UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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<tr>
<td>AMNESTY INTERNATIONAL USA; GLOBAL FUND FOR WOMEN; GLOBAL RIGHTS; HUMAN RIGHTS WATCH; INTERNATIONAL CRIMINAL DEFENSE ATTORNEYS ASSOCIATION; THE NATION MAGAZINE; PEN AMERICAN CENTER; SERVICE EMPLOYEES INTERNATIONAL UNION; WASHINGTON OFFICE ON LATIN AMERICA; DANIEL N. ARSHACK; DAVID NEVIN; SCOTT MCKAY; and SYLVIA ROYCE

Plaintiffs,

v.

JOHN M. McCONNELL, in his official capacity as Director of National Intelligence; LT. GEN. KEITH B. ALEXANDER, in his official capacity as Director of the National Security Agency and Chief of the Central Security Service; and MICHAEL B. MUKASEY, in his official capacity as Attorney General of the United States,

Defendants.</td>
<td>DECLARATION OF PROFESSOR STEPHEN GILLERS

Case No. 08 Civ. 6259 (JGK)

ECF CASE</td>
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DECLARATION OF PROFESSOR STEPHEN GILLERS

I, Stephen Gillers, an attorney admitted to practice before this Court, and the Courts of the State of New York, hereby affirm under penalty of perjury as follows:

1. I am a chaired professor of law at New York University School of Law. I have been on the faculty since 1978 and was vice dean from 1999 to 2004. I have taught Regulation of Lawyers ("legal ethics") at NYU, and as a visitor elsewhere, since 1978 and am author of a leading casebook in the field, first published in 1985 and now in a seventh edition (published in 2005) with an eighth edition forthcoming in 2009. My field of study encompasses the ethical and legal rules governing the legal and judicial professions in the United States. I have written

extensively on legal ethics in law journals and in the law and popular press. I have spoken on legal ethics at bar associations nationwide, law firms, law school conferences, corporate law offices, and judicial conferences. In New York, I have served on the ethics committee of the Association of the Bar and on the Departmental Disciplinary Committee of the First Department Appellate Division. I am a member (and former chair) of the American Bar Association's Policy Implementation Committee, whose charge is to assist American jurisdictions in adopting ethics rules for lawyers. A resume accurately reflecting my qualifications is annexed as Exhibit A.

2. I have been asked to speak to the professional responsibilities of lawyers in the positions of Sylvia Royce and Scott McKay. By "positions," I mean lawyers who have good reason to believe that their communications with clients, co-counsel, clients' family members and associates, witnesses, experts, and others abroad will be intercepted under the authority of the FISA Amendments Act ("FAA") because those individuals' geographic location, their identity, or the nature of their communications make them likely targets of FAA surveillance. I am not offering an opinion on the constitutionality of the FAA. Nor am I addressing the legal question whether the lawyer plaintiffs have standing. My opinion is limited to the requirements of ethics rules for lawyers in the position of the plaintiff lawyers. I recognize, of course, that these requirements bear on the standing inquiry.

3. In order to offer my opinion, I have read and assume familiarity with the following: the Complaint, Plaintiffs' Memorandum in Support of Their Motion for Summary Judgment, Defendants' Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment, the Declaration of Sylvia Royce and the Declaration of Scott McKay. I assume the truth of the assertions in the declarations of Ms. Royce and Mr. McKay. Any other factual assertions in this Declaration are those I have been asked to make. However, the inferences that I believe a lawyer

should reasonably draw from those facts, and the ethical duties that follow from those inferences, constitute the substance of my opinion.

4. Ms. Royce and Mr. McKay practice in Washington, D.C. and Idaho respectively. Both jurisdictions have professional conduct rules for lawyers that are substantially the same as (though not identical to) the American Bar Association's Model Rules of Professional Conduct ("Model Rules"). Indeed, all but three U.S. states now have rules that derive substantially from the Model Rules. The three exceptions are New York, California, and Maine. New York's Code of Professional Responsibility derives from, though it is not identical to, the 1970 ABA Code of Professional Responsibility. New York's Appellate Divisions now have before them State Bar proposals to conform the New York Code more closely to the language of the ABA Model Rules. California imposes confidentiality duties by statute. Cal. Bus. & Prof. Code 6068(e).

