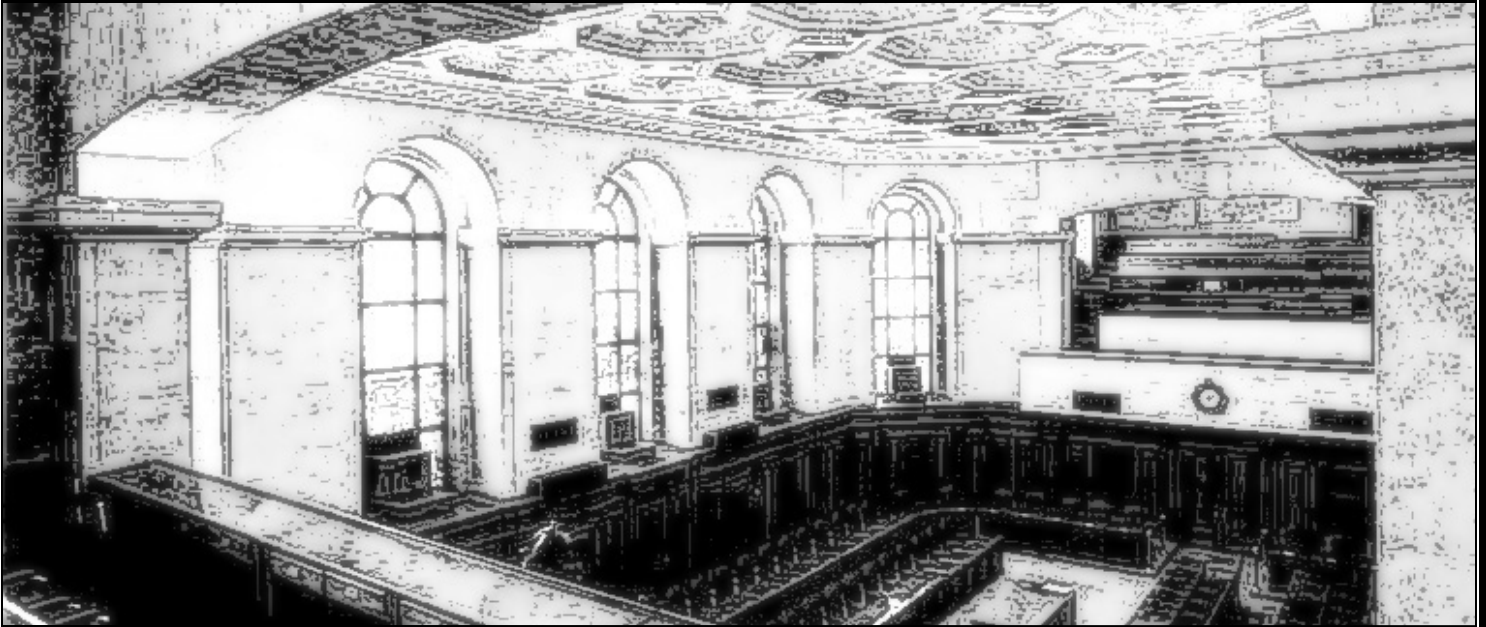


Citizens' Forum On Judicial Accountability

Final Report and Recommendations

May 7, 2009



Presiding Panelists:

- **James Holzrichter - Co-Founder of the Taxpayers Against Fraud Mentoring Project;**
- **Adam Miles* - Former Legislative Representative, Government Accountability Project (GAP);**
- **Attorney Beth Slavet* - Private lawyer and former Chairman, U.S. Merit System Protection Board;**
- **Jim Murtagh, M.D.* - Co-chair, International Association of Whistleblowers;**
- **Marcel Reid - Chairperson, The ACORN 8; and**
- **Matthew Fogg - Chief Deputy U.S. Marshal (retired), International Human Rights Advocate, and EEO/Diversity Counselor.**



- ❖ Panelists Adam Miles, attorney Beth Slavet, and Dr. James Murtagh did not participate in the drafting of and do not explicitly or implicitly endorse this report by virtue of having attended the Citizens' Forum On Judicial Accountability.

Forum Co-Sponsors:

- National Judicial Conduct and Disability Law Project, Inc. (NJCDLP)
- The E-Accountability Foundation
- The 3.5.7 Commission
- Congress Against Racism and Corruption in Law Enforcement (CARCLE)

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Acknowledgments

This report evolved from the past and ongoing commitment and sacrifices of many, many people in the interest of due process, equal protection, and the Rule of Law in America. Completing this report would not have been possible without the keen research and editing of Dr. Andrew D. Jackson, a member of the Advisory Board of Directors for National Judicial Conduct and Disability Law Project, Inc. (NJCDLP). While Tom Saunders was not directly involved with our Citizens' Forum On Judicial Accountability (CFOJA), his faithful membership on the NJCDLP Advisory Board of Directors helped in a real way to make the event possible. And of course the logistical and financial support of NJCDLP Executive Board Member Rodney A. Logal is the wind beneath the wings of countless Americans striving for justice.

We are grateful to and sincerely thank everyone who took time and money out of their lives and pockets to be part of our CFOJA and/or its internet radio counterpart, the "Change Of Venue" show on Blog Talk Radio. Special thanks are extended to videographers Francis C. P. Knize and Steven G. Erickson who filmed the entire CFOJA at no cost to its co-hosts. And finally we thank the Stewart R. Mott Charitable Trust for allowing us access at no cost to its beautiful mansion and gracious staff on Capitol Hill in Washington, D.C. on May 15, 2008 when our historic CFOJA was held.

CFOJA Co-Sponsors:

- National Judicial Conduct and Disability Law Project, Inc.
By: Attorney Zena D. Crenshaw, Executive Director
- The E-Accountability Foundation
By: Betsy Combier, President
- The 3.5.7 Commission
By: Attorney Michael R. McCray, Chairman
- Congress Against Racism and Corruption in Law Enforcement
By: Matthew Fogg, Founder and National President

"I may not be there yet, but I'm closer than I was yesterday."

~ Author Unknown ~

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Citizens’ Forum On Judicial Accountability
Final Report and Recommendations

Preface

An audience slowly gathered on the morning of May 15, 2008 at the Capitol Hill mansion in Washington, D. C. of the now deceased philanthropist Stewart R. Mott, for an unprecedented “Citizens’ Forum on Judicial Accountability” (CFOJA). As executive director of National Judicial Conduct and Disability Law Project, Inc. (NJCDLP), a co-sponsor of the event, Zena Crenshaw shares her views on the program’s intent. “The forum provided a controlled, but reasonably exciting environment for members of Congress, judges, court administrators, human rights activists, and good government advocates to hear an orchestrated, comprehensive, and rationally sound debate on the proper scope of judicial accountability in America”.

“Our invitees embody a cross section of views on appropriate judicial oversight” notes Betsy Combier, president of the E-Accountability Foundation, a co-host of the Citizens’ Forum. Attorney Michael R. McCray, chairman of “The 3.5.7 Commission”, a forum co-host studying the proliferation of summary judgments in employment discrimination cases, adds “in fact the

greatest value of our event should be the comprehensiveness it brings to the debate about judicial independence and accountability in America.” Chief Deputy U. S. Marshal Matthew Fogg, founder and national president of CARCLE (Congress Against Racism and Corruption in Law Enforcement), a forum co-host, interjects that “the debate will likely continue, but our event will bring to bear all the relevant, legitimate considerations.”

Citizens’ Forum On Judicial Accountability

Final Report and Recommendations

I. The Impetus for a Citizens’ Forum on Judicial Accountability and the Underlying Debate on the Proper Scope of Judicial Accountability in America

Since 2006, retired Supreme Court Justice Sandra Day O’Connor has periodically gathered with judicial officers, lawyers, and opinion leaders from the corporate, non-governmental organization, and media fields to develop and pursue strategies for increasing public confidence in the judiciary and promoting judicial independence. The logistics or criteria for joining Justice O’Connor’s group has not prompted the involvement of what appears to be a significant number of grassroots advocates with relevant empirical data and sound views (in whole or part) on the proper scope of judicial accountability in America. The “Citizens’ Forum on Judicial Accountability” (CFOJA) was accordingly convened on Capitol Hill in Washington, D.C. on May 15, 2008. An overview of the event, partial transcripts, and related videos are accessible at www.njcdlp.org/Forum.html

Empirical evidence suggests that judges generally regard judicial accountability as an infringement on judicial independence that unduly undermines public confidence in their integrity beyond considerations of judicial error; the non-judicial or personal misconduct of judges; and their relatively rare, largely inadvertent ethics violations. In contrast, many non-lawyers and some lawyers publicly contend that improper bias prevails among judges against certain minorities and in favor of big business², the rich, the powerful, the influential, the politically connected, and U.S. local, state, as well as federal government. Whistleblowers³ press for judicial oversight that goes beyond considerations of harmless or reversible legal error; garden variety, largely employment related torts impacting court personnel; noncriminal ethics transgressions; and/or garden variety crimes such as bribery.

This report considers whether the proper scope of judicial accountability seemingly hinges on perspective more than established principles of due process. It will articulate and evaluate competing views on the subject. In fact, some find this report’s greatest value in the comprehensiveness it brings to the debate about judicial independence and accountability in America. Hopefully it is widely embraced as a useful “best practices” recommendation in striking the appropriate balance between judicial independence and due oversight on state and federal levels.

² Such as from the defense, pharmaceutical, and/or insurance industries.

³ This report utilizes the word whistleblower in a broad nontechnical sense unless otherwise indicated.

II. The Sponsors' Quest for a Bipartisan, Presiding Panel

Co-sponsors of the CFOJA⁴ intended and made every effort within their capability to have a truly representative presiding panel reflecting all responsible points of view on judicial accountability in America. The corresponding thirty-plus invitees⁵ represent a wide spectrum of training, vocations, insights, experience, and opinion. They collectively hailed from two (2) judges' associations, one federal and one state; four (4) well known and long standing bar associations; Congress with two (2) of the three (3) on the House Judiciary Committee, one (1) being its chair; the legal profession including nine (9) noted current or former attorneys, legal scholars, commentators, and columnists; ten (10) known and respected civic organizations including legal reform advocates; a United Nations organization concerned with freedom of expression; and a nationally known think tank.

The president of a judges' association was among several distinguished invitees who committed to or showed considerable interest in attending the CFOJA but failed to show. It eventually became clear that judges' associations and administrative centers as well as more established bar associations were unwilling to be part of the CFOJA.⁶ Other invitees either could or chose not to attend for undisclosed reasons with no discernible pattern.

⁴ CFOJA co-sponsors are National Judicial Conduct and Disability Law Project, Inc. (NJCDLP); The E-Accountability Foundation; The 3.5.7 Commission; and Congress Against Racism and Corruption in Law Enforcement (CARCLE).

⁵ The Honorable John Conyers, Jr., Chairman, House Judiciary Committee; The Honorable F. James Sensenbrenner, U.S. Congressman; The Honorable Ron Paul, U.S. Congressman; Barbara J. Rothstein - Director, Federal Judicial Center; The Honorable Sarah Evans Barker, President, Federal Judges Association; The Honorable Eileen Olds, President, American Judges Association; James C. Duff, Director, Administrative Office of the U. S. Courts; Mary Campbell McQueen, President and CEO, National Center for State Courts; Attorney Jack D. Locridge, Exec. Director, The Federal Bar Association; Janet Jackson, Director, American Bar Association; The Honorable Edwin Meese III, Distinguished Fellow, The Heritage Foundation; Attorney John Crump, Exec. Director, National Bar Association; Attorney Heidi Boghosian, Exec. Director, National Lawyers Guild; Attorney Dominic Gentile - *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991); Marcel Reid, President, D. C. ACORN; Professor Carl Bogus, Author, *Culture of Quiescence*; F. Lee Bailey; Attorney Michael Tigar, attorney for former attorney Lynne F. Stewart; Matthew Fogg, National President - CARCLE; Representative(s) of: i. No FEAR Coalition, ii. Government Accountability Project, iii. National Whistleblower Center, and iv. Make It Safe Coalition; Cynthia Gray, Director, Center for Judicial Ethics, American Judicature Society; Bill Buzenberg, Exec. Director, Center for Public Integrity; Judge Andrew P. Napolitano, Author, *Constitutional Chaos* and *The Constitution in Exile*; PBS Anchor Bill Moyers; Attorney Beth Slavet, former Chair, U.S. Merit System Protection Board; New York Time's columnist Adam Liptak; Leticia Linn, Journalist - Office of the Special Rapporteur for Freedom of Expression; Nancy Boswell, President and CEO, Transparency International USA; Johannes F. Linn, Senior Fellow, Brookings Institute and Exec. Director of the Wolfensohn Center for Development; Larry Cox, Exec. Director, Amnesty International USA; Jim Turner, Exec. Director, HALT (Help Abolish Legal Tyranny); John J Oliver, Jr., CEO and Publisher, Washington Afro; and Attorney Michael Brown, Fox News Political Commentator.

⁶ On December 1, 2008, the Honorable Judge Robert Pirraglia attempted to be part of a "Change Of Venue" interview entitled "Self-Policing Under The Uniform Rules of Judicial Conduct and Disability – An Unbridled Horse or A Steady Compass?". However, the show was unexpectedly and inexplicably preempted after airing live for approximately 20 minutes. Customer support for the internet radio station, BlogTalkRadio, has been unable or unwilling to explain why or how such a thing would or could happen. At the time of his referenced interview, Judge Pirraglia was Chair of the ABA Judicial Committee on Ethics and Professionalism and State District Court Judge, Providence, Rhode Island.

III. A Profile of the Presiding Panel, Its Implications and Impact

While five (5) of our six (6) presiding panelists have publicly described him or herself at one time or another as a “good government advocate”, none is primarily a legal or judicial reform activist. All five (5) have attested to some form of need for legal and/or judicial reform in America through their good government advocacy. Yet all six (6) have the intellectual and moral fortitude to be fair and substantially impartial in judging the CFOJA debate.

James Holzrichter and Adam Miles presided over the CFOJA debate as both law students and good government advocates. Presiding panelists Dr. Jim Murtagh and Ms. Marcel Reid are savvy nonlawyer litigants and public interest activists, often relying on courts to confirm and protect critical social policies.

Interestingly, presiding panelist Chief Deputy U.S. Marshal Matthew Fogg has experienced America’s judiciary while on the job protecting federal judges and as an employment discrimination litigant. His participation virtually guaranteed levity as the CFOJA audience considered and addressed judicial oversight in America.

