

**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

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IN RE:

J. Michael Eakin  
Justice of  
The Supreme Court of Pennsylvania

13 JD 2015

**JOINT STIPULATIONS OF FACT IN LIEU OF TRIAL AND WAIVER OF TRIAL  
PURSUANT TO COURT OF JUDICIAL DISCIPLINE RULE OF PROCEDURE 502**

AND NOW, this 17<sup>th</sup> day of March, 2016, comes the Judicial Conduct Board of the Commonwealth of Pennsylvania (the Board), and Justice J. Michael Eakin, by and through their undersigned counsel, and files these joint stipulations of fact in lieu of trial pursuant to C.J.D.R.P. No. 502, as follows:

**JOINT STIPULATIONS OF FACT IN LIEU OF TRIAL**

1. The parties stipulate to the authenticity and admissibility of all exhibits set forth in their respective pre-trial memoranda filed as of this date and stipulate to the authenticity and admissibility of all exhibits entered of record at the Rule to show cause hearing held on December 21, 2015.
2. The parties stipulate to the authenticity and admissibility of the following: (1) the self-report letter to the Board drafted by Justice Eakin on October 17, 2014; (2) the Notice of Full Investigation (NOFI) issued by the Board to Justice Eakin on October 27, 2014; (3) Justice Eakin's November 5, 2014 response to the Board's NOFI; (4) three reports of interview for Justice Eakin written by Investigator Jack Harlacker dated October 17, 20, and 24, 2014; and (5) the deposition of Justice Eakin conducted by Board counsel on October 20, 2015.
3. This action is taken by the Board pursuant to the authority granted to it under Article V, § 18 of the Constitution of the Commonwealth of Pennsylvania to file formal charges alleging violations of the Code of Judicial Conduct and the Constitution of the Commonwealth of Pennsylvania on the part of judges, justices, or justices of the peace, and to present the case in support of such charges before this Court.

4. From approximately January 2, 2002, until March 15, 2016, Justice Eakin served continuously as a duly elected Justice of the Supreme Court of Pennsylvania, with a principal office at 4720 Old Gettysburg Road, Suite 405, Mechanicsburg, PA.
  - a. Prior to his service as a Justice of the Supreme Court, Justice Eakin served as a Judge of the Superior Court of Pennsylvania.
  - b. In his written judicial opinions, Justice Eakin was never shown to have demonstrated overt bias due to the race, gender, ethnicity, or sexual orientation of a litigant or witness.
5. As a Justice of the Supreme Court, Justice Eakin was at all times relevant hereto, subject to all the duties and responsibilities imposed on him by the Constitution of the Commonwealth of Pennsylvania.
6. Until July 1, 2014, and during all times relevant hereto, Justice Eakin was subject to all the duties and responsibilities imposed on him by the Old Code of Judicial Conduct.
7. During his tenure with the Pennsylvania Supreme Court, Justice Eakin was provided with Commonwealth-issued computer hardware and other electronic equipment capable of sending and receiving email.
8. Justice Eakin utilized this Commonwealth-issued computer equipment to send and receive email from a personal, *i.e.*, non-court provided, web-based email address, wap092001@yahoo.com (the "John Smith" email address).
  - a. This email address does not identify Justice Eakin by his name or judicial title.
  - b. This email address identified Justice Eakin as "John Smith."
  - c. People who sent email to Justice Eakin at this email address knew that it was, in fact, Justice Eakin's personal email address.
  - d. People who received email from Justice Eakin from this email address knew that it was, in fact, Justice Eakin's personal email address.
  - e. Justice Eakin also has a court-provided public email address, "JusticeEakin@pacourts.us."

9. One of the persons who exchanged, *i.e.*, sent and received, emails with Justice Eakin at the "John Smith" email address was Jeffrey Baxter, Esquire, a Deputy Attorney General (DAG) employed by the Office of Attorney General (OAG) in the OAG's Pittsburgh field office.
  - a. Justice Eakin and DAG Baxter had a long friendship, which started after Justice Eakin hired DAG Baxter as an assistant district attorney when Justice Eakin was the District Attorney of Cumberland County.
10. Over the years that he was a Supreme Court Justice, Justice Eakin, DAG Baxter, and a group of several other men went on golfing vacations together, played fantasy football, and were engaged in other social activities together (the "golfing group").
  - a. From 2008-2012, Justice Eakin used his "John Smith" email address to communicate with DAG Baxter and the other individuals who were part of the golfing group.
  - b. The majority of emails exchanged between Justice Eakin, DAG Baxter, and the golfing group related solely to social activities that took place among and between them.
  - c. As set forth more fully below, Justice Eakin sent to DAG Baxter or members of the golfing group a joke that contained a semi-nude photograph of a woman and emails containing statements that were inappropriate and chauvinistic.
  - d. As set forth more fully below, Justice Eakin engaged in an exchange with DAG Baxter that contained inappropriate sexual innuendo about specific women known to both men.
  - e. None of the emails discussed in Paragraph 10 generally or those set forth more fully below discuss matters pending before the Supreme Court or involve the business of the Judiciary.
11. From approximately 2008-2012, Justice Eakin, together with a large number of other individuals (male and sometimes female), including persons employed by the OAG, received "blast" emails from Terrance McGowan, Esquire, a Harrisburg-area criminal defense attorney.
  - a. Attorney McGowan is a friend of Justice Eakin and has been on one or two out-of-state fishing vacations with him.
  - b. Justice Eakin's personal email address had formerly identified him by his last name and title, but, as a result of the content of

Attorney McGowan's emails, he changed his personal email address to wap092001@yahoo.com and listed his name at that address as "John Smith."

12. A number of the emails sent by Justice Eakin from his "John Smith" email address and received at that email address from the golfing group and Attorney McGowan between 2008 and 2012 included content that someone of reasonable sensitivities would find offensive.
  - a. With the exception of the filing of, or responding to, petitions for allowance of appeal, all of which were denied by the Supreme Court, neither Attorney McGowan nor any member of the golfing group who was an attorney appeared before Justice Eakin during the time that he exchanged emails with them.
13. The subject of the content of the emails sent from, and received by, Justice Eakin at his "John Smith" email address first arose in the context of a public controversy surrounding an October 2014 confrontation between Justice Eakin and former Justice Seamus McCaffery, who instigated an argument about emails that had been exchanged between former Justice Seamus McCaffery and specific members of the OAG staff, and Justice Eakin and specific members of the OAG staff, respectively.
  - a. The controversy about the emails was generated as a result of the OAG's September 2014 internal investigation of OAG email traffic.
  - b. At approximately the same time as the investigation took place, it was revealed in media outlets that "top Pennsylvania jurists" were among those who received sexually-explicit emails.
  - c. Ultimately, former Justice McCaffery was identified as a sender and recipient of emails containing pornographic content.
  - d. The argument involved former Justice McCaffery threatening to release to the media emails involving Justice Eakin if Justice Eakin did not take action to persuade then Chief Justice Ronald Castille to retract statements he made to the media about former Justice McCaffery's conduct in sending and receiving emails with sexually explicit content. Justice Eakin refused to take the requested action.
  - e. Subsequent to the argument with former Justice McCaffery, Justice Eakin learned that several emails from his "John Smith" account had been provided to the media.



14. By letter to the Board dated October 17, 2014, Justice Eakin reported the substance of the argument between himself and former Justice McCaffery, and the revelations to the media about his "John Smith" emails. That same day, Justice Eakin also made his letter to the Board public when he released it to the media along with a Press Release.
15. Former Justice McCaffery responded to the statements made by Justice Eakin in his Press Release by issuing his own media statement on Friday, October 17, 2014.
16. Former Justice McCaffery's media statement essentially constituted his denial of Justice Eakin's recollection of the facts of their prior phone call.
17. Thereafter, in the evening of October 17, 2014, Justice Eakin issued a subsequent press release that responded to former Justice McCaffery's counter-allegations.
18. In Justice Eakin's second press release, he stated the following: "I have read [former] Justice McCaffery's self-victimizing explanation. I find it incomplete, and inaccurate in many details and specifics, but there is little to be gained by pointing out the inconsistencies or otherwise quarreling about the matter at this point. I stand completely behind my statements about the call, every word."
19. Based on Justice Eakin's October 17, 2014 self-report to the Board, the Board opened investigation No. 2014-647.
  - a. The Board later received a second request for investigation of Justice Eakin's email conduct from a private citizen. That request was opened as investigation No. 2014-650.
20. On that same day, pursuant to Article V, § 18(a)(8) of the Pennsylvania Constitution, the Board issued a prepared statement indicating that Justice Eakin had self-reported to the Board, confirming that an investigation was underway, and stating that Justice Eakin was then entitled to a full, fair, and confidential investigation of all of the facts of the matter and to a fair hearing without prejudgment.
21. Also on October 17, 2014, after receiving Justice Eakin's self-report, the Board's investigator interviewed Justice Eakin.
  - a. The Board's investigator conducted two further interviews of Justice Eakin on October 20 and 24, 2014.
  - b. The Board also authorized the issuance of a notice of full investigation to Justice Eakin and the Board's counsel subsequently issued such notice.

c. Justice Eakin provided a timely written response to the notice of full investigation.

22. On October 24, 2014, by personal service, the Board's counsel issued subpoena *duces tecum* No. 2014-048 to Attorney General Kathleen Kane (AG Kane), which ordered her to produce the following:

- a. Printed copies of any and all emails and printed copies of any and all attachments to those emails (if same are capable of reproduction by printing) sent to or from any email address used by, or known to be used by, Justice J. Michael Eakin, including but not limited to, the email address wap092001@yahoo.com or identified as being sent or received from "John Smith," that were exchanged, forwarded, received or otherwise disseminated between the dates of January 1, 2008, and December 31, 2012,<sup>1</sup> between and among Justice J. Michael Eakin and any employee of the Pennsylvania Office of Attorney General, including former employees of the Pennsylvania Office of Attorney General whose employment has ended, including, but not limited to, any and all emails which contain pornographic images, sexually explicit, sexually suggestive or sexually-charged material, or racially-charged jokes, or other improper content, or are titled to indicate they contain such content, showing any and all senders, recipients, including, but not limited to direct recipients, Cc'd recipients or Bcc'd recipients, dates, content and any and all information relating thereto, including but not limited to, whether or not any email and its content were opened by the recipient.
- b. Printed copies of the internet "header" information embedded within each of the emails described above, identifying the electronic email from which the header information was generated.
- c. Electronic copies of any and all of the attachments to the emails described above (identifying the email to which they were attached), if same are not capable of being republished by printing without significant expense, e.g., video and audio file attachments.

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<sup>1</sup> The Board's counsel selected the date range of January 1, 2008, to December 31, 2012, because those dates corresponded to the dates of the Jerry Sandusky criminal investigation and prosecution by the OAG. AG Kane's *post-hoc* investigation of the Jerry Sandusky criminal investigation led to her staff's discovery of questionable email exchanges by former Justice McCaffery, which led to the revelation of Justice Eakin's emails with OAG staff and the emails that he received from Attorney McGowan.

23. Previously on October 9, 2014, in connection with another investigation, the Board's counsel, by personal service, issued subpoena *duces tecum* No. 2014-044 to AG Kane that ordered her to produce the following:
- a. Printed copies of any and all emails and printed copies of any and all attachments to those emails (if same are capable of reproduction by printing) sent to or from any email address used by, or known to be used by, any member of the Pennsylvania Judiciary [...] that were exchanged, forwarded, received or otherwise disseminated between the dates of January 1, 2008, and December 31, 2012, between and among any such jurist and any employee of the Pennsylvania Office of Attorney General, including former employees of the Pennsylvania Office of Attorney General whose employment has ended, including, but not limited to, any and all emails which contain pornographic images, sexually explicit, sexually suggestive or sexually-charged material, or other improper content, or are titled to indicate they contain such content, showing any and all senders, recipients, including, but not limited to direct recipients, Cc'd recipients or Bcc'd recipients, dates, content and any and all information relating thereto, including but not limited to, whether or not any email and its content were opened by the recipient.
  - b. Printed copies of the internet "header" information embedded within each of the emails described above, identifying the electronic email from which the header information was generated.
  - c. Electronic copies of any and all of the attachments to the emails described above (identifying the email to which they were attached), if same are not capable of being republished by printing without significant expense, e.g., video and audio file attachments.
24. On November 4, 2014, OAG First Deputy Bruce Beemer (FD Beemer) contacted Board Chief Counsel Robert A. Graci and informed him that he had material for the Board's review.
25. The Board's investigator obtained the material provided by FD Beemer on November 4, 2014; because the Board's offices were closed that day for Election Day, the material received from FD Beemer was marked received on November 5, 2014, the following business day.
26. The material received by the Board on November 5, 2014, consisted of one disc containing 48 Microsoft Outlook files (the November 5, 2014 disc), which comprised four emails that were sent by Justice Eakin from his "John Smith" email address, and 44 emails (inclusive of several duplicates or responses) that

were received by Justice Eakin at his "John Smith" email address; and printouts of the 48 emails contained on the disc.

- a. The emails received by Justice Eakin that were contained on the November 5, 2014 disc were sent to him partially by Attorney McGowan as part of his "blast" email practice and partially by members of the golfing group, including DAG Baxter.

27. In chronological order, the emails sent by Justice Eakin on the November 5, 2014 disc contained the following content:

- a. An email bearing the subject line "Why I failed 4<sup>th</sup> Grade," sent Monday, March 29, 2010.

The email contains a photograph of an elementary school teacher in the midst of a group of school-aged children at desks; the teacher is holding open a book bearing the words "Grammar 101." A word balloon from the teacher asks, "So – an abstract noun is something you can think of but not touch...Can you give me two examples..." A student responds "Your Tits!"

- b. A thread of emails bearing the subject line "Personal Note." Justice Eakin did not send the email that initiated the thread, which contained a joke which included a series of pictures of women in increasing levels of undress, culminating in a picture of a topless woman in a hot tub. However, Justice Eakin sent three emails in the discussion that ensued following the joke, which referenced the attendance of the golfing group at a Myrtle Beach strip club.

28. The content of the emails received by Justice Eakin included photographs of nude or semi-nude women, video clips of comedic skits that had sexually-suggestive themes, and photographic slide shows of faux "motivational posters" and other pictures that contained nude or semi-nude women and jokes based on negative social and gender stereotypes. A description of the emails Justice Eakin received that are contained on the November 5, 2014 disc is as follows:

- a. An email bearing the subject line "FW: A little family fun...FW WHEN YOUR DAUGHTER WANTS TO GET HER EARS PIERCED", sent Thursday, April 8, 2010, at 4:53 p.m., by Attorney McGowan.

This email contains a video clip of a scene from a motion picture titled "Say It Isn't So" (R 2001), wherein a family eating dinner is discussing the

propriety of their daughter's ear piercings. In rage, she exposes her breasts and her pierced nipples.

- b. An email bearing the subject line "FW: Bank," sent Monday, May 11, 2009, at 11:39 a.m., by Attorney McGowan.

This email contains a clip of a comedy skit wherein a woman in line at a sperm bank is asked a question by a man, and, when she responds, she spits out what appears to be sperm in her mouth.

- c. An email bearing the subject line "FW: Beware of the Big Bad Wolf xxxx", sent Wednesday, July 29, 2009, at 12:13 p.m. by Attorney McGowan.

- i. This email contains a cartoon video clip of Little Red Riding Hood, the Three Little Pigs, and the Big Bad Wolf engaging in sexual conversations.

- ii. At the conclusion of the video, Little Red Riding Hood, nude, directs the Big Bad Wolf to "eat [her], just like the book says."

- d. An email bearing the subject line "FW: Friendship strings/a man's chain letter," sent Monday, February 9, 2009, at 9:10 a.m., sent by DAG Baxter.

This email contains a pictorial "chain letter" interspersed with photographs of women in sexually suggestive poses wearing g-string panties. There is one photograph in the montage of women sunbathing with exposed breasts.

- e. An email bearing the subject line "FW : FW (no subject)", sent Tuesday, February 24, 2009, at 3:50 p.m., by Attorney McGowan.

- i. This email contains topless photographs of an extraordinarily large breasted African American woman.

- ii. In the email thread, the woman is described as being in the Guinness Book of World Records for her 100Z size bra.

- f. A second email bearing the subject line "FW: Fw (No subject)," sent Friday, March 6, 2009, at 5:06 p.m., by Attorney McGowan.

- i. This email contains a picture of a Volkswagen Beetle with a woman's pubis on the car's hood.
  - ii. The email thread contends that the Beetle's female owner photographed her own pubis and somehow was able to put the picture on the car's hood.
- g. An email bearing the subject line "FW: Fwd Why women stay single..." sent on Wednesday, March 5, 2009, at 11:47 a.m., by Attorney McGowan.

This email contains a montage of pictures of men in bizarre scantily-clad costumes.

- h. An email bearing the subject line "FW: Girls You Can't Take Anywhere," sent Saturday, December 4, 2010, at 1:31 p.m., by Attorney McGowan.
    - i. This email contains a pictorial montage of women, fully clothed, generally making sexually suggestive poses in public with inanimate objects.
    - ii. In one photograph, a woman is shown sucking milk from a cow's udder.
  - i. An email bearing the subject line "FW: Happy Ending!" sent Monday, May 10, 2010, at 4:07 p.m., by Attorney McGowan.

This email contains a joke clip where, after a man receives a massage from a female Asian masseuse in a bikini, she asks if he wants a "happy ending," impliedly, a sexual favor. He responds "yes," and balloons and clowns fill the room as if it was a birthday party.

- j. An email bearing the subject line "FW: How to tell when your house is infected with the swine flu" sent Friday, May 15, 2008, at 12:35 p.m., by Attorney McGowan.

This email contains a forwarded picture of an obese nude woman on all fours wearing a pig's snout, pig's ears, and a pig's tail.

- k. Two emails bearing the subject line "FW: Ladies toilet," sent Monday, February 23, 2009, at 2:01 p.m. and 2:03 p.m., respectively, by Attorney McGowan

These emails contain a video clip of a prank where a man, wearing a toilet costume scares two women attempting to use a public bathroom.

- l. An email bearing the subject line "FW: Mission Impossible" sent Tuesday, October 6, 2009, at 3:01 p.m., by Attorney McGowan.

This email contains a video clip of an average-sized man engaging in sexual intercourse with a large woman, while the theme from "Mission Impossible" played in the background.

- m. An email bearing the subject line "FW: Morning Funnies" sent Wednesday, July 29, 2009, at 11:33 a.m., by Attorney McGowan.

This email contains a photographic slide show entitled "All men are the same." Generally, the pictures show small children ogling women's breasts and bodies. One photograph depicts a picture of a woman on a nude beach with a baby sitting next to her grabbing one of her nipples, and one photograph has a small child putting the breasts of an unclothed Barbie doll in his mouth.

- n. An email bearing the subject line "FW: Please Help !!" sent Wednesday, January 14, 2009, at 3:55 p.m., by Attorney McGowan.

This email contains a clip of a Comedy Central skit featuring Carmen Electra talking about a faux "charity" called "Tits for Tots."

- o. An email bearing the subject line "FW: Short golf story..." sent Tuesday, July 10, 2012, at 3:26 p.m., by Attorney McGowan.

This email contains a joke about a golfer cheating on his wife and, impliedly, running her over with his golf cart.

- p. An email bearing the subject line "FW: the end of civilization" sent Friday, January 30, 2009, at 3:36 p.m., by Attorney McGowan.

This email contains a video clip of Eve walking around the Garden of Eden wherein she is greeted by an effeminate Adam.

- q. An email bearing the subject line "FW: THIS IS THE BEST HALLOWEEN COSTUME EVER" sent Wednesday, October 28, 2009, at 2:26 p.m., by Attorney McGowan.

This email contains the same video clip described above at Paragraph 28(k)(i).

- r. An email bearing the subject line "FW: Too Old to Squat" sent Tuesday, June 7, 2011, at 11:09 a.m., by Attorney McGowan.

This email contains a joke and a corresponding montage of photographs of men and women in various levels of undress.

- s. An email bearing the subject line "FW: UPS Man" sent Wednesday, October 20, 2010, at 1:15 p.m., by Attorney McGowan.

This email contains a video clip of a UPS man delivering a package to a woman's home. The woman, who jumped out of the shower still nude, is visible from behind. When she approaches the door, the UPS man opens the mail slot, looks in, and says "Hey curly, is your mom home?" The woman runs away.

- t. An email bearing the subject line "FW: VIBRATOR WARNING..." sent Monday, June 21, 2010, at 5:32 p.m., by Attorney McGowan.

This email contains a two-part pictorial joke; the first picture attempts to warn women against using a corn cob for a vibrator. The second picture is of a topless woman with her legs spread, with her genital area entirely covered by popcorn.

- u. An email bearing the subject line "FW: When Somebody Steals Your Kodak Moment" sent Tuesday, January 13, 2009, at 5:35 p.m., by Attorney McGowan.



This email contains a collage of pictures of people being "photobombed" in various ways. For example, in one picture, a couple is being married on a beach and, in the distance of the photograph, a topless woman is walking down the beach.

- v. An email bearing the subject line "Fwd: A REAL MAN'S CHAIN LETTER -XXX" sent Thursday, November 12, 2009, at 7:51 p.m., by B.M., a member of the golfing group.

This email contains a series of pictures of women in a wet t-shirt contest and two photos of a woman's breasts.

- w. An email bearing the subject line "FW: ANOTHER SELFISH SPORTS STAR sent Wednesday, August 18, 2010, at 9:53 p.m., by B.M.

- i. This email contains a picture of pro tennis player Simona Halep playing tennis, and a discussion about her 34 DD breasts and the difficulty that they cause her when playing tennis.
- ii. The email then states "WILL SOMEONE PLEASE TELL THIS KID THAT WINNING ISN'T EVERYTHING! THIS SELFISH SPOILED LITTLE BRAT SHOULDN'T BE SO CONSUMED WITH 'WINNING MAJOR TENNIS TOURNAMENTS'! WHAT ABOUT US...THE HARD-WORKING EVERYDAY FAN?"

- x. An email bearing the subject line "Fwd: Beer Temperature Tester," sent Tuesday, February 14, 2012, at 1:25 p.m., by B.M.

This email contains two pictures of a woman dipping her nipples into glasses of beer.

- y. An email bearing the subject line "Fwd: cup sizes tt#2," sent Monday, January 2, 2012, at 3:37 p.m., by B.M.

- i. This email contains a joke interspersed with pictures of nude or semi-nude women of increasing breast size. The joke concludes with an over-sized golf tin cup.
- ii. The joke asks, "WHICH OF THE FOUR CUP SIZES PICTURED BELOW EXCITES OLDER MEN THE MOST?"

- z. An email bearing the subject line "Fwd: Farewell to My Golf Friends," sent Sunday, December 19, 2010, at 5:36 p.m., by B.M.
  - i. This email contains a photographic slide show of pictures concluding with two pictures of nude or semi-nude women on bicycles.
  - ii. The joke indicates that the golfer has taken up a new hobby with new "Friends."
- aa. An email bearing the subject line "Fwd: Fw: Daily meds" sent on Friday, February 26, 2010, at 3:39 p.m., by B.M.

This email contains pictures of nude or semi-nude women in sexually suggestive poses.
- bb. An email bearing the subject line "Fwd: FW: Emailing: Male Antidepressants.wmv," sent Saturday, November 27, 2010, at 11:48 p.m., by B.M.
  - i. This email contains a video featuring shorter video clips of women's breasts' bouncing; some of the women in the clips expose their bare breasts.
  - ii. While the clip plays, the song "Don't Worry, Be Happy" plays in the background.
- cc. An email bearing the subject line "Fwd: Fw: Hooter's 2th XX," sent Wednesday, May 12, 2010, at 8:06 p.m., by B.M.
  - i. This email contains a photographic slide show of nude women, who were apparently employed by Hooter's restaurant.
  - ii. The images appear to be scanned from *Playboy* magazine.
- dd. An email bearing the subject line "Fwd: FW: Priceless," sent Tuesday, June 8, 2010, at 8:06 p.m., by B.M.
  - i. This email contains a photograph and corresponding joke. The joke states "Admission to Six Flags....\$65.000; Popcorn and a soda at the refreshment stand.....\$9.00; Paint-on tattoo....\$7.00; a set of tits that can handle 5 G's on a roller coaster and still look firm. Priceless!"

- ii. The picture is of two women exposing their breasts while riding a roller coaster.
- ee. An email bearing the subject line "Fwd: Fw: We stare because we care (it all makes sense to me!)," sent Wednesday, September 23, 2009, at 9:43 a.m., by B.M.  
  
This email contains a number of photographs of nude women in sexually suggestive poses.
- ff. An email bearing the subject line "Fwd: FW: Will the dollar fall?" sent Thursday, February 25, 2010, at 9:21 p.m., by B.M.  
  
This email is a picture of a nude woman with a 100 dollar bill between her buttocks.
- gg. An email bearing the subject line "Fwd: Greek Economy," sent Saturday, November 27, 2010, at 11:28 a.m., by B.M.
  - i. This email contains a joke and a picture of a woman sitting in a restaurant next to an ashtray; due to the angle of the camera shot, one of her bare breasts is visible in the picture.
  - ii. The joke says "There is no way in hell the Greeks will be able to control their economy and meet the terms of the bailout by the EEC and the IMF. They can't even enforce their No Smoking regulations. The new law banned smoking in their eateries since 7/1/09. Look how many cigarettes are in the ashtray...In this restaurant...".
- hh. An email bearing the subject line "Fwd: How do YOU pronounce Oklahoma?" sent Thursday, April 22, 2010, at 1:23 p.m., by B.M.  
  
This email contains a picture of a large-breasted young woman wearing a tight fitting Oklahoma t-shirt.
- ii. An email bearing the subject line "Fwd: MOTIVATIONAL POSTERS," sent Wednesday, February 15, 2012, at 1:21 p.m., by B.M.
  - i. This email contains a photographic picture slide show containing "motivational" or "demotivational" pictures with pictures of semi-nude or topless women in them.

- ii. The majority contain sexually-suggestive themes or jokes based on gender or sexual orientation.
  - iii. One picture of an apparently nude woman sitting on a bed has the following text:, "Dear Abby, I'm an 18 year-old virgin in Arkansas. Are my brothers gay?"
  - iv. Another picture depicts what appears to be a feminist protest in front of a Hooters restaurant; the text of the picture states "SEXISM – Only ugly bitches complain about it."
- jj. An email bearing the subject line "Fwd: Neck exercises sent to me by a doctor – great 4 poker players too," sent Sunday, January 29, 2012, at 1:34 p.m., by B.M.  
  

This email contains photographs of nude or semi-nude women at odd angles that require the viewer to stretch their neck to see the picture in its intended fashion.
- kk. An email bearing the subject line "Fwd: Personal Note," sent Sunday, December 18, 2011, at 8:02 p.m., by B.M.
  - i. This email contains a joke which included a series of pictures of women in increasing levels of undress, culminating in a picture of a topless woman in a hot tub.
  - ii. Justice Eakin responded to this email, as set forth above at Paragraph 27(b).
- ll. An email bearing the subject line "Fwd: protect your nose from the sun," sent Monday, August 2, 2010, at 8:55 p.m., by B.M.  
  

This email contains a picture of a man and a woman in the ocean; the man is kissing the woman's stomach and his nose is in a shadow caused by her breasts.
- mm. Three emails bearing the subject line " Re: FW How to tell when your house is infected with the swine flu" sent Friday, May 15, 2009 at 1:04 p.m. by B.P., 1:42 p.m., by J.E., and 1:50 p.m. by E.S., respectively.

- i. These emails were sent to Justice Eakin and the other recipients of Attorney McGowan's "swine flu" email by the aforementioned persons.
    - ii. Justice Eakin did not respond to the emails.
  - nn. An email bearing the subject line "Re: Neck exercises sent to me by a doctor," sent Sunday, January 29, 2012, by C.S., another member of Justice Eakin's golfing group.
    - i. This email was sent to Justice Eakin and the other recipients of the "Neck exercises" email noted above at Paragraph 28(jj).
    - ii. Justice Eakin did not author a response to the email.
  - oo. Other than what is described above at Paragraph 27(b), there were no emails contained on the November 5, 2014 disc that suggested that Justice Eakin replied or responded to any of the emails sent to him by others that contained nude or semi-nude women, video clips of comedic skits that had sexually-suggestive themes, and photographic slide shows of faux "motivational posters" and other pictures that contained nude or semi-nude women and jokes based on negative social and gender stereotypes that were contained on the November 5, 2014 disc.
29. On November 20, 2014, the Board's counsel received an email from FD Beemer providing access to an "electronic vault" of emails stored on the OAG's servers.
  30. This "electronic vault" contained emails exchanged among the then-Justices of the Supreme Court and OAG personnel from the Justices' official "pacourts.us" email addresses.
  31. Pertaining to Justice Eakin, the "electronic vault" contained 415 Microsoft Outlook files that constituted emails that were exchanged between Justice Eakin at Justice.Eakin@pacourts.us, his official court-provided email address, and OAG staff.
    - a. The emails sent and received by Justice Eakin with OAG staff at Justice.Eakin@pacourts.us were either proper professional communications or limited social exchanges that did not contain content that a person of reasonable sensibilities would find offensive.

- b. The only emails that Justice Eakin received at JusticeEakin@pacourts.us that contained content that a person of reasonable sensibilities would find offensive were some "blast" emails that were sent to him and others, including OAG staff, by former Justice McCaffery.
- c. In chronological order, these emails, sent by Justice McCaffery to Justice Eakin and others, were as follows:
  - i. An email sent on December 11, 2008, bearing the subject line "FW: Fwd(3) Did I read it right???" This email contains signs or billboards with typographical errors, bizarre or offensive messages.
    - a. One sign advertises Southern Comfort liquor and states "Liquid panty remover."
    - b. Another sign states "Pasadena High - School Tarts Mon. - 9 A.M."
  - ii. An email sent on January 27, 2009, bearing the subject line "FW: FW: Foreign Commercials" sent on January 27, 2009. This email contains video clips of several foreign commercials. One of these commercials depicts a man sitting in a bar, who is approached by a seductively-dressed woman. When she attempts to sit down next to the man, he pulls the chair away from her to retrieve the bag of snacks that was on the chair. She then falls to the ground.
  - iii. An email sent on April 20, 2009, bearing the subject line "FW: Fw: Best Husband (UNCLASSIFIED)." This email contains a picture slide show of men, supposedly husbands, watching women, supposedly their wives, do strenuous physical activity without assisting.
  - iv. An email sent on April 28, 2009, bearing the subject line "FW: Fw: Can you be fooled???" This email contains pictures of Thai transsexual women and asks the viewer to guess whether the pictured transsexual woman is "a girl or a guy." In fact, all of the transsexual women pictured were born male.

- v. An email sent on September 21, 2009, bearing the subject line "FW: The People at Wal-Mart." This email contains pictures of people at Wal-Mart with outlandish dress or appearance.
- vi. An email sent on December 3, 2009, bearing the subject line "FW: Tiger." This email contains a picture of Tiger Woods and his former wife, who is holding a golf club. Tiger Wood's face is Photoshopped to indicate that his wife beat him with the golf club.
- vii. An email sent on December 15, 2009, bearing the subject line "FW: Recruiting...Navy style." This email contains a video clip suggesting that potential recruits should consider the United States Navy because it is "co-ed" and that, consequently, they could "get laid." The clip contains photographs of women in American flag bikinis and an image of a man and a woman in a shower together, but there are no pictures of bare female breasts, buttocks, male or female genitals, or pornographic content.
- viii. An email sent on December 24, 2009, bearing the subject line "Fw: I DIDN'T KNOW YOU COULD DANCE." This email contains a clip of a man doing a strip tease for a woman; when he strips down to his underwear, a brown stain is visible on the underwear, and the woman laughs.
- ix. An email sent on January 28, 2010, bearing the subject line "FW: Fwd: The Border." This email contains the following statement:

\*LET ME SEE IF I GOT THIS RIGHT..\*

IF YOU CROSS THE NORTH KOREAN BORDER  
ILLEGALLY YOU GET 12 YEARS HARD LABOR.

IF YOU CROSS THE IRANIAN BORDER ILLEGALLY YOU  
ARE DETAINED INDEFINITELY.

IF YOU CROSS THE AFGHAN BORDER ILLEGALLY,  
YOU GET SHOT.

IF YOU CROSS THE SAUDI ARABIAN BORDER  
ILLEGALLY YOU WILL BE JAILED.

IF YOU CROSS THE CHINESE BORDER ILLEGALLY  
YOU MAY NEVER BE HEARD FROM AGAIN.

IF YOU CROSS THE VENEZUELAN BORDER ILLEGALLY  
YOU WILL BE BRANDED A SPY AND YOUR FATE WILL  
BE SEALED.

IF YOU CROSS THE CUBAN BORDER ILLEGALLY YOU  
WILL BE THROWN INTO POLITICAL PRISON TO ROT.

IF YOU CROSS THE U.S. BORDER ILLEGALLY, YOU  
GET

- \*A JOB,
- \*A DRIVERS LICENSE,
- \*SOCIAL SECURITY CARD,
- \*WELFARE
- \*FOOD STAMPS,
- \*CREDIT CARDS,
- \*SUBSIDIZED RENT OR A LOAN TO BUY A HOUSE,
- \*FREE EDUCATION,
- \*FREE HEALTH CARE,
- \*A LOBBYIST IN WASHINGTON
- \*BILLIONS OF DOLLARS WORTH OF PUBLIC  
DOCUMENTS PRINTED IN YOUR LANGUAGE
- \*THE RIGHT TO CARRY YOUR COUNTRY'S FLAG  
WHILE YOU PROTEST THAT YOU DON'T GET ENOUGH  
RESPECT
- \*AND YOU CAN VOTE REPUBLICAN or DEMOCRATIC.

I JUST WANTED TO MAKE SURE I HAD A FIRM GRASP  
ON THE SITUATION...

- x. An email sent on March 18, 2010 bearing the  
subject line FW: Canadian signs They tell it like it  
is." This email contains pictures of billboards and  
signs allegedly posted in Canada.
  - a. One sign allegedly from the American  
Kennel Club states "It's all about the  
bitches."
  - b. Another sign allegedly advertised the  
then-new 2003 BMW Z3 Roadster



stating "For when you can't get laid on  
your looks and charm alone."

