Judicial Council Opinion(/Order)
№ 01-16-90036 – 01-16-90041
Annotated

This document, **“JCOpAnn,”** presents the Judicial Council’s Opinion(/Order) of Jan. 27, 2017 (**“JCOp,”** original at JCApx Exh.EE), reformatted into a table, together with *annotations* thereto (keyed by annotation numbers, *1*, *2*,...). The annotations occur both as (i) *brief comments* embedded within the table itself (with arrows attaching each annotation to its associated JCOp text), and as (ii) *expanded remarks* following the table.

Profuse references are made throughout this JCOpAnn to its accompanying Judicial Council Appendix, **“JCApx”** (which has its own cover page and index).

Judicial Council Opinion(/Order)
(JCOp, JCApx Exh.EE)
Annotations, Brief Comments

Judicial Council Opinion (“JCOp”)	Annotations
◀ *1* ▶ Complainant, a litigant, has filed complaints of misconduct, under 28 U.S.C. § 351(a), against a district judge and five appellate judges in the First Circuit. Complainant alleges judicial misconduct in connection with a civil proceeding and appeal. The misconduct complaints are baseless and not cognizable.	*1* JCApx Exh.B.a–b. *2* JCApx Exh.GG (“JCDA”). *3* JCApx Exh.B.a. *4* JCApx Exh.B.b. *5* **False/lie** (*proven* superlatively throughout).
Complainant asserts that the district judge was biased against him because of his cause of action and, as a result, entered judgment in favor of the defendant. Specifically, complainant alleges that, by accepting facts asserted by the defendant in support of a motion for summary judgment, the district judge “wrongfully lied” and failed to comply with a local rule. Additionally, complainant alleges that the district judge violated various canons of The Code of Conduct for United States Judges (Code of Conduct), as well as numerous federal criminal statutes.	*6* JCApx ℘13ƒ6; Exh.G–I. *7* “As a result” of real **proof/ evidence,** not “mere” “bias.” *8* ***THIS IS THE CRUX: judges LYING by “accepting” KNOWN-FALSE “facts”*** (JCApx℘9,19; Exh.CC). *9* FRCP 56 & LR 56.1 D.-Mass. (JCApx Exh.DD.b–c, BB.c, etc.) — **judges must follow their own Rules!** *10* JCApx Exh.FF (“CodCon”); *cf.* esp. ℘849 end of 1st ¶. *11* JCApx Exh.X,Y,Z,AA,BB.a–b, II–KK.
◀ *2* ▶ Complainant lodges the same allegations against the subject circuit judges. He further asserts that, by affirming the judgment of the district court, the appellate panel “wrongfully lied” and used abusive language in its written opinion. Further, complainant alleges that, by denying his petition for panel rehearing and rehearing en banc, the circuit judges ignored facts and “blindly” accepted the appellate panel’s decision.	*12* JCApx ℘23. *13* JCApx ℘19. *14* JCApx ℘20–21. *15* JCApx ℘20.

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A review of the record provides no factual support for complainant's conclusory allegation of judicial wrongdoing. As an initial matter, a violation of the Code of Conduct may inform consideration of a judicial misconduct complaint but does not necessarily constitute judicial misconduct under the statute. See Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules for Judicial-Conduct), Commentary on Rule 3. In the present matter, there is no evidence that any of the subject judges violated the Code of Conduct, let alone engaged in judicial misconduct.	16 **This is insane/bald-faced knowing/willful lying!** JCApx Exh.CC.c. 17 JCApx Exh.FF ("CodCon"). 18 JCApx Exh.HH ("JCDR"). 19 JCApx ℘881–884,12. 20 JCApx ℘849, end of 1st ¶: **"violations of law"** (Exh.BB.b,DD.a,II) and **"court rules"** (Exh.DD.b,c).
Plaintiff offers no facts suggesting that the district judge exhibited bias or engaged in any other wrongdoing in connection with the proceeding. The record demonstrates that the district court heard from both parties in full before issuing a lengthy memorandum and order thoroughly reviewing complaint's substantive claims before granting the defendant's motion for summary judgment and dismissing the complaint. Furthermore, complainant's claim that the district judge violated a local rule would not, absent evidence of improper judicial motive, suggest cognizable misconduct.[1] [1] Although not necessary to the disposition of the matter, the allegation that the district judge violated a local rule is unsupported by the record and was rejected by the Court of Appeals.	21 Ann.6 and *passim.* 22 **Lie:** Judge heard/reviewed **her** "facts," **not mine/PSOF.** 23 "Lengthy," but **based on her/DSOF FALSE "FACTS," not on my/PSOF FACTS.** 24 WTF‽ 25 Yes, necessary to disposition of this matter. 26 Yes, supported by record. 27 Appeals Court didn't even *address,* much less "reject".

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◀ *3* ▶ The appellate record is equally devoid of any facts suggesting judicial impropriety. With regard to the claim of abusive language in the per curiam opinion, the Court's wording is not remotely "egregious" or "hostile". See Rules of Judicial-Conduct, Rule 3(h)(1)(D) ("Cognizable misconduct … includes … treating litigants or attorneys in a demonstrably egregious and hostile manner …"). "[J]udges commonly express views based upon the record … in written opinions, and they are permitted 'leeway in the crafting of judicial opinions.'" Lynch, C.C.J., Order, In Re Judicial Misconduct Complaint No. 01-12-90015, July 11, 2012, at 5, quoting In Re: Complaint of Jane Doe, 640 F.3d 861, 863 (Judicial Council of the Eighth Circuit, February 24, 2011). The opinion at issue in this matter "do[es] not even approach 'the sort of deep-seated unequivocal antagonism that may constitute misconduct.'" In Re Judicial Misconduct Complaint No. 01-12-0015, supra, at 6, quoting In Re: Jane Doe, 640 F.3d at 863.	*28* Repeat the above, since Appeals Court was accused of same as District (and more). *29* The point is, the language was egregious/hostile only ***in the context of its falsity.*** *30* *Of course* there's no linguistic misconduct in *those* cases, but those cases are **non-comparable** to ours.
As there is no evidence of judicial bias or other wrongdoing by any of the subject judges, the misconduct complaints are dismissed as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).	*31* **Stupid/obvious/evil lie,** already addressed, *passim.* *32* JCApx ℘866,892.
Lacking any evidence of improper judicial motive, the misconduct complaints are simply another attempt to reassert complainant's dissatisfaction with the district and appellate courts' rulings in complainant's underlying case. This is not misconduct. See Rules of Judicial-Conduct, Rule 3(h)(3)(A) ("Cognizable misconduct … does not include … an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge's ruling … ◀ *4* ▶ without more, is merits-related."). Accordingly, the complaints are also dismissed as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B).	*33* Ann.*31*. *34* The issues with this case are all *objective,* not *subjective* as pretended by JCOp. *35* ***At S.J.,*** "merits-related (without-more)" relates only to "**conclusions of law,"** ***not*** **"findings-of-fact";** *JUDGES MUST NOT "FIND" FACTS* at S.J.: **they *must* blindly credit nonmovant's facts. "Merits" *can never* be reached at *S.J. fact-finding* time.** *36* JCApx ℘.866,892.

