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10 Of Counsel
11

12
13 **IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

14
15 MANUEL de JESUS ORTEGA MELENDRES, on
behalf of himself and all others similarly
16 situated; *et al.*

17 Plaintiff,

18 v.

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

21 Defendants.

22 DENNIS L. MONTGOMERY

23 Intervenor.
24

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

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

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

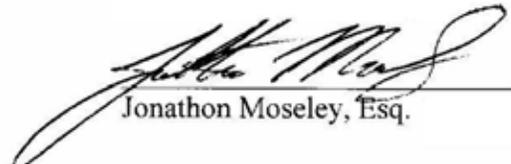
1 moves for disqualification of the Honorable G. Murray Snow, for the reasons set forth in his
2 companion affidavit, memorandum of law, and other exhibits attached thereto.

3 Dated: May 7, 2015

Respectfully submitted,

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1 **CERTIFICATE OF SERVICE**

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

3 Honorable John Z. Boyle
4 United States District Courthouse
5 Sandra Day O'Connor U.S. Courthouse, Suite 322
6 401 West Washington Street, SPC 75
Phoenix, AZ 85003-2160

7 Honorable G. Murray Snow
8 United States District Courthouse
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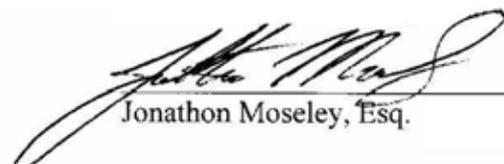
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20 DENNIS L. MONTGOMERY

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

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

26 **I. INTRODUCTION**

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

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

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

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

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.

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?”**

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.”

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:

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

A. Well, on a certain issue I was.

Q. And what issue was that?

A. It was the president's birth certificate.

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

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

Judge Snow continued questioning Sheriff Arpaio on page 647:

Q. And what were those?

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

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?

A. It's not true.

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

A. You investigated?

Q. Yes.

A. No. No.

Q. Any of my activities?

A. No.

Q. Any of my family members?

A. That have been investigated?

Q. Yes.

A. Not by our office.

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

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

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?

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A. I'm not sure about that.

Q. You're not sure about that?

A. No.

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

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

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

A. We're speaking about Montgomery.

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

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

Q. By the Department of Justice?

A. By someone.

Judge Snow continued questioning Sheriff Arpaio on pages 650:

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

A. Yes. And mine, too.

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

A. No.

Q. Who was in your department?

A. This is Zullo and I think Mackiewicz.

Q. What rank does Mackiewicz have?

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.

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

A. Yes.

Q. Or the informer was giving you junk?

A. Yes.

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

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

A. That had nothing to do with Montgomery.

Q. What did it have to do with?

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

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

A. We may have it, yes.

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

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

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

A. I believe it was someone named Grissom.

Q. Grissom?

A. Grissom.

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

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

A. The person met your wife in a restaurant, and she's the one that 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
6 conclude that the information you were getting from Mr.
Montgomery is not reliable?

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

8 Q. Did the MCSO also purchase computer equipment for

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.

1 The affidavit shall state the facts and the reasons for the belief that
2 bias or prejudice exists, and shall be filed not less than ten days before
3 the beginning of the term at which the proceeding is to be heard, or
4 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.

5 **B. Governing Legal Precedents and Principles**

6 An impartial judiciary is a fundamental component of the system of justice in the United
7 States. The right to a “neutral and detached judge” in any proceeding is protected by the
8 Constitution and is an integral part of maintaining the public’s confidence in the judicial system.
9 *Ward v. City of Monroeville*, 409 U.S. 57, 61-62 (1972). *See also Marshall v. Jerrico, Inc.*, 446 U.S.
10 238, 243 (1980) (“powerful” constitutional interest in fair adjudicative procedure). Congress has
11 sought to secure the impartiality of judges by requiring them to step aside, or in some instances,
12 disqualify themselves, in various circumstances.

13
14 In order to preserve the integrity of the judiciary, and to ensure that justice is carried out in
15 each individual case, judges must adhere to high standards of conduct." *York v. United States*, 785
16 A.2d 651, 655 (D.C. 2001). "A judge should disqualify himself in a proceeding in which his
17 impartiality might reasonably be questioned. . . ." ABA Code Of Judicial Conduct Canon 3(C)(1)
18 *see also Scott v. United States*, 559 A.2d 745, 750 (D.C. 1989) (en banc).

