursuant to 28 U.S.C. § 1651, Federal Rules of Appellate Procedure (“FRAP”) Rule 21, and Local Circuit Rules 21-1, 21-2, 21-3, 21-4, and 27-3, Petitioner Dennis L. Montgomery ("Petitioner") respectfully petitions for a writ of mandamus to compel the Respondent, the Honorable G. Murray Snow, to recuse himself or be disqualified from the case of *Melendres, et. al. v. Arpaio, et. al.* (CV-07-2513-PHX-GMS) in the U.S. District Court for the District of Arizona pursuant to 28 U.S.C. § 455 and/or 28 U.S.C. §144, and to vacate his prior orders and actions at a minimum, relating to Dennis Montgomery, which Petitioner believes, began on April 21, 2015. Petitioner Montgomery is a whistleblower who worked for the National Security Agency (“NSA”) and Central Intelligence Agency (“CIA”).

The Petitioner, who is an intervenor as a matter of right pursuant to Rule 24 of the Federal Rules of Civil Procedure (“FRCP”), also filed an affidavit, motion,

and certificate of counsel requiring the disqualification of Judge Snow in the District Court. *See* Exhibit 1.

Judge Snow was obligated under the statutory command of 28 U.S.C. § 144 to immediately stop actions in the case and recuse and/or disqualify himself.

Alternatively, even apart from the motion and affidavit under 28 U.S.C. § 144, Judge Snow is obligated to immediately recuse himself under the Code of Conduct for United States Judges and also under 28 U.S.C. § 455. Distinguished ethics expert Professor Ronald Rotunda explains the requirement for disqualification and/or recusal in his declaration. *See* Exhibit 2.

Nevertheless, Judge Snow has continued to act despite being informed of his ethical violations and conflict of interests. Judge Snow issued *three* orders on May 8, 2015, presenting a number of substantive, administrative and scheduling matters and set a status hearing for May 14, 2015. Judge Snow also ordered “[t]he Court will hold weekly status conferences” beginning May 14, 2015, May 22, 2015, May 29, 2015 June 5, 2015, and June 12, 2015. *See* Exhibit 3. It is Judge Snow’s practice to issue substantive orders at these conferences. Judge Snow has already ordered that “[c]ounsel for Defendants will contact the chief legal counsel at the CIA, inform such legal counsel of MCSO’s receipt of the alleged CIA documents, this proceeding, the Court’s subsequent discovery orders and the CIA’s need to seek relief, if any, with respect to such documents within 14 days of today’s date.”

Id. Judge Snow continues, “[w]ith respect to the CIA documents, the Defendants will cooperate with the Monitor in identifying which documents are those provided by Dennis L. Montgomery to the MCSO, and, with respect to those documents, indicating to the parties their contents, the files they contain if any, the file’s general contents and organization, and the general content of the file.” *Id.*

Even after the Motion to Disqualify was filed, Judge Snow set even more hearings for June 23, June 24, June 25, and June 26. After Petitioner moved to intervene as a matter of right and to disqualify Judge snow, he issued orders about documents pertaining to “workplace operations” responsive memoranda, motions to compel, materials and transcripts, motions under seal, objections, supplements, Notice of Completions, independent accountants, monitors, and other requirements from parties that Judge Snow should not have been authorized to order as here he has a clear conflict of interest and should be ordered to recuse himself or be disqualified, as discussed fully below. Attached are the orders issued after Petitioner filed his motions to intervene as a matter of right to disqualify Judge Snow. They show a flagrant disregard for 28 U.S.C. § 144 and 28 U.S.C. § 455.¹

Judge Snow cannot be the judge to run an investigation in the context of ongoing litigation into matters concerning Judge Snow’s own family, wife, or

¹ On May 11, 2015, Petitioner was also forced to file an ethics complaint before this Court because of Judge Snow’s continued abuse of process and defiant violations of judicial ethics as set forth herein.

himself. Judge Snow has an incurable conflict of interest by pursuing personal interests. It is admitted and undisputed, spread upon the transcript in open court, that Judge Snow has launched his own personal inquiry – and thus an unethical abuse of judicial and court process – into whether there was an investigation of his wife and/or himself.

It is also undisputed that Judge Snow has personal knowledge of disputed facts outside of the presentation of witnesses and evidence in the courtroom. Judge Snow has undoubtedly already learned from his wife whether she made the statement.

Judge Snow's wife announced to the Grissom family, as acquaintances, in a Someburros restaurant in Arizona that his husband – Judge Snow – was determined to conduct the litigation in *Melendres, et. al. v. Arpaio, et. al.* in such a way as to ensure that Sheriff Joe Arpaio would not be re-elected as Sheriff of Maricopa County, Arizona in 2016. Several witnesses confirmed this conversation. See "How Mexican Food Drew Couple into Heart of Arpaio Case," by Yvonne Wingett Sanchez, Arizona Republic, May 8, 2015, attached as Exhibit 4. See also Transcript, April 24, 2015, pgs. 901-906, Exhibit 5.

To the best of Petitioner's knowledge after reviewing the records and public news reports, neither Judge Snow nor Judge Snow's wife have denied that Judge Snow's wife made the (voluntary) statement, nor sought to explain.

Instead, during the evidentiary hearing which began April 21, 2015, Judge Snow began on April 23, 2015, to conduct an inquiry into whether Sheriff Arpaio and the Maricopa County Sheriff's Office ("MCSO") hired Petitioner Dennis L. Montgomery to investigate Judge Snow's wife. That is, instead of addressing his own bias appearing from his wife's statements, Judge Snow sought to cover-up, intimidate, threaten, and silence any inquiry into Judge Snow's own bias. In doing so, he embroiled Montgomery in false allegations that Petitioner was investigating Judge Snow's family.

Judge Snow's questioning thus becomes exactly what Judge Snow's wife predicted it would be: Judge Snow is using the litigation to make sure that Sheriff Arpaio is not re-elected. It is also undisputed on the transcript that Judge Snow has undertaken his own factual investigation outside of court proceedings and apart from the witnesses or the parties. After the lunch break on April 23, 2015, Judge Snow returned to the bench and announced that he had spoken to someone and learned additional facts outside of the courtroom (which are in fact inaccurate) about alleged payments from the Maricopa County Sheriff's Office ("MCSO") to Dennis Montgomery. *See* Exhibit 5.

Thereupon, Judge Snow by order – not requested in discovery by any party – seized all documents relating to Dennis Montgomery, trampling upon Montgomery's proprietary interests, attorney work productive privilege, and even

more sensitive information.

II. RELIEF SOUGHT

Petitioner seeks a writ of mandamus compelling the Honorable G. Murray Snow to recuse himself immediately or be disqualified from any further proceedings in the case of *Melendres, et. al. v. Arpaio, et. al.* in the U.S. District Court for the District of Arizona.

Petitioner further seeks in the writ of mandamus that any orders or actions by Judge Snow, including orders for production of documents, relating at least to Petitioner Dennis Montgomery be vacated and his documents, information, and intellectual property returned to him.

III. STATEMENT OF FACTS NECESSARY TO UNDERSTAND THE ISSUES PRESENTED BY THE PETITION

A. Standing of Petitioner for Writ of Mandamus

Petitioner Dennis L. Montgomery has a personal stake in this matter to bring this Petition now, including because his intellectual property, records, documents, and work have been seized by order of Judge Snow. Petitioner provided his work and intellectual property to the MCSO under contract that preserved his ownership of the proprietary information, trade secrets, data, and work belonging to him. By order in open court on April 23 and April 24, 2015, and by a sealed order on April 27, 2015, ECF # 1033. Petitioner's intangible personal property has been taken and his constitutional rights, including the work product privilege with his attorney

have been trampled. Petitioner has an interest in bringing this Petition regardless of whether any observer believes the Court's taking was lawful or unlawful.

Petitioner advises that the ownership of this intellectual property has already been litigated. The U.S. District Court for the District of Nevada has already ruled that (1) the data and intellectual property belongs to Dennis Montgomery, (2) none of the data or information is classified, (3) the U.S. Government was required to return all of the data and information to Dennis Montgomery, and (4) the U.S. Government deceived the Court in falsely claiming that the data, information, and/or intellectual property did not belong to Dennis Montgomery. *See Dennis Montgomery and the Montgomery Family Trust v. eTreppid Technologies, LLC, Warren Trepp and the U.S. Department of Defense*, Case Nos. 3:06-CV-00056-PMP-VPC and 3:06-CV-00145-PMP-VPC, Order, Judge Philip M. Pro, March 19, 2007, and *In the Matter of the Search of: The Residence Located at 12720 Buckthorne Lane, Reno, Nevada, and Storage Units 136, 140, 141, 142 and 143, Double R Storage, 888 Madestro Drive, Reno, Nevada*, Case Nos. 3:06-CV-0263-PMP-VPC and 3:06-MJ-00023-VPC, Order, Magistrate Judge Valerie P. Cooke, November 28, 2006. These Orders are *res judicata* and are now final. Furthermore, that previous litigation also indirectly refutes the libel and slander about Dennis Montgomery.

Petitioner Dennis Montgomery is alleged to have performed confidential

work for the MCSO but it had nothing to do with Judge Snow's attempts to cover up Judge Snow's wife's public statements about Judge Snow's bias in the case and determination to use the case to throw an election campaign for Sheriff of Maricopa County.

Because Judge Snow's own family is now involved, his objectivity is compromised. Yet while harming Sheriff Arpaio in his re-election campaign in 2016, Judge Snow is publicly slandering Montgomery in open court, before many local and national news reporters keenly interested in the court proceedings, portraying Montgomery as a con-artist and a "known scammer." Thus, Petitioner is caught in a battle not of his own choosing and being used as a pawn in harming Arpaio.

B. Case Has been Dramatically Transformed Into New Matters

The original case of *Melendres v. Arpaio* in the U.S. District Court for the District of Arizona from which these matters arise ended with a final order on October 2, 2013. On that date, Judge Snow entered a "Supplemental Permanent Injunction / Judgment Order." Sheriff Joe Arpaio and the Maricopa County Sheriff's Office filed a Notice of Appeal from the October 2, 2013, final order to the U.S. Court of Appeals for the Ninth Circuit, which appeal was heard. This confirms that that October 2, 2013, Order was a final order.

Now 19 months after the final order, post-judgment proceedings are focused

on allegations that the Court's permanent injunction was not complied with.

But then, on April 23, 2015, Judge Snow launched an entirely different and irrelevant inquiry concerning Dennis L. Montgomery during the testimony of Sheriff Joe Arpaio. The case fundamentally changed once more on April 23, 2015.

It will be nearly impossible to understand these matters without recognizing that the case of *Melendres, et. al. v. Arpaio, et. al.* has taken several dramatic turns and that now current developments bear no relationship to the original litigation. Plaintiffs brought proceedings to enforce the Permanent Injunction. However, on or about April 21-24, 2015, the case entered a new, irrelevant and improper phase focusing on Petitioner Dennis Montgomery for the first time.

C. Mandamus Required for Recusal of Judge Snow

In the hearing in this case on April 23, 2015, Judge G. Murray Snow was conducting the questioning of Sheriff Joe Arpaio. At Page 646, lines 4-6, Judge Snow asked Sheriff Arpaio: **“Q. Did you ever -- you see that the article says that what Montgomery was actually doing was investigating me. You see that that's what the article says?”**

Sheriff Arpaio answered, **“It's not true.”**

Yet Judge Snow nevertheless completely believes hearsay by reporter Stephen Lemons at an unreliable, disreputable, partisan blog known as The

Phoenix New Times.² Lemons, whose blog hates Sheriff Arpaio and has done everything possible to have his reputation tarnished and removed from office, is pulling the strings and writing the script. Being emotionally compromised concerning his own wife and family, Judge Snow seized on it for his and his wife's own personal interests.

During the evidentiary hearing, Judge Snow embarked on an unethical detour to personally engage in extensive questioning focused on himself and his wife and allegations about Dennis Montgomery. The detour in the case began when reports were published that Judge Snow's wife stated to several witnesses at a restaurant that her husband, Judge Snow, wanted to do everything possible in his conduct of this case to make sure that Sheriff Arpaio is not re-elected as Sheriff in the upcoming 2016 elections.

But instead of Judge Snow recusing himself because of the appearance of bias from his wife's public comments, Judge Snow has confused Dennis Montgomery's alleged other, unrelated work for MCSO as being about Judge Snow. This shows the effects of a lack of objectivity that results from personal interests. A different judge must hear these matters.

Neither Judge Snow nor Judge Snow's wife have even denied that Judge Snow's wife made the (voluntary) statement that Judge Snow was determined to

² The Phoenix New Times, owned by Voice Media Group, hires pornographers, convicted felons and drug addicts as bloggers.

use the case to ensure that Sheriff Arpaio would lose re-election in the 2016 campaign, denied that Judge Snow is actually conducting the case so as to cause Sheriff Arpaio to lose re-election, nor sought to explain or place in context his wife's comments. To the contrary, it has been confirmed by Sheriff Arpaio's office that the statements were made. *See* Exhibit 5, 654:6 – 656:6, 961:15 – 967:19, 656:3 – 660:16.

D. Petitioner Has No Adequate Remedy at Law

Petitioner Dennis Montgomery has no adequate remedy at law, as he is being dragged into a case and publicly defamed, with continuing and incalculable further damage to his reputation, because of the lack of objectivity of Judge Snow about personal interests of the judge. Importantly, Judge Snow refuses to remove himself on the case and instead continues to flagrantly and defiantly violate 28 U.S.C. § 144 and 28 U.S.C. § 455 and the Code of Conduct for United States Judges.

Petitioner followed the procedure for recusal and/or disqualification prescribed under 28 U.S.C. § 144. Yet Respondent Judge Snow refused to recuse himself from the proceedings and has instead continued to act and issue orders in the case. Petitioner has sought all available means to redress this blatant refusal to follow the law, including today having been forced to file a judicial complaint with the U.S. Court of Appeals for the Ninth Circuit given Judge Snow's defiant refusal

to recuse himself and the continuing violations of the judicial canons, rules of ethics and 28 U.S.C. § 144 and 28 U.S.C. § 455.

Petitioner is thus left with no other remedy available to him to compel Respondent Judge Snow to follow the law other than to file this petition.

E. No Prejudice or Delay to a Pending Jury Trial

Because this case was decided on the merits 19 months ago, transferring any remaining post-judgment proceedings to a different judge will not prejudice or disrupt a pending trial, which finished long ago. Furthermore, the post-judgment actions do not require any special knowledge of the prior proceedings, but only concern the Plaintiffs' allegations that the injunction has not been followed. A different judge is fully capable of understanding and applying the Court's Permanent Injunction. No particular institutional memory is required at this phase of the case.

IV. GOVERNING LAW: MANDAMUS ON FAILURE TO RECUSE FOR DISQUALIFICATION

Pursuant to 28 U.S.C. § 144:

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten

days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

Mandamus is a proper remedy for the refusal of a judge to recuse himself, although some Circuits hold that mandamus applies pursuant to 28 U.S.C. § 455 rather than 28 U.S.C. § 144. *In re: School Asbestos Litigation*, 977 F.2d 764 (C.A.3 (Pa.), 1992); *In re: International Business Machines Corp.*, 687 F.2d 591 (C.A.2, 1982). *See, also*, Cynthia Gray, “The Line Between Legal Error and Judicial Misconduct: Balancing Judicial Independence and Accountability,” 32 Hofstra L. Rev. 1245 (2004).

The U.S. Courts of Appeals for the First, Fifth, Sixth, Tenth, and Eleventh Circuits have said that close questions should be decided in favor of recusal. *See Republic of Pan. v. American Tobacco Co.*, 217 F.3d 343, 347 (5th Cir. 2000) (citing *In re Chevron*, 121 F.3d 163, 165 (5th Cir. 1997)); *In re United States*, 158 F.3d 26, 30 (1st Cir. 1998); *Nichols v. Alley*, 71 F.3d 347, 352 (10th Cir. 1995); *United States v. Dandy*, 998 F.2d 1344, 1349 (6th Cir. 1993); *United States v. Kelly*, 888 F.2d 732, 744 (11th Cir. 1989).

In *SCA Servs. v. Morgan*, 557 F.2d 110 (7th Cir. 1977), mandamus was ordered for disqualification because of the personal interests of the judge. There, the judge's brother was an attorney in the firm appearing before the judge. Similar

to the relationship between Judge Snow and his wife in the case at bar: “This appearance of partiality begins with the natural assumption that brothers enjoy a close personal and family relationship and, consequently, would be inclined to support each other's interests. When one’s brother is a lawyer in the firm representing a party before his brother who is the judge in the case, the belief may arise in the public's mind that the brother's firm and its clients will receive favored treatment, even if the brother does not personally appear in the case.” *Id.* at 116. The U.S. Court of Appeals for the Seventh Circuit also found that “the judge's ‘Memorandum of Decision’ suggests that he made a confidential inquiry, presumably to his brother, to determine in what capacity Donald A. Morgan was involved in this case (Petitioner's App. D-3). Counsel were not present and were unaware of the inquiry at the time it was made. While it is understandable why the judge may have felt his brother could present the most accurate evidence as to his role in the pending litigation, the judge's inquiry creates an impression of private consultation and appearance of partiality which does not reassure a public already skeptical of lawyers and the legal system.” *Id.* The Seventh Circuit granted a petition for writ of mandamus requiring the trial court to abstain from presiding over further proceedings.

The same situation appears here. Judge Snow will have access to his wife's explanation outside of court as to whether she did or did not make the statement at

issue and has a personal interest regarding his wife. He also admits on the record to having conducted his own factual investigation outside of the courtroom.

In *In re Faulkner*, 856 F.2d 716 (5th Cir. 1988), the U.S. Court of Appeals for the Fifth Circuit reversed a refusal to recuse where a relative of the judge was a major participant in transactions relating to the defendant's indictment and "that relative had communicated to the judge . . . material facts and her opinions and attitudes regarding those facts." *Id.* at 721.

Also on point is *In re Aetna Casualty & Surety Co.*, 919 F.2d 1136 (6th Cir. 1990), where the U.S. Court of Appeals for the Sixth Circuit, sitting en banc, required recusal. The trial judge initially recused himself because his daughter's law firm represented four of the claimants. The judge later separated the cases and planned to try the three claims in which his daughter's firm was not involved. On mandamus petition the court reversed: A "decision on the merits of any important issue in any of the seven cases . . . could constitute the law of the case in all of them, or involve collateral estoppel, or might be highly persuasive as precedent." *Id.* at 1143. The court did not specify whether it based its decision on section 455(a) or section 455(b)(5)(ii), but a concurring opinion, joined by seven judges, emphasized that there was an actual conflict of interest under section 455(b)(5) as well as an appearance of partiality.

Moreover, the Code of Conduct for United States Judges governs:

CANON 2 requires:

* * *

(B) Outside Influence. A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.

CANON 3 requires:

* * *

(C) Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which:

(a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

* * *

(c) the judge knows that the judge, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding;

(d) the judge or the judge's spouse, or a person related to either within the third degree of relationship, or the spouse of such a person is:

* * *

(iii) known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or

(iv) to the judge's knowledge likely to be a material witness in the proceeding;

Also pursuant to 28 U.S.C. § 455:

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

* * *

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

* * *

Recusal or disqualification is required when judicial conflicts create the appearance that the court's impartiality may be called into question, and "could suggest, to an outside observer, such a 'high degree of favoritism or antagonism' to defendants' position that 'fair judgment is impossible.'" *Liteky v. United States*, 510 U.S. 540, 555, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994). The courts strive to eliminate even the appearance of bias. "Thus even if there is no bias in fact, an appearance of bias or prejudice requires recusal if it is sufficient to raise a question

in the mind of 'the average citizen' about a judge's impartiality.” *York v. United States*, 785 A.2d 651, 655 (D.C. 2001).

V. ARGUMENT: STATEMENT OF REASONS WHY THE WRIT SHOULD ISSUE

A. Jurisdiction is Proper Under the All Writs Act., 28 U.S.C. § 1651.

This Court has jurisdiction under the All Writs Act, 28 U.S.C. § 1651. The All Writs Act is invoked by federal courts of appeals to a district judge, or by the Supreme Court to issue a writ to a lower court judge. *Allied Chemical Corp. v. Daiflon, Inc.*, 449 U.S. 33 (1980).

The All Writs Act states:

The Supreme Court and all courts established by Act of Congress may issue all writs necessary and appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

28 U.S.C. § 1651. "The authority of federal courts to issue writs of mandamus is derived from the All Writs Act, 28 U.S.C. § 1651." *United States v. Bell*, 2008 U.S. Dist. LEXIS 91803, 7-8 (E.D. Tenn. Sept. 29, 2008) *citing In re Parker*, 49 F.3d 204, 206 (6th Cir. 1995). Mandamus is defined as "[a] writ issued by a superior court to compel a lower court or a government officer to perform mandatory or purely ministerial duties correctly." *Coles v. Granville*, 448 F.3d 853, 861 n. 2 (6th Cir. 2006) (citing Black's Law Dictionary p. 973 (7th ed. 1999)). Mandamus is a remedy to be invoked in extraordinary situations where the petitioner can show a clear and indisputable right to the relief sought. *Will v.*

Calvert Fire Ins. Co., 437 U.S. 655, 661-62, 98 S. Ct. 2552, 57 L. Ed. 2d 504 (1978); *Kerr v. United States District Court*, 426 U.S. 394, 402-03, 96 S. Ct. 2119, 48 L. Ed. 2d 725 (1976).

The case at hand is precisely one of those "extraordinary situations" that the court in *Will* described. Petitioner has been subject to repeated violations of his constitutional rights and the ethics complaint Petitioner filed has fallen on deaf ears. It is mandatory that Respondent Judge Snow remove himself from the proceedings, yet he defiantly refuses to do so and continues to issue orders that have caused and will cause more irreparable damage to Petitioner.

B. Case Must Be Transferred to Another Judge

For a United States judge, recusal and/or disqualification are mandated by statute under 28 U.S.C. § 144. The language of the statute does not leave any room for discretion. The judge "*shall* proceed no further therein." If an affidavit meets the rule's standards, the judge *has a duty* to recuse himself. *Morse v. Lewis*, 54 F.2d 1027, 1031 (4th Cir.), cert. denied, 286 U.S. 557, 76 L. Ed. 1291, 52 S. Ct. 640 (1932) (emphasis added).

Petitioner, with well-documented showings of extra-judicial bias and conflicts of interest by Judge Snow, filed a timely affidavit and that of ethics expert Professor Ronald Rotunda in an attempt to have Judge Snow remove himself from the proceedings, as provided by 28 U.S.C. § 144. *See* Exhibits 1, 2.

Recusal is a mandatory act, and therefore “ministerial” within the law of a writ of mandamus. There is no requirement for any subjective decision.

The disqualification statute, 28 U.S.C. §144, is **mandatory and automatic**, requiring only a timely and sufficient affidavit alleging personal bias or prejudice of the judge. The judge is a silent defendant, unable to make findings on the truth or falsity of the affiant's allegations, and truth must be presumed. *United States v. Hanrahan*, 248 F. Supp. 471, 474 (D.D.C. 1965)(Emphasis added); and the allegations may be based upon information and belief, *Berger v. United States*, 255 U.S. 22, 34, 65 L. Ed. 481, 41 S. Ct. 230 (1920).

Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook Railroad Co., 380 F.2d 570, 576 (D.C. 1967).

Nothing can create more of the appearance of a conflict of interest than when a presiding judge has a personal interest in the litigation or matters related to it. The applicable standard for recusal is whether a judge's participation in a lawsuit will create the *appearance* of bias and prejudice. *See Liteky v. United States*, 510 U.S. 540, 555, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994)); *Jackson v. Microsoft Corp.*, 135 F. Supp. 2d 38, 40 (D.D.C. 2001), *supra*.

Recusal is required when there is even the appearance that the court's impartiality may be called into question, and “could suggest, to an outside observer, such a 'high degree of favoritism or antagonism' to defendants' position that 'fair judgment is impossible.'” And, indeed much more than an appearance of extra-judicial bias and conflicts of interest are at issue here. *Liteky v. United States*, 510 U.S. 540, 555, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994)); *See also*

Jackson v. Microsoft Corp., 135 F. Supp. 2d 38, 40 (D.D.C. 2001) (recusal was proper because the judge "ha[d] created an appearance of personal bias or prejudice").

As explained in the legal opinion of Professor Ronald Rotunda, an expert on Professional Responsibility and Constitutional Law, Judge Snow now has – by his own admission – an incurable personal interest in the case. At this stage, there is no jury and Judge Snow is the sole decision-maker in the case in this phase.

Judge Snow admits that the investigation now concerns – at least as the Judge believes – his own wife and family, including himself. As explained by Professor Ronald Rotunda, Judge Snow should recuse himself including for the following reasons, including with additional elucidation from the Code of Conduct and 28 U.S.C. § 455.

Pursuant to Code of Conduct Canon 2(B) and Canon 3(C)(1)(d)(iii) and 28 U.S.C. § 455(a), Judge Snow's impartiality may reasonably be questioned, because the Judge has a personal interest running an inquiry concerning possible investigations of himself and his family, and also, according to Professor Rotunda, because the transcript indicates Judge Snow investigating matters on his own outside of the evidentiary hearing.

Pursuant to Code of Conduct Canon 3(C)(1)(a) and 28 U.S.C. § 455(b)(1), Judge Snow has personal knowledge of disputed evidentiary facts concerning the

proceeding. The Court determined that an inquiry about investigations in the context of on-going litigation into his wife's statement should come within the current case. Yet, undoubtedly, Judge Snow has or will find out from his wife if she made the statement or not. Therefore, Judge Snow has personal knowledge of disputed facts which the Court has determined to be relevant.