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For the reasons stated, Complaint Nos. 01-16-00036, 01-16-00037, 01-16-00038, 01-16-00039, 01-16-00040, 01-16-00041 are dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B) and Rule 11(c)(1)(D), respectively. ◀ ■ ▶	*37* Ann.*31* *supra*. **Provably falsified/fake/alt pseudo/non-reasons.** *Passim*. *38* JCApx ℘866,892; Ann.*32*,*36* *supra*.

Annotations, Expanded Remarks

1 • Complainant's two Complaints, filed with the Judicial Council on Sep. 12, 2016, are included at JCApx Exh.B.a–b. Complainant also filed Petition for Writ of Certiorari ("PetWritCert") (with Required Appendix, "ReqApx"), which was also filed with the Judicial Council (separately from JCApx, see JCApx Index Exh.B.—′,F.—′) on the same date (Sep. 12, 2016).

2 • The Judicial Conduct & Disability Act **("JCDA"),** 28 USC §351–364, is reproduced at JCApx Exh.GG.

3 • The Complaint (№ 01-16-90036) against the District Judge (Casper) is included at JCApx Exh.B.a. It was also filed with the Supreme Court as first appendix to First Supplemental Brief to PetWritCert, which was also filed with the Judicial Council (available separately from JCApx, see JCApx Index Exh.F.—″) on Sep. 30, 2016.

4 • The (five) Complaint(s) (№ 01-16-90037 – 01-16-90041) against the (five) Appellate Court Judges (Torruella, Lynch, Thompson, Howard, Kayatta, in some unknown order) is included at JCApx.B.b. It was also filed with the Supreme Court as second appendix to First Supplemental Brief to PetWritCert, which was also filed with the Judicial Council (available separately from JCApx, see JCApx Index Exh.F.—″) on Sep. 30, 2016.

5 • The JCOp's bald (false) statement here — that "[t]he misconduct complaints are baseless and not cognizable" — is, to put it very mildly, a transparent/clear/plain/blatant/outrageous **lie.** In any rational/cognizant/sensible/honest human sense, that is. Complainant's Misconduct Complaints are nowhere-near "baseless," nor "non-cognizable." They are, in actual/real/live/universal fact, soundly-based, and cognizable(/perceptible/identifiable)-in-the-legal-sense, that is, within the jurisdictional compass/ambit of the JCDA/JCDR/CodCon/Judicial-Council (*cf. infra* for unfamiliar abbreviations). And hence, the JCOp is here promulgating knowing/willful/egregious **lies.** This is well-proven (to within-and-beyond all-known *human logico-legal standards*), throughout these Annotations, *passim.* Full stop.

6 • The JCOp here (and Ann.7) falsely/misleadingly addresses the topic of *bias,* as its first/leading issue — "as-if" bias is somehow The Biggest Deal In The World. But in reality, bias is a very *secondary* complained-of offense (as is the topic of abusive language, Ann.14 *infra,* which the JCOp also falsely/misleadingly tries to "trump-up"). The judges' *primary offenses,* as complained-of in the Complaints (and everywhere else, esp. Supreme Court filings, all of which were properly submitted to the Judicial Council Complaint record by Complainant), are, as always:

(i) **<u>Falsification of facts by lying (“PSOF-Exclusion strategy”)</u>: Boxed paragraphs in Complainant’s Complaints at JCApx ℘10,20, including the footnote at JCApx ℘20f3.**

(ii) **<u>Violation of court rules</u>: FRCP 56, FRCP-LR 56.1.**

(iii) **<u>Unethical conduct</u>: Violations of Judicial Code of Conduct.**

(iv) **<u>Plus many ensuing additional “unanticipated *(criminal)* consequences”</u> of those primordial unlawful acts (i–iii), beginning with *conspiratorial cover-up.***

(These four primary offenses are eventually reached *infra,* the JCOp falsely/misleadingly treating them “as-if” afterthoughts, see Ann.*8*–*11* *infra.*)

While Complainant’s “bias” accusations do indeed exist, they are *secondary afterthoughts/suspicions,* attempting to conjecture/understand *why* the judges were motivated to commit their primary offenses (just listed, *inst.*), and are in no way a “required” element of the Complaints. That’s obvious, by the fact that the only reference to “bias” in the original Complaints occurs in a single *footnote(/“afterthought”),* JCApx ℘13f6 — which itself in turn references two other *footnotes* elsewhere (PetWritCert ℘xif7,15f21). We quote those three footnotes *in toto* here, because they are indeed compellingly supportive testimony by third parties of Complainant’s “bias suspicions”:

> **I do allege** that Casper’s PSOF-Exclusion scheme was informed by her animus (and that of other elements of the federal judiciary) towards the class nature of my case (namely, *employment discrimination/retaliation*), and hence of me myself (namely, an employment case litigant). This allegation is expressed quite vociferously in my Petition for Writ of Certiorari (see section *Further Information To Aid Investigation, infra*), esp. Petition ℘xif7, ℘15f21. — *JCApx ℘13f6 (emphasis in original).*
>
> Our topic, **“<u>illicit federal court bias against employment discrimination/retaliation cases</u>,”** is very much “in the air” (**“ripe”**) currently. To the <u>*ten*</u> *articles* in the terrific *N.Y.L.S.L.R. Symposium* cited *supra* (and references therein), we here add two more recent ones: (i) Hon. Nancy Gertner (Ret.), *Losers’ Rules,* 122 Yale L.J. Online ℘109–124 (2012) (http://yalelawjournal.org/2012/10/16/gertner.html); (ii) Marcia L. McCormick, *Let’s Pretend that Federal Courts Aren’t Hostile to Discrimination*

> *Claims,* 76 Ohio State L.J. Furthermore ℘22–32 (2015). **“[W]here there is smoke there is fire”** (Hon. Denny Chin, N.Y.L.S.L.R. Symposium ℘680). — *PetWritCert ℘xif7 (emphasis in original).*

> Our claim of judicial misconduct is *not* fantastical/delusional/hyperbolical (it is *proven* herein). Even worse, it’s *not even unprecedented* — albeit as *surreptitious/unwritten/off-the-record/ersatz/pseudo-“law.”* A *sitting federal judge* testifies **on-point** to this (Hon. Mark. W. Bennett, *N.Y.L.S.L.R. Symposium ℘691–692*): “The federal courts’ daily ritual of trial court grants and appellate court affirmances of **summary judgment in employment discrimination cases** across the land is increasingly troubling to me. … I think that the trend away from jury trials toward a new focus on expensive discovery and summary judgment has been fueled by the complicity of federal trial and appellate judges. … In my view, trial and appellate judges engage in the daily ritual of docket control by [unfairly/falsely] uttering too frequently the [unfair/false] incantation, ‘We find no material question of fact’.” See especially Bennett’s *per curium* dissent in *Kampouris. — PetWritCert ℘15f21 (emphasis in original).*

In addition to those three footnotes in the original Complaints, further persuasive evidence of bias (even moreso, because particularized to Mr. Tuvell, not generalized to his employment class) was added in Complainant’s subsequent supplementary filings to the Judicial Committee (unsuspected at the time of original filing, hence further implicative of “secondary afterthoughts/suspicions”), in the form of **eight explicit examples** (JCApx Exh.G–I) of cases adjudicated by Casper, all of them *employment cases at summary judgment stage* (as *Tuvell v. IBM*), **in *none* of which did Casper *employ* her illicit/illegal PSOF-Exclusion strategy she used to dissemble/disenfranchise Mr. Tuvell.** Those eight cases **prove,** beyond any reasonable doubt, not only “perception-of-bias,” but “actuality-of-bias” — premeditatively (*cf.* also Ann.*24*) — resulting in injustice and harm to Mr. Tuvell.

