

**Appeal to the  
Committee on Judicial Conduct and Disability  
of the  
Judicial Council of the D.C. Circuit Ruling  
in the  
Matter of Judge Jones (DC-13-90021)**

**Attachment 2:**

**Affidavits of Attendees submitted  
in support of Complaint Below**

State of Pennsylvania )  
 )  
County of Philadelphia )

Declaration of Marc Bookman

Appeared before the undersigned authority duly designated to administer oaths, Marc Bookman states on oath:

1. My name is Marc Bookman. I am a resident of Wyndmoor, Pennsylvania. I am over 18 years of age and am otherwise competent to give this declaration. No promises or agreements have been made to me in exchange for this statement, and I do not expect any in the future.

2. I am the Director of the Atlantic Center for Capital Representation, an organization based in Philadelphia that provides services to capital defense teams in Pennsylvania and Delaware. Before that I was employed by the Defender Association of Philadelphia, and was in their Homicide Unit since its inception in 1993. I graduated from the University of North Carolina Law School in 1982, and have been a lawyer in Pennsylvania since 1982. I graduated from the University of Pennsylvania with a B.A. in 1978.

3. On February 20, 2013, I attended a lecture at the University of Pennsylvania Law School given by Edith Jones, formerly Chief Judge of the Fifth Circuit Court of Appeals. The Law School advertisements described the lecture as "Federal Death Penalty Review with Judge Edith Jones (5<sup>th</sup> Cir.)," and noted that "Circuit Judge Edith Jones will discuss federal death penalty review through the perspective of a federal judge." The lecture was open to the public and the audience appeared to be made up largely of law students. The lecture lasted roughly an hour and a quarter.

4. In her introductory remarks, Judge Jones noted that she had reviewed more than a hundred capital cases and that, while she was personally a supporter of the death penalty, her job as a judge obliged her to apply whatever legislation the legislature enacted.

5. Judge Jones noted at the outset that she intended to structure her initial remarks so as to answer three questions: Is the death penalty constitutional? Is the death penalty morally justifiable? Is the death penalty working? Judge Jones did answer these questions and then went beyond them to address several additional matters, as I've noted below.

6. Judge Jones said there was no arguing that the death penalty is constitutional. She noted that the Founding Fathers wrote it directly into the constitution and that it has ancient roots in Deuteronomy. She also noted that she does not share others' views that the death penalty is no longer constitutional because of evolving standards of decency.

7. Regarding the question of whether the death penalty is morally justifiable, Judge Jones answered that it is "absolutely" justifiable, and then provided several reasons.

8. It is, she said, justifiable because it provides vindication for a life that has been taken by another who has shown wanton disregard for that life. Such a person must be penalized to the maximum extent possible, and life imprisonment did not meet that bill.

9. Moreover, Judge Jones said, we do the convicted killer a service by imposing capital punishment on him or her, because a killer is only likely to make peace with God and the victim's family in that moment when the killer faces imminent execution, recognizing that he or she is about to face God's judgment. In support of the propriety of this justification, Judge Jones referred her audience to an article her husband had gotten from the internet entitled, "Hanging Concentrates the Mind." She said the article talked about the Vatican's perspective on capital punishment while executions were occurring within the Vatican's jurisdiction, suggesting that

the Vatican approved the practice of capital punishment for the very reason she had just articulated.

10. In further answer to the question whether the death penalty is justifiable, Judge Jones offered her opinion that a review of several of the most recent capital cases for which she had written opinions amply illustrated the morality of state-authorized executions. She described the fact scenarios about each of these cases that demonstrated why the accused deserved to die.

11. Judge Jones mentioned seven defendants that I can recall: a woman named Beets, whom she described as the "Black Widow;" Walter Bell; Larry Hatten; Larry Swearingen; Marcus Druery; Elroy Chester; and a Mexican national named Ramiro Ibarra. I do not recall all of the details that Judge Jones recounted about these cases but these are the descriptions I remember:

12. The Black Widow was so-called because she had been married five times and each of her husbands had died. The fifth husband had last been seen going out in a rowboat and had then disappeared. A vial of his medication was found near the boat. It turned out Beets had poisoned the husband. His remains were later discovered in a planter or urn by her front door.

13. Judge Jones described one defendant who was a college student. She said he had left campus with a group of his friends one night, had been out drinking with them, and had then shot several of them, execution-style, killing at least one of them. She said he had done this simply to get their wallets and the drugs in their pockets.

14. She described one defendant who had broken into someone's house and had viciously attacked some people in an upstairs bedroom. As the defendant was trying to leave the house, the uncle of the victims arrived to try to protect the family but the defendant shot and killed him.

15. One of the defendants (I believe this was Bell) had tried to claim he was mentally retarded so he wouldn't get executed. Judge Jones said he did have some IQ scores that were in the 60's range, but he also had one that was 70, which did not qualify him as being mentally retarded because he didn't have adaptive deficits. She thought it was clear this defendant was not mentally retarded. He had offered to take the police to where the murder weapon was hidden. When they got to the location, the defendant climbed up on a chair in four-point shackles, reached up behind a ceiling tile to retrieve the gun, and pulled down a loaded firearm, which he began shooting at the police. Judge Jones thought this action demonstrated this man was far too canny to be mentally retarded.

16. I'm not sure if she was talking about the same defendant or another, but Judge Jones said someone who was "claiming" to be mentally retarded clearly was not because he had been working as a hitman for a corrupt police officer in New Orleans.

17. She described another defendant who was claiming to be mentally retarded but who had been able to plan a way to get into a young woman's house where he raped and killed her. I believe Judge Jones said there had been some young children around at the time, too. I believe she said this was Ibarra and that he was a Mexican national.

18. Judge Jones made special mention of Elroy Chester. She said that Chester claimed to be mentally retarded and had been slow in school but he still managed to go on a burglary spree. In the context of talking about this case and others involving claims of mental retardation, Judge Jones commented that she believes it may do a disservice to the mentally retarded to exempt them from death sentencing.

19. In describing above what Judge Jones said about these cases, I am not able to capture the complete outrage she expressed over the crimes or the disgust she evinced over the

defenses raised, particularly by the defendants who claimed to be mentally retarded.