5. Despite jurisdictional differences, the duties I address here are common to lawyers in all American jurisdictions. For convenience, therefore, I will use the Model Rules (or "MR") as the basis for my opinion.

6. The duties under the Model Rules are: (a) a duty to protect confidential information gained in representing a client under MR 1.6; (b) a duty under MR 1.4 to keep a client informed about the status of his or her matter and to respond to inquiries; and (c) a duty of competence under MR 1.1, which includes a duty to conduct a factual investigation equal to that which a prudent lawyer exercising a reasonable degree of care, skill, and judgment, would conduct.

7. Each of these duties necessarily entails communication, whether with the client or with third persons in connection with client matters. Those communications will very often be confidential within the meaning of the Model Rules. MR 1.6(a) provides: "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed

consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b)."

8. Confidential information under MR 1.6 is a broad category. It includes both privileged information (generally, information gained from the client or the client's agents) and other information gained in representing the client from any source. *See* MR 1.6 cmt. [1] (confidential information is "information relating to the representation"); cmt [4] (duty of confidentiality applies "to all information relating to the representation whatever its source").

9. Central to my opinion with regard to MR 1.6 is the duty of a lawyer to safeguard confidential information. A lawyer may not divulge confidential information about a client over any vehicle of communication, including telephone, fax, and e-mail, if the lawyer does not have "a reasonable expectation of privacy" in the use of the vehicle. ABA Opinion 99-413 (finding such expectation for e-mail). Comments [16] and [17] to MR 1.6 are in accord and provide in full:

> **Acting Competently to Preserve Confidentiality**
>
> [16] A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3.
>
> [17] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule.

10. If an attorney has reason to believe that sensitive and confidential information related to the representation of a client and transmitted by telephone, fax, or e-mail is reasonably likely to be intercepted by others, he or she may not use that means of communication in exchanging or collecting the information. He or she must find a safer mode of communication, if one is available, which may require communication in person.

11. The main legal issue in the parties' briefs is this: Given that the communications of United States persons located within the United States will be acquired under the FAA, even if these persons are not targets of the interception, do the FAA's purported safeguards – e.g., its limitation on who may be targeted, the role of the FISA Court, and the law's minimization requirements – satisfy one or another provision of the Constitution. The answer to that question is irrelevant to my opinion because the professional responsibilities of the lawyers do not depend on the legality of any effort to intercept their communications relating to representation of a client. Determinative of how the lawyer may proceed is, instead, whether the lawyer has good reason to believe that his or her communications are reasonably likely to be intercepted, even if the interception is lawful.

12. For example: A lawyer may have good reason to believe that the government may be lawfully wiretapping the client's (or the client's associates') telephones or intercepting the client's (or associates') e-mail. The lawyer would then act unethically if he or she nevertheless exchanged sensitive information about the client's matter, with the client or others, on the telephone or via e-mail. The assumed legality of the interception would not relieve the lawyer of obligations, described in MR 1.6 and its comments, to protect the communications relating to the matter from disclosure. The lawyer would have to find another, safe way to communicate.

13. Ms. Royce and Mr. McKay do have good reasons to believe that their communications with their clients or third persons (in connection with their clients' matters) over the telephone or electronically will be intercepted. The government's argument that the lawyers' concerns are based on "speculation and conjecture" is wrong. Any analysis of the two lawyers' concerns must be grounded in consideration of the identity of the particular clients or others with whom the lawyers are communicating, their location, and the scope of the government's power to intercept. It is impossible to answer the question "does the FAA change the way U.S. lawyers must behave in representing clients abroad?" without asking: who are the clients, with whom are the lawyers communicating, and where are the people located?

