

Devine, Michael

From: Devine, Michael
Sent: Monday, June 27, 2011 10:37 AM
To: Renoe, Curtis; Ingolia, Joseph; Brudzinski, Walter; Jordan, George AL3; Metry, Dean C ALJ; Smith, Bruce T; Allison, Megan
Cc: #6 [REDACTED] Melendres, Cindy
Subject: RE: Draft Retraction Letter and Draft Cover Letter

I wasn't able to get to this last week but will be reviewing & making comments this week.

Thanks, MJD

M. J. Devine

U.S. Administrative Law Judge

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-----Original Message-----

#6
From: Renoe, Curtis
Sent: Thursday, June 23, 2011 3:38 PM
To: Ingolia, Joseph; Brudzinski, Walter; Devine, Michael; Jordan, George AL3; Metry, Dean C ALJ; Smith, Bruce T; Allison, Megan
Cc: #6 [REDACTED] Melendres, Cindy
Subject: Draft Retraction Letter and Draft Cover Letter

Judge McKenna asked that I send you the attached documents for your review and comment.

V/R

-Curtis

Curtis E. Renoe
Attorney-Advisor to the
Hon. Parlen L. McKenna
USCG ALJ
Coast Guard Island, Building 54A
Alameda, CA 94501-5100
Tel: (510) 437-3359
Fax: (510) 437-2717

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Devine, Michael

From: Devine, Michael
Sent: Thursday, June 09, 2011 8:38 AM
To: Renoe, Curtis; Ingolia, Joseph; Brudzinski, Walter; Jordan, George AL3; Metry, Dean C ALJ; Smith, Bruce T; Allison, Megan
Cc: McKenna, Parlen Judge; Melendres, Cindy
Subject: RE: Draft Retraction Letter to JAMS
Attachments: Retraction Letter to JAMS re Swartwood Report 6_8.doc X

Withhold #5

CALJ, Parlen et al: I had already made the revisions in the attached with track changes but had to leave the office for other business yesterday. Please consider a merge of the various versions but also please note

[REDACTED]

#5

Thanks MJD
M. J. Devine

U.S. Administrative Law Judge
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-----Original Message-----

From: Renoe, Curtis
Sent: Wednesday, June 08, 2011 7:13 PM
To: Ingolia, Joseph; Brudzinski, Walter; Devine, Michael; Jordan, George AL3; Metry, Dean C ALJ; Smith, Bruce T; Allison, Megan
Cc: McKenna, Parlen Judge; Melendres, Cindy
Subject: RE: Draft Retraction Letter to JAMS

Judge McKenna asked that I pass along this revised version of the letter (which incorporates Judge Brudzinski's comments).

V/R,

-Curtis

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-----Original Message-----

From: Renoe, Curtis
Sent: Tuesday, June 07, 2011 2:52 PM
To: Ingolia, Joseph; Brudzinski, Walter; Devine, Michael; Jordan, George AL3; Metry, Dean C ALJ; Smith, Bruce T; Allison, Megan
Cc: McKenna, Parlen Judge; Melendres, Cindy
Subject: Draft Retraction Letter to JAMS

Judge McKenna asked that I forward you this revised letter. #S
[REDACTED]

V/R

-Curtis

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-----Original Message-----

From: Renoe, Curtis
Sent: Friday, June 03, 2011 12:49 PM
To: Ingolia, Joseph; Brudzinski, Walter; Devine, Michael; Jordan, George AL3; Metry, Dean C ALJ; Smith, Bruce T; Allison, Megan
Cc: McKenna, Parlen Judge; Melendres, Cindy; [REDACTED] #C
Subject: RE: Draft Demand Letter to JAMS

Judge McKenna asked that I send you a modified version of the letter. Please direct comments, if any, to Judge McKenna's personal email account.