20. Judge Jones turned next to the question of whether the death penalty was working. In answering this question, she went through a brief history of the death penalty up through the mid-1970's, and said that proper guidelines for imposing death sentences were enacted by the states and accepted by the United States Supreme Court in 1976. She said that, at that point, the Supreme Court went on a real "judicial law-making binge" and began fashioning all kinds of problematic rules. The result, she said, was that the death penalty was now "compelled by law, but didn't have to be imposed by the jury." She said the whole area of law was like a "zoo" throughout the 1980's, and only finally began to settle down under Chief Justice Rehnquist and with the passage of the Anti-Terrorism and Effective Death Penalty Act. She noted that this calmer era coincided with the time that O.J. Simpson "was convicted. I mean, let go."

21. Unfortunately, according to Judge Jones, the Supreme Court went on a "new spree" in the early 2000's, "micromanaging" the death penalty when they decided the Atkins and Roper cases. She quoted Justice White as referring to "death penalty jurisprudence - if you can call it that." She again made disparaging comments about the Atkins decision, noting that the issue of mental retardation became a "slippery slope" if you wound up dealing with someone whose IQ was 67 or above and you had to take the person's adaptive functioning into consideration. Judge Jones mentioned that she thinks the Supreme Court's next attempt at meddling with the death penalty will come by "back-dooring" through the Martinez case the right to counsel in post-conviction proceedings. She seemed to think this would be a travesty.

22. Judge Jones summed up her feelings about what the Supreme Court had done regarding the death penalty by saying that the Court had managed to do with the death penalty

what they had been unable to do with abortion: they “made it safe, legal, and rare.”

23. As for the federal death penalty, Judge Jones thought people would be shocked to learn there were roughly fifty death penalty prosecutions per year. She said most people were not aware that the federal government sought death in so many cases because so few cases actually went to trial. She said the federal prosecutors treat the process like it is an “elaborate game.” She explained that she learned this as a result of being asked to sign off on vouchers for appointed defense lawyers and was astonished to find out “how the game worked.” She described that fact that the courts were required to appoint two highly trained defense lawyers to every defendant against whom death was sought. These lawyers would typically spend two years investigating the case and would then bring the “so-called mitigation” they had found to the Justice Department. The Justice Department would then decide *not* to pursue death. Judge Jones said this would consume thousands of dollars of taxpayer money.

24. Judge Jones thought the federal prosecutors also did a terrible job with the cases that survived this review, getting death sentences in only 50% of those cases. Judge Jones considered it a “complete joke” that after all the time, money and effort the federal government has expended on capital cases, there have only been two executions of people sentenced under the federal death penalty statute, one of whom was Timothy McVeigh. (She was incorrect about this, there have been three federal executions.)

25. Judge Jones’ conclusion was that the death penalty was not working.

26. As part of her prepared remarks, Judge Jones next addressed what she considered “red herrings” “thrown up” by opponents of capital punishment.

27. She said that racism was one red herring and that no case has ever been made for systemic racism. Rather, there were certain systemic classes of crimes and certain racial groups

committed more of these crimes than others. In her words, "Sadly, some groups seem to commit more heinous crimes than others."

28. She elaborated on this during the question/answer session that followed her prepared remarks. She was asked whether she actually had meant that certain races committed worse crimes than others and, further, whether she was troubled by the fact that it was more likely that someone would be sentenced to death if the victim was white. She responded that she did not mean that certain races were "prone" to such violent behavior - just that, "sadly," they happened to engage in it more often. She noted there was no arguing that "Blacks" and "Hispanics" far outnumber "Anglos" on death row and repeated that "sadly" people from these racial groups do get involved in more violent crime. She pointed, by way of example, to the "fact" that there were an awful lot of Hispanics involved in drug trafficking, which in turn involved a lot of violent crime. She also noted it was not true that the death penalty is only given to people whose victims are white (although that was not the question that was asked.) She pointed to the fact that Ibarra, who was a Mexican national, had killed a sixteen-year-old Hispanic woman, and he was sentenced to death.

29. Actual innocence was another red herring. She said most people were guilty, no system worked perfectly, and there were always going to be a couple of cases that were decided improperly. She noted that there were just as many innocent people killed in drone strikes as innocent people executed for crimes. In fact, all of the cases she knew of that had been reversed were reversed on technicalities.

30. During the question/answer period, she was asked if she considered prosecutorial misconduct like Brady violations to be technicalities. She rambled a bit about Brady violations and then mentioned that she had had the Kyles case before her several years ago, and had not



believed it involved any prosecutorial misconduct or Brady violation, but that the Supreme Court had disagreed with her and overturned Kyles' conviction. When asked specifically if she would regard it as a technicality if a prosecutor withheld genuinely exculpatory evidence, she said she did not know of any case out of Texas in which a prosecutor had ever done anything to try to convict someone intentionally who was not actually guilty.

31. Arbitrariness was yet another red herring. Judge Jones said there is nothing arbitrary about the way the death penalty is imposed. She suggested that people claimed the death penalty was arbitrary because people wound up spending twenty years on death row, a problem that was the fault of the very people who claimed the death penalty was arbitrary. They wouldn't permit executions to be carried out "efficiently" and then complained about the length of time people spent on death row. She also said that "arbitrariness is in the mind of the beholder."

32. The final red herring was "international standards." Judge Jones said she thought this was the weakest argument of all. She again used the example of Ibarra, and suggested there was no way in the world that he would rather be in prison in Mexico than in the United States, even if he wasn't subjected to the death penalty there. She said the Mexican government might claim to object to one of their nationals facing the death penalty in the United States but Mexico certainly wasn't about to provide any of their own citizens with the kind of legal protections the person would get in the United States. She said it was an insult when the Supreme Court looked to the law of some other country and suggested that its legal system is more advanced than our own.

