

# Exhibit A

**WESTLAW****People v. Danielson**

Supreme Court, Appellate Division, Third Department, New York. | March 28, 2019 | 170 A.D.3d 1430 96 N.Y.S.3d 754 | 2019 N.Y. Slip Op. 020

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170 A.D.3d 1430

Supreme Court, Appellate Division, Third Department, New York.

The PEOPLE of the State of New York, Respondent,

v.

**William H. DANIELSON**, Appellant.

108633

Calendar Date: February 15, 2019

Decided and Entered: March 28, 2019

**Synopsis**

**Background:** Defendant was convicted in the County Court, Chenango County, Revoir Jr., J., of murder. Defendant appealed.


**Holdings:** The Supreme Court, Appellate Division, held that:

- 1 defendant's waiver of right to appeal was knowing, voluntary, and intelligently made in murder prosecution;
- 2 defendant's guilty plea on charge of murder foreclosed his right to challenge the legal sufficiency of the evidence submitted to the grand jury on the charge; and
- 3 defendant's guilty plea foreclosed his right to challenge the court's denial of his motion to disqualify the District Attorney's office from prosecuting his murder case.





Affirmed.

Appellate ReviewPlea Challenge or Motion

**West Headnotes (5)**[Change View](#)

- 1 **Criminal Law**  **Plea of Guilty or Nolo Contendere**  
Defendant's waiver of right to appeal was knowing, voluntary, and intelligently made in murder prosecution, although court did not use specific language of separate and distinct; at the outset of the plea colloquy, defendant's counsel indicated that he had discussed the appeal waiver with defendant, including the fact that, notwithstanding the appeal waiver, defendant retained certain rights to appeal, such as challenging the voluntariness of his guilty plea, the County Court thereafter distinguished defendant's right to appeal from the panoply of other trial-related rights that are automatically forfeited by entering a guilty plea, and defendant executed a written waiver of appeal, indicating that he had read same and discussed it with counsel prior to signing it.

2 Cases that cite this headnote

- 2 **Criminal Law**  **Plea of Guilty or Nolo Contendere**  
There is no particular litany or catechism that a court must use during its allocation of a plea regarding waiver of right to appeal.
- 3 **Criminal Law**  **Issues considered**  
Defendant's guilty plea on charge of murder foreclosed his right to challenge the legal sufficiency of the evidence submitted to the grand jury on the charge.
- 4 **Criminal Law**  **Issues considered**  
Defendant's guilty plea foreclosed his right to challenge the court's denial of his motion to disqualify the District Attorney's office from prosecuting his murder case.
- 5 **Criminal Law**  **Issues considered**  
Defendant forfeited his ineffective assistance challenge to defense counsel's motion practice in murder prosecution, where defendant entered a guilty plea. U.S. Const. Amend. 6.

### Attorneys and Law Firms

**\*\*755** Paul J. Connolly, Delmar, for appellant, and appellant pro se.

Michael D. Ferrarese, Acting District Attorney, Norwich (Lauren D. Konsul, New York Prosecutors Training Institute, Inc., Albany, of counsel), for respondent.

Before: Egan Jr., J.P., Clark, Mulvey, Devine and Aarons, JJ.

### MEMORANDUM AND ORDER

Egan Jr., J.P.

**\*1430** Appeal from a judgment of the County Court of **\*1431** Chenango County (Revoir Jr., J.), rendered December 18, 2015, convicting defendant upon his plea of guilty of the crime of murder in the second degree.

In January 2014, defendant was charged in a five-count indictment with murder in the second degree (two counts), robbery in the first degree, assault in the first degree and assault in the second degree. The charges stemmed from an incident occurring in the early morning hours of December 27, 2013 in which defendant brutally beat the victim, causing mortal injuries from which she would succumb the next day. Following jury selection, defendant elected to forgo a trial and, instead, pleaded guilty to one count of murder in the second degree in satisfaction of the indictment and waived his right to appeal. Defendant was thereafter sentenced, in accordance with the terms of his plea agreement, to 20 years to life in prison. Defendant now appeals.