Through her work as former chair of the U.S. Merit System Protection Board, attorney Beth Slavet brought the closest to a judicial perspective to the CFOJA presiding panel. Attorney Michael McCray also supplied that perspective in championing the adequacy for judicial oversight of well established government processes in America as part of the CFOJA debate. Unfortunately other members and representatives of America’s judiciary were not part of corresponding discussions.

Impartiality and to some, even fairness in determining the proper scope of judicial accountability in America is a state that may only be reached through the balancing of multiple and counter perspectives. The CFOJA audience was admittedly inclined to favor legal and/or judicial reform. But neither the CFOJA debate nor this report with recommendations simply carries to their views.

Perhaps upon the publication of this report with recommendations, the best debates are yet to come.

IV. The Strategy of the Program Agenda

The CFOJA began with an academic debate on the resolution that adequate judicial oversight is generally available in America through well-established government processes. The question of whether current government processes for judicial oversight generally align with due process in America was then considered in light of testimony from a pre-selected panel of U.S. citizens. Finally, renowned civil rights activist and former constitutional law professor attorney Thomas N. Todd introduced through a pre-recorded interview the contention that Congress should nationalize free speech standards for critiquing judges in the interest of zealous advocacy and fair trials.

A CFOJA co-host, National Judicial Conduct and Disability Law Project, Inc. (NJCDLP), subsequently launched a public awareness campaign about the CFOJA and the significance of private citizens helping define the scope of judicial accountability in America. Anchoring that multi-media campaign was and is the internet radio show entitled “Change of Venue”. (see: www.njcdlp.org/Change_of_Venue.html) The goal of that show and the CFOJA is to push dialogue beyond the “judges can’t be trusted to self regulate / judicial critics are merely disgruntled litigants” paradigm of popular debates.

V. The Debate Contentions

The CFOJA debate contentions are as follows:

Resolved: Adequate judicial oversight is generally available in America through well-established government processes.

Negation: Government processes for judicial oversight in America generally lack adequate procedural protections to vindicate the substantive rights of complainants alleging judicial misconduct.

Stipulation: Both sides to the debate stipulate that the relevant government processes are as follows:

Trial Process:

- Change of Venue
- Recusal motions
- Disqualification motions
- Motions for Reconsideration
- Objections to Proposed Findings
And Conclusions
- Post-trial motions for relief
- Writs Coram Nobis and Coram Vobis
- Jury Trial;

Appellate Process:

- Interlocutory Appeals
- Appeal of Final Judgment
- Motion for Rehearing
- Motion for Rehearing *En Banc*
- Limited right of Direct Appeal or
Transfer to Highest Court;

Action for Extraordinary Writ:

- Mandamus -Prohibition -Habeas Corpus -Certiorari;

Civil lawsuit for monetary and/or equitable relief;

Administrative claims for relief – local/state/federal;

Judicial disciplinary procedures – state/federal;

Legislative limitations of judicial power – state/federal;

Impeachment proceedings – state/federal;

Criminal prosecution – local/state/federal.

VI. The Message of Five (5) Forum Witnesses

The pre-selected panel of private citizens who provided unsworn testimony at the CFOJA consisted of Mrs. Evelyn Johnson, Mrs. Nancy Swan, Ms. Katherine Moore, Mrs. Betsy Combiar, and Mrs. H. Christina Pak.

- Mrs. Johnson is a former federal judiciary, career-tenured employee of 22+ years with the Administrative Office of the U.S. Courts and the Eleventh Circuit U.S. Court of Appeals, Staff Attorneys' Office in Atlanta, Georgia. Her case profile appears at appendix page iv. It presents the prospect of a federal court deliberately violating the law as an employer and skirting responsibility through unconscionable legal maneuvers or gamesmanship and technicalities;
- Mrs. Swan is author of *Toxic Justice: A Conspiracy of Silence*. Her case profile appears at appendix page vi. It presents the prospect that seriously injured litigants may be denied comprehensive relief and even a lawyer to pursue it despite strong indications that judicial misconduct prompted dismissal of their claims;
- Ms. Moore is a former Mayor Pro Tem in Wilmington, North Carolina. Her case profile appears at appendix page viii. It presents the prospect of courts joining schemes to deprive public officials of the equal protection of law when they champion unpopular causes;
- Mrs. Combiar is an avid legal reform activist and founder of ParentAdvocates.org. Her case profile appears at appendix page xii. It presents the prospect that her investigation of possible money laundering by a wealthy church prompted court-sanctioned harassment of her through her mother's estate; and
- Mrs. Pak is a former Maryland attorney. Her case profile appears at appendix page xv. It presents the prospect that courts may remove reputable lawyers from their profession based on less than clear and convincing evidence, clouded by procedural irregularities and a specter of unlawful discrimination.

Each of the CFOJA witnesses was a guest on the internet radio show "Change Of Venue", expounding on her case and forum testimony. Archived broadcasts of their radio appearances are accessible at www.njcdlp.org/Change_of_Venue.html

VII. Answering the Question of Whether the Proper Scope of Judicial Accountability in America Seems to Hinge on Perspective More than Established Principles of Due Process

A relatively recent article of *The Yale Law Journal* provides these interesting insights:

If judicial independence had been an unqualified value or purpose of Article III, the Constitution could simply have given judges an absolute life tenure, unconstrained by any good-behavior condition – or even, for that matter, the possibility of impeachment. The Framers did not do that, obviously, because the

value of judicial independence was qualified by, and was to an extent in conflict with, the need to ensure that judges behaved responsibly and to hold accountable judges who fell short of that requirement. So judges needed to be independent, to be sure – but not *too* independent. The Framers sought to strike a balance between these competing values by giving judges life tenure, subject to removal for violations of the good-behavior proviso, and also (as with all other civil officers) to impeachment.

How To Remove A Federal Judge, Volume 116, The Yale Law Journal, 72 - 2006.

Yet the concepts of judicial independence and judicial accountability seem to clash in public debates as if a choice must or at least should be made between the two. The hopefully safe and maybe even politically correct consensus among the writers of this report is that such a choice would be wrong for basically reasons excerpted from the *Yale Law Journal* article above.

A conundrum less retractable than the “judicial independence versus judicial accountability” debate relates to *how* American judges should account for their official conduct. The answer does seem to hinge on perspective more than established principles of due process, but not because any dominant, related contention is totally unfounded. There are those upheld by citations to history, the U.S. and/or state constitutions, and common law that are generally endorsed in major media and others that are correspondingly scorned. Therein lies their clearest distinction.

VIII. The Official Debate Decision and Recommendation

- This report seeks to resolve conflict in affirming or negating the CFOJA debate resolution on the adequacy of judicial oversight in America without throwing any proverbial babies out with the bath water.

Attorney Michael R. McCray persuasively argues in the affirmative at the CFOJA debate that “. . . there is a consensus among judges that self-policing works; if it is an imperfect system, there is nothing better; and no other agency of government or private group has a superior understanding of the judicial process or can do the job any better”. *Aff Deb Pos*, p 2.

Attempting to negate their debate resolution on the adequacy of judicial oversight in America, attorney Zena Crenshaw introduced these dynamics: “. . . we have the rule of law; an evaluation of whether it has been violated; and a restoration of the rule when breached.” *Neg Deb Pos*, p 6. She contends:

. . .

It is when criticism of judges escalates to complaints of deliberate, willful, or reckless misconduct that they (i.e. judges) should not respond alone for America’s judiciary. Restoring the rule of law when breached is an obligation of all Americans. A system for our competent, substantial, and direct involvement in every phase of the process is the only balanced response; it is the strategy for judicial oversight that makes the most sense.

Neg Deb Pos, p 6.

Such thinking is undeniably consistent with “. . . government of the people, by the people, for the people . . .” See, *The Gettysburg Address*. President Abraham Lincoln reportedly said that “(w)e the People are the rightful masters of both Congress and the Courts, not to overthrow the Constitution but to overthrow the men who pervert the Constitution.”

As part of the CFOJA debate, attorney Crenshaw essentially proposes that “(g)overnment processes for judicial oversight in America generally lack adequate procedural protections to vindicate the substantive rights of complainants alleging judicial misconduct” because they fail to allow the “. . . competent, substantial, and direct involvement (of all Americans) in every phase” of those processes. Presumably anyone arguing for the affirmative would assert the “best” approximation of that populist oversight is judicial self-policing. After all, attorney McCray accurately explained:

Some critics want to be appeased by the courts. They are not completely satisfied unless they get everything they want from the courts, will not settle for all they are entitled to under the law, and are not satisfied with obtaining most of what they want. Such appeasement is not the function of the courts.

Aff Deb Pos, p 3.

Of course in negating the CFOJA debate resolution, someone may counter by citing prospects of judicial corruption. The report at hand seeks to resolve underlying conflict without throwing any proverbial babies out with the bath water.

- It seems “the real problem for our country is not the reality *or* unwarranted perception of judicial misconduct”, but the lack of forums for addressing related allegations that do not rely almost exclusively for effectiveness on judicial integrity and/or that of lawyers and/or public officials whose power and/or careers are controlled or substantially impacted by judges.

Professor David Barnhizer, a nationally recognized legal scholar, explains:

Judges, operating within the rules of choice articulated for a powerful institution with critical functions, have made important choices about values. These choices are advanced in the form of doctrine. Doctrine is a conclusion about appropriate values, a formula for allocating benefits and duties, or a hypothesis about something of importance that supports and is supported by a particular institution or set of institutions. Through their formulations of legal doctrines judges provide rules for distributing power.

David Barnhizer, *“On the Make”: Campaign Funding and the Corruption of the American Judiciary*, 50 *Catholic University Law Review* 361, p 374 – 2001.

It is arguably naïve and inconsistent with America’s system of governmental checks and balances to entrust compliance with such “powerful formulae that have moral and political implications as well as great economic impact”, *Id. at 373-374*, to mere human, albeit judicial integrity. At the suggestion of our U.S. Supreme Court, the writers of this report examine:

(T)he nature of the functions with which a particular official or class of officials has been lawfully entrusted, and we seek to evaluate the effect that exposure to particular forms of liability would likely have on the appropriate exercise of those functions. Officials who seek exemption from personal liability have the burden of showing that such an exemption is justified by overriding considerations of public policy . . .

Forrester v. White, 484 U.S. 219 at 224 (1988).

While *Forrester* references the doctrine of judicial immunity by which judges are exempt from civil litigation based on their official conduct, it seems the Court’s balancing of public policy considerations should extend to broader considerations of judicial accountability.

In justifying judicial self-policing as part of the CFOJA debate, attorney McCray reminds us that “(a)llegations of very widespread corruption involving many or most judges, several times that many attorneys, a good many in law enforcement, and so on seems quite implausible as at least a few members of such a conspiracy are bound to be detected.” *Aff Deb Pos*, p 4. This reports accordingly considers whether major media, America’s metaphorical fourth branch of government, facilitates that discovery process. On multiple occasions, Justices of the U.S. Supreme Court note in regard to publicity that without it “. . . all other checks are insufficient: in comparison of publicity, all other checks are of small account.” *See, for eg., Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569 (1980).

Writing for a bar association, online publication, Sarah Kellogg quotes the news director for American University’s public radio station saying “(f)or broadcast stations like ours, when it comes to the courts, we tend to be reactionary . . . (as you’re) not covering the courts; you’re covering something that’s happening at the courthouse.” *See, Legal Journalism At A Crossroads*, D.C. Bar Cover Story – September 2008. When asked whether media is like a sleeping watch dog as to the courts, embattled media and legal reform activist Dr. Mark Adams substantially responded, “it’s more like the judiciary’s attack dog”. *See, The Media As Judicial Monitor: A Sleeping Watchdog?*, BlogTalkRadio – “Change Of Venue” – September 8, 2008. A local newspaper recently complained that “(m)any, if not most, gag orders and other restrictions on media access are granted almost automatically at the request of either party and without much consideration of the impact on the public’s understanding of judicial processes and almost no respect for the proper functioning of the press as surrogate of the public.” *Editorial: Ban on media in courts disregards public rights*, The Monterey County Herald, August 18, 2008.

This report was not created to advocate media reform, but comfortably concludes that major media is not combining with America’s well-established government processes for judicial oversight to provide what CFOJA’s witnesses Johnson, Swan, Moore, Combier, and Pak apparently need: one or more forums to attempt proving or refuting allegations of judicial misconduct that are not susceptible to exactly the same kind of corruption allegedly thwarting

their vindication to date. It seems “the real problem for our country is not the reality *or* unwarranted perception of judicial misconduct” as attorney Crenshaw suggests, but the lack of forums for addressing allegations of judicial misconduct that do not rely almost exclusively for effectiveness on judicial integrity and/or that of lawyers and/or public officials whose power and/or careers are controlled or substantially impacted by judges. This is not to suggest that judges, lawyers, and public officials whose power and/or careers are controlled or substantially impacted by judges are not generally honest people of great integrity. This report instead decries “a judiciary that is “. . . essentially final arbiter of whether it has been corrupted and exclusive regulator of any attorney or judge who would object” as NJCDLP did in 2005. (See, NJCDLP letter to Congress of 1/31/05, p. 2).

- This report is a limited endorsement of three (3) major grassroots legal reform efforts.

So the government processes at issue generally lack adequate procedural protections because they rely almost exclusively for effectiveness on judicial integrity and/or that of lawyers and/or public officials whose power and/or careers are controlled or substantially impacted by judges. Veteran legal reform activist and Minnesota resident attorney Dale Nathan reportedly drafted a comprehensive legislative scheme specifically addressing:

Performance evaluation of judges

Performance evaluation boards that are independent of the judicial branch of government will evaluate how judges perform their work and send reports to voters before elections. Minnesota’s judges have advocated for such boards.

Judicial Oversight - accountability for wrongful actions or abuse

A legislative agency similar to the Office of the Legislative Auditor will investigate complaints of wrongdoing or abuse by judges. Management of the agency is selected by legislators. The agency will have the power to sanction judges, but not the power to change or modify any decision or order. It will have a professional staff. Judges will be shielded from frivolous and groundless charges. The Judicial Standards Board will be abolished.

Common Sense Board

A citizens’ board will investigate complaints of decisions or orders by judges that are outrageous, obviously unjust, or lacking in a reasonable basis, and widely publicize the decisions and the names of the officials responsible for it. The board will not have the power to change or modify any decision, order or court action. The board will be assisted by a staff of legal analysts.

