
**IN THE COURT OF APPEALS
OF MARYLAND**

September Term, 2006

No. 71

NIKOS STANFORD LIDDY,

Appellant,

v.

LINDA LAMONE, et al.,

Appellees.

On Appeal from the Circuit Court for Anne Arundel County
(Ronald A. Silkworth, Judge)
Pursuant to a Writ of Certiorari to the Court of Special Appeals

APPENDIX TO BRIEF OF APPELLEE DOUGLAS F. GANSLER

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October 31, 2006

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND

NIKOS STANFORD LIDDY

Plaintiff,

v.

LINDA LAMONE, in her capacity as
STATE ADMINISTRATOR
OF ELECTIONS, *et al.,*

Defendants.

Case No. C-06-117729

* * * * *

AFFIDAVIT OF DOUGLAS F. GANSLER

I, Douglas F. Gansler, hereby affirm that:

1. I was admitted to practice law in Maryland in December, 1989, and have been a member in good standing of the Bar of the State of Maryland continuously ever since. I have been a practicing lawyer since I was admitted to the Bar. Since 1989, I have held myself out to the public, and otherwise represented, that I am admitted to practice law in Maryland, and I have, in fact, literally practiced law in Maryland continuously since then, as described in more detail below.

2. I was admitted to the Bar of the State of Maryland while I was a law clerk for the Honorable John McAuliffe, Judge, Maryland Court of Appeals. In that capacity, I was called upon to analyze and apply legal principles, as requested by Judge McAuliffe.

3. Following the completion of my clerkship with Judge McAuliffe, in August, 1990, I became an associate in the Litigation Department of Howrey & Simon, a national law firm with its principal place of business in Washington, D.C. At the time, Howrey & Simon

represented numerous national clients, including clients with business interests in Maryland. The work I did while an associate included representing corporations that did business throughout the United States, including Maryland. As a young associate, I did not have an opportunity to appear in court in Maryland on behalf of any of Howrey & Simon's clients, but at all times during my employment both the law firm and I represented to the public that I was licensed to practice law in Maryland and able to provide advice and representation to any client in Maryland.

4. From 1992 through 1998 I served as an Assistant United States Attorney for the District of Columbia. In that capacity, I prosecuted over 1,000 cases involving almost every conceivable type of crime, including public corruption, hate crimes, narcotic trafficking, sex offenses, child abuse, economic crimes, gang-related violence and homicides. All these cases were prosecuted in the local and federal courts in the District of Columbia.

5. The Department of Justice prohibited its Assistant United States Attorneys from engaging in the private practice of law, but allowed us to provide pro bono services that included the practice of law and I did so.

6. From 1990 through 1992, I served on the Montgomery County Community Partnership, an organization that dealt with drug use in the Montgomery County community. I drew on my legal education, training, and experience to assist in the work of the Partnership; in fact, I was selected because the Partnership wanted an attorney to participate. Meetings of the Partnership and my preparation for the Partnership meetings took place in Maryland.

7. From 1990 through 1993, I served as a member of the Montgomery County Commission on Aging. In that capacity I advised the Commission from time to time on questions involving legal principles that affected the Commission's work, such as the jurisdiction

of various federal, state and county entities to deal with some of the problems facing our elder citizens in Maryland. Meetings of the Commission and my preparation for Commission meetings took place in Maryland.

8. From approximately 1994 through 1998, I was first a member and then Co-Chair of the Montgomery County NAACP Criminal Justice Committee. In that capacity, I assisted the Committee in identifying and analyzing legal issues in the criminal system affecting Montgomery County citizens. This work included reviewing complaints by and counseling individuals who alleged misconduct by the police, as well as identifying those cases that should or could be referred for litigation or other appropriate action because an individual's legal rights had been violated.

9. From 1996 until the present, I have served as an Adjunct Professor, at the Washington College of Law, American University in Washington, D.C. My preparation for classes took place in Maryland.

10. I was a civil litigator at the law firm of Coburn & Schertler from February, 1998, through January, 1999. During this time, the firm and I represented to the public that I was licensed to practice law in Maryland and able to provide advice and representation to any client in Maryland. During my year at Coburn & Schertler, I personally represented at least one Maryland resident in an ongoing matter and represented a client at depositions taking place in Maryland.

11. Since being admitted to practice law in Maryland in 1989, I have also conducted legal work, including drafting legal documents and providing analysis of legal rights to individuals, from my home in Montgomery County, Maryland, in connection with work performed for my employers and in connection with my pro bono responsibilities, as well as for

individuals, primarily personal acquaintances, friends and family members, who requested legal advice.

12. I was elected State's Attorney for Montgomery County in November, 1988, and assumed the office in January 1999. In my capacity as State's Attorney, I supervised all prosecutions brought in Montgomery County and appeared personally on behalf of the State on many occasions.


