United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

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CONFIDENTIAL

TO: All Members of the Eighth Circuit Judicial Council

FROM: Michael E. Gans

DATE: September 11, 2017

RE: JCP No. 08-17-90048 Complaint of Richard Fleming
8th Circuit Case No. 17-9548

On April 25, 2017, Richard Fleming filed a judicial complaint against Hon. Richard G Kopf. On August 31, 2017, Hon. Lavenski R. Smith entered an order dismissing the complaint. On August 31, 2017, Richard Fleming filed a petition for review of Judge Smith's decision. Copies of each of these documents are enclosed for information purposes.

Pursuant to the new Rules Governing Complaints of Judicial Misconduct and Disability, a ballot is being sent only to the members of the initial review committee (see below). The review committee is requested to return the ballot to me within 20 days of the date of this memo. I will advise you of the outcome of the vote. You need not copy other Council members.

Please call me if you have any questions or need other information.

/dmh

Enclosures

cc: Hon. Lavenski R. Smith
Hon. Laurie Smith Camp
Hon. Richard G Kopf
Ms. Millie Adams

Review Committee: Hon. Roger L. Wollman, Chair
Hon. Steven M. Colloton
Hon. Catherine D. Perry
Hon. Susan O. Hickey
Hon. Robert F. Rossiter, Jr.

JCP 08-17-90048

AO 310 (Rev. 03/16)

Judicial Council of the 8th Circuit

COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY

To begin the complaint process, complete this form and prepare the brief statement of facts described in item 4 (below). The RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, adopted by the Judicial Conference of the United States, contain information on what to include in a complaint (Rule 6), where to file a complaint (Rule 7), and other important matters. The Rules are available in federal court clerks' offices, on individual federal courts' websites, and on www.uscourts.gov.

Your complaint (this form and the statement of facts) should be typewritten and must be legible. For the number of copies to file, consult the local rules or clerk's office of the court in which your complaint is required to be filed. Enclose each copy of the complaint in an envelope marked "COMPLAINT OF MISCONDUCT" or "COMPLAINT OF DISABILITY" and submit it to the appropriate clerk of court. **Do not put the name of any judge on the envelope.**

1. Name of Complainant: Richard Max Fleming, MD, JD

Contact Address: 4055 Lankershim Blvd.
#422
Studio City, CA 91604

Daytime telephone: (818) 821-9576

2. Name(s) of Judge(s): Richard G. Kopf

Court: Nebraska Federal Court - Lincoln

3. Does this complaint concern the behavior of the judge(s) in a particular lawsuit or lawsuits?

☑ Yes ☐ No

If "yes," give the following information about each lawsuit:

Court: Nebraska Federal Court

Case Number: 4:07cr03005, more than one case but beginning with this one

Docket number of any appeal to the 16-357 Circuit: 8th

Are (were) you a party or lawyer in the lawsuit?

☒ Party ☐ Lawyer ☐ Neither

If you are (were) a party and have (had) a lawyer, give the lawyer's name, address, and telephone number:

I now represent myself Pro Se.

RECEIVED
APR 25 2017
U.S. COURT OF APPEALS
EIGHTH CIRCUIT

Judicial Council of the 8th Circuit

COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY

4. **Brief Statement of Facts.** Attach a brief statement of the specific facts on which the claim of judicial misconduct or disability is based. Include what happened, when and where it happened, and any information that would help an investigator check the facts. If the complaint alleges judicial disability, also include any additional facts that form the basis of that allegation.

—See attached—

5. **Declaration and signature:**

I declare under penalty of perjury that the statements made in this complaint are true and correct to the best of my knowledge.

Signature: Richard May Fleming, MD, JD Date: 04/20/2017

Judge Richard G. Kopf has violated my Due Process and Equal Protection rights under the Federal Constitution and as it apply to the States in Amendment 14 of the U.S. Constitution.

During the original trial (4:07cr03005), Judge Kopf held a sidebar conversation with public defender Hanson and prosecuting attorneys Everett and Russell, where as Judge Kopf put it, "the Jury didn't need to know the whole truth" if "the wool" was "pulled over their eyes." In so doing, the expert witness was deprived of substantive exculpatory evidence, as were the jury and myself. This resulted in the expert witness being deemed "worthless" by the jury as evidenced in post proceedings documentation between one of the jurors and public defenders office. As detailed in the attached Petition for Rehearing En Banc No 16-3572, Judge Kopf mislead the expert witness and the jury as detailed in the attached case.

When I attempted to address this legally, Judge Kopf threatened me with possible imprisonment. Efforts to address this through the Nebraska Counsel for Discipline as well as raise questions of Ineffective Assistance of Counsel were intentionally blocked by Judge Kopf.

He has since "restricted access" to case documents and has destroyed others.

Other substantive exculpatory evidence was not presented as documented in the attached Petition for Rehearing En Banc by the 8th Circuit.

Subsequent Judges and attorneys who have been involved in this case are in violation of their professional ethics as detailed in the case material included with this complaint.

Complainant is Uncertain how to address the conspiracy between Judge Richard G. Kopf, public defender Michael Hansen, Prosecutors Alan L. Everett and Steven A. Russell. I am also uncertain of how to address the subsequent Judges and attorneys who were made aware of the facts and matters of law in this case and did nothing despite an ethical obligation to report such matters for investigation to avoid ethical violations themselves.

In addition to the above noted issues, Judge Kopf has also admittedly violated Canon 5 of the Code of Conduct of Federal Judges.

