STATE OF RHODE ISLAND PROVIDENCE, SC		SUPREME COURT
STATE OF RHODE ISLAND By and through PATRICK LYNCH, ATTORNEY GENERAL, vs LEAD INDUSTRIES ASS'N, INC., et al	: : : : : : :	C.A. No. 06-158 A Superior Court No. 99-5266

BRIEF OF AMICUS CURIE RHODE ISLAND AFFILIATE AMERICAN CIVIL LIBERTIES UNION

Respectfully Submitted

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Introduction. The Rhode Island Affiliate of the American Civil Liberties Union, as *amicus curiae,* submits this brief to address (1) whether the Trial Court in this matter properly ruled that the Attorney General's extrajudicial statements about a pending civil case violated Rule 3.6 of the Rules of Professional Conduct, (2) the constitutionality of the Trial Court's order that the Attorney General "cease and desist from making any subjective characterizations of the defendants or any of them or of their agents, servants or attorneys' and (3) the propriety and constitutionality of the Trial Court's courts rulings that the Attorney General was in contempt of the Court's orders.

The lawsuit and publicity surrounding it. The orders in question were issued during the course of a lengthy, high-profile, and aggressively contested civil lawsuit ("the lead paint lawsuit") brought by Rhode Island Attorney General Patrick Lynch against a number of corporations that had in past years produced, marketed and/or sold lead paint, or that had acquired companies that had earlier done so. At issue, *inter alia*, was whether these corporations had a legal responsibility to contribute to the costs of eliminating the ongoing serious health hazards created by lead paint in residential homes throughout Rhode Island.

Throughout the 6-year pendency of the lawsuit, issues related to the hazards of lead paint and the question of who should bear the responsibility for abating those hazards remained of high interest both in Rhode Island and nationally. Concerned sectors of the community included public health professionals, environmental organizations, consumer advocates, school systems with children who had been cognitively and/or behaviorally affected by ingestion of lead, parents of such children, homeowners, landlords, tenants,

realtors, corporations that had produced and sold lead paint, states, municipalities and industry associations.[1]

The Rhode Island lead paint lawsuit itself was closely followed by local, state and national media, including both publications of general circulation and trade, industry and professional journals. As defendant Sherwin-Williams acknowledged, "[T]his case has generated extensive nationwide publicity and unprecedented demand for information about the content of the proceedings." (The Sherwin-Williams Company's Memorandum in Support of Motion to Unseal," 3/31/06, p. 3). Indeed, the trial was so closely watched on a national level that within minutes of the jury verdict against three of the defendants, the value of their stock fell precipitously.

Media coverage of the trial included descriptions of motions filed, legal arguments made, pre-trial and trial rulings and witness testimony. The media also reported on public statements by the Rhode Island Attorney General and by spokespersons and attorneys for the defendant corporations, expressing their positions on issues of fact, fault, liability and fairness related to the trial.

The challenges to the Attorney General's public statements, the court orders and the contempt findings. Shortly before jury selection was to begin in October, 2005, defendant Millennium Holdings LLC ("Millennium") moved to take the deposition of the Attorney General to probe the nature of a settlement the state had earlier reached with the Du Pont Corporation. The Trial Judge granted this motion and the deposition was taken on October 19. On the following day, the Providence Journal published a 21-paragraph article

[1] One illustration of the media and public interest in the topic was a 6-part series on lead pain published in the providence Journal in May, 2001, available at http://www.projo.com/extra/lead/stories

about the lead paint case, entitled "Lead Paint Defendant Wins Legal Motion." The report included a quote from defense attorney DeMaria stating that the information obtained in the deposition might result in the remaining defendants being discharged of all liability. The Attorney General was also quoted as expressing confidence that this would not be the result, as saying he had spent about six hours the previous day responding to reams of questions from defense counsel, and as commenting, "This discovery is just part of the despicable legal moves the company lawyers are willing to make to slow down justice." The entire second half of the article described other aspects of the ongoing litigation.

Shortly after this article was published, and with jury selection scheduled to begin, Millennium filed a motion for both severance and a continuance. It cited the Providence Journal article as the basis for its motion, and it dramatically characterized the Attorney General's comments therein as an "unwarranted attack on Millennium's character and conduct of the litigation" that would undermine its right to trial by an impartial jury."

Defendant Sherwin-Williams filed its own similar motion, citing same Providence Journal article plus three others, along with an 8-week-old article from the Bureau of National Affairs publication Product Liability , a 4-month-old article from the National Law Journal, and a 2-week-old Associated Press wire report. Like Millennium, Sherwin-Williams argued that the Attorney General's comments in these articles undermined its right to an impartial jury. A review of the articles reveals, however, that attorneys and other spokespersons for the paint companies were also quoted, and that these individuals used the opportunity to assert the strength of the defendants' legal position and the weakness and unfairness of the Attorney General' position.

For example, the Providence Journal article dated 8/5/05 described a letter sent *ex parte* to the Trial Judge by Sherwin-Williams attorney Pohl, purporting to "flag" the issue of whether the Trial Judge should recuse himself from the case because he owned a home built prior to 1978. The article quoted Attorney Pohl as saying that the Trial Judge "has an economic interest in the outcome of the case" and should therefore disqualify himself. The article also noted that the recusal letter, which resulted in the trial being postponed an additional 12 days so that the Trial Judge could address the recusal issue, "triggered an angry response and a 128-page brief from Attorney General Patrick C. Lynch, who called the motion 'despicable'" and a "ploy to delay the trial." It also noted Lynch's objection to the *ex parte* nature of letter sent by attorney Pohl, and quoted the Attorney General as saying that his office was ready to go to trial "despite a continuing barrage of obfuscation and attempts to muddy the water" by the defense.

A second Providence Journal article proffered by Sherwin-Williams, dated 8/12/05, reported on the Trial Judge's decision not to recuse himself. This article repeated both the quote from the Sherwin-Williams attorney that the Trial Judge should disqualify himself and the Attorney General's description of this assertion as "despicable." It also noted the Attorney General's statements that the recusal motion was a last-minute delay tactic and an attempt to judge shop, and quoted him as saying, "I am grateful for the court's decision and eager to move forward, despite Sherwin Williams' toxic tactics and its attempts to engage in judge shopping. Sherwin Williams helped make the mess in Rhode Island. Sherwin Williams should help clean up the mess in Rhode Island." Your *amicus curiae* submits that these last statements were simply a way of stating, in layman's terms, the nature of the State's opposition to the recusal motion (and indeed, motions to recuse are often viewed as

judge-shopping, in both lay and more formal legal language) and again in the vernacular, one of the fundamental allegations of the State's complaint - - that the paint companies had created a nuisance, and should fund the abatement of that nuisance.