Too, we note that Mr. Tuvell is an older white “working”-class “self-made” male suffering from PTSD, while Judge Casper is a younger black “gentry”-class “silver-spoon” female (her husband makes ≫$10 million/year) without (known) health issues — and these facts were well-known to the JCOp. Such circumstances suffice for *prima facie* suspicion of discrimination, yet the JCOp refused to consider/acknowledge them. Fi-

nally, the fact that Casper's husband is employed as a corporate CEO (also well-known to the JCOp) presents another, even stronger, incentive for judge Casper to be biased based on Tuvell's charges of employment discrimination against his big-business employer (IBM).

7 • Continuing with its attempted false/clumsy linguistic jiu-jitsu begun in Ann.*6* *supra,* the JCOp's language "asserts … as a result" falsely hints/insinuates/paints/taints Complainant's Complaints as arising mainly from his "bias" accusations. But that's not the case at all. The Complaints arise "as a result" of rock-solid slam-dunk proof/evidence of the primary offenses listed in Ann.*6* *supra* (falsification of facts, violation of rules, conspiratorial cover-up, etc.). Belatedly, the JCOp begrudgingly starts to admit this, with its word "[s]pecifically."

8 • Finally, after falsely dawdling with its "bias" side-distraction (Ann.*6*–*7* *supra*), the JCOp finally reaches (a little) the meat of Complainant's Complaints, as listed in Ann.*6* *supra:* (i) falsification of facts by lying (PSOF-Exclusion strategy) at Ann.*8* *inst.*; (ii) violation of court rules (FRCP 56, FRCP-LR 56.1) at Ann.*9* *infra*; (iii) unethical conduct (violations of Judicial Code of Conduct) at Ann.*10* *infra* — (iv) plus many ensuing additional "unanticipated (criminal) consequences" of those initial unlawful acts (i–iii), beginning with conspiratorial cover-up (Ann.*11* *infra*).

But, the amount of space and intellectual capital the JCOp devotes to analyzing these hard/difficult issues is falsely perfunctory/superficial and *de minimus* (compared, starkly, to the amount of space/words the JCOp expends on the soft/easy issues of bias (Ann.*6*–*7* *supra*) and abusive language (Ann.*14* *infra*)), unworthy of the public respectability the Judicial Council should be striving to foster. In particular note the wishy-washy wording of the JCOp: "… accepting facts asserted by the defendant …". **That actually does admit** (though timorously *sub rosa*) that the District Court **did indeed violate rule** (FRCP 56, LR 56.1) **and law** (*Tolan v. Cotton et al.*, and **all related precedents** known to the American judicial system) — yet the JCOp still can't choke out the whole truth, as it should do: **"The District Court totally abridged Plaintiff's rights by committing fact-falsification via PSOF-Exclusion."**

9 • The **Summary Judgment Rule (of Court)** is split into two parts: (i) a **global part,** that all federal courts must observe (FRCP 56, reproduced at JCApx Exh.DD.b with annotations); and (ii) a **local part,** wherein each federal district is empowered (by FRCP 83(a)) to consistently modify/amend the global part to suit its own local preferences (in D.Mass., this is FRCP-LR 56.1, reproduced at JCApx Exh.DD.c with annotations). By here whispering *sotto voce* of ("mere") "failure to comply with" (should be "wholesale abgroation") a "['mere'] local rule" (LR 56.1), the JCOp is again (as in Ann.*6*-*7*

supra) falsely trying to mislead/misdirect the reader, by obscuring the fact that there is also a corresponding global rule (Rule 56) that's also being violated. And, these are "big" rules, not "tiny" ones.

In actuality, the relevant/genuine/material chain of the Complaints' logical reasoning goes as follows, recalling that **PSOF-Exclusion** is of course ***the* central/core instigating issue** of these Complaints (Ann.6 *supra*) (and where the arrow symbol "⟹" means "implies/entails/yields/causes"):

(★) PSOF-Exclusion ⟹ Violation of FRCP-LR 56.1
⟹ Violation of FRCP 56
⟹ Violation of Summary Judgment Rule
(via "SJTOR", Summ. Jgmt. Tenets of Review)

This chain of reasoning (★) is **fully elaborated** (as noted in the Complaints themselves, JCApx ℘9,19) in PetWritCert (℘17–20 for theoretical aspects, ℘20–26*ff* for practical aspects). The chain (★) also illustrates **the very reason** we mention LR 56.1 more often than Rule 56: it has a more basic position in the chain (★), because **LR 56.1 where the PSOF and DSOF themselves are *defined* (see JCApx ℘838).** So, *instead* of falsely homing-in on such misinformative small-level detail about "local rule," what the JCOp *should* rightly be doing is focusing on Complainant's true big-level complaint — the **PSOF-Exclusion** (the *launch-point* of the chain (★)). Of course, it is PSOF-Exclusion (= fact-falsification) that has been everywhere/consistently/loudly proclaimed from Day One as the ultimate basis for our Complaints (e.g.: §A–B of the District Complaint at JCApx ℘9–12; §A,C of the Appellate Complaint at JCApx ℘19–22).

Judges must follow their own Rules (of Court).[@] Anent, in the (truly, deservedly) immortal words of Oliver Wendell Holmes (PetReh ℘14):

[T]he law must keep its promises.

10 • The Federal Judicial Code of Conduct **("CodCon")** is reproduced at JCApx Exh.FF (and relevant portions were cited already in Complainant's Complaints, JCApx ℘12–13). Of particular interest to us here is the last sentence of the 1st ¶ at JCApx ℘849 (emphasis added): "**Actual improprieties** under this [Code, CodCon] include **violations of law, court rules,** or other specific provisions of this Code." To repeat: *any violation of either **law** or of court **rules** amounts to **automatic** breach of the CodCon.* In our case, this

@ • This commandment has of course been a constant feature of all law, from time immemorial. Yet, finding a comparator case in contemporary American law is not so easy, due to the very "impossibility" of a case ever reaching a posture similar to the instant one. The closest we're been able to find is *Owens v. Duncan,* JCApx Exh.PP ℘1148 (emphasis added): "[W]e know of no case identical [comparable] to this one — unsurprisingly, given the combination of weak proof with a verdict based on groundless conjecture [falsified facts]."

pronouncement easily/immediately yields two (classes of) breaches of CodCon: (i) the PSOF-Exclusion strategy demonstrates absolute breach of court rule(s) for summary judgment (see Ann.9 *supra*); (ii) which in turn cascades into a plethora of absolute breaches of more rules and laws, beginning with the ignorance of the *stare decisis* of Summary Judgment Tenets of Review ("SJTOR", PetWritCert ℘17–20), and ending with numerous federal felony crimes (JCApx Exh.II–KK).

