SZAFERMAN, LAKIND, BLUMSTEIN
BLADER & LEHMANN, P.C.
By: Arnold C. Lakind, Esq.
101 Grovers Mill Road, Suite 104
Lawrenceville, NJ 08648
(609) 275-0400
Attorneys for Respondent

IN THE MATTER OF WILBUR H. MATHESIUS, JUDGE OF THE SUPERIOR COURT	SUPREME COURT OF NEW JERSEY ADVISORY COMMITTEE ON JUDICIAL CONDUCT DOCKET NOS.: ACJC 2005-072 & 2005-103 ANSWER

Superior Court Judge Wilbur H. Mathesius, by way of Answer to the Formal Complaint of the New Jersey Supreme Court Advisory Committee on Judicial Conduct, says that:

AS TO COUNT I

1. Respondent admits the allegations of Paragraph 1.

2. Respondent denies the allegations of Paragraph 2, insofar as, in 2001, he was a Judge in the Municipal Court. All other allegations of this paragraph are admitted.

3. Respondent admits the allegations of Paragraph 3.

4. Respondent denies the allegations of Paragraph 4 except that he admits that, on February 3, 2005, after the jury had delivered its verdict, it returned to the jury room to prepare to leave the court house. Respondent did enter the jury room to thank them for their service and to answer any questions they might have had.

5. Respondent denies the allegations of Paragraph 5, except that he admits that he made a statement to the Defendant in the presence of the jury, as more particularly described in Exhibit A.

6. Respondent denies the allegations of Paragraph 6 except that he admits (a) that he made a statement to the Defendant in the presence of the jury, as more particularly described in Exhibit A; and (b) that, after the jury rendered its verdict, he entered the jury room to respond to any inquiries from the jury.

7. Respondent denies the allegations of Paragraph 7 except that he admits (a) that he made a statement to the Defendant in the presence of the jury, as more particularly described in Exhibit A; and (b) that, in certain responses to questions from jurors, he did comment on the evidence.

8. Respondent denies the allegations of Paragraph 8, insofar as all remarks, except as set forth in the response to Paragraph 4, were made in open court. Respondent believes that counsel were aware of the fact that it was the Court's practice to visit with the jury after verdict, to personally thank them for their service and to respond to questions. It was Respondent's practice to discuss the juror's comments with counsel insofar as the comments related to counsel's trial techniques.

9. Respondent made the statements set forth in Exhibit A. They were not directed to the jury; they were directed to the Defendant.

10. Respondent denies the allegations of Paragraph 10.

Attached as Exhibits B, C and D are three unsolicited letters from jurors in the case, thanking the Judge for his consideration.

AS TO COUNT II

1. Respondent repeats his responses to the allegations contained in Count I of the Complaint as if such responses were set forth fully and at length herein.

2. Respondent admits the allegations of Paragraph 2.

3. Respondent admits the allegations of Paragraph 3. Given the serious concerns relating to security, the Respondent thought it would have been imprudent to have the defendants returned to the court room for jury dismissal. Two incarcerated individuals, charged with felony murder, were being detained in another building. Respondent believed it posed an unnecessary risk to return the defendants, who were aggressive and vociferous during trial, to the courtroom for jury dismissal.

4. Respondent admits the allegations of Paragraph 4.

5. Respondent admits the allegations of Paragraph 5, but notes that his conduct was motivated by a concern for security.

6. Respondent admits the allegations of Paragraph 6, but notes that his conduct was motived by a concern for security.

7. Respondent denies the allegations of Paragraph 7, insofar as he believes that the Sheriff's Officer, not the Respondent, informed the jury that they were released.

8. Respondent denies the allegations of Paragraph 8.

9. Respondent denies the allegations of Paragraph 9.

10. Respondent admits the allegations of Paragraph 10.

11. Respondent admits the allegations of Paragraph 11.

12. Respondent admits the allegations of Paragraph 12.

13. Respondent admits the allegations of Paragraph 13.

14. Respondent denies the allegations of Paragraph 14.

15. Respondent denies the allegations of Paragraph 15, as the language does not constitute a commendation.

16. Respondent denies the allegations of Paragraph 16.

17. Respondent denies the allegations of Paragraph 17.

AS TO COUNT III

1. Respondent repeats his responses to the allegations contained in Count II of the Complaint as if such responses were set forth fully and at length herein.

