Dr. Richard Cordero, Esq.

Ph.D., University of Cambridge, England
M.B.A., University of Michigan Business School
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December 13, 2006

Samuel W. Seymour, Esq., NYCBar Chair
and Members of the NYCBar Board of Directors
fax (212)558-3588; seymours@sullcrom.com

Dear Mr. Seymour and Directors,

This is an appeal to you, as members of the board of directors of the NYCBar, to hold the Bar to the level of moral courage that led it to engage in action with significant practical consequences at the time of its historical origin in "a campaign to defeat corrupt politicians and judges at the polls and to establish standards of conduct for those in the legal profession"[1] so that now it may act equally courageously on the evidence that I submitted to it[2] showing that Former and Current Chief Judges of the Court of Appeals for the Second Circuit John M. Walker, Jr., and Dennis Jacobs, respectively, have tolerated or supported coordinated wrongdoing by judges and others in the Circuit, including a bankruptcy fraud scheme and its cover up.[3]

I initially submitted the evidence of coordinated judicial wrongdoing back on June 19, 2006, in a complaint to the NYCBar Committee on Judicial Conduct,[4] which was jointly formed with the Federal Bar Council (FBC) and announced by then Chief Judge Walker.[5] For more than four and a half months and despite my repeated efforts to contact the Committee,[6] the latter would not even acknowledge its receipt. By letter of November 9, I submitted the complaint with its evidence to the NYCBar's president, Barry M. Kamins, Esq., its officers, and numerous members, as well as their FBC counterparts, and requested that the Bars investigate it, place it in their next meeting agendas, and inform the media thereof. By letter of November 17, Mr. Kamins and FBC President Dean Joan G. Wexler dismissed it by disregarding such submission to the Bars and pretending that the Committee did not have jurisdiction to deal with it.[7] & infra, pg. 4

My letter of November 27 to them[8] showed that even by the terms of Chief Judge Walker's announcement and the limited jurisdictional scope acknowledged by the Bar presidents, the Committee had jurisdiction to deal with the complaint; but that the evidence of coordinated wrongdoing was now before the Bars and their members, confronting them with the choice of expedient protection of their relationship with powerful judges, in conflict with the interests of other members and their clients, or principled conduct that holds all judges to high standards of judicial integrity.

This choice between expediency and principled conduct is now before you as NYCBar directors. At stake is whether you approve that the NYCBar may aid and abet chief judges and their peers by its refusal to investigate the evidence of their coordinated wrongdoing.[9] Neither for you nor for the Bar does the investigation depend on having jurisdiction; rather it is required by your knowledge that the judges have compromised judicial integrity. Unless an authoritative voice like yours denounces them, their wrongdoing will only become more pervasive under cover of their increased secrecy and unaccountability. Indeed, the judges have announced a rule change allowing them to dispose of a matter without providing any reasons at all.[10] So you may spend hundreds of thousands of dollars and invest an enormous amount of intellectual and emotional efforts litigating a case in the lower courts or agencies and pay the recently increased $455 appeal fee only to receive a form titled "Summary Order". Would judges that only have to tell a clerk 'to S.O. your case out' even bother to read your brief just as they now need not read your motions to tell the clerk to select the word "Granted" or "Denied" on the Motion Informa-

tion Sheet?[11] Will your current 1 in a 100 chance of the Supreme Court taking your petition to examine the legal soundness of an appellate decision not be dashed if all you can point to is an S.O. form? The summary order rule also prohibits the citation of orders issued up to now, which could still have a brief explanatory statement appended to them. Does this give you even the appearance of judges publicly administering justice according to law or the proof of a syndicate varnishing their fiats adopted at secret meetings by bosses that exempt each other from prosecution?

In the same vein, Chief Judge Jacobs also announced that from now on a litigant that wants to present oral argument may not do so through video conference but must instead be physically present before the Court in New York City.[12] Would you deem it cost-effective to send your high powered and higher charging team of lawyers all the way to NYC for them to argue before the Court for as little as *five* minutes? Forget the lower court Federal Rules[13] that "shall be construed and administered to ensure the just, speedy, and inexpensive determination of every action". The Appellate Rules do not have such statement of purpose. On the contrary, Rule 2 provides that "a court of appeals may –to expedite its decision or for other good cause– suspend any provision of the rules".[14] As a result, appellate judges can handle your case however they like by simply suspending a rule that they do not want to apply to it, except Rule 26 for extending the time to take the appeal or seek a review, that is, precisely the one constituting the first hurdle to having an appeal at all. For how long would your boss or supervisory board remain just and fair if they could do to you anything, regardless of the rules, particularly when expediency is the only guiding principle?

Indeed, the appellate judges can deprive you of even those five minutes to explain orally your case since they recently instituted a no-argument calendar.[15] Moreover, they have no rule providing the time from the notice of appeal by which they must issue the scheduling order that sets forth the deadline for you to file your appellate brief. After all, if they have predetermined 'to S.O. your case out', why bother asking you for a brief that they are not going to read?, especially if you complained against judges' toleration or support of a bankruptcy fraud scheme, let alone chief judges'. You get the S.O. premonition when, as in my case, you file your appeal on October 16, but two months later the scheduling order has not issued, none of your subsequent motions has been decided, and some were not even docketed for almost three weeks after you hand-delivered them to the Court![16]

There is a pattern here: These judges act with expediency to dispose of appeals arbitrarily and unaccountably simply because they can get away with it. Hence the importance of you and the NYCBar denouncing the judges' abuse of their enormous power over our lives, liberty, and property that absolutely corrupts them and judicial process.[17] In so doing, you can assume your responsibility for truth and justice as did French Author Emile Zola when he wrote "I accuse"[18] to denounce those at the highest level of the defense ministry and military tribunal who framed Captain Alfred Dreyfus and convicted him of treason because as a Jew he was a convenient scapegoat for a botched handling of espionage evidence. There is a Jew here too. It is called Judicial Integrity. Like Dreyfus, it is unpopular, discriminated against, and abused by powerful judges and those that would rather protect their careers than uphold the laws as they are sworn to. More than in the Dreyfus Affair, it offends the conscience that here due process and the truth are so patently denied only out of greed and the preservation of power to make wrongdoing pay.[19]

It would achieve historic importance if all of you, NYCBar Directors, convinced that the NYCBar must demand integrity of judicial process and of the judges charged with safeguarding it lest the Bar becomes an aider and abettor of corruption, rose up as one to make your *Denunciation in the Judicial Integrity Affair*. But it only takes one courageous man or woman to break conniving silence in order to take the place of Emile Zola and with a bold *I Denounce* link

his or her name forever to the launch of an investigation of coordinated corruption that can shake the Federal Judiciary to its foundation.[20] For that person, you, this can be the affair that defines your career, for no other will be more intricate, risky, and capable of emblazoning your name with greater moral shine than this one where you are called upon to challenge powerful wrongdoing judges and resist the pressure of colleagues in order to take action with significant consequences for the common good: a judiciary where its officers are required, and held accountable for failing, to administer "Equal Justice Under Law". An opportunity to have such a profound positive impact on government and society presents itself only once in a lifetime. Do not miss it. Let your courageous action in this *Affair* be the one that cements your professional and moral legacy.

Hence, an appeal is made to you, as it was made to Emile Zola, to use your influential public standing on behalf of truth and justice in that you 1) call on the NYCBar to conduct a public investigation of the evidence of coordinated judicial wrongdoing; 2) transmit it for the same purpose to Attorney General Alberto Gonzales and Incoming H.R. Speaker Nancy Pelosi; and 3) inform the media thereof. Meantime, I look forward to hearing from you.

Sincerely, Dr. Richard Cordero, Esq.

cn=Dr. Richard Cordero, Esq., c=US, o=Judicial-Discipline-Reform.org, ou=http://Judicial-Discipline-Reform.org, email=DrRCordero@Judicial-Discipline-Reform.org
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Important! This letter and its exhibits can be retrieved through http://judicial-discipline-reform.org/NYCBar_Directors/I_Denounce_13dec6.pdf. That PDF as well as those below must be opened with Adobe Acrobat Reader 7, which is downloadable for free from www.Adobe.com.

[1] http://www.nycbar.org/AboutUs/index.htm; and footnote 2, infra, page N_F:6.

[2] http://Judicial-Discipline-Reform.org/NYCBar_FBC/Complaint_to_NYCBar_FBC_9nov6.pdf

[3] Id., N_F:17, 29.

[4] Id., N_F:16.

[5] Id., N_F:139.

[6] Id., page 1¶3.

[7] http://Judicial-Discipline-Reform.org/2NYCBar_FBC/to_members_27nov6.pdf, Y_B:5 .....ID:4

[8] Id., Y_B:1.

[9] Cf. id., Y_B:2¶¶2-4.

[10] http://judicial-discipline-reform.org/NYCBar_Directors/Summary_Orders_17nov6.pdf ID:5

[11] Cf.., id., Y_B:227; see also http://judicial-discipline-reform.org/NYCBar_Directors/reasonless_disposition_recusal_motions.pdf ID:11

[12] http://Judicial-Discipline-Reform.org/NYCBar_Directors/no_video_conf_oral_argument.pdf ID:69

[13] FRCivP Rule 1; http://Judicial-Discipline-Reform.org/NYCBar_Directors/FRCP_1dec5.pdf; also FRBkrP 1001; http://Judicial-Discipline-Reform.org/NYCBar_Directors/FRBkrP_1dec5.pdf

[14] http://www.ca2.uscourts.gov/ >Clerk's Office>Rules>FRAP Rule 2; http://Judicial-Discipline-Reform.org/NYCBar_Directors/FRAP.pdf

[15] Id., Local Rules of the Second Circuit, Rule §0.29 Non-Argument Calendar.....ID:71

[16] http://Judicial-Discipline-Reform.org/NYCBar_Directors/mtn_docket_&_correct_5dec6.pdf ID:73

[17] Footnote 2, supra, N_F:141, The Dynamics of Organized Corruption in the Courts

[18] http://Judicial-Discipline-Reform.org/NYCBar_Directors/J_accuse_E_Zola_D_Short.pdf ID:79

[19] Footnote 7, supra, Y_B:218.

[20] http://Judicial-Discipline-Reform.org/StatFacts10.htm, §§42-43; and http://Judicial-Discipline-Reform.org/docs/SCt_knows_of_dismissals.pdf ID:87

NEW YORK
CITY BAR

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November 17, 2006

Dr. Richard Cordero, Esq.
59 Crescent Street
Brooklyn, New York 11208-1515

Dear Dr. Cordero:

The Committee on Judicial Conduct has reviewed the complaint and the supporting materials. The Committee's charge is to receive and review confidential written complaints from members of the bar regarding the conduct of judges in the Southern and Eastern Districts of New York and on the Second Circuit Court of Appeals and to take such further action, if any, as the Committee may determine. Such matters of conduct within the Committee's purview include issues of temperament, delay and violations of the Code of Judicial Conduct, but not the merits of rulings by a judge. The Committee has no power to impose any sanctions on any judicial officer.

Upon initial review of the complaint, two members of the Committee chose to recuse themselves from consideration of the matter. The Committee then reconvened to consider the complaint and the several submissions supplied, both in written and electronic form. We note that the complaint focuses on the merits of decisions made by numerous judicial officers, and not on issues of temperament, delay or violations of the Code of Judicial Conduct. Because the merits of decisions are not within the purview of the Committee, the Committee determined that it had no jurisdiction to take any further action with respect to the complaint. We apologize for the delay in providing this response.

Very truly yours,

Joan G. Wexler
President, Federal Bar Council

Barry Kamins
President, New York City Bar Association

UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

NOTICE OF RULE CHANGE

The United States Court of Appeals for the Second Circuit hereby gives notice of interim changes and proposed permanent changes in its Local Rules, and invites comment thereon. The new rule will go into effect immediately on an interim basis. Comments should be submitted in writing no later than December 29, 2006. Comments may be mailed to, or filed with:

Thomas Asreen
Acting Clerk of the Court
United States Court of Appeals for the Second Circuit
40 Foley Square, Room 1802
New York, NY 10007

The Interim and proposed permanent Local Rule 0.23 is as follows. (Comparison of text with preexisting Local Rule 0.23 is set forth below.)

Local Rule 0.23. Dispositions by Summary Order

(a) Use of Summary Orders

The demands of contemporary case loads require the court to be conscious of the need to utilize judicial time effectively. Accordingly, in those cases in which decision is unanimous and each judge of the panel believes that no jurisprudential purpose would be served by an opinion (i.e., a ruling having precedential effect), the ruling may be by summary order instead of by opinion.

(b) Precedential Effect of Summary Orders

Rulings by summary order do not have precedential effect.

(c) Citation of Summary Orders

(1) Citation to summary orders filed after January 1, 2007, is permitted.

(A) In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)."

(B) Unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at http://www.ca2.uscourts.gov/), the party citing the summary order must file and serve a copy of that summary order together with the paper in which the summary order is cited. If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the docket number of the case in which the order was entered.

(2) Citation to summary orders filed prior to January 1, 2007, is not permitted in this or any other court, except in a subsequent stage of a case in which the summary order has been entered, in a related case, or in any case for purposes of estoppel or res judicata.

(d) Legend

Summary orders filed after January 1, 2007, shall bear the following legend:

SUMMARY ORDER

> Rulings by summary order do not have precedential effect. Citation to summary orders filed after January 1, 2007, is permitted and is governed by this court's Local Rule 0.23 and Federal Rule of Appellate Procedure 32.1. In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)." Unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at http://www.ca2.uscourts.gov/), the party citing the summary order must file and serve a copy of that summary order together with the paper in which the summary order is cited. If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the docket number of the case in which the order was entered.

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Comparison of Interim Rule with preexisting Local Rule:

Local Rule 0.23. Dispositions ~~in Open Court or~~ by Summary Order

(a) Use of Summary Orders

The demands of ~~an expanding~~contemporary case loads require the court to be ~~ever~~ conscious of the need to utilize judicial time effectively. Accordingly, in those cases in which decision is unanimous and each judge of the panel believes that no jurisprudential purpose would be served by ~~a written opinion, disposition will be made in open court or~~an opinion (i.e., a ruling having precedential effect), the ruling may be by summary order.

~~Where decision is rendered from the bench, the court may deliver a brief oral statement, the record of which is available to counsel upon request and payment of transcription charges. Where disposition is~~ instead of by opinion.

(b) Precedential Effect of Summary Orders

Rulings by summary order~~, the court may append a brief written statement to that order. Since these statements do not constitute formal opinions of the court and are unreported or not uniformly available to all parties, they shall not be cited or otherwise used in unrelated cases before~~ do not have precedential effect.

(c) Citation of Summary Orders

(1) Citation to summary orders filed after January 1, 2007, is permitted.

(A) In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)."

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UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 17th day of November, two thousand and six,

PRESENT: Hon. Dennis Jacobs, *Chief Judge*
Hon. Guido Calabresi
Hon. José A. Cabranes
Hon. Chester J. Straub
Hon. Rosemary S. Pooler
Hon. Robert D. Sack
Hon. Sonia Sotomayor
Hon. Robert A. Katzmann
Hon. Barrington D. Parker
Hon. Reena Raggi
Hon. Richard C. Wesley
Hon. Peter W. Hall

IT IS HEREBY ORDERED, that the Local Rules of the United States Court of Appeals for the Second Circuit are hereby amended on an interim basis effective immediately by the adoption of Interim Local Rule 0.23, which is set forth below and replaces the current Local Rule 0.23. The Court proposes furthermore to adopt Interim Local Rule 0.23 on a permanent basis following publication for notice and comment. The Clerk of the Court shall publish the new Interim Rule and Proposed Permanent Rule inviting comment to be submitted by December 29, 2006. Anyone wishing to comment should do so, in writing, to the Clerk of Court, 40 Foley Square, Room 1802, New York, NY 10007.

