# Rachel M. Baird & Associate

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December 18, 2014

Michael Lawlor, Chairman
Criminal Justice Policy Advisory Commission
Office of Policy and Management
450 Capitol Avenue
Hartford, CT 06106
Email: mike.lawlor@ct.gov

**Re: Public Comment at December 18, 2014, Commission Meeting**

Dear Chairman Lawlor:[1]

Thank you for the opportunity to address the Commission during public comment today regarding the issues raised in my December 11, 2014, letter[2] about the presentation of a "Research Study of Connecticut's 'Dangerous Persons' Gun Seizure Law" at the October 30, 2014, meeting of the Commission.

When you asked me more than halfway through my 22 minute presentation whether it was my duty as an attorney to file a grievance against The Honorable Edward J. Mullarkey for comments he made about the Second Amendment in the course of a criminal trial last year my initial, uncensored response was that I do not grieve judges. I should have added that in my 21 years of courtroom practice it is a matter of record that I address any issues I may have with judges directly, publicly and on the record, as is proper. Of course I did not miss your point; specifically, if the Rules of Professional Conduct ("Rules") require attorneys to report violations by judges of judicial canons and I did not then I am subject to a grievance. In speaking out as an attorney on firearms issues in the State of Connecticut I am aware that my conduct will be scrutinized and accountability is high; therefore, although I was confident your question arose not from any concern about Judge Mullarkey's remarks about the Second Amendment but from an intent to distract the focus of my presentation, I immediately performed due diligence and researched the Rules of Professional Conduct.

Subsection (b) of Rule 8.3 provides: "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 judge's fitness for office shall ***inform*** the ***appropriate authority***." The rule also requires lawyers who are

[1] *See* Appendix A for List of Commission Members copied by email.
[2] *See* Appendix B for December 11, 2014, letter from Attorney Baird to Chairman Lawlor and Members of the Commission.

aware of another lawyer's misconduct or rule violations to ***report*** the conduct to either an "***appropriate professional authority***" or an "***appropriate disciplinary authority***." As written, a lawyer is obligated only to inform, not to report, a judge's violation to an "appropriate authority."

If the drafters of the Rules had intended that lawyers report judges to an "appropriate professional authority" or an "appropriate disciplinary authority" then they would have so stated. However, the drafters, while requiring that lawyers report other lawyers to an "appropriate professional authority" or an "appropriate disciplinary authority" only required lawyers to inform an "appropriate authority" of a judge's violations. Your use of the term "grievance" clearly contemplated a complaint to the Judicial Review Council which is both a "professional" and a "disciplinary" authority. I invite you to provide me any rule or regulation which required me to report Judge Mullarkey to an "appropriate professional authority" or an "appropriate disciplinary authority." The Rules do not obligate me or any other lawyer to file a grievance, a complaint, or report against a judge with the Judicial Review Council or any other disciplinary or professional authority, ever, about any matter.

In the criminal trial that you and I discussed today involving Judge Mullarkey, I informed Judge Mullarkey by written motion for recusal prior to the commencement of evidence, of my concerns.[3] In my opinion he was the "appropriate authority" to so inform. As stated previously my preference is to address an issue directly and Rule 8.3(b) provides me the discretion to make that choice with regard to judges. The content of the motion was widely reported in the media and was by no means a secret in the State of Connecticut.[4] While Judge Mullarkey may be a lawyer, his role as a judge removes him from the population of lawyers subject to another lawyer's mandatory duty to report rule violations. My choice of Judge Mullarkey as the "appropriate authority" to inform of my concerns resulted in the cessation of his commentary about the Second Amendment, comparisons of me to "Annie Oakley" and "Bonnie Parker," references to Wyoming as a place where I should know people, and invitations from the bench that I read law review articles written by professors who deem as racist the United States Supreme Court's interpretation of the Second Amendment as an individual right. I withdrew my motion and the trial proceeded with a verdict that preserved my client's right to possess firearms.

Practicing attorneys who care deeply about their reputations are rightfully concerned about grievances that accuse them of failing to follow the Rules. Questions about duty are serious. While your unexpected question about a non-issue did give me pause, as it would any attorney who considers the practice of law a calling and a vocation, I knew what you were doing when you asked it and that you were wrong as you said it. I just did not have the Rules at hand to prove it.

I will have time this weekend to review again the House remarks from June 7, 1999, regarding section 18 of Public Act 99-212 and follow-up on that part of today's discussion next week.

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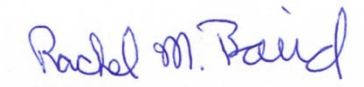
[3] *See* Appendix C for Recusal Motion, dated July 15, 2013.

[4] *See* Carole Bass, *Speak Slowly for Yale Law Grads?*, Yale Alumni Magazine, July 25, 2013; Jay Stapleton, *Lawyer Objects to Judge's Second Amendment Remarks*, The Connecticut Law Tribune, July 19, 2013; Jessica Glenza, *Torrington Attorney Asks Rockville Judge to Recuse Himself*, The Register Citizen, July 16, 2013.

