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12
13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 STATE OF NEVADA,
16
Plaintiff.

17 vs.

18 GARY TRAFFORD
19 GERRI SHEPPARD

20 Defendants.

Case No.: C-11-277573-1

DATE: January 23, 2013
TIME: 9:00 a.m.
DEPT.: V
JUDGE: Hon. Carolyn Ellsworth

21
22 **TRAFFORD'S JOINDER AND REPLY IN SUPPORT OF**
23 **SHEPPARD'S MOTION TO DISMISS INDICTMENT**
24 **BASED UPON FORMER LEAD PROSECUTOR CONFLICT OF INTEREST**
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1 **I. PRELIMINARY STATEMENT**

2 Defendant Gary Trafford previously joined in Defendant Sheppard’s *Motion to Dismiss*
3 *Indictment Based Upon Former Lead Prosecutor Conflict of Interest* (the “Motion to Dismiss”).
4 In that joinder, Trafford further provided notice that, to avoid unnecessarily burdening the Court
5 and the parties with additional briefing, he was incorporating in his joinder to the Motion to
6 Dismiss the facts, argument, affidavits and exhibits presented with (1) the *Second Supplemental*
7 *Brief in Support of Gary Trafford’s Writ of Habeas Corpus and Motion to Dismiss* and (2) *Gary*
8 *Trafford’s Opposition to Motion to Strike His Second Supplemental Brief*. Trafford also joins in
9 Sheppard’s reply brief in support of her Motion to Dismiss.

10 Further, the Attorney General’s Office (the “AG”) has now had two opportunities to
11 respond in full concerning the former lead prosecutor’s conflict of interest. (*See Motion to Strike*
12 *Defendant Trafford’s Second Supplemental Brief and Opposition to Defendants’ Motion to*
13 *Dismiss*.) Because the AG’s responses leave numerous serious questions unanswered, and
14 because the AG has taken the surprising and untenable position that the prosecutor had no conflict
15 here, Trafford submits this short reply brief to further assist the Court in evaluating the Motion to
16 Dismiss.

17 **II. ARGUMENT**

18 There are two fundamental points that are clear. First, the law is clear that if a prosecutor
19 has a conflict of interest, “he is an unauthorized person in the grand jury room, and the slightest
20 intrusion into a grand jury proceeding by him voids the indictment, even without a showing of
21 prejudice.” *United States v. Gold*, 470 F. Supp. 1336, 1346 (N.D. Ill. 1979) (citation omitted).
22 The AG has not refuted this authority, nor has the AG cited a single exception to this
23 commonsense holding.

24 Second, the record is clear that the former lead prosecutor on this case, John Kelleher,
25 made the “decision to prosecute this matter,” Opp. at 5:8, and presented this case to the grand jury
26 while laboring under a conflict of interest. Despite the AG’s proclamation in its brief that “There
27 Is No Evidence of any Conflict of Interest on the Part of Kelleher,” *id.* at 4:12, Attorney General
28 Masto is on record as saying that Kelleher was removed from this case due to a conflict of interest

1 “surrounding [his] personal foreclosure crisis.” Nov. 26, 2012 Lenhard Aff., Ex. C at 2. The AG
2 has not disputed that AG Masto made such a statement. Indeed, the sole affidavit that the AG *has*
3 submitted, from Kelleher, only further confirms that AG Masto determined that “a conflict of
4 interest existed.” Kelleher Aff. ¶ 25. Moreover, as explained more fully below by Dean Nancy
5 B. Rapoport of UNLV’s William S. Boyd School of Law – an expert on legal ethics – *whether or*
6 *not Kelleher actually knew that LSI Title (“LSI”) processed his personal foreclosure*
7 *documents*, “there was a significant risk that his personal interests would cloud his duty as a
8 prosecutor to administer justice” and, therefore, “Mr. Kelleher had a conflict of interest.”
9 Affidavit of Nancy B. Rapoport (“Rapoport Aff.”), ¶¶ 22-24.¹ In short, Kelleher “should not have
10 been involved at the indictment stage or thereafter.” *Id.* ¶ 22.

11 **A. Kelleher’s Conflict Of Interest Presents Several Important, Unanswered**
12 **Questions**

13 On the facts, the AG’s sole response to the serious issues concerning Kelleher’s conflict is
14 to claim that he did not know until after the indictment was handed down that LSI, Trafford’s
15 employer, was the processor of Kelleher’s personal foreclosure documents. Opp. at 4:21-23, 5:3-
16 8; Kelleher Aff. ¶¶ 20, 23. There are three critical problems with this response.

17 The first problem is that the AG’s claim does not hold up to careful scrutiny.² In addition
18 to the points made in Sheppard’s reply brief, there is other evidence suggesting that Kelleher was
19 aware *before* the indictment issued that LSI processed his personal foreclosure documents.

20 Namely, the AG’s own witness interviews produced in discovery demonstrate that the AG never

21 ¹ After the AG made the surprising claims in its Opposition that (a) Kelleher did not have
22 a conflict of interest in this case, and (b) he did not know that LSI was involved in his personal
23 foreclosure, Trafford retained Dean Rapoport to offer her expert opinion concerning the ethical
24 issues, if any, raised by Kelleher’s presentation to the grand jury in this case while foreclosure
proceedings were underway on his personal residential home. Dean Rapoport’s qualifications
and opinion are set forth in full in her attached Affidavit.

25 ² As Sheppard pointed out in her reply brief, Kelleher admits that he received the election
26 to mediate form *before* he presented this case to the grand jury, and that mailing would have
27 included the LSI-processed NOD he claims not to have seen until *after* the grand jury indicted
28 this case. Sheppard Reply at 5:5-10. Sheppard also correctly pointed out that, by statute,
Kelleher was likely personally served with the NOD and the NOD was likely posted on his
property. *Id.* at 5:1-4. It is not disputed that the NOD, on its face, identifies LSI as the processor.

1 once mentioned LSI *before* Kelleher’s NOD was filed, but Kelleher himself raised LSI for the
2 first time with a witness immediately *after* LSI filed Kelleher’s NOD. Vanzura Aff. ¶¶ 2-4.
3 Specifically, just two days after LSI recorded Kelleher’s NOD, Kelleher met with Tracy
4 Lawrence and brought up LSI – for the first time ever in a recorded witness statement tied to this
5 case – in the first 5 minutes of their meeting. *Id.* Needless to say, it is an incredible coincidence
6 – if Kelleher truly did not know about LSI’s involvement in his foreclosure – that he and his
7 investigators never once mentioned LSI before it recorded Kelleher’s NOD, but then happened to
8 raise the company for the first time immediately after LSI recorded the NOD.

9 The second problem is that the AG’s claim – even if accepted – does not resolve
10 Kelleher’s conflict of interest or the consequences of his involvement in the charging decision
11 and grand jury presentation. The simple, undisputed fact is that, *whether Kelleher was aware of*
12 *LSI’s involvement in his foreclosure or not*, he was knowingly going through a personal
13 foreclosure crisis at the same time he made the grand jury presentation and secured the
14 indictment. As Dean Rapoport explains:

15 I believe that it would still be reasonable to assume that someone in
16 the middle of a foreclosure, especially one in which there might
17 have been questionable documents, would be unhappy about that
18 foreclosure. As such, a prosecutor in that situation should not have
19 been involved at the indictment stage or thereafter, whether or not
20 the particular defendant was involved in effectuating the
21 prosecutor’s own foreclosure. Someone else at the Attorney
22 General’s Office could have handled this case without incurring the
23 significant risk that the prosecution would be materially limited by
24 his own emotional involvement. ... Whether he was *actually*
25 affected, though, is not the appropriate test. The test involves a
26 *likelihood* that Mr. Kelleher was affected by the circumstances—
27 whether there was a significant risk that his personal interests
28 would cloud his duty as a prosecutor to administer justice. I believe
that there was such a likelihood, and that, therefore ... Mr. Kelleher
had a conflict of interest.

Rapoport Aff., ¶¶ 22-24 (emphases in original).³

³ The AG itself describes this case as one “for crimes arising out of false notarization of legal documents required in the process of foreclosing on residential homes in the Las Vegas area.” *Opp.* at 2:11-12. It is beyond dispute that, at the time he investigated and indicted this case, the lead prosecutor was personally subject to the “process of foreclosing on residential

1 What's more, Kelleher admits that he views himself as a victim of criminal foreclosure
2 processes. Kelleher Aff. ¶ 24 (describing himself as a victim of "criminally fraudulent transfers"
3 involving his foreclosure and "Bank of America or LSI"); *see also id.* ¶ 14 (Kelleher describing
4 how he discovered, before presenting the case to the grand jury, fraudulent statements and forged
5 signatures added to his personal loan documents). Thus, as Dean Rapoport explains, "[a]ny
6 knowledge that Mr. Kelleher's own foreclosure was potentially tainted by fraudulent documents
7 would have made his conflict of interest worse" and "if Mr. Kelleher believed that his own
8 foreclosure was based on criminally fraudulent documents, his conflict of interest would be
9 strong enough to disqualify him from participating at the indictment stage or thereafter."
10 Rapoport Aff. ¶¶ 20-21. At the very least, Kelleher's perception that he was a victim in a
11 "personal foreclosure crisis" at the same time he was prosecuting this foreclosure-related case
12 gives the *appearance* of partiality, malice, unfairness, or other prejudice. This is precisely the
13 result that numerous courts have counseled against. *See, e.g., Gold*, 470 F. Supp. at 1346; *Young*
14 *v. United States ex rel. Vuitton Fils S.A.*, 481 U.S. 787, 812, 107 S. Ct. 2124, 2140 (1987); *People*
15 *v. Zimmer*, 51 N.Y.2d 390, 395-96, 414 N.E.2d 705, 708 (N.Y. Ct. App. 1980); *State v. Hill*, 88
16 N.M. 216, 219, 539 P.2d 236, 239 (1975).

17 The third problem is that the AG's response is silent as to several other important issues
18 concerning the lead prosecutor's conflict of interest. For example, the following issues are
19 noticeably *not* addressed in the AG's response:

- 20 1. The AG has not explained its failure to disclose Kelleher's conflict of interest to the
21 defendants and the Court. Equally disturbing is that the AG has not disputed that it
22 actually misled Trafford's counsel when Deputy AG Giunta claimed in writing that

23 homes in the Las Vegas area" pursuant to "legal documents required in" that process. If, in
24 addition, Kelleher was actually aware that LSI processed his foreclosure, that would be another
25 reason to conclude that Kelleher was not disinterested in this prosecution. *See Rapoport Aff.* ¶ 18
26 ("When a prosecutor who is in danger of losing his own home knows that the defendant's
27 company is the entity charged with effectuating that very foreclosure, there is a significant
28 likelihood that the prosecutor's professional judgment would be clouded by that knowledge. ...
[I]t is my opinion that Mr. Kelleher's personal foreclosure situation presented a conflict of
interest. In such a situation, Mr. Kelleher's presentation to the grand jury to seek an indictment,
and his prosecution of the case, was inappropriate.")

1 Kelleher was removed from this case due to an administrative “re-alignment” in the AG’s
2 office. *See* Nov. 26, 2012 Lenhard Aff., Ex. B. The AG also has not explained its refusal
3 to respond to the defendants’ repeated requests for information about Kelleher’s conflict
4 before (or since) the defendants were forced to bring the issue to the Court’s attention.
5 *See* Dec. 10, 2012 Lenhard Aff., ¶¶ 5-6 and Ex. A, B, C.