To the extent that the Court determines the topic to be relevant at all, pursuant to Code of Conduct Canon 3(C)(1)(d)(iv) and 28 U.S.C. § 455(b)(5)(iv), Judge Snow's wife would be a likely witness as to whether she made the statement or not and/or what she meant and the context, etc.

Sheriff Arpaio testified that Dennis Montgomery had nothing to do with any investigation of Judge Snow or his wife. Yet when Court resumed after lunch on April 23, 2015, at page 657-660 of the transcript, Judge Snow immediately started up again with further inquiries about Dennis Montgomery's alleged funding and records. Judge Snow's orders after the lunch recess indicated a determination to undertake a major examination of Dennis Montgomery.

In addition and separately, the language of the Judicial Code leaves no doubt that that recusal process is to be self-executing, as the judge should not unethically wait for a recusal motion to be filed.

It [the Code of Conduct] is intended to be used by a judge at the start of each case as a checklist to assist in deciding whether at that point he should disqualify himself from any participation in the proceedings . . . [E]ven before appraising participation in the case under the

[Judicial Code], the judge should first consult his own emotions and conscience, and pass an 'internal test of freedom' from disabling conflicts.

Leslie W. Abramson, *Judicial Disqualification Under Canon 3 of the Code of Judicial Conduct* 10 (2d ed. 1992).

An impartial judiciary is a fundamental component of the system of justice in the United States. The right to a “neutral and detached judge” in any proceeding is protected by the Constitution and is an integral part of maintaining the public’s confidence in the judicial system. *Ward v. City of Monroeville*, 409 U.S. 57, 61-62 (1972). *See also Marshall v. Jerrico, Inc.*, 446 U.S. 238, 243 (1980) (“powerful” constitutional interest in fair adjudicative procedure). Congress has sought to secure the impartiality of judges by requiring them to step aside, or in some instances, disqualify themselves, in various circumstances.

“In order to preserve the integrity of the judiciary, and to ensure that justice is carried out in each individual case, judges must adhere to high standards of conduct.” *York v. United States*, 785 A.2d 651, 655 (D.C. 2001). “A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned . . .” ABA Code Of Judicial Conduct Canon 3(C)(1) *see also Scott v. United States*, 559 A.2d 745, 750 (D.C. 1989) (en banc).

VI. CONCLUSION

Pursuant to 28 U.S.C. § 144 and 28 U.S.C. § 455, this Court must

respectfully disqualify Judge Snow, order that this case be assigned to another judge, and order that any orders, at least with regard to Petitioner Dennis Montgomery, be vacated forthwith. Petitioner Dennis Montgomery notified each of parties and counsel that this Emergency Petition is being filed.

Dated: May 11, 2015

Respectfully submitted,

/s/ Larry Klayman

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STATEMENT OF RELATED CASES

Pursuant to Circuit Rule 28-2.6, Petitioner Dennis Montgomery states that this case is related to the case of *Melendres v. Arpaio*, Case No. CV-07-2513-PHX-GMS, that is currently pending before the U.S. District Court for the District of Arizona.

CERTIFICATE OF COMPLIANCE

I certify that this petition complies with the page limitations of Fed. R. App. 21(d), and that this petition complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman style.

CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2015, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, I hereby certify that I have served the following in the manner indicated:

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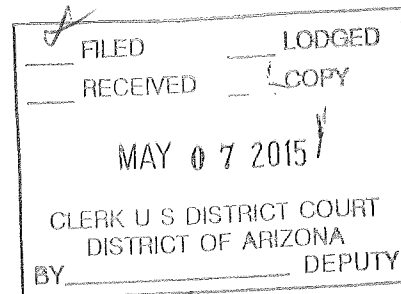
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19 **IN THE UNITED STATES DISTRICT COURT**
20 **FOR THE DISTRICT OF ARIZONA**

21 MANUEL de JESUS ORTEGA MELENDRES, on
22 behalf of himself and all others similarly
23 situated; *et al.*

24 Plaintiff,

25 v.

26 JOSEPH M. ARPAIO, in his individual
27 And official capacity as Sheriff of Maricopa
28 County, Arizona; *et al.*

Defendants.

DENNIS L. MONTGOMERY

Intervenor.

Civil Action No.
CV-07-2513-PHX-GMS

INTERVENOR DENNIS L. MONTGOMERY'S MOTION
TO DISQUALIFY JUDGE G. MURRAY SNOW UNDER 28 U.S.C. §144

Pursuant to 28 U.S. Code § 144, Intervenor Dennis L. Montgomery hereby respectfully

1 moves for disqualification of the Honorable G. Murray Snow, for the reasons set forth in his
2 companion affidavit, memorandum of law, and other exhibits attached thereto.

3 Dated: May 7, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

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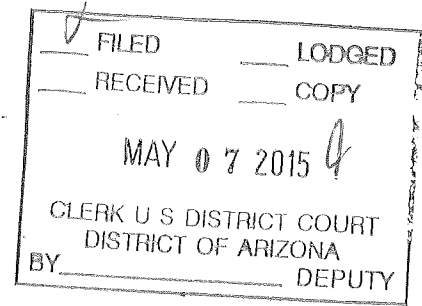
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

MANUEL de JESUS ORTEGA MELENDRES, on
behalf of himself and all others similarly
situated; *et al.*

Plaintiff,

v.

JOSEPH M. ARPAIO, in his individual
And official capacity as Sheriff of Maricopa
County, Arizona; *et al.*

Defendants.

DENNIS L. MONTGOMERY

Intervenor.

Civil Action No.
CV-07-2513-PHX-GMS

**INTERVENOR DENNIS L. MONTGOMERY'S MEMORANDUM OF LAW
IN SUPPORT OF INTERVENOR'S MOTION TO RECUSE/DISQUALIFY JUDGE G.
MURRAY SNOW UNDER 28 U.S.C. §144**

I. INTRODUCTION

Pursuant to 28 U.S. Code § 144, Intervenor Dennis L. Montgomery hereby respectfully

1 moves for disqualification of the Honorable G. Murray Snow. (Exhibit 2). Intervenor hereby
2 presents this Memorandum and files the attached affidavits and corresponding certificate of filing in
3 good faith by counsel. Intervenor hereby respectfully demands the transfer of what remains of this
4 case to a different judge, immediately, as provided by 28 U.S. Code § 144 and the disqualification
5 or recusal of Judge Snow in further related proceedings concerning Dennis L. Montgomery and his
6 attorney Larry Klayman.

7 The legal opinion of Professor Ronald Rotunda, a renowned expert on Professional
8 Responsibility and Constitutional Law, is attached and incorporated herein in support of this Court's
9 disqualification. (Exhibit 1). As explained by Professor Rotunda, Judge Snow now has – by his own
10 admission – an incurable personal interest in the case, at least in this new phase of this case as it has
11 metastasized into something entirely new. At this stage, Judge Snow is the sole decision-maker in
12 the case.
13

14 By his own official inquiry, statements, and questions in open court, on the transcript, Judge
15 Snow admits that the investigation now concerns – at least as the Judge believes – the Judge's wife.
16 As proclaimed by Judge Snow himself, Judge Snow is now unethically investigating issues about
17 his own family.
18

19 This began when reports were published that Judge Snow's wife stated to several witnesses
20 at a restaurant that her husband, Judge Snow, wanted to do everything possible in his conduct of this
21 case to make sure Arpaio is not re-elected as Sheriff in the upcoming elections.

22 Apparently neither Judge Snow nor his wife have denied nor sought to explain his wife's
23 public statement as far as Intervenor or counsel are able to determine. Instead, Judge Snow is
24 determined to investigate and threaten Dennis Montgomery and others have confirmed that Judge
25 Snow's wife did make the statement at issue.
26

27 These matters can only, even if relevant and not unethical (which they are not) be heard by a
28

1 different judge and the inquiry concerning Mr. Montgomery should be shut down and his
2 documents and property returned forthwith.

3 Intervenor Dennis Montgomery strongly rejects the insinuations and implications of this
4 inquiry sparked by scurrilous lies and defamation by blog postings, particularly The Phoenix New
5 Times, a disreputable, dishonest and low-class internet rag that has a far-left political agenda and
6 which hates Sheriff Joe Arpaio and anyone associated with him.¹ Mr. Montgomery was not
7 working on this case or investigating Judge Snow or Snow's family. However, just as physicians
8 are not supposed to treat their own family for anything serious, it is doubtful that accurate facts can
9 be presented and correctly interpreted by a person considering allegations about his wife and family.
10

11 Now, Dennis Montgomery's own documents, intellectual property, patented technology,
12 copyrighted material, and other information has been seized by order of Judge Snow.

13 Also, this week, Judge Snow has also ordered to be produced from the Maricopa County
14 Sheriff's Office ("MCSO") and Cold Case Posse all documents concerning Dennis Montgomery's
15 attorney Larry Klayman and all documents relating to any communications with another federal
16 judge, thus also invading the authority of another federal judge.
17

18 **II. STATEMENT OF FACTS RELEVANT TO MOTION**

19 The mainstay of this case is concluded and only contempt proceedings are now underway.
20 On October 2, 2013, Judge Snow entered a "Supplemental Permanent Injunction / Judgment
21 Order." Sheriff Joe Arpaio and the MCSO filed a Notice of Appeal from the October 2, 2013, final
22 order to the U.S. Court of Appeals for the Ninth Circuit., which heard the appeal from the October
23 2, 2013, Order.
24

25 Yet 19 months after the final judgment was entered in this Court, ongoing proceedings now,

26
27 ¹ The Phoenix New Times employs as so-called reporters a pornographer, drug addict and convicted
28 felon, as discovered in other lawsuits.

1 post-judgment, have become focused on irrelevant and scandalous allegations concerning Mr.
2 Montgomery published by a disreputable and dishonest, ultra-leftist rag, The Phoenix New Times,
3 which hates anyone remotely associated with Sheriff Joe Arpaio and his office.

4 Dennis Montgomery provided his software work, analysis, technological work, copyrighted
5 material, patents, programs, source code, output data, and information to the MCSO. Thus, Dennis
6 Montgomery retains a proprietary interest in those documents including as intellectual property
7 and/or trade secrets. Yet, documents about and generated by Dennis Montgomery working on
8 confidential matters were demanded by Judge Snow and turned over without the opportunity for a
9 review of privilege or documents subject to trade secrets protection or confidentiality agreements
10 with third parties.

11
12 On April 23, 2015, Judge Snow also launched his own inquiry of the Intervenor Dennis L.
13 Montgomery during the testimony of Sheriff Joe Arpaio.

14 In the hearing in this case on April 23, 2015, Judge G. Murray Snow was conducting the
15 questioning of Sheriff Joe Arpaio. At Page 646, lines 4-6, Judge Snow asked Sheriff Arpaio: **"Q.**
16 **Did you ever -- you see that the article says that what Montgomery was actually doing was**
17 **investigating me. You see that that's what the article says?"**

18
19 Although Sheriff Arpaio answered **"It's not true,"** Judge Snow puts his faith in hearsay by
20 blogger Stephen Lemons at an unreliable and dishonest rag, The Phoenix New Times, proffering
21 such scandalous stories as "Judge Snow Rips the Lid Off an MCSO Riddled With Corruption,
22 Confirming My Reporting in the Process," "Arpaio Cops to Investigating Federal Judge, Judge's
23 Wife, Confirming *New Times* Story," "Arpaio's Chief Deputy Confirms Wack Investigations of
24 Judge's wife, CIA, DOJ, etc."

25
26 Specifically, starting on Page 646, Judge Snow asked Sheriff Arpaio, in which "the article"
27 refers to Lemons' blog posting in The Phoenix New Times:
28

1 Q. Now, the article says that you were personally conducting these
investigations and personally aware of them. Were you?

2 A. Well, on a certain issue I was.

3 Q. And what issue was that?

4 A. It was the president's birth certificate.

5 Q. Okay. So you were -- Mr. Montgomery was doing research into
the president's birth certificate. Did Mr. Montgomery ever tell you
6 -- or, well, did you ever use Mr. Montgomery to investigate
anything about the Department of Justice?

7 A. I don't believe that Montgomery was involved in the birth
certificate. It was other violations that he was looking into.
8

9 Judge Snow continued questioning Sheriff Arpaio on page 647:

10 Q. And what were those?

11 A. Had to do with computer tampering and also bank fraud, that
type of thing.

12 Q. Did you ever -- you see that the article says that what
13 Montgomery was actually doing was investigating me. You see
that that's what the article says?

14 A. It's not true.

15 Q. All right. Are you aware that I've ever been investigated by
16 anyone?

17 A. You investigated?

18 Q. Yes.

19 A. No. No.

20 Q. Any of my activities?

21 A. No.

22 Q. Any of my family members?

23 A. That have been investigated?

24 Q. Yes.

25 A. Not by our office.

26 Q. Are you aware of anybody who's investigated any of my family
members by any -- any office. Or anybody.

27 A. I believe there was an issue, but once again, it wasn't my
office.
28

Q. Well, whose office was it?

1 A. It was an outside investigator not hired by us.

2 Q. Who hired the outside investigator?

3 Judge Snow continued questioning Sheriff Arpaio on pages 648 -649:

4 A. Could have been counsel.

5 Q. "Counsel" meaning your counsel?

6 A. Yes.

7 Q. And would that have been Mr. Casey or Ms. Iafrate?

8 A. I believe it would have been Mr. Casey.

9 Q. And who did he hire?

10 A. It was the counsel.

11 Q. I'm sorry?

12 A. Mr. Casey.

13 Q. Mr. Casey. Who did Mr. Casey hire?

14 A. Pardon?

15 Q. Who did Mr. Casey hire? To investigate me or a member of my
16 family, or members of my family.

17 A. We weren't investigating you, Your Honor.

18 Q. Well, who were you investigating?

19 A. We were investigating some comments that came to our
20 attention.

21 Q. Okay. And how did they come to your attention?

22 A. Through e-mail.

23 Q. And do you know who the author of the e-mail was?

24 A. I don't have the name right now.

25 Q. Okay. Let me ask, in his article Mr. Lemons indicates -- well,
26 let me get -- let me get this clear. Your testimony is that Mr.
27 Mackiewicz, Mr. Anglin, Mr. Zullo, never were involved in any
28 investigation of the Department of Justice or of me, is that correct?

A. Not -- no, not of you.

Q. Well, were they involved in an investigation of the Department
of Justice?

A. I'm not sure.

Q. Were they trying to determine whether the Department of
Justice had contacted me in any way?

1 A. I'm not sure about that.

2 Q. You're not sure about that?

3 A. No.

4 Q. And would Mr. Montgomery have been involved in assisting
5 them to determine whether the Department of Justice had
6 contacted me in any way?

7 A. No. I believe there was information about many judges being
8 infiltrated or wiretaps and that type of thing. That's what the
9 informer said that right now we don't have much confidence in.

10 Q. Well, who was the informer and what did the informer say?

11 A. We're speaking about Montgomery.

12 Q. All right. Montgomery said that judges had been infiltrated?

13 A. That many judges -- if I recall, that they're wire -- their phones
14 were tapped, e-mails, that type of thing.

15 Q. By the Department of Justice?

16 A. By someone.

17 Judge Snow continued questioning Sheriff Arpaio on pages 650:

18 Q. And so Mr. Montgomery proposed to -- who did he propose to
19 at the MCSO that the DOJ was inappropriately -- I assume it was
20 of interest to you if they were wiretapping my phone, among
21 others?

22 A. Yes. And mine, too.

23 Q. And yours, too. And so were you conducting this investigation?

24 A. No.

25 Q. Who was in your department?

26 A. This is Zullo and I think Mackiewicz.

27 Q. What rank does Mackiewicz have?

28 A. He's a detective.

Q. Who did he report to about this investigation?

A. I think he and Zullo worked together.

Q. And who did they report to?

A. And Jerry Sheridan.

Q. They reported to Deputy Chief Sheridan?

A. At one time, but let me just say that the information we're --
we've been getting is the informer's not very viable.

1 Q. Well, I understand that, I think the article itself says, that you
2 became aware after a considerable amount of time that the reporter
3 was giving you junk. Is that fair to say?

4 A. Yes.

5 Q. Or the informer was giving you junk?

6 A. Yes.

7 Judge Snow continued questioning Sheriff Arpaio on pages 654, line 5 onward:

8 Q. Now, I think in addition to the investigation that may have
9 involved me and my phone or any contact or tapping by the
10 Department of Justice, you indicated that there were investigations
11 made into members of my family. Did you indicate that?

12 A. That had nothing to do with Montgomery.

13 Q. What did it have to do with?

14 A. I believe there was a, as I say, e-mail that came to me.

15 Q. And do you still have that e-mail?

16 A. We may have it, yes.

17 Q. I'm going to direct you to keep that e-mail. What did the e-mail
18 say, to the best of your recollection?

19 A. I think it mentioned that Judge Snow wanted to do everything to
20 make sure I'm not elected.

21 Q. Do you recall who the author of that e-mail was?

22 A. I believe it was someone named Grissom.

23 Q. Grissom?

24 A. Grissom.

25 Q. Okay. And how did this person purport to know that?

26 Judge Snow continued questioning Sheriff Arpaio on pages 655, line 5 onward:

27 A. The person met your wife in a restaurant, and she's the one that
28 made those comments.

Q. According to whatever Mr. Grissom said.

A. There was other witnesses, yes.

Q. Okay. And so you turned that over to your counsel and counsel
hired a private investigator, and what did the investigator do?

A. He investigated it.

Q. And what was the result of the investigation?

A. Results were that he confirmed that your wife was in that
restaurant and con -- I guess talked to the witnesses, three or four,
that confirm that remark was made.

1 Q. All right. And do you have any materials pertaining to that
investigation?

2 A. We should have.

3 Q. Okay. Will you save those as well?

4 A. Yes.

5 Q. All right. Thank you. Who has told you that the information
that Mr. Montgomery provide -- or how is it that you've come to
conclude that the information you were getting from Mr.
Montgomery is not reliable?

6 A. I think the investigators, as time progressed, figured that he may
not be reliable.

7 Q. Did the MCSO also purchase computer equipment for
8

9 Nowhere does it appear that either Judge Snow or his wife have ever denied that his wife
10 made those comments about Judge Snow's intention to conduct this case in a manner to ensure
11 Sheriff Arpaio's defeat in the upcoming election for Sheriff or that she was misreported or
12 misunderstood. And, his wife's indeed having made the prejudicial comments have been confirmed
13 by other third party witnesses. Nor have Judge Snow or his wife even, however convincingly or not,
14 offered an apology for making these unethical and prejudicial statements.
15

16 Instead, Judge Snow, to pursue his won personal interests and agenda, then questioned
17 improperly Chief Deputy Sheridan and others about Mr. Montgomery on issues having nothing to
18 do with the on-going contempt proceedings.

19 This is all very far removed from the final order entered 19 months ago on October 2, 2013,
20 ending this case.

21
22 **III. ARGUMENT**

23 **A. The Governing Law**

24 Pursuant to 28 U.S. Code § 144:

25 Whenever a party to any proceeding in a district court makes and
26 files a timely and sufficient affidavit that the judge before whom the
matter is pending has a personal bias or prejudice either against him
27 or in favor of any adverse party, such judge shall proceed no further
therein, but another judge shall be assigned to hear such proceeding.
28

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

B. Governing Legal Precedents and Principles

An impartial judiciary is a fundamental component of the system of justice in the United States. The right to a “neutral and detached judge” in any proceeding is protected by the Constitution and is an integral part of maintaining the public’s confidence in the judicial system. *Ward v. City of Monroeville*, 409 U.S. 57, 61-62 (1972). *See also Marshall v. Jerrico, Inc.*, 446 U.S. 238, 243 (1980) (“powerful” constitutional interest in fair adjudicative procedure). Congress has sought to secure the impartiality of judges by requiring them to step aside, or in some instances, disqualify themselves, in various circumstances.

In order to preserve the integrity of the judiciary, and to ensure that justice is carried out in each individual case, judges must adhere to high standards of conduct." *York v. United States*, 785 A.2d 651, 655 (D.C. 2001). "A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned. . . ." ABA Code Of Judicial Conduct Canon 3(C)(1) *see also Scott v. United States*, 559 A.2d 745, 750 (D.C. 1989) (en banc).

The language of the Code of Conduct for United States Judges leaves no doubt that that
recusal process is to be self-executing, as the judge should not unethically wait for a recusal motion
to be filed. **“It is intended to be used by a judge at the start of each case as a checklist to assist
in deciding whether at that point he should disqualify himself from any participation in the
proceedings . . . [E]ven before appraising participation in the case under the [Judicial Code],
the judge should first consult his own emotions and conscience, and pass an 'internal test of**

1 **freedom' from disabling conflicts."** Leslie W. Abramson, *Judicial Disqualification Under Canon 3*
 2 of the Code of Judicial Conduct 10 (2d ed. 1992).

3 Here, of course, the case has embarked on a dramatically new phase quite unrelated to the
 4 past history of the case. At this juncture, the analysis should be applied.

5 Disqualification or recusal is required when there is even the appearance that the court's
 6 impartiality may be called into question, and "could suggest, to an outside observer, such a 'high
 7 degree of favoritism or antagonism' to defendants' position that 'fair judgment is impossible.'" *Liteky v. United States*, 510 U.S. 540, 555, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994)); *See also*
 8 *Jackson v. Microsoft Corp.*, 135 F. Supp. 2d 38, 40 (D.D.C. 2001) (recusal was proper because the
 9 judge "ha[d] created an appearance of personal bias or prejudice").

12 The disqualification statute, 28 U.S.C. §144, is **mandatory and**
 13 **automatic**, requiring only a timely and sufficient affidavit alleging
 14 personal bias or prejudice of the judge. The judge is a silent
 15 defendant, unable to make findings on the truth or falsity of the
 16 affiant's allegations, and truth must be presumed. *United States v. Hanrahan*, 248 F. Supp. 471, 474 (D.D.C. 1965)(Emphasis added); and the allegations may be based upon information and belief, *Berger v. United States*, 255 U.S. 22, 34, 65 L. Ed. 481, 41 S. Ct. 230 (1920).

17 *Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook Railroad Co.*,
 18 380 F.2d 570, 576 (D.C. 1967).

19 Under § 455(a), a judge must recuse himself if a reasonable person with knowledge of all the
 20 facts would conclude that his impartiality might reasonably be questioned." *United States v. Nelson*,
 21 718 F.2d 315, 321 (9th Cir. 1983).

22 Further, the Supreme Court has held that a violation of section 455(a) takes place even if the
 23 judge is unaware of the circumstance that created the appearance of impropriety. In *Liljeberg v.*
 24 *Health Services Acquisition Corp.*, 486 U.S. 847 (1988), the trial judge was a member of the board
 25 of trustees of a university that had a financial interest in the litigation, but he was unaware of the
 26 financial interest when he conducted a bench trial and ruled in the case. The court of appeals
 27
 28

1 nevertheless vacated the judgment under Fed. R. Civ. P. 60(b) because the judge failed to recuse
2 himself pursuant to section 455(a), and the Supreme Court agreed. Noting that the purpose of
3 section 455(a) is to promote public confidence in the integrity of the judicial process, the Court
4 observed that such confidence “does not depend upon whether or not the judge actually knew of
5 facts creating an appearance of impropriety, so long as the public might reasonably believe that he
6 or she knew.

7 The U.S. Courts of Appeals for the First, Fifth, Sixth, Tenth, and Eleventh Circuits have said
8 that close questions should be decided in favor of recusal. *See Republic of Pan. v. American*
9 *Tobacco Co.*, 217 F.3d 343, 347 (5th Cir. 2000) (citing *In re Chevron*, 121 F.3d 163, 165 (5th Cir.
10 1997)); *In re United States*, 158 F.3d 26, 30 (1st Cir. 1998); *Nichols v. Alley*, 71 F.3d 347, 352 (10th
11 Cir. 1995); *United States v. Dandy*, 998 F.2d 1344, 1349 (6th Cir. 1993); *United States v. Kelly*, 888
12 F.2d 732, 744 (11th Cir. 1989).

14 In *SCA Servs. v. Morgan*, 557 F.2d 110 (7th Cir. 1977), the judge's brother was an attorney
15 in the firm appearing before the judge. Similar to the relationship between Judge Snow and his
16 wife: "This appearance of partiality begins with the natural assumption that brothers enjoy a close
17 personal and family relationship and, consequently, would be inclined to support each other's
18 interests. When one's brother is a lawyer in the firm representing a party before his brother who is
19 the judge in the case, the belief may arise in the public's mind that the brother's firm and its clients
20 will receive favored treatment, even if the brother does not personally appear in the case." *Id.* at
21 116. The U.S. Court of Appeals for the Seventh Circuit also found that “the judge's ‘Memorandum
22 of Decision’ suggests that he made a confidential inquiry, presumably to his brother, to determine in
23 what capacity Donald A. Morgan was involved in this case (Petitioner's App. D-3). Counsel were
24 not present and were unaware of the inquiry at the time it was made. While it is understandable why
25 the judge may have felt his brother could present the most accurate evidence as to his role in the
26
27
28

1 pending litigation, the judge's inquiry creates an impression of private consultation and appearance
2 of partiality which does not reassure a public already skeptical of lawyers and the legal system." *Id.*
3 The Seventh Circuit granted a petition for writ of mandamus requiring the trial court to abstain from
4 presiding over further proceedings. The same situation appears here. Judge Snow will have access
5 to his wife's explanation outside of court as to whether she did or did not make the statement at
6 issue.