V/R,

-Curtis

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From: Renoe, Curtis
Sent: Thursday, June 02, 2011 2:07 PM
To: Ingolia, Joseph; Brudzinski, Walter; Devine, Michael; Jordan, George AL3; Metry, Dean C ALJ; Smith, Bruce T; Allison, Megan
Cc: McKenna, Parlen Judge; Melendres, Cindy; [REDACTED] #6
Subject: Draft Demand Letter to JAMS #5

Judge McKenna asked that I send this draft for your review and comment. [REDACTED]

Judge McKenna also asked that you please review the following link, which discusses the Swartwood Report and the alleged "dirty judges."

http://bore-head007.new.newsvine.com/_news/2011/05/19/6676446-hey-ive-got-dirty-cops-dirty-judges-dirty-witnesses-pounding-the-snot-out-of-their-victimswwhy-cant-i-get-your-attention?commentId=54338812

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Devine, Michael

From: Devine, Michael
Sent: Friday, June 03, 2011 11:19 AM
To: Renoe, Curtis; Ingolia, Joseph; Brudzinski, Walter; Jordan, George AL3; Metry, Dean C ALJ; Smith, Bruce T; Allison, Megan
Cc: McKenna, Parlen Judge; Melendres, Cindy; [REDACTED] #6
Subject: RE: Draft Letter to JAMS
Attachments: Retraction ltr.doc

↑withheld #5

#5

CALJ et al: [REDACTED]

MJD

M. J. Devine
U.S. Administrative Law Judge

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McKenna, Parlen Judge

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V/R

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Curtis E. Renoe
Attorney-Advisor to the
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Cc: McKenna, Parlen Judge; Melendres, Cindy; [REDACTED] #6
Subject: RE: Draft Letter to JAMS
Attachments: Retraction ltr.doc x

Follow Up Flag: Follow up
Flag Status: Flagged *↳ withheld #5*

#5

CALJ et al: [REDACTED]

MJD
M. J. Devine
U.S. Administrative Law Judge
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Reno, Curtis

From: Devine, Michael
Sent: Wednesday, May 25, 2011 1:24 PM
To: Reno, Curtis
Cc: McKenna, Parlen Judge
Subject: RE: Final Draft of Recusal Order

#5

Fyi. [REDACTED]

Mjd

Sent with Good (www.good.com)

-----Original Message-----

From: Reno, Curtis
Sent: Tuesday, May 24, 2011 02:35 PM Central Standard Time
To: Devine, Michael
Subject: RE: Final Draft of Recusal Order

Judge Devine,

We can review your comments to the prior version. I do not think it has radically changed from what you saw earlier and your comments on that draft will likely apply to this one with equal force.

-Curtis

-----Original Message-----

From: Devine, Michael
Sent: Tuesday, May 24, 2011 12:32 PM
To: Reno, Curtis
Cc: McKenna, Parlen Judge
Subject: RE: Final Draft of Recusal Order

Curtis: Hopefully you can compare my track changes with this version. I'm not in a position to re-enter the track changes. If you or Judge Mck want to ask me any questions on my suggestions etc feel free to call me on my personal cell. [REDACTED] You guys have put a lot of great work together in a short amount of time.

#6

Thanks, MJD
M. J. Devine

U.S. Administrative Law Judge
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-----Original Message-----

From: Reno, Curtis

Sent: Tuesday, May 24, 2011 2:21 PM

To: Ingolia, Joseph; Allison, Megan; Brudzinski, Walter; Devine, Michael; Jordan, George AL3;
Metry, Dean C ALJ; Smith, Bruce T
Subject: Final Draft of Recusal Order

Attached is the final draft of the recusal order. Comments by Judges Brudzinski and Devine on an earlier draft will be considered next.

Judge McKenna requests that you provide your specific word changes by 9:00 am (CA time) tomorrow (Wednesday).

He intends to issue it as soon thereafter as possible.

Please note that the Swartwood Report is not attached to this email, but will be attached to the Order once issued.

Thank you.