- d. None of the "blast" emails sent by Justice McCaffery that were received by Justice Eakin at his Justice.Eakin@pacourts.us email address contained nudity or pornography.
  - e. Justice Eakin received the aforementioned emails more than four years before the complaints against him at 2014-647 and 2014-650 were opened by the Board in October 2014.
- 32. The "electronic vault" access provided to Board staff on November 20, 2014, did not contain any emails from Justice Eakin's "John Smith" account.
  - 33. Other than the 415 Justice.Eakin@pacourts.us emails that were contained in the "electronic vault" and the 48 emails that were contained on the November 5, 2014 disc, the Board was not provided with any other emails exchanged among Justice Eakin and OAG staff, despite the existence of subpoenas 2014-044 and 2014-048.
  - 34. Based on the lack of production of any other emails exchanged among Justice Eakin and OAG staff, Board staff concluded that it was in possession of all of the emails exchanged among Justice Eakin and OAG staff that involved the material requested by subpoena Nos. 2014-044 and 2014-048, *i.e.*, any and all emails which contained pornographic images, sexually explicit, sexually suggestive or sexually-charged material, or racially-charged jokes, or other improper content, or are titled to indicate they contain such content between the dates of January 1, 2008, and December 31, 2012.
  - 35. Board counsel presented the Eakin matter to the Board at its December 8, 2014 meeting, and the Board voted to dismiss complaint Nos. 2014-647 and 2014-650 which were then pending against Justice Eakin.
  - 36. Board counsel informed Justice Eakin of the Board's decision to dismiss the complaints by letter on December 17, 2014.
  - 37. Two days after Board counsel informed Justice Eakin of the Board's dismissal of complaint Nos. 2014-647 and 2014-650, Attorney Robert Byer, special counsel to the Supreme Court, issued an independent report to the Supreme Court regarding the nature of the emails exchanged among the then-Justices of the Supreme Court and OAG staff.
  - 38. Attorney Byer found Justice Eakin's emails to be unremarkable.

39. Despite the Board's prior subpoenas, OAG did not inform the Board of its possession of any emails from Justice Eakin's "John Smith" email address beyond the 48 Outlook files received by the Board on November 5, 2014, and did not provide them to the Board until September 28, 2015.
40. On September 21, 2015, AG Kane's license to practice law in this Commonwealth was suspended by the Supreme Court on a temporary emergency basis, stemming from criminal charges pending against her currently.
41. All five then-currently sitting Justices, including Justice Eakin, voted to suspend AG Kane's law license on an emergency temporary basis.
42. In the wake of the entry of the Supreme Court's suspension order, AG Kane stated that she "instructed [her] office to engage in a comprehensive review of all emails sitting on [OAG] servers to fully comply with [Right to Know Law requests made by media outlets]," and she claimed that "Our preliminary review has generated emails of government officials, including law enforcement officials and judges, heretofore unknown to us. These emails will be fully released either as public documents defined by the Commonwealth Court, or at my discretion."
  - a. Shortly thereafter, AG Kane, on her own or through staff, stated that Justice Eakin had sent and received "racial, misogynistic pornography" on state computers.
  - b. AG Kane also claimed that she provided 1,500 emails sent or received by Justice Eakin to the Board as support for her assertion.
43. Thereafter, for the first time since November 2014, AG Kane sent a letter and enclosed disc, with the words "John Smith" written on the disc on September 28, 2015, to the Honorable Jayne Duncan, Chair of the Board, carbon copied to Chief Justice Thomas G. Saylor of the Supreme Court of Pennsylvania.
44. AG Kane's letter stated, in pertinent part, the following:

Pursuant to an inquiry from the Philadelphia Daily News on Friday, September 11, 2015, concerning any emails on [OAG] servers sent or received by Supreme Court Justice [J.] Michael Eakin using an email address user name of

"John Smith" from a yahoo email account, my office began to retrieve said emails.

A review of these emails indicates that they may trigger Rule 8.3(b) of the Rules of Professional Conduct which states: "A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the

judges [sic] fitness for office shall inform the appropriate authority." As noted, this Rule is a "shall" and makes the disclosure imperative rather than discretionary.

While it is not within the authority of the executive branch to make the final determination, a review indicates these emails may violate Rule 1.2 of the Code of Judicial conduct which provides: "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." In addition [sic] these emails may violate Rule 3.1(c) of the Code of Judicial Conduct which states, in part: "Judges shall regulate their extrajudicial activities to minimize the risk of conflict with their judicial duties and to comply with all provisions of this canon. However a judge shall not...(C) participate in activities that would reasonably appear to undermine the judge's independence, integrity, and impartiality."

45. When opened on a computer, the disc enclosed with AG Kane's letter contained a general file folder entitled "John Smith;" the "John Smith" file folder contained two first-level subfolders entitled "2008-2012" and "2012-present."
46. Both the "2008-2012" and "2012-present" first-level subfolders contained two second-level subfolders entitled "From wap092001" and "To wap092001."
47. The second-level subfolders "From wap092001" contained Outlook files representing emails sent by Justice Eakin from his "John Smith" email address for the time period that was used as the title of the second-level file folder, *i.e.*, 2008-2012 and 2012-Present.<sup>2</sup>
48. The second-level subfolders "To wap092001" contained Outlook files representing emails received by Justice Eakin at his "John Smith" email address for the time period that was used as the title of the second-level file folder, *i.e.*, 2008-2012 and 2012-Present.
49. The "From wap092001" second-level subfolder in the "2008-2012" subfolder on the September 28, 2015 disc contained 120 Outlook files representing 120 emails sent by Justice Eakin at his "John Smith" email address for the relevant time period.
50. The "To wap092001" second-level subfolder in the "2008-2012" subfolder on the September 28, 2015 disc contained 642 Outlook files representing 642 emails

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<sup>2</sup> The designation "2012-Present" on the disc is a misnomer; the latest emails on the discs were sent or received in 2014.

received by Justice Eakin at his "John Smith" email address for the relevant time period.

51. The "From wap092001" second-level subfolder in the "2012-Present" subfolder on the September 28, 2015 disc contained 37 Outlook files representing 37 emails sent by Justice Eakin at his "John Smith" email address for the relevant time period.
52. The "To wap092001" second-level subfolder in the "2012-Present" subfolder on the September 28, 2015 disc contained 144 Outlook files representing 144 emails received by Justice Eakin at his "John Smith" email address for the relevant time period.
53. The grand total of all Outlook files on the September 28, 2015 disc was 943 files, or 157 emails sent by Justice Eakin, and 786 emails received by Justice Eakin.
54. After the Board received AG Kane's letter and the enclosed disc, Board counsel opened Investigation No. 2015-601 into Justice Eakin's conduct of sending and receiving the emails in question.
55. When the September 28, 2015 disc was received, Board staff conducted a file-by-file review of the Outlook files on the disc.
56. Based on their review, Board staff concluded that the September 28, 2015 disc contained emails that had not been seen by any Board staff member during the 2014 investigation of Justice Eakin.
57. Board staff thereafter attempted to gain access to the "electronic vault" to determine if the unseen emails had been made available for viewing by OAG staff at a point in time after the Board had made its decision to dismiss the 2014 investigation.
58. After their preliminary review of the contents of the September 28, 2015 disc, Board staff could not gain access to the "electronic vault" to cross-reference the emails on the September 28, 2015 disc with the emails viewed previously in 2014.
59. Board staff obtained renewed access to the "electronic vault" of emails on OAG servers on October 8, 2015.
60. The contents of the "electronic vault" available to the Board on October 8, 2015, remained limited to the emails exchanged among the 2014 composition of Pennsylvania Supreme Court Justices from their "pacourts.us" email addresses and OAG staff; there were no emails from Justice Eakin's "John Smith" email address available to the Board in the "electronic vault" on October 8, 2015, or at any point thereafter.

61. On October 9, 2015, after the discrepancy in the 2014 emails received by the Board and the 2015 emails received by the Board came to light (both before the Board and in the public), Board counsel issued subpoena No. 2015-019 to AG Kane, ordering her to produce the following by October 16, 2015:
  - a. Printed copies of all emails and printed copies of any attachments to those emails (if same are capable of reproduction by printing) sent to, received from, exchanged, forwarded or otherwise disseminated from any email address used by or known to be used by any current or former member of the Pennsylvania Judiciary, including, but not limited to, Justice J. Michael Eakin, that were sent to, received from, exchanged, forwarded, or otherwise disseminated between and among these jurists and any current or former employee of the Office of Attorney General (OAG), between the dates of January 1, 2008 and the present, which contain any of the following: pornographic images; sexually-charged or sexually-suggestive material; material that has been described publicly by the Attorney General as "misogynistic;" material that has been described publically by the Attorney General as "racist" or "racial;" material that is offensive to currently and commonly-held notions of decency; or other improper content; or are titled to indicate that they contain such content, showing any and all senders, recipients, including but not limited to direct recipients, Cc'd recipients or Bcc'd recipients, dates, contents, and any and all information relating thereto, whether or not the email and its content were opened by the recipient.
  - b. Electronic copies of any and all of the emails and the attachments to the emails described above (identifying the email to which they are attached).
62. Purportedly to coordinate compliance with the subpoena, OAG Chief of Staff Jonathan A. Duecker attempted to call Chief Counsel Robert A. Graci between October 9, 2015 and October 15, 2015.
63. Chief Counsel Graci was unwilling to speak with Mr. Duecker regarding AG Kane's compliance with the subpoena because Mr. Duecker does not have a license to practice law in this Commonwealth.
64. Thereafter, on October 15, 2015, Mr. Duecker sent a letter to Chief Counsel Graci with two discs, the first disc contained a single file entitled "PA\_Supreme\_Court\_Review\_10-14-2015.pst," and a copy of the November 5, 2014 disc containing the 48 Outlook files previously viewed by the Board staff in the 2014 investigation; the second disc also contained 48 PDF files of the text (and some embedded attachments) of the 48 Outlook files.

- a. Also included with the letter and two discs were four reams of printed emails titled as follows: (1) "December 5, 2008 – December 29, 2008 Non-Sexual Forwards;" (2) "December 30, 2008 – January 16, 2009 Non-Sexual Forwards;" (3) "January 16, 2009 – February 6, 2009 Non-Sexual Forwards;" and (4) "2008-2012 Potential Duplicates Non-Sexual Forwards."
- 65. When opened with an "Outlook viewer" program, the "PA\_Supreme\_Court\_Review\_10-14-2015.pst" file contained two first-level file folders entitled "2008-2012 emails" and "2013-2014 emails."
- 66. When opened, the two-first level file folders contained two second level folders entitled "Non-sexual Forwards" and "Sexual Forwards."
  - a. The "2008-2012 emails" first-level file folder also had a third-level file folder entitled "Potential Duplicates."
- 67. Contained on the September 28, 2015 disc or the "PA\_Supreme\_Court\_Review\_10-14-2014.pst" file are emails that were sent by Justice Eakin from his "John Smith" email address to the golfing group, either to individuals in the group or as a group, during the time period of 2008-2012 and 2012-2014; a number of these emails contained subject matter that involved nudity, gender stereotypes, and ethnic stereotypes; these emails are as follows:
  - a. An email bearing the subject line "Advice from a retired sympathetic husband," sent Friday, February 2, 2012, at 8:54 am.

This email is a "joke" type email about a retired husband named "Ron" who recounts treating his wife in a sexist fashion while making it seem like he was doing her a favor. The punchline of the joke concludes with an "editor's note" about "Ron" being found with a "golf club jammed up his rear end."

- b. An email bearing the subject line "Environmental Spill," sent Monday, May 10, 2010, at 10:28 a.m.

This email contains text that states the following: "Subject: Slut Bus Crashes Causing Major Slut Spill...As if they didn't have enough problems.....There is nothing worse than California slut!" Attached to the email is a file entitled "Slut\_Bus\_Crashes\_Causing\_Major\_Slut\_Spill.wmv" which is a satirical video production by the Onion.com about a busload of "sluts" crashing in California. The

video contains images of suggestively dressed, and one bare-breasted, women who are drinking alcohol to excess and engaging in compromising, sexually-suggestive activity.

- c. An email bearing the subject line "Re: Environmental Spill," sent Monday, May 10, 2010, at 10:46 a.m.

- i. This email contains text that constituted Justice Eakin's response to a comment made by DAG Baxter regarding the "Slut Bus" video mentioned above at Paragraph 67(b).
  - ii. Justice Eakin's response was as follows: "As [G.S.] once remarked.. 'Ah, the smell of tittie powder in the morning.'"

- d. An email bearing the subject line "For your edification," sent Wednesday, June 1, 2011 at 10:20 a.m.

This email contains text that states the following: "How the word Boob was invented[,]" which is followed by a pictorial joke using the letters of the word "boob" to imply views of a woman's breasts from different directions, *i.e.*, "B- top view," and the like.

- e. An email bearing the subject line "Fw (no subject)," sent Monday, January 30, 2012, at 10:41 a.m.

This email contains text that states the following: "This is how a bacon cheeseburger is made. It was sent to me by my doctor so I know it is true. Don't bother checking Snopes." Following the text is a picture of a pig attempting to mount a cow lying in a field.

- f. An email bearing the subject line "Fw: Arnold's misunderstanding" sent Tuesday, June 7, 2011, at 10:58 a.m.

This email contains the following text: "It's too bad Arnold Schwarzenegger had this little misunderstanding because English isn't his native language. He told Maria that their housekeeper wanted a raise. Maria said, 'Screw her.' Any simple-

minded, semi-literate Austrian could have made the same mistake."

- g. An email bearing the subject line "Fw: MAY ALL YOUR DAYS START THIS WELL," sent Tuesday, July 6, 2010, at 1:24 p.m.

This email contains the following text: "My suggestion for about the only way Julie the Cruise Director could improve the Myrtle trip....." Following the text is a picture of an older man riding his bike towards the camera, smiling, and a shirtless woman walking away from the camera. At the bottom of the picture is the caption "Some Days - they just start better than others."

- h. An email bearing the subject line "Marital advice," sent Tuesday, July 6, 2010, at 1:20 p.m.

This email contains text that states the following: "A woman goes to the doctor, beaten black and Blue.

Doctor: 'What happened?'

Woman: 'Doctor, I don't know what to do.

Every time my husband comes home drunk he beats me to a pulp.'

Doctor: 'I have a real good medicine for that. When your husband comes home drunk, just take a glass of sweet tea and start swishing it in your mouth. Just swish and swish but don't swallow until he goes to bed and is asleep.'

Two weeks later the woman comes back to the doctor looking fresh and reborn.

Woman: 'Doctor that was a brilliant idea! Every time by husband came home drunk, I swished that sweet tea. I swished and swished, and he didn't touch me!'

Doctor: 'You see how much keeping your mouth shut helps?'



- i. An email bearing the subject line "Re: Holiday Party," sent Thursday, December 17, 2009, at 9:15 a.m.

- i. This email constitutes a response by Justice Eakin to DAG Baxter's initiating email regarding his inability to attend Justice Eakin's annual Holiday Party. At the close of DAG Baxter's message, he asks Justice Eakin to "Slap Stoney's ass for me and wish him a Merry Christmas. Lubba's too if he shows up. And, well, Janey's too and let me know how it was. Maybe next year we won't have the conflict and I can slap hers for myself."

- ii. Justice Eakin responded, in part, "Will do."

- j. Two emails bearing the subject line "Re: [L.] getting married," sent Monday, 12/28/2009, at 1:49 p.m. and 2:44 p.m., respectively.

These emails constitute a sexually-suggestive thread/conversation between Justice Eakin and DAG Baxter about a woman who they both know that was employed by Justice Eakin at the time of the email thread/conversation.

- k. Six emails bearing the subject line "Re: Myrtle next year![,] " sent Thursday, June 18, 2009, between 8:45 a.m. and 10:21 a.m.

- i. These emails constitute a thread/discussion between Justice Eakin and his golfing group.

- ii. Points in the thread/discussion became sexually suggestive; at one point in the exchange, Justice Eakin wrote the following: "Being on the road- I just got this exchange - you guys sound like a bunch of women, worrying about offending and being misunderstood and falling all over each other thanking everyone and getting misty eyed! Jeezus, boys, is it a menstrual [sic] thing? The next thing we'll be splitting the check at Finn McCool['s 'now you had the BLT and an iced tea, so you owe....' Snap the hell out of it!!! Everybody's great, everybody's in - Bax, get the money up front and all of the rest of us will go. New Judge [B.] will find [out] a judge has to go out of state to see boobs. New Dad [S.] will go unless he knocks Momma up again. [S.] can spend an extra hour in the OR and

pay for all of us!! I'm in. I've got a stake of fifty ones and a titty-deficit that needs cured."

- iii. A sexually-suggestive thread/discussion continued between Justice Eakin and DAG Baxter regarding two women known to both men.
- l. Three emails bearing the subject line "Re: Personal Note," sent Monday, December 19, 2011, at 1:24 Thursday, December 22, 2011, at 9:07 a.m., p.m., and Tuesday, December 27, 2011, at 11:48 a.m..
  - i. These emails constitute a thread/discussion between Justice Eakin and his golfing group that was initiated with an attempted joke containing several embedded pictures of partially nude or scantily-clad women.
  - ii. This email thread was referred to above at Paragraphs 27(b) and 28(kk), and was contained in part on the November 5, 2014 disc.
- m. An email bearing the subject line "The complete list (so far)," sent Friday, December 4, 2009, at 9:48 a.m.
  - i. This email constituted a list of off-color jokes regarding Tiger Woods' failed marriage.
  - ii. One of the jokes was "Given Tiger's racial heritage, can we call this a Black Thai affair?"
- n. An email bearing no subject line, sent Monday, April 20, 2009, at 3:04 p.m.
  - i. This email constituted an off color joke regarding President Barack Obama.
  - ii. The joke states "In honor of the 44<sup>th</sup> President of the United States, Baskin-Robbins Ice Cream has introduced a new flavor, "Barocky Road[.] Barocky Road is a blend of half Vanilla, half Chocolate, and surrounded by Nuts and Flakes. The Vanilla portion of the mix is not openly advertised and usually denied as an ingredient. The Nuts and Flakes are all very bitter and hard to swallow. The cost is \$100.00 per scoop. When purchased it will be presented to you in a large, beautiful cone, but then the Ice Cream is

taken away and given to the person in line behind you. Thus[,] you are left with an empty wallet, no change, holding an empty cone, with no hope of getting any Ice Cream."

- o. An email bearing the subject line "Re: I need your advice," sent Monday, December 23, 2013, at 9:50 a.m.

- i. This email is part of a thread/discussion initiated by an email from one of Justice Eakin's golfing group containing pictures of a large-breasted woman in tight fitting clothing doing yoga exercises in a field; the joke asks, "I need your advice – Should the grass be cut?"

- ii. Justice Eakin responded to the joke.

- p. An email bearing the subject line, "Warning do NOT take your girl to the Phillies game this weekend," sent Monday, May 21, 2012, at 9:56 a.m.

This email contains a link to a YouTube.com video, which is apparently a satirical video of a montage of men claiming that former Phillies' baseball player Pat Burrell had sexual intercourse with their girlfriends. The video contains "bleeped out" profanity, but no nudity.

- q. An email bearing the subject line, "Query: did Fioravanti get a partnership cut," sent Monday, July 26, 2013, at 12:48 p.m.

This email reprints an article that reported that an attorney named Knight (first name not stated) of the Bucks County law firm Fioravanti & Knight was suspended by the Pennsylvania Supreme Court for one year because he received oral sex from a woman in exchange for legal services in a DUI case.

- r. An email bearing the subject line "Why I failed 4<sup>th</sup> Grade," sent Monday, March 29, 2010.

The email is the same email mentioned at Paragraph 27(a) above.

68. With the exception of the emails listed above at Paragraphs 67(l) and 67(r), the emails listed above at Paragraph 67 were not contained on the November 5, 2014 disc.
69. Contained on the September 28, 2015 disc or the "PA\_Supreme\_Court\_Review\_10-14-2014.pst" file were emails received by Justice Eakin at his "John Smith" email from members of the golfing group during the time period of 2008-2012 and 2012-2014.
- a. A number of the emails received by Justice Eakin from the golfing group contained pictures of nude women; sexually-suggestive themes; gender stereotypes; homophobic content; socioeconomic stereotypes; violence towards women; racial humor; ethnically-based humor; and stereotypes of religious groups. These emails contain material including, but not limited to, the following:
- i. A video clip, entitled "What have we done," of a black woman speaking to the camera about Barack Obama and saying that, as a result of his election, black people won't have to "pay bills." She later bemoans the fact that black people will "have to get jobs" and will, consequently, no longer get a government assistance check. This clip was forwarded by DAG Baxter, and it was not included in the November 5, 2014 disc. This email was sent on Monday, September 21, 2009.
- ii. A picture of a large-breasted professional tennis player named Simona Halep, who is described as wanting breast reduction surgery to help her tennis game. The subject line of the email is "FW: a Sad Day for Tennis." There is no nudity. This email was noted above at Paragraph 28(w). This email was forwarded by Attorney McGowan, and it was also forwarded to Justice Eakin by B.M. The email from Attorney McGowan was not included on the November 5, 2014 disc, although the picture was included in a different email from B.M. This email was sent on Tuesday, June 15, 2010.
- iii. A video clip consisting of an audio track of a prank phone call played on the "Bob and Tom Show," wherein a telemarketer is told by the pranker that the person who was called by the telemarketer was killed and the police were investigating the murder scene. This clip contains some profanity. The email was

forwarded by C.S. of the golfing group and it was not included in the November 5, 2014 disc. This email was sent on Monday, March 14, 2011.

- iv. A series of pictures and text with the subject line "FW: Black is In!" showing pictures of notable black celebrities, including President Obama, highlighting their accomplishments, and concluding with a picture of Michael Jackson, which stated "...Michael Jackson must be kicking himself." This email was sent by DAG Baxter to Justice Eakin and others. It was not included in the November 5, 2014 disc. This email was sent on Wednesday, April 22, 2009.
- v. A video clip of a woman throwing out a "cheap pair of Kmart earrings" on Christmas morning to find that her husband has actually purchased a new Cadillac SUV for her. When she gets in the Cadillac and starts it, it explodes. The video concludes with the words "Merry Christmas, Bitch." This email was forwarded by DAG Baxter, and it was not included in the November 5, 2014 disc. This email was sent Wednesday, December 21, 2011.
- vi. A joke wherein the punchline is a man's name representing the things he enjoys the most, i.e., "B.J. Titsengolf." This joke was forwarded by C.S. to Justice Eakin, and it was not included in the November 5, 2014 disc. This email was sent on Tuesday, June 16, 2009.
- vii. A video clip containing an audio track of a man prank calling a cable company about a new gay and lesbian channel. The audio contains profanity and jokes portraying a negative view of gays and lesbians based on stereotypes. This email was forwarded to Justice Eakin by DAG Baxter. It was not included in the November 5, 2014 disc. This email was sent on Monday, September 14, 2009.
- viii. A video clip in German about Nintendo Wii games which women "should" play, including games that simulate cooking and performing oral sex on men. This email was forwarded by DAG Baxter to Justice Eakin, and it was not included on the November 5,

2014 disc. This email was sent on Wednesday, April 29, 2009.

- ix. A series of nude or semi-nude photographs of women entitled "Friendship strings," which is a reference to the g-string panties worn by some of the women in the pictures. This email was mentioned above at Paragraph 28(d). This email was forwarded to Justice Eakin by DAG Baxter. This email, or some part of the thread that it generated, was included on the November 5, 2014 disc. This email was sent on Monday, February 9, 2009.
- x. A forwarded joke saying "It was once said that a black man would be president when 'pigs fly.' Indeed, 100 days into Obama's presidency... 'swine flu'!!!" This email was forwarded to Justice Eakin by DAG Baxter. It was not included on the November 5, 2014 disc. This email was sent on Thursday, April 30, 2009.
- xi. A joke entitled "golf panties" about couples of Swedish, Irish, and Scottish origin golfing when the wind reveals that the women of the group are not wearing underwear. Upon seeing that his wife is not wearing underwear, the Scotsman offers his wife a comb and tells her to "tidy" up. This email was sent by DAG Baxter to Justice Eakin. It was not included on the November 5, 2014 disc. This email was sent Thursday, August 20, 2009.
- xii. A joke entitled "Man Rules." This lists a number of "rules" for women to follow when dealing with men. These rules are evidently based on gender stereotypes such as "Christopher Columbus didn't need directions and neither do we!" This email was sent by C.S. to Justice Eakin. It was not included on the November 5, 2014 disc. This email was sent on January 26, 2012.
- xiii. A joke video clip with a puppet Osama Bin Laden threatening to kill Santa Claus. This email was sent by DAG Baxter to Justice Eakin. It was not included on the November 5, 2014 disc. This email was sent on Monday, December 7, 2009.

- xiv. A comedy routine by a woman named "Mrs. Hughes," who jokes about her husband and her family life. This email was sent by DAG Baxter to Justice Eakin. It was not included in the November 5, 2014 disc. This email was sent on Wednesday, October 27, 2010.
- xv. A series of "demotivational" posters entitled "New Motivational posters." The jokes are geared toward animals, parenting, female breasts, and Asian accents. This email was sent by DAG Baxter to Justice Eakin. It was not included on the November 5, 2014 disc. This email was sent on Thursday, May 7, 2009.
- xvi. An email entitled a "prayer for dad" with a picture of a young girl praying, with the text "Dear God, please send clothes for all the ladies on Daddy's computer. Amen." This email was sent by C.S. to Justice Eakin. It was not included on the November 5, 2014 disc. This email was sent on Tuesday, December 1, 2009.
- xvii. A series of jokes entitled "rotten but funny," which include jokes about race, gender, and ethnicity. This series of jokes was sent by DAG Baxter to Justice Eakin. It was not included on the November 5, 2014 disc. This email was sent on Monday, December 27, 2010.
- xviii. A joke about an environmentalist woman having to slide down a tree in haste. When she goes to the doctor and asked what took him so long to tend to her wounds, the doctor says "Well, I had to get permits from the Environmental Protection agency, the Forest Service, Fish and Wildlife Commission and the Bureau of Land Management before I could remove old-growth timber from a recreational area. I'm sorry, but due to Obamacare, they turned me down." The joke was sent by DAG Baxter to Justice Eakin. It was not included on the November 5, 2014 disc. This email was sent on Tuesday, January 11, 2011.
- xix. A picture of a woman using her nipples as "beer temperature" testers. This email was sent by B.M. to Justice Eakin. This email was noted above at

Paragraph 28(x). It was included on the November 5, 2014 disc. This email was sent on Tuesday, February 14, 2012.

- xx. A series of pictures entitled a "Real man's Chain Letter" featuring pictures of women in a wet t-shirt contest and a topless woman. This email was sent to Justice Eakin by B.M., his golfing friend. This email was noted above at Paragraph 28(v). It was included on the November 5, 2014 disc. This email was sent on Thursday, November 12, 2009.
- xxi. A joke email regarding a woman's vagina which states, that "the best engine in the world is the vagina. It can be started with one finger. It is self-lubricating. It takes any size piston. And it changes its own oil every four weeks. It is only a pity that the management system is so fucking temperamental." This email was sent by B.M. to Justice Eakin. There are no nude pictures. This email was not included on the November 5, 2014 disc. This email was sent on Sunday, July 25, 2010.
- xxii. A picture of bare breasted women of increasing breast size entitled "Cup sizes." The last picture is of an oversized golf tee, and the email asks "Which cup size excites older men the most?" This email was noted above at Paragraph 28(y) sent by B.M. to Justice Eakin. It was included on the November 5, 2014 disc. This email was sent on Monday, January 2, 2012.
- xxiii. A slide show called "Farewell to my Golf Friends," which includes pictures of bare breasted women and pictures of their buttocks. This email was noted above at Paragraph 28(z). This email was sent by B.M. to Justice Eakin. It was included on the November 5, 2014 disc. This email was sent on Sunday, December 19, 2010.
- xxiv. A slide show called "Daily meds" which contains pictures of nude or semi-nude women evidently scanned from Playboy magazine. This email was sent by B.M. to Justice Eakin. This email was noted above at Paragraph 28(aa). It was included on the November 5, 2014 disc. This email was sent on Friday, February 26, 2010.



- xxv. A video clip of both clothed and bare female breasts bouncing while the song "Don't Worry, Be Happy" plays. This email was noted above at Paragraph 28(bb). This email was sent by B.M. to Justice Eakin. It was included on the November 5, 2014 disc. This email was sent on Saturday, November 27, 2010.
- xxvi. A picture of a large breasted woman holding a can of beer between her bare breasts, with the warning, "Don't do this to a can of beer, it will get warm and explode." This email was sent to Justice Eakin by B.M. It was not included on the November 5, 2014 disc. This email was sent on Sunday, April 25, 2010.
- xxvii. A picture entitled "Priceless" of two women riding a roller coaster with their breasts exposed. This email was noted above at Paragraph 28(dd). It was sent to Justice Eakin by B.M. It was included on the November 5, 2014 disc. This email was sent on Tuesday, June 8, 2010.
- xxviii. A video clip of a man farting in his car after he leaves his girlfriend's apartment; she runs to the car to give him one final kiss, and she discovers that he farted in the car. This email was sent to Justice Eakin by DAG Baxter. It was not included on the November 5, 2014 disc. This email was sent on Monday, February 27, 2012.
- xxix. A series of pictures of bare breasted women entitled "We stare because we care." This email was sent by B.M. to Justice Eakin. This email was noted above at Paragraph 28(ee). It was included on the November 5, 2014 disc. This email was sent on Wednesday, September 23, 2009.
- xxx. A picture entitled "Will the Dollar Fall," of a dollar bill squeezed between a woman's buttocks. This email was noted above at Paragraph 28(ff). It was sent by B.M. to Justice Eakin. It was included on the November 5, 2014 disc. This email was sent on Thursday, February 25, 2010.

- xxxi. A joke about a little girl receiving a ticket from a mounted policeman for a safety violation while riding her new bike that Santa brought her. The girl asks, "Did Santa bring you that horse?" The policeman said "Yes." The little girl responds, "Tell Santa for next year that the dick goes beneath the horse, not on top of it." There is also a picture of a little girl giving the finger to whoever took her picture. This email was sent by B.M. to Justice Eakin. It was not included on the November 5, 2014 disc. This email was sent on Monday, May 10, 2010.
- xxxii. A picture of a woman with an exposed breast sitting at a dinner table entitled "Fwd: Greek economy." The joke with the picture asks how many cigarettes were in an ashtray next to her. This email was noted above at Paragraph 28(gg). It was sent to Justice Eakin by B.M.. It was included on the November 5, 2014 disc. This email was sent on Saturday, November 27, 2010.
- xxxiii. A series of "Motivational Posters" or "demotivational posters." This email was noted above at Paragraph 28(ii). One picture asks, "Dear Abby, I'm an 18 year-old virgin in Arkansas. Are my brothers gay?" This email was sent to Justice Eakin by B.M.. It was included on the November 5, 2014 disc. This email was sent on Wednesday, February 15, 2012.
- xxxiv. A series of nude pictures entitled "Neck exercises sent to me by a doctor." This email was noted above at Paragraphs 28(jj) and 28(nn). The position of the photographs requires the viewer to bend their neck to see them properly. This email was sent to Justice Eakin by B.M.. It was included on the November 5, 2014 disc. This email was sent on Sunday, January 29, 2012.
- xxxv. A series of pictures of bare breasts called "Protect your nose from the sun." The pictures are of a man kissing the stomach of a woman in a bikini, while the two swam in the ocean. This email was noted above at Paragraph 28(ll). It was sent to Justice Eakin by B.M.. It was included on the November 5, 2014 disc. This email was sent on Monday, August 2, 2010.

- xxxvi. A joke called the "Water Miracle." This joke is the same as the "sweet tea" joke, but in this instance, the woman is told by the doctor to swish water in her mouth. This email was sent to Justice Eakin by B.M.. It was not included on the November 5, 2014 disc. This email was sent on Friday, December 9, 2011.
- xxxvii. A joke about robot golf caddies. According to the joke, the silver color of the robot caddies blinded the other golfers, and the golfer using the robot asks, "Why didn't you paint them black?" The man in the golf shop said, "We did. Then four of 'em didn't show for work, two filed for welfare, one of them robbed the pro shop, and the other thinks he's the President." This email was sent by DAG Baxter to Justice Eakin. It was not included in the November 5, 2014 disc. This email was sent on Thursday, August 18, 2011.
- xxxviii. A joke about "hand jobs." This email was sent by DAG Baxter to Justice Eakin. This email was not included in the November 5, 2014 disc. This email was sent on Wednesday January 6, 2010.
- xxxix. A repeat emailing of the "May all Your Days Start this Well" email described above at Paragraph 67(g). This email was sent to Justice Eakin by B.M.. It was not included on the November 5, 2014 disc. This email was sent on Tuesday July 6, 2010.
- xl. A photograph/joke combination about a "homeless golfer." The joke says, "I'm reaching out on behalf of a friend of mine who needs some help who wishes to remain anonymous. His wife told him to go out and get some of those pills that would help him get an erection. When he came back, he handed her diet pills. ANYWAY, he's looking for a place to live. Can you help him?" This email was sent to Justice Eakin by DAG Baxter, it was not included in the November 5, 2014 disc. This email was sent on Monday, January 23, 2012.
- xli. A link to a YouTube video clip of the "Key and Peele" show on Comedy Central, wherein a black inner-city teacher substitutes in a predominantly white middle-class school district and mispronounces all of the

students' names. For example, the teacher pronounces "Aaron" as "A-A-ron." This email was sent by DAG Baxter to Justice Eakin. It was not included on the November 5, 2014 disc. This email was sent on Wednesday, November 14, 2012.

xlii. An email thread containing a message from DAG Baxter to, presumably, Justice Eakin and his golfing friends, which contains the statement, "While most of us are shoveling a foot of snow from our driveways, I thought now would be a good time to bring thoughts of warmth, golf, and titties your way!" This message was forwarded to Justice Eakin by DAG Baxter. It was not included on the November 5, 2014 disc. This email was sent on Friday, January 3, 2014.

xlili. A series of pictures of a large breasted woman, fully clothed, doing yoga poses. There is a joke with these pictures which asks whether the grass the woman is posing on needs to be cut. This email was noted above at Paragraph 67(o). This email was sent to Justice Eakin by B.M. Justice Eakin saw the email because he responded to it. It was not included on the November 5, 2014 disc. This email was sent on Saturday, December 21, 2013.

xliv. A picture of a nude woman driving a convertible BMW. There is a joke about the car's "airbags" functioning, but not its air conditioning. This email was sent to Justice Eakin by B.M.. It was not included on the November 5, 2014 disc. This email was sent on Wednesday, April 30, 2014.