33. During the question/answer session, I posed two questions. I asked Judge Jones why there were no Federal Defender Capital Habeas Units permitted in the areas served by the

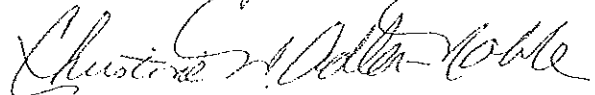
Fifth Circuit Court of Appeals. I noted that in the Third Circuit, where there were such offices staffed by highly-trained capital habeas lawyers, there had not been an execution other than for a volunteer during the entire modern age of the death penalty, while there were substantial numbers of executions in areas not served by these experienced capital habeas lawyers. Judge Jones said she thought the difference in numbers reflected the fact that Pennsylvania trial courts had not been as careful in their trial procedures as the Texas courts had been, and so the Pennsylvania courts had required more reversals. She also claimed that the capital habeas units were expensive – she asked rhetorically if people realized that every defendant needed a lawyer, and that that required a lot of lawyers; to me her implication was that there were not enough lawyers available for habeas units in Texas, because some defendants would have to do without lawyers if such units were set up.

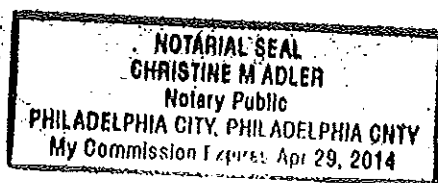
34. The other question I asked was the following: why did she put so much stock in the constitutionality of the death penalty based on the fact that the Founding Fathers put it in the Constitution, when the Founding Fathers also felt that women couldn't vote, and that African-Americans were only three-fifths of a person? In other words, I said, doesn't that support the idea that we should view the death penalty from the perspective of our evolving standards of decency? Judge Jones did not specifically address the question – rather she pointed out at some length that the United States was the best country in the world.

I declare under penalty of perjury under the laws of the State of Pennsylvania and of the United States that the foregoing is true and correct. Executed this 8<sup>th</sup> day of April, 2013 at Philadelphia, Pennsylvania.

  
Marc Bookman

Witness and subscribed before me  
this 8<sup>th</sup> day of April 2013.





## AFFIDAVIT AND DECLARATION OF JOSEPH SENGOBA

I, Joseph Sengoba, do hereby swear and declare that the following is true and correct to the best of my knowledge, information and belief subject to the penalties for unsworn falsification to authorities set forth in 28 U.S.C. section 1746 and 18 Pa.C.S. section 4904.

1. My name is Joseph Sengoba. I am 26 years old and a resident of Philadelphia, Pennsylvania. No one has promised me anything in exchange for this statement and I do not expect to receive any benefits in the future.

2. I received my bachelor's degree from Princeton University in 2010. Following graduation I completed a two-year fellowship at the Office of District Attorney of Philadelphia. I am presently pursuing my master's degree in criminology at the University of Pennsylvania.

3. On February 20, 2013 I attended a lecture at the University of Pennsylvania Law School given by Judge Edith Jones of the Fifth Circuit Court of Appeals and sponsored by the Federalist Society. While not a member of the Federalist Society, I had attended other events sponsored by the Federalist Society and was interested in hearing Judge Jones' perspective on the death penalty. I went to the lecture by myself.

4. On April 25, 2013 I reviewed the Declaration of Marc Bookman dated April 8, 2013 [hereafter "Bookman Declaration"]. By and large, the Bookman Declaration is accurate to the best of my knowledge. Mr. Bookman's recollections of the Judge Jones lecture correspond with my own. Mr. Bookman mentioned a few more small details than I do not presently recall and therefore I cannot speak to the accuracy of those details. I recall a few details he did not mention, but I do not dispute anything stated in his Declaration.

5. Specifically, Judge Jones did note in the beginning of her presentation that she had reviewed more than a hundred death penalty cases and that, although she personally supported

the death penalty, she understood her job as obligating her to apply the law as enacted by the legislature. Paragraph 4 of the Bookman Declaration is accurate.

6. Judge Jones said that she would address three questions: (1) Is the death penalty constitutional? (2) Is the death penalty morally justifiable? and (3) Is the death penalty working? Judge Jones addressed all three of these questions and made other remarks, as described below. Paragraph 5 of the Bookman Declaration is accurate.

7. Paragraph 6 of the Bookman Declaration is accurate.

8. Paragraph 7 of the Bookman Declaration is accurate.

9. Paragraph 8 of the Bookman Declaration is accurate.

10. Judge Jones used what I would call moral language in praising the death penalty as a means to help people comes to terms with the crime they committed. She talked about how the imminent prospect of execution forced the criminal to confront his deed, and she said this as justification for the death penalty. In this regard she mentioned that her husband shared with her an article titled "Hanging Concentrates the Mind". I do not recall whether she specifically said that a killer is only likely to make peace with God if facing execution.

11. Judge Jones did discuss several individual cases that had come before her and on which she wrote judicial opinions. I remember her mentioning the case involving the woman with several dead husbands and I recall her discussing a case involving a Mexican national who killed a Latina girl. I do not recall the names of any of these cases nor do I recall any of the facts except that they were pretty gruesome. I just remember that she in fact discussed the facts of each case, whatever they were. I do not dispute any of the facts set forth in the Bookman Declaration at paragraphs 10 through 14; I just do not remember them.

12. Judge Jones emphasized how strongly opposed she was to defendants using what she called "technicalities" to defend against the death penalty. As an example of such "technicalities" Judge Jones discussed how defendants tried to claim that they were mentally retarded. This whole discussion was very surprising to me. She was dismissive of the Supreme Court's death penalty decisions regarding juveniles and the mentally retarded. She said that she would have come out differently. But it was her dismissive attitude toward these Supreme Court decisions that was very surprising to me. It struck me as odd that a court of appeals judge would be as dismissive of the Supreme Court as she was. She said that the standard for determining mental retardation was "too lenient". Judge Jones made it clear that she did not think those who were mentally retarded should be exempt from the death penalty and that this was her current position.

13. Judge Jones also said that the cases in which the Innocence Project got its clients released did not turn out that way because of the facts or because the defendants were innocent but rather because of technicalities.

14. Paragraph 15 of the Bookman Declaration is accurate.

15. I do not recall the facts set forth in paragraph 16 of the Bookman Declaration. I do not dispute the accuracy of what is said there; I just do not remember her mentioning anything about a defendant working as a hit man for a police officer in New Orleans.

16. Regarding paragraph 17 of the Bookman Declaration, I do vaguely recall Judge Jones discussing a case in which a man who claimed to be mentally retarded was able to plan a way to enter a young woman's house, rape and kill her. I do not recall whether she said this case involved a Mexican national or what the defendant's name was. I just remember that the thrust

of her comments was that too many people were falsely claiming to be mentally retarded and the facts of the cases she mentioned proved, in her view, that they were not mentally retarded.