JCP 08-17-90048

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

RICHARD M. FLEMING,	)	NO: 16-3572
	)	
Plaintiff-Appellant,	)	**PETITION FOR REHEARING EN BANC**
	)	
v.	)	INCLUDING *INTER ALIA* THIS COURTS
	)	31 JANUARY 2017 JUDGMENT
IOWA BOARD OF MEDICINE,	)	AFFIRMING THE DISTRICT COURT
JULIE JEAN BUSSANMAS,	)	**AND**
THERESA MARIE WEEG	)	ORIGINAL JURISDICTION ISSUE FOR
Defendants-Appellees.	)	**SCOTUS**

This case originated from (1) a failure of defendants to substantially investigate claims (a fact admitted to by defendant in their briefs) made about appellant to the defendants, who have admitted that plaintiff has provided legal "preserv(ation) of error" and that "Dr. Fleming raised substantial evidence … subpar investigation" (Appellee's briefs of October 20, 2014 and October 5, 2015), *as well as* (2) a failure of the defendants, the Courts *and* legal counsel involved in this case to substantially investigate evidence presented to them by appellant showing BOTH Judicial and Attorney Professional Ethical Misconduct wherein the original Judge and attorneys involved in the Criminal case, **which defendants failed to substantially investigate any of the intentionally hid exculpatory evidence from the Jury** and have consequently prevented a substantial investigation of this case resulting in defendants conducting a subpar investigation *which their briefs freely admit*, (3) a failure to address the filed Motions for Summary Judgment (MSJ) and Statements of Undisputed Facts (SUFs) submitted to the Iowa Courts and Northern District of Iowa Federal Court whose only interest appears to have been denying appellant IFP status rather than reviewing the facts and matters of law in this case; a status which this Court has now reversed, *in addition to* (4) violating appellants Civil Rights and remedies pursuant to

the *International Covenant on Civil and Political Rights*, a **treaty** ratified by Congress on 8 June 1992 to which the Executive Branch of the Federal Government and several Federal Courts have stipulated as documented infra, that the treaty provides for these rights and remedies in U.S. Federal Court when U.S. Citizens rights have been violated in U.S. territory.

Appellant hereby petitions this Court for a rehearing en banc to reverse the Courts judgment of 31 January 2017, which affirmed the District Court as well as the State Courts who have previously ruled on this case. Appellant acknowledges and appreciates this Court's overturning of the IFP ruling made by the District Court and further asks for a Federal Investigation into BOTH the Judicial and Attorney Professional Ethical Misconduct involved in ALL of appellants trials to date as noted passim; an investigation **required** by the Rules of Professional Conduct of ALL attorneys and Justices.

STATEMENT OF FACTS AND MATTERS OF LAW

The Iowa Board of Medical Examiners began actions against defendant following communications from Appellant's ex-wife (Ms. Haag) beginning on 14 May 2009, just weeks following entry of a holographic plea (infra), which does not stipulate a crime (infra). This information was obtained through voluntary communications with a HHS agent (Ms. Kathy Palmer), who had used the power of her office to obtain personal information regarding appellant (Dr. Fleming) and subsequently communicated this information not only to the defendants but also to Ms. Haag on multiple occasions, to assist with divorce proceedings. The defendants did not substantially investigate this and appellant believes this to have been an abuse of Ms. Palmer's position with the federal government, providing Ms. Palmer with no immunity. Ms. Haag reported she would rather receive no alimony and see Dr. Fleming lose his Medical license, than for Dr. Fleming to have his license and be able to pay alimony. Ms. Haag's testimony in

Nebraska Federal Court had been cancelled according to the public defender (Mr. Michael Hansen), given Ms. Haag's physical, emotional and psychological abuse of their children, who were subsequently placed in the custody of appellant only three months later.

> Kopf: Now you tell me that the reason that you enter into this plea agreement is as follows in answer to question 35 c, What are your reasons for making the agreement? You say, I hope to avoid going to prison. Is that the reason that uh, that uh, causes, causes you to enter into this plea agreement?
>
> Fleming: Yes sir. It's my hope to avoid prison, to be able to uh obtain sole custody of my son whose been abused by his mom. *USA v Fleming*; 4:07cr03005; docket item #134 @ 36:16-38:38.

Appellant made **multiple** attempts to communicate with appellees-defendants and place on the record the necessary facts and matters of law which a substantial investigation would have required as admitted by defendants briefs, including evidence that (1) the holographic plea did not and does not state a crime as well as (2) there has been no medical malpractice. Defendants refused to consider many if not all of these documents including (a) material showing that the Appellant had billed as directed pursuant to CMS regulations, (b) rulings by the Nevada Federal Court (*U.S. v. Prabhu*, 442 F. Supp. 2d 1008, infra) which state that when a physician bills according to Medicare and Medicaid rules as appellant did, that *physician cannot be guilty of a crime* for billing thusly and (c) documentation that the Nebraska Federal Court has never denied Dr. Fleming's actual innocence, only his use of 28 USC § 2241 for establishing his actual innocence. Said statute as noted infra is in fact the applicable statute given the denial of appellant's Civil Rights in this case and therefore demonstrates further Judicial error or an intentional misrepresentation of the law.

Dr. Fleming has not asked defendants to try to reverse another Courts ruling nor is he even asking this Court to do so (although an investigation of the ethical violations and hiding of

exculpatory evidence from the Jury would undoubtedly result in a reverse and sanctions upon those who hid the exculpatory evidence), only that they conduct their Administrative Review as required by the Iowa Court of Appeals (*Smoker v. Iowa Bd. of Med.*, 834 N.W.2d 83) requiring a substantial investigation rather than a subpar investigation, from which they could then consider the substantive evidence pertinent to their Administrative task, evidence which a reasonable person would require in determining the facts and matters of law in this case. Specifically, defendants have a legal obligation to appellant to independently conduct a substantial investigation pursuant to the legal and administrative rules and regulations and the rulings enforced by the Iowa Court of Appeals (*Smoker*, passim) wherein when a subpar investigation occurs, which defendant has freely admitted to in two different briefs of this case, the Iowa Court of Appeals has ruled against defendants and reversed for appellant's (*Smoker*). Since a subpar investigation by defendants in the past against a physician has resulted in reversal, a subpar investigation in this case must also be reversed or the Courts will have broken the rule of law as established by *Smoker*, promoting Forum Shopping and inequitable outcomes.

