

Office of the Chief State's Attorney  
300 Corporate Place  
Rocky Hill, Connecticut 06067  
March 5, 2010

Senator Patrick J. Leahy  
Chairman, Senate Judiciary Committee  
224 Dirkson Senate Office Building  
Washington, DC 20510

Senator Jeff Sessions  
Ranking Member, Senate Judiciary Committee  
152 Dirkson Senate Office Building  
Washington, DC 20510

Re: Nomination of Judge Robert N. Chatigny to the United States Court of Appeals for the Second Circuit

Dear Chairman Leahy and Ranking Member Sessions:

I am an assistant state's attorney in the Office of the Chief State's Attorney for the State of Connecticut. In 2005, I represented the state in federal habeas corpus proceedings filed by individuals attempting to block the execution of convicted serial killer Michael B. Ross. Judge Robert N. Chatigny presided over the proceedings in the United States District Court for the District of Connecticut. I provide the following information to the committee because I believe that Judge Chatigny's conduct in that case, in other litigation relating to Ross, and in the days leading up to Ross's scheduled execution call into question his suitability to serve on the United States Court of Appeals for the Second Circuit.

On October 6, 2004, Connecticut Superior Court Judge Patrick Clifford issued a death warrant to execute Michael Ross on January 26, 2005 or within five days thereafter. At this hearing, Ross was represented by the counsel of his choice, Attorney T.R. Paulding. Ross represented that it was his desire to forgo all further post-conviction relief and accept his execution. *State v. Ross*, 272 Conn. 577, 579-592 (2005). A series of "next friend" actions were instituted by Ross's former lawyers from the Chief Public Defender's Office and Ross's father, Dan Ross, seeking to block the execution. Each action claimed that Ross was incompetent and thus incapable of forgoing further legal review of his convictions and the death sentences imposed on him. Efforts to interfere based on Ross's competence were rejected by state trial and habeas courts and the state supreme court. The United States Supreme Court denied an application by the Chief Public Defender's Office to file a petition for certiorari on Michael Ross's behalf *in forma pauperis*. Order, *Ross v. Connecticut*, United States Supreme Court Case No. 04M35. A §1983 action was also filed on Ross's behalf in the United States District Court. After canvassing Ross, Judge Christopher F. Droney dismissed the §1983 action, ruling that the plaintiff lacked standing because Ross was competent. *Ross v. Rell*, Case No. 3:04 CV 2186 (CFD).

On January 21, 2005, the Chief Public Defender filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 and a request for an emergency stay of execution as “next friend” of Michael Ross. *Ross v. Lantz*, Case No. 3:05 CV 116 (RNC). Chief Judge Robert N. Chatigny heard the case because Judge Droney was sitting by designation in the Second Circuit. The state objected to the stay and moved to dismiss the petition. At the hearing on the state’s motion to dismiss and the petitioner’s request for a stay, Judge Chatigny refused to apply the presumption of correctness to the state court factual findings; *see* 28 U.S.C. § 2254(e); stating that the finding that Ross was competent was “not binding on me. It can’t be.” T. 1/24/05 at 37-38.<sup>1</sup> Judge Chatigny then held his own competency hearing for Ross. After allowing the Chief Public Defender to present the testimony of Dr. Stuart Grassian, a psychiatrist who had never examined Ross; *id.* at 46-74; he issued his ruling before the state had even finished its cross-examination of Grassian. *Id.* at 75-79. Judge Chatigny granted the Chief Public Defender “next friend” status, denied the motion to dismiss and granted a stay of execution. *Id.* at 79-84. Judge Chatigny made these rulings without ever questioning Ross himself, as Judge Droney had done.

After issuing his ruling, Judge Chatigny invited State’s Attorney Kevin Kane, who was questioning Dr. Grassian for the state, to continue his cross-examination. T. 1/24/05 at 87. Attorney Kane expressed doubt about the utility of further cross-examination given the fact that the court had already ruled. *Id.* In response, Judge Chatigny stated that:

I may have ... couched my statement in terms that allowed some room for me to come to a different conclusion after hearing more this afternoon, but I am quite satisfied that whatever characterization one might make of the written proffer, whether it’s meaningful or not, having listened to the witness, there’s no doubt in my mind that we have a genuine issue here that needs to be fully explored.