17. I do not recall the facts set forth in paragraph 18 of the Bookman Declaration. I do not dispute their accuracy; I just do not remember them.

18. Paragraph 19 of the Bookman Declaration is accurate. Judge Jones was very passionate about the victims of the crimes she discussed. She said that criminal defendants have too many opportunities and protections under the law, and that these protections are hurting the justice system. She expressed disgust at the use of mental retardation as a defense in capital cases.

19. She said that she would limit defendants' access to counsel in death penalty cases. She said that in the death penalty context the Supreme Court was "moving in the wrong direction" on the issues of juveniles, the mentally retarded and access to counsel.

20. Paragraph 20 of the Bookman Declaration is accurate and Mr. Bookman's recollection of her quotations is accurate. She did say that the Supreme Court went on a "judicial law-making binge" and fashioned all kinds of problematic rules. She did say that the death penalty was "compelled by law but didn't have to be imposed by the jury". She did say that this whole area of the law was a "zoo".

21. Paragraph 21 of the Bookman Declaration is accurate. This part really stood out for me, how strident she was and how dismissive she was of the Supreme Court's decisions in this area. Judge Jones did say that the Supreme Court went on a "new spree" "micromanaging" the death penalty in its decisions on the mentally retarded and juveniles. She did say that the issue of mental retardation was a "slippery slope" for someone with an IQ of 67 or above because adaptive functioning had to be taken into account. Her main point was that the direction of the Supreme Court was wrong.

22. Paragraph 22 of the Bookman Declaration is accurate. Judge Jones compared the death penalty with abortion and did say that the Supreme Court had managed to make the death penalty “safe, legal and rare”. She said this in a critical way.

23. Paragraph 23 of the Bookman Declaration is accurate. Judge Jones did say that federal prosecutors treat the death penalty process as an “elaborate game”. She did say that she discovered “how the game worked” when she reviewed the pay requests of defense counsel and saw how long they worked on gathering mitigating evidence to convince the prosecutors to drop the death penalty and how successful they were at doing that. She was definitely very critical of the federal government’s way of handling death penalty cases.

24. Paragraph 24 of the Bookman Declaration is accurate. Judge Jones did describe as a “complete joke” that there had only been two federal executions after all the time and money that had been spent.

25. Judge Jones said that the death penalty was not working.

26. Paragraph 26 of the Bookman Declaration is accurate.

27. Judge Jones described racism as a “red herring”. I am familiar with the Supreme Court decision in McCleskey and the Baldus Study. So it came as a surprise to me that Judge Jones was as dismissive as she was of the notion that race might be a relevant consideration in the debate on capital punishment. She did say, “Sadly, some groups seem to commit more heinous crimes than others.”

28. Paragraph 28 of the Bookman Declaration is accurate. Judge Jones did say that a lot of Hispanics were involved in drug trafficking. She did support her claim that the death penalty is not only given to those who kill white victims by referring to the case of the Mexican national who killed a Latina woman.

29. Judge Jones characterized actual innocence as another “red herring”. I do not recall whether Judge Jones said that there were just as many innocent people killed in drone strikes as innocent people executed for crimes. But she was very dismissive of claims of innocence. She did not take seriously the possibility that innocent people had been sentenced to death.

30. Paragraph 30 of the Bookman Declaration is accurate. Judge Jones included in her definition of “technicalities” cases in which the state withheld evidence and cases of actual innocence. She did say that she did not know of any case in Texas where a prosecutor had ever tried to convict someone intentionally who was not guilty.

31. Paragraph 31 of the Bookman Declaration is accurate.

32. Paragraph 32 of the Bookman Declaration is accurate in full except I do not recall whether Judge Jones said that it was an insult when the Supreme Court looked to other countries for legal guidance. I am familiar with the conservative critique on the use of international standards in American court decisions, so it did not surprise me that Judge Jones shared that view. She said that the United States should not be using international standards and was dismissive of that principle.

33. Paragraph 33 of the Bookman Declaration is accurate.

34. Regarding paragraph 34 of the Bookman Declaration, I recall the question about the evolving standards but I do not recall Judge Jones’ answer. I would have recalled it better if she had answered the question. Judge Jones did say that the United States is the best country in the world.

35. In regards to Judge Jones’ general comments on the death penalty and prior decisions of the Supreme Court, I found the overall tone of the lecture disrespectful. As an African American male, and as someone who is interested in the areas where race and law intersect, I was made



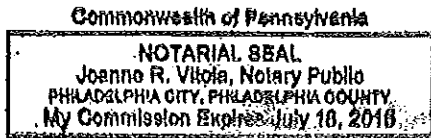
uncomfortable by her comments on race and found them offensive. She created an uncomfortable situation by her remarks and I think she sensed it and then tried to clarify her position. After the lecture, I overheard that the organizer of the event was apologetic and wanted to make sure the students were not offended by what she had said.

The foregoing is true and correct to the best of my information, knowledge and belief.

  
\_\_\_\_\_  
Joseph Sengoba

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS 6<sup>th</sup> DAY  
OF *May* 2013.

  
NOTARY PUBLIC



AFFIDAVIT AND DECLARATION OF [REDACTED]

I, [REDACTED] do hereby swear and declare that the following is true and correct to the best of my knowledge, information and belief subject to the penalties for unsworn falsification to authorities set forth in 28 U.S.C. section 1746 and 18 Pa.C.S. section 4904.

1. My name is [REDACTED] I am [REDACTED] years old and a resident of Philadelphia, Pennsylvania. No one has promised me anything in exchange for this statement and I do not expect to receive any benefits in the future.

2. I received my bachelor's degree in philosophy from the [REDACTED] in [REDACTED]. Following graduation I served AmeriCorps for two years. In the first year I was in the City Year Program and the second year I served in the After-School Activities Partnerships, assisting public high school teachers in class and running after-school programs. I am currently finishing up my first year at the University of Pennsylvania Law School.

3. On February 20, 2013, at the invitation of a classmate, I attended a lecture at the University of Pennsylvania Law School given by Judge Edith Jones of the Fifth Circuit Court of Appeals and sponsored by the Federalist Society. I went to the lecture by myself.