7 In *In re Faulkner*, 856 F.2d 716 (5th Cir. 1988), the U.S. Court of Appeals for the Fifth
8 Circuit reversed a refusal to recuse where a relative of the judge was a major participant in
9 transactions relating to the defendant's indictment and "that relative had communicated to the judge
10 . . . material facts and her opinions and attitudes regarding those facts." *Id.* at 721.

12 Also on point is *In re Aetna Casualty & Surety Co.*, 919 F.2d 1136 (6th Cir. 1990), where
13 the U.S. Court of Appeals for the Sixth Circuit, sitting en banc, required recusal. In *In re Aetna*
14 *Casualty & Surety Co.*, seven claims against an insurance company were consolidated for trial, and
15 the trial judge initially recused himself because his daughter's law firm represented four of the
16 claimants. The judge later separated the cases and planned to try the three claims in which his
17 daughter's firm was not involved. On mandamus petition the court reversed because the cases
18 remained intimately connected: A "decision on the merits of any important issue in any of the seven
19 cases . . . could constitute the law of the case in all of them, or involve collateral estoppel, or might
20 be highly persuasive as precedent." *Id.* at 1143. The court did not specify whether it based its
21 decision on section 455(a) or section 455(b)(5)(ii), but a concurring opinion, joined by seven
22 judges, emphasized that there was an actual conflict of interest pursuant to section 455(b)(5) as well
23 as an appearance of partiality.

26 Providing further definition and guidance, 28 U.S. Code § 455 also requires:

1 (a) Any justice, judge, or magistrate judge of the United States shall disqualify
himself in any proceeding in which his impartiality might reasonably be questioned.

2 (b) He shall also disqualify himself in the following circumstances:

3 (1) Where he has a personal bias or prejudice concerning a party, or
4 personal knowledge of disputed evidentiary facts concerning the
proceeding;

5 * * *

6 (4) He knows that he, individually or as a fiduciary, or his spouse or
minor child residing in his household, has a financial interest in the
7 subject matter in controversy or in a party to the proceeding, or any other
interest that could be substantially affected by the outcome of the
proceeding;

8 (5) He or his spouse, or a person within the third degree of relationship
9 to either of them, or the spouse of such a person:

10 (i) Is a party to the proceeding, or an officer, director, or
trustee of a party;

11 (ii) Is acting as a lawyer in the proceeding;

12 (iii) Is known by the judge to have an interest that could be
13 substantially affected by the outcome of the proceeding;

14 (iv) Is to the judge's knowledge likely to be a material
witness in the proceeding.

15 * * *

16 Moreover, the Code of Conduct for United States Judges

17 **CANON 2** requires:

18 * * *

19 (B) Outside Influence. A judge should not allow family,
social, political, financial, or other relationships to influence judicial
20 conduct or judgment. A judge should neither lend the prestige of the
judicial office to advance the private interests of the judge or others
21 nor convey or permit others to convey the impression that they are in
a special position to influence the judge. A judge should not testify
22 voluntarily as a character witness.

23 **CANON 3** requires:

24 * * *

25 (C) Disqualification.

26 (1) A judge shall disqualify himself or herself in a
proceeding in which the judge's impartiality might reasonably be
questioned, including but not limited to instances in which:

(a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

* * *

(c) the judge knows that the judge, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding;

(d) the judge or the judge's spouse, or a person related to either within the third degree of relationship, or the spouse of such a person is:

* * *

(iii) known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or

(iv) to the judge's knowledge likely to be a material witness in the proceeding;

C. Case Must Be Transferred to Another Judge Immediately

Nothing can create more of the appearance of a conflict of interest – much more an actual conflict of interest – than when a presiding judge has a personal interest in the litigation or matters related to it. The applicable standard for recusal is whether a judge's participation in a lawsuit will, at a minimum, create the *appearance* of bias and prejudice. *See Liteky v. United States*, 510 U.S. 540, 555, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994); *Jackson v. Microsoft Corp.*, 135 F. Supp. 2d 38, 40 (D.D.C. 2001), *supra*.²

As explained by Professor Ronald Rotunda, Judge Snow should be disqualified or recuse himself. (Exhibit 1).

Pursuant to 28 U.S. Code § 455(a), at a minimum Judge Snow's impartiality may reasonably be questioned, because the Judge has a personal interest running an inquiry concerning possible

² Here, we have much more than an "appearance." Judge Snow has misused the ongoing proceedings to pursue his own personal agenda and interests concerning him and his wife.

1 investigations of himself and his family, and also, according to Rotunda, because the transcript
2 indicates Judge Snow investigating matters on his own outside of the evidentiary hearing.

3 Pursuant to 28 U.S. Code § 455(b)(1), Judge Snow has personal knowledge of disputed
4 evidentiary facts concerning the proceeding. The Court unethically and improperly determined that
5 an inquiry about investigations into his wife's statement should come within the current case. Yet,
6 undoubtedly, Judge Snow has or will find out from his wife if she made the statement or not.
7 Therefore, Judge Snow has personal knowledge of disputed facts which the Court has determined to
8 be relevant.
9

10 To the extent that the Court determines the topic to be relevant at all, pursuant to 28 U.S.
11 Code § 455(b)(5)(iv), Judge Snow's wife would be a likely witness as to whether she made the
12 statement or not and/or what she meant and the context, etc.

13 Sheriff Arpaio testified that Dennis Montgomery had nothing to do with any investigation of
14 Judge Snow or his wife. Yet when Court resumed after lunch on April 23, 2015, at page 657-660 of
15 the transcript, Judge Snow immediately started up again with further inquiries about Dennis
16 Montgomery's alleged funding and records. Judge Snow's orders after the lunch recess indicated a
17 determination to undertake a major examination concerning Dennis Montgomery.
18

19 **D. Seizing Dennis Montgomery's Documents Without Review**

20 Dennis Montgomery provided his software work, technology, and analysis to the MCSO
21 retaining the rights to his proprietary work and interests, trade secrets, and intellectual property.

22 However, the Court also ordered the immediate production of documents about, written to or
23 from, or generated by Dennis Montgomery, without an opportunity for Mr. Montgomery and his
24 counsel to review the documents for compliance with confidentiality agreements with third parties
25 such as Dennis Montgomery, privilege, work product, proprietary interests or other concerns.
26

27 Furthermore, counsel for Intervenor is advised that when Sheriff Arpaio's counsel requested
28

1 the opportunity to review the documents promptly provided to Judge Snow to retrieve any
2 documents that might be privileged and not subject to disclosure, Judge Snow refused.

3 The seizure of Dennis Montgomery's intellectual property and work without an opportunity
4 for review, at a minimum demonstrates the appearance of bias or conflict of interest in the case.

5 **IV. CONCLUSION**

6 Pursuant to 28 U.S.C. § 144, this case must be immediately transferred to a different judge, ,
7 and Judge Snow should remove himself or be disqualified on the case as required by the statute, as
8 he has used it to pursue his own personal agenda with regard to scurrilous statements made by his
9 wife and violated sacrosanct attorney client and work product privileges.
10

11
12 Dated: May 7, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2015, I served this document by U.S. Mail to:

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Phoenix, AZ 85003-2160

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(Pro Hac Vice Application Filed)

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
Civil Action No. 07-2513-PHX-GMS
Judge G. Murray Snow

Manuel de Jesus Ortega)
Melendres, et al.,)
)
Plaintiffs,)
)
v.) CV 07-2513-PHX-GMS
)
Joseph M. Arpaio, et al.,)
Defendants.)
)
)
)
The Hon. G. Murray Snow,
Judge Presiding.
)

DECLARATION OF RONALD D. ROTUNDA

I, RONALD D. ROTUNDA, declare as follows:

I. INTRODUCTION

1. My name is Ronald D. Rotunda. I am currently the Doy & Dee Henley Chair and Distinguished Professor of Jurisprudence at Chapman University School of Law in Orange, California, where I teach courses in Legal Ethics and Constitutional Law. Attached, as Exhibit A is a copy of my current resume.
2. Except where otherwise noted, I make this declaration based on my personal knowledge and if called upon as a witness, I could and would testify competently to its contents.

- 2 -

II. QUALIFICATIONS

3. Before I joined Chapman U. in August 2008, I was the George Mason University Foundation Professor of Law from August 2002 (when I started teaching at George Mason University School of Law), until August 2006, when I became University Professor and Professor of Law at George Mason University School of Law. Please see my resume, Exhibit 1, for more information, including a list of my publications.
4. Prior to that (from 1993 until 2002), I was the Albert E. Jenner, Jr. Professor of Law at the University of Illinois. I left the University of Illinois in 2002, and then began working full-time at George Mason University.
5. I am a magna cum laude graduate of Harvard Law School, where I served as a member of the Harvard Law Review. I later clerked for Judge Walter R. Mansfield of the United States Court of Appeals for the Second Circuit. During the course of my legal career, I have practiced law in Illinois, New York, Washington, D.C., and served as assistant majority counsel for the Senate Watergate Committee.
6. I am the co-author of PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Westbury, N.Y., 12th ed. 2014), the most widely used legal ethics course book in the United States. It has been the most widely used since I coauthored the first edition in 1976. In addition, I have authored or coauthored several other books on legal ethics, including ROTUNDA & DZIENKOWSKI, LEGAL ETHICS: THE LAWYER'S DESKBOOK ON PROFESSIONAL RESPONSIBILITY (ABA/Thompson, 2014).
7. In addition to these books, I have written numerous articles on legal ethics, as well as several books and articles on Constitutional Law, as indicated in the attached resume. State and federal courts at every level have cited my treatises and articles over 1000

- 3 -

times. From 1980 to 1987, I was a member of the Multistate Professional Examination Committee of the National Conference of Bar Examiners.

8. In 2000, the University of Chicago Press published a lengthy study that sought to determine the influence, productivity, and reputations of law professors over the last several decades. That study ranked me as the 17th highest in the nation. *See Interpreting Legal Citations*, 29 JOURNAL OF LEGAL STUDIES (part 2) (U. Chicago Press, Jan. 2000).
9. The 2002-2003 New Educational Quality Ranking of U.S. Law Schools (EQR) ranked me the 11th most cited of all law faculty in the United States. *See* http://www.leiterrankings.com/faculty/2002faculty_impact_cites.shtml . I was selected the Best Lawyer in Washington, DC, in 2009 in Ethics and Professional Responsibility Law, as published in the November 2008 in the Washington Post in association with the Legal Times. I was also selected as one of the Best Lawyers in Southern California, in 2010 in Ethics and Professional Responsibility Law, and yet again in 2011, 2012, 2013, 2014, as published in the Los Angeles Times, in association with American Law Media.
10. I am a member of the bars of New York, Illinois, Washington, D.C., the Second Circuit, Seventh Circuit, the D.C. Circuit, the Fourth Circuit, the Central District of Illinois, D.C. District Court, and the U.S. Supreme Court.
11. Over the years, I have spoken at various ABA conferences on legal ethics and was a featured speaker on an ABA videotape series on legal ethics. I am a former —
 - Member of the Bar Admissions Committee of the Association of American Law Schools;
 - Chair of the Section on Professional Responsibility of the Association of American Law Schools;
 - Member of the ABA Standing Committee on Professional Discipline (1991-1997);

- 4 -

- Chair of the ABA Subcommittee on Model Rules Review (1992-1997); member of the Consultant Group of the American Law Institute's Restatement of the Law Governing Lawyers.
 - Member of the Advisory Council to Ethics 2000, the ABA Commission that proposed revisions to the ABA Model Rules of Professional Conduct (1998-2000).
 - Liaison to the ABA Standing Committee on Ethics and Professional Responsibility (1994-1997).
12. Since 1994, I have been a member of the Publications Board of the A.B.A. Center for Professional Responsibility. I am a Life Fellow of the American Bar Foundation and the Illinois Bar Foundation, and a former consultant to the Administrative Conference of the United States on various issues relating to legal ethics.
13. During May 1996, I was the Consultant to the Chamber of Advocates of the Czech Republic: under the auspices of the United States Agency for International Development, I spent the month of May 1996, in Prague, drafting Rules of Professional Responsibility for lawyers in the Czech Republic. I also wrote the original draft of the first Czech Bar Examination on Professional Responsibility, and consulted with the Czech Supreme Court in connection with the Court's proposed Rules of Judicial Ethics and the efforts of that Court to create an independent judiciary.
14. During November-December, 2002, I was Visiting Scholar, Katholieke Universiteit Leuven, Faculty of Law in, Leuven, Belgium.
15. In May 2004, and December 2005, I was visiting lecturer at the Institute of Law and Economics, Institut für Recht und Ökonomik, at the University of Hamburg.
16. During July 2007, I was in Latvia where I conferred with various judges from the Baltic States on judicial ethics, under the auspices of the U.S. Embassy, the Supreme Court of Latvia, and the Latvian Ministry of Justice. A copy of my curriculum vitae is attached.

III. DOCUMENTS

- 5 -

17. I have reviewed the followings documents in connection with this matter. It appears that

the judge is getting most of his “information” from articles of the Phoenix New Times:

- a. http://blogs.phoenixnewtimes.com/valleyfever/2015/04/judge_murray_snow_joe_arpaiο_contempt_trial.php
- b. http://blogs.phoenixnewtimes.com/valleyfever/2015/04/arpaiο_cops_to_investigating_federal_judge_judges_wife_confirming_new_times.php (“judge's spouse allegedly made at a restaurant, to the effect that Judge Snow wanted to ‘make sure’ Arpaiο’s not re-elected”)
- c. http://blogs.phoenixnewtimes.com/valleyfever/2015/04/arpaiοs_chief_deputy_confirms_wack_investigations_of_judges_wife_cia_doj_et.php (“I know Judge Snow's wife, she told me he hates you and wants to see you out of office.”)
- d. Order re evidentiary hearing of 4/27/2015; MEO re Day 4 evidentiary hearing
- e. Transcripts of Evidentiary Hearing of 4/21/2015; 4/22/2015; 4/23/2015; 4/24/2015

IV. SUMMARY OF THE FACTS

18. On April 22, 2015, and on April 23, 2015, Judge Snow conducted a cross examination of Sheriff Arpaiο. Judge Snow quickly learned that Sheriff Arpaiο was not investigating the judge (Evidentiary Hearing, 4/23/2015, p. 648, l. 14.) Instead, the judge was interested in learning all he could about an email that Sheriff Arpaiο received from “someone named Grissom,” who met the judge’s wife in a restaurant.” (Evidentiary Hearing, 4/23/2015, p. 654-55.). Mr. Grisson heard the judge’s wife say that “Judge Snow wanted to do everything to make sure I'm [Sheriff Arpaiο] not elected.” (Evidentiary Hearing, 4/23/2015, p. 655, ll. 19-20.)

19. Sheriff Arpaiο wanted to confirm that Mr. Grisson’s statement was actually true. The judge then asked Sheriff Arpaiο various leading questions (indicating that the judge was cross-examining the witness). Q is Judge; A. is Sheriff

- Q. Okay. And so you turned that over to your counsel and counsel hired a private investigator, and what did the investigator do?
- A. He investigated it.

- 6 -

- Q. And what was the result of the investigation?
- A. Results were that *he confirmed that your wife was in that restaurant* and con -- I guess *talked to the witnesses, three or four, that confirm that remark was made.* [Evidentiary Hearing, 4/23/2015, p. 655, ll. 5-12 (emphasis added)]

20. The *judge apparently engaged in his own investigation of facts outside the courtroom* he thought relevant that were not in evidence. (Evidentiary Hearing, 4/23/2015, at p. 657, l. 25 & p. 658, ll. 1-2.) The judge said, “*I was told* [during the luncheon break] that you also have various sources of funding within the MSCO,” and Sheriff Arpaio responded that the judge’s information was false. [Emphasis added.] The judge did not say who told him this false information, nor does he say if he questioned others as well.
21. Later, the *judge* said, “Well, so he found information that the DOJ [Department of Justice] had sent a communication to my computer?” Evidentiary Hearing of 4/24/2015, at p. 1000, ll. 19-20. Note that this is a leading question, to which the witness (Sheridan) responds, “Something to that effect, yes.”
22. Shortly thereafter, Mr. Sheridan said that he did not think the evidence of this email showed “collusion,” to which the judge promptly replied, “Well, I certainly agree with that” Evidentiary Hearing of 4/24/2015, at p. 1002, l.3.
23. The judge appears to be taking evidence outside of court (See ¶ 20), asking leading questions (e.g. ¶ 21), and giving his own testimony (¶ 22).
24. The judge also becomes argumentative. He tells Mr. Sheridan that he did not have to hire Mr. Montgomery as a “confidential” consultant — “Well, but what was he doing that needed to be confidential for?” The witness tries to answer, but the judge *interrupted* the witness, preventing him from finishing his sentence. Then the judge argues that there

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was no need for confidentiality because the consultant was not a mole infiltrating organized crime. The witness responds that the investigation was confidential because it concerns the CIA breaching personal information at least 50,000 American citizens, including “citizens that lived here in Maricopa County.” However, the judge became more argumentative, telling the witness, “I still don’t understand” why such a witness should be called “confidential,” even though the witness informed the judge that this informant qualified as “confidential” under the *written* rules of the operations manual. Evidentiary Hearing of 4/24/2015, at pp. 1005-0116.

25. I am told that Judge Snow is now ordering that documents showing communications with or referring to Larry Klayman, the lawyer for Mr. Montgomery, be turned over to him, including documents covered at least by the Attorney Work Product Privilege.

- a. Mr. Klayman and Mr. Montgomery are not parties to this case;
- b. No party has issued subpoenas for any of these documents;
- c. I am advised that the documents are confidential and within the Attorney Client and/or Work Product Privileges.

26. In the judge’s order of April 27, he states that he ordered the “MCSO defendants to *immediately disclose* certain materials discussed in the Court’s colloquy Sheriff Arpaio.” [Emphasis added.] The judge states, “Attorney review for privilege was conducted contemporaneously with this production” I have been advised that this is not true.

V. CONCLUSION

27. We know that several people report that the judge’s wife said that her husband, Judge Snow, “Judge Snow wanted to do everything to make sure [that Sheriff Arpaio is] not elected.” It should be quite obvious that whatever the duties of a federal judge are, that job description does not include conducting a judicial proceeding in a way to insure that

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Sheriff Arpaio is not elected and to pursue an investigation that is even broader than that for what appears to be personal reasons.

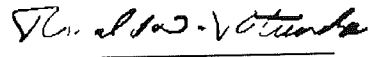
28. Moreover, we also know that in the several days of hearing, the judge —

- a. asked leading questions,
- b. gave his own version of the facts,
- c. conducted his own investigation outside the courtroom,
- d. argued with witnesses, and
- e. was extremely interested in what evidence existed concerning the statement he made to his wife that he would do all that he could to make sure that Sheriff Arpaio is not elected.

29. Under these set of facts, the judge should be disqualified because of his personal bias or prejudice against a party, Sheriff Arpaio. See 28 U.S.C. §144. This section has no provision for any waiver.


30. The judge should also be disqualified pursuant to 28 U.S.C. §455(b)(1) (“personal bias or prejudice concerning a party” *or* “personal knowledge of disputed evidentiary facts concerning the proceeding.” Section 455(e) allows for waiver of some disqualifications but does not allow any waiver for any disqualification under §455(b). 28 U.S.C 144 is also implicated here.

31. I declare under penalty of perjury that the foregoing is true and correct and that I signed this declaration on 6 May 2015, in Orange, California.


RONALD D. ROTUNDA

Attachment A

RONALD D. ROTUNDA
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April 27, 2015
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Experience:

Since August, 2008	DOY & DEE HENLEY CHAIR AND DISTINGUISHED PROFESSOR OF JURISPRUDENCE, CHAPMAN UNIVERSITY
June 17, 2009 – Jan. 31, 2013	COMMISSIONER, Fair Political Practices Commission a regulatory body of the State of California,
2006- August 2008	UNIVERSITY PROFESSOR AND PROFESSOR OF LAW, George Mason University
2002-2006	THE GEORGE MASON UNIVERSITY FOUNDATION PROFESSOR OF LAW, George Mason University School of Law
Nov. to Dec. 2002	Visiting Scholar, Katholieke Universiteit Leuven, Faculty of Law, Leuven, Belgium
May 2004	Visiting Lecturer, The Institute for Law and Economics, Institut für Recht und Ökonomik, The University of Hamburg, Germany
June 2004-May 2005	Special Counsel to Department of Defense, The Pentagon
December 2005	Visiting Lecturer, The Institute for Law and Economics, Institut für Recht und Ökonomik, The University of Hamburg, Germany
1993 - 2002	THE ALBERT E. JENNER, JR. PROFESSOR OF LAW, University of Illinois College of Law
Since 2002	THE ALBERT E. JENNER, JR. PROFESSOR OF LAW, EMERITUS, University of Illinois College of Law
Fall, 2001	Visiting Professor, George Mason University School of Law

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Ronald D. Rotunda

Spring & Fall 2000	Cato Institute, Washington, D.C.; Senior Fellow in Constitutional Studies [Senior Fellow in Constitutional Studies, 2001-2009]
Spring, 1999	Visiting Professor, holding the JOHN S. STONE ENDOWED CHAIR OF LAW, University of Alabama School of Law
August 1980 - 1992	Professor of Law, University of Illinois College of Law
March 1986	Fulbright Professor, Maracaibo and Caracas, Venezuela, under the auspices of the Embassy of the United States and the Catholic University Andres Bello
January – June, 1981	Fulbright Research Scholar, Italy
Spring 1981	Visiting Professor of Law, European University Institute, Florence, Italy
August 1977 – August, 1980	Associate Professor of Law, University of Illinois College of Law
August 1974 – August 1977	Assistant Professor of Law, University of Illinois College of Law
April 1973 - July 1974	Assistant Counsel, U.S. Senate Select Committee on Presidential Campaign Activities
July 1971 - April, 1973	Associate, Wilmer, Cutler & Pickering Washington, DC
August 1970 – July 1971	Law Clerk to Judge Walter R. Mansfield, Second Circuit, New York, N.Y.

Education:

Legal:	HARVARD LAW SCHOOL (1967- 1970) Harvard Law Review, volumes 82 & 83 J.D., 1970 Magna Cum Laude
College:	HARVARD COLLEGE (1963- 1967) A.B., 1967 Magna Cum Laude in Government

Member:

American Law Institute (since 1977); Life Fellow of the American Bar Foundation (since 1989); Life Fellow of the Illinois Bar Foundation (since 1991); The Board of Editors, The Corporation Law Review (1978-1985); New York Bar (since 1971); Washington, D.C. Bar and D.C. District Court Bar (since 1971); Illinois Bar (since 1975); 2nd Circuit Bar (since 1971); Central District of Illinois (since 1990); 7th Circuit (since 1990); U.S. Supreme Court Bar (since 1974); 4th Circuit, since 2009. Member: American Bar Association, Washington, D.C. Bar Association, Illinois State Bar

Association, Seventh Circuit Bar Association; The Multistate Professional Responsibility Examination Committee of the National Conference of Bar Examiners (1980-1987); AALS, Section on Professional Responsibility, Chairman Elect (1984-85), Chairman (1985-86); Who's Who In America (since 44th Ed.) and various other Who's Who; American Lawyer Media, L.P., National Board of Contributors (1990-2000). Best teacher selected by George Mason U. Law School Graduating Class of 2003.

Scholarly Influence and Honors:

Symposium, *Interpreting Legal Citations*, 29 JOURNAL OF LEGAL STUDIES (part 2) (U. Chicago Press, Jan. 2000), sought to determine the influence, productivity, and reputation of law professors. Under various measures, Professor Rotunda scored among the highest in the nation. *E.g.*, scholarly impact, most-cited law faculty in the United States, 17th (p. 470); reputation of judges, legal scholars, etc. on Internet, 34th (p. 331); scholar's non-scholarly reputation, 27th (p. 334); most influential legal treatises since 1978, 7th (p. 405).

In May 2000, *American Law Media*, publisher of *The American Lawyer*, the *National Law Journal*, and the *Legal Times*, picked Professor Rotunda as one of the ten most influential Illinois Lawyers. He was the only academic on the list. He was rated, in 2014, as one of "The 30 Most Influential Constitutional Law Professors" in the United States.

- 2012, Honored with, THE CHAPMAN UNIVERSITY EXCELLENCE IN SCHOLARLY/CREATIVE WORK AWARD, 2011-2012.
- Appointed UNIVERSITY PROFESSOR, 2006, George Mason University; Appointed 2008, DOY & DEE HENLEY CHAIR AND DISTINGUISHED PROFESSOR OF JURISPRUDENCE, Chapman University.
- The 2002-2003 *New Educational Quality Ranking* of U.S. Law Schools (EQR) ranks Professor Rotunda as the eleventh most cited of all law faculty in the United States. See http://www.leiterrankings.com/faculty/2002faculty_impact_cites.shtml
- Selected UNIVERSITY SCHOLAR for 1996-1999, University of Illinois.
- 1989, Ross and Helen Workman Research Award.
- 1984, David C. Baum Memorial Research Award.
- 1984, National Institute for Dispute Resolution Award.
- Fall, 1980, appointed Associate, in the Center for Advanced Study, University of Illinois.

LIST OF PUBLICATIONS:

BOOKS:

PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y., 1976) (with Thomas D. Morgan).

CALIFORNIA SUPPLEMENT TO PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y., 1976) (with Thomas D. Morgan).

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1979 CALIFORNIA RULES SUPPLEMENT TO PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y., 1979) (with Thomas D. Morgan).