11 • Complainant first raised the specter of criminal (felony, actually) violations in JCApx Exh.X,Y, and continued them in Exh. Z,AA,BB.a–b,II–KK. It was Complainant's "discovery" ("inspirational insight," JCApx ℘679) of the applicability of criminal statues that propelled his Complaints "across the finish line" — that is, gave the Judicial Council credibly (not "incredibly") strong notice that very serious doings were afoot in this case (though the JCOp shows the Council falsely ignored that notice).

12 • The appellate judges (both panel and *en banc*) are guilty of all the same infractions (JCApx ℘23) as the district judge, because they falsely adopted (ReqApx ℘0–3) the district judge's **false** Opinion (Op, ReqApx ℘4–38) and PSOF-Exclusion scheme. **The falsity of Op cannot be argued/doubted (thus proving the JCOp is knowingly/willfully lying),** given the *inarguable/incontestable/incontrovertible/indisputable/indubitable/irrefragable/irrefutable* 70-page(!) **three-way juxtaposition** at JCApx Exh.CC.c, properly presented to the Judicial Council, comparing/contrasting/visualizing the three-way relationship **Op ↔ PSOF ↔ DSOF.**

13 • "Wrongfully lied": JCApx ℘19. I stand by this characterization.

14 • "Abusive language": JCApx ℘20–21. The "snide" language used by the panel (JCApx ℘21), *in vacuo,* could perhaps be justified *if* their opinion had been correctly applied to the case at hand. But it was knowingly/willfully false (applied to some imaginary, fact-different, case, other than the one at bar), so such degrading/intimidating language cannot be tolerated.

This is explained at JCDR ℘7 = JCApx ℘84, 3rd ¶ (emphasis added): "If the judge's language was *relevant to the case at hand* … then the judge's choice of language is presumptively [but rebuttably] merits-related, and excluded …. If, on the other hand, the challenged language does not seem relevant [to the case at hand] on its face, then an additional inquiry under Rule 11 is *necessary.*" In the instant case, since the language used referred, not to this case itself but to a different, imaginary, case (due to the falsification of facts), the language clearly could not possibly have been "relevant to the case at hand," and *must* (by rule) have undergone "additional inquiry."

15 • "Blindly" swallowed: JCApx ℘20. I stand by this characterization.

16 • The irreducible core/nub of Complainant's allegation of judicial wrongdoing is, and always has been (*cf.* Ann.*6*,*8*,*9*(★) *supra*), **falsification of facts (in the Op's recitation of "Factual Background", ReqApx ℘6–18) stemming from the judges' PSOF-Exclusion strategy.** By rule (FRCP 56 & FRCP-LR 56.1, Exh.DD.b–c), and by law (SJTOR (PetWritCert ℘17*ff*); *stare decisis* (PetReh ℘7–12; e.g., *Tolan v. Cotton,* JCApx Exh.BB.c)), the **Op falsely credited DSOF and discredited PSOF (hence, "falsification of facts") — 180° the wrong way around** (as stated at PetWritCert ℘i,25). There is *no sane/honest way ("no way in hell")* that officially filed formal documents — (i) on-the-record court documents (Op, PSOF, DSOF), together with (ii) analysis of them provided by an on-the-record Judicial Council document 70-page(!) three-way juxtaposition (Add.*12* *supra*), together with (iii) the latter's predecessor "PSOF-Exclusion Table" (PetWritCert, abridged version at ℘29, unabridged version at ReqApx ℘86–90) — can be called "conclusory" ("non-evidential non-admissible (in a court of law) conclusion/assertion of fact; utterly devoid of any real-world evidentiary support whatsoever"). Period. **To call Complainant's claim of falsification of facts "conclusory" is an insane/bald-faced knowing/willful lie. Period.**

17 • Well … sort-of. This is again legalistic jiu-jitsu. The *goal* ("mission statement") of the CodCon is certainly to foster **judicial good conduct (the opposite of "judicial misconduct").** For, CodCon Canon 1 states (JCApx ℘847, emphasis added):

> **CANON 1:**
> **A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY**
>
> An independent and honorable judiciary is indispensable to justice in our society. A judge should maintain and enforce **high standards of conduct** and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. **The provisions of this Code *should be construed and applied [cf. Ann.19 infra]* to further that objective.**

So, by this, while it may be (and is, see Ann.*19* *infra*) true, as the JCOp says, that "a violation of [CodCon] … does *not necessarily* constitute judicial misconduct under the [strictest picayune double-talk interpretation of the] *statute* [JCDA]," it's clearly *intended* that the CodCon *should be interpreted* such that violations of the CodCon *do* constitute misconduct. That is, violations of the CodCon *should presumptively* ("by default") automatically amount to misconduct — unless exigent circumstances ("corner-cases," "loopholes") affirmatively indicate otherwise (that's what Canon 1, Ann.*17* *inst.,* says).

Once a violation of CodCon has been established (*cf.* also Ann.10 *supra*), the inquiry remains whether it rises to actual Judicial Misconduct. That has been discussed already in Complainant's District Complaint §C at ℘4–6 = JCApx ℘12–14, and is further discussed through this document, *passim*.

18 • The Judicial Conduct and Disability Rules **("JCDR")** are reproduced at JCApx Exh.HH. Curiously, JCOp cites to the JCDR "as-if" it's "more authoritative" than CodCon. But it's not. For, both CodCon and JCDR are judge/court-made constructs, not statutory. Only the JCDA is statute-made, hence it (if non-unconstitutional, which has never been questioned) trumps both CodCon and JCDR. The only sense in which the JCDR may be "more authoritative" than CodCon is that the JCDR (not CodCon) more directly controls Judicial Misconduct proceedings (such as the instant one). But the JCDR (and CodCon) must always remain subservient to the JCDA.

19 • Be that (Ann.18 *supra*) as it may, we already know what's being said here (there's no need for supercilious lecture from the JCOp, Ann.17–18 *supra*), because Complainant's District Complaint, §C, JCApx ℘12–14, already cites/quotes the relevant portions of the JCDA and JCDR (esp. the JCDR's Commentary on Rule 3, **"CommR3",** JCApx ℘881–884), including the relationship between them. The specific passage being referred-to here by JCOp is the wavy-underlined sentence from JCDR CommR3 ℘5 = JCApx ℘882 following, as quoted from Complainant's District Complaint, JCApx ℘12–13:

> "[T]he Code of Conduct for United States Judges ['CodCon,' a.k.a. 'Judicial Ethics'] may be informative ...". And, the CodCon reciprocally affirms (CodCon Commentary to Canon 1): "Th[is] Code ... may also provide standards of conduct for application in proceedings under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (28 USC §§ 332(d)(1), 351-364)."