13. The description contained in paragraphs 2 through 12 is not intended to be exhaustive, nor is it intended to be an all-inclusive listing of every instance in which I engaged in the practice of law in Maryland.

14. During the seventeen years that I have held myself out as an attorney admitted to practice law in Maryland, I have resided in Montgomery County, Maryland, and have been actively involved in the civic and legal life of the County. Over these seventeen years, I have met literally thousands of citizens of Maryland, in Montgomery County and beyond. Throughout this time, it has been known and understood that, except when prohibited by other applicable laws or rules, I have been generally available to represent any citizen in the courts of the State of Maryland or otherwise to engage in the practice of law in the State. The development of this wide network of acquaintances has been part and parcel of, among other things, my establishment of a practice of law that I intend to pursue for the rest of my career, whether in the private practice of law or in public service.

15. I announced my candidacy for Attorney General on May 15, 2006. I filed my certificate of candidacy with the State Board of Elections on June 28, 2006.

16. I was declared the winner of last September's Democratic primary for Attorney General.

I hereby affirm under the penalties of perjury that the above statements are true to the best of my knowledge, information and belief.


Douglas F. Gansler

Dated: October 24, 2006

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1 THE COURT: Counsel.

2 MR. SHOEMAKER: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. SHOEMAKER:

5 Q Mr. Gansler, are you currently a candidate for
6 Attorney General of Maryland?

7 A Yes.

8 MR. SHOEMAKER: I believe we stipulated to the date
9 the candidacy -- the date the petition was filed. Correct?

10 BY MR. SHOEMAKER:

11 Q Mr. Gansler, are you familiar with Article 5,
12 Section 4 of the Maryland Constitution?

13 A Not by number.

14 Q Are you familiar with the constitutional
15 requirements to become the Attorney General?

16 A Yes. I read it before deciding to seek the office.

17 Q Have you practiced law in the State of Maryland for
18 10 years?

19 A I've practiced law in the State of Maryland for 17
20 years.

21 Q And on what do you base that statement?

22 A Well, I became a member of the Maryland State Bar on
23 -- I believe it was December 18th, 1989, and I've practiced law
24 every minute since that time. And as you mentioned the
25 constitutional provision, the constitutional provision, as I

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1 recall, requires you to be a -- one, to be a resident in
2 Maryland and practice in Maryland for at least 10 years.

3 To practice law in Maryland is defined in the
4 Unauthorized Practice of Law, which we prosecute as state
5 attorneys, and that requires to be a member of the bar and to
6 follow the rules of the Court of Appeals. So, I've satisfied
7 those.

8 Q So, it is your testimony that, at least based on
9 your interpretation, the constitutional requirement and the
10 phrase practice law has the same meaning as that in the
11 Unauthorized Practice of Law statute?

12 A Yes. With a slight modification. I believe that
13 being a member of the state bar -- it says 'shall' in the
14 language, and that is sort of the ticket to admission. In
15 other words, that is the threshold requirement. Above and
16 beyond that you have to practice law in the common usage of the
17 word.

18 For example, I believe there was a 1983 case
19 involving a dean of the University of Maryland Law School who
20 wanted to run for Attorney General, and the Attorney General's
21 opinion said that that person could run. In other words, it's
22 a very expansive view of what practice of law means.

23 I don't think, in my particular situation, we need
24 to get there because I've practiced law in anybody's
25 interpretation. In other words, at no time in those 17 years

1 was I, for example, taking a year off from the practice of law
2 to be a fifth-grade school teacher or something that clearly is
3 to practicing law.

4 Q During the 17 years that you have been licensed to
5 practice in the State of Maryland, but prior to your service as
6 State's Attorney, on how many cases are you docketed as the
7 attorney of record in the courts of Maryland?

8 A Physically? Where the Court is the soil of
9 Maryland?

10 Q Correct.

11 A I don't believe I would be docketed on any case
12 prior to my becoming a state's attorney. Yeah. I think that's
13 right. I was a clerk for the Court of Appeals actually at the
14 time I became a member of the state bar, but I don't think they
15 put those in the opinions or on the docket or anything.

16 Q Well, as I promised, I am going to keep this short
17 and sweet. I would like to go through the affidavit that you
18 submitted.

19 MR. SHOEMAKER: Does anybody have an extra copy of
20 it?

21 MR. : Your Honor, may I approach the witness
22 to provide him a copy?

23 THE COURT: You may.

24 MR. SHOEMAKER: Thank you.

25 THE WITNESS: Thank you.

1 BY MR. SHOEMAKER:

2 Q Obviously, you are familiar with the affidavit. Do
3 you need a minute to go through it again?

4 A No. I know what I've done and, for the most part,
5 the years that I did it.

6 Q Okay. You previously testified about your clerkship
7 at the Court of Appeals. In your affidavit you state you were
8 called upon to analyze and apply legal principles. Could you
9 just elaborate on that a little bit?