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1979-1980 SUPPLEMENT TO CONSTITUTIONAL LAW (West Publishing Co., St. Paul, Minnesota, 1979) (with John E. Nowak and J. Nelson Young).

1982 SUPPLEMENT TO CONSTITUTIONAL LAW (West Publishing Co., St. Paul, Minnesota, 1982) (with John E. Nowak and J. Nelson Young).

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THE UNITED STATES FEDERAL SYSTEM: LEGAL INTEGRATION IN THE AMERICAN EXPERIENCE (Giuffrè, Milan, 1982) (with Peter Hay).

SIX JUSTICES ON CIVIL RIGHTS (Oceana Publications, Inc., Dobbs Ferry, N.Y., 1983) (edited and with introduction).

CONSTITUTIONAL LAW (West Publishing Co., St. Paul, Minnesota, 2d ed. 1983) (with John E. Nowak and J. Nelson Young) (a one volume treatise on Constitutional Law).

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THE POLITICS OF LANGUAGE: LIBERALISM AS WORD AND SYMBOL (University of Iowa Press, 1986) (with an Introduction by Daniel Schorr).

TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE (West Publishing Co., St. Paul, Minnesota, 1986) (*three volume treatise*) (with John E. Nowak and J. Nelson Young).

1987 POCKET PART TO TREATISE ON CONSTITUTIONAL LAW (West Publishing Co., 1987) (with John E. Nowak).

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헌법: 개인의 자유와 절차를 [AMERICAN CONSTITUTIONAL LAW: INDIVIDUAL LIBERTIES AND PROCEDURE; published in Korean] (Korean Constitutional Court, 1999) (with John E. Nowak).

PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Westbury, NY, 7th ed. 2000) (with Thomas D. Morgan).

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LEGAL ETHICS IN A NUTSHELL (West Group, St. Paul, Minnesota, 1st ed. 2003, Nutshell Series) (with Michael I. Krauss).

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2003 SUPPLEMENT TO MODERN CONSTITUTIONAL LAW (Thomson/West, St. Paul, Minnesota, 2003).

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2006 SUPPLEMENT TO MODERN CONSTITUTIONAL LAW (Thomson/West, St. Paul, Minnesota, 2006).

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LEGAL ETHICS: THE LAWYER'S DESKBOOK ON PROFESSIONAL RESPONSIBILITY (ABA-Thomson/West, St. Paul, Minn., 3rd ed. 2005) (a Treatise on legal ethics, jointly published by the ABA and Thomson/West) (with John S. Dzienkowski).

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Other Activities:

March-April, 1984, Expert Witness for State of Nebraska on Legal Ethics at the Impeachment Trial of Nebraska Attorney General Paul L. Douglas (tried before the State Supreme Court; the first impeachment trial in nearly a century).

July 1985, Assistant Chief Counsel, State of Alaska, Senate Impeachment Inquiry of Governor William Sheffield, (presented before the Alaskan Senate).

Speaker at various ABA sponsored conferences on Legal Ethics; Speaker at AALS workshop on Legal Ethics; Speaker on ABA videotape series, "Dilemmas in Legal Ethics."

Interviewed at various times on Radio and Television shows, such as MacNeil/Lehrer News Hour, Firing Line, CNN News, CNN Burden of Proof, ABC's Nightline, National Public Radio, News Hour with Jim Lehrer, Fox News, etc.

1985--1986, Reporter for Illinois Judicial Conference, Committee on Judicial Ethics.

1981-1986, Radio commentator (weekly comments on legal issues in the news), WILL-AM Public Radio.

1986-87, Reporter of Illinois State Bar Association Committee on Professionalism.

1987-2000, Member of Consultant Group of American Law Institute's RESTATEMENT OF THE LAW GOVERNING LAWYERS.

1986-1994, Consultant, Administrative Conference of the United States (on various issues relating to conflicts of interest and legal ethics).

1989-1992, Member, Bar Admissions Committee of the Association of American Law Schools.

1990-1991, Member, Joint Illinois State Bar Association & Chicago Bar Association Committee on Professional Conduct.

1991-1997, Member, American Bar Association Standing Committee on Professional Discipline.

CHAIR, Subcommittee on Model Rules Review (1992-1997). [The subcommittee that I chaired drafted the MODEL RULES FOR LAWYER DISCIPLINARY ENFORCEMENT that the ABA House of Delegates approved on August 11, 1993.]

1992, Member, Illinois State Bar Association [ISBA] Special Committee on Professionalism; CHAIR, Subcommittee on Celebration of the Legal Profession.

Spring 1993, Constitutional Law Adviser, SUPREME NATIONAL COUNCIL OF CAMBODIA. I traveled to Cambodia and worked with officials of UNTAC (the United Nations

Transitional Authority in Cambodia) and Cambodian political leaders, who were charged with drafting a new Constitution to govern that nation after the United Nations troop withdrawal.

1994-1997, LIAISON, ABA Standing Committee on Ethics and Professional Responsibility.

1994-1996, Member, Illinois State Bar Association [ISBA] Standing Committee on the Attorney Registration and Disciplinary Commission.

Winter 1996, Constitutional Law Adviser, SUPREME CONSTITUTIONAL COURT OF MOLDOVA.

Under the auspices of the United States Agency for International Development, I consulted with the six-member Supreme Constitutional Court of Moldova in connection with that Court's efforts to create an independent judiciary. The Court came into existence on January 1, 1996.

Spring 1996, Consultant, CHAMBER OF ADVOCATES, of the CZECH REPUBLIC.

Under the auspices of the United States Agency for International Development, I spent the month of May 1996, in Prague, drafting Rules of Professional Responsibility for all lawyers in the Czech Republic. I also drafted the first Bar Examination on Professional Responsibility, and consulted with the Czech Supreme Court in connection with the Court's proposed Rules of Judicial Ethics and the efforts of the Court to create an independent judiciary.

Consulted with (and traveled to) various countries on constitutional and judicial issues (e.g., Romania, Moldova, Ukraine, Cambodia) in connection with their move to democracy.

1997-1999, Special Counsel, Office of Independent Counsel (Whitewater Investigation).

Lecturer on issues relating to Constitutional Law, Federalism, Nation-Building, and the Legal Profession, throughout the United States as well as Canada, Cambodia, Czech Republic, England, Italy, Mexico, Moldova, Romania, Scotland, Turkey, Ukraine, and Venezuela.

1998-2002, Member, ADVISORY COUNCIL TO ETHICS 2000, the ABA Commission considering revisions to the ABA Model Rules of Professional Conduct.

2000-2002, Member, ADVISORY BOARD TO THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS (This Board was charged with removing any remaining vestiges of organized crime to influence the Union, its officers, or its members.) This Board was part of "Project RISE" ("Respect, Integrity, Strength, Ethics").

2001-2008, Member, Editorial Board, CATO SUPREME COURT REVIEW.

2005-2006, Member of the Task Force on Judicial Functions of the Commission on Virginia Courts in the 21st Century: To Benefit All, to Exclude None

July, 2007, Riga, Latvia, International Judicial Conference hosted by the United States Embassy, the Supreme Court of Latvia, and the Latvian Ministry of Justice. I was one of the main speakers along with Justice Samuel Alito, the President of Latvia, the Prime Minister of Latvia, the Chief Justice of Latvia, and the Minister of Justice of Latvia

Since 1994, Member, Publications Board of the ABA Center for Professional Responsibility; vice chair, 1997-2001.

Since 1996, Member, Executive Committee of the Professional Responsibility, Legal Ethics & Legal Education Practice Group of the Federalist Society; Chair-elect, 1999; Chair, 2000

Since 2003, Member, Advisory Board, the Center for Judicial Process, an interdisciplinary research center (an interdisciplinary research center connected to Albany Law School studying courts and judges)

Since 2012, Distinguished International Research Fellow at the World Engagement Institute, a non-profit, multidisciplinary and academically-based non-governmental organization with the mission to facilitate professional global engagement for international development and poverty reduction, <http://www.weinstitute.org/fellows.html>

Since 2014, Associate Editor of the Editorial Board, THE INTERNATIONAL JOURNAL OF SUSTAINABLE HUMAN SECURITY (IJSHS), a peer-reviewed publication of the World Engagement Institute (WEI)

Since 2014, Member, Board of Directors of the Harvard Law School Association of Orange County

Since 2014, Member, Editorial Board of THE JOURNAL OF LEGAL EDUCATION (2014 to 2016).

Exhibit 2

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Of Counsel

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

MANUEL de JESUS ORTEGA MELENDRES,
on behalf of himself and all others similarly
situated; *et al.*

Plaintiff,

v.

JOSEPH M. ARPAIO, in his individual
and official capacity as Sheriff of Maricopa
County, Arizona; *et al.*

Defendants.

DENNIS L. MONTGOMERY, and
LARRY KLAYMAN

Intervenors.

Civil Action No.
CV-07-2513-PHX-GMS

**DECLARATION OF DENNIS MONTGOMERY
PURSUANT TO 28 U.S.C. 144 MOTION**

Pursuant to 28 U.S.C. §1746, I, Dennis Montgomery, hereby declare under penalty of perjury that
the following is true and correct based on my personal knowledge and belief:

- 1) I am over the age of 18 years old and mentally and legally competent to make this affidavit sworn under oath, despite having suffered a brain **aneurysm** and serious related health issues.
- 2) However, there are reasons now why Judge Snow cannot continue with this case.
- 3) I was surprised to learn from the local Arizona news media that on or about April 23- 24, 2015, the Honorable Judge G. Murray Snow began to investigate me in this Court and undertake his own questioning to take testimony about me.
- 4) The news was published on April 30, 2015, when it came to my attention.
- 5) I was even more surprised to discover that the reports – which this Court has apparently relied on – from the disreputable and dishonest publication, the Phoenix New Times, falsely claiming that I investigated Judge Snow’s wife, because that is absolutely and categorically false. Phoenix New Times is an ultra-leftist publication, with its own political ideologies that it thrusts on everyone standing in their way, owned by Voice Media Group. It employs as reporters pornographers, convicted felons and drug addicts; persons who have little to no respect for the facts or the law.
- 6) Similarly, the Phoenix New Times reported falsely that I worked to find “compromising information about Snow, the judge overseeing the racial profiling case against Arpaio.”
- 7) That is false and it is a scurrilous insinuation, particularly (but not limited to) because the familiar phrase “compromising information” tends to suggest a certain kind of dirt.
- 8) Nevertheless, starting at least about two weeks ago, Judge G. Murray Snow launched an inquiry into whether I had been investigating him and/or his wife.
- 9) It is important to recognize that the focus of the case has dramatically changed. These are issues that have nothing to do with the original case or the ongoing contempt proceedings.

- 10) Such an inquiry must be conducted by another judge who does not have a personal interest in the subject matter.
- 11) On April 27, 2015, Judge Snow ordered all documents and records about me and my work to be handed over to the Court – including those which are privileged, subject to work product, and are proprietary, as well as my intellectual property.
- 12) More recently, Judge Snow, I am told, ordered the MCSO to produce all documents about my attorney, Larry Klayman, and about another federal judge in another jurisdiction, and even an attorney (now deceased) who worked to help Sheriff Joe Arpaio in a re-call petition election, and ordered production of all communications to or from any of them.
- 13) Judge Snow did not allow these documents seized by the Court to be reviewed to screen for attorney-client and/or work product privilege or confidential information such as trade secrets, proprietary information and intellectual property which I own.
- 14) As Professor Ronald Rotunda, in a companion affidavit filed herewith, points out, no party requested those documents. They were not part of any discovery / document request by a party.
- 15) *Therefore, Judge Snow is acting as a party himself* conducting his own discovery.
- 16) I have become concerned that Judge Snow's personal interests in these matters could cloud the judgment of any normal human being so as to confuse the work of the "Cold Case Posse" and myself as being only about Judge Snow.
- 17) I intervene in this case because I am forced into the case by these events. It is not my desire to be dragged into this controversy.
- 18) But I also am moving for the immediate return of my documents, my work, and my intellectual property that the Court ordered handed over. In so doing, the Court violated

my attorney-client privilege and work product, as well as my property and intellectual property rights.

19) I am also moving the Court to strike the scandalous and false smears against me in the Court transcript and to end this unethical, improper and irrelevant inquiry of Judge Snow.

20) Even after being told that my work has nothing to do with this case, Judge Snow continued to ask extensive leading and prejudicial questions about me and my work on April 23 and 24 and followed up with orders for document production and further discovery.

21) Therefore, it is Judge Snow's incorrect determination – not my own – that I and my work are relevant within the Court's proceedings.

22) Because of that, I have the legal right and the necessity to intervene in this case.

23) Judge Snow's own questioning of witnesses, persistently concerning me, indicates that Judge Snow is conducting his own personal inquiry into whether I and/or Sheriff Joe Arpaio's office were investigating Judge Snow and/or his wife.

24) Judge Snow's investigation is not relevant to the gravamen of the ongoing contempt proceeding and he cannot be the official who will conduct such an inquiry about himself and/or his wife, even were it proper, which it is not.

25) The Code of Conduct for United States Judges requires this case to be transferred to a different judge: *(Emphases added.)*

CANON 2 requires:

* * *

(B) Outside Influence. *A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment.* A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression

that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.

CANON 3 requires:

* * *

(C) Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding *in which the judge's impartiality might reasonably be questioned*, including but not limited to instances in which:

(a) the judge has a personal bias or prejudice concerning a party, *or personal knowledge of disputed evidentiary facts concerning the proceeding;*

* * *

(c) the judge knows that the judge, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, *or any other interest that could be affected substantially by the outcome of the proceeding;*

(d) the judge or the judge's spouse, or a person related to either within the third degree of relationship, or the spouse of such a person is:

* * *

(iii) *known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;* or

(iv) to the judge's knowledge *likely to be a material witness in the proceeding;*

26) Here, if Judge Snow's wife made the statement about Judge Snow's conduct of this case as confirmed by several witnesses, even if the substance of the statement is untrue about Judge Snow's conduct of the case, Judge Snow's wife could be affected either way, at least in reputation or emotionally if she made the statement.

27) Judge Snow will be "emotionally compromised" in examining the matter because no matter how the inquiry turns out there could be potential ramifications, if only in the form of stress in personal relationships.

28) Furthermore, the Judge's wife could become a witness, and the more so if the Court (not I) determines that the topic is important enough to warrant investigation.

- 29) Based upon my reading of the affidavit of Professor Ronald Rotunda, Judge Snow must recuse himself including for the following reasons:
- 30) Pursuant to 28 U.S. Code § 455(a), Judge Snow's impartiality may reasonably be questioned, because the Judge has a personal interest running an inquiry concerning possible investigations of himself and his family, and also, according to Rotunda, because the transcript indicates Judge Snow investigating matters on his own outside of the evidentiary hearing (such as during the lunch break).
- 31) Pursuant to 28 U.S. Code § 455(b)(1), Judge Snow has personal knowledge of disputed evidentiary facts concerning the proceeding. The Court determined that an inquiry about investigations into his wife's statement should come within the current case. Yet, undoubtedly, Judge Snow has or will find out from his wife whether she made the statement or not. Judge Snow is running the case in such a manner as to ensure that Sheriff Arpaio is not re-elected as Sheriff. Therefore, Judge Snow has personal knowledge of disputed facts which the Court has determined to be relevant.
- 32) To the extent that the Court determines the topic to be relevant at all, pursuant to 28 U.S. Code § 455(b)(5)(iv), Judge Snow's wife would be a likely witness as to whether she made the statement or not and/or what she meant and the context, etc.
- 33) Sheriff Arpaio testified that I, Dennis Montgomery, had nothing to do with any investigation of Judge Snow or his wife. Yet when Court returned after lunch on April 23, 2015, at page 657-660 of the transcript, Judge Snow immediately started up again with further inquiries about Dennis Montgomery's funding and records. Judge Snow's orders after the lunch recess indicated a determination to undertake a major examination of me, even after learning that I had nothing to do with this case.
- 34) As Professor Rotunda notes in his affidavit paragraph 24:

The judge also becomes argumentative. He tells Mr. Sheridan that he did not have to hire Mr. Montgomery as a “confidential” consultant — “Well, but what was he doing that needed to be confidential for?” The witness tries to answer, but the judge *interrupted* the witness, preventing him from finishing his sentence. Then the judge argues that there was no need for confidentiality because the consultant was not a mole infiltrating organized crime. The witness responds that the investigation was confidential because it concerns the CIA breaching personal information at least 50,000 American citizens, including “citizens that lived here in Maricopa County.” However, the judge became more argumentative, telling the witness, “I still don’t understand” why such a witness should be called “confidential,” even though the witness informed the judge that this informant qualified as “confidential” under the *written* rules of the operations manual. Evidentiary Hearing of 4/24/2015, at pp. 1005-0116.

35) As Professor Rotunda stated in his affidavit paragraph 27: “We know that several people report that the judge’s wife said that her husband, Judge Snow, “Judge Snow wanted to do everything to make sure [that Sheriff Arpaio is] not elected.” It should be quite obvious that whatever the duties of a federal judge are, that job description does not include conducting a judicial proceeding in a way to insure that Sheriff Arpaio is not elected and to pursue an investigation that is even broader than that for what appears to be personal reasons.

36) As Professor Rotunda stated in his affidavit paragraph 28: “Moreover, we also know that in the several days of hearing, the judge —

- i. asked leading questions,
- ii. gave his own version of the facts,
- iii. conducted his own investigation outside the courtroom,
- iv. argued with witnesses, and
- v. was extremely interested in what evidence existed concerning the statement he made to his wife that he would do all that he could to make sure that Sheriff Arpaio is not elected.”

37) As Professor Rotunda stated in his affidavit paragraph 29: “Under these set of facts, the judge should be disqualified because of his personal bias or prejudice against a party, Sheriff Arpaio. See 28 U.S.C. §144. This section has no provision for any waiver.”

38) As Professor Rotunda stated in his affidavit paragraph 30: “”The judge should also be disqualified pursuant to 28 U.S.C. §455(b)(1) (“personal bias or prejudice concerning a party” *or* “personal knowledge of disputed evidentiary facts concerning the proceeding.” Section 455(e) allows for waiver of some disqualifications but does not allow any waiver for any disqualification under §455(b). 28 U.S.C 144 is also implicated here.

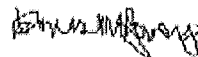
39) Furthermore, Judge Snow in his questioning spent considerable time on the question of whether or not the alleged money paid by MCSO to me was well-spent or a wise use of County funds. Unfortunately, this persistent inquiry by Judge Snow starts to look like exactly what his wife stated.

40) An inquisition by Judge Snow into whether Sheriff Arpaio misspent MCSO funds creates the appearance of Judge Snow collecting ammunition to be used in the partisan re-election campaign against Sheriff Arpaio’s re-election.

41) Therefore, Judge Snow’s inquiry runs the danger of turning into a fulfillment of the statement that several witnesses claim Judge Snow’s wife made, that the case would be handled so as to ensure Sheriff Arpaio’s defeat in his re-election campaign.

42) Therefore, it is mandatory and beneficial for the remaining aspects of this case to be handled by a different judge. I therefore move pursuant to 28 U.S.C. § 144 and 28 U.S.C. § 455(b)(1), et seq., that Judge Snow recuse himself from this case, or otherwise be disqualified.

I hereby swear under oath and penalty of perjury that the foregoing facts are true and correct to the best of my knowledge and belief:



Mr. Dennis Montgomery

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Of Counsel

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

MANUEL de JESUS ORTEGA MELENDRES, on
behalf of himself and all others similarly
situated; *et al.*

Plaintiff,

v.

JOSEPH M. ARPAIO, in his individual
And official capacity as Sheriff of Maricopa
County, Arizona; *et al.*

Defendants.

DENNIS L. MONTGOMERY

Intervenor.

Civil Action No.
CV-07-2513-PHX-GMS

DENNIS L. MONTGOMERY'S MOTION FOR INTERVENTION OF RIGHT

Pursuant to Federal Rules of Civil Procedure ("FRCP") Rule 24(a)(2) Dennis L.

Montgomery hereby moves to intervene as of right in order, as further explained in his companion

Memorandum of Law and also his proposed motions.

1 Dennis Montgomery intervenes to demand a return of his documents, records, work product
2 and proprietary interests; to move to strike false information about him from the record, which is
3 also irrelevant to the proceedings, to disqualify the Honorable Murray Snow and file a demand for
4 the immediate transfer of the case to a different judge pursuant to 28 U.S. Code § 144, and to move
5 for a halt to the inquiry.
6

7 Dated: May 7, 2015

Respectfully submitted,
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22 (*Pro Hac Vice Application Filed*)
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CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2015, I served this document by U.S. Mail to:

Honorable John Z. Boyle
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Honorable G. Murray Snow
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Of Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

MANUEL de JESUS ORTEGA MELENDRES, on
behalf of himself and all others similarly
situated; *et al.*

Plaintiff,

v.

JOSEPH M. ARPAIO, in his individual
And official capacity as Sheriff of Maricopa
County, Arizona; *et al.*

Defendants.

DENNIS L. MONTGOMERY

Intervenor.

Civil Action No.
CV-07-2513-PHX-GMS

**INTERVENOR DENNIS L. MONTGOMERY'S MEMORANDUM OF LAW IN SUPPORT
OF MOTION FOR INTERVENTION OF RIGHT**

I. INTRODUCTION

Pursuant to Federal Rules of Civil Procedure ("FRCP") Rule 24(a)(2) Dennis L.

Montgomery hereby moves to intervene as of right in order to protect and vindicate his interests in being improperly investigated and having his documents, records, work product and intellectual property seized by the Court without any privilege review or protections for his propriety interests. Dennis Montgomery intervenes to demand a return of his documents, records, work product and intellectual property; to move to strike false information about him from the record, which is also irrelevant to the proceedings, to file a demand for recusal or disqualification and the immediate transfer of the case to a different judge pursuant to 28 U.S. Code § 144, and move for a halt to the inquiry.

II. GOVERNING LAW

Federal Rules of Civil Procedure ("FRCP") Rule 24 governs intervention by additional parties in existing litigation in the federal courts: ¹

Rule 24. Intervention

(a) INTERVENTION OF RIGHT. On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a federal statute;

or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) PERMISSIVE INTERVENTION.

(1) *In General*. On timely motion, the court may permit anyone to intervene who:

(A) is given a conditional right to intervene by a federal statute;

or

(B) has a claim or defense that shares with the main action a common question of law or fact.

¹ It does not appear that the Local Rules of the U.S. District Court for the District of Arizona present any additional rules or requirements for intervention.

1 (2) *By a Government Officer or Agency.* On timely motion, the court
 2 may permit a federal or state governmental officer or agency to intervene if
 3 a party's claim or defense is based on:

4 (A) a statute or executive order administered by the officer or
 5 agency; or

6 (B) any regulation, order, requirement, or agreement issued or
 7 made under the statute or executive order.

8 (3) *Delay or Prejudice.* In exercising its discretion, the court must
 9 consider whether the intervention will unduly delay or prejudice the
 10 adjudication of the original parties' rights.

11 (c) NOTICE AND PLEADING REQUIRED. A motion to intervene must be served
 12 on the parties as provided in Rule 5. The motion must state the grounds for
 13 intervention and be accompanied by a pleading that sets out the claim or
 14 defense for which intervention is sought.

15 **III. STATEMENT OF FACTS RELEVANT TO MOTION**

16 There has been a dramatic change of this case, so that the case is now about entirely
 17 different albeit irrelevant, personal issues concerning the presiding judge and his wife in a new
 18 phase than when it began. The Court entered a final order on October 2, 2013. This is, in effect,
 19 now an entirely different case which is being used for improper purposes.

20 On or about April 23-24, 2015, the Honorable G. Murray Snow embarked on an inquiry of
 21 Dennis L. Montgomery extensively inquiring about the alleged dealings with the Maricopa County
 22 Sheriff's Office ("MCSO") and Cold Case Posse entirely unrelated to this litigation, seizing by his
 23 unprecedented and improper court order Dennis Montgomery's documents, records, work product,
 24 and intellectual property, and even demanding documents about and concerning Dennis
 25 Montgomery's attorney and a federal judge in the District of Columbia.

26 Mr. Montgomery's physical personal property and intellectual property has been affected
 27 and taken. Montgomery's proprietary interests have been invaded along with his attorney work
 28 product subject to privilege and other privileged material, documents, and/or information.
 Montgomery was deprived of the right to review the documents to protect privileged information
 and/or documents and proprietary information.

1 Judge Snow explicitly relied upon the so-called reporting from The Phoenix New Times, a
2 disreputable and dishonest internet publication with a far-left political agenda which hates anyone
3 remotely associated with Sheriff Joe Arpaio or his office.

4 As a result, the substance of the allegations which the inquiry is pursuing, based on the so-
5 called reporting of The Phoenix New Times, clearly includes making profoundly significant
6 determinations about Dennis Montgomery's honesty, legitimacy, career, work, and profession.

7 IV. ARGUMENT

8 A. Dennis Montgomery Has a Direct Interest in the Property and Transaction

9 Dennis Montgomery has a vested right to intervene. Pursuant to FRCP Rule 24(a)(2)
10 Dennis Montgomery claims an interest in property or transaction that is the subject of the action.
11 The Court has seized his physical property and intellectual property, and attorney-client and work
12 product privileges have been violated and trashed. Montgomery seeks to file motions to quash and
13 for the return of his documents, property, and intellectual property.