1      2      We affirm. Contrary to defendant's contention, his waiver of the right to appeal was knowing, voluntary and intelligent. At the outset of the plea colloquy, defendant's

counsel indicated that he had discussed the appeal waiver with defendant, including the fact that, notwithstanding the appeal waiver, defendant retained certain rights to appeal, such as challenging the voluntariness of his guilty plea. County Court thereafter distinguished defendant's right to appeal from the panoply of other trial-related rights that are automatically forfeited by entering a guilty plea (see *People v. Sanders*, 25 N.Y.3d 337, 341–342, 12 N.Y.S.3d 593, 34 N.E.3d 344 [2015]; *People v. Lopez*, 6 N.Y.3d 248, 256, 811 N.Y.S.2d 623, 844 N.E.2d 1145 [2006]; *People v. Khan*, 139 A.D.3d 1261, 1262, 31 N.Y.S.3d 671 [2016], *lvs denied* 28 N.Y.3d 932, 934, 40 N.Y.S.3d 360, 362, 63 N.E.3d 80, 82 [2016] ). In addition, at sentencing, defendant executed a written waiver of appeal, indicating that he had read same and discussed it with counsel prior to signing it. Accordingly, although County Court may not have specifically used the language “separate and distinct” during its plea colloquy, we note that there is no “particular litany or catechism” that a court must use during its allocution (*People v. Bradshaw*, 18 N.Y.3d 257, 264–265, 938 N.Y.S.2d 254, 961 N.E.2d 645 [2011] [internal quotation marks and citation omitted]; see *People v. Walker*, 166 A.D.3d 1393, 1393–1394, 86 N.Y.S.3d 920 [2018] ). Upon review, we find that defendant knowingly, voluntarily and intelligently waived his right to appeal (see *People v. Sanders*, 25 N.Y.3d at 339–341, 12 N.Y.S.3d 593, 34 N.E.3d 344).

3 4 Given defendant's valid appeal waiver, he is precluded from challenging County Court's adverse ruling on his pretrial suppression motion (see *People v. Sanders*, 25 N.Y.3d at 342, 12 N.Y.S.3d 593, 34 N.E.3d 344; *People v. Daniels*, 167 A.D.3d 1088, 1089, 89 N.Y.S.3d 436 [2018]; **\*\*756** *People v. Saunders*, 162 A.D.3d 1217, 1218, 78 N.Y.S.3d 790 [2018], *lv denied* 32 N.Y.3d 1128, 93 N.Y.S.3d 267, 117 N.E.3d 826 [2018] ), as **\*1432** well as his claim of judicial bias (see *People v. Debberman*, 113 A.D.3d 929, 929, 978 N.Y.S.2d 448 [2014]; *People v. White*, 81 A.D.3d 1039, 1039, 916 N.Y.S.2d 652 [2011] ) and his various challenges to the sentence and sentencing proceedings (see *People v. Daniels*, 167 A.D.3d at 1089, 89 N.Y.S.3d 436; *People v. Williams*, 163 A.D.3d 1172, 1173, 81 N.Y.S.3d 636 [2018], *lv denied* 32 N.Y.3d 1009, 86 N.Y.S.3d 768, 111 N.E.3d 1124 [2018]; *People v. Collier*, 71 A.D.3d 909, 910, 895 N.Y.S.2d 848 [2010], *lv denied* 15 N.Y.3d 773, 907 N.Y.S.2d 461, 933 N.E.2d 1054 [2010]; *People v. Schweppe*, 250 A.D.2d 881, 881, 672 N.Y.S.2d 267 [1998], *lv denied* 92 N.Y.2d 905, 680 N.Y.S.2d 69, 702 N.E.2d 854 [1998] ). Defendant's challenge to the legal sufficiency of the evidence before the grand jury is precluded by his guilty plea (see *People v. Wilburn*, 158 A.D.3d 894, 894–895, 71 N.Y.S.3d 181 [2018], *lv denied* 31 N.Y.3d 1123, 81 N.Y.S.3d 383, 106 N.E.3d 766 [2018] ), as is his claim that the court erred in denying his motion to disqualify the District Attorney's office from prosecuting his case (see *People v. Ball*, 152 A.D.3d 973, 974, 55 N.Y.S.3d 915 [2017], *lv denied* 30 N.Y.3d 978, 67 N.Y.S.3d 580, 89 N.E.3d 1260 [2017] ). Although defendant's further contention that the grand jury proceedings were jurisdictionally defective survives his appeal waiver and guilty plea, we have reviewed the provided grand jury minutes and find said contention to be without merit (see *People v. Busreth*, 167 A.D.3d 1089, 1090, 87 N.Y.S.3d 406 [2018]; *People v. Bonds*, 148 A.D.3d 1304, 1305, 47 N.Y.S.3d 916 [2017], *lvs denied* 29 N.Y.3d 1076, 1081, 64 N.Y.S.3d 166, 86 N.E.3d 253 [2017] ).