Sincerely,



Rachel M. Baird, Attorney

The Honorable Dannel P. Malloy
Office of the Governor - State of Connecticut
210 Capitol Avenue
Hartford, CT 06106

George Jepsen, Attorney General
Office of the Attorney General - State of Connecticut
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# APPENDIX A

# Appendix A

State of Connecticut
Criminal Justice Policy Advisory Commission
Board Members

Michael Lawlor, Under Secretary for Criminal Justice Policy and Planning
Office of Policy and Management
Email: mike.lawlor@ct.gov

The Honorable Patrick L. Carroll, III
Office of the Chief Court Administrator
Email: patrick.carroll@jud.ct.gov

Commissioner Scott Semple
Department of Correction
Email: scott.semple@ct.gov

Chairman Carleton J. Giles
Board of Pardons and Paroles
Email: carleton.giles@ct.gov

Commissioner Dora Schriro
Department of Emergency Services and Public Protection
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Office of the Chief State's Attorney
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Chief Public Defender Susan O. Storey
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Commissioner Patricia A. Rehmer
Department of Mental Health and Addiction Services
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Executive Director Stephen Grant
Judicial Branch – Court Support Services Division
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Commissioner Sharon Palmer
Department of Labor
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Commissioner Roderick L. Bremby
Department of Social Services
Email: commis.dss@ct.gov

Commissioner Joette Katz
Department of Children & Families
Email: commissioner.dcf@ct.gov

Commissioner Stefan Pryor
Department of Education
Email: stefan.pryor@ct.gov

Governor's Appointments:

Government Official 1
VACANT

Government Official 2
Reverend Shelly Copeland
Rep. of Offender Services in the Private Community
Email: scopeland@conferenceofchurches.org

Government Official 3
Attorney Laurie Deneen
Town of Windsor
Email: c/o mike.lawlor@ct.gov

Government Official 4
Public Member Richard Healey, City of New Britain
Email: rhealey@rms-law.com

Government Official 5
Mayor Scott Kaupin, Town of Enfield
Email: skaupin@enfield.org

Government Official 6
Chief of Police James L. Kenny
Town of Vernon
Email: jkenny@vernon-ct.gov

Government Official 7
Executive Director Laura Cordes, CONNSACS
Rep. of Offender and Victim Services in the Private Community
Email: laura@connsacs.org

Government Official 8
Executive Director Sean Thakkar
CJIS Governing Board
Email: Sean.Thakkar@ct.gov

Government Official 9
Chief Executive Officer Karen M. Jarmoc, CCADV
Rep. of Offender and Victim Services in the Private Community
Email: kjarmoc@ctcadv.org

State of Connecticut

# Criminal Justice Policy Advisory Commission (CJPAC)

## Board Members

September 2014

**Office of Policy and Management**
Mike Lawlor, (Chair) Under Secretary

**Office of Chief Court Administrator**
Patrick L. Carroll, III, Judge, Deputy Chief Court Administrator, Designee

**Department of Correction (with Parole Functions)**
Scott Semple, Commissioner

**Board of Pardons and Paroles**
Carleton J. Giles, Chairman

**Department of Emergency Services and Public Protection**
Dora Schriro, Commissioner

**Office of the Chief State's Attorney**
Kevin Kane, Esq., Chief State's Attorney

**Office of Chief Public Defender Services**
Susan O. Storey, Esq., Chief Public Defender

**Department of Mental Health and Addiction Services**
Patricia A. Rehmer, Commissioner

**Judicial Branch - Court Support Services Division (CSSD)**
Stephen Grant, Executive Director

**Department of Labor**
Sharon Palmer, Commissioner

**Department of Social Services**
Roderick L. Bremby, Commissioner

**Department of Children and Families**
Joette Katz, Commissioner

**Department of Education**
Stefan Pryor, Commissioner

*Governor's Appointments:*

**Government Official 1**
VACANT

**Government Official 2**
**Rep. of Offender Services in the Private Community**
Reverend Shelly Copeland

**Government Official 3**
**Public Member**
Laurie Deneen, Esq., Town of Windsor

**Government Official 4**
**Public Member**
Richard Healey, City of New Britain

**Government Official 5**
Scott Kaupin, Mayor, Town of Enfield

**Government Official 6**
James L. Kenny, Chief of Police, Town of South Windsor

**Government Official 7**
**Rep. of Offender and Victim Services in the Private Community**
Laura Cordes, Executive Director, CONNSACS

**Government Official 8**
**CJIS Governing Board**
Sean Thakkar, Executive Director

**Government Official 9**
**Rep. of Offender and Victim Services in the Private Community**
Karen M. Jarmoc, Chief Executive Officer, CCADV

# APPENDIX B

# Rachel M. Baird & Associate

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December 11, 2014

Michael Lawlor, Chairman
Criminal Justice Policy Advisory Commission
Office of Policy and Management
450 Capitol Avenue
Hartford, CT 06106
Email: mike.lawlor@ct.gov

**Re: Duty to Disclose Private Funding for Connecticut Gun Seizure Research Project**

**(1) Full Disclosure of Funding for Research Project**
**(2) Release of Personal Information About Connecticut Gun Owners to Project Researchers**
**(3) Equal Access to the Commission for a Diversity of Views on Gun Seizure Issues**

Dear Chairman Lawlor and Commission Members:[1]

This letter regards a presentation of a "Research Study of Connecticut's 'Dangerous Persons' Gun Seizure Law" at the October 30, 2014, meeting of the Commission. For years as a practicing attorney in the criminal trial courts of Connecticut I have had concerns about state and federal constitutional violations arising from the implementation of the Firearm Safety Act enacted in 1999 and in particular the seizure of firearms. Please place my name on the Agenda for Public Comment at your December 18, 2014, meeting.

At the Commission's October 30, 2014, meeting chaired by Office of Policy and Management Under Secretary Michael Lawlor a group of researchers from Yale, Duke, and UCONN offered a 16-page Power Point presentation titled "Research Study of Connecticut's 'Dangerous Persons' Gun Seizure Law." The researchers have advanced degrees in the fields of social work, psychiatry, behavioral studies, or medicine. Their plans include creating a database to track the personal characteristics of Connecticut gun owners along with gun owners' patterns of arrest, incarceration, and psychiatric hospitalization before and after gun seizures.