14 B. Dennis Montgomery Will Be Impaired or Impeded

15 Dennis Montgomery has a vested right to intervene as a matter of law and right. Pursuant to
16 FRCP Rule 24(a)(2) Dennis Montgomery is so situated that disposing of the action will as a
17 practical matter impair or impede his ability to protect his interest. The inquiry now launched is
18 obviously intended to and will make decisions about Dennis Montgomery and his work, as well as
19 harm his legal rights and interests.

20 C. The Motion is Timely

21 Intervenor's motion is timely. Although the litigation has been going on for years, the case
22 has entered a new and different phase only in late April of 2015. The case only began to involve
23 Dennis Montgomery in April 2015. Therefore, Intervenor files this motion timely as soon as his
24 interests became involved in the case by the actions of Judge Snow.
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1 **V. CONCLUSION**

2 Dennis L. Montgomery has a vested right to intervene pursuant to FRCP Rule 24(a)(2) and
3 should be granted the status of Intervenor for the purpose of seeking a transfer of the case to another
4 judge, demanding return of his documents and intellectual property including by quashing the
5 orders for their production, striking libelous information from the court record that have nothing to
6 do with the ongoing contempt proceedings. Mr. Montgomery is also filing a motion to disqualify
7 Judge Snow on the basis of his unethical judicial misconduct, which has resulted in him pursuing
8 his own personal family interests and agenda, and egregiously violating attorney-client privileges
9 and Mr. Montgomery's work product and intellectual property rights.
10

11 Dated: May 7, 2015

Respectfully submitted,

12
13 Larry Klayman, Esq.
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22 Jonathon Moseley, Esq.

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 Attorney for Plaintiff

CERTIFICATE OF SERVICE

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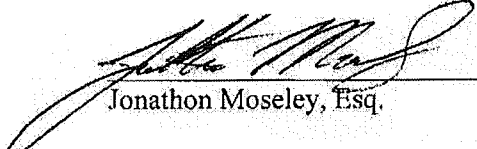
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(Pro Hac Vice Application Filed)

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
Civil Action No. 07-2513-PHX-GMS
Judge G. Murray Snow

Manuel de Jesus Ortega)	
Melendres, et al.,)	
)	
Plaintiffs,)	
)	
v.)	CV 07-2513-PHX-GMS
)	
Joseph M. Arpaio, et al.,)	
Defendants.)	
)	
)	
)	The Hon. G. Murray Snow,
)	<i>Judge Presiding.</i>
)	

DECLARATION OF RONALD D. ROTUNDA

I, RONALD D. ROTUNDA, declare as follows:

I. INTRODUCTION

1. My name is Ronald D. Rotunda. I am currently the Doy & Dee Henley Chair and Distinguished Professor of Jurisprudence at Chapman University School of Law in Orange, California, where I teach courses in Legal Ethics and Constitutional Law. Attached, as Exhibit A is a copy of my current resume.
2. Except where otherwise noted, I make this declaration based on my personal knowledge and if called upon as a witness, I could and would testify competently to its contents.

II. QUALIFICATIONS

3. Before I joined Chapman U. in August 2008, I was the George Mason University Foundation Professor of Law from August 2002 (when I started teaching at George Mason University School of Law), until August 2006, when I became University Professor and Professor of Law at George Mason University School of Law. Please see my resume, Exhibit 1, for more information, including a list of my publications.
4. Prior to that (from 1993 until 2002), I was the Albert E. Jenner, Jr. Professor of Law at the University of Illinois. I left the University of Illinois in 2002, and then began working full-time at George Mason University.
5. I am a magna cum laude graduate of Harvard Law School, where I served as a member of the Harvard Law Review. I later clerked for Judge Walter R. Mansfield of the United States Court of Appeals for the Second Circuit. During the course of my legal career, I have practiced law in Illinois, New York, Washington, D.C., and served as assistant majority counsel for the Senate Watergate Committee.
6. I am the co-author of PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Westbury, N.Y., 12th ed. 2014), the most widely used legal ethics course book in the United States. It has been the most widely used since I coauthored the first edition in 1976. In addition, I have authored or coauthored several other books on legal ethics, including ROTUNDA & DZIENKOWSKI, LEGAL ETHICS: THE LAWYER'S DESKBOOK ON PROFESSIONAL RESPONSIBILITY (ABA/Thompson, 2014).
7. In addition to these books, I have written numerous articles on legal ethics, as well as several books and articles on Constitutional Law, as indicated in the attached resume. State and federal courts at every level have cited my treatises and articles over 1000

times. From 1980 to 1987, I was a member of the Multistate Professional Examination Committee of the National Conference of Bar Examiners.

8. In 2000, the University of Chicago Press published a lengthy study that sought to determine the influence, productivity, and reputations of law professors over the last several decades. That study ranked me as the 17th highest in the nation. *See Interpreting Legal Citations*, 29 JOURNAL OF LEGAL STUDIES (part 2) (U. Chicago Press, Jan. 2000).
9. The 2002-2003 New Educational Quality Ranking of U.S. Law Schools (EQR) ranked me the 11th most cited of all law faculty in the United States. *See* http://www.leiterrankings.com/faculty/2002faculty_impact_cites.shtml . I was selected the Best Lawyer in Washington, DC, in 2009 in Ethics and Professional Responsibility Law, as published in the November 2008 in the Washington Post in association with the Legal Times. I was also selected as one of the Best Lawyers in Southern California, in 2010 in Ethics and Professional Responsibility Law, and yet again in 2011, 2012, 2013, 2014, as published in the Los Angeles Times, in association with American Law Media.
10. I am a member of the bars of New York, Illinois, Washington, D.C., the Second Circuit, Seventh Circuit, the D.C. Circuit, the Fourth Circuit, the Central District of Illinois, D.C. District Court, and the U.S. Supreme Court.
11. Over the years, I have spoken at various ABA conferences on legal ethics and was a featured speaker on an ABA videotape series on legal ethics. I am a former —
 - Member of the Bar Admissions Committee of the Association of American Law Schools;
 - Chair of the Section on Professional Responsibility of the Association of American Law Schools;
 - Member of the ABA Standing Committee on Professional Discipline (1991-1997);

- Chair of the ABA Subcommittee on Model Rules Review (1992-1997); member of the Consultant Group of the American Law Institute's Restatement of the Law Governing Lawyers.
 - Member of the Advisory Council to Ethics 2000, the ABA Commission that proposed revisions to the ABA Model Rules of Professional Conduct (1998-2000).
 - Liaison to the ABA Standing Committee on Ethics and Professional Responsibility (1994-1997).
- 12.** Since 1994, I have been a member of the Publications Board of the A.B.A. Center for Professional Responsibility. I am a Life Fellow of the American Bar Foundation and the Illinois Bar Foundation, and a former consultant to the Administrative Conference of the United States on various issues relating to legal ethics.
- 13.** During May 1996, I was the Consultant to the Chamber of Advocates of the Czech Republic: under the auspices of the United States Agency for International Development, I spent the month of May 1996, in Prague, drafting Rules of Professional Responsibility for lawyers in the Czech Republic. I also wrote the original draft of the first Czech Bar Examination on Professional Responsibility, and consulted with the Czech Supreme Court in connection with the Court's proposed Rules of Judicial Ethics and the efforts of that Court to create an independent judiciary.
- 14.** During November-December, 2002, I was Visiting Scholar, Katholieke Universiteit Leuven, Faculty of Law in, Leuven, Belgium.
- 15.** In May 2004, and December 2005, I was visiting lecturer at the Institute of Law and Economics, Institut für Recht und Ökonomik, at the University of Hamburg.
- 16.** During July 2007, I was in Latvia where I conferred with various judges from the Baltic States on judicial ethics, under the auspices of the U.S. Embassy, the Supreme Court of Latvia, and the Latvian Ministry of Justice. A copy of my curriculum vitae is attached.

III. DOCUMENTS

17. I have reviewed the followings documents in connection with this matter. It appears that the judge is getting most of his “information” from articles of the Phoenix New Times:

- a. http://blogs.phoenixnewtimes.com/valleyfever/2015/04/judge_murray_snow_joe_arpaio_contempt_trial.php
- b. http://blogs.phoenixnewtimes.com/valleyfever/2015/04/arpaio_cops_to_investigating_federal_judge_judges_wife_confirming_new_times.php (“judge's spouse allegedly made at a restaurant, to the effect that Judge Snow wanted to ‘make sure’ Arpaio’s not re-elected”)
- c. http://blogs.phoenixnewtimes.com/valleyfever/2015/04/arpaio's_chief_deputy_confirms_wack_investigations_of_judges_wife_cia_doj_et.php (“I know Judge Snow's wife, she told me he hates you and wants to see you out of office.”)
- d. Order re evidentiary hearing of 4/27/2015; MEO re Day 4 evidentiary hearing
- e. Transcripts of Evidentiary Hearing of 4/21/2015; 4/22/2015; 4/23/2015; 4/24/2015

IV. SUMMARY OF THE FACTS

18. On April 22, 2015, and on April 23, 2015, Judge Snow conducted a cross examination of Sheriff Arpaio. Judge Snow quickly learned that Sheriff Arpaio was not investigating the judge (Evidentiary Hearing, 4/23/2015, p. 648, l. 14.) Instead, the judge was interested in learning all he could about an email that Sheriff Arpaio received from “someone named Grissom,” who met the judge’s wife in a restaurant.” (Evidentiary Hearing, 4/23/2015, p. 654-55.). Mr. Grisson heard the judge’s wife say that “Judge Snow wanted to do everything to make sure I'm [Sheriff Arpaio] not elected.” (Evidentiary Hearing, 4/23/2015, p. 655, ll. 19-20.)

19. Sheriff Arpaio wanted to confirm that Mr. Grisson’s statement was actually true. The judge then asked Sheriff Arpaio various leading questions (indicating that the judge was cross-examining the witness). Q is Judge; A. is Sheriff

Q. Okay. And so you turned that over to your counsel and counsel hired a private investigator, and what did the investigator do?

A. He investigated it.

- Q. And what was the result of the investigation?
- A. Results were that *he confirmed that your wife was in that restaurant* and con -- I guess *talked to the witnesses, three or four, that confirm that remark was made.* [Evidentiary Hearing, 4/23/2015, p. 655, ll. 5-12 (emphasis added)]

20. The *judge* apparently engaged in his own investigation of facts outside the courtroom he thought relevant that were not in evidence. (Evidentiary Hearing, 4/23/2015, at p. 657, l. 25 & p. 658, ll. 1-2.) The judge said, “I *was told* [during the luncheon break] that you also have various sources of funding within the MSCO,” and Sheriff Arpaio responded that the judge’s information was false. [Emphasis added.] The judge did not say who told him this false information, nor does he say if he questioned others as well.
21. Later, the *judge* said, “Well, so he found information that the DOJ [Department of Justice] had sent a communication to my computer?” Evidentiary Hearing of 4/24/2015, at p. 1000, ll. 19-20. Note that this is a leading question, to which the witness (Sheridan) responds, “Something to that effect, yes.”
22. Shortly thereafter, Mr. Sheridan said that he did not think the evidence of this email showed “collusion,” to which the judge promptly replied, “Well, I certainly agree with that” Evidentiary Hearing of 4/24/2015, at p. 1002, l.3.
23. The judge appears to be taking evidence outside of court (See ¶ 20), asking leading questions (e.g. ¶ 21), and giving his own testimony (¶ 22).
24. The judge also becomes argumentative. He tells Mr. Sheridan that he did not have to hire Mr. Montgomery as a “confidential” consultant — “Well, but what was he doing that needed to be confidential for?” The witness tries to answer, but the judge *interrupted* the witness, preventing him from finishing his sentence. Then the judge argues that there

was no need for confidentiality because the consultant was not a mole infiltrating organized crime. The witness responds that the investigation was confidential because it concerns the CIA breaching personal information at least 50,000 American citizens, including “citizens that lived here in Maricopa County.” However, the judge became more argumentative, telling the witness, “I still don’t understand” why such a witness should be called “confidential,” even though the witness informed the judge that this informant qualified as “confidential” under the *written* rules of the operations manual. Evidentiary Hearing of 4/24/2015, at pp. 1005-0116.

25. I am told that Judge Snow is now ordering that documents showing communications with or referring to Larry Klayman, the lawyer for Mr. Montgomery, be turned over to him, including documents covered at least by the Attorney Work Product Privilege.

- a. Mr. Klayman and Mr. Montgomery are not parties to this case;
- b. No party has issued subpoenas for any of these documents;
- c. I am advised that the documents are confidential and within the Attorney Client and/or Work Product Privileges.

26. In the judge’s order of April 27, he states that he ordered the “MCSO defendants to *immediately disclose* certain materials discussed in the Court’s colloquy Sheriff Arpaio.” [Emphasis added.] The judge states, “Attorney review for privilege was conducted contemporaneously with this production” I have been advised that this is not true.

V. CONCLUSION

27. We know that several people report that the judge’s wife said that her husband, Judge Snow, “Judge Snow wanted to do everything to make sure [that Sheriff Arpaio is] not elected.” It should be quite obvious that whatever the duties of a federal judge are, that job description does not include conducting a judicial proceeding in a way to insure that

Sheriff Arpaio is not elected and to pursue an investigation that is even broader than that for what appears to be personal reasons.

28. Moreover, we also know that in the several days of hearing, the judge —

- a.** asked leading questions,
- b.** gave his own version of the facts,
- c.** conducted his own investigation outside the courtroom,
- d.** argued with witnesses, and
- e.** was extremely interested in what evidence existed concerning the statement he made to his wife that he would do all that he could to make sure that Sheriff Arpaio is not elected.

29. Under these set of facts, the judge should be disqualified because of his personal bias or prejudice against a party, Sheriff Arpaio. See 28 U.S.C. §144. This section has no provision for any waiver.

30. The judge should also be disqualified pursuant to 28 U.S.C. §455(b)(1) (“personal bias or prejudice concerning a party” *or* “personal knowledge of disputed evidentiary facts concerning the proceeding.” Section 455(e) allows for waiver of some disqualifications but does not allow any waiver for any disqualification under §455(b). 28 U.S.C 144 is also implicated here.

31. I declare under penalty of perjury that the foregoing is true and correct and that I signed this declaration on 6 May 2015, in Orange, California.


RONALD D. ROTUNDA

Attachment A

RONALD D. ROTUNDA

Email: rrotunda@chapman.edu

April 27, 2015

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Experience:

Since August, 2008	DOY & DEE HENLEY CHAIR AND DISTINGUISHED PROFESSOR OF JURISPRUDENCE, CHAPMAN UNIVERSITY
June 17, 2009 – Jan. 31, 2013	COMMISSIONER, Fair Political Practices Commission a regulatory body of the State of California,
2006- August 2008	UNIVERSITY PROFESSOR AND PROFESSOR OF LAW, George Mason University
2002-2006	THE GEORGE MASON UNIVERSITY FOUNDATION PROFESSOR OF LAW, George Mason University School of Law
Nov. to Dec. 2002	Visiting Scholar, Katholieke Universiteit Leuven, Faculty of Law, Leuven, Belgium
May 2004	Visiting Lecturer, The Institute for Law and Economics, Institut für Recht und Ökonomik, The University of Hamburg, Germany
June 2004-May 2005	Special Counsel to Department of Defense, The Pentagon
December 2005	Visiting Lecturer, The Institute for Law and Economics, Institut für Recht und Ökonomik, The University of Hamburg, Germany
1993 - 2002	THE ALBERT E. JENNER, JR. PROFESSOR OF LAW, University of Illinois College of Law
Since 2002	THE ALBERT E. JENNER, JR. PROFESSOR OF LAW, EMERITUS, University of Illinois College of Law
Fall, 2001	Visiting Professor, George Mason University School of Law

Spring & Fall 2000	Cato Institute, Washington, D.C.; Senior Fellow in Constitutional Studies [Senior Fellow in Constitutional Studies, 2001-2009]
Spring, 1999	Visiting Professor, holding the JOHN S. STONE ENDOWED CHAIR OF LAW, University of Alabama School of Law
August 1980 - 1992	Professor of Law, University of Illinois College of Law
March 1986	Fulbright Professor, Maracaibo and Caracas, Venezuela, under the auspices of the Embassy of the United States and the Catholic University Andres Bello
January – June, 1981	Fulbright Research Scholar, Italy
Spring 1981	Visiting Professor of Law, European University Institute, Florence, Italy
August 1977 – August, 1980	Associate Professor of Law, University of Illinois College of Law
August 1974 – August 1977	Assistant Professor of Law, University of Illinois College of Law
April 1973 - July 1974	Assistant Counsel, U.S. Senate Select Committee on Presidential Campaign Activities
July 1971 - April, 1973	Associate, Wilmer, Cutler & Pickering Washington, DC
August 1970 – July 1971	Law Clerk to Judge Walter R. Mansfield, Second Circuit, New York, N.Y.

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Harvard Law Review, volumes 82 & 83
J.D., 1970 Magna Cum Laude

College: HARVARD COLLEGE (1963- 1967)
A.B., 1967 Magna Cum Laude in Government

Member:

American Law Institute (since 1977); Life Fellow of the American Bar Foundation (since 1989); Life Fellow of the Illinois Bar Foundation (since 1991); The Board of Editors, The Corporation Law Review (1978-1985); New York Bar (since 1971); Washington, D.C. Bar and D.C. District Court Bar (since 1971); Illinois Bar (since 1975); 2nd Circuit Bar (since 1971); Central District of Illinois (since 1990); 7th Circuit (since 1990); U.S. Supreme Court Bar (since 1974); 4th Circuit, since 2009. Member: American Bar Association, Washington, D.C. Bar Association, Illinois State Bar

Association, Seventh Circuit Bar Association; The Multistate Professional Responsibility Examination Committee of the National Conference of Bar Examiners (1980-1987); AALS, Section on Professional Responsibility, Chairman Elect (1984-85), Chairman (1985-86); Who's Who In America (since 44th Ed.) and various other Who's Who; American Lawyer Media, L.P., National Board of Contributors (1990-2000). Best teacher selected by George Mason U. Law School Graduating Class of 2003.

Scholarly Influence and Honors:

Symposium, *Interpreting Legal Citations*, 29 JOURNAL OF LEGAL STUDIES (part 2) (U. Chicago Press, Jan. 2000), sought to determine the influence, productivity, and reputation of law professors. Under various measures, Professor Rotunda scored among the highest in the nation. *E.g.*, scholarly impact, most-cited law faculty in the United States, 17th (p. 470); reputation of judges, legal scholars, etc. on Internet, 34th (p. 331); scholar's non-scholarly reputation, 27th (p. 334); most influential legal treatises since 1978, 7th (p. 405).

In May 2000, *American Law Media*, publisher of *The American Lawyer*, the *National Law Journal*, and the *Legal Times*, picked Professor Rotunda as one of the ten most influential Illinois Lawyers. He was the only academic on the list. He was rated, in 2014, as one of "[The 30 Most Influential Constitutional Law Professors](#)" in the United States.

- 2012, Honored with, THE CHAPMAN UNIVERSITY EXCELLENCE IN SCHOLARLY/CREATIVE WORK AWARD, 2011-2012.
- Appointed UNIVERSITY PROFESSOR, 2006, George Mason University; Appointed 2008, DOY & DEE HENLEY CHAIR AND DISTINGUISHED PROFESSOR OF JURISPRUDENCE, Chapman University.
- The 2002-2003 *New Educational Quality Ranking* of U.S. Law Schools (EQR) ranks Professor Rotunda as the eleventh most cited of all law faculty in the United States. See http://www.leiterrankings.com/faculty/2002faculty_impact_cites.shtml
- Selected UNIVERSITY SCHOLAR for 1996-1999, University of Illinois.
- 1989, Ross and Helen Workman Research Award.
- 1984, David C. Baum Memorial Research Award.
- 1984, National Institute for Dispute Resolution Award.
- Fall, 1980, appointed Associate, in the Center for Advanced Study, University of Illinois.

LIST OF PUBLICATIONS:

BOOKS:

PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y., 1976) (with Thomas D. Morgan).

CALIFORNIA SUPPLEMENT TO PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y., 1976) (with Thomas D. Morgan).

1978 SUPPLEMENT TO PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y., 1978) (with Thomas D. Morgan).

1979 PROBLEMS, CASES AND READINGS SUPPLEMENT TO PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y., 1979) (with Thomas D. Morgan).

1979 CALIFORNIA RULES SUPPLEMENT TO PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y., 1979) (with Thomas D. Morgan).

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1979-1980 SUPPLEMENT TO CONSTITUTIONAL LAW (West Publishing Co., St. Paul, Minnesota, 1979) (with John E. Nowak and J. Nelson Young).

1982 SUPPLEMENT TO CONSTITUTIONAL LAW (West Publishing Co., St. Paul, Minnesota, 1982) (with John E. Nowak and J. Nelson Young).

MODERN CONSTITUTIONAL LAW: CASES & NOTES (West Publishing Co., St. Paul, Minnesota, 1981).

1981 SUPPLEMENT TO MODERN CONSTITUTIONAL LAW (West Publishing Co., St. Paul, Minnesota, 1981).

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1983 STANDARDS SUPPLEMENT TO PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y., 1983) (with Thomas D. Morgan).

THE UNITED STATES FEDERAL SYSTEM: LEGAL INTEGRATION IN THE AMERICAN EXPERIENCE (Giuffrè, Milan, 1982) (with Peter Hay).

SIX JUSTICES ON CIVIL RIGHTS (Oceana Publications, Inc., Dobbs Ferry, N.Y., 1983) (edited and with introduction).

CONSTITUTIONAL LAW (West Publishing Co., St. Paul, Minnesota, 2d ed. 1983) (with John E. Nowak and J. Nelson Young) (a one volume treatise on Constitutional Law).

PROFESSIONAL RESPONSIBILITY (West Publishing Co., 1984, Black Letter Series).

PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y., 3d ed. 1984) (with Thomas D. Morgan).

1984 SELECTED STANDARDS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y. 1984) (with Thomas D. Morgan).

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1985 SUPPLEMENT TO MODERN CONSTITUTIONAL LAW (West Publishing Co., St. Paul, Minnesota, 1985).

1986 SUPPLEMENT TO MODERN CONSTITUTIONAL LAW (West Publishing Co., St. Paul, MINNESOTA, 1986).

1987 SUPPLEMENT TO MODERN CONSTITUTIONAL LAW (West Publishing Co., St. Paul, Minnesota, 1987).

1988 SUPPLEMENT TO MODERN CONSTITUTIONAL LAW (West Publishing Co., St. Paul, Minnesota, 1988).

THE POLITICS OF LANGUAGE: LIBERALISM AS WORD AND SYMBOL (University of Iowa Press, 1986) (with an Introduction by Daniel Schorr).

TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE (West Publishing Co., St. Paul, Minnesota, 1986) (*three volume treatise*) (with John E. Nowak and J. Nelson Young).

1987 POCKET PART TO TREATISE ON CONSTITUTIONAL LAW (West Publishing Co., 1987) (with John E. Nowak).

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JOSEPH STORY'S COMMENTARIES ON THE CONSTITUTION (Carolina Academic Press, Durham, N.C. 1987) (with introduction) (with John E. Nowak).

CONSTITUTIONAL LAW: PRINCIPLES AND CASES (West Publishing Co., St. Paul, Minnesota, 1987).

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1989 SELECTED STANDARDS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Westbury, N.Y. 1989) (with Thomas D. Morgan).

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CONSTITUTIONAL LAW (West Publishing Co., St. Paul, Minnesota, 4th ed. 1991) (a one volume treatise on Constitutional Law) (with John E. Nowak).

PROFESSIONAL RESPONSIBILITY (West Publishing Co., St. Paul, Minnesota, 3d ed. 1992, Black Letter Series).

TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE (West Publishing Co., St. Paul, Minnesota, 2d ed. 1992) (*four volume treatise*) (with John E. Nowak).

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1999 POCKET PART TO CONSTITUTIONAL LAW (West Group, St. Paul, Minnesota, 1999) (with John E. Nowak).

MODERN CONSTITUTIONAL LAW: CASES AND NOTES (West Publishing Co., St. Paul, Minnesota, 4th ed. 1993).

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PROFESSIONAL RESPONSIBILITY (West Publishing Co., St. Paul, Minnesota, 4th ed. 1995, Black Letter Series) (with computer disk).

Treatise on Constitutional Law: Substance and Procedure — EXPANDED CD ROM EDITION (West Publishing Co., St. Paul, Minnesota, 1995) (with John E. Nowak).

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2000 POCKET PART TO TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE (West Group, St. Paul, Minnesota, 2000) (with John E. Nowak).

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헌법: 개인의 자유와 절차를 [AMERICAN CONSTITUTIONAL LAW: INDIVIDUAL LIBERTIES AND PROCEDURE; published in Korean] (Korean Constitutional Court, 1999) (with John E. Nowak).

PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Westbury, NY, 7th ed. 2000) (with Thomas D. Morgan).

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LEGAL ETHICS IN A NUTSHELL (West Group, St. Paul, Minnesota, 1st ed. 2003, Nutshell Series) (with Michael I. Krauss).

MODERN CONSTITUTIONAL LAW: CASES AND NOTES (Thomson/West, St. Paul, Minnesota, 7th ed. 2003).

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언론의 자유와 미국 헌법, **FREEDOM OF SPEECH AND THE AMERICAN CONSTITUTION** (Korean Studies Information Co. Ltd. Publishers, Korea, 2007) (translated into Korean by Professor Lee Boo-Ha, Yeungnam University College of Law and Political Science), coauthored with Professor John E. Nowak.

PRINCIPLES OF CONSTITUTIONAL LAW (Thomson/West, St. Paul, Minnesota, 3rd ed. 2007) (with John E. Nowak).