Judge Campaign Financing

Judge elections will be financed with public funds at no cost to taxpayers. To get campaign funds, judges and candidates for judge would have to agree to run nonpartisan

and conduct ethical campaigns. The proposed law is modeled on the highly successful North Carolina law that depoliticized judge elections.

Judge Elections

Judges will be elected to office by vote of the people as provided in Minnesota's Constitution, not appointed to office by the governor. Judges will be on the ballot only in the county or counties to which they are assigned. The identification of incumbents will be eliminated.

Judge Gratuities

Judges and employees of the judicial branch will be subject to the same restrictions on accepting gratuities as are applicable to legislators and employees of the legislative and executive branches of government.

Nathan's proposal also provides:

- Abolition of the rule of judicial immunity
- Justice Cost Reduction - public services, loser pays, fee restrictions, . . .
- Right of citizens to petition for creation of a grand jury and an investigation
- Increased judge compensation
- Requirement for judges to strictly comply with the rules of procedure
- Ban on judge legislating (creating or changing existing law)
- Ban on altering, tampering with, or modifying evidence or transcripts
- Requirement for district court decisions by elected judges only, not referees
- Certification of decisions and orders by judges
- Creation of a Code of Ethics for the judicial branch of government
- Lawyers Responsibility Board replaced by independent oversight board
- Prohibition on Jailing a person without a trial
- Court Administrator controlled court video and sound recorders
- Prevention of wrongful termination of parental custody
- Right to parent children, liberal and meaningful contact by both parents
- Right to criticize judges to the same extent as other public officials
- Right to jury trial in all cases
- Measures to penalize unjustified dismissals of claims and cases
- Remand to a different judge after a successful appeal
- Right of a corporation or other entity to represent itself in court
- Enforcing orders of the Judicial Oversight Board by judge pay cutoff

Outline of reforms accomplished by a proposed bill for an act to improve Minnesota's courts and legal system, Dale Nathan – July, 2008.

This report does not endorse the foregoing proposal except in characterizing it as a good starting point for considering an overhaul of America's well-established government processes for judicial oversight.

Attorney Nathan's proposed bill allows for abolition of judicial immunity unlike the 2007 Global Report on Judicial Corruption by Transparency International (TI), a prestigious anti-corruption coalition. Even in proposing changes consistent with reforms Nathan suggests, attorney Crenshaw hastens:

The prospect of judges being tried before run-away juries is sure to spark judicial misconduct complaints in a litigious society. Screening those cases through hospitable fact finding processes is certain to increase the number deemed viable. In fact viable judicial misconduct complaints may proliferate before this jury-friendly system corrects itself and settles on what should be proscribed.

...

Neg Deb Pos, pp 6-7.

Admittedly, some grassroots advocates make pretty compelling arguments for eliminating judicial immunity and realizing this temporary turmoil Crenshaw projects. See, *The Literal And Figurative Pros And Cons Of Judicial Immunity*, BlogTalkRadio – “Change Of Venue” – August 25, 2008.

As controversial and derided as it has been in the mainstream press, the grassroots reform movement advocating the “Judicial Accountability Initiative Law” signals a plausible way, at least in part, to maintain judicial immunity while containing abuse in both its use and preemption. See, *Stegmeier v. Long et al*, Cause No. HU06-322 before the Circuit Court for the Sixth Judicial Circuit of South Dakota, County of Hughes and related decision reproduced at http://www.tulanelink.com/jail/ruling_06a.htm The proposed legislation envisions a “Special Grand Jury” substantially insulated from judges, lawyers, and other public officials while directing when the doctrine of judicial immunity can be applied or preempted. See, *Id.* Except in applauding its thoughtful effort to deter related corruption, this report does not endorse the referenced proposal commonly known as “JAIL 4 Judges” to the establishment's chagrin and the delight of many private citizens. Whatever may or may not be their shortcomings, the proposed legislation's current provisions for qualifications, selection, and service of jurors seem much less susceptible to insidious manipulation than similar arrangements attorney Nathan proposes.⁷ See, *Id.*

- Adequate judicial oversight is not generally available in America through well-established government processes, but contrary to a popular sentiment, that inadequacy is not due to corruption.

In conclusion, the CFOJA debate resolution was and should have been successfully negated; adequate judicial oversight is not generally available in America through well-established government processes. But contrary to a popular sentiment, that inadequacy is not due to corruption. Its most fundamental cause is an imbalance of power making it much more difficult for average Americans to redress what they contend is judicial misconduct than it is for

⁷ Attorney Dale Nathan was a “Change Of Venue” guest on October 6, 2008 and activist Reverend Ron Branson of Jail 4 Judges provided an interview for the show on November 3, 2008.

judges to avoid comprehensive scrutiny of their official conduct.⁸ Ironically, making an appropriate shift in that balance substantially relies on the integrity of judges, lawyers, and public officials whose power and/or careers are controlled or substantially impacted by judges as “(j)ustice is a moral construct rather than a technical legalistic device.” *“On the Make”* at 363.

IX. Attorney Thomas N. Todd on National Standards for Judicial Critiques

Attorney Thomas N. Todd, an accomplished civil rights activist, widely known for his dynamic oratorical skills as TNT, personally called on House Judiciary Committee Chairman John Conyers, Jr. (D-Mich) in 2007 to move towards federalizing the regulation of speech among lawyers. In a prerecorded interview, Todd vividly describes the difficulties lawyers face in zealously advocating for clients without running “afoul of what (their) judge may personally feel or think”. Todd notes the predicament “is a problem which I talked about in the deep South, (and) a problem which lawyers grapple with every day now . . .”

Interviewing Todd on camera is NJCDLP Executive Director, Zena D. Crenshaw. She questions Todd as to whether strict restraints on what lawyers can say to and about judges negatively impact fair trials and effective legal representation. A central focus of their discussion is *Matter of Wilkins*, a 2002 decision by the Indiana Supreme Court to discipline a lawyer for suggesting certain judges twisted the facts and law of a case to justify a desired result. The full interview is accessible at http://www.popular4people.org/Video_View/TNT.html

According to Todd, the reality of 50 different states providing “various interpretations of the federal standard” for a lawyer’s free speech is a problem that “cries out for a solution which is one that is uniform.” He projects that in some communities, lawyers are likely unwilling to accept cases that may place them in “bad standing with the judiciary.” This “chilling effect” on a right as fundamental and critical as free speech, particularly troubles Todd when lawyers were called in 2007 to represent “very, very unpopular clients, just as they did in the South.” He cites alleged enemy combatants and illegal immigrants as clients that may in one state more than another, require lawyers to push the bounds of acceptable advocacy.

In an approximately 30 minute explosive interview, Todd calls for a complete overhaul of professional disciplinary rules purporting to preserve the sanctity of America’s judiciary. He remarks essentially that lawyers should not be curtailed in making legitimate arguments for serious clients when television producers have t.v. judges doing whatever is necessary to entertain and make money. Noting the “consistent” concern about equity and justice of Chairman John Conyers, Todd envisions that relevant hearings before the House Judiciary Committee may lead to a “national (lawyers’) commission with one standard” for free speech.

X. Congress Should Strengthen America’s Judiciary By Enacting Judicial Whistleblower Protection

As a global coalition against corruption, Transparency International (TI) submits “(i)t is . . . crucial that the transparency of the judiciary be continuously scrutinized, and when found to be lacking, enforced with particular momentum in order to prevent the weakest sections of the society to bear the costs of corruption in the judicial system.” After acknowledging that, among

⁸ Distinguished legal reform activist Dr. Richard Cordero, Esquire, describes many of the corresponding challenges and difficulties as a “Change Of Venue” guest on September 22, 2008. See also the case study, *Michael McCray v. Thomas Penfield Jackson*, at our appendix page xix.

others, “(i)t is often courageous members of the . . . judicial system itself who speak out against specific instances of corruption”, TI proposes that such action be encouraged through development of “confidential and rigorous formal complaints procedure”. Missing from the coalition’s key recommendations are direct measures to protect and/or help vindicate as needed, Doctors of Jurisprudence and licensed attorneys whom authorities have identified as judicial whistleblowers.

In making its 2006 report, the “Judicial Conduct and Disability Act Study Committee” chaired by Associate Supreme Court Justice Stephen Breyer, acknowledged that lawyers generally fear retaliation for alleging misconduct or disability on the part of any judge or judges.⁹ Unfortunately for America’s poor and otherwise disadvantaged, judicial “(c)orruption generally comes to light only through a partnership between courageous (journalists and lawyers).”¹⁰ When addressing “(t)he media and judicial corruption”, TI makes related hazards quite clear:

In most democracies today, corrupt politicians, officials and businessmen can exploit both civil and criminal law to silence their critics. In the case of judges, they have a special power to punish critics for contempt of court, and they can misinterpret these laws or twist the facts to support unjust rulings in favour of the state, or its favourites.

Certainly processes for screening bar candidates and lawyer disciplinary proceedings are no less amendable to abuse.¹¹

“(I)t is important . . . to ensure not only that . . . substantive First Amendment standards are sound, but also that they are applied through reliable procedures.” *Waters v. Churchill*, 511 U.S. 661 at 666 (1994). Federal trial, appellate, and state courts of America do not always apply to lawyers and judges, the standards for free speech enunciated in *New York Times v. Sullivan*, 376 U.S. 254 (1964), and *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991). The Supreme Judicial Court of Massachusetts provides a convenient survey of American states on “. . . the standard to be applied in disciplinary proceedings where an attorney invokes the First Amendment protection of free speech when defending against charges that he impugned the integrity of a judge, without basis, during a pending case” in *The Matter of Cobb*, 838 N.E.2d 1197 (12/08/2005). “A majority of the State courts that have considered the question have concluded that the standard is whether the attorney had an objectively reasonable basis for making the statements”. *Id. at 1212*. In addition, “(a)t least three States have said that disciplining an attorney for criticizing a judge is analogous to a defamation action by a public official for the purposes of First Amendment analysis (and applied) the ‘actual malice’ or subjective knowledge standard of *New York Times Co. v. Sullivan* . . .” *Id. at 1212*.

Admittedly, “. . . the speech of lawyers representing clients in pending cases may be regulated under a less demanding standard . . .” than would otherwise apply. *See, Gentile v.*

⁹ *Implementation of the Judicial Conduct and Disability Act of 1980 – A Report to the Chief Justice*, pp 103-104, The Judicial Conduct and Disability Act Study Committee – September 2006.

¹⁰ *Global Corruption Report 2007 – Corruption in Judicial Systems*, Transparency International, Part One, p 110.

¹¹ “(S)ome judges forget about the First Amendment when free speech is directed at them and take disciplinary action against the lawyer.” *The Threat to Judicial Independence by Criticism of Judges – A Proposed Solution to the Real Problem*, Monroe H. Freedman, p 730, Hofstra Univ. School of Law, Law Review – 2005. (internal footnote omitted).

State Bar of Nevada, 501 U. S. 1030 at 1069 (1991). (emphasis added). In 1907, the U. S. Supreme Court determined that ‘(w)hen a case is finished, courts are subject to the same criticism as other people . . .’ *Id.* (emphasis added). However, the collective applications of free speech standards tracked by the *Cobb Court*, do not correspond to a “pending case/concluded proceedings” distinction. See, *The Matter of Cobb*. That reality corresponds to the aforementioned call of attorney Thomas N. Todd for national regulation of First Amendment activities among lawyers.¹² The same protection likely needs to extend to judicial officers as well.

XI. Next Steps

Professor David Barnhizer and perhaps others instruct that “(t)hrough their formulations of legal doctrines judges provide rules for distributing power.” *“On the Make”* at 374. This report suggests “(i)t is arguably naïve and inconsistent with America’s system of governmental checks and balances to entrust compliance with such ‘powerful formulae that have moral and political implications as well as great economic impact’,” *Id.* at 373-374, to mere human, albeit judicial integrity.” See, CFOJA Report & Rec., pp 9-10. So our “next steps” are to consider through a panel lecture series, why as a society we are essentially doing that in America.

In hopefully attracting educational and public policy institutions to endorse, host, and/or underwrite a panel lecture series examining the sanctity of judicial integrity in America, CFOJA co-sponsors will suggest the effort begin with considerations of the character and role of judges prescribed in Judaeo-Christian history and as English common law emerged. Obviously the God of Judaeo-Christian religion is reported to have ordained the judiciary recounted by scriptures. Similarly the creation of a judiciary extended from the “Divine Rights of Kings” before that notion submerged in England.

CFOJA co-sponsors will endeavor to assemble students and scholars of American and Judaeo-Christian history as well as that of American and English legal systems to consider whether the “divine” function of judges is a remnant subtly woven in America’s societal fabric. If it is, the question becomes will America’s judiciary remain appropriately sanctified if recast as a distinguished but unequivocally secular undertaking by exceptional but fallible people currently enjoying too much deference?

The idea of a “lecture series”, even addressing the topics hereby proposed, may provide little or no comfort for alleged victims of judicial misconduct. As noted by Transparency International, “(i)t is difficult to overstate the negative impact of a corrupt judiciary”. However, it is much different to allege than prove such corruption.

CFOJA’s witnesses Johnson, Swan, Moore, Combier, and Pak apparently need one or more forums to attempt proving or refuting allegations of judicial misconduct that are not susceptible to exactly the same kind of corruption allegedly thwarting their vindication to date. Creating one or more of those forums will mark phenomenal changes among America’s major institutions. The CFOJA, this report and recommendations hopefully move grassroots reformers a step closer to that change by facilitating a related venture between them and some of America’s accomplished educational and/or public policy institutions.

¹² The grassroots nonprofit organization known as POPULAR, Inc. or POPULAR (Power Over Poverty Under Laws of America Restored) is attempting to effectuate that call. This report adopts its White Paper on the effort in part. The complete White Paper is available at www.popular4people.org/files/POPULAR_WhitePaper_finalized.pdf

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Citizens' Forum On Judicial Accountability

Final Report and Recommendations

May 7, 2009

APPENDIX

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Case profile of:
Mrs. Evelyn Johnson

I am Evelyn Johnson, of Douglasville, Georgia, a former federal judiciary career-tenured employee of 22+ years of the Administrative Office of the U.S. Courts (AO), employing agency, and the Eleventh Circuit U.S. Court of Appeals, Staff Attorneys' Office (SAO), Atlanta, Georgia, employing office, who was fired without good cause, in retaliation for filing a good faith intentional discrimination and disparate treatment complaint. My case background, facts, the inconsistencies between what federal law requires and AO conduct especially for my pursuing legal remedies, and lack of relief presents a significant federal question of public importance requiring the need for legislative action, probing, and some reform of the U.S. justice system.