> … "Evidence is not substantial when a reasonable mind would find the evidence inadequate to reach the conclusion reached by the agency." *Id.* (internal quotations omitted). "We are bound by the agency's factual findings unless a contrary result is demanded as a matter of law." *Id.* (internal quotations omitted). *Smoker v. Iowa Bd. of Med.*, 834 N.W.2d 83 (Iowa App. 2013)

Also as shown in the District Court's correspondence to Dr. Fleming, the defendants began by denying ever being served in this case despite evidence to the contrary; yet no action has taken by the Courts here either. Thus illustrating yet another example of defendants failure to substantially investigate the facts and matters of law in this case, as they either were incompetent to find such docketed material or elected to deny receiving it raising further questions of Professional Misconduct.

The defendants specifically did not and intentionally refused to independently investigate the claims made against Dr. Fleming, even when the evidence was directly provided to them by the appellant, but rather decided to ignore it relying upon personal information from the biased parties already noted, instead of substantially investigating the actual courtroom and other documents which demonstrate the hiding of exculpatory evidence from the Jury. Exculpatory evidence, which at least for the defendants investigation in this case would have been required by a reasonable person to make decisions regarding the facts and matters of law in the case, thereby further demonstrating and consistent with the intentional subpar investigation by defendants, which they have admitted on the record. In addition, Court documents filed by appellant clearly show that defendant's records erred in both the facts and matters of law in this and other cases. Yet, defendants made no effort to investigate any of this after it was brought to their attention. Further evidence demonstrating defendant's obstinate refusal to substantially investigate this case and the facts and matters of law surrounding it has been documented in the case files.

After refusing to consider Appellant's documentation of the facts and matters of law, defendant's capriciously elected to penalize appellant and have tried to pretend that this penalization component is what the case is all about and then to force Dr. Fleming to take billing classes, ethics classes, pay civil fines and have his medical practice monitored for five years. The filed Court documents clearly show appellant filed with Polk County District Court and later with the Iowa Court of Appeals.

The Court of Appeals actually failed to correctly file all the pages of the original complaint despite an obvious gap in their original entry of the complaint, claiming no grounds for the complaint had been filed. This was finally corrected at Appellant's insistence and persistent indefatigable monitoring of the docketing of ALL the pages as submitted to the Court

again but apparently ignored, looking at the Iowa Appellate Courts final order including their admitted failure to review the entire docket of the case (infra). ALL civil complaints in these cases from initiation to present include *inter alia* (1) failure of defendants to conduct a substantial investigation which defendants admit to in their Briefs filed with the Iowa Court of Appeals, (2) defamation of character, (3) failure of the Courts to follow FRCP and State rules of civil procedure in addition to Court rulings on MSJ and SUFs, both Federal and State, (4) failure to address hiding of exculpatory evidence, (5) failure to address Professional Responsibility violations of Ethics, and (6) U.S. and State of Iowa Constitutional violations and violations of appellants rights and remedies under the ICCPR Treaty. (Appendix A)

During this subpar investigation Dr. Fleming was required to stop practicing medicine, preventing him from making a living for himself, his family or even being able to acquire the funds required by defendants to pay civil fines or obtain legal counsel. The fact that appellant does not and never has done the actual billing of his medical practice (like all the physicians appellant is aware of) and the decision made by the defendants that his law school ethics course was an inadequate course on ethics (which should be offensive to any other attorney or Court having taking their legal ethics courses) to meet their requirement, raises serious concerns regarding the defendants goals.

Appellant refuses to acquiesce to defendant's interpretation of the basis of this case and given that Dr. Fleming is the person filing the suit, it would seem logical that appellant would know why the case was filed. Appellant has never heard of a case being filed by plaintiff and the Courts then allowing the defendants to change the nature and reason for filing the suit. Since the lower Courts have allowed defendants to raise this as their actual legal argument, the rule of law is once again questioned promoting inequitable outcomes and forum shopping. Apparently in

Iowa State and Federal Courts, defendants will now be allowed to change the filings made by plaintiffs to meet the needs of the defendants rather than defend the charges brought by appellant against defendants.

The records clearly demonstrate that ALL Administrative efforts were exhausted before pursuing legal remedies - a fact frequently missed by the Courts involved in this case and selectively forgotten or ethically ignored by the defendants. Further evidence showing respondents failure to substantially investigate the factual truth and matters of law in this case have been submitted by appellant to the defendants and the Courts. E.g. Kathy Palmer's misinforming Mary Nelson at the Iowa Board that Dr. Fleming was not pursuing further legal action.

> "Dr. Fleming's deadline to appeal the Judgment has passed and he did not file an appeal and there are no matters relating to the case that are pending at this time." (File 02-2009-0283 from Iowa Board of Medicine Investigative Report.)

The Court records, which could easily have been obtained with anything other than a subpar investigation, clearly showed this was misinformation by Ms. Palmer. After Dr. Fleming was denied his legal rights and remedies in Polk County District Court, he accordingly appealed the case to the Iowa Court of Appeals, noting that the Iowa Court of Appeals had already ruled in *Smoker* that subpar investigations of a physician by the defendants was unacceptable and subsequently reversed the District Court rulings.