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2008 POCKET PART TO TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE (Thomson/West, St. Paul, Minnesota, 2008) (with John E. Nowak).

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PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, New York, N.Y., 11th ed. 2011) (with Thomas D. Morgan & John S. Dzienkowski).

2012 SELECTED STANDARDS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, New York, N.Y. 2012) (with Thomas D. Morgan).

2013 SELECTED STANDARDS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, New York, N.Y. 2013) (with Thomas D. Morgan).

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PROFESSIONAL RESPONSIBILITY (West: A Thomson-Reuters Co., St. Paul, Minnesota, 9th ed. 2011, Black Letter Series).

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Other Activities:

March-April, 1984, Expert Witness for State of Nebraska on Legal Ethics at the Impeachment Trial of Nebraska Attorney General Paul L. Douglas (tried before the State Supreme Court; the first impeachment trial in nearly a century).

July 1985, Assistant Chief Counsel, State of Alaska, Senate Impeachment Inquiry of Governor William Sheffield, (presented before the Alaskan Senate).

Speaker at various ABA sponsored conferences on Legal Ethics; Speaker at AALS workshop on Legal Ethics; Speaker on ABA videotape series, "Dilemmas in Legal Ethics."

Interviewed at various times on Radio and Television shows, such as MacNeil/Lehrer News Hour, Firing Line, CNN News, CNN Burden of Proof, ABC's Nightline, National Public Radio, News Hour with Jim Lehrer, Fox News, etc.

1985--1986, Reporter for Illinois Judicial Conference, Committee on Judicial Ethics.

1981-1986, Radio commentator (weekly comments on legal issues in the news), WILL-AM Public Radio.

1986-87, Reporter of Illinois State Bar Association Committee on Professionalism.

1987-2000, Member of Consultant Group of American Law Institute's RESTATEMENT OF THE LAW GOVERNING LAWYERS.

1986-1994, Consultant, Administrative Conference of the United States (on various issues relating to conflicts of interest and legal ethics).

1989-1992, Member, Bar Admissions Committee of the Association of American Law Schools.

1990-1991, Member, Joint Illinois State Bar Association & Chicago Bar Association Committee on Professional Conduct.

1991-1997, Member, American Bar Association Standing Committee on Professional Discipline.

CHAIR, Subcommittee on Model Rules Review (1992-1997). [The subcommittee that I chaired drafted the MODEL RULES FOR LAWYER DISCIPLINARY ENFORCEMENT that the ABA House of Delegates approved on August 11, 1993.]

1992, Member, Illinois State Bar Association [ISBA] Special Committee on Professionalism; CHAIR, Subcommittee on Celebration of the Legal Profession.

Spring 1993, Constitutional Law Adviser, SUPREME NATIONAL COUNCIL OF CAMBODIA. I traveled to Cambodia and worked with officials of UNTAC (the United Nations

Transitional Authority in Cambodia) and Cambodian political leaders, who were charged with drafting a new Constitution to govern that nation after the United Nations troop withdrawal.

1994-1997, LIAISON, ABA Standing Committee on Ethics and Professional Responsibility.

1994-1996, Member, Illinois State Bar Association [ISBA] Standing Committee on the Attorney Registration and Disciplinary Commission.

Winter 1996, Constitutional Law Adviser, SUPREME CONSTITUTIONAL COURT OF MOLDOVA.

Under the auspices of the United States Agency for International Development, I consulted with the six-member Supreme Constitutional Court of Moldova in connection with that Court's efforts to create an independent judiciary. The Court came into existence on January 1, 1996.

Spring 1996, Consultant, CHAMBER OF ADVOCATES, of the CZECH REPUBLIC.

Under the auspices of the United States Agency for International Development, I spent the month of May 1996, in Prague, drafting Rules of Professional Responsibility for all lawyers in the Czech Republic. I also drafted the first Bar Examination on Professional Responsibility, and consulted with the Czech Supreme Court in connection with the Court's proposed Rules of Judicial Ethics and the efforts of the Court to create an independent judiciary.

Consulted with (and traveled to) various countries on constitutional and judicial issues (*e.g.*, Romania, Moldova, Ukraine, Cambodia) in connection with their move to democracy.

1997-1999, Special Counsel, Office of Independent Counsel (Whitewater Investigation).

Lecturer on issues relating to Constitutional Law, Federalism, Nation-Building, and the Legal Profession, throughout the United States as well as Canada, Cambodia, Czech Republic, England, Italy, Mexico, Moldova, Romania, Scotland, Turkey, Ukraine, and Venezuela.

1998-2002, Member, ADVISORY COUNCIL TO ETHICS 2000, the ABA Commission considering revisions to the ABA Model Rules of Professional Conduct.

2000-2002, Member, ADVISORY BOARD TO THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS (This Board was charged with removing any remaining vestiges of organized crime to influence the Union, its officers, or its members.) This Board was part of "Project RISE" ("Respect, Integrity, Strength, Ethics").

2001-2008, Member, Editorial Board, CATO SUPREME COURT REVIEW.

2005-2006, Member of the Task Force on Judicial Functions of the Commission on Virginia Courts in the 21st Century: To Benefit All, to Exclude None

July, 2007, Riga, Latvia, International Judicial Conference hosted by the United States Embassy, the Supreme Court of Latvia, and the Latvian Ministry of Justice. I was one of the main speakers along with Justice Samuel Alito, the President of Latvia, the Prime Minister of Latvia, the Chief Justice of Latvia, and the Minister of Justice of Latvia

Since 1994, Member, Publications Board of the ABA Center for Professional Responsibility; vice chair, 1997-2001.

Since 1996, Member, Executive Committee of the Professional Responsibility, Legal Ethics & Legal Education Practice Group of the Federalist Society; Chair-elect, 1999; Chair, 2000

Since 2003, Member, Advisory Board, the Center for Judicial Process, an interdisciplinary research center (an interdisciplinary research center connected to Albany Law School studying courts and judges)

Since 2012, Distinguished International Research Fellow at the World Engagement Institute, a non-profit, multidisciplinary and academically-based non-governmental organization with the mission to facilitate professional global engagement for international development and poverty reduction, <http://www.weinstitute.org/fellows.html>

Since 2014, Associate Editor of the Editorial Board, THE INTERNATIONAL JOURNAL OF SUSTAINABLE HUMAN SECURITY (IJSHS), a peer-reviewed publication of the World Engagement Institute (WEI)

Since 2014, Member, Board of Directors of the Harvard Law School Association of Orange County

Since 2014, Member, Editorial Board of THE JOURNAL OF LEGAL EDUCATION (2014 to 2016).

Exhibit 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Manuel de Jesus Ortega Melendres, on
behalf of himself and all others similarly
situated; et al.

Plaintiffs,

v.

Joseph M. Arpaio, in his individual and
official capacity as Sheriff of Maricopa
County, AZ; et al.

Defendants.

No. CV-07-2513-PHX-GMS

ORDER

The Court held a status conference on this action on May 08, 2015. Pursuant to discussions and the Court's directions,

IT IS HEREBY ORDERED:

1. Deputy County Attorneys Thomas Liddy, Ann Thompson Uglietta, and Douglas Schwab's Amended and Supplemental Application to Withdraw as Counsel of Record for Defendants (Doc. 1028) is **GRANTED**.

2. The Court will hold weekly status conferences according to the schedule set forth below, at which out-of-state counsel may appear telephonically¹:

Thursday, May 14, 2015 at 9:30 a.m.

Friday, May 22, 2015 at 9:30 a.m.

Friday, May 29, 2015 at 10:00 a.m.

¹ Plaintiffs' counsel, Andre Segura, is directed to obtain and disseminate the conference call-in number to the Court and pertinent parties prior to the status conferences.

1 **Friday, June 5, 2015 at 9:30 a.m.**

2 **Friday, June 12, 2015 at 9:30 a.m.**

3 3. The Parties shall hold the dates of June 23–26, 2015 to follow the
4 resumption of the show cause proceedings on June 16-19, 2015. The hearings will be
5 continued as follows:

6 **Tuesday, June 23, 2015 at 1:30 p.m.**

7 **Wednesday, June 24, 2015 at 9:00 a.m.**

8 **Thursday, June 25, 2015 at 1:30 p.m.**

9 **Friday, June 26, 2015 at 9:00 a.m.**

10 4. Defendants shall file objections to Plaintiffs’ request for documents
11 pertaining to “workplace operations” by **Friday, May 15, 2015**. Plaintiffs shall file a
12 responsive memorandum as soon as practicable. Plaintiffs may file a motion to compel
13 the investigative reports of Don Vogel and the accompanying materials and transcripts,
14 and the Defendants shall promptly respond, after which the Court will rule.

15 5. The Parties and specially appearing non-Parties who have received
16 documents that contain personally identifying, financial or other confidential information
17 pursuant to this Court’s April 23–24, 2015 Orders shall maintain the materials under seal,
18 not to be disclosed to others without further Order of the Court. (*See* Doc. 1032.)

19 6. Defendants have received materials from confidential informant Dennis L.
20 Montgomery that he apparently indicated were improperly obtained from the Central
21 Intelligence Agency. (“the alleged CIA documents”) Counsel for Defendants will contact
22 the chief legal counsel at the CIA, inform such legal counsel of MCSO’s receipt of the
23 alleged CIA documents, this proceeding, the Court’s subsequent discovery orders and the
24 CIA’s need to seek relief, if any, with respect to such documents within 14 days of
25 today’s date. Counsel shall take any other steps required by law to contact the
26 appropriate officials with respect to documents now in the custody and control of the
27 Maricopa County Sheriff’s Office.

28 ///

1 7. With respect to the CIA documents, the Defendants will cooperate with the
2 Monitor in identifying which documents are those provided by Dennis L. Montgomery to
3 the MCSO, and, with respect to those documents, indicating to the parties their contents,
4 the files they contain if any, the file's general contents and organization, and the general
5 content of the file. To the extent that parts of the CIA documents file may have already
6 been delivered to the parties in hard copy, the parties may review it, but are bound by the
7 confidentiality provisions set forth in paragraph 5 above.

8 8. Any objections to the unsealing of Magistrate Judge John Z. Boyle's Order
9 (Doc. 1053) on the applicability of any attorney-client privilege and/or work-product
10 immunity to the materials submitted by Timothy Casey and Thomas Liddy in compliance
11 with this Court's April 27, 2015 Order (Doc. 1033) shall be filed by **Tuesday, May 12,**
12 **2015.**

13 9. Defendants shall file a supplement to their Notice regarding Completion of
14 Internal Investigations (Doc. 1052) to verify the investigations that are complete by
15 investigation number and further describe the length of time that the subjects of these
16 investigations have to appeal the internal investigation decisions.

17 10. The Court will appoint an independent accountant to review the bills
18 submitted to Maricopa County by the Monitor. This independent accountant will perform
19 the function that was previously performed by Deputy County Manager for Maricopa
20 County, Sandi Wilson, and her attorney in reviewing on a monthly basis the detailed
21 billings of the Monitor. The independent accountant will be under the same
22 confidentiality obligations and will follow the same procedure that Ms. Wilson followed
23 when reviewing the Monitor's bills as set forth in the Court's Order (Doc. 696), as
24 modified by the statements on today's record. Ms. Wilson will provide the Court with a

25 ///


26 ///

27 ///

28

1 list of three or four qualified individuals to fill this appointment, from which the Court
2 will select an available candidate.

3 Dated this 8th day of May, 2015.

4 
5 Honorable G. Murray Snow
6 United States District Judge
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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF ARIZONA**
10

11 Manuel de Jesus Ortega Melendres, on
12 behalf of himself and all others similarly
situated; et al.

13 Plaintiffs,

14 v.

15 Joseph M. Arpaio, in his individual and
16 official capacity as Sheriff of Maricopa
County, AZ; et al.

17 Defendants.
18

No. CV-07-2513-PHX-GMS

AMENDED ORDER

19 Previously the parties agreed to a confidential procedure in which Sandi Wilson,
20 Deputy County Manager for Maricopa County, and her attorney reviewed on a monthly
21 and confidential basis the detailed billings of the monitor prior to authorizing payment.
22 The details of that arrangement and the required confidentiality procedures were set forth
23 in the Court's Order (Doc. 696). Recently, Maricopa County has separately re-entered
24 this action to assert rights that it claims to be separate from the interests of Sheriff Arpaio
25 and/or the MCSO. In light of that independent representation which may well encompass
26 Ms. Wilson's interests, the Court is uncomfortable authorizing this continued review
27 without reconsidering the matter with the parties. Therefore, pending reconsideration of
28 this matter with all parties, the procedure set forth under the Order (Doc. 696) is at least

1 temporarily suspended. Maricopa County is directed to authorize payment of the
2 Monitor's April invoice. Ms. Wilson and her counsel remain under the confidentiality
3 obligations set forth under the Order (Doc. 696) for those reviews that they have
4 conducted to date.

5 Dated this 8th day of May, 2015.

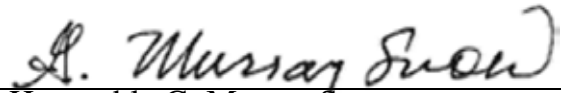
6
7 
8 Honorable G. Murray Snow
United States District Judge

Exhibit 4

How Mexican food drew couple into heart of Arpaio case



Yvonne Wingett Sanchez, The Republic | azcentral.com 12:45 p.m. MST May 8, 2015

Dale Grissom never expected his family to be caught up in a federal court case involving Maricopa County Sheriff Joe Arpaio. But thanks to a craving for Mexican food on a summer day back in 2012, they are now key figures in Arpaio's civil contempt hearing.



(Photo: Michael Schennum/The Republic)

Dale Grissom never expected his family to be caught up in a federal court case involving Maricopa County Sheriff Joe Arpaio (</topic/joe-arpaio/>).

But here they are, thanks to a craving for Mexican food from their favorite restaurant, Someburros, back in summer 2012.

The events of that day led to an important disclosure during civil-contempt proceedings last month against Arpaio in U.S. District Court. Under questioning by Judge G. Murray Snow, Arpaio confirmed a probe into remarks allegedly made to the Grissoms by the judge's wife at the restaurant.

The contempt hearings have focused on the defiance by Arpaio and others of Snow's orders in an ongoing racial-profiling lawsuit.

Snow's questioning of Arpaio left the man of many words nearly speechless and thrust the Grissoms into the middle of a high-stakes political and legal drama.

"It just blew up a couple of weeks ago — like kapow," said Grissom, speaking publicly for the first time about the case from behind a screen door as the nightly news blared on TV in his south Phoenix home.

"We just thought, 'Wow — what happened here? And we've been following it right along. We're not trying to hide anything, we're just telling the truth, and that's the way it was, and that's what she said, and hey, whatever happens, happens.'"

[PREVIOUSLY: Attorneys prep for 2nd bout of Arpaio contempt hearings in June \(/story/news/local/phoenix/2015/05/07/sheriff-joe-arpaio-contempt-hearings-second-bout-june/70931926/\)](/story/news/local/phoenix/2015/05/07/sheriff-joe-arpaio-contempt-hearings-second-bout-june/70931926/)

The judge's wife, Cheri Snow, declined comment when reached by phone Thursday.

About a month after their lunch-time encounter at Someburros, Snow presided over the start of a trial to weigh allegations that Arpaio's office engaged in a pattern of discriminatory policing.

Dale said that he and his family sat at a table just a few feet from Cheri. He said Cheri began talking to Karen, confusing her with Karen's sister, an acquaintance of Cheri's from their childhood days in Yuma.

"She was talking to my wife and I don't even know how it got brought up," recalled Dale, 66. "And I heard them start talking about Sheriff Joe and how her husband wanted him out and didn't want him back in office again, and that's kind of where it went, then they talked about school."

"I didn't pay attention. As soon as that came up, that stuck to me, and I thought, 'How rude is that? Why is this guy, a federal judge, telling his wife he doesn't want Sheriff Joe back in office — and why is she out telling people?'"

The Grissoms returned home and didn't think much of Cheri's remarks until May 2013, when they heard that her husband had ruled Arpaio and his deputies violated the constitutional rights of Hispanics by targeting them during raids and traffic stops.

Dale says he's not a die-hard Arpaio fan or critic, saying, "There's a lot of things where he kind of goes overboard, but I think he's a good sheriff."

But news of Snow's decision upset his wife in light of Cheri's alleged comments, Dale recalled. (Karen would not come to the front door to speak to The Arizona Republic.)

"It went on and on and on, and it just got to bothering her and she said, 'I think they need to know,'" Dale remembered.

Three months later, in August 2013, Karen sent a Facebook message to Arpaio that described her encounter with Cheri. It said, in part, that "she told me that her husband hates u and will do anything to get u out of office. This has bothered me since last year when I saw her."

Days later, a private investigator arrived at their home. Jerry Sheridan, Arpaio's chief deputy, said Tim Casey, Arpaio's former defense attorney on the racial-profiling case, hired the investigator to look into the veracity of the message.

Sheridan said the office was obligated to look into Karen's note: "The sheriff and I felt that we should have our lawyer look into the comment in the event that it was made, and it was credible, because it went to the judge's state of mind," Sheridan said in an interview.

Dale said he was outside when the private investigator stopped by.

"They came to talk to us and to see how we were and ... if we were a bunch of kooks with tinfoil hanging on our heads," Dale said, laughing.

He says he never learned what happened after their interviews, "But I don't believe the investigator went to investigate Snow's wife."

When asked that question, Sheridan said Casey told him and Arpaio there wasn't enough evidence to take the tip any further.

"And it sat in my desk drawer for a year and a half, until it came out in court when the sheriff was on the stand," Sheridan said. "We had no intention to do anything with it because we were told it would be unethical for us to make a complaint on a third-party hearsay."

Dale stands by his story, saying he and his wife were truthful in their account.

"I would not go as far to lie for Sheriff Joe," he said. "I mean, I like the guy, but I wouldn't go as far and say ... this. I wouldn't do that. You just don't do that."

Reach the reporter at yvonne.wingett@arizonarepublic.com or 602-444-4712.

Read or Share this story: <http://azc.cc/1bDNNe3>

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logical-choice-
corona-del-sol-
basketball-
job/26993489/\)](#)

IMMIGRATION AND SHERIFF JOE ARPAIO

2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016

Exhibit 5

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Manuel de Jesus Ortega)
Melendres, et al.,)
)
Plaintiffs,) CV 07-2513-PHX-GMS
)
vs.) Phoenix, Arizona
) April 24, 2015
Joseph M. Arpaio, et al.,) 8:41 a.m.
)
Defendants.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE G. MURRAY SNOW
(Evidentiary Hearing Day 4, pages 818-1030)

Court Reporter: Gary Moll
401 W. Washington Street, SPC #38
Phoenix, Arizona 85003
(602) 322-7263

Proceedings taken by stenographic court reporter
Transcript prepared by computer-aided transcription

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(602) 237-5076

ALSO PRESENT: Chief Robert Warshaw
Chief John Girvin
Chief Raul Martinez
Karen Clark, Esq.
Ralph Adams, Esq.

P R O C E E D I N G S

THE CLERK: All rise. Court is now in session, the Honorable G. Murray Snow presiding.

THE COURT: Thank you. Please be seated.

08:41:33

THE CLERK: This is civil case number 07-2513, Melendres v. Arpaio, on for continued evidentiary hearing.

THE COURT: We ready, Ms. Wang?

MS. WANG: Yes, Your Honor. Good morning.

THE COURT: Good morning.

08:41:46

MS. WANG: Plaintiffs call Gerard Sheridan.

THE CLERK: Step right up here, sir.

Please state your first and last name for the record.

THE WITNESS: Gerard Sheridan. G-e-r-a-r-d, S-h-e-r-i-d-a-n.

08:42:11

THE CLERK: Thank you. Please raise your right hand.

(Gerard Sheridan was duly sworn as a witness.)

THE CLERK: Thank you. Please take our witness stand.

THE COURT: Please proceed, Ms. Wang.

MS. WANG: Thank you, Your Honor.

08:42:48

GERARD SHERIDAN,
called as a witness herein, having been duly sworn, was
examined and testified as follows:

DIRECT EXAMINATION

BY MS. WANG:

08:42:50

1 Q. Good morning, Chief Sheridan.

2 A. Good morning.

3 Q. Chief, you're currently employed with the Maricopa County
4 Sheriff's Office, correct?

5 A. Yes.

08:42:58

6 Q. How long have you been with the MCSO?

7 A. A little over 36 years.

8 Q. And your current position is chief deputy, correct?

9 A. That's correct.

10 Q. That is the second in command of the entire agency?

08:43:05

11 A. Yes, it is.

12 Q. Before you were the chief deputy, what position did you
13 hold?

14 A. I held the position of the director of detention.

15 Q. You ran the entire MCSO jail system?

08:43:21

16 A. Yes, ma'am.

17 Q. And before that you held various positions in the
18 Patrol Division, is that right?

19 A. Correct.

20 Q. And you served as a patrol deputy earlier on in your
21 career, correct?

08:43:32

22 A. I did.

23 Q. Now, as chief deputy, is it true that you're responsible
24 for all of the operations of the MCSO?

25 A. That's correct.

08:43:42

1 Q. What became of that investigation?

2 A. Eventually, nothing.

3 Q. Why is that?

4 A. Because we found it difficult to determine the credibility
5 of the informant.

16:14:53

6 Q. The credibility of an informant in attempting to make a
7 criminal case is vital, correct?

8 A. Yes, ma'am.

9 Q. So if you were doubting the credibility of the confidential
10 informant, the investigation went nowhere?

16:15:11

11 A. That's correct.

12 Q. There was some discussion regarding how you pay
13 confidential informants. Do you know the source of the money
14 for that confidential informant?

15 A. I do.

16:15:30

16 Q. Where? What was the source?

17 A. RICO funds.

18 Q. And who is responsible for determining what fund is used?

19 A. It's normal standing operating procedure that we pay
20 informants using those RICO funds.

16:15:44

21 Q. There was another investigation that the judge queried
22 Sheriff Arpaio about. Do you recall that?

23 A. Yes, ma'am.

24 Q. The question that I think -- and I don't mean to put words
25 in his mouth, but what the judge asked was: Do you know of

16:16:04

1 anyone that investigated Judge Snow or a family member?

2 Do you recall that question?

3 A. Yes, ma'am.

4 Q. Do you know of anyone that investigated Judge Snow or a
5 family member of Judge Snow?

16:16:20

6 A. The reason I'm hesitating in answer -- answering the
7 question is because I've been around lawyers for the last five
8 years and I know words mean certain things. We did not
9 investigate Judge Snow's wife.

10 Q. Who was investigated?

16:16:48

11 A. We contacted an individual that talked to Judge Snow's
12 wife.

13 Q. How did you find out about this conversation with an
14 individual and Judge Snow's wife?

15 A. An individual sent a private Facebook page message to
16 Sheriff Arpaio in August of 2013.

16:17:04

17 Q. And what was the content of that Facebook message?

18 A. I'd rather not say.

19 Q. Well, I'm asking you what it said. If I sit down and the
20 judge chooses to ask that very same question, are you going to
21 answer it?

16:17:40

22 A. I will answer the question if the Court orders me to answer
23 that question.

24 THE COURT: Well, let me ask you, was it about me?

25 THE WITNESS: Yes, sir.

16:17:56

1 THE COURT: And did it make allegations that I was
2 doing something illegal?

3 THE WITNESS: No, sir.

4 THE COURT: Did it make allegations that I was biased
5 in this litigation?

16:18:08

6 THE WITNESS: Yes, sir.

7 THE COURT: All right. You may go ahead and answer.

8 BY MS. IAFRATE:

9 Q. Do you remember the question?

10 A. Could you please repeat it?

16:18:17

11 Q. Sure. You were talking about this Facebook message that
12 went to the sheriff's office, and I asked you what was the
13 content of the message.

14 A. Yes. I can't quote it verbatim, but it was -- I know
15 Judge Snow's wife. She told me he hates you and he wants to
16 see you out of office.

16:18:40

17 Q. Did you identify who that message was from?

18 A. Yes. The header from the individual that it came from was
19 Karen Grissom.

20 Q. Did you learn -- subsequently learn more about how
21 Ms. Grissom came to get this information that Judge Snow's wife
22 said that Judge Snow hates the sheriff and wants to get him out
23 of office?

16:19:11

24 A. Yes, ma'am.

25 Q. What did you -- what did you learn subsequently?

16:19:30

1 A. I learned that Ms. Grissom was at a restaurant in the
2 East Valley with her husband and her adult son. They were met
3 by Judge Snow's wife and his daughter near the counter to pay
4 the cashier. Apparently, they knew each other from when they
5 were children growing up in Yuma, I believe, and that
6 Judge Snow's wife recognized her as childhood friends, but
7 actually she mistook her for her other -- for Ms. Grissom's
8 sister, and they had a conversation about life, they hadn't
9 seen each other for years, and then this conversation occurred.

16:20:06

10 Q. So why -- why was Ms. Grissom being investigated?

16:20:38

11 A. I'm sorry, what was that question?

12 Q. Why was Ms. Grissom being investigated?

13 THE COURT: If I understood correctly, Ms. Iafrate,
14 Ms. Grissom was not being investigated. She was the person who
15 wrote the e-mail to the sheriff.

16:20:58

16 MS. IAFRATE: She was the person who wrote the e-mail
17 to the sheriff and then subsequently was investigated.

18 THE COURT: Oh, I didn't know that.

19 THE WITNESS: Well, no one was investigated.

20 BY MS. IAFRATE:

16:21:10

21 Q. Okay. The investigator spoke to her?

22 A. She was interviewed, her husband was interviewed, her son
23 was interviewed, for the veracity of Ms. Grissom's Facebook
24 message to the sheriff.