While advanced degrees and associations with Yale, Duke, and UCONN are admirable, the results of a project are only as valid as the facts made available to the researchers and the receptiveness of the researchers to objective interpretations of the facts provided them. So far,

[1] *See* Appendix A for List of Commission Members.

the Waterbury Republican American, The New Haven Register, and The Connecticut Law Tribune have reported on the project as if the research is sponsored by esteemed institutions such as Yale, Duke, and UCONN. Not one of these media outlets disclosed that the research project is in fact sponsored by the New Venture Fund and the Elizabeth K. Dollard Trust. Not one of these media outlets disclosed the association between the New Venture Fund and The Joyce Foundation. The media relied on Under Secretary Lawlor and the Commission who, similar to economics professor Jonathan Gruber, simply think the media and the public are stupid.[2]

The New Venture Fund received grants from The Joyce Foundation in excess of $650,000 during 2013 for gun related projects. According to *Inside Philanthropy*:

> There's no mistaking where Joyce stands in this debate. It's among the leading anti-gun funders in the foundation world, with a Gun Violence Prevention program that funds research, policy, and public education.[3]

Omitting reference to an association between The Joyce Foundation and the New Venture Fund as a sponsor of a "Research Study of Connecticut's 'Dangerous Persons' Gun Seizure Law" is similar to conveniently failing to disclose sponsorship of a gun related research project by a pro-Second Amendment organization. Of course, the latter would never happen. In full disclosure I am a Yale Law School graduate, I have received funding from the NRA Civil Rights Defense Fund, I represent firearm owners in Connecticut gun seizure cases, and I have not yet been contacted by the Yale, Duke, and UCONN researchers associated with the project.[4]

A brief background and summary of my concerns specific to firearm seizures:

Prior to a vote on the Firearm Safety Act in 1999,[5] State Representative Michael Lawlor assured others in the State House, including Representatives Tulisano, Stripp, Hamm, Caron, Esposito, Diamantis, Garvey, Prelli, and O'Neill, that police officers conducting investigations under the new firearm seizure law would be responsible for signing the seizure warrants and held accountable for the information sworn to under oath in the warrants.[6] The purpose was to ensure

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[2] *See* Ashley Killough, *Jonathan Gruber: I am embarrassed and I am sorry*, CNN.com, December 9, 2014 ("MIT economics professor Jonathan Gruber apologized Tuesday for his 'glib, thoughtless and sometimes downright insulting comments' about Obamacare and the intelligence of American voters.").

[3] *See* Kristina Strain, *The Joyce Foundation's Long Fight to Curb Gun Violence*, InsidePhilanthropy.com, June 6, 2014.

[4] For a year end special edition of The Connecticut Law Tribune I wrote an editorial opinion forecasting the future of gun seizures in Connecticut, *Gun Owners Worry About Enforcement of Laws: Advocates See Continued Problems With Illegal Seizures of Weapons*. The editorial exposed a Connecticut State Police (CSP) illegal practice that had occurred for years. Specifically, the CSP extorted firearm owners to surrender their firearms by threatening felony arrest when in fact the firearm owners were not in violation of any criminal law. The CSP stopped this practice in 2013 when I brought it to their attention. There were absolutely no other consequences for the CSP's longstanding involvement in illegal conduct. This is because the victims of the CSP's government-sanctioned criminal conduct were firearm owners. *See* article at Appendix B.

[5] Public Acts 1999, No. 99-212, § 18, *codified* at General Statutes (Rev. to 2013) § 29-38c.

[6] *See* Representative Lawlor's remarks at House Transcript for June 7, 1999, 53 of 280:
"This would require police to put in writing and sign their names to an affidavit which indicates they've done the investigation, they've ruled out other options, etc. And then it would require a judge to sign it and you know, for all of the allegations we hear about police misconduct, let's say, you hear very few stories of abuse in the warrant process, whether it's an arrest warrant or a search warrant. I mean, there are stories, but there are few and far between. I think the reason for that is requiring people to go through a very formal process of completing an

that the officers would be responsible and accountable for misleading or false information contained in a firearm seizure warrant.[7] In 2013 a prosecutor in New Britain argued to the court that a warrant signed by two Berlin Police Department officers who had no involvement in the investigation was not only acceptable but routine.[8] Courts routinely sign warrants for the seizure

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investigation, putting the totality of it into an affidavit, signing their name on the bottom under the penalties of false statement I think is making it clear to the law enforcement officials involved and to the judge that they'll be held responsible if they are, in any way, lying or misleading or not including relevant information."

[7] *See* footnote 6.

[8] Berlin Police Department Officer Robert L. Canto and Detective Brian McMahon testified that they had no involvement in an investigation underlying a firearm seizure warrant that they signed.

According to testimony offered by Berlin Police Department Officer Canto during cross-examination by Supervisory Assistant State's Attorney Palmese:

Q: Now, when you review these search warrants before you sign off as an affiant, you actually -- you read it. Correct?
A: Correct, I read it.
Q: And were you aware at the time that it was based on police reports submitted by Officer Bartlett?
A: Yes, ma'am.
Q: Okay. And as a brother officer would -- Officer Bartlett, you rely on information in their reports to be truthful and accurate?
A: Absolutely.
Q: And is that the reason that you are allowed to be an affiant on the document that's submitted to the Court?
A: I believe so.
Q: Okay. And is it typical that, as police officers, you rely on information from brother and sister officers?
A: All the time.
Q: All the time. Okay.