14. I am asked to assume from their submissions to the Court that in representing their clients, Ms. Royce and Mr. McKay speak to persons abroad, in connection with client matters, who are likely to be targets of the government's authority under the FAA, because those persons are suspected of involvement in terrorism, are associated with suspected terrorists, or are in geographic areas where the U.S. government's counterterrorism efforts are focused. Ms. Royce represents a prisoner in Guantanamo Bay, Mohammedou Ould Salahi, in connection with his habeas petition and in other matters. The government suspects Mr. Salahi of terrorist activities. Mr. McKay represents Khalid Sheik Mohammed, also a prisoner at Guantanamo, in connection with his detention and trial by military commission. He also currently represents Sami Omar Al-Hussayen, a Saudi national in civil litigation in the United States. Mr. Al-Hussayen was acquitted of terrorism charges following trial in 2004.

15. The lawyers' work for their clients requires them to communicate with their clients, co-counsel and others, to keep their clients informed of the status of the matters, and to conduct

factual investigations in accordance with their duty of competent representation. Some of the persons with whom they must communicate in the course of representing their clients are abroad.

16. Because of the status of their clients, the identity and location of witnesses and sources, and the breadth of FAA authority, Ms. Royce and Mr. McKay have good reason to believe that the persons abroad with whom they must communicate to satisfy their professional obligations will be or are targets of the authority granted the government under the FAA. In order to intercept electronic communications with persons with whom Ms. Royce and Mr. McKay speak, the FAA does not require the government to have probable cause or even, in any filing with the FISC, state the individual identities of the targets of the interception. I am asked to assume that the FAA authorizes the government to conduct mass, non-individualized, acquisition of electronic communications. Under these circumstances, the lawyer plaintiffs have an ethical obligation to limit their telephonic and electronic communications with persons abroad to routine and non-sensitive information.

17. The government asserts that Ms. Royce and Mr. McKay cannot show with certainty that any of their communications have been or will be intercepted. But their ethical obligations do not depend on any such proof. It is triggered by the *risk* that the communications will be intercepted. Or to put it another way, the duty is to *safeguard* confidential information. The ethical violation is complete if a lawyer does not take appropriate measures to safeguard confidential information proportionate to the risk of discovery, even if, as it happens, the lawyer's failure does not result in certain discovery.

18. It is also no answer to say that the lawyers are relieved of their duties so long as the seized information is not used (or can be suppressed from use) against their clients in court. The duty of confidentiality is broader than a duty to protect against adverse use of information in

court. It is a duty to safeguard the information from discovery by others, regardless of the use to which it may or may not be put and regardless of whether the others do or do not reveal the information in other forums – assuming it is even possible ever to know whether or how the confidential information was used.

19. Consider an analogy. A lawyer in a Starbuck's coffee shop receives a call on her cell phone about a client matter. Nearby on her right is a woman seemingly engrossed in Proust. On her left is a man with his eyes closed, possibly dozing. Across is a woman scribbling in a notebook. The lawyer does not know that anyone in the shop will listen to her end of the conversation. The government might call that possibility "speculation and conjecture." But if those words mean to suggest that the risk is one the lawyer can blithely ignore, the government is wrong under MR 1.6 and state equivalents. Those rules would require the lawyer to move to a secure line elsewhere before discussing sensitive information. The answer would be the same for e-mail communication that posed an equivalent risk of discovery.

20. Indeed, this hypothetical poses an even lower risk of interception of confidential communications than do the facts before the Court. It is not likely that anyone in the coffee shop is intent on overhearing the lawyer's end of the conversation. And if by chance someone did so out of curiosity or because proximity made it unavoidable, the one-sided contents are not likely to mean anything. By contrast, the lawyer plaintiffs' concern here is that an actual or potential party adverse to their client, the government, has the claimed statutory authority, the means, and the motive to intercept both sides of communications with clients, witnesses, sources, co-counsel, and others abroad, in connection with client matters.