70. Contained on the September 28, 2015 disc or the "PA\_Supreme\_Court\_Review\_10-14-2014.pst" file were emails received by Justice Eakin at his "John Smith" email from Attorney McGowan in his "blast emails," during the time period of 2008-2012 and 2012-2014.

a. A number of the emails received by Justice Eakin from Attorney McGowan contained pictures of nude women; sexually-suggestive themes; gender stereotypes; homophobic content; socioeconomic stereotypes; violence towards women; racial humor; ethnically-based humor; and stereotypes of religious groups. These emails contain material including, but not limited to, the following:

- i. A "demotivational picture" entitled "Guys Night Out – there is no way that this could end poorly," with a picture of Ben Roethlisberger and Tiger Woods. The humor is obviously due to the accusations women made against them. This picture was forwarded by Attorney McGowan. This was not included in the November 5, 2014 disc. This email was sent on Monday, May 3, 2010.
- ii. A video clip of a beer commercial where a man is seen furiously brushing his teeth and swishing mouthwash, the clip says "earlier..." and cuts to a group of friends drinking. One says, "Can I have another light beer?" The man who was seen brushing his teeth says, "If this is light beer, I'll suck Bill's co-" and his statement is interrupted with the advertisement for Big Rock Beer Company. This clip was forwarded by Attorney McGowan. This was not included in the November 5, 2014 disc. This email was sent on Tuesday, March 30, 2010.
- iii. A video clip of a scene from the motion picture "Say It Isn't So," showing the sister of one of the main characters defiantly showing off her pierced nipples to her family. This email was noted above at Paragraph 28(a). This clip was forwarded by Attorney McGowan, and it was included in the November 5, 2014 disc. This email was sent on Thursday, April 8, 2010.
- iv. A video clip of a car commercial for Mercedes Benz highlighting two unfaithful couples; the tagline of the commercial is "at least there's one thing you can rely on." This email was forwarded by Attorney McGowan, and it was not included in the November 5, 2014 disc. This email was sent on Friday, August 27, 2010.
- v. A video clip entitled "The craziest white man ever," which appears to be a satirical video of a white man picking up Hispanic individuals at a Home Depot and offering them work at his home, but he ends up taking them to the Immigration and Customs Enforcement office. In the video, the man uses racial and ethnic slurs such as "beaner" and "wetback." This video was forwarded to Justice Eakin by Attorney McGowan and it was not included in the November 5,

2014 disc. This email was sent on Tuesday, June 15, 2010.

- vi. A joke about a man taking a woman out to eat at an expensive restaurant, where the woman eats a lot of expensive items on the menu. The man asks. "Does your mother feed you like this when you eat at home?" The woman responds, "No, but my mother is not expecting a blow job." This email was forwarded by Attorney McGowan. It was not included in the November 5, 2014 disc. This email was sent on Wednesday, April 6, 2011.
- vii. A series of pictures of strange looking and strangely-attired people getting married entitled "the people of Walmart weddings." This email was sent to Justice Eakin by Attorney McGowan. It was not included on the November 5, 2014 disc. This email was sent on Monday, March 29, 2010.
- viii. A "demotivational" poster of a young girl smiling eerily at the camera while a house in the background of the shot burns. The tagline says "Girl Scouts - Maybe next time you'll buy the fucking cookies." This email was sent to Justice Eakin by Attorney McGowan. It was not included on the November 5, 2014 disc. This email was sent on Monday, November 1, 2010.
- ix. A series of pictures entitled "girls you can't take anywhere." This series of pictures are of women, fully clothed, generally engaged in sexually-suggestive poses with statues, signs, and other inanimate objects. This email was noted above at Paragraph 28(h). This email was sent to Justice Eakin by Attorney McGowan. It was included on the November 5, 2014 disc. This email was sent on Saturday December 4, 2010.
- x. A video clip called "Happy Ending Massage." This email was noted above at Paragraph 28(i). This video clip is a joke clip where, after a man receives a massage from a female Asian masseuse in a bikini, she asks if he wants a "happy ending," impliedly, a sexual favor. He responds "yes," and balloons and clowns fill the room as if it was a birthday party. This

email was sent by Attorney McGowan to Justice Eakin. It was included on the November 5, 2014 disc. This email was sent on Monday, May 10, 2010.

- xi. A picture entitled "If she hasn't yet, she will soon..." The picture is a shot of a woman squatting to relieve herself in the African veldt with a lioness stalking her (at the same time) in the background of the photo. This email was sent by Attorney McGowan. It was not included on the November 5, 2014 disc. This email was sent on Tuesday, August 31, 2010.
- xii. A joke entitled "instant spark," which implies that a man tasered a "beautiful woman" who he saw in a park and then raped her. This email was sent by Attorney McGowan to Justice Eakin. It was not included on the November 5, 2014 disc. This email was sent on Monday, December 20, 2010.
- xiii. A joke picture of a baby doll in traditional Islamic garb. The punchline of the joke is "Nobody knows what the hell it says 'cause no one's got the balls to pull the cord!" This email was sent by Attorney McGowan to Justice Eakin. It was not included on the November 5, 2014 disc. This email was sent on Thursday, September 8, 2011.
- xiv. A joke entitled "Leroy's Hearing Problem," wherein "Leroy" asks a Preacher to pray for help with his hearing, the preacher prays and asks how his hearing is, and Leroy says, "I don't know, Reverend, it ain't till next Wednesday." This email was sent by Attorney McGowan to Justice Eakin. It was not included on the November 5, 2014 disc. This email was sent on Wednesday, March 24, 2010.
- xv. A joke about a "magic green hat" that cleared out an emergency room. The hat was a U.S. Customs and Border Patrol hat, implying that the emergency room was full of illegal immigrants. This email was sent by Attorney McGowan. It was not on the November 5, 2014 disc. This email was sent on Friday, February 18, 2011.

- xvi. A joke about a woman golfer who fails at golfing and kills a man. The woman says, "I guess all those fucking lessons I took over the winter didn't help." One of the men in the all-male crowd responded "Well, there you have it. You should have taken golf lessons instead!" This email was sent by Attorney McGowan. It was not included in the November 5, 2014 disc. This email was sent on Friday, May 13, 2011.
- xvii. A joke about a marriage counselor who asks a couple what they both have in common. The husband responds, "Well, for starters, neither one of us sucks dick." This email was sent by Attorney McGowan to Justice Eakin. It was not included on the November 5, 2014 disc. This email was sent on Friday, August 6, 2010.
- xviii. A joke entitled "Men Should Never Do Advice Columns." In the joke, a woman writes a male advice column writer with a story of her broken down car and how it led her to discover that her husband was cheating. The advice column writer responds with advice as to why her car broke down. This email was sent by Attorney McGowan. It was not included on the November 5, 2014 disc. This email was sent on Tuesday, April 19, 2011.
- xix. A joke entitled "mother of all," where two Muslim women reminisce about their children. At the close of the joke, one woman says "they blow up so fast, don't they?" This email was sent by Attorney McGowan. It was not included on the November 5, 2014 disc. This email was sent on Thursday, March 25, 2010.
- xx. A video clip of a man who takes his new girlfriend fishing on his Nitro speed fishing boat, but then ejects her from the boat after she complains. The girlfriend does not die. This email was sent by Attorney McGowan to Justice Eakin. It was not included on the November 5, 2014 disc. This email was sent on Thursday, April 15, 2010.



- xxi. A series of pictures entitled "Prom Night at Camden High School." The pictures are predominantly of black students in prom attire that would generally be considered unusual. This email was sent by Attorney McGowan. It was not included on the November 5, 2014 disc. This email was sent on Wednesday, May 19, 2010.
- xxii. A video clip of a dog pulling a chicken into its dog house and mounting the chicken. The clip is entitled "Roethlisberger's dog." This email is an evident reference to the rape allegations against Ben Roethlisberger. The email was sent by Attorney McGowan to Justice Eakin. It was not included on the November 5, 2014 disc. This email was sent on Monday, April 26, 2010.
- xxiii. A video clip of a man lying on the couch watching TV, who has a remote controlled refrigerator. He sends the remote controlled fridge to his girlfriend, and asks her to get him a beer. The tagline is "When your lady friend can't get to the fridge, get the fridge to your lady friend." This email was sent by Attorney McGowan to Justice Eakin. It was not included on the November 5, 2014 disc. This email was sent on Wednesday, March 9, 2011.
- xxiv. A series of pictures entitled "New Female Wal-Martians." These pictures are mainly of obese women in ill-fitting clothing in Wal-Mart. This email was sent by Attorney McGowan to Justice Eakin. This email was not included on the November 5, 2014 disc. This email was sent on Monday, February 14, 2011.
- xxv. A video clip of a UPS man delivering a package to a woman's home. The woman, who is nude, is visible from behind. When she approaches the door, the UPS man opens the mail slot and says "Hey curly, is your mom home?" The woman runs away. This email was noted above at Paragraph 28(s). The email was sent by Attorney McGowan to Justice Eakin. It was included on the November 5, 2014 disc. This email was sent on Wednesday, October 20, 2010.

- xxvi. A two-picture series entitled "Vibrator warning." The first picture attempts to warn women against using a corn cob for a vibrator. The second picture is of a topless woman with her legs spread, with her genital area entirely covered by popcorn. This email was noted above at Paragraph 28(t). This email was sent by Attorney McGowan to Justice Eakin. It was included on the November 5, 2014 disc. This email was sent on Monday, June 21, 2010.
- xxviii. A joke video entitled "Mohammed Brand Condoms," which indicates that jihadists should wear the condoms so they do not have to worry about the sexual pasts of their goats. This email was sent by Attorney McGowan to Justice Eakin. It was not included on the November 5, 2014 disc. This email was sent on Monday, August 16, 2010.
- xxiv. A joke picture of the "Home Alone" movie poster. In it, the robber's face behind Macaulay Culkin is replaced with a smiling Jerry Sandusky. This email was sent by C.K.P., an email contact of Attorney McGowan, to Attorney McGowan, Justice Eakin, and a number of other recipients. It was not included on the November 5, 2014 disc. This email was sent on Wednesday, December 21, 2011.
- xxv. An email with the phrase "Jerry Sandusky as Santa Claus with a crying baby boy on his lap..." This email was sent by J.M.C, an email contact of Attorney McGowan, to Attorney McGowan, Justice Eakin, and a number of other recipients. It was not included on the November 5, 2014 disc. This email was sent on Wednesday, December 21, 2011.
- xxvi. A series of pictures purporting to be Houston Oilers player Mike Comrie proposing to his girlfriend. The last picture appears, from behind, to be Comrie's girlfriend performing oral sex on him, although the viewer cannot see anything other than her head in his lap. The series is called "How to propose to your girlfriend – as demonstrated by Oilers' Mike Comrie." This email was sent to Justice Eakin, Attorney McGowan, and a number of other recipients by P.T., an email contact of Attorney McGowan. This picture

was not included on the November 5, 2014 disc. This email was sent on Thursday, March 4, 2010.

- xxvii. A picture of an obese nude woman wearing a pig costume entitled "How to tell if your house is infected with the swine flu." The email was noted above at Paragraphs 28(j) and 28(mm). The email was sent by E.S., an email contact of Attorney McGowan, to Attorney McGowan, Justice Eakin, and a number of other recipients. This email was included on the November 5, 2014 disc. This email was sent on Friday, May 15, 2009.
- xxviii. A joke entitled "sex in the shower." The joke states that, "in a survey 86% of inner city residents (almost all of whom are registered democrats) said that they have enjoyed sex in the shower. The other 14% said that they have not been to prison yet." This joke was sent to Justice Eakin, Attorney McGowan and many other recipients by P.T. It was not included on the November 5, 2014 disc. This email was sent on Thursday, December 18, 2008.
- xxix. A two-picture series of pictures entitled "for a dreary day," which are of a wrecked golf cart and a large breasted woman in a bikini top. This email was sent to Justice Eakin by Attorney McGowan. It was not included on the November 5, 2014 disc. This email was sent on Thursday, January 3, 2013.
- xxx. A two-picture series entitled "Difference between Ravens/SF fans;" the first picture is of a woman in a Ravens' football jersey exposing her breasts to the camera. The second picture is two male San Francisco fans in a bar kissing each other. This email was sent to Justice Eakin by Attorney McGowan. It was not part of the November 5, 2014 disc. This email was sent on Tuesday, February 5, 2013.
- xxxi. A photograph/joke combination entitled "Wife's First Hunt;" the picture is of a woman hunting in a hat with antlers on it. The joke describes the hat as the "first timer's lucky hat." The obvious implication is that the husband wanted the wife to get shot by mistake because of the hat. This email was sent to Justice Eakin by Attorney McGowan. It was not included on

the November 5, 2014 disc. This email was sent on Tuesday, November 26, 2013.

xxxli. A photograph/joke combination that is entitled "Howard was always slow!" The picture is of a nude woman, on a couch, with a skeleton between her legs, apparently performing oral sex on her. There is a word balloon that says "Come on Howard, you're taking forever!" This email was sent to Justice Eakin by Attorney McGowan. It was not included on the November 5, 2014 disc. This email was sent on Saturday, April 20, 2013.

xxxiii. A link to a YouTube video entitled "Kodak Moment" or "How Not To Instagram." The video is of two women in a swamp. One of the women was taking "selfies" of herself by the water when she is eaten by an alligator or a crocodile. This link was sent to Justice Eakin by Attorney McGowan. It was not included on the November 5, 2014 disc. This email was sent on Tuesday, November 12, 2013.

xxxiv. A picture slide show entitled "Morning Funnies" or "All men are the same," which shows pictures of small children ogling women's breasts. One photograph has a picture of a woman on a nude beach with a baby sitting next to her grabbing one of her nipples, and one photograph has a small child putting the breasts of an unclothed Barbie doll in his mouth. This email was noted above at Paragraph 28(m). It was sent to Justice Eakin by Attorney McGowan. It was included on the November 5, 2014 disc. This email was sent on Wednesday, July 29, 2009.

71. After receiving the aforementioned emails on October 15, 2015, Board counsel sought to achieve written confirmation from the OAG that it, in fact, had all of the emails pertaining to Justice Eakin from his "John Smith" email address.
72. Board counsel deposed Justice Eakin at its offices on October 20, 2015.
  - a. Immediately prior to the start of the deposition, Justice Eakin, on his own and through counsel, waived his right to receive a Notice of Full Investigation.

- b. At the deposition, Justice Eakin testified that he recognized the content of approximately three emails that were sent to him after they were shown to him by Board counsel.
- 73. During the Board's investigation, the Supreme Court, which had also been provided with discs containing emails sent and received by Justice Eakin by AG Kane, retained the law firm of Del Sole Cavanaugh Stroyd LLC to conduct a parallel review of Justice Eakin's emails.
- 74. The purpose of the Del Sole Cavanaugh Stroyd LLC review was to analyze Justice Eakin's emails and to advise the Supreme Court whether they gave rise to extraordinary circumstances warranting the immediate exercise of the Court's supervisory authority over the Unified Judicial System.
- 75. Following its review, Del Sole Cavanaugh Stroyd LLC issued a report regarding Justice Eakin's emails on October 30, 2015.
- 76. The report issued by Del Sole Cavanaugh Stroyd LLC concluded that the immediate exercise of the Supreme Court's supervisory authority was not warranted regarding Justice Eakin's email activity and that the Court should "allow the investigation of Justice Eakin's conduct to proceed pursuant to the provisions of Article V, § 18 of the Pennsylvania Constitution."
- 77. As to the emails that Justice Eakin sent, the report of Del Sole Cavanaugh Stroyd LLC concluded the following:
  - a. The vast majority of the emails that Justice Eakin sent that were contained on the discs related to social activities involving a small group, such as planning a golf outing, or discussions about fantasy football and fishing trips.
  - b. None of the emails sent by Justice Eakin relate, refer to, discuss or mention any cases before the court, any business of the court or any matters involving the judiciary.
  - c. Justice Eakin did not express personal views about legal or political matters in the emails.
  - d. The emails sent by Justice Eakin did not contain material that, according to the interpretation of contemporary community standards utilized in the report, constituted pornography.
  - e. Justice Eakin forwarded multiple emails that were offensive to women and contained inappropriate and chauvinistic statements.

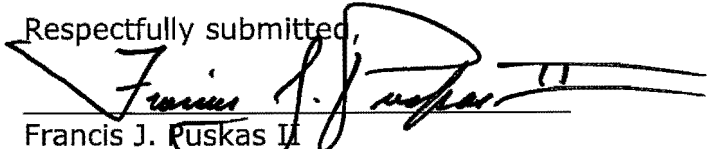
- f. The emails sent by Justice Eakin did not include material that could be characterized as racist, homophobic, or otherwise discriminatory toward any group, other than the gender-related issues discussed above.
78. As to the emails that Justice Eakin received, the report of Del Sole Cavanaugh Stroyd LLC concluded the following:
  - a. In the case of many of the emails received, Justice Eakin was one recipient among many other recipients.
  - b. Many of the other emails received by Justice Eakin were from members of the golfing group (called "a relatively small social circle" in the report).
  - c. The emails received by Justice Eakin do not relate to, refer to, discuss or mention any matters before the Court, any business of the Court or any aspect of the judiciary.
  - d. The emails received by Justice Eakin do not request favors, influence, or contain similar communications.
  - e. Justice Eakin received emails containing pictures of topless or, less frequently, completely nude women. Most of the pictures are included in the context of jokes or attempts at adult humor, which, generally speaking, would warrant an "R" rating from the Motion Picture Association of America.
  - f. Justice Eakin received one email containing a video of what appears to be sexual intercourse entitled "FW: Mission Impossible," and, according to the interpretation of contemporary community standards utilized in the report, constituted pornography.
  - g. Aside from emails containing nudity, Justice Eakin received a substantial number of emails with jokes that were racially insensitive and disparaging of women and other groups.
79. On November 10, 2015, Board staff obtained written confirmation from the OAG IT Department that it had all of the emails pertaining to Justice Eakin's "John Smith" email address and his "pacourts.us" email address.
80. Board staff also received from the OAG a 32 GB thumb drive that contained all of the emails from Justice Eakin's "John Smith" email address that were present on OAG servers, which were sent or received from 2008 to 2014.

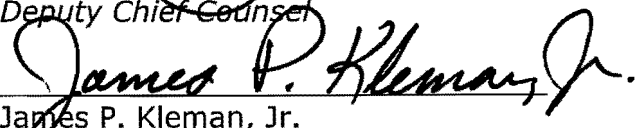
81. The emails contained on the 32 GB thumb drive mirrored the aforementioned emails recounted at Paragraphs 27, 28, 31, 67, 69, and 70 in both subject matter and content, and included all emails noted above at those paragraphs, respectively.
82. Pursuant to this Court's Order of December 10, 2015, the Board served a subpoena issued by this Court to AG Kane that required her to search for and to provide any emails sent to or from any email account associated with Justice Eakin that contained material that was sexually explicit, misogynistic, ethnically insensitive, racist or homophobic.
  - a. On February 12, 2016, AG Kane responded to the subpoena by providing two compact discs containing electronic copies of the same emails that she had previously provided to the Board.
  - b. Based on AG Kane's compliance with the subpoena and the prior certification, Board counsel concluded that AG Kane did not have any other emails sent to or from Justice Eakin that had not already been provided to the Board.

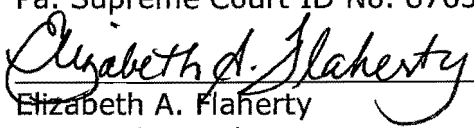
**WAIVER OF TRIAL**

The parties hereby agree that the aforementioned joint stipulations of fact and stipulated exhibits referenced herein and noted on the attached Trial Exhibit List constitute the binding factual record and stipulated exhibits necessary for this Court to reach a decision on the issues presented in this case by the Board's Complaint. Based upon these stipulations and stipulated exhibits, the parties hereby waive their right to trial on the factual issues of this case and hereby submit this case to the Court for its legal conclusions on the issues without further argument.

Respectfully submitted,

  
Francis J. Puskas II  
Deputy Chief Counsel

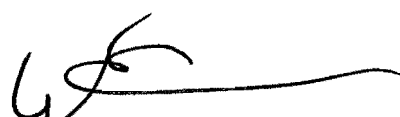
  
James P. Kleman, Jr.  
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Pa. Supreme Court ID No. 205575

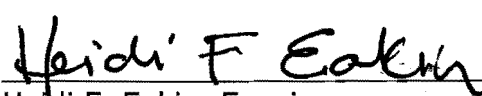
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DATE: March 17, 2016

## **TRIAL EXHIBIT LIST**

Exhibit A – Seagate Portable Harddrive containing emails provided to the Judicial Conduct Board by the Office of Attorney General; Exhibit A (1-112) summary provided.

1. Emails sent by Justice Eakin (John Smith account), Exhibits (A) 1-20;
2. Emails received from the golfing group (John Smith account), Exhibits (A) 21-64;
3. Emails received from Terry McGowan (John Smith account), Exhibits (A) 65-102; and
4. Emails received from former Justice McCaffery (pacourts account), Exhibits (A) 103-112.

Exhibit B – Newspaper Articles and Editorials regarding Justice Eakins' emails.

Exhibit C - AOPC and Appellate Courts of the Commonwealth of PA Policy for Use and Protection of Information Resources.

Exhibit D - Supreme Court of PA Unified Judicial System of PA Technology Resources Usage Policy.

Exhibit E – *Judicial Discipline and Disability Commission v. Michael Maggio, Circuit Judge*, 14-136, Letter of Suspension and Removal from office (August 6, 2014) and PER CURIAM ORDER removing Judge Maggio from judicial office (September 11, 2014).

Exhibit F - December 17, 2014 Dismissal Letter regarding JCB File Nos. 2014-647 and 2014-650.

Exhibit G - October 30, 2015 Report of Special Counsel Regarding the Review of Justice Eakin's Personal Email Communications by Del Sole Cavanaugh Strodyd LLC.

Exhibit H - December 16, 2015 Opinion Letter by Samuel C. Stretton, Esquire.

Exhibit I - *In Re: Complaint of Judicial Misconduct*, J.C. No. 03-08-90050, June 5, 2009.

Exhibit J - *In Re: Complaint of Judicial Misconduct*, C.C.D. No. 13-01, January 17, 2014.

Exhibit K - December 19, 2014 Report of Special Counsel Concerning Review of Email Messages Involving Supreme Court Justices and Office of Attorney General from 2008-2012, by Robert L. Byer.

Exhibit L – Video Deposition of the Honorable Stephen J. McEwen, Jr., December 18, 2015.

Exhibit M – Transcript of Video Deposition held on December 18, 2015.

Exhibit N – Curriculum Vitae of the Honorable Stephen J. McEwen, Jr.

Exhibit O – Number of cases Judge McEwen sat on with J. Michael Eakin.

Exhibit P - Opinions of J. Michael Eakin from the Superior and Supreme Courts over a 20 year span.

Exhibit Q – Resume of Justice J. Michael Eakin.

Exhibit R – Twenty-five (25) character letters in support of Justice J. Michael Eakin.

Exhibit S – Self-report letter to the Judicial Conduct Board from Justice J. Michael Eakin addressing media reports of inappropriate material sent unsolicited to his private email account, dated October 17, 2014.

Exhibit T – Notice of Full Investigation issued to the Honorable J. Michael Eakin regarding Judicial Conduct Board File Nos. 2014-647 and 2014-650, dated October 27, 2014.

Exhibit U – Response to Notice of Full Investigation by J. Michael Eakin, dated November 5, 2014.

Exhibit V – Report of Interview of J. Michael Eakin by Investigator Jack Harlacker, dated October 17, 2014.

Exhibit W – Report of Interview of J. Michael Eakin by Investigator Jack Harlacker, dated October 20, 2014.

Exhibit X – Report of Interview of J. Michael Eakin by Investigator Jack Harlacker, dated October 24, 2014.

Exhibit Y – Deposition of J. Michael Eakin taken by Board Counsel, on October 20, 2015.

## **1. Emails Sent by Justice Eakin**

**Exhibit 1:** An email bearing the subject line "Advice from a retired sympathetic husband," sent Friday, February 10, 2012.

This email is a "joke" type email about a retired husband named "Ron" who recounts treating his wife in a sexist fashion while making it seem like he was doing her a favor. The punchline of the joke concludes with an "editor's note" about "Ron" being found with a "golf club jammed up his rear end."

**Exhibit 2:** An email bearing the subject line "Environmental Spill," sent Monday, May 10, 2010.

This email contains text that states the following: "Subject: Slut Bus Crashes Causing Major Slut Spill...As if they didn't have enough problems....There is nothing worse than California slut!" Attached to the email is a file entitled "Slut\_Bus\_Crashes\_Causing\_Major\_Slut\_Spill.wmv" which is a satirical video production by the Onion.com about a busload of "sluts" crashing in California. The video contains images of suggestively dressed, and one bare-breasted, women in compromising, sexually-suggestive activity.

**Exhibit 3:** An email bearing the subject line "Re: Environmental Spill," sent Monday, May 10, 2010.

- i. This email contains text that constituted Justice Eakin's response to a comment made by DAG Baxter regarding the "Slut Bus" video mentioned above in Exhibit 2
- ii. Justice Eakin's response was as follows: "As [G.S.] once remarked.. 'Ah, the smell of tittie powder in the morning.'"

**Exhibit 4:** An email bearing the subject line "For your edification," sent Wednesday, June 1, 2011.

This email contains text that states the following:  
"How the word Boob was invented[,] " which is followed by a pictorial joke using the letters of the word "boob" to imply views of a woman's breasts from different directions, *i.e.*, "B- top view," and the like.

**Exhibit 5:** An email bearing the subject line "Fw (no subject)," sent Monday, January 30, 2012.

This email contains text that states the following:  
"This is how a bacon cheeseburger is made. It was sent to me by my doctor so I know it is true. Don't bother checking Snopes." Following the text is a picture of a pig attempting to mount a cow lying in a field.

**Exhibit 6:** An email bearing the subject line "Fw: Arnold's misunderstanding" sent Tuesday, June 7, 2011.

This email contains the following text: "It's too bad Arnold Schwarzenegger had this little misunderstanding because English isn't his native language. He told Maria that their housekeeper wanted a raise. Maria said, 'Screw her.' Any simple-minded, semi-literate Austrian could have made the same mistake."

**Exhibit 7:** An email bearing the subject line "Fw: MAY ALL YOUR DAYS START THIS WELL," sent Tuesday, July 6, 2010.

This email contains the following text: "My suggestion for about the only way Julie the Cruise Director could improve the Myrtle trip....." Following the text is a picture of an older man riding his bike towards the camera, smiling, and a shirtless woman walking away from the camera. At the bottom of the picture is the caption "Some Days - they just start better than others."

**Exhibit 8:** An email bearing the subject line "Marital advice," sent Tuesday, July 6, 2010.

This email contains text that states the following: "A woman goes to the doctor, beaten black and Blue.

Doctor: 'What happened?'

Woman: 'Doctor, I don't know what to do.

Every time my husband comes home drunk he beats me to a pulp.

Doctor: 'I have a real good medicine for that. When your husband comes home drunk, just take a glass of sweet tea and start swishing it in your mouth. Just swish and swish but don't swallow until he goes to bed and is asleep.'

Two weeks later the woman comes back to the doctor looking fresh and reborn.

Woman: 'Doctor that was a brilliant idea! Every time by husband came home drunk, I swished that sweat tea. I swished and swished, and he didn't touch me!'

Doctor: 'You see how much keeping your mouth shut helps?'

**Exhibit 9:** An email bearing the subject line "Re: Holiday Party," sent Thursday, December 17, 2009.

- i. This email constitutes a response by Justice Eakin to DAG Baxter's initiating email regarding his inability to attend Justice Eakin's annual Holiday Party. At the close of DAG Baxter's message, he asks Justice Eakin to "Slap Stoney's ass for me and wish him a Merry Christmas. Lubba's too if he shows up. And, well, Janey's too and let me know how it was. Maybe next year we won't have the conflict and I can slap hers for myself."
- ii. Justice Eakin responded, in part, "Will do."

**Exhibit 10:** Two emails bearing the subject line "Re: [L.] getting married," sent Monday, 12/28/2009, at 1:49 p.m. and 2:44 p.m., respectively.

These emails constitute a sexually-suggestive thread/conversation between Justice Eakin and DAG Baxter about a woman who they both know that was employed by Justice Eakin at the time of the email thread/conversation.

**Exhibit 11:** Six emails bearing the subject line "Re: Myrtle next year![,] " sent Thursday, June 18, 2009, between 8:45 a.m. and 10:21 a.m.

- i. These emails constitute a thread/discussion between Justice Eakin and his golfing group.
- ii. Points in the thread/discussion became sexually suggestive; at one point in the exchange, Justice Eakin wrote the following: "Being on the road- I just got this exchange - you guys sound like a bunch of women, worrying about offending and being misunderstood and falling all over each other thanking everyone and getting misty eyed! Jeezus, boys, is it a menstrual [sic] thing? The next thing we'll be splitting the check at Finn McCool[']s 'now you had the BLT and an iced tea, so you owe....' Snap the hell out of it!!! Everybody's great, everybody's in - Bax, get the money up front and all of the rest of us will go. New Judge [B.] will find [out] a judge has to go out of state to see boobs. New Dad [S.] will go unless he knocks Momma up again. [S.] can spend an extra hour in the OR and pay for all of us!! I'm in. I've got a stake of fifty ones and a titty-deficit that needs cured."
- iii. A sexually-suggestive thread/discussion continued between Justice Eakin and DAG Baxter regarding two women known to both men.

The following three emails bearing the subject line "Re: Personal Note,":

**Exhibit 12:** Monday, December 19, 2011.

**Exhibit 13:** Thursday, December 22, 2011.

**Exhibit 14:** Tuesday, December 27, 2011.

- i. These emails constitute a thread/discussion between Justice Eakin and his golfing group that was initiated with an attempted joke containing several embedded pictures of partially nude or scantily-clad women.
- ii. This email thread was contained in part on the November 5, 2014 disc.

**Exhibit 15:** An email bearing the subject line "The complete list (so far)," sent Friday, December 4, 2009.

- i. This email constituted a list of off-color jokes regarding Tiger Woods' failed marriage
- ii. One of the jokes was "Given Tiger's racial heritage, can we call this a Black Thai affair?"

**Exhibit 16:** An email bearing no subject line, sent Monday, April 20, 2009.

- i. This email constituted an off color joke regarding President Barack Obama.
- ii. The joke states "In honor of the 44<sup>th</sup> President of the United States, Baskin-Robbins Ice Cream has introduced a new flavor, "Barocky Road[.] Barocky Road is a blend of half Vanilla, half Chocolate, and surrounded by Nuts and Flakes. The Vanilla portion of the mix is not openly advertised and usually denied as an ingredient. The Nuts and Flakes are all very bitter and hard to swallow. The cost is \$100.00 per scoop. When purchased it will be presented to you in a large, beautiful cone, but then the Ice Cream is taken away and given to the person in line behind you. Thus[,], you are left with an empty wallet, no change, holding



an empty cone, with no hope of getting any Ice Cream."

**Exhibit 17:** An email bearing the subject line "Re: I need your advice," sent Monday, December 23, 2013.

- i. This email is part of a thread/discussion initiated by an email from one of Justice Eakin's golfing group containing pictures of a large-breasted woman in tight fitting clothing doing yoga exercises in a field; the joke asks, "I need your advice – Should the grass be cut?"
- ii. Justice Eakin responded to the joke.

**Exhibit 18:** An email bearing the subject line, "Warning do NOT take your girl to the Phillies game this weekend," sent Monday, May 21, 2012.

This email contains a link to a YouTube.com video, which is apparently a satirical video of a montage of men claiming that former Phillies' baseball player Pat Burrell had sexual intercourse with their girlfriends. The video contains "bleeped out" profanity, but no nudity.

**Exhibit 19:** An email bearing the subject line, "Query: did Fioravanti get a partnership cut," sent Monday, July 26, 2013.

This email reprints an article that reported that an attorney named Knight (first name not stated) of the Bucks County law firm Fioravanti & Knight was suspended by the Pennsylvania Supreme Court for one year because he received oral sex from a woman in exchange for legal services in a DUI case.

**Exhibit 20:** An email bearing the subject line "Why I failed 4<sup>th</sup> Grade," sent Monday, March 29, 2010.

The email contains a photograph of an elementary school teacher in the midst of a group of school-aged children at desks; the teacher is holding open a book

bearing the words "Grammar 101." A word balloon from the teacher asks, "So – an abstract noun is something you can think of but not touch...Can you give me two examples..." A student responds "Your Tits!"

## **2. Emails Received From Golfing Group**

**Exhibit 21:** An email with no subject line, sent Monday, September 21, 2009.

A video clip entitled "What have we done" of a black woman speaking to the camera about Barack Obama's election and saying that, because of that, black people won't have to "pay bills." She later bemoans the fact that black people will "have to get jobs" and will, consequently, no longer get a government assistance check. This clip was forwarded by DAG Baxter, and it was not included in the November 5, 2014 disc.

**Exhibit 22:** An email bearing the subject line "Fw: A Sad Day for Tennis," sent Tuesday, June 15, 2010.

A picture of a large-breasted professional tennis player named Simona Halep, who is described as wanting breast reduction surgery to help her tennis game. The subject line of the email is "FW: a Sad Day for Tennis." There is no nudity. This email was forwarded by Attorney McGowan, and it was also forwarded to Justice Eakin by B.M. The email from Attorney McGowan was not included on the November 5, 2014 disc, although the picture was included in a different email from B.M.

**Exhibit 23:** An email bearing the subject line "Fwd: Best Prank Phone Call Ever," sent Monday, March 14, 2011.

A video clip consisting of an audio track of a prank phone call played on the "Bob and Tom Show," wherein a telemarketer is told by the pranker that the person who was called by the telemarketer was killed and the police were investigating the murder scene. This clip contains some profanity. The email was forwarded by C.S. of the golfing group and it was not included in the November 5, 2014 disc.

**Exhibit 24:** An email bearing the subject line "Fw: Black is In!," sent Wednesday, April 22, 2009.

A series of pictures and text with the subject line "FW: Black is In!" showing pictures of notable black celebrities, including President Obama, highlighting their accomplishments, and concluding with a picture of Michael Jackson, which stated "...Michael Jackson must be kicking himself." This email was sent by DAG Baxter to Justice Eakin and others. It was not included in the November 5, 2014 disc.

**Exhibit 25:** An email bearing the subject line "Fw: Cheap Kmart Earrings," sent Wednesday, December 21, 2011.

A video clip of a woman throwing out a "cheap pair of Kmart earrings" on Christmas morning to find that her husband has actually purchased a new Cadillac SUV for her. When she gets in the Cadillac and starts it, it explodes. The video concludes with the words "Merry Christmas, Bitch." This email was forwarded by DAG Baxter, and it was not included in the November 5, 2014 disc.

**Exhibit 26:** An email bearing the subject line "Fw: Cocktail Conversation PG Rated," sent Tuesday, June 16, 2009.

A joke wherein the punchline is a man's name representing the things he enjoys the most, i.e., "B.J. Titsengolf." This joke was forwarded by C.S. to Justice Eakin, and it was not included in the November 5, 2014 disc.

**Exhibit 27:** An email bearing the subject line "Fw: Colon, Colon, Colon...", sent Monday, September 14, 2009.

A video clip containing an audio track of a man prank calling a cable company about a new gay and lesbian channel. The audio contains profanity and jokes portraying a negative view of gays and lesbians based on stereotypes. This email was forwarded to Justice Eakin by DAG Baxter. It was not included in the November 5, 2014 disc.

**Exhibit 28:** An email bearing the subject line "Fw: Emailing: Shii," sent Wednesday, April 29, 2009.

A video clip in German about Nintendo Wii games which women "should" play, including games that simulate cooking and performing oral sex on men. This email was forwarded by DAG Baxter to Justice Eakin, and it was not included on the November 5, 2014 disc.

**Exhibit 29:** An email bearing the subject line "Fw: Friendship Strings/a man's chain letter," sent Monday, February 9, 2009.

A series of nude or semi-nude photographs of women entitled "Friendship strings," which is a reference to the g-string panties worn by some of the women in the pictures. This email was forwarded to Justice Eakin by DAG Baxter. This email, or some part of the thread that it generated, was included on the November 5, 2014 disc.