*Id.* at 87. Judge Chatigny then informed Attorney Kane that if he wanted to “recognize the reality of that and accept that, then we can simply talk about how best to proceed.” *Id.* at 88. Attorney Kane concluded that, under the circumstances, further cross-examination of the witness would be pointless, and declined Judge Chatigny’s invitation to continue. *Id.* At that point, I informed Judge Chatigny that the state intended to seek review of his ruling in the Second Circuit and, if necessary, in the United States Supreme Court. *Id.* at 91-92. The hearing then concluded. *Id.* at 92. On January 25, the Second Circuit reversed the granting of “next friend” status but affirmed the stay of execution. *Ross ex rel. Smyth v. Lantz*, 396 F.3d 512, 514 (2nd Cir. 2005).

On January 25, Michael Ross’s father, Dan Ross, filed a §1983 action against Governor Jodi Rell and other state officials seeking a temporary restraining order and an injunction against Ross’s execution. *Ross v. Rell*, Case No. 3:05 CV 130 (RNC). In the complaint, Mr. Ross alleged that his right to equal protection of the law would be violated by the execution of his son. T. 1/26/05 at 5. In a telephone conference on Mr. Ross’s § 1983 action, before counsel for either party had even

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<sup>1</sup> References to the transcripts of the proceedings before Judge Chatigny are denoted by T. followed by the date on which the transcribed proceedings took place.

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addressed the issue, Judge Chatigny expressed skepticism regarding the merits of the equal protection claim. *Id.* at 5-6. He indicated, however, that he believed Mr. Ross would have a viable due process claim. Judge Chatigny stated that:

It seems to me that under the due process clause, Mr. Ross can plausibly claim a liberty interest in his relationship with his son, one that is obviously threatened with extinction by the proposed execution of the son.

*Id.* at 6-7. Judge Chatigny then stated that, as a result of his determination in the habeas litigation that there was meaningful evidence of Ross's incompetency; *Id.* at 6; it seemed to him that:

[T]here's a procedural due process claim that just jumps right off the page. So that's where I'm coming from.

*Id.* at 8. Judge Chatigny continued, stating that:

[H]aving laid it out for you that way, I will tell you that I am very much inclined to issue the requested restraining order. In fact, unless you can give me a good explanation why I shouldn't, I going to do it.

*Id.*

Then, after reconfiguring the plaintiff's claim from one based on equal protection to one based on due process, and expressing his strong inclination to grant the restraining order requested by the plaintiff, Judge Chatigny offered counsel for the plaintiff and the state "an opportunity to comment." T. 1/26/05 at 8. Before doing so, however, Judge Chatigny stated that:

I don't want to foreclose anybody from making whatever arguments that they feel obligated to make. But I do want to say that to my mind in the face of a judicial determination that there is sufficient cause to doubt this person's competency, for people to prevent a full and fair hearing on that issue raises serious questions under the due process clause, questions that become more conspicuous the harder people fight to prevent the hearing from being held.

*Id.* at 8-9.

At that point, Attorney Antonio Ponvert, counsel for the plaintiff, stated that:

I think Your Honor has articulated that claim as correctly and succinctly as it could be, *and I can't obviously quibble with anything that you've said in support of it*, and I agree wholeheartedly with the comments that you've made.

(Emphasis added.) T. 1/26/05 at 11.

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When finally given an opportunity to speak, Assistant Attorney General Terrence O'Neill stated that:

I have to admit up front that speaking for the defendants, we're at a significant loss to understand or begin to appreciate that there is a due process claim in this case. We certainly don't read the complaint that way.

More critically, we're not aware of any case law that would support such a claim in this context.

T. 1/26/05 at 13. Attorney O'Neill continued, stating that:

I do have to assert strongly that the state certainly does not read the complaint in the way that the court did. And in all candor, I'm not sure that the plaintiffs would concede that they pled it that way.

*Id.* In spite of the state's strong objections, Judge Chatigny granted a temporary restraining order requested by the plaintiff. *Id.* at 20. Judge Chatigny indicated that his restraining order in the § 1983 action protected Mr. Ross, the plaintiff in that case, in the event that the United State Supreme Court "does vacate my stay [in the habeas corpus case]." *Id.* at 22-23.