5 With regard to defendant's ineffective assistance of counsel claim, initially we find that his challenge to defense counsel's motion practice was forfeited upon the entry of his guilty plea (see *People v. Gorman*, 165 A.D.3d 1349, 1350, 85 N.Y.S.3d 614 [2018], *lv denied* 32 N.Y.3d 1125, 93 N.Y.S.3d 263, 117 N.E.3d 822 [2018]; *People v. Duggins*, 161 A.D.3d 1445, 1446, 77 N.Y.S.3d 765 [2018], *lv denied* 32 N.Y.3d 937, 84 N.Y.S.3d 863,

109 N.E.3d 1163 [2018] ). To the extent that defendant's ineffective assistance of counsel claim impacts the voluntariness of his plea, although such claim survives the appeal waiver, "it is unpreserved for our review in the absence of a[n appropriate] postallocution motion" (*People v. Walker*, 166 A.D.3d at 1393, 86 N.Y.S.3d 920). Moreover, even assuming that certain postplea statements made by defendant implicated the voluntariness of his plea, thereby triggering the narrow exception to the preservation rule (see *People v. Brassard*, 166 A.D.3d 1312, 1313, 87 N.Y.S.3d 738 [2018] ), the record establishes that County Court satisfied any duty that it had to make further inquiry. Defendant's remaining contentions in this regard involve matters outside of the record on appeal and, therefore, are more appropriately raised in a CPL article 440 motion (see *People v. Gorman*, 165 A.D.3d at 1350, 85 N.Y.S.3d 614; *People v. Williams*, 163 A.D.3d at 1173, 81 N.Y.S.3d 636). To the extent not specifically addressed, defendant's remaining claims have been reviewed and found to lack merit.

Clark, Mulvey, Devine and Aarons, JJ., concur.  
ORDERED that the judgment is affirmed.

### All Citations

170 A.D.3d 1430, 96 N.Y.S.3d 754, 2019 N.Y. Slip Op. 02388

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# **Exhibit B**

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# State of New York

## Court of Appeals

BEFORE: HON. EUGENE M. FAHEY,  
Associate Judge

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THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

WILLIAM H. DANIELSON,

Appellant.

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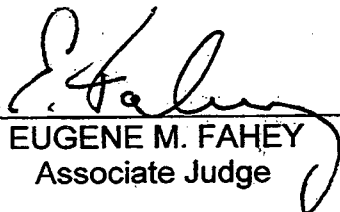
**ORDER  
DENYING  
LEAVE**

Appellant having applied for leave to appeal to this Court pursuant to Criminal  
Procedure Law § 460.20 from an order in the above-captioned case;\*

UPON the papers filed and due deliberation, it is

ORDERED that the application is denied.

Dated: **MAY 21 2019**  
at Buffalo, NY

  
EUGENE M. FAHEY  
Associate Judge

\*Description of Order: Order of the Supreme Court, Appellate Division, Third  
Department, entered March 28, 2019, affirming a judgment of the County Court,  
Chenango County, rendered December 18, 2015.

# **Exhibit F**



1 S T A T E O F N E W Y O R K

2 C O U N T Y C O U R T C O U N T Y O F C H E N A N G O

3 -----

4 T H E P E O P L E O F T H E S T A T E O F N E W Y O R K ,

5 Plaintiff,

6 -vs-

Indict. 2014-1

7 W I L L I A M D A N I E L S O N ,

8 Defendant.

9 -----

10 ARRaignMENT in the above-entitled matter,  
11 held in Chenango County Court at Norwich,  
12 New York, on January 22, 2014, before the  
13 HON. FRANK B. REVOIR, JR., County Court Judge.