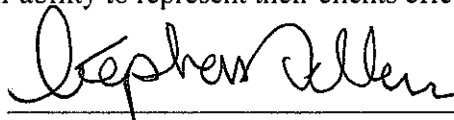
21. It is true that even if the law required an individualized warrant based on probable cause, the lawyers would still have a duty under Rule 1.6 to determine whether telephonic or

electronic communications with their clients or others was sufficiently safe. As stated above, their duty does not depend on the legality of the interception but its degree of likelihood. Obviously, then, assessment of risk is pivotal and the breadth of the FAA authority must factor into the risk analysis. Because of the law's broad interception authority, and in light of the identities of the clients, as well as the identity and location of witnesses and sources, the risk of interception is exponentially expanded over what it would be if the government were obligated to demonstrate probable cause and identify its individual targets, to the satisfaction of a neutral judicial officer, as a prelude to interception.

22. Nothing in the requirement for minimization procedures changes this analysis. That requirement does not prevent the government, in targeting individuals outside the United States, from learning the content of communications by Ms. Royce or Mr. McKay with their clients or third parties about their clients' matters. The statutory minimization requirements are heavily qualified. They must be "reasonably designed" to minimize, not eliminate, certain acquisitions but only "in light of the purpose and technique of the particular surveillance." The minimization requirement, furthermore, exists only in so far as it is "consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information." 50 U.S.C. § 1801(h)(1). And notwithstanding this language, the government is authorized to retain information that is evidence of a crime "which has been… committed." §1801(h)(3). That is, information about a concluded act, perhaps the very act about which the client needs legal advice. A request for advice or representation about concluded conduct, and counsel's response, is of course a privileged communication.

23. The question for me here is whether the Ms. Royce and Mr. McKay have good reason to believe that their communications with their clients or third parties abroad in

connection with client matters will be intercepted, thereby requiring them to avoid using electronic means of communication, including the telephone and e-mail, to impart or receive sensitive information that is within MR 1.6. My opinion is that the lawyers have good reason for this belief because of the status of their clients, the identity and location of witnesses and sources, and the broad authority that the FAA grants the government. The lawyers' decision to avoid electronic means of communication is not discretionary. It is obligatory. This limitation on the attorneys' work severely restricts their ability to represent their clients effectively.



Stephen Gillers, Esq.

Dated: December 8, 2008

Exhibit A

[November 2008]

STEPHEN GILLERS

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(vice dean 1999-2004)
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AREAS OF TEACHING Regulation of Lawyers and Professional Responsibility
Evidence; Law and Literature; Media Law

PRIOR COURSES Civil Procedure, Agency, Advocacy of Civil Claims, Federal Courts

PUBLICATIONS BOOKS AND ANTHOLOGIES:

Regulation of Lawyers: Problems of Law and Ethics (Aspen Law & Business, 7th ed., April 2005). The first edition of this popular casebook was published in 1985. Norman Dorsen was a co-author on the first two editions. Stephen Gillers is the sole author of the third through eighth editions. The first four editions were published by Little, Brown & Co., which then sold its law book publishing operation to Aspen. The 8th edition is forthcoming in spring 2009.

Regulation of Lawyers: Statutes and Standards (with Roy Simon and Andrew Perlman) (Aspen Law & Business) (This is a compilation with editorial comment. The first volume was published in 1989. Updated versions have been published annually thereafter. As of the 2009 edition, Andrew Perlman has joined as a co-editor.)

Getting Justice: The Rights of People (Basic Books, 1971; revised paperback, New American Library, May 1973).

Investigating the FBI (co-Editor with P. Watters)
(Doubleday, 1973; Ballantine, 1974)

None of Your Business: Government Secrecy in America (co-Editor with N. Dorsen) (Viking, 1974; Penguin, 1975).