At approximately 5:00 p.m. on January 27, the United States Supreme Court vacated the stay in the habeas proceeding. *Lantz v. Ross*, 543 U.S. 1134 (2005). Shortly thereafter, Judge Chatigny asked counsel for the parties in both the habeas case and the §1983 action to participate in a teleconference. Judge Chatigny did not ask Michael Ross's attorney, T.R. Paulding, to participate. During the teleconference, Judge Chatigny referred to a letter that he had received from Connecticut inmate Ramon Lopez. In the letter, Lopez accused two state mental health professionals of being "sociopaths in disguise" and of brainwashing Ross. The letter, which was not part of the record, had been received in chambers before the Supreme Court had vacated the stay. *See Lopez letter*, attached. Judge Chatigny urged counsel for the state to seek a stay of the execution to enable them to investigate the allegations in Lopez's letter. T. 1/27/05 at 3-8.

On the afternoon of January 28, the Second Circuit vacated the temporary restraining order in the §1983 action with a modification staying the execution, now scheduled for 2:00 a.m. on January 29, until January 31, the last day the death warrant was valid. *Ross v. Rell*, 398 F.3d 203, 205 (2nd Cir. 2005). When it became likely that the Supreme Court would vacate the Second Circuit's temporary stay and the execution could proceed on January 29, the parties seeking to halt the execution stated that they contemplated no further legal challenges. *See Articles*, attached. Judge Chatigny then called for another teleconference.

At 3:00 p.m. on January 28, Judge Chatigny convened a teleconference with counsel for the parties in both the habeas proceeding and the §1983 action. There were no motions pending before Judge Chatigny and decisions by higher courts had eliminated his ability to rule further in either

case. Although Michael Ross was not a party to either proceeding, Judge Chatigny asked T.R. Paulding, Ross's attorney, to participate. When the conference began, Judge Chatigny said "Mr. Paulding ... I want to speak with you, as Mr. Ross's counsel." T. 1/28/05 at 5. Judge Chatigny recapped his understanding of Paulding's role as Ross's counsel. Judge Chatigny then told Paulding that if Ross were executed "you will have been a substantial factor in bringing it about." *Id.* at 5. After Paulding told Judge Chatigny that he disagreed with the import of the Lopez letter and had spoken to Michael Ross about it, Judge Chatigny asked Paulding if he had spoken to Lopez. *Id.* at 6. Paulding stated that he was not obligated to speak to Lopez. *Id.* at 6-7. Judge Chatigny then detailed what he would do if he were representing Michael Ross and "facilitating the execution of his client...." *Id.* at 7. He would speak to Lopez and speak to Dr. Michael Norko, the psychiatrist who had examined Ross for the state trial court and had found him to be competent. *Id.* at 7-8.

Attorney Paulding also advised Judge Chatigny that he had a difference of opinion with him regarding whether the conditions of confinement at Northern Correctional Institute created despair in Ross. *Id.* at 8-9. Paulding discussed Ross's history of confinement in the Connecticut prisons, and his understanding that for many years the death row inmates, especially Ross, were not subject to highly restrictive conditions. *Id.* at 11-12. With respect to whether those conditions could have coerced Ross in particular, Paulding stated that he worked closely with Ross in 1995 and formulated his present opinions based on his historic knowledge and Ross's present affect. *Id.* at 13-14. Paulding reiterated that he had discussed appellate alternatives with Ross, that Ross was aware of them and did not wish to pursue them. *Id.* at 14. Judge Chatigny then interrupted Paulding and said:

I feel strongly that you're way out on a limb, and I want to be sure that I discharge my responsibilities as the chief judge of the court dealing with you as an officer of this court making sure that you don't commit a very grave error.... I believe Mr. Ross is effectively boxed in now. He would be hard-pressed to change his mind. Even if he changed his mind, he would be hard-pressed to admit it. He doesn't want to go back to Northern and be the subject of ridicule for somebody who had backed out at the end.... But my point here is for now, the only hope he has, in my opinion, at this point lies with the people on this conference. You first and foremost.