V/R

-Curtis

Curtis E. Renoe
Attorney-Advisor to the
Hon. Parlen L. McKenna
DHS/USCG ALJ
Coast Guard Island, Building 54A
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Johns, John

From: Devine, Michael
Sent: Wednesday, May 25, 2011 7:53 AM
To: McKenna, Parlen Judge
Cc: Ingolia, Joseph; Brudzinski, Walter; Smith, Bruce T; Metry, Dean C ALJ; Jordan, George AL3; Allison, Megan
Subject: FW: News from FALJC

#5

Parlen: [REDACTED]

MJD

M. J. Devine

U.S. Administrative Law Judge

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#6

From: [REDACTED]
Sent: Tuesday, May 24, 2011 9:14 PM
To: Devine, Michael
Subject: FW: News from FALJC

Date: Tue, 24 May 2011 11:00:12 -0400
From: james.g.gilbert@usps.gov
To: [REDACTED] #6
Subject: News from FALJC

Having trouble viewing this email? Click here
<http://campaign.r20.constantcontact.com/render?llr=6wa664dab&v=001Sr5a1LSTp600oICxbbDh3YhWBBMy81A-DNU3hXSSvye-ELT19k1H8XAYKk9_tDRKTGjZfj-4EeRHH9c7TpsmaT37--KQFE4MeVE-f7H_hQgntLHUTc7MW57uYKhNSIWq-pA1_4Zkpw1NSsylY8-k-ejBSmGddsts6e2cwcBKqRzsihakwz1aqFnwafNhC0IRG6s9fo0vRTyMmhtH7S8JInSvBsGxy170E01e6-bBDDpVeD-xJEaIEFGLs-6JNdEDKmCFkcTmV4EH901uQmUkT_foZ1qgqF1CITbZDo32h4%3D>

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Federal Administrative Law Judges Conference Member Newsletter

April/May 2011

In This Issue

FALJC Meets with OPM General Counsel Elaine Kaplan

<<http://sn122w.snt122.mail.live.com/mail/RteFrame.html?v=15.4.3103.0517&pf=pf#LETTER.BLOCK15>>

ABA Judicial Division Chair-elect Richard Goodwin Addresses April Luncheon

<<http://sn122w.snt122.mail.live.com/mail/RteFrame.html?v=15.4.3103.0517&pf=pf#LETTER.BLOCK17>>

Chairman of the Administrative Conference of the United States Paul Verkuil Speaks to FALJC

<<http://sn122w.snt122.mail.live.com/mail/RteFrame.html?v=15.4.3103.0517&pf=pf#LETTER.BLOCK18>>

FALJC Meets with OPM to Discuss New ALJ Exam

<<http://sn122w.snt122.mail.live.com/mail/RteFrame.html?v=15.4.3103.0517&pf=pf#LETTER.BLOCK9>>

2011 Annual FALJC Conference Update

<<http://sn122w.snt122.mail.live.com/mail/RteFrame.html?v=15.4.3103.0517&pf=pf#LETTER.BLOCK12>>

ALJ Moves and Appointments

<<http://sn122w.snt122.mail.live.com/mail/RteFrame.html?v=15.4.3103.0517&pf=pf#LETTER.BLOCK13>>

Dear Judge Devine,

Now that a potential government shutdown is in the rearview mirror, FALJC has turned its sights on the upcoming Annual Conference in September. Mark your calendars for Sunday, September 11, 2011, in Ocean City, Maryland. Details will follow in your annual dues notice.

Speaking of dues, don't forget to mail your dues check before June 30th to take advantage of the payment discount. The Annual Dues Mailing went out last week and should have arrived at your home or office by now. If you have not received the mailing, please contact Secretary James Gilbert at james.g.gilbert@usps.gov. Also in the mailing is a ballot for changes to our Constitution and Bylaws. Please fill it out and return it with your dues payment.

This is my last Newsletter as FALJC President. I want to thank all of you for your support and encouragement the past year. I will remain as the FALJC representative on ACUS (See Chairman Verkuil's story below). I look forward to working with the new officers, including President Rick Pearson, as they embark on the 2011-2012 membership year.

Also, if you have any news or information you would like in our next newsletter, please drop Judge Gilbert a note at the above email.

See you in Ocean City in September!

Dan Solomon, President

Federal Administrative Law Judges Conference

FALJC Meets with

OPM General Counsel Elaine Kaplan

FALJC Officers, along with Legislative Consultant Lillian Gaskin, met with OPM General Counsel Elaine Kaplan and her staff to discuss various issues of ALJ concern. On the positive side, we were encouraged that Ms. Kaplan and her staff were significantly more receptive to our presence and concerns than previous Administrations. On the negative side, we were disappointed to hear that the Obama Administration is following the prior Administration's lead by denying ALJs full annual leave benefits under the Federal Workforce Flexibility Act of 2004. 5 U.S.C. 6303(f).