**Exhibit 30:** An email bearing the subject line "Fw: FYI," sent Thursday, April 30, 2009.

A forwarded joke saying "It was once said that a black man would be president when 'pigs fly.' Indeed, 100 days into Obama's presidency...'swine flu'!!!" This email was forwarded to Justice Eakin by DAG Baxter. It was not included on the November 5, 2014 disc.

**Exhibit 31:** An email bearing the subject line "FW: Golf Panties," sent Thursday, August 20, 2009.

A joke entitled "golf panties" about couples of Swedish, Irish, and Scottish origin golfing when the wind reveals that the women of the group are not wearing underwear. Upon seeing that his wife is not wearing underwear, the Scotsman offers his wife a comb and tells her to "tidy" up. This email was sent by DAG Baxter to Justice Eakin. It was not included on the November 5, 2014 disc.

**Exhibit 32:** An email bearing the subject line "Fw: Man Rules," sent Thursday, January 26, 2012.

A joke entitled "Man Rules." This lists a number of "rules" for women to follow when dealing with men. These rules are evidently based on gender stereotypes such as "Christopher Columbus didn't need directions and neither do we!" This email was sent by C.S. to Justice Eakin. It was not included on the November 5, 2014 disc.

**Exhibit 33:** An email bearing the subject line "Fw: Merry Christmas (UNCLASSIFIED) - and not what you expect," sent Monday, December 7, 2009.

A joke video clip with a puppet Osama Bin Laden threatening to kill Santa Claus. This email was sent by DAG Baxter to Justice Eakin. It was not included on the November 5, 2014 disc.

**Exhibit 34:** An email bearing the subject line "Fw: Mrs. Hughes—FUNNY!," sent Wednesday, October 27, 2010.

A comedy routine by a woman named "Mrs. Hughes," who jokes about her husband and her family life. This email was sent by DAG Baxter to Justice Eakin. It was not included in the November 5, 2014 disc.

**Exhibit 35:** An email bearing the subject line "Fw: New Motivational Posters," sent Thursday, May 7, 2009.

A series of "demotivational" posters entitled "New Motivational posters." The jokes are geared toward animals, parenting, female breasts, and Asian accents. This email was sent by DAG Baxter to Justice Eakin. It was not included on the November 5, 2014 disc.

**Exhibit 36:** An email bearing the subject line "Fw: Prayer For Dad," sent Tuesday, December 1, 2009.

An email entitled a "prayer for dad" with a picture of a young girl praying, with the text "Dear God, please send clothes for all the ladies on Daddy's computer. Amen." This email was sent by C.S. to Justice Eakin. It was not included on the November 5, 2014 disc.

**Exhibit 37:** An email bearing the subject line "Fw: Rotten, but funny," sent Monday, December 27, 2010.

A series of jokes entitled "rotten but funny," which include jokes about race, gender, and ethnicity. This series of jokes was sent by DAG Baxter to Justice Eakin. It was not included on the November 5, 2014 disc.

**Exhibit 38:** An email bearing the subject line "Fw: Splinters," sent Tuesday, January 11, 2011.

A joke about an environmentalist woman having to slide down a tree in haste. When she goes to the doctor and asked what took him so long to tend to her wounds, the doctor says "Well, I had to get permits from the Environmental Protection agency, the Forest Service, Fish and Wildlife Commission and the Bureau of Land Management before I could remove old-growth timber from a recreational area. I'm sorry, but due to Obamacare, they turned me down." The joke was sent by DAG Baxter to Justice Eakin. It was not included on the November 5, 2014 disc.

**Exhibit 39:** An email bearing the subject line "Fwd: Beer Temperature Tester," sent Tuesday, February 14, 2012.

A picture of a woman using her nipples as "beer temperature" testers. This email was sent by B.M. to Justice Eakin. It was included on the November 5, 2014 disc.

**Exhibit 40:** An email bearing the subject line "Fwd: A Real Man's Chain Letter - XXX," sent Thursday, November 12, 2009.

A series of pictures entitled a "Real man's Chain Letter" featuring pictures of women in a wet t-shirt contest and a topless woman. This email was sent to Justice Eakin by B.M., his golfing friend. It was included on the November 5, 2014 disc.

**Exhibit 41:** An email bearing the subject line "Fwd: Best Engine in the World," sent Sunday, July 25, 2010.

A joke email regarding a woman's vagina which states, that "the best engine in the world is the vagina. It can be started with one finger. It is self-lubricating. It takes any size piston. And it changes its own oil every four weeks. It is only a pity that the management system is so fucking temperamental." This email was sent by B.M. to Justice Eakin. There are no nude pictures. This email was not included on the November 5, 2014 disc.

**Exhibit 42:** An email bearing the subject line "Fwd: cup sizes?? tt#2," sent Monday, January 2, 2012.

A picture of bare breasted women of increasing breast size entitled "Cup sizes." The last picture is of an oversized golf tee, and the email asks "Which cup size excites older men the most?" This email was sent by B.M. to Justice Eakin. it was included on the November 5, 2014 disc.



**Exhibit 43:** An email bearing the subject line "Fwd: Farewell to my Golf Friends," sent Sunday, December 19, 2010.

A slide show called "Farewell to my Golf Friends," which includes pictures of bare breasted women and pictures of their buttocks. This email was sent by B.M. to Justice Eakin. It was included on the November 5, 2014 disc.

**Exhibit 44:** An email bearing the subject line "Fwd: Fw: Daily Meds," sent Friday, February 26, 2010.

A slide show called "Daily meds" which contains pictures of nude or semi-nude women evidently scanned from Playboy magazine. This email was sent by B.M. to Justice Eakin. It was included on the November 5, 2014 disc.

**Exhibit 45:** An email bearing the subject line "Fwd: FW: Emailing: Male Antidepressants.wmv," sent Saturday, November 27, 2010.

A video clip of both clothed and bare female breasts bouncing while the song "Don't Worry, Be Happy" plays. This email was sent by B.M. to Justice Eakin. It was included on the November 5, 2014 disc.

**Exhibit 46:** An email bearing the subject line "Fwd: Fw: ENC: Beer Warning," sent Sunday, April 25, 2010.

A picture of a large breasted woman holding a can of beer between her bare breasts, with the warning, "Don't do this to a can of beer, it will get warm and explode." This email was sent to Justice Eakin by B.M. It was not included on the November 5, 2014 disc.

**Exhibit 47:** An email bearing the subject line "Fwd: Fw: Priceless," sent Tuesday, June 8, 2010.

A picture entitled "Priceless" of two women riding a roller coaster with their breasts exposed. It was sent to Justice Eakin by B.M. It was included on the November 5, 2014 disc.

**Exhibit 48:** An email bearing the subject line "Fw: Fw: One Last Kiss!," sent Monday, February 27, 2012.

A video clip of a man farting in his car after he leaves his girlfriend's apartment; she runs to the car to give him one final kiss, and she discovers that he farted in the car. This email was sent to Justice Eakin by DAG Baxter. It was not included on the November 5, 2014 disc.

**Exhibit 49:** An email bearing the subject line "Fw: Fw: We stare because we care! (It all makes sense to me!)," sent Wednesday, .

A series of pictures of bare breasted women entitled "We stare because we care." This email was sent by B.M. to Justice Eakin. It was included on the November 5, 2014 disc.

**Exhibit 50:** An email bearing the subject line "Fwd: Fw: Will the dollar fall?," sent Thursday, February 25, 2010.

A picture entitled "Will the Dollar Fall," of a dollar bill squeezed between a woman's buttocks. It was sent by B.M. to Justice Eakin. It was included on the November 5, 2014 disc.

**Exhibit 51:** An email bearing the subject line "Fwd: Fw: Your humor for the day," sent Monday, May 10, 2010.

A joke about a little girl receiving a ticket from a mounted policeman for a safety violation while riding her new bike that Santa brought her. The girl asks, "Did Santa bring you that horse?" The policeman said "Yes." The little girl responds, "Tell Santa for next year that the dick goes beneath the horse, not on top of it." There is also a picture of a little girl giving the finger to whoever took her picture. This email was sent by B.M. to Justice Eakin. It was not included on the November 5, 2014 disc.

**Exhibit 52:** An email bearing the subject line "Fwd: Greek Economy," sent Saturday, November 27, 2010.

A picture of a woman with an exposed breast sitting at a dinner table entitled "Fwd: Greek economy." The joke with the picture asks how many cigarettes were in an ashtray next to her. It was sent to Justice Eakin by B.M.. It was included on the November 5, 2014 disc.

**Exhibit 53:** An email bearing the subject line "Fwd: Motivational Posters," sent Wednesday, February 15, 2012.

A series of "Motivational Posters" or "demotivational posters." One picture asks, "Dear Abby, I'm an 18 year-old virgin in Arkansas. Are my brothers gay?" This email was sent to Justice Eakin by B.M.. It was included on the November 5, 2014 disc.

**Exhibit 54:** An email bearing the subject line "Fwd: Neck exercises sent to me by a doctor – great 4 poker players too!," sent Sunday, January 29, 2012.

A series of nude pictures entitled "Neck exercises sent to me by a doctor." The position of the photographs requires the viewer to bend their neck to see them properly. This email was sent to Justice Eakin by B.M.. It was included on the November 5, 2014 disc.

**Exhibit 55:** An email bearing the subject line "Fwd: Protect your nose from the sun," sent Monday, August 2, 2010.

A series of pictures of bare breasts called "Protect your nose from the sun." The pictures are of a man kissing the stomach of a woman in a bikini, while the two swam in the ocean. It was sent to Justice Eakin by B.M.. It was included on the November 5, 2014 disc.

**Exhibit 56:** An email bearing the subject line "Fwd: Water Miracle," sent Friday, December 9, 2011.

A joke called the "Water Miracle." This joke is the same as the "sweet tea" joke, but in this instance, the woman is told by the doctor to swish water in her mouth. This email was sent to Justice Eakin by B.M.. It was not included on the November 5, 2014 disc.

**Exhibit 57:** An email bearing the subject line "Golf joke," sent Thursday, August 18, 2011.

A joke about robot golf caddies. According to the joke, the silver color of the robot caddies blinded the other golfers, and the golfer using the robot asks, "Why didn't you paint them black?" The man in the golf shop said, "We did. Then four of 'em didn't show for work, two filed for welfare, one of them robbed the pro shop, and the other thinks he's the President." This email was sent by DAG Baxter to Justice Eakin. It was not included in the November 5, 2014 disc.

**Exhibit 58:** An email bearing the subject line "Good One," sent Wednesday, January 6, 2010.

A joke about "hand jobs." This email was sent by DAG Baxter to Justice Eakin. This email was not included in the November 5, 2014 disc.

**Exhibit 59:** An email bearing the subject line "RE: MAY ALL YOUR DAYS START THIS WELL," sent Tuesday, July 6, 2010.

A repeat emailing of the "May all Your Days Start this Well" email described above at Board Exhibit 7. This email was sent to Justice Eakin by B.M.. It was not included on the November 5, 2014 disc.

**Exhibit 60:** An email bearing the subject line "FW: Don't give up Golf," sent Thursday, August 18, 2011.

A photograph/joke combination about a "homeless golfer." The joke says, "I'm reaching out on behalf of a friend of mine who needs some help who wishes to

remain anonymous. His wife told him to go out and get some of those pills that would help him get an erection. When he came back, he handed her diet pills. ANYWAY, he's looking for a place to live. Can you help him?" This email was sent to Justice Eakin by DAG Baxter, it was not included in the November 5, 2014 disc.

**Exhibit 61:** An email bearing the subject line "FW: Sub teacher," sent Wednesday, November 14, 2012.

A link to a YouTube video clip of the "Key and Peele" show on Comedy Central, wherein a black inner-city teacher substitutes in a predominantly white middle-class school district and mispronounces all of the students' names. For example, the teacher pronounces "Aaron" as "A-A-ron." This email was sent by DAG Baxter to Justice Eakin. It was not included on the November 5, 2014 disc.

**Exhibit 62:** An email bearing the subject line "Myrtle Reservation Confirmation," sent Friday, January 3, 2014.

An email thread containing a message from DAG Baxter to, presumably, Justice Eakin and his golfing friends, which contains the statement, "While most of us are shoveling a foot of snow from our driveways, I thought now would be a good time to bring thoughts of warmth, golf, and titties your way!" This message was forwarded to Justice Eakin by DAG Baxter. It was not included on the November 5, 2014 disc.

**Exhibit 63:** An email bearing the subject line "Fw::I need your advice.," sent Saturday, December 21, 2013.

A series of pictures of a large breasted woman, fully clothed, doing yoga poses. There is a joke with these pictures asks whether the grass the woman is posing on needs to be cut. This email was sent to Justice Eakin by B.M. Justice Eakin saw the email because he responded to it. It was not included on the November 5, 2014 disc.

**Exhibit 64:** An email bearing the subject line "Fwd: Car Safety Needed???", sent Thursday, August 18, 2011.

A picture of a nude woman driving a convertible BMW. There is a joke about the car's "airbags" functioning, but not its air conditioning. This email was sent to Justice Eakin by B.M.. It was not included on the November 5, 2014 disc.

### **3. Emails Sent by Terry McGowan**

**Exhibit 65:** An email bearing the subject line "FW:," sent Monday, May 3, 2010.

A "demotivational picture" entitled "Guys Night Out - there is no way that this could end poorly, with a picture of Ben Roethlisberger and Tiger Woods. The humor is obviously due to the accusations women made against them. This picture was forwarded by Attorney McGowan. This was not included in the November 5, 2014 disc.

**Exhibit 66:** An email bearing the subject line "Fwd: Car Safety Needed???", sent Thursday, August 18, 2011.

A video clip of a beer commercial where a man is seen furiously brushing his teeth and swishing mouthwash, the clip says "earlier..." and cuts to a group of friends drinking. One says, "Can I have another light beer?" The man who was seen brushing his teeth says, "If this is light beer, I'll suck Bill's co-" and his statement is interrupted with the advertisement for Big Rock Beer Company. This clip was forwarded by Attorney McGowan. This was not included in the November 5, 2014 disc.

**Exhibit 67:** An email bearing the subject line "w: A little family fun...FW: WHEN YOUR DAUGHTER WANTS TO GET HER EARS PIERCED," sent Thursday, April 8, 2010.

A video clip of a scene from the motion picture "Say It Isn't So," showing the sister of one of the main characters defiantly showing off her pierced nipples to her family. This clip was forwarded by Attorney McGowan, and it was included in the November 5, 2014 disc.

**Exhibit 68:** An email bearing the subject line "FW: best car commercial," sent Friday, August 27, 2010.

A video clip of a car commercial for Mercedes Benz highlighting two unfaithful couples; the tagline of the commercial is "at least there's one thing you can rely

on." This email was forwarded by Attorney McGowan, and it was not included in the November 5, 2014 disc.

**Exhibit 69:** An email bearing the subject line "FW: Craziest white man ever," sent Tuesday, June 15, 2010.

A video clip entitled "The craziest white man ever," which appears to be a satirical video of a white man picking up Hispanic individuals at a Home Depot and offering them work at his home, but he ends up taking them to the Immigration and Customs Enforcement office. In the video, the man uses racial and ethnic slurs such as "beaner" and "wetback." This video was forwarded to Justice Eakin by Attorney McGowan and it was not included in the November 5, 2014 disc.

**Exhibit 70:** An email bearing the subject line "FW: Dating Memories," sent Wednesday, April 6, 2011.

A joke about a man taking a woman out to eat at an expensive restaurant, where the woman eats a lot of expensive items on the menu. The man asks, "Does your mother feed you like this when you eat at home?" The woman responds, "No, but my mother is not expecting a blow job." This email was forwarded by Attorney McGowan. It was not included in the November 5, 2014 disc.

**Exhibit 71:** An email bearing the subject line "FW: FW: The people of Walmart weddings," sent Monday, March 29, 2010.

A series of pictures of strange looking and strangely-attired people getting married entitled "the people of Walmart weddings." This email was sent to Justice Eakin by Attorney McGowan. It was not included on the November 5, 2014 disc.



**Exhibit 72:** An email bearing the subject line "FW: Girl Scouts – Motivational Poster," sent Monday, November 1, 2010.

A "demotivational" poster of a young girl smiling eerily at the camera while a house in the background of the shot burns. The tagline says "Girl Scouts – Maybe next time you'll buy the fucking cookies." This email was sent to Justice Eakin by Attorney McGowan. It was not included on the November 5, 2014 disc.

**Exhibit 73:** An email bearing the subject line "FW: Girls you can't take anywhere," sent Saturday, December 4, 2010.

A series of pictures entitled "girls you can't take anywhere." This series of pictures are of women, fully clothed, generally engaged in sexually-suggestive poses with statues, signs, and other inanimate objects. This email was sent to Justice Eakin by Attorney McGowan. It was included on the November 5, 2014 disc.

**Exhibit 74:** An email bearing the subject line "FW: Happy Ending!," sent Monday, May 10, 2010.

A video clip called "Happy Ending Massage." This email was noted above at Paragraph C(39)(i). This video clip is a joke clip where, after a man receives a massage from a female Asian masseuse in a bikini, she asks if he wants a "happy ending," impliedly, a sexual favor. He responds "yes," and balloons and clowns fill the room as if it was a birthday party. This email was sent by Attorney McGowan to Justice Eakin. It was included on the November 5, 2014 disc.

**Exhibit 75:** An email bearing the subject line "FW: If she hasn't yet...," sent Tuesday, August 31, 2010.

A picture entitled "If she hasn't yet, she will soon..." The picture is a shot of a woman squatting to relieve herself in the African veldt with a lioness stalking her (at the same time) in the background of the photo. This email was sent by Attorney McGowan. It was not included on the November 5, 2014 disc.

**Exhibit 76:** An email bearing the subject line "FW: Instant spark," sent Monday, December 20, 2010.

A joke entitled "instant spark," which implies that a man tasered a "beautiful woman" who he saw in a park and then raped her. This email was sent by Attorney McGowan to Justice Eakin. It was not included on the November 5, 2014 disc.

**Exhibit 77:** An email bearing the subject line "FW: Latest Christmas Present," sent Thursday, September 8, 2011.

A joke picture of a baby doll in traditional Islamic garb. The punchline of the joke is "Nobody knows what the hell it says 'cause no one's got the balls to pull the cord!" This email was sent by Attorney McGowan to Justice Eakin. It was not included on the November 5, 2014 disc.

**Exhibit 78:** An email bearing the subject line "FW: Leroy's Hearing Problem," sent Wednesday, March 24, 2010.

A joke entitled "Leroy's Hearing Problem," wherein "Leroy" asks a Preacher to pray for help with his hearing, the preacher prays and asks how his hearing is, and Leroy says, "I don't know, Reverend, it ain't till next Wednesday." This email was sent by Attorney McGowan to Justice Eakin. It was not included on the November 5, 2014 disc.

**Exhibit 79:** An email bearing the subject line "FW: Magic Green Hat," sent Friday, February 18, 2011.

A joke about a "magic green hat" that cleared out an emergency room. The hat was a U.S. Customs and Border Patrol hat, implying that the emergency room was full of illegal immigrants. This email was sent by Attorney McGowan. It was not on the November 5, 2014 disc.

**Exhibit 80:** An email bearing the subject line "FW: MAN KILLED ON GOLF COURSE...THE PRICE OF HONESTY!," sent Friday, May 13, 2011.

A joke about a woman golfer who fails at golfing and kills a man. The woman says, "I guess all those fucking lessons I took over the winter didn't help." One of the men in the all-male crowd observing responded "Well, there you have it. You should have taken golf lessons instead!" This email was sent by Attorney McGowan. It was not included in the November 5, 2014 disc.

**Exhibit 81:** An email bearing the subject line "FW: marriage counselor," sent Friday, August 6, 2010.

A joke about a marriage counselor who asks a couple what they both have in common. The husband responds, "Well, for starters, neither one of us sucks dick." This email was sent by Attorney McGowan to Justice Eakin. It was not included on the November 5, 2014 disc.

**Exhibit 82:** An email bearing the subject line "FW: MEN SHOULD NEVER DO ADVISE [SIC] COLUMNS," sent Tuesday, April 19, 2011.

A joke entitled "Men Should Never Do Advice Columns." In the joke, a woman writes a male advice column writer with a story of her broken down car and how it led her to discover that her husband was cheating. The advice column writer responds with advice as to why her car broke down. This email was sent by Attorney McGowan. It was not included on the November 5, 2014 disc.

**Exhibit 83:** An email bearing the subject line "FW: Mother of all," sent Thursday, March 25, 2010.

A joke entitled "mother of all," where two Muslim women reminisce about their children. At the close of the joke, one woman says "they blow up so fast, don't they?" This email was sent by Attorney McGowan. It was not included on the November 5, 2014 disc.

**Exhibit 84:** An email bearing the subject line "FW: Nitro boat accessories...", sent Thursday, April 15, 2010.

A video clip of a man who takes his new girlfriend fishing on his Nitro speed fishing boat, who ejects her from the boat after she complains. The girlfriend does not die. This email was sent by Attorney McGowan to Justice Eakin. It was not included on the November 5, 2014 disc.

**Exhibit 85:** An email bearing the subject line "FW: prom night in NJ," sent Wednesday, May 19, 2010.

A series of pictures entitled "Prom Night at Camden High School." The pictures are predominantly of black students in prom attire that would generally be considered unusual. This email was sent by Attorney McGowan. It was not included on the November 5, 2014 disc.

**Exhibit 86:** An email bearing the subject line "FW: Rothlisberger's Dog" sent Monday, April 26, 2010.

A video clip of a dog pulling a chicken into its dog house and mounting the chicken. The clip is entitled "Roethlisberger's dog." This email is an evident reference to the rape allegations against Ben Roethlisberger. The email was sent by Attorney McGowan to Justice Eakin. It was not included on the November 5, 2014 disc.

**Exhibit 87:** An email bearing the subject line "FW: Proof that there ARE some considerate men in this world! NOT!," sent Wednesday, March 9, 2011.

A video clip of a man lying on the couch watching TV, who has a remote controlled refrigerator. He sends the remote controlled fridge to his girlfriend, and asks her to get him a beer. The tagline is "When your lady friend can't get to the fridge, get the fridge to your lady friend." This email was sent by Attorney McGowan to Justice Eakin. It was not included on the November 5, 2014 disc.

**Exhibit 88:** An email bearing the subject line "FW: THIS JUST IN – New Female Wal-Martians," sent Monday, February 14, 2011.

A series of pictures entitled "New Female Wal-Martians." These pictures are mainly of obese women in ill-fitting clothing in Wal-Mart. This email was sent by Attorney McGowan to Justice Eakin. This email was not included on the November 5, 2014 disc.

**Exhibit 89:** An email bearing the subject line "FW: UPS man," sent Wednesday, October 20, 2010.

A video clip of a UPS man delivering a package to a woman's home. The woman, who is nude, is visible from behind. When she approaches the door, the UPS man opens the mail slot and says "Hey curly, is your mom home?" The woman runs away. The email was sent by Attorney McGowan to Justice Eakin. It was included on the November 5, 2014 disc.

**Exhibit 90:** An email bearing the subject line "FW: VIBRATOR WARNING....," sent Monday, 2010.

A two-picture series entitled "Vibrator warning." The first picture attempts to warn women against using a corn cob for a vibrator. The second picture is of a topless woman with her legs spread, with her genital area entirely covered by popcorn. This email was sent by Attorney McGowan to Justice Eakin. It was included on the November 5, 2014 disc.

**Exhibit 91:** An email bearing the subject line "FW: What," sent Monday, August 16, 2010.

A joke video entitled "Mohammed Brand Condoms," which indicates that jihadists should wear the condoms so they do not have to worry about the sexual pasts of their goats. This email was sent by Attorney McGowan to Justice Eakin. It was not included on the November 5, 2014 disc.

**Exhibit 92:** An email bearing the subject line "Here's back at you, Terry!," sent Wednesday, December 21, 2011.

A joke picture of the "Home Alone" movie poster. In it, the robber's face behind Macaulay Culkin is replaced with a smiling Jerry Sandusky. This email was sent by C.K.P., an email contact of Attorney McGowan, to Attorney McGowan, Justice Eakin, and a number of other recipients. It was not included on the November 5, 2014 disc.

**Exhibit 93:** An email bearing the subject line "RE:," sent Wednesday, December 21, 2011.

An email with the phrase "Jerry Sandusky as Santa Claus with a crying baby boy on his lap..." This email was sent by J.M.C, an email contact of Attorney McGowan, to Attorney McGowan, Justice Eakin, and a number of other recipients. It was not included on the November 5, 2014 disc.

**Exhibit 94:** An email bearing the subject line "Re: FW: FW: How to propose to your girlfriend - as demonstrated by Oilers' Mike Comrie," sent Thursday, March 4, 2010.

A series of pictures purporting to be Houston Oilers player Mike Comrie proposing to his girlfriend. The last picture appears, from behind, to be Comrie's girlfriend performing oral sex on him, although the viewer cannot see anything other than her head in his lap. The series is called "How to propose to your girlfriend - as demonstrated by Oilers' Mike Comrie." This email was sent to Justice Eakin, Attorney McGowan, and a number of other recipients by P.T., an email contact of Attorney McGowan. This picture was not included on the November 5, 2014 disc.

**Exhibit 95:** An email bearing the subject line "RE: FW: How to tell when your house is infected with the swine flu," sent Friday, May 15, 2009.

A picture of an obese nude woman wearing a pig costume entitled "How to tell if your house is infected with the swine flu.". The email was sent by E.S., an

email contact of Attorney McGowan, to Attorney McGowan, Justice Eakin, and a number of other recipients. This email was included on the November 5, 2014 disc.

**Exhibit 96:** An email bearing the subject line "Re: FW: Sewx in the Shower," sent Thursday, December 18, 2008.

A joke entitled "sex in the shower." The joke states that, "in a survey 86% of inner city residents (almost all of whom are registered democrats) said that they have enjoyed sex in the shower. The other 14% said that they have not been to prison yet." This joke was sent to Justice Eakin, Attorney McGowan and many other recipients by P.T. It was not included on the November 5, 2014 disc.

**Exhibit 97:** An email bearing the subject line "FW: for a dreary day," sent Thursday, January 3, 2013.

A two-picture series of pictures entitled "for a dreary day," which are of a wrecked golf cart and a large breasted woman in a bikini top. This email was sent to Justice Eakin by Attorney McGowan. It was not included on the November 5, 2014 disc.

**Exhibit 98:** An email bearing the subject line "FW: Fwd: Difference between Ravens/SF fans," sent Tuesday, February 5, 2013.

A two-picture series entitled "Difference between Ravens/SF fans;" the first picture is of a woman in a Ravens' football jersey exposing her breasts to the camera. The second picture is two male San Francisco fans in a bar kissing each other. This email was sent to Justice Eakin by Attorney McGowan. It was not part of the November 5, 2014 disc.

**Exhibit 99:** An email bearing the subject line "Fw: Fwd: Wife's first hunt," sent Tuesday, November 26, 2013.

A photograph/joke combination entitled "Wife's First Hunt;" the picture is of a woman hunting in a hat with antlers on it. The joke describes the hat as the "first

timer's lucky hat." The obvious implication is that the husband wanted the wife to get shot by mistake because of the hat. This email was sent to Justice Eakin by Attorney McGowan. It was not included on the November 5, 2014 disc.

**Exhibit 100:** An email bearing the subject line "FW: Howard was always slow!," sent Saturday, April 20, 2013.

A photograph/joke combination that is entitled "Howard was always slow!" The picture is of a nude woman, on a couch, with a skeleton between her legs, apparently performing oral sex on her. There is a word balloon that says "Come on Howard, you're taking forever!" This email was sent to Justice Eakin by Attorney McGowan. It was not included on the November 5, 2014 disc.

**Exhibit 101:** An email bearing the subject line "FW: Kodak moment," sent Tuesday, November 12, 2013.

A link to a YouTube video entitled "Kodak Moment" or "How Not To Instagram." The video is of two women in a swamp. One of the women was taking "selfies" of herself by the water when she is eaten by an alligator or a crocodile. This link was sent to Justice Eakin by Attorney McGowan. It was not included on the November 5, 2014 disc.

**Exhibit 102:** An email bearing the subject line "FW: Morning funnies," sent Wednesday, July 29, 2009.

A picture slide show entitled "Morning Funnies" or "All men are the same," which shows pictures of small children ogling women's breasts. One photograph has a picture of a woman on a nude beach with a baby sitting next to her grabbing one of her nipples, and one photograph has a small child putting the breasts of an unclothed Barbie doll in his mouth. This email was sent to Justice Eakin by Attorney McGowan. It was included on the November 5, 2014 disc.



#### **4. Emails Received From Justice McCaffery at pacourts.us**

**Exhibit 103:** An email bearing the subject line "FW: Fwd(3) Did I read it right???", sent Thursday, December 11, 2008.

- i. This email contains signs or billboards with typographical errors, bizarre or offensive messages.
  - a. One sign advertises Southern Comfort liquor and states "Liquid panty remover."
  - b. Another sign states "Pasadena High - School Tarts Mon. - 9 A.M."

**Exhibit 104:** An email bearing the subject line "FW: FW: Foreign Commercials," sent Tuesday, January 27, 2009.

This email contains video clips of several foreign commercials. One of these commercials depicts a man sitting in a bar, who is approached by a seductively-dressed woman. When she attempts to sit down next to the man, he pulls the chair away from her to retrieve the bag of snacks that was on the chair. She then falls to the ground.

**Exhibit 105:** An email bearing the subject line "FW: Fw: Best Husband (UNCLASSIFIED)," sent Monday, April 20, 2009.

This email contains a picture slide show of men, supposedly husbands, watching women, supposedly their wives, do strenuous physical activity without assisting.

**Exhibit 106:** An email bearing the subject line "FW: Fw: Can you be fooled???", sent Tuesday, April 28, 2009.

This email contains pictures of Thai transsexual women and asks the viewer to guess whether the pictured transsexual woman is "a girl or a guy." In fact, all of the transsexual women pictured were born male.

**Exhibit 107:** An email bearing the subject line "FW: The People at Wal-Mart," sent Monday, September 21, 2009.

This email contains pictures of people at Wal-Mart with outlandish dress or appearance.

**Exhibit 108:** An email bearing the subject line "FW: Tiger.," sent Thursday, December 3, 2009.

This email contains a picture of Tiger Woods and his former wife, who is holding a golf club. Tiger Wood's face is Photoshopped to indicate that his wife beat him with the golf club.

**Exhibit 109:** An email bearing the subject line "FW: Recruiting...Navy style," sent Tuesday, December 15, 2009.

An email sent on December 15, 2009, bearing the subject line "FW: Recruiting...Navy style." This email contains a video clip suggesting that potential recruits should consider the United States Navy because it is "co-ed" and that, consequently, they could "get laid." The clip contains photographs of women in American flag bikinis and an image of a man and a woman in a shower together, but there are no pictures of bare female breasts, buttocks, male or female genitals, or pornographic content.

**Exhibit 110:** An email bearing the subject line "Fw: I DIDN'T KNOW YOU COULD DANCE," sent Thursday, December 24, 2009.

This email contains a clip of a man doing a strip tease for a woman; when he strips down to his underwear, a brown stain is visible on the underwear, and the woman laughs.

**Exhibit 111:** An email bearing the subject line "FW: Fwd: The Border," sent Thursday, January 28, 2010.

This email contains the following statement:

\*LET ME SEE IF I GOT THIS RIGHT..\*

IF YOU CROSS THE NORTH KOREAN BORDER  
ILLEGALLY YOU GET 12 YEARS HARD LABOR.

IF YOU CROSS THE IRANIAN BORDER ILLEGALLY YOU  
ARE DETAINED INDEFINITELY.

IF YOU CROSS THE AFGHAN BORDER ILLEGALLY, YOU  
GET SHOT..

IF YOU CROSS THE SAUDI ARABIAN BORDER  
ILLEGALLY YOU WILL BE JAILED..

IF YOU CROSS THE CHINESE BORDER ILLEGALLY YOU  
MAY NEVER BE HEARD FROM AGAIN.

IF YOU CROSS THE VENEZUELAN BORDER ILLEGALLY  
YOU WILL BE BRANDED A SPY AND YOUR FATE WILL  
BE SEALED.

IF YOU CROSS THE CUBAN BORDER ILLEGALLY YOU  
WILL BE THROWN INTO POLITICAL PRISON TO ROT.

IF YOU CROSS THE U.S. BORDER ILLEGALLY, YOU GET

- \*A JOB,
- \*A DRIVERS LICENSE,
- \*SOCIAL SECURITY CARD,
- \*WELFARE
- \*FOOD STAMPS,
- \*CREDIT CARDS,
- \*SUBSIDIZED RENT OR A LOAN TO BUY A HOUSE,
- \*FREE EDUCATION,
- \*FREE HEALTH CARE,
- \*A LOBBYIST IN WASHINGTON
- \*BILLIONS OF DOLLARS WORTH OF PUBLIC  
DOCUMENTS PRINTED IN YOUR LANGUAGE

\*THE RIGHT TO CARRY YOUR COUNTRY'S FLAG WHILE  
YOU PROTEST THAT YOU DON'T GET ENOUGH  
RESPECT

\*AND YOU CAN VOTE REPUBLICAN or DEMOCRATIC.

I JUST WANTED TO MAKE SURE I HAD A FIRM GRASP  
ON THE SITUATION...

**Exhibit 112:** An email bearing the subject line "FW: Canadian signs They tell it  
like it is," sent Thursday, March 18, 2010.

This email contains pictures of billboards and signs  
allegedly posted in Canada.

- a. One sign allegedly from the American  
Kennel Club states "It's all about the  
bitches."
- b. Another sign allegedly advertised the  
then-new 2003 BMW Z3 Roadster stating  
"For when you can't get laid on your  
looks and charm alone."



Commonwealth of Pennsylvania



SUPREME COURT  
4720 Old Gettysburg Road, Suite 405  
Mechanicsburg, Pennsylvania 17055

J. MICHAEL EAKIN  
JUSTICE

Phone: (717) 731-0461

October 17, 2014

Judicial Conduct Board  
Pennsylvania Judicial Center  
601 Commonwealth Avenue, Suite 3500  
PO Box 62525  
Harrisburg, PA 17106-2525

Dear Board Members:

I attach a statement I have released to the media this date.

Yesterday morning, October 16, I returned a call to Justice McCaffrey at 8:22 am. Justice McCaffrey was extremely upset with the Chief Justice's recent public statements, becoming more agitated as the call progressed. While I do not attempt to reconstruct the entirety of the call, I offer here the details pertinent to the situation.

Justice McCaffrey said he was receiving communications from "people", and that "they" had in their possession inappropriate emails that involved me. He described the purported nature of the emails, which involved my private "John Smith" Yahoo email account. Specifically, he named one person that was on the other end of the email exchange, to convince me that they did exist and that he had seen them personally.

The subject of much recent publicity concerning the sending of salacious emails, Justice McCaffrey next told me he "was not going down alone." Justice McCaffrey told me that I had to cause the Chief Justice to retract his media statements of the prior day. I told him I would not attempt to do so even if it were possible. He repeated that I had to, and that he "needed an answer" by noon to prevent release of the emails involving my account.