10 A Yeah. I was a law clerk, here were two of us, for
11 John McCollough on the Maryland Court of Appeals. We had our
12 own office and what we would do is we would be assigned to a
13 specific opinion that the Judge had been assigned to. Each of
14 us had our own opinion.

15 I would do a draft of that opinion and speak with
16 Judge McCollough quite often about it. Actually, we took walks
17 every day at lunch, and we would discuss the legal principles
18 and the opinion and then we'd sort of go back and forth. The
19 typical responsibilities of any appellate law clerk, which
20 would be obviously distinguishable from being a trial law clerk
21 where you're watching trials and that type of thing and not
22 doing opinions.

23 Q And to the extent that you recall, for how many
24 months after you were actually licensed did you act as Judge
25 McCollough's law clerk?

1 A I believe I was a law clerk until August of 1990,
2 because I believe I started working at Howery & Simon in early
3 September and took a couple of weeks off in between.

4 THE COURT: What year was that?

5 THE WITNESS: Your Honor, that was in -- I started
6 in August or September of 1989 and clerked. It was a
7 one-year clerkship. So, into August of 1990.

8 THE COURT: Okay.

9 BY MR. SHOEMAKER:

10 Q And I am assuming you were at least sworn into the
11 bar around December of that year?

12 A I was sworn into the bar in this city. I believe it
13 was -- yes. It was December of '89. I don't remember the
14 exact day. I believe it was the 18th.

15 Q I note that paragraph three of your affidavit
16 discusses your work as an associate at Howery & Simon. You
17 already stated you were not the attorney of record in any cases
18 in Maryland, but I believe your affidavit states you had
19 clients with business interests in Maryland. Could you
20 describe those?

21 A Yeah. I was -- I think most people know what a
22 first or second-year associate does. Those of us who are
23 lawyers certainly know what a first or second-year associates
24 does at a major law firm, which you don't really get into court
25 very much. You get to watch court sometimes.

1 But I was a litigation associate being supervised by
2 junior partners and partners, for the most part, and sometimes
3 senior associates on -- for clients. For the most part they
4 were fairly large clients. Anheuser Bush was one of the
5 clients. Calvin Klein was one of the clients that I worked.
6 Gatorade was one of the clients that I worked for. Carolina
7 Power & Light and Duke Power were clients in a nuclear steam
8 generator litigation against Westinghouse.

9 And I guess the reason why it says that they're
10 Maryland interests would be that most of these clients had
11 either retail facilities or some direct interaction with the
12 State of Maryland. But let me use just for an example
13 Gatorade, and this is going back a while.

14 But there was somebody who thought they had a
15 copyright to the phrase, "Gatorade, for that deep down body
16 thirst." Remember that? It was a slogan. And Gatorade was
17 saying that they had the rights to that slogan and this person
18 said he should be compensated.

19 Well, the changing of that slogan would happen on
20 all Gatorades that were in the State of Maryland for example.
21 I want to be clear. I never appeared in a courtroom on behalf
22 of any client during that two-year period while I was with
23 Howery & Simon.

24 Q And based on your former testimony as to at least
25 your interpretation of the term practiced law, would you

1 consider representing clients with national interests,
2 including Maryland interests, practicing law in the State of
3 Maryland?

4 A Of course. And I actually don't think it's my
5 interpretation. I'm certainly unaware of any legal precedent
6 whatsoever to suggest it's anything but that and that it ought
7 to be as broad an interpretation as possible.

8 But also, the other thing about it is the reason why
9 I was able to practice law, in other words, be a lawyer and
10 represent clients and go to depositions and so forth, was
11 because I was a member of the Maryland State Bar, subject to
12 its rules and practices. For example, I wasn't a member of the
13 Utah State Bar. It was only because of Maryland.

14 Also during that time period one of the things that
15 you like to do as a young associate in a law firm is be able to
16 bring in business and hold yourself out as available to bring
17 in business, and during the time that I was at Howery & Simon I
18 was certainly available to do that as well.

19 Q But you never did so?

20 A I don't think so. Not that I'm aware of. Not that
21 I remember. I certainly didn't bring in any major client. No.

22 Q I just want to clarify. Is it your, I guess,
23 contention that the license to practice law is obviously also a
24 necessary requirement of practicing law in a state?

25 A I think it's -- I believe it's membership in the

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1 state bar. It says you shall be a member of the state bar, and
2 that's what you have to be. If you were practicing law in the
3 state and you are not a member of the bar, you are doing so at
4 your peril because you are practicing the unauthorized practice
5 of law.

6 You need to be a member of the bar in order to
7 practice a law in this state, and you need to be a member of a
8 bar to practice law anywhere. A bar. My choice was to sit for
9 the Maryland Bar, and I did so in 1989.