A third Providence Journal article proffered by Sherwin-Williams, dated 10/17/05, also reported opinions expressed by both attorneys for the paint companies and the Attorney General. The article quoted the paint companies and their attorneys expressing a number of opinions, including insisting that they had done nothing wrong (presumably with respect to the sale of lead paint), complaining that the state was targeting them unnecessarily and illegally, asserting that the paint companies should not be blamed for selling products that were lawful at the time, and arguing that the blame should instead be placed on landlords who had allowed their properties to deteriorate. The Attorney General was quoted as saying that the paint companies had created a public nuisance by having made lead paint that was still harming children, and as describing characterizing the defendants' legal challenge to the State's use of a private law firm to assist in the case as yet another tactic by the defendants to evade their responsibilities.

The remaining two articles proffered by Sherwin-Williams to support its claim that the Attorney General's out-of-court statements "imperiled" its right to an impartial jury appeared in publications generally found in law libraries - - the National Law Journal and the Bureau of National Affairs publication *Product Liability.* Your *amicus curiae* submit that it is highly unlikely that either publication would have been read by any potential juror, and no evidence was submitted to the contrary.

Both Sherwin-Williams' and Millennium's attorneys argued that the Attorney General's words quoted in these articles were so likely to have infected the jury pool that

the trial should be postponed. In making this argument they repeatedly and stridently asserted that the Attorney General had called the paint companies and their attorneys "despicable," and that this would poison any potential jury panel. Your *amicus curiae* submits that this characterization of the Attorney General's words was both overblown and inaccurate. The articles make it clear that the Attorney General was speaking of two specific procedural tactics that had just been used by the paint companies - - the 6-hour deposition of the Attorney General himself, taken the previous day, and the *ex parte* letter to the Trial Judge (who had presided over the case for the past six years), asking him to consider recusing himself - - and that the Attorney General was saying that in his view, these tactics were despicable. Moreover, the comment appeared somewhere in the middle of a much larger article describing a number of developments in the lead paint litigation. Your *amicus curiae* submits that these statements, even when read out of context, and even more clearly when reviewed both in the context of the complete articles in which they appeared and in the context of all the circumstances and publicity surrounding the case, had no likelihood whatsoever of affecting prospective jurors or impairing their impartiality.

The Trial Judge denied the paint companies' motions to sever and continue to the case, but also ordered the Attorney General, both orally and in a written order, to fully comply with Rule 3.6 of the Rules of Professional Conduct.

As the transcript shows, the Trial Judge took great care in the voir dire of potential jurors. As part of the initial screening of potential jurors, each juror had to complete a questionnaire that had been drafted by the parties. During voir dire, each juror was questioned separately from all the others and at great length. The Trial Judge carefully

considered every motion to excuse for cause, and did indeed excuse numerous potential jurors for cause until, after an intensive jury selection process, a jury was selected.

The First Finding of Contempt. On November 17, 2005 the Providence Journal published another article about the case. The article reported at some length on a ruling in which the Trial Judge had rejected request for mistrial sought by the defendants. The article also described Attorney General Patrick Lynch as "beaming" as he left the court after this ruling, praising the Trial Judge for the way he had guided the case, and saying, "We want to continue our search for justice before this jury and not give in to those who would spin and twist the facts." The article went on to describe the legal arguments made by both sides with respect to witness examination that preceded the request for a mistrial.

The defendants themselves did not initially raise any objection based on the contents of the November 17 article. The Trial Judge, however, raised the issue *sua sponte* on November 18, at which time he invited the defendants to file such papers as they might deem appropriate. The defendants responded quickly, with motions seeking both a dismissal with prejudice of the entire case and to have the Attorney General adjudicated in contempt of the court's order to obey Rule 3.6. At subsequent *in camera* hearing, the Attorney General, given the opportunity to respond to the issue, explained the context in which he had made the statement. Upon leaving court on the 17th, he had been approached by a journalist who had asked him words to the effect of: "What do you have to say about their claims that your counsel have flagrantly disregarded the law, have violated ethical rules intentionally?" (Tr. 11/18/05 at 35). Although the newspaper story did not report the journalist's question, it quoted his response, which, he explained to the Court, he had made in an effort to defend his staff against the charge of ethical violations.

The Trial Judge subsequently found that the Attorney General had been goaded by the reporter's question into making the statement (T. 11/28/05 at 93) and that he had not willfully violated the court's order to comply with Rule 3.6 (T. 11/28/05 at 92). The Trial Court further found that "there had been no prejudice to the defendants resulting from the Attorney General's statements," (T. 11/18/05 at 97). Despite these findings, the Trial Judge ruled that the Attorney General was in civil contempt of his order to comply with Rule 3.6 (T. 11/28/05 at 94), and that a $5,000 fine would be imposed for that "contempt."

The gag order. At that point the Trial Judge also issued a verbal gag order, later reduced to writing and entered on 12/6/05, as follows:

> The Court directs the Attorney General to cease and desist from making any subjective characterizations of the defendants or any of them or of their agents, servants or attorneys.
> (T. 11/28/05 at 97.)

The second finding of contempt. Near the end of the trial process, defense counsel, in the course of their closing arguments, thanked the jury for their hard work, dedication and patience during the lengthy trial. On February 22, 2006, after eight days of deliberation, the jury returned its verdict, exonerating one defendant, but finding the remaining three defendants liable for creating a nuisance in the form of lead paint that was still causing harm to Rhode Island residents. Following this verdict, the Trial Judge excused the jurors, but because they might be called back for further deliberations with respect to remedies, he again admonished them to continue not to discuss the case with anyone, not to do any independent research, and not to read or listen to anything about the case in the newspapers, on the radio or on television. He also advised them that he had admonished the attorneys in the case not to talk to them, and the attorneys were so instructed. (T. 2/22/06, p. 14).