4. On April 26, 2013 I reviewed the Declaration of Marc Bookman dated April 8, 2013 [hereafter "Bookman Declaration"]. Mr. Bookman's overall recollections of the Judge Jones lecture correspond with my own. Mr. Bookman mentioned more details than I presently recall, and I recall a few details he did not mention, but overall his Declaration is accurate. I have set out below details that I recall that are not mentioned in the Bookman Declaration. Those paragraphs of the Bookman Declaration that I do not mention either simply comport with my memory of Judge Jones' comments or reference matters that I do not recall one way or the other.

5. Specifically, Judge Jones did note in the beginning of her presentation that she had reviewed more than a hundred death penalty cases and that, although she personally supported the death penalty, she understood her job as applying the law. Paragraph 4 of the Bookman Declaration is accurate.

6. Judge Jones said that she would address three questions: (1) Is the death penalty constitutional? (2) Is the death penalty morally justifiable? and (3) Is the death penalty working? Judge Jones addressed all three of these questions and made other remarks, as described below. Paragraph 5 of the Bookman Declaration is accurate.

7. Regarding paragraph 6 of the Bookman Declaration, I only recall that Judge Jones referenced the Bible in providing support for the death penalty. I do not dispute the accuracy of the rest of what Mr. Bookman says in this paragraph; I just do not recall it.

8. Judge Jones did discuss several individual cases that had come before her and on which she wrote judicial opinions. I somewhat recall her mentioning the case involving the "Black Widow" and a case involving a defendant who broke into a house, raped and killed a teenage girl. I do not recall the names of any of these cases nor do I recall any of the specific facts except that they were pretty gruesome. I just remember that she discussed the facts of each case, whatever they were, and did so to show why in her view the death penalty was justifiable for those defendants.

9. Regarding paragraph 19 of the Bookman Declaration, it was abundantly clear that Judge Jones was disgusted by the crimes she had discussed.

10. Regarding paragraph 20 of the Bookman Declaration, Judge Jones did say that the Supreme Court went on a "judicial law-making binge" or engaged in "judicial activism". She did say that this area of the law had become a "zoo". She did say that under Chief Justice

Rehnquist the Supreme Court started to bring to the system order out of chaos. I do not recall the other facts set forth in this paragraph of the Bookman Declaration.

11. Regarding paragraph 21 of the Bookman Declaration, I recall that Judge Jones was critical of the Supreme Court decisions on exempting the mentally retarded and juveniles from the death penalty. I especially remember that she argued how the issue of mental retardation became a "slippery slope", as it was hard to draw a line on when a defendant was or was not mentally retarded. I do not recall anything about the Martinez case or the other quotations Mr. Bookman attributed to her in this paragraph.

12. Paragraph 26 of the Bookman Declaration is accurate. I clearly remember that she used the term "red herrings" to describe certain substantive criticisms of capital punishment.

13. Paragraph 27 of the Bookman Declaration is accurate. Judge Jones described racism as a "red herring". She did say, "Sadly, some groups seem to commit more heinous crimes than others." I am African American, am interested in the places where race and law intersect, and paid close attention when she began to discuss issues of race. Judge Jones said that some racial groups are "prone" to commit acts of violence. In the question and answer session of the lecture, I asked Judge Jones if she could clarify what she meant when she said that. In answering, she said that she did not mean that it was a matter of their biology, but rather that it was a "statistical fact" that certain races are more likely to commit certain violent crimes. Judge Jones said that most of these cases were intra-racial. She did say that a lot of Hispanics were involved in drug trafficking.

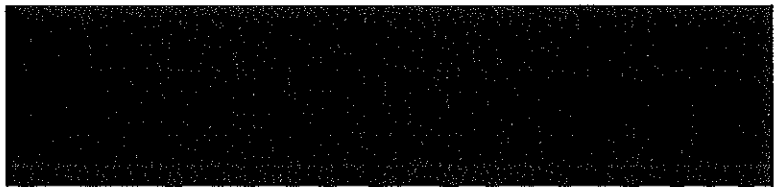
14. From speaking with others after the lecture and observing the reactions of others during her remarks, she upset and offended many of the attendees in the room tremendously.

15. Paragraph 29 of the Bookman Declaration is accurate. Judge Jones characterized actual innocence as another "red herring". Judge Jones did say that there were just as many innocent people killed in drone strikes as innocent people executed for crimes, which I thought was at best a curious analogy. She did say that all of the innocence cases had been reversed on technicalities.

16. Regarding paragraph 30 of the Bookman Declaration, Judge Jones did describe as "technicalities" those cases in which the state withheld evidence from the defense. The other facts set forth in this paragraph I do not recall, though I do not dispute them.

17. Regarding paragraph 34 of the Bookman Declaration, I recall the question about the evolving standards and the facts set forth by Mr. Bookman are accurate. I would add that Judge Jones did not directly answer the question, that she was very dismissive of this argument, and that she was more emotional at this time than at any other time during her presentation. She said that we have the best opportunities in the United States and this is why immigrants come to the United States.

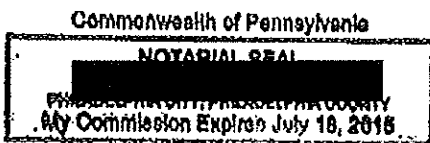
The foregoing is true and correct to the best of my information, knowledge and belief.



SWORN TO AND SUBSCRIBED  
BEFORE ME THIS 3<sup>rd</sup> DAY  
OF *May* 2013.



NOTARY PUBLIC



AFFIDAVIT AND DECLARATION OF [REDACTED]

I, [REDACTED] do hereby swear and declare that the following is true and correct to the best of my knowledge, information, and belief subject to the penalties for unsworn falsification to authorities set forth in 28 U.S.C. section 1746 and 18 Pa.C.S. section 4904.

1. My name is [REDACTED] I am [REDACTED] years old and a resident of New York, NY. No one has promised me anything in exchange for this statement and I do not expect to receive any benefits in the future.

2. I received my bachelor's degree in Modern Middle Eastern Studies and Religious Studies from the [REDACTED] in [REDACTED]. Following my college graduation, I worked for a government contracting firm in Washington, D.C. On May 13, 2013, I graduated from the [REDACTED]

3. On February 20, 2013, I attended a lecture at the University of Pennsylvania Law School given by Judge Edith Jones of the Fifth Circuit Court of Appeals and sponsored by the University of Pennsylvania Law School chapter of the Federalist Society. I went to the lecture by myself. While there were a large number of law students there, I also noticed a large number of outside attendees. I stayed for the entire program.