PUBLICATIONS (continued)

I'd Rather Do It Myself: How to Set Up Your Own Law Firm (Law Journal Press, 1977).

Looking At Law School: A Student Guide From the Society of American Law Teachers (editor and contributor) (Taplinger, 1977; NAL, 1977; revised ed., NAL, 1984; third ed., NAL, 1990).

The Rights of Lawyers and Clients (Avon, 1979).

"Four Policemen in London and Amsterdam," in R. Schrank (ed.) American Workers Abroad (MIT Press, 1979).

"Dispute Resolution in Prison: The California Experience," and "New Faces in the Neighborhood Mediating the Forest Hills Housing Dispute," both in R. Goldmann (ed.) Roundtable Justice: Case Studies in Conflict Resolution (Westview Press, 1980).

"The American Legal Profession," in A. Morrison (ed.), Fundamentals of American Law (Oxford University Press 1996).

The Elsinore Appeal: People v. Hamlet (St. Martin's Press 1996). This book contains the text of Hamlet together with briefs and oral argument for and against affirmance of Prince Hamlet's murder convictions. The book arose out of a symposium sponsored by the Association of the Bar of the City of New York.

“In the Pink Room,” in Legal Ethics: Law Stories (D. Rhode & D. Luban, eds.) (Foundation Press, 2006) (also published as a freestanding monograph).

ARTICLES:

Virtual Clients: An Idea in Search of a Theory (with Limits), 42 Valparaiso L. Rev. 797 (2008) (Tabor lecture).

The “Charles Stimson” Rule and Three Other Proposals to Protect Lawyers From Lawyers, 36 Hofstra L. Rev. 323 (2007)

A Tendency to Deprave and Corrupt: The Transformation of American Obscenity Law from *Hicklin* to *Ulysses II*, 85 Washington U. L. Rev. 215 (2007)

Some Problem with Model Rule 5.6(a), Professional Lawyer (ABA 2007 Symposium Issue).

PUBLICATIONS
(continued)

Monroe Freedman's Solution to the Criminal Defense Lawyer's Trilemma Is Wrong as a Matter of Policy and Constitutional Law, 34 Hofstra L. Rev. 821 (2006)

"In the Pink Room," TriQuarterly 124.

Free the Lawyers: A Proposal to Permit No-Sue Promises in Settlement Agreements, 18 Georgetown J. Legal Ethics 291 (2005) (with Richard W. Painter).

Lessons from the Multijurisdictional Practice Commission: The Art of Making Change, 44 Ariz. L. Rev. 685 (2002).

Speak No Evil: Settlement Agreements Conditioned On Noncooperation Are Illegal and Unethical, 31 Hofstra L. Rev. 1 (2002) (reprinted at 52 Defense L.J. 769 (2003)).

"If Elected, I Promise [_____]"–What Should Judicial Candidates Be Allowed to Say? 35 Ind. L. Rev. 735 (2002).

Legal Ethics: Art or Theory?, 58 Annual Survey Am. L. 49 (2001).

The Anxiety of Influence, 27 Fla. St. L. Rev. 123 (1999) (discussing rules that restrict multidisciplinary practice.

Can a Good Lawyer Be a Bad Person? 2 J. Inst. Study of Legal Ethics 131 (1999) (paper delivered at conference "Legal Ethics: Access to Justice" at Hofstra University School of Law, April 5-7, 1998).

More About Us: Another Take on the Abusive Use of Legal Ethics Rules, 11 Geo. J. Legal Ethics 843 (1998).

Caveat Client: How the Proposed Final Draft of the Restatement of the Law Governing Lawyers Fails to Protect Unsophisticated Consumers in Fee Agreements With Lawyers, 10 Geo. J. Legal Ethics 581 (1997).

Participant, Ethical Issues Arising From Congressional Limitations on Legal Services Lawyers, 25 Fordham Urban Law Journal 357 (1998) (panel discussion).

