

Judicial Twilight Zone

Hypothetical Reality Of Judicial Perjury

[I] • Hypothesis

The American Federal judiciary is widely regarded as populated by a powerful and “all-but-infallible” cabal of super-beings — in the sense that they collectively steward the country’s legal business professionally and “perfectly” (never making uncorrected mistakes, at least not in the “procedural” sense) — largely due to the judicial system’s “due process” protection, and rigorous practice of self-policing via a robust appellate overview program.

Does this view admit of any serious limitations or reservations? What is the “worst-case scenario”?

For the sake of argument let’s suppose, “hypothetically speaking,” that a District Judge sitting in judgment over a civil action (on any topic; the facts are not important), were to grant Defendant’s Motion for Summary Judgment (the final pre-trial step before trial), “paraphrasing” her Opinion as follows (“**Smoking Gun**”):

At Summary Judgment stage, the Court is strictly required, by law and by judicial rule, to blindly credit (“believe”) the Plaintiff/non-movant’s “story” as “true”: to view all purported/alleged “facts” (“events,” “transactions,” “happenings”) in the light most favorable to the Plaintiff, resolving all disagreements and inferences therefrom to Plaintiff’s benefit. But arbitrarily, in this case, we completely ignore Plaintiff’s story, and inexplicably accept Defendant/movant’s biased story as “true.” On the basis of that known-falsification, we find no laws were broken, so the case is dismissed.

Of course such a “smoking gun” would “never, ever” happen in the real world, because it’s so wildly self-contradictory and seemingly “illegal” — it would amount to “*judicial falsification of the facts*,” “fraud upon the court” (by a judge), etc. For, as correctly stated in the Opinion’s first sentence, courts are indeed absolutely bound (by law and rule) at Summary Judgment to automatically *credit* the non-movant’s PSOF (Plaintiff’s Statement of Facts) — *never* elevating movant’s DSOF (Defendant’s Statement of Facts) over PSOF: the PSOF *always* trumps the DSOF. That’s because it’s the jury’s job to “find the facts,” not the judge’s; the judge’s job is instead to make “conclusions of law” based upon the facts found by the jury. And judges would “never, ever” abridge that sacred duty.

Or would they? What’s to stop judges from “going rogue”?

In this essay, we hypothesize that the paraphrased Opinion *supra* is written by the District Judge (perhaps on her “worst day,” or perhaps she was bribed by the Defendant, who knows?), and we ask the question: “What recourse would the Plaintiff then have?”

[III] • Appeal

Well, the “natural” reaction is to take an appeal, of course. An appeal, to a panel of three judges, is guaranteed “as-of-right” in the Federal Courts. The Appellate Court’s Standard of Review at Summary Judgment is (again by law and rule) *de novo* (also known as “plenary”) — that is, the panel looks at the whole case afresh, owing no deference to the District Judge’s Opinion. And, the panel must also adhere to the same Summary Judgment tenet as the District Court, of “drawing all disputes of fact in favor of nonmovant, never the movant.” Thus, even if such an Opinion were somehow “mistakenly” rendered by the District Judge, the collaborative investigation of three “wise” judges “must obviously” detect the error, and correct it.

But we’re exploring worst-case scenarios in this essay. So let’s hypothesize that the appellate panel affirms the District Court’s dismissal, for the “same reasons” as the District Judge (that is, accepting same falsified facts). Now what?

[III] • Higher Appeals; Constitutional Rights

As opposed to the initial “as-of-right” appeal (§[II] *supra*), further appeals are “discretionary” — that is, they must first survive a preliminary “petition for appeal.” Our Plaintiff attempts all available paths: (i) Petition for Rehearing by the same panel (which is specifically intended to correct the panel’s errors, not to review the case itself again); (ii) Petition for *En Banc* Review before an “entire bench” of appellate judges (not just the panel of three); (iii) Petition for Writ of Certiorari to the Supreme Court (in its “supervisory” capacity, [Sup.Ct.R. 10\(a\)](#):¹ “a United States court of appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court’s supervisory power”); (iv) Petition for Rehearing at the Supreme Court (which is designed to raise new issues not available when the original Writ Petition itself was filed). [Due Process](#);² [Equal Protection](#).³

Continuing with our theme of worst-case scenarios, let’s assume that our Plaintiff attempts all available appeal paths, and is rejected at every step — all without any explanation whatsoever. What then?