Prior to my filing the complaint, my file reflected only records of excellent work reviews, including work records from other federal agencies. I was one of five SAO senior administrative support staffs, when I transferred without-a-break in service to the judiciary in January 1989. Between 1998 and 2001, retirements, resignations, and reorganizations created several openings for higher paying positions at which level I had been performing at lower pay and for which I had been training other less experienced and sometimes outside employees.

In March 2002, I discovered the blanket promotions of seven recently hired support staff members in the new organizational chart showing their pay grades and titles. Although I pursued available if not actually promised promotions beginning in 1996, the SAO gave me a then reasonably believable explanation that I "had already received the full promotion" when the judiciary switched

to a different salary pay plan in February 1996.

There was no really good explanation for non-promotion based on my performance and experience, and I finally realized and recognized the motive, nature of conduct, and intent of my non promotion was none other than discriminatory. I filed an intentional discrimination and disparate treatment complaint under Title VII of the Civil Rights Act of 1964, as amended in 1991, on the basis of race, ethnic origin (Filipino and only Asian throughout my tenure with SAO), color, age, and sex, under the employing agency's (AO) EEO/EDR Plan, something I was legally allowed to do. I initially filed an Equal Opportunity Commission (EEOC) complaint as I had to pursue administrative remedies before I could sue in federal district court.

Ten days after filing the Title VII EEOC complaint, I started to be subjected to continuing retaliatory action, which would culminate in retaliatory termination of employment without good cause. I filed a timely amended complaint due to numerous violations of federal employment statutes such as engaging in unlawful personnel practices; hostile work environment; computer tampering impeding my work; FMLA (sick leave) problems; and other violations of law. I started receiving unnecessary mundane emails subjecting me to account for hourly-daily activities at work which other support staff were not asked to do. I never had employment issues in that office since January 1989, but only after filing my complaint was I subjected to written reprimand memos, everything I did was scrutinized, which made it seem I could not do anything right at that office anymore.

In April 2002, soon after I filed the complaint, my mother, who lived in California, suffered a stroke and eventually died in May 2002. When I asked for sick leave due to my mother's sickness, the SAO

demanded that I return to work. When I returned to work, the sick leave I asked for was charged to annual leave, something that didn't happen to others similarly situated. The most humiliating aspect of my employment life came when less than sixty (60) days of the discharge of the 2002 EEOC complaint, I was handed the letter of involuntary termination of my employment without cause, but undoubtedly in retaliation for filing of the complaint.

I should note at the outset that there were two complaints filed for various adverse employment actions. The Title VII discrimination complaint was initially filed with EEOC which then went to the federal district court and then to the U. S. Court of Appeals for the 11th Circuit. Another complaint for retaliatory firing was filed with the Merit System Protection Board which then went to the U. S. Court of Appeals for the Federal Circuit.

The dismissal of my Title VII complaint took place under strange circumstances. The SAO counsel told my counsel there would be a "telephone conference" with the judge. My counsel was then summoned to proceed to the judge's chambers when she found out that the scheduled "telephone conference" became the "actual hearing". My counsel was absolutely ambushed and was unprepared when the chief magistrate judge proceeded with the hearing, without appropriate notice to my counsel or to me. This "telephone conference" happened during the Thanksgiving holiday of 2003 when my counsel was unable to get in touch with me due to scheduled mammogram testing which gave a positive result of breast cancer. While I dealt with the life-threatening disease news, the magistrate judge decided my presence was not needed, and the case was dismissed as untimely filed even though I filed it some 18 days before the deadline. Appeal to the 11th Circuit was unavailing.

My MSPB complaint for retaliatory discharge was also dismissed as AO persuaded the MSPB Board that U.S. "court employees do not work for the AO, the court system is under the judiciary, the AO is a separate agency within the judiciary, and that judiciary employees were under excepted service and not competitive service under the executive branch." This was a misrepresentation. As a former federal executive and judicial employee, I am well aware that an employee with more than three years of service acquires status and tenure, could move around for promotion or lateral transfer in all branches of the federal government regardless of the federal employee's type of service, i.e., excepted or competitive, without losing any time of service and entitlement to federal employment benefits. The AO's and MSPB's contention that my employment was some kind of "excepted service" is false.

I timely petitioned in November 2004 the Merit System Protection Board's dismissal of complaint for lack of jurisdiction with the Federal Circuit Court of Appeals. Asserted in my petition was that this case was never given an opportunity for an appropriate and impartial judicial review. An appellate Federal Circuit Court judge issued an order to the Board to review the case on its merits to which the Board haphazardly filed an informal brief without addressing the merits of the case as ordered by the court. The Court of Appeals for the Federal Circuit nonetheless rehashed the Board's order of July 2004, and once again dismissed the appeal for lack of jurisdiction in December 2004.

As a last resort, I filed a Petition for Writ of Mandamus in the United States Supreme Court as a significant federal question of imperative public importance regarding tenured federal employees of the U.S. courts needed resolution. I received another UNOFFICIAL and undocketed two-

sentence letter stating, “The Court today entered the following order in the above-entitled case: The Petition for a writ of mandamus and/or prohibition is denied.”

And maybe the point of this lengthy narrative is that the Administrative Office and other agencies working with the U. S. Courts should be held to a higher standard of conduct that other federal agencies rightfully sued for discrimination and retaliation in those courts and that those very courts should accord some sort of remedy when that happens. It seems incomprehensible that with both the discrimination complaint and the wrongful termination complaint neither EEOC nor MSPB would have jurisdiction and the federal district court and the 11Th Circuit would affirm one dismissal and the Federal Circuit affirm the other.

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Case profile of:
Mrs. Nancy Swan

Dozens of attorneys described my claim as a textbook tort case. During a school roofing project done while classes were in session in October, 1985 over one thousand students and teachers in a Mississippi school were repeatedly exposed to toxic levels of the same isocyanate that had killed over ten thousand people in Bhopal, India a year earlier. Many at my school fell seriously ill. I was one of the injured teachers.

Attorney Paul Minor filed my claim in 1986. Mr. Minor also later filed the separate consolidated claim of two dozen other injured students and teachers. For the next fifteen years, our cases languished in a system some of the media and others have characterized as notorious for corruption. Five judges ruled on my case. My first judge, Vincent Sherry, was shot to death, along with his wife in his own home.

In 1996, I called the Mississippi Commission on Judicial Performance and asked if I had grounds for a formal complaint about my second judge J.T. I explained that my case had been stalled for nine years by J. T. who had a conflict of interest. I was assured by the director that my call would be confidential. Somehow, one of my attorneys learned of my inquiry. She was furious and threatened if I proceeded with a complaint, "No attorney will take your case...no judge will hear it. End of case". She was right: my attorneys ultimately abandoned me, I never found another attorney to take my case, and my case was dismissed.

December 1996: Four months after my call to the Commission, Judge J T was asked by the state supreme court to recuse himself from my case for exhibiting extreme bias. When he stepped down, I was

relieved. But, the relief was only temporary.

Another Judge, R. T., committed suicide shortly after his indictment on embezzlement charges. Another judge, O. D., was indicted for bribery, fraud, and racketeering. In 2000, I became aware of an unethical relationship involving questionable loans between my new judge, John Whitfield, and my attorney Paul Minor. This time, I filed formal judicial complaints. This time, there would be hell to pay.

Both of my attorneys orchestrated their withdrawals on a long delayed day of trial. Judge Whitfield conspired with my attorneys to withhold records and a financial accounting of my case- even going so far as to personally remove documents from the courthouse. Both Minor and Judge Whitfield relentlessly attacked my character and my integrity. Judge Whitfield sealed my court records to protect himself and my attorneys. Despite prior appeals to the Mississippi Supreme Court and Court of Appeals overruling prior dismissals, Judge Whitfield apparently disregarded those opinions refusing to follow the law and precedent set forth therein. He summarily dismissed my case, with prejudice, on his last day on the bench. The threats had become reality. No attorney took my case, no judge heard it. End of case.

Judge Whitfield also issued a gag order, threatening, that if I continued to speak out, I would be jailed, fined, or both. But I refused to remain silent.

In 2001, I went public. I began writing a series of editorials about the failures of both the peer and legislative judicial oversight commissions. Statewide newspapers published all my letters. My research uncovered evidence that the state was not auditing judicial campaign finance reports. One of my letters called for an investigation of Judge O. D. after I

discovered two suspicious campaign loans totaling almost \$150,000.

I contacted the Commission on Judicial Performance and wrote a letter to the Mississippi Secretary of State requesting an investigation of the suspicious loans. Fearing a state cover up, I also provided information to the FBI. Shortly thereafter, the Department of Justice began investigating Paul Minor, John Whitfield and O. D. In March, 2007, Minor and Whitfield were convicted of fraud, bribery, and racketeering in matters unrelated to my case, but covering the same time period.

Even after the convictions, none of Whitfield's orders have been reversed. My case remains dismissed. My records remain sealed. The Commission on Judicial Performance has repeatedly refused to reopen my complaints. Over seventy attorneys have declined to represent me. All heard my story, but every one claimed either a conflict of interest -- or taking the case would be professional suicide.

For those like me who dare to file complaints against judges, judicial revenge is a reality. Without protection for judicial whistle blowers and attorneys who may represent them, those willing to testify at forums like this are forced to fight alone. Even after federal convictions and a suspicious fact pattern in my case, post-trial or other relief is not forthcoming. Some of us, along with our families and friends take great risks when oversight commissions fail to hold lawyers and judges accountable.

Those commissions, lawyers, judges, and lawmakers could do much more to prevent reoccurrence, probe, or grant relief in my or similar cases. State and federal oversight committees add to the problem by using secrecy which sometimes conceals their failures.

Our only hope to restore the integrity of our nation's courts is to have complete transparency in the hearing and disposition

of complaints and real, effective oversight of the bar and judicial commissions.

I do not want anyone else to suffer my fate.

###

Case profile of:
Ms. Katherine Moore

My name is Katherine Moore and I am from Wilmington, North Carolina . I am a former college professor and business woman. I represented the Small Business Administration and the Avon Company in 1990 as a Woman of Enterprise and toured the country speaking on behalf of women's issues. I was fortunate enough to have my business featured on Good Morning America, the Faith Daniels Show, the Sally Jesse Raphael Show, USA Today, Good Housekeeping, and Entrepreneur Magazine. I was living the American dream.

In 1991, I was elected to the Wilmington , North Carolina City Council. I was elected three times in at-large-elections and elected five times by my fellow Council members as the Mayor Pro Tem. But my political career came with very high consequences. I learned soon after joining the Council of the blatant misuse of federal funds by Council members and high level staff . I succeeded in getting HUD to reject several of our plans and threaten the City with repayment of block grant monies. The police department was mired in controversy and accusations of police brutality with six chiefs in eight years. One Chief had been accused very publicly of child molestation. I was very vocal and proactive in attempting to change the direction of the Department. Finally, I challenged the Police Department for not providing the mother of a child who had been molested by the Executive Director of an after school program with a police report even though she had filed numerous complaints. It took two years to get the Police Department to write a report even though the school system removed its students from the program and the City ceased all public funding of the program.

Retaliation and revenge were swift and relentless. My family and I were

harassed and intimidated incessantly. Finally, on November 6, 2002, I was arrested by a Wilmington police officer and charged with Driving under the Influence. I requested a pre-arrest breathalyzer which is a Constitutional right in North Carolina . The officer replied, “No pre-arrest breathalyzer, you are going to jail.” I was cuffed with my hands behind my back and tossed into the back seat of the squad car with the instructions to, “Slide your fanny over.” At the police station, I was administered TWO breathalyzer tests and blew .00 TWICE.. The officer conferred with the Magistrate who issued the arrest warrant anyway citing that she had previously found probable cause for others who blew .00. She was not reappointed in New Hanover County but moved on to another North Carolina county and was rehired as a Magistrate.

On November 17, 2002 a seventy-four page Police Department internal investigation concluded that the officer who arrested me had “flagrantly” violated five police department policies, including profiling, making a stop prior to reasonable suspicion, and refusing to administer the pre-arrest breathalyzer. Written transcripts of the 911 tape reveal him dispatching a fellow officer to my vehicle with the instructions, “ You better hustle and stop her before she gets home.” I demanded to know how this false arrest had occurred. The officer was administered a polygraph on November 14, 2002 that was found to be “inconclusive.” He was fired from the police department but was promptly hired by the Sheriff who, according to a City Manager, was the person who arranged for my false arrest. On November 17, 2002, the District Attorney dismissed the charges against me. He paid with his job. Shortly after dismissing my case, the DA resigned half-way through his term and moved to the other side of the State. The attorney, who

originally took my case, lost his practice and moved to Arizona . The Sheriff ran unopposed which was a “first” in the county’s two hundred and fifty year history.

Immediately after my false arrest, I requested the US Justice Department investigate my case. DOJ found probable cause to investigate and so notified me via certified mail on December 11, 2002. A copy of this letter was sent to the US District Court in Raleigh , North Carolina . Subsequently, DOJ “suspended” their investigation pending the outcome of my civil case with the understanding that they would reopen their investigation once my civil case had been adjudicated.

On August 28, 2003, I filed a lawsuit against the City of Wilmington . My complaint included but was not limited to the following counts: “ This matter is being brought pursuant to Civil Rights Act of 1871, 42 USC,1983, 1985, and 1986 and the Fourth, Fifth, and Fourteenth Amendments of the United States Constitution for the deprivation of Ms Moore’s civil rights by the defendants. The final request in the brief was “THE PLAINTIFF DEMANDS A JURY TRIAL on all issues so triable.

The issue of jurisdiction and venue were appropriately addressed and the case filed in the appropriate venue meaning the federal district court located in Wilmington, North Carolina. However ,without explanation and ignoring the opposition of the Plaintiff, the case was reassigned to the federal courthouse in Raleigh , North Carolina. In May of 2005, I received a letter from the DOJ informing me that my case had been closed and that I would need to request a new investigation; and on July 5, 2005, the federal district judge in Raleigh granted Summary Judgment to all of the Defendants and dismissed my case without regard for my request for a jury trial, the overwhelming

evidence of misconduct by the arresting Officer cited in the Police Internal Investigation, denial of my right to a pre-arrest breathalyzer, an injury sustained during the arrest, and the transcript of the 911 tape that documents the officer's instructions "You better hustle and stop her before she gets home" She ignored my request for a jury trial and dismissed my case with the explanation that a police officer has the right to stop, interrogate, and arrest anyone suspected of having a single drink. She never addressed my denial of the pre-arrest breathalyzer or the fact that the officer insisted on my arrest after I blew .00 TWICE on the breathalyzer, or other issues.