However, this story doesn't end there. For, the reason the JCOp timorously refers-to the wavy-underlined sentence, is its *faux apologia* of hiding behind its cramped interpretation of limitation to the JCOp's authority. But that's not the case: the JCDR/CodCon is actually inclusively expansive (recalling CodCon Canon 1, quoted in Ann.17 *supra*), as would be exposed if the JCOp had had the courage to quote the entire containing paragraph in question (JCDR CommR3 ℘5 = JCApx ℘882, emphasis added):

> The phrase "prejudicial to the effective and expeditious administration of the business of the courts" **is not subject to precise definition,** and subsection (h)(1) therefore provides some specific examples. Although the

> Code of Conduct for United States Judges [CodCon] may be informative, its main precepts are highly general; the Code is in many potential applications aspirational rather than a set of disciplinary rules. Ultimately, the responsibility for determining what constitutes misconduct under the statute [JCDA] is the ***province of the judicial council of the circuit,*** subject to such review and limitations as are ordained by the statute and by these Rules [JCDR].

20 • For the JCOp to pretend, as it does here, that "there is no evidence that any of the subject judges violated the Code of Conduct," is a flat-out lie. To the contrary, as already noted in Ann.*10* *supra,* the CodCon stipulates on its face (JCApx ℘849, end of 1st ¶, emphasis added) that: "Actual improprieties under this [Code, CodCon] include **violations of law, court rules,** or other specific provisions of this Code." That is, *any violation of either* ***law*** *or of court* ***rules*** *amounts to* ***automatic*** *breach of the CodCon.* And, Complainant's Complaints present (provably, on-the-record, in public-domain formal official court documents signed by judges) *many* violations of law and court rules "in spades" (see Ann.*6* *supra,* and *passim*).

21 • JCOp says "no facts." I say "yes facts." The judge *did* "exhibit bias," as a *secondary* offense: Ann.*6* *supra,* 2nd ¶ *ff.* She *did* "engage in other wrongdoing in connection with the proceeding," as *primary* offenses: Ann.*6* *supra,* 1st ¶.

22 • The JCOp falsely claims that the district judge, "heard from both parties in full force … thoroughly reviewing complainant's substantive claims." This cannot be said loudly enough: **THAT IS A BALD-FACED LIE!** Instead, what's true is that the judge, "falsely totally ignored/excluded nonmovant/Plaintiff's side (PSOF), and instead falsely listened-to/heard *only* movant/Defendant's side (DSOF), thereby falsely adopting the latter's 'facts' as her own." This falsity is precisely borne out by the judge's very own self-contradictory announcement in her Op, which provides **direct self-offered "smoking gun" self-evidence of judicial misconduct** (JCApx ℘943; also included at Ann.*35* *infra*):

the production of evidence that is 'significant[ly] probative.'" Id. (quoting Anderson, 477 U.S. at 249) (alteration in original). The Court "view[s] the record in the light most favorable to the nonmovant, drawing reasonable inferences in his favor." Noonan v. Staples, Inc., 556 F.3d 20, 25 (1st Cir. 2009).

III. Factual Background

This "Factual Background" (at SJ) is a TOTALLY INSANE/ILLEGAL LIE! By SJ RULE/LAW (Rule # 56 + LR # 56.1 + "Standard of Review" just stated), the court *MUST* CREDIT PSOF (Dkt.# 83), TRUMPING DSOF (Dkt.# 74)!

The facts are as represented in IBM's statement of material facts, D. 74, and undisputed by Tuvell, D. 82, unless otherwise noted.

DSOF(Dkt.# 74) & PSOF(Dkt.# 83) are REQUIRED (by LR # 56.1); RespDSOF (Plf.'s Response to DSOF, Dkt.# 82) is OPTIONAL. RespDSOF pointed into PSOF 19 times, but the judge DIDN'T FOLLOW those pointers, not even once.

Tuvell is a white male, born in 1947, who claims to suffer from post-traumatic stress

23 • The district judge's Op is indeed "lengthy" (ReqApx ℘4–38 as reformatted in Supreme Court format; OptApx ℘6–32 in original format). But quantity/length is not a measure of quality/truth. And this Op is totally false, because it's based on a "foundation of sand" (falsified "facts"). **The Op's recitation of "Factual Background" (ReqApx ℘6–18) is wholly false (because falsely based on DSOF instead of PSOF, contrary to rule and law).** Hence its subsequent "conclusions of law" are **wholly worthless/invalid.** They *may* have some merit as "conclusions based on the stated/false Defendant's 'facts/DSOF;'" but they are *certainly* entirely meritless as applied to Plaintiff's own facts/PSOF in this case.

24 • **WTF‽ This is so insipidly crazy, it's pitiful.** By its (i) vague, ambiguous, and falsely limiting⁂ wording — "[C]omplainant's claim that the district judge violated a local rule would not, absent evidence of improper judicial motive, suggest cognizable misconduct" —, and its (ii) calculated ignorance of citation to authority, the JCOp is here again vying to defy/thwart analysis. But it doesn't work: we can penetrate the smokescreen anyway.

Insofar as we can parse it, the JCOp's wording seems to be suggesting (at least) two (perhaps intertwined) theories: (I) that judges have *immunity* (absolute or qualified, in some degree, such as "judicial act") for violating rules of court (FRCP 56 and LR 56.1, via falsification of facts); (II) that before we can pin wrongdoing on judges, we must have previously "read their minds," to guarantee they were thinking "evil thoughts" (*scienter,* "premeditated improper judicial motive") prior to the time of the incident. Fortunately, we can dispose of both these *faux* theories.

Theory (I) has already been definitively scotched at *Judicial Twilight Zone* ℘3 = JCApx ℘933 *et seq.* We grant that the judiciary does indeed en-

⁂ • It's falsely limiting because the JCDR lists "improper motive" as *only one* of the characteristics indicative of judicial misconduct. Ann.35 *infra.*

joy general immunity from *civil* infractions (e.g., 42 USC §1983). But what we're talking about here are *criminal* infractions. And for that, *all* [wo]men must answer. Issues of "immunity," and/or "lax liability," go out the window.

Theory (II) requires a little more work, because the JCOp posits the issue with a false twist (i.e., they're "bluffing"): the shoe (burden) is on the wrong foot. The burden is *not* on Complainant, "to prove premeditated *scienter* existed prior to the act." No proof of *scienter* "evil intent" is required; *cf.* JCApx ℘1068,1079,1116–1117,1120,1123. "[C]ircumstantial evidence is sufficient, since there is no direct evidence possible concerning what the defendant actually believed [at the time of events]" — JCApx ℘1080. *Rather,* the burden is on the *accused judges,* "to *prove* their act(s) could have happened *without* the requisite premeditated *scienter.*" (*Cf.* also Ann.6 *supra,* final ¶, for a discussion of premeditation.)