[IV] • Judicial Misconduct

Independently from the primary judicial appellate process (§[II-III] *supra*), there exists also a secondary appellate-like process within the judicial system. This is the process of judicial discipline via Complaints of Judicial Misconduct (and Disability). This (rather shadowy) path proceeds via Judicial Councils and Conferences, [28 USC I 15](#),⁴ as governed by: (i) the JCDA (Judicial Conduct & Disability Act, [28 USC I 16](#));⁵ and (ii) the JCDR ([Rules for Judicial-Conduct and Judicial-Disability Proceedings](#)),⁶ and their [local analogs](#).⁷

Again, our Plaintiff files his complaints to this process, which at first glance

seems very promising. But as with the mainline appellate process (§[II-III] *supra*), this disciplinary process is self-administered by presumptively-biased “brethren” judges, hence is *a priori* non-trustworthy ([28 USC §144](#),⁸ [28 USC §455](#)⁹). And, the process takes “forever” to run its course. So unsurprisingly, our Plaintiff seeks out alternative parallel paths to pursue while the Judicial Misconduct proceedings silently run their course. Where can our Plaintiff turn next?

[V] • Civil Litigation — NOT (Judicial Immunity)

Next after appellate(-like) processes (§[II-IV] *supra*), the “natural” way to resolve grievances in American society is via new litigation. Sue the District Judge! But that’s easier said than done.

The canonical avenue for seeking redress against government officials — [42 USC §1983](#)¹⁰ (§1 of Civil Rights Act of 1871), Civil Action for Deprivation of Rights — turns out to be a dead-end. While this statute is a well-known vehicle taken by victims of governmental abuse (especially police brutality), it was foreclosed to our Plaintiff by the Supreme Court, which specifically granted absolute immunity to judges against any such “harassment” by their “victims”: “in any action brought against a *judicial officer* for an act or omission taken in such officer’s *judicial capacity*, neither *damages* [[Pierson v. Ray](#)],¹¹ 386 U.S. ¶547-566 (1967), ¶553-555] nor *injunctive relief* [later incorporated in §1983 by Congressional statute, in 1996] shall be granted.” Accord, [Pulliam v. Allen](#), 466 U.S. 622 (1984).¹²

What’s left now?

[VI] • Criminal Litigation

As just seen, §[V] *supra*, *civil* action via §1983 is stymied. But to our Plaintiff, it feels as if his rights have actually been violated *criminally*, not just civilly. Is an action for *criminal* public corruption a possibility? As it turns out, this inspirational insight yields remarkably fertile ground yet to be plowed (as-yet-under-explored by case law when applied to judicial misconduct). It is this insight which comprises the core contribution of this essay.

But first, there’s a threshold barrier that must be surmounted. Namely, given that §1983 grants judicial *civil* immunity, the question arises whether any statute exists granting judicial *criminal* immunity? Fortunately, that answer is “No.” *Nobody*, in government or out, enjoys *a priori* immunity against criminal charges (not even the President). See for example: (i) [Nixon v. Fitzgerald](#),¹³ 457 U.S. ¶731-799 (1982), ¶766: “Even when performing a judicial function, judges and justices are subject to criminal liability;” (ii) [Mireles v. Waco](#),¹⁴ 502 U.S. ¶9-15 (1991), ¶10f1: “The Court has recognized that a judge is not absolutely immune from criminal liability.”

The underbrush now being cleared for exploration of criminal action, we discover that the following laws *in toto* support more-than-viable causes-of-action in

the worst-case scenario we posit.[†]

[VI.i] • 18 USC §1519¹⁵ — Obstruction Of Justice: Falsification Of Records; Concealment; Cover-Up

Whoever knowingly conceals, covers up, falsifies, or makes a false entry in any document with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States, or in relation to or contemplation of any such matter, shall be fined under this title, imprisoned not more than 20 years, or both.

Originally, §1519 was passed by Congress into law as part of the Sarbanes-Oxley Act (“SOX”), enacted in 2002, and incorporated into [18 USC I 73](#),¹⁶ “Obstruction of Justice.” While SOX overall is generally thought-of in terms of corporate wrongdoing (fraud, corruption), §1519 itself is intended to have a broader scope, and has no such restriction.