*Id.* at 15. Judge Chatigny stated that all of the players in this matter were relying heavily on Paulding to make sure that Ross's decision was intelligent and voluntary. *Id.* at 16. Judge Chatigny stated that he understood that Ross had been transferred to Northern in the spring of 1995 and, based on his outside-the-record knowledge of the conditions at Northern, stated:

I believe that as a result of [Ross's transfer to Northern] ... his life changed very dramatically for the worst [sic], and that was again April of 1995. So we're going back almost ten years.... So he spent the better part of ten years in those conditions. And I toured the place with an eye toward trying to grasp what its effect would be on the individual inmates. And I found it to be a very striking experience, one that I remember vividly years later. There is abundant literature ... not half of which, but a fair amount of which I have read, and that gives great weight to the notion that a

person who is in that setting can lose his ability to make a knowing, intelligent and voluntary choice.

*Id.* at 16-17. Judge Chatigny referred to improprieties that allegedly occurred during his prior tour of Northern. He accused the staff there of altering conditions in the cell of a death row inmate." I believed then and I believe now that the allegation was well-founded." *Id.* at 18-19.

Attorney Hubert Santos, counsel for the Chief Public Defender in the habeas proceeding, interrupted to inform Judge Chatigny that he had taken the affidavit of a retired Deputy Commissioner of Correction who had knowledge of Ross's conditions of confinement and who believed that the conditions were a substantial factor in Ross's decision to forgo further litigation. *Id.* at 19-21. This document, like the Lopez letter, was never part of the record and was not offered during the telephone conference as a reason to stay the execution. Judge Chatigny stated that it "makes my blood pressure climb even higher...." *Id.* at 21. This amounted, he opined, to "more than the critical amount of information" necessary to make a state official act. Judge Chatigny then addressed Paulding directly and said "I'm not going to try to lay that on them anymore. I tried to do that yesterday. *I'm laying it on you now.*" (Emphasis added.) *Id.* at 21-22. However, despite Judge Chatigny's stated concern that the Lopez letter and the affidavit from the retired Correction Department official constituted a sufficient basis to stay the execution, he entered no order based on these documents.

Rather, Judge Chatigny stated that he wished to look at Ross in the best light, and to "bring a fresh eye to it." *Id.* at 22. In that light, and despite the findings of two Connecticut juries and decisions of the Connecticut Supreme Court affirming the conviction and the death sentence, Judge Chatigny stated that:

[Ross] never should have been convicted. Or if convicted, he never should have been sentenced to death because his sexual sadism, which was found by every single person who looked at him, is clearly a mitigating factor....

(Emphasis added.) *Id.* at 22. Judge Chatigny discussed at length his understanding of the circumstances of Ross's murder of a young woman in New York "because he has this affliction, this terrible disease." *Id.* at 22-23. He gave his rendition of Ross's remorse and his desire to kill himself. *Id.* at 22-23. "I suggest to you that Michael Ross may be the least culpable, the least, of the people on death row." (Emphasis added.) *Id.* at 23. After further discussion of Ross's "obsessional bouts with sexual sadism," *Id.* at 23-24, Judge Chatigny stated, "So is he a sick man? Boy, oh, boy. So when he says, I feel that I'm the victim of a miscarriage of justice because they didn't treat it as a mitigating factor, I can well understand where he's coming from." *Id.* at 24.

So I don't know how anybody in your position honestly, Mr. Paulding, I do not know how anybody in your position could be accepting of this responsibility to proceed in the face of this record *to be the proximate cause of this man's death.* I put it to you, Mr. Paulding, I think you are way out on a limb.

(Emphasis added.) *Id.* at 24-25. Judge Chatigny chastised Paulding for what the judge viewed as the poor investigation that Paulding had done, saying that Judge Chatigny had done more work in injury cases than Paulding had done here. *Id.* at 25. Despite the fact that Dr. Grassian, like Judge Chatigny, had never seen Ross, Judge Chatigny endorsed Grassian as a "nationally recognized expert" who said that Ross is trying to kill himself." And you're going to take it upon yourself to say that Grassian's wrong? I know better." *Id.* at 25.