14

15 APPEARANCES:

16

17 JOSEPH A. McBRIDE, ESQ.  
Chenango County District Attorney

18

SCOTT CLIPPINGER, ESQ.  
Attorney for Defendant

19

DEFENDANT, Present in Person

20

21

22

Reported by

23

Helen F. Hagen  
Sr. Court Reporter

24

25

1 (The following takes place on January 22, 2014.)

2 THE COURT: We are on the record this morning  
3 in the matter of the People of the State of New York  
4 versus William H. Danielson under Indictment 2014-1.  
5 Mr. Danielson is here this morning with his attorney,  
6 Scott Clippinger. The Court has before it a five count  
7 Indictment. The first count of the Indictment charges  
8 Mr. Danielson with the Class A-1 violent felony of  
9 murder in the second degree. The second count of the  
10 Indictment also charges Mr. Danielson with the Class A-1  
11 violent felony of murder in the second degree. The  
12 third count of the Indictment charges Mr. Danielson with  
13 the Class B felony of robbery in the first degree. The  
14 fourth count charges Mr. Danielson with the Class B  
15 felony of assault in the first degree. And the fifth  
16 and final count of the Indictment charges Mr. Danielson  
17 with the Class D felony of assault in the second degree.

18 At this time, Mr. Clippinger, would Mr.  
19 Danielson like the Court to read the allegations under  
20 each count of the Indictment, or will he waive a  
21 reading?

22 MR. CLIPPINGER: Judge, at this time we'd waive  
23 a reading of the Indictment and enter a plea of not  
24 guilty to each of the five counts.

25 MR. McBRIDE: Can we approach briefly?

1 THE COURT: Yes.

2 (Off-the-record discussion bench.)

3 THE COURT: At this time, Mr. Clippinger,  
4 notwithstanding that your client is willing to have the  
5 Court waive a reading of the specific allegations  
6 contained under each count, at this time the Court will,  
7 for purposes of making a record, read each count of the  
8 Indictment. The first count --

9 MR. CLIPPINGER: Judge, first of all, the  
10 Indictment is part of the record. It's already in the  
11 record. The only reason I can see the request from the  
12 D.A. is to further inflame the public with the  
13 information that's involved in this matter. It is part  
14 of the record. It isn't necessary to read it to the  
15 public. It's been waived by the defendant. This is not  
16 the public's trial of this case. This is the  
17 defendant's trial of this case.

18 MR. McBRIDE: Judge, actually I take strong  
19 offense to that. My understanding of the law is that  
20 the Court is required in homicide murder cases to read  
21 the entire Indictment to the defendant because of the  
22 nature of the offense. Counsel knows that's the only  
23 reason that I asked the Court to be aware of that and  
24 make the decision as to how the Court wanted to proceed.

25 MR. CLIPPINGER: And just for the record, I

1 would note that when that was requested, I asked for the  
2 authority. And I haven't been provided with that  
3 authority.

4 THE COURT: Well, I do know there is some  
5 conflicting case authority out there on that issue. I'm  
6 not certain in the Third Department exactly what that  
7 is. But in the spirit of doing everything correctly  
8 here, Mr. Clippinger, I will read the underlying  
9 allegations.

10 The first count accuses Mr. Danielson of  
11 committing the Class A-1 violent felony in violation of  
12 Section 125.25(1) of the Penal Law of the State of New  
13 York, which is murder in the second degree, alleges that  
14 the defendant, William H. Danielson, on or about  
15 December 28th, 2013, in the Town of Norwich, County of  
16 Chenango, and State of New York, with intent to cause  
17 the death of another person, he did cause the death of  
18 such person or of a third person.

19 Specifically, on December 27th, 2013, at the  
20 aforesaid time and place, at approximately 6:30 o'clock  
21 in the forenoon at 110 Bourbon Street, the defendant did  
22 intentionally cause the death of one Lucinda Knoll on  
23 December 28th, 2013, date of birth May 23rd, 1974, by  
24 striking her numerous times on the head.