Interim Local Rule 0.23. Dispositions by Summary Order

(a) Use of Summary Orders

The demands of contemporary case loads require the court to be conscious of the need to utilize judicial time effectively. Accordingly, in those cases in which decision is unanimous and each judge of the panel believes that no jurisprudential purpose would be served by an opinion (i.e., a ruling having precedential effect), the ruling may be by summary order instead of by opinion.

(b) Precedential Effect of Summary Orders

Rulings by summary order do not have precedential effect.

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(A) In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)."

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IT IS SO ORDERED.

FOR THE COURT:
/s/Thomas Asreen
Thomas Asreen
Acting Clerk of Court

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT

Docket Number(s): 03-5023 **In re: Premier Van et al.**

Motion for: the Hon. Chief Judge John M. Walker, Jr., to recuse himself from this case and from considering the pending petition for panel rehearing and hearing en banc

Statement of relief sought:

1. Given Chief Judge Walker's failure to comply with his statutory and regulatory duty, under both 28 U.S.C. §351 and the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers, respectively, to take any required action at all, let alone 'promptly and expeditiously', in the more than seven months since Dr. Cordero submitted a complaint about Bankruptcy Judge John C. Ninfo, II, for having "engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" by disregarding the law, rules, and facts when issuing orders now on appeal in this Court, in particular, and in handling the case, in general,
2. the Chief Judge himself has engaged in such prejudicial conduct and has in effect condoned such disregard of legality so that he cannot reasonably be expected to have due regard for law and rules when considering the pending petition for panel rehearing and hearing en banc or when otherwise dealing with this case.
3. Consequently, Chief Judge Walker should recuse himself from any such consideration.

MOVING PARTY: Dr. Richard Cordero Petitioner Pro Se
59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521; corderoric@yahoo.com

OPPOSSING PARTY: See next

Court-Judge/Agency appealed from: Hon. John M. Walker, Jr., Chief Judge of the Court of Appeals, 2d Cir.

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of Moving Petitioner Pro Se: Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: March 22, 2004

ORDER

IT IS HEREBY ORDERED that the motion is **GRANTED** **DENIED.**

FOR THE COURT:
ROSEANN B. MacKECHNIE, Clerk of Court

Date: _____ **By:** _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MOTION FOR CHIEF JUDGE JOHN M. WALKER, JR.,
TO RECUSE HIMSELF FROM *IN RE PREMIER VAN et al.*
AND THE PENDING PETITION FOR
PANEL REHEARING AND HEARING EN BANC

In re PREMIER VAN et al. case no. 03-5023

RICHARD CORDERO
Third party plaintiff-appellant
v.
KENNETH W. GORDON, Esq.
Trustee appellee
DAVID PALMER,
Third party defendant-appellee

Dr. Richard Cordero, appellant pro se, states under penalty of perjury as follows:

1. On August 11, 2003, Dr. Cordero filed with the Clerk of this Court a complaint about the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge, who together with court officers at the U.S. Bankruptcy Court and the U.S. District Court for the Western District of New York has disregarded the law, rules, and facts so repeatedly and consistently to the detriment of Dr. Cordero, the sole non-local party, who resides in New York City, and to the benefit of the local parties in Rochester as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and of bias against him. Those wrongful and biased acts included Judge Ninfo's failure to move the case along its procedural stages, the

instances of which were identified with cites to the FRCivP. To no avail, for there has been a grave failure to act upon that complaint.

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I. The Chief Judge's failure to comply with duties imposed on him by law and rules shows his capacity to disregard law and rules, which nevertheless must be the basis for administering the business of the courts, such as deciding the petition for panel rehearing and hearing en banc

A. The Chief Judge has a duty under law and rules to handle the complaint 'promptly and expeditiously'

2. Those failures have not been cured yet and the bias has not abated either. Hence, Judge Ninfo has engaged and continues to engage "in conduct prejudicial to the effective and **expeditious** administration of the business of the courts." (emphasis added) Such conduct provides the basis for a complaint under 28 U.S.C. §372.

3. Dr. Cordero's complaint about Judge Ninfo relied thereupon. After being reformatted and resubmitted on August 27, 2003, it invoked the similar provisions found now at 28 U.S.C. §351.

4. Subsection (c)(1) thereof provides that "In the interests of the effective and **expeditious** administration of the business of the courts…the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this subsection and thereby dispense with filing of a written complaint" (emphasis added). In the same vein, (c)(2) states that "Upon receipt of a complaint filed under paragraph (1) of this subsection, the clerk shall **promptly** transmit such complaint to the chief judge of the circuit…" (emphasis added). More to the point, (c)(3) provides that "After **expeditiously** reviewing a complaint, the chief

judge, by written order stating his reasons, may- (A) dismiss the complaint…(B) conclude the proceedings…The chief judge **shall** transmit copies of his written order to the complainant." (emphasis added). What is more, (c)(3) requires that "If the chief judge does not enter an order under paragraph (3) of this subsection, such judge **shall promptly**-(A) appoint…a special committee to investigate…(B) certify the complaint and any other documents pertaining thereto to each member of such committee; and (C) provide written notice to the complainant and the judge…of the action taken under this paragraph" (emphasis added). The statute requires 'prompt and expeditious' handling of such a complaint and even imposes the obligation so to act specifically on the chief judge of the circuit.

5. Rule 3(a) of the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C. §351 et seq., provides, among other things, that "The clerk will **promptly** send copies of the complaint to the chief judge of the circuit…" (emphasis added). Likewise, Rule 4(e) provides that "If the complaint is not dismissed or concluded, the chief judge will **promptly** appoint a special committee" (emphasis added). For its part, Rule 7(a) requires that "The clerk will **promptly** cause to be sent to each member of the judicial council" (emphasis added) copies of certain documents for deciding the complainant's petition for review. The tenor of the Rules of the Second Circuit is

that action will be taken expeditiously. The Circuit's chief judge is not only required to enforce those Rules, but as its foremost officer, he is also expected to do so in order to set the most visible example of conduct in accordance with the rule of law.

B. The Chief Judge has failed to take action in more than seven months and would not even keep, let alone answer, a complaint status inquiry

6. Nevertheless, over seventh months have gone by since Dr. Cordero submitted his complaint about Judge Ninfo, but the Chief Judge of the Second Circuit, the Hon. John M. Walker, Jr., has failed to take the action required of him by statute and rules in connection therewith, let alone notify Dr. Cordero of any action taken by him 'promptly and expeditiously'.

7. Far from it! Thus, on February 2, 2004, Dr. Cordero wrote to Chief Judge Walker to ask about the status of the complaint and to update it with a description of subsequent events further evidencing wrongdoing. To Dr. Cordero's astonishment, his letter of inquiry and its four accompanying copies were returned to him immediately on February 4. One can hardly fathom why the Chief Judge, who not only is dutybound to apply the law, but must also be seen applying it, would not even accept possession of a letter inquiring what action he had taken to comply with such duty. Nor can one fail to be shocked by the fact that precisely a complaint charging disregard of the law and rules is dealt

with by disregarding the law and rules requiring that it be handled 'promptly and expeditiously'. Nobody is above the law; on the contrary, the higher one's position, the more important it is to set the proper example of respect for the law and its objectives.

C. The Chief Judge failed to appoint a special committee

8. Likewise, there is evidence that Chief Judge Walker has failed to comply with Rule 4(e) of the Rules Governing Complaints requiring that "the chief judge will **promptly** appoint a special committee…to investigate the complaint and make recommendations to the judicial council". (emphasis added) The latter can be deduced from the fact that on February 11 and 13 Dr. Cordero wrote to members of the judicial council concerning this matter. The replies of those that have been kind enough to write back show that they did not know anything about this complaint, much less have knowledge of the Chief Judge appointing any special committee or of any committee recommendations made to them.

D. The Chief Judge is member of the panel that failed even to discuss the pattern of wrongdoing

9. There is still more. The pattern of wrongdoing and bias at the bankruptcy and district courts has materialized in more than 10 decisions adopted by either Judge Ninfo or his colleague upstairs in the same federal building, the Hon. David G. Larimer, U.S. District Judge. Dr. Cordero challenged those orders in an appeal in

this Court bearing docket no. 03-5023. One of the appeal's three separate grounds is that such misconduct has tainted the decisions with bias and prejudice against Dr. Cordero and denied him due process. Yet, the order of January 26, 2004, dismissing the appeal was adopted by a panel including the Chief Judge. It does not even discuss that pattern, not to mention determine how wrongdoing may have impaired the lawfulness of the orders on appeal.

10. If a judge can be disqualified for only "creating an appearance of impropriety", *Liljeberg v. Health Servs. Acquisition Corp.,* 486 U.S. 847, at 859-60 (1988), then the appearance of one of the worst forms of impropriety, that is, perverting judicial judgment through partiality, must be sufficient to at the very least be recognized and considered in any decision. Disregarding bias and prejudice in the process of judicial decision-making that vitiate any alleged substantive grounds for the resulting decision allows the process to become a farce. The Chief Judge, in addition to his responsibility as the chief steward of the integrity of that process in this Circuit, had a statutory duty to act upon a complaint that the process that issued the appealed orders was perverted through a pattern of disregard of legality and of commission of wrongdoing. Yet, the Chief Judge too disregarded the complaint.

E. The Chief Judge failed to bear his heavier responsibility arising from his superior knowledge of judicial wrongdoing and its consequences on a person, and from his role as chief steward of the integrity of the courts

11. In so disregarding his duty, the Chief Judge bears a particularly heavy responsibility, for he knows particularly through a complaint transmitted under statute and rule to him for his consideration, as well as generally through all the papers filed by Dr. Cordero and transmitted to the panel, that Judge Ninfo's and others' targeted misconduct and systemic wrongdoing have inflicted upon Dr. Cordero irreparable harm for a year and a half by causing him enormous expenditure of time, effort, and money in, among other things, legal research and writing as well as traveling, aggravated by tremendous emotional distress. Yet, the Chief Judge has knowingly allowed the case to be remanded and thereby permitted Dr. Cordero to be the target of further abuse. Worse still, such abuse is likely to be rendered harsher by a retaliatory motive and more flagrant by the Chief Judge's failure to take any action on the complaint, let alone condemn the complained-about abuse, which may be construed as his condonation of it…

12. by the Circuit's Chief Judge!, the one reasonably expected to ensure that the foremost business of Circuit courts must be the dispensation of justice through fair and just process. But instead of doing justice and being seeing doing justice, the Chief Justice is seen to be not only blind to the commission of injustice

through the disregard of laws and rules at the root of justice by those whom he is supposed to supervise, but also to be insensitive to its injurious consequences on a party…no! no! on Dr. Cordero, a person, a human being whose life has being disrupted in very practical terms by such injustice while his dignity has been trampled underfoot by so much disrespect and abuse.

13. However, if the person suffering those consequences is of no importance, for the human 'element' is not a part of the machinery of appellate decision making, where only the mechanics of judicial process matters and justice is but a by-product of it, not its paramount objective, then one is entitled to insist that at least the rules of that process be 'observed', that is, that they be applied and be seen to be applied. Chief Judge Walker has failed to apply the rules.

II. By disregarding law and rules just as have done the judges that issued the appealed orders, the Chief Judge has an interest in not condemning the prejudicial conduct that he has engaged in too, whereby he has a self-interest in the disposition of the petition that reasonably calls into question his objectivity and impartiality

14. Chief Judge Walker has failed to comply in over seven months with the duty to take specific action imposed upon him by law and rule, and that despite the insistent requirement that he act 'promptly and expeditiously'. Moreover, since he is deemed to know what the law and rules require of him, it must be conclusively stated that he has intentionally failed to comply. Thereby the Chief

Judge himself "has [knowingly] engaged in conduct prejudicial to the effective and **expeditious** administration of the business of the courts." (emphasis added) Worse still, he has caused that prejudice by engaging in the same conduct complained about Judge Ninfo, who has acted in his judicial capacity with disregard for the law, rules, and facts. Since both the Chief Judge and Judge Ninfo would hold themselves, and their positions require that they be held, to be reasonable persons, who are deemed to intend the reasonable consequences of their acts and omissions, then both of them must be deemed to have intended to inflict on Dr. Cordero the irreparable harm that would reasonably be expected to result from their failure to comply with their duties under law and rule.

15. Their having engaged in similar conduct has grave implications for the disposition of the pending motion for panel rehearing and hearing en banc as well as any further handling of this case. This is so because Dr. Cordero's petition is predicated, among other grounds, on the unlawfulness of the appealed orders due to Judge Ninfo's and Judge Larimer's participation in a pattern of disregard of the rule of law and the facts in evidence. Therefore, the Chief Judge can reasonably be expected to base his decision, not on law and rules, which he has shown to be capable of disregarding even when they charge him with specific duties, but rather on the extra-judicial consideration of not condemning his own conduct. That constitutes a self interest that compromises

his objectivity. Consequently, the Chief Judge cannot be reasonably expected to be qualified to examine impartially, let alone zealously, and eventually find fault with, conduct that he himself has engaged in.

III. Relief requested

16. Therefore, Dr. Cordero respectfully requests that the Chief Judge, the Hon. John M. Walker, Jr., recuse himself from any direct or indirect participation in any current or future disposition of In re Premier Van Lines, docket no. 03-5023, beginning with the pending petition for panel rehearing and hearing en banc.

Respectfully submitted on,

March 22, 2004

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero
Petitioner Pro Se
tel. (718) 827-9521

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT

Docket Number(s): 03-5023 **In re Premier Van et al.**

Motion for: Leave to Update the Motion For the Hon. Chief Judge John M. Walker, Jr., to Recuse Himself from this Case With Recent Evidence of a Tolerated Pattern of Disregard for Law and Rules Further Calling Into Question the Chief Judge's Objectivity and Impartiality to Judge Similar Conduct on Appeal

Statement of relief sought: Dr. Cordero respectfully requests that:

I. Chief Judge Walker recuse himself from this case and have nothing to do, whether directly or indirectly, with the pending petition for panel rehearing and hearing en banc or any future proceeding in this case;

II. the Court declare that Clerks MacKechnie and Allen violated FRAP Rule 25(4) to Dr. Cordero's detriment and determine whether they and other officers did so in concert and following the instructions of their superiors;

III. the Court determine with respect to Dr. Cordero's complaints of March 2004 and of August 2003, whether the clerks and/or their superiors:
1. delayed their submission and tried to dissuade Dr. Cordero from resubmitting, thereby hindering the exercise of his right under 11 U.S.C. §351;
2. caused him to waste his time, effort, and money, and inflicted on him emotional distress;
3. engaged in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing;

IV. launch an investigation to ascertain the facts, including the possibility of wrongful coordination between officers in the bankruptcy and district courts in Rochester and in this Court, and disclose the result of such investigation;

V. order that the TOC and pages 1-25 (below) that were attached to the complaint's Statement of Facts but removed by Clerks MacKechnie and Allen be copied and attached to the Statement's original, its three copies, and any other copy that the clerks may make of such Statement.