On August 23, 2005, I filed an appeal with the 4th Circuit Court of Appeals in Richmond, Virginia and on July 24, 2006, the appeals Court upheld the lower court judge's decision. On December 2, 2006, I asked the US Supreme Court to hear my case. They declined. After the Supreme Court declined to hear my case, I requested that the Justice Department resume its investigation. All departments refused to investigate my case, and I went to Washington in an attempt to meet with my original case worker. I was DENIED entrance to the Justice Department by armed guards. I was not allowed to enter this public building. I have sent certified letters to former Attorney General Gonzales and Mr. Mueller of the FBI. I have received no responses.

Justice also eluded me in the state courts of North Carolina. The matter is a bit complicated. In 1996, I signed a contract with a company we'll call TTT. My contract was for the purchase of machine and auto parts. I was required to provide a personal guarantee for \$500.00 which was my credit limit. In 2002, I signed a lease agreement with a leasing company to lease a truck for my business. As my business began to falter, I decided to sell it. I returned the truck to the

leasing company before the end of the lease. The leasing company knowing that the gentleman purchasing my business wanted to purchase the truck, refused to sell the truck to the new owner or doing anything to mitigate any potential damages, an important concept in contract law known to most first year law students. Leasing company hired an attorney to sue me for \$39,000 when the original lease was capped at \$25,000 and the company used the personal guarantee that I had signed for \$500.00 with TTT to hold me personally, instead of my company, responsible for the truck. When I signed the personal guarantee in 1996 limited to \$500 with TTT, the leasing company did not exist. North Carolina Secretary of State records will confirm this. The records also confirm that the 2004 and 2005 annual reports submitted to the Secretary of Corporations by leasing I/TTT were rejected because the "two corporations had failed to lawfully merge". I responded by asking for a jury trial. The judge ignored all of the aforementioned evidence and ruled that I was personally liable. Then another judge who was to hold the hearing and convene a jury, never convened a jury, dismissed the witnesses who were present in the courtroom, and allowed the opposing counsel to call the man who had offered to purchase my vehicle and tell him not to come to court. In short, I was denied the right to call witnesses on my behalf. A third judge was called in to sign the order for the judgment of \$39,000 even though the lease contract did not exceed \$25,000 and any personal liability I had with TTT was capped at \$500. I countersued in the federal court . Once again, my case was transferred from my local jurisdiction to Raleigh . The Defendants filed for a dismissal that was denied, but the Judge, in his findings of fact, instructed the Defendants how to position

their case so that he could dismiss it. Below is a direct quote from the order.

“Having addressed the defendants’ motion, the court raises another issue for the parties to consider. Specifically, the court mandates briefing on whether plaintiff’s complaint should be dismissed under the Rooker-Feldman doctrine.”

I have written documents and transcripts substantiating all of my allegations in both cases. The question is, does anyone really care that our judicial system seems bankrupt. Everyone thinks, “It can’t happen to me.” Surprise, it can happen to anyone. Psychologist Karen Huffer has written a book entitled, “Surviving the Legal Abuse Syndrome” showing how some people have been traumatized in dealing with the legal system.

I briefly moved to Florida with my daughter to escape the retaliation in North Carolina . Little did I know that there was no escape. Within months of my arrival in Florida , five Homeland Security agents breeched three levels of security and entered our apartment. When I demanded to know how and why they were admitted, I was told that they entered the complex via the marina in their own Homeland Security vessel. Why? I called everyone at Homeland Security and no one could explain why I had received the visit.

My two children are also paying the price for my whistle blowing. Both are law school graduates who have not “Passed” the bar despite numerous attempts. My son was a dean’s list student at the New England School of Law and wrote for the New England Law Journal. By the way, check statistics, New England has one of the highest bar passage rates in the country. The NC Bar refuses to allow him to verify his scores or provide him any evidence of the results of his scores. Even the ABA was unaware that the NC Bar required a social

security number on each page of the essay questions. So much for anonymity!

Both of my children sat for the Florida Bar with three thousand other candidates. Anonymity is the “buzz” word for all bar exams, but I have in my possession a letter from the Florida Bar that names in the return address my daughter, Katherine Moore. The salutation, however, is addressed to “ Dear Mr. Braswell”. Braswell is my son ... again, so much for anonymity!

###

Case profile of:
Mrs. Betsy Combier

Our Constitutional rights include due process, equal protection under the law, and an expectation of impartiality in the judicial system. We have the right to ask Congress to remedy any violations of law that occurs. The time to make a request for accountability in the courts of America has arrived, and my story will show this.

As an advocate for judicial accountability, I believe that the best way to show the need for legislative reform in this area is to provide public exposure of judicial error or malfeasance. We can do this by focusing on the specific steps of procedural due process that are corrupted or missing, and make sure that no other circumstances are responsible for the end result. Starting in 2001 I studied the processes necessary to probate a will, file a motion, order to show cause, do depositions, etc. I became, in other words, a knowledgeable non-attorney that could speak intelligently about justice, procedure, facts and judicial intervention. Fortunately, I have been a reporter for more than 30 years. I am also member of the New York University Law Library, where I read case law and legal documents to support my documentation on the practices of Judges, attorneys, and court personnel. I have, in other words, done my due diligence as a person who wants to show how there may be a lack of judicial accountability, and where changes should be made.

On March 16, 1998, my mom died in her sleep. The next day I received a call from a man named Kenneth Wasserman, allegedly an Attorney representing my twin sister who, he told me, would be fighting me for the apartment that our mom left me in her Will dated November 1997. I found out several years later that Mr. Wasserman was originally paid to get whatever estate

property or money he could get and his “employer” was Guide One Insurance Company, the insurer of my church, where my mom worked as a volunteer for more than 40 years. She and I both knew that the church pastor was involved with financial misappropriations and a corrupt construction company based in New Jersey. Mr. Wasserman entered my mother’s apartment after promising me he would only look for items belonging to my sister, which I wanted her to have, and took out about \$1 million in property between April – June 1998. The Surrogate Court Judge Renee Roth arranged for him to store the property in upstate New York, and proceeded to prepare for her to obtain “legal” ownership.

I filed my mom’s Nov. 1997 Will in the Surrogate Court on March 17, 1998, and filed a petition for probate soon thereafter. From 1998 to 2004 I paid attorneys approximately \$450,000 in legal fees to get my mom’s Will probated, not realizing that the Judge made deals with my attorneys to prevent me from doing this. Mr. Wasserman and the law assistant to Judge Roth both called me from 2002-2006, and literally screamed at me that the court had decided I abused my mother and that I was going to lose my Probate Proceedings. They demanded that I give my sister \$350,000 for the apartment. I wouldn’t fall for this, and taped them starting in 2004.

On July 22, 2006, Judge Roth wanted, it seems, to speed up my removal from potential ownership of any of my mom’s estate, so she prepared an order for Public Administrator Ethel Griffin to take all my mother’s property because, stated Roth, my mother died “intestate” or without a Will. I knew that this was not true, but nonetheless I ended up in the hospital that day with heart failure. In August, I filed a police complaint with the NYPD 19th Precinct against Mr. Wasserman. A police detective by the name of “Detective Ahearn”

told me that he would investigate, and ask Mr. Wasserman not to call me anymore with threats and harassment techniques.

On July 25, 2006 Judge Roth ordered that there was a Will, and that it had been executed correctly. Judge Roth then got New York State Supreme Court Judge Karla Moskowitz to start a case against me that claimed I had stolen \$2 million from my grandfather's trust fund under which both Banker's Trust and my mother were Co-Trustees. I visited the court twice as a courtesy on September 13, 2006 and October 3, 2006 to tell Judge Moskowitz that she had no jurisdiction, the Trust fund had been closed in 1999, and there was no case. She – Judge Moskowitz – declared me in contempt of court for not showing up after that date.

On January 3, 2007 I called the 19th precinct to ask whether or not someone could help me stop Mr. Kenneth Wasserman from calling me up and threatening me and the answer, taped by me, was "sorry, we cannot help you because Mr. Wasserman is being paid by Judge Karla Moskowitz to harass you, therefore we – the NYPD – can not do anything to help you... I suggest that you go to the District Attorney's office". I was working at the time with a political media strategist who knew DA Robert Morgenthau, and I saw an opportunity to get my information personally to him. Coincidentally, my dad was Assistant Attorney General for the State of New York, and knew Bob Morgenthau. Mr. Morgenthau – on April 24, my boss and one of Bob's assistants, Eban Bronfman, had lunch with Mr. Morgenthau, and they gave him my package with the Ahearn tape in it. I also sent copies to Tom Werner, Administrator of the NY State Supreme Court personal; Ms. Jacqueline Silbermann, Chief Administrative Judge of the NY State Supreme Court, and every other administrator in the office of court

administration and the Supreme Court. I also sent the tape and all supporting documentation to the Surrogate Court Judge, Judge Moskowitz, Mr. Wasserman, and Governor Eliot Spitzer. No one replied to me at all.

In July 2007 I wrote a Motion to Dismiss this case for lack of subject matter jurisdiction. On December 27, 2007 Judge Karla Moskowitz granted my Motion with prejudice. On January 3, 2008 former NYS Governor Eliot Spitzer appointed Judge Karla Moskowitz to the New York State Appellate Division, First Department with a glowing report of her integrity and honesty.

On February 5, 2008 I gave the material I had on Eliot Spitzer and Judge Karla Moskowitz to two people who are working with Mr. Napoli, the NY State Comptroller. I gave them a copy of the tape of the 19th precinct wherein Detective Ahearn tells me that Judge Moskowitz is paying Mr. Wasserman to harass me, therefore they – the NYPD – cannot protect me. On October 26 and November 5, 2007 Judge Roth ordered me to be deposed in her courtroom by Mr. Wasserman or my mother's Will would never be probated. I was locked in and my cell phone was confiscated.

On or about April 16, 2008, Mr. Wasserman filed an Appeal of Judge Moskowitz' order dismissing the non-existent Trust case with prejudice, and he filed it with the 1st Department Appellate Division where Judge Karla Moskowitz now sits. He filed his notice of appeal more than 3 months after Judge Moskowitz issued her order, and it was accepted by the 1st Department.

Relevant statutes:

ARTICLE III – JUDICIARY

SECTION 1. The judicial power of the United States, shall be vested in one

Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office. SECTION 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

OATH OF OFFICE AND COMPLIANCE
WITH THE CONSTITUTION
ARTICLE VI – LEGAL STATUS OF THE
CONSTITUTION

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding. The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

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Case profile of:
Mrs. H. Christina Pak

Introduction and Background

H. Christina Pak (a.k.a. Hekyong Pak and Christina Pak) received her B.A. degree from Barnard College of Columbia University with a joint degree in Political Science and Economics in 1984 where she graduated with Distinction in Senior Thesis and was on the Dean's List. In 1985, she earned her M.S.J. from Columbia University School of Journalism, concentrating in Broadcast Journalism. Prior to attending law school, she studied Chinese at Towson University and also at Beijing Language Institute in Beijing, China. In 1990, she received her J.D. from University of Maryland School of Law.

She began her professional career in journalism as the founder and editor-in-chief of a student newspaper "East West News" while in college. She worked as a syndication assistant at TIME-LIFE, Inc., later earning a spot at an NBC affiliate in Baltimore (WMAR-TV) as an Assignment Desk Editor and Consumer News Producer. She also hosted her own radio talk show for Korean Broadcasting Company (KBC) discussing various issues of legal concern and worked as a legal columnist for Baltimore-Washington Shinmun, a Korean Newspaper for the Baltimore-Washington area.

She pursued a legal career by interning for Honorable Judge Sfekas in Baltimore, Legal Aid for Baltimore County and U.S.I.N.S. (United States Immigration Naturalization Service) in the prosecution department. She also served as the chief legal counsel for The Lin Group, LLC., in business and health care development.

She expanded her legal practice to international joint ventures and corporate law, real estate acquisitions, hotel and

franchise acquisitions and commercial/business law. She is the owner of Bayside Title Group, Inc. where series of both commercial and residential transactions are conducted representing various lending institutions. She continues various international transactions involving Asia and Africa.

As a legal counsel for The Lin Group and other clients, she coordinated various contractual matters involving business and legal issues. Her specialty in the hotel business comes from her family's prior ownership of a full service Ramada Hotel in Pennsylvania where she oversaw the general management operations, franchise acquisitions and various legal and financial issues while representing private groups in various hotel acquisitions, addressing capital and investment issues as well as franchise installation and quality control issues.

She is an advocate of health care for the needy and for the rights of the disabled and her work with The Lin Group reflects much of her belief in those areas. She is fluent in Korean and English and has knowledge of Chinese and French.

After 17 years of unblemished practice, she was disbarred in 2007 by the Court of Appeals of Maryland which she had appealed to the US Supreme Court. Her story is summarized in her statement at a judicial forum event (herein attached).

Statement of H. Christina Pak

My name is H. Christina Pak. For nearly seventeen years, I was an attorney with an unblemished record until I was disbarred by the Maryland Court of Appeals on August of 2007. For those who know the true facts that was masked by the decision of Maryland Courts, this is a case reminiscent of a Hollywood suspense movie where those in power thwarted the legal system through collusion, discrimination and complicity to

hide the truth...all to protect a lying bar counsel whom they favored and considered their own.

In July of 2004, I was sent an investigation letter from the Grievance Commission which failed to disclose the true identity of the complainant as required under the Maryland Rules 16-731(c)(1). The letter named the “bar counsel” as the Complainant with a copy of a federal judge’s order. I immediately called the bar counsel because I suspected that the referral was from the collection attorney who was trying to collect from my parents through me. When asked for identity of the Complainant, Bar counsel got furious and said the decision was from the judge and when I called the collection attorney, he denied filing of the complaint. Pressured by what seemed to be a judge’s referral, I quickly settled the collection case against my parents and myself.

But this did not prevent the bar counsel from pressing on with my case. The following year, I was tried before a peer review panel of five attorneys and a layperson on trumped up charges of misconduct., among them misrepresentation. The panel “unanimously dismissed” all charges against me as being unfounded.