25 The second count of the Indictment also

1 charging the Class A-1 violent felony of murder in the  
2 second degree in violation of Section 125.25(3) of the  
3 Penal Law of the State of New York, alleges that the  
4 defendant, William H. Danielson, on or about  
5 December 27th, 2013, in the Town of Norwich, County of  
6 Chenango and State of New York, acting either alone or  
7 with one or more other persons, did commit robbery. And  
8 in the course of and in the furtherance of such crime or  
9 of immediate flight therefrom, he or another  
10 participant, if there be any, caused the death of a  
11 person other than one of the participants.

12 Specifically, at the aforesaid time and place,  
13 at approximately 6:30 o'clock in the forenoon at 110  
14 Bourbon Street, the defendant, while acting alone, did  
15 commit the crime of robbery by forcibly stealing  
16 property from Lucinda Knoll and during the course of the  
17 robbery, did cause the death of Lucinda Knoll on  
18 December 28th, 2013, date of birth being May 23rd, 1974,  
19 by striking her numerous times on the head.

20 The third count of the Indictment charging Mr.  
21 Danielson with the Class B felony of robbery in the  
22 first degree in violation of Section 160.15(1) of the  
23 Penal Law of the State of New York, alleges that the  
24 defendant, William H. Danielson, on or about  
25 December 27th, 2013, in the Town of Norwich, County of

1       Chenango and State of New York, did forcibly steal  
2       property and, in the course of the commission of the  
3       crime or of immediate flight therefrom, he or another  
4       participant in the crime caused serious physical injury  
5       to any person who's not a participant in the crime.

6               Specifically, at the aforesaid time and place,  
7       at approximately 6:30 o'clock in the forenoon at 110  
8       Bourbon Street, the defendant did forcibly steal  
9       property from Lucinda Knoll and, during the commission  
10      of the robbery, did strike Lucinda Knoll numerous times  
11      on the head, causing serious physical injury to the  
12      victim.

13             The fourth count of the Indictment alleging the  
14      Class B felony of assault in the first degree in  
15      violation of Section 120.10(4) of the Penal Law of the  
16      State of New York, alleges that the defendant, William  
17      H. Danielson, on or about December 27th, 2013, in the  
18      Town of Norwich, County of Chenango, and State of New  
19      York, in the course of and in furtherance of the  
20      commission or attempted commission of a felony or of  
21      immediate flight therefrom, he or another participant,  
22      if there be any, causes serious physical injury to a  
23      person other than one of the participants.

24             Specifically, at the aforesaid time and place,  
25      at approximately 6:30 o'clock in the forenoon at 110

1 Bourbon Street, the defendant,/-RG during the commission  
2 of the crime of robbery against Lucinda Knoll, did cause  
3 serious physical injury to Lucinda Knoll; the defendant  
4 did strike Lucinda Knoll numerous times on the head  
5 causing serious physical injury. On December 28th,  
6 2013, Lucinda Knoll succumbed to the serious physical  
7 injuries she received during the commission of the  
8 robbery.

9 And the fifth and final count of the Indictment  
10 alleging the Class D felony of assault in the second  
11 degree in violation of Section 120.05(1) of the Penal  
12 Law of the State of New York, alleges that the  
13 defendant, William H. Danielson, on or about  
14 December 27th, 2013, in the Town of Norwich, County of  
15 Chenango and State of New York, with intent to cause  
16 serious physical injury to another person, he caused  
17 such injury to such person or to a third person.

18 Specifically, at the aforesaid time and place  
19 at approximately 6:30 o'clock in the forenoon at 110  
20 Bourbon Street, the defendant, with intent to cause  
21 serious physical injury to Lucinda Knoll, did so by  
22 striking her numerous times on the head which resulted  
23 in her death on December 28th, 2013.

24 So with that, Mr. Clippinger, you've already  
25 entered a not guilty plea to each and every one of those

1 five counts. That not guilty plea has already been  
2 noted for the record. I will direct that motions shall  
3 be filed within 45 days of today's date.

4 Mr. Danielson, relative to this Indictment, you  
5 do have the following rights: You have the right to  
6 remain silent. You also have the right to make pretrial  
7 motions to test the legal sufficiency of the evidence  
8 which the People claim they have against you. You also  
9 have the right to a speedy trial by a jury of your  
10 peers. And at that trial, you would have the right to  
11 cross-examine and confront any witnesses the People  
12 bring against you. And at that very same trial, sir,  
13 you would have the right to subpoena witnesses to  
14 testify on your own behalf.