10 Q So, you wouldn't assert that you were practicing law
11 in Utah, which you mentioned earlier as --

12 A That's right. Even if I were -- for example, when I
13 was working at Howery & Simon I went to Texas, I went to
14 Missouri, I went to New York, I went to North Carolina. Those
15 are the ones that stand out in my mind. I'm sure I went to
16 other places.

17 But I wasn't practicing law in those states as
18 defined in legal terms. The problem is, in sort of layperson's
19 terms, we think of, well, you're sitting in a conference room
20 in Raleigh, North Carolina, which I had to do for some time,
21 and I wasn't practicing law in North Carolina. I happened to
22 be physically sitting in North Carolina, but under the laws I
23 was practicing law in Maryland because I was using my Maryland
24 license to do it.

25 If I had done something unethical, let's say I had

1 stolen money from Carolina Power & Light, the North Carolina
2 Bar couldn't do anything to me because I wasn't a member of
3 their bar. But Maryland could, and that's why it's practicing
4 in Maryland, albeit physically located in a different location
5 at that moment.

6 And that is certainly a common thing in Maryland
7 because we have -- for example, a part of Maryland I'm from, in
8 suburban Maryland, many people who are partners in major law
9 firms live where I am, but they work downtown in D.C. law
10 firms. They may never set foot in a Maryland courtroom, but
11 they're practicing law in Maryland because that's the bar they
12 chose to adopt.

13 Q So I guess again, just to clarify, under that
14 rationale the mere licensing and being subject to the rules of
15 the Maryland court system is the practice of law, as you
16 understand it?

17 A No. that is the threshold requirement to be able to
18 practice law in Maryland. There is a case that, for example,
19 the Court of Appeals has not handed down yet, but it's an
20 opinion involving a Mr. Tom Perez, which that's what he was
21 lacking. In other words, he didn't have that particular
22 requirement. I did.

23 But the other component that needs to be there, and
24 it's a little bit -- I think it's unclear in the law, is
25 whether or not the person is a lawyer; is holding himself out

1 as a lawyer engaged in the practice of law as anybody would
2 understand that.

3 In my particular case as a law clerk and working in
4 a major law firm, working in a small law firm, as a federal
5 prosecutor and as a state's attorney who does try his own
6 cases, under anybody's definition I've been a lawyer those 17
7 years. I never took that time off to do some other -- engage
8 in some other livelihood. I've always been a lawyer.

9 Q We are not going to hear this often. I do agree
10 with your two component rule. I want to get into the meat of
11 clients with business interests in Maryland.

12 A Sure.

13 Q Your assertion that just having a client with a
14 business interest in Maryland, in conjunction with your license
15 to practice law in Maryland, is practicing law in Maryland.

16 A Yes. I don't think that's a requirement of it. I
17 think that's the last level. I think that the first level is
18 do you meet the legal requirements. That is, are you a member
19 of the bar and have you been practicing law; have you been
20 holding yourself out as a lawyer? That, I believe, is the
21 legal requirements.

22 What we're talking about in terms of what I did
23 every day or every month or every year literally, like was I
24 standing in Maryland, I think, first of all, is not the law,
25 nor could it be the law. It would be an unworkable standard.

1 You would have to say, well, you have to show up in court once
2 a week, once a month, once a year. Some people never go to
3 court. You have to show up in an office or take a deposition.

4 That would be an unworkable standard, and that's why
5 everywhere where this type of thing has been interpreted it has
6 been a very liberal interpretation of what constitutes the
7 practice of law. But I'm happy to engage in the conversation
8 regarding whether or not I've been in a Maryland courtroom and
9 that kind of thing.

10 Q Well, before we get to that, just hypothetically
11 speaking, you could be a member of bars of various
12 jurisdictions in the country. Correct?

13 A Well, you have to sit for the bar exam and pass it.
14 Yes.

15 Q Arguably, you can become a member of that bar and
16 licensed to practice law in that state?

17 A One can. Yes.

18 Q So, if you had -- you are a member of the D.C. Bar
19 I'm assuming?

20 A Yeah. I waived in.

21 Q Okay. If you have several memberships to the bar in
22 several jurisdictions and represent these national clients with
23 business interests everywhere, would you be qualified to be the
24 attorney general of say three or four different states?

25 A Yes. Well --

1 MR. : Objection.

2 MR. : Objection, Your Honor.

3 THE WITNESS: No. But I --

4 THE COURT: Wait a minute. Wait a minute,

5 Mr. Gansler. I heard an objection there somewhere.

6 MR. : Objection.

7 THE COURT: Okay.

8 MR. : Objection. Foundation, Your Honor.

9 THE COURT: Okay. Overruled. Thank you. You may
10 answer.

11 THE WITNESS: The answer is yes, and the answer is
12 yes because you would be practicing law under the auspices of
13 that state bar if the laws, again, were the same as -- in other
14 words, the constitutions in those states would have to be the
15 same as the Maryland Constitution. You would have to have a
16 constitutional provision, and the definition of practice of law
17 would have to be the same.