The Year: 2075, the Product: Law, 1 J. Inst. Study of Legal Ethics 285 (1996) (paper delivered on the future of the legal profession at

Hofstra University Law School's conference "Legal Ethics: The Core Issues").

PUBLICATIONS
(continued)

Getting Personal, 58 Law & Contemp. Probs. 61 (Summer/Autumn 1995) (contribution to symposium on teaching legal ethics).

Against the Wall, 43 J. Legal Ed. 405 (1993) (ethical considerations for the scholar as advocate).

Participant, Disqualification of Judges (The Sarokin Matter): Is It a Threat to Judicial Independence?, 58 Brooklyn L. Rev. 1063 (1993) (panel discussion).

The New Old Idea of Professionalism, 47 The Record of the Assoc Bar of the City of N.Y. 147 (March 1992).

The Case of Jane Loring-Kraft: Parent, Lawyer, 4 Geo. J. Legal Ethics 115 (1990).

Taking L.A. Law More Seriously, 98 Yale L.J. 1607 (1989) (contribution to symposium on popular legal culture).

Protecting Lawyers Who Just Say No, 5 Ga. St. L. Rev. 1 (1988) (article based on Henry J. Miller Distinguished Lecture delivered at Georgia State University College of Law).

Model Rule 1.13(c) Gives the Wrong Answer to the Question of Corporate Counsel Disclosure, 1 Geo. J. Legal Ethics 289 (1987).

The Compelling Case Against Robert H. Bork, 9 Cardozo L. Rev. 33 (1987).

Ethics That Bite: Lawyers' Liability to Third Parties, 13 Litigation 8 (Winter 1987).

Can a Good Lawyer Be a Bad Person?, 84 Mich. L. Rev. 1011 (1986).

Proving the Prejudice of Death-Qualified Juries After Adams v. Texas: An Essay Review of Life in the Balance, 47 Pitt. L. Rev. 219 (1985), cited in Lockhart v. McCree, 476 U.S. 162, 197, 201 (1986) (Marshall, J., dissenting).

What We Talked About When We Talked About Ethics: A Critical View of the Model Rules, 46 Ohio St. L.J. 243 (1985).

The Quality of Mercy: Constitutional Accuracy at the Selection

Stage of Capital Sentencing, 18 U.C. Davis L. Rev. 1037 (1985).

PUBLICATIONS (continued)

Berger Redux, 92 Yale L.J. 731 (1983) (Review of Death Penalties by Raoul Berger).

Selective Incapacitation: Does It Offer More or Less?, 38 The Record of the Assoc. Bar City of N.Y. 379 (1983).

Great Expectations: Conceptions of Lawyers at the Angle of Entry, 33 J. Legal Ed. 662 (1983).

Perspectives on the Judicial Function in Criminal Justice (Monograph, Assoc. Bar City of N.Y., 1982).

Deciding Who Dies, 129 U. Pa. L. Rev. 1 (1980) (quoted and cited as "valuable" in Spaziano v. Florida, 468 U.S. 447, 487 n.33 (1984) (Stevens, J., dissenting); also cited in Zant v. Stephens, 462 U.S. 862, 878 n.17, 879 n.19 (1983); Lockhart v. McCree, 476 U.S. 162, 191 (1986) (Marshall, J., dissenting); Callins v. Collins, 114 S.Ct. 1127, 1134 n.4 (1994) (Blackmun, J., dissenting); and Harris v. Alabama, 115 S.Ct. 1031, 1038-39 (1995) (Stevens, J., dissenting).

Numerous articles in various publications, including The New York Times, The Nation, American Lawyer, The New York Law Journal, The National Law Journal, Newsday, and the ABA Journal. See below for selected bibliography.

VIDEOTAPES

"Adventures in Legal Ethics and Further Adventures in Legal Ethics": videotape of thirteen dramatic vignettes professionally produced and directed and raising issues of legal ethics. Author, Producer. (1994)

"Dinner at Sharswood's Café," a videotape raising legal ethics issues. Author, Producer. (1996)

“Amanda Kumar’s Case,” a 38-minute story raising more than two dozen legal ethics issues. Author. (1998)

TRIBUTES

To Honorable Gus J. Solomon, printed at 749 Federal Supplement LXXXI and XCII (1991).