As many of you know, OPM previously singled out ALJs as the only senior government officials to be denied the 8 hour per pay period leave benefit first instituted by Congress in 2004 for all senior government officials. At the time, OPM's odd defense for this action relied on the unrelated fact that the APA does not permit ALJs to be subject to performance appraisals. Before the meeting, based upon earlier representations made to FALJC by OPM Director Berry, we had high hopes that a change in Administration and ALJ policy would lead to a resolution of this issue in favor of equal treatment of ALJs with other senior government officials. However, in our meeting, we were surprised when GC Kaplan strongly defended OPM's past interpretation of the statute, again linking the benefit to OPM's "Pay for Performance" reviews when nothing in the statute or legislative history supports or addresses any such linkage.

After much discussion in the meeting where FALJC representatives repeatedly expressed our frustration with the ongoing policy application, Ms. Kaplan invited FALJC to submit a legal analysis of the statute to support our position that OPM is acting unfairly in "interpreting" the statute to exclude ALJs to further some unrelated OPM policy goal. FALJC is currently drafting an appropriate response that we hope will assist OPM in abandoning its current position on this issue.

On another issue of concern, we discussed OPM's role in challenges by some senior officials in federal agencies to ALJ independence under the APA. We explained that OPM has, in the past, failed to respond whenever there was an assault on ALJ independence by a federal agency, leaving ALJs to fight their agency alone and defend the APA without support or intervention by OPM. We referenced the most recent assault on ALJ independence that led to a federal lawsuit by two HUD ALJs. That lack of support for ALJs has led to litigation that might have been avoided had OPM intervened in the matter in accordance with its statutory obligations in an earlier stage when called upon to do so. After discussion, Ms. Kaplan

requested that FALJC make a proposal about how OPM might address such issues in the future. FALJC is preparing a proposal for review by the Executive Committee before submission to OPM.

Additional issues raised included discussions about potential advisory committees involving ethics and other matters of interest to ALJs. In the end, although none of the officers in attendance would characterize the meeting as successful, we do expect that the dialogue with OPM will continue in 2011. Ms. Kaplan's open approach to ALJ issues was a welcome departure from FALJC's previous experiences with other Administrations. On that basis, we will continue to work with OPM to improve the OPM/ALJ relationship, and address issues that remain unique to the ALJ community.

ABA Judicial Division Chair-elect Richard Goodwin

Addresses April Luncheon

Image removed by sender. Judge Richard Goodwin

Judge Richard Goodwin

ABA Judicial Division Chair-elect, and DOT ALJ Richard Goodwin was the guest speaker at the April 2011 FALJC Luncheon held at Maggiano's Italian Restaurant on April 15, 2011. Judge Goodwin discussed his recent trip to Japan following the country's devastating earthquake and shared his experiences and thoughts on post-earthquake Japan.

The April Luncheon is also our traditional salute to our retired ALJs. We had terrific attendance from some local retired ALJs, including Judge Lillian McEwen, whose recent book has caused quite a sensation. Judge McEwen's book is now available for purchase on Amazon.com
<[http://r20.rs6.net/tn.jsp?llr=6wa664dab&et=1105398857363&s=148&e=001qqQmrOoQc027kCzVu2zsuasytgKYPYclm8tI_QG2xS-TEywlbm20DVtSIs0JA0dyqTBxsjq4GPylMPvqYpyWEF5AIrg3_7uj52gZl2m1_D1GbRa_64cVXBvJ0RASWJgrZL4iYhZK00yDyDhP0k6d14R1ORS14CDdWQCg9rbLoxbWewNz6p9tmHbVNi3DAKWg0BIBa8sezaowU7tpCi3l8o1wcfEAEIHE6VxDuL7iGyv5HH3M4GsE1NWXHe-ftbLgqAplSprneg8SuOTffMQmEA==](http://r20.rs6.net/tn.jsp?llr=6wa664dab&et=1105398857363&s=148&e=001qqQmrOoQc027kCzVu2zsuasytgKYPYclm8tI_QG2xS-TEywlbm20DVtSIs0JA0dyqTBxsjq4GPylMPvqYpyWEF5AIrg3_7uj52gZl2m1_D1GbRa_64cVXBvJ0RASWJgrZL4iYhZK00yDyDhP0k6d14R1ORS14CDdWQCg9rbLoxbWewNz6p9tmHbVNi3DAKWg0BIBa8sezaowU7tpCi3l8o1wcfEAEIHE6VxDuL7iGyv5HH3M4GsE1NWXHe-ftbLgqAplSprneg8SuOTffMQmEA==>)> . We invite you to read it for yourself and see what all the buzz is about.