Appellant has also provided evidence that the Polk County District Court went out of its way to exclude evidence of the subpar investigation. Astonishingly, defendant's appeals briefs admitted to a subpar investigation. Nonetheless, the Iowa Court of Appeals did not reverse, for all intents and purposes destroying the rule of law they had established. Efforts to appeal were

misdirected through the Iowa State Courts and no rehearing was allowed. The case was then directed to Federal Courts in the Northern District of Iowa. Efforts to seek reversal of the State Courts were obfuscated with the Federal Court focusing their attention on appellants IFP status and denying his case for not having paid court fees; the Court ceased to address the facts and matters of law. In fact, the Northern District Court of Iowa admitted in its order of 30 August 2016, that the Court had not reviewed plaintiff's complete pleading.

> "..despite not being able to review the plaintiff's complete pleading…" (1:16-cv-00161)

None of the Courts to date have addressed the defendant's admitted to subpar investigation, the ethics violations, nor the MSJ with SUFs filed in this case. *Defendants have not once denied nor objected to a single item within the MSJ with SUFs filings*, demonstrating further failure of the Courts to uphold the rule of law for MSJ and SUFs, providing for inequitable outcomes and promote forum shopping.

The Federal and State Courts and attorneys involved, beginning with the original Federal Case (*USA v Fleming*; 4:07cr03005) have all erred in failing to investigate the Professional Ethics Violations committed including *inter alia* the hiding of exculpatory evidence and pursuant to the Professional Rules of Conduct *are therefore themselves in violation of the Rules of Professional Ethics* for Justices and Attorneys and must be held accountable. *Inter alia* Rules 8.2, 8.3, 8.4 and 8.5 of The Lawyer's Code of Professional Responsibility.

Pursuant to these rules, by simply being made aware of potential professional misconduct of a judge or attorney ***requires action to avoid being in violation*** of the Professional Code of Ethical Conduct for Attorneys and Judges themselves, including the Justices composing the 8th Circuit Court of Appeals now hearing this case. Appellant is aware that Justice Kopf clerked for

the 8th Circuit Court of Appeals which is and of itself is concerning to appellant raising questions of nepotism. Kopf has reprimanded female attorneys for provoking his "dirty old man" view of women,

> "In candor, I have been a dirty old man ever since I was a very young man," Kopf says in the post, which appeared on "Hercules and the Umpire," his personal blog that he said he'd quit using in January.
> The post begins with a story about a family "kerfuffle" over his daughter wearing a "low-cut dress" to a wedding and transitions into a story of "a wonderfully talented and very pretty female lawyer" who "wears very short skirts and shows lots of her ample chest."
> "I especially appreciate the last two attributes," Kopf writes of the female lawyer's looks.
> Kopf then gives his rules for women in the courtroom:
> From the foregoing, and in my continuing effort to educate the bar, I have three rules that young women lawyers should follow when considering how to dress for court:
> 1. You can't win. Men are both pigs and prudes. Get over it.
> 2. It is not about you. That goes double when you are appearing in front of a jury.
> 3. Think about the female law clerks. If they are likely to label you, like Jane Curtin, an ignorant slut behind your back, tone it down.
> (Judge Admits To Being A 'Dirty Old Man' In Post About How Women Lawyers Dress, The Huffington Post, 27 March 2014)

told the SCOTUS to STFU in his blog

> U.S. federal Judge Richard Kopf declared Monday he thinks it's time for the Supreme Court to "STFU."
> Kopf made his pronouncement in a rather colorful blog post regarding the Supreme Court's recent decision Burwell v. Hobby Lobby. Kopf was appointed as a federal district judge president George H.W. Bush in 1992.
> "Next term is the time for the Supreme Court to go quiescent-this term and several past terms has proven that the Court is now causing more harm (division) to our democracy than good by deciding hot button cases that the Court has the power to avoid," Kopf wrote. "As the kids say, it is time for the Court to stfu."
> (Federal Judge Tells Supreme Court to 'STFU', ABC World News 7 July 2014)

and further violated his Professional Ethics as a Judge by calling Presidential candidate Senator Cruz unfit for the office.

> In a recent post, Kopf may have added another controversial notch to his blogging belt by proclaiming a political candidate "not fit" for office. In response to recent Supreme Court decisions, Sen. Ted Cruz (R-Tex.) has proposed a constitutional amendment that would require Supreme Court justices to face periodic retention elections. Judge Kopf argues that Cruz's attack on lifetime tenure reveals Cruz as "a right-wing ideologue" who "is demonstrably unfit to become President." In Kopf's view, it's obvious that lifetime tenure for federal judges is better than a system of retention elections. To argue otherwise would "sacrifice the Supreme Court upon the altar of an extreme right-wing ideology." "[A]s a federal judge," Kopf writes, that gives him "the right . . . and dare I say the duty, to respond to the proposal." Cruz's proposal is so bad, Kopf reasons, that it makes Cruz "unsuited to become President."
>
> Whatever one thinks of the substance of Kopf's argument — both as to the proposal and the candidate — I'm more interested in the ethical questions it raises. Canon 5 of the Code of Conduct for Federal Judges states:
> A judge should not . . . publicly endorse or oppose a candidate for public office[.] (Blogging judge calls political candidate "unfit" for office. The Washington Post, 7 July 2015)

Despite the efforts of Professor Orin Kerr, with George Washington University, none of these issues have been addressed, raising further questions of ethical violations and nepotism within the legal community.

§ 3-508.3. Reporting professional misconduct.

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

COMMENT

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would involve violation of Rule 1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

[3] If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

[4] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client-lawyer relationship.