(12/24/2013 H'rg Tr., 64:25-65:14) Officer Canto was an affiant to a Search and Seizure Warrant for firearms based on a police response to a home on December 2, 2013. Officer Canto had no knowledge of the December 2, 2013, police response until December 9, 2013, when he signed the warrant. (12/24/2013 H'rg Tr., 60:7-11) He was not one of the four officers at the scene. (*Id.* at 60:12-15) Prior to signing the warrant he never spoke to any officer who was at the scene, including the single officer, Officer William Bartlett, who wrote a report. (*Id.* at 60:2-11) Officer Canto never read the report prepared by Officer Bartlett prior to signing the warrant. (*Id.* at 61:4-11) Officer Canto spoke to one officer, Detective Sean McMahon, who was not one of the four officers at the scene. (*Id.* at 60:16-20) ( (See Detective McMahon's report) The warrant was already drafted when Officer Canto received it. (*Id.* at 62:4-17) The only action taken by Officer Canto with regard to the investigation underlying the warrant was to read it after it was written. (*Id.* at 62:13-63:2) The other affiant to the search warrant, Officer David A. Cruickshank, became involved in the December 2, 2013, matter when Detective McMahon entered the office he shared with Officer Canto on December 9, 2013, and Detective McMahon asked Officer Canto and Officer Cruikshank to be co-affiants. (12/27/2013 H'rg Tr., 9:8-12) Officer Cruikshank did not review any documents prior to signing the warrant. (*Id.* at 9:26-10:8) Detective McMahon has been employed by the Berlin Police Department for 24 years. (*Id.* at 56:17-21)

According to testimony offered by Detective McMahon during cross-examination by Supervisory Assistant State's Attorney Palmese:

Q: So is it common practice in the Berlin Police Department to draft a warrant from another investigation?
A: Yes, it's happened.
Q: Okay. You're kind of the writer at the department, aren't you?
A: Unfortunately.
Q: You're the best writer, yes, okay. And is it common to rely on information from brother and sister officers when preparing an arrest warrant or a search warrant?
A: It is.
Q: Okay. Because you can rely on truthfulness of your brother and sister officers, correct?
A: That's correct.
Q: All right. And is it common to have two individuals who may not have been involved in the investigation as co-affiants?
A: It is.
Q: And in this case it happened because Canto and Cruickshank happened to be coming to the courthouse that particular morning?
A: That's correct.

of firearms that are signed and sworn to by officers who had no involvement in the investigation.[9]

The Firearm Safety Act of 1999 was co-sponsored by Representative Lawlor and Representative Ron San Angelo. In persuading his fellow legislators to vote in favor of the Act, Representative San Angelo said that firearms would only be seized when the danger was imminent, when an individual was brandishing a firearm, and when the firearms were in the home.[10] Many of the firearm seizures that occur in Connecticut under the authority of General Statutes § 29-38c are in fact executed at the evidence rooms of police stations rather than at individuals' homes. This is because the firearms are seized before a warrant has issued. The State of Connecticut is the first state in the nation to use a warrant to condone a seizure of property that has occurred already.

To address the overwhelming appearance that the findings and recommendations of the pending gun seizure research study are pre-determined by its choice of researchers the Commission is obligated to explain: (1) How Under Secretary Lawlor is fit to chair a Commission tasked with examining firearm seizure issues given his documented record of providing inaccurate information to his fellow legislators in 1999 and his failure to ensure in his current position as Under Secretary for Criminal Justice Policy and Planning since January 2011 that the 1999 firearm seizure law was implemented as passed;[11] (2) How the privacy rights of firearm owners will be protected when the Commission has condoned a study by private researchers that will require the disclosure of private, personal information to individuals paid by the New Venture Fund and the Elizabeth K. Dollard Trust; and (3) How the Commission will incorporate a diversity of perspectives on firearm seizure issues so that the findings and recommendations of the researchers sponsored by the New Venture Group and the Elizabeth K. Dollard Trust are part of a search for the truth in the context of healthy opposition and constructive debate.

While organizations such as The Joyce Foundation, the New Venture Fund, and the Elizabeth K. Dollard Trust have a right to their opinions, their sponsorship of a gun related research project in Connecticut should not be presented as a study by Yale, Duke, and UCONN researchers. The Yale, Duke, and UCONN researchers are being sponsored by organizations that

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[9] I expressed this concern about lack of accountability to Commission member Chief State's Attorney Kevin T. Kane in letters dated January 27, 2014, and September 8, 2014, when addressing a separate concern about the State of Connecticut's flagrant violations of state and federal constitutional rights in failing to follow the law set forth in the seminal United States Supreme Court case of *Brady* v. *Maryland* (1963) which requires prosecutors to provide exculpatory information about the credibility of police officers to defense attorneys. This letter provides notice to each Commission member that the State of Connecticut does not maintain a *Brady* list in violation of state and federal constitutional guarantees. I look forward to addressing this issue at a Commission meeting in the upcoming year. For your reference the correspondence between me and the Office of the Chief State's Attorney is attached at Appendix C.

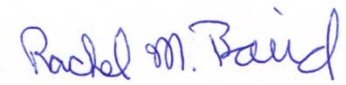
[10] *See* Representative San Angelo's remarks at House Transcript for June 7, 1999, 18 of 280:
"And the standard is set extremely high. Imminent danger to himself or to others which means that he has to be getting ready to either kill himself or kill somebody else. … . And we've set some of the things that the judge has to look at. Again, they're very high. You have to have firearms in your house. You have to be brandishing them. … . I believe that any reasonable judge in the State of Connecticut will be extremely cautious in putting this provision forward, will look at it very closely for absolute purposes of legislative intent, it makes absolutely clear that this is not to be used very often, but only in very rare extreme situations. That is recognized by everybody that's a proponent of this amendment. It's not something that we want to see used loosely. … ."