Chairman of the Administrative Conference of the United States Paul Verkuil Speaks to FALJC at May Luncheon

Image removed by sender. Paul Verkuil

Chairman Paul Verkuil

FALJC was honored to have ACUS Chairman Paul Verkuil address the May Monthly Luncheon meeting in Rosslyn, Virginia, on May 20, 2011. Chairman Verkuil spoke about a number of issues that ACUS plans to undertake in 2011 that may impact ALJs, focusing on their most recent work on

video hearings. Chairman Verkuil took several questions from the audience, and expressed his hope that ALJs would continue to be involved with ACUS as they proceed with their interesting agenda. FALJC is represented on ACUS by Judge Dan Solomon. If you think you might like to get involved, contact Judge Solomon at [REDACTED] H L

For more information about ACUS, take a look at their website at www.acus.gov
<http://r20.rs6.net/tn.jsp?llr=6wa664dab&et=1105398857363&s=148&e=001qqQmrOoQc02Z5oMzJrUs3QNh7nbwLCJG9Tnrhg__3uMSuPC7nIsA1X6EPLUI08mZDl66iYsBwAi6V1oAmwhyDXU58aVENgX15ZIJ_xtNka4=> .

FALJC Meets with OPM to Discuss New ALJ Exam

FALJC joined a number of ALJ related organizations at a meeting with OPM staff to discuss OPM's plans to revise the ALJ examination process. A meeting earlier in the day was held with the various Chief Judges. Both meetings focused on the need to tighten ALJ qualifications, particularly with respect to prior trial experience. The Chief Judges were unanimous in their position that prior courtroom trial experience is a necessity as a basic qualification for ALJs. A recent change in the ALJ selection process allowed for administrative experience to be substituted for trail experience. Both groups stated that while administrative trial experience is relevant to the trial experience qualification, a lack of any trial experience should be a disqualifying factor for an ALJ applicant.

For its part, OPM listened to the concerns and criticisms expressed by the groups, and promised to insure that both the organizations and the Chief Judges will remain in close contact with OPM as the process progresses.

2011 Annual FALJC Conference Update

At the March Executive Committee meeting, the Executive Committee authorized Judge Pearson to continue to negotiate with Dunes Manor Hotel for the September Annual Conference. At the May luncheon, Judge Pearson announced the meeting plans, and included all the registration information, which was forwarded to all FALJC members in the May mailing. The meeting will be held at the Dunes Manor Hotel

<http://r20.rs6.net/tn.jsp?llr=6wa664dab&et=1105398857363&s=148&e=001qqQmrOoQc02sRtIN6zTtajxfJ7uJhuM_yg7I19yenEnTqiDC0ashIfId9vxo2MJr8o8UE061GPZtvk-jntIK5bQOlSH2EEtJGa5SIqO_m2CKQYEcaqG5A==> in Ocean City, Maryland, starting on Sunday, September 11, 2011. The Annual Conference Schedule is attached. The Registration Form is also attached. Please fill out your registration form today and mail it to FALJC, P.O. Box 1772, Washington, D.C. 20003.

If you have any thoughts, suggestions, or comments about this year's Annual Meeting, please contact First VP Judge Rick Pearson at rpears@flra.gov.

See you in Ocean City!