For, judges are privileged people. They "know" (are professionally trained in) the law. They act at their leisure (not in haste under pressure, except in vanishingly rare "emergency" circumstances), at their own pace. They have collegial and well-funded research support (libraries, librarians, law clerks). They benefit from sharp adversarial argument by counsel. They benefit from qualified support staff (administrative clerks, bailiffs, stenos, IT technicians). They command the respect of the community (their judicial colleagues, the public in general). They wield awesome power. They're handsomely remunerated. It is simply *in no way feasible/credible/believable* that decisions rendered under such conditions would "innocently/inadvertently" violate "well established" court rules. And, even if that did happen "once or twice," it is *certainly impossible* that an "innocent/inadvertent error," impinging upon "clearly established" constitutional and statutory rights (as in the instant case), *could ever* persist through multiple rounds of appellate and supreme review, and even through judicial misconduct proceedings. There is *simply "no way in hell"* that the egregious judicial fact-falsification exhibited in the instant case could possibly happen *absent* the requisite *scienter.* Period.

But, wait! There's more. *Even if* the argument just given defeating Theory (II) doesn't "ring your chimes," here's an alternative argument that does the job just as well: Namely, **even if** *scienter* were *(nominally)* a prerequisite for *some* acts of "judicial (claimed-)misconduct," there is **no need ("strict liability")** to prove *anything* regarding *scienter (= good-faith vs. bad-faith)* in our case of *"[judicial] fact-falsification at Summary Judgment"* (which is morally/ethically/analogistically tantamount-to *"[prosecutorial] suppression-of-evidence at trial," mutatis-mutandis ["m-m"]*):

> We now hold that the *suppression [m-m: exclusion] by the prosecution [m-m: judge] of evidence [m-m: non-movant's proffered-facts] favorable to an accused [m-m:*

> *nonmovant] upon request [m-m: nonmovant's statement of facts, "SOF"]* ***violates [the Constitutional guarantee of] due process [and equal protection]*** where the evidence [m-m: nonmovant's SOF] is material either to guilt or to punishment [m-m: genuine issues of material facts], ***irrespective of the [scienter, i.e.,] good faith or bad faith of the prosecution.*** — *Brady v. Maryland* (Ann.30 ƒ# *infra*), ℘87 (emphasis added).

This *same result* (that ***fact-falsification is automatically corrupt,*** a.k.a "evil or wicked motive" (JCApx ℘1051), hence a *fortiori* "improper [judicial] conduct") can be reached via another route (18 USC §1515(b), JCApx ℘953,1058, at least in the context of 18 USC §1505 emphasis added):

> **[T]he term ''corruptly'' means acting with an improper purpose, personally or by influencing another, *[automatically]* including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information.**

25 • The JCOp claims it's unnecessary to determine whether or not the district judge violated a local (or global) rule of court. No, it's not unnecessary. It's very necessary. For, that's part-and-parcel of Complainant's core complaints (Ann.6 *supra*, 1st ¶; Ann.8 *supra*). And, doing it on-the-bench (as here) is even *much worse* than "'mere' off-the-bench ~~judicial~~ personal misconduct" (wherein one might count, say, public debauchery in a non-court setting, or published conviction for shoplifting).

26 • Oh Come On. Yes, of course violation of court rules *is* plainly very well supported by the record. E.g., Ann.9 *supra.*

27 • Yet another foolish lie: there never was any "rejection" of Complainant's rule-violation complaint. Neither of the Appeals Courts (panel, *en banc*) even *acknowledged/recognized* the central issue of rules-violation, much less *addressed* it (hence, *a fortiori,* they didn't "reject" it, they "ignored" it), and certainly didn't *explain* anything about why rule-violation was allowable in this one, singular/isolated case. Indeed, for the appellate panel, the issue of rules-violation was *never even briefed* (by rule, namely, the issue before the panel was *de novo* review of the *"substantive case-in-chief,"* and *not* a *"procedural case-in-error"*),[†] much less addressed. And, in

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† • "As mentioned in the remarks at the beginning of the *QUESTIONS PRESENTED* section, below, the mistakes we identify herein first appeared in the opinion of the district court. The question may be asked: Why didn't we raise these district court mistakes already in our Appellate briefs (principal and reply) we presented to the appellate panel?

Appellant's Petition for Rehearing, the panel and *en banc* courts, even though the rules-violation *was briefed* by Appellant (properly, by rule, the case-in-error now being in order),[†] the Petition was denied completely perfunctorily, without even addressing (much less "rejecting" or explaining anything at all.

28 • Since the Appellate Courts blindly/whole-heartedly adopted the same *faux* "facts" and conclusions as the District Court (Appeals Complaint, §D, JCApx ℘22–23) (plus a little more, Appeals Complaint, §B, JCApx ℘20–21, see Ann.29 *infra*), the arguments above apply as well, *mutatis mutandis.*

29 • The Complaint's point about the Appellate Opinion's offensive/abusive language (quoted in Ann.29 *inst.*) is not, of course, the wording's *absolutely* hostile nature, but rather its *relative* hostility (Appeals Complaint, §B, JCApx ℘20–21). Viewed in isolation, without more, the panel's language does not rise to a charge of abusive/hostile/demeaning — *provided that* the original District Opinion had been *legal/correct.* But when viewed in the language's *actual context*[‡] of *fact-falsifying/lying judicial misconduct,* the panel's words take on the sinister tone of a not-so-veiled *threat* ("A mere mortal like you isn't allowed to appeal a district judge's fact-falsification, no matter how egregious. And, to make an "example" of you, we're going to linguistically horsewhip/embarrass you, by making your appeal seem meritless/frivolous in our exalted/supercilious eyes. And, to twist the knife even more, we'll toss in a gratuitous lie of our own, implying 'of course the lower courts always supportably find the facts'."):

> We have made it abundantly clear that "when **lower courts have supportably found the *facts,*** applied the appropriate legal standards, articulated their reasoning clearly, and reached a correct result, a reviewing court ought not to write at length merely to **hear its own words resonate**" (providing that "when a lower court

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The answer is that it was *inappropriate (not ripe)* to do so, by rule. The panel's review of the district court's opinion is *de novo:* the panel looks at appellant's case-in-chief with fresh eyes, and comes to its own independent determination, owing no deference to the district court's opinion; raising issues of *mistake* by the district court would be out-of-bounds for that inquiry. It is only <u>*here,* at *rehearing* level, that issues of *mistake* are in order</u> (FRAP 35, 40). Since the panel *adopted* the district's opinion, any mistakes at the district level are equally attributable to the appellate level, so are appropriate here." — *Appellant's Petition for Rehearing (Ter) ℘v = OptApx ℘450 f‡ (emphasis in original); repeated (in lightly edited form) at JCApx ℘22.*

‡ • The JCOp's ignorance/obliviousness to *context* in *this* (Complainant's) situation contrasts starkly with its curiously attentive/aggressive notice of same in a situation of self-interest to the JCOp itself: one of JCOp's *only two* (*inapplicable:* Ann.30 *infra*) referred-to cases (JCApx Exh.MM): "Complainant takes this sentence *completely out of context*" (JCApx ℘1004, emphasis added).

