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April 16, 2009

Office of the Clerk
United States Court of Appeals for the Third Circuit
21400 United States Courthouse
601 Market Street
Philadelphia, PA 19106-1790

MOTION TO STRIKE

Re: Kamienski v. Hendricks
No. 06-4536

Dear Court Clerk:

I write to bring to the Court's attention that on pp. 19 and 26 of Appellees' Supplemental Brief, dated April 13, 2009, they cite to testimony found at p. SA 2257 of the trial record, when that testimony was later stricken by the trial court and made subject to a curative instruction at p. SA 2267.

It is my understanding that the Court has not yet ruled on whether to accept Appellees' Supplemental Brief, and I take no position on their request to file it, but, if it is accepted, then I ask that the offending parts referenced above be stricken.

I submit this written request with great reluctance, but I know of no other way to bring the issue to the Court's attention and I believe it is unlikely that the Court would easily discover the trial judge's ruling striking the testimony since no objection was made at the time and the ruling did not occur until the following court date. This particular instance of using stricken testimony was not the subject of colloquy during oral argument today to the best of my recollection.

Respectfully submitted,

/s

Timothy J. McInnis, Esq.

Service via ecf filing: Samuel J. Marzarella, Esq., Office of Ocean County Prosecutor