

№ 16-343

In the  
**Supreme Court**  
of the  
**United States**

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WALTER TUVELL

*Petitioner*

*v.*

INTERNATIONAL BUSINESS MACHINES (IBM)

*Respondent*

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***On Petition for Writ of Certiorari to the United  
States Court of Appeals for the First Circuit***

**PETITION FOR WRIT OF CERTIORARI,  
SUPPLEMENTAL BRIEF<sub>2</sub> OF PETITIONER**

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1 • Tuvell is not “really” *pro se* — see main Petition ¶vif6.



## INTRODUCTION

Pursuant to Sup.Ct.R. 15.8, petitioner hereby submits this *second* Supplemental Brief (“**Supp-Brief<sub>2</sub>**”) to his Petition for Writ of Certiorari (with Required Appendix), “**PetWritCert.**”

The sole reason for submitting this brief is to notify and transmit to this Court (in the appendix, “**SuppApx**”) *additional information*, in the form of *two letters* that petitioner has filed with the Judicial Council, supporting his two **Complaints of Judicial Misconduct** in connection with this case.<sup>2</sup> The two letters were of course not available when the main PetWritCert was filed, nor when petitioner’s *first* Supplemental Brief (“**SuppBrief<sub>1</sub>**”) was filed.

The two letters provide *eight* solid **examples** of *other (contemporaneous)* cases, in which the *same* district judge (Casper) applied **correct PSOF-Inclusion** — in sharp contrast to the **false PSOF-Exclusion** scheme she applied in our case. The significant *differentiator* between those *other* cases and *our* case is *our greater degree of complexity*“*hardness*” — as we have pled in the main PetWritCert (¶ spanning ¶15–16; PSOF-Exclusion Table (Abridged ¶29; Unabridged ReqApx ¶86–90); ¶40 2<sup>nd</sup> ¶).

### **“Proof-positive” of Judicial Misconduct.**<sup>3</sup>

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2 • Those two Complaints of Judicial Misconduct were the subject of petitioner’s *first* Supplemental Brief (SuppBrief<sub>1</sub>).

3 • **Lies/malfeasance/fraud (not incompetence/insanity).**

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## COMPLAINT OF JUDICIAL MISCONDUCT, LETTER #1

◀ 1 ▶

**From:**

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October 2, 2016

Dear Ms. Pagano:

This letter<sup>1</sup> is to inform you (Judicial Council of the First Circuit) of two pieces of **new/additional material** I have discovered this morning, relevant to the two Complaints of Judicial Misconduct that I have filed with your office (September 12, 2016).<sup>2</sup>

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1 • Delivered by both email and U.S. mail.

2 • And which, as you know, has been forwarded to the U.S. Supreme Court, in the Supplemental Brief to my Petition for Writ of Certiorari N<sup>o</sup>16-343.

*Both* pieces of this new material apply to *both* of the Complaints (District and Appeals) I have filed.<sup>3</sup> This new material is important, and should be distributed immediately to all appropriate members of the Judicial Council.

It will be recalled that my two complaints, as filed, have at their core the fact that the judges (both district and appellate) **refused to consider Plaintiff's Statement of Material Facts (PSOF)** that was filed to the district court in my case at summary judgment stage. (I am the plaintiff.) The new material I am transmitting here **proves that Casper does indeed consider PSOFs in other cases** she adjudicates at summary judgment. This **proves**, therefore, that Casper did indeed *knowingly target* my case differentially/discriminately/falsely — exactly as alleged in my complaint(s) — thereby supplying **new/additional irrefutable proof of judicial miscon-◀ 2 ▶duct** (by both Casper and the appellate judges, as explained in *f3 supra*).

The new material presented here consists of the

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3 • *Both* pieces of additional material presented here are excerpts from opinions of Judge Casper, illuminating her complained-of behavior in my case (District Docket №13-11292-DJC). However, since the Appellate Courts (*both* panel and *en banc*) in my case (Appellate Docket №15-1914) whole-heartedly *adopted* Casper's opinion, any/all complaints lodged against the district judge apply equally as complaints against the appellate judges too. (I am certain that I could additionally find similar material relating directly to the appellate judges I have accused of judicial misconduct, but that is an exercise I have not attempted.)

*Complaint of Judicial Misconduct, Letter #1*

following two excerpts from two other opinions Casper has issued at summary judgment stage. As presented here, the new material is formatted straightforwardly (not reformatted)<sup>†</sup> as screenshots-with-comments/emphasis/highlighting from the two published PDF opinions. As a convenience to you, I am also forwarding to you (as email attachments) full copies of the two published PDF opinions.

- *Shervin v. Partners HealthCare System (N<sup>o</sup>10-cv-10601, March 7, 2014), ¶2:*

## II. Facts

As discussed in the Court's legal analysis, a number of the material facts in this case remain disputed. To the extent a material fact is undisputed, the Court refers to either Harvard's Statement of Material Facts, D. 153, or the remaining Defendants' Amended Joint Statement of Material Facts, D. 172, and Dr. Shervin's responses to same, D. 230 and D. 229, respectively. To

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<sup>†</sup> • { Per Supreme Court Rule, the screenshots appearing in the original letter are here reformatted, and re-colored (~ grey). }

*i.e., disputed facts* → the extent Dr. Shervin raises **additional all-**  
**egations**, the Court refers **only** to her addi-  
 tional **Statement of Material Facts**, D. 217,  
 or her **responses** to the **Defendants' State-**  
**ments of Material Facts**, again D. 229 and  
 D. 230.