At peer review, the panel asked two very specific questions to the bar counsel: First, who was the complainant?...she replied by rummaging through her file, pretending to look for a letter and said “usually it’s the court or from the clerk.”; Second, there was a question of the validity of an antecedent debt, a Korean promissory note, executed by my mother in Korea – to the panel’s direct question, “do you dispute the validity of the Note?”... she answered a resounding “No.”

At all times, everyone, including myself, my attorney, and the peer review were under the impression that the complainant in my case was a judge. The

commission, overruled the panel’s unanimous dismissal, and pushed my case to a one judge trial with the same charges. My case, without a doubt, is the first of its kind in Maryland or in fact, anywhere else, to go for public charges after a unanimous finding of no misconduct.

At trial, her witness, the collection attorney, truthfully admitted this time, that he was the one who filed the case by sending the bar counsel a letter and a copy of the judge’s order. Bar Counsel, apparently, pulled out the letter from the file to create a false impression that a federal judge had referred the case and by doing do, she was able to hide the true identity of the complainant. She did admit on record that there was a letter but insisted that judge may still have referred the case...as if she did not know.

To our shock, trial judge responded to her destruction of evidence and misrepresentation, by saying “why is identity of the Complainant important?” and reluctantly agreed to an out of court verification as to the federal judge’s referral after the trial. My attorney met with the federal judge who denied ever referring me to the Grievance Commission for ethical violations and a confirmatory letter was filed with the court.

Every evidence we put forth, every Korean witness that we produced, the judge found them unbelievable. However, he did believe the lying bar counsel and the bank’s collection attorney although we proved that they were lying on record. Judge even threw in some facts of his own to make the case against me and called my husband, a college professor, basically a liar, although he was not a witness in the case. Judge claimed that he could not understand my parents’ English although my father spoke fluent English because he was a former interpreter for US and Korean army generals and studied in the US. And what is so

unbelievable was that the judge disbarred me on a fabrication of a Note which I was never charged with by erroneously shifting the burden on a charge I was not required to defend. Judge claimed that he had thoroughly reviewed the entire record, and if that is true, he should have seen that the bar counsel never raised the fabrication charge from the beginning of proceedings to close of all evidence. While stipulating to Note's authenticity at Peer Review, in a post closing memo, she intimated that the Note was fake. The judge jumped on this without a shred of evidence except he believed that "the wording of the Note" was suspicious... Since when did we judge the validity of a foreign document written in foreign language by US legal standards?

At the oral argument before the Court of Appeals, Bar Counsel lied once again and said she never admitted to the Note's authenticity before the peer review. In our brief and argument, we raised prosecutorial misconduct surmounting to constitutional violations, judge's egregious lack of knowledge of law and bias. We also pointed out that unanimous dismissal of the panel must be honored because the legislative history supported our position.

Every issue we raised were supported by cases on point, not only Maryland but also the US Supreme Court, a copy of legislative history, affidavits with compilation with other ample evidence but the Court of Appeals simply rubber stamped the lower judge decision and denied every exception that we raised to judge's findings. The Court's opinion is absolutely silent, not even one single word, on these issues as if they were never raised and they further hid the irregularities of the case by guising the Peer Review's finding of "unanimous dismissal" as a just a "dismissal" and downplaying it as a mere "recommendation" rendering the Peer Review's role as a fact finder nugatory. They further said "what is

said is Peer Review stays in peer review" declining to address her misrepresentations made before the Peer Review.

The heartbreak for me is not so much the stripping of my license but the betrayal by the system that I believed to be the pillar of truth and integrity. This is the same pain I experienced some thirty years ago when a white teacher that I admired so much commented that only reason my parents immigrated to the U.S. was because we were poor and ill educated and in shock of his hidden racism that had blatantly surfaced, I walked around for days like a zombie. I cannot believe that thirty some years later, I am still facing same type of discrimination ...but this time it's legalized and meticulously calculated from an institution that pretends to be above it all.

My father, a former engineer and a company executive, showed me not to be afraid and went to the principal to state the case against the teacher. And when I was disbarred he left a book on my bedside reciting history of U.S. civil rights. I am here today because I am a U.S. citizen and my civil rights have been abridged by the Maryland courts where constitutional rights take a back seat behind favoritism. In Maryland, the system has denigrated to the point that a lying bar counsel can easily push the case through the courts to remove a reputable attorney because she is so certain that once the case reaches the court system, she can break every law on the books and get away with it because judges will sweep her indiscretions under the rug to nail an attorney under any cost while keeping a false veneer of honesty. My case is a resounding proof that in Maryland, government officials and courts enforcing ethics themselves are most unethical and those within the court system are in fact in Star Chamber proceedings removing and forgiving attorneys at their whim. There is no due process when the proceeding is

infected from the beginning to the end. My case is an example of a legal system that has gone awry because there is no intervention for judicial abuse...where abuse is tolerated under the name of STATE judicial independence...all because they know they are not regulated and will not be held accountable for their actions...and federal courts will decline to intervene for review.

Civil liberties in Maryland are one for the books but not to be enforced. Since when is it legal to go through an entire trial not knowing the accuser? Since when is it legal for bar counsel to pull out evidence from file infecting every step of the proceeding to undermine the outcome? How can the Highest Court in Maryland refuse to review their own legislative history and participate in a cover up of bar counsel's lies and make their own peer review system worthless? We feed fallacy to our law students and attorneys coming into the system that our Courts are level and it is in pursuit of truth and equal justice...this myth I now painfully know is the travesty of American legal system.

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Citizen's Forum on Judicial Accountability
Case Study: *Michael McCray v.*
Thomas Penfield Jackson

Judge Thomas Penfield Jackson was a U.S. District Judge for the District of Columbia U.S. District Court from 1982 until his forced retirement from the bench. Judge Jackson presided over the Microsoft antitrust case and also heard the drug trial of former District of Columbia Mayor Marion Barry, the public disclosure case over former Senator Packwood's diaries, and the case involving the constitutionality of the presidential line-item veto.

As a civil rights lawyer and federal whistleblower, Michael McCray became known as the “**\$40,000,000 Whistleblower**” when he reported over \$40 million in government waste, fraud and abuse at the United States Department of Agriculture. Later Michael became a Judicial Reform Activist when he reported significant judicial misconduct against U.S. v. Microsoft Judge Thomas Penfield Jackson and the Ashcroft Justice Department. Michael's judicial complaint contributed to Judge Jackson's early retirement. McCray is the chairperson of the 3-5-7 Commission, a judicial reform association dedicated to exposing judicial misconduct through quantifiably and statistically verifiable methods, to ensure that American citizens receive fair hearings and tribunals as provided for in the U.S. Constitution and declared in the Universal Declaration of Human Rights.

I. Procedural History

Michael McCray, Esq. Complainant / Petitioner was the plaintiff in a series of lawsuits against the Secretary of the United States Department of Agriculture (“USDA”) and other federal officials, over which Judge Thomas Penfield Jackson and Judge Richard J. Leon

presided. In the first lawsuit, Civil Action No. 00-CV-0426 (TPJ), filed on March 2, 2000 the Petitioner alleged continuous discrimination, retaliation and harassment beginning during the tenure of Former Secretary of Agriculture Mike Espy; under Title VII and joined various Constitutional claims, against Former Secretary of Agriculture Daniel Glickman and other USDA officials. The complaint further alleged that the adverse action was based in part on the fact that Petitioner was African-American and that USDA has a long, well-documented history of racial discrimination, retaliation and harassment against African-Americans. In the subsequent lawsuit, Civil Action No. 03-CV-1786 (RJL), the Petitioner joined Former Attorney General John Ashcroft, the U.S. Department of Justice, and individual U.S. Attorneys (collectively the “Justice Department”) with USDA into a separate civil action for professional misconduct and abusive litigation in violation of FRCP Rule 11 and 28 U.S.C. §1927.

EEO Investigative Record

The Petitioner filed a series of employment grievances with the USDA Office of Civil Rights on May 20, 1997; August 20, 1997; December 1, 1997 and March 16, 1998. The Petitioner established his Prima Facie Case of continuous discrimination, retaliation and harassment with admissible evidence, agency admissions and eyewitness corroboration, during the EEO investigation. However, the Petitioner's EEOC Hearing was indefinitely continued due to repeated USDA misconduct and violations of EEO regulations. Consequently, the Petitioner has never received a hearing of any kind. Additionally, a subsequent EEOC Report to Congress documented USDA's abusive tactics and repeated violations of EEO regulations. **Exhibit 1** – Washington Post Article / Synopsis on EEOC Report to Congress (2/26/03).

In contrast, USDA Officials refused to cooperate with the Agency EEO process, produced no admissible statements or evidence and refused to sign their own statements or affidavits. **Exhibit 2** – EEO Investigator File

Memorandum on “Unsigned Affidavits” of USDA Defendants (7/14/98) Therefore, there is no factual or evidentiary basis for any defense in any subsequent legal proceeding. The Petitioner received an Order affirming his right to sue in federal court, and filed suit within the statutory time frame. **Exhibit 3** – EEOC Sanctions and Order Affirming Petitioner’s Right to Sue (1/3/00). Consequently, the EEO investigative record is totally devoid of any admissible statements or evidence to support a valid defense of USDA in federal court.

U.S. District Court Complaint (Discrimination)

As a result of the fact that the EEO investigative record is totally devoid of any admissible statements or evidence to support a valid defense of USDA in federal court, the Justice Department engaged in totally baseless and vexatious litigation in its defense of USDA.

The complaint asserted that Petitioner was a conscientious federal employee who suffered systematic and continuous discrimination and retaliation throughout his employment at USDA, and after he was terminated. The Petitioner was demoted, constructively discharged and “*blacklisted*” from subsequent federal and related non-profit employment, after he reported \$40 Million in government waste, fraud and abuse in certain Rural Development programs and made other protected disclosures.

The complaint languished before Judge Jackson from March 2, 2000 during which time, Judge Jackson “*rubber stamped*” all of the Justice Department’s pleadings, including nearly a dozen requests for additional time to respond. Eventually, the Justice Department defaulted on the case. And on July 10, 2000 the Petitioner moved the court for a default judgment, unbeknownst to Judge Jackson who habitually ignored the Petitioner’s pleadings as a Pro Se litigant.

After discovering the default, Judge Jackson directed the clerk for the court to back-

date various documents to cure the government default. **Exhibit 4** – Judge Jackson Order Denying Motion for Default Backdated to (8/31/00) from (7/10/00) filing date – “*Let This Be Filed*”. Accordingly, the clerk for the court edited the trial docket on September 7, 2000 and entered the Petitioner’s July 10, 2000 Motion for Default on August 31, 2000 along with Judge Jackson’s Order denying the Petitioner’s motion for default. **Exhibit 5** – District Court Docket Proving That Four Documents Entries Were Edited by the Clerk Pursuant To Judge Jackson’s “*Let This Be Filed*” Directive (12/18/02).

Judge Jackson displayed bias from the first status conference, which was held on June 4, 2001. At which, Judge Jackson granted the Justice Department’s motion for summary judgment – without explanation, stating that the Petitioner would not understand the ruling since he was not an attorney. The Petitioner notified Judge Jackson that he was an attorney and sought justification of Judge Jackson’s previous order. Judge Jackson then stated his dismissal was based on the Justice Department’s arguments (without stating what those arguments were), and then dismissed the complaint without prejudice. Judge Jackson directed the Petitioner to address the Justice Department’s arguments and admonished the Petitioner to return with counsel.

The Petitioner addressed the Justice Department’s arguments and re-filed his complaint on August 2, 2001. The Justice Department previously argued that the complaint should be dismissed because the Petitioner failed to provide sufficient evidence to prevail. This argument was premature; it may have been an appropriate argument for a motion for summary judgment, which could be granted after the Petitioner had an opportunity to present relevant evidence through discovery. However, this is not the legal standard for a motion to dismiss, which is that the Petitioner failed to assert a claim for which relief could be granted. Nevertheless, the Petitioner provided additional offers of proof, including supplemental statements, affidavits and public records (i.e., the USDA Civil Rights Action Team Report) as additional evidence, and re-filed his original complaint. The Justice

Department filed a motion to dismiss the Petitioners subsequent complaint on September 17, 2001.

At the first status conference, which was held on October 3, 2001 Judge Jackson repeated his displeasure with the Pro Se Petitioner, mocked the size of the evidentiary support presented and granted the Justice Department's motion to dismiss – without explanation or citation to the record indicating that he had ever read any of the Petitioner's Pro Se pleadings.

The Petitioner had previously filed an unopposed motion for enlargement of time to submit a supplement distinguishing the cases cited by the Justice Department – but Judge Jackson displayed no familiarity with this document or any of the Petitioner's Pro Se pleadings.

The Petitioner informed the court that he had recently acquired counsel (waiting in court), who sought to be admitted pro hac vice in this matter. Judge Jackson approved the pro hac application immediately, and directed counsel to re-draft the Petitioner's complaint. However, on oral application from the Justice Department, Judge Jackson granted the dismissal of the Petitioner's Constitutional claims with prejudice, without further explanation or citation to the record and over the Petitioner's vehement objections.

Judge Jackson never made one citation to any of the Petitioner's pleadings, arguments; or evidence despite dismissing important Constitutional claims. Counsel amended the Petitioner's complaint and re-filed it on November 5, 2001. The Justice Department filed a motion to dismiss on January 17, 2002 and the Petitioner responded to the Justice Department's motion to dismiss on February 20, 2002.

After finally reading the Petitioner's pleadings filed by counsel, Judge Jackson immediately recused himself from the case citing "heavy case load", but failed to vacate his previous order. Judge Jackson used a similar tactic in U.S. v. Microsoft where he sought to

evade appellate review by ordering the direct review to the U.S. Supreme Court. In this case, Judge Jackson chose Judge Richard J. Leon to be assigned to review the case.

A third status conference was held on July 12, 2002 before Judge Leon. At which, for the first in the case, the court inquired about the actual status of the case and whether the parties had discussed settlement. Judge Leon stated that he was reviewing the case file, and that he would take the Justice Department's motion to dismiss under advisement.

On September 28, 2002 Judge Leon granted the Petitioner's previous ignored, but unopposed motion for 30 days additional time to file a supplemental statement to distinguish the cases cited by the Justice Department. **Exhibit 6** – Judge Leon Order – Authorizing the Petitioner to Submit a Supplemental Statement to Distinguish Cited Cases (9/28/02). However, two weeks later, Judge Leon dismissed the Petitioner's complaint with prejudice on October 15, 2002 without waiting to consider the Petitioner's supplemental statement.