ALJ Moves and Appointments

Judge Cameron Elliot Joins SEC

On Monday, April 25, 2011, the Securities and Exchange Commission announced
<[http://r20.rs6.net/tn.jsp?llr=6wa664dab&et=1105398857363&s=148&e=001qqQmrOoQc02H21wByGm0Qgbk
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du8yLKln_kh47MJ3oeP5w==](http://r20.rs6.net/tn.jsp?llr=6wa664dab&et=1105398857363&s=148&e=001qqQmrOoQc02H21wByGm0Qgbk
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0CtdPVt64lhiNxSifJcbvY3wsYfSf7jSs6UJIwnMI4kHUosYNEBrTQpzR5y4DCu92ltarn9UEgusiv-
du8yLKln_kh47MJ3oeP5w==)> the appointment of Judge Cameron Elliot as an Administrative Law
Judge. Prior to his appointment, Judge Elliot was an ALJ with SSA in New York. Judge Elliot
is a current FALJC member and attended his first monthly luncheon meeting in May. FALJC
congratulates Judge Elliot on his appointment. If you want to congratulate Judge Elliot
directly, he can be reached at elliottc@sec.gov.

Do You Have News, Updates, or Information to Share with Your FALJC Colleagues?

We are happy to add your information for our next newsletter! Contact Secretary James
Gilbert at

james.g.gilbert@usps.gov with your news and information.

Also, send your comments and suggestions for future newsletters to Judge Gilbert.

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m&a=1105398857363](http://ui.constantcontact.com/sa/fwtf.jsp?llr=6wa664dab&m=1103804400349&ea=mjdevine75@msn.co
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#6

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Image removed by sender.

Reno, Curtis

From: Devine, Michael
Sent: Tuesday, May 24, 2011 12:32 PM
To: Reno, Curtis
Cc: McKenna, Parlen Judge
Subject: RE: Final Draft of Recusal Order

Follow Up Flag: Follow up
Flag Status: Flagged

Curtis: Hopefully you can compare my track changes with this version. I'm not in a position to re-enter the track changes. If you or Judge MCK want to ask me any questions on my suggestions etc feel free to call me on my personal cell. [REDACTED] You guys have put a lot of great work together in a short amount of time.

#6

Thanks, MJD

M. J. Devine

U.S. Administrative Law Judge

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-----Original Message-----

From: Reno, Curtis
Sent: Tuesday, May 24, 2011 2:21 PM
To: Ingolia, Joseph; Allison, Megan; Brudzinski, Walter; Devine, Michael; Jordan, George AL3; Metry, Dean C ALJ; Smith, Bruce T
Subject: Final Draft of Recusal Order

Attached is the final draft of the recusal order. Comments by Judges Brudzinski and Devine on an earlier draft will be considered next.

Judge McKenna requests that you provide your specific word changes by 9:00 am (CA time) tomorrow (Wednesday).

He intends to issue it as soon thereafter as possible.

Please note that the Swartwood Report is not attached to this email, but will be attached to the Order once issued.

Thank you.

V/R

-Curtis

Curtis E. Reno
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Hon. Parlen L. McKenna
DHS/USCG ALJ
Coast Guard Island, Building 54A
Alameda, CA 94501-5100

Tel: (510) 437-3359
Fax: (510) 437-2717

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Reno, Curtis

From: [redacted] on behalf of Michael Devine [redacted] #6
Sent: Tuesday, May 24, 2011 12:09 PM
To: Reno, Curtis
Cc: Parlen McKenna
Subject: order

Follow Up Flag: Follow up
Flag Status: Flagged

#5

Parlen/Curtis: I'll see if I can get on the cg system but a few additional comments:

[redacted]

[redacted]

[redacted]

#5

[redacted]

Renoë, Curtis

From: [REDACTED] on behalf of Michael Devine [REDACTED] #6
Sent: Tuesday, May 24, 2011 10:39 AM
To: Parlen McKenna
Cc: Renoë, Curtis
Subject: RE: pp latest
Attachments: Order re Swartwood's Report 4.5[tk chngs].doc X

Follow Up Flag: Follow up
Flag Status: Flagged

↗ with #5

#5

Parlen: Attached is your draft with some suggested changes in track changes

[REDACTED]

Feel free to give me a call to discuss.
MJD

Date: Sun, 22 May 2011 22:30:25 +0000

From: [REDACTED] #6

To: joseph.n.ingolia@uscg.mil; Megan.H.Allison@uscg.mil; Curtis.E.Renoë@uscg.mil

Subject: pp latest

Here is a revised draft that is toned down. P