Truth, Justice, and White Paper, 27 Harv. Civ. R. Civ. Lib. L. Rev. 315 (1992) (to Norman Dorsen).

Irving Younger: Scenes from the Public Life, 73 Minn. L. Rev. 797 (1989).

OTHER TEACHING

Visiting Professor of Law, Harvard Law School, Winter 1988 Semester;

Adjunct Professor of Law, Yeshiva University, Cardozo Law School, Spring 1986, Spring 1987, and Fall 1988 Semesters.
Course: The Legal Profession.

Adjunct Associate Professor of Law, Brooklyn Law School, 1976-78.

PRIOR EMPLOYMENT

1973 - 1978
Private practice of law
Warner and Gillers, P.C. (1975-78)

1974 - 1978
Executive Director
Society of American Law Teachers, Inc.

1971 - 1973
Executive Director, Committee for
Public Justice

1969 - 1971
Associate, Paul, Weiss, Rifkind,
Wharton & Garrison

1968 - 1969
Judicial Clerk to Chief Judge
Gus J. Solomon, Federal District Court
for the District of Oregon, Portland, Oregon

SELECTED TESTIMONY

Testimony on "Nomination of Sandra Day O'Connor to the Supreme Court of the United States", Hearings, before the Senate Committee on the Judiciary, 97th Congress, 1st Sess., Sept. 11, 1981.

Testimony on S. 2216, "Habeas Corpus Reform Act of 1982", Hearings, before the Senate Committee on the Judiciary, 97th Congress, 2d Sess., April 1, 1982.

Testimony on H.R. 5679, "Criminal Code Revision Act of 1981", Hearings, before the House of Representatives, Committee on the Judiciary, 97th Congress, 2d Sess., April 22, 1982.

Testimony on S. 653, "Habeas Corpus Procedures Amendment Act of

1981", Hearings, before the Senate Committee on the Judiciary, 97th Congress, 1st Sess., November 13, 1981.

SELECTED TESTIMONY (continued)

Testimony on S. 8875 and A. 11279, "A Proposed Code of Evidence for the State of New York", before Senate and Assembly Codes and Judiciary Committees, February 25, 1983.

Testimony before A.B.A. Commission on Women in the Profession, Philadelphia, February 6, 1988.

Testimony on the nomination of William Lucas to be Assistant Attorney General for Civil Rights, before the Senate Committee on the Judiciary, 101st Congress, 1st Sess., July 20, 1989.

Testimony on the nomination of Vaughn Walker to be United States District Judge for the Northern District of California, before the Senate Committee on the Judiciary, 101st Congress, 1st Sess., November 9, 1989.

PUBLIC LECTURES (partial list)

Tabor Lecture, Valparaiso University School of Law, April 12, 2007. This event consisted of two lectures. A public lecture was entitled "Here's the Gun: A Lawyer's Responsibility for Real Evidence." The Bench and Bar lecture, which will be published in the school's law review, is entitled "Virtual Clients: An Idea in Search of a Theory (With Limits)."

Paul M. Van Arsdell, Jr., Memorial Lecture, University of Illinois, College of Law, March 7, 2005: "Do Lawyers Share Moral Responsibility for Torture at Guantanamo and Abu Ghraib?"

Howard Lichtenstein Distinguished Professorship of Legal Ethics Lecture Series, "In Praise of Confidentiality (and Its Exceptions)," delivered at Hofstra University School of Law, November 12, 2003.

Henry J. Miller Distinguished Lecture, Georgia State University College of Law, May 11, 1988. "Protecting Lawyers Who Just Say No."