> **accurately takes the measure [primarily *facts,* then secondarily *law*] of a case** and articulates a cogent rationale, it serves no useful purpose for a reviewing court to write at length"). [¶] This is one of those cases. — *Abusive (false, snide, belittling) language from the Appellate Opinion (ReqApx ℘3) (internal citations omitted; emphasis added).*

Furthermore, the JCOp's cited passage about abusive language from JCDR 3(h)(1)(D) (JCApx ℘880) — isolating the out-of-context word "includes," "as-if" it is somehow limiting/restrictive — is yet another example of JCOp's mischievous/misleading double-talk. The honest way to cite it would have been to embed it in its immediately surrounding context: **"includes, but is not limited to"** (JCApx ℘880). The generally non-limiting nature of the JCDR is made clear at JCDR CommR3 ℘5 = JCApx ℘882, already quoted in Ann.19 *supra.*

30 • The paucity of cases cited by the JCOp (only two, one of them indirectly) are included in JCApx at Exh.LL–MM. By inspection, those cases contain no misconduct charges involving *either:* (i) fact-falsification; *or* (ii) the complained-of language's attack on any other charge complained-of in their corresponding Judicial Misconduct Complaints (recalling that in the instant case, it is precisely the *panel's language's* content in relation to the complained-of fact-falsification that is being challenged; Ann.29 *supra*). Even sillier, the complainants in those two cases are: (iii) not litigants, but attorneys involved in cases before the judges complained-of (recalling that the Complainant Tuvell was represented by competent counsel at District and panel levels); and the complained-of language was alleged to (iv) impugn the personal/professional characters of the Complainants (which is not alleged in the instant case). *None* of the characteristics (i–iv) apply to the instant case, so those cases are non-comparators, hence are non-persuasive in relation to the instant case. If the JCOp wants to make a *valid/persuasive* argument, it need/must proffer case(s) comparable to the instant case, in *at least one,* and preferably *all four,* dimensions (i–iv) (or, if none exists, say so[#]). Of course.

Indeed, the objection just voiced focuses a bright spotlight on another serious, global problem with the JCOp: Since JCOp is so *intent/vociferous* regarding citation of *(even inapplicable)* precedent for *this single minor charge* (abusive language), why is JCOp so *silent/lackadaisical* regarding precedent (inapplicable or not) for Complainant's *four major charges* (Ann.6,8 *supra*) — especially when

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• Compare the "Brady Rule," *Brady v. Maryland,* 373 U.S. 83 (1963) (https://en.wikipedia.org/wiki/Brady_disclosure).

respect for *stare decisis* is a major concern of Complainant's Complaints (*cf.* Ann.*10*,*16*, *Tolan v. Cotton* (JCApx Exh.BB.c), etc.)??

Relatedly, it is to be observed here that a prominent aspect of JCOp's vigorous defense/dismissal of Complaints' *minor* complaint of judicial language is dependent upon *judicial* ***discretion*** ("judgment call") (JCApx ℘1005). Yet, when addressing Complaints' *major* complaints (Ann.*6*,*8* *supra*), JCOp off-handedly/ill-consideredly/peremptorily/dismissively sloughs-over the District Court's false "dissing"/exclusion of PSOF, where ***no discretion* is allowed,** yet the District judge *"discretionally" ignored PSOF anyway*. **Why that double-talk double-standard by JCOp?**

31 • The JCOp is **stupendously/outrageously lying here.** There plainly exists **more-than-enough** admissible "evidence," none of it "baseless," all in the form of officially filed court documents (nothing in this case has happened "behind closed doors"), properly presented to the Judicial Council, supporting Complainant's Complaints. (We need not point to specific Annotations herein to justify this statement, because that would amount to pointing to "anything-and-everything," *passim.*) Period.

32 • 28 USC §352(b)(1)(A)(iii), reproduced at JCApx ℘866, authorizes the Chief Judge (or designee) to dismiss a Judicial Misconduct Complaint if he/she finds it to be: "frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred, or containing allegations which are incapable of being established through investigation."

JCDR 11(c)(1)(D), reproduced at JCApx ℘892, states that the Chief Judge (or designee) must dismiss (in whole or in part) the Complaint, to the extent that he/she finds it to be: "based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred."

The "Catch-22" with both those clauses is the catch-phrase *"'finds' it to be."* In the instant case, the Chief Judge designee (Barron) has falsely knowingly/willfully lied, **falsifying the facts** of the case (by blindly swallowing, whole-hog, the falsified facts promulgated by the District and Appellate Judges) — which thereby falsely enabls him to *"'find' no true facts whatsoever* (only his own fantastical *'false-facts'*)." You can't "find" a fact you've previously decided is invisible to you!

That's evil incarnate. It literally is.

33 • The false pretension of "lack of evidence" is discussed at Ann.*31* *supra* (and everywhere else, *passim*).

34 • The JCOp's reference to "complainant's dissatisfaction" is a transparent sickening attempt to portray the issues involved as "mere spectral *sub-*

jective interpretations." Nothing could be further from the truth. The issues are crystalline-clear *objective* facts, not subject to any reasonable/rational misinterpretation — *but for* the JCOp's bad-faith treacherous perfidy. Literally. Period.

35 • The JCOp's thoughtless invocation of its formulaic mantra "merits-related (without-more)" (*cf.* Ann.36 *infra*), falsely begs the *foundational definitional threshold* question: ***What does "merits-related (without-more)" even mean?*** (This "merits-related (without-more)" issue was already anticipated, and addressed to the extent necessary, by Complainant's District Complaint at ℘5–6 = JCApx ℘12–14. But now, because of JCOp's falsity, we will analyze it even more deeply.)

No authoritative/definitive *definition* of "merits-related" was cited by JCOp, and none can be found (after exhaustive search) in the JCDA, JCDR, CodCon, or anywhere else in statute, common/case law, or rule. The reference cited by the JCOp (JCDR 3(h)(3)(A) at JCDR ℘3–4 = JCApx ℘880–881, and its commentary in CommR3 at JCDR ℘6–7 = JCApx ℘883–884), quoted extensively *(next),* falls short (no cabined definition of "merits-related" is given; certain *outer* boundaries are merely delineated) (emphasis added):

> **Cognizable misconduct** … does not include … an allegation that is **directly related to the merits ["(merely) merits-related (without more)"]** of a decision or procedural **[decision or] ruling [based on procedural rules].** An allegation that calls into question the *correctness [meritoriousness] of a judge's* ***[decision or] ruling [pursuant to applicable rules],*** including a failure to recuse, *without more,* is merits-related. If the **decision or ruling** is alleged to be the result of an *improper motive,* e.g., a bribe, *ex parte* contact, racial or ethnic bias, or **[simple/plain/clear] improper conduct in rendering a decision or ruling,** such as personally derogatory remarks irrelevant to the issues, the complaint is not cognizable to the extent that it attacks the *[mere correctness (as opposed to "judicial impropriety") of the judge's ruling on the] merits.*
>
> …
>
> Rule 3(h)(3)(A) tracks the Act, 28 U.S.C. § 352(b)(1)(A)(ii) [JCApx ℘866], in excluding from the definition of misconduct allegations "[d]irectly related to the *[correctness of a judge's ruling on the] merits* of a **decision** or procedural **ruling** [noting that in the instant case, the district judge made no decisions/rulings whatsoever *on*