October 17, 2014

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I told him I would not attempt to sway the Chief Justice or anyone else because of a threat or to avoid the consequences, however unpleasant that may turn out to be. I specifically told him that I was not a "fixer", and that his demand was totally inappropriate. After making a series of other allegations against several other people not relevant to the instant situation, he repeated that I had until noon to get back to him.

When the call ended, I went to Philadelphia where I had meetings scheduled. I did not get back to him. At approximately 3:30 I entered the new family law courthouse where reporters from both the Daily News and Inquirer approached me. One reporter said that about an hour earlier, there arrived on his desk a pack or packet of emails from 2010 involving my private email account, that they were "racy." I replied I had not seen them and could not comment.

To be clear, I still have not seen them. I have no reason to question the media's description of them, and that these were received, not sent. (I opened a "John Smith" account years ago specifically to preclude identification of the court or my position on all personal matters, from sales confirmations to my electric bill.) That said, in an abundance of caution, I am hereby reporting the matter to the Board, and trust that you will determine if any violation of the rules on my part has occurred. I will certainly cooperate fully in your efforts.

Very truly yours,

J. Michael Eakin

JME/k/z

Attachment

Commonwealth of Pennsylvania



SUPREME COURT  
4720 Old Gettysburg Road, Suite 405  
Mechanicsburg, Pennsylvania 17055

J. MICHAEL EAKIN  
JUSTICE

Phone: (717) 731-0461

October 17, 2014

PRESS RELEASE

The media reports today about inappropriate material sent unsolicited to my private email account.

Yesterday, Justice McCaffery caused certain material, sent to my private email account some years ago, to be given to the media. I have not seen the material, nor do I wish to, but insofar as receiving such may be seen as violative of the rules of conduct, I have referred the matter to the Judicial Conduct Board. I do so not to avoid any responsibility I may bear, but to assure expeditious, candid, and complete evaluation of the matter.

My letter to the Conduct Board is appended. I have no further comment on the matter at this time.







**COMMONWEALTH OF PENNSYLVANIA  
JUDICIAL CONDUCT BOARD**

PENNSYLVANIA JUDICIAL CENTER  
601 COMMONWEALTH AVENUE, SUITE 3500  
P.O. Box 62525  
HARRISBURG, PA 17106-2525  
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HONORABLE ROBERT A. GRACI  
CHIEF COUNSEL

October 27, 2014

717-234-7911

The Honorable J. Michael Eakin  
Justice  
Supreme Court of Pennsylvania  
4720 Old Gettysburg Road, Ste. 405  
Mechanicsburg, PA 17055

Re: Notice of Full Investigation/Request for Written Response  
Judicial Conduct Board File Nos. 2014-647, 2014-650

Dear Justice Eakin:

The Constitution of the Commonwealth of Pennsylvania requires the Judicial Conduct Board to receive and investigate complaints concerning judicial conduct. Article V, § 18(d) sets forth the conduct that subjects a judge to disciplinary action. Please be advised that this office received and is considering complaints currently pending against you, including your self-report of possible misconduct, receipt of which is hereby acknowledged.

It is important for you to understand that the Board's authorization of the issuance of this letter means that the complaints against you survived the initial screening process. Based upon the information currently available to the Board and pursuant to J.C.B.R.P. No. 30(B), the Board authorized its legal counsel to conduct a full investigation of the alleged conduct.

It is also important for you to understand that it is the obligation of the Judicial Conduct Board to develop all information relevant to complaints. Your written response to this Notice of Full Investigation, if you choose to file one, is considered such relevant information. The Board's consideration of your written response may result in a decision to dismiss the complaints pending against you. However, because the complaints have survived the initial screening process, you may wish to consult or to retain counsel before submitting a written response. Since counsel had not entered an appearance on your behalf, this Notice of Full Investigation is provided to you.

You have a right to provide a written response or other information within 20 days of your receipt of this Notice of Full Investigation. The ongoing investigation may discover facts concerning the allegations that could change the violations investigated and/or charged. If the Board directs you to appear or testify, and you fail to do so without justification, the Board may consider such failure when making its final determination. It is noted that, effective July 1, 2014, Rule 2.16(A) of Canon 2 of the Code of Judicial Conduct adopted by the Supreme Court of Pennsylvania provides that "[a] judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies."

Please be assured that neither the receipt of an allegation of misconduct nor the Board's determination that a full investigation is warranted constitutes a final judgment that misconduct has occurred.

The allegations being investigated at Judicial Conduct Board File Nos. 2014-647 and 2014-650 relate to the circumstances surrounding your receipt of a number of e-mails containing either sexually-suggestive images or attachments or inappropriate race-based humor from a member or members of the staff of the Office of Attorney General (OAG). These e-mails were allegedly received on your state-owned computer equipment. In your self-report, you accepted responsibility for that conduct. The Board is investigating the following matters regarding your receipt of these e-mails:

1. You were elected to the office of Justice of the Supreme Court of Pennsylvania in 2001, and have served in that capacity continuously to the present.
2. Prior to being elected to the Supreme Court, you served as a Judge of the Superior Court of Pennsylvania and as the District Attorney of Cumberland County.
3. In your capacity both as a judicial officer and as a District Attorney, you have made many personal and professional contacts in the Pennsylvania legal community, including with persons who are presently employed by the OAG and with persons formerly employed by that Office.
4. In the course of corresponding with the aforementioned individuals, you employed a web-based e-mail address, [wap092001@yahoo.com](mailto:wap092001@yahoo.com), which identified you pseudonymously as "John Smith."

5. Generally, the recipients of your personal e-mail correspondence knew that you were, in fact, the "John Smith" identified in the e-mail address.
6. You also utilized the wap092001@yahoo.com address for various and sundry purposes, such as paying your personal household bills electronically.
7. You were provided with Commonwealth-paid internet service in your chambers and at your home.
8. As a benefit of office, you were provided with Commonwealth-issued computer hardware and other electronic equipment, including, but not limited to, a home computer, a lap top computer, an iPhone, and an iPad.
9. You utilized your Commonwealth-issued computer hardware equipment and internet service to access your wap092001@yahoo.com e-mail address *v/a* the internet.
10. You received e-mails from the government e-mail address or addresses of a person or persons on the staff of the OAG at your wap092001@yahoo.com address.
11. One of the persons sending you e-mails to your wap092001@yahoo.com e-mail address was identified by you as Deputy Attorney General Jeffrey Baxter, Esquire, a current employee of the OAG located in the Pittsburgh field office of the OAG.
12. Mr. Baxter was formerly employed by you while you were the District Attorney of Cumberland County.
13. Some of the e-mails that you received from Mr. Baxter or other persons on the staff of the OAG had attachments, including pictures.
14. Some of the e-mails that you received from persons on the staff of the OAG and the attachments to the e-mails depict sexually-suggestive material or acts.

15. Some of the e-mails that you received from a person or persons on the staff of the OAG and the attachments to the e-mails contain sexually-objectifying portrayals of women.
15. Some of the e-mails that you received from a person or persons on the staff of the OAG and the attachments to the e-mails contain jokes or photographs that are racially insensitive.
16. Some of the e-mails that you received from a person or persons on the staff of the OAG and the attachments to the e-mails invite the viewer to ridicule individuals depicted in photographs on the basis of negative racial stereotypes.
17. Some of the e-mails that you received from a person or persons on the staff of the OAG and the attachments to the e-mails were circulated among other persons on the staff of the OAG and to other individuals employed by other Commonwealth agencies and by the federal government
18. The Attorney General is the chief law officer of the Commonwealth of Pennsylvania.
19. The Attorney General is the chief law enforcement officer of the Commonwealth of Pennsylvania.
20. The Attorney General, either individually or represented by deputies, regularly represents the Commonwealth of Pennsylvania and its officers and departments in proceedings before the Supreme Court of Pennsylvania.
21. Your receipt of the e-mails described above in this notice was discussed in a telephone call between you and former Justice Seamus P. McCaffery on your mobile phone at approximately 8:20 a.m. on Thursday, October 16, 2014.
22. Former Justice McCaffery was extremely upset over the then-recent public statements of Chief Justice Ronald D. Castille relating to his conduct, including his sending and receiving of e-mails with sexually-explicit attachments.

23. Former Justice McCaffery told you that he was receiving communications from "people" whose identities he did not reveal and that those people had in their possession inappropriate e-mails that involved you.
24. Former Justice McCaffery described the purported nature of the e-mails which involved your wap092001@yahoo.com (or "John Smith") e-mail address.
25. In making this description, former Justice McCaffery named Deputy Attorney General Jeff Baxter, who was on the other end of the e-mail exchange, in order to convince you that the e-mails existed and that he had personally seen them.
26. Because he had been the subject of much recent publicity concerning the sending of salacious e-mails, Justice McCaffery told you that he "was not going down alone."
27. Former Justice McCaffery told you to get Chief Justice Castille to retract his media statements of the prior day, Wednesday, October 15, 2014.
28. You told former Justice McCaffery that you would not attempt to cause Chief Justice Castille to retract his media statements of the prior day, even if it were possible to do so.
29. Former Justice McCaffery repeated to you that you had to attempt to cause Chief Justice Castille to retract his media statements of the prior day and that former Justice McCaffery "needed an answer" by noon on Thursday, October 16, 2014 in order to prevent release to the media of the e-mails involving your e-mail account.
30. You told former Justice McCaffery that you would not attempt to sway Chief Justice Castille or anyone else because of a threat or to avoid the consequences of your own actions, however unpleasant that may turn out to be for you.
31. You specifically told former Justice McCaffery that you were not a "fixer," referring to former Justice McCaffery's alleged attempt to exert influence over the disposition of a traffic ticket issued to Lise Rapaport,

former Justice McCaffery's spouse and former employee, by contacting a former Traffic Court administrator and now-convicted felon, William Hird, and you told former Justice McCaffery that the demand that he made to you was totally inappropriate.

32. After former Justice McCaffery made a series of other allegations against several other people to you that were not relevant to the situation then unfolding, former Justice McCaffery repeated to you that you had until noon to get back to him with your answer regarding his demand.
33. You did not comply with former Justice McCaffery's demand, and you took no action to importune the Chief Justice on his behalf as he had demanded.
34. You reported the substance of former Justice McCaffery's phone call to Justice Thomas G. Saylor a short time after you spoke with former Justice McCaffery.
35. In the afternoon of October 16, 2014, after the expiration of the deadline that former Justice McCaffery had given you to try to exert influence over Chief Justice Castille, you learned that e-mails from 2010 from your wap092001@yahoo.com (or "John Smith") address had been released to the media.
36. You reported the information recounted above to the Judicial Conduct Board by letter dated October 17, 2014, and released his letter to the Board to the media on the same date along with a Press Release.
37. In your Press Release, you stated that on Thursday, October 16, 2014, former Justice McCaffery "caused certain material, sent to [your] private e-mail account some years ago, to be given to the media."
38. As has been reported in the media, former Justice McCaffery responded to the statements made by you by issuing a Statement in the afternoon of Friday, October 17, 2014.
39. In former Justice McCaffery's Statement, as reported in the media, he denied your allegations and provided an alternate version of the substance of the call that essentially denied that he threatened you.

40. Thereafter, in the evening of October 17, 2014, you issued a subsequent press release that responded to former Justice McCaffery's counter-allegations.
40. In your second press release, you stated the following: "I have read [former] Justice McCaffery's self-victimizing explanation. I find it incomplete, and inaccurate in many details and specifics, but there is little to be gained by pointing out the inconsistencies or otherwise quarrelling about the matter at this point. I stand completely behind my statements about the call, every word."

In order to aid the Board in conducting its investigation, the Board requests that you answer the following:

1. How many e-mails did you receive at your wap092001@yahoo.com account from persons who are currently or have been employed by
  - a. the OAG?
  - b. another Commonwealth agency?
  - c. the federal government?
2. State the names of the persons from whom you received these e-mails.
3. State the positions those persons hold or held in
  - a. the OAG.
  - b. another Commonwealth agency.
  - c. the federal government.
4. Of the e-mails received by you from these persons, were you aware if any of the e-mails originated from a state or federal government e-mail account?
5. Of the e-mails received by you from these persons, were you aware at the time you received them that any of them contained sexually-suggestive content?



6. Of the e-mails received by you from these persons, were you aware at the time you received them that any of them contained
  - a. racially-insensitive content; or
  - b. content that subjected the persons depicted in any attachment to ridicule based upon racial stereotypes?
7. If the answer to either question 5 or 6 is "yes," how many such e-mails did you receive from the aforementioned persons?
  - a. After you learned of the content of the e-mails, did you take any steps to prevent these persons from sending such material to you?
8. Did you send, forward, or otherwise redistribute any e-mail containing sexually-suggestive or racially insensitive material to the government or personal e-mail address of a state employee?
  - a. If the answer is "yes," please state the name and government position held by such person or persons.
  - b. If the answer is "yes," please state the e-mail address that you sent, forwarded, or otherwise distributed the e-mails.
9. Did you send, forward, or otherwise redistribute any e-mail containing sexually-suggestive or racially insensitive material to the government or personal e-mail address of a federal employee?
  - a. If the answer is "yes," please state the name and government position held by such person or persons.
  - b. If the answer is "yes," please state the e-mail address that you sent, forwarded, or otherwise distributed the e-mails.

10. If the answer to question 8 and 9 is "no," did you know or later learn that the sexually-suggestive or racially insensitive e-mails were being redistributed or forwarded to other persons within the OAG or elsewhere?
11. Did any of the persons from whom you received these sexually-charged e-mails ever personally appear before the Supreme Court while you were a Justice of the Supreme Court?
  - a. If you sent, forwarded or otherwise distributed the sexually-suggestive e-mails that you had received, did any of the persons to whom you sent, forwarded, or otherwise distributed the e-mails ever personally appear before the Supreme Court while you were a Justice of the Supreme Court?
12. Did any of the persons from whom you received these racially-insensitive e-mails ever personally appear before the Supreme Court while you were a Justice of the Supreme Court?
  - a. If you sent, forwarded or otherwise distributed the racially-insensitive e-mails that you had received, did any of the persons to whom you sent, forwarded, or otherwise distributed the e-mails ever personally appear before the Supreme Court while you were a Justice of the Supreme Court?
13. If the answer to question 11 or 12 is "yes," what are the names and positions of the persons who appeared before the Supreme Court while you were a Justice of the Supreme Court?
  - a. If these persons appeared before the Supreme Court, did you disclose your relationship with these persons publically prior to hearing their matters?
14. While you have said that you sent the e-mails described elsewhere in this notice from a private account, explain whether they were sent from computer or electronic

equipment owned personally by you or some other private person, or were they sent from equipment owned, provided and paid for by the Commonwealth of Pennsylvania or some other governmental agency.

15. If the e-mails described elsewhere in this notice were sent from computer or electronic equipment owned, provided and paid for by the Commonwealth of Pennsylvania or some other governmental agency, are you able to identify the equipment used to send these e-mails and the account e-mail address or addresses that you used? If so, please provide that information.
16. Did you send the e-mails described elsewhere in this notice to any other members of the judiciary of the Commonwealth of Pennsylvania?
17. If the answer to question 16 is "yes," what are the names of the persons to whom you sent these e-mails?
18. If the answer to question 16 is "yes," what positions did those persons hold?
19. Did you receive any such e-mails from any other members of the judiciary of the Commonwealth of Pennsylvania?
20. If the answer to question 19 is "yes," what are the names of the persons from whom you received such e-mails?
21. If the answer to question 19 is "yes," what positions did those persons hold?

**RELATING TO YOUR TELEPHONE CONVERSATION WITH FORMER JUSTICE MCCAFFERY**

22. Are there any details of the conversation that you had with former Justice McCaffery that are not included in the above recitation of investigative facts? If so, please relate these facts.
23. Are you aware of the identity of the individual who informed former Justice McCaffery of your receipt of

inappropriate e-mails? If so, please identify that individual.

Some, all or one of these allegations, if true, may subject you to discipline pursuant to Article V, §§ 18(b)(5) and 18(d)(1) of the Constitution of the Commonwealth of Pennsylvania in that some, all or one of them may constitute misconduct in office, conduct which prejudices the proper administration of justice, conduct which brings the judicial office into disrepute, or conduct in violation of a canon or rule prescribed by the Supreme Court, or conduct which constitutes a violation of Article V, § 17 of the Constitution of Pennsylvania. Article V, § 17(b) provides, in pertinent part, that "Justices and judges shall not engage in any activity prohibited by law and shall not violate any canon of legal or judicial ethics prescribed by the Supreme Court."

By your conduct, you may have violated the Code of Judicial Conduct, as well as Article V, §§ 17(b) and 18(d)(1) of the Pennsylvania Constitution.

Canon 1 of the Code of Judicial Conduct, in effect for conduct through June 30, 2014, provides:

**Judges should uphold the integrity and independence of the Judiciary**

An independent and honorable judiciary is indispensable to justice in our society. Judges should participate in establishing, maintaining, and enforcing, and should themselves observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective

Canon 2 of the Code of Judicial Conduct, in effect for conduct through June 30, 2014, provides, in pertinent part:

**Judges should avoid impropriety and the appearance of impropriety in all their activities**

A. Judges should respect and comply with the law and should conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. Judges should not allow their family, social, or other relationships to influence their judicial conduct or judgment. They should not lend the prestige of their office to advance the private interests of others; nor should they convey or knowingly permit others to convey the impression that they are in a special position to influence the judge. ... .

Canon 5 of the Code of Judicial Conduct, in effect for conduct through June 30, 2014, provides, in pertinent part:

**Judges should regulate their extra-judicial activities to minimize the risk of conflict with their judicial duties.**

A. Avocational Activities. Judges may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of their office[.]

Article V, Section 18(d)(1) of the Pennsylvania Constitution provides, in pertinent part:

A justice, judge or justice of the peace may be suspended, removed from office or otherwise disciplined for . . . conduct which [...] brings the judicial office into disrepute, whether or not the conduct occurred while acting in a judicial capacity.

Article V, Section 17(b) of the Pennsylvania Constitution provides, in pertinent part:

Justices and Judges shall not engage in any activity prohibited by law, and shall not violate any canon of legal or judicial ethics prescribed by the Supreme Court.

The undersigned Board counsel will make no recommendation to the Board for the disposition of this complaint until you have been afforded an opportunity to provide a written response or other information within 20 days of the date of this letter. While you are not required to respond to this letter, it is possible that your reply may provide the Board with information leading to a non-public resolution of these matters.

If you intend to respond, the Board would like you to provide specific affirmances or denials to each of the numbered factual allegations set forth above, including your version of the facts, if they differ in any way from those set forth above, answers to the questions posed, and any other information that you believe would be relevant to the Board's investigation. In any reply that you make to the Board, please chronologically and specifically state your account of the events and include copies of any particularly pertinent documents to which you refer. You may also identify individuals whom you feel that the Board should interview.

Please be assured that we are not prejudging the alleged facts and charges nor are we an advocate on behalf of the complainants. Rather, we are conducting an impartial and unbiased investigation with regard to this complaint. In that regard, we will attempt to verify statements in your response, just as we do with the statements made to us by the complainant.

For this reason, and because a judge can be subject to discipline for making a material false statement or deliberately failing to disclose a material fact in connection with a disciplinary matter, you should be careful to be accurate in your factual statements.

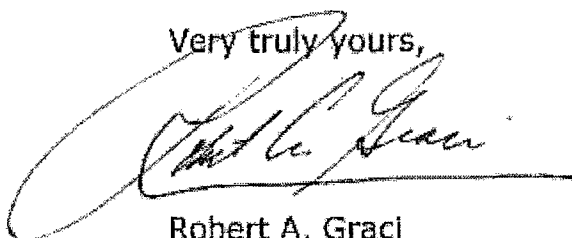
If we do not hear from you within 20 days, we may assume that you do not desire to submit your position with respect to this Notice. Under such circumstances, the board may continue with its investigation, possibly require you or other witnesses to submit to a deposition, or proceed to make our recommendation for an appropriate disposition on the basis of the information contained in our file. However, the Board would certainly prefer to have the benefit of your position before making the recommendation.

You should note that the Constitution of the Commonwealth of Pennsylvania, Article V, § 18(a)(8) provides that all proceedings before the Board and all information gathered in the course of the Board's investigation are confidential and are not public records. Additionally, J.C.B.R.P. No. 17 provides that all information and proceedings relating to a complaint and records of the Board's deliberations shall be confidential.

Honorable J. Michael Eakin  
Page **14** of **14**  
October 27, 2014

If you have any questions, you or your counsel should not hesitate to contact this office.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert A. Graci", written over a horizontal line.

Robert A. Graci  
Chief Counsel

RAG/tis

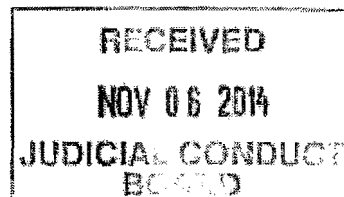
Certified Mail No. 7161 7145 5373 0150 1528  
Return Receipt Requested  
Restricted Delivery







SUPREME COURT OF PENNSYLVANIA  
4720 OLD GETTYSBURG ROAD  
MECHANICSBURG, PA 17055



J. MICHAEL EAKIN  
JUSTICE

(717) 731-0461  
Fax (717) 731-0465

November 5, 2014

Honorable Robert A. Graci  
Judicial Conduct Board  
Pennsylvania Judicial Center  
601 Commonwealth Avenue, Suite 3500  
P. O. Box 62525  
Harrisburg, PA 17106-2525

Dear Counsel:

Please find enclosed my response to your letter of October 27. I hope this, together with my interviews with your investigator, will enable the Board to resolve the allegations about my conduct that have been the subject of my self-referral and that of Mr. Stilp, in an expeditious fashion.

Very truly yours,

J. Michael Eakin

JME/klz  
Enclosure



**SUPREME COURT OF PENNSYLVANIA**

4720 OLD GETTYSBURG ROAD  
MECHANICSBURG, PA 17055

November 5, 2014

J. MICHAEL EAKIN  
JUSTICE

(717) 731-0461  
Fax (717) 731-0465

**PREFACE**

I do not challenge the premise that I received "a number of e-mails" on state-owned computer equipment, and insofar as there is responsibility for receiving unsolicited emails, I accept it. However, I repeat that the only knowledge of these that I have is from media reports; I have not seen what has been given the media, or the Board. The public reports involve a total of three e-mails, apparently sent four or five years ago to a private e-mail account that I maintain. I have no direct knowledge or recollection of them or of their content or their sender. I have not retained copies of any emails at all, on personal or judicial accounts, from that time frame.

**GENERAL ALLEGATIONS**

Paragraphs 1 and 2 are acknowledged.

3. is admitted, though my acquaintance with the legal community is obviously much broader than the OAG.

4. is misleading as stated. Over the years I have corresponded with few people in the OAG — I did not create or employ the stated email address in order to communicate with "the aforementioned individuals," be they OAG employees or otherwise. I maintain a judicial email address, and a private email address for matters not related to my judicial correspondence and duties. If court related, I normally use my judicial email — if otherwise, my private email.

5., 6. I chose to be identified as the "pseudonymous" John Smith rather than by my name, as my name or title appearing on non-court affiliated matters might seem inappropriate. The private email address is for personal matters, such as paying bills or scheduling personal events, or just saying hello to friends. I have been identified as John Smith for many years. My friends know this, billing agencies or retailers may or may not, at first, but it is not intended to fool anyone.

7. All court employees have Commonwealth-paid internet at chambers. All appellate judges may have such at home, though I suppose they could choose not to work at

home. While it is now billed to the court directly, for several years it was less expensive to have me "package" the service with my cable TV and be reimbursed — this saved the Commonwealth about \$50/month I was told. I have no idea of the current cost.

8. These devices are not "benefits of office" any more than is my desk or chair — they are tools that allow jurists with statewide obligations to work with some level of efficiency. Suggesting they are mere perks is incorrect. I currently have the four items listed. At the time of these emails, I had no iPad, and the phone was likely a Blackberry.

9. True.

10. I have no records to check. In the last dozen years, it is likely I have received more than one email from some official OAG email address, and many other "governmental" addresses, but I have no recollection of any such emails, no record of same, and no means of resurrecting such information.

11. Mr. Baxter was not "sending [me] emails" to my private account, which implies a regular flow of them. He is a friend and former employee but has a private email account and the correspondence I recall with him was irregular, likely involved golf or our families, and was done using that private address. If his government email was used, I don't recall it.

12. True.

13. I do not recall any specific emails from Mr. Baxter, their contents or any attachments. I likewise don't recall the contents of any emails from "other persons on the staff of the OAG."

14., 15., 15.(sic), 16. I recall no such emails. Insofar as these allegations refer to the media-reported emails in question here, I have not seen them and the subjective descriptions of their contents are not mine.

17. I have no idea who may have circulated what to whom. I understand the emails reported by the media were purportedly received in my private email without solicitation and without any suggestion they were 'circulated' or forwarded to anyone by me. That is all I know about them.

18., 19. Both versions are admitted.

20. Employees of the OAG appear from time to time before us — it could be called 'regularly' I suppose, but it frankly is not that frequent. Neither Mr. Baxter nor his





department, to my recollection, has ever appeared before my court. If they have provided the court a communication or brief as part of any case, I don't recall it.

#### EVENTS INVOLVING JUSTICE MCCAFFERY I

21. Not true as stated, as this avers I did receive emails — I have not seen them, and certainly did not see them then. I did not acknowledge receipt in this phone call, much less receiving emails "described above in this notice." The proper statement of events is in your paragraph 23.

22-24. True.

25. Justice McCaffery named Mr. Baxter as "involved." He did not say he "was on the other end" or that there was an "exchange" between Baxter and myself. I was not party to the Justice's thinking or motivation in mentioning Mr. Baxter, but it was pretty clearly for the purpose you state — there was no other reason to mention Mr. Baxter.

26. That is what he said, several times — again I cannot attest to his motivation.

27. Justice McCaffery told me I "had to" cause the retraction. He did so several times.

28. True.

29. He told me I had to cause it, not just attempt to cause it. And his exact words after the demand to brace the Chief Justice was made, were that he needed an answer by noon, even though I had already refused to do so. In fairness, he did not specifically complete the deadline ultimatum by adding the threat, but they were clearly intertwined in context, and the connection was unavoidable. There was no other matter or demand that I was called upon to "answer."

30. True.

31. I used the term "Fixer" because that was the name given Mr. Hird, according to official reports on the Traffic Court incident, which incident had been the subject of a previous candid discussion between Justice McCaffery and myself. I repeatedly told Justice McCaffery his demand and ultimatum was inappropriate — I cannot say he comprehended the "fixer" reference, but I told him more than once that I would not do what he wanted.

32-34. True. My conversation with Justice Saylor was shortly after eleven a.m.

35. At about 3:30 that afternoon, a reporter from the Philadelphia Daily news told me that an hour or so before, a "packet" of emails had "landed on his desk," that they

contained sexual and racial content, and involved my "John Smith" account, though he told me they were "not on the level of" those involving Justice McCaffery. He did not suggest their source. I declined comment, and he told me the matter would be in the morning paper. I was later approached by a reporter from the Inquirer about the same subject, but I declined comment.

36-40. I am not certain of the meaning here. You have the material I sent you, the releases are public, and I stand by my statements therein.

#### OTHER INFORMATION

1-13. I have no way of knowing, or making any reasonable guess about numbers, or the time period you are asking about. I do not retain emails long, much less indefinitely. The question is exceptionally broad and smacks of investigation of other issues. It asks about information beyond my ability to estimate, and beyond my understanding of the present inquiry. For example, my tax return correspondence with the state and federal government, my local sewer authority, and officials involved in settling my mother's estate, all are through this address — I trust you are not interested in a copy of that correspondence.

I have not retained a history that allows me to address whether I ever received or "redistributed" what someone might individually consider "sexually-suggestive" material to the personal email address of a state employee. My sister works for a Commonwealth agency, but her sense of "suggestive" is probably different than yours and mine. I repeat, I do not retain emails and cannot reconstruct what you ask.

As I cannot acknowledge receipt or transmission of such material, there are no such "persons" that might have appeared before the court. I repeat that my understanding of the allegations involving my conduct are limited to receipt of emails, not transmission of them — the distinction is as significant as the difference between being shot and doing the shooting, and it appears to be forgotten in these interrogatives.

14. I have never said I sent any emails — there were three unsolicited emails in question, which apparently I received, but I did not send them from any account.

15. If this refers to material sent to me, I have no knowledge of the hardware from which it came.

16-18. Assuming this refers to the three emails described in the media, I repeat that I have no recollection of receiving them, much less passing them on.

19-21. I received no "such" emails from the court. I receive other emails from the court all the time — that is why we have court email.

EVENTS INVOLVING JUSTICE MCCAFFERY II

22. I did not include or attempt to repeat all words in the conversation. As I understand it, this inquiry is closed, and I'm not sure what blanks need filled in.

23. I have no idea who told him anything.

I trust this will aid the inquiry. While I appreciate the assurances of confidentiality, most of this has already made the papers. I am most concerned in that regard for Mr. Baxter. I understand he has been disciplined within the OAG office, but that said, identifying him to the public will undoubtedly cause him to lose his job. As his identity seems of remote relevance at best, I hope the Board will respect the assurances of your investigator and recognize the consequences of a breach of confidentiality in this regard.

Very truly yours,

  
J. Michael Eakin

JME/klz





JUDICIAL CONDUCT BOARD  
**REPORT OF INTERVIEW**

Interview of: J. Michael EAKIN

JCB File: 2014-647

Interviewed By: Jack HARLACKER, Investigator

Interview Date/Time: October 17, 2014 @2:00 pm

APPROVED  
By JCB at 7:29 pm, Oct 26, 2014

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J. Michael EAKIN, Justice, Supreme Court of Pennsylvania, 4720 Old Gettysburg Road, Mechanicsburg, PA 17055, 717-731-0461, justice.eakin@pacourts.us.

EAKIN is aware of the identity of Investigator Jack HARLACKER, and was advised of the matter under investigation. EAKIN thereafter provided the following information:

On Thursday, October 16, 2014 at 8:00 AM, while EAKIN was at his house in Lancaster County, EAKIN received a call on his AOPC iPhone (717-329-0997), but was not able to answer the call at that time. The caller ID displayed the name of Seamus McCAFFERY (Mobile 215-290-9999).

On October 16, 2014, EAKIN was traveling from Elizabethtown, PA to Philadelphia, Pa via Amtrak to attend the new "family court" building dedication.

At 8:22 a.m., while waiting at the Elizabethtown Amtrak Rail Station for the 9:17 a.m. train, EAKIN returned Seamus McCAFFERY's call. The conversation lasted 21 minutes.

The conversation started with McCAFFERY stating "people" and "they" have sexual and racial emails that involved EAKIN's private yahoo email account.

In an effort to "validate the authenticity of the emails" McCAFFERY mentioned a friend of EAKIN's email address was listed on the emails. Throughout the conversation McCAFFERY told EAKIN "he saw the contents."

McCAFFERY said "You have to get CASTILLE to take it back. I'm not going down alone." McCAFFERY stated "I need an answer by noon" or otherwise the emails would be released to the media. EAKIN replied, "I'm not going to

do that." McCAFFERY stated "people are calling, they have this stuff and want to go public." EAKIN replied, "Ok." McCAFFERY repeated his noon deadline.

EAKIN told McCAFFERY "I am not the fixer. I'm not going to cover this up even if it harms me." EAKIN was referring to the "traffic matter" involving "McCAFFERY's wife getting a ticket in Philadelphia" The term fixer was referring to a guy who worked at traffic court. The fixer could take care of tickets in Philadelphia. EAKIN said the fixer's name eludes me right now.

McCAFFERY was so upset and agitated; unlike EAKIN has ever heard or seen before. EAKIN had to talk loudly and repeat his name (McCAFFERY's) to get him under control. EAKIN said McCAFFERY "feels singled out," and that he is being judged unfairly by CASTILLE. The call ended with EAKIN refusing to participate with McCAFFERY's demand.

On October 16, 2014 @ 11:04 a.m. EAKIN called Justice Tom SAYLOR and told him about the telephone conversation he had with McCAFFERY. This call lasted eleven minutes.

After the "family court dedication", at approximately 3:30 pm, a member of the media approached EAKIN. The reporter was Chris BRENNAN from the Philadelphia Daily News (215-313-3162). BRENNAN said about an hour earlier, a packet arrived on his desk with emails from 2010, with EAKIN'S private email address on them. The reporter described the emails as "racy." EAKIN told BRENNAN that he had not seen the emails and would not comment. EAKIN provided HARLACKER with the paper phone message noting the date/time of 10-16-14 @ 3:20 pm. He wanted to stress the time when BRENNAN confronted him because it was after the noon deadline that McCAFFERY had given to him.

I asked EAKIN about McCAFFERY's statement regarding "people" and "they," did he know who McCAFFERY was referring to? EAKIN said it was common for "Seamus" to start conversations with, "I'm hearing, or getting calls from so and so." EAKIN said "Seamus hides behind such remarks."

Regarding EAKIN's private yahoo email account, he stated that "I've had the address for many years." Previously he used the email address judgeEAKIN@yahoo.com. After some thought, he decided using "judgeEAKIN" wasn't an appropriate address for a judge to using on a daily basis for personal matters, such as paying utilities bills etc."

EAKIN has used johnsmith@yahoo.com at *least* two or three times a day for many years. Most people know this email address belongs to him. Occasionally some will ask "who is this?" He added, "Seamus knows this is

my private email," based upon how long and the frequency EAKIN uses the email account.

When asked what would motivate McCAFFERY to call him and make these demands, EAKIN stated, "Seamus is a bully, in your face, always cops and guns, tough guy stuff." McCAFFERY was upset because "the chief released information about the emails to the media." "Seamus wanted the chief to retract his statement to the media" McCAFFERY said based upon his friendship with CASTILLE, EAKIN should call Chief Justice CASTILE and encourage him make a retraction. McCAFFERY said, "You have to get CASTILLE to take it back. I'm not going down alone."

McCAFFERY brought up incidents that other Justices were publically involved in, for example, SAYLOR's matter with a pen knife at the airport. EAKIN said "McCAFFERY blames everyone for his problems."

EAKIN did not want to provide the name of the person that McCAFFERY mentioned to validate the emails at this time. EAKIN said, "It's not that I won't, I want to have a conversation with him first. I am very protective of him." The person "works for the attorney general in the western part of the state. He has already been disciplined; I hate to see him lose his job now."

EAKIN reiterated he will not withhold any information from the investigation; he just wants to let this person know before the JCB contacts him.

Regarding if EAKIN has ever sent inappropriate emails, EAKINS said "I can't say I never did, but not from any state computers and no state emails."

Regarding the comment McCAFFERY made about "I'm not going down alone," EAKIN said he took it to mean McCAFFERY was referring to him, and not CASTILLE.

EAKIN said there is a long standing feud between CASITLLE and McCAFFERY. It has to do with McCAFFERY wanting his hand in "everything Philadelphia" and CASITLLE spending too much time with Philadelphia matters, and not enough time with Harrisburg matters relating to the court with regards to the duties of the Chief Justice.