6 2. Even accepting as true Kelleher’s claim that he did not know of LSI’s involvement in his
7 personal foreclosure until December 2011, the AG has not explained why Kelleher was
8 permitted to remain on this case for another *five months* after his conflict of interest was
9 known. *See* Kelleher Aff. at ¶¶ 23, 25.

10 3. The AG claims that investigator Grosz’s statements about a “pissed” prosecutor were
11 nothing more than a game of “good cop, bad cop.” *Opp.* at 5:16-21. However, the AG
12 does not support its claim with any evidence. In fact, noticeably absent from the AG’s
13 submission is any sworn affidavit from Mr. Grosz or his co-investigator supporting the
14 AG’s claim. The AG’s papers also fail to explain why Tracy Lawrence was urgently
15 interviewed on “short notice” immediately after Kelleher’s NOD was recorded. *See* Nov.
16 26, 2012 Lenhard Aff., Ex. E at 1.

17 This prosecution should not be permitted to proceed, particularly as long as these and
18 other questions concerning Kelleher’s conflict of interest remain unanswered.

19 **B. The AG’s Attempt To Distinguish Some Cases – While Ignoring Others –**
20 **Does Not Absolve The AG Of Responsibility For Its Misconduct**

21 On the law, the AG’s sole response to the defendants’ papers is to avoid altogether the
22 authority most damaging to the AG’s position, while suggesting that the Court ignore the
23 commonsense conclusion reached in numerous cases that a prosecutor should be disinterested and
24 avoid any appearance of a conflict when pursuing charges. *See Opp.* at 3:2-4:8. For example, the
25 AG never addresses *Gold*, one of the chief cases on which the defendants’ briefing relied. As
26 defendants pointed out, that case has twice been cited with approval by the Nevada Supreme
27 Court and directly addresses the issue of a prosecutor who presented evidence to the grand jury
28 while operating under a conflict of interest. *See, e.g.,* Trafford Sec. Supp. at 6:13-24, 6 n.2.

1 Applying the holding of *Gold* to the facts of this case leads to the conclusion that the indictment
2 should be dismissed.

3 Rather than addressing *Gold* and other cases, the AG attempts (unsuccessfully) to
4 distinguish three cases it cherry-picked from defendants' briefs. *See* Opp. at 3:5-4:8. For
5 example, the AG claims that *Hill* is distinguishable because the prosecutor at issue was a private
6 individual sworn in as a special assistant immediately before his grand jury presentation, while
7 Kelleher was a longtime prosecutor in the AG's office. *Id.* at 3:5-15. This analysis, though,
8 ignores the most critical discussion and holding in the case – namely, that a prosecutor who labors
9 under a conflict of interest while making a grand jury presentation compromises the impartiality
10 of the grand jury proceedings. *Hill*, 88. N.M. at 219. Given the AG's prior admission that
11 Kelleher had a conflict of interest, the AG should not be permitted to avoid the reasoning in *Hill*
12 most applicable here:

13 In the performance of [the prosecutor's] duties he must not only be
14 disinterested and impartial but must also appear to be so. It is not
15 necessary that his participation be corrupt or that he use unfair
16 tactics. Public confidence in the office in the exercise of broad
17 powers demands that there be no conflict of interest or the
18 appearance of a conflict. ... The law protects the fairness and
impartiality of the grand jury hearing. Not only must there be no
improper influence exercised, there must be *no opportunity for*
improper influence on the grand jury.

19 *Id.* (citations omitted) (emphasis in original).

20 Surely, the AG does not dispute that its prosecutors “must not only be disinterested and
21 impartial but must also appear to be so.” If that is, in fact, the AG's position, then Trafford must
22 respectfully disagree. *See, generally*, Rapoport Aff.

23 **C. Dismissal Or, At The Very Least, An Evidentiary Hearing Is Warranted**

24 In its Opposition, the AG does not address or otherwise oppose the defendants' request for
25 an evidentiary hearing to get to the bottom of the serious issues raised by Kelleher's conflict of
26 interest. At the very least, the defendants have raised plausible concerns about a prosecutorial
27 conflict. Accordingly, and for the reasons outlined in the *Second Supplement Brief in Support of*
28 *Gary Trafford's Writ of Habeas Corpus and Motion to Dismiss* (Trafford Sec. Supp. at 7:24-8:4),

1 the *Motion to Dismiss* (Sheppard Mot. Dismiss at 9:1-19), and *Sheppard's Reply* (Sheppard Reply
2 at 4:7-5:12), if the Court is not inclined to dismiss the indictment on the present record, there are
3 certainly enough questions raised by the circumstances presented here to warrant an evidentiary
4 hearing.

5 **III. CONCLUSION**

6 Trafford respectfully submits that the Motion to Dismiss should be granted. In the
7 alternative, the Court should order an evidentiary hearing.

8
9 DATED this 18th day of January, 2013.

10 **BROWNSTEIN HYATT FARBER SCHRECK, LLP**

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26 *Attorneys for Defendant Gary Trafford*

CERTIFICATE OF SERVICE

1
2 I HEREBY CERTIFY that on the 18th day of January, 2013, and pursuant to NRCP 5(b),
3 I served a true and correct copy of the foregoing **JOINDER AND REPLY IN SUPPORT OF**
4 **SHEPPARD'S MOTION TO DISMISS INDICTMENT BASED UPON FORMER LEAD**
5 **PROSECUTOR CONFLICT OF INTEREST**, to be served, via messenger, in a sealed
6 envelope, addressed to the following:
7

8 CATHERINE CORTEZ MASTO, ESQ.
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15
16
17 /s/ Paula Kay
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28

1 AFFIDAVIT OF NANCY B. RAPOPORT

2 State of Nevada)
3) ss.
4 County of Clark)

5 BACKGROUND AND QUALIFICATIONS

6 1. I have been retained on behalf of Gary Trafford to offer my expert opinion
7 concerning the ethical issues, if any, raised by former Assistant Chief Deputy John Kelleher's
8 presentation to the grand jury in this case (Clark County District Court Case No. C-11-277573-1)
9 while foreclosure proceedings were underway on Mr. Kelleher's personal residential home.

10 2. I am the Interim Dean and Gordon Silver Professor of Law at the William S. Boyd
11 School of Law, University of Nevada, Las Vegas. Given my two roles, I must make it clear that
12 all opinions expressed in this Affidavit are mine alone and not those of UNLV or of the Boyd
13 School of Law.

14 3. I have been employed at the Boyd School of Law since 2007. I teach the following
15 courses on a regular basis: contract law, professional responsibility, and corporate scandals and
16 decision-making.

17 4. Prior to my work at UNLV, I served as a Professor of Law at the University of
18 Houston Law Center (2006-07), as Dean and Professor of Law at the University of Houston Law
19 Center (2000-06), as Dean and Professor of Law at the University of Nebraska College of Law
20 (1998-2000), as Associate Professor¹ and Associate Dean for Student Affairs at The Ohio State
21 University College of Law (now the Moritz College of Law) (1996-98), as an Associate Professor
22 of Law at Ohio State (1995-98), and as an Assistant Professor of Law at Ohio State (1991-95).

23 5. Before I entered academia, I was a law clerk to the Hon. Joseph T. Sneed III, U.S.
24 Court of Appeals for the Ninth Circuit (1985-86) and an associate attorney at Morrison & Foerster
25 (1986-91). I received my undergraduate degree from Rice University (B.A., *summa cum laude*,
26 1982) and my law degree from Stanford Law School (J.D., 1985).

27 _____
28 ¹ My promotion to Professor at The Ohio State University College of Law occurred as I
was transitioning to the University of Nebraska College of Law.

1 homes in the Las Vegas area.” (State of Nevada’s Opposition to Defendants’ Motion to Dismiss,
2 p. 2.)

3 13. *Standard of conduct of prosecutors—generally.* Nevada prosecutors are subject to
4 the same Nevada Rules of Professional Conduct that all Nevada lawyers must follow. In addition,
5 they are subject to Nev. R. Prof’l Conduct 1.11 (Special Conflicts of Interest for Former and
6 Current Government Officers and Employees). Nev. R. Prof’l Conduct 1.11(d) provides in part
7 that “[e]xcept as law may otherwise expressly permit, a lawyer currently serving as a public
8 officer or employee: (1) [i]s subject to Rules 1.7 and 1.9. . . .” Nev. R. Prof’l Conduct 1.7(a)
9 provides in part that “[e]xcept as provided in paragraph (b), a lawyer shall not represent a client if
10 the representation involves a concurrent conflict of interest[, which exists] if . . . (2) [t]here is a
11 *significant risk that the representation of one or more clients will be materially limited by the*
12 *lawyer’s responsibilities to another client, a former client or a third person or by a personal*
13 *interest of the lawyer.*” (Emphasis added.)² I did not find an exception that applied in this case.

14 14. It is the personal interest of Mr. Kelleher that is at issue here.

15 15. Prosecutors have a special role in our system of justice. “The prosecutor’s mission
16 is not so much to secure a conviction as it is to achieve a just result. The defendant is entitled to a
17 full measure of fairness, and it is as much a prosecutor’s duty to see that the accused is not
18 deprived of any statutory or constitutional rights as it is to prosecute. Thus, disqualification may
19 be necessary if the trial court determines that the prosecutor has a conflict of interest which might
20 prejudice him or her against the accused.” 42 A.L.R.5th 581 at ¶ 2(a) (footnote omitted).

21 16. Although the American Bar Association’s Criminal Justice Section Standards do
22 not have the force of law, they reflect this same general understanding: because a prosecutor is an
23 arm of our system of justice, he should not allow his personal interests to affect his professional
24

25 ² The Local Rules of the United States District Court for the District of Nevada apply
26 Nevada’s version of the American Bar Association’s Model Rules of Professional Conduct. *See*
27 LR IA 10-7 (2011) (“An attorney admitted to practice pursuant to any of these Rules shall adhere
28 to the standards of conduct prescribed by the Model Rules of Professional Conduct as adopted and
amended from time to time by the Supreme Court of Nevada, except as such may be modified by
this Court.”).

1 judgment. *See* American Bar Association's Criminal Justice Section Standard 3-1.3(f) ("A
2 prosecutor should not permit his or her professional judgment or obligations to be affected by his
3 or her own political, financial, business, property, or personal interests."); *see also Parkerson v.*
4 *Norris*, 529 So.2d 1392, 1392 (La. Ct. App. 1988) (finding "no error in the district court's ruling
5 which ordered recusal of the district attorney who had initiated a grand jury investigation into a
6 matter in which he had a personal interest by virtue of having been the victim of the alleged
7 criminal activity which is the subject of the grand jury investigation"); *U.S. v. Gold*, 470 F. Supp.
8 1336, 1346 (N.D. Ill. 1979) ("[A] prosecutor who has a conflict of interest cannot administer
9 justice."). *See generally* Allan L. Schwartz & Danny R. Veilleux, *Disqualification of prosecuting*
10 *attorney in state criminal case on account of relationship with accused*, 42 A.L.R. 581 (1996)
11 (discussing the range of cases that did—or did not—merit disqualification based on potential
12 personal conflicts of interest).

13 17. Admittedly, there is no clear line of demarcation as to when disqualification is
14 appropriate and when it is not, and the decision to disqualify is discretionary with the trial court.
15 Nonetheless, the more likely it is that personal animus would affect the prosecutor's decision-
16 making, the more appropriate it would be for a court to disqualify that prosecutor from
17 participating in grand jury or trial proceedings. I use that general rule in discussing four different
18 possibilities with respect to Mr. Kelleher's prosecution.