2. Respondent admits the allegations of Paragraph 2.

3. Respondent admits the allegations of Paragraph 3.

4. Respondent admits the allegations of Paragraph 4.

5. Respondent admits the allegations of Paragraph 5, except that he denies that his comments gave rise to a reasonable perception that he was biased and lacked fairness in such a case, although he acknowledged that his comments were not appropriate.

6. Respondent denies the allegations of Paragraph 6.

7. Respondent denies the allegations of Paragraph 7.

AFFIRMATIVE DEFENSE

First Affirmative Defense

Respondent denies that his conduct constitutes a violation of the Code of Judicial Conduct.

Second Affirmative Defense

Insofar as Defendant's conduct may have been wrongful, it was an error of judicial judgment, and not marked with moral turpitude which reveals a shortage of integrity and character. In re Mattera, 34 N.J. 259, 270 (1961).

SZAFERMAN, LAKIND, BLUMSTEIN, BLADER & LEHMANN, P.C.
Attorneys for Respondent

By: _____
Arnold C. Lakind, Esq.

Dated: November 14, 2005

EXHIBIT A

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MERCER COUNTY
IND. NO. 04-07-0469

THE STATE OF NEW JERSEY,	)	STENOGRAPHIC TRANSCRIPT
	)	
vs.	)	OF
	)	
DEANDRE MC DANIELS	)	VERDICT
	)	
Defendant	)	

PLACE: Mercer County Courthouse
209 South Broad Street
Trenton, New Jersey 08650
DATE: February 3, 2005

B E F O R E:

HONORABLE BILL MATHESIUS, J.S.C. AND A JURY

Transcript Ordered By:

A P P E A R A N C E S:

JOSEPH L. BOCCHINI, JR.,
PROSECUTOR - MERCER COUNTY
BY: S. VINET BRYANT, ASSISTANT PROSECUTOR
For the State of New Jersey

AZZMEIAH R. VASQUES, ESQ.
For the Defendant

* * * * * * *

LAURA E. CAREY, CSR,
Mercer County Courthouse
209 South Broad Street
Trenton, New Jersey 08650

A-2

(Jury enters courtroom 4:30.)
THE COURT: Please be seated, folks.
All right, ladies and gentlemen, I have received your second note which was unanticipated but appropriate nevertheless.
Mr. Morrison, ask I ask you stand, please. Mr. Morrison, the note indicates that you have reached a verdict. I ask is that true?
THE FOREPERSON: Yes, that's correct.
THE COURT: Is the verdict unanimous?
THE FOREPERSON: Yes, it is.
THE COURT: Would you respond to the question of the clerk.
THE CLERK: Question one, how do you find as to count one of the indictment charging the defendant, Deandre McDaniels, with unlawful possession of a handgun, in that on or about the 8th of day November, 2003, he did knowingly have in his possession a handgun without having obtained a permit to carry a handgun, not guilty or guilty?
THE FOREPERSON: Not guilty.
THE COURT: Okay, ladies and gentlemen, stand, please.
Mr. Morrison, is that your verdict?
(The jury is polled and the verdict stands

as previously reported.)
THE COURT: Mr. McDaniels, I ask you to stand.
You are, sir, a very, very, very lucky man. The evidence was very strong that you were guilty of this offense. I don't know what they were thinking, but they're thinking other than what I was thinking. You have a number of convictions and I'll tell you this: If you find yourself in trouble again, the resolution of the case is other than the windfall you received today, do you understand how lucky you are, Mr. McDaniels? Do you understand that?
THE DEFENDANT: Yes.
THE COURT: I hope you do. I hope that you take this opportunity to straighten your life out and not play games with guns shooting them in the air. Do you understand what I'm saying, Mr. McDaniels?
THE DEFENDANT: Yes.
THE COURT: But for the fact that something happened with the other defendant and he got scared and didn't testify, that may have changed the jury's verdict. Mr. Williams' testimony was one of the most credible witnesses this Court has ever seen. I'm going to tell you, you have a girlfriend out there, you better look in the mirror tonight when you go home and

say I dodged five years in jail by some God unknown occurrence. 12 people listened to the testimony and somehow didn't believe not only the direct testimony, but the circumstantial evidence that you took the gun and shot it in the air, walked in front of Mr. Williams and walked out into the field and buried it or had Kafarr Logan bury it so that may be a change in your life, I hope it is, because if it's involved with gangs and drugs and any of the screwing around with guns or drugs or anything more, you're going to end up with your ass in jail. Do you understand? I don't want that to happen.