MOVING PARTY: Dr. Richard Cordero, Movant Pro Se
59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521; corderoric@yahoo.com

OPPOSSING PARTY: N/A

Court-Judge/Agency appealed from: Bankruptcy J. Ninfo, District J. Larimer, and Chief J. Walker

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: N/A

Signature of Moving Petitioner Pro Se:

Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: April 18, 2004

ORDER

IT IS HEREBY ORDERED that the motion is **GRANTED DENIED.**

FOR THE COURT:
ROSEANN B. MacKECHNIE, Clerk of Court

Date: _____ **By:** _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re Premier Van et al. case no. 03-5023

MOTION FOR Leave to Update the Motion for the Hon. Chief Judge John M. Walker, Jr., to recuse himself from this case with recent evidence of a tolerated pattern of disregard for law and rules further calling into question the Chief Judge's objectivity and impartiality to judge similar conduct on appeal

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1. "The bucket stops with me" is short for taking responsibility for what subordinates do. Herein is evidence of how clerks all the way to the top have made so many mistakes and repeatedly disregarded the law and rules with the consistent effect of hindering the submission of a complaint about the Hon. John M. Walker, Chief Judge. Their conduct forms a pattern of non-coincidental, intentional, and coordinated wrongful activity that is being engaged in under the Chief Judge's stewardship of this Court. He must take responsibility for having at the very least tolerated the formation of such pattern and its injurious effect on the Court's business and claim on public trust. Disregard for legality and facts by the lower courts is precisely the attitude that has determined their orders on appeal. Thus, by his own tolerance of disregard for legality among his subordinates, the Chief Judge can reasonably be expected to lack objectivity and impartiality to assess the facts and eventually find and condemn the same conduct that the lower courts have tolerated, encouraged, and participated in. Hence, he should recuse himself.

Table of Contents

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I. Statement of Facts describing a repeated effort by clerks to hinder the submission of Dr. Cordero's complaint about the Chief Judge

2. Last March 22, Dr. Cordero showed the receiving clerk in In-Take Room 1803 a misconduct complaint about Chief Judge Walker under 28 U.S.C. §351 and this Circuit's Rules Governing Complaints thereunder (referred to hereinafter as Rule #); (i-25, below; see the Table of Contents, M-22, below). He also submitted a separate volume titled "Evidentiary Documents" (26, below). He asked to speak

with Deputy Clerk Patricia Chin Allen. After the clerk phoned her, she told him that Clerk Allen was unavailable. He filed the complaint.

A. This Court bottlenecks the processing of all misconduct complaints through Clerk Allen, thus disregarding the 'promptness' requirement

3. Dr. Cordero asked for Clerk Allen because when on August 11, 2003, he filed the original complaint about the Hon. John C. Ninfo, II, and other officers in the bankruptcy and district courts in Rochester, he was told that Clerk Allen is the only clerk in the whole of this Court to handle such filings. Since on that occasion she was said to be on vacation for two weeks, nothing happened with the complaint until her return. Likewise on this occasion, Clerk Allen subsequently told Dr. Cordero that she would be on medical leave on March 25 and 26 and that nobody else in the Court could examine for conformity or process his complaint until she came back on Monday 29.

4. As these facts show in two consecutive occasions, limiting to a single clerk the processing of misconduct complaints is not an arrangement reasonably calculated to respond to the requirement under 28 U.S.C. §351 and this Circuit's Governing Rules that such complaints be handled "expeditiously" and "promptly". Even in the absence of such requirement, it should be obvious that since judicial misconduct impairs the courts' integrity in their performance of their duty to dispense justice through just and fair process, a misconduct complaint should as a matter of principle be treated in that way: "expeditiously" and "promptly". Hence,

intentionally bottlenecking the handling of complaints to a single clerk constitutes prima facie evidence of disregard for the statutory and regulatory promptness requirement. It reveals the Court's attitude toward misconduct complaints, in general, and provides the context in which to interpret the clerks' handling of Dr. Cordero's complaint, in particular.

B. Dr. Cordero also filed a motion and the clerks misplaced the complaint with it, thus delaying the complaint's handling

5. So it happened that on Monday 22, Dr. Cordero also tendered to the clerk for filing five individually bound copies of a motion for something else in his appeal from the Rochester courts' decisions, docket no. 03-5023. Each copy was clearly identified as a motion by an Information Sheet bound with and on top of it.

6. Two days later, on Wednesday 24, that docket still did not show any entry for the motion. That got Dr. Cordero concerned about the complaint too, although he knows that complaints are not entered on the same docket. So he called Clerk Allen to find out whether she had reviewed and accepted the complaint. He found her, but she did not know anything about his misconduct complaint because none had been transmitted to her! At his request, she called the In-takers. However, none knew anything about it either. He asked that she have them search for it while he waited on the phone. Eventually, everything that he had filed on Monday was found on another floor with the case manager for the motion's case. The explanation offered was that the complaint's Statement of Facts and separate

volume of "Evidentiary Documents" were thought to belong to the motion!

7. That explanation presupposes that all the clerks in the In-Take Room forgot Dr. Cordero's conversation with them about his wanting to file a complaint, his request that they call Clerk Allen to review it while he was there, and his asking whether anybody else could review it since she was unavailable. Moreover, it presupposes that all those who handled it from the In-Take Room to the motions team failed to read the *second* line of the complaint's heading laid out thus (i, below):

STATEMENT OF FACTS
Setting forth a COMPLAINT UNDER 28 U.S.C. §351 **ABOUT**
The Hon. John M. Walker, Jr., Chief Judge
of the Court of Appeals for the Second Circuit
addressed under Rule 18(e) of the Rules of the Judicial Council
of the Second Circuit Governing Complaints against Judicial Officers
to the Circuit Judge eligible to become the next chief judge of the circuit

8. For her part, Clerk Allen herself found that heading most confusing and said that 'it would of course be interpreted as a statement of facts in support of the motion', never mind how ridiculous that statement is in the context of motion practice. As to the cover page (26, below) of the separate volume titled "Evidentiary Documents"…forget'a 'bout it! Dr. Cordero had to engage in advanced comparative exegesis to establish the identity between the text below those two words and the heading of the complaint. Clerk Allen found it so objectionable that he had not titled it "Exhibits" that she said that she would return it to him for correction. Eventually, he managed to persuade her to just write in that word and keep it. But

she found the Statement so incurably unacceptable that she refused to transmit it to the next eligible chief judge and instead would return to Dr. Cordero the four copies for him to reformat and resubmit them. Her objections were the following:

a) The misconduct form was not on top, 'so how do you expect one to know that this is a misconduct complaint and not a Statement of Facts?' Dr. Cordero's suggestion that one might read the heading got him nowhere.

b) The complaint form was the wrong one, for its title refers to §372 rather that §351. Dr. Cordero said that was the form that he had received in connection with the original August 11 complaint; that the heading of the Statement of Facts cites §351; that from this and the rest of the heading the intention of filing a misconduct complaint becomes apparent; all to no avail. Both forms appear at M-23 and v-a, below, so that the Court may try to find any difference, let alone one significant enough to justify refusal of the complaint.

c) The complaint had a table of contents, but 'complaints have no such thing!'.

d) A major issue was Dr. Cordero's inclusion of documents with the Statement of Facts and with the separate bound volume, 'What for?! You can't do that!' He explained that those are documents created since his August com-plaint and are clearly distinguished by a plain page number, while documents accompanying the August complaint are referred to by either A-# (A as used with the page numbers of the documents in the Appendix accompanying the opening brief) or E-# (E as in Exhibit, which was the title of a separate

volume containing an extended statement of facts accompanying the August complaint, so that to distinguish from it the separate volume accompanying the March complaint the different title “Evidentiary Documents” was used). Subtleties of no significance to Clerk Allen.

e) An ‘obvious’ defect was that Dr. Cordero had bound the complaint, but ‘a complaint must not be bound; rather, it must be stapled or clipped!’ He indicated to Clerk Allen that Rule 2 does not prohibit binding. Moreover, FRAP 32(a)(3) provides that “The brief must be bound in any manner that is secure…and permits the brief to lie reasonably flat when open.” However, Dr. Cordero’s reasoning by analogy was lost on Clerk Allen. So he went for the practical and said that he could hardly imagine that a circuit judge would prefer to run the risk of having the sheets of a clipped complaint scatter all over the floor or to have to flip back and forth stapled sheets, if so many can be stapled at all. ‘No!, Dr. Cordero, if the Rules do not say that you can do something, then you can’t do it! It is that simple’.

9. These are the ‘unacceptable’ features on account of which Clerk Allen refused to send the complaint on to the next eligible chief judge. Instead, she would return the original and three copies of the Statement for Dr. Cordero to reformat and resubmit them to her review. They agreed that to save time he would bring them to her on Monday 29. To her it was of no concern the extra time, effort, and money that she would cause him to waste, let alone the aggravation, upon forcing him to

comply with her unwritten arbitrary demands to implement 'the way things are done with complaints', which he had to discover the hard way after complying with the written Rules, whether on point or applied by analogy.

C. Clerk Allen's March 24 letter imposes meaningless arbitrary requirements

10. On Saturday, March 27, Dr. Cordero received a cloth bag mailed by Clerk Allen. It contained not only the original and three copies of his Statement of Facts, but also the separate volume titled "Evidentiary Documents" as well as a cover letter dated March 24, 2004. (M-26, below)

1. Clerk Allen requires the separate volume to be marked "Exhibits"

11. Although Clerk Allen had told Dr. Cordero that she would write in the word "Exhibits", she wrote in her cover letter that "Exhibits should clearly be marked exhibits". As a result, Dr. Cordero had to unbind the volume of 85 documents, reformat the cover page to include the word "Exhibits" prominently enough so that she would see it, reprint it, and rebind the volume of several hundred pages.

12. However, this Circuit does not require anywhere that the documents accompanying a misconduct complaint be marked "Exhibits". Rule 2(d) reads thus:

> **(d) Submission of Documents**. Documents such as excerpts from transcripts may be submitted as evidence of the behavior complained about; if they are, the statement of facts should refer to the specific pages in the documents on which relevant material appears.

13. So where does Clerk Allen get it to impose on a complainant a form requirement that this Court's judges never deemed appropriate to impose? Why should a clerk

be allowed to in the Court's name abuse her position by causing a complainant so much waste and aggravation in order to satisfy her arbitrary requirements? Judges, as educated persons, should feel offended that a clerk considers that if the word "Exhibits" is missing from the cover page, they will be 'confused' because they too are incapable, as the clerks allegedly were, to read past the first line and see:

EVIDENTIARY DOCUMENTS
supporting a complaint
UNDER 28 U.S.C. §351 ABOUT
The Hon. John M. Walker, Jr.,
Chief Judge
of…

14. Did Clerk Allen show that she lacks the capacity even to read and apply the Rules literary, let alone in an enlightened way given their underlying objective within their context, or was she following instructions to give Dr. Cordero a hard time to dissuade him from resubmitting the complaint or at least delay its acceptance?

2. Clerk Allen requires that the Complaint Form not be attached to the Statement of Facts, thereby flatly contradicting Rule 2(b)

15. In her March 24 letter Clerk Allen also wrote thus:

> The Complaint Form is a document separate from the Statement of Facts. They **should not be attached** to each other. *The Statement of Facts must be on the same sized paper as the Official Complaint Form.* (emphasis added)

16. However, Rule 2(b) expressly provide the opposite:

> (b) Statement of Facts. A statement **should be attached** to the complaint form, setting forth with particularity the facts upon which the claim of misconduct or disability is based. *The statement should not be longer than five pages (fives sides), and the paper size should not be larger than the paper the form is printed on.* (emphasis added)

17. The phrase in bold letters shows how Clerk Allen, by contradicting precisely what the Rules provide, faulted Dr. Cordero, who had bound a Complaint Form to each of the original and three copies of his Statement of Facts.

18. Yet, Clerk Allen followed her Rules-contradicting sentence with an accurate restatement of the next sentence of the Rules regarding paper size for the Statement of Facts; both sentences are in italics here. The contiguity of this pair of sentences in Clerk Allen's letter indicates that when she quoted them she was reading the Rules, which sets forth these sentences successively. It cannot be said realistically that Clerk Allen just read the first sentence incorrectly but the next one correctly. This follows from the fact that she is the only clerk in the whole Court through whom all misconduct complaints are bottlenecked. Thus, when Dr. Cordero submitted his about the Chief Judge, Clerk Allen's top boss, she did not have to consult the Rules for the first time ever. She must know them by heart.

19. To say Clerk Allen made a mistake the first time she read the Rules to apply them to the first complaint she ever handled and has carried on that mistake ever since would be to indict her competence and that of her supervisor. But if that were the case, then the track record of all the misconduct complaints that she has ever handled must show that every time a complainant correctly submitted a Statement of Facts with the Complaint Form attached to it, she refused acceptance and required that the complainant detach them and resubmit them detached.

20. If so, what for!? If she keeps the original Form for the Court's record, what does

she do with the copies if it is not to send them to the judges to whom she sends the Statement? If so, why bother if the complainant attaches one to each copy of the Statement? If she does not send the Form, why does she ask for copies of it at all?

D. Clerk Allen requires that no table of contents (TOC) be attached to the Statement of Facts

21. Rule 2(h) reads thus "(h) No Fee Required. There is no filing fee for complaints of misconduct or disability". That provision has the purpose and effect of facilitating the submission of such complaints by removing the hurdle of a fee. Hence, on whose authority does Clerk Allen, in handling such complaints, raise hurdles in blatant disregard for the letter as well as the spirit of the law and its Rules?

22. Clerk Allen raised another such hurdle when she wrote, "Please do not [sic] a table of contents to the Statement of Facts"? There is no provision whatsoever entitling her to make such requirement. And a requirement it was, for when Dr. Cordero resubmitted the original and three copies of the Statement each with a TOC, Clerk Allen removed and mailed the TOCs back to him! (para. 30 below)

23. For those who can reason by analogy, the justification for a TOC has its legal basis in Local Rule 32(b)(1)(B). It requires that the Appendix to an appeal brief contain "A detailed table of contents referring to the sequential page numbers".

24. For its part, Rule 2 provides as follows:

> (b) Statement of Facts.…Normally, the statement of facts will include-
>
> …
>
> (3) Any other information that would assist an investigator in

> checking the facts, such as the presence of a court reporter or other witness and their names and addresses.
>
> (c) Submission of Documents. Documents such as excerpts from transcripts may be submitted as evidence of the behavior complained about; if they are, the statement of facts should refer to the specific pages in the documents on which relevant material appears.

25. The justification for a TOC also has a practical basis. The complaint about the Chief Judge is predicated on his failure to deal with the complaint about Judge Ninfo. Between them they refer to 85 documents and use three formats of page numbers to identify the specific pages of those documents where relevant material appears, to wit, a simple number #, E-#, or A-#. Under those circumstances, it is reasonable to assume that the next eligible chief judge and the investigators will find a TOC a most useful research device. This is particularly so because there is only one copy of the separate volume of documents. Hence, a TOC attached to each of the four copies of the Statement of Facts and providing the 'names and addresses' of 85 'witnessing' documents allows those readers to read the titles of the documents to get an overview of the kind of supporting evidence available and then decide whether they want to request the separate volume for consultation.

26. It should be noted that Clerk Allen quoted verbatim Rule 2(d). This means that she understands the concept of authority for what she requires. So on whose authority does she require that for which she lacks any written authority in law or rule?

E. Clerk Allen fails to meet with Dr. Cordero as agreed to review the reformatted complaint

27. As agreed with Clerk Allen on Wednesday, March 24, Dr. Cordero went to the Court before opening time on Monday, March 29, to submit to her review the reformatted complaint and separate volume of documents. At 8:50a.m., he had the officer in the security office in the lobby call her. She said to send him upstairs to the 18th floor. So he went up there. But she was not there. He waited until the In-Take Room 1803 opened. He asked the clerk behind the counter to call Clerk Allen and tell her that he was there waiting for her. The clerk called her and then relayed to him that Clerk Allen was tied up with the telephone –for the rest of the day?- and could not meet him and that he should just file the complaint. So he did.