Once again, Judge Chatigny referred to Ross's stated reasons for choosing to forgo further challenges, stating that it made no sense to him in light of "the Callahan litigation." *Id.* at 25-26. "He doesn't have to cause any victim any pain ... That's the situation. Let's be very, very clear. That's the situation." *Id.* at 26-27. Contradicting the judgment of every court and doctor who had ever examined Ross, Judge Chatigny stated that "[h]is explanation makes no sense, no sense." *Id.* at 27. "If I were his lawyer, I'd be in his face telling him that." *Id.* at 27. Challenging Paulding's concept of his professional role, Judge Chatigny stated that Paulding should be calling Ross an "idiot" and telling him that his rationale made no sense. *Id.* at 27. Judge Chatigny stated that:

[I]nstead you seem to be saying, He's perfectly rational ... And you don't know what you're talking about. And you're an officer of this court. And I see this happening and I can't live with it myself, which is why I'm on the phone right now. It's wrong. What you're doing is wrong. ... And I tell you that, Mr. Paulding, because it is true. *What you are doing is terribly, terribly wrong. No matter how well motivated you are, you have a client whose competence is in serious doubt and you don't know what you're talking about.*

(Emphasis added.) *Id.* at 28. Judge Chatigny then threatened Attorney Paulding's livelihood.

*So I warn you , Mr. Paulding, between now and whatever happens Sunday night [this was prior to the Supreme Court vacating this Court's temporary stay] you better be prepared to live with yourself for the rest of your life. And you better be prepared to deal with me if in the wake of this an investigation is conducted and it turns out that what Lopez says and what this former program director says is true, **because I'll have your law license.***

(Emphasis added.) *Id.* at 29.

Judge Chatigny warned Paulding and the State's Attorney that now that the "can of worms" was opened, it was going to get "very messy." *Id.* at 29-30. Paulding asked for time to consider what the Judge had said. Judge Chatigny encouraged him to tell Ross what the judge had said, stating that Paulding had a duty to stop the execution. He stated:

I would urge you to say, I think he's right. And I would urge you to say, Michael, *I can bring you in off this limb that we're both out on.* I can bring you in.... In fact, I'm saying that what you're doing is a mistake. You don't have to cause any victims'

families any pain.... I cannot be a party to this any more. And in fact, I object. I won't let you do it.... You say, I'm not letting you. I'm standing next to you on the bridge and I'm holding you and I'm preventing you from jumping and I'll take the heat for it.... But I'm not going to stand by here and take it upon myself to watch you go to your death when all of these questions have been raised. I cannot do it as an officer of the court. I cannot do it. That's what I would tell him.

*Id.* at 31-32. Judge Chatigny also threatened Paulding by suggesting that he have a court reporter present when advising Ross because “*you’re going to need it.*” (Emphasis added.) *Id.* at 29. The conference call then concluded. There were no motions before Judge Chatigny when he convened the conference and he entered no orders when it concluded. Thus, there was no controversy before the court that would have enabled him to act in a judicial capacity during the teleconference.

At 10:00 p.m. on January 28, the United States Supreme Court granted the Connecticut Attorney General’s motion to vacate the stay; *Rell v. Ross*, 543 U.S. 1134 (2005); and denied Dan Ross's application for stay or temporary restraining order, thus eliminating the last legal impediment to the execution. *Ross v. Rell*, 543 U.S. 1134 (2005). *See* Logs, attached. At 10:50 p.m. on January 28, hours before the scheduled execution, Kevin Rowe, clerk of the district court, called the execution command center at the Chief State’s Attorney’s Office and asked for the telephone number of Judge Patrick Clifford, the state trial court judge, for Judge Chatigny. *See* Logs, attached. At 11:25 p.m., I called Mr. Rowe and informed him that, pursuant to the order of the Chief Justice of the Connecticut Supreme Court, the state’s attorney’s office could not provide the phone number of any state judge. At 11:30 p.m., Mr. Rowe called again, and inquired whether the state could call Judge Clifford and give him Judge Chatigny’s phone number. *See* Logs, attached. I informed Mr. Rowe that pursuant to the order of the Chief Justice, the state's attorney’s office could not contact state judges pertaining to the matter. Based on information and belief, Mr. Rowe also called the Connecticut Supreme Court on behalf of Judge Chatigny.