In our Plaintiff’s case, the judges have obviously “falsified/concealed/covered-up the record” (various terms are used widely, more-or-less synonymously, with “concealment,” such as [cover-up](#),¹⁷ [whitewash](#),¹⁸ and [misprision](#)¹⁹). Namely: (i) the District Judge falsified the District Court’s Opinion (by falsely allowing DSOF to trump PSOF, contrary to law and rule); and then (ii) all subsequent judges blindly swallowed/concealed/covered-up that falsified Opinion, despite knowing full-well its falsity (as Plaintiff pointed out expressly to them!). The District Judge is directly guilty of falsification (namely, she wrote her false Opinion), by virtue of her original jurisdiction; but the panel judges are also directly guilty, by virtue of their own independent *de novo* review. The panel and *en banc* judges are obviously indirectly guilty of falsification via concealment/cover-up.

However, for three of §1519’s provisions, it is not immediately obvious whether our Plaintiff’s case satisfies them, and so these require further analysis. These are (all considered in the special context of §1519):

- “(Federal) investigation” — Does this mean only “FBI-style” investigations, or does it also apply to “court proceedings”?
- “Jurisdiction” — Does this encompass “judicial jurisdiction” in the sense of the judicial system?
- “Department/agency” — These terms are rather context-sensitive, not hard-coded universally-well-defined terms-of-art/law. Are the “courts” included within the ambit of “departments/agencies”?

Fortunately for our Plaintiff, these questions were all definitively resolved in Plaintiff’s favor by the recent controversial (“a-fish-is-not-a-tangible-object”) case of [Yates v. U.S.](#),²⁰ 574 U.S. ___, №13-7451 (2015), Ginsburg’s decision ¶18, ¶13f5,

[†] • For the sake of simplicity and clarity in this essay, the “quotations” are (faithful) *paraphrases*, supplied with references (internet hyperlinks, “live” in PDF, and in endnotes) to the *literal* text.

Kagan's dissent ¶10:

Section 1519 covers conduct intended to impede any federal investigation or proceeding. It is meant to do away with the distinctions between court proceedings, investigations, and other government inquiries, regardless of their title. The intent of the provision is simple: people should not be destroying, altering, or falsifying documents to obstruct any government function. This includes any proceeding before a judge or court of the United States, and prohibits tampering with evidence in federal litigation between private parties.

[VI.ii] • 18 USC §4²¹ — Misprision Of Felony

Whoever, having knowledge of the actual commission of a felony, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

See generally: (i) Christopher Mark Curenton, *The Past, Present, and Future of 18 U.S.C. §4: An Exploration of the Federal Misprision Statute*,²² Alabama Law Review, vol. 55, Issue 1, ¶183-192 (2003-2004); (ii) *U.S. v. Osvaldo Caraballo-rodriguez*,²³ 480 F.3d ¶62-88 (1st Cir. 2007).

A misprision of felony charge is especially appropriate against a person placed in a special position of trust/responsibility (such as a judge), and may be referred to as “misfeasance/malfeasance in public office.”

In the U.S. today, misprision of felony is uniformly construed to require that the accused take some “positive/active/affirmative step” (beyond mere “negative/passive silence”) to conceal the felony. In our Plaintiff’s case, that’s true of all reviewing authorities (appellate panel and higher, individually and/or collectively), all of whom were fully briefed about the District Judge’s falsification of facts felony (18 USC §1519, §[VI.i] *supra*), but deliberately lied by producing (false) documentation (official court filings), thereby positively concealing/refusing-to-recognize/refusing-to-“make-known” the felony.

Note that **judicial ethics** even **requires** judges to report any judicial misconduct (much less criminal activity) (*Code of Conduct for United States Judges*,²⁴ Canon 3(B)(5)):

A judge should take appropriate action upon learning of reliable evidence indicating the likelihood that a judge’s conduct contravened this Code or a lawyer violated applicable rules of professional conduct.

**[VI.iii] • [18 USC §1503](#)²⁵, [§1505](#)²⁶ — “Omnibus Clauses”:²⁷
Obstruction Of Justice Or Proceedings**

Whoever corruptly influences (or endeavors to influence), obstructs, or impedes the due and proper administration of justice/ law under which any pending proceeding before any court, department or agency of the United States, shall be fined under this title, imprisoned not more than 5 (or 10) years or, or both.

Here, “corruptly” is defined (at least for purposes of §1505) by [18 USC §1515\(b\)](#):²⁸ “Acting with an improper purpose, including making a false or misleading statement, concealing or altering information.”

For “department or agency,” see the discussion of §1519 (§[VI.i] *supra*).

[VI.iv] • [18 USC §242](#)²⁹ — Deprivation Of Rights Under Color Of Law

Whoever, under color of any law or custom, willfully subjects any person to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, shall be fined under this title or imprisoned not more than one year, or both.

This law is the criminal counterpart to the civil §1983 (§[V] *supra*).