4. On May 9, 2013 I reviewed the Declaration of Marc Bookman dated April 8, 2013 [hereafter "Bookman Declaration"]. Mr. Bookman's overall recollections of Judge Jones' lecture correspond with my own although he mentioned more details than I presently recall. I recall a few details that Mr. Bookman did not mention in his declaration, which I have set out below. Those facts and observations contained in the Bookman Declaration that I do not mention either comport with my memory of Judge Jones' comments or reference matters that I

do not recall in one way or the other. I do not dispute anything in the Bookman Declaration although I do not recall some of the specific details it contains.

5. Concerning the death penalty, Judge Jones said that the U.S. Supreme Court has made clear that it is both constitutional and justified. She noted that the Founding Fathers wrote the death penalty directly into the U.S. Constitution and that it has ancient roots in Deuteronomy. She also mentioned an article she found on the Internet that she said discussed the Vatican's one-time view that executing a condemned person may allow him or her to make peace with God.

6. Judge Jones also said that the death penalty is justifiable and provided her reasons for this position. I do not recall whether she said that it was "absolutely" justifiable, although I do not dispute the Bookman Declaration's claim that she used that term.

7. Judge Jones said that the death penalty vindicates murder victims' lives and that for certain defendants life imprisonment is not an adequate punishment.

8. In explaining her view that the death penalty is justified, Judge Jones relayed in detail the specific facts of several cases. I remember that she discussed a number of capital cases involving rape, the "Black Widow" case, a case involving a college student, and a case involving a Mexican national. I do not recall the specific facts of these cases. Her recounting of these facts seemed to reflect her outrage at the crimes and her conclusion that the heinousness of these crimes justified the death penalty.

9. Judge Jones mentioned the Supreme Court's prohibition against executing people who are intellectually disabled, who she referred to as "mentally retarded." In several of the individual cases that she described, Judge Jones noted the defendant's claims of being "mentally retarded" and suggested that these claims may be unsubstantiated. She also indicated that test results purporting to establish mental retardation may be invalid. She seemed to suggest that capital

defendants often abuse the Supreme Court's protections of mentally impaired individuals established in *Atkins v. Virginia*. Judge Jones also suggested that the manner in which some defendants committed their crimes demonstrates that they were not "mentally retarded" and that defendants might be feigning mental impairment to avoid execution.

10. Judge Jones also appeared critical of the Supreme Court's death penalty jurisprudence and claimed that it does not work well with how the death penalty works in practice. She criticized the Supreme Court for "judicial law-making" and for fashioning "problematic rules" such as categorical bans on the execution of the "mentally retarded." She said that the Supreme Court's restrictions on execution of the "mentally retarded" created a "slippery slope." Judge Jones seemed to convey her position that the Supreme Court should not create additional restrictions on the death penalty or afford capital defendants any additional protections, including increased access to counsel.

11. Judge Jones also discussed her "surprise" at what she described as the small number of federal capital prosecutions. She stated that federal prosecutors' willingness to pursue a lesser sentence when defense counsel argued that their clients' individual circumstances did not warrant the death penalty and prosecutors' methods of handling federal capital cases were wasteful of taxpayer dollars.

12. Judge Jones discussed what she described as "red herrings" raised by capital lawyers and opponents of the death penalty, including matters pertaining to race. In response to a question describing statistical evidence that the death penalty is not evenly applied across races, she said that certain racial and ethnic groups commit more crimes than other groups and noted that Hispanics are heavily involved in drug trafficking. Many of the attendees at the lecture, a group comprised of various races, looked both surprised and dismayed at these remarks. The people I



was sitting next to looked at one another and me and conveyed their surprise at these remarks on the issues of race. Based on these observations as well as comments I heard after the lecture, it was clear to me that many students were offended by Judge Jones' remarks and how cavalierly she dismissed race and ethnicity as a legitimate concern in how the death penalty was administered.

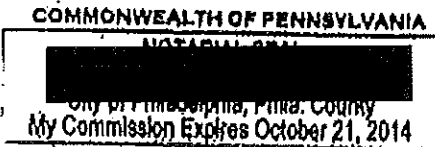
13. Judge Jones also characterized actual innocence and arbitrariness as red herrings. In response to one question regarding procedural concerns in death penalty administration, she replied that she was not aware of any cases in the Fifth Circuit involving prosecutorial misconduct indicating that the death penalty was inappropriate.

14. Judge Jones also asserted that international standards regarding the death penalty are irrelevant because the American legal system provides more protections than any other legal system.

15. Following her lecture, Judge Jones accepted questions from the audience. By the end of these questions, Judge Jones appeared to be uncomfortable with the audience's questions and disagreement with her remarks and the program ended abruptly. Conversations I had after the program with other attendees, largely fellow law students, made clear that many of them were critical of her remarks and were surprised that the lecture did not follow a more legalistic approach to the serious issue of capital punishment.

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS 21<sup>st</sup> DAY  
OF May 2013.

NOTARY PUBLIC



**AFFIDAVIT AND DECLARATION OF CHANEL LATTIMER-TINGAN**

I, Chanel Lattimer-Tingan, do hereby swear and declare that the following is true and correct to the best of my knowledge, information and belief subject to the penalties for unsworn falsification to authorities set forth in 28 U.S.C. section 1746 and 18 Pa.C.S. section 4904.

1. My name is Chanel Lattimer-Tingan. I am 30 years old and a resident of Philadelphia, PA. No one has promised me anything in exchange for this statement and I do not expect to receive any benefits in the future.

2. I received my Bachelor's degree in Sociology and a Certificate in African-American Studies from Princeton University in 2005. I received my Master's degree in Sport Management from the University of Tennessee in 2008. I received my law degree from the University of Pennsylvania in May 2013.

3. On February 20, 2013, I attended a lecture at the University of Pennsylvania Law School given by Judge Edith Jones of the Fifth Circuit Court of Appeals and sponsored by the Federalist Society. I went to the lecture by myself. I arrived a couple minutes after the lecture was scheduled to begin and stayed for the remainder of the program.