As a result of Judge Chatigny’s tirade – something readily appreciated as threatening and intimidating by those who heard the judge during the January 28 teleconference – he succeeded in stopping the execution through extra-judicial means when he was unable to do so by his legal rulings. He created an immediate conflict of interest between Attorney Paulding and his client. Attorney Paulding had to either do Judge Chatigny’s bidding or face being disbarred. Paulding was no longer free to act as Michael Ross’s counsel of choice and respect his obviously competent client’s desires. Consequently, the state, which was willing to enforce Ross’s decision to volunteer, in part, because he had retained competent counsel, was faced with executing Ross when counsel was encumbered by a potentially insoluble conflict. Having no desire to strip Ross of his counsel of choice, the state postponed the execution until Monday, January 31 at 9:00 p.m. to resolve the conflict. Thereafter, Ross and the state moved for an additional stay to resolve the conflict. The Connecticut Supreme Court granted Ross’s motion, provided a one-day stay, and the death warrant expired. On February 3, 2005, at a hearing before the Judge Clifford in the state trial court, Ross reiterated that he had wanted the execution to proceed, but agreed to a delay solely to protect Attorney Paulding’s career. T. 2/3/05 at 33-36.

After further proceedings in state court, Judge Clifford again ruled that Michael Ross was competent. Judge Clifford's ruling was upheld by the Connecticut Supreme Court on May 9, 2005. *State v. Ross*, 273 Conn. 684, 713 (2005). On May 12, 2005, Judge Droney ruled that Ross's sister, Donna Dunham, did not have standing to pursue a legal challenge to Ross's execution as "next friend" and dismissed the federal habeas corpus petition that she filed on behalf of Ross. *Ross v. Lantz*, Case No. 3:05 CV 758 (CFD). That same day, the Second Circuit denied Dunham's motion for a stay; *Ross ex rel. Dunham v. Lantz*, 408 F.3d 121, 124 (2d Cir. 2005); and the United States Supreme Court denied certiorari. *Ross ex rel. Dunham v. Lantz*, 544 U.S. 1028 (2005). Michael Ross was executed on May 13, 2005.

As a result of Judge Chatigny's conduct while presiding over the habeas corpus case and the § 1983 action, as well as his actions in the days leading up to Ross's first scheduled execution, six other prosecutors from the Chief State's Attorney's Office and I filed a complaint against Judge Chatigny with the Judicial Council of the Second Circuit. *See In re Charges of Judicial Misconduct*, 465 F.3d 532, 535 (2006). After my colleagues and I filed the complaint, Senior Assistant State's Attorney Harry Weller, one of the complainants, received information that Judge Chatigny had participated in Michael Ross's direct appeal from his capital convictions. Attorney Weller reviewed his files and discovered that in 1992, while he was still a practicing attorney in Connecticut, Judge Chatigny had submitted an application for permission to file an *amicus curiae* brief on behalf of the Connecticut Criminal Defense Lawyers Association in Ross's original appeal to the Connecticut Supreme Court. *See* "Application of the Connecticut Criminal Defense Lawyers Association for Permission to Appear and File a Brief as Amicus Curiae," *State v. Ross*, Connecticut Supreme Court Case Nos. 13224, 13225 and 13226, dated June 4, 1992. Attorney Weller also discovered the Connecticut Supreme Court's order granting Judge Chatigny permission to file an *amicus* brief in the case. "Order," *State v. Ross*, Connecticut Supreme Court Nos. 13224, 13225 and 13226, dated June 18, 1992. In addition, Attorney Weller found copies of numerous orders issued by the Connecticut Supreme Court that were transmitted to Judge Chatigny as a result of his appearance in the case until as late as October 13, 1994. *See* Connecticut Supreme Court Orders in *State v. Ross*, attached. After discovering these documents, Attorney Weller transmitted these documents to the Second Circuit Judicial Council and amended the complaint by the members of my office to include an allegation that Judge Chatigny had improperly failed to disqualify himself from presiding over the litigation relating to Ross's execution because of his prior participation in the case as required by 28 U.S.C. § 455(b). *In re Charges of Judicial Misconduct*, 465 F.3d at 538.