The jury verdict was immediately and widely reported, not only in Rhode Island but nationwide. On the evening of the verdict, National Public Radio reported the verdict on its nationally-syndicated news show All Things Considered. The transcript of the NPR report was later submitted to the Trial Court by Millennium Holdings, joined by the other losing defendants, in support of their new motions for sanctions and to find the Attorney General in violation of Rule 3.6 and the court's gag order. The NPR transcript reflects Host Melissa Block's interviews with four people - - NPR reporter Tovia Smith, University of Maryland Law Professor Don Gifford, Harvard Law Professor David Rosenberg, and Attorney General Patrick Lynch. Of these four interviewees, Patrick Lynch had the least to say - - just two sentences in the middle of the report, in which he commented that "This is an enormous victory for kids, this is an enormous victory for the taxpayers. And I think a big victory, you know, and just in terms of fundamental fairness for the little guy."

On the day after verdict, the Providence Journal published a 27-paragraph article about the case. As in prior articles, the quoted comments of the Attorney General were only one small aspect of a much larger report. The Attorney General was quoted as praising the work of one of the defense attorneys, John Tarantino, as having done a wonderful job. He was also quoted as pointing out that children continue to be poisoned by lead paint, with victims in nearly every Rhode Island community. And, in words similar to those used by defense counsel in closing arguments, he praised the jury for putting so much time and thoughtfulness into its verdict. This article also reported, along with other information related to the case, that within moments of the verdict the value of Sherwin-Williams' stock began to plummet, and by the end of the day had dropped nearly 18 percent, while the value of NL Industries stock had dropped by 8 percent. This story too was later submitted by

defendant Millennium Holdings as further "evidence" of the Attorney General's violation of Rule 3.6, and the Trial Court's gag order, and in support of its motion for further sanctions.

On that same day (2/23/06), the Boston Globe also reported the verdict, quoting both the Attorney General and the defendants. Sherwin-Williams was quoted as saying, "We continue to believe that the facts and the law are on our side. The court still has to rule on various remaining issues before the next steps in the legal process can be determined." After noting that numerous other states and municipalities could contemplate legal action, the article quoted the Attorney General saying, "It's not limited to states. There are cities and towns that could file suits," and as commenting that "The companies failed to step up and clean up the problem they created. The legal process has held them accountable and said you can't duck and run." This too was submitted by Millennium and described as "evidence" of the Attorney General's violation of Rule 3.6, and the Trial Court's gag order.

In response to the verdict, the Attorney General also placed on his department's official website the following brief statement:

> This is great news for the children, the taxpayers, and the short- and long-term public health of the State of Rhode Island! For the jury to have unanimously agreed that we met our burden, and proved our case, is enormously gratifying. Much more important, though, it means that the State can better fulfill its most important function, protecting its citizens-especially its most vulnerable citizens, children - from harm.
>
> I would like to congratulate each and every member of my legal team, and thank them for pouring their hearts and souls into this noble cause. And, of course, I'd like to thank the jury for their service, their attention to the facts and evidence that led them to this moment, and their courage in rendering a historic verdict that, ultimately, will help make Rhode Island a safer and better place to live.

The defendant lead paint companies submitted this website notice as well, arguing that it was a violation of Rule 3.6, the Trial Court's gag order and the order not to talk to jurors.

At a hearing on May 1, 2006, the Trial Judge found no evidence that any of the Attorney General's written, electronic or verbal communications had come to the attention of any jury member (T. 5/1/06 p. 76). He also found that the jurors had universally abided by the Court's instructions. Despite these findings, he ruled that the Attorney General was in civil contempt, based on (1) his comment in the Boston Globe that the defendants could not "duck and run," (2) his two sentence comment on National Public Radio's All Things Considered, and (3) the statement posted on the Attorney General Department's website. The Court imposed an additional $10,000 fine in connection with this ruling.

Argument

Introduction

Both Rule 3.6 of the Code of Professional Conduct and any specific "gag order" on out-of-court speech implicate First Amendment concerns. For this reason, the case law mandates that whenever an attorney may be subjected to such an order or is sanctioned for violating one, both the order and the out-of-court comments must be examined in light the record as a whole, including all the circumstances under which the statements are made. Only if, under all the existing circumstances, it is clear that the extrajudicial statements create a "*substantial* likelihood of *material* prejudice" to the adjudicative proceedings can an attorney be sanctioned. And to the extent that a specific protective order/gag order is under consideration, it can be validly issued only if it is needed to prevent such a *substantial* likelihood of *material* prejudice, and even then, it must be carefully and narrowly drafted so as to limit speech no further than is necessary to prevent such prejudice.

Your *amicus curiae* submits that the Attorney's General's sanctioned comments in this case were minimal in amount and in length, and had minimal likelihood of any significant impact, when viewed in the overall context of a highly publicized trial in which the media interviewed and reported the views of numerous parties, attorneys and others with an interest in the issue of lead paint. Your *amicus* further submits that majority of the sanctioned comments were no more that a vernacular explanation of the State's claims and legal arguments being made in court, and that an attorney cannot be sanctioned for stating in public what he is also presenting (and is available to the jury and/or the media) in court.

And despite the repeated and stridently histrionic protests by defense counsel that they and their clients were wrongfully, outrageously and irremediably publicly smeared with unjust accusations, the actual words spoken by the Attorney General, and the context within which they were spoken, simply do not bear out these claims. The Attorney General's public statements were in fact limited in scope and quantity, and were far milder in nature than attorney speech that the U.S. Supreme Court has found innocuous, unlikely to undermine a jury's impartiality, and fully entitled to First Amendment protection.

It must be noted that the defendant paint companies also spoke out in public through both their trial attorneys and such attorney-spokespersons as Bonnie Campbell, who was often quoted in the newspaper articles as spokesperson for the lead paint defendants and further described as a former Attorney General for the State of Iowa. Throughout the pre-trial and trial proceedings these attorneys and spokespersons continued to make their own public statements to the press, asserting the paint companies' lack of fault for lead paint hazards in Rhode Island homes, describing the remaining problems with lead paint as minimal nature, ascribing any fault and responsibility to entities other than themselves such

as landlords, and describing as unfair the court proceedings that had been brought against them.