Now I want you to look and thank God, get on your hands and knees tonight and thank God that this jury didn't see the forest for the trees. Do you understand what I'm saying to you, sir?

THE DEFENDANT: Yes.

THE COURT: All right. I hope you take this as an omen and change your life a little bit.

Good luck.

THE DEFENDANT: Can I say something, your Honor?

THE COURT: No you can't. You're excused.

Ladies and gentlemen, you're excused as well as everybody else is excused.

(Jury exits courtroom 4:35.)

CERTIFICATE

I, LAURA E. CAREY, Certified Shorthand Reporter, License Number 766, an official court Reporter in and for the State of New Jersey, do hereby certify the foregoing, to the best of my knowledge, to be prepared in full compliance with the current transcript format for judicial proceedings and is a true and accurate compressed transcript to the best of my knowledge, skill and ability.

Date: 2-7-05

LAURA E. CAREY, CSR
Official Court Reporter
Mercer County Courthouse

** TITLEPAGE.07 **

EXHIBIT B

February 3, 2005

Judge Bill Mathesius
Mercer County Superior Court
175 S. Broad St., 2nd floor
Trenton, NJ 08650-0068

RECEIVED
FEB 08 2005
The Chambers of
Judge Mathesius

Your Honor:

I was just on the jury for the trial of Deandre Mc Daniels vs. the State. While it may be immaterial at this time, I feel I must share my thoughts with you regarding the trial. As it weighs heavily on my mind, there are some issues I need to bring out. It was a rewarding, albeit upsetting, experience. It confirmed my belief in myself while I find I am chastising myself for not listening to my conscience more, and for not giving greater value for my perspective of the entire picture.

I was one of the last two jury members to maintain a guilty verdict. I thought Mr. Williams' testimony was credible and I admired him for taking the witness stand. I was of the opinion that he did so at his potential peril and I was concerned for his welfare. I voiced this to other members, who seemed to think it irrelevant. I am now very concerned for his welfare after you told us about Mc Daniels' threats to the other witness, who was intimidated into not testifying. If something happens to Mr. Williams, I feel we the jury are guilty by association. Most of the members of the jury seemed to maintain a fatalistic way of thinking that says that when it is your turn to die, it will happen somehow. One guy said that if Mc Daniels is in jail he could send one of his friends to exact some "street justice" on Williams, an obtuse argument in my view, since personal vendettas tend to be just that.

I have always been the type of person to look at the bigger picture, to see the forest for the trees, as you fairly said the jury failed to do. I looked for cues about Mc Daniels' character in his demeanor, the way he dressed, and even minor, seemingly unrelated things like the fact that he did not seem to have any family present in the courtroom. I thought that his family, being fed up with his criminal ways, might have given up on him. I thought it was interesting that the only person there for him was his not-very-bright looking girlfriend. I thought he looked kind of thuggish. I noticed that he kept his jackets on through the trial. To me that communicates a defensive posture. I noticed how he was glowering when the prosecutor gave her closing statement. Why did he give an alias? I thought to myself, "This is a dangerous man." I've lived in this city for 8 years, and I've become aware of whom to watch out for and how to size people up. But I was told, in so many words, that that kind of judgment has no place in the jury room. Has that form of judgment been politically corrected out of existence? I find I must rely on it on a regular basis. To learn that I was correct was infuriating.

I am of the opinion that the prosecutor rendered a better argument and was more professional in presentation. Feel free to share this letter with her if you see fit. The defense was weak, and there were a few times when she came across more like an actress reciting lines, trying to create some drama that did not exist. I'd like to think I have some inkling of when someone is lying, and I thought she was, or at least not telling the whole story. My peers in the jury seemed to think the discomfort she communicated was due to her pregnancy. My experience with and reading about non-verbal communication told me otherwise.