“Color of law” refers to operations taken under the *superficial appearance* of legal power/authority (such as official acts committed by a judge “from the bench” within their jurisdiction), but which may *in fact* be in violation of the law.

[VI.v] • [28 USC §453](#)³⁰ — Judicial Oath Of Office

I, <name>, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to everyone, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me under the Constitution and laws of the United States. So help me God.

Anent, we recall two Constitutional provisions:

We the People of the United States, in Order to ... establish Justice [which includes Truth] ... — [U.S. Const. Preamble](#).³¹

All executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation [i.e., Promise], to support this Constitution [esp. law ([Art. III](#))], which incorporates the doctrine of [stare decisis](#)³²] ... — [U.S. Cons](#)³³*t. Art VI*.

[VI.vi] • 5 USC §3331³⁴ — Civil Service Oath Of Office

I, <name>, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States; that I will bear true faith and allegiance to the same; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

Judges must take *both* the judicial oath (§453, §[VI.v] *supra*) and this civil service oath (§3331, §[VI.vi] *supra*).

[VI.vii] • 18 USC §1621-1623³⁵ — Perjury (Lying Under Oath); Subornation; False Declarations Before Court

Whoever, having taken an oath that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury and shall be fined under this title or imprisoned not more than five years, or both.

Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined under this title or imprisoned not more than five years, or both.

Whoever under oath in any proceeding before or ancillary to any court of the United States knowingly makes any false material declaration or makes or uses any other information, including any paper, document or record, knowing the same to contain any false material declaration, shall be fined under this title or imprisoned not more than five years, or both.

Judges/justices are, of course, always subject to both of their oaths, §453 and §3331 (§[VI.v-VI.vi] *supra*), when on the bench (acting in a judicial capacity). By “oath” is meant a personal promise to deity and government/Constitution, as a sacred sign of solemn veracity, developed over time by various cultures as a symbolic concept in legal practice — namely, willful violation of oath (lying about the duties one has promised-to under oath) subjects the false promisor to the crime of perjury.

[VI.viii] • 18 USC §1001³⁶ — False Statements Or Entries (Oath/Swearing Not Required)

Whoever, in any matter within the jurisdiction of the judicial branch of the Government of the United States, knowingly and willfully — (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any

false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry — shall be fined under this title, imprisoned not more than 5 years.

[VI.ix] • 5 USC §7311(1-2);³⁷ 5 USC §3333;³⁸ 18 USC §1918(1-2)³⁹ — Loyalty; Affidavit Of Loyalty; Disloyalty

An individual may not accept or hold a position in the Government of the United States if he — (1) advocates the overthrow of our constitutional form of government; (2) is a member of an organization that he knows advocates the overthrow of our constitutional form of government.

An individual who accepts office or employment in the Government of the United States shall execute an affidavit that his acceptance and holding of the office or employment will not violate section 7311 of this title.

Whoever violates the provision of section 7311 of title 5, if he — (1) advocates the overthrow of our constitutional form of government; or (2) is a member of an organization that he knows advocates the overthrow of our constitutional form of government — shall be fined under this title or imprisoned not more than one year and a day, or both.

The “overthrow of our constitutional form of government” involved in our Plaintiff’s case refers to “dissing” (disregard/dismiss/disagree/disrespect/dissemble) the Judicial Branch as an institution (corruption of one-third of our constitutional form of government, entrusted by Const. Art. III⁴⁰ with the administration/interpretation of law in the United States).

The “organization” involved in our Plaintiff’s case refers to the collection of judges who are like-minded with the judges involved in the case. (“Like-mindedness” is also the hallmark of conspiracy, §[VI.x] *infra*.)

[VI.x] • 18 USC §371⁴¹ — Conspiracy

If two or more persons conspire to commit any offense against the United States or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

The appellate panel and *en banc* court clearly satisfy the “two or more” criterion. But so does the district court, according to the next paragraph.

Conspiracy (successful or not) does not require written/spoken/express/formal “agreement.” Nor does it require all-to-all consent. Nor does it even require co-conspirators’ knowledge of one-another’s identity or quantity. Mere “like-minded-

ness” suffices (*U.S. v. Monroe*,⁴² 73 F.3d ¶129-133, 7th Cir. (1995), ¶132): “All that is required is that a participant know of the others’ existence and their activities to further the conspiracy.” Neither repentance nor restitution limits liability.