15 You have the right to post bail, which we'll  
16 discuss momentarily, and the right to make motions  
17 addressed to this particular Indictment.

18 At this time, Mr. McBride, do the People wish  
19 to be heard?

20 MR. McBRIDE: Judge, at this time I'd like to  
21 file my Affidavit of Service and Certificate of  
22 Readiness for the Clerk of the Court. Judge, I'd ask  
23 the defendant be remanded pending a disposition of this  
24 matter.

25 THE COURT: Thank you, Mr. McBride. Mr.



1 Clippinger, do you wish to be heard?

2 MR. CLIPPINGER: Judge, at this immediate time,  
3 we're not requesting bail. But we reserve our right to  
4 make an application for bail at some time in the future.

5 THE COURT: All right. Thank you, Mr.  
6 Clippinger. Then the Court will continue to remand Mr.  
7 Danielson to the correctional facility without bail.  
8 Motions shall be made within 45 days of today's date.

9 MR. CLIPPINGER: Judge, while we're on the  
10 record, I have one question, and it has to do with Mr.  
11 McBride. I have been told -- there's a rumor that Mr.  
12 McBride has appeared in Family Court sessions in which  
13 my client has been present and that Mr. McBride appeared  
14 in chambers, in conferences, and made certain  
15 representations to you as the sitting Judge in that  
16 Family Court matter. And I'd like to confirm whether  
17 that has happened or not.

18 MR. McBRIDE: First off, I have the absolute  
19 right to be in any Family Court proceedings. They're  
20 open in the State of New York. Second off, I did appear  
21 at a custody hearing and sat in the audience when the  
22 matter was proceeding. And the issue came up as to  
23 whether or not the child had witnessed a homicide, and  
24 the answer to that question was absolutely yes. And  
25 that information was disclosed to the Court, as the

1 Court's well aware.

2 MR. CLIPPINGER: Was that done in --

3 MR. McBRIDE: And none of this is relevant.

4 MR. CLIPPINGER: Is --

5 MR. McBRIDE: None of this is relevant to  
6 today's proceedings.

7 THE COURT: And that is correct, Mr.  
8 Clippinger, that, first of all, there have been no  
9 in-chambers sessions, conferences in the custody matter.  
10 There was a court appearance earlier this week. And as  
11 you know, Family Court is open to the public, unless the  
12 Court chooses for a particular reason to close the  
13 courtroom. Mr. McBride is correct. He has the right,  
14 as does the general public, to sit in the back of the  
15 family courtroom, which he chose to do.

16 MR. CLIPPINGER: And so -- I want it clear on  
17 the record he did not appear in chambers for a  
18 conference?

19 THE COURT: That's correct.

20 MR. CLIPPINGER: And there was nothing said in  
21 chambers by Mr. McBride with regard to this event?

22 MR. McBRIDE: Judge, I've never appeared in  
23 chambers.

24 THE COURT: There has been nothing on the  
25 Family Court case in chambers.

1 MR. CLIPPINGER: With regard to the Family  
2 Court appearance, did he make statements to the Court  
3 with regard to this matter?

4 MR. McBRIDE: First off, this is clearly  
5 inappropriate. If he has some motion he'd like to bring  
6 or if he wants to hold some --

7 MR. CLIPPINGER: I want it clarified before I  
8 bring the motion.

9 MR. McBRIDE: No.

10 THE COURT: All right.

11 Mr. McBRIDE: And Judge, he has no authority to  
12 do anything, and counsel can make any grandstand that  
13 he'd like. But the facts are the facts. I have the  
14 right to appear.

15 THE COURT: Mr. Clippinger, you do have the  
16 right to make any application you wish to do, but you  
17 need to do so in writing on notice so that the District  
18 Attorney's Office can appropriately respond, if they  
19 deem it to be necessary.

20 MR. CLIPPINGER: Thank you.

21 THE COURT: All right. At this time, unless  
22 there's anything further, we're concluded.

23 MR. McBRIDE: Thank you, Judge.

24 THE COURT: And the defendant is remanded back  
25 to the correctional facility.

**Additional material  
from this filing is  
available in the  
Clerk's Office.**