28. It is part of the character of people who make arbitrary decisions to be unreliable and not keep their word. Clerk Allen once more wasted Dr. Cordero's time by making him come to meet her in the Court so early in the morning for nothing. Except that from her point of view, it was not for nothing. By avoiding meeting him and reviewing the complaint while he was there, Clerk Allen gave herself another opportunity to delay the acceptance.

29. And so she did, for when Dr. Cordero returned home late in the afternoon, there was a message recorded by Clerk Allen asking that he call her. By that time it was too late. They spoke on the phone the following morning. She said that he had left blank the question of whether there was an appeal in that Court. He explained to her that the appeal did not relate to the complaint about the Chief Judge. She said that there was an appeal anyway, but that she would write it in.

30. However, she said that she had to send back to him the original and three copies of the Statement of Facts because he had added to each a table of contents (TOC) and 25 pages that were duplicative of the first 25 pages in the separate volume of documents (vi and 1-25, below). He told her that not only had she not written in her March 24 letter anything about not attaching documents to the Statement, but also those pages contain documents created since the original complaint of August 11. It was to no avail. She would return the Statement copies so that he could remove the TOC and pages 1-25 from each because otherwise she would have to make copies also of the TOC and those pages when she copied the Statement for all the judges. Dr. Cordero asked her not to send them back once more, but rather remove whatever she wanted and file the complaint without any more delay. She said that she would have to cut the plastic ring combs (like the one binding these pages). He gave her permission to do so. A couple of days later four sets of TOCs and pages 1-25 were delivered by mail to Dr. Cordero. A cover letter signed by Clerk of Court Roseann B. MacKechnie stated that pages 1-25 were being returned because they were duplicates of those in the Exhibits. (M-27, below)

31. So Clerk Allen, with Clerk MacKechnie's approval, forced Dr. Cordero to agree to the removal of those two parts of his complaint, lest she refuse and return the whole, for her convenience of not having to copy them. Where does a clerk get it that in order to spare herself some work, she can strip of some of its parts a judicial misconduct complaint authorized by an act of Congress and governed by

the Rules adopted by this Court's judges?! Moreover, why does Clerk Allen have to make any copies in addition to those that Rule 2(e) requires the complainant to submit? Normally, it is the person filing that makes the required number of copies.

II. Legal provisions violated by Clerk Allen and her superiors who approved or ordered her conduct

32. Clerk Allen sent Dr. Cordero a letter dated March 30, 2004, stating that "We hereby acknowledge receipt of your complaint, received and filed in this office on March 29, 2004". (M-28, below) This means that the complaint was not filed on March 22 when he first submitted the Statement of Facts and "Evidentiary Documents" volume and had them time stamped. So if he had not given in to the clerks' arbitrary form requirements, they would not have filed it. Yet, clerks not only lack authority to refuse to file a paper due to noncompliance with such requirements, they are expressly prohibited from doing so by FRAP Rule 25(4):

> The clerk **must not refuse** to accept for filing **any paper** presented for that purpose solely because it is not presented in proper form as required by these rules or by **any local rule** or **practice**. (emphasis added)

33. Likewise, the Local Rules were adopted by a majority of the circuit judges as provided under FRAP Rule 47(a)(1)) and the clerks are there simply to apply them, not to add to or subtract from them on their whims. People that rely on those rules and make a good faith effort to comply with them, have a legal right to expect and require that clerks respect and apply them. That expectation is reasonable for it arises from the specific legal basis referred to above as well as

others that determine the general working of the rules of procedure.

34. Thus, FRAP 32(e) provides that "Every court of appeals must accept documents that comply with the form requirements of this rule," whereby it prohibits those courts from refusing acceptance due to non-compliance with its local rules. On the contrary, FRAP goes on to provide that "By local rule or order in a particular case a court of appeals may accept documents that do not meet all of the form requirements of this rule", whereby it states a policy choice in favor of acceptance of documents even if non-complying, as opposed to a policy of non-acceptance due to non-compliance. The logic of that policy makes it inadmissible for clerks to impose unwritten form requirements that they come up with arbitrarily, let alone to refuse acceptance due to non-compliance with such requirements. Consequently, for clerks to refuse acceptance of a complaint because its Statement of Facts has attached to it a TOC and some documents, regardless of whether they duplicate those in the separate volume of Exhibits, constitutes a per se violation of the Rules' policy to facilitate rather than hinder the filing of documents.

35. What is more, when the clerks refused to file unless Dr. Cordero complied with their arbitrary form requirements, they hindered his exercise of a substantive right under 28 U.S.C. §351, which Congress created to provide redress to people similarly situated to Dr. Cordero who are aggrieved by judicial misconduct, which includes acts undertaken by judges themselves and those that they order, encourage, or tolerate to be undertaken under their protection. Judges have no

authority to disregard the law or the rules, but rather the obligation to show the utmost respect for their application. They cannot authorize clerks to disregard the rules to the detriment of people who have relied on, and complied with, them.

36. Hence, when clerks disregard the law or rules, whether on a folly of their own or on their superiors' orders, they render themselves liable for all the waste of effort, time, and money and all the emotional distress that they intentionally inflict on others. Indeed, the infliction is intentional because a person is presumed to intend the reasonable consequences of her acts. When clerks force filers to redo what they have done correctly to begin with and to correct proper-form mistakes, which do not provide grounds for refusal to file, they can undeniably foresee the waste and distress that they will inflict on those filers. Here they have inflicted plenty.

A. A long series of acts of disregard for legality reveals a pattern of wrongdoing that has become intolerable

37. Enough is enough! The clerks' tampering with Dr. Cordero's right to file a misconduct complaint is only the latest act of disregard for rights and procedure by judges and other court officers to Dr. Cordero's detriment. Here is a sampler:

    a) The January 26 order on Dr. Cordero's appeal, docket no. 03-5023, stated, and stills does, that it was the district court's decisions that were dismissed, thus giving him the misleading or false impression that he had prevailed and did not have to start preparing his petition for rehearing.

    b) FRAP Rule 36(b) provides that "**on the date** when judgment is entered, the

clerk **must** serve on all parties a copy of the opinion…", (emphasis added). Yet, that order was not mailed to Dr. Cordero on that date of entry, so that on January 30, he had to call Case Manager Siomara Martinez and her supervisor, Mr. Robert Rodriguez, to request that it be mailed to him. It was postmarked February 2; as a result, it was a week after entry when he could read that in reality it was his appeal that had been dismissed, not the district court decisions appealed from. They would not correct the mistake.

c) The motion for an extension to file a petition for rehearing due to the hardship of doing pro se all the necessary legal research and writing within 10 days was granted on February 23, but was not docketed until February 26, and Dr. Cordero did not receive it until March 1, so that he ended up having the same little amount of time in which to scramble to prepare, as a pro se litigant, the petition by the new deadline of March 10.

d) The motion for panel rehearing and hearing en banc that he filed on March 10 was not docketed until he called on March 15 and spoke with Case Manager Martinez and Supervisor Rodriguez. Do these incidents reflect the clerks' normal level of performance or did somebody not want Dr. Cordero to file the petition?

e) Dr. Cordero's original letter and four copies, dated February 2, 2004, to Chief Judge Walker asking for the status of his August 11 complaint about Judge Ninfo, was refused by Clerk Allen and returned to him immediately with her letter of February 4, 2004. (1 and 4, below)

f) Cf. Instances of disregard for law, rules, and facts in the Rochester courts. (Opening Brief, 9.C, 54.D; Petition for a Writ of Mandamus 7.B-25.K)

g) Cf. Rochester court officers' disregard for even their obligations toward this Court. (Petition for a Writ of Mandamus, 26.L);

h) Cf. Motion of August 8, 2003, for recusal of Judge Ninfo and removal of the case to the U.S. District Court in Albany. (A-674 in the Exhibits)

i) Cf. Motion of November 3, 2003, for leave by this Court to file updating supplement of evidence of bias. (A-768 in the Exhibits)

j) Cf. Statement of Facts setting forth a complaint about the Hon. John Walker, Chief Judge, and describing the egregious disregard of legality by Judge Ninfo and the trustees in Rochester on March 8, 2004 (i-v, below).

38. How many acts of disregard of legality are needed to detect a pattern of wrong-doing? How much commonality of interests and conduct permit to infer coordination between officers of this Court and those of the Rochester courts? When will so much frustration of reasonable expectations, legal uncertainty, and abuse *ever stop and I get just and fair process under the law!?* The line is drawn here!

III. Relief sought

39. Is there any circuit judge who cares and will do the right thing no matter who gets in the way? In that hope, Dr. Cordero respectfully requests that:

a) Chief Judge Walker recuse himself from this case and have nothing to do, whether directly or indirectly, with the pending petition for panel rehearing

and hearing en banc or any future proceeding in this case;

b) the Court declare that Clerks MacKechnie and Allen violated FRAP Rule 25(4) to Dr. Cordero's detriment and determine whether they and other officers did so in concert and following the instructions of their superiors;

c) the Court determine with respect to Dr. Cordero's complaints of March 2004 and of August 2003, whether the clerks and/or their superiors:

   1. delayed their submission and tried to dissuade Dr. Cordero from resubmitting, thereby hindering the exercise of his right under 11 U.S.C. §351;
   2. caused Dr. Cordero to waste his time, effort, and money, and inflicted on him emotional distress;
   3. engaged in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing;

d) launch an investigation to ascertain the facts, including the possibility of wrongful coordination between officers in the bankruptcy and district courts in Rochester and in this Court, and disclose the result of such investigation;

e) order that the TOC and pages 1-25 (vi and 1-25, below) that were attached to the complaint's Statement of Facts but removed by Clerks MacKechnie and Allen be copied and attached to the Statement's original, its three copies, and any other copy that the clerks may make of such Statement.

Respectfully submitted on

April 18, 2004

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208; tel. (718) 827-9521

Dr. Richard Cordero
Movant Pro Se

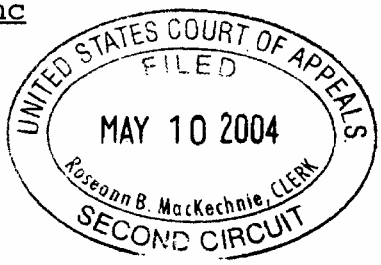
Table of Exhibits

of the Motion of April 18, 2004
for Leave to Update the Motion of March 22, 2004
for C.J. Walker to Recuse Himself from *In re Premier Van et al.*
by
Dr. Richard Cordero

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MOTION INFORMATION FORM

RECUSAL OF CHIEF JUDGE WALKER
from petition for rehearing
and petition for rehearing en banc



AMENDED ORDER

In re: Premier Van Lines

Docket No. 03-5023

Movant:
Richard Cordero
50 Crescent Street
Brooklyn, NY 11208-1515

	Yes	No
Consent sought from adversary (ies)?	/___/	/___/
Consent obtained from adversary (ies)?	/___/	/___/
Is oral argument desired?	/___/	/___/

ORDER

Before: Hon. John M. Walker,Jr., *Chief Judge*, Hon. James L. Oakes,
Hon. Robert A. Katzmann, *Circuit Judges*

IT IS HEREBY ORDERED that the motion be and it hereby is DENIED.

FOR THE COURT:
ROSEANN B. MACKECHNIE, Clerk
by

MAY 10 2004
Date

Arthur M. Heller
Motions Staff Attorney

C:360 CA2's amended order of 5/10/4 denying Dr. Cordero's motion for recusal of CJ Walker from *In re Premier*

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT

Docket Number(s): 03-5023 **In re: Premier Van et al.**

Motion for: Motion For The Hon. John M. Walker, Jr., Chief Judge, Either To State His Arguments For Denying The Motions That He Disqualify Himself From Considering The Pending Petition For Panel Rehearing And Hearing En Banc And From Having Anything Else To Do With This Case Or Disqualify Himself And Failing That For This Court To Disqualify The Chief Judge Therefrom

Statement of relief sought: Dr. Cordero respectfully requests that:

1. Chief Judge Walker state his arguments why the self-disqualification obligation did not attach as a result of Dr. Cordero's reasonable questioning of his impartiality;
2. in the absence of such reasons, the Chief Judge disqualify himself from considering the pending motion for panel rehearing and hearing en banc and from any other proceeding involving this case;
3. this Court so disqualify the Chief Judge if he fails to reasonably discharge his obligations under a) or b) above.

MOVING PARTY: Dr. Richard Cordero
Petitioner Pro Se
59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521; corderoric@yahoo.com

OPPOSSING PARTY: See next

Court-Judge/Agency appealed from: Hon. John M. Walker, Jr., Chief Judge of the Court of Appeals, 2d Cir.

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of Moving Petitioner Pro Se:

Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: May 31, 2004

ORDER

IT IS HEREBY ORDERED that the motion is **GRANTED** **DENIED.**

FOR THE COURT:
ROSEANN B. MacKECHNIE, Clerk of Court

Date: _____ **By:** _____

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re PREMIER VAN et al. case no. 03-5023

Motion For The Hon. John M. Walker, Jr., Chief Judge, Either To State His Arguments For Denying The Motions That He Disqualify Himself From Considering The Pending Petition For Panel Rehearing And Hearing En Banc And From Having Anything Else To Do With This Case Or Disqualify Himself And Failing That For This Court To Disqualify The Chief Judge Therefrom

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Dr. Richard Cordero states under penalty of perjury as follows:

1. Last March 22 and subsequently on April 18, Dr. Cordero filed two related motions, namely:

    1. Motion for the Hon. Chief Judge John M. Walker, Jr., to recuse himself from this case and from considering the pending petition for panel rehearing and hearing en banc (21, infra)

    2. Motion for leave to Update the motion for the Hon. Chief Judge John M. Walker, Jr., to Recuse Himself from this Case with Recent Evidence of a Tolerated Pattern of Disregard for Law and Rules further Calling into Question the Chief Judge's Objectivity and Impartiality to Judge Similar Conduct on Appeal (33, infra)

2. These motions were predicated on 28 U.S.C. §455(a) and laid forth reasons based on facts and law why the Hon. John M. Walker, Jr., Chief Judge of this

Court, should recuse himself from the pending rehearing and hearing an banc and from considering any other matter therein.

3. Nevertheless, on May 4, an order captioned "Recusal of Chief Judge Walker from petition for rehearing and petition for rehearing en banc", signed by Motions Staff Attorney Arthur M. Heller, and amended on May 10, stated merely that "It is hereby ordered that the motion be and it hereby is denied". (55 and 56, infra).

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I. Why the Chief Judge has a duty either to disqualify himself upon the reasonable questioning of his impartiality or to state his arguments why the questioning is not reasonable so that the self-disqualification obligation has not attached

4. Section 455(a) provides that a federal judge "**shall** disqualify himself in any proceeding in which his impartiality might reasonably be questioned." (emphasis added). Thus, the law lays on judges a statutory obligation to disqualify themselves if the stated condition is met.

5. That condition is that "his impartiality might **reasonably** be questioned." (emphasis added). Hence, it suffices that reasons –not evidence, let alone proof- questioning the judge's impartiality be presented for the self-disqualification obligation to attach.

6. This means that §455(a) relies on a rule of reason. The standard by which that rule is to be applied is implicit in the section's language, for it requires only the possibility that the judge's impartiality "**might** reason-ably be questioned". The verb "might" lies, of course, at the bottom of the modal continuum of might>may>could>can>must>ought to. This grammatical choice of the §455(a) legislators conveys their choice of the legal standard by which the sufficiency of the reasons is to be assessed: as it were, by a preponderance of persuasiveness.