Your *amicus curiae* does not challenge the right of defendants' attorneys and spokespersons to make such statements. Rather your amicus curiae submits that attorneys for both the State as plaintiff and for the defendants, in speaking publicly about the case, were exercising their First Amendment rights, and that of their clients, to do so.

Finally your *amicus curiae* submits that the publicity that accompanied this trial, including public statements made by attorneys for both sides, were will within the norm of public comments made during high profile (and even not-so-high profile) trials in a nation that has, since its inception, valued free speech and an open and public judicial system.

I. The First Amendment protects right of an attorney of record to publicly discuss issues related to pending litigation.

An attorney participating in pending litigation does not forfeit his fundamental First Amendment right of free speech with respect to that litigation. To the contrary, the First Amendment allows such speech to be restricted only if, and only to the extent that the speech can be shown, under all relevant circumstances existing at that time, to result in a "*substantial* likelihood of *material* prejudice" to the adjudicative proceedings. Gentile v. State Bar of Nevada, 501 U.S. 1030 at 1074-75 (1991) (Rehnquist, J., Opinion of the Court) (emphasis added).

Citing First Amendment principles, trial courts have often rejected a party's request for a protective order in the nature of a gag order on the attorneys of record. See, *e.g.*, Ruggieri v. Johns-Manville Products Corp., 503 F.Supp. 1036 (D. Ct. R.I. 1980), in which a defendant asbestos company in a product liability/personal injury asbestos case sought to enjoin plaintiff's attorney from speaking publicly about the pending case and about asbestos

issues in general. Citing Attorney Ronald Motley's appearance, during pending litigation, on a nationally-broadcast CBS television show, "See You In Court," in which he criticized the past actions of asbestos producers and describe his view of their legal liability to those injured by exposure to the substance, the asbestos company also asked the court to disqualify him form the case based on his extrajudicial comments. The Trial Court denied both the motion to disqualify and the request for a gag order, explaining that "[r]igid restrictions upon the rights of attorneys to discuss pending litigation or disclose information concerning a case encroach upon [the attorneys'] right to freedom of expression." Ruggieri v. Johns-Manville Products Corp., 503 F.Supp. 1036 (D. Ct. R.I. 1980).

See also People v Fioretti, 516 NY Supp. 2d. 422 (N.Y. Supr. Ct. Bronx Cty 1987), in which the trial court rejected, on First Amendment grounds, the motion of a criminal defendant charged with forgery and grand larceny to enjoin the district attorney and police department from providing information to the news media concerning an investigation into the disappearance of the defendant's wife, the defendant arguing that he could not receive a fair trial if the jury's mind was "poisoned" by suspicion of a connection between the defendant's alleged forgery of his wife's name on withdrawal slips and his wife's prior disappearance.

Appellate courts, both state and federal, have often vacated trial courts' protective orders on First Amendment grounds when these orders barred or restricted extrajudicial speech by counsel of record concerning pending litigation.

See , *e.g.,* United States v Salemeh*,* 992 F. 2d 445 (2nd Cir. 1993) (vacating, on First Amendment grounds, a Trial Court order barring counsel from publicly discussing any aspect of a pending criminal case); Chase v Robson, 435 F. 2nd 1049 (7th Cir. 1970) (writ of

mandamus issued, vacating on First Amendment grounds a trial court order that had prohibited counsel for both the government and the defendants in a pending criminal trial from making statements at public meetings or for public dissemination regarding the jury, jurors, merits of the case, actual or anticipated evidence, witnesses, or the rulings of the court); *Twohig v Blackmer*, 918 P. 2d 332 (N. Mex. 1996) (vacating, on First Amendment grounds, a gag order prohibiting counsel for both defendant and the state in a vehicular homicide prosecution from making any extrajudicial statements to or through any media or public fora on any substantive matters of the case); State of Washington v Bassett, 911 P. 2d 385 (Wash. 1996) (vacating, on First Amendment grounds, a trial court's oral gag order prohibiting both the prosecutor and defense counsel from making any statements to the press or the general public about a pending murder case); Breiner v Takao, 885 P. 2d 637 (Hawaii 1997) (ruling constitutionally impermissible a trial court order prohibiting counsel from communicating with the media regarding any aspect of the trial); and Rodriguez v. Feinstein, 734 So. 2d 1162 (Fl. App. 3 Dist. 1999) (reversing, on First Amendment grounds, a trial court's order in a medical malpractice case enjoining the plaintiffs and their counsel from discussing issues in the case with the media without prior leave of court).

II. The First Amendment protects the public's right to hear the views of others, including the views of attorneys concerning pending litigation in which the attorneys are involved. A gag order punishing or broadly restricting attorneys' expression of such views thus violates not only the attorneys' First Amendment rights but also those of the public.

The First Amendment guarantees not only a right to speak but also a right to receive information communicated by others. Bates v State Bar of Arizona, 433 U.S. 350 (1977); Organization for a Better Austin v Keefe, 402 U.S. 415, 419-20 (1971); Red Lion

Broadcasting Co. v. FCC, 395 U.S. 367, 390 (1969); Martin v City of Struthers, 319 U.S. 141 (1943). This right to receive information includes the public's right to receive both factual information and opinions from lawyers about the cases they are litigating. As the Supreme Court stated in reversing the disciplinary reprimand of an attorney who had held a press conference to discuss, and indeed to publicly challenge, the criminal charges pending against his client:

> "Since lawyers are considered credible in regard to pending litigation in which they are engaged and are in one of the most knowledgeable positions, they are a crucial source of information and opinion." Chicago Council of Lawyers v Baue*r*, 522 F. 2d 242, 250 (CA 7, 1975). To the extent the press and public rely upon attorneys for information because they are well informed, this may prove the value to the public of speech by members of the bar. If the dangers of their speech arise from its persuasiveness, from their ability to explain judicial proceedings, or from the likelihood the speech will be believed, these are not the sort of dangers that can validate restrictions. The First Amendment does not permit suppression of speech because of its power to command assent.
> Gentile v. State Bar of Nevada, 501 U.S. at 1029-30.