25 Q. And were the husband and the son present when -- supposedly

16:21:26

1 present when this statement by Ms. -- by Judge Snow's wife was
2 made?

3 A. Yes, as well as His Honor's daughter, also.

4 Q. Ultimately, following the interviews of these individuals
5 was the statement deemed credible?

16:21:54

6 A. Yes.

7 THE COURT: Maybe we ought to go back. I missed the
8 whole investigation.

9 MS. IAFRATE: Okay.

10 THE COURT: It probably makes sense to only go through
11 this once.

16:22:07

12 MS. IAFRATE: Yes.

13 THE COURT: So I got that Karen Grissom, who is an
14 acquaintance or a friend of my -- childhood friend of my wife
15 from Yuma, met my wife and daughter in a restaurant, said
16 something about what I supposedly feel about Sheriff Arpaio. I
17 didn't hear -- and then you said there was an investigation.

16:22:21

18 Who did the investigation?

19 MS. IAFRATE: Okay, so let me back up. I used the
20 wrong verb, Your Honor.

16:22:39

21 THE COURT: Okay.

22 BY MS. IAFRATE:

23 Q. You said an investigator interviewed Ms. Grissom.

24 THE COURT: Can we go back? Can we jointly ask these
25 questions?

16:22:49

1 MS. IAFRATE: Sure.

2 THE COURT: Who hired the investigator?

3 THE WITNESS: Mr. Casey.

4 THE COURT: All right. And so do you mind if I ask a
5 question? You can interrupt me.

16:23:04

6 MS. IAFRATE: I will not interrupt you.

7 THE COURT: Please do.

8 MS. IAFRATE: I will not.

9 THE COURT: In all seriousness, Ms. Iafrate, I think
10 that if you have objections or if anybody else does, they ought
11 to make them, even though I -- I'm asking questions.

16:23:13

12 EXAMINATION

13 BY THE COURT:

14 Q. I take it, then, that the sheriff discussed this e-mail
15 with his counsel?

16:23:25

16 A. That's correct, Your Honor.

17 Q. All right. And I take it, then, that the decision was
18 made, by whom I don't know, that there should be an
19 investigator that would contact Ms. Grissom.

20 A. That's correct.

16:23:38

21 Q. All right. And it's your understanding -- or do you know
22 that Mr. Casey hired that investigator?

23 A. I do know that, yes, he did.

24 Q. All right. Are you aware that Mr. Casey has filed a press
25 release which, while acknowledging -- I read the press release

16:23:50

1 because he sent it to my office. You're aware that Mr. Casey,
2 while acknowledging that he has duties to you and not
3 commenting on it, denies that he was involved in any way, or he
4 says -- he doesn't deny anything, but he says something to the
5 effect that he's confident that when the materials are
6 evaluated he was not involved in any way in the investigation
7 of me or a member of my family.

16:24:09

8 And is it your view that you were at a conversation in
9 which that just simply isn't true? That if I read it that way,
10 my understanding is wrong?

16:24:25

11 A. Your Honor, that -- that's where I started out saying it
12 depends on how you define "investigated your wife," because
13 no one, no one ever went any further than just verifying that
14 conversation --

15 Q. All right.

16:24:49

16 A. -- occurred.

17 Q. Mr. Casey hired, if not an investigator, somebody?

18 A. That's correct.

19 Q. And that somebody went and talked to Ms. Grissom?

20 A. Correct.

16:24:58

21 THE COURT: Okay.

22 CROSS-EXAMINATION CONTINUED

23 BY MS. IAFRATE:

24 Q. And also spoke to her husband and her grown son?

25 A. Correct.

16:25:07

1 Q. Who also heard the statements?

2 A. Who verified her statement, yes.

3 THE COURT: Okay. I'm with you. Go ahead.

4 BY MS. IAFRATE:

5 Q. Okay. So based on this investigation, what was done with
6 this information? I don't want you to reveal attorney-client
7 privilege, but ultimately, what was the end game of these
8 interviews with these individuals?

16:25:18

9 A. Nothing.

10 MS. IAFRATE: I believe I'll stop there, Your Honor.

16:25:39

11 THE COURT: Okay. Thank you.

12 Do you have any more? You're through with your
13 examination?

14 MS. IAFRATE: Yes.

15 THE COURT: All right.

16:25:48

16 Mr. Walker?

17 MR. WALKER: Your Honor, I would like to defer on this
18 witness also, particularly since he's going to be coming back
19 in June in any event.

20 THE COURT: All right.

16:26:00

21 Mr. Como.

22 MR. COMO: I don't have any questions at this time,
23 Your Honor.

24 FURTHER EXAMINATION

25 BY THE COURT:

16:26:31

1 Q. You know, I've got some questions that may be helpful for
2 both of us in terms of where we're going. You and I have had
3 some unpleasant interactions; I think you indicated that early
4 on.

5 A. Yes, sir.

16:26:43

6 Q. I think you've done some wrong things and I told you so,
7 did I not?

8 A. Yes, sir, you have.

9 Q. I also have mentioned when I thought you did things that
10 were praiseworthy, have I not?

16:26:51

11 A. I've also noted that, too, thank you.

12 Q. All right. You talked about people needing to know who
13 Jerry Sheridan is. And I do need to know who Jerry Sheridan is
14 to some extent, as I'm required to make the decisions that I'm
15 required to make.

16:27:07

16 You understand that?

17 A. I do, Your Honor.

18 Q. It strikes me that you're a person who values loyalty.

19 Is that a fair statement?

20 A. Yes, sir.

16:27:20

21 Q. Let me tell you that in your testimony this morning you
22 said something that I want to talk to you a little bit about
23 before we go on with other questions, because I don't want to
24 give you the impression that I want you to dump on anybody, but
25 I also don't want to give you the impression that I want you to

16:27:39

1 take responsibility for the actions of other people.

2 And this morning, in testimony when you were
3 discussing the conversation which is the third article of
4 contempt that I've talked about, which is the conversation that
5 you had with Chief Trombi in directing him to send out e-mail?

16:28:00

6 You know what I'm talking about?

7 A. Yes, sir.

8 Q. And you have accepted responsibility for giving that
9 direction, but this morning I think you said something like:
10 Well, I accept responsibility for giving the direction, but I
11 think we were all discussing it.

16:28:14

12 Do you remember that, when you said something like
13 that?

14 A. Yes, sir.

15 Q. All right. I'm not sure that I'll ask you all my questions
16 today, but I think it would be profitable for us to at least
17 start.

16:28:22

18 When I ask you questions, I understand that you have
19 a -- or I believe that you value loyalty. If it is true that
20 you were alone responsible for decisions or things that I'm
21 asking you about, I want you to tell me that. But if it is
22 true that you, in addition to others, participated in
23 decisions, I want you to tell me that, too. In other words, I
24 want you to tell me the truth and the whole truth. Okay?

16:28:41

25 A. Yes, sir.

16:29:01

1 Q. And the whole truth sometimes means that if you did it,
2 and -- or if you did something and you did it alone, you say
3 so. But I don't want you to, for example, assume
4 responsibility alone if that's not your responsibility.

5 Can we agree to that?

16:29:19

6 A. Yes, sir.

7 Q. And by that I'm not trying to suggest that you dump on
8 Sheriff Arpaio, either. I just -- I just want the truth.

9 As I did with him, I just want to be sure that you're
10 conceding the civil contempt on the preliminary injunction
11 order. You're conceding that you are in civil contempt for
12 violating that order, is that correct?

16:29:37

13 A. That's correct, Your Honor.

14 Q. And if I understand correctly, you're also conceding that
15 you're in contempt for the communication you had with Sheriff
16 Trombi that resulted in the large dissemination, not
17 necessarily because it was a bad way of doing things in your
18 mind, but because it violated my order, is that correct?

16:29:52

19 A. That's correct, Your Honor.

20 Q. You've already talked about, and I don't know that we have
21 to spend a lot of time talking about, the fact that SID was
22 where -- well, I'm now on the May 14th time frame, right?

16:30:11

23 You and I had the discussion on May 14th -- this
24 wasn't the bad discussion where I held your feet to the fire,
25 but this is where you came forward, you showed me all the stuff

16:30:38

1 that was in the Armendariz house, I told you -- and we had the
2 discussion about quietly gathering stuff.

3 You're there with me?

4 A. Yes.

5 Q. All right. I did express to you in this discussion, do you 16:30:50
6 remember this, that I had concern about you conducting the
7 investigation because there were so many potential conflicts of
8 interest.

9 A. Correct.

10 Q. Do you remember that? 16:31:01

11 A. Yes, sir.

12 Q. And you knew that a lot of the de -- a lot of the
13 investigation would have to be done by your internal
14 investigation folks, which I think you call the PSB?

15 A. We do now, yes. 16:31:18

16 Q. Was it then still Internal Affairs?

17 A. Yes, sir.

18 Q. All right. And as we've said, Bailey came from Special
19 Investigations.

20 A. Yes. 16:31:30

21 Q. And that's the person that you put in charge of Internal
22 Affairs shortly after you -- shortly after our May 14
23 conversation, within a month or so.

24 A. That's correct.

25 Q. All right. And in his role as the -- at Special 16:31:44

1 Investigations, he had supervisory responsibility for
2 Deputy Armendariz for a short period of time, right?

3 A. Yes.

4 Q. And I think it was, like, three months. That sound about
5 right?

16:32:03

6 A. It may not have even been that long, Your Honor, because
7 I -- I know he was the one that actually got Charley
8 transferred out of HSU.

9 Q. Well, you understood, and we'll go through this in a
10 minute, but you understood that we're concerned about the
11 supervision of Deputy Armendariz, and that that was one of the
12 things that was eventually investigated and that is still being
13 investigated, correct?

16:32:22

14 A. Correct.

15 Q. And you also understood that we had all this array of
16 material in the Armendariz home that apparently came from what
17 looked to be like his HSU responsibilities, correct?

16:32:33

18 A. Correct.

19 Q. And that among those things there were a bunch of
20 identifications. There were Mexican identifications, there
21 were other identifications from other areas of the country,
22 there were all kinds of identifications and other things.

16:32:50

23 You understood that, correct?

24 A. Yes, sir.

25 Q. In addition to those identifications, there was Mexican

16:33:05

1 money in various denominations in the Armendariz home, was
2 there not?

3 A. I believe there was.

4 Q. There was a bunch of drugs?

5 A. Yes.

16:33:25

6 Q. There were credit cards?

7 A. Yes.

8 Q. And there were bank cards and debit cards and gift cards?

9 A. Yes, sir.

10 Q. And there were passports, license plates, all kinds of
11 things.

16:33:31

12 A. Yes, sir.

13 Q. All right. Now, when he came to PSB he brought with him
14 Sergeant Tennyson, right? Or do you know?

15 A. I don't know. I -- I don't know, sir.

16:33:46

16 Q. Is Sergeant Tennyson a homicide investigator? I will tell
17 you, I may be wrong, but I'm under the impression that he
18 brought Sergeant Tennyson with him from the homicide
19 department.

20 A. I don't recall, sir, sorry.

16:34:04

21 Q. There are divisions within the PSB as you've now set it up,
22 right?

23 A. Yes. There's the criminal division, and then there's the
24 administrative division, and that's been that way for a long,
25 long time.

16:34:17

1 Q. All right. And unlike other police departments, if a
2 police officer commits a crime, let's say, for example,
3 aggravated assault, it's not -- pardon me -- it's not
4 investigated by the normal investigators, it's investigated by
5 the PSB. In other words, it's not investigated by somebody who
6 would investigate me for aggravated assault.

16:34:39

7 A. That's correct, Your Honor. It would be investigated by
8 the criminal section of our Professional Standards Bureau.

9 Q. All right. So you have a criminal section and you have
10 what you call the administrative section, right?

16:34:55

11 A. Yes, sir.

12 Q. So the criminal section investigates officers who are
13 actually under suspicion for crimes. And it does the -- it
14 does those investigations as opposed to the assault and battery
15 unit. I know that's not a unit, but you know what I'm saying?

16:35:09

16 A. Yes, sir.

17 Q. And then you have the administrative unit. What does the
18 administrative unit investigate?

19 A. They would investigate citizens' complaints, policy
20 violations, those types of things, personnel issues.

16:35:22

21 Q. And they would investigate to see things for violations of
22 MCSO policy?

23 A. Yes, sir.

24 Q. And MCSO policy violations can result in internal
25 discipline, but not criminal prosecution.

16:35:37

1 A. Correct.

2 Q. When a complaint comes in, who determines which will be
3 assigned to what? I mean, who determines whether the complaint
4 is assigned to criminal or to administrative?

5 A. Captain Bailey and myself would make that decision, sir. 16:35:57

6 Q. All right. So you're pretty involved in the operation of
7 PSB?

8 A. Yes. Captain Bailey reports directly to me.

9 Q. And so when a matter comes in, Captain Bailey brings it to
10 you. You and he decide whether it's going to be assigned to
11 the criminal or to the administrative. 16:36:14

12 A. Yes, sir.

13 Q. Who assigns an officer to investigate?

14 A. That would be Captain Bailey's decision.

15 Q. Ultimately, in the criminal division who decides whether a
16 criminal matter should be taken to the county attorney? 16:36:32

17 A. I'm not sure I understand your question, Your Honor.

18 Are you talking now about just a normal somebody from
19 General Investigations Division, or normal --

20 Q. No, no, no, no, no. If you in the PSB criminal division
21 decide that there ought to be a criminal prosecution for
22 something that an officer has done, you have to take that to
23 the county attorney for a decision, right? 16:36:57

24 A. Yes, sir.

25 Q. Who makes that decision? 16:37:15

1 A. That would be, again, made with discussion between the
2 detective that's investigating the crime, the captain, and
3 myself, usually.

4 Q. And then you'd take it to the county attorney?

5 A. Yes, sir.

16:37:30

6 Q. Or I'm not saying you, but somebody in that group would
7 take it to the county attorney for a charging decision.

8 A. Yes. The detective that investigated the incident.

9 Q. Now, do you make the final decision on administrative
10 discipline as well?

16:37:44

11 A. No, sir.

12 Q. Who does?

13 A. That's delegated to -- for the deputies, Deputy Chief
14 Lopez, or for the detention side it would be Deputy Chief John
15 Marshon.

16:38:02

16 Q. Okay. Now we -- I think I heard testimony, I know I heard
17 testimony that suggested that if you delay too long in
18 completing an administrative investigation, that limits the
19 dis -- pardon me -- the disciplinary options that can be
20 imposed on an officer, even if they have violated a Maricopa
21 County -- or MCSO policy.

16:38:26

22 A. Yes and no, Your Honor. There -- it's -- there is a
23 timeline that is set by state statute that we could still
24 discipline someone. However, upon appeal by that individual,
25 most likely it would be overturned if they appealed their

16:38:59

1 discipline.

2 Q. So if an administrative investigation goes too long, you
3 just don't impose discipline. Or you don't impose -- impose
4 serious discipline.

5 A. For the most part, no. We -- we haven't really run into
6 that too much.

7 Q. But a delay in conducting an administrative investigation
8 would be important and unfortunate?

16:39:14

9 A. That's correct. I know I had to sign some letters for
10 Mr. Vogel because the investigation was going beyond the time
11 period. That extends that time period. That doesn't absolve
12 us of exceeding that time period, but it would be arguable
13 during the personnel hearing that we followed some due process,
14 and it would be up to the -- the board, the merit commission,
15 to decide whether that discipline would stand if it was major
16 discipline or not.

16:39:37

16:40:04

17 But we have never had that challenged as yet.

18 Q. In any case, Sergeant Tennyson, whether he was a homicide
19 detective or what, was assigned to do a criminal investigation
20 for the materials found in the Armendariz home.

16:40:21

21 A. That's correct.

22 Q. And he was subject to the oversight of my monitor staff,
23 correct?

24 A. Correct.

25 Q. And my monitor staff didn't think he did a very good job,

16:40:30

1 did they?

2 A. No, sir.

3 Q. And in fact, they issued a report to me about which I held
4 a hearing, and you were present at that hearing, and it was in
5 late October, right? Do you remember it?

16:40:47

6 A. I remember the hearing, sir.

7 Q. That was part of the one -- that was part of the same
8 hearing where I was --

9 A. I try and forget those kinds of things, but yes, I
10 remember.

16:40:58

11 Q. All right. And do you remember that at the beginning of
12 that hearing I had my monitor, and I'm not going to read it all
13 to you, but I had him outline some of the concerns he had with
14 the criminal investigation that had been performed by Captain
15 Tennyson. You remember that?

16:41:14

16 A. Yes, sir.

17 Q. I'm just going to read you one paragraph. I'd like at this
18 time to emphasize -- this is Mr. Warshaw -- in our collective
19 judgment as a monitoring team, and we have hundreds of years of
20 experience, we have never seen, having seen a good number of
21 the interviews that occurred as part and parcel of that
22 criminal inquiry, we had never seen a more deficient,
23 unprofessional set of aimless interviews, interviews replete
24 with extraordinary familiarities, informalities, and apologetic
25 treatment towards those who are being interviewed. This, in

16:41:28

16:41:45

1 our view, Your Honor, called into question the seriousness in
2 which the MCSO had taken the order of this Court.

3 He said that, right? Or you remember him saying
4 something like that?

5 A. I remember something like that, yes, sir. 16:41:58

6 Q. And do you remember that I indicated in that hearing that
7 I'd actually watched a videotape of one of Sergeant Tennyson's
8 interviews and I was very unimpressed?

9 A. I do remember that, yes, sir.

10 Q. And do you remember that there were a number of other 16:42:13
11 problems that we discussed relating to the investigation as I
12 perceived it, and we moved forward? Or we -- we had a long
13 hearing then.

14 Do you remember some of those things? And I've lost
15 my notes. You remember that? 16:42:30

16 A. Yes, sir.

17 Q. Do you remember that one of the things we raised in that
18 hearing is it became clear to us at that time that Detective
19 Bailey had, in fact, directly supervised Sergeant Armendariz.

20 You remember that? 16:42:58

21 A. Yes, sir.

22 Q. We raised it with him?

23 A. Yes, sir.

24 Q. And then do you remember that Chief Warshaw called you the
25 next day and said: You can't have Bailey interviewing 16:43:07

1 Armendariz about -- or Armendariz was dead by that time, but
2 you can't have Bailey conducting his own interview of himself
3 for his supervision of Armendariz and for all that may have
4 happened in his home. And he suggested -- or I don't know
5 whether he suggested or directed that you get an outside
6 investigator to handle that investigation.

16:43:25

7 Do you remember that?

8 A. Yes, sir.

9 Q. And within a day or two you wrote him back and said that
10 you'd hired Detective Vogel to do the -- to be an independent
11 investigator.

16:43:38

12 A. Yes, sir.

13 Q. Do you also recall that in the course of that --
14 approximately that time -- and I don't know if you've seen
15 this, Chief, but I'm going to give it to you anyway.

16:44:04

16 THE COURT: And I'm going to have my clerk mark it.
17 It's materials -- mark it as an exhibit, please.

18 I'm not going to introduce it because I'm not sure the
19 chief has the foundation, but I'm going to show it to you.

20 We were -- my monitor was provided this incident
21 report. I've got copies for all counsel. It's MELC028130 --
22 these are the Bates numbers -- through MELC028159.

16:44:24

23 If you'd just distribute that to counsel, Ms. Iafrate,
24 I'd appreciate it.

25 I need one, Kathleen. I just gave away all mine. If

16:44:45

1 you can pull one back.

2 BY THE COURT:

3 Q. And have you seen this before?

4 A. No, I have not.

5 Q. Are you capable of recognizing Sergeant Whelan's signature? 16:45:03

6 Do you know it or not?

7 A. I -- I don't know it, but it looks like probably
8 Sergeant Dimitri Whelan.

9 Q. And this -- what is this?

10 MS. IAFRATE: Your Honor, could I just clarify? This 16:45:18
11 is not Sergeant Dimitri Whelan.

12 THE COURT: Oh, okay. I don't know who it is.

13 MS. IAFRATE: Okay. I just wanted to clarify so that
14 that wasn't on the record.

15 BY THE COURT: 16:45:34

16 Q. And what is this? What does it look like it is?

17 A. This is an incident report for found property.

18 Q. And it looks like the found property was dropped off at
19 property and evidence for destruction, correct?

20 A. That's correct. 16:45:49

21 Q. And it is Sergeant Frei who says --

22 A. Oh, reviewed by, okay.

23 Q. Is it "Fray" or "Fry"? Am I mispronouncing it?

24 A. I'm not familiar with him.

25 MS. IAFRATE: Your Honor -- 16:46:04

1 THE COURT: Neither one of us know --

2 MS. IAFRATE: -- Sergeant "Fry."

3 BY THE COURT:

4 Q. Okay, Sergeant "Fry." And he has been holding on to all of

5 these identifications for five years, and he's being -- and 16:46:13

6 he's dropping them off for destruction, and he says the

7 identifications were used for training purposes only, as most

8 of the criminal employment unit was certified in document

9 examination and had some training in forged fraudulent

10 questioned documents. 16:46:30

11 Do you see where he's saying that?

12 A. Yes, sir.

13 Q. And he says he's attaching the identifications, and they

14 have been attached.

15 And do you see those? 16:46:40

16 A. I do.

17 Q. But the very first page is not identifications, is it?

18 A. No, sir.

19 Q. It's a memo from Sergeant Frei to Captain Bailey written in

20 May when Captain Bailey was still the Special Investigations 16:47:01

21 division, right? Or that's what it looks like?

22 A. That -- yes, sir.

23 Q. And it says, gosh, I've got all these identifications. And

24 see the attached photocopies. And so it looks like Sergeant

25 Frei has written this memorandum to Captain Bailey, right? 16:47:23

1 A. Yes, sir.

2 Q. And then there's a bunch of identifications that are
3 attached.

4 You see that?

5 A. I do.

16:47:35

6 Q. And again, Sergeant Frei says that these identifications
7 were used for training purposes only, as most of the Criminal
8 Employment Unit is certified in documentation -- document
9 examination or has had some training in
10 forged/fraudulent/questioned documents.

16:47:46

11 You see that?

12 A. I do.

13 Q. Did you know that my monitor asked for any training that
14 your folks had had in document examination and training for
15 forged/fraudulent/questioned documents, and they received only
16 one person who had ever done such training in response?

16:48:05

17 Did the monitor team ever tell you that?

18 A. I'm not aware of that, no, sir.

19 Q. All right. Now, if you'll look at all these documents --
20 just look at the first page, but I think it's fairly
21 representative -- most of these documents are, like, Mexican
22 consular identifications, driver's license from individual
23 states in Mexico, various other Mexican identifications.
24 There's a social security card and a couple of Arizona driver's
25 licenses. Do you see that?

16:48:19

16:48:39

1 A. I do.

2 Q. Do you have any idea why people would assume that
3 identifications were fraudulent if they'd taken them from
4 people they'd arrested as illegal aliens and all they did was
5 show that they were Mexican?

16:48:52

6 A. I don't, Your Honor.

7 Q. In fact, all of -- a great number of these documents, as
8 you look through them, are Mexican identifications, aren't
9 they? And it wouldn't make any -- any sense for somebody to
10 fabricate Mexican identification documents if they wanted to
11 pass themselves off as an American citizen, would it?

16:49:11

12 A. Correct, it would not.

13 Q. So it looks like the -- well, the date that was -- they
14 were transmitted to be destroyed was November 6th, correct?

15 A. Yes, sir.

16:49:37

16 Q. And my monitor team, when it received a copy of these
17 documents, I think, called and stopped the destruction so that
18 they were not destroyed. I'm not sure about that, maybe some
19 other reason. But the documents do seem to indicate that they
20 were provided to Captain Bailey when Captain Bailey was SID
21 captain, and that -- it just would be problematic to have him
22 investigating seized documents when he received such a document
23 earlier. Wouldn't you agree?

16:50:01

24 A. I would agree.

25 Q. All right. Then you knew that I -- you knew that I had

16:50:23

1 questions with Sergeant Tennyson's investigative techniques and
2 determinations?

3 A. Yes, sir.

4 Q. And we had another hearing on November 20th.

5 Do you remember that one?

16:50:37

6 A. Not specifically, Your Honor.

7 Q. It's the one where Mr. Casey withdrew.

8 Oh, he's not in the courtroom any more.

9 A. Yes.

10 Q. It's the one where Mr. Casey withdrew.

16:50:48

11 A. I remember that.

12 Q. All right. I'm going to give you another document and I'm
13 going to have my courtroom deputy mark that one, too.

14 This one I think you might remember.

15 THE CLERK: You need a copy?

16:51:09

16 THE COURT: Yes, let's give chief the marked exhibit.

17 MS. IAFRATE: Your Honor?

18 THE COURT: Yes.

19 MS. IAFRATE: While this is being marked, could I just
20 raise one objection regarding --

16:51:22

21 THE COURT: Yes, surely.

22 MS. IAFRATE: To my knowledge, Chief Sheridan has
23 never seen that document that you provided to me, or the
24 attachments.

25 THE COURT: I didn't purport to say that he had, and I

16:51:32

1 haven't moved it in evidence.