18 But speaking hypothetically, the problem that you
19 might have, if they were the same, is the residency
20 requirement. Now, I've lived in Maryland each and every
21 minutes of that 17 years. So, I don't think you're challenging
22 my residency as well, but that would be the difference.

23 So, if I lived in Maryland those 17 years and been a
24 member of six different bars, the only place I could run for
25 attorney general would be Maryland, because I imagine every

1 state has some -- it might not be 10 years, but every state has
2 some residency requirement under which you have to run for
3 attorney general.

4 BY MR. SHOEMAKER:

5 Q But separate from the residency requirement, it is
6 your testimony that you would be deemed to have practiced law
7 in every state you were barred in if you had clients with
8 national interests?

9 A It wouldn't be the clients of national interest. It
10 would be of moment. It would be if the law were the same; the
11 constitution were the same and the law were the same. Was I a
12 member of that state bar and was I practicing law? And if
13 those were the requirements, the answer would be yes.

14 The fact of the matter that I had clients with
15 national interests really is not relevant. But since we're
16 engaged in the conversation, it's in there because I want --
17 that's who I represented. I just happened to represent major
18 companies at a big law firm.

19 Q Okay. During your time as an assistant U.S.
20 Attorney in D.C. you were able to engage in pro bono legal work
21 outside of the District. Correct?

22 A Yes.

23 Q Could you just describe for the Court some of that
24 work?

25 A Beginning, I believe, in -- actually, prior to being

1 in the U.S. Attorney's Office I worked for something called the
2 Community Partnership, which was an organization dedicated to
3 creating a drug-free Montgomery County. It was a Montgomery
4 County organization and I was the one lawyer that was on the
5 committee that I'm aware of.

6 And what we did was we worked with people in terms
7 of making sure we had the proper treatment facilities in the
8 county, that there was accessibility for people to get into
9 treatment and that kind of thing.

10 I also was on -- I was appointed -- that was
11 something I joined or asked to be on. I can't remember which
12 it was. I was appointed by the County Executive at the time,
13 and I actually don't remember who it was, to the Montgomery
14 County Commission on Aging. It was either Neal Potter or Sid
15 Kramer. But that is something that you have to actually
16 appointed to.

17 And I was appointed not -- let me be clear. I was
18 not the general counsel of either of these things. I happened
19 to be a lawyer that was on the committee or the commission.

20 But I was on the Committee on Aging and during that
21 time period those meetings took place in Montgomery County. It
22 was the Montgomery County Commission on Aging. And we dealt
23 with a myriad of issues involving seniors in the county, but
24 some of them involved legal issues.

25 For example, the -- and I don't remember what the

1 piece of legislation was, but there's always a need or desire
2 to promote pro-seniors legislation, and I worked on that. I
3 don't know if it's legal service or not, but in 1994, in
4 compliance with the Hatch Act, which became less strict while I
5 was there, I served for Governor -- well, then County Executive
6 Glendening, who was running for Governor.

7 I did a lot of his criminal policy. In fact, I
8 wrote his criminal policy papers that ended up being part of
9 his distribution here in Maryland.

10 I was on NAACP beginning in about 1994 I believe
11 until I had to -- I thought it would be a conflict to be on
12 that when I became state's attorney. So I resigned in 1998.
13 But I've been a member of and then co-chair of the Montgomery
14 County NAACP Criminal Justice Committee, and that mostly was
15 legal work.

16 Those four years was mostly legal work in sort of
17 the -- when I say legal work, I'm using the pedestrian
18 viewpoint of it, which was people who thought that their
19 constitutional rights or legal rights were violated would write
20 letters or call the NAACP. That chapter of the NAACP would
21 meet on a monthly basis in the Aspen Hill area and review those
22 claims for merit or not.

23 They had a list of lawyers that they would recommend
24 that you should seek. You know, one of these lawyers. They
25 wouldn't recommend a specific lawyer. So I think that was as

1 well pro bono.

2 What I also did, which is not pro bono, was I taught
3 along with Judge DeLawrence Beard of the Circuit Court of
4 Montgomery County a class at American University Law School,
5 the Washington College of Law, which is also physically located
6 in the District of Columbia though.

7 During the course of the teaching, because he's a
8 Maryland judge, and at the beginning I was -- I still -- we
9 still teach that class. I was an Assistant United States
10 Attorney in the District, but then subsequently in Maryland.
11 We would talk about the differences in law between Maryland and
12 D.C. as a teaching tool.

13 Q Okay. Now, you mentioned four things. I'm going to
14 go from the latter to the forward and just ask some specific
15 questions.