EAKIN was asked if he felt that he had violated any canons or laws. EAKIN said, "I don't believe I violated the canons, not intentionally." He added, "I am embarrassed by it."

EAKIN did share the self-report letter with his colleagues with the exception of McCAFFERY.



JUDICIAL CONDUCT BOARD  
**REPORT OF INTERVIEW**

Interview of: J. Michael EAKIN

JCB File: 2014-647

Interviewed By: Jack HARLACKER, Investigator

APPROVED  
By JCH at 12:08 pm, Oct 28, 2014

Interview Date/Time: October 20, 2014 @ 10:00 AM

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J. Michael EAKIN, Justice, Supreme Court of Pennsylvania, 4720 Old Gettysburg Road, Mechanicsburg, PA 17055, 717-731-0461, justice.eakin@pacourts.us

EAKIN is aware of the identity of Investigator Jack HARLACKER, and was advised of the matter under investigation. EAKIN thereafter provided the following information:

This interview is for additional information based upon the interview of EAKIN on Friday, October 17, 2014.

On Friday, October 17, 2014, EAKIN issued a second press release (after the interview with JCB). The second press release was based upon McCAFFERY's response to EAKIN's first press release earlier that day.

The morning of Friday, October 17, 2014, EAKIN disseminated his first press release through the "Capitol Wire".

Later that afternoon EAKIN released his second press release in response to McCAFFERY's response to EAKIN's first press release. EAKIN assumes his staff released the second press release through the Capitol Media service.

EAKIN provided the JCB with a hard copy of his second press release:

***"I have read Justice McCaffery's self-victimizing explanation. I find it incomplete, and inaccurate in many details and specifics, but there is little to be gained by pointing out the inconsistencies or otherwise quarreling about the matter at this point.***

***I stand completely behind my statements about the call, every word."***

EAKIN was asked if he sends emails to government agencies, attorneys that appear before him, including those in the private and public sectors. EAKIN said he sends emails to some Philadelphia attorneys about golfing, this occurs once or twice a year. EAKIN said the emails are to plaintiff attorneys, defense attorneys and several retired cops.

EAKIN said that no one has ever suggested or tried to influence his vote since he has become a Judge/Justice.

The Personal Computer (PC) in EAKIN's office, his iPhone and iPad are all the property of Administrative Office of Pennsylvania Courts (AOPC).

EAKIN said he placed a call to the US Attorney, Pennsylvania Eastern District to report his telephone conversation with McCAFFERY.

While Investigator Harlackner was present, EAKIN telephoned the person McCAFFERY referenced about validating the emails during the Thursday, October 16, 2014 conversation.

EAKIN told the person on the telephone that he had to release his name to the JCB. EAKIN told the person on the telephone that he had been talking to the investigator and he will most likely be calling him.

After the call, EAKIN wrote the following name and telephone number on a piece of paper:

724-331-2140  
deff BAXTER





JUDICIAL CONDUCT BOARD  
**REPORT OF INTERVIEW**

Interview of: J. Michael EAKIN

JCB File: 2014-647

Interviewed By: Jack HARLACKER, Investigator

APPROVED  
By JCH at 12:20 p.m., Oct 28, 2014

Interview Date/Time: October 24, 2014 9:30 AM

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J. Michael EAKIN, Justice, Supreme Court of Pennsylvania, 4720 Old Gettysburg Road, Mechanicsburg, PA 17055, 717-731-0461, justice.eakin@pacourts.us

EAKIN is aware of the identity of Investigator Jack HARLACKER, and was advised of the matter under investigation. EAKIN thereafter provided the following information:

*This was a telephonic interview.*

EAKIN was asked for clarification about his private yahoo email account. EAKIN provided the following information:

The actual email address: wap092001@yahoo.com  
The name alias/pseudo is: John Smith@yahoo.com

In other words if you want to send the justice an email you would send to: wap092001@yahoo.com the alias name seen is Johnsmith@yahoo.com

This is done when you initially set up the account. You pick the actual address (wap092001@yahoo.com) and you enter a pseudo name (John Smith)



COMMONWEALTH OF PENNSYLVANIA  
JUDICIAL CONDUCT BOARD

IN RE:

THE HONORABLE J. MICHAEL EAKIN : JCB File No. 2015-601

Deposition of: J. MICHAEL EAKIN

Taken by : James P. Kleman, Jr., Esquire

Before : Kelly S. Grube, RPR  
Lancaster County Court Reporters

Date : Tuesday, October 20, 2015

Place : Judicial Conduct Board  
Pennsylvania Judicial Center  
Suite 3500  
601 Commonwealth Avenue  
P.O. Box 62525  
Harrisburg, PA 17106-2525

APPEARANCES:

JAMES P. KLEMAN, JR., ESQUIRE  
and ROBERT A. GRACI, ESQUIRE  
Pennsylvania Judicial Center  
601 Commonwealth Avenue, Suite 3500  
Harrisburg, Pennsylvania 17120  
For - Judicial Conduct Board

HEIDI F. EAKIN, ESQUIRE  
COSTOPOULOS, FOSTER & FIELDS  
831 Market Street  
Lemoyne, Pennsylvania 17043  
For - J. Michael Eakin

ALSO PRESENT:

Jack Harlacker, Investigator for the Board

KELLY S. GRUBE, RPR, (717) 299-8091  
Lancaster County Court Reporters

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(1:06 p.m.)

(Board's Exhibits 1 through 14 were pre-marked.)

J. MICHAEL EAKIN,

called as a witness, having been duly sworn or affirmed,  
was examined and testified as follows:

EXAMINATION

BY MR. KLEMAN:

Q Today is the 20th of October 2015. We are  
located in the offices of the Judicial Conduct Board in  
the Pennsylvania Judicial Center. Present are myself,  
Judicial Conduct Board Deputy Counsel James Kleman; the  
Honorable J. Michael Eakin, Justice of the Supreme Court  
of Pennsylvania; Heidi Eakin, Esquire, his able counsel;  
board investigator, Jack Harlacker; and Board Chief  
Counsel Robert A. Graci.

Justice Eakin, you've been subpoenaed -- excuse  
me. You haven't been subpoenaed. You've been asked to  
this deposition which is being conducted as part of a  
confidential investigation by the Judicial Conduct Board  
regarding your possible violations of the Pennsylvania  
Constitution and the Code of Judicial Conduct.

Thank you very much for coming here and being  
deposed on such short notice without the necessity of a  
subpoena.

Justice Eakin, I am sure, given your position,

1 that you are familiar with the composition of the Board  
2 and the function that the Board serves for the people of  
3 the Commonwealth; but if you would like, I can certainly  
4 put on the record any information that you would like or  
5 answer any questions you have.

6 A I'm quite familiar with it.

7 Q Thank you, sir.

8 As far as ground rules are concerned, I try to  
9 break for 10 minutes every hour on the hour. If you need  
10 a break for any reason, just ask me. All I do ask is  
11 that you ask for a break either before I ask a question  
12 or after I answer it -- or after you answer it. You  
13 can't take a break between the question and answer,  
14 obviously. If you need a break for any reason, feel free  
15 to ask.

16 First question, are you under the influence of  
17 any substances that might affect your understanding of  
18 what's going on here today?

19 A No.

20 Q Because you haven't received a Notice of Full  
21 Investigation, it's incumbent upon me to lay out the  
22 somewhat lengthy factual predicate of the Board's current  
23 investigation; and if I misstate anything, either you or  
24 your counsel can correct me, based on your understanding  
25 of the facts. Is that all right with you?

1           A     Yes.

2           Q     As you are aware, both from your self-report to  
3     the Board this month, or this past month, and from the  
4     news coverage regarding the matter, the Board is  
5     investigating a number of e-mails that you sent or  
6     received from your personal e-mail account,  
7     wap092001@yahoo.com. This e-mail account is yours, but  
8     you operate it under the pseudonym John Smith.

9                 You are also aware that your primary accuser  
10    regarding these allegations is Attorney General Kathleen  
11    Kane. Ms. Kane's law license was temporarily suspended  
12    effective October 21st, 2015, by the Pennsylvania Supreme  
13    Court due to the many and varied allegations of egregious  
14    attorney misconduct on her part, including criminal  
15    conduct and charges pending against her.

16                You participated in the vote to suspend  
17    Ms. Kane, and you voted in favor of her suspension. The  
18    vote to suspend Ms. Kane's law license was unanimous.

19                Shortly thereafter, on or about September 22nd,  
20    2015, Ms. Kane was charged in the criminal courts with a  
21    second count of perjury. On that same day, she, on her  
22    own with the assistance of a spokesperson, accused you  
23    personally of exchanging racial, misogynist pornography  
24    with persons involved in the criminal justice system from  
25    your John Smith e-mail account.



1           At the time she revealed this information,  
2           Ms. Kane claimed that the e-mails were, quote, heretofore  
3           unknown to her and to her office. Ms. Kane claims that  
4           she is the victim of a good ol' boys network of officials  
5           involved in the criminal justice system that contrived  
6           the criminal charges against her to prevent her from  
7           revealing the fact that those individuals shared  
8           pornography on government time with government equipment.

9           As you're also aware, the Board investigated  
10          similar allegations regarding your John Smith e-mail  
11          account last year in 2014 which came to light resulting  
12          from an ongoing feud between former Chief Justice Ronald  
13          Castille and former Justice Seamus McCaffery regarding  
14          Justice McCaffery's conduct.

15          Ms. Kane had claimed in the press at around that  
16          same time that, quote, top jurists and other executive  
17          branch officials had exchanged pornography on State  
18          computers with State e-mail accounts.

19          Purportedly Ms. Kane's subordinates had  
20          uncovered pornographic e-mail exchanges between and among  
21          Attorney General staff and other government officials  
22          during her review of the Jerry Sandusky investigation and  
23          ultimate prosecution.

24          Chief Justice -- then Chief Justice Castille  
25          conducted an inquiry of the allegation regarding top

1 jurists, and it was determined that Justice McCaffery  
2 exchanged as a sender and a recipient graphic images and  
3 videos of sex acts with OAG staff and others.

4 The Supreme Court set in motion a process to  
5 suspend Justice McCaffery; and prior to the suspension  
6 order, Justice McCaffery called you and threatened to  
7 expose certain e-mails sent or received from your John  
8 Smith e-mail account that he claimed contained, quote,  
9 racist, end quote, pornographic images.

10 Justice McCaffery told you that he, quote, was  
11 not going down alone, and he wanted you to get Chief --  
12 then Chief Justice Castille to retract his earlier press  
13 release. Otherwise, a packet of your John Smith e-mails  
14 would be released to the media.

15 In response, you informed the Board of Justice  
16 McCaffery's conduct and self-reported your own conduct,  
17 if your conduct would have, in fact, violated the Code or  
18 the Constitution.

19 Ultimately, Justice McCaffery was suspended by  
20 the Supreme Court and he resigned.

21 The Board conducted its investigation of your  
22 John Smith e-mails by interviewing you and issuing  
23 subpoenas to the Attorney General for the e-mails you  
24 exchanged with OAG staff using your John Smith account  
25 and your official pacourts.us e-mail account for the time

1 span of January 1st, 2008 until September 31st of 2012.

2 In the Board's interviews, you were cooperative  
3 and candid; and although you didn't recall receiving any  
4 appropriate -- inappropriate e-mails, you did not dispute  
5 receiving them and you acknowledged that you used your  
6 State-provided computer equipment to access your John  
7 Smith e-mail account.

8 In response to the Board's subpoenas, the OAG  
9 provided the Board with a compact disc containing 48  
10 Microsoft Outlook files with any attachments that might  
11 have been contained in those e-mails that were either  
12 sent from or received by your John Smith e-mail account  
13 that were on OAG servers, as well as printed copies of  
14 the 48 Outlook files minus their attachments.

15 Later in November 2014, the OAG provided the  
16 Board with access to a so-called electronic vault that  
17 contained 415 e-mails sent from or received by your  
18 pacourts.us e-mail address for the requested time period  
19 and nothing more.

20 The Board's investigation determined that there  
21 were not any inappropriate e-mails contained within your  
22 official pacourts.us e-mail address.

23 As to your John Smith e-mails, the Board also  
24 determined that of the 48 Outlook files provided by the  
25 OAG, you received a number of e-mails containing content

1 that could best described as mildly pornographic or  
2 sexually suggestive in the vein of material that appeared  
3 commonly, in those days at least, in Playboy magazine.  
4 That has changed.

5 The Board also determined that many of these  
6 e-mails were the product of blast e-mails sent to you and  
7 many other persons by an attorney named Terrence McGowan  
8 or by your personal friends who also sent them to Jeffrey  
9 Baxter, an OAG staff member who was a mutual friend.

10 The Board concluded that these e-mails did not  
11 contain, quote, racist images, as had been suggested by  
12 Justice McCaffery, and that you did not send any  
13 pornographic material to any person from your John Smith  
14 account.

15 Based on this finding, the Board dismissed the  
16 complaints pending against you which were opened by Chief  
17 Counsel Graci and a private citizen.

18 The revelations in the press from Ms. Kane's  
19 2015 allegations regarding your John Smith e-mail  
20 accounts indicated that the Board had not received all of  
21 the material that it should have obtained from its  
22 subpoena to the OAG in 2014.

23 The reasons for this lapse are unknown, but some  
24 have ascribed a political motive for the piecemeal  
25 release of the e-mails. I have not -- I'm uncertain for

1 the reason. It could have been a mistake, but that's  
2 what was reported.

3 Some of this new e-mail material as reported in  
4 the media may run afoul of the Code of Judicial Conduct.  
5 Therefore, based on your self-report and its own  
6 authority, the Board opened this investigation against  
7 you.

8 You have already apologized publicly for the  
9 insensitive content of your e-mails and you have promised  
10 your full cooperation with this investigation. Have I  
11 missed anything?

12 MS. EAKIN: Huh-uh. Do you have anything?

13 THE WITNESS: I don't know. I have no quarrel  
14 with it, but there was a part about her motivation?

15 MR. KLEMAN: Yeah.

16 THE WITNESS: I don't know what her motivation  
17 is. Some have ascribed that motive to her, a political  
18 motive, yeah, because it came --

19 MR. KLEMAN: On the heels of her suspension  
20 order?

21 THE WITNESS: But it was -- there was some  
22 release before her suspension.

23 MR. KLEMAN: There was?

24 THE WITNESS: Because there was speculation that  
25 her motive was to get me to recuse, anticipating a vote

1 on her suspension that would be along partisan political  
2 lines.

3 MR. KLEMAN: Um-hum.

4 THE WITNESS: It was in the -- one of the Philly  
5 papers, if not both.

6 BY MR. KLEMAN:

7 Q Did she ever end up filing a motion to recuse  
8 you?

9 A No, because the suspension came down -- she made  
10 this general statement. The suspension comes down, and  
11 then she makes the specific allegations she made. And  
12 the suspension order was -- was unanimous. It was not  
13 partisan so --

14 Q Right.

15 A -- that theory went out the window. But I do  
16 recall reading speculation about trying to get me recused  
17 in the Philly papers.

18 Q Um-hum.

19 A Now, that -- that certainly doesn't bespeak  
20 anything wrong with what you said.

21 Q Um-hum.

22 A It's just --

23 MR. GRACI: Just for clarification, I heard that  
24 rumor. And when I spoke to somebody about it the week  
25 before the suspension order, because the order came down

1 on a Monday, as I recollect, I had heard that was being  
2 rumored; and then somebody said that they had read  
3 something to that effect in the Philadelphia media.

4 THE WITNESS: Yeah.

5 MR. GRACI: And the rumor was that there was  
6 going to be an effort to have you recuse.

7 THE WITNESS: Yeah.

8 MR. GRACI: I didn't remember specific reference  
9 of e-mails the way they became public in the week or two  
10 thereafter.

11 THE WITNESS: I don't either. And it may have  
12 been that it was published as a rumor.

13 MR. KLEMAN: Um-hum.

14 THE WITNESS: I don't think it was anything  
15 more, but the speculation certainly was there because it  
16 was -- it was mentioned when we were considering the --  
17 the suspension issue.

18 MR. KLEMAN: Did --

19 THE WITNESS: And I certainly saw no reason to  
20 recuse, certainly not at that point.

21 BY MR. KLEMAN:

22 Q Did your colleagues bring the issue up to you?  
23 And I realize I'm kind of treading on --

24 A No, I don't recall. And it was more of a  
25 passing reference than anything else.

1 Q Um-hum.

2 A I don't recall who said what because we were not  
3 together as a group at that point.

4 Q Um-hum.

5 A So it's likely I was speaking to the chief.  
6 He's the one I would speak to about potential recusal.  
7 But there was never any consideration I would recuse; but  
8 if I did speak to someone, I'm going to guess it was the  
9 chief.

10 Q Was there any threat curried to you through what  
11 I would call political channels?

12 A No.

13 Q Okay. Is there anything else you would like to  
14 say on that subject?

15 A No.

16 MR. KLEMAN: Okay. I have here several e-mails  
17 that you sent from your John Smith account that were  
18 presented, to some degree, in the media that raised some  
19 concerns about their insensitivity. And I would first  
20 like you to look them over and see if you recall them,  
21 and we'll do that one by one.

22 Well, some are sent and -- there's two piles,  
23 actually. There's one sent pile and one received pile,  
24 but it's just all together here so -- I realize it's  
25 somewhat tedious, but I think we have to do it.



1 (Board's Exhibit 1 identified.)

2 MR. KLEMAN: I've marked this as Board's Exhibit  
3 Number 1. I'll hand it to you and to counsel.

4 BY MR. KLEMAN:

5 Q This is an e-mail dated Tuesday, July 6th,  
6 1:20 p.m. The subject line is, Marital advice. It was  
7 sent from your John Smith account to the following  
8 people: Chris Stone, Bill Morgan, Mike L. Mixell,  
9 Jeffrey Baxter, and Sal Doshi.

10 The e-mail reads as follows: A woman goes to  
11 the doctor, beaten black and blue.

12 The doctor says, what happened?

13 The woman answers, Doctor, I don't know what to  
14 do. Every time my husband comes home drunk, he beats me  
15 to a pulp.

16 The doctor responds, I have real -- a real good  
17 medicine for that. When your husband comes home drunk,  
18 just take a glass of sweet tea and start swishing it in  
19 your mouth, just swish and swish, but don't swallow until  
20 he goes to bed and is asleep.

21 Two weeks later the woman comes back to the  
22 doctor looking fresh and reborn.

23 The woman says, Doctor, that was a brilliant  
24 idea. Every time my husband came home drunk, I swished  
25 with sweet tea. I swished and swished, and he didn't

1 touch me.

2 The doctor said in response, you see how much  
3 keeping your mouth shut helps?

4 Do you recall sending Board Exhibit 1?

5 A I don't recall it.

6 Q All right.

7 A No.

8 Q Okay. Do you have any reason to dispute that  
9 you did, in fact, send it?

10 A No. The heading shows my address and  
11 five -- what I will call golfing buddies.

12 Q Um-hum. And could you identify for the record  
13 who these golfing buddies were, Mr. Stone, Mr. Morgan.  
14 Did they golf with you on a regular basis?

15 A Yes.

16 Q Are they otherwise friends with you?

17 A Yeah.

18 Q Are either of them lawyers, Mr. Stone or  
19 Mr. Morgan?

20 A No. One -- Mr. Stone's an engineer, and  
21 Mr. Morgan's a financial consultant.

22 Q What about Mr. Mixell?

23 A Mixell is a --

24 Q Or Mixell. Excuse me.

25 A Yeah. He is a -- he is an attorney in private

1 practice in the Reading area. Jeffrey Baxter, we -- we  
2 know who he is. He works for the Attorney General.  
3 Mr. Doshi is a surgeon in Chicago.

4 Q Have Mr. Mixell or Mr. Baxter appeared in front  
5 of you during your tenure on the Superior -- Supreme  
6 Court?

7 A No.

8 MR. GRACI: Excuse me, Jim. Just for  
9 clarification, you said the date July 10, but you didn't  
10 say the year -- just for clarification.

11 MR. KLEMAN: July -- July 6, 2010, I said.

12 MR. GRACI: I'm -- I'm sorry. I didn't hear the  
13 year.

14 MR. KLEMAN: Yeah. July 6, 2010.

15 BY MR. KLEMAN:

16 Q As to Mr. Baxter, am I correct in saying that  
17 you generally sent e-mails to him from your John Smith  
18 account?

19 A Generally speaking, yeah.

20 (Board's Exhibit 2 identified.)

21 MR. KLEMAN: The next e-mail I have for you I've  
22 marked as Board's Exhibit 2, and it has a video  
23 attachment to it. And I would be able to play the video  
24 attachment to it, if that would help you to authenticate  
25 the e-mail. But I will hand out the -- what I have

1 printed out first, and this is Board's Exhibit 2. That's  
2 two pages.

3 MS. EAKIN: Thank you.

4 BY MR. KLEMAN:

5 Q The subject line of this e-mail is entitled,  
6 Environmental spill, and it was sent from your John Smith  
7 account on May 10 of 2010 at 10:28 a.m. to the following  
8 people: Chris Stone, Jeffrey Baxter, Mike Scherer, Sal  
9 Doshi, and Mike L. Mixell, as well as Rod Civis.

10 Are Mr. Civis and Mr. Scherer attorneys?

11 A Mr. Scherer is an attorney in Carlisle.  
12 Mr. Civis is not an attorney. He is a -- he used to be a  
13 pharmaceutical salesman. I think he's actually doing  
14 landscaping now, but he lives in Carolina.

15 Q Has Mr. Scherer appeared in front of you?

16 A No.

17 Q Mr. -- I neglected to mention Mr. Bill Morgan.  
18 Is he an attorney?

19 A No. He's a financial consultant.

20 Q That's right. You had said that.

21 The text of the e-mail from the bottom reads,  
22 Subject, Slut Bus Crashes Causing a Major Slut Spill. As  
23 if they didn't have enough problems. There is nothing  
24 worse than California slut.

25 And then your John Smith account responds, I

1 think the spill is headed for Myrtle next.

2 Would you like me to play the video associated  
3 with this?

4 A No. I'll just -- I don't recall what it is, but  
5 I have no reason to doubt you.

6 Q I could just summarize it for the record, I  
7 think. The sum -- if I could summarize the video, it is  
8 a satire piece from the onion.com web site about a VH1  
9 busload of so-called slutty women crashing and spilling  
10 all over a highway in California.

11 And then there's footage of them acting out in  
12 various inappropriate ways and drinking; but there's no  
13 nudity or sex acts in the video, just the depiction of  
14 scantily clad, I would say, college-age women drinking  
15 and doing stupid things. There is some profanity.

16 Do you recall that?

17 A Not specifically, but I am familiar with The  
18 Onion and --

19 Q And that is the kind of material that is on The  
20 Onion sometimes; we can agree?

21 A Sometimes, yes.

22 Q You have no dispute that you sent that e-mail?

23 A No.

24 Q Or the response?

25 A No. The reference to Myrtle is Myrtle Beach,

1 because I think every one of those folks and I have  
2 golfed together at Myrtle Beach.

3 Q Is that an annual trip that you take or  
4 semiannual or something --

5 A Pretty much.

6 Q Do you golf anywhere else with these gentlemen  
7 on trips?

8 A Stone and Morgan are local -- well, relatively  
9 local, so I'll golf with them two or three times a year.  
10 Jeff Baxter I have not golfed with in quite some time.  
11 Scherer's given up the game. Civis is too far away, as  
12 is Doshi, and I played in one charity event with  
13 Mr. Mixell this year.

14 (Board's Exhibit 3 identified.)

15 MR. KLEMAN: The next e-mail I'm going to show  
16 you is entitled, Re: Environmental spill. This is a  
17 two-page exhibit marked as Number 3.

18 For you, sir, and Heidi.

19 BY MR. KLEMAN:

20 Q It's basically just a continuation of the thread  
21 that was started from the forwarded message with the  
22 video about the bus crash. The first thread after your  
23 message, I think the spill is headed for Myrtle next, is  
24 from Mr. Baxter to yourself, Mr. Stone, Mr. Morgan,  
25 Mr. Scherer, Mr. Civis, Mr. Doshi, and Mr. Mixell; and

1 that was sent on Monday, May 10, 2010, at 10:35 a.m.

2 And the subject is, Re: Environmental Spill, and  
3 the e-mail reads, I know it isn't either politically  
4 correct or environmentally correct, but I hope I get some  
5 hot slut all over me while at Myrtle. It usually washes  
6 off after a couple of days, although that early morning  
7 round with the stench of slut does invoke the gag reflex.  
8 So long as the slut doesn't leave slut rings on my  
9 shorts, I should be okay.

10 Then you responded from your John Smith e-mail  
11 account on Monday, May 10 of 2010, at 10:46 to Mr. Baxter  
12 alone, stating, as Geoff Shuff once remarked, Ah, the  
13 smell of titty powder in the morning.

14 Q Do you recall sending or participating in that  
15 e-mail chain with Mr. Baxter?

16 A No. Specifically, no.

17 Q Do you have any dispute --

18 A I -- I don't dispute it.

19 (Board's Exhibit 4 identified.)

20 MR. KLEMAN: All right. The next e-mail that I  
21 wanted you to take a look at I've marked as Board's  
22 Exhibit 4. It's a multipage exhibit, but really the  
23 focus of my question is going to be on page 3.

24 For you.

25 For you, Heidi.

1 MS. EAKIN: Thank you.

2 BY MR. KLEMAN:

3 Q The last e-mail in the chain was a response --  
4 it's on the first page -- but the last e-mail in the  
5 chain which went back and forth over -- it looks to me  
6 like June 17 and June 18 -- the last e-mail in the chain  
7 was sent by you on Thursday, June 18th, 2009, at  
8 10:21 a.m. to Mr. Baxter; and the subject line in the  
9 e-mail is, Re: Myrtle next year.

10 But the part that I was concerned with was on  
11 page 3 in the middle of the page. It's from you, and it  
12 was sent Thursday, June 18th at 8:42 a.m. to Mr. Stone,  
13 Mr. Scherer, the e-mail address blcjrlaw@ptd.net, and  
14 rodc3\_rod@yahoo.com. Is that Mr. Civis's e-mail address,  
15 the rod?

16 A The rod is, yes.

17 Q And from what I've seen, the blcjrlaw@ptd.net  
18 was the former address of now deceased Judge Bernard L.  
19 Coates, Jr.?

20 A I -- I don't recall it specifically; but it --  
21 I mean, those are his initials.

22 Q Um-hum.

23 A And he'd been to Myrtle Beach with us.

24 Q All right. He was not a judge at the time this  
25 e-mail --



1           A     Correct.

2           Q     -- was sent?

3                     Did he appear before you during your time on the  
4     Supreme Court?

5           A     No.

6           Q     The e-mail reads, Being on the road, I just got  
7     this exchange. You guys sound like a bunch of women  
8     worrying about offending and being misunderstood and  
9     falling all over each other, thanking everyone and  
10    getting misty eyed. Jesus, boys, is it a menstrual  
11    thing?

12                    The next thing, we'll be splitting the check at  
13    Finn McCools, quote, now, you had the BLT and an iced  
14    tea, so you owe... end quote. Snap the hell out of it.  
15    Everybody's great. Everybody's in. Bax, get the money  
16    up front, and all the rest of us will go.

17                    New Judge Bernie will find a judge has to go out  
18    of state to see boobs. New Dad Scherer will go unless he  
19    knocks Momma up again. Sal can spend an extra hour in  
20    the OR and pay for all of us. I'm in. I've got a stake  
21    of fifty ones and a titty deficit that needs cured.

22                    Do you recall participating in this e-mail  
23    chain?

24           A     Specifically, no.

25           Q     Okay. Any dispute?

1           A     I do not dispute it.

2                     (Board's Exhibit 5 identified.)

3       BY MR. KLEMAN:

4           Q     I have next what I've marked as Board's Exhibit  
5       Number 5. This e-mail was sent from your John Smith  
6       account on Friday, July 26th, 2013, at 12:48 p.m. The  
7       recipient was a Tom Noonan.

8                     What is your relationship with Mr. Noonan?

9           A     He was a law school classmate and a good friend.

10          Q     Is he still practicing law?

11          A     Yes.

12          Q     Does he appear in front of you --

13          A     Never.

14          Q     -- in the Supreme Court?

15                     Never has?

16          A     No.

17          Q     Okay. This e-mail subject line is, Query: Did  
18       Fioravanti -- F-I-O-R-A-V-A-N-T-I -- get a partnership  
19       cut? And the e-mail reprints an article that reported  
20       that a Bucks County attorney named Knight -- the first  
21       name I don't think was mentioned -- was suspended by the  
22       supreme court because he represented a woman in a DUI  
23       case in exchange for oral sex. And Mr. Fioravanti was  
24       Knight's partner in the firm at Fioravanti & Knight.

25                     Do you know either Fioravanti or Knight?

1 A No.

2 Q Okay. Are you aware if either of them appeared  
3 before you other than the suspension?

4 A I have --

5 Q Okay.

6 A -- not that I know of.

7 (Board's Exhibit 6 identified.)

8 MR. KLEMAN: The last e-mail that I'm going to  
9 show you from the sent pile I've marked as Board's  
10 Exhibit 6, and this is a two-page exhibit, original two.

11 There you are, sir, and one for you.

12 BY MR. KLEMAN:

13 Q Again, this -- this e-mail is dated Monday,  
14 March 29, 2010, at 4:06. It was sent from your John  
15 Smith account to Mr. Tom Noonan. The subject line is  
16 entitled, why I failed fourth grade. And there is an  
17 attachment, which I have printed out as the second page  
18 of Board's Exhibit Number 6. The file extension for the  
19 attachment is image001.jpg.

20 The attachment is simply a picture of an  
21 attractive female elementary school teacher in a group of  
22 her students. The teacher is holding up a book with the  
23 words Grammar 101 on it; and there is a word balloon  
24 from -- emanating from her mouth with the question, So an  
25 abstract noun is something you can think of but not

1 touch. Can you give me two examples?

2 And one young lad in the foreground with his  
3 back to the camera says, Your tits.

4 Do you recall sending this e-mail to Mr. Noonan?

5 A No. But I do not dispute it.

6 Q Thank you.

7 Looking back at the e-mails that I've shown you,  
8 those being Board's Exhibits 1 through 6, can you just  
9 give me a general flavor of a context in which these  
10 e-mails were exchanged between you and your friends.

11 A As to the ones to Mr. Noonan, as I say, I  
12 correspond with him probably more than any of the others.

13 Q That would be 5 and 6, Exhibits 5 and 6?

14 A Yes, 5 and 6. And, yes, our humor is intended  
15 as humor between two law school buddies and not for  
16 anyone else.

17 As to the others, which are --

18 Q One through 4.

19 A -- 1 through 4, which would be the golf group,  
20 yes, it references the guys-away-from-home mentality, if  
21 that's at all descriptive of joking and the like. None  
22 of them were meant for exposure to anyone who did not  
23 understand the nature of them, and none of these people  
24 would be offended by the content --

25 Q Um-hum.

1           A     -- whether sophomoric or humorous or not, as  
2     between the limited number of people that -- that I sent  
3     them to. It was never to someone who would take any  
4     offense to any of it, and I certainly am apologetic that  
5     they became public.

6           Q     Um-hum.

7           A     But as far as the, you know, my act in sending  
8     them, it was strictly among a limited group that would  
9     not find offense in them and would understand them as  
10    intended to be humorous, whether others would see that or  
11    not.

12          Q     As to the e-mails that you exchanged with  
13    Mr. Baxter --

14          A     Um-hum.

15          Q     -- I -- I -- in looking over them, of course, I  
16    was privy to the electronic version of those e-mails. In  
17    some instances, you had sent e-mails to his -- what I  
18    would think would be private address, which, if memory  
19    serves me correctly, is psumoyan@comcast.net.

20          A     Um-hum.

21          Q     And some were sent to his official e-mail  
22    address, his professional e-mail address, at attorney --  
23    jeffreybaxter@attorneygeneral.gov or some --

24          A     Yes, sir.

25          Q     -- some variation of that.

1           With that background, did the thought ever cross  
2           your mind that perhaps the content of these e-mails, at  
3           least to Mr. Baxter's professional address, might get him  
4           in trouble at his office?

5           A     I never thought it would get him in trouble, but  
6           certainly that isn't where they ought to be sent. In --  
7           in my e-mail, if you start typing a name --

8           Q     Um-hum.

9           A     -- it will give you suggestions.

10          Q     Right.

11          A     I have multiple e-mails for him. And you click  
12          on the one you send it -- you want to send it to. Either  
13          I clicked on the wrong one or didn't pay attention to it  
14          or didn't give it any thought because -- no, this is the  
15          kind of thing that ought to go privately.

16          Q     Right.

17          A     But if I sent to the other one, I don't doubt  
18          that I did --

19          Q     Um-hum.

20          A     -- but it wasn't --

21          Q     And that, of course --

22          A     -- it was without thinking, more than anything  
23          else.

24          Q     That, of course, was the reason that we picked  
25          them up, was because they were sent to his official

1 e-mail address --

2 A Right.

3 Q -- and it resided somewhere on Attorney General  
4 servers.

5 One of the things that was pointed out by some  
6 of the pundits on this issue was that these e-mails, or a  
7 number of them, were sent during work hours. Am I right  
8 about that?

9 A Yes.

10 Q And that, also, that you accessed your John  
11 Smith Yahoo account from generally State-provided  
12 electronic equipment. Is that a fair statement?

13 A Yes.

14 Q Hypothetically, if a non-judge Supreme Court  
15 employee or an AOPC employee or an employee of the state  
16 courts system at large was discovered to be sending  
17 e-mails containing similar content on State equipment,  
18 could they be subject to some form of workplace  
19 discipline?

20 A I suppose they could.

21 Q Um-hum.

22 A I don't know of anyone who has been.

23 Q I mean, when I say workplace discipline --

24 A Yeah. I have --

25 Q -- I'm talking from yelling, all the way up to

1 firing.

2 A Right.

3 Q Right.

4 A No. I understand. We originally had a lot of  
5 limits on what employees could and could not access.

6 Q Um-hum.

7 A We backed off of that a good bit because it --  
8 the experience was, it had not been abused. But the  
9 concern was not so much the content, as the -- although,  
10 obviously, we didn't want people sending pornography  
11 around -- but the time spent on Facebook or other things  
12 that take the employee away from work.

13 Q Right.

14 A But I --

15 Q Or the exposure with malicious software,  
16 computer viruses, things like that?

17 A Oh, yeah. All of those were considerations; but  
18 as I said, they did back off.

19 Q And I --

20 A I'll let it at that.

21 Q Understood.

22 A Anything else would be speculation.

23 Q The -- the purpose for my question, as you can  
24 imagine, is that some might say that you, as a justice of  
25 the Supreme Court, you have, really, the final word on



1       what is proper workplace conduct in the State court  
2       system.

3           A     Um-hum.

4           Q     And given that, some might say that holding  
5       State court employees to one standard of e-mail activity  
6       while sending this type of material around might be  
7       viewed as taking advantage of your position.