First Annual South Carolina Bar Foundation Lecture, April 9, 1992, University of South Carolina Law School, Columbia, South Carolina. "Is the Legal Profession Dead? Yearning to Be Special in an Ordinary Age."

Philip B. Blank Memorial Forum on Attorney Ethics, Pace University School of Law, April 8, 1992. "The Owl and the Fox: The Transformation of Legal Work in a Commodity Culture."

Speaker on Judicial Ethics, ABA Appellate Judges' Seminar and Flaschner

Judicial Institute, September 29, 1993, Boston, Massachusetts.

PUBLIC LECTURES (continued)

Baker-McKenzie Ethics Lecture, Loyola University Chicago School of Law, October 13, 1993, Chicago, Illinois ("Bias Issues in Legal Ethics: Two Unfinished Dramas").

The Sibley Lecture, University of Georgia School of Law, Athens, Georgia, November 10, 1993 ("Telling Stories in School: The Pedagogy of Legal Ethics").

Participant, "Ethics in America" series (to be) broadcast on PBS 2007, produced by Columbia University Seminars on Media and Society.

Participant, "Ethics in America" series, broadcast on PBS February and March 1989, produced by Columbia University Seminars on Media and Society.

Participant, "The Constitution: That Delicate Balance, Part II" series, broadcast on PBS February and March 1992, produced by Columbia University Seminars on Media and Society.

Lecturer on legal ethics and allied subjects in the U.S. and abroad at hundreds of seminars, CLE events, and conferences organized by private law firm, corporate law departments, the District of Columbia, Second, Fourth, Sixth, Ninth and Federal Circuit Judicial Conferences; American Bar Association; Federal Bar Council; New York State Judiciary; New York City Corporation Counsel; American Museum of Natural History; Practicing Law Institute; Law Journal Seminars; state, local and specialty bar associations (including in Oregon, Nebraska, Illinois, New York, New Jersey, Pennsylvania, Rhode Island, Vermont, and Georgia); corporate law departments; law schools; and law firms.

LEGAL AND PUBLIC SERVICE ACTIVITIES

Chair, American Bar Association Center for Professional Responsibility, Policy Implementation Committee, 2005-2008 (Member 2002-present).

Member, American Bar Association Commission on Multijurisdictional Practice, 2000-2002.

Consultant, Task Force on Lawyer Advertising of the New York State Bar Association (2005).

Retained by the New Jersey Supreme Court, in connection with the Court's review of the lawyer disciplinary system in New Jersey, to provide an "analysis of the strengths and weaknesses of California's 'centralized' disciplinary system" and to "report on the quality,

efficiency, timeliness, and cost effectiveness of the California system...both on its own and compared with the system recommended for New Jersey by the Ethics Commission." Report filed December 1993. Oral presentation to the Court, March 1994.

LEGAL AND PUBLIC SERVICE ACTIVITIES (continued)

Reporter, Appellate Judges Conference, Commission on Judicial participation in the American Bar Association, (October 1990-August 1991).

Member, David Dinkins Mayoral Transition Search Committee (Legal and Law Enforcement, 1989).

Member, Committee on the Profession, Association of the Bar of the City of New York (1989-1992)

Member, Executive Committee of Professional Responsibility Section, Association of American Law Schools (1985-1991).

Chair, 1989-90 (organized and moderated Section presentation at 1990 AALS Convention on proposals to change the ABA Code of Judicial Conduct).

Counsel, New York State Blue Ribbon Commission to Review Legislative Practices in Relation to Political Campaign Activities of Legislative Employees (1987-88).

Administrator, Independent Democratic Judicial Screening Panel, New York State Supreme Court (1981).
Member, Departmental Disciplinary Committee, First Judicial Department (1980 - 1983).

Member, Committee on Professional and Judicial Ethics, Association of the Bar of the City of New York (1979 - 1982).

Member, Criminal Law Committee, Association of the Bar of the City of New York (1992-1995).

BAR MEMBERSHIPS

STATE:

New York (1968)

FEDERAL:

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