7. Applying the rule of reason under this standard, the questioning is "evaluated on an objective basis, so that what matters is not the reality of bias or prejudice but its

appearance", *Liteky v. United States,* 510 U.S. 540, 549, 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994); not how it appears from the subjective standpoint of the judge internally assessing his feelings toward a litigant or her legal position, but rather "from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances" enabling her to conduct an 'objective inquiry', *In re Drexel Burnham Lambert, Inc.,* 861 F.2d 1307, 1309 (2d Cir. 1988).

8. "Objective" here means that what matters in the impartiality inquiry is how the judge, as its object, appears to the reasonable observer, rather than how the judge, as a subject, assesses it personally. This follows from the Supreme Court's statement that, "The goal of 28 USC §455(a)…is to avoid even the appearance of partiality…created even though no actual partiality exists because the judge (1) does not recall the facts, (2) actually has no interest in the case, or (3) is pure in heart and incorruptible." *Liljeberg v. Health Services Acquisition Corp.,* 486 U.S. 847; 108 S. Ct. 2194; 100 L. Ed. 2d 855 (1988).
9. Hence, the rule of reason is applied to a §455(a) questioning to preserve the appearance of the judge's impartiality, rather than to ascertain the reality of his lack of it. Since the section's purpose calls for a low threshold for the rule's application, it follows that the questioning is reasonable when it is more likely than not to persuade of the judge's lack of impartiality. Hence, the section's

language and purpose support the correctness of the standard of preponderance of persuasiveness to assess the sufficiency of the reasons for questioning the judge's impartiality. It is a standard easy to satisfy that cuts in favor of the reasonableness of the questioning.

10. Section 455(a) is so phrased as to allow the questioning to be done by the judge himself to begin with. This Court recognized that in *United States v. Wolfson,* 558 F.2d 59; 1977 U.S. App. LEXIS 13096 (2d Cir. 1977), note 11, where it stated that "Section 455 is a self-enforcing provision that is directed towards the judge, but may be raised by a party." The judge's foremost obligation is no longer a "duty to sit" on an assignment, *In Re: International Business Machines,* 618 F.2d 923, at 929 (2d Cir. 1980); rather, it is to preserve even the appearance of impartiality for the "purpose of promoting public confidence in the integrity of the judicial system"; id. *Liljeberg*.

11. If by a preponderance of persuasiveness the facts and circumstances available to the judge yield reasons that persuaded him of the possibility that his impartiality "**might** reasonably be questioned", the consequence is inescapable: he "shall disqualify himself", for the self-disqualification obligation has attached.

12. Once that obligation attaches, the judge must not wait until a litigant or another person actually questions his impartiality. If he has reasons that persuade him that it might be, then, even though his impartiality has not yet been questioned

by another person, the judge has the obligation to disqualify himself sua sponte.

13. It follows that the self-disqualification obligation attaches with even more strength when an observer is the person who questions the judge's impartiality, for the questioning has evidently proceeded from a possibility that might occur to a fact that has occurred. Consequently, once an observer has questioned the judge's impartiality, the only concern left is whether the questioning might persuade a reasonable person of the judge's likely lack of impartiality. If no inquiry is conducted or no determination is made, the easily meet standard of preponderance of persuasiveness weighs in favor of a reasonable questioning that attaches the self-disqualification obligation. The judge has no discretion but he "**shall** disqualify himself" and "his failure to disqualify himself [is] a plain violation of § 455(a)", id. *Liljeberg*.

14. The only way for the judge not to find himself under such obligation is for him to argue that the questioning of his impartiality is not reasonable and that, as a result, the self-disqualification obligation has not attached. That he can only do, of course, by stating his arguments therefor.

15. The obligation to state those arguments is all the more evident the more prominent the judge is whose impartiality has been questioned, lest he claim that the higher the judge's visibility or station in the judicial hierarchy, the higher above the law he is so that not even a statute can place on him the obligation to

disqualify himself despite his impartiality having in fact been questioned. A judge that shows such contempt for the law as to put below his feet an obligation that the law places on him, despite the obligation being unambiguous and critically important for the judicial systems that he serves and the public that must trust it and him, breaches his oath of office to "administer justice without respect to persons…and…faithfully and impartially **discharge** and perform **all duties** incumbent upon me as [judge] **under the** Constitution and **laws** of the United States", 28 U.S.C. §453, (emphasis added). He thereby forfeits his right to apply the law just as he loses any right to require others to show respect for the law and him.

II. The reasons presented in the motions to question the Chief Judge's impartiality satisfied the standard of preponderance of persuasiveness and caused the self-disqualification obligation to attach

16. Among the reasons on which the motions of March 22 and April 18 (21 and 33, infra) urged the Chief Judge to disqualify himself are these:

a) On August 11, 2003, a judicial misconduct complaint about the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge, as well as District Judge David Larimer and their administrative staff in their courts in Rochester, was filed with Chief Judge Walker under 28 U.S.C. §351 et seq. and this Circuit's Rules Governing such complaints. (57 and 62, infra) Those law and rules impose on the chief

judge of the circuit the obligation to handle the complaint "promptly" and "expeditiously". (63, infra) The promptness obligation is all the more categorical and non-discretionary because both §351 and the Governing Rules state that the gravamen of the complaint is that the complained-about judge "engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts". (emphasis added) That statement unequivocally makes expeditious action an essential obligation of the conduct of judges as well as a key element of the application of the law. For its part, the promptness obligation is justified by the need both to protect the complainant from a judge's misconduct and to safeguard the trust of the public at large in the integrity of the judicial system. But disregarding their welfare and general interest, to date, ten months later!, Chief Judge Walker has still not dealt with the complaint at all. Not even additional grounds for complaint arising in the meantime and expectedly brought to his attention have made him aware of the urgency of the situation enough to cause him to comply with his statutory and regulatory obligations. (67-69, infra) The Chief Judge's failure to discharge them shows his capacity to disregard law and rules, which nevertheless must be the basis for administering the business of the courts. Thus, his conduct provides the basis for the well-grounded fear that in his participation in deciding the pending petition in this case for panel rehearing and hearing en banc the Chief Judge

can likewise disregard legality so as to apply extrajudicial considerations, including personal interests, and, given his preeminent position not only in this Court, but also in the Circuit, influence others to do the same.

b) Through such disregard of his obligations under §351 and the Rules, and by at least tolerating his own administrative staff to engage in a pattern of non-coincidental, intentional, and coordinated disregard of law and rules (33, infra), the Chief Judge engaged in the same conduct, namely, a pattern of non-coincidental, intentional, and coordinated disregard of law, rules, and facts that Judges Ninfo and Larimer together with their administrative staff engaged in. Thereby the Chief Judge condoned their conduct and called into question his impartiality to condemn the very disregard for legality in which he engaged. Such questioning is all the more reasonable in light of the fact that the Chief Judge is a member of the panel that dismissed the appeal from those judges' orders without even discussing how their pattern of disregard for legality and bias for the local parties and against Dr. Cordero, the only non-local, tainted their orders and rendered them null and void.

c) By disregarding the precise statutory and regulatory obligation to deal with the misconduct complaint "promptly" and "expeditiously", the Chief Judge intentionality subjected the complainant to the reasonable consequences of his acts, that is, to suffering at the hands of the complained-about judges and

administrative staff further loss of effort, time, and money, as well as additional emotional distress (cf. 69-70, infra) and deprivation of his constitutional right to due process before an unbiased judge. (Cf. *William Bracy v. Richard B. Gramley, Warden*, 520 U.S. 899, 117 S. Ct. 1793, 138 L. Ed. 2d 97 (1997) (noting that due process requires a fair trial before a judge without actual bias against the defendant or an interest in the outcome of his particular case). In order to avoid providing a basis for his own liability, the Chief Judge now has a personal interest in neither condemning their prejudicial conduct nor referring the case to the FBI. Such referral has been requested for the FBI to investigate, among other things, how bankruptcy fees in *thousands of open cases per trustee*, including cases obviously undeserving of relief under the Bankruptcy Code, may be driving the pattern of wrongdoing among judges and their administrative staff. (70 and 71, infra) Evidence obtained by the FBI could reveal the motive for bias and support the claim of its resulting harm. Consequently, Chief Judge Walker's self-interest in the disposition of every aspect of this case reasonably calls into question his objectivity and impartiality and causes his self-disqualification obligation to attach.

17. Applying the standard of preponderance of persuasiveness to the above-stated reasons upon which Chief Judge Walker's impartiality 'might be questioned',

those reasons appear persuasive enough to cause "an objective, disinterested observer fully informed of the[se] underlying facts [to] entertain significant doubt that justice would be done absent recusal", *United States v. Lovaglia,* 954 F.2d 811, 815 (2d Cir. 1992). Hence, the self-disqualification obligation has attached upon the Chief Judge.

18. These impartiality-questioning reasons and the obligation deriving from the "shall disqualify himself" command would spur a judge respectful of the law to disqualify himself or state his arguments why the obligation has not attached. But the Chief Judge slapped this reasonable questioning away with the hand of a staffer penning a mere "denied". It cannot honestly be said that by merely doing that, the Chief Judge was paying respect in action to the principle that "Justice should not only be done, but should manifestly and undoubtedly be seen to be done"; *Ex parte McCarthy*, [1924] 1K. B. 256, 259 (1923).

19. The only thing that such "denied" undoubtedly did and may have been intended to do was slap Dr. Cordero's face. Indeed, he complained in his appeal precisely that District Judge Larimer, in his first two orders, made gross and numerous mistakes of fact and disregarded his obligation to provide a legal basis for the onerous requirements that he imposed on Dr. Cordero without making even a passing reference to the latter's legal and factual arguments for the relief requested, whereby Judge Larimer showed that he had not even read Dr.

Cordero's motions and thus, had responded ex parte to Judge Ninfo's recommendations. Then in his subsequent two orders, Judge Larimer disregarded his obligation as a judge to be seen doing justice through the application and explanation of the law and instead gave two offhand and lazy strokes of the pen to write a mere "The motion is in all respects denied", for which he did not have to even see the motions…though at least he signed his own orders. (cf. paras. 9-11, Rehearing petition of March 10, 2004)

20. The Chief Judge did not do even that, limiting himself contemptuously to a mere "denied" penned by a staffer to slap away the reasons for his disqualification presented in two motions that he did not even have to see. That the only error corrected by the amended denial order was precisely in the name of one of the judges is not reassuring as to who saw, read, and decided what. (55 and 56, infra) Such slap does no justice where arguments for not abiding by the "shall disqualify himself" command are required. That mere "denied" also slaps in the face the Supreme Court's principle of "preserving both the appearance and reality of fairness," which "'generat[es] the feeling, so important to a popular government, that justice has been done'"; *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 64 L. Ed. 2d 182, 100 S. Ct. 1610 (1980).

III. The Court must disqualify the Chief Judge upon his failure to disqualify himself or state his arguments that the obligation to do so has not attached

21. A reasonably prudent and disinterested person faced with the criticism of lacking impartiality would naturally want to dispel it by providing reasons why it is unfounded. The urge to do so would be greater if the person is a judge charged with lack of impartiality, for then what is at stake is not only his fairness, but also his professional integrity and effectiveness. Section 455(a) still raises the stakes because it automatically attaches on the judge the obligation that he "**shall** disqualify himself" upon his impartiality being reasonably questioned. The section does not accord him any margin of discretion to determine any other appropriate reaction. The judge can only argue the non-attachment of the obligation because the questioning is so unreasonable that it does not meet even the low threshold of the preponderance of persuasiveness standard.

22. The above-stated reasonable questioning of Chief Judge Walker's impartiality caused that obligation to attach to him. Therefore, for the Chief Judge to slap away that obligation without bothering to provide any arguments demonstrates that the he has neither factual nor legal grounds to rebut such questioning, but instead puts himself above the law to escape that obligation.

23. However, if the Chief Judge did have such arguments, he could not skip stating them just to save his effort and time or out of contempt for a pro se movant or

one who dared question his impartiality. By the preponderance of persuasiveness standard the questioning was reasonable and the self-disqualification obligation attached. The Chief Judge could not merely have the motions "denied": He had to argue against the obligation ever attaching. He owed to the law, to the Movant, and to the public at large a statement of arguments why he would stay on the case, not despite the self-disqualification obligation, but because of its absence; otherwise, he had to disqualify himself, for "Quite simply and quite universally, recusal [i]s required whenever 'impartiality might reasonably be questioned'", id, *Liteky,* 510 U.S. 540.

24. The Chief Judge also owed those arguments to the Supreme Court so as to enable it to assess on appeal the legal basis and analysis that he relied upon in deciding not to recuse himself. From nothing but a "denied" slapped by a staffer, how are the Justices to determine whether Chief Judge Walker meant that the he did not want to read the motions, had no time to waste writing a memorandum, has a cavalier attitude toward his statutory obligations, treated dismissively a mere pro se litigant, or clearly abused his discretion by failing to recognize that a fiat does not rise above the level of arbitrariness to appear as an act of justice until it ascends from a controversy on a stable platform of precedent and sound reasoning?

A. Justice Scalia's law-abiding reactions to motions for his recusal

25. In this context, it is illustrative to contrast the Chief Judge's slapped denial and Justice Scalia's two examples of respect for the law and his duty as a judge to promote public confidence in both his integrity and the judicial process. In one instance, Justice Scalia was confronted with a motion filed by Sierra Club for his self-disqualification because the Justice had spent several days duck hunting with Vice President Cheney, who was a named party in a case asking the Supreme Court whether broad discovery is authorized under the Federal Advisory Committee Act (FACA), 5 U. S. C. App. 1, §§1 *et seq*., so as to determine whether the Vice President, as the head of the Task Force gathering information to advise the President on the formulation of a national energy policy, was responsible for the involvement of energy industry executives in the Task Force's operations. Justice Scalia denied the motion, but only after stating his arguments in detail in a memorandum; *Cheney v. U.S. District Court for the District of Columbia,* 541 U.S. ___ (2004).

26. Justice Scalia showed equal respect for his obligation to avoid even the appearance of lack of impartiality in another case, which challenged the "one nation under God" phrase in the Pledge of Allegiance as a violation of the Establishment Clause of the 1st Amendment. There Appellant Michael Newdow moved for the Justice to recuse himself because his impartiality might

reasonably be questioned after the Justice commented at a Religious Freedom Day event, before reading the briefs and knowing the facts in a case that he would likely hear, that the Ninth Circuit's decision finding a violation was based on a flawed reading of the Establishment Clause; *Newdow v. United States*, App. No. 03-7 in the Supreme Court, September 5, 2003. In that case, Justice Scalia, before writing any argument concerning the questioning of his impartiality, immediately announced his self-disqualification; *Elk Grove Unified School District v. Newdow,* 540 U. S. ___ (cert. granted, Oct. 14, 2003).

27. When the Chief Judge of this Circuit, the preeminent judicial officer herein, has his impartiality questioned, he too has the obligation either to put forth his arguments why the questioning thereof is not reasonable or to disqualify himself. If he fails to acquit himself of either obligation, those judges of this Court who still hold sufficient respect for the law not to put themselves above it or allow anybody else to do so, regardless of his station in the judiciary or in society at large, must enforce the obligation that has attached to the Chief Judge by disqualifying him from the case. Only by taking such action can those judges attest to their belief that "Justice must satisfy the appearance of justice", *Offutt v. United States,* 348 U.S. 11, 14, 99 L. Ed. 11, 75 S. Ct. 11 (1954), and that having a mere "denied" slapped on two reasonable disqualification motions satisfies neither justice nor them. Either they believe in those words and act to

V. Table of Exhibits

accompanying the motion of May 31, 2004,
for Chief Judge Walker either to state his arguments for denying
the motions that he disqualify himself from considering
the pending petition for panel rehearing and hearing en banc
or disqualify himself
and failing that for the Court of Appeals to disqualify him therefrom
by
Dr. Richard Cordero

Proof of Service

I, Dr. Richard Cordero, hereby certify under penalty of perjury that I have served by USPS on the following parties copies of my motion for a statement of arguments from the Chief Judge of the Court of Appeals for the Second Circuit or for his disqualification from the case.