In a letter dated July 7, 2005 responding to the allegations of misconduct, Judge Chatigny admitted that he had filed the application for permission to file the *amicus* brief in the Connecticut Supreme Court. *In re Charges of Judicial Misconduct*, 465 F.3d at 538. In addition, he admitted that Michael Ross sent him a letter regarding his appearance in the case and that he had sent Ross a letter in response. *Id.* at 538-39. Nevertheless, despite the extensive knowledge of the facts of the case and the firmly held conviction that Ross was wrongfully sentenced to death that were revealed by his comments during the teleconference on January 28, 2005, and his admission that he had corresponded with the most notorious serial killer in Connecticut history, Judge Chatigny maintained that he had simply forgotten his prior participation in the Ross case. *Id.* at 538.

Judge Chatigny's actions while presiding over the habeas corpus petition and the §1983 action constituted judicial misconduct for four reasons. First, Judge Chatigny completely abandoned the role of neutral and detached magistrate and instead became an advocate for the position held by the parties who were seeking to stop the execution of Michael Ross. Second, Judge Chatigny's attempt to direct the manner in which Attorney Paulding advised his client constituted blatant interference with Michael Ross's constitutional right to representation by counsel of his choice. Third, after having been reversed by higher courts, Judge Chatigny chose to defy those rulings and effectively overturn them through the use of threats and intimidation. Finally, Judge Chatigny's failure to disqualify himself from a case in which he had participated as an attorney, or at least notify the parties of his prior participation, violated the requirements of 28 U.S.C. § 455(b). These actions certainly call into questions Judge Chatigny's fitness to serve on the United States Court of Appeals for the Second Circuit.

If the committee believes that our testimony would be helpful in evaluating Judge Chatigny's nomination, both Senior Assistant State's Attorney Harry Weller and I would be willing to appear before the committee to provide such testimony. If you would like us to appear, you may contact me by telephone at (860) 258-5881 or (860) 794-1404, or by e-mail at [michael.ohare@po.state.ct.us](mailto:michael.ohare@po.state.ct.us).

Thank you for your time and consideration in this matter.

Very truly yours,

Michael E. O'Hare  
Supervisory Assistant State's Attorney  
Office of the Chief State's Attorney

## ATTACHMENTS

### Transcripts:

- January 24, 2005 hearing before Judge Chatigny in habeas corpus action
- January 26, 2005 teleconference in § 1983 action before Judge Chatigny
- January 27, 2005 teleconference with lawyers from both cases and Judge Chatigny
- January 28, 2005 teleconference with lawyers from both cases, Ross's lawyer, Attorney T.R. Paulding and Judge Chatigny
- February 3, 2005 excerpt of hearing in *State v. Ross* in Connecticut Superior Court.

### Exhibits:

- Letter from Connecticut inmate Ramon Lopez, dated January 24, 2005
- Articles pertaining to litigation relating to the execution of Michael Ross
- Contemporaneous logs of communications in Chief State's Attorneys execution command center with District Court and United States Supreme Court on January 28-29, 2005.

### Judicial Rulings:

- Opinion of the Connecticut Supreme Court in *State v. Ross*, 272 Conn. 577 (2005), dated January 14, 2005
- Order of the United States Supreme Court in *Ross v. Connecticut*, United States Supreme Court No. 04M35, dated January 10, 2005
- Decision of Judge Christopher F. Droney, United States District Court, District of Connecticut, in *Ross, etc. v. Rell, et al.*, 3:04 CV 2186 (CFD), dated January 10, 2005
- Decision of Judge Robert N. Chatigny, United States District Court, District of Connecticut, in *Ross, etc. v. Lantz, et al.*, 3:05 CV 116 (RNC)
- Opinion of the United States Court of Appeals for the Second Circuit in *Ross ex rel Smyth v. Lantz*, 396 F.3d 512 (2nd Cir. 2005), dated January 25, 2005
- Order of the United States Supreme Court in *Lantz, et al. v. Ross, etc.*, 543 U.S. 1134 (2005), dated January 27, 2005

Opinion of the United States Court of Appeals for the Second Circuit in *Ross v. Rell, et al.*, 398 F.3d 203 (2nd Cir. 2005), dated January 28, 2005

Orders of the United States Supreme Court in *Rell, et al. v. Ross, etc.*, 543 U.S. 1134 (2005), and *Ross v. Rell, et al.*, 543 U.S. 1134 (2005), dated January 28, 2005