19 18. *Assumption #1: Mr. Trafford's employer, LSI Title, handled the processing of the*
20 *foreclosure on Mr. Kelleher's personal residential home (including the filing of the Notice of*
21 *Default on Mr. Kelleher's personal residential home) and Mr. Kelleher was aware that LSI Title*
22 *was involved with his personal mortgage loan or foreclosure at the time this case was presented to*
23 *the grand jury.* I also assume (based on my own observations and on talking with other
24 bankruptcy lawyers and academics) that most consumers subject to foreclosure are unhappy about
25 finding themselves in such a situation. When a prosecutor who is in danger of losing his own
26 home knows that the defendant's company is the entity charged with effectuating that very
27 foreclosure, there is a significant likelihood that the prosecutor's professional judgment would be
28 clouded by that knowledge. Given that the standard for a conflict of interest includes situations in

1 which “[t]here is a significant risk that the representation of one or more clients will be materially
2 limited by the lawyer’s responsibilities to another client, a former client or a third person or by a
3 personal interest of the lawyer,” Nev. R. Prof’l Conduct 1.7(a)(2) (emphasis added), it is my
4 opinion that Mr. Kelleher’s personal foreclosure situation presented a conflict of interest. In such
5 a situation. Mr. Kelleher’s presentation to the grand jury to seek an indictment, and his
6 prosecution of the case, was inappropriate. No one could have faulted Mr. Kelleher for choosing
7 to step aside and ask one of his colleagues to take this case, but Mr. Kelleher did not choose that
8 route.

9 19. I am not in any way implying that Mr. Kelleher deliberately set out to ignore this
10 conflict of interest. My study of behavior in the post-Enron environment leads me to conclude
11 that very smart and ethical people can still miss the clues that they are doing something that they
12 should not be doing. Mr. Kelleher may not have made the mental connection between his seeking
13 the indictment of (or prosecuting) LSI Title and the significant risk that his duty as a prosecutor
14 would be compromised by his personal situation. Nonetheless, that risk is clear and should have
15 triggered a change in Attorney General personnel in terms of who worked on this case.

16 20. *Assumption #2: Mr. Kelleher discovered before presenting the case to the grand*
17 *jury that (i) fraudulent statements had been added to his personal loan documents without his*
18 *knowledge; (ii) although he was originally advised that he had received a 30-year fixed mortgage,*
19 *he had received an adjustable rate mortgage with a balloon payment due in five years; and (iii)*
20 *signatures in his personal mortgage file were forged.* For the same reason that I concluded, in the
21 discussion on Assumption #1, that Mr. Kelleher had a conflict of interest and should not have
22 participated in this case at the grand jury stage or thereafter, I reach the same conclusion under
23 Assumption #2. Any knowledge that Mr. Kelleher’s own foreclosure was potentially tainted by
24 fraudulent documents would have made his conflict of interest worse.

25 21. *Assumption #3: Mr. Kelleher believed that any claim by LSI Title concerning his*
26 *personal mortgage loan was based on criminally fraudulent transfers.* For the same reasons that I
27 concluded, under Assumptions #1 and #2, that Mr. Kelleher had an impermissible conflict of
28 interest and should not have participated in this case at the grand jury stage or thereafter, I

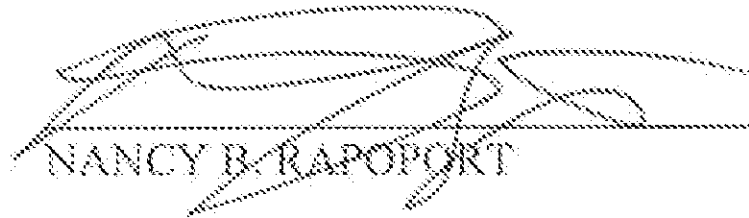
1 conclude that, if Mr. Kelleher believed that his own foreclosure was based on criminally
2 fraudulent documents, his conflict of interest would be strong enough to disqualify him from
3 participating at the indictment stage or thereafter.

4 22. Assumption #4: Mr. Kelleher was not aware that LSI Title was in any way involved
5 with his personal mortgage loan or foreclosure at the time this case was presented to the grand
6 jury. Under the other three assumptions, Mr. Kelleher could have drawn a clear link between the
7 behavior for which he sought an indictment and his own personal situation. Under this
8 assumption #4, however, the conflict of interest is not as strong as in the other three assumptions.
9 Nonetheless, I believe that it would still be reasonable to assume that someone in the middle of a
10 foreclosure, especially one in which there might have been questionable documents, would be
11 unhappy about that foreclosure. As such, a prosecutor in that situation should not have been
12 involved at the indictment stage or thereafter, whether or not the particular defendant was involved
13 in effectuating the prosecutor's own foreclosure. Someone else at the Attorney General's Office
14 could have handled this case without incurring the significant risk that the prosecution would be
15 materially limited by his own emotional involvement.

16 23. Only Mr. Kelleher can know his own mindset at the time of the indictment or
17 thereafter. Whether he was *actually* affected, though, is not the appropriate test. The test involves
18 a *likelihood* that Mr. Kelleher was affected by the circumstances—whether there was a significant
19 risk that his personal interests would cloud his duty as a prosecutor to administer justice.

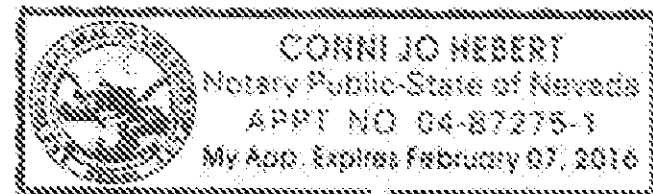
20 24. I believe that there was such a likelihood, and that, therefore, under any of the four
21 assumptions, Mr. Kelleher had a conflict of interest.

22 DATED this 18th day of January, 2013.


NANCY B. RAPOPORT

23
24
25 Subscribed and Sworn to Before Me
this 18th day of January 2013.

26
27 
Notary Public



Attachment 1

NANCY B. RAPOPORT

Work:
University of Nevada, Las Vegas
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530 Farrington Court
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Blog: <http://nancyrapoport.blogspot.com>

EMPLOYMENT

William S. Boyd School of Law, University of Nevada, Las Vegas (Las Vegas, NV)
Interim Dean (as of July 1, 2012).
Gordon Silver Professor of Law (July 1, 2007-present).

Works in progress:

Nancy B. Rapoport, *Managing U.S. News & World Report—The Enron Way*, 42
GONZAGA L. REV. (forthcoming 2013).

Nancy B. Rapoport, Book Review of Brian Z. Tamanaha, *Failing Law Schools* (2012),
___ L. & SOC. REV. (forthcoming 2013) (solicited review).

NANCY B. RAPOPORT & JEFF VAN NIEL, LAW FIRM JOB SURVIVAL MANUAL (Aspen
Publishers / Wolters Kluwer, forthcoming 2014).

TERESA BROWN-EDWARDS, C.R. BOWLES, EDWARD T. GAVIN, JUDITH
GREENSTONE MILLER & NANCY B. RAPOPORT, ABI BOOK ON CHAPTER 11 ETHICS
(title TBA) (forthcoming 2013).

BERNARD BURK, STEVEN ALAN CHILDRESS, MICHAEL S. FRISCH & NANCY B.
RAPOPORT, ETHICAL LAWYERING IN REAL LIFE: MATERIALS AND PROBLEMS (Aspen
Publishers / Wolters Kluwer, forthcoming 2014).

AMERICAN BAR ASSOCIATION, CORPORATE COUNSEL TOOLKIT (co-editor,
forthcoming 2013).

LAWRENCE C. LEVINE & NANCY RAPOPORT, LEMMINGS: HOW LEGAL EDUCATION
FAILS LAW STUDENTS (forthcoming).

MANAGING BY AMBUSH: WHY UNIVERSITIES CAN'T KEEP PACE WITH THE REAL WORLD (forthcoming).

Teaching:

Basic Bankruptcy Law; Contracts; Professional Responsibility; Seminar on Enron and Other Corporate Scandals; Colloquium on Lawyers in Pop Culture.

Service:

Advisor to the NEVADA LAW JOURNAL and the UNLV GAMING LAW JOURNAL; UNLV Law's representative to the REYNOLDS COURTS & MEDIA LAW JOURNAL; Dean's Advisory Committee (2007-2008; 2008-2009; 2010-2011) (elected position); member of administration subcommittee of 2011-12 self-study.

Deanship duties:

Interim CEO of Nevada's only law school, which has a budget of approximately \$25 million; the Associate Dean for Academic Affairs, the Associate Dean for Faculty Research and Development, the Associate Dean for Administration and External Relations, the Associate Dean for Student Affairs, the Development Director, the Budget and Finance Manager, and the Library Director all report to me; as Dean, I serve ex-officio on the Board of Governors of the State Bar of Nevada.

University of Houston Law Center (Houston, TX)
Professor of Law (June 1, 2006-June 30, 2007).
Dean and Professor of Law (August 2000-May 31, 2006).

Responsibilities as Dean:

Managed all areas of Law Center life; served as primary external spokesperson for the Law Center; facilitated internal programs of the Law Center; raised public and private funds for the Law Center; highlighted the University's and Law Center's programs in discussions with various Texas legislators; and served the state of Texas as CEO of the state's premier urban, public law school. As Dean, taught one course per year.

The Associate Dean for Academic Affairs, the Associate Dean for Student Affairs, the Director of the O'Quinn Law Library, the Associate Dean for Information Technology, the Associate Dean for Finance and Administration and Chief Operating Officer of the Law Foundation, the Associate Dean for External Affairs and Executive Director of the Law Foundation, and the Director of CLE all reported directly to me.

Significant accomplishments as Dean:

Facilitated the establishment of several new centers, programs, and institutes, including the Criminal Justice Institute, the Institute for Energy, Law & Enterprise (now the Program In Energy, Environment & Natural Resources), and the Center for Consumer Law; reinvigorated the Blakely Advocacy Institute (BAI) and acquired the A.A. White Center for Dispute Resolution as part of the BAI; encouraged the first major revamping of the Law Center's curriculum in twenty years; hired fourteen new faculty members (three of which hold endowed chairs at the Law Center); presided over a record increase in the amount and size of gifts to the Law Center, even during a downturn in the economy. Raised seven new Law Center professorships, in partnership with a special campaign of the University of Houston, in under two months. Facilitated the Law Center's recovery from the devastation caused by Tropical Storm Allison on June 9, 2001, which poured over 12 feet of water into the Law Center's sub-basement and destroyed much of its library collection (over 175,000 volumes and 1,000,000 microfiche lost) as well as much of its facilities.

Service highlights:

The Hon. Arthur L. Moller / David B. Foltz, Jr. Inn of Court (Bankruptcy Inn) (2003-2007), Executive Committee (2004-2006); UH Faculty Senate Commission on University Governance (2004-2006); Texas General Counsel Forum Statewide Advisory Committee (2004-2006); member, Search Committee for Vice President/Vice Chancellor of University Advancement (2004-2005); Garland Walker Inn of Court (2004-2007); State Bar of Texas's Women in the Profession Committee (2002-2005); Texas Supreme Court's Gender Equity Taskforce (2002-2006); Rice University Business & Professional Women (2002-2006); Texas Accountants & Lawyers for the Arts (2002-2006); Houston Bar Association (2000-2007); Houston Bar Foundation, Selection Committee for the Best Article Award (2000-2006); City of Houston Mayor's Pension Governance Advisory Committee (2004-2006); UH Commission on Women (ex officio) (2004-2005); Houston Bar Foundation Fellow (2003-2007); Texas Supreme Court's Gender Fairness Task Force (2002-2006); Executive Committee, A.A. White Inn of Court (2000-2002); community associate, Wiess College (Rice University) (2000-2007).