[11] *See also* footnote 4.

spend billions in foundation assets to affect government change through government officials all in support of increased restrictions on gun owners.

I look forward to the Commission's meeting on December 18, 2014.

Sincerely,



Rachel M. Baird, Attorney

The Honorable Dannel P. Malloy
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Hartford, CT 06106

George Jepsen, Attorney General
Office of the Attorney General - State of Connecticut
55 Elm Street
Hartford, CT 06106

# APPENDIX C

| | | |
|---|---|---|
| DOCKET NO. CR12-0101640-S | : | SUPERIOR COURT |
| | : | |
| STATE OF CONNECTICUT | : | JUDICIAL DISTRICT OF TOLLAND |
| | : | AT ROCKVILLE (G.A. #19) |
| V. | : | |
| | : | |
| CHRISTOPHER PETERSON | : | JULY 15, 2013 |

**MOTION FOR RECUSAL AND DISQUALIFICATION OF JUDGE**[1]

The Defendant Christopher Peterson, by and through his undersigned counsel and pursuant to Connecticut Practice Book (P.B.), § 1–22(a),[2] hereby moves to disqualify The Honorable Edward J. Mullarkey from presiding at trial in the above-captioned matter.

In support the Defendant offers:

## I. THE COURT'S *SUA SPONTE* INQUIRY OF DEFENDANT'S COUNSEL RE: THE SECOND AMENDMENT, SLAVERY, AND SHAME

[1] Admitted to the Connecticut Bar in 1993, this is undersigned counsel's first motion, in federal or state court, written or oral, for recusal or disqualification of a judge.

[2] P.B. § 1-22(a) provides: "A judicial authority shall, upon motion of either party or upon its own motion, be disqualified from acting in a matter if such judicial authority is disqualified from acting therein pursuant to Canon 3(c) of the Code of Judicial Conduct ..." "'[C]anon 3 of the Code of Judicial Conduct requires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.'" Ajadi v. Commissioner of Correction, 280 Conn. 514, 527 (2006).

A. Jury Selection

In the course of jury selection on Thursday, July 11, 2013, the Court raised, *sua sponte* and on the record, the content of a 1998 University of California at Davis Law Review article entitled *The Hidden History of the Second Amendment* to inquire whether undersigned counsel for the Defendant was aware of the history of the Second Amendment as it relates to anti-federalists, ratification of the United States Constitution, and passage of the Bill of Rights. See Carl T. Bogus, *The Hidden History of the Second Amendment*, 31 U.C. Davis L. Rev. 309 (1998).

In response to the Court's inquiry, an inquiry that was not made to the prosecutor, regarding knowledge of the content of Professor Bogus's article, undersigned counsel admitted a lack of knowledge. The instant trial does not implicate the Second Amendment nor has the Second Amendment been raised[3] except to the extent that the Court has raised undersigned counsel's involvement in firearms and Second Amendment civil rights cases and media coverage.[4]

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[3] The criminal matter before the Court is a misdemeanor trial. Previously, the Defendant was charged with six counts of criminal possession of a firearm but the charges were dismissed after undersigned counsel obtained proof that the Defendant is not a felon.

[4] For recent examples, see Matthew Kauffman, *Gun Board Member Charts Own Path*, Hartford Courant, June 23, 2013 at http://articles.courant.com/2013-06-23/news/hc-gunboard-kuck-0624-20130623_1_state-police-state-board-board-meetings/2 ("[Doe's] attorney at the hearing was

At approximately 3:20 p.m. on Thursday, July 11, 2013, after the Court's initial comments about the Professor Bogus article, the Court recessed for an afternoon break, stood, and spoke. However, prior to speaking the Court confirmed with the court monitor that his comments would not be recorded. The Court then stated, as he stood at the bench, that those who support the Second Amendment should be "ashamed."[5] No reference was made to our state

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Rachel M. Baird of Torrington, a prominent firearms-rights lawyer in the state; Matthew Kauffman and Dave Altimari, *Hundreds Gain Gun Permits Despite Police Rejection*, Hartford Courant, June 23, 2012 at http://www.courant.com/news/connecticut/hc-gun-permits-20130622,0,1847793.story ("Rachel Baird, a lawyer who frequently represents clients with cases before the board, said that situation is appropriate because applicants have no formal opportunity to make their case to the local officials."); David Owens, *Lawsuit Seeks to End $50 Fee for Gun Permits*, Hartford Courant, June 10, 2013 at http://articles.courant.com/2013-06-10/news/hc-gun-license-fees-0607-20130606_1_state-police-gun-permits-state-criminal-history-record; Associated Press, "*Guns ordered returned to Connecticut Suspect in Threats*, Norwich Bulletin, May 28, 2013 at http://www.norwichbulletin.com/news/x514114075/Judge-orders-guns-returned-to-suspect-in-threats#axzz2XQbXg81X; Eric Parker, *Local police depts. want more say with issuing permits*, WFSB Channel 3, April 29, 2013 at http://www.wfsb.com/story/22108142/local-police-depts-want-more-say-with-issuing-pistol-permits; Jay Stapleton, *Lawyers Have Little Success Fighting Gun Seizure Warrants*, Connecticut Law Tribune, January 25, 2012 at http://www.ctlawtribune.com/PubArticleCT.jsp?id=1202585866233&Lawyers_Have_Little_Success_Fighting_Gun_Seizure_Warrants_.