- *Fiske v. MeYou Health, Inc. (N<sup>o</sup>13-10478-DJC, June 20, 2014), ¶3:*

### III. Factual Background

The Court draws the facts of this case from **the parties' statements of facts** and their **responses** to same. D. 29-2, 33 (collectively "SOF").<sup>1</sup> MYH was founded in 2009 and is a [...]

<sup>1</sup> Defendants **have not responded** to **Plaintiffs' "further statement of material facts,"** SOF ¶¶ 32-84, instead moving her supporting affidavit, D. 38.



Sincerely yours,

/s/ Walter Tuvell

Walter E. Tuvell



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## COMPLAINT OF JUDICIAL MISCONDUCT, LETTER #2

◀ 1 ▶

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October 3, 2016

Dear Ms. Pagano:

This letter<sup>1</sup> is a *follow-up* to the previous letter I sent you (yesterday).

After a little more (non-exhaustive) research, I have discovered some **additional examples** of *other* cases adjudicated by Judge Casper, of the same general nature as mine (employment/labor, discrimination/retaliation, summary judgment, etc.) — which

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1 • Delivered by both email and U.S. mail.

involve Casper *correctly citing to plaintiff/non-movant's Statement of Material Facts (PSOF)* (as is required by law/rule, FRCP-LR 56.1).<sup>2</sup> These examples therefore provide additional instances contrasting with her *wrongful actions in my case* (where she ***falsely refused to cite to my PSOF***) — thereby additionally supporting my complaint(s) of **Judicial Misconduct** (both District and Appeals) in **my case**.

The formatting of the listed items, *infra* (in no particular order), follows that of my previous letter. Also as previously, I am providing you with full PDF copies of Casper's opinions (via email), for your convenience.

- *Griffin v. Adams & Assoc. (N<sup>o</sup>14-12668-DJC, June 28, 2016), ¶3:*

### III. Factual Background

The following facts are drawn from the

parties' statements of material facts, D. 47,

D. 53, and, unless otherwise noted, are undisputed.

◀ 2 ▶

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2 • Interestingly, I have *also* found **motion to dismiss** (*parallel* to **summary judgment**) employment cases by Casper, where she *correctly* cites to non-movant/plaintiff's original **Complaint** (*parallel* to **PSOF**); e.g., *Breda v. McDonald (N<sup>o</sup>15-13263-DJC, Dec. 23, 2015)*.

- *Sanchez v. NECCO (N<sup>o</sup>14-11353-DJC, August 14, 2015), ¶2:*

### III. Factual Allegations

Unless otherwise noted, all facts are drawn from <sup>PSOF</sup> Sanchez's statement of material facts, D. 57, and <sup>DSOF</sup> Local 348's statement of material facts, D. 52.

- *Bailey v. PWC (N<sup>o</sup>14-10141-DJC, November 18, 2015), ¶2:*

### III. Factual Background

#### A. Independent Foreclosure Review Projects

Bailey was hired by PwC as a switch-board operator in 1995. D. 53 ¶ 15. During her first ten years at PwC, she worked as a hotel administrator, receptionist and executive assistant. Id. ¶¶ 16-18. In 2005, Bailey became an associate in the Capital Markets group supervised by PwC principal Scott Dillman. Id. ¶¶ 22-23.

- *Boone v. Old Colony YMCA (Nº13-13131-DJC, November 17, 2015), ¶3:*

During her employment at YouthBuild, Boone received reports from students that McHugh, a YouthBuild teacher, had made racially offensive comments. An African-American student reported that McHugh told her: “There are more African American people on Welfare than Whites; you should be ashamed of yourself. I know you all feel bad and might want to donate to the kids in Africa but I could give a damn. I change the channel and keep eating my food.” D. 36-1

at 2. A student from Cape Verde said that McHugh said “he could care less about the kids in Africa ... and there are enough people like that on welfare anyway.” D. 36-2 at

2. A white student reported that McHugh told the class that he did “not know why people get so mad about slavery, sorry to break it to you guys but you guys were the ones

selling your own fucking kind first.”<sup>1</sup>

D. 36-3 at 2. Boone and a coworker approached Barakat in early 2013 to [...]

◀ 3 ▶

- *Marchinuk v. Lew* (N<sup>o</sup>13-cv-12722, January 11, 2016), ¶2:

### III. Factual Background

The following facts are drawn from the

parties' statements of material facts, D. 61,

D. 64, and unless otherwise noted, are undisputed.

- *Joyce v. The Upper Crust* (N<sup>o</sup>10-12204-DJC, July 21, 2015), ¶4 — ***illustrating Casper's familiarity with (mastery of) FRCP-LR 56.1:***

### IV. Factual Background<sup>2</sup>

The following facts are as described in

Joyce's statement of material facts, D. 85.

Tobins did not file a statement of material facts in support of his motion for partial summary judgment.<sup>3</sup>

<sup>3</sup> At oral argument, Joyce argued that Tobins's motion for partial summary judgment should be dismissed as Tobins did not submit a concise statement of material facts in support of his motion in accordance with Local Rule 56.1. See Mass. L. R. 56.1 (noting that "[m]otions for summary judgment shall include a concise statement of the material facts ..." and that "[f]ailure to include such a statement constitutes grounds for denial of the motion"). Tobins indicated, however, that for the purposes of summary judgment, he did not dispute the facts as presented by Joyce. Accordingly, the Court will not dismiss Tobins's motion due to this procedural flaw, but will rely upon Joyce's statement of facts with all reasonable inferences drawn in Joyce's favor.

*DSOF* → statement  
*PSOF* ← will

Naturally, I expect this information to be immediately conveyed to the appropriate members of the Judicial Council.

Sincerely yours,

/s/ Walter Tuvell

Walter E. Tuvell





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