Pursuant, to Judge Leon's prior order, the Petitioner delivered the Supplemental Statement Distinguishing the Cases on October 22, 2002. However, Judge Leon refused to consider the Petitioner's supplemental statement on November 4, 2002 despite his previous authorization. **Exhibit 7** – Petitioner/Plaintiff's Statement Distinguishing Cited Cases "*Denied*" by Judge Leon on (11/4/02). The Petitioner submitted the supplemental statement within the time frame requested in the motion. However, Judge Leon denied the Petitioner's statement – without explanation or comment.

Appellate Court Review

The Petitioner filed a timely appeal to the District of Columbia Circuit. But as a result of its Order denying the Petitioner's counsel from continuing the appeal pro hac vice; the Court of Appeals granted the Petitioner additional time to file a docketing statement on December 24, 2002 and directed the Petitioner

to submit a “Statement of Issues to be Raised on Appeal” by January 27, 2003. **Exhibit 8** – Appellate Court Docketing Order Requiring Statement of “Issues Raised on Appeal” to be filed by December 20, 2002 (11/20/02); and Appellate Court Order Authorizing Petitioner’s Statement of “Issues Raised on Appeal” to be filed on January 27, 2003 (12/24/02).

The Justice Department filed a premature motion to dismiss the appeal, citing a Failure to Exhaust Administrative Remedies on January 6, 2003 i.e., before the Petitioner presented the “Issues to be Raised on Appeal” on January 27, 2003. However, on April 17, 2003 in an unpublished opinion, the Per Curium Court affirmed the District Court Decision based on the Justice Department’s premature Motion for Summary Affirmance – without referring to or considering any of the arguments the Petitioner actually raised in the appeal, which were Judicial Bias and Misconduct. **Exhibit 9** – Appellate Court Per Curiam Order (4/17/03).

Thus, the Per Curium granted the Justice Department’s motion for summary affirmance without consideration or reference to the actual “Issues Raised on Appeal” in effect they allowed the appellees (not the appellant) to assert the issues raised for appellate review and thereby denied the appellant a fair opportunity to be heard.

The Petitioner filed for a rehearing of the case En Banc, on June 3, 2003. And the Appellate Court further denied Petitioner's motion for a rehearing on August 8, 2003 for failure of any Appellate Judge (U.S. Supreme Court Chief Justice John Roberts sat on this panel) to request a vote. **Exhibit 10** – Petitioner/Plaintiff's Petition for Rehearing En Banc (6/3/03); and Appellate Court Order Denying En Banc Review (8/8/03).

Judicial Misconduct / Disability Complaint

On June 4, 2003 the Petitioner, filed a Complaint of Judicial Misconduct and Disability pursuant to 28 USC § 372 against Judge Jackson

for bias and “*backdating*” orders granting the Justice Department additional time to respond in order to cover-up the government default, and Judge Leon for bias and entering a prejudicial dismissal after renegeing on his prior approval authorizing the Petitioner to distinguish the cases cited by the defendants. Together Judge Jackson and Judge Leon engaged in misconduct and conspired to deny (and then cover-up) the Petitioner his civil and constitutional rights. **Exhibit 11** – Petitioner/Plaintiff's Judicial Complaint No. 03-9. (6/11/03).

Chief Justice Ginsburg denied the Petitioner’s Judicial Complaint on June 25, 2003 stating that the discrepancy in the filing dates and the postmark dates did not provide sufficient evidence to prove that Judge Jackson and the clerk backdated the pleadings in the docket.

In the past, court dockets consisted of systems of paper journals and ledgers. In that environment a judge could actually conspire and direct the clerk for the court to backdate or tamper with a document or court filing. Previously, the date stamp was the only proof of filing or the transaction. A judicial complaint filed in that environment would fail because, the Chief Justice would refuse to investigate the matter due to the lack of evidence. However, things are different today because computerized docketing actually creates evidence of tampering and manipulation. In this case, when Judge Jackson and the clerk backdated the documents to avoid the government default; that editing and manipulation of the record, created a computer “*footprint*” which (in addition to the postmark dates) do not match the filing dates reported in the docket.

The docket itself provides dispositive proof that the records were backdated and tampered, by the clerk under the directives of Judge Thomas Penfiled Jackson. **Exhibit 5** –

District Court Docket Proving That Four Documents Entries Were Edited by the Clerk Pursuant To Judge Jackson’s “*Let This Be Filed*” Directive (12/18/02). The Chief Judge’s dismissal does not refute the inconsistency contained in the actual docket; the dismissal

order only refutes the postmarks, it never references any of the additional proof provided by the Petitioner.

The Petitioner filed an appeal including additional documentary proof that the clerk under directions from Judge Jackson tampered with the docket; however, the dismissal was affirmed by the judicial council, **Exhibit 12** – Judicial Council Order Denying Review (6/25/03) – despite the additional evidence provided.¹³

U.S. District Court Complaint (Abusive Litigation)

The Petitioner filed a motion for sanctions for abusive litigation against the Justice Department in Civil Action No. 03-CV-00426 (RJL) on February 28, 2003 alleging abusive litigation against the U.S. Attorneys assigned to the underlying McCray v. USDA case.

Receiving no relief from the prior motion, the Petitioner filed a second lawsuit Civil Action No. 03-CV-01786 (RJL) on August 25, 2003 alleging abusive litigation against Former Attorney General John Ashcroft and the U.S. Attorneys assigned to the underlying McCray v. USDA case, and requested a trial by jury.

The Petitioner alleged that the Justice Department violated FRCP Rule 11 and 28 U.S.C. §1927 for engaging in a baseless and vexatious defenses that lacked any factual or evidentiary basis. The case was docketed and

¹³ NOTE – Subsequent negative actions by Judge Leon further prove the judicial bias and misconduct the Petitioner raised against Judge Leon in his Judicial Complaint No. 03-9 (e.g., entering orders in the case docket which had been CLOSED for two years, and repeated intentional violations of the automatic stay).

assigned to Judge Richard Leon despite the fact that Judge Leon was named in the Petitioner's previous Judicial Complaint No. 03-9. The Petitioner filed a Supporting Brief and Appendix on August 26, 2003. The Justice Department has never answered this complaint or moved the court to dismiss the Petitioner's Rule 11 complaint.

Bankruptcy Filings

As a result of financial strain and the Justice Department's vexatious litigation, the Petitioner filed for relief under Chapter 7 of the Bankruptcy Code in Pine Bluff, Arkansas on October 14, 2003 – Case No. 03-BK-22252 (T). The Petitioner filed notice of the imposition of the automatic stay to Judge Leon in Civil Action Nos. 00-CV-00426 (RJL) and 03-CV-01786 (RJL) on October 15, 2003. **Exhibit 13** – Petitioner/Plaintiff's Motion Notice of Bankruptcy Filing & Imposition of the Automatic Stay – District Court (10/15/03).

The Petitioner also filed notice of the automatic stay to the Court of Appeals No. 02-5367 (September 2002 Term). **Exhibit 14** – Petitioner/Plaintiff's Motion Notice of Bankruptcy Filing & Imposition of the Automatic Stay – Appellate Court (10/15/03).

The Petitioner's bankruptcy created a dilemma for Judge Leon; since none of the Petitioner's claims were ever adjudicated in federal court in Washington D.C., they remain available for full adjudication in Arkansas, as an adversary proceeding in bankruptcy court. Thus, to continue the ongoing judicial cover-up, Judge Leon was forced to disregard federal law and the Petitioner's bankruptcy filings.

The Justice Department filed a Motion for Stay or Enlargement of Time to Answer or Respond on October 24, 2003. Judge Leon willfully violated 11 U.S.C. §362(a)(3) and ignored the automatic stay on October 31, 2003 when he granted the Justice Department's motion for additional time to respond and stay pending abandonment. **Exhibit 15** – Judge Leon Order Granting the DOJ Motion/Request

in Violation of Automatic Stay (10/31/03). This willful action violated Judicial Canons 2(4) because federal judges are required to comply with the law.

On November 10, 2003 the Petitioner immediately notified the court that Judge Leon's previous order violated the automatic stay, and the Petitioner moved the court for Vacatur and Disqualification of Judge Leon pursuant to 28 U.S.C. §455(A) due to his inclusion in the Petitioner's previous Judicial Complaint No. 03-9. **Exhibit 16** – Petitioner/Plaintiff's Motion for Vacatur and Disqualification of Judge Richard Leon (11/10/03). Judge Leon's refusal to disqualify himself violated Judicial Canon 3 since he had an affirmative duty to disqualify himself since his impartiality could be reasonably questioned, after he was named in the Petitioner's Judicial Complaint.

The Petitioner's original bankruptcy case was dismissed without prejudice for failure to file timely schedules on February 19, 2004. The Petitioner cured the defects and immediately re-filed an emergency bankruptcy petition on February 23, 2004 – Case No. 04-BK-12158 (T). The Petitioner filed notice of the imposition of the automatic stay to Judge Leon in Civil Action Nos. 00-CV-00426 (RJL) and 03-CV-01786 (RJL) on February 24, 2004. **Exhibit 17** – Petitioner/Plaintiff's Motion Notice of Bankruptcy Filing & Imposition of the Automatic Stay – District Court (2/24/04). And the Petitioner also filed notice of the automatic stay to the Court of Appeals No. 02-5367 (September 2002 Term). **Exhibit 18** – Petitioner/Plaintiff's Motion Notice of Bankruptcy Filing & Imposition of the Automatic Stay – Appellate Court (2/24/04)

For the second time, Judge Leon willfully violated 11 U.S.C. §362(a)(3) and ignored the automatic stay on February 26, 2004 when he entered an order dismissing the Petitioner's motion for sanctions in Civil Action No. 00-CV-00426 despite the fact that the case had been CLOSED for two years. **Exhibit 19** – Judge Leon Order Denying Motion for Relief in "CLOSED CASE" (2/26/04)

Finally, Judge Leon willfully violated 11 U.S.C. §362(a)(3) and ignored the automatic stay for the third time on March 10, 2004 when he "spontaneously" entered an order dismissing the Petitioner's formal complaint for abusive litigation and sanctions in Civil Action No. 03-CV-01786 in which the Justice Department had never filed an answer, response or motion to dismiss. **Exhibit 20** – Judge Leon "Spontaneous" Order Denying Complaint for Sanctions (3/10/04)

Clearly, any reasonable person *would* question the impartiality of any judge who had been named by the Petitioner in a formal Judicial Complaint. Therefore, under Canon 3 of the Code of Judicial Conduct – alone, Judge Leon had an automatic duty to recuse himself from all the Petitioner's lawsuits after being named in the Petitioner's Judicial Complaint No. 03-9. However, from June 4, 2003 onward, Judge Leon continuously violated this Code with respect to the Petitioner's lawsuits against USDA and the Justice Department when he sat and entered judgment in favor of the government, when Judge Leon was specifically disqualified pursuant to 28 U.S.C. §455 (b)(1).

II. Background Statement

In the employment discrimination matter that was the subject of Petitioner's initial lawsuit, the District Court Judge Thomas Penfield Jackson granted Justice Department motions to dismiss in favor of USDA without any factual or evidentiary support; under circumstances which would cause reasonable people to question the independence and integrity of the court, committing similar acts which Judge Jackson was publicly chastised for similar Judicial Bias and Misconduct in the U.S. v. Microsoft case. **Exhibit 21** – Thomas Penfield Jackson Judicial Misconduct Comparison Chart – US v. Microsoft and McCray v. USDA

This judicial bias and misconduct continued after Judge Jackson recused himself and selected Judge Richard J. Leon to preside over the case (and cover-up Judge Jackson's

misconduct); wherein Judge Leon, granted additional baseless dismissal orders in the Petitioner's initial discrimination case and subsequent case of abusive litigation.

Judge Leon refused to recuse himself and vacate the (his and Judge Jackson's) previous dismissal orders, after being named in formal Judicial Complaint along with Judge Jackson. Furthermore, Judge Leon continued to enter prejudicial orders, after being named in the Petitioner's Judicial Complaint, and in willful disregard and violation of the Petitioner's bankruptcy stay. These actions violated Judicial Canons 2(4) because federal judges are required to comply with the law.

The underlying causes of action remain un-adjudicated and Judge Leon continues to deprive the Petitioner of due process to the present day. Under Canon 3 of the Code of Judicial Conduct, Judge Leon had an affirmative duty to disqualify himself after being named the Petitioner's Judicial Complaint pursuant to 28 U.S.C. §455(a) and §455(b)(1). Consequently, Judge Leon has continuously violated statutes regulating disqualification in all of the Petitioner's civil lawsuits and related bankruptcy filings over which he presided.

History of Judicial Bias & Misconduct

Federal District Judge Thomas Penfield Jackson has a history displaying pro-government bias and making improper remarks to the media (see U.S. v. Microsoft) and from the bench (see U.S. v. Marion Barry). In this case Judge Jackson also made improper remarks to the Petitioner from the bench, displaying pro-government bias and prejudice against Pro Se litigants.

The Petitioner sought to use Judge Jackson's statements to support his appeal; however, the court reporter refused to release the audio-transcripts from the status conferences where Judge Jackson's public comments displayed his bias. **Exhibit 22** – Petitioner/Plaintiff's First Request for Audio-Tape Transcripts (3/31/03) **and Exhibit 23** –

Petitioner/Plaintiff's Second Request for Audio-Tape Transcripts (4/19/03). The court refused to release the audio-tapes even under FOIA request, which is evidence of concealment. **Exhibit 24** – Chief Justice Denial of FOIA Request Denied on (7/16/03). This refusal, along with Judge Jackson's history of making misstatements is sufficient for a reasonable person to question the impartiality and integrity of the court.

Judge Jackson admonished the Petitioner, from the bench, that he would not consider the Petitioner's case until he retained counsel. This violated Judicial Canons 3(A)(4) by denying the Petitioner an opportunity to be heard, and the Petitioner's Sixth Amendment right to counsel of his choice (including the right to proceed Pro Se).

Judge Jackson also has a history of attempting to evade appellate review. In U.S. v. Microsoft, Judge Jackson attempted to evade appellate review by certifying the case was important enough for direct Supreme Court review. In this case Judge Jackson refused to review the Petitioner's pleading until after he retained counsel. Once doing so, Judge Jackson recognized his error and denial of due process; Judge Jackson then recused himself (but failed to vacate his previous Orders) and picked Judge Richard J. Leon to cover-up his misdeeds and avoid meaningful appellate review.

Abuse of Judicial Discretion

Judge Jackson's pervasive pro-government (Justice Department) bias and anti-pro se litigant prejudice is evident from numerous unexplained rulings that went beyond the formation of impartial judgment based on considerations of law and fact alone.