University of Nebraska College of Law (Lincoln, NE)
Dean and Professor of Law (July 1998-August 2000).

Responsibilities:

CEO of Nebraska's land-grant law school. 1999-2000 state budget for the Law College (excluding the Schmid Law Library) was approximately \$3.5 million; 1998-1999 private funds had a market value of approximately \$35.5 million and a book value of approximately \$15.9 million. The Associate Dean, the Assistant Dean for Administration and Student Services, the Assistant Dean for Career Services and Alumni Relations, the Director of the Law Library, the Director of Development, the Office Manager, and the Acting Head of the Nebraska Institute for Technology in the Practice of Law all reported directly to me.

Achievements:

Instituted the creation of a new Access database to enable all Law College administrative units to organize and share information; encouraged the establishment of new student organizations (including an organization for law students who prefer non-traditional career paths and a GLBT student organization); encouraged the development of a link between an undergraduate “learning community” and the Law College; helped to organize a campus-wide cross-disciplinary ethics initiative; instituted systems facilitating the scheduling of Law College events, the timely review of employees, and the cultivation and stewardship of donors; initiated the design of the new “image” of the Law College; revamped the furnishings of the student lounge (at zero cost to the Law College); and raised significant funds for such needs as scholarships and professorships. I was the point person for completing the fund-raising for, and coordinating the design and construction of, the planned addition to the Schmid Law Library. I also taught at least one course a year, including Sales, Images of Lawyers in Film, and the Skills course for first-year law students; I supervised several independent studies; and I maintained an active research agenda in my areas of professional responsibility and bankruptcy ethics.

Service:

Rotary Club #14, Lincoln, Nebraska (1999-2000); chair, UNL Search Committee for Dean of College of Arts & Sciences (2000); chair, UNL Search Committee for Dean of College of Architecture (1999-2000); member, Chancellor’s Special Budget Advisory Committee (1999); member, UNL’s Robert Wood Johnson Foundation Partnership Initiative, Policy and Enforcement Workgroup (1998-2000); UNL Mentoring Program (mentoring then-Assistant Professor Julia McQuillan) (1998-2000); member, University-Wide Assessment Committee (1998-2000); member, NSBA Bankruptcy Section Sub-Committee on Legislative Issues (1999-2000); co-chair of Homestead Girl Scout Council’s Task Force on Diversity (1999); head of portion of YMCA’s “Building Strong Kids” Campaign dealing with UNL contributions (1999).

The Ohio State University College of Law (now Moritz College of Law) (Columbus, OH) Professor (promoted to the rank of Professor in 1998 as I was leaving to become Dean at Nebraska); Associate Dean for Student Affairs (1996-98).

Responsibilities:

Supervised admissions, financial aid, and placement offices; managed a staff that included the Assistant Dean of Admissions and Financial Aid, the Financial Aid Counselor and Staff Assistant, the Placement Director, and their associated support personnel; was directly responsible for admissions budget; supervised budgets for financial aid and placement; counseled potential applicants regarding admission to College of Law; counseled existing students on academic and non-academic issues; worked with Development Director regarding the establishment and maintenance of scholarships and other relationships with donors; worked with Assistant Dean of Alumni Affairs to use alumni in recruiting activities; acted as “Chief Morale Officer” of College. Concurrently taught a half-load of courses.

Associate Professor (with tenure) (1995-98).

Teaching innovations:

Established e/mail listservs in all of my courses, leading to significant additional out-of-class contacts with students; integrated in-class exercises on drafting and negotiation in my Sales and Contracts courses; created "Friday Learning Sessions" to bring 1L, 2L, and 3L students together for discussions of general interest.

Assistant Professor (1991-95).

Principal subjects:

Debtor-Creditor Law; Advanced Bankruptcy Seminar (Chapter 11 Issues); Contracts; Sales; Professional Responsibility; Contract Drafting and Negotiation; Legal Writing & Analysis (OSU used full-time faculty to teach this course).

Service:

Member, leadership learning community, Leadership for Institutional Change (1998); member, College of Law Teaching Retreat Planning Committee (1998); member, University Search Committee for the Student Gender & Sexuality Services Director (1997); member, College Search Committee for various internal positions, including Placement Director (1997), Assistant to the Registrar (1997), Assistant to the Dean (1996), and Assistant Dean for Admissions and Financial Aid (1996); vice chair, Special Committee on College Housing (1997-98); member, Faculty Advisory Board, OSU Pro Bono Research Group (1997-98); member, College of Law Affirmative Action/Minority Affairs Committee (1996-98); coordinator, Ohio Women in Legal Education (1995-96); chair, College of Law Admissions Committee (1995-96; 1997-98); member, College of Law Planning Committee (1994-95); member, College of Law Placement and Judicial Clerkship Committee (1991-94); member, College of Law Administration Committee (1991-92); member, College of Law Admissions Committee (1992-94; 1996-97); member, College of Law Minority Affairs Committee (1996-98); faculty advisor to the following College organizations: the College's chapter of the Association of Trial Lawyers of America (1996-98); Delta Theta Phi (1997-98); the Jewish Law Students' Network (1991-98); and the Women's Law Caucus (1991-98); faculty advisor to the Ballroom Dance Association at Ohio State (1992-98); invited speaker at various College of Law events, including *How to Survive the First-Year Blues* and *How to Outline Law School Courses*, College of Law (1993-96), and various brown-bag discussions (1991-98); member, Teachers' Round Table (affiliated with the Center for Instructional Resources at Ohio State) (1993-96); advisor to The Ohio State University Press regarding the 25th anniversary edition of GRANT GILMORE, *THE DEATH OF CONTRACT* (25th anniv. ed. 1994); founding member, Junior Faculty Support Network (affiliated with the Office of Faculty & TA Development at Ohio State) (1994-96); dance demonstrator, Hispanic Awareness Week (1993-94); consultant on drafts of lender liability provisions in pending Ohio environmental legislation (1993); co-leader, Brownie Troop 2426 (Discovery Service Unit), Seal of Ohio Girl Scout Council, Inc. (1996-97); co-leader, Junior Girl Scout Troop 654 (Discovery Service Unit), Seal of Ohio Girl Scout Council, Inc. (1996); representative for the North-Central Region, United States Dance Sport Council Rules Committee (the national rules-

making committee of the United States Amateur Ballroom Dancers Association) (1995-98); vice-president, Mid-Ohio Chapter of the United States Amateur Ballroom Dancers Association (1993-95).

Morrison & Foerster (San Francisco, CA)

Associate; Bankruptcy and Workouts Group, Business Department (1986-91).

Bankruptcy cases included *In re Toy Liquidating Co. (Worlds of Wonder)*, *Plexus*, *Greyhound*, *Nucorp*, and *California Land & Cattle Co.*; significant experience in bankruptcies involving industries such as toy manufacturers, computers, livestock, and television stations. Advised clients on such matters as pre-bankruptcy planning (creditor side), environmental issues, purchase of assets from bankruptcy estates, and creditor protection generally.

The Hon. Joseph T. Sneed, United States Court of Appeals for the Ninth Circuit (San Francisco, CA)

Judicial Clerk (1985-86).

EDUCATION

Stanford Law School (Stanford, CA)

J.D. (1985).

Note Editor, STANFORD LAW REVIEW (1984-85).

Thesis: *Computer Program for Secured Transactions* (1985).

Activities and Honors:

Member, STANFORD LAW REVIEW (1983-84); member, Student Assistants to Admissions Program (1984); member, Law School Film Society (1982-85); member, Orientation Committee (1983-84); Vice-President (Alumni Programs), Law Forum (1983-84); technical assistant in various law school and all-university plays (1983-85); First Place, Stanford Women's Intramural Powerlifting Competition (1985).

Rice University (Houston, TX)

B.A., *summa cum laude* (1982).

Majors: Legal Studies, Honors Psychology.

Senior Thesis: *The Effects of Time of Day on Cognitive Performance*, Psychology Department (1982).

Activities, Honors, and Scholarships:

Phi Beta Kappa (1981); Houston Psychological Association Award for Excellence in Psychology (1982); Jones College Scholar (1981-82); Academic Coordinator, Jones College (1980-82); President, Rice Hillel (1980-82); Student Advisor, Lovett College (1979-80); member, Student Admissions Committee (1979-82); Rice Pre-Law Society (1979-82); founder, Rapoport Prize in Legal Studies (1982); Max Roy Scholarship (1979-80, 1981-82); Jones College Scholarship (1981-82); Board of Governors Scholarship (1980-81).

PUBLICATIONS, GRANTS, SPECIAL TRAINING, AND PRESENTATIONS

Publications—Books

NANCY B. RAPOPORT & JEFFREY D. VAN NIEL, *LAW SCHOOL SURVIVAL MANUAL: FROM LSAT TO BAR EXAM* (Aspen Publishers / Wolters Kluwer 2010).

NANCY B. RAPOPORT, JEFFREY D. VAN NIEL & BALA G. DHARAN, *ENRON AND OTHER CORPORATE FIASCOS: THE CORPORATE SCANDAL READER* (Foundation Press 2d ed. 2009).

STEVEN L. EMANUEL, *STRATEGIES & TACTICS FOR THE MBE* (Aspen Publishers / Wolters Kluwer 2009) (one of several revision authors).

ENRON: CORPORATE FIASCOS AND THEIR IMPLICATIONS (Nancy B. Rapoport & Bala G. Dharan, eds., 2004).

DAVID B. GOODWIN & NANCY B. RAPOPORT, *AN ORAL HISTORY OF THE HONORABLE JOSEPH T. SNEED*, Ninth Circuit Historical Society (1994) (solicited oral history).

Publications—Book Chapters

Nancy B. Rapoport, *Analysis and the Arts*, in ZENON BANKOWSKI, MAKSYMILIAN DEL MAR & PAUL MAILARG, *THE ARTS AND THE LEGAL ACADEMY: BEYOND TEXT IN LEGAL EDUCATION* 101 (Ashgate Press 2012) (solicited essay).

COLLIER COMPENSATION, EMPLOYMENT AND APPOINTMENT OF TRUSTEES AND PROFESSIONALS IN BANKRUPTCY CASES (Lexis-Nexis 2009) (one of several revision authors).

Nancy B. Rapoport, *Swimming with Shark*, in *LAWYERS IN YOUR LIVING ROOM! LAW ON TELEVISION* 163 (Michael Asimow, ed., 2009) (solicited manuscript), chapter available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1157053.

Nancy B. Rapoport, *Reflections of a Former Dean*, in *LAW SCHOOL LEADERSHIP STRATEGIES: TOP DEANS ON BENCHMARKING SUCCESS, INCORPORATING FEEDBACK FROM FACULTY AND STUDENTS, AND BUILDING THE ENDOWMENT* 199 (Aspatore Books 2006) (solicited), abstract available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=979321.

Nancy B. Rapoport, *Bankruptcy Ethics Issues for Solos and Small Firms*, in *ATTORNEY LIABILITY IN BANKRUPTCY* (Corinne Cooper, ed. & Catherine E. Vance, contributing ed., ABA 2006) (solicited manuscript).

Nancy B. Rapoport, *Lord of the Flies: The Development of Rules Within an Adolescent Culture*, in *SCREENING JUSTICE—THE CINEMA OF LAW: FIFTY SIGNIFICANT FILMS OF LAW, ORDER AND SOCIAL JUSTICE* 253 (Rennard Strickland, Terec Foster & Taunya Banks, eds. 2006) (solicited manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=949168.