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting

Finally as noted passim, the Iowa Court of Appeals and its' Supreme Court in addition to the Northern Iowa Federal Court and the judgment of this Court which is hereby being petitioned to be reheard en banc, have broken the rule of law and produced an environment conducive for Inequitable Outcomes and Forum Shopping. The rule of law established by *Smoker* provides that a subpar investigation by these defendants cannot stand and the findings of the lower Courts must be reversed. Appellant is calling for this Court to address the issues noted supra as well as

the following issues, where the lower Courts have erred and not addressed the facts, matters of law, ethical violations and hiding of exculpatory evidence. *A substantial investigation by defendants would have raised serious questions about rubber-stamping what others have done*.

VIOLATIONS OF THE FEDERAL RULES OF CIVIL PROCEEDURE

As stipulated on multiple occasions within the Court Documents, the filed MSJs and SUFs (only one of which appears in Appendix B) have never been denied nor disputed by defendants including a failure by defendants to oppose, deny or dispute even one of the facts or matters of law presented within the filed MSJs and SUFs. The lower Courts themselves have failed to act in accord with the FRCP and case law as required. As a matter of law and factual evidence, the MSJ with SUFs must be granted pursuant to FRCP Rule 56. In accordance with the 2010 Amendment Committee Notes on these Rules, the Court "**shall**" grant the MSJ when there is no genuine dispute as to the facts and matters of law and dependants has not filed a single dispute as to these facts and matters of law AND the Courts have failed to address the facts and matters of law presented to them.

> The court **shall** grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion. FRCP 56(a). (Emphasis added)

The MSJ and SUFs included in Appendix B were originally filed in the Polk County District Court on 7 January 2013. The Court must grant the MSJ with SUFs as pursuant to case law, the FRCP, the corresponding State rules of Civil Procedure and applicable State and Federal rulings of law. (*Anderson v. Liberty Lobby*, 477 U.S. 242; *City of Sioux City v. GME, Ltd*, 584 N.W.2d, 324-327; *Schulte v. Mauer*, 219 N.W.2d, 496, 499, 502; *Jensen v.*

Voshell, 193 N.W.2d 86, 88; *Schmitt v. Jenkins Truck Lines, Inc.*, 170 N.W.2d, 632) Appellant has been denied his rights and remedies pursuant to the FRCP and corresponding state rules of civil procedure.

VIOLATIONS OF THE FEDERAL RULES OF CIVIL PROCEEDURE AND RULES OF PROFESSIONAL CONDUCT – THE HIDING OF EXCULPATORY EVIDENCE

During the original Criminal trial (*USA v Fleming*; 4:07cr03005), which Defendants have tried to use to unjustifiably defend their subpar investigation, without actually conducting a substantial investigation of the actual facts and matters of law themselves in the case (taking the personal statements of Kathy Palmer does not constitute a substantial investigation) and despite defendants admitting (passim) that their investigation was subpar (passim) and despite the fact that appellant presented defendants with substantial evidence regarding the facts and matters of law applicable in the investigation as required under *Smoker*, defendants intentional decided to conduct a substantial investigation. Defendants have agreed in their Court briefs that they conducted a subpar investigation, yet are now not being held to the Rule of Law established by the Iowa Court of Appeals in *Smoker*.

The evidentiary facts and matters of law presented by appellant to the defendants and submitted to the Courts in this case as well as the attorneys in this case, clearly show that the prosecution, defense and Judge in the original case hid exculpatory evidence from the Jury for their own personal benefit, including but not limited to the exclusion of Exculpatory Soy Research Evidence. During a side bar discussion between the Judge, Public Defender Michael J. Hansen and Prosecuting Attorneys Alan L. Everett and Steven A. Russell, the contents of which were hidden from appellant, the four decided the jury did not need to know the whole truth and the wool could be pulled over the jurors eyes.

> Justice Kopf stated that he would not allow Hansen to take the witness stand and that "the Jury didn't need to know the whole truth" if "the wool" was "pulled over their eyes." (*USA v Fleming*; 4:07cr03005, docket 117 & 118)

Rather than have the public defender take the witness stand, the Judge, Prosecuting attorneys and public defender ALL elected to hide the exculpatory evidentiary report of the expert witness Dr. Alicia Carriquiry from the Jury. This not only violates the Professional Code of Conduct for Attorneys and Judges but deprived appellant of his Civil and Constitutional Rights as guaranteed by the U.S. Constitution and the ICCPR Treaty. As a result of this side bar discussion, defense counsel admitted he plagiarized data *at side bar only*, admitting he used Dr. Fleming's data as a template and then proceeded to enter onto the court record, a false erroneous statement that his "plagiarized data" actually represented "fabricated data" (fake data) discrediting Professor Carriquiry absent her ability to know this erroneous stipulation.

Consequently, Judge Kopf kept referring to the Public defenders (without the jury knowing it was the public defender, leading them to believe it was "fake data" which knowingly fooled Dr. Carriquiry) "plagiarized data" as "fake data." The Court never identify the defense counsel as the source of the "fake data" erroneously leading the jury to believe that Professor Carriquiry didn't know what she was talking about. By hiding facts from Dr. Carriquiry and the Jury, the "whole truth" was hidden from the Jury, Professor Carriquiry and the defendant. An investigation by defendants would have shown that appellant was denied his due process rights and misleading statements were made by the attorneys and court involved to both the witness and the jury. By not knowing the "fake data" was in fact defense counsels "plagiarized data" using Dr. Fleming's data as a template, Dr. Carriquiry was left without the evidence she needed to correct the Juries misperception and erroneous assumptions. Since Hansen's "plagiarized data" when fabricated/plagiarized using real (Dr. Fleming's) data, Hansen's "plagiarized data"

would statistically look exactly like the real data it emulated; a point exculpatorily relevant in proving Dr. Fleming's actual innocence given the experts testimony.