[5] Professor Bogus uses the word "shame" to explain why there is no direct support in historical writing for his theory that the Second Amendment arises from a compromise between the North and the South. See id. at 373 ("The evidence that the Second Amendment was written to assure the South that the federal government would not disarm its militia is, I suggest, considerable. However, the evidence is almost entirely circumstantial. Madison never expressly stated that he wrote the Second Amendment for that purpose. If the thesis is sound, why is no direct evidence to be found supporting it?"); see also id. at 372 ("Bargaining over slavery produced a sense of

constitution or whether those who support Article 1, § 15 of our state constitution need be "ashamed." See Kuck v. Danaher, 600 F.3d 159, 165 (2d Cir. 2010) ("Yet the Connecticut Constitution establishes a clear liberty interest in a permit to carry a firearm-an interest that is highly valued by many of the state's citizens.") (citing Conn. Const. art. I, § 15 ("Every citizen has a right to bear arms in defense of himself and the state.")).

Other comments[6] not relevant to the proceedings but directed presumably to undersigned counsel's involvement in firearms and Second Amendment civil rights cases and media coverage include:

- The Court's reflection on whether undersigned counsel will be "Annie Oakley" or "Bonnie Parker."; and
- The Court's response to undersigned counsel's statement that a Vernon Police Department detective who had been subpoenaed to testify at a motion hearing for Friday, July 12, 2013, was unavailable; the Court commented that undersigned counsel should know a lot of people in Wyoming.[7]

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shame on both sides. Northerners felt shame for becoming complicit in the slave system. For Southerners, the issue was more complex and confused, but even staunch defenders of the system struggled with a sense of disgrace.").

[6] The Court's inquiry included a remark that the Court would speak slowly as undersigned counsel is a graduate of Yale Law School.

[7] According to the New York Times:
"In Wyoming, home to some of the country's least restrictive gun regulations, a bill to exempt the state from any new gun-control laws sailed through the Republican-controlled House by a vote of 46 to 13 and is now headed to the State Senate. The measure, called the Firearm Protection Act, declares that any new gun-control laws or executive orders that ban

B. Professor Carl T. Bogus[8] and Newtown

According to Professor Bogus:

> More than a dozen years ago, I wrote an article titled The Hidden History of the Second Amendment. It got a fair amount of attention at the time. Some historians endorsed it – at least to the extent of saying they found its thesis plausible and deserving of attention – including Garry Wills and Don Higginbotham from the University of North Carolina, who specializes in military history of the colonial and Revolutionary eras. But, frankly, the article did not get the kind of attention that I thought it deserved.

See *EDMUND: A Blog with a Burkean Point of View* at http://www.carltbogus.com/edmund-a-blog/72-the-hidden-history-of-the-second-amendment-redux. Professor Bogus attributes the surge in the 1998 article's popularity to Newtown:

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semiautomatic weapons or limit ammunition clip sizes are 'unenforceable' in Wyoming. Any federal agent who tries to enforce gun-control measures would be guilty of a felony punishable by five years in prison and a $5,000 fine. It also allows the state's attorney general to defend Wyoming residents prosecuted for violating federal gun laws." Jack Healy, *Some States Push Measure to Repel New U.S. Gun Laws*, N.Y. Times, Feb. 7, 2013 at http://www.nytimes.com/2013/02/08/us/some-states-try-to-repel-new-federal-gun-laws.html?_r=0.

[8] Professor Bogus has been or is currently on the National Advisory Panel for the Violence Policy Center, the Board of Governors for Handgun Control, Inc., and the Board of Directors for the Center to Prevent Handgun Violence. He is diametrically opposed to the position held by organizations such as the National Rifle Association that the right to keep and bear arms is an individual right and works through organizations to ban handguns and increase regulation of firearm ownership.

> To my surprise, the recent massacre in Newtown ignited a resurgence of interest in The Hidden History of the Second Amendment. During one week recently, it was the fourth most-downloaded article from the Social Science Research Network, which contains more than 300,000 articles. Even more surprising, as far as I can tell this resurgence in interest is taking place not primarily among scholars but among people from all walks of life, who – learning about it from social media or radio shows – are taking the initiative to find, download, and read a heavily-footnoted, 99-page law review article.

Id. This interest has surged primarily from non-academics who have learned about the article from social media or radio shows despite the rejection by the United States Supreme Court of the article's premise that the Second Amendment right to keep and bear arms is a collective, not an individual, right. See District of Columbia v. Heller (U.S. 2008) and McDonald c. City of Chicago (U.S. 2010).

C. *The Hidden History of the Second Amendment*

The thesis of the article is that the history of the Second Amendment is founded in a compromise that provided the southern states some comfort that their ability to suppress slave insurrections would not be infringed upon by the federal government's disarmament of state militias or through other means. See id. at 407 ("The Second Amendment takes on an entirely different complexion when instead of being symbolized by a musket in the hands of the minuteman, it is associated with a musket in the hands of the slave holder."). The article cited favorably by the Court states:

- "The Second Amendment is part of the reason that the United States tolerates a level of carnage and terror unparalleled in any other nation at peace." Id. at 314.

- "According to this view, the Second Amendment grants people a right to keep and bear arms only within the state-regulated militia. In contrast, those who advocate an "individual rights" theory believe that the Second Amendment grants individuals a personal right to keep and bear arms. This model has long been advocated by the firearm industry, shooting organizations, and political libertarians." Id. at 317.

- "One of Virginia's main concerns was that the federal government would abolish or directly interfere with the slave system." Id. at 327.

- "Even more chilling than emancipation was the prospect of continuing the slave system but weakening the white population's control over the slave population." Id. at 331.