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May 31, 2004
59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero
Movant Pro Se
tel. (718) 827-9521

fulfill their lofty mission as judges dispensing justice according to law or they must admit that they simply administer another system for disposing of vested interests, theirs and others, where justice and respect for the law do not just appear, but rather are mere shams.

IV. Relief requested

28. Therefore, Dr. Cordero respectfully requests that:

a) Chief Judge Walker state his arguments why the self-disqualification obligation did not attach as a result of Dr. Cordero's reasonable questioning of his impartiality;

b) in the absence of such reasons, the Chief Judge disqualify himself from considering the pending motion for panel rehearing and hearing en banc and from any other proceeding involving this case;

c) this Court so disqualify the Chief Judge if he fails to reasonably discharge his obligations under a) or b) above.

Respectfully submitted on,

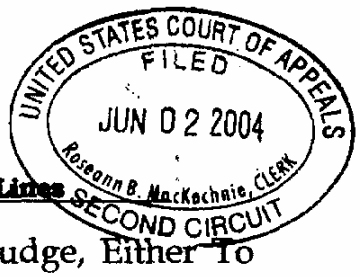
May 31, 2004

59 Crescent Street
Brooklyn, NY 11208

Dr. Richard Cordero

Dr. Richard Cordero
Movant Pro Se
tel. (718) 827-9521

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT



Docket Number(s): 03-5023 **In re: Premier Van Lines**

Motion for: Motion For The Hon. John M. Walker, Jr., Chief Judge, Either To State His Arguments For Denying The Motions That He Disqualify Himself From Considering The Pending Petition For Panel Rehearing And Hearing En Banc And From Having Anything Else To Do With This Case Or Disqualify Himself And Failing That For This Court To Disqualify The Chief Judge Therefrom

Statement of relief sought: Dr. Cordero respectfully requests that:

1. Chief Judge Walker state his arguments why the self-disqualification obligation did not attach as a result of Dr. Cordero's reasonable questioning of his impartiality;
2. in the absence of such reasons, the Chief Judge disqualify himself from considering the pending motion for panel rehearing and hearing en banc and from any other proceeding involving this case;
3. this Court so disqualify the Chief Judge if he fails to reasonably discharge his obligations under a) or b) above.

MOVING PARTY: Dr. Richard Cordero
Petitioner Pro Se
59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521; corderoric@yahoo.com

OPPOSSING PARTY: See next

Court-Judge/Agency appealed from: Hon. John M. Walker, Jr., Chief Judge of the Court of Appeals, 2d Cir.

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of Moving Petitioner Pro Se: Dr Richard Cordero

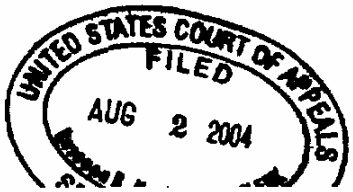
Has service been effected? Yes; proof is attached

ORDER

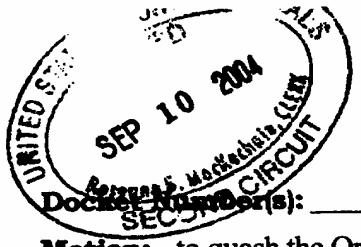
Before: Hon. John M. Walker, Jr., *Chief Judge*, Hon. James L. Oakes, Hon. Robert A. Katzmann, *Circuit Judges*

IT IS HEREBY ORDERED that the motion is DENIED.

AUG 2 - 2004
Date



FOR THE COURT:
Roseann B. MacKechnie, Clerk
by
Arthur M. Heller
Motions Staff Attorney.



UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT

ORIGINAL

Docket Number(s): 03-5023 **In re: Premier Van Lines**

Motion: to quash the Order of August 30, 2004, of WBNY J. John C. Ninfo, II, to sever claim from this case

Statement of relief sought:

1. Judge Ninfo stated at the hearing on August 25 that no motion or paper submitted by Dr. Cordero would be acted upon, so that for Dr. Cordero to request that he stay his Order would be futile; hence, it is requested that the Order be stayed until this motion has been decided and that the period to comply with it, should the Order be upheld, be correspondingly extended; otherwise, that this motion be treated on an emergency basis since the period to comply has started and ends on December 15, 2004;
2. the Order, attached as Exhibit E-149, infra, be quashed;
3. the Premier, the Pfuntner v. Gordon et al., and the DeLano (WBNY dkt. no. 04-20280) cases be referred under 18 U.S.C. §3057(a) to the U.S. Attorney General and the FBI Director so that they may appoint officers unacquainted with those in Rochester that they would investigate for bankruptcy fraud;
4. Judge Ninfo be disqualified from the Premier, Pfuntner, and DeLano cases and, in the interest of justice, order under 28 U.S.C. §1412 the removal of those cases to an impartial court unrelated to the parties, unfamiliar with the officers in the WDNY U.S. Bankruptcy and District Courts, and roughly equidistant from all parties, such as the U.S. District Court in Albany;
5. Dr. Cordero be granted any other relief that is just and fair.

MOVING PARTY: Dr. Richard Cordero
Petitioner Pro Se
59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521

OPPOSSING PARTY: See next

Court-Judge/Agency appealed from: Bankruptcy Judge John C. Ninfo, II, of the Western District of N.Y.

Has consent of opposing counsel been sought? Not applicable

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL
See 1. above

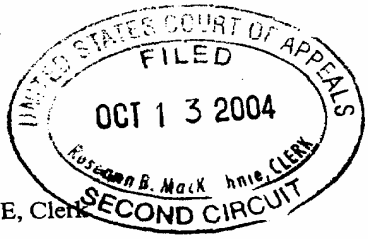
Is oral argument requested? Yes

Argument date of appeal: December 11, 2003

Signature of Moving Petitioner Pro Se: Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: September 9, 2004



ORDER

Before: Hon. James L. Oakes, Hon. Robert A. Katzmann, *Circuit Judges**

IT IS HEREBY ORDERED that the motion be and it hereby is DENIED.

FOR THE COURT:
ROSEANN B. MACKECHNIE, Clerk
by
Arthur M. Heller, Motions Staff Attorney

OCT 13 2004

* Hon. John M. Walker, Jr., Chief Judge, has recused himself from further consideration of this case. In accordance with Local Rule 0.14(b), the instant motion has been decided by the two remaining panel members.

Blank

SECOND JUDICIAL CIRCUIT OF THE UNITED STATES
UNITED STATES COURTHOUSE
40 FOLEY SQUARE
NEW YORK, NEW YORK 10007
(212) 857-8700 PHONE
(212) 857-8680 FACSIMILE

DENNIS JACOBS
CHIEF JUDGE

KAREN GREVE MILTON
CIRCUIT EXECUTIVE

FOR IMMEDIATE RELEASE

Date: **Monday, November 6, 2006**

Contact: Karen Greve Milton
Circuit Executive
212-857-8700

Chief Judge Dennis Jacobs of the United States Court of Appeals for the Second Circuit announced today that, effective immediately and until further notice, the Court of Appeals will no longer grant requests to present oral argument via video conferencing. Litigants desiring to present oral argument to the Court must now appear in person at the Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, New York. Counsel wishing additional information should contact the Acting Clerk of Court, Tom Asreen, at 212-857-8662.

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UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

DANIEL PATRICK MOYNIHAN U.S. COURTHOUSE

500 Pearl Street
New York, NY 10007
(212) 857-8500

Dennis Jacobs, Chief Judge **Karen Greve Milton, Circuit Executive**

Thomas Asreen, Acting Clerk of Court

Emergency Hotline Information

Pilot Program

The Second Circuit was one of three circuits selected to participate in a three-year CJA Case-Budgeting Pilot Project. The purpose of the Pilot Project is to provide guidance and educational support on CJA case-budgeting for courts and CJA panel attorneys in mega-capital and capital habeas cases. The **Circuit Case-Budgeting Attorney** is a full-time professional position providing guidance and educational support on Criminal Justice Act (CJA) case budgeting for courts and CJA panel attorneys in the circuit.

COURT NOTICE

- The Second Circuit recently adopted **Interim Local Rule 0. 23**. **Local Rule 0. 23** concerns Dispositions by Summary Order. **Click** to see a copy of the November 17, 2006, order announcing interim adoption of this rule as well as a copy of the Notice of Rule Change. The period for comment extends to Friday, December 29,2006.

The new rules will take effect on January 1, 2007.

- Effective immediately (November 6, 2006) new form **CJA-20-I** to be used for all interim vouchers.

- Chief Judge Dennis Jacobs of the United States Court of Appeals for the Second Circuit announced today that, effective immediately and until further notice, the Court of Appeals will no longer grant requests to present oral argument via video conferencing. Litigants desiring to present oral argument to the Court must now appear in person at the Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, New York. Counsel wishing additional information should contact the Acting Clerk of Court, Tom Asreen, at 212-857-8662. Click here for the Press Release.

Local Rule 0.29. Non-Argument Calendar

(a) Any appeal or petition for review in which a party seeks review of a denial of a claim for asylum will be initially placed on the Non-Argument Calendar. A case on the Non-Argument Calendar will be disposed of by a three-judge panel without oral argument unless the Court transfers it to the Regular Argument Calendar.

(b) To the extent practicable, the Clerk's Office will promptly identify proceedings to be placed on the Non-Argument Calendar and issue scheduling orders for them upon the receipt of the certified record. The scheduling order will inform the parties that the proceeding has been placed on the Non-Argument Calendar. Any party to a proceeding on the Non-Argument Calendar may request to have the proceeding transferred to the Regular Argument Calendar. Such a request shall not be made by motion but must be included in the party's brief, identified by a separate heading, and will be adjudicated in conformity with Federal Rule of Appellate Procedure 34(a)(2) and Local Rule 34(d)(1). In its discretion, the Court may at any time transfer a proceeding from the Non-Argument Calendar to the Regular Argument Calendar. Upon the transfer of a case from the Non-Argument Calendar to the Regular Argument Calendar, no briefs may be filed, other than those specified in the scheduling order, unless leave of Court is obtained. The Court may at any time sua sponte, with notice to the parties, tentatively transfer a proceeding mistakenly placed on the Regular Argument Calendar to the Non-Argument Calendar.

(c) The Civil Appeals Management Plan shall not apply mandatorily to proceedings on the Non-Argument Calendar. However, any party to a proceeding on the Non-Argument Calendar may request a conference under the Civil Appeals Management Plan, which will be promptly provided. A request for a conference will not alter a scheduling order.

(d) An appeal or petition for review on the Non-Argument Calendar may be dismissed by the Clerk if, 15 days after the due date, the party seeking a review has failed to file its brief. The filing of a motion for an extension of time to file a brief does not stay or alter an existing deadline. If the respondent or appellee fails to file its brief by the due date, the Clerk may calendar the proceedings for decision as early as 15 days following the due date.

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UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Daniel Patrick Moynihan U.S. Courthouse at 500 Pearl Street, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 06-4780-bk In Re: Dr. Richard Cordero v.

Motion for: docketing papers already and herewith filed and correction of two errors in the docket

1. Appellant served on this Court last October 21 his Statement of Issues to be presented and Designation of items in the record on appeal; yet, that paper was only entered on the docket on December 5.
2. Similarly, on November 21, Appellant filed by hand-delivery to this Court the following papers:
   a. Motion for leave to submit the opening brief, appendix, and special appendix in 5 paper copies & CDs;
   b. Motion for correction of the docket by removal of a case wrongly listed as related to the case in this appeal;
   c. Motion for the scheduling of the filing of the opening brief by the time certain of January 31, 2007
   d. Request to the parties for consent to electronic service of documents in PDFs.
3. Motions 2a. and b. were docketed only on December 5, but the correction of 2b. has not been made and the simultaneously served 2c. and d. have not been docketed yet.
4. Hence, Appellant Dr. Cordero respectfully moves this Court to order the clerk forthwith to docket, and give him and those on his service list notice thereof, papers 2c. and d. and those filed herewith, namely:
   e. Motion to disregard Appellees' opposition to Appellant's Statement of issues and Designation of items;
   f. Motion for appellant to be served by e-mail during the December 18-January 8 Christmas Holidays; and
   g. Letter to the parties requesting service by e-mail during the December 18-January 8 Christmas Holidays.
5. Appellant moves that the erroneous docket entry "Date order/judgement: 9/12/2006" be corrected to indicate that the order/judgment on appeal is that of 8/21/6, by D.J. David Larimer, WDNY, which is attached hereto.

MOVING PARTY: Dr. Richard Cordero
Appellant/Petitioner Pro Se
59 Crescent Street, Brooklyn, NY 11208-1515
tel. (718) 827-9521; corderoric@yahoo.com
MOVING ATTORNEY: Pro se

OPPOSSING PARTY: David and Mary Ann DeLano
OPPOSING ATTORNEY: Devin L. Palmer, Esq.
Boylan, Brown, Code, Vigdor & Wilson, LLP
2400 Chase Square tel. (585)232-5300
Rochester, NY 14604 fax (585)232-3528

Court-Judge/Agency appealed from: U.S. District Court, WDNY, U.S. District Judge David G. Larimer

Has **consent** of opposing counsel:
A. been sought? No B. been obtained? ____
Has request for relief been made **below**?
Is **oral argument** requested? Yes
(requests for oral argument will not necessarily be granted)
Has **argument** date of appeal been **set**? No
If yes, enter date _____

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:
Has this relief been previously sought in this Court?
Requested return date and explanation of emergency:

Signature of Moving Attorney:
Dr. Richard Cordero
Date: December 6, 2006 Has service been effected? Yes
[Attach proof of service]

ORDER

IT IS HEREBY ORDERED THAT the motion is GRANTED DENIED.

FOR THE COURT:
THOMAS ASREEN, Acting Clerk of Court

Date: _____ By: _____

Form T-1080 (Revised 11/01/06).

General Docket

US Court of Appeals for the Second Circuit

Second Circuit Court of Appeals

INDIV

OPEN

Court of Appeals Docket #: 06-4780-bk
Nsuit : 3422 STATUTES-Bkrup Appeals 801

In Re: Dr. Richard Cordero v. Filed 10/16/06

Appeal from: WDNY (ROCHESTER)

Case type information:

Bankruptcy

District Court

None

Lower court information:

District: 05-cv-6190

Trial Judge: David G. Larimer

MagJudge:

Date Filed: 04/22/05

Date order/judgement: 9/12/2006

Date NOA filed: 10/16/2006

Fee status: Paid

Panel Assignment:

Panel:

Date of decision:

Prior cases: NONE

Current cases NONE

Official Caption 1/

INDIV

OPEN

Docket No. [s] : 06-4780 -bk

In Re: David DeLano and May DeLano, Debtors.

****
*
Dr. Richard Cordero,

Creditor-Appellant,
v.

David DeLano, Mary Ann DeLano,

Debtors-Appellees.

Authorized Abbreviated Caption 2/

Docket No. [s] : 06-4780 -bk

In Re: Dr. Richard Cordero v.

1/ Fed. R. App. P. Rule 12 [a] and 32 [a].
2/ For use on correspondence and motions only.