Nonetheless, as noted (supra) the Court would not allow (1) a mistrial, (2) withdraw of defense counsel or (3) for defense counsel to be placed on the witness stand to provide exculpatory evidence, which would have been another Professional Ethics Violation **(Rule 3.7).** The same Judge blocked later efforts by Dr. Fleming to prove these wrongs and begin an ethics violation investigation of those involved. [Fleming v. U.S., 4:10-cv-3217 (2010)] as shown passim the records of this case. In fact, the Judge threatened appellant should he decide to continue trying to prove these ethics grievances.

> I now warn Dr. Fleming that the filing of any additional ethics grievances against Mr. Hansen with the Nebraska Counsel for Discipline or with this Court or otherwise will subject Dr. Fleming to substantial sanctions. Those sanctions may include, but are not limited to, holding Dr. Fleming in contempt of court or revoking or modifying his probation. The continued abuse of the legal process will not be tolerated.

Appendix C shows multiple attempts made by appellant to address these ethical breaches and intentional exclusion of exculpatory evidence from the jury; evidence which would have been available to the defendants had they conducted a substantial investigation. Evidence, which clearly shows efforts were being made by appellant to address these wrongs through the appropriate Professional State of Nebraska Counsel for Discipline. The same Judge involved in the case, which raised the initial ethics violations, raising more questions of ethics violations, blocked these efforts. It should be noted that Appendix C could easily be obtained from the Counsel for Discipline. Judge Kopf has "Restricted Access" to these documents (exhibit #202) presented to his Court and allowed the destruction of Court exhibits (exhibit #204) without notification of the appellant (*USA v Fleming*; 4:07cr03005). These facts and matters of law would also have been easily available to anyone conducting a substantial investigation.

In the end, while this hid exculpatory evidence which would have proven appellants actual innocence, it turned out well for the Judge, Prosecutors and Public Defender who did not want to use the Iowa State University World Renown Statistical Expert Professor Carriquiry in the original trial. In fact Mr. Hansen did everything humanly possible to not introduce Professor Carriquiry as a witness, including threatening appellant that he would have to "hire (his) ou(r)wn lawyer to present whatever statistical evidence you want. End of story." In fact Mr. Hansen made it quite clear to appellant that Hansen was excellent with mathematics and he wasn't going to be forced to listen to Dr. Carriquiry.

RE: soy numbers

Mike Hansen

Wed 3/18/2009 7:35 AM

To:RM Fleming <rmfmd7@hotmail.com>;

After reading the report, I stand by my position that we are not presenting any statistical evidence in our defense on the last three counts. If you disagree, hire your our lawyer to present whatever statistical evidence you want. End of story.

Mike

RM Fleming <rmfmd7@hotmail.com>
03/17/2009 08:46 PM

To
<rmfmd7@hotmail.com>, Mike Hansen
PD corrected <mike_hansen@fd.org>,
Tim Domgard for Hansen
<timothy_domgard@fd.org>
cc

Subject
RE: soy numbers

Hansen only allowed Carriquiry to testify following multiple correspondence including Dr. Carriquiry's adamant statements regarding a total lack of evidence that the appellants data was fabricated. She was quite specific but this exculpatory evidence was also hidden from the Jury and not uncovered by defendant's subpar investigation.

RE: alicia

Alicia L Carriquiry

Fri 3/20/2009 7:25 AM

To RM Fleming <rmfmd7@hotmail.com>; Mike Hansen PD corrected <mike_hansen@fd.org>;

Ccmskaiser@iastate.edu <mskaiser@iastate.edu>;

I am sorry I did not write yesterday as promised. Something came up and I had to leave earlier.

I am copying Mark Kaiser, who was, after all, the person who wrote the report. Just so that you know, Mark started his analyses in the belief that the data had in fact been fabricated and set out to show this was the case. While we cannot prove beyond a doubt that they were not, no one can prove that they were, either. In fact, I believe that no one could even find any plausible evidence pointing to fraud in the data themselves. Mark certainly could not and he tried very hard.

So the points I wished to make are the following:

* There is no evidence in the data to suggest that they were fabricated.
* Fabricating these data would require a level of statistical sophistication that we doubt Dr. Fleming possesses (no offense!). Mark or I or any good statistician might have been able to do it, but it would have taken quite some thinking.

Mike, I do not believe that I have "changed my story". I told you in an earlier conversation that statistics is not magic and that it is not possible to prove (in the real sense of the word) that data are not fabricated. I continue to stand by that statement. It is true that it is not possible to prove (or disprove) with 100% certainty that the data are falsified. Unless, of course, a person tampering with data does so in a really incompetent manner. If these data were fraudulent, then Dr. Fleming is either a professional closet statistician, is very lucky, or hired someone to do it.

Best wishes,

Alicia

At 05:18 PM 3/19/2009, RM Fleming wrote:

> Mike,
>
> She promised to email you with these statements that (1) the study was analyzed as the ORI would have, (2) there is no evidence of fraud in the analysis and (3) that to produce fraudulent data would have required a level of sophistication that even the world renown ISU could not produce.
>
> Dr. Fleming
>
> > Subject: Re: alicia
> > To: rmfmd7@hotmail.com

The following email not only demonstrates Mr. Hansen's reluctance to use Professor Carriquiry but also refers to Dr. Paknicar at Creighton University, who had he been called to testify, would have supported Dr. Fleming's Nuclear Cardiac Imaging and testify that Creighton University was planning to begin using Dr. Fleming's protocol along with the billing code used by Dr. Fleming.