The societal value of attorney speech was also underscored by the United States District Court for the District of Rhode Island in Ruggieri v. Johns-Manville Products Corp. *supra*, a product liability/personal injury lawsuit brought against a number of asbestos companies on behalf of Joseph Ruggieri, who had developed mesothelioma, a cancer of the lining of the lung caused by asbestos exposure. When one of Mr. Ruggieri's attorneys, Ronald L. Motley appeared on the CBS television show "See You in Court," while the litigation was pending, he charged that the asbestos companies had known of the dangers of asbestos inhalation as early as 1935, and had deliberately concealed these dangers for decades. He characterized the situation as a "tragedy," said that an asbestos company president had chosen "to keep the lid on" as people were exposed throughout the

1930s through 1960s, and that as a result, "we're seeing thousands and thousands of people dying as a result of that exposure." 503 F. Supp. at 1038.

In rejecting the motion of an asbestos company defendant to disqualify Attorney Motley and the company's motion to enjoin the attorney's from further public speech about asbestos cases, the Federal District Court observed that the case before it was one of many highly publicized asbestos cases then pending, and that issue of responsibility for asbestos-related diseases was a matter of ongoing public debate. The Court then held that attorney Motley had a First Amendment right to participate in that debate and that the public had a right to hear his voice. Its reasoning is particularly relevant to the case now before this Court:

> [I]n our present society many important social issues became entangled to some degree in civil litigation. Indeed, certain civil suits may be instigated for the very purpose of gaining information for the public. Often actions are brought on behalf of the public interest on a private attorney general theory. Civil litigation in general often exposes the need for governmental action or correction. *Such revelations should not be kept from the public. Yet it is normally only the attorney who will have this knowledge or realize its significance.* Sometimes a class of poor or powerless citizens challenges, by way of a civil suit, actions taken by our established private or semi-private institutions or governmental entities. Often non-lawyers can adequately comment on behalf of these institutions or governmental entities. *The lawyer representing the class plaintiffs may be the only articulate voice for that side of the case. Therefore, we should be extremely skeptical about any rule that silences that voice*.
>
> Ruggieri v. Johns-Manville Products Corp. 503 F. Supp. at 1039-40, citing Chicago Council of Lawyers v Bauer, 522 F. 2d 242 at 257-8 (7th Cir. 1975), *cert. den.* 427 U.S. 912 (1976). (*emphasis added.*)

Thus, based in large part on the public's right to hear the opinions of trial attorneys about significant litigation in which they are engaged, the Court concluded that "It would be a serious invasion of a treasured liberty to prohibit [Attorney Motley] from continuing to discuss this very controversial issue of asbestos inhalation." 503 F.Supp. at 1041.

III. Under Rule 3.6 of the Code of Professional Responsibility and governing case law, speech may be restricted or punished only if extrajudicial statements create a substantial likelihood of material prejudice in obtaining a fair trial.

In the instant case, the Trial Court's first finding of contempt was based on its conclusion that the Attorney General had violated its order to comply with Rule 3.6 of the Code of Professional Responsibility. Your *amicus* submits that the Trial Judge's finding was based on an unconstitutionally overbroad reading of Rule 3.6, and must be reversed.

Rule 3.6 states, in applicable part (with references to criminal law omitted):

> **Rule 3.6. Trial publicity.**
> (a) A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding.
>
> (b) A statement referred to in paragraph (a) ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration, and the statement relates to:
>
> (1) the character, credibility, reputation or criminal record of a party or witness;
> . . .
> (3) the performance or results of an examination or test or the refusal or failure to a person to submit to an examination or test, or the identify or nature of physical evidence expected to be presented;
> . . .
> (5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial…
>
> (c) Notwithstanding paragraphs (a) and (b)(1-5), a lawyer involved in the investigation or litigation of a matter may state without elaboration:
>
> (1) the general nature of the claim or defense;
> (2) the information contained in a pubic record;
> (3) that an investigation of the matter is in progress, including the general scope of the investigation, the offense or claim or defense involved, and, except when prohibited by law, the identity of the person involved;
> (4) the scheduling or result of any step in litigation;
> (5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interests.

A. Rule 3.6(b) does not create a presumption that any statement relating to "the character, credibility, reputation or criminal record of a party or witness" is presumed to violate Rule 3.6. Only if it is independently determined that the statement had a *substantial likelihood* of *materially prejudicing* the proceedings can such a violation be found.

In the case on appeal, the Trial Court imposed the first of two sanctions when it ruled that the Attorney General had violated Rule 3.6 by responding to a journalist's question," What do you have to say about their claims that your counsel have flagrantly disregarded the law, have violated ethical rules intentionally?" with the answer, "We want to continue our search for justice before this jury and not give in to those who would spin and twist the facts."

In considering this incident, the Trial Court made specific findings that the Attorney General had been goaded by the reporter's question into making the statement, and that his violation had not been willful. The Court further found that the jury had not in fact been prejudiced in any manner by these words, and indeed there was no evidence that any juror had disobeyed the Court's orders and read the newspaper report. In nevertheless sanctioning the Attorney General, the Trial Court focused on language of Rule 3.6 (b) that states:

> A statement referred to in paragraph (a) ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury . . . and the statement relates to (1) the character, credibility, reputation or criminal record of a party."
> Rule 3.6(b) of the Rhode Island Rules of Professional Conduct

Noting that Attorney General's words, "those who would spin and twist the facts," related to the character, credibility or reputation of the defendants, the Court concluded that

the Attorney General had violated both Rule 3.6 and the court's order to comply with that rule, and on that basis found him in contempt and imposed a $5,000 fine.

Your *amicus* submits that such a broad interpretation of the strictures of Rule 3.6 was in error. Governing case law, including U.S. Supreme Court decisions, mandate that Rule 3.6 must be construed in light of the broad protective constitutional mandates of the First Amendment.