- "However, Mason's main concern was not the creation of a standing army but the preservation of the militia. Mason personally owned three hundred slaves. He understood the critical role of the militia in preserving the slave system." Id. at 349.

- "But it was at Richmond that concerns about slave control and federal authority over the militia were united, producing a new rationale for a right to bear arms." Id. at 358.

Professor Bogus is an outspoken proponent of an interpretation, rejected by the United States Supreme Court, that the Second Amendment right to keep and bear arms is a collective, not an individual, right.[9]

[9] See Robert Willing, *Case could shape future of gun control*, USA Today, Aug. 27, 1999 at **http://www.saf.org/EmersonUSA1.html** ("Clearly, the reference to 'militia' is there for a reason," Bogus says. If the Amendment's drafters had "wanted an individual right, they wouldn't have needed to qualify it. That first (clause) is all-important. They're saying, 'Because there's a need for a militia, we're bringing up the subject of arms.") (external quotation marks omitted).

In Heller, Professor Bogus was amicus counsel for 15 professional history/legal academics who filed a brief supporting the District of Columbia's handgun ban. The United States Supreme Court rejected the District of Columbia's ban finding that Second Amendment rights attach to the individual, a clear and unequivocal rejection of Professor Bogus's position. In his article, Professor Bogus attributes the bulk of Second Amendment academic writing supporting an interpretation of individual rights to:

> A small band of true believers who belong not merely to the individual rights school of thought but a particular wing commonly called "insurrectionist theory." The leader of this band is Stephen P. Halbrook, who, with the support of tens of thousands of dollars in NRA grants, has written no less than two books and thirteen law review articles advocating this particular theory of the Second Amendment. Insurrectionist theory is premised on the idea that the ultimate purpose of an armed citizenry is to be prepared to fight the government itself.

Id. at 318-19.

Professor Bogus proceeds in his 1998 article to admit:

> While, as a general matter, mainstream scholars have only a cold disdain for the work of insurrectionist theorists, at least three prominent constitutional scholars -Sanford Levinson of the University of Texas, Akhil Reed Amar of Yale, and William Van Alstyne of Duke-have recently joined the insurrectionist school, giving it a respectability it did not previously enjoy.

Id. at 320.

Finally, while Professor Bogus was amicus counsel for 15 professional history/legal academics who filed a brief supporting the District of Columbia's handgun ban in Heller, Attorney Halbrook, leader of the group described by Professor Bogus's as a "small band of true believers" drafted an amicus brief in support of Heller for 55 members of the United States Senate, the President of the United States Senate, and 250 members of the House of Representatives.[10] The United States Supreme Court ruled in favor of Heller (supported by Attorney Halbrook) and against the District of Columbia (supported by Professor Bogus) ban on handguns.

## II. LEGAL STANDARD

### A. Standard of Law for Recusal and Disqualification

Connecticut Practice Book (P.B.), § 1–22(a) provides in relevant part:

> A judicial authority shall, upon motion of either party or upon its own motion, be disqualified from acting in a matter if such judicial authority is disqualified from acting therein pursuant to Canon 3(c) of the Code of Judicial Conduct ..."

"'[C]anon 3 of the Code of Judicial Conduct requires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.'" Ajadi v.

[10] See Amicus Brief at http://www.nraila.org/heller/proamicusbriefs/07-290_amicus_congress.pdf.

Commissioner of Correction, 280 Conn. 514, 527 (2006). The standard for determining whether a judge should recuse himself or herself pursuant to Canon 3(c) is well established.

> The standard to be employed is an objective one, not the judge's subjective view as to whether he or she can be fair and impartial in hearing the case. ... Any conduct that would lead a reasonable [person] knowing all the circumstances to the conclusion that the judge's impartiality might reasonably be questioned is a basis for the judge's disqualification ... The standard for appellate review of whether the facts require disqualification is whether the court's discretion has been abused.

Sabatasso v. Hogan, 90 Conn.App. 808, 825–26, cert. denied, 276 Conn. 923 (2005).

The Court's express statement that those who support the Second Amendment should be "ashamed" and other comments indicating a focus on undersigned counsel's involvement in firearms issues compellingly leads a reasonable person to conclude that the Court's impartiality might reasonably be questioned.

The Court is aware, not through undersigned counsel but through means external to the proceeding, of undersigned counsel's involvement in firearms and Second Amendment civil rights cases and issues. The Court expressly cites to an article that holds, contrary to two decisions by the United States Supreme Court, the Second Amendment as a collective, not individual, right.

In holding that those who support the Second Amendment should be "ashamed" the Court demonstrates a lack of fairness and impartiality in this case where undersigned counsel

appears on behalf of the Defendant. In reviewing Professor Bogus's article cited favorably by the Court this "shame" arises from the purported foundation of the Second Amendment in the southern states' demand that some assurance be given that their militias would not be disarmed, disbanded, or deployed in exchange for agreement to ratify the United States Constitution. Undersigned counsel's "shame" would apparently arise from defending individuals and bringing causes of action in reliance upon the Second Amendment or in representing individuals who "shamefully" support the Second Amendment because to do so supports slavery.

The impact on the Defendant in the instant action is a reasonable and intractable belief that undersigned counsel cannot represent the Defendant before a judge who finds his counsel "shameful" for her reliance on the Second Amendment as interpreted by the United States Supreme Court, and not Professor Bogus, and treats her accordingly, including comparisons to Annie Oakley[11] and Bonnie Parker.[12] The Defendant is so impacted that he raises as a reasonable belief founded in what he has witnessed in the courtroom that he cannot receive a fair trial from

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[11] "Annie Oakley was an American sharpshooter and exhibition shooter." See http://en.wikipedia.org/wiki/Annie_Oakley.