4. On May 16, 2013 I reviewed the Declaration of Marc Bookman dated April 8, 2013 [hereafter "Bookman Declaration"]. Mr. Bookman's overall recollections of the Judge Jones lecture correspond with my own. I set forth in this affidavit details I recall that he did not mention. Those paragraphs of the Bookman Declaration that I do not mention either simply comport with my memory of Judge Jones' comments or reference matters that I do not recall one way or the other. I do not dispute anything in the Bookman Declaration.

5. Paragraphs 5 through 8 of the Bookman Declaration are accurate in all respects. Judge Jones noted that the Founding Fathers wrote the death penalty directly into the Constitution and

that it had ancient roots in Deuteronomy. I thought it seemed out of place for a Court of Appeals judge to cite the Bible as legal support for the death penalty.

6. Judge Jones related in detail the facts of several cases that she was aware of or that had come before her. I remember that she discussed a number of cases that involved rape. I recall her discussing the "Black Widow" case and a case involving a Mexican national. I do not recall any of the specific facts of these cases except I believe she related that in the case involving the Mexican national he had raped and killed a woman. I thought that it was simplistic for her to justify the death penalty solely on the basis of the heinousness of the crimes. She conveyed a lot of disgust about the facts of these crimes – it seemed very personal to her, which surprised me.

7. Judge Jones spoke at length about the rules against executing people who are intellectually disabled (she used the insensitive term "mentally retarded") and many of the cases she described raised mental retardation as a defense. She cited one case where the defendant had IQ scores in the 60's range and one IQ score of 70 and said that it was clear to her that the defendant was not "mentally retarded" because the facts of the crime themselves proved that he knew what he was doing. Judge Jones was very dismissive and skeptical of these types of arguments and overall highly critical of the use of "mental retardation" to escape the death penalty. She said that "mental retardation" should not preclude death as a sentence and criticized the United States Supreme Court decision that held that it did.

8. Judge Jones' dismissive approach to claims of "mental retardation" surprised me. I thought that she did not have a very sophisticated understanding of what intellectual disabilities involved and the whole discussion seemed disrespectful to me. She placed great emphasis on the facts of the crime as support for her position that these defendants were not "mentally retarded," which seemed to me a very limited – at best – analysis, and more rooted in her personal views of

the crimes and the defendants than in a legal analysis. At one point she said that it is a “disservice” to the “mentally retarded” to exempt them from capital sentencing, which was very shocking to hear. Judge Jones was clearly unhappy with how these defendants were using “mental retardation” to claim exemption from the death penalty.

9. Judge Jones was also very critical of several of the Supreme Court’s decisions concerning the death penalty. She criticized the Supreme Court for creating “problematic rules” such as exempting the “mentally retarded” from death sentences. She said that the Supreme Court was “micromanaging” the death penalty with these new rules and that the decision on “mental retardation” was a “slippery slope.”

10. She said that the Supreme Court had done with the death penalty what it had been unable to do with abortion: making it “safe, legal and rare”. When she said this, I was shocked and looked at one of my classmates in the audience in shared disbelief.

11. Judge Jones was also very critical of the manner in which federal prosecutors handled capital cases. I do not remember her reasons for being so critical. I just recall that she felt that the federal prosecutors were wasting a lot of taxpayer money and that she criticized them for being so unsuccessful in securing more death sentences.

12. Judge Jones discussed what she described as “red herrings” raised by capital lawyers and opponents of the death penalty. The first “red herring” she discussed was race. One of the main reasons I decided to attend a lecture on the death penalty to begin with was my interest in the areas where race and law intersect, and I am aware that race issues often arise in death penalty cases. Because of this, I would say that I paid particular attention when she began to discuss this topic. She said that “sadly” certain racial and ethnic groups commit more crimes than other groups and that Hispanics are heavily involved in drug trafficking. Although she used the term

“sadly”, it was clear to me that she was not sad at all about her belief that certain groups commit more violent crimes than others. She said that the case involving the Mexican national who killed a girl who was not white proves that the death penalty is not only imposed on those who kill whites.

13. Judging by the looks on their faces, many others in the audience were dismayed by these remarks on race. My reaction was akin to “here we go again” – meaning that I perceived her remarks to be the type of racially insensitive comments I have heard many times in my life and professional career. Because of my experience with this level of racial insensitivity and ignorance, I cannot say I was offended in that moment, as I have come to expect this type of ignorance from certain types of people. I recognize that the statements she made are offensive; it’s just that I personally am past getting upset when I hear these types of comments. They are offensive because they willingly ignore so much of the nuances of others’ lives about which she knows so little. It struck me that she was so willing to dismiss race as a legitimate concern in how the death penalty was administered. I thought it was ironic that she seemed so willing to make generalized and stereotypical comments about racial groups and their “criminal tendencies” yet so unwilling to accept the validity of the statistics showing that those who kill whites are more likely to be prosecuted capitally and sentenced to death.

14. Judge Jones also characterized actual innocence as a red herring. Because I did some work at the Pennsylvania Innocence Project during law school, I again paid particular attention to her remarks on this subject. As the Bookman Declaration notes, she said that there were always going to be some cases that slipped through the cracks and that there were just as many innocent people killed in drone strikes as innocent people executed for crimes. She said that reversals of those who were allegedly innocent were really based on “technicalities,” not

innocence. She was unapologetic when making these comments. I found her remarks on this issue highly offensive and disrespectful of those who had been wrongly convicted and sentenced to death. I was offended both because of her willingness to tolerate a legal system with such mistakes and because of her position that concerns about the mistaken conviction of the innocent was not a valid reason to oppose the death penalty.

15. Judge Jones also labeled Brady violations as “technicalities.” In response to a question as to whether she considered it a technicality when a prosecutor failed to disclose genuinely exculpatory evidence, she said that she did not know of any case out of Texas in which a prosecutor had ever tried to convict someone who was not actually guilty. I felt like she was deliberately trying not to answer this question based on her canned response.

16. Judge Jones was also very critical of defense lawyers and advocates for the capital inmates who caused “delays” in executions.