Re: Carriquay

Mike Hansen

Wed 3/25/2009 1:23 PM

To:RM Fleming <rmfmd7@hotmail.com>;

As you were writing this is when, ironically. You win. I will retain her to testify about the fact that you would have to be a closet statistician to fake the balance of the data as the government contends you did.

I just got off the phone with Paknicar. He was very open minded in discussing the matter with me, but when I pressed him to be an expert to explain his thought processes to the jury, he said he would have to think about it.

Did you find any patient notes that you would have submitted to an insurer with the images?

Mike

RM Fleming <rmfmd7@hotmail.com> 03/25/2009 02:42 PM	To	Mike Hansen PD corrected <mike_hansen@fd.org>
	cc	
	Subject	Carriquay

The support by Dr. Paknicar was so overwhelmingly supportive of Dr. Fleming's work and protocols to improve the detection of heart disease and breast cancer, that Mark Andersen of the Lincoln Journal Star had written and was planning to run a feature story a few days before trial showing plans by Creighton University to begin using the Fleming protocol. When Hansen was told this by appellant, Hansen immediately insisted the story be pulled from publication, again raising the issue of not being Dr. Fleming's public defender at trial with only days to go before the trial was set to begin.

In the end, Defense attorney Hansen ultimately contaminated the case by plagiarizing appellant's data and then seeking judicial support to not be placed on the witness stand. Hansen, the prosecuting attorneys and the trial Judge obtained their desired results at the cost of hiding exculpatory evidence from the Jury and violating their Professional Ethical Responsibilities. A substantial investigation by defendants would have revealed this.

The Court and it's attorneys also knew that the Federal Governments Division of Investigative Oversight known as the Office for Research Integrity (ORI) had been involved in reviewing the statistical analysis of the soy data as directed by Dr. Alicia Carriquiry of Iowa State University (ISU) and found no evidence of data fabrication. Dr. Carriquiry is **world renown** as an expert in the analysis of data fraud. After a review of the ISU reports, the following exculpatory communications occurred but were hidden from the Jury and not uncovered by defendant's subpar investigation.

RE: OIG-Kathy Palmer

Hohmann, Ann (HHS/OPHS)

Fri 3/20/2009 1:19 PM

To:RM Fleming <rmfmd7@hotmail.com>;

Cc:Mike Hansen PD corrected <mike_hansen@fd.org>;

Dr. Fleming,

I need to correct your perception of what I told you.

- ORI is a regulatory office, but our jurisdiction is strictly limited by 42 CFR 93 (http://ori.dhhs.gov/). We do not investigate fraud. We investigate misconduct in research funded by the Public Health Service (PHS) and **only** the PHS. Research misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.
- ORI's mission "is to promote integrity in research programs of the Public Health Service, both intramural and extramural, including responding to allegations of research misconduct."
- ORI does not have any relationship with the HHS OIG.
- Dr. John Dahlberg has never read the report written by the Iowa State University statistician.
- I read the report and determined that the techniques used are standard for this type of analysis.
- Dr. Dahlberg is as confused as I am, given the information you have given us, why the HHS OIG has charged you with research fraud.
- ORI cannot and will not provide you assistance in your legal difficulties with the HHS OIG.
- ORI can discuss with your attorney or the HHS OIG attorney the techniques we use to uncover misconduct, which include statistical analyses such as the one conducted by the statistician at Iowa State.

I hope this makes the matter clearer for you.

Ann A. Hohmann, Ph.D., MPH - on detail
Division of Investigative Oversight

In the end, the Nebraska Federal Court would not allow (1) a mistrial with Hansen testifying as to the truth of his "plagiarized" data, (2) withdraw of defense counsel and (3) Judge Kopf would not allow defense counsel to be placed on the witness stand (docket 117 & 118) proving it was his data to be questioned, not Dr. Fleming's. Efforts by Dr. Fleming to pursue ineffective assistance of counsel were chastised by the trial Court [Fleming v. U.S., 4:10-cv-3217 (2010)] and could easily have been uncovered through a substantial investigation by defendants.

In the end, the defendants conducted a meaningless investigation as well as demonstrating that their record keeping in this case was conducted in a non-professional subpar manner. They have admitted appellant has provided substantial proof of their subpar investigation and despite *Smoker* (passim), the Courts have continued to turn a blind eye to the rule of law in this case, the facts and matters of law in this case as well as the multiple violations of Professional Ethics made by Judges and attorneys in each of the Courts involved.

The **list of Exculpatory items hidden from the Jury include**, that which would have been uncovered by defendants conducting a substantial instead of a subpar investigation. The include but are not limited to the following:

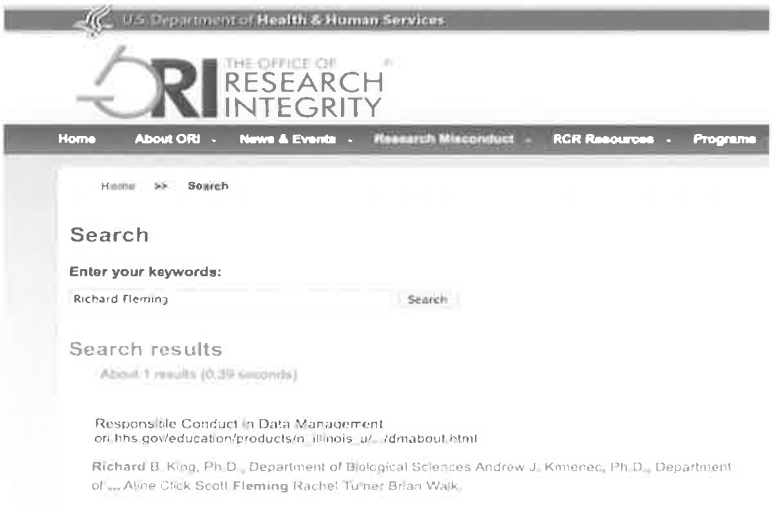
1. The Iowa State University (ISU) reports analyzing the soy data showing appellant did not fabricate data.