[VI.xi] • 18 USC §1341⁴³(1346⁴⁴) — Honest-Services Fraud (Perhaps/Probably NOT)

Whoever, having devised or intending to devise any scheme or artifice to defraud by means of false or fraudulent pretenses, representations, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

Here, the term “scheme or artifice to defraud” includes a scheme or artifice to deprive another of the intangible right of honest services.

While §1341(1346) has been called federal prosecutors’ “weapon of mass discretion” in the war against both white-collar and public-sector corruption (Nicholas J. Wagoner, *Honest-Services Fraud: The Supreme Court Defuses the Government’s Weapon of Mass Discretion in Skilling v. United States*,⁴⁵ South Texas Law Review, Vol. 51, №4, ¶1087-1142), recent narrow interpretation has tended to limit its scope, on the basis of a “void-for-vagueness” due-process doctrine (*Skilling v. U.S.*,⁴⁶ 561 U.S. ¶358-464 (2010), ¶404). For that reason (only), §1341(1346) may not be applicable to our Plaintiff’s case.

[VI.xii] • 18 USC §2381,⁴⁷2382⁴⁸ — Treason; Misprision

Whoever, owing allegiance to the United States, adheres to their enemies (or conceals knowledge of others doing so), is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined under this title but not less than \$10,000; and shall be incapable of holding any office under the United States.

Federal (i) judges/justices (trusted agents owing allegiance to the United States), engaged in (ii) widespread (iii) conspiracy to (iv) disloyally (v) betray the Constitution, by (vi) obstructing justice, (vii) violating their oaths of office, (viii) committing perjury (falsifying documents), and (ix) depriving innocent citizens of their rights, (x) within the scope of their official duties — all proven by our Plaintiff beyond shadow of doubt — are certainly not “friends” of the United States. They are “enemies” to the very concept of America.

But, is a charge of *treason* appropriate, or is it hyperbolic (given that we’re not talking here about national security, spying, espionage, sedition, etc.)? Since the Constitution went into effect, fewer than forty federal cases of treason have been prosecuted. The earliest example (the case of Benedict Arnold’s collaboration with the British occurred during the Revolutionary War, before the Constitution was written) involved the *Whiskey Rebellion*⁴⁹ (resisting taxation on distilled spirits); some were convicted, all were pardoned. The most famous example in-

volved [Arron Burr](#),⁵⁰ charged with proposing the idea of stealing land in the Louisiana Purchase; he was acquitted.

Is a widespread conspiracy of false/corrupt judges on a par with these and other historical examples? *Res Ipsa Loquitur* (“the thing speaks for itself”).⁵¹

[VI.xiii] • [18 USC §3282\(a\)](#)⁵² — Statute Of Limitations

No person shall be prosecuted, tried, or punished unless the indictment is found or the information is instituted within five years next after such offense shall have been committed.

[VI.xiv] • No (Criminal) Immunity; Strict (Criminal) Liability (Owen/Thayer Principle)

As we know (§[V,VI] *supra*), *nobody* enjoys (“as-of-right”)-immunity from *criminal* liability. This principle is often encountered as a “strict (criminal) liability” meme, attributed to [Owen v. City of Independence](#),⁵³ 445 U.S. ¶622-683 (1980) (in the context of *municipal* government), and articulated “something like” this (*paraphrase*, based largely on *Owen* ¶641, and cited therein as “the Thayer principle”):

Government cannot disavow (criminal) liability for injuries it has begotten, whether based on bad faith or good. Government actors (individual or collective) enjoy no immunity from liability, when violating (criminal) laws. For they are deemed to know the law (cannot pretend “ignorance of law”).

“Strict/absolute (criminal) liability” here means no (criminal) immunity, regardless of intent, *scienter*, *mens rea*, “moral blameworthiness,” bad/good faith, innocent error, etc. *Owen* involved (civil) liability under §1983 (§[V] *supra*), but at a time (1980) prior to that statute’s incorporation (in 1996) of Congress’s anti-Owen/Thayer special judicial (civil) immunity clause.

[VI.xv] • [FRCP 60\(b\)\(6\)](#)⁵⁴ — Relief From Judgment Or Order

So what? Even if wayward judges could to be found officially guilty of any of the preceding criminal acts, how would that redound to the Plaintiff’s benefit, given that the Plaintiff’s original case had been “deep-sixed” long before (including rejection by the Supreme Court), hence was presumptively beyond resurrection, in the interests of “judicial finality”?

Answer: Life may be good anyway. “Finality,” it turns out, is never truly final. As contemplated and accommodated by the Federal Rules of Civil Procedure, FRCP 60(b)(6) (“Grounds for Relief from a Final Judgment, Order, or Proceeding”):

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for any reason that justifies relief.