19
20 The language of the Code of Conduct for United States Judges leaves no doubt that that
21 recusal process is to be self-executing, as the judge should not unethically wait for a recusal motion
22 to be filed. **“It is intended to be used by a judge at the start of each case as a checklist to assist**
23 **in deciding whether at that point he should disqualify himself from any participation in the**
24 **proceedings . . . [E]ven before appraising participation in the case under the [Judicial Code],**
25 **the judge should first consult his own emotions and conscience, and pass an 'internal test of**
26

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

14
15 In *SCA Servs. v. Morgan*, 557 F.2d 110 (7th Cir. 1977), the judge's brother was an attorney
16 in the firm appearing before the judge. Similar to the relationship between Judge Snow and his
17 wife: "This appearance of partiality begins with the natural assumption that brothers enjoy a close
18 personal and family relationship and, consequently, would be inclined to support each other's
19 interests. When one's brother is a lawyer in the firm representing a party before his brother who is
20 the judge in the case, the belief may arise in the public's mind that the brother's firm and its clients
21 will receive favored treatment, even if the brother does not personally appear in the case." *Id.* at
22 116. The U.S. Court of Appeals for the Seventh Circuit also found that “the judge's ‘Memorandum
23 of Decision’ suggests that he made a confidential inquiry, presumably to his brother, to determine in
24 what capacity Donald A. Morgan was involved in this case (Petitioner's App. D-3). Counsel were
25 not present and were unaware of the inquiry at the time it was made. While it is understandable why
26 the judge may have felt his brother could present the most accurate evidence as to his role in the
27
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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
8 In *In re Faulkner*, 856 F.2d 716 (5th Cir. 1988), the U.S. Court of Appeals for the Fifth
9 Circuit reversed a refusal to recuse where a relative of the judge was a major participant in
10 transactions relating to the defendant's indictment and "that relative had communicated to the judge
11 . . . 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.
24
25

26 Providing further definition and guidance, 28 U.S. Code § 455 also requires:
27
28

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
7 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
8 interest that could be substantially affected by the outcome of the
proceeding;

9 (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:

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

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

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

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

16 * * *

17 Moreover, the Code of Conduct for United States Judges

18 **CANON 2** requires:

* * *

19 (B) Outside Influence. A judge should not allow family,
20 social, political, financial, or other relationships to influence judicial
21 conduct or judgment. A judge should neither lend the prestige of the
22 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.

23 **CANON 3** requires:

* * *

24 (C) Disqualification.

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

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

* * *

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

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

* * *

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

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

12 **C. Case Must Be Transferred to Another Judge Immediately**

13 Nothing can create more of the appearance of a conflict of interest – much more an actual
14 conflict of interest – than when a presiding judge has a personal interest in the litigation or matters
15 related to it. The applicable standard for recusal is whether a judge's participation in a lawsuit will,
16 at a minimum, create the *appearance* of bias and prejudice. *See Liteky v. United States*, 510 U.S.
17 540, 555, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994)); *Jackson v. Microsoft Corp.*, 135 F. Supp. 2d
18 38, 40 (D.D.C. 2001), *supra*.²

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

22 Pursuant to 28 U.S. Code § 455(a), at a minimum Judge Snow's impartiality may reasonably
23 be questioned, because the Judge has a personal interest running an inquiry concerning possible
24

25
26
27 ² Here, we have much more than an “appearance.” Judge Snow has misused the ongoing
28 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

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

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**

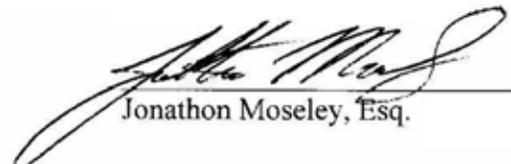
6 Pursuant to 28 U.S.C. § 144, this case must be immediately transferred to a different judge, ,
7 and Judge Snow should remove himself or be disqualified on the case as required by the statute, as
8 he has used it to pursue his own personal agenda with regard to scurrilous statements made by his
9 wife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

11
12 Dated: May 7, 2015

Respectfully submitted,

13
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16 Freedom Watch, Inc.
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Attorney for Plaintiff

CERTIFICATE OF SERVICE

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

Honorable John Z. Boyle
United States District Courthouse
Sandra Day O'Connor U.S. Courthouse, Suite 322
401 West Washington Street, SPC 75
Phoenix, AZ 85003-2160

Honorable G. Murray Snow
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Sandra Day O'Connor U.S. Courthouse, Suite 322
401 West Washington Street, SPC 75
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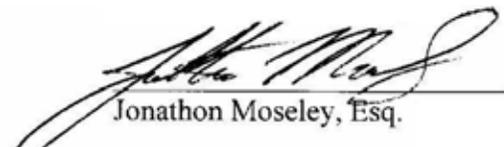
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(Pro Hac Vice Application Filed)

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,
)	<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.

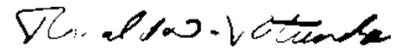
26. In the judge’s order of April 27, he states that he ordered the “MCSO defendants to *immediately disclose* certain materials discussed in the Court’s colloquy Sheriff Arpaio.” [Emphasis added.] The judge states, “Attorney review for privilege was conducted contemporaneously with this production” 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
Home Page  <http://www1.chapman.edu/~rrotunda>

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Orange, CA 92866-1005
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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.

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

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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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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).

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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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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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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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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.

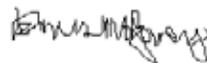
39) Furthermore, Judge Snow in his questioning spent considerable time on the question of whether or not the alleged money paid by MCSO to me was well-spent or a wise use of County funds. Unfortunately, this persistent inquiry by Judge Snow starts to look like exactly what his wife stated.

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