Nancy B. Rapoport, *Dr. Jekyll & Mr. Skilling: How Enron's Public Image Morphed from the Most Innovative Company in the Fortune 500 to the Most Notorious Company Ever*, in *ENRON: CORPORATE FIASCOS AND*

THEIR IMPLICATIONS 77 (Nancy B. Rapoport & Bala G. Dharan, eds.) (Foundation Press 2004) (essay co-written with Jeffrey D. Van Niel), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=505662.

Publications—Articles, Book Reviews, and Essays

Nancy B. Rapoport, *Black Swans, Ostriches, and Ponzi Schemes*, 42 GOLDEN GATE L. REV. 627 (manuscript solicited as part of a symposium) (2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2131393.

Nancy B. Rapoport, *The Case for Value Billing in Chapter 11*, 7 J. BUS. L. & TECH. LAW 117 (2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2039506.

Nancy B. Rapoport, *Changing the Modal Law School: Rethinking U.S. Legal Education in (Most) Schools*, 116 PENN ST. L. REV. 1119 (2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2038409.

Jennifer Gross & Nancy B. Rapoport, *Is the Attorney-Client Privilege Under Attack?*, GP | SOLO MAGAZINE 47 (October-November 2010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1704026.

Nancy B. Rapoport, *Rethinking Fees in Chapter 11 Bankruptcy Cases*, 5 J. BUS. & TECH. LAW 263 (2010) (solicited manuscript for University of Maryland School of Law's symposium on Examining Government Reform in the Financial Crisis), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1625102.

Nancy B. Rapoport, *Through Gritted Teeth and Clenched Jaw: Court-Initiated Sanctions Opinions in Bankruptcy Courts*, 41 ST. MARY'S L.J. 701 (2010) (solicited manuscript for St. Mary's 9th Annual Symposium on *Legal Malpractice and Professional Responsibility*), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1628275.

C.R. Bowles & Nancy B. Rapoport, *Debtor Counsel's Fiduciary Duty: Is There a Duty to Rat in Chapter 11?*, 29 AM. BANKR. INST. JOURNAL 16 (2010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1544930.

Nancy B. Rapoport, *Academic Freedom and Academic Responsibility* (reviewing MATTHEW W. FINKIN & ROBERT C. POST, FOR THE COMMON GOOD: PRINCIPLES OF AMERICAN ACADEMIC FREEDOM (Yale University Press 2009)), in 13 GREEN BAG 2D 191 (Winter 2010) (solicited manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1544932.

Eric Van Horn & Nancy B. Rapoport, *Restructuring the Misperception of Lawyers: Another Task for Bankruptcy Professionals*, 28 AM. BANKR. INST. JOURNAL 44 (2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1472211.

Nancy B. Rapoport, *Where Have All the (Legal) Stories Gone?*, M/E INSIGHTS 7 (Fall 2009) (publication of the Association of Media and Entertainment Counsel), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1545443.

Nancy B. Rapoport, *The real reason why businesses make bad decisions* (reviewing JONATHAN R. MACEY, CORPORATE GOVERNANCE: PROMISES KEPT, PROMISES BROKEN (Princeton University Press 2008)), in 18 BUS. LAW TODAY 52 (July/Aug. 2009) (solicited manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1425118.

Nancy B. Rapoport, *Lessons From Enron—And Why We Don't Learn From Them*, May/June 2009 COMMERCIAL LENDING REVIEW 23, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1413937.

Colin Marks & Nancy B. Rapoport, *Corporate Ethical Responsibility and the Lawyer's Role in a Contemporary Democracy*, 77 FORDHAM L. REV. 1269 (2009) (solicited manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1376475.

Nancy B. Rapoport & Roland Bernier III, *(Almost) Everything We Learned About Pleasing Bankruptcy Judges. We Learned in Kindergarten*, 27 AM. BANKR. INST. J. 16 (July/August 2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1157103.

Nancy B. Rapoport, *The Curious Incident of the Law Firm That Did Nothing in the Night-Time* (reviewing MILTON C. REGAN, JR., EAT WHAT YOU KILL: THE FALL OF A WALL STREET LAWYER (Univ. of Michigan Press 2004)), in 10 LEGAL ETHICS 98 (2007) (<http://www.hartjournals.co.uk/lc/index.html>), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1017627.

Nancy B. Rapoport & Roland Bernier, *Bankruptcy Pro Bono Representation of Consumers: The Seven Deadly Sins*, 44 HOUS. LAWYER 18 (June 2007), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1051221.

Nancy B. Rapoport, *Not Quite "Them," Not Quite "Us": Why It's Difficult for Former Deans to Go Home Again*, 38 U. TOLEDO L. REV. 581 (2006) (solicited manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=936251.

Nancy B. Rapoport, *Eating Our Cake and Having It, Too: Why Real Change Is So Difficult in Law Schools*, 81 IND. L.J. 359 (2006) (solicited manuscript) (symposium at Indiana University-Bloomington School of Law—*The Next Generation of Law School Rankings*), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=703843.

Nancy B. Rapoport, *Enron and the New Disinterestedness—The Foxes Are Guarding the Henhouse*, 13 AM. BANKR. INST. L. REV. 521 (2005) (solicited manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=936167.

Nancy B. Rapoport, *Decanal Haiku*, 37 U. TOLEDO L. REV. 131 (2005) (solicited manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=936166.

Nancy B. Rapoport, *Recent Developments in Bankruptcy Law*, 35 TEXAS TECH. L. REV. 543 (2004) (solicited manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=938551.

Nancy B. Rapoport, *Zen and the Art of Shared Governance*, 35 U. TOLEDO L. REV. 169 (2003) (solicited manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=936247.

Nancy B. Rapoport, *Examining Enron's enablers: Watkins' perspective makes Swartz's account stand out*, HOUSTON CHRONICLE, March 23, 2003, at Zest 15 (solicited book review).

Nancy B. Rapoport, *Enron, Titanic, and the Perfect Storm*, 71 FORDHAM L. REV. 1373 (2003) (solicited essay for a special issue on ethics), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=498122; also included as an essay in ENRON: CORPORATE FIASCOS AND THEIR IMPLICATIONS 927 (Nancy B. Rapoport & Bala G. Dharan, eds.) (Foundation Press 2004).

Nancy B. Rapoport, *The Intractable Problem of Bankruptcy Ethics: Square Peg, Round Hole*, 30 HOFSTRA L. REV. 977 (2002) (solicited essay for ethics symposium), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=936235.

Nancy B. Rapoport, *In Memoriam: Yale Rosenberg*, 39 HOUS. L. REV. 869 (2002) (solicited essay), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1598446.

Nancy B. Rapoport & Jeffrey D. Van Niel, *"Retail Choice" Is Coming: Have You Hugged Your Utilities Lawyer Today? (Part II)*, August 2002 NORTON BANKRUPTCY LAW ADVISER 2, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=963913.

Nancy B. Rapoport, *Multidisciplinary Practice After In Re Enron: Should the Debate on MDP Change At All?*, TEXAS BAR JOURNAL 446 (May 2002), available at <http://www.texasbar.com/Template.cfm?Section=Home&Template=/ContentManagement/ContentDisplay.cfm&ContentID=5999>.

Nancy B. Rapoport & Jeffrey D. Van Niel, *"Retail Choice" Is Coming: Have You Hugged Your Utilities Lawyer Today? (Part I)*, February 2002 NORTON BANKRUPTCY LAW ADVISER 4, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=963912.

Nancy B. Rapoport, *Is "Thinking Like a Lawyer" Really What We Want to Teach?*, in *Erasing Lines: Integrating the Law School Curriculum*, 2001 ALWD CONF. PROCEEDINGS 91, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=936248.

Nancy B. Rapoport, *When Local IS Global: Using a Consortium of Law Schools to Encourage Global Thinking*, 20 PENN STATE INT'L LAW REVIEW 19 (2001) (transcript of AALS Annual Meeting session).

Nancy B. Rapoport, *Of Cat-Herders, Conductors, Fearless Leaders, and Tour Guides*, 33 U. TOLEDO L. REV. 161 (2001) (solicited manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=936245.

Nancy B. Rapoport, *Presidential Ethics: Should a Law Degree Make a Difference?*, 14 GEO. J. L. ETHICS 725 (2001), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=260021.

Nancy B. Rapoport, *Going from "Us" to "Them" in Sixty Seconds*, 31 U. TOLEDO L. REV. 703 (2000) (solicited manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=936171.

Nancy B. Rapoport, *Dressed for Excess: How Hollywood Affects the Professional Behavior of Lawyers*, 14 NOTRE DAME J. OF LAW, ETHICS & PUBLIC POLICY 49 (2000) (solicited manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=936188.

Nancy B. Rapoport, *Ratings, Not Rankings: Why U.S. News & World Report Shouldn't Want To Be Compared To Time and Newsweek—or The New Yorker*, 60 OHIO ST. L.J. 1097 (1999), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=936246.

Nancy B. Rapoport, *Living "Top-Down" in a "Bottom-Up" World: Musings on the Relationship Between Jewish Ethics and Legal Ethics*, 78 NEB. L. REV. 18 (1999), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=936241.

Nancy B. Rapoport, *Moral Bankruptcy: Modeling Appropriate Attorney Behavior in Bankruptcy Cases*, THE NEBRASKA LAWYER 14 (March 1999) (solicited manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1598447.

Nancy B. Rapoport, *The Need For New Bankruptcy Ethics Rules: How Can "One Size Fits All" Fit Anybody?*, 10 PROFESSIONAL LAWYER 20 (1998) (solicited manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=939448.

Nancy B. Rapoport, *Our House, Our Rules: The Need for a Uniform Code of Bankruptcy Ethics*, 6 AM. BANKR. INST. L. REV. 45 (1998) (solicited manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=936343.

C.R. Bowles & Nancy B. Rapoport, *Has the DIP's Attorney Become the Ultimate Creditors' Lawyer in Bankruptcy Reorganization Proceedings?*, 5 AM. BANKR. INST. L. REV. 47 (1997) (symposium manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=936240.

Nancy B. Rapoport, *Ethics: Is Disinterestedness Still a Viable Concept? A Roundtable Discussion*, 5 AM. BANKR. INST. L. REV. 201 (1997) (solicited transcript) (with co-panelists John D. Ayer, the Hon. Charles N. Clevert, the Hon. Joel Pelofsky & Bettina Whyte), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=936340.

Nancy B. Rapoport, *Turning the Microscope on Ourselves: Self-Assessment by Bankruptcy Lawyers of Potential Conflicts of Interest in Columbus, Ohio*, 58 OHIO ST. L.J. 1421 (1997), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=938611.

Nancy B. Rapoport, *Avoiding Judicial Wrath: The Ten Commandments for Bankruptcy Practitioners*, 5 J. BANKR. L. & PRAC. 615 (September/October 1996) (solicited manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=940769.

Nancy B. Rapoport, *Seeing the Forest and The Trees: The Proper Role of the Bankruptcy Attorney*, 70 IND. L.J. 783 (1995), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=938527.

Nancy B. Rapoport, *Worth Reading: Review of Annual Survey of Bankruptcy Law*, TURNAROUNDS AND WORKOUTS (Beard Group, Inc.), January 15, 1995, at 6 (solicited book review).

Nancy B. Rapoport, *Turning and Turning in the Widening Gyre: The Problem of Potential Conflicts of Interest in Bankruptcy*, 26 CONN. L. REV. 913 (1994), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=936337.