“We have consistently ruled that the interest in finality of litigation must yield where the interests of justice would make unfair the strict application of our rules” — *United States v. Ohio Power Co.*,⁵⁵ 353 U.S. 98-110 (1957), ¶99. (See also Aaron-Andrew P. Bruhl, *When Is Finality ... Final? Rehearing and Resurrection in the Supreme Court*,⁵⁶ *The Journal of Appellate Practice and Process*, Vol. 12, No. 1 (Spring 2011).)

[VII] • Catch-22: Executive & Legislative Stonewall

But wait! Amazingly enough, we’re not done even yet! In any “just world,” thanks to the criminal analysis §[VI.i-VI.xv] *supra*, the judges would be tried and convicted, and that would be the end of our story. But given the exigencies of the “real world,” there is no justice.

For it turns out that our Plaintiff can’t even file criminal charges against the judges!

He *should* be able to, of course. But every responsible authority he turns to (FBI, Department of Justice, U.S. Representatives, Senators, even the President) throws up an impenetrable stonewall, the instant he mentions “criminal charges against judges.” For, not only do they refuse to conduct an investigation (even a sham one), they actually refuse to accept receipt of his criminal complaints (never acknowledging written submissions, and even refusing to “hear” him in phone calls or face-to-face discussions)!

In other words, not only the Judicial Branch, but also the Executive and Legislative Branches too, are “in on” the conspiracy (§[VI.x] *supra*). So you can forget about separation-of-powers checks-and-balances. You really can’t fight city hall.

[VIII] • Pro Se

Oh, yes, there’s one more little problem our Plaintiff encounters. As soon as the District Judge files her (false) Opinion, the Plaintiff’s lawyers start balking: they refuse to expressly tell the judges they made mistakes (namely, “PSOF-Exclusion,” falsely elevating DSOF over PSOF). Their reason? “Fear of speaking truth to power” (retaliation/retribution by the judges).

That means the Plaintiff (who has no legal training) is forced to proceed “*pro se*,” that is, he must self-represent himself in further court proceedings. A distinct disadvantage, since the Courts now know they can “railroad” him (because of the technical difficulty of law, the only people who can understand the case are lawyers and judges, all of whom are already “in on” the conspiracy)!

[IX] • Conclusions

Yes — It’s *theoretically* possible to bring corrupt judges to bay, under our *ideal*

form of government.

No — It's not *practically* possible, under our current *actual* government in power.

Unless ... The Plaintiff can tap into some new (non-governmental) paradigm. As we've seen recently the world over, the only remaining possibility is "mass insurrection" via "[Brandeis sunlight](#)"^{‡,57} (publicity), focusing widespread attention on the situation, hoping to "shame" the government into upholding the Constitution and its ideals. Internet/social media anyone?

[X] • Reality

This essay is not restricted to any individual case — it applies generally, to American Justice Writ Large. Nevertheless as the reader will have conjectured, "hypothetical" paraphrased cases as envisioned here (§[I], *supra*) do in fact exist in "reality." *Tuvell v. IBM* (D.Mass. №13-11292; 1st Cir. №15-1914; Sup.Ct. №16-343; 1st Cir. Judicial Council №01-16-90036,01-16-90041); full details in two ZIP archive file, available for free anonymous download at <http://bit.ly/2kDSEUn> and <http://bit.ly/2mHdbWx>).

SMOKING GUN:

‡ • "The Duty of Publicity': I have talked about the wickedness of people shielding wrongdoers and passing them off (or allowing them to pass themselves off) as honest men. If the broad light of day could be let in upon men's actions, it would purify them as the sun disinfects. You see my idea; I leave you to straighten out and complete that sentence."

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WALTER TUVELL,
Plaintiff,
v.
INTERNATIONAL BUSINESS MACHINES,
INC.,
Defendant.

This is at Summary Judgment ("SJ") time. SJ is governed by FRCP (Fed. Rules of Civ. Procedure) # 56, augmented by FRCP LR (Local Rule) # 56.1

Civil Action No. 13-11292-DJC

MEMORANDUM AND ORDER A.k.a. "Opinion"

CASPER, J. July 6, 2015

I. Introduction

Plaintiff Walter Tuvell ("Tuvell") filed this lawsuit against Defendant International Business Machines, Inc. ("IBM") alleging that he was unlawfully terminated as a result of discrimination and retaliation in violation of the Americans with Disabilities Act (the "ADA"), 42 U.S.C. §§ 12101 *et seq.*, and Mass. Gen. L. c. 151B, §§ 4(1), 4(16), 4(4) and 4(5). D. 10.