16 A Sure.

17 Q Serving as an adjunct at American University you
18 state in your affidavit that preparation for classes took place
19 in Maryland. Is that correct?

20 A Yeah. And that goes back to Howery & Simon. As you
21 remember as a young associate, you have to work at home, and so
22 each night I would take -- unfortunately, it was almost each
23 night. I would take work home and do that physically located
24 in Maryland.

25 So the problem we're talking about are what happened

1 physically in Maryland versus not physically in Maryland and is
2 really legally different than factually. But I literally,
3 factually would prepare for the classes most often at home at
4 night, because I was doing my job during the day.

5 Q So, it is your assertion that preparing for an
6 American University Law School class while you were located in
7 Maryland is the practice of law in Maryland?

8 A I think it's irrelevant to the practice of law
9 legally, but because of the -- what the constitution says and
10 the statute says and sort of the workability of that. But I
11 mention it because there seems to be a concern with what
12 physically happened while located in Maryland, which I think is
13 -- seems outside of the realm of what the legal requirement
14 would be and ought to be. But since there is that suggestion,
15 yeah.

16 Q Okay. Now, you mentioned the NAACP Criminal Justice
17 Committee, and you mentioned that you were a member and a co-
18 chair?

19 A Yes.

20 Q Did all of the university co-chairs, I guess,
21 participate in identifying and analyzing legal issues and then,
22 I believe, referring these people to attorneys?

23 A Yes.

24 Q And were all --

25 A On a committee. I would say yes. On a committee.

1 Yes.

2 Q And were all of the members attorneys?

3 A No. Some were -- Linda Plummer at the time was the
4 head of the NAACP in Montgomery County, and she would attend
5 the meetings usually. Not always, but usually. I don't -- I
6 think she sells real estate. So I don't think she's a lawyer.

7 So she would -- she had more of an administrative
8 function, in the sense of bringing these to us, and then the
9 people on the committee -- and this was not a big committee.
10 This would be three or four or five us usually on any given
11 night. We were in a public school that was open at night. We
12 would meet and parse through these different complaints.

13 Q So based on, I guess, the interpretation of practice
14 law, as the definition in the Unauthorized Practice of Law
15 Statute, is it your contention that these individuals on the
16 committee who are not attorneys were engaged in the
17 unauthorized practice of law?

18 A No.

19 Q But you were engaged in the practice of law while
20 you were doing the same thing?

21 A I was engaged in the practice of law when I was
22 playing basketball at the gym because somebody I was playing
23 with could hire me as their lawyer at any time, and I held
24 myself out as a lawyer in the State of Maryland, because that's
25 the only place I could walk into a courtroom if someone hired

1 and because during the daytime I was not doing something
2 irrelevant.

3 In other words, I was a federal prosecutor. So, I
4 was being a lawyer. I was looking at law books, I was
5 prosecuting criminals and so forth. So, that is why I
6 satisfied the requirements for 17 years.

7 The fact that I also decided to try and help my
8 community by being on the NAACP Criminal Justice Committee, the
9 reason why that's in the affidavit, is because there was some
10 suggestion by somebody, I don't really know who it is, that you
11 have to physically be sitting in soil on Maryland, which I
12 don't think is a requirement anywhere in the nation, but that's
13 what we're discussing.

14 So, I was physically sitting on the soil of Maryland
15 when I was reviewing these cases for the NAACP.

16 Q A few more and then I'm done. Paragraph 11 of the
17 affidavit I find, personally, vague. So I just want to get a
18 little more detail. It states, "I've also conducted legal
19 work, including drafting legal documents and providing analysis
20 of legal rights to individuals from my home in Montgomery
21 County." Could you describe exactly what you meant by that
22 paragraph?

23 A You know, one of the things that you find when
24 you're a lawyer is -- and we all get this. Is that everybody
25 thinks you know something about the law and every part of the

1 law, and you often get friends and family that ask you for
2 legal advice, and you often -- I always preface it by saying,
3 you know, you're asking me this as a friend. I'm giving you
4 what my view would be.

5 So, you get small cases and large cases. For
6 example, I drafted my now deceased grandfather's will, you
7 know, and my mother's will.

8 And so, those are kinds of things I would do so they
9 didn't have to hire a lawyer. I thought I was competent enough
10 to do that. More sophisticated trusts and estates law I didn't
11 think I'd be more competent to do.

12 I remember one of my good friends had a situation
13 where he was a teacher at a school and he rented a van to take
14 the -- he started a wrestling program there and he rented a van
15 from Budget, and the van had gotten stolen the next -- that
16 day. So I did all the legal work for him, obviously pro bono
17 because he was one of my close friends, and helped him with
18 that case and wind his way through the system.

19 And I did that and I was allowed to do that because
20 I was a member of the Maryland State Bar. You know, so that's
21 the kind of thing I'm talking about, being -- you know, and
22 then you get questions all the time. You know, I'm getting
23 divorced, can I do this? Can I take my kids somewhere?