Indeed, such First Amendment concerns are highlighted in the Commentary to Rule 3.6, which states:

> It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to the trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

Under the broad mandates of the First Amendment, counsel's speech cannot be restricted unless it would result in "substantial likelihood of material prejudice" in the adjudicative proceeding. Gentile v. State Bar of Nevada, 501 U.S at 1074-76 (Rehnquist, J., opinion of the Court) (*emphasis added.)*

Gentile is the U.S. Supreme Court case most directly on point with respect to the meaning of Rule 3.6. At issue was Nevada Supreme Court Rule 177, a rule virtually identical to Rule 3.6. As Justice Rehnquist explained, in analyzing this rule:

> When a state regulation implicates First Amendment rights, the Court must balance those interests against the State's legitimate interest in regulating the activity in question. [*citation omitted.*] The "substantial likelihood" test embodied in [Nevada's] Rule 177 is constitutional under this analysis, for it is designed to protect the integrity and fairness of a state's judicial system, and it imposes only narrow and necessary limitation on lawyers' speech. The limitations are aimed at two principal evils: (1) comments that are likely to influence the actual outcome of the trial and (2) comments that are likely to prejudice the jury venire, even if an untainted panel can ultimately be found.
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> Gentile v State Bar of Nevada at 1075. (*emphasis added*)

This Rule, the Court noted, "is limited on its face to preventing only speech having a substantial likelihood of materially prejudicing that proceeding." Gentile at 1076.

Substantial likelihood of material prejudice is a high standard. Even comments that might be *reasonably* likely to cause material prejudice are not proscribed by the Rule. The difference between these two standards is more than mere semantics. *See* Press-Enterprise Co. v Superior Court, 478 U.S. 1, 14 (1986), in which trial court decision was reversed because the court had applied a standard of "*reasonable* likelihood of substantial prejudice" to the issue of whether pretrial proceeding should be closed to the public, rather than the correct standard of "*substantial* probability" of prejudice to fair trial rights.

The Supreme Court's application of this test to the attorney speech in Gentile is particularly instructive. At the outset, the Court's application makes it clear that a trial court may not constitutionally presume that, because an attorney's speech relates to the "character, credibility, reputation or criminal record of a party or witness," the speech has "a substantial likelihood of materially prejudicing an adjudicative proceeding" and thus violates of Rule 3.6.

Attorney Gentile was a Las Vegas criminal defense attorney. In January 1987, undercover police officers reported that large amounts of cocaine and travelers' checks,

both used as part of an undercover operation, were now missing from a safety deposit vault at Western Vault Corporation. Attorney Gentile's client, Sanders, owned Western Vault. Although two police officers enjoyed free access to the deposit box throughout the period of the theft, and had kept no log of their comings and goings, police investigators did not consider them suspects, and instead, focused their investigation increasingly on Attorney Gentile's client. As news of the loss spread, other individuals who had deposit boxes at Western Vault began claiming that valuable items were missing from their boxes. Then the police department claimed that the two officers with access to the vault had been investigated and cleared of suspicion after passing a lie detector test; however the person who administered that test was later arrested for distributing cocaine to an FBI informant. Although the press began to suggest that police officers might be responsible for the thefts, police officials and the prosecutor chose to indict Sanders.

Following all these developments Attorney Gentile, now attorney of record in his client's criminal case, called a press conference to make public some of the weaknesses in the State's case against his client and to challenge the credibility and honesty of those who had brought these charges.

Attorney Gentile's press release was replete with strongly-worded opinions about the strength of his client's case, his client's innocence and with highly negative accusations about the "character, credibility, reputation *and* criminal records" of the witnesses to the State's case. Attorney Gentile's announcements at the press conference included statements that (1) the evidence demonstrated his client's innocence, (2) the likely thief was a police detective, whom he identified by name, (3) that police detective appeared in a videotape to be exhibiting symptoms similar to that of cocaine use. (4) the other alleged victims, who

claimed they had lost items from their safe deposit boxes, were not credible, and most of them were drug dealers or convicted money launderers, and (5) most of these alleged victims had accused Gentile's client only in response to police pressure while "trying to work themselves out of something."

Attorney Gentile also described his client as an innocent man being made a "scapegoat" by officials who had not "been honest enough to indict the people who did it; the police department, crooked cops." 501 U.S. at 1030, 1045 and1059-60.

Some of Gentile's statements were disseminated to the public in two newspaper stories and two television newscasts. Based on his statements at this press conference, the Nevada State Bar filed a complaint against him, alleging that he had violated Rule 177 (the Nevada equivalent to Rhode Island Rule 3.6) by making extrajudicial statement that he knew or reasonably should have known would have a substantial likelihood of materially prejudicing an adjudicative hearing. The Disciplinary Board found that Gentile had indeed violated Nevada's Rule 177, and the Nevada Supreme Court affirmed the resulting private reprimand.

Attorney Gentile (whose client Sanders was ultimately exonerated at trial) sought review of the reprimand by the U.S. Supreme Court, which reversed the private reprimand, holding that its imposition violated Attorney Gentile's First Amendment rights. In doing so, the Court held that Nevada's Rule 177, as interpreted and applied in Attorney Gentile's case, violated the First Amendment.

In so holding, the Court emphasized a number of factors that are relevant to the instant appeal.

First, as noted above, the Court held that Nevada's Trial Publicity Rule could be constitutionally applied to penalize or prohibit *only* that attorney speech that had a substantial likelihood of materially prejudicing a pending proceeding.

Second, the Court rejected the idea that a presumption of substantial likelihood of material prejudice could be drawn from the fact that the attorney's words met the criteria listed in Nevada's version of Rule 3.6(b). The fact that the attorney's words "related to the character, credibility, reputation or criminal record of a witness or party" was not, the Court held, a basis to find the attorney in violation of the regulation. Such an approach, the Court said, would violate the First Amendment by punishing "pure speech in the political forum" 501 U.S. at 1034. The Court further condemned such an approach because it limited publicity concerning the judicial system during the period when litigation on the topic of the speech was pending, which was "not only at a crucial time but upon the most important topics of discussion." 501 U.S. at 1035, citing Bridges v California, 314 U.S. 252 (1941). The Court emphasized the importance of speech at such times in maintaining public vigilance with respect to the courts and the justice system, noting that "Without publicity, all other checks are insufficient." 501 U.S. at 1035, citing in re Oliver, 333 U.S. 257 (1948).

B. The determination as to whether an attorney's statement violate Rule 3.6 must be made by examining not only the statement itself, but also all the circumstances under which that statement was made. An appellate court reviewing the imposition of Rule 3.6 sanctions cannot defer to the trial court's determination, but must make an independent review of these circumstances.