Like you, I am deeply concerned about the level of violence in my city. Besides the obvious reasons, like the pain and suffering that it causes, it affects the city economically. Every time someone shoots a gun in this city my property values go down, along with the property values of everyone else in this city. When Trenton is ranked as having the 4th highest crime rate for a city of its size in the country, it impacts the ability of the city to attract employers and other forms of investment. As someone who has chosen to invest in the city, I would like to see it become a more desirable place to live. When Mc Daniels and his ilk perform stunts like this, they are in effect *stealing* from the people of Trenton. They are stealing the possibility of experiencing rises in home value comparable to the suburbs, of easily accessing gainful employment, and above all, the right to a peaceful, safe place to live. It galls me that in a "free" country there are places in my own city

where I am not free to go without risking my safety. It worries me that Mr. Williams is probably not feeling very "free" at this moment and is watching his back. While my neighborhood is considered one of the safer ones in Trenton, I can't flee to my enclave in the suburbs at night like most of the other jurors, secure in the idea that the consequences of my actions are someone else's problem.

So why then, did I change my mind? I can only attribute it to the psychological phenomenon known as "group-think". The others in the jury were more interested in dissecting the minutiae of how much Mr. Williams could have seen from the window, and in making irrelevant my inferences about the character of Mc Daniels. One of them even told me that I had "missed the boat" in reference to how we are supposed to consider the question. I guess I allowed myself to be intimidated. This was my first actual jury experience. While it is a moot point as far as this trial is concerned, you can be sure that I will be more confident in my judgment if I ever find myself on a jury again. This is not the first time that discounting my judgment of a character has had a negative result, so if there is any good that has come out of this, it is a belief in my own judgment and intelligence. Although that offers you nothing at this time, hopefully it can in the future. It was of good cathartic value for me to write this, and maybe I just need to say "I'm really not a moron despite my moronic verdict!" I have wondered how some juries could reach seemingly idiotic verdicts, and now I have seen how it can happen. Jury duty really was an interesting experience. I hope you have found this of some value and I thank you for your time.

Sincerely,

Tim Troxler

EXHIBIT C

266 Moore Street
Princeton, NJ 08540-3476
5 February 2005

The Honorable Bill Mathesius
Mercer County Court House
P. O. Box 8068
Trenton, New Jersey 08650-0068

Dear Judge Mathesius:

I was a member of the jury on the trial of the State of New Jersey versus DeAndre McDaniels. The unfolding of events after we delivered our verdict distressed me greatly, and out of respect for you, I wanted to offer a few pieces of information.

I simply wanted to say that right from the start on Thursday afternoon, those in favor of a not guilty verdict were in the majority. This was a great surprise to those of us persuaded by the eyewitness testimony. As the discussion proceeded we learned that many favoring a not guilty verdict were firmly convinced, whereas those favoring a guilty verdict were uncertain in varying degrees. We never doubted the witness's honesty, but were unsure how he identified so precisely a very small gun in a very large hand. Thus, in my opinion, the only other possible outcome of this week's trial would have been a jury unable to reach a verdict.

Despite the final outcome, it was an honor for me to sit in your courtroom. I am encouraged to see that justices with your integrity are serving our state. I especially appreciate that you were open with us after the trial. My family and I pray with you that this break might indeed have a positive effect on Mr. McDaniels.

Sincerely,

Christopher Baldwin

Christopher Baldwin

RECEIVED
FEB 07 2005
The Chambers of
Judge Mathesius

B-3

EXHIBIT D

February 2, 2005

Dear Judge Mathesius:

I was a juror on the McDaniels trial which concluded recently with a not guilty verdict. I will not identify myself and would prefer to reamain anonymous. While I ended up voting with the majority I had serious doubts about the outcome of the case. At the end of the day I guess I had "reasonable doubt" but now believe that neither I nor members of the jury really understood the term as it is defined in the court's instructions. I believed the state's witness as to the guy having the gun but there seemed to be a lot of discussion about things that had nothing to do with the trial – the city, the life of the people at Black Jacks, and, frankly, some of the jurors felt bad for the defense attorney who seemed inadequate to the task.

The reason that I write is to thank you for talking with us after the trial. Most of the jurors were distressed during deliberations. We had sent a question and had others but suddenly it seemed everyone said the hell with it, let it go. Your answers to our questions were helpful to me and other jurors with whom I spoke on the bus going back for our cars. I was proud to be involved in the process and was impressed with the dignity and personality you brought to the case. Despit how the case turned out, it was as you suggested, greater than television and was "reality."

Thank you again for sharing your thoughts in the jury room. It brought closure to the case for me and for other jurors.

B-5