IBM has moved for summary judgment. D. 73. For the reasons stated below, the Court ALLOWS the motion.

IBM is "movant" (for this SJ motion, Dkt.# 73). Tuvell is "nonmovant".

The REQUIRED DSOF (Def./movant's Statement of Facts, Dkt.# 74) is designed to claim there are "no disputed facts". The REQUIRED PSOF (Pl./nonmovant's Statement of Facts, Dkt.# 83) is designed to claim there are "lots of disputed facts". [That's how the SJ legal game is played.]

II. Standard of Review

This is CORRECT Standard of Review (at SJ), REQUIRED BY RULE/LAW

The Court grants summary judgment where there is no genuine dispute as to any material fact and the undisputed facts demonstrate that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). "A fact is material if it carries with it the potential to affect the outcome of the suit under applicable law." *Santiago-Ramos v. Centennial P.R. Wireless*

Corp., 217 F.3d 46, 52 (1st Cir. 2000) (quoting *Sánchez v. Alvarado*, 101 F.3d 223, 227 (1st Cir. 1996)). The movant bears the burden of demonstrating the absence of a genuine issue of material fact. *Carmona v. Toledo*, 215 F.3d 124, 132 (1st Cir. 2000); see *Celotex v. Catrett*, 477 U.S. 317, 323 (1986). If the movant meets its burden, the non-moving party may not rest on the allegations or denials in her pleadings, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986), but "must, with respect to each issue on which she would bear the burden of proof at trial, demonstrate that a trier of fact could reasonably resolve that issue in her favor." *Borges ex rel. S.M.B.W. v. Serrano-Isern*, 605 F.3d 1, 5 (1st Cir. 2010). "As a general rule, that requires 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.

Tuvell is a white male, born in 1947, who claims to suffer from post-traumatic stress disorder ("PTSD")¹ stemming from an incident in 1997 when he was allegedly offered a job with the Microsoft Corporation ("Microsoft"), which was subsequently rescinded. D. 82 ¶¶ 1, 2.

On November 3, 2010, Tuvell was hired by Netezza Corporation ("Netezza") in the Performance Architecture Group. *Id.* ¶ 4. In this position, Tuvell reported directly to Daniel Feldman and reported "on a dotted line" to Fritz Knabe. *Id.* IBM subsequently acquired

¹ For the purposes of this motion, IBM does not challenge Tuvell's claimed disability. D. 75 at 4 n.3.

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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.

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- 1 https://www.law.cornell.edu/rules/supct/rule_10.
- 2 https://www.law.cornell.edu/wex/due_process.
- 3 https://www.law.cornell.edu/wex/equal_protection.
- 4 <https://www.law.cornell.edu/uscode/text/28/part-I/chapter-15>.
- 5 <https://www.law.cornell.edu/uscode/text/28/part-I/chapter-16>.
- 6 <http://www.uscourts.gov/judges-judgeships/judicial-conduct-disability>.
- 7 <http://www.uscourts.gov/judges-judgeships/judicial-conduct-disability>.
- 8 <https://www.law.cornell.edu/uscode/text/28/144>.
- 9 <https://www.law.cornell.edu/uscode/text/28/455>.
- 10 <https://www.law.cornell.edu/uscode/text/42/1983>.
- 11 <https://supreme.justia.com/cases/federal/us/386/547/case.html>.
- 12 <https://supreme.justia.com/cases/federal/us/466/522/>. “Common law principles of judicial immunity were incorporated into the United States judicial system, and should not be abrogated absent clear legislative intent to do so. ... The history of judicial immunity in the United States is fully consistent with the common law experience.” — *Pulliam v. Allen*, ¶522.
- 13 <http://caselaw.findlaw.com/us-supreme-court/457/731.html>.
- 14 <http://caselaw.findlaw.com/us-supreme-court/502/9.html>.
- 15 <https://www.law.cornell.edu/uscode/text/18/1519>.
- 16 <https://www.law.cornell.edu/uscode/text/18/part-I/chapter-73>.
- 17 <https://en.wikipedia.org/wiki/Cover-up>.
- 18 [https://en.wikipedia.org/wiki/Whitewashing_\(censorship\)](https://en.wikipedia.org/wiki/Whitewashing_(censorship)).
- 19 <https://en.wikipedia.org/wiki/Misprision>.
- 20 https://www.supremecourt.gov/opinions/14pdf/13-7451_m64o.pdf.
- 21 <https://www.law.cornell.edu/uscode/text/18/4>.
- 22 <http://www.law.ua.edu/pubs/lrarticles/Volume%2055/Issue%201/Curenton.pdf>.
- 23 <http://openjurist.org/480/f3d/62/united-states-v-caraballo-rodriquez>.
- 24 <http://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges>.
- 25 <https://www.law.cornell.edu/uscode/text/18/1503>.
- 26 <https://www.law.cornell.edu/uscode/text/18/1505>.
- 27 The nearly-identical 18 USC §1503 and §1505 are referred-to as catch-all “omnibus clauses.” See: <https://www.justice.gov/usam/criminal-resource-manual-1724-protection-government-processes-omnibus-clause-18-usc-1503>; <https://www.justice.gov/usam/criminal-resource-manual-1727-protection-government-processes-omnibus-clause-18-usc-1505>;