Having rejected an approach that would apply the literal language of the rule ("related to the character, credibility, reputation or criminal record of a witness or party") as a presumption, the Court in Gentile further ruled that an attorney can be found to have

violated the Rule only if it is shown that the remarks did in fact create a substantial likelihood of material prejudice," and only if it can further shown that the attorney "knew or reasonably should have known" of this. Whether there was such a "substantial likelihood of material prejudice" and whether the attorney "knew or should have known," of this, the Court held, can be determined only by examining all the circumstances under which the statement was made..

Because such cases raise important First Amendment concerns, the Court held, the appellate court cannot simply defer to the lower court's findings. Rather, "in cases raising First Amendment issues. . . an appellate court has an obligation to 'make an independent examination of the whole record' in order to make sure that 'the judgment does not constitute a forbidden intrusion on the field of free expression." Gentile, 501 U.S. at 1038, citing Bose Corp. v Consumers Union, 446 U.S. 485 (1984).

The Supreme Court then proceeded to make that "independent examination of the whole record," reviewing for itself

> the statements in issue and the circumstances under which they were made to see whether or not they do carry a threat of clear and present danger to the impartiality and good order of the courts or whether they are of a character which the principles of the First Amendment, as adopted by the Due Process Clause of the Fourteenth Amendment, protect."
> Gentile, 501 U.S. at 1038.

The factors the Court found relevant, in concluding that Attorney Gentile's extrajudicial speech was protected by the First Amendment and did not violate the Trial Publicity Rule, included the following:

- Gentile's comments did not come near to creating the kind of "barrage of publicity" to which a community may be subjected, and still allow a court to find that the parties can obtain a fair trial by impartial jurors;

- Gentile was not in any way trying to materially prejudice an adjudicative proceeding, but rather to stop a wave of publicity that he feared might prejudice potential jurors against his client and injure his client's reputation in the community;

- The news media were covering far more than Gentile's press conference, and the entire circumstances under which police evidence had disappeared was under public scrutiny;

- The news media had also reported on a police press conference and a prosecutor's comments concerning the indictment of Gentile's client;

- Much of the information provided by Gentile had been published in one form or another by others, and the remainder was available to any journalist willing to do a little investigative work; the Court emphasized that the extent to which information has already circulated was highly relevant to the question of whether the attorney's statements had, in fact, a likelihood of prejudice;

- When the case finally came to trial, the trail judge questioned the jury venire about publicity, and none seemed affected by the publicity that had surrounded the case;

- At the trial itself, information was presented that had earlier been disseminated by Gentile, including his questioning of the motives and credibility of witnesses; thus Gentile's public statements had not informed potential jurors of facts or opinions other than those they would hear in court.

Based on this independent review of the circumstances as a whole, the Court concluded that there was "no support for the conclusion that [Gentile's] statements created a likelihood of material prejudice, or indeed of any harm of sufficient magnitude or imminence to support a punishment for speech." 501 U.S. at 1048.

In his press release, Attorney Gentile called potential witnesses liars, drug addicts and criminals, and he charged the prosecuting police with using his client as a scapegoat in a cover-up. If these comments were found to be protected by the First Amendment, then the Attorney General's much milder expression of frustration, such as his oblique reference to "those who would twist and spin the facts," and his reference to some pre-trial tactics as "despicable" are clearly speech protected by he First Amendment. Thus they cannot be the

basis for a finding of either a violation of Rule 3.6 or contempt of the court's order to comply with Rule 3.6.

This is especially so when examined those words are examined, as they must be, in the context of the entire case. That context included the ongoing, widespread public debate about lead paint, whose participants included community activists, politicians, industry spokespersons, schools and many others. The context also includes the fact that attorneys and spokespersons for the defendant lead paint companies were also speaking to the press. In addition, the attorneys descriptive words were no more than mere vernacular language describing the State's legal positions and the claims they were making in court. More formal versions of the same arguments and claims were being presented to the court itself and to the jury. Such information was available to the media even without the Attorney General's remarks, and for this reason as well cannot constitute a basis for sanctions. t

C. The Attorney General's Remarks were protected by the "safe harbor" provisions of Rule 3.6 (c).

The Court in Gentile identified the "safe harbor" provisions of Nevada's Rule 177(3) as another reason why Attorney Gentile could not be found to have violated Nevada's Trial Publicity Rule. Nevada's Rule 177(3) is identical to Rhode Island's Rule 3.6(c). The Court noted that Nevada's Rule 177(3) provides that, notwithstanding the previous sections of the rule, a lawyer "may state without elaboration . . . the general nature of the claim or defense." Emphasizing the word "notwithstanding," Court construed this to mean that a lawyer could describe the general nature of the claim or defense without elaboration, even if in doing so he commented on the character, credibility, reputation or criminal record of a party or witness, *and* even if he knew or reasonably should have known that the statement would have a substantial likelihood of materially prejudicing an

adjudicative procedure. 501 U.S. at 1048. Noting that Gentile himself believed that his statements were protected by Rule 177(3), the Court observed that the right to explain the "general" nature of a claim or defense without "elaboration" incorporated such vague terms of degree as to make it impossible for the attorney to determine when his words passed from the "safe harbor" to the "forbidden sea." 401 U.S. at 1048-9. Citing the First Amendment's prohibition against vague regulations of speech, the Court struck down Gentile's reprimand on this basis as well.

Similarly in the instant case, a number of the comments for which the Attorney General was sanctioned were no more than public explanations, in the vernacular rather than more formal legal language, of the general nature of the State's claims and the State's perception of the defendants' defenses. In the area of freedom of speech, the Attorney General should not more be left to guess at what speech may subject him to sanction than any other citizen.

IV. The First Amendment protects the right to express and to hear opinions at a meaningful time, place and manner. This includes the right to communicate about social and political controversies while those controversies are current, and in particular the right to communicate about lawsuits that involve controversial social and political issues while those lawsuits are taking place. The Trial Court's broad ban on "making any subjective characterizations of the defendants or any of them or of their agents, servants or attorneys" violates these rights.

The First Amendment protects the right to communicate about social and political controversies not only during periods of relative calm and disinterest, but also during those times when the controversies are current, including those periods when litigation related to those controversies is ongoing. See Bridges v California, 314 U.S. 252 (1941), where the U.S. Supreme Court reversed contempt findings against a newspaper that had stridently criticized a judge in a pending case for being too "soft" on labor activists and against a

labor leader, Harry Bridges, who had released to the press a telegram he had sent to the Secretary of Labor threatening to call a major strike if the judge in a pending case issued an anticipated adverse ruling against union activists.