[12] "Bonnie Elizabeth Parker (October 1, 1910 – May 23, 1934) and Clyde Chestnut Barrow (March 24, 1909 – May 23, 1934) were well-known American outlaws, robbers, and criminals who traveled the Central United States with their gang during the Great Depression. … With her sassy photographs, Bonnie supplied the sex-appeal, the oomph, that allowed the two of them to transcend the small-scale thefts and needless killings that actually comprised their criminal careers." See http://en.wikipedia.org/wiki/Bonnie_and_Clyde.

any judge in Connecticut at this time due to the events of December 14, 2012, in Newtown, events that have popularized the 1998 article by Professor Bogus cited favorably by the Court. The Defendant has been unnerved by the Court's animus toward undersigned counsel and the Second Amendment, as well as the Court's reliance on a 1998 law review article that is contrary to the law of the land as expressed in the United States Supreme Court decisions Heller and McDonald which provide, jointly, that the Second Amendment individual right to keep and bear arms is a right incorporated through the Fourteenth Amendment to the states, including Connecticut.[13]

Finally, undersigned counsel has been unduly and unfairly distracted from competently representing the Defendant as a consequence of the Court's comments and Defendant's concerns

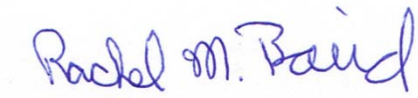
[13]After appearing before the Court on June 27, 2013, the Defendant expressed concerns to undersigned counsel following the Court's comments directed toward the Defendant's father's military service. The Defendant's father retired from active-duty United States Army service at the rank of E-7. He served an extended tour of duty in Vietnam from October 1968 through April 1970 logging 250 combat flight hours as a crew member on a UH-1C Huey Gunship. For combat related service, he was awarded 21 Air Medals, a Bronze Star, and other combat related decorations. The Court's comments, on the record and in the presence of the parties, the Defendant's father, court personnel, and members of the public challenged the father's military combat experience, firearms experience, and knowledge of firearms. A request for a transcript of the June 27, 2013, hearing date has been pending since July 3, 2013, and undersigned counsel's office understands that the transcript will be ready on July 16, 2013. Undersigned counsel did not intend to move for recusal or disqualification based solely on the June 27, 2013, commentary because such a motion must be considered with import and filed as a last resort and, although shocking, the Court's June 27, 2013, comments may have been overcome by a lack of further concerns. Unfortunately, for the reasons stated herein those concerns have been exacerbated by the Court's comments on July 10, 11, and 12, 2013, during jury selection and hearing.

arising from those reckless, demeaning, and defamatory comments resulting in an inability to adequately prepare for trial while addressing the Defendant's reasonable concerns, reviewing the "heavily-footnoted, 99-page law review article" brought to undersigned counsel's attention by the Court as an important article to read, contacting Attorney Stephen P. Halbrook referenced by Professor Bogus as the "leader" of the "small band of true believers who belong not merely to the individual rights school of thought but a particular wing commonly called 'insurrectionist theory'" id. at 318-19, and preparing this motion. See attached response from Attorney Holbrook to Attorney Baird's inquiry regarding the credibility of the 1998 article drafted by professor Bogus and favourably cited by the Court.

## III. CONCLUSION

For the foregoing reasons and arguments of law, the Defendant respectfully moves for recusal and disqualification of The Honorable Edward J. Mullarkey from further proceedings in the above-captioned matter.

DEFENDANT
CHRISTOPHER PETERSON

BY: 

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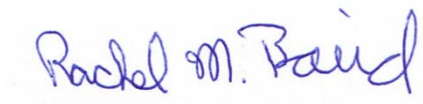
**ORDER**

The Court, upon due consideration, hereby order the Defendant's motion
GRANTED / DENIED.

_____
Judge of the Superior Court

**CERTIFICATION OF SERVICE**

I HEREBY CERTIFY THAT the foregoing Motion for Recusal and Disqualification of Judge was transmitted by email on July 15, 2013, to Assistant State's Attorney Reed Durham in Rockville, Connecticut.



_____
Rachel M. Baird
Commissioner of the Superior Court

## Rachel Baird

**From:** PROTELL@aol.com [mailto:PROTELL@aol.com]
**Sent:** Thursday, July 11, 2013 11:07 PM
**To:** rbaird@rachelbairdlaw.com
**Cc:** protell@aol.com
**Subject:** Re: CT State Court Judge

Hi Rachel,

The most prominent early demand for recognition of the right to keep and bear arms was in the northern states. My book The Founders' Second Amendment book goes into great detail on the reasons for ratification of the Second Amendment, which was inspired by the British disarming of the Americans, not slavery. The first state to declare the right to keep and bear arms was Pennsylvania, in 1776. Other states to do so in that time period were North Carolina, Vermont, and Massachusetts.

When the state ratification conventions considered the proposed Constitution without a Bill of Rights in 1787-88, a bill of rights with the right to bear arms was proposed by Samuel Adams in the Massachusetts convention, by the Dissent of the Minority in the Pennsylvania convention, and by the entire New Hampshire convention. When the Virginia convention debated the issue, George Mason recalled how the British sought to disarm the Americans. New York, North Carolina, and Rhode Island joined in the demand for what became the Second Amendment.

Slavery was never mentioned in the above context. It was the denial of the right to bear arms to all that supported slavery, not the Second Amendment. As shown in my book Securing Civil Rights, the framers of the Fourteenth Amendment sought to correct this by extending the right to all, including African Americans.

Steve

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