24 Whatever it is. And we all get those kinds of
25 questions. So, I think that's what that paragraph would be

1 about.

2 Q And there was no conflict writing your mom's will.
3 Strike that. Strike that, Your Honor.

4 A The only conflict would be with my mom. But yeah.
5 (Laughter.)

6 THE WITNESS: She's a wonderful let the record
7 reflect.

8 (Laughter.)

9 BY MR. SHOEMAKER:

10 Q One more questions. On paragraph 14 you make a
11 statement that you have been generally available to represent
12 any citizen in Maryland. I think we have discussed this, but
13 is it your contention that just holding yourself out as an
14 attorney in a state that you are licensed to practice law in
15 constitutes the practice of law in Maryland?

16 A Can you repeat the question?

17 Q Yes. As you understand or --

18 A Actually, I heard the question. I think that's
19 ambiguous. In other words, let me go back to my fifth grade
20 teacher analysis. So, I'm a member of the state bar and I
21 decide I'm going to take a year off. I can't take it anymore.
22 I'm going to go and teach fifth graders, and I'm not teaching
23 them law. I'm teaching them math.

24 So, under any sort of very expansive view is that
25 practicing law in the pedestrian sense of it? The answer would

1 be no. But while I'm a fifth grade teacher could I also
2 represent somebody in a divorce case? Could I? Not that I
3 did, but could I? It would present an interesting legal
4 question in my view under the statute and law as it currently
5 exists.

6 The attorney general opinion that I referred to
7 earlier I think was Dean Kelly. This is all coming back to me;
8 what I believe was the dean of a law school. And the question
9 was does that constitute practicing law, because it's sort of
10 tangentially or certainly around the law, even though he may or
11 may not have been teaching law, and the attorney general's
12 opinion said yes.

13 The fifth grade teacher scenario I would say that
14 the attorney general would say no. But then is holding
15 yourself out to be a lawyer enough? I don't know the answer to
16 that question and it would be a case of first impression.
17 That is a different scenario than we are existing under now,
18 because I've never had that for me.

19 Now, I should be clear about this. During those 17
20 years I could only hold myself out as a lawyer for three of
21 those years. Right? Because I couldn't represent -- I was a
22 state's attorney in Montgomery County. I can hold myself out
23 as a lawyer to represent family and friends on -- you know,
24 mostly family actually. I wouldn't even get involved with
25 friends during that time, and as a U.S. attorney the same

1 thing. An assistant U.S. attorney.

2 So it would be the three years that I was in private
3 practice that would be the best most clearly obvious where I
4 could hold myself out to anybody. During those other times it
5 would be just family and friends.

6 Q But your previous testimony was that when you are
7 playing basketball today you are practicing law in Maryland
8 because you are answering legal questions, performing legal
9 analysis.

10 A If I was unclear, I apologize. When I was playing -
11 - when I was at Howery & Simon and I was playing basketball
12 with friends, or when I was a Cobert & Schertler -- and by the
13 way, when I was at Cobert & Schertler, under your sort of
14 physically located on the soil of Maryland test, I actually
15 took depositions in Bethesda representing a man named Flax.
16 That was his last name. I think he's now deceased. F-l-a-x.

17 But those actually happened at the law firms in
18 Bethesda. At those three years I definitely was holding myself
19 out. It would be a great thing for me to be able to bring in
20 clients to the business. To the law firms. During those other
21 years I would only be able to hold myself out, I would imagine,
22 to my -- certainly to my family. And depending on where I was
23 and what I was doing, to friends.

24 Q So again, in the time that you have been licensed to
25 practice law, prior to becoming a State's Attorney for

1 Montgomery County, if you know or if you can remember, on how
2 many occasions did you represent clients involving substantive
3 Maryland law?

4 A Substantive Maryland law is where I get tied up. I
5 did not -- I think for -- well, I had not been in a Maryland
6 courtroom prior to those eight years. That is, as far as I
7 remember, which is a good thing because I was never -- I wasn't
8 a defendant for those times.

9 I don't -- you know, substantive Maryland is a
10 little bit difficult because, you know, Maryland law would have
11 a place in a lot of what I was doing, even for Howery & Simon,
12 because we reviewed the laws of all the states to see what was
13 applicable and what wasn't applicable in some of these cases.

14 Even in the nuclear steam generator cases, which was
15 primarily focused on North Carolina utility companies, there
16 would be -- Westinghouse was the defendant. It involved
17 nuclear steam generators all over the country. I guess I don't
18 feel comfortable answering that, but I think for your purposes
19 I would say there were none.

20 Q And other than your testimony today under oath, do
21 you have documentation of any of these allegations? A memo?
22 You know, a --

23 A What are the allegations? What do you mean
24 allegations?

25 Q I mean the things set forth in your affidavit. Not

gaw

1 the allegations.