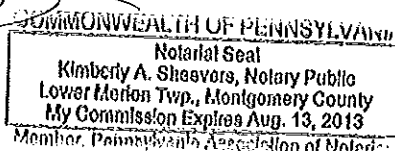
17. By the end of the question and answer period, Judge Jones was angry and very emotional. I would describe her as super-defensive. She lost her composure and there was now a very tense and uncomfortable atmosphere in the room. The host of the program ended the program abruptly, and it was awkward to be in the room.

18. Overall, I was surprised by the level of informality, lack of candor, and failure to demonstrate empathy and sensitivity by Judge Jones, particularly since she spoke in her role as a Fifth Circuit judge.

  
Chanel Lattimer-Tingan

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS 20<sup>th</sup> DAY  
OF MAY 2013.

NOTARY PUBLIC 



AFFIDAVIT AND DECLARATION OF [REDACTED]

I, [REDACTED] do hereby swear and declare that the following is true and correct to the best of my knowledge, information and belief subject to the penalties for unsworn falsification to authorities set forth in 28 U.S.C. section 1746 and 18 Pa.C.S. section 4904.

1. My name is [REDACTED] I am [REDACTED] years old and a resident of Philadelphia, PA. No one has promised me anything in exchange for this statement and I do not expect to receive any benefits in the future.

2. I received my Bachelor's degree in Science and Industrial Engineering from [REDACTED] [REDACTED] in [REDACTED]. Following graduation I worked as a management consultant for two years and was the [REDACTED] for a firm operating charter schools in Chicago, Illinois for three years. I am currently finishing up my first year of [REDACTED]  
[REDACTED]

3. On February 20, 2013, I attended a lecture at the University of Pennsylvania Law School given by Judge Edith Jones of the Fifth Circuit Court of Appeals and sponsored by the Federalist Society. I went to the lecture by myself. I arrived on time and stayed for the whole program. The lecture was open to the public and was attended mostly by law students. The lecture lasted approximately an hour and 15 minutes.

4. On May 17, 2013 I reviewed the Declaration of Marc Bookman dated April 8, 2013 [hereafter "Bookman Declaration"]. Mr. Bookman's overall recollections of the Judge Jones lecture correspond with my own. I set forth in this affidavit details I recall that he did not mention. Those paragraphs of the Bookman Declaration that I do not mention either simply comport with my memory of Judge Jones' comments or reference matters that I do not recall one way or the other. I do not dispute anything in the Bookman Declaration.

5. At the beginning of her remarks, Judge Jones said that she had reviewed more than 100 capital cases and that, although she was personally a supporter of capital punishment, her job as a judge required her to apply the law.

6. Judge Jones said that the death penalty was clearly constitutional and there was no arguing that question.

7. Judge Jones recounted in some detail the facts of several capital cases, some of which had come before her and some of which might not have. She used the facts of these crimes as her main argument why the death penalty was justifiable. Although I do not recall any of the specific facts of any of these cases, I do recall her mentioning a Mexican national who raped and killed a girl. It was clear that Judge Jones was disgusted by the gruesomeness of these killings. I was surprised at how personal and emotional these particular arguments were. They seemed less analytical than a judge should approach a case. I drew from her remarks that her emotions and beliefs drove the results in some of these cases.

8. Judge Jones discussed United States Supreme Court decisions that she felt had unfairly restricted the use of the death penalty, including the cases which banned the death penalty for juveniles and those with intellectual disabilities. She viewed the Supreme Court's new rules with some degree of contempt and she was generally disparaging of the Court. She made it clear that she was not in agreement with some Supreme Court decisions.

9. I do not recall any specifics of what Judge Jones said about "mental retardation". But I did feel as though her remarks represented a lack of appreciation of the complexities presented by intellectual disability.

10. I vaguely recall that Judge Jones was critical of how the Justice Department prosecutors handled capital cases, how they relented to pressure from the defense to withdraw the death



sentence in cases, and how little success they had in securing death sentences when they did pursue them. She said that the lawyers were gaming the system and that it was a "complete joke" how these cases were handled in federal court.

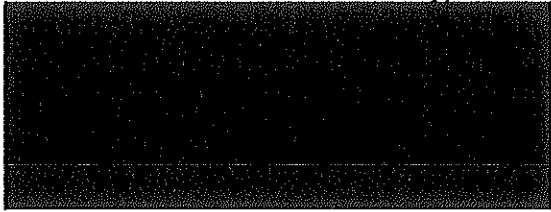
11. Judge Jones mentioned several issues that "opponents of the death penalty" raised that she considered "red herrings." Racism was one such red herring. She said that certain racial groups like African Americans and Hispanics are pre-disposed to crime, that an awful lot of Hispanics are involved in drug trafficking, and that certain races happen to engage in violent crime more than others. She used the fact that the Mexican national had received death for killing a Hispanic girl as support for her claim that it is not only defendants who kill whites that are sentenced to death. The reaction in the room when she made these remarks was one of shock, surprise and offense. As a judge, she came off sounding distasteful and tactless.

12. Judge Jones described as "technicalities" prosecutorial misconduct such as Brady violations. When she was asked whether she would consider it a technicality if a prosecutor were to fail to disclose genuinely exculpatory evidence, she said that she did not know of any Texas case in which a prosecutor had ever intentionally tried to convict someone who was not actually guilty.

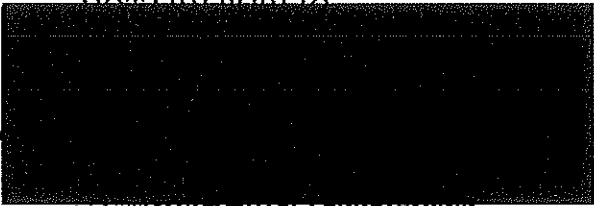
13. Judge Jones said that arbitrariness was another red herring.

14. Judge Jones said that Mexican nationals would clearly prefer to be in the United States than in Mexico. She said that it was insulting for the Supreme Court to consider the laws of other countries, as that suggested that their laws were superior to our own.

15. By the end of the question and answer period, Judge Jones seemed to have lost her composure. She became combative, her tone of voice and demeanor were angry and defensive, and the atmosphere in the room was tense.



SWORN TO AND SUBSCRIBED  
BEFORE ME THIS 20<sup>th</sup> DAY  
OF MAY, 2013.



NOTARIAL SEAL  
City of Philadelphia, Phila. County  
My Commission Expires July 24, 2016