INDIV

OPEN

David DeLano	Devin Lawton Palmer Esq.
Debtor-Appellee	[LD ret] Boylan, Brown, Code, Vigdor & Wilson, LLP 2400 Chase Sq. Rochester , NY , 14604 585-232-3528
Mary Ann DeLano	Devin Lawton Palmer Esq.(See above)
Debtor-Appellee	[LD n]
Dr. Richard Cordero	Dr. Richard Cordero
Creditor-Appellant	n/a

59 Crescent St.
Brooklyn , NY , 11208

718-827-9521

INDIV

OPEN

10/16/06 Copy of notice of appeal and district court docket entries on behalf of APPELLANT Richard Cordero, filed. Fee Paid # 69787. [Entry date Oct 27 2006] [LR]

10/16/06 Copy of district court Judgment in a Civil case, dated 8/22/06 endorsed by John S. Falwell, Deputy Clerk, RECEIVED. [Entry date Oct 27 2006] [LR]

10/16/06 Note SEE case number(s): 03-5023, 03-3088, 93-7048. [Entry date Oct 23 2006] [LR]

10/23/06 Index in lieu of Record on Appeals Electronically Filed (Original documents remain in the originating court). [Entry date Oct 26 2006] [LR]

10/25/06 Instructional Forms sent to Pro Se litigant [Entry date Oct 25 2006] [LR]

10/25/06 Record on appeal filed. (Original papers of district court.) Volume(s)1, (Transcripts). [Entry date Oct 27 2006] [LR]

10/26/06 Papers In re: David Delano and Mary Ann Delano, Statement of Issues to be presented and designation of the Record on Appeal, from APPELLANT Dr. Richard Cordero, received. [Entry date Nov 3 2006] [LR]

10/30/06 Record on appeal received in records room from team. (1 volume). [Entry date Oct 30 2006] [DR]

11/6/06 Notice of appeal acknowledgment letter from Dr. Richard Cordero received. [Entry date Nov 8 2006] [JR]

11/6/06 Notice of appearance form on behalf of Dr. Richard Cordero , filed. (Orig in acco, copy to Calendar and Admissions Dept.). [Entry date Nov 8 2006] [JR]

11/21/06 Appellant Dr. Richard Cordero motion file fewer copies (leave to submit the opening

brief, appendix, and special appendix in five paper copies and five Cds containing them on Adobe PDFs) filed with proof of service. [Entry date Dec 5 2006] [LR]

11/21/06 Appellant Dr. Richard Cordero motion allow (Correction of the docket by removal of a

case wrongly listed as related to the case to this appeal) filed with proof of service. [Entry date Dec 5 2006] [LR]

11/21/06 Appellant Dr. Richard Cordero motion to allow scheduling of the filing of the opening brief by the time certain of January 31, 2007, filed with proof of service. [Entry date Dec 8 2006] [LR]

12/4/06 Notice of appeal acknowledgment letter from Devin Palmer received. [Entry date Dec 11 2006] [LR]

12/4/06 Letter received form Mr. Palmer stating he will be the attorney of record and he is opposed to the Appellants' motion to serve the brief and other submitted papers by email in PDF format rather than regular mail in hard copy form. [Entry date Dec 11 2006] [LR]

PACER Service Center

Transaction Receipt

12/13/2006 06:09:47

PACER Login:		**Client Code:**	
Description:	dkt report	**Case Number:**	06-4780
Billable Pages:	4	**Cost:**	0.32

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J'accuse…!, by Émile Zola

Sir,

Would you allow me, grateful as I am for the kind reception you once extended to me, to show my concern about maintaining your well-deserved prestige and to point out that your star which, until now, has shone so brightly, risks being dimmed by the most shameful and indelible of stains?

Unscathed by vile slander, you have won the hearts of all. You are radiant in the patriotic glory of our country's alliance with Russia, you are about to preside over the solemn triumph of our World Fair, the jewel that crowns this great century of labour, truth, and freedom. But what filth this wretched Dreyfus affair has cast on your name — I wanted to say 'reign' —. A court martial, under orders, has just dared to acquit a certain Esterhazy, a supreme insult to all truth and justice. And now the image of France is sullied by this filth, and history shall record that it was under your presidency that this crime against society was committed.

As they have dared, so shall I dare. Dare to tell the truth, as I have pledged to tell it, in full, since the normal channels of justice have failed to do so. My duty is to speak out; I do not wish to be an accomplice in this travesty. My nights would otherwise be haunted by the spectre of the innocent man, far away, suffering the most horrible of tortures for a crime he did not commit.

And it is to you, Sir, that I shall proclaim this truth, with all the force born of the revulsion of an honest man. Knowing your integrity, I am convinced that you do not know the truth. But to whom if not to you, the first magistrate of the country, shall I reveal the vile baseness of the real guilty parties?

The truth, first of all, about Dreyfus' trial and conviction:

At the root of it all is one evil man, Lt Colonel du Paty de Clam, who was at the time a mere Major. He is the entire Dreyfus case, and the entirety of it will only come to light when an honest enquiry firmly establishes his actions and responsibilities. He appears to be the shadiest and most complex of creatures, spinning outlandish intrigues, stooping to the deceits of cheap thriller novels, complete with stolen documents, anonymous letters, meetings in deserted spots, mysterious women scurrying around at night, peddling damning evidence. He was the one who came up with the scheme of dictating the text of the *bordereau*[1] to Dreyfus; he was the one who had the idea of observing him in a mirror-lined room. And he was the one that Major Forzinetti caught carrying a shuttered lantern that he planned to throw open on the accused man while he slept, hoping that, jolted awake by the sudden flash of light, Dreyfus would blurt out his guilt.

[1 "French for "schedule", containing a list of secret French military documents that were scheduled for delivery to the German embassy in Paris. http://encarta.msn.com/encyclopedia_761560347/Dreyfus_Affair.html#end761593926. Note added before this translation was reprinted in http://Judicial-Discipline-Reform.org/NYCBar_Directors/J_accuse_E_Zola_D_Short/pdf.]

I need say no more: let us seek and we shall find. I am stating simply that Major du Paty de Clam, as the officer of justice charged with the preliminary investigation of the Dreyfus case, is the first and the most grievous offender in the ghastly miscarriage of justice that has been committed.

The *bordereau* had already been for some time in the hands of Colonel Sandherr, Head of the Intelligence Office, who has since died of a paralytic stroke. Information was 'leaked', papers were disappearing, then as they continue to do to this day; and, as the search for the author of the *bordereau* progressed, little by little, an *a priori* assumption developed that it could only have come from an officer of the General Staff, and furthermore, an artillery officer. This interpretation, wrong on both counts, shows how superficially the *bordereau* was analysed, for a logical examination shows that it could only have come from an infantry officer.

So an internal search was conducted. Handwriting samples were compared, as if this were some family affair, a traitor to be sniffed out and expelled from within the War Office. And, although I have no desire to dwell on a story that is only partly known, Major du Paty de Clam entered on the scene as soon as the slightest suspicion fell upon Dreyfus. From that moment on, he was the one who 'invented' Dreyfus the traitor, the one who orchestrated the whole affair and made it his own. He boasted that he would confuse him and make him confess all. Oh, yes, there was of course the Minister of War, General Mercier, a man of apparently mediocre intellect; and there were also the Chief of Staff, General de Boisdeffre, who appears to have yielded to his own religious bigotry, and the Deputy Chief of Staff, General Gonse, whose conscience allowed for many accommodations. But, at the end of the day, it all started with Major du Paty de Clam, who led them on, hypnotised them, for, as an adept of spiritualism and the occult, he conversed with spirits. Nobody would ever believe the experiments to which he subjected the unfortunate Dreyfus, the traps he set for him, the wild investigations, the monstrous fantasies, the whole demented torture.

Ah, that first trial! What a nightmare it is for all who know it in its true details. Major du Paty de Clam had Dreyfus arrested and placed in solitary confinement. He ran to Mme Dreyfus, terrorised her, telling her that, if she talked, that was it for her husband. Meanwhile, the unfortunate Dreyfus was tearing his hair out and proclaiming his innocence. And this is how the case proceeded, like some fifteenth century chronicle, shrouded in mystery, swamped in all manner of nasty twists and turns, all stemming from one trumped-up charge, that stupid *bordereau*. This was not only a bit of cheap trickery but also the most outrageous fraud imaginable, for almost all of these notorious secrets turned out in fact to be worthless. I dwell on this, because this is the germ of it all, whence the true crime would emerge, that horrifying miscarriage of justice that has blighted France. I would like to point out how this travesty was made possible, how it sprang out of the machinations of Major du Paty de Clam, how Generals Mercier, de Boisdeffre and Gonse became so ensnared in this falsehood that they would later feel compelled to impose it as holy and indisputable truth. Having set it all in motion merely by carelessness and lack of intelligence, they seem at worst to have given in to the religious bias of their milieu and the prejudices of their class. In the end, they allowed stupidity to prevail.

But now we see Dreyfus appearing before the court martial. Behind the closed doors, the utmost secrecy is demanded. Had a traitor opened the border to the enemy and driven the Kaiser straight to Notre-Dame the measures of secrecy and silence could not have been more stringent. The public was astounded; rumors flew of the most horrible acts, the most monstrous deceptions, lies that were an affront to our history. The public, naturally, was taken in. No punishment could be too harsh. The people clamored for the traitor to be publicly stripped of his rank and

demanded to see him writhing with remorse on his rock of infamy. Could these things be true, these unspeakable acts, these deeds so dangerous that they must be carefully hidden behind closed doors to keep Europe from going up in flames? No! They were nothing but the demented fabrications of Major du Paty de Clam, a cover-up of the most preposterous fantasies imaginable. To be convinced of this one need only read carefully the accusation as it was presented before the court martial.

How flimsy it is! The fact that someone could have been convicted on this charge is the ultimate iniquity. I defy decent men to read it without a stir of indignation in their hearts and a cry of revulsion, at the thought of the undeserved punishment being meted out there on Devil's Island. He knew several languages: a crime! He carried no compromising papers: a crime! He would occasionally visit his country of origin: a crime! He was hard-working, and strove to be well informed: a crime! He did not become confused: a crime! He became confused: a crime! And how childish the language is, how groundless the accusation! We also heard talk of fourteen charges but we found only one, the one about the *bordereau*, and we learn that even there the handwriting experts could not agree. One of them, Mr Gobert, faced military pressure when he dared to come to a conclusion other than the desired one. We were told also that twenty-three officers had testified against Dreyfus. We still do not know what questions they were asked, but it is certain that not all of them implicated him. It should be noted, furthermore, that all of them came from the War Office. The whole case had been handled as an internal affair, among insiders. And we must not forget this: members of the General Staff had sought this trial to begin with and had passed judgement. And now they were passing judgement once again.

So all that remained of the case was the *bordereau*, on which the experts had not been able to agree. It is said that within the council chamber the judges were naturally leaning toward acquittal. It becomes clear why, at that point, as justification for the verdict, it became vitally important to turn up some damning evidence, a secret document that, like God, could not be shown, but which explained everything, and was invisible, unknowable, and incontrovertible. I deny the existence of that document. With all my strength, I deny it! Some trivial note, maybe, about some easy women, wherein a certain D… was becoming too insistent, no doubt some demanding husband who felt he wasn't getting a good enough price for the use of his wife. But a document concerning national defense that could not be produced without sparking an immediate declaration of war tomorrow? No! No! It is a lie, all the more odious and cynical in that its perpetrators are getting off free without even admitting it. They stirred up all of France, they hid behind the understandable commotion they had set off, they sealed their lips while troubling our hearts and perverting our spirit. I know of no greater crime against the state.

These, Sir, are the facts that explain how this miscarriage of justice came about; The evidence of Dreyfus's character, his affluence, the lack of motive and his continued affirmation of innocence combine to show that he is the victim of the lurid imagination of Major du Paty de Clam, the religious circles surrounding him, and the “dirty Jew” obsession that is the scourge of our time.

And now we come to the Esterhazy case. Three years have passed, many consciences remain profoundly troubled, become anxious, investigate, and wind up convinced that Dreyfus is innocent.

I shall not chronicle these doubts and the subsequent conclusion reached by Mr Scheurer-Kestner . But, while he was conducting his own investigation, major events were occurring at headquarters. Colonel Sandherr had died and Lt Colonel Picquart had succeeded him as Head of the Intelligence Office. It was in this capacity, in the exercise of his office, that Lt Colonel

Picquart came into possession of a telegram addressed to Major Esterhazy by an agent of a foreign power. His express duty was to open an inquiry. What is certain is that he never once acted against the will of his superiors. He thus submitted his suspicions to his hierarchical senior officers, first General Gonse, then General de Boisdeffre, and finally General Billot, who had succeeded General Mercier as Minister of War. That famous much discussed Picquart file was none other than the Billot file, by which I mean the file created by a subordinate for his minister, which can still probably be found at the War Office. The investigation lasted from May to September 1896, and what must be said loud and clear is that General Gonse was at that time convinced that Esterhazy was guilty and that Generals de Boisdeffre and Billot had no doubt that the handwriting on the famous *bordereau* was Esterhazy's. This was the definitive conclusion of Lt Colonel Picquart's investigation. But feelings were running high, for the conviction of Esterhazy would inevitably lead to a retrial of Dreyfus, an eventuality that the General Staff wanted at all cost to avoid.

This must have led to a brief moment of psychological anguish. Note that, so far, General Billot was in no way compromised. Newly appointed to his position, he had the authority to bring out the truth. He did not dare, no doubt in terror of public opinion, certainly for fear of implicating the whole General Staff, General de Boisdeffre, and General Gonse, not to mention the subordinates. So he hesitated for a brief moment of struggle between his conscience and what he believed to be the interest of the military. Once that moment passed, it was already too late. He had committed himself and he was compromised. From that point on, his responsibility only grew, he took on the crimes of others, he became as guilty as they, if not more so, for he was in a position to bring about justice and did nothing. Can you understand this: for the last year General Billot, Generals Gonse and de Boisdeffre have known that Dreyfus is innocent, and they have kept this terrible knowledge to themselves? And these people sleep at night, and have wives and children they love!

Lt Colonel Picquart had carried out his duty as an honest man. He kept insisting to his superiors in the name of justice. He even begged them, telling them how impolitic it was to temporize in the face of the terrible storm that was brewing and that would break when the truth became known. This was the language that Mr Scheurer-Kestner later used with General Billot as well, appealing to his patriotism to take charge of the case so that it would not degenerate into a public disaster. But no! The crime had been committed and the General Staff could no longer admit to it. And so Lt Colonel Picquart was sent away on official duty. He got sent further and further away until he landed in Tunisia, where they tried eventually to reward his courage with an assignment that would certainly have gotten him massacred, in the very same area where the Marquis de Morès had been killed. He was not in disgrace, indeed: General Gonse even maintained a friendly correspondence with him. It is just that there are certain secrets that are better left alone.

Meanwhile, in Paris, truth was marching on, inevitably, and we know how the long-awaited storm broke. Mr Mathieu Dreyfus denounced Major Esterhazy as the real author of the *bordereau* just as Mr Scheurer-Kestner was handing over to the Minister of Justice a request for the revision of the trial. This is where Major Esterhazy comes in. Witnesses say that he was at first in a panic, on the verge of suicide or running away. Then all of a sudden, emboldened, he amazed Paris by the violence of his attitude. Rescue had come, in the form of an anonymous letter warning of enemy actions, and a mysterious woman had even gone to the trouble one night of slipping him a paper, stolen from headquarters, that would save him. Here I cannot help seeing the handiwork of Lt Colonel du Paty de Clam, with the trademark fruits of his fertile

imagination. His achievement, Dreyfus's conviction, was in danger, and he surely was determined to protect it. A retrial would mean that this whole extraordinary saga, so extravagant, so tragic, with its denouement on Devil's Island, would fall apart! This he could not allow to happen. From then on, it became a duel between Lt Colonel Picquart and Lt Colonel du Paty de Clam, one with his face visible, the other masked. The next step would take them both to civil court. It came down, once again, to the General Staff protecting itself, not wanting to admit its crime, an abomination that has been growing by the minute.