2 This hearing for me is serving multiple purposes, and
3 part of them is to demonstrate part of my frustration with
4 what -- what appear to be deficiencies in the ongoing
5 operations of MCSO. And I, like Ms. Wang, am not going to get 16:51:53
6 into matters that are under seal, but I'm going to start with
7 matters that are out of seal so that --

8 MS. IAFRATE: My --

9 THE COURT: -- everyone can be informed of what my
10 concerns are during the break, including Chief Sheridan. Then 16:52:07
11 I'll have a few final questions on some other matters, and then
12 we can end for the weekend and discuss scheduling.

13 MS. IAFRATE: My only objection is that there were
14 some statements that Chief Sheridan made in order to agree with
15 you regarding certain things and they weren't accurate. The 16:52:22
16 rationale for that is he has never seen that set of documents
17 before.

18 THE COURT: Fair enough, and you've preserved any such
19 objections.

20 BY THE COURT: 16:52:33

21 Q. Did you have the marked exhibit, Chief? Have you been
22 given that yet?

23 A. Yes, sir, I have.

24 Q. What's the number on it?

25 A. Number 1001. 16:52:41

1 Q. All right. If you turn to the back page of number 1001 it
2 has a handwritten notation in what looks to me to be your
3 signature.

4 A. That's correct.

5 Q. Is that your signature?

16:52:53

6 A. Yes, sir.

7 Q. And is that your handwritten notation?

8 A. It is, sir.

9 Q. And do you remember receiving this report from

10 Sergeant Tennyson?

16:53:06

11 A. I do.

12 Q. Now, part of the reason that we had the October hearing is
13 that Sergeant Tennyson had closed the criminal investigation,
14 and my monitor folks didn't like that, right?

15 A. That's correct.

16:53:20

16 Q. And we had the October hearing, and then this is a new
17 memorandum closing the October -- or still closing the
18 Armendariz criminal investigation, right?

19 A. Yes, sir.

20 Q. And you have signed off on that closure.

16:53:29

21 A. Yes, I did.

22 Q. All right. If you would be so kind as to turn to the
23 second page and -- skip the first paragraph, but do you see
24 where it says Most recently the Professional Standards Bureau
25 Criminal Division investigated a claim made by Cisco -- a

16:53:48

1 former deputy who was Cisco Perez.

2 Do you remember that?

3 A. Yes, sir.

4 Q. And it says we interviewed 45 officers and -- and there was
5 just a bunch of identifications involved, and so we wrote a
6 memorandum to Keith Manning of the Maricopa County Attorney's
7 Office for review and possible prosecutorial consideration of
8 the Cisco Perez matter.

16:54:00

9 A. I see that, yes, sir.

10 Q. And is that what you recall reading?

16:54:15

11 A. Yes, sir.

12 Q. And then if you turn to the next page, he quotes, actually,
13 what Mr. Manning, who's the law enforcement liaison, told him.
14 And I'm going to summarize it. If you don't like what I say,
15 correct me; I'm trying to move along, okay?

16:54:31

16 A. Okay.

17 Q. Mr. Manning said: Look, this isn't good that they've got
18 this stuff, that the deputies have this stuff, but we can't
19 identify victims for these identifications, and they're not
20 worth anything, so there's no criminal action to be had here,
21 is that correct?

16:54:45

22 A. It's correct.

23 Q. And so he said then, in the next paragraph, which is part
24 of his memo to you, Sergeant Tennyson said, well, one of the --
25 he seems to suggest that one of the reasons Armendariz might

16:55:00

1 have had all this stuff in his home is because he's a packrat,
2 right?

3 A. Yes, sir.

4 Q. And then he says in the next paragraph we had a female
5 detention coworker who says he took stuff, and he accused her 16:55:10
6 of bringing stuff to his home, but she denies it, basically, is
7 what he says, right?

8 A. Correct.

9 Q. And then the third paragraph, you remember when
10 Chief Warshaw talked about the overfamiliarity and lack of 16:55:25
11 critical judgment that seemed to take place in these
12 investigations is one of his concerns?

13 A. Sergeant Tennyson's investigations, correct?

14 Q. Yeah.

15 A. Yes, sir. 16:55:46

16 Q. You see this third paragraph? "It is with great respect
17 for those Deputies associated with the MCSO Human Smuggling
18 Unit the following be noted. Based on this inquiry as well as
19 the aforementioned criminal investigation HSU Detectives
20 invested much effort carrying out duties as they related to 16:55:59
21 Human Smuggling Operations. With every effort not to
22 overshadow the tremendous work of the Detectives and
23 Supervisors in the unit..."

24 Then he says it looks like they've done some wrong
25 things, right. 16:56:12

1 A. Yes, sir.

2 Q. Doesn't that seem to be strange language for somebody who's
3 just supposed to be investigating whether or not they engaged
4 in criminal conduct?

5 A. It would be, Your Honor, if that was placed in their -- in 16:56:22
6 a criminal report. This is a -- a memorandum that
7 Sergeant Tennyson wrote to me concerning the overall findings
8 of his investigation and the County Attorney's turndown.

9 There was a lot of thought and discussion that went
10 into me signing off on this on that day. 16:57:02

11 Q. Was there a lot of thought?

12 A. Yes, sir.

13 Q. I'm going to tell you a couple of problems I have with it,
14 so you'll know. And you'll see these and some of my
15 criticisms, and I'll have others that express my real concerns 16:57:16
16 about how MCSO's doing some things. These are fairly minor,
17 but I thought they would be illustrative.

18 You see the next paragraph when it says we've made all
19 investigative efforts to determine why some of the
20 identification documents ended up in Deputy Armendariz's home 16:57:29
21 and we just can't come to any conclusion. So it's not clear
22 why the items did not remain with the arrestee or why the items
23 were not placed into property and evidence.

24 Do you see that?

25 A. Yes, sir. 16:57:47

1 Q. Do you agree with that conclusion?

2 A. Well, from a --

3 Q. Let me ask it this way, Chief, and I'm sorry, I know I'm
4 interrupting you. You're aware that I subsequently authorized
5 my monitors to do an independent investigation of the number of
6 investigations that were within the MCSO.

16:58:02

7 You're aware of that?

8 A. Yes, sir.

9 Q. And you're aware that even though this was characterized by
10 the MCSO deputies as we were just holding a few of these for
11 training for fraudulent -- training purposes to dem -- show
12 people fraudulent identification, that they couldn't identify a
13 single training where they had used them to show fraudulent
14 identification. And as I said, most of these identifications
15 people would rightfully own, since they were Mexican consular
16 identifications, and my monitor subsequently determined that it
17 was a widespread practice, and I'm not saying everybody or even
18 the majority of people did it, but it was a widespread practice
19 to seize -- seize these sorts of identifications --

16:58:16

16:58:36

20 A. Um-hum.

16:58:51

21 Q. -- without turning them in to property and evidence, and
22 throwing them into bins in all the districts. It wasn't just
23 HSU, it was widespread throughout the department, wasn't it?

24 A. Yes, sir.

25 Q. And so Deputy Perez's allegations and why Sergeant

16:59:02

1 Armendariz would have a bunch, and we found Powe and Gandar and
2 Frei had a bunch, that's just not that uncommon at the time in
3 the MCSO, was it?

4 A. That's correct.

5 Q. Now, the last paragraph. "Based on the criteria provided
6 by the Maricopa County Attorney's Office regarding elements
7 needed for the criminal offense of theft as defined by Arizona
8 State Law has not been met."

16:59:20

9 And so he's referring, at least I understand him to be
10 referring to Keith Manning's conclusion that we don't have a
11 crime or we don't have an identifiable victim, and the
12 property's not worth anything, right.

16:59:36

13 A. Correct.

14 Q. And you agree with that conclusion as it pertains to the
15 Armendariz investigation, right?

16:59:49

16 A. I do, Your Honor.

17 Q. And so you closed the criminal investigation.

18 A. Yes.

19 Q. But the Armendariz investigation is different from the
20 Perez investigation, wasn't it?

16:59:57

21 A. Yes, it was.

22 Q. Because it wasn't just identifications we were dealing
23 with. There was money, and there were credit cards, and there
24 were gift cards, and there were debit cards.

25 Those things have value, don't they?

17:00:11

1 A. Yes, sir.

2 Q. And they can -- the victims of those things can be
3 identified because their name's right on the credit card.

4 A. Correct.

5 Q. And so Attorney Manning's conclusions that there wasn't an
6 identifiable victim and the thing wasn't worth value, although
7 in fairness it applies to, perhaps, many of the identifications
8 in the Armendariz investigation, doesn't apply to them all,
9 does it?

17:00:21

10 A. No, sir. Can I -- can I be heard?

17:00:38

11 Q. You certainly may.

12 A. Okay. The thought process --

13 Q. Let me ask you first: Did you have a thought process or
14 did you just assume that the investigation was the same?

15 A. I had a thought process.

17:00:51

16 Q. All right. Let's hear it.

17 A. Okay. I'm the one that ordered an -- criminal
18 investigation into this issue of the ID cards for all the
19 members from the Human Smuggling Unit. It was fairly close to
20 the beginning of the administrative investigation after Charley
21 Armendariz, all those items were found in his garage that
22 had -- basically was in its infancy at that point.

17:01:14

23 When we discovered comment from former Deputy Perez,
24 who, again, I just want to emphasize, was terminated by us for
25 truthfulness, and only because we couldn't prove the fact that

17:01:44

1 he was actually running guns, even though he had made
 2 statements to that on the wiretap. We had some good statements
 3 from him, but it wasn't good enough to charge him criminally
 4 working with the drug cartels.

5 So with that information from former Deputy Perez, I 17:02:03
 6 ordered a criminal investigation for all the deputies that were
 7 in HSU, because he had made the comment that we took things
 8 from crime scenes and that kind of thing.

9 And when we did so, I was told by Captain Bailey that
 10 he was questioned by one of the monitor teams: Why are you 17:02:33
 11 doing that? And basically questioning the wisdom of doing a
 12 criminal investigation on these issues. And my assumption was
 13 that it was, Why are you wasting your time with that when we
 14 have this huge Armendariz investigation going on, because this
 15 was going to be very time-consuming. We had to stop the 17:03:05
 16 administrative investigation for HSU and the spin-off for
 17 Charley Armendariz because we cannot commingle the criminal
 18 investigation while there's an administrative investigation.
 19 We have to complete the criminal investigation first.

20 Q. I get that. And the criminal investigation tolls the 17:03:28
 21 administrative one from running, tolls the time limit on the
 22 administrative investigation?

23 A. Well, it certainly doesn't help when you have that.

24 Q. Let me ask you another question, if I can.

25 A. Your Honor, can I -- 17:03:42

1 Q. Yeah.

2 A. Can I finish?

3 Q. Sure.

4 A. Okay.

5 Q. You know what, though? There is one area I wanted to get
6 to. We're after 5 o'clock, I told you we might run a little
7 over, and I'll dispense with all my other questions, but I do
8 have one area I still want to cover with you.

17:03:46

9 A. Okay.

10 Q. Okay?

17:03:58

11 A. My wife came in, so I think she'll give me permission to
12 stay late.

13 Q. Hope so.

14 A. Okay. So with that in mind, we -- and I know there was a
15 lot of discussion with how the questions were to be asked by
16 the monitor team, and there was tension between Sergeant
17 Tennyson, who, contrary to some -- the opinion of the Court,
18 has a very good reputation as a criminal investigator, did run
19 this by the County Attorney's Office, who felt that there was
20 no value, there was no intent to deprive anyone of anything of
21 value, and the fact was we could not interview Charley
22 Armendariz because he was dead.

17:04:12

17:04:43

23 So the Armendariz part of this criminal investigation
24 was what we would call exceptionally cleared because we can't
25 interview the suspect. And so therefore, it would be --

17:05:16

1 Q. Can I interrupt? I think I understand what your answer is.
2 But the truth was that the property found at Armendariz's house
3 was often not seized by Armendariz, was it? It was seized by
4 other deputies.

5 Did you not know that?

17:05:41

6 A. I know there was some -- there was an allegation to that
7 effect. I'm not sure --

8 Q. I'll tell you that it's since been confirmed by your own --

9 A. Okay.

10 Q. -- investigation.

17:05:56

11 So terminating the criminal investigation just because
12 Armendariz is dead terminates the investigation as to all the
13 other deputies who did the seizure of the property that was in
14 Armendariz's house. And would you acknowledge, and I don't --
15 you know, I don't -- you can object if you want, Ms. Iafrate --
16 your memo doesn't say -- doesn't take into account that the
17 property seized in the Armendariz investigation is -- isn't
18 just identifications, it's valuable items, even if you view
19 identifications as not valuable, with identifiable victims that
20 distinguishes this investigation from the investigation you
21 were relying on with Keith Manning, doesn't it?

17:06:13

17:06:35

22 A. I guess I'm a little bit confused --

23 Q. Well, we'll leave this --

24 A. Okay.

25 Q. -- because I want to go to something else.

17:06:48

1 A. Okay.

2 Q. We can take it up again another time.

3 Let's talk about the Montgomery investigation.

4 A. Yes, sir.

5 Q. Chief -- or Sheriff Arpaio yesterday said that you were in 17:06:55
6 charge of that investigation. Is that true?

7 MR. WALKER: Your Honor --

8 THE COURT: Sure.

9 MR. WALKER: Just so the record is clear, when we use
10 the word -- the name Montgomery, can we make it clear it's 17:07:18
11 Dennis Montgomery?

12 THE COURT: Yes. I'm sorry, that's correct. It's
13 Dennis Montgomery, who is the confidential informant.

14 THE WITNESS: Yes, sir.

15 BY THE COURT: 17:07:29

16 Q. And I have some questions on this. Sheriff Arpaio said
17 you -- folks reported to you.

18 A. Yes, sir.

19 Q. You seemed hesitant about that.

20 A. Well, I'm only hesitant because when you said that I'm in 17:07:41
21 charge of, the detective, Brian Mackiewicz, I would consider
22 him to be in charge of an investigation.

23 Q. All right. And so he is in charge of the investigation?

24 A. Correct.

25 Q. He's a sergeant? 17:08:05

1 A. Yes, sir.

2 Q. There is -- is it Sergeant Anglin as well?

3 A. Yes, sir. For a short time he was involved in the case.

4 Q. And somebody from your posse?

5 A. Yes, sir.

17:08:18

6 Q. And they spent a lot of time in Seattle?

7 A. Yes, sir.

8 Q. Did you report to Sheriff Arpaio about what they were
9 doing?

10 A. Yes, sir.

17:08:26

11 Q. How often did you report to Sheriff Arpaio about what they
12 were doing?

13 A. We got weekly updates, sometimes twice a week.

14 Q. Think he understood what they were doing?

15 A. I would think so, yes.

17:08:41

16 Q. You heard him yesterday say that the DOJ was wiretapping me
17 and other judges, and that that was part of that investigation.

18 You heard that testimony, didn't you?

19 A. Yes, sir.

20 Q. I didn't hear you say anything about that. Was that part
21 of the investigation?

17:08:58

22 A. I -- it's my recollection that I don't believe you were.

23 There were wiretaps. I know that there were wiretap numbers

24 that were from my phone and the sheriff's phone in about 2008.

25 I certainly don't recall yours.

17:09:30

1 What maybe the sheriff was confusing that with, there
2 were -- there was information that Dennis Montgomery gave us
3 that certain law offices, Jones, Skelton & Hochuli, Ogletree
4 Deakins, two law firms that represented us in the DOJ case,
5 were breached. One in particular with Mr. Popolizio, who was
6 representing us.

17:10:06

7 Q. Well, let's go back to my question.

8 A. I'm getting there, Your Honor.

9 Q. Okay.

10 A. Because you're next.

17:10:19

11 Q. Okay.

12 A. And also there was some information that your e-mail from
13 the court was possibly there -- there might have been an e-mail
14 from the -- the DOJ to you.

15 But understand, Dennis Montgomery gave us no evidence
16 that showed the contents of any of those e-mails except one
17 sentence from Mr. Popolizio's e-mail that talked about
18 something about his daughter and a soccer game.

17:10:45

19 It's a very long story. I don't think you have
20 time -- I can tell it in --

17:11:14

21 Q. I don't want to hear it, but I will let you tell it later
22 because we'll decide if we're going to take this up later.

23 But in your description of the investigation I didn't
24 hear anything about the DOJ at all. So why would

25 Mr. Montgomery have been looking at my computer to see if the

17:11:28

1 DOJ was sending me e-mails?

2 A. Okay. Here's where the plot thickens a little bit with
3 Mr. Montgomery. Mr. Montgomery worked for the CIA. And I
4 don't remember the years, but it was '07 to '10 for a few
5 years, and he took --

17:11:58

6 Q. When you say '7 to '10 for a few years, I don't -- I didn't
7 understand that.

8 A. 2007 to 2010, sometime -- I may have the dates wrong,
9 because this has been a few years, and I've had other things on
10 my mind since this thing kind of got cold.

17:12:15

11 He would -- when he worked for the CIA, he pulled data
12 from American citizens for the CIA. I mean, we heard a lot
13 about this a few years ago; it was very much in the media. And
14 he said he was one of the individuals that was tasked with
15 doing that, and he knew that was incorrect, it was wrong, and
16 so he made backup copies that he took and he kept. And he was
17 mining that data to find these e-mail breaches, to find the
18 bank information that he originally came to us with.

17:12:38

19 Q. Well, so he found information that the DOJ had sent a
20 communication to my computer?

17:13:05

21 A. Something to that effect, yes.

22 Q. And he brought that to you, and did he have the actual
23 content of the communication?

24 A. No, sir.

25 Q. How did he know -- how did he arrive at the conclusion that

17:13:17

1 the DOJ had accessed my computer?

2 A. Again, we were always very skeptical of what he was giving
3 us. However, he was giving us information on occasion that was
4 credible.

5 We had a seated justice in Washington -- I can't 17:13:42
6 recall his name; I have it written down on my pad, Your
7 Honor -- that is a member of the FISA court in Washington, D.C.
8 We had Mr. Mon -- because the sheriff and I were concerned
9 about the CIA wiretapping our phones. This justice actually
10 confirmed that these were typical wiretap numbers, and so it 17:14:16
11 did give Mr. Montgomery a little more credibility with us.

12 And we continued to work with him, we continued to
13 keep him on our informant payroll, so to speak, as he was
14 producing information. But it became very slow, it became very
15 stale, and we finally realized that he was stringing us along. 17:14:49

16 Q. You know, with all due respect, we did hear the sheriff say
17 yesterday that he -- some pretty critical comments about the
18 Department of Justice. Do you remember those?

19 Maybe I misremember. I'll scratch that.

20 Let me ask you this: If in fact the sheriff thought 17:15:19
21 there might have been some improper collusion between me and
22 the Department of Justice, can you blame him if he wanted to
23 investigate that further?

24 A. Could I blame the sheriff?

25 Q. Yeah. 17:15:33

1 A. Well, there was -- there was really nothing to think that
2 there was any collusion.

3 Q. Well, I certainly agree with that, but Mr. Montgomery was
4 an expensive proposition for the MCSO, was he not?

5 A. He was.

17:15:48

6 Q. Did you ever hear the sheriff describe his work as an
7 investigation of a conspiracy, or something of that nature,
8 between the Department of Justice and me?

9 A. No, sir.

10 Q. Did you ever hear him describe it as an investigation of me
11 to anyone at the MCSO? 17:16:04

12 A. No, sir. As a matter of fact, I made quite sure, and I
13 believe in the presence of the sheriff, with detective --
14 Sergeant Anglin and Detective Mackiewicz when this information
15 came forward that they were not, it was -- and I don't normally 17:16:29
16 do this because it's not my style, but I told them: This is a
17 direct order from me. You are not to investigate any
18 information involving Judge Snow. If any further information
19 comes up, I want to know immediately. Nothing ever did
20 materialize. 17:16:52

21 Q. So Montgomery brought you some information?

22 A. Initial. And when we say "information," what Montgomery
23 would do, because -- I'll try and give you the two-second
24 version. When you send an e-mail, it goes out in bits and
25 pieces and it could go all over the world. It could go to 17:17:13

1 Indonesia and back within seconds. And it comes back in your
2 computer, the system puts it back together.

3 Montgomery has that data, or he says he does, in
4 those -- in that format. He needs -- or he says he needed
5 supercomputers to put that information together. He doesn't
6 have one. He's got this huge one in his garage, and it takes
7 forever to run programs. And so he would come back with
8 information.

17:17:36

9 Our primary focus, Your Honor, was the fraud, the bank
10 fraud, the -- excuse me, the computer fraud of him hacking into
11 person -- people's personal bank accounts.

17:17:57

12 Q. Are you uncomfortable telling me who the target of this
13 investigation was?

14 A. No, because there were about 50,000 people. Some of them
15 very prominent people.

17:18:14

16 Q. Well, the sheriff told me that the target was the
17 Department of Justice. Do you remember that?

18 A. I -- I'm sorry, I don't.

19 Q. Oh. Who would have had to sign off on these
20 investigations?

17:18:30

21 A. I don't --

22 Q. When I say the target of the investigation, in other words,
23 he thought the Department of Justice was doing the bugging. Do
24 you remember that? And the investigation was trying to find
25 out the Department of Justice's bugging of judges and your

17:18:42

1 defense attorney and your offices.

2 Do you remember him saying that?

3 A. I -- I don't remember.

4 Q. He didn't mention anything about banks, that I recall.

5 A. Well, when I think it's Dennis Montgomery and what we were 17:19:01
6 doing with him, it was really the bank fraud, it was the DOJ
7 wiretapping our phones going into the e-mail accounts of our
8 counsel, and there was something in there about your e-mail
9 also.

10 So, you know, the DOJ was on our radar screen because, 17:19:26
11 you know, personally if they did do an illegal wiretap on my
12 phone, I would have liked to -- I would like to know that.

13 Q. I would, too. You didn't call me.

14 A. Probably good thing.

15 And so that's how -- that's how that happened. So 17:19:52
16 when you say sign off on it, now, we were working with the
17 Arizona Attorney General's Office, as they were going to
18 prosecute this case if we were ever able to bring it to a
19 conclusion.

20 And it was also our intent and it is also our intent 17:20:16
21 to gather -- to complete gathering this information, because
22 Montgomery has promised us -- we're no longer paying him, we
23 haven't been paying him for a while -- some further
24 information, and to package this up and forward it to the
25 Federal Bureau of Investigation. That was going to be our -- 17:20:41

1 our final conclusion to tie up this case.

2 Q. Let me ask you, Montgomery's simply a computer consultant,
3 isn't he?

4 A. Well, that's what he is now. He did work for, and this had
5 been verified, and you can google his name and find all kinds
6 of crazy stuff about him, but there were some pieces of
7 information that were verified and credible also. So like many
8 informants that we deal with, there's a very shady side of them
9 and then there's also a very credible side for them.

17:21:01

10 Q. Well, why in the world did you have to designate him as a
11 confidential informant if there isn't anything he was doing
12 that was confidential was there?

17:21:24

13 A. Well, he was working with us confidentially.

14 Q. Well, why can't you just hire him as a consultant?

15 A. Because he was -- well, I don't know. This is the way we
16 handled him.

17:21:41

17 Q. Well, you don't have -- there's certain protections from
18 disclosure if you designate somebody as a confidential
19 informant, aren't there?

20 A. Yes, sir.

17:21:54

21 Q. That don't apply to just consultants?

22 A. That's correct.

23 Q. So I can do a public information request, you gotta give me
24 your consultants, but you don't have to give me your
25 confidential informants, do you?

17:22:06

1 A. No, but when the -- somebody leaks to members of the media
2 who he is, he's no longer confidential.

3 Q. Well, but what was he doing that he needed to be
4 confidential for?

5 A. Well, it could have shown --

17:22:26

6 Q. He hadn't infiltrated organized crime, had he?

7 A. Could have shown that either the Department of Justice or
8 the CIA was breaching American citizens' personal information,
9 and he had at least 50,000, that I remember, of citizens that
10 lived here in Maricopa County.

17:22:52

11 Q. But I still don't understand. Do you have a definition of
12 what a confidential informant is anywhere in your operations
13 manual?

14 A. Yes, sir, we do.

15 Q. And is it written so broadly that Dennis Montgomery
16 qualifies?

17:23:02

17 A. I believe so.

18 Q. Who all has to sign off -- you purchased a bunch of
19 equipment for him.

20 A. We did, but we never gave it to him.

17:23:17

21 Q. You authorized travel and overtime and pay for your
22 detectives to go to Seattle?

23 A. Yes, sir.

24 Q. Why were you doing this out of Seattle?

25 A. That's where he lives.

17:23:35

1 Q. Why did your detectives have to go to Seattle?

2 A. That's where his massive computer system is.

3 Q. Who -- did they have to be there with him?

4 A. Well, that was always the discussion, because we wanted to
5 be there when he found the information. And he worked a lot
6 harder when our detectives were there than when they weren't.

17:23:48

7 Q. Was it worth paying their overtime and travel and all those
8 expenses?

9 A. Well, now that we look back, and hindsight's 20/20,
10 probably not.

17:24:07

11 Q. Let me ask this: Did you ever get any referrals that you
12 handled within PSB related to this investigation?

13 A. I don't believe so, no, sir.

14 THE COURT: Well, I thank you for your patience. We
15 will probably be resuming this matter in June, but I think it's
16 time to let you go. Thank you.

17:24:27

17 THE WITNESS: Thank you, Your Honor.

18 MS. WANG: Your Honor, I did have redirect. Do you
19 want me just to defer that till June?

20 THE COURT: I had assumed you were going to redirect.
21 How long is it? I assumed you were going to defer. I'm sorry.

17:24:40

22 MS. WANG: I'm happy to defer the redirect, Your
23 Honor.

24 THE COURT: I think it makes sense. We've gone pretty
25 late in the day.

17:24:48