2 A No. But I'm sure they all exist. They're matters
3 of public record, and I didn't know that -- the fact that I was
4 an assistant United States attorney was being challenged or the
5 fact that -- I mean, I was notified that any of these things,
6 that I worked at Howery & Simon, were being challenged. Or,
7 Colbert & Schulter for that matter.

8 But I certainly -- I know -- like, for example, I
9 know the phone number for Colbert & Schulter sitting here,
10 because I happen to know it because I worked there.

11 So none of those things -- they're all available
12 public record. I think everything in there is sort of a matter
13 of public record. My involvement in those things.

14 MR. SHOEMAKER: That is all I have, Your Honor.

15 MS. SHEPARD: Your Honor, if I may?

16 THE COURT: You may.

17 CROSS-EXAMINATION

18 BY MS. SHEPARD:

19 Q Mr. Gansler, just to make clear, I would like to ask
20 you about your pro bono activities. When you were involved in
21 those, did those involve the analysis of substantive Maryland
22 law? And by pro bono I'm referring to the NAACP, the
23 partnership and the Commission on Aging.

24 A Yes. And I guess -- just to clarify, my response to
25 the questions on direct -- when I said no at the end, I said

1 for your purposes, because I thought the question was saying
2 were you sort of going back to the beginning. Were you counsel
3 of record or were you for any of these cases, I guess, grounded
4 in Maryland or something of that sort? And the answer would be
5 no.

6 But in terms of, you know, the people -- and even
7 your question is interesting. I mean, who is the client? You
8 know, when I'm the NAACP Criminal Justice Committee and people
9 are writing in with various complaints about how they felt they
10 were treated by the criminal justice system, are they the
11 client or is the NAACP Montgomery County Chapter the client?

12 I don't know the answer to that, but I suppose in
13 that case it would be substantive Maryland law that I was
14 dealing with and only substantive Maryland law that I was
15 dealing with.

16 Q Let me ask in a different way.

17 A And federal law I suppose actually.

18 Q With regard to those pro bono activities, did those
19 activities require legal knowledge and skill that you had to
20 apply?

21 A Yes.

22 Q And did you bring your legal education, training and
23 experience to address the issues that arose before those
24 commissions and partnerships and organizations?

25 A Yes.

1 MS. SHEPARD: I have nothing further, Your Honor.

2 MR. BROCKMAN: We have no questions, Your Honor.

3 THE COURT: Redirect?

4 MR. SHOEMAKER: No, Your Honor.

5 THE COURT: You may step down.

6 THE WITNESS: Thank you, Your Honor. May I be
7 excused?

8 MR. : I don't -- I don't think I have any
9 other reason for Mr. Gansler to be here.

10 THE COURT: Mr. Gansler, you are free to go.

11 THE WITNESS: Thank you.

12 MR. SHOEMAKER: Thank you, Your Honor.

13 (Witness excused.)

14 THE COURT: Call your next witness.

15 MR. SHOEMAKER: The only other issue I had -- we
16 discussed this previously before, a stipulation. I'm not even
17 sure if we can stipulate to this. But a stipulation to the
18 fact that if the Court deemed Mr. Gansler ineligible, it would
19 potentially affect the outcome of the election.

20 I don't know if we can stipulate to that fact or if
21 judicial notice could be taken of it. Short of me calling
22 someone from the State Board to give an expert opinion on that,
23 I would rest at this point, Your Honor.

24 MR. BROCKMAN: Your Honor, I think our position
25 would be that that is not a factual question. I think the

1 purpose, if I take your direction right, is to address that
2 element in Title 12, Subtitle II of the Election Law Article
3 that requires a cause of action like this one should address an
4 act or omission relating to an election.

5 I think this case does arise under that set of
6 provisions, but I think that's a matter of law.

7 MR. SHOEMAKER: Yes. I agree it is a legal question
8 too. I just wanted to be clear. So, Plaintiff rests.

9 THE COURT: Okay.

10 MR. BROCKMAN: In light of Plaintiff resting, we
11 would renew our motion to dismiss under Rule 2324(a). Our
12 motion to dismiss. That is how this case had been brought to
13 issue. We haven't filed an answer. We have filed the motion
14 to dismiss, but it can be raised at any time, including at a
15 trial on the merits.

16 MS. SHEPARD: All right. And we do as well, Your
17 Honor.

18 THE COURT: Do you wish to be heard?

19 MR. SHOEMAKER: Yes. I do, Your Honor. Thank you.

20 I believe we have three -- well, I guess two issues
21 on the motions to dismiss. Number one, the statute of
22 limitations issue. Number two, I guess the insufficiency of
23 the pleadings issue; the failure to state a claim issue.

24 THE COURT: We are here on the merits. You have
25 finished your case. They are moving to dismiss.