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March 15, 2007

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Virginia State Bar
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RE: In the Matter of Harvey L. Bryant, III
VSB Docket #07-021-2545

Dear Mr. Davis:

It is with confident expectations that I respond to your letter of February 27, 2007 which had enclosed a complaint about a political appearance and talk I made on February 3, 2007.

I was the Virginia Beach Republican City Committee speaker at that organization's weekly breakfast, as I have been on many occasions over the last seven years. At that and numerous other such appearances, I gave a patterned, fairly scripted insight of what goes on and is going on in the Virginia Beach criminal justice system and my office.

On that particular Saturday morning, I focused most of my remarks during the approximately twenty-minute talk on a new initiative to protect senior citizens that my office and another city department were to announce on Monday. I also discussed and highlighted a press release from the day before regarding a fifteen-year high for my office in the opening of new cases. I had handouts for each of those items. In addition, the grand jury that was to meet on the next Monday was discussed and I related the types of charges that were being presented and the number of defendants, as well as the Circuit Court criminal docket for the coming Monday. I give you these details because they will help substantiate what was said and not said, presented

and not presented as part of not only my remarks, but announcements and presentations by others that morning.

I addressed what crimes had increased in Virginia Beach and by what percentages and took questions from the audience about why I thought we were experiencing certain increases. I talked about office organizational structure, caseloads and initiatives. I asked that the twenty-five or so attorneys present from my office, along with some support staff and a sprinkling of spouses, be recognized, and also pointed out and recognized the criminal section supervisor from the United States Attorney's Office who was there.

The complainants were not at this political event. It will be shown that had they been there, they would have heard what everyone there heard. As usual, I pointed out that Virginia Beach accounts, on average, for approximately ten percent of all DUI arrests in Virginia. That usually leads to questions from audiences about why that is, as it did that day also. There was a question about sentences in DUI's, what the judges were doing with these cases, and were the sentences adequate for the size of the problem. Someone gave an example from a case they had read about in the newspaper. My response was that generally sentences for DUI's are appropriate, but, from time to time, on DUI and some other convictions appealed to Circuit Court from General District Court, some of our judges were deferring dispositions without statutory authority. That had been the case in a matter reported by the newspaper. I did not use the term "illegal conduct" as reported to the complainants, who, again, were not present. I did give examples of provisions for deferred findings in other statutes to illustrate the difference.

I remember, as does the person who asked it, a question regarding what could be done about judges deferring sentences in DUI's, and who watches over or monitors judges' handling of cases. I responded that no one was responsible for such oversight. I did say that there was a Judicial Inquiry and Review Commission to whom certain serious matters could be reported. I also pointed out that the Virginia Supreme Court had started sending out evaluations of judges at all levels to attorneys, and that was a way for judges to get some feedback. We were reminded that former Virginia Beach Republican Delegate Bob McDonnell, now Attorney General, was part of the legislative initiative to have the Supreme Court begin the evaluation process.

I also said, as I routinely do on such occasions, that we are very fortunate to have a very good bench overall in Virginia Beach; that like the rest of us, our judges are human beings and so we have twenty-two personalities with their own idiosyncrasies, likes and dislikes, before whom my thirty-four attorneys must adapt their presentation of evidence in our 16,000 cases per year. However, I said then, and routinely do, that I wouldn't trade our bench for any other bench I knew of or had heard of in my thirty-two years of practice in Virginia or in the federal system. When I said that, I meant it.

Allegations of Illegal Conduct

Mr. Davis, I did not and have not falsely accused a judge or judges of illegal conduct. I did not use the words "illegal conduct." In the unfortunate event that it becomes necessary, many independent witnesses will confirm that. I greatly respect the legal system I am sworn to

uphold. Partly because of that respect, I have been honored to serve on the board of the criminal law section of the Virginia State Bar, and am it's immediate past chairman. I serve as an officer and director of the state's Commonwealth's Attorney's Services Council, and the Virginia Association of Commonwealth's Attorneys, for which I am president-elect. At no time in my thirty-two years of practice have I been confronted with an assertion that I have acted unethically.

Allegations of Undue Influence

As the only elected law enforcement officer in the City of Virginia Beach, it is my duty to monitor the functioning of the criminal justice system and its statutes as enacted by our legislature, in accordance with the expectations of the public they exist to protect. By policy, I require my assistants to advise me when a judge defers a finding or disposition without statutory authority. In the past, a Virginia Beach legislator has told me that I should advise them of such instances. I am not certain that I used the words "until I need it" but more likely said "I keep track of them for potential use later on" or words to that effect. Either way, the group to which I was speaking had discussed before, and was therefore much more aware than most, that judges have to be reappointed from time to time, and thus come under the scrutiny of both House and Senate Courts committees in the General Assembly. That certainly would be a potentially acceptable place for me or anyone else to provide both positive and negative information at a later time. There are a number of cases, the facts, names and dates of which I will provide to you if deemed necessary, in which some of the complainants have deferred dispositions and/or findings in DUI and other cases.

If I believed I had any influence over judges, I would have hopefully influenced some of the complainants from deferring dispositions in DUI and other cases. My long standing policy, known to the complainants, is that my assistants are to object on the record every time a deferred finding or disposition is utilized without statutory authority regardless of the statute involved. Nothing I said, nor believe, implied the ability to get a judge to do anything improper nor to exercise improper influence over them.

I urge you to send my answer to the complainants for their review and comments. I am eager for them to know what was said, as opposed to what was reportedly said. I wish I had been given an opportunity to respond to the complaints before being required to respond to you. Nevertheless, I am confident that numerous independent witnesses will establish the facts as I have related them herein.

Please provide a copy of any future correspondence in this matter to my attorney Rodney

March 15, 2007

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Leffler, Leffler & Hyland, P.C., 4163 Chain Bridge Road, Fairfax, VA 22030.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Harvey L. Bryant", with a long horizontal flourish extending to the right.

HARVEY L. BRYANT
COMMONWEALTH'S ATTORNEY

HLB:jac