Publications—Op-Eds

Nancy Rapoport, *Board Smart Not to Raise the Superintendent Salary Stakes*, LAS VEGAS SUN, September 5, 2010, available at <http://www.lasvegassun.com/news/2010/sep/05/board-smart-not-raise-superintendent-salary-stakes/>.

Nancy B. Rapoport, *Enron an Example: Grads Lost in Trees*, HOUSTON CHRONICLE, February 24, 2002, at 4H.

Nancy B. Rapoport, *Wrestling with the Problem of Potential Conflicts of Interest in Bankruptcy*, 26 BANKRUPTCY COURT DECISIONS WEEKLY NEWS AND COMMENT (LRP Publications), March 7, 1995, at A3 (solicited editorial).

Grants

2002 Participant, Harvard Institutes for Higher Education MLE Program (partial scholarship from Harvard, \$1,000 in 2001—had to withdraw, due to the aftermath of Tropical Storm Allison, but returned to participate in 2002).

1999 Participant, Harvard Institutes for Higher Education Management Development Program (partial scholarship from Harvard, \$1,000).

1995 Instructional Technology Small Grant (Ohio State funds; \$850).

1995 West Publishing/NCAIR Fellow (\$15,000 grant for developing a computer program that teaches law students about conflicts of interest in bankruptcy law).

1994 participant in Summer Institute of the Law & Society Association (Wellesley, Massachusetts).

1993 University Seed Grant for the study of creditor representation in bankruptcy (1993 grant from Ohio State University's Office of Research & the College of Law).

Special training

Attended STAR: A Systematic Approach to Mediation Strategies, Straus Institute for Dispute Resolution, Pepperdine University School of Law (June 2008) (attended on a grant from Pepperdine)

Selected academic presentations

Roger Williams University School of Law, Women Who Lead Series, *Why the World Needs Nay-Sayers* (March 2010) (keynote speaker).

Distinguished Lecturer, The Chapman Dialogue Series, Chapman University School of Law, *Why No Amount of Regulation Is Likely to Prevent Corporate Scandals* (February 2010).

Presentation at Fordham Law School's Colloquium, *The Lawyers' Role in a Contemporary Democracy* (September 2008) (invited speaker).

Adjunct professor, St. John's University School of Law, LL.M. in Bankruptcy Program (Enron seminar) & invited speaker, St. John's University School of Law Faculty, *Enron: Is It Still Relevant?* (March 2006 & March-April 2007).

Invited panelist, *Eating Our Cake and Having It, Too: Why Real Change Is So Difficult in Law Schools*, Symposium at Indiana University-Bloomington School of Law (March 2005).

Invited panelist, *Local Cultures + Judicial Discretion = National Confusion?: Equities, Equations, and the "Uniformity" of the Bankruptcy Code*, Annual Conference of the Association of American Law Schools, Creditors' & Debtors' Rights Section (January 1998).

Invited speaker, *Disinterestedness and the Chapter 11 Professional*, National Conference of Bankruptcy Judges, Annual Meeting (October 1997).

Invited faculty member, *Bankruptcy Issues*, Eastern District of Pennsylvania Bankruptcy Conference (January 1996, January 1997, January 1998, and January 1999).

Selected CLE and other professional presentations

Sacramento Valley Bankruptcy Forum's 11th Annual Northern California Bankruptcy Conference, *Stupid Lawyer Tricks* (2012).

National Association of Bankruptcy Trustees' Spring Meeting, panelist on *Friend Me? Ethics and Professionalism Issues Related to the Use of Social Media* (2012).

ABA Business Law Section's Annual Spring Meeting, panelist for the sessions on *Ethical Issues in Commercial Transactions, Should In-House Counsel Be Navigating in the Choppy Waters of Corporate Compliance?*, and *Consumer Bankruptcy Clinics for Law Schools* (2012).

Southeastern Bankruptcy Law Institute, SBLI Visiting Scholar Presentation, *The Case for Value Billing in Chapter 11* (2011).

Bankruptcy Law Section of the State Bar of Texas Bench/Bar Conference, *"Money, Money, Money" Red Flags to Fee Examiners and Solutions to Those Red Flags*, (with the Hon. H. Christopher Mott, Kemp Savers, & Warren H. Smith (2011).

American Bankruptcy Institute's Annual Spring Meeting, *Fulfilling the Fiduciary Duty in a Complex Commercial World* (with Richard M. Meth & Judith Greenstone Miller (2011) (plenary session).

Association of American Law Schools, Annual Meeting, Section on Continuing Legal Education (co-sponsored by Section for the Law School Dean), *Exploring the Options for the Future of Legal Education* (with Kellye Y. Teste, Daniel McCarroll, Gary A. Munneke, and Ellen Y. Suni) (January 2010).

National Conference of Bankruptcy Judges, *(Almost) Everything You Wanted to Know About... Getting Retained and Committee Solicitation Issues – The Problems, the Rules and the Enforcers* (October 2009).

ABI Southwest Bankruptcy Conference, *Multimedia Ethics Presentation; Perspectives from the Bench and Ethical Issues*; and *Ethics—Walking in the Grey Areas: Advising Clients and Avoiding Pitfalls in Ethically Unsettled Areas* (September 2009).

Department of Energy & Contractor Attorneys' Association, Inc.'s Annual Meeting, *Ethics in the Corporate World* (May 2009).

Moderator and speaker, National Conference of Bankruptcy Judges, 82d Annual Conference, *Ethical Fee Limits: Getting Paid and Getting What You Deserve* (Sept. 2008).

Plenary speaker, American Bankruptcy Institute's 16th Annual Southwest Bankruptcy Conference, *Multimedia Ethics Extravaganza* (Sept. 2008).

Emanuel Bar Review Lecturer (2008-2010).

Invited speaker, National Conference of Consumer Bankruptcy Attorneys, 16th Annual Conference, *Ethics Issues* (May 2008).

Invited panelist, American Bankruptcy Institute's 26th Anniversary Annual Spring Meeting, *Beyond Ethics: The Coexistence of Zealousness, Professionalism and Civility in the Insolvency Community* (April 2008).

Invited panelist, American Bankruptcy Institute's 15th Annual Southwest Bankruptcy Conference, *Ethics: Negotiating the Sanctions Minefield* (September 2007).

American Bankruptcy Institute's 25th Annual Spring Meeting, *The Application of State Ethics Rules in Bankruptcy: Are We Just Holding Our Noses and Looking the Other Way?* (April 2007).

Invited speaker (with Martin Bienenstock), *Conflicts Writ Large: Intercreditor Issues and Issues with Fees and Overbilling*, 25th Anniversary Jay L. Westbrook Bankruptcy Conference, University of Texas CLE (November 2006).

Invited panelist, *A Look Inside the Mega-Case*, 10th Annual Southwest Bankruptcy Conference, American Bankruptcy Institute (September 2002).

Invited speaker, *Conflicts, Ethical Duties and Independence: Lessons from Enron*, The University of Texas School of Law CLE: The 24th Annual Corporate Counsel Institute (August 2002).

Invited speaker, *Lessons in Character from Enron*, NASA National Managers Association (April 2002).

Invited speaker, *Ethical Problems: Dual Representation in Chapter 11*, and *Ethics: Pre-Bankruptcy Planning and Ethical Limitations*. Twenty-Fourth Annual Bankruptcy Law & Practice Seminar, Stetson University College of Law (December 1999).

Invited speaker, *Reflections of an Ex-Novice Dean*, American Bar Association's Workshop for New Law Deans (June 1999).

Invited speaker, *Reliable Evaluation of Law Schools: Going Beyond Law School Rankings*, Annual Conference of the National Association for Law Placement (April 1999).

Media appearances

Appearances on a variety of local, national, and international news broadcasts, and in local, national, and international news articles, on various bankruptcy, corporate law, and other legal issues, including the Enron bankruptcy case, the Arthur Andersen trial, and the Anna Nicole death (December 2001-present).

Appeared in Academy Award®-nominated documentary, *Enron: The Smartest Guys in the Room* (Magnolia Pictures 2005).

Due Process with William F. Schenck, Prosecuting Attorney, Greene County, Ohio (October 23, 1996) (discussing legal education).

Contributor to the following blogs:

NANCY RAPOPORT'S BLOGSPOT, <http://nancyrapoport.blogspot.com/>.

LAW SCHOOL SURVIVAL MANUAL, <http://lawschoolsurvivalmanual.blogspot.com/>.

CORPORATE SCANDAL WATCH, <http://corporatescandalwatch.blogspot.com/>.

UNLV LAW BLOG, Contributing Editor, <http://unlvlawblog.blogspot.com>.

MONEYLAW, Contributing Editor, <http://money-law.blogspot.com/>.

LEGAL PROFESSION, Contributing Editor: http://lawprofessors.typepad.com/legal_profession/.

JURIST, Contributing Editor, <http://jurist.law.pitt.edu/>.

THE FACULTY LOUNGE, Guest Blogger, <http://www.thefacultylounge.org/>.

THE CONGLOMERATE, Guest Blogger, <http://www.theconglomerate.org/>.

FEMINIST LAW PROFESSORS, Guest Blogger, <http://feministlawprofs.law.sc.edu/>.

RACE TO THE BOTTOM, Guest Blogger, <http://www.theracetothetbottom.org/home/>.

EXPERT WITNESS ACTIVITY

Expert for Irell & Manella LLP, in State of Nevada v. Gary Trafford, et al., Clark County District Court Case No. C-11-277573-1 (2013).

Expert for the Fee Examiner in Matter of Lehman Brothers Holdings, Inc., U.S. Bankruptcy Court, Southern District of New York, Case No. Case No. 08-13555-jmp (2012).

Expert for the Fee Examiner in In re Motors Liquidation Co. (f/k/a General Motors Corp.), U.S. Bankruptcy Court, Southern District of New York, Case No. 09-50026 (2011-2012).

Expert for Alverson Taylor Mortensen & Sanders in Stanish et al. v. Catholic Healthcare West, Nevada District Court, Clark County, Case No. A-11-639674-C (2011).

Expert for a multinational firm (name kept confidential) on bankruptcy conflicts of interest.

Fee examiner in the various Station Casino bankruptcy cases, U.S. Bankruptcy Court, District of Nevada, Case Nos. BK-09-52477 through BK-11-51219 (2011).

Expert for the Office of the United States Trustee in three cases: In re Mark Andrew Brown, U.S. Bankruptcy Court, Western District of Maryland, Case No. 09-44254-jwv7; In re Tracy L. Quarm, U.S. Bankruptcy Court, Northern District of Ohio, Case No. 09-20498; and In re John W. Young, U.S. Bankruptcy Court, Northern District of Ohio, Case No. 10-11404 (2010) (testified in discovery depositions and at trial; deposition and trial testimony done via videotape).

Expert for the Trustee in The Pappg Grantor Trust v. Scott (In re Baltimore Emergency Services II, LLC, et al.), U.S. Bankruptcy Court, District of Maryland, Adversary No. 03-8294-esd (2010).

Expert for Lionel, Sawyer & Collins in Michael Racusin v. Lionel Sawyer & Collins, American Arbitration Association, Case No. 79 194 Y 00108 08 (2009-2010) (testified in arbitration).

Expert for the Reorganized Debtor in In re ASARCO, LLC, et al., U.S. Bankruptcy Court, Southern District of Texas, Case No. 05-21207 (2010) (testified at trial).

Expert for BuckleySandler LLP in Pulte Homes, Inc. v. Terry Goddard, In His Official Capacity as Attorney General for the State of Arizona and Catherine Cortez Masto, In Her Official Capacity as Attorney General for the State of Nevada, D.C. Circuit, Civil Action No. 1:10-cv-00377 (2010).