The lower courts had ruled the contempt findings appropriate because the sanctioned parties had made their critical or threatening statements during the time that the cases in question were being litigated.

The Supreme Court rejected this rationale, and ruled, to the contrary, that the fact that the sanctioned statements had been made while litigation was pending meant that both sets of expressions were particularly timely and were entitled to First Amendment protection. As the Court explained:

> It must be recognized that public interest is much more likely to be kindled by a controversial event of the day than by a generalization, however penetrating, of the historian or scientist. Since they punish utterances made during the pendency of a case, the judgments below therefore produce their restrictive results at the precise time when public interest in the matters discussed would naturally be at its height. Moreover, the ban is likely to fall not only at a crucial time but upon the most important topics of discussion. Here, for example, labor controversies were the topic of some of the publications. Experience shows that the more acute labor controversies are, the more likely it is that in some aspect they will get into court. It is therefore the controversies that command most interest that the decisions below would remove from the area of public discourse.
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> No suggestion can be found in the Constitution that the freedom there guaranteed for speech and the press bears an inverse ratio to the timeliness and importance of the ideas seeking expression. Yet, it would follow the practical result of the decisions below that anyone who might wish to give public expression to his views on a pending case involving no matter what problem of public interest, just at the time his audience would be most receptive, would be as effectively discouraged as if a deliberate statutory scheme of censorship had been adopted. . . .
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> This unfocussed threat is, to be sure, limited in time, terminating as it does upon final disposition of the case. But this does not change its censorial quality. An endless series of moratoria on public discussion, even if each were very short, could hardly be dismissed as an insignificant abridgement

> of freedom of expression. And to assume that each would be short is to overlook the fact that the "pendency" of a case is frequently a matter of months or even years rather than days or weeks.
> Bridges v California, 314 U.S. at 268-9.

Similarly in the instant case, public interest in lead paint poisoning was extremely high during the pendency of the case now on appeal before this Court. Media coverage was extensive, with newspaper and television reports on the health hazards of lead paint, the methods and potential costs of abatement, and the viewpoints expressed by public health professionals, consumer advocacy groups, homeowners and landlords, lead paint industry spokespersons and the Attorney General on behalf of the State. The court proceedings were not been immune from this public interest; to the contrary there was extensive media coverage of the litigation case, including reports describing motions filed, allegations made, witness testimony, and Trial Court rulings. In short, throughout the pendency of this litigation, and especially during the trial itself, public interest in both the case and in lead paint in general has been high.

The freedom, of the trial attorneys involved in this case to express their views on lead paint, whether medical, economic, moral, political, or legal, cannot constitutionally be subject to broad restraints just at the time the public is most receptive to hearing those views.

V. The Trial Court's Order Directing the Attorney General to "cease and desist from making any subjective characterization of the defendants or any of them or of the agents, servants or attorneys" is impermissible both as a prior restraint on speech, and as being overbroad and vague.

On December 6, 2005 the Trial Court entered an order trial, earlier issued orally on November 28, 2005. This new ordered amended its prior order of November 2, 2005, and added the following proscription:

> 5. The Court directs the Attorney General to cease and desist from making any subjective characterizations of the defendants or any of them or of their agents, servants or attorneys.
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> Trial Court Order, 6/2/06.

This order not to make "any subjective characterizations of the defendants . . ." clearly goes far beyond a mandate to comply with Rule 3.6.

As noted by this Court in its Order of June 15, 2006 in this case, such an order constitutes a prior restraint on speech. There is "a heavy presumption against [the] constitutional validity of governmental action which constitutes a prior restraint. New York Times Co. v United States, 403 U.S. 713 (1971); Near v Minnesota, 283 U.S. 697 (1931); Matter of Providence Journal Co., 820 F. 2d 1342 (1st Cir. 1986), modified on rehearing, 820 F. 2d 1354 (1st Cir. 1987 (*en banc*), cert. dismissed, 485 U.S. 693 (1988.) You *amicus curiae* submits that Rule 3.6 of the Code of Professional Conduct sets the outer limits of speech that can be curtailed by such prior restraint, and that the much broader restraints on speech contained in the Trial Court's Order of 6/2/06 are constitutionally impermissible.

The order is further violative of the basic principle that government regulations that affect free speech cannot be vague or overbroad, because vague or overbroad regulations have a chilling effect on an individual's willingness to exercise his First Amendment rights. "Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." NAACP v Button, 371 US 415 at 433 (1963).

A ban on speech is unconstitutionally overbroad when it is drawn so broadly that it forbids constitutionally protected activity. Kolender v Lawson 461 US 352 (1983). When

an overbroad gag order has been issued, courts have ruled that the conduct allegedly in contempt of such an order does not come within the definition of contempt. In re Little, 404 US 553, (1972); In re McConnell, 370 US 230 (1962); In re Dellinger 461 F. 2d 389, 398-99 (7th Cir. 1972) aff'd on reh. 502 F. 2d. 813 (1974) cert den. 420 US 990. See Dombrowski 380 at 487, noting that the chilling effect of an overly broad limit on constitutionally protected conduct cannot be remedies when "the contours of regulation would have to hammered out case-by-case and tested only by those hardy enough to risk criminal prosecution to determine the proper scope of regulation."

In this case, for example, Attorney General Lynch's comment to the Providence Journal that opposing counsel John Tarantino had done a "fine job" representing his client comes within the strictures of this order, and is sanctionable. Clearly such a prohibition on trial counsel's speech is both vague and overbroad, sweeping into its realm any number of innocent and otherwise constitutionally protected "subjective" comments.

Conclusion

By reason of the above points and authorities, the Trial Court's order that the Attorney General cease and desist from making any subjective characterizations of the defendants or any of them or of their agents, servants or attorneys should be declared in error and unconstitutional. Additionally, the Trial Court's findings that the Attorney General was in contempt of court by virtue of his out-of-court statements and website notice should be reversed and the sanctions imposed based on those findings removed.

Respectfully submitted,

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CERTIFICATION

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