In disbelief, people wondered who Commander Esterhazy's protectors were. First of all, behind the scenes, Lt Colonel du Paty de Clam was the one who had concocted the whole story, who kept it going, tipping his hand with his outrageous methods. Next General de Boisdeffre, then General Gonse, and finally, General Billot himself were all pulled into the effort to get the Major acquitted, for acknowledging Dreyfus's innocence would make the War Office collapse under the weight of public contempt. And the astounding outcome of this appalling situation was that the one decent man involved, Lt Colonel Picquart who, alone, had done his duty, was to become the victim, the one who got ridiculed and punished. O justice, what horrible despair grips our hearts? It was even claimed that he himself was the forger, that he had fabricated the letter-telegram in order to destroy Esterhazy . But, good God, why? To what end? Find me a motive. Was he, too, being paid off by the Jews? The best part of it is that Picquart was himself an anti-Semite. Yes! We have before us the ignoble spectacle of men who are sunken in debts and crimes being hailed as innocent, whereas the honour of a man whose life is spotless is being vilely attacked: A society that sinks to that level has fallen into decay.

The Esterhazy affair, thus, Mr President, comes down to this: a guilty man is being passed off as innocent. For almost two months we have been following this nasty business hour by hour. I am being brief, for this is but the abridged version of a story whose sordid pages will some day be written out in full. And so we have seen General de Pellieux, and then Major Ravary conduct an outrageous inquiry from which criminals emerge glorified and honest people sullied. And then a court martial was convened.

How could anyone expect a court martial to undo what another court martial had done?

I am not even talking about the way the judges were hand-picked. Doesn't the overriding idea of discipline, which is the lifeblood of these soldiers, itself undercut their capacity for fairness? Discipline means obedience. When the Minister of War, the commander in chief, proclaims, in public and to the acclamation of the nation's representatives, the absolute authority of a previous verdict, how can you expect a court martial to rule against him? It is a hierarchical impossibility. General Billot directed the judges in his preliminary remarks, and they proceeded to judgement as they would to battle, unquestioningly. The preconceived opinion they brought to the bench was obviously the following: “Dreyfus was found guilty for the crime of treason by a court martial; he therefore is guilty and we, a court martial, cannot declare him innocent. On the other hand, we know that acknowledging Esterhazy's guilt would be tantamount to proclaiming Dreyfus innocent.” There was no way for them to escape this rationale.

So they rendered an iniquitous verdict that will forever weigh upon our courts martial and will henceforth cast a shadow of suspicion on all their decrees. The first court martial was perhaps unintelligent; the second one is inescapably criminal. Their excuse, I repeat, is that the supreme chief had spoken, declaring the previous judgement incontrovertible, holy and above mere mortals. How, then, could subordinates contradict it? We are told of the honour of the army; we are supposed to love and respect it. Ah, yes, of course, an army that would rise to the first threat, that would defend French soil, that army is the nation itself, and for that army we

have nothing but devotion and respect. But this is not about that army, whose dignity we are seeking, in our cry for justice. What is at stake is the sword, the master that will one day, perhaps, be forced upon us. Bow and scrape before that sword, that god? No!

As I have shown, the Dreyfus case was a matter internal to the War Office: an officer of the General Staff, denounced by his co-officers of the General Staff, sentenced under pressure by the Chiefs of Staff. Once again, he could not be found innocent without the entire General Staff being guilty. And so, by all means imaginable, by press campaigns, by official communications, by influence, the War Office covered up for Esterhazy only to condemn Dreyfus once again. Ah, what a good sweeping out the government of this Republic should give to that Jesuit-lair, as General Billot himself calls it. Where is that truly strong, judiciously patriotic administration that will dare to clean house and start afresh? How many people I know who, faced with the possibility of war, tremble in anguish knowing to what hands we are entrusting our nation's defense! And what a nest of vile intrigues, gossip, and destruction that sacred sanctuary that decides the nation's fate has become! We are horrified by the terrible light the Dreyfus affair has cast upon it all, this human sacrifice of an unfortunate man, a “dirty Jew.” Ah, what a cesspool of folly and foolishness, what preposterous fantasies, what corrupt police tactics, what inquisitorial, tyrannical practices! What petty whims of a few higher-ups trampling the nation under their boots, ramming back down their throats the people's cries for truth and justice, with the travesty of state security as a pretext.

Indeed, it is a crime to have relied on the most squalid elements of the press, and to have entrusted Esterhazy's defense to the vermin of Paris, who are now gloating over the defeat of justice and plain truth. It is a crime that those people who wish to see a generous France take her place as leader of all the free and just nations are being accused of fomenting turmoil in the country, denounced by the very plotters who are conniving so shamelessly to foist this miscarriage of justice on the entire world. It is a crime to lie to the public, to twist public opinion to insane lengths in the service of the vilest death-dealing machinations. It is a crime to poison the minds of the meek and the humble, to stoke the passions of reactionism and intolerance, by appealing to that odious anti-Semitism that, unchecked, will destroy the freedom-loving France of Human Rights. It is a crime to exploit patriotism in the service of hatred, and it is, finally, a crime to ensconce the sword as the modern god, whereas all science is toiling to achieve the coming era of truth and justice.

Truth and justice, so ardently longed for! How terrible it is to see them trampled, unrecognised and ignored! I can feel Mr Scheurer-Kestner's soul withering and I believe that one day he will even feel sorry for having failed, when questioned by the Senate, to spill all and lay out the whole mess. A man of honour, as he had been all his life, he believed that the truth would speak for itself, especially since it appeared to him plain as day. Why stir up trouble, especially since the sun would soon shine? It is for this serene trust that he is now being so cruelly punished. The same goes for Lt Colonel Picquart, who, guided by the highest sentiment of dignity, did not wish to publish General Gonse's correspondence. These scruples are all the more honourable since he remained mindful of discipline, while his superiors were dragging his name through the mud and casting suspicion on him, in the most astounding and outrageous ways. There are two victims, two decent men, two simple hearts, who left their fates to God, while the devil was taking charge. Regarding Lt Col Picquart, even this despicable deed was perpetrated: a French tribunal allowed the statement of the case to become a public indictment of one of the witnesses [Picquart], accusing him of all sorts of wrongdoing, It then chose to prosecute the case behind closed doors as soon as that witness was brought in to defend himself.

I say this is yet another crime, and this crime will stir consciences everywhere. These military tribunals have, decidedly, a most singular idea of justice.

This is the plain truth, Mr President, and it is terrifying. It will leave an indelible stain on your presidency. I realise that you have no power over this case, that you are limited by the Constitution and your entourage. You have, nonetheless, your duty as a man, which you will recognise and fulfill. As for myself, I have not despaired in the least, of the triumph of right. I repeat with the most vehement conviction: truth is on the march, and nothing will stop it. Today is only the beginning, for it is only today that the positions have become clear: on one side, those who are guilty, who do not want the light to shine forth, on the other, those who seek justice and who will give their lives to attain it. I said it before and I repeat it now: when truth is buried underground, it grows and it builds up so much force that the day it explodes it blasts everything with it. We shall see whether we have been setting ourselves up for the most resounding of disasters, yet to come.

But this letter is long, Sir, and it is time to conclude it.

I accuse Lt Col. du Paty de Clam of being the diabolical creator of this miscarriage of justice — unwittingly, I would like to believe — and of defending this sorry deed, over the last three years, by all manner of ludricrous and evil machinations.

I accuse General Mercier of complicity, at least by mental weakness, in one of the greatest inequities of the century.

I accuse General Billot of having held in his hands absolute proof of Dreyfus's innocence and covering it up, and making himself guilty of this crime against mankind and justice, as a political expedient and a way for the compromised General Staff to save face.

I accuse Gen. de Boisdeffre and Gen. Gonse of complicity in the same crime, the former, no doubt, out of religious prejudice, the latter perhaps out of that *esprit de corps* that has transformed the War Office into an unassailable holy ark.

I accuse Gen. de Pellieux and Major Ravary of conducting a villainous enquiry, by which I mean a monstrously biased one, as attested by the latter in a report that is an imperishable monument to naïve impudence.

I accuse the three handwriting experts, Messrs. Belhomme, Varinard and Couard, of submitting reports that were deceitful and fraudulent, unless a medical examination finds them to be suffering from a condition that impairs their eyesight and judgement.

I accuse the War Office of using the press, particularly *L'Éclair* and *L'Écho de Paris*, to conduct an abominable campaign to mislead the general public and cover up their own wrongdoing.

Finally, I accuse the first court martial of violating the law by convicting the accused on the basis of a document that was kept secret, and I accuse the second court martial of covering up this illegality, on orders, thus committing the judicial crime of knowingly acquitting a guilty man.

In making these accusations I am aware that I am making myself liable to articles 30 and 31 of the law of 29/7/1881 regarding the press, which make libel a punishable offence. I expose myself to that risk voluntarily.

As for the people I am accusing, I do not know them, I have never seen them, and I bear them neither ill will nor hatred. To me they are mere entities, agents of harm to society. The action I am taking is no more than a radical measure to hasten the explosion of truth and justice.

I have but one passion: to enlighten those who have been kept in the dark, in the name of humanity which has suffered so much and is entitled to happiness. My fiery protest is simply the cry of my very soul. Let them dare, then, to bring me before a court of law and let the enquiry take place in broad daylight! I am waiting.

With my deepest respect, Sir.

Émile Zola, 13th January 1898

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The Supreme Court Justices and the Chief Judges Have Semi-annually Received Official Information About the Self-immunizing Systematic Dismissal of Judicial Conduct Complaints, But Have Tolerated It With Disregard for the Consequent Abuse of Power and Corruption

by

Dr. Richard Cordero, Esq.

For decades since before the Judicial Conduct and Disability Act of 1980 (28 U.S.C. §351 et seq.) [1] , the Supreme Court has known of the lack of an effective judicial impeachment mechanism (ToEC:60>Comment, C:1384):[2] In the 217 years since the U.S. Constitution of 1789, only 7 federal judges[3] have been impeached and convicted. Since the Act's passage, they have know also of the break down of its self-discipline mechanism (ToEC:24>Comment, C:573). To know it, Late Chief Justice Rehnquist, who was also the presiding member of the Judicial Conference (28 U.S.C §331¶1), the body of last resort under the Act (id. §354(b)), need not read the Annual Reports on the Act produced by the Administrative Office of the U.S. Courts (id. §604(h)(2)) or the Conference's reports (C:1771). He knew that in the 24 years since the Act the Conference had issued under it only 15 orders! (C:1611) Yet he waited until May 2004 to charge Justice Stephen Breyer with chairing a committee to study it. (C:574-577) The Breyer Committee held no hearings (cf.ToEC:66§L) and took over 27 months only to issue a report that clears his lower peers of the systematic dismissal of complaints apparent from the official reports.

All the justices are also circuit justices of the circuits to which they have been allotted (28 U.S.C. §42, 45(b); C:149) so they may attend (C:980y-83; cf. 980z-10) their councils' meetings where misconduct complaints are discussed (C:980y-84, z-76) and can learn the nature and number of orders related thereto, which must be reported to the Administrative Office (28 U.S.C. §332(c-d, g); C:980y-87, z-79). Hence, they know that such complaints are systematically dismissed. Actually, the justices must be presumed to have realized from the cases that they deal with daily at the Supreme Court that 'power corrupts and in the absence of any control over its exercise, power becomes absolute and corrupts absolutely'. So they could not have reasonably believed that while wielding power over life, liberty, and property the 2,133 federal judges would remain immune to the type of "Culture of Corruption", in the words of House Minority Leader Nancy Pelosi, that has engulfed the 535 members of Congress. Did the justices or the circuit judges of the courts of appeals, who appoint bankruptcy judges to renewable 14-year terms (28 U.S.C. §152(a)(1)) believe for a moment that even in the absence of any supervision and discipline and without the deterrence of impeachment bankruptcy judges would resist the temptation to mishandle the $billions that are at stake in bankruptcies and whose disposition they

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[1] All the references to legal authority are found at:
http://judicial-discipline-reform.org/Authorities%20Cited.htm#VII.A.3._Table_of_Authorities.

[2] All the references with the format 'letter:#' are found at:
http://judicial-discipline-reform.org/Bank%20of%20Links.htm#Table_of_Exhibits.

[3] Judges of the United States, Impeachments of Federal Judges, Federal Judicial Center, http://www.fjc.gov/history/home/nsf

determine? (D:458§V, Add:621§1) Since the justices and circuit judges cannot have ignored ongoing misconduct of judges abusing their uncontrolled power, why have they tolerated it?

A reasonable person is assumed to intend the normal consequences of his or her acts, just as they are assumed to engage in rational behavior in furtherance of what they conceive to be their interests. Consequently, it must be assumed that when the justices and circuit judges engaged or acquiesced in the systematic dismissal of misconduct complaints against judges they intended to allow their peers and themselves to wield uncontrol power and engage in its normal consequence of abuse of power and corruption. Since this in turn would normally give rise to complaints leading to prosecution, the dismissal of such complaints became necessary to immunize themselves from such prosecution. The facts do not allow the justices of the Supreme Court to deny that this was their intention.

Indeed, they know how litigious our society is, for the number of filings in the Supreme Court went from 7,924 in the 2001 Term to 8,255 in the 2002 Term[4]…for only the nine justices to take care of! Hence, they could not assume for a nanosecond that it was a natural occurrence that *for years in a row* not a single complaint, all denied by a circuit chief judge or dismissed by any of the 13 circuit councils, made it up as a petition for review to the Judicial Conference. The later is the highest administrative body of the federal judiciary, the Third Branch of Government, that must ensure the proper functioning and integrity of the courts and its judges. (C:1711)

It would be patently untenable to pretend that not even one of all the complainants to the circuit chief judges was so dissatisfied with a chief judge's final order concerning his complaint under 28 U.S.C. §351 as to petition the respective circuit council for review thereof under §352(c). It would be just as untenable to allege that not a single petitioner to any of the 13 councils was "aggrieved" under §357(a) by a council's action so as to be entitled to petition the Conference for review thereof. It would be equally untenable to suggest that of all the complaints filed during the course of years there has not been even one meritorious enough for any of the councils to refer under §354(b) to the Conference.

Consequently, it necessarily follows that the occurrence of "no pending petitions for review of judicial council action on misconduct orders"[5] is the result of the non-coincidental, intentional, and coordinated determination of the judges of the 13 councils, with the conniving approval of those who are also members of the Conference, and its presiding member, the chief justice, both to prevent complaints, not to mention their own action on them, from being reviewed and to put an end to them at the earliest stage possible. The Supreme Court is responsible for ensuring respect for the rule of law through its application not only by, but also to, judges. Hence, it too is to blame for having allowed the entrenchment of the attitude of flagrant disregard by judges, chief judges, and their councils and Conference, of the legal duty imposed on them under §351 et seq. to handle effectively complaints against them and to discipline themselves as well as for having tolerated its deleterious effect on the integrity of judicial process: abuse of power and corruption. (Cf. A:1662§D; ToEC:>C:973 and Comment thereunder)

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[4] Supreme Court of the United States 2003 Year-end Report on the Federal Judiciary; www.supremecourtus.gov.

[5] Report of September 23, 2003, of the Proceedings of the Judicial Conference, and Reports of March and September 2003 and March 2004, of the Judicial Conference's Committee to Review Circuit Council Conduct and Disability Orders. (C:569-572)