Court's fee expert and chair of the Fee Review Committee in In re Pilgrim's Pride Corp., U.S. Bankruptcy Court, Northern District of Texas, Case No. 08-45664 (DML) (2009-2010) (testified at hearing).

Expert for plaintiff in Judy M. Jackson, M.D. v. Ira Levine et al., Nevada District Court, Clark County, Case No. A538983 (2009-2010) (testified in deposition and at trial).

Expert for the Trustee in Asset Funding Group, L.L.C., Scobar Adventures, L.L.C., AFG Investment Fund 2, L.L.C., and HW Burbank, L.L.C. v. Adams and Reese, I.L.P., U.S. District

Court, Eastern District of Louisiana, Case No. 07-2965 (2009) (testified in deposition; made available for trial, but case settled).

Expert for Clausen Miller in *In re Raymond Professional Group, Inc. (Raymond Professional Group, Inc. v. William A. Pope Company)*, Adv. No. 07-A-00639, U.S. Bankruptcy Court, Northern District of Illinois (2008-2009) (testified in deposition and at hearing).

Expert for the plaintiff in *Todd v. Guidance Software, Inc.*, U.S. District Court, Central District of California, Case No. SACV 08-1354 JVS (ANx) (2008-2009).

Expert for the Debtor in *Sports Shinko Co. v. Franklin K. Mukai*, U.S. District Court, D. Hawaii, Case No. CV 04-00127 ACK/BMK (2007-2008).

Expert for the Trustee in *In re Mego Financial Corp., et al.*, U.S. Bankruptcy Court, D. Nev., Case Nos. BK-N-03-52300-GWZ through BK-N-03-52304-GWZ and BK-N-03-52470-GWZ through BK-N-03-52474-GWZ (2007-2008) (testified at deposition).

Expert for Pillsbury Winthrop in *In re SONICBlue Incorporated*, U.S. Bankruptcy Court, Northern District of California, Case Nos. 03-51775 through 03-51778 MM (2007) (made available to testify in court early in the case; did not testify).

Expert for the Trustee in *In re Southwest Florida Heart Group, P.A.*, U.S. Bankruptcy Court, Middle District of Florida, Case No. 9:05-bk-17167-ALP (2007) (testified in deposition).

Expert for Beirne, Maynard & Parsons in *Brazos Electric Power Cooperative, Inc. v. Tenaska IV Texas Partners* and related cases (2003-2004; 2006-2007) (testified in depositions).

Expert for Beirne, Maynard & Parsons in *Hicks v. Charles Pfizer & Co.*, U.S. District Court, Eastern District of Texas, Civil Action No. 1:04CV201 (2006).

Expert for Benjamin Hall, Esq., in *Costilla Energy, Inc.*, by and through its litigation trustee, *George Hicks v. Joint Energy Development Investments II*, 49th Judicial District, Zapata County, Texas (2006-2008) (testified in deposition).

Expert for Winstead, Secrest & Minick in an issue involving conflicts of interest (2005).

Expert for Beckley, Singleton in *Fremont Investment & Loan v. Beckley Singleton, Chtd. and Sidney Bailey*, U.S. District Court, D. Nevada, Case No. CV-S-03-1406-JCM-RJJ (2003) (2005-2006) (testified in deposition).

Expert for the debtor in *In re ACandS, Inc.*, U.S. Bankruptcy Court, D. Delaware, Case No. 02-12687 (2004-2005) (testified at hearing).

Court's fee expert and chair of the Fee Review Committee in *In re Mirant Corporation*, U.S. Bankruptcy Court, Northern District of Texas, Case No. 03-46590 (2003-2006; 2011-2012) (testified in deposition and at hearing).

Expert witness for Latham & Watkins regarding Section 414 of H.R. 333 (changes in “disinterestedness” standard of 11 U.S.C. § 101(14)) (March-April 2003).

Expert witness for the Office of Disciplinary Counsel, *In re Charles William Ewing*, Case No. 97-5, before the Board of Commissioners on Grievances and Discipline of the Bar of the Supreme Court of Ohio (1998).

ADVICE COLUMN

“Ms. Ps and Qs”: ethics advice column for the National Association of Chapter 13 Trustees (2011-present).

AMICUS BRIEFS

Brief of Amici Curiae, In re David Marshall Brown, Case No. 12-Cv-60016-KAM, United States District Court, Southern District of Florida (filed by co-counsel George Castrataro) (April 11, 2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2038267.

Brief in Support of Respondent for Amici Curiae Professors Richard Aaron, Laura Beth Bartell, Jagdeep S. Bhandari, Susan Block-Lieb, Robert D’Agostino, Jessica Dawn Gabel, Kenneth N. Klee, George W. Kunev, C. Scott Pryor, Nancy B. Rapoport, Marie T. Reilly, Lynne F. Riley, Keith Sharfman, and Michael Sousa, RadLAX Gateway Hotel, LLC and RadLAX Gateway Deck, LLC v. Amalgamated Bank, Case No. 11-166, United States Supreme Court (March 5, 2012).

Brief of Legal Ethics Professors and Practitioners and the Ethics Bureau at Yale as Amici Curiae in Support of Petitioner, Maples v. Thomas, Case No. 10-63, United States Supreme Court (May 25, 2011).

Brief of Amicus Curiae, Warren v. Seidel, United States District Court for the District of Ohio, Case No. 2:10-cv-01049-MHW (2010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1843496.

Brief of 30 Leading Ethicists as Amici Curiae in Support of the Petitioner, Charles Dean Hood v. State of Texas, Case No. 09-8610, United States Supreme Court (February 18, 2010), available at 2010 WL 638469.

Brief of Amicus Curiae, Danny Joe McClure and Kimberly Deskins McClure, Plaintiffs, v. Bank of America, Creditors Financial Group, LLC, and Peter Rebelo, Defendants, Bankr. N.D. Tex. 2010, Adv. No. 08-04000-DML, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1550353.

HONORS, BAR ADMISSIONS, MEMBERSHIPS, AND COMMUNITY SERVICE

Honors

Southeastern Bankruptcy Law Institute Distinguished Visiting Scholar (week-long visits at Georgia State College of Law) (2011).

2008 Public Service Counsel of the Year, 4th Annual Association of Media and Entertainment Counsel (2009).

Fellow, American College of Bankruptcy (2005-present) (Class 16).

Named a "Woman of Vision" by the Houston Delta Gamma Foundation (2004).

Admitted to American Leadership Forum, Class XXII (2004). Withdrew due to family illness.

Named "Best Local Girl Made Good," HOUSTON PRESS, September 25, 2003, at 24.

Fellow, American Bar Foundation (2002-present).

Received a Distinguished Alumna Award from Rice University (2002).

Named by the Greater Houston Area Chapter of the National Council of Jewish Women as a "Woman of Influence" (2001).

Elected to membership in the American Law Institute (2001).

Honored in 2000 by the Nebraska State Bar Association as a Legal Pioneer for Women in the Law (first woman to serve as the dean of a Nebraska law school).

Awarded 1998 Fellowship from the AMERICAN BANKRUPTCY LAW JOURNAL. (awarded to five academics attending the 1998 National Conference of Bankruptcy Judges).

1998 Louis Nemzer Memorial Lecture (yearly lecture honoring a Jewish member of the Ohio State faculty).

1997 Outstanding Professor of the Year, The Ohio State University College of Law (third-year students voting) (co-winner, with Professor Barbara Rook Snyder).

Bar admissions

United States District Court, District of Nevada (2009).

Nevada Supreme Court (2008).

United States District Court, Northern District of Texas (2003).

Texas Supreme Court (2001).

United States Supreme Court (2000).

Nebraska Supreme Court (1999).

Ohio Supreme Court (1993).

United States District Court for the District of Hawaii (1988).

California Supreme Court (1987).

United States Court of Appeals for the Ninth Circuit (1987).

United States District Courts for the Northern, Eastern, Central, and Southern Districts of California (1987).

Editorial boards

REYNOLDS COURTS & MEDIA LAW JOURNAL. (2011-present).

Association of American Law Schools, JOURNAL OF LEGAL EDUCATION (2007-2010).

State Bar of Texas, TEXAS BAR JOURNAL Board of Editors (2003-06); State Bar of Texas, TEXAS BAR JOURNAL, Editorial Board Committee (2001-2004).

CALIFORNIA BANKRUPTCY JOURNAL (1995-2002).

Selected board memberships

JURIST Board of Directors (<http://jurist.law.pitt.edu/>) (2008-2011).

American Bankruptcy Institute Board of Directors (2008-present); Executive Committee (2012-present).

American Board of Certification (board certification for bankruptcy lawyers) (2007-2009) (rejoined in 2010 to become Dean of Faculty, 2011-present).

Association of Rice Alumni Board (2006-2009).

NALP Foundation for Law Career Research and Education (2005-2009).

Law School Admissions Council Board of Trustees (2001-2004).

Selected national service activities and memberships

Member, Federal Bar Association (2012-present).

Member, Advisory Committee to the American Bankruptcy Institute's Commission to Study the

Reform of Chapter 11 (2012-present) (Governance Subcommittee).

Co-Reporter, American Bankruptcy Institute's Task Force on National Ethics Standards for Professionals (2011-present).

Co-Chair, American Bankruptcy Institute's Task Force on Young and New Members (2011-2012).

Association of Media and Entertainment Counsel, Law School Section (Co-Chair, 2010-2011; member and temporary Co-Chair, 2012-present).

American Bar Association, Section on Legal Education, Committee on Law School Administration (2008-2010); Chair-Elect (2010); Chair (2011-present).

American Bar Association, Section on Business Law, Committee on Corporate Counsel, Subcommittee on Corporate Governance (co-chair, with Roberta Torian) (2007-2010).

Advisory Committee, American Bankruptcy Institute's consumer bankruptcy fee study (advisor to Professor Lois Lupica) (2008-2011).

Advisory Committee, American Bankruptcy Institute's Chapter 11 fee study (advisor to Professor Stephen Lubben) (2005-2007).

Advisory Committee, *The Birth of the Dot-Com Era*, project for the Library of Congress (Project Manager, Prof. David Kirsch, University of Maryland) (advising the Library of Congress on what to do with the records of now-defunct law firm of Brobeck, Phleger & Harrison) (2004-2007).

ABA Commission on Loan Repayment & Forgiveness (2001-2003).

American Bankruptcy Institute (1994-present).

American Bar Association (1987-present).

PERSONAL INFORMATION

Native Texan: born in Bryan, Texas. Married to Jeffrey D. Van Niel. No children; two cats (Grace and Shadow).

ATTACHMENT 2

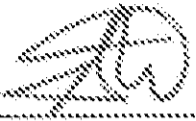
In formulating my opinion, I considered the following documents:

1. Indictment filed November 16, 2012 in the matter of *State of Nevada v. Gary Randall Trafford, et al.*, Case No. C-11-277573-1.
2. An article entitled *I-TEAM: Former Deputy AG Skeptical of Task Force*, dated July 9, 2012.
3. A Notice of Default and Election to Cause Sale of Real Property under Deed of Trust, concerning a Deed of Trust dated 4/3/2006 executed by John P. Kelleher and Lori A. Kelleher, recorded on September 6, 2011.
4. The State of Nevada's *Opposition to Defendants' Motion to Dismiss*, dated December 24, 2012.
5. The *Affidavit of John P. Kelleher*, dated December 24, 2012. and its exhibits.