procedural matters].” This exclusion preserves the independence of judges in the exercise of judicial power by ensuring that the **complaint procedure is not used to collaterally attack [*cf.* “collateral bar rule”] the substance of a judge’s ruling.** Any allegation that calls into question **the correctness of an official action [where, in the sense of the instant extended quotation *passim,* “action” means “decision or ruling”, as opposed to “just ‘any’ arbitrary type of ‘activity,’ in a colloquial sense — such as ‘mere administrative/ministerial/mechanical importation/transcription of verbiage {be it truly or falsely} from a pre-existing document {such as nonmovant’s PSOF} into a written opinion’”] of a judge** — without more — is merits-related. The phrase “**decision** or procedural **ruling**” is not limited to rulings issued in deciding Article III cases or controversies. Thus, a complaint challenging the correctness of a chief judge’s determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related — in other words, as challenging the substance of the judge’s administrative determination to dismiss the complaint — even though it does not concern the judge’s rulings in Article III litigation. Similarly, an allegation that a judge had incorrectly declined to approve a Criminal Justice Act voucher is merits-related under this standard.

Conversely, an allegation — however unsupported — that a judge **conspired with a prosecutor [or “conspired with herself”] to make a particular ruling** is *not merits-related, even though it “relates” to a ruling in a colloquial sense.* Such an allegation ***attacks the propriety of conspiring with the prosecutor [or with herself]*** and **goes beyond a challenge to the correctness — “the merits” — of the [decision or] ruling itself.** An allegation that a judge [decided or] ruled against the complainant because the complainant is a member of a particular racial or ethnic group, or because the judge dislikes the complainant personally, is also not merits-related. Such an allegation attacks the propriety of **arriving at [decisions or] rulings with an illicit or improper motive.** Similarly, an allegation that a judge used an inappropriate term to refer to a class of people is not merits-related even if the judge used it on

> the bench or in an opinion; the correctness of the judge's [decisions or] rulings is not at stake. **An allegation that a judge treated litigants, attorneys, or others in a demonstrably egregious and hostile manner [such as importing/transcribing *falsified verbiage* from nonmovant's PSOF, immediately after promising (by rule) to import/transcribe correctly] while on the bench is also not merits-related.**

This quotation/discussion demonstrates the lack of an adequate strict/precedential/binding/"official" definition of "merits-related (without-more)." Absent such authoritative/definitive definition, we must turn to the well-known/accepted academic analysis/research on "merits-relatedness" by Roscoe Pound — one of the greatest legal philosophers/scholars/theoreticians, and intellectual/spiritual/pragmatist father of the Federal Rules of Civil Procedure themselves. Quoting from JCApx ℘1017–1018 (emphasis added):

> A resolution **"on the merits"** occurs when a lawsuit is **decided [ruled]** according to **procedural rules** that (1) are designed, interpreted, **and implemented** to give the parties a **full opportunity to participate** in presenting the proofs and reasoned arguments on which a court can decide a case, and (2) do not systematically affect the outcomes of cases due to the **intended operation** of a principle other than the principle of allowing the parties a **full opportunity to participate.** …
>
> The **critical word in the definition is *"full"*** [and that critical word is enshrined in the CodCon at Canon 3(A)(4), JCApx ℘851, as noted in Complainant's District Complaint at ℘5 = JCApx ℘13]. Virtually any [legitimate] system of procedural rules — including ones designed to enhance efficiency, to foster settlements, or to advance the interests of certain classes of litigants — gives the parties *some* opportunity to participate in shaping the litigation. It is the guarantee of a *full opportunity* —unfettered by concerns for expense, delay, or advancing certain political interests — that defines the **"on the merits" principle.** What this definition *excludes* are decisions made in accordance with rules designed, interpreted, or *implemented to advance other purposes* — for instance, rules designed to enhance the efficiency of litigation, to foster settlements, or to favor business interests.

The **specialization,** of the general discussion of "on-the-merits" embodied in these two extensive quotations, **to the context of *Summary Judgment*** has already been hinted-at by the comments embedded in the quotations. Namely: "on-the-merits" refers to a **judge's ("conscious"/"expressed") <u>decisions/rulings</u>.** It does ***NOT*** refer to a judge's **merely-administrative/ministerial/mechanical (non-"conscious", non-"expressed", non-decisional, non-ruling) <u>activities incidental to the effectuation/implementation of said decisions/rulings</u> — and in particular, certainly never to a judge's "false/improper choice/conspiracy with herself to falsify (or "mis-copy/import/transcribe" facts) the facts at Summary Judgment by excluding nonmovant's PSOF."**

Thus, in the summary-judgment-context of the instant case: The judge's properly-motivated (and correct) writing in Op that "The Court 'view[s] the record in the light most favorable to the nonmovant, drawing reasonable inferences in his favor'" (JCApx ℘943) is <u>correctly termed "merits-related"</u> (an intentional/conscious/expressed decision/ruling by the judge). However, the judge's **improperly-motivated** (**silent/unconscious/unexpressed/evil intent;** "mere error" having been ruled out long ago in the proceedings of the instant case) immediately subsequent writing in Op that "The facts are as represented in IBM's statement of material facts [<u>nonmovant's DSOF</u>]" (JCApx ℘943) **<u>cannot be correctly termed "merits-related"</u>** (because it is a mere non-decisional/ruling administrative/ministerial/mechanical importation of verbiage, previously announced/intended to be from <u>nonmovant's most favorable/required source, the PSOF</u>). Period. **"Smoking gun",** JCApx ℘943 (also included at Ann.<u>*22*</u> *supra*):

the production of evidence that is 'significant[ly] probative.'" <u>Id.</u> (quoting <u>Anderson</u>, 477 U.S. at 249) (alteration in original). The Court "view[s] the record in the light most favorable to the nonmovant, drawing reasonable inferences in his favor." <u>Noonan v. Staples, Inc.</u>, 556 F.3d 20, 25 (1st Cir. 2009).

III. Factual Background

This "Factual Background" (at SJ) is a TOTALLY INSANE/ILLEGAL LIE! By SJ RULE/LAW (Rule #56 + LR #56.1 + "Standard of Review" just stated), the court *MUST* CREDIT PSOF (Dkt.#83), TRUMPING DSOF (Dkt.#74)!

The facts are as represented in IBM's statement of material facts, D. 74, and undisputed by Tuvell, D. 82, unless otherwise noted.

DSOF(Dkt.#74) & PSOF(Dkt.#83) are REQUIRED (by LR #56.1); RespDSOF (Plf.'s Response to DSOF, Dkt.#82) is OPTIONAL. RespDSOF pointed into PSOF 19 times, but the judge DIDN'T FOLLOW those pointers, not even once.

Tuvell is a white male, born in 1947, who claims to suffer from post-traumatic stress

<u>*36*</u> • *Cf.* Ann.<u>*35*</u> *supra.*

<u>*37*</u> • Repeat Ann.<u>*31*</u> *supra,* here.

38 • These provisions have already been discussed, at Ann.*32*,*36* *supra.*