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- <https://fas.org/sgp/crs/misc/RL34303.pdf>.
- 28 <https://www.law.cornell.edu/uscode/text/18/1515>.
- 29 <https://www.law.cornell.edu/uscode/text/18/242>.
- 30 <https://www.law.cornell.edu/uscode/text/28/453>.
- 31 <https://www.law.cornell.edu/constitution/preamble>.
- 32 https://www.law.cornell.edu/anncon/html/art3frag32_user.html.
- 33 <https://www.law.cornell.edu/constitution/articlevi>.
- 34 <https://www.law.cornell.edu/uscode/text/28/3331>.
- 35 <https://www.law.cornell.edu/uscode/text/18/part-1/chapter-79>.
- 36 <https://www.law.cornell.edu/uscode/text/18/1001>.
- 37 <https://www.law.cornell.edu/uscode/text/5/7311>.
- 38 <https://www.law.cornell.edu/uscode/text/5/3333>.
- 39 <https://www.law.cornell.edu/uscode/text/18/1918>.
- 40 <https://www.law.cornell.edu/constitution/articleiii>.
- 41 <https://www.law.cornell.edu/uscode/text/18/371>.
- 42 <https://casetext.com/case/us-v-monroe-13>.
- 43 <https://www.law.cornell.edu/uscode/text/18/1341>.
- 44 <https://www.law.cornell.edu/uscode/text/18/1346>.
- 45 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1734551.
- 46 <https://www.supremecourt.gov/opinions/09pdf/08-1394.pdf>.
- 47 <https://www.law.cornell.edu/uscode/text/18/2381>.
- 48 <https://www.law.cornell.edu/uscode/text/18/2382>.
- 49 https://en.wikipedia.org/wiki/Whiskey_Rebellion.
- 50 https://en.wikipedia.org/wiki/Aaron_Burr.
- 51 “Any judge who does not comply with his oath to the Constitution of the United States wars against that Constitution and engages in acts in violation of the supreme law of the land. The judge is engaged in acts of treason.” — *Paraphrase, Cooper v. Aaron*, 358 U.S. 1, 78 S. Ct. 1401 (1958).
- 52 <https://www.law.cornell.edu/uscode/text/18/3282>.
- 53 <https://supreme.justia.com/cases/federal/us/445/622/case.html>.
- 54 https://www.law.cornell.edu/rules/frcp/rule_60.
- 55 <https://supreme.justia.com/cases/federal/us/353/98/case.html>.
- 56 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2026281.
- 57 *Letters of Louis D. Brandeis, Vol III, 1913–1915: Progressive and Zionist*, David W. Levy and Melvin I. Urofsky, ed. (1971), ¶100, letter to his fiance Alice Goldmark, Feb. 26, 1891 (https://books.google.com/books?id=Q7bviBd4w18C&pg=PA100&dq=brandeis+letter+feb+26+1891&hl=en&sa=X&ved=0ahUKEwjj_bCOMqPRAhXBSyYKHUxjC90Q6AEIHDA#v=onepage&q=brandeis%20letter%20feb%2026%201891&f=false). Twenty-two years later, Brandeis elaborated upon this idea in *Harper's Weekly*, Dec. 20, 1913, ¶10–13, *Other People's Money, Chapter V: What Publicity Can Do* (http://3197d6d14b5f19f2f440-5e13d29c4c016cf96cbbfd197c579b45.r81.cf1.rackcdn.com/collection/papers/1910/1913_12_20_What_Publicity_Ca.pdf), beginning with the more famous rendition: “Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.”