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This Affidavit of Nancy B. Rapoport is respectfully submitted by:

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By:  NV 11640 GC

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Las Vegas, Nevada 89106
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Facsimile: 702.382.8135

IRELL & MANELLA LLP

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Telephone: 310.277.1010
Facsimile: 310.203.7199

Attorneys for Defendant Gary Trafford

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AFFD
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Attorneys for Defendant Gary Trafford

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff.

vs.

GARY TRAFFORD
GERRI SHEPPARD

Defendants.

Case No.: C-11-277573-1

DATE: January 23, 2013
TIME: 9:00 a.m.
DEPT.: V
JUDGE: Hon. Carolyn Ellsworth

AFFIDAVIT OF GLENN K. VANZURA
IN SUPPORT OF TRAFFORD'S JOINDER AND REPLY IN SUPPORT OF
SHEPPARD'S MOTION TO DISMISS INDICTMENT BASED UPON FORMER LEAD
PROSECUTOR CONFLICT OF INTEREST

1 1. I am over eighteen years of age and an attorney at the law firm of Irell & Manella
2 LLP, counsel for Gary Trafford. I am a member in good standing of the State Bar of California,
3 and have pending a *pro hac vice* application in this matter. I provide the following information
4 based on my personal knowledge.

5 2. The Nevada Attorney General's Office (the "AG") has represented to Trafford's
6 counsel that the AG has provided recorded statements made by any witness in this matter. My
7 office has endeavored to create accurate transcriptions of the audio recorded statements produced
8 by the AG.

9 3. Based on my review of the transcriptions of the audio recorded statements
10 produced by the AG, I did not identify any instance in which "LSI" was mentioned by any
11 investigator, prosecutor or witness in a recorded statement prior to September 6, 2011 (the date on
12 which the notice of default was filed on Mr. Kelleher's personal residence, which notice of
13 default identified "LSI Title Agency Inc." as the processing company).

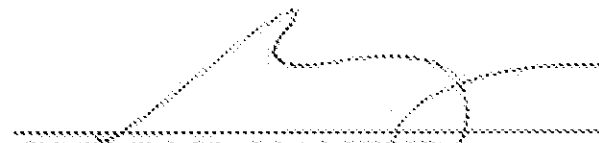
14 4. Based on my review of the transcriptions of the audio recorded statements
15 produced by the AG, the first instance in which "LSI" was mentioned by any investigator,
16 prosecutor, or witness in a recorded statement was on September 8, 2011, during an interview of
17 Tracy Lawrence. Based on my review of the audio recording of Ms. Lawrence's interview, it
18 appears that Mr. Kelleher was the individual who first mentioned "LSI." Mr. Kelleher mentioned
19 "LSI" approximately four minutes and twenty-two seconds into the recording of his meeting with
20 Ms. Lawrence on the afternoon of September 8, 2011.

21 5. Attached as **Exhibit A** is a true and correct copy of an accurate transcription of an
22 audio file produced by the Nevada Attorney General's office in this case. The audio file purports
23 to contain a recording of an interview with Ms. Lawrence on September 8, 2011. Mr. Kelleher's
24 mention of "LSI" appears on page 2 of Exhibit A.

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6. I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED this 17th day of January, 2013.



GLENN K. VANZURA

Subscribed and Sworn to Before Me
this 17th day of January 2013

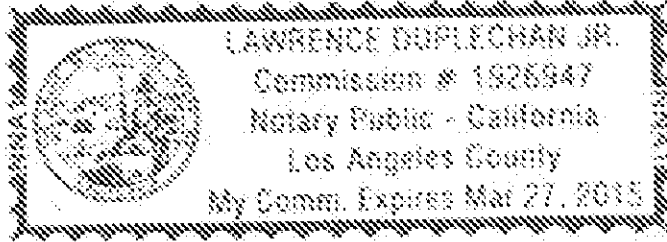
**PLEASE SEE THE ATTACHED
CALIFORNIA JURAT**

Notary Public _____

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 N. BRUNNEN STREET, SUITE 1400
LAS VEGAS, NV 89106
(702) 251-1000

State of California)
) ss.
County of Los Angeles)

Subscribed and sworn to (or affirmed) before me on this 17th day of January, 2013, by
GLENN K. VANZURA, proved to me on the basis of satisfactory evidence to be the person
who appeared before me.



Place Notary Seal Above

Signature of Notary Public

1 This AFFIDAVIT OF GLENN K. VANZURA IN SUPPOR OF TRAFFORD'S JOINDER AND
2 REPLY IN SUPPORT OF SHEPPARD'S MOTION TO DISMISS INDICTMENT BASED
3 UPON FORMER LEAD PROSECUTOR CONFLICT OF INTEREST is respectfully submitted
4 by:

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EXHIBIT A

TRACY LAWRENCE INTERVIEW
2011-9-8 Interview 2

GROSZ: Alright, um. (papers rustling) (chuckle) sorry for this.

NYMAN: Are we on?

GROSZ: Yeah, it's alright.

NYMAN: I'm just going to do, ah. intro that, um, today is Thursday, September 8th

LAWRENCE: Don't read 'em yet, because they won't make indecipherable

NYMAN: 2011. It is approximately 2 o'clock. We're at the Grant Story Building at 555 East Washington. Currently here is myself. Senior Investigator, Shelley Nyman(sp?), Investigator Todd Grosz. our Chief Deputy Attorney General, John Kelleher, Deputy Attorney General. Sam . . .

KERN: Kern.

NYMAN: . . . Kern. And we also have here with us, and I'll let you say your name. Tracy.

LAWRENCE: Tracy Lawrence.

NYMAN: Now Tracy, ah, we asked you to come down today. We met with you earlier. This is in reference to an ongoing investigation that we have. Ah. a couple of things that we just want to clarify. First and foremost is that you're here voluntarily. Is that correct?

LAWRENCE: Yes.

NYMAN: Ah, the only reason we have this door shut is purely for privacy reasons. If at any point. at any time – and the attorneys are going to go over some things in more detail -- but if, if you feel uncomfortable, if you don't want to answer questions or if you want an attorney present, you need to just make that known to us.

LAWRENCE: Um huh

NYMAN: But for all intents and purposes we are here for information sharing and cooperation and with that in, with that, I'll turn it over to John.

KELLEHER: Ah, and, and, you know, just wanna clarify, this is the second time that we met with you.

LAWRENCE: Correct.

KELLEHER: Ah, the interview today resulted in some subsequent investigation that Investigators Nyman and Grosz did after we first met.

LAWRENCE: Um huh .

KELLEHER: And ah, it has come to our attention that one of the other witnesses contradicted some of the statements you said, so we want to give you the opportunity to talk about that. Now what we are prepared to do, and before we ask any questions or anything, is the purpose of today's meeting is to kind of give you what's called "proffer." What we want to do is, we want to lay out to you what we're willing to offer you in exchange for you, your truthful statements and your cooperation in our investigation.

LAWRENCE: Okay.

KELLEHER: Ah, based on the information we have already, and this is in the interest of complete disclosure, ah, we have enough evidence -- [whispers] thanks a lot -- we have enough evidence to charge you with multiple felony charges for forgery, among other things. There are other things we could charge but, in exchange for your cooperation, we're willing to offer you to plead to one gross misdemeanor with no opposition to probation.

LAWRENCE: Explain what that means.

KELLEHER: It would be a guilty plea to a gross misdemeanor charge. We, the State, would not oppose probation. Typically, the judges will go along with the State's recommendations. So, in the event that occurs, you would have the ah, we would enter the plea for the, the gross misdemeanor. That would be on your record, um, and if the State agrees with the probation recommendation, then you would be placed on probation. Ah, the only other conditions to that would be that you tell us the truth, that you provide us with information that we don't already have or that something new than what we've already discussed, um, and that you don't commit any other crimes, um, and then the other thing is that we would, ah, request that you do not speak with or contact anybody that works for LSI, LPS or any of their incarnations, whatever their the name of

that company happens to be since they seem to change names periodically and often.

LAWRENCE: So this means people I'm friends with, I can't talk to them anymore?

KELLEHER: Um. well. there are specific people that we would request that you didn't because we're investigating . . .

LAWRENCE: You mean not talk about this; or not talk about, like sports or in. everything?

KELLEHER: Well, ah, right now we would say, not talk to them.

LAWRENCE: Okay. Can I ask you a question? This misdemeanor thing, does that, would I have to be arrested and all that?

KELLEHER: Ah, no.

LAWRENCE: Okay, so I wouldn't go to jail.

KELLEHER: Now, having said all of that, I highly recommend that you speak to an attorney about this offer. Ah. you know, it affects your rights. you have the right not to talk to us. you have the right to an attorney, you have the right to have counsel present when we talk to you. I definitely highly recommend that you, you know, and, and we'll put this in writing, this offer. but I. I definitely recommend that you take this offer and have it reviewed by an attorney. It's your choice whether to do that or not, but, again. it's, it's my recommendation that you do that.

LAWRENCE: Okay, question. You say the State generally goes with what you say. is there anything that could say that they could say no and throw me in jail?

KELLEHER: Well. sentencing is always up to the Judge, okay? However, the fact is . . .

LAWRENCE: I mean the fact that I've been completely open and honest and I've helped the State in every way I can . . .

KELLEHER: Which, which we would inform the Judge of. Ah.

LAWRENCE: Yeah.

KELLEHER: And again, that's another reason why I recommend you talk to an attorney. I'm not allowed to give you legal advice.

LAWRENCE: You know what. I'm, as I said from day one, I want to be completely honest with you guys, and I have been: and, I mean, I know they say, get a lawyer, get a lawyer. I can't afford a lawyer. I'm unemployed. So, even, even if I was employed. I don't . . .

KELLEHER: I mean if you'd like to . . .

LAWRENCE: I don't have a problem agreeing to that.

KELLEHER: If you would like to go

LAWRENCE: I would rather agree to a misdemeanor than. I don't know whatever felonies you're talking about, you know.

KELLEHER: Okay.

LAWRENCE: That seems like a common sense move. I mean, I don't have any. . . there's no lawyer that's going to be able to go before a judge and say, you know, to dispute what I've already told you. I mean, you have me on record telling you what I did. So, I would much rather, you know, I understand what you're saying and I'm fully aware that from day one I didn't have to come in here. But, I wanted to come in here. I wanted to just lay it all out: say what, you know, what I had to say, and, you know. I mean, I understand what you're saying to protect the State, to protect you guys. I, I completely understand that.

KELLEHER: Yeah, I mean, keep in mind that it, it serves no purpose to us if we were to talk to you today and then later you come back and say, you know what, I didn't have a lawyer there. . .

LAWRENCE: Yeah, mm-hmm.

KELLEHER: . . . you can't charge me and, you know, so . . . The other thing I would like to say is, if you can't afford an attorney, you would have the right to request a public defender be appointed and that's something you may want to do is, you know. And, I'd be happy to give you a, a written copy of this agreement if you wanna go to the Public Defender's office, tell them what's going on, see if you qualify. There is a little blue sheet you fill out. If you qualify, maybe they can have you sit down with one of their deputies and review, at least review this and make a recommendation.

LAWRENCE: I don't feel that's necessary, but, you know. That's how I feel.

KELLEHER: Well, let's do this. How 'bout I let you read the agreement . . .

LAWRENCE:

Okay.

KELLEHER:

Ah, we'll leave the room. let you read the agreement. come back in a few minutes: see if you have any questions regarding the agreement and then we'll, you can decide after you read the agreement whether you still wanna waive your right to an attorney. Again, I highly recommend you have an attorney review it. Okay. So we'll. we'll go off tape just for a few minutes just to give her a chance to read?

NYMAN:

Oh sure. Go off tape at 2:09

KELLEHER:

Okay.