8           A     Well, let me -- let me suggest, I do not for a  
9       minute think that there isn't an employee working for the  
10      court who doesn't do e-mail from their workplace and  
11      their work machine.

12          Q     Um-hum.

13          A     It would absolutely shock me if someone didn't  
14      do that.

15          Q     Right.

16          A     And, of course, everybody has e-mail these days,  
17      and it's like they have tablets and pens; so just using  
18      the State equipment to -- to exchange e-mail, I don't  
19      think would get anybody in hot water. It's the nature of  
20      the content, I suppose, that would give someone concern  
21      here.

22          Q     And that's what I'm -- that's really what I'm  
23      saying, is --

24          A     Uh-huh.

25          Q     -- you know --

1           A     But at the same time, we're not monitoring what  
2     they're saying or their use of adjectives or --

3           Q     Um-hum.

4           A     -- the subject matter that they're talking to  
5     their golfing buddies or whoever and the like. No, they  
6     shouldn't be sending it. I should not have been sending  
7     references to, you know, the teacher with the titties.  
8     But, like I say, to -- to monitor that and -- I don't --  
9     I don't know how we'd ever do it. And I don't think we'd  
10    want to do it, unless it gets over --

11          Q     Right.

12          A     -- overbroad

13          Q     But, of course, the danger being that, you know,  
14    if -- if someone found out about it -- and someone,  
15    unfortunately, did find out about it -- there could  
16    potentially be problems and make the courts look bad?

17          A     As several people have mentioned to me, I'll bet  
18    there are a whole lot of deleted e-mails going out of  
19    every State employee's e-mail account all -- left and  
20    right lately.

21          Q     And undoubtedly that was the reason why you  
22    apologized publicly for the insensitive comment --  
23    commentary in the e-mails, is that you were worried  
24    that -- or, you know, you felt perhaps that the Court was  
25    embarrassed?

1           A     Well, sure, yes, the Court was embarrassed  
2           and -- and rightly so, and I'm embarrassed and sincerely  
3           so.

4           Q     Okay. Do you think that persons of ordinary  
5           sensibilities might be offended if they saw some of the  
6           e-mails I saw in the press --

7           A     If I --

8           Q     -- or reported in the press?

9           A     If I put these out publicly, yes, they would;  
10          and -- and all things that would come to me because of it  
11          would be richly deserved. But that, to me, is different.  
12          I can tell -- they -- they tell you as a public speaker  
13          not to be -- not to joke because you'll offend somebody.

14          Q     Um-hum.

15          A     And I think that's probably true, but I cannot  
16          help myself. I will joke as a public speaker, and some  
17          people are just overly sensitive.

18          Q     Um-hum.

19          A     I don't think maybe taking offense to this, if  
20          it were a public statement, would be overly sensitive.  
21          It would not. But it was not public, and it did not go  
22          to nor was it intended for anyone other than people who  
23          would not be offended.

24                     That it was released, that it was discovered, an  
25          uncovered search, was never a consideration because why

1 would that ever happen?

2 Q Um-hum.

3 A Obviously, it did, and it did for reasons of --  
4 that have -- that I've already been linked to, rightly or  
5 wrongly, but that would -- that, to me, is a distinction  
6 that I offer as a -- such explanation as I can give you.

7 Q And I appreciate it. I mean, obviously, in the  
8 law we deal with different levels of conduct, different  
9 continuums of behavior.

10 A Absolutely.

11 Q And one of the things that was bandied about in  
12 the press was that these e-mails that I've just  
13 discussed -- some of them -- reflect a sexist or  
14 misogynist attitude on your part.

15 A Yes.

16 Q What is your response to that part?

17 A You know, it's -- one of the people that was  
18 quoted in the most recent Patriot News was a woman who  
19 was my victim/witness coordinator in the DA's office  
20 who --

21 Q Cumberland County DA's office?

22 A Cumberland County DA's office.

23 -- remarked that these do not reflect what I am,  
24 what I did, and what I have done. I started -- it was  
25 under my watch that we started the victim/witness

1 program. It was under my watch that we did a lot of  
2 things for people, to include that.

3 It's -- in trying to explain it, why it's -- why  
4 I thought it was funny, it had nothing to do with  
5 demeaning women. It had to do with the fact that, as a  
6 prosecutor for 20 years, I can't tell you how many  
7 defendants in domestic violence and murder cases, murder  
8 of the people, mentioned, she just wouldn't shut up. It  
9 is a common them.

10 Now, that certainly does not mean it is an  
11 excuse for domestic violence, nor does it mean that  
12 somehow I -- I'm adopting that as -- as something. It  
13 was just a common thing. And because of that, so much of  
14 humor is funny because it has, if not a grain of truth,  
15 at least a stereotypical aspect that people can look to  
16 and say, I understand what you're saying, ha, ha, ha.

17 That does not mean we adopt that women ought to  
18 be quiet and that you can beat them up, regardless.  
19 That's not the case.

20 It was a phenomenon to me, as a prosecutor, if  
21 you went to a murder scene --

22 Q And I have.

23 A -- and the body is lying there, it's in the  
24 trunk, it's on the floor, it's what -- the police, who  
25 have to deal with it, will be cracking jokes at the

1 scene.

2 Q So it's kind of like a gallows humor type --

3 A It's very much a gallows humor and, in murder  
4 cases, almost a way of dealing with the horror that  
5 you're looking at. And that was -- the first one I was  
6 ever to was an eye opener, but it was a consistent thing.

7 It's the same thing. Cops, who would shoot the  
8 son-of-a-gun that beat the wife, can tell the joke and  
9 laugh at it because they understand the humor comes  
10 because so many guys say, well, she just wouldn't keep  
11 her mouth shut. And somehow that does it. It's a  
12 reflection back on that.

13 It is not a reflection -- it is not funny  
14 because we like to beat up women. If you ask my kids,  
15 the three rules they had growing up, you don't lie to me,  
16 you don't sass your parents, and you don't hit girls.  
17 And you don't.

18 To try and explain that, that this was why it  
19 was funny, is very difficult to do because you can't  
20 explain it, a joke, other than in great theory, and then  
21 it sounds like you're weaseling off the content of it.  
22 But that's -- that's pretty much what it was.

23 Q Some have also said that you having a pseudonym  
24 e-mail address was for the purpose of you being able to  
25 send and receive these kinds of e-mails without

1       tarnishing your reputation as a judge, shall I say.

2       What's your reaction to that statement?

3           A       When I first got an e-mail address, I didn't  
4       know how to do it. I didn't know how to work it. It  
5       was -- I don't know -- maybe 15 years ago. And a friend  
6       was showing me how to do it. He said, now you need a  
7       name. I said, like what?

8                   He says, well, type in Eakin. Well, that's  
9       taken. Well, type in Eakin with your house number.  
10      That's taken. Type the Eakin with some other number. We  
11      tried four or five and, believe it or not, Eakin with a  
12      lot of things was taken.

13                  My friend suggests, type in Judge Eakin, so I  
14      must have been on the Superior Court. So I typed in  
15      Judge Eakin, and it's available. So, okay, now I'm Judge  
16      Eakin. I correspond with people.

17                  Terry McGowan, who you mentioned, back in --  
18      well, whatever the time period is, a half dozen years  
19      ago, would send out half a dozen to a dozen jokes or  
20      pictures or something every day, and he would send them  
21      to one person and then copy dozens and dozens of people.

22                  And I never paid a lot of attention to it. But  
23      then I looked up one day, and there's Judge Eakin shown  
24      getting something that was -- I don't know. I don't  
25      remember what it was. But it was something I decided,

1       you know, that's not a real good name to have as your  
2       e-mail.

3           Q     So the content might have been off color, would  
4       you say?

5           A     I -- I don't recall if it was or not. It  
6       wouldn't surprise me. And, apparently, he -- one of  
7       those or more of those dozens of people that he sent it  
8       to is on the AG server, I assume. But when that  
9       happened, I said, this is not a good idea, so I changed  
10      it. I did away with that and became wap092001, which,  
11      incidentally, is the docket number of my first rhyming  
12      dissent on the Supreme Court.

13          Q     Believe it or not, I knew that. I was going to  
14      ask, for the record, for that, but I did know that.

15          A     I wonder why.

16          Q     I read it.

17          A     Okay. Interesting.

18                 But, anyhow, that's -- I just picked that out as  
19      it.

20                 I worked with my father, who's still a  
21      practicing attorney at 91. And when I work with him,  
22      when he would call another attorney, this would be the  
23      conversation: Is attorney so-and-so in?

24                 I'll have to see. Who's calling?

25                 And that offended my dad, for reasons, you know,



1 whether overly sensitive or not. He would always say,  
2 John Smith, because he said -- I asked him about it. He  
3 said, because it -- either he's going to talk to me or  
4 he's not. It shouldn't be who I am. It's either he's  
5 there or not. And he didn't ask her --

6 Q Um-hum.

7 A -- anymore, the secretary.

8 So I said, well, you know, I'll just be John  
9 Smith. I mean, they don't -- Yahoo doesn't care. And I  
10 don't recall the exact mechanics of it, but I pretty much  
11 let all those who I communicated with as Judge Eakin know  
12 that I'm doing away with that. Henceforth, I will be  
13 John Smith at this.

14 Q Okay.

15 A And that was it. It was not to send or receive  
16 anything specific at all. It was so that when people do  
17 see it, because somebody's going to carbon, that the --  
18 the Court would not be up there, unless you know that  
19 it's me.

20 And if you know it's me, you know who I am, and  
21 I really don't mind that. But the -- if they're going to  
22 send it on to 50 people that I don't know, John Smith  
23 seemed to me to be a good option. It really wasn't -- I  
24 mean, doing away with Judge Eakin was concern for the  
25 Court.

1 Q Yeah.

2 A But John Smith was not concerned that I'm trying  
3 to hide from anybody who I would communicate with  
4 otherwise.

5 Q I wanted to ask you about your relationship with  
6 Mr. McGowan. What is the nature of that relationship?

7 A I know him -- he's an attorney in Harrisburg.  
8 I've known him for years. I don't -- I don't recall him  
9 ever having a case in front of the Court. If he did, it  
10 was likely on the Superior Court, but I really don't  
11 recall that. I'll see him socially or at local bar  
12 events, that type of thing.

13 Q Would you call him a friend or --

14 A Yeah.

15 Q All right.

16 A In fact, he went golfing with us one year.

17 Q Um-hum. Okay.

18 A But only one.

19 Q Before we get into the e-mails you received, I'd  
20 like to take a break. We'll take 10 minutes. If you  
21 need to use the facilities or anything like that, feel  
22 free to do so.

23 (A recess was taken.)

24 MR. KLEMAN: We'll go back on the record -- it's  
25 approximately 2:10 -- after a short break.

1 BY MR. KLEMAN:

2 Q Other than friendship -- we were talking about  
3 the e-mails that Terry McGowan sent to you. Other than  
4 just friendship, are you able to ascribe any reason why  
5 Mr. McGowan sent you the number of e-mails that he did?

6 A Not really, other than it was the age where  
7 everybody seemed to send a ton of e-mails and you had to  
8 get rid of 20 of them a day. Mercifully, that phenomenon  
9 has faded. But other than that, no.

10 Q Do you know if Mr. McGowan appeared before you  
11 at all during the period of time he was sending these  
12 e-mails --

13 A No.

14 Q -- to you?

15 Okay.

16 MS. EAKIN: wait. No, you don't know, or no, he  
17 did not?

18 THE WITNESS: I do not recall him ever doing it.  
19 I do not think he did.

20 MS. EAKIN: Sorry.

21 BY MR. KLEMAN:

22 Q what -- what is the nature of his practice?

23 A It's largely criminal defense, I think.

24 Q So it might be possible but you don't know; is  
25 that a fair statement?

1           A     Honestly, I don't recall him ever appearing  
2 before us, no.

3           Q     If he would have, do you think it would have  
4 been likely that you would have recused yourself in that  
5 case or --

6           A     No. No. I don't recall recusing myself at all.

7           Q     okay.

8           A     Once you're on the Supreme Court, all the  
9 lawyers know you. I don't know all the lawyers, but they  
10 know you. And I do know a ton more than I used to.

11          Q     Um-hum.

12          A     And you can't recuse because you know the  
13 lawyers. You wouldn't hear any cases so --

14          Q     Right.

15          A     -- so, no.

16               MR. KLEMAN: That's why I like to say, I like to  
17 work on the ship but never meet the captain.

18               (Board's Exhibit 7 identified.)

19               MR. KLEMAN: I'll mark this as Board's Exhibit  
20 Number 7.

21               Here's the original. There you are, folks.

22           BY MR. KLEMAN:

23           Q     This is an e-mail sent to your John Smith  
24 account by Mr. McGowan. It is dated Tuesday,  
25 October 6th, 2009. It was sent at 3:01 p.m. And since

1       there are a number of recipients, I'll refrain from  
2       naming them all; but you are in the, I guess, one, two,  
3       three, four, fifth line as John Smith. The subject line  
4       is, FW: Mission Impossible, and there is an attachment  
5       which is entitled -- file extension name is  
6       missionimpossible.wmv.

7               Do you have any independent recollection of this  
8       e-mail?

9           A     No.

10          Q     If I were to play the video for you, would that  
11       help you authenticate it? Would you like me to play it  
12       for you?

13          A     No, you don't have to play it. I don't question  
14       that I got whatever's attached.

15          Q     I'll just --

16          A     Whether I looked at it, I have no idea.

17          Q     Well, I'll summarize the contents of the video,  
18       and then you can tell me if you ever saw it or remember  
19       seeing it.

20               The video attachment contains a pornographic  
21       video of a man of average height and weight attempting to  
22       have sex with a morbidly obese woman while the theme from  
23       the Mission Impossible television show is playing.

24               Do you remember that video?

25          A     I do not.

1           Q     When you received e-mails from Mr. McGowan with  
2     attachments, do you -- did you normally look at the  
3     e-mail, or did you ignore it? Habitually, I mean.

4           A     I really don't think I can offer a, I usually  
5     did this or that. It was probably a function of whether  
6     or not I had time to or any reason to -- to open it.

7                     As I said, Terry sent a lot of stuff, and a lot  
8     of people sent a lot of stuff back in '09. So you just  
9     go through and eliminate a lot of it without ever looking  
10    at it. Whether I looked at this, I don't know. Had I  
11    seen the premise, that would have been the end of it  
12    though because I had no desire to --

13          Q     Right.

14          A     -- do anything more than what -- what you just  
15    offered.

16                     (Board's Exhibit 8 identified.)

17                  MR. KLEMAN: The next e-mail that I'll share  
18    with you was also sent by Mr. McGowan. It, too, has a  
19    video attachment to it. It's two pages. There's the  
20    original. Well, actually, it's three pages with the  
21    third page -- fourth page -- four pages, with a third and  
22    fourth page of no content.

23                     That's one for me, one for you, and one for you,  
24    Heidi.

25                  MS. EAKIN: Thank you.

1 MR. KLEMAN: That's marked as Board's Exhibit 8.

2 BY MR. KLEMAN:

3 Q This was sent, again, by Mr. McGowan to you on  
4 Tuesday, June 15th, 2010, at 4:21 p.m. And you, as your  
5 John Smith account, are listed as a recipient somewhere  
6 in that paragraph of names, of which there are many. I  
7 think it's the line beginning with Jason Kutulakis, Jeff  
8 Engle, Jeff McGee, Lyons John, John Hyams, John Smith,  
9 which is you.

10 The subject of the e-mail is FW: Craziest white  
11 man ever, and there's a file attachment with a  
12 designation craziest\_white\_man.wmv. Just take a look at  
13 that exchange and see if any of this rings a bell to you.

14 A It does not.

15 Q Would you like me to play the video?

16 A No.

17 Q Okay. I will summarize. The e-mail appears to  
18 be a satirical video a gentleman who offers work to a  
19 number of Spanish-speaking people at a Home Depot and  
20 they accept, and then he promptly drives them in his  
21 truck --

22 A I recall this one.

23 Q -- okay -- to an immigration center?

24 A Yeah. I don't recall that it came from Terry  
25 but --

1 Q Right.

2 A -- I do recall seeing that video at some point  
3 somewhere.

4 Q Yeah.

5 A Drives them to immigration --

6 Q Right.

7 A -- and they all --

8 Q They all scatter.

9 A -- bail out of the truck. Yes.

10 Q At the close of the video, he refers to the  
11 spanish speakers as beaners and wetbacks; and I think he  
12 made the statement that, you know, he's trying to keep  
13 the wetback population under control or something.

14 But you have know idea that you saw that from  
15 Mr. McGowan?

16 A No. I saw it at some point somewhere, but  
17 whether it was from this or not, I don't know. I  
18 certainly don't suggest it could not have been.

19 Q Okay. I mean, I just showed you two mail --  
20 e-mails from Mr. McGowan but --

21 A Um-hum.

22 Q -- it is a sampling, a very small sampling.  
23 Some of the e-mails that you received to his address, I  
24 will say, had photographs of nude women and -- and things  
25 like that, as well as, you know, kind of these off-color



1 jokes and satirical videos.

2 At any time did you tell Mr. McGowan to stop  
3 sending you this stuff?

4 A No.

5 Q And do you have a reason why?

6 A Well, I -- I don't recall doing that, no. I  
7 don't think I did.

8 Q Why -- why did you not?

9 A Because when they come in, you just delete them  
10 and be done with it rather than quibble with it because  
11 he did send things -- he was a big elk hunter, so he'd  
12 send you that type of thing.

13 When I say he went golfing with us once, I was  
14 incorrect. He didn't go golfing with us once. He did go  
15 to Key West where my -- my friend Tom and I go every  
16 April to fish for tarpon. He did go there once. And  
17 some of the exchanges, if they were of that nature, would  
18 be -- he wouldn't have a thousand people he was sending  
19 it to.

20 Q Um-hum.

21 A It would be relatively few. So, no, I wouldn't  
22 have ever told him, don't -- stop sending me stuff.

23 Q Do you know if any of the people that he sent  
24 these -- first of all, we'll go with the Mission  
25 Impossible e-mail first. That was Exhibit Number 7, if

1 you want to take a look at that. Just take a look  
2 through the names.

3 Did he send that e-mail to any women that --  
4 that you're able to identify here?

5 It looks to me like a Carol Verish, but some men  
6 are named Carol.

7 A Yeah. Where is that name?

8 Q A Susan Bucknum and there's a Becky and John.  
9 Do you know any of those people? Are they ringing a bell  
10 to you?

11 A No. Becky or John, no. I see a couple -- well,  
12 there's somebody with initials, CJ Lunt.

13 Q Do you know of any -- any -- I'm just talking  
14 about the -- the few women here -- would you have any  
15 idea if any of them ever expressed any offense at  
16 receiving a pornographic e-mail from --

17 A No, not that I'm aware of.

18 Q We'll go to the -- Board's Exhibit Number 8. If  
19 you want to look through those names, just the best you  
20 can, any of them stand out as anybody who would be people  
21 of color, Hispanic or black or Asian?

22 A I mean, I obviously have no way of knowing.

23 Q Um-hum. Just from the names that you might  
24 recognize.

25 A Well, I don't know. There's a H-A-N-G.

1 Q Hang Lai?

2 A Hang Lai.

3 Q Yeah.

4 A Which sounds Asian.

5 Q Um-hum.

6 Had, to the best of your knowledge, any of these  
7 people that you might have seen in these e-mails crossing  
8 on your computer, had any of those people ever expressed  
9 any offense at --

10 A No.

11 Q -- a racially -- what I'd call racial --  
12 racially based humor or racially insensitive --

13 A No.

14 Q -- humor?

15 (Board's Exhibit 9 identified.)

16 MR. KLEMAN: The next e-mail I want to show you,  
17 marked as Board's Exhibit Number 9, has a video  
18 attachment to it. It was sent to your John Smith address  
19 by Mr. Baxter.

20 Apparently, it was a blank subject line, and he  
21 just forwarded to you, Mr. Ed Sollenberger, and Kyle  
22 Baxter.

23 Who are those -- Ed Sollenberger, do you know  
24 him?

25 A That rings no bell.

1 Kyle Baxter's Jeff's wife.

2 Q Okay. The blank forward subject line, and then  
3 there's a file attachment called, WhatHaveWeDone3.4.wmv.

4 Does that e-mail ring any kind of a bell to you?

5 A No.

6 Q Would you like me to play the video for you?

7 A No.

8 Q Okay. I'll just summarize the video. In my  
9 viewing of it, it appears to be satire. It's of a young,  
10 black female speaking to the camera about President  
11 Obama's election; and in the video, she exclaims that  
12 we -- and I imagine that's African-Americans -- are not  
13 going to have to pay any bills because of President  
14 Obama's election.

15 And later she speaks with some trepidation about  
16 having to get her job and losing her government  
17 assistance check because of President Obama's election.  
18 And she asks at the close, What have we done? Is it too  
19 late to vote for the white guy? And then the camera goes  
20 off.

21 Does that, what I'm describing to you, ring a  
22 bell?

23 A No, not specifically. I mean, there obviously  
24 was a lot of commentary from a lot of people through the  
25 election and thereafter -- I don't know -- suggestive of

1 a similar vein.

2 Q Um-hum. That you received?

3 A No, not that I received, I heard. People would  
4 say to you that -- people joked about it. I mean, it  
5 wasn't, again, anything more than that.

6 Q Um-hum.

7 A I don't recall this. I could have seen it. I  
8 just don't recall.

9 MR. GRACI: Excuse me, Jim. Before you  
10 continue --

11 MR. KLEMAN: Sure.

12 MR. GRACI: -- I -- I want to go back up just  
13 for a moment, Your Honor. Jim had -- Mr. Kleman had  
14 asked if you had ever asked Mr. McGowan to stop sending  
15 any particular kind of e-mails, and you said no.

16 THE WITNESS: Right.

17 MR. GRACI: Did you ever see an e-mail from  
18 anybody else among that big group that he was sending to  
19 routinely, saying, stop sending me this kind of  
20 information or --

21 THE WITNESS: I can't say that I did not because  
22 I've seen them from some people. But I don't recall it  
23 specifically with Terry. It may have been. But I -- I  
24 just -- I don't recall. It may well have been.

25 MR. GRACI: Okay. Thank you.

1                   Sorry for the interruption.

2                   MR. KLEMAN: No problem.

3                   (Board's Exhibit 10 identified.)

4                   BY MR. KLEMAN:

5                   Q     What I've marked here as Board's Exhibit 10 is  
6                   actually an e-mail from John Smith to John Smith. I  
7                   don't know how the Attorney General picked this up. We  
8                   got the e-mail from her office, but I imagine that there  
9                   was a blind carbon copy to somebody and that it was  
10                  picked up by the OAG servers.

11                  The e-mail reads, quote, Jesus loves you, quote,  
12                  is always a good thing to hear unless you are in a  
13                  Mexican jail.

14                  Do you recall sending that e-mail to yourself or  
15                  seeing it?

16                  A     Again, not specifically, but I certainly don't  
17                  deny it. It sounds like me.

18                  Q     Do you recall receiving any others e-mails from  
19                  Mr. Baxter -- and we might have covered this -- or your  
20                  other e-mail contacts, that had what I would term  
21                  racially oriented humor or humor based on what I would  
22                  call racial stereotypes?

23                  A     I'm -- I'm certain I got at some point some joke  
24                  pretty much based on the stereotype of every ethnicity  
25                  there is, from Irish to Italian to -- you name it --

1 Russian jokes and the like. The specifics and who was  
2 sending them and what the -- what the joke was, if it  
3 wasn't -- particularly if it wasn't a good joke, I have  
4 no recollection of it at all.

5 Q Um-hum.

6 A But, again, it's -- if I was involved with  
7 passing it on, it was simply to people that would  
8 understand we're making fun of ourselves as much as  
9 anybody else.

10 Q I know that Bernie Coates was Irish.

11 A As -- that's my heritage. And if you want a  
12 good Irish joke, I was -- when I was first on the Supreme  
13 court, there was a meeting in State College of county bar  
14 leaders. It was a Bar Association function. And they  
15 had had former Chief Justice Flaherty for seven years in  
16 a row be their speaker.

17 Of course, I replaced him on the Court; and if  
18 you ever met or listened to the former chief, he was an  
19 interesting fellow but very Irish and not very dynamic as  
20 a speaker.

21 Well, the current chief, Justice Zappala, did  
22 not wish to go -- he was invited -- so he asked me to go  
23 because it was not that far for me to go. And I told the  
24 people that they had had Justice Flaherty, who apparently  
25 had given them Irish history lessons, and that the change

1 when I replaced him was that I would tell them an Irish  
2 joke, and I did.

3 In fact, it was a -- I will tell you the joke,  
4 if appropriate.

5 Q I'd like to hear it. I am Irish so I'll --  
6 well --

7 A The Englishman, the Scotsman, and the Irishman  
8 sit at the bar and order a pint of beer, and  
9 simultaneously a fly lands in each one. The Englishman,  
10 being very proper, picks the fly out and flicks it aside  
11 but pushes the pint away and asks for a new one. The  
12 Scotsman, being more frugal, picks the fly out and keeps  
13 the pint; and the Irishman picks the fly up and pounds  
14 his back and says, spit it out, you little bastard.

15 Q Yeah.

16 A Now --

17 Q I heard that one.

18 A Yeah. Well, that's what I told them, and I  
19 suppose I have made stereotypes of the Englishman, the  
20 Scotsman, and the Irishman. But, again, they're funny  
21 because there is that stereotypical sense that makes them  
22 funny.

23 It is not a reflection that all Englishmen are  
24 stuck up, all Scotsmen are cheap, and all Irishmen are  
25 drunks. They're not. And I know that, and it would



1 insult me if someone said that to my face, all Irishmen  
2 are drunks. That's an insult. You tell an Irish joke,  
3 you laugh at yourself, and it moves on so --

4 Q We are, of course, not completely talking about  
5 Irish and Italian jokes.

6 A Oh, no. I understand and --

7 Q And there is a -- if I might, there is a bit of  
8 a distinction between -- at least drawn by society at  
9 large these days, between white people making fun of  
10 themselves and whites telling jokes about other races,  
11 black, Asian, whatever.

12 And I guess my concern is, is that, were these  
13 jokes inclusive -- to the best of your knowledge, were  
14 these jokes sent around inclusive of people of different  
15 racial backgrounds or exclusive of people of different  
16 racial backgrounds?

17 A For the McGowan list, I have absolutely no idea  
18 because I don't know --

19 Q Um-hum.

20 A -- the vast majority of those names. For the  
21 ones that I forwarded, no, they were not inclusive of  
22 others because they were inclusive of my golf buddies.  
23 With the exception of Mr. Doshi, whose heritage is Middle  
24 Eastern, the others are typical, white males that --

25 Q Did Mr. Doshi ever express any sense of --

1           A     Oh, no, he has a -- he has a very inclusive  
2     sense of humor himself and -- well, he and others made --  
3     he was a -- I think a college roommate of Mr. Baxter; and  
4     the two of them would call each other names, ethnic  
5     names, ethnic slurs back and forth because they were  
6     buddies and that's what buddies do, is make fun of each  
7     other and -- and the like.

8                     But beyond that, no. And I -- for the  
9     longest -- for the most part, those sent to me, I just  
10    don't know the names, so I couldn't tell you.

11                    MR. KLEMAN: Okay. Judge, do you have anything  
12    on that?

13                    MR. GRACI: No.

14                    (Board's Exhibit 11 identified.)

15                    MR. KLEMAN: Okay. I'll show you what I've  
16    marked as Board's Exhibit 11.

17                    Actually, I have to give you that one.

18                    MS. EAKIN: Thank you.

19                    MR. GRACI: Excuse me. So the record's clear,  
20    he inappropriately referred to me as judge; but he was  
21    talking to the chief counsel, not to the justice.

22                    MR. KLEMAN: Right.

23                    MR. GRACI: But I appreciated him  
24    inappropriately referring to me as judge.

25                    MR. KLEMAN: It's a term of endearment.

1 BY MR. KLEMAN:

2 Q This e-mail was sent by Mr. Baxter to Rod Cavis,  
3 yourself, Chris Stone, and Tim Brown.

4 Do you know who Mr. Brown is?

5 A I --

6 Q Do you recall?

7 A That rings no bell.

8 Q Okay.

9 A I couldn't tell you.

10 Q It was sent on Monday, September 14th, 2009, at  
11 2:10 p.m. The subject line in the e-mail is, FW: Colon,  
12 colon, colon, and there's an attachment. And the  
13 attachment is -- the file extension name is  
14 Ned\_calls\_the\_cable\_company.wmv, and there's some other  
15 file extension there that I don't understand. And the  
16 text of the e-mail that was sent by Mr. Baxter is simply,  
17 Brace yourself.

18 Do you recall receiving this?

19 A No.

20 Q Okay. Would you like me to play the --

21 A No.

22 Q -- file attachment?

23 I'll just summarize that for the record. The  
24 video is actually just an audio track of a series of  
25 prank phone calls made by a guy who identified himself as

1 Ned to a cable company that had just started a  
2 gay-and-lesbian-oriented channel.

3 And the prank calls have profanity in them and  
4 statements that some might find to be based on negative  
5 stereotypes of gays and lesbians, basically, you know,  
6 made statements like, you know, I don't know how they're  
7 going to, you know, have a channel for gays and lesbians  
8 that anybody's going to watch because, basically, gays  
9 and lesbians are too busy having sex to watch television,  
10 and things like that. And, you know, there are slurs and  
11 so forth.

12 Do you have any recollection of that e-mail or  
13 its attachment?

14 A No.

15 Q Do you recall receiving any other e-mails from  
16 your contacts that might be perceived as offensive to  
17 gays and lesbians?

18 A I suppose it's possible, but I don't recall any.  
19 I really don't.

20 Q Was that a common subject of humor among your  
21 friends, that sort of --

22 A I wouldn't say common, but I wouldn't say it's  
23 never happened.

24 Q Okay.

25 A But, no, no one -- those who might be inclined

1 to send that to me or joke with me would not be any -- I  
2 don't know anybody that I communicate with that I would  
3 describe as homophobic or anything like that --

4 Q Do you --

5 A -- that would be doing that on any regular  
6 basis.

7 Q Do you have any e-mail contacts that are  
8 homosexual?

9 A I don't know.

10 Q I mean, you know --

11 A I'd have to think about it. I probably do, but  
12 I couldn't tell you who without going through the list.

13 Q Were there -- was there anybody who received  
14 this kind of material and had expressed offense?

15 A No.

16 (Board's Exhibit 12 identified.)

17 BY MR. KLEMAN:

18 Q The next e-mail I've marked as Board's  
19 Exhibit 12. It's a multipage exhibit -- forgive the  
20 phrase sticking together. This is an e-mail exchange, a  
21 chain that the final e-mail was sent from Mr. Baxter --  
22 it's on the first page -- Monday, December 19th, 2011, at  
23 3:05 p.m.

24 The recipients were yourself, John Smith; Bill  
25 Morgan; Chris Stone. The subject is, RE: Personal Note,

1 and the attachments are identified as  
2 mime-attachment.jpg.

3 And the -- if you look in the second page, the  
4 e-mail starts with the thread, As we have seen with  
5 various personalities whose transgressions have been  
6 posted in the news, Tiger Woods only returned to golf  
7 after a five-month hiatus. Arnold Schwarzenegger is  
8 still in limbo. Charlie Sheen has been cut from both his  
9 wife and show. Italians are calling for the resignation  
10 of their prime minister, Berlesconi, so it's probably  
11 prudent to remind of the following piece of wisdom:

12 When you see a woman and want her badly, please  
13 consider the following:

14 No matter how beautiful she is, no matter how  
15 sexy she is, no matter how seductive she is, no matter  
16 how huge her breasts are -- I forgot where I'm going with  
17 this.

18 And I think that the pictures actually appeared  
19 between the sentences and they go in what I would call  
20 increasing levels of seductiveness and undress.

21 Bill Morgan forwarded that to Chris Stone,  
22 yourself, and Jeff Baxter on Sunday, December 18th, 2011,  
23 back at the first page.

24 Mr. Baxter responded on Monday, December 19th,  
25 to Mr. Morgan, Mr. Stone, and yourself. On

1 December 19th, 2011, the subject, RE: Personal Note, it  
2 says, All blondes, just my types.

3 You respond on Monday, December 19th, 2011, at  
4 1:23 p.m. to Mr. Baxter, Mr. Morgan, and Mr. Stone,  
5 stating, This lineup at Dollhouse, Bax's entire week's  
6 bankroll is gone in an hour.

7 And then Mr. Baxter closes the thread by saying,  
8 okay. okay. You guys know me all too well. Make sure  
9 there are some brunettes around so I will still have  
10 money to eat with come Monday.

11 Do you recall this e-mail thread and the  
12 attachments?

13 A I recall the -- the attachment; and the thread  
14 afterwards would -- would be what the banter would be  
15 between that group.

16 Q Can you give me some context for your  
17 discussion?

18 A Yes. There is -- in Myrtle Beach there is a  
19 gentlemen's club called The Dollhouse; and Mr. Baxter has  
20 demonstrated a proclivity to go there and spend -- be  
21 quite generous to the blondes in the place --

22 Q Understood.

23 A -- to the point that, you know, overspending, he  
24 was pretty much unable to go out later in the week  
25 because he spent all his money early in the week.

1 Q Okay.

2 A And, therefore, he's getting -- getting teased,  
3 noting, all blondes, just my type, and me saying, yeah,  
4 you'd spend your whole bankroll if -- if that's who you  
5 bump into, in reply. That's -- that's what it is.

6 Q That kind of leads me back to what -- one of --  
7 one of the prior exhibits when you were talking  
8 about -- you said about new Judge Coates, that he had to  
9 see -- he had to go out of state to see boobs.

10 Why is it that you -- you think it's  
11 inappropriate for a judge to go to a strip club -- a  
12 Pennsylvania judge to go to a strip club in Pennsylvania  
13 but it's not inappropriate in another state?

14 A Well, I don't know that it's inappropriate to go  
15 in this state. That's not what was being intended,  
16 that -- what was said before to Mr. Coates was that there  
17 are appearances that you have to have in Pennsylvania  
18 because you're going to be seen by the people that depend  
19 on you.

20 If you go to South Carolina, you're not likely  
21 to bump into people that are going to worry so much about  
22 whether you got shorts on or whether you have a tie on or  
23 anything else, to include going to gentlemen's clubs, if,  
24 in fact, you wish to go to gentlemen's clubs.

25 Q Um-hum.



1           A     It's not a question of whether it's appropriate  
2                 or inappropriate -- to me, it's not a question of whether  
3                 it's inappropriate or appropriate; it's a question of,  
4                 here in Pennsylvania you really should not be doing  
5                 anything of that kind.

6           Q     Um-hum.

7           A     And it's -- well, as Chief Justice Cappy always  
8                 said, he had to go out of state to find out if his jokes  
9                 were funny because everybody laughs at them here. Here  
10                you are a known figure, and people will be quick to  
11                criticize you for things. And if you are an unknown  
12                figure, out of state, you know, you don't have to be  
13                quite so circumspect on things that -- that you would  
14                around here.