As plaintiff, Petitioner's rights to substantive Due Process Clause under the 5th Amendment, the Right to Counsel of his choice under the 6th Amendment, and his Right to Trial by Jury under the 7th Amendment were severely abridged in his civil rights suit against the

Secretary of Agriculture, et al and the U.S. Justice Department.

Judge Leon's failure to recuse himself after being named in the Petitioner's Judicial Complaint deprived the Petitioner of a fair opportunity to expose the vexatious litigation and professional misconduct which misled Judge Jackson (due to his documented pro-government bias) into dismissing the Petitioner's civil rights and important constitutional claims.

Additionally, the Justice Department's professional misconduct prevented the Appellate Court from addressing the basis of the Petitioner's appeal; namely, judicial bias and misconduct. Had the Justice Department's misconduct been examined, and Judge Jackson's history and strong appearance of impropriety been addressed, his impartiality might reasonably have been questioned and affected the outcome of the appellate process.

Thus, the Petitioner complained that deceptive and untruthful statements were employed by the Justice Department in its pleadings and arguments before both the District Court and the Appellate Court. When these baseless arguments were pointed out in briefs that requested a rehearing, the Appellate Court declined to rehear the case.

Moreover, the U.S. Trustee's Office may have been more receptive to the Petitioner's bankruptcy petitions had it known that Judge Leon was disqualified under 28 U.S.C. §455(a) and §455(b)(1) at the time he made rulings and entered judgment in favor of USDA and the Justice Department.

At every critical junction, Judge Jackson's and Judge Leon's actions and decisions appeared to be guided along a path that led to the Justice Department's goal of denying Petitioner a trial on the merits of this case. In some instances, this process involved treating as "undisputed facts" facts that were sharply disputed by Petitioner's sworn testimony and contradicted by documentary evidence.

An egregious example of the District Court's abuse of authority may be seen in Judge Jackson's treatment of Petitioner during the second status conference. Judge Jackson granted the Justice Department's oral application to dismiss the Petitioner's Constitutional claims against individually named federal officials. The Petitioner objected, and argued that these federal officials were individually liable because the committed crimes in furtherance of there discrimination and retaliation against the Petitioner. Since criminal conduct is beyond the scope of federal employment, these officials were not protected by sovereign immunity. Judge Jackson told the Petitioner not to argue with him, and summarily declared that the federal officials committed no crime. The question of whether the federal officials committed criminal acts is a question of fact for the jury to decide – and not a question of law for the judge. That determination alone is a clear abuse of discretion because it arbitrarily denied the Petitioner his right to trial by jury.

III. Violations of Judicial Canons

The Petitioner contends that as a result of Judge Jackson's documented pro-government bias, and the professional misconduct committed by the U.S. Attorneys defending USDA; that Judge Jackson was misled into denying constitutional protections and due process because the Petitioner was a Pro Se litigant. After the Petitioner retained counsel, Judge Jackson realized his error and recruited Judge Leon to help cover-up his previous mistakes. Together these federal district court judges violated the Petitioner's constitutional rights and numerous Judicial Canons.

Judge Thomas Penfield Jackson –

The Petitioner asserts that Judge Jackson (1) backdated court orders to avoid issuing a default judgment against the government, (2) directed the clerk to tamper with the court docket to enter pleadings and orders out of sequence, (3) made improper and biased comments from bench to the Petitioner, (4)

refused to consider any Pro Se pleading or arguments, (5) conspired with Judge Leon to deprive the petitioner of a trial on the merits, and (6) conspired with Judge Leon to cover-up and conceal the Petitioner's constitutional deprivations.

- Judge Jackson Backdated Court Orders to Avoid Issuing a Default Judgment against the Government violates Judicial Canon 2(4) – *which requires federal judges to “respect and comply with the law” and to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”*
- Judge Jackson Directives to the Clerk to Tamper with the Court Docket also violates Judicial Canon 2(4) – *which requires federal judges to “respect and comply with the law” and to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”*
- Judge Jackson has a history of making Improper Comments to the Media, and from the Bench; in this case he expressed contempt and disdain from the bench against the Petitioner for appearing Pro Se, thereby violating Judicial Canon 3C – *which states, in part, “A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned... .”*
- Judge Jackson Refused to Consider the Petitioner's Pro Se Pleading or Arguments (stating so from the Bench), which violates Judicial Canon 3(A)(4) – *which states that a “judge should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to the law.”*
- Judge Jackson conspired with Judge Leon to cover-up Jackson's misconduct and Deprive the Petitioner of a trial on the merits in violation of Judicial Canon 2(4) – *which requires federal judges to “respect and comply with the law” and to “act at all times in a manner that promotes public confidence*

in the integrity and impartiality of the judiciary.”

- Judge Jackson conspired with Judge Leon to cover-up and conceal the Petitioner's constitutional deprivation which violated Judicial Canon 2 – *which provides that “a judge should avoid impropriety and the appearance of impropriety in all activities”* AND; Judicial Canon 1 – *which states that “Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges.”*

Any of the conduct displayed above will cause the public and any reasonable person to lose confidence in the independence and impartiality of the courts. How can the public have any confidence in the independence of the judiciary and integrity of the courts when a District Court Judge willfully, intentionally and repeatedly directs the clerk to tamper with court the docket? There is no legitimate reason for a judge to do this; therefore, the only explanation for it is to conceal a previous mistake or cover-up further misconduct.

Judge Richard J. Leon –

The Petitioner asserts that Judge Richard Leon (1) entered a ruling in a case docket TWO years after the CASE WAS CLOSED, (2) refused to recuse himself and made prejudicial orders after being named in a judicial complaint, (3) dismissed a case without allowing the petitioner to distinguish the cases cited by the Justice Department, (4) intentionally and repeatedly violated the Petitioner's bankruptcy stay, (5) conspired with Judge Jackson to deprive the Petitioner of a trial on the merits, and (6) conspired with Judge Jackson to cover-up and conceal the Petitioner's constitutional deprivations.

- Judge Leon Entered an Order in the Case Docket Two Years after the Case was Closed, in violation of Judicial Canon 2(4) – *which requires federal judges to “respect and comply with the law” and to “act at all*

times in a manner that promotes public confidence in the integrity and impartiality of the judiciary” AND Judicial Canon 2 – which provides that “a judge should avoid impropriety and the appearance of impropriety in all activities.”

- Judge Leon Refused to Recuse Himself and Made Prejudicial Orders After Being Named in the Petitioner’s Judicial Complaint in violation of Judicial Canon 3C – *which states, in part, “A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned... .”*
- Judge Leon Granted the Petitioner Permission, and then Dismissed the Case without Allowing the Petitioner to Distinguish the Cases Cited by the Justice Department in violation of Judicial Canon 3(A)(4) – *which states that a “judge should accord to every person who is legally interested in a proceeding, or the person’s lawyer, full right to be heard according to the law.”*
- Judge Leon willfully, Intentionally and Repeatedly Violated the Petitioner’s Bankruptcy Stay, in violation of Judicial Canon 2(4) – *which requires federal judges to “respect and comply with the law” and to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”*
- Judge Leon conspired with Judge Jackson Deprive the Petitioner of a trial on the merits, violates Judicial Canon 2(4) – *which requires federal judges to “respect and comply with the law” and to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”*
- Judge Leon conspired with Judge Jackson to Conceal the Petitioner’s Constitutional Deprivation in violation of Judicial Canon 2 – *which provides that “a judge should avoid impropriety and the appearance of impropriety in all activities” AND Judicial Canon 1 – which states the “Deference to the judgments and rulings of courts depends*

upon public confidence in the integrity and independence of judges.”

Any of the conduct displayed above will cause the public and any reasonable person to lose confidence in the independence and impartiality of the court. The mere fact that Judge Leon was named in the Petitioner’s Judicial Complaint should have resulted in his automatic disqualification; since clearly, any reasonable person would question the impartiality of any judge who had been named in a Judicial Complaint by the litigant.

How can the public have any confidence that they will be heard and receive due process when a District Court Judge enters prejudicial dismissals of constitutional claims without bothering to allow the Plaintiff to distinguish the cases cited by the defendants? Or when a District Court Judge willfully, intentionally and repeatedly violates federal bankruptcy law?

Moreover, how can the public have any confidence in the independence of the judiciary and integrity of the courts when a District Court Judge willfully, intentionally and repeatedly tampers with court docket and enters pleadings, papers or orders in a CLOSED CASE file? There is no legitimate reason for a judge to do this; therefore, there it can only be to conceal a previous mistake or cover-up further misconduct.

Per Curium Court (Judge Henderson, Judge Randolph, Judge Rogers) –

The Petitioner Asserts that the Per Curium Court (1) Dismissed Petitioner’s Appeal without actually considering the “Issues Raised on Appeal” and then (2) Conceals the dismissal in an unpublished decision.

- The Per Curium Court Dismissed the Petitioner’s Appeal without Considering the actual “Issues Raised on Appeal”, in violation of Judicial Canon 3(A)(4) – *which states that a “judge should accord to every person who is legally interested in a*

proceeding, or the person's lawyer, full right to be heard according to the law" AND Judicial Canon 2(4) – which requires federal judges to "respect and comply with the law" and to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

How can the public have any confidence that they will receive due process and a fair opportunity to be heard on appeal when a Per Curium court denies an appeal without bothering to consider the actual "Issues Presented on Appeal?" And then conceals the dismissal in an unpublished decision.

Coordinated Judicial Misconduct

This case demonstrates the existence of coordinated judicial wrongdoing. Judge Jackson's history of pro-government bias and Judge Leon's subsequent tacit conduct has cast a long shadow on the litigation that is presently before him. Under the circumstances of this case, vacatur and recusal are the only remedies that will promote the public's faith in the integrity and fairness of the federal judicial system, prompt other judges to honor the Bill of Rights and carefully consider Pro Se litigant claims, restore impartiality to the litigants in the judicial process, and secure the relief that Petitioner deserves.

1. The District Court was misled by the U.S. Attorney's Office baseless and unsupported pleadings (in violation of F.R.C.P Rule 11 and 28 U.S.C. §1927) into denying fundamental fairness and due process and the Petitioner's civil and constitutional rights.

2. The Petitioner has cured all previous defects, but been denied relief without ever receiving a hearing of any type (either Jurisdictional or Evidentiary) through any Administrative Process (i.e., USDA, EEOC, MSPB or OSC) or District Court proceedings.

3. There was no factual or evidentiary basis for any of Judge Jackson's and/or Judge Leon's previous rulings, orders or judgments.

4. The Petitioner has established his *Prima Facie* case for discrimination, retaliation and abusive litigation, which remain totally unrefuted; there is no evidentiary support in the EEO investigative record for USDA or the Justice Department, and the U.S. Attorney's Office mislead the court into entering baseless rulings, orders and judgments.

5. Neither USDA nor the Justice Department has ever bothered to answer or deny any of the Petitioner's allegations in any forum, i.e. Administrative Process or District Court proceedings.

6. The District Court has indisputably abused its discretion, and Petitioner has been unable to obtain relief through an ordinary appeal.

7. The serious nature and sheer number of Judicial Code of Conduct Canons violations committed by Judge Jackson and Judge Leon in the instant case;

- Canon 3(A)(4) – states that a "judge should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to the law."
- Canon 2 – provides that "a judge should avoid impropriety and the appearance of impropriety in all activities."
- Canon 2(4) – requires federal judges to "respect and comply with the law" and to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."
- Canon 1 – states the "Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges."

- Canon 3C – states, in part, "A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned... ."

Recusal and Vacatur are justified on the grounds that the Judge was disqualified under 28 U.S.C. § 455(a) and § 455(b)(1) at the time he entered numerous rulings and orders in favor of the Justice Department, after being named in the Petitioner’s formal judicial complaint along with Judge Thomas Penfield Jackson on June 4, 2003. Judge Jackson’s documented history of pro-government bias along with Judge Leon’s tacit participation in the matter now before him creates the strong appearance of impropriety for which relief through disqualification and vacatur was warranted.

New Technology & Judicial Accountability

This case demonstrates the impact that new technology will have on the future judicial accountability and reform efforts. First, as an evidentiary matter e-filings and computer technology allows the creation and preservation of evidence of docket manipulation by judges and clerks which was not previously available. In the past, there was no evidence if records in a case docket were changed or “file stamped” out of order. The clerk’s stamp was the only evidence available. Today, these types of manipulations or changes in record, while allowed, create computer “foot prints” of the authorizations and modifications. These computer records become admissible evidence in cases of coordinated judicial misconduct or collusion. Second, as cameras become ever more ubiquitous in society, it will become more difficult to justify the federal court ban on cameras in the court room. The presences of cameras and the ability of litigants/[oversight] to access the audio and video records of court proceedings will provide evidence of judicial disability and bias.

Finally, the Internet provides litigants (including Pro Se ones) the ability to self-publish cases of unprosecuted judicial bias and misconduct. Previously, judicial complaints could be summarily dismissed and disposed of in unpublished opinions with little (if any) chance that the story would be picked up by the main stream media. Thus the appearance of judicial integrity could be maintained. Today, new technology allows litigants affected by judicial bias and misconduct can take their story and evidence directly to the people in e-mail campaigns, web sites, bloggs, tweets, you-tube, pod casts, etc. Moreover, due to 500 cable channel telephony and the 24 hour news cycle, mainstream media feeds off of online content. Thus, it will become more and more difficult (if not impossible) for the judiciary to cover up all cases and evidence of judicial corruption.

CONCLUSION

In conclusion, the Court of Appeals for the District of Columbia chastised but refused to initiate impeachment of Judge Tomas Penfield Jackson despite his prior history of government bias and misconduct displayed in U.S. v. Microsoft and U.S. v. Barry. And while the U.S. District Court for the District of Columbia and U.S. Court of Appeals for the District of Columbia ultimately provided no relief to Michael McCray, *per se*, or hundreds of other litigants affected by Judge Jackson’s misconduct and bias who lacked the celebrity of Bill Gates or Marion Barry – Judge Thomas Penfield Jackson unceremoniously retired on August 31, 2004; in the term following the Petitioner’s judicial complaint, appellate argument and subsequent mandamus applications. Justice disguised is not justice at all – it is a disgrace.

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“We the People are the rightful masters of both Congress and the Courts, not to overthrow the Constitution but to overthrow the men who pervert the Constitution.”

~ President Abraham Lincoln ~

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