15          Q     Okay.

16          A     Now, whether that, you know, means you can do  
17                 stuff out of state, that wasn't the point of it.

18                (Board's Exhibit 13 identified.)

19                MR. KLEMAN: Okay. This I've marked as Board's  
20                Exhibit 13. It's a multipage exhibit. I believe it is  
21                five pages.

22                This was -- if --

23                THE WITNESS: It's got a golf hole at the end.  
24                Yes.

25

1 BY MR. KLEMAN:

2 Q It appears to be a forwarded message from Bill  
3 Morgan, sent on Monday, January 2nd, 2012, to Chris  
4 Stone, yourself, Geoffrey Shuff, Mr. Baxter.

5 Who's Mr. Shuff?

6 A He's an attorney, local attorney here. He has  
7 not appeared before the Court.

8 Q Does he golf with you?

9 A Yes.

10 Q Okay. What kind of practice is he involved in?

11 A Mostly banking.

12 Q Um-hum.

13 The e-mail -- and I'm -- I'm reading from the  
14 first page and going backward because there's no text in  
15 the forward, the portion Mr. Morgan sent at the top from  
16 his iPad; but the e-mail reads, which of the four cup  
17 sizes pictured below excites older men the most?

18 And then there are one, two, three pictures of  
19 nude women of increasing breast size, and the last  
20 picture is a very large golf hole and flag.

21 Do you recall receiving this?

22 A I don't recall receiving it. I -- when I saw  
23 the line you read about the four cup sizes, I recalled  
24 the joke. I immediately looked to the last page, saw the  
25 golf hole, yes, I've seen that. I have no recollection

1 of the women, but I'm sure they were there.

2 Q Um-hum.

3 A And I'm sure I -- if I didn't get it here --  
4 this -- this strikes me as a much older joke --

5 Q Um-hum.

6 A -- than 2012. I'll bet I got that more than  
7 twice.

8 Q Was it from your same golf friends?

9 A I don't recall --

10 Q All right.

11 A -- who would have sent it before. I just  
12 remember the picture of the golf hole.

13 Q The last e-mail, the big one --

14 MS. EAKIN: Jim, you said they were nude. they  
15 were topless.

16 MR. KLEMAN: No. They're actually fully nude if  
17 you can -- if you look a little bit closer.

18 That one maybe I -- I might give you that. I  
19 can't really tell, but it looks like they're naked. And  
20 I -- I looked pretty close. I apologize.

21 THE WITNESS: You got that, right?

22 MR. KLEMAN: I couldn't -- I couldn't --

23 MS. EAKIN: Now he's bright red.

24 MR. KLEMAN: This is Board's Exhibit --

25 THE WITNESS: It's your job.

1 (Board's Exhibit 14 identified.)

2 BY MR. KLEMAN:

3 Q This is Board's Exhibit 14. Yeah. This is --  
4 it is not the way I do it. I apologize for its size.  
5 It's at least, I would say, 50-pages long, if I were to  
6 guess.

7 This was a forwarded message from Bill Morgan to  
8 yourself, Mr. Stone, Mr. Shuff, and Mr. Baxter. It was  
9 sent on Wednesday, February 15th, 2012, at 1:21 p.m. The  
10 subject line is, Fwd: Motivational Posters, and the  
11 attachment is -- file extension is  
12 motivational\_posters.pps. It was sent on February 15th,  
13 2012, if I missed that.

14 The pps is a file extension for slide shows and  
15 pictures. And the pictures -- I'm sorry about the first  
16 page. That was cut off. It read, Motivational posters,  
17 or anti-motivation, depends on your point of view, and  
18 turn on music and view each until you get it.

19 And there are a bunch of pictures with women in  
20 somewhat -- generally, women in somewhat sexually  
21 seductive poses with -- in the form of what appears to be  
22 a motivational poster, but it's really a joke.

23 For example, the first one has -- well, that's  
24 cut off.

25 But the second picture is a woman racking up

1 pool balls. You can see down her shirt, and that's --  
2 the poster says, pool, yes, I would love to play. Take a  
3 look through that for a minute.

4 Like I said, some of them are cut off, but I can  
5 play the file extension if you want -- if you want to  
6 look at it.

7 Like I said, the pictures in the slide show, as  
8 I see them, are mostly pictures of scantily clad women in  
9 sexually suggestive vignettes with funny sayings, and the  
10 pictures are in the form of motivational posters. And  
11 the saying on the motivational poster spells out the  
12 intended joke in the picture. Is that a fair  
13 characterization?

14 A Well, for the moment. I don't know that -- for  
15 the most part, yes.

16 Q Okay. Do you recall receiving this e-mail?

17 A No.

18 Q Do you recall receiving any other e-mails  
19 containing photographs of nude or semi-nude women from --

20 A I'm certain that I did. I do recall a couple of  
21 these posters.

22 Q Were they sent separately, or were they sent as  
23 part of it?

24 A That I could not recall. There's one here of a  
25 woman -- it looks like she's painting her toenails with

1 her foot up on a very expensive European car saying, in  
2 the long term, the car is cheaper. I remember that one.

3 There's another one I saw that I recall for  
4 various reasons. I don't recall them as part of this,  
5 and I do know that if -- if I got something with 50 pages  
6 of attachment, I would not have looked at them all.

7 Q But you might have -- it's very conceivable that  
8 you did receive other nude pictures from Mr. Morgan or  
9 anybody else in your other e-mail?

10 A Somebody, yeah. It's entirely possible, yeah.

11 Q Do any of them stand out? Is there any kind  
12 of --

13 A No.

14 Q Other than the nudity itself, were there any sex  
15 acts depicted that you recall or anything like that?

16 A No, not that I recall.

17 Q I wanted to jump back to the exhibits that we  
18 were talking about regarding the racially tinged humor.  
19 I think that was Exhibits 8, 9, and 10. That was the  
20 Craziest White Man, What Have We Done, and the Jesus  
21 Loves You e-mails.

22 what would your reaction be to those who might  
23 say that you were racially biased because you received or  
24 exchanged those jokes?

25 A Well, I think these were all received.

1 Q Yeah. Well, one was sent to yourself, the Jesus  
2 loves you --

3 A Oh.

4 Q -- is a good thing to hear, unless you're in a  
5 Mexican jail.

6 A Yeah. Well, as I say -- which one -- we're 8?

7 Q Eight. Eight, 9, and 10.

8 A And what was the Craziest White Man?

9 Q That was the -- the guy in the truck that --

10 A Oh.

11 Q -- drove the Mexicans to the INS or ICE.

12 A Yes. Well, obviously, he's an idiot, but it was  
13 funny.

14 Q Um-hum.

15 A I found it funny but, again, not in the sense  
16 that I would espouse doing that.

17 My son, my oldest son, does landscaping, and a  
18 lot of golf courses around the state have a big  
19 contingency of Mexican workers --

20 Q Um-hum.

21 A -- who are the hardest working, most reliable  
22 people that you can hire. My son says the same thing;  
23 that, you know, you can make fun of that. But as a  
24 personal belief and what I espouse when I talk to people  
25 about it, is just that.

1 Q And I --

2 A People aren't in the Mexican prison. It's --  
3 they're hard-working, reliable people, and that's just  
4 the bottom line for it.

5 Q And the reason I ask the question, of course, is  
6 because some pundits and various commenters have  
7 indicated that these e-mails that you sent manifest a  
8 racial bias. And, you know, I'd just like your response  
9 to that.

10 A I think they are entirely oversensitive.  
11 They're entirely anxious to point the finger at anything  
12 that -- that can be criticized.

13 Q Do you think that's a function of the  
14 environment in which government operates now days or are  
15 there --

16 A I think it's a function of how the media  
17 operates these days.

18 Q Um-hum.

19 A I mean, if -- if the one about Jesus in the  
20 Mexican jail came to light --

21 Q Um-hum.

22 A -- the papers would call a short list of people  
23 for comment, and they will call people who will comment  
24 that I am a racist. If they called a hundred people,  
25 they wouldn't get a dozen, I don't think, that said I was



1 a racist. If they called a hundred people that know me,  
2 they would get nobody that says I'm a racist.

3 Q Prior to this particular series of e-mails being  
4 made public, to the extent that they were made public,  
5 had anybody ever accused you of that previously, of being  
6 racist?

7 A Not -- not that I'm aware of. I mean, if  
8 it's --

9 Q Have you, as -- as a justice of the Supreme  
10 Court or in your prior career as a judge and lawyer, have  
11 you ever engaged in activities as a lawyer that could be  
12 considered to be helpful to other races or anti --  
13 anti-racism activity, you know, gender or bias or racial  
14 bias committees, anything like that?

15 A I've -- I've -- I had a classmate named Sam  
16 Cooper. He's African-American. He lives around here.  
17 I've appointed him to at least two of our rules  
18 committees. I've attended the -- he was instrumental in  
19 starting a diversity summit, I think he called it,  
20 through the PBA, and I went and I sat through the -- the  
21 first of those.

22 And Sam told me at lunch he was so happy to see  
23 me there, not just because we're friends and we don't see  
24 each other that often, but that my being there  
25 represented something to the people who were coming to

1       that.

2               I've -- Judge Smith-Ribner, who is no longer  
3       with the Commonwealth Court, led a diversity initiative  
4       to try to get more minority law clerks. It's very  
5       difficult in this part of the state to get minority law  
6       clerks because, unless the folks are from here, they move  
7       in, and they have no social network. They go home at 5,  
8       and they don't know anybody. So the few  
9       African-Americans that I've been able to hire last a year  
10      and leave.

11             I do get a lot of ethnic, African-American and  
12      other ethnicities, interns from the law schools. Anthony  
13      was in today.

14             Q     He's an African-American?

15             A     He's an African-American. I have a second  
16      African-American intern as we speak. I've got one Latino  
17      law clerk. I'm low on females at the moment for reasons  
18      that are unconnected to anything else. But, no, we try  
19      to do it.

20             I'm liaison to the Philly courts. I have a very  
21      good relationship with their significant African-American  
22      contingent of judges, including the president judge,  
23      Sheila Woods-Skipper. It's -- as I say, there's --

24             Q     And there are African-Americans in your circle  
25      of friends?

1 A Oh, yeah, certainly.

2 Q Regarding Exhibit 11, which was, Ned calls the  
3 Cable Guy, the FW: Colon, colon, colon.

4 A That's the gay and lesbian --

5 Q Right. Channel.

6 A Yes.

7 Q Right.

8 What is your reaction to those that have said  
9 your receipt of this e-mail or others like it reflects a  
10 homophobic or anti-gay bias on your part?

11 A I'd say the same thing. I mean, I -- I have no  
12 reason to think Mr. Baxter or the other recipients of it  
13 are in any way homophobic or the other, nor am I. I  
14 don't have -- if I'm guilty of anything in that regard,  
15 it would be thinking perhaps there's too much emphasis on  
16 the topic.

17 People -- now this is the first openly gay  
18 whatever. Just as there used to be, this is the first  
19 African-American to do this or that. And I understand  
20 that's significant; but once you get to the third or  
21 fourth African-American to do the same thing, it's not  
22 quite as newsworthy. Openly gay athletes now are the  
23 rage. Openly gay legislators, this and that.

24 That's fine. I'm anxious for the day when that  
25 doesn't matter and people don't make it an issue in the

1 news; that you can be gay and you can be African-American  
2 and you can be Irish and nobody cares. You are what you  
3 are. You are who you are. And that would be a wonderful  
4 thing.

5 It's -- it's always troubled me that the word  
6 discrimination means the ability to tell one thing from  
7 another. I can discriminate this from that.

8 Q Right.

9 A But it's come to mean, because you can tell a  
10 difference, you must not like one of them, and that's  
11 totally wrong. African-Americans are -- I -- I think  
12 it's Mexican -- there's something like 26 words to  
13 describe the degree of racial mixing that people are down  
14 there. We don't. We've got black and we've got white,  
15 and that's a shame.

16 But it's the same as with gay, lesbian,  
17 transgender, or whatever the situation is. Are there --  
18 is there humor to be found from time to time? Sure. To  
19 me that's not a reason to suggest somebody is anti that.

20 And it would be nice when the day comes that we  
21 can laugh like we can laugh at the Irish because it's  
22 different now than it was a hundred and twenty years ago  
23 when everybody laughed at the Irish just as they laugh at  
24 others now. Now it's faded. The Irish have assimilated.  
25 It will be nice when that day comes.

1           In the meantime, no, I don't -- I don't know and  
2 I don't care, pretty much. You can be what you want to  
3 be, and God bless you.

4           Q     Thank you.

5           Regarding the last e-mails that I showed you of  
6 the nude women, people have characterized them as  
7 pornographic. Would you --

8           A     No.

9           Q     -- use that appellation?

10          A     No.

11          Q     Why not? Why wouldn't you?

12          A     I would not. Pornographic, to me, involves --  
13 necessarily involves some degree of sexual activity. I  
14 mean, I'm -- I am no more able to define the term than  
15 the famous lines from the U.S. Supreme Court. But this,  
16 to me, is -- yes, occasionally topless. But what was the  
17 description, of being Playboy level? The worst of it is  
18 Playboy level. And, in fact, the worst of it isn't even  
19 to Playboy -- ex-Playboy level.

20          Q     Fair enough.

21          A     Apparently they're not putting nudes in anymore.

22                But that's about it. And if -- the three -- as  
23 I understand it, McCaffery -- excuse me -- former Justice  
24 McCaffery sent three e-mails last year to the  
25 Philadelphia Daily News.

1 Q of yours?

2 A That were sent to me --

3 Q Right

4 A -- by Mr. Baxter. He described them as kiddie  
5 porn. And to this day the Daily News prints that mine  
6 came about as part of the pornographic investigation.  
7 And that really frosts me because, whatever sophomoric  
8 content it is, whatever, it's inappropriate to send or  
9 receive topless pictures or jokes that could offend the  
10 public, whatever's in that, it isn't pornographic and --

11 Q why -- do you know why Justice McCaffery called  
12 it kiddie porn?

13 A Yeah, because he was threatening me.

14 Q Um-hum.

15 A when he --

16 Q Was there any factual basis for it? I mean, was  
17 it --

18 A Well, when he made the threat, I had no idea  
19 what he had --

20 Q Um-hum.

21 A -- or what he was talking about sending. I just  
22 told him I would not do what he wanted, and I spoke to  
23 Justice Saylor. He was still a justice at that time. He  
24 called me before I got on the train to go to  
25 Philadelphia.

1 I called Justice Saylor when I got to  
2 Philadelphia. And at 2:00 in the afternoon, I was to  
3 speak at the opening of the new Family Court building.  
4 And two reporters, Daily News and Inquirer, both had them  
5 by that time.

6 And I had no idea what they had. It was  
7 described to me as a packet of e-mails. Seamus, in  
8 trying to get me to do what he wanted, called it racist  
9 and kiddie porn. So I made no comment.

10 It wasn't till the next day, I guess, that we  
11 found out what they had and what they were, and there  
12 were three of them. The one was a baby in a highchair  
13 reaching for a glass of beer.

14 One I saw on a greeting card in a grocery store.  
15 It's a boy and a -- a little boy and a little girl in  
16 diapers. And she's holding her underpants out, and he's  
17 trying to peek in. It says, men in training.

18 And the third was inner-city prom pictures --

19 Q Um-hum.

20 A -- with -- I -- I guess with comments that -- I  
21 don't recall them. And I --

22 Q Did you -- did you have any independent  
23 recollection of receiving those e-mails when they were  
24 pointed out to you?

25 A I -- I recall getting, if not these pictures,

1 some kind of prom picture kind of thing. I remember the  
2 kid reaching for the beer. The other one, like I said,  
3 rang a bell, but I've seen it since in the greeting card  
4 section of the grocery store.

5 Q Our former --

6 A But they were -- they were not pornographic,  
7 except since he described them as that and the newspapers  
8 first printed them as that, they remain that to this day  
9 even though the paper has them and knows better.

10 Q Right. Are you aware of any connection between  
11 Attorney General Kane and former Justice McCaffery that  
12 might lead you to believe that Attorney General Kane's  
13 current activity is revenge for Justice McCaffery?

14 A I'm sorry. Revenge?

15 Q Is she --

16 A Is she trying --

17 Q Well, first let me ask it -- let me ask it like  
18 this: Are Ms. Kane and Justice McCaffery friends or  
19 political allies or anything like that?

20 A I have -- other than being of the same political  
21 party, I have no idea. I -- I don't know of any support  
22 he would have given her -- her election campaign.

23 Q Would her recent attempts to discredit you have  
24 any relation to anything involving Justice McCaffery's  
25 case, if you know?



1 A I don't think so because there's no case.

2 Q Well, I mean, his problem, his prior -- is it a  
3 tit for tat is what I'm asking you.

4 A I -- I have no idea. I -- I can't -- I have no  
5 connection -- I have no idea of a connection between  
6 them, though I must say that her motivation for a lot of  
7 her statements is a mystery to me.

8 Q Um-hum.

9 A As I say, I can see the rumors that we discussed  
10 earlier being a motivation for her against me. McCaffery  
11 might have a motivation to get me --

12 Q Um-hum.

13 A -- because it was his extortion of me that  
14 really caused him to resign, not the pornographic stuff  
15 he was passing on. That certainly was a problem for him,  
16 as was his -- he had a couple other issues.

17 But when he threatened me, I believe it was  
18 a -- a Friday; and by Monday, my colleagues had taken  
19 action and he was off -- he retired by the end of the  
20 week. And I think that was probably in contemplation of  
21 criminal prosecution and the fact, by walking away, he  
22 could end all his problems --

23 Q I'm familiar with the arrangement.

24 A Yeah. But there was arrangements with the  
25 Court, too.

1           Q     Right.

2           A     I mean, I didn't. I had to sign off on it; but  
3     I was asked, if this happened, would I have -- would I be  
4     willing to let that end it.

5           Q     Next-to-last question. Some have said and  
6     claimed that your participation in these e-mail  
7     exchanges, both with the private circle of friends  
8     and -- and the -- kind of the broader e-mails with  
9     Mr. McGowan and his recipients, indicates that you might  
10    have relationships with lawyers in this Commonwealth that  
11    are too close, to the point of raising an appearance of  
12    impropriety.

13                   What is your reaction to that statement?

14          A     Well, as I said, I have close relations with an  
15    increasingly large number of lawyers, just because you  
16    interact with them on a pretty regular basis. The top  
17    lawyers in the state appear before us. The top lawyers  
18    in the state are ones we appoint to our various  
19    procedural and other committees and the conduct board,  
20    for -- for that matter, and the Court.

21                   You don't want lesser folks there, and your  
22    opinion of people as to who's a good lawyer is enhanced  
23    when they come before you and do it. And Lord knows I  
24    don't keep score, but I can think of a number of lawyers  
25    who are just wonderful. You are happy to see them come

1 before you because you will get benefit from what they  
2 have to say. But they don't win all the time, and they  
3 don't get votes all the time.

4 There was a time early in my time on the Court  
5 when there were -- I don't want to say deals made, but  
6 there were patterns you could see and not that ever was  
7 after the fact looking back I said, ah, you know what?  
8 There may have been some inappropriate considerations.

9 Excuse me.

10 But -- but, no, that -- I have never been asked  
11 by any advocate or client to decide a case in a certain  
12 way. The -- the best of the lawyers would never do that.  
13 And probably the worst of them would be afraid to do it.  
14 But be that as it may, no, it's -- it's just not the  
15 fact.

16 It's like the allegation that, you know, the Rs  
17 vote together and the Ds vote together. Well, no. We  
18 just went over our vote list this morning, and I'm with  
19 this one on this case and that one on that case and this  
20 one here. And there is -- there is no pattern and no  
21 give-or-take because you're acquainted with somebody. I  
22 want good argument from people. I want good work when  
23 they're on our committees; but that's -- that's all the  
24 consideration they're going to get.

25 I -- I guess I would put it this way: If -- and

1 for some reason Bill Heim comes to -- comes to mind. Do  
2 you know Bill?

3 MR. GRACI: Yes, I do

4 THE WITNESS: Yeah. He was -- he's been on  
5 several. When Bill stands up, he's got credibility. He  
6 doesn't have credibility because I like Bill. He doesn't  
7 have credibility because he's worked hard for us. He's  
8 got credibility because of his advocacy.

9 He -- he never gives you BS. He does not waste  
10 your time. He does not make a jury oracle. He gets to  
11 the point, and he gives you helpful stuff. And if you  
12 have questions, he does his best to answer them,  
13 certainly respecting his client's wishes, but he's not  
14 going to BS you. And there's so many like that that you  
15 tend to see the ones that aren't like that, and they're  
16 not the ones that are going to be your friends.

17 BY MR. KLEMAN:

18 Q Last question. If there was anything else, if  
19 the Board was sitting here, what would you say to them  
20 about these things?

21 A Well, I am certainly embarrassed by it all, and  
22 I am certainly apologetic to anyone offended and everyone  
23 who may think that there is some shadow cast over my  
24 impartiality, my character, my desire to do the right  
25 thing for the right reasons on all these cases. That, to

1 me, is a shame because it is at my hand, and I'm sorry  
2 for that.

3 Certainly I will be more circumspect in the  
4 future about any of them; but as far as anything I could  
5 do to undo that, I certainly would. Unfortunately, the  
6 horse is out of the barn, for the most part, but that  
7 doesn't mean you can't clean up the barn.

8 MR. KLEMAN: I'm finished.

9 Counsel, anything else?

10 MS. EAKIN: Just two clarifications.

11 EXAMINATION

12 BY MS. EAKIN:

13 Q The trip to Myrtle Beach with -- for the annual  
14 golfing trip, the people you've identified as your  
15 buddies in these e-mails, when does that occur each year?

16 A Usually in May.

17 Q Okay. And what type of lawyer is Tommy Noonan?

18 A He does estates, almost exclusively estates.

19 Q You went to law --

20 A Wills and estates.

21 Q You went to law school with him?

22 A Yes.

23 Q You graduated when from law school?

24 A Forty years ago this -- this year. Thank you.

25 MS. EAKIN: You're welcome.

1           That's it.

2           MR. GRACI: I have a couple of questions, if I  
3           might.

4                               EXAMINATION

5           BY MR. GRACI:

6           Q     Your colleagues on the Court issued a  
7           statement -- last week I guess it was at this point --  
8           indicating that they were -- I think they used the word  
9           disturbed by some of the things they had read --

10          A     Yes.

11          Q     -- about these e-mails, and I think that  
12          preceded your issuing your own statement of apology.

13                My question, Your Honor, is, of the things that  
14          Mr. Kleman has reviewed with you today -- and, I mean,  
15          recognizing that particularly the e-mails to and from the  
16          John Smith account were amongst a -- a group of  
17          friends -- and it sounds like reasonably close  
18          friends -- but the information's been made public, as  
19          unfortunate as that might be -- is there any of the  
20          conduct reflected in those e-mails -- and let -- let me  
21          go through some of them -- receiving of pictures of nude  
22          or semi-nude women, discussions of going to a gentlemen's  
23          club out of state, the -- the -- the joke e-mails -- and  
24          I can appreciate that they were intended to be jokes  
25          and I can appreciate the gallows humor, as you expressed

1 it -- but that, if you read them out of context, might  
2 have a different flavor to them? Is there any of that  
3 conduct that you shouldn't have been involved in simply  
4 because you are a judge?

5 A If the conduct is -- I -- I can't help what is  
6 sent to me. Could I have done more to discourage it?  
7 Probably. But I --

8 Q Let me stop you there, if I might. Should you  
9 have because you're a judge?

10 A I -- I honestly -- yeah, in -- in hindsight, of  
11 course I should have. But would I criticize another  
12 judge simply because somebody sent them topless pictures?  
13 No, I would not.

14 I don't think the title that you wear keeps you  
15 from being a real person with your inner circle of  
16 friends. I don't. In that it happened as it did and got  
17 released as it did, yeah.

18 But I think -- you made a very good point; that  
19 in context they're one thing. Out of context they're  
20 quite another. And I'm hesitant to criticize other  
21 judges who would, in context, have some similar ability.

22 When I hang around with other judges, socialize  
23 with other judges, things are said, things are exchanged  
24 that, no, if -- you wouldn't say them from a public  
25 podium. But in context they're understood and accepted

1 for what they are, which is people being people.

2 I don't think that just because you are a judge  
3 you all of a sudden must retreat into a bubble world, if  
4 you will. I am incapable of getting rid of my sense of  
5 humor. Different people may think different things about  
6 it, but that's me.

7 And I don't think it excludes -- it's much like  
8 the controversy when I wrote that rhyming dissent. The  
9 chief justice thought it was totally inappropriate for  
10 the Court to be seen in that way. I thought it did not  
11 comprise anything inappropriate. He thought it brought  
12 contempt on the Court. I got written up as a hero in the  
13 New York Times. And who looks at it in what way is  
14 different person from person.

15 But in context, in the persons that were -- to  
16 whom it was restricted, the things I had control over,  
17 I -- I don't know that I can say with a straight face  
18 that a judge should never, ever do that kind of stuff.

19 A judge shouldn't be a racist. A judge  
20 shouldn't be a homophobic. A judge should not, in any  
21 event, discriminate against those folks. If you get a  
22 joke, I'm hard pressed to say that's a terrible,  
23 terrible, actionable thing.

24 It's the -- it's the context that makes it  
25 offensive. And, yes, will I be more circumspect?



1       Certainly, because, obviously, things said to a small  
2       group can find them way -- their way into the public eye.

3               But to say that a judge should never, ever look  
4       at a picture of a topless woman, that seems a bit extreme  
5       to me. I don't think doing that brings disrespect on the  
6       Court. I don't think doing that violates any of the  
7       canons. I don't.

8               Q     What does it mean then -- and we talk about this  
9       around this table when the Board's here. We talk about  
10      it -- I would have been talking about it downstairs  
11      lecturing to MDJs if I weren't here.

12              We talk about the Code of Judicial Conduct, the  
13      Rules Governing the Standards of Conduct of Magisterial  
14      District Judges as setting a higher standard for judges;  
15      that they're supposed to be held to a higher standard.  
16      And your Court has said as recently as a year -- it  
17      probably could be going on two years now -- but that's an  
18      obligation 24 hours a day, seven days a week.

19              Is it because it was intended for a small group  
20      that all of the conduct was okay and it only becomes  
21      questionable because it gets out of that group?

22              A     Well, what's the conduct?

23              Q     Well --

24              A     If the conduct is -- you and I talking is  
25      different than the world and I talking.

1           Q    Well, you had suggested in response to the  
2           question that was about the -- I think it was what you  
3           can do out of the state but you can't do in the state,  
4           and that had to do with going to gentlemen's clubs. I  
5           think that was the context of that discussion. And your  
6           explanation to at least part of that was, there are  
7           things I can do in Pennsylvania -- or can't do in  
8           Pennsylvania because people may know me, but I can do  
9           them when I'm outside of the state. Is that really the  
10          standard?

11          A    No. That's -- that's -- I obviously didn't  
12          express myself correctly. When you're in Pennsylvania,  
13          people watch you, people see you, people know who you  
14          are. So the appearance -- the appearance of anything is  
15          what people perceive.

16                If they perceive you are a judge, that is your  
17          appearance. If they do not perceive you are a judge, you  
18          could do, hypothetically, a lot of things that a judge  
19          shouldn't do, but people don't know you're a judge. You  
20          have not brought disrepute on or done anything where the  
21          appearance brings down the reputation of the Court.

22                It is, after all, the Court we're talking about,  
23          not an individual; so if no one knows I am a judge, that  
24          might change it. Now, I'm not telling you that I -- a  
25          judge ought to have free rein to put a mask on and run

1 around doing -- no, that's not my point.

2 My point is, if you were in England and nobody  
3 knows you, you could probably yell at people. You could  
4 probably make an ethnic joke or a homophobic joke in  
5 public to a hundred people, but they don't know you're a  
6 judge. Have you brought disrepute on the Court? I don't  
7 know that you do.

8 Q Okay.

9 A And I'm not saying you should go do that, but  
10 it's -- it's one thing that way. It's another thing when  
11 you are not recognized and not known as a Court.  
12 It's -- John Smith is not the Court. If I had  
13 justiceeakin@pacourts.us and was sending this stuff out,  
14 that's -- that's a different ball of wax to me.

15 MR. GRACI: I'm sorry. I didn't mean to  
16 interrupt you.

17 MR. KLEMAN: I have one question along those  
18 lines.

19 EXAMINATION

20 BY MR. KLEMAN

21 Q I'm not talking -- my question isn't based on  
22 disrepute. But there's a -- the old canon, the old code,  
23 that's really what we're dealing with because this was  
24 a -- this took place, you know, when the old code was in  
25 effect. I believe it's Canon 5 that says that -- it

1 deals with extra-judicial activity.

2 The canon says, a judge -- something to the  
3 effect of, a judge should not do anything that would  
4 detract -- in his private life that will detract from the  
5 dignity of the judicial office.

6 And isn't that really what we're talking about;  
7 that some of this conduct is undignified? It's  
8 undignified to participate in, you know, e-mail exchanges  
9 in -- with lawyers, with people who might know you or  
10 know you're a judge, sending these kinds of jokes around.  
11 It's -- it's somewhat less than -- than what would -- one  
12 would expect of someone in your august position in the  
13 Commonwealth. That's, I think, really what we're talking  
14 about.

15 What's -- what's your thought on that?

16 A I can't disagree with you. Dignity is --

17 Q That's a personal standard, isn't it?

18 A -- in the eye of the beholder.

19 Q Right.

20 A Like I say, if I get up and make a humorous  
21 speech, am I being dignified? No, I'm not being  
22 dignified. I may not be undignified.

23 Q Right.

24 A But that -- that reads as if one must be  
25 dignified while you're --

1 Q Right.

2 A -- mowing the grass. And I don't know that you  
3 can do it quite that way so... I -- I take your point.  
4 It's a good point.

5 Q I think there's a difference between something  
6 that brings disrepute on the court as a whole or  
7 conduct -- personal conduct of a judge that is less than  
8 dignified.

9 A Well, again, I can't go to the bathroom in a  
10 dignified way, but people aren't going to see me going to  
11 the bathroom.

12 Q Right.

13 MS. EAKIN: Except the time you left your mic  
14 on.

15 THE WITNESS: I did do that once. I did.

16 MR. KLEMAN: I heard about that.

17 THE WITNESS: You've heard a lot of my history  
18 here.

19 MR. KLEMAN: I know a lot of things.

20 EXAMINATION

21 BY MR. GRACI:

22 Q If I may, this question wasn't asked, but I  
23 think we have to assume, not because of any action by the  
24 Board -- and I'll be quite candid to you -- in  
25 discussions I've had -- and usually discussions are one

1 way -- I listen to the question and then say, I can't  
2 answer it.

3 But one reporter suggested to me yesterday --  
4 and I think this is eventually going to happen -- all  
5 these e-mails are going to be released. They're not  
6 going to be released in any context. And while I feel  
7 badly for you, the people I really feel bad for are the  
8 Noonans and all these other people who can do really  
9 whatever they please.

10 A Um-hum.

11 Q But when somebody gets an e-mail, sees an e-mail  
12 from a Justice of the Supreme Court who says, you have to  
13 go out of state to -- whatever you said --

14 A Um-hum.

15 Q -- is it appropriate?

16 And maybe Jim -- Mr. Kleman just answered the  
17 question. But I want to hear what you have to say.

18 Is it appropriate for a judge on vacation,  
19 having a good time, to go to a gentlemen's club?

20 A I don't know. I don't know that it's  
21 prohibited, whether you should or shouldn't.

22 Q Should you go to the one over on Cameron Street?

23 A Again, I would think not, simply because that is  
24 something that's going to put you in the spotlight, being  
25 there. And not that it's fair to say you can't go or

1 shouldn't go, but it would shine the spotlight on you and  
2 you know that that would be reflected in a bad way on the  
3 court. And in that sense, no, you shouldn't go. You  
4 should have a little more discretion than that. But if  
5 you are in California, I'm -- I mean, I'm hard -- I would  
6 be hard pressed to criticize somebody for doing that.

7 MR. GRACI: I have no -- I don't have any  
8 further questions.

9 MR. KLEMAN: Thank you, Justice Eakin, and thank  
10 you, Heidi.

11 We'll close the deposition now at 3:30.

12 (The deposition concluded at 3:30 p.m.)  
13  
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1 COUNTY OF LANCASTER:

SS

2 COMMONWEALTH OF PENNSYLVANIA:

3  
4 I, Kelly S. Grube, RPR, Official Court Reporter  
5 and Undersigned Commissioner, do hereby certify that  
6 J. MICHAEL EAKIN, the witness, personally appeared before  
7 me, being by me first duly sworn or affirmed to testify  
8 to the truth, the whole truth and nothing but the truth,  
9 and in answer to the oral questions propounded to  
10 J. MICHAEL EAKIN, by the attorneys for the respective  
11 parties, testified as set forth in the foregoing  
12 deposition.

13 I further certify that before the taking of said  
14 deposition, the above witness was duly sworn or affirmed,  
15 that the questions and answers were taken down  
16 stenographically by the said Kelly S. Grube, RPR,  
17 Official Court Reporter, Lancaster, Pennsylvania,  
18 approved and agreed to, and afterwards reduced to print  
19 by means of computer-aided transcription under the  
20 direction of the aforesaid Reporter.

21 In testimony whereof, I have hereunto  
22 subscribed my hand this day of 2015.

23  
24  
25 KELLY S. GRUBE, RPR  
Lancaster County Court Reporters

KELLY S. GRUBE, RPR, (717) 299-8091  
Lancaster County Court Reporters



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**COMMONWEALTH OF PENNSYLVANIA  
COURT OF JUDICIAL DISCIPLINE**

IN RE:

J. Michael Eakin  
Justice of  
The Supreme Court of Pennsylvania

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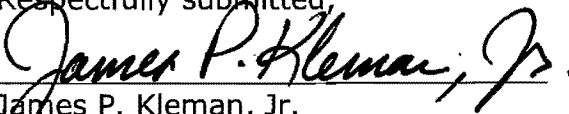
**PROOF OF SERVICE**

In compliance with Rule 122 of the Court of Judicial Discipline Rules of Procedure, on March 17, 2016, a copy of the Joint Stipulation of Fact in Lieu of Trial and Waiver of Trial was provided by hand delivery to William C. Costopoulos, Esquire, and Heidi Eakin, Esquire, counsel for Justice Eakin, at the following address:

William C. Costopoulos, Esquire  
Heidi F. Eakin, Esquire  
Costopolous, Foster & Fields  
831 Market Street  
Lemoyne, PA 17043

DATE: March 17, 2016

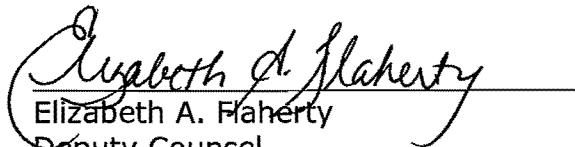
Respectfully submitted,



James P. Kleman, Jr.

Deputy Counsel

Pa. Supreme Court ID No. 87637



Elizabeth A. Flaherty

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