2. The ISU method of analysis could not have even been predicted in 2004; since it was produced by statistician's appellant didn't even know about until 2009.
    a. Frank conversation with Drs. Kaiser and Carriquiry revealed they started with the premise that the data had been fabricated by appellant, only to realize after their analysis that it could not have been-it had to be real.

3. The problem with the report discussed (The Kaiser report) was that it could not tell that the Public Defenders data was fake.
    a. In fact, the Public Defenders data wasn't fake. The Public Defender (Michael J. Hansen) simply changed adjusted all of original data by adding a couple pounds to each person's original weight and adjusting all the results accordingly. (I believe he said it was 5 lbs but despite the actual amount, his data mirrored real data so it looked real.) Hence, his data was "fabricated data", not "fake data" so analysis of his "fabricated data" would have required a different test. He, the prosecutors and Judge Kopf, hid this exculpatory evidence from Professor Carriquiry and the Jury.
        i. In contrast, appellant had no real data from which he could have fabricated his results to accomplish this same result. During the trial period, appellant looked up all the published data on soy studies, which had been published by 2009 (year of the original trial) including information about weight loss and sent these via email to Hansen. Hansen refused to show this exculpatory evidence and never showed these exculpatory documents to anyone. Had he done so, he would have had to admit his role in the hiding of exculpatory data from the Jury and Professor Carriquiry, who would have then been told the **truth**. The three studies sent to Mr. Hansen by the

appellant, provided no actual data which appellant could have used to fabricate data.

b. Professor Carriquiry was Dr. Kaiser's superior. She modified the Kaiser report to reflect that the data were valid and called the Fleming data "innocent" at trial. The jury did not believe Dr. Carriquiry because she could not account for the "fake data", which as discussed and explained above, was Hansen's "fabricated data." Dr. Carriquiry's testimony was shot down because Hansen's data (which was not identified as his during the trial but rather described as the "fake data") could not be shown to be "fake data". In fact, it wasn't "fake data" so a test for "fake data" would not show it to be "fake data" however had Dr. Carriquiry known the Hansen data was actually "fabricated data", Dr. Carriquiry would then have been able to testify intelligently and explain the differences between analysis for "fake" versus "fabricated data." There was no reason for Dr. Carriquiry to include this exculpatory evidence as Judge Kopf and the attorneys kept calling the data "fake."
    i. Dr. Carriquiry had no reason to believe the Judge or the attorneys were lying her to, so her testimony and exculpatory evidence to prove Dr. Fleming's actual innocence was lost and the defendants in this case failed to substantially investigate this.



The Office of Research Integrity (ORI) which is part of HHS (immediately supra) and the remainder of the Federal Government are very specific about what constitutes data fabrication.

§ 93.103 Research misconduct.
Research misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.
(a) Fabrication is making up data or results and recording or reporting them.
(b) Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.
(c) Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.
(d) Research misconduct does not include honest error or differences of opinion.

4. The Judge would not allow the Jury to hear this exculpatory evidence or place Hansen on the stand. (Covering the eyes of the jury and not allowing the jury to see the whole truth.)

5. The Office of Research (ORI) of the Federal Government (Ann Hohmann-HHS) said there was no evidence that the data was fraudulent.

6. A major hallmark of research validity is when one researcher shows a result and another researcher then independently reports the same outcome.
    a. It should be noted that the reported 1-2 pound weight loss per week from the Soy Study appellant conducted has in fact been confirmed by others as shown on the Revival Soy website.
        i. E.g. Hopkins researchers (posted on Dr. Tabor's Revival Soy site) reported a 1-2 pound weight loss per week; meaning:
            1. Either researchers at Johns Hopkins University copied Dr. Fleming's work as Hansen did and modified (Plagiarized) the original work as Hansen did,
            2. Or they conducted an independent study confirming and validating appellant's data, confirming appellant did not fabricate data.
        ii. By contrast, failure to have others confirm research indicates research fraud.
            1. E.g. Cold Fusion has never been replicated because it wasn't valid research.
    b. A substantial investigation leaves one to conclude that either Johns Hopkins Medical University committed research fraud or appellant's data is not fraudulent.

7. Hansen's emails show he was upset that appellant pushed for Carriquiry to do this statistical analysis of the study.

8. Dr. Carriquiry had previously shown in court (different case) that the FBI falsified ballistics test results.
    a. The Jury didn't believe Dr. Carriquiry originally in this case but years later she was vindicated and shown to be right, proving FBI data fraud.
        i. Dr. Carriquiry is clearly a world expert but even she needs to know whether she is analyzing data for "fake date" or "fabricated data."

9. Dr. Carriquiry and ISU (Iowa State University) is one of the top 3-5 statistical labs in the World.
    a. Dr. Carriquiry herself said, not to insult me, but she did not believe I had the knowledge to have beat her test.
        i. Again, he test was developed 5 years after the data was sent to Revival using a software program and computer program which I had never heard of and which didn't even exist at the time the Revival Soy study was done. Drs. Carriquiry and Kaiser acknowledge they were wrong about appellant

as a result of the test. This was never mentioned in Court either and clearly wasn't investigated by defendants in this case.

In addition, a substantial investigation by defendants or any of the Courts and attorneys involved in this case since then, would have uncovered evidence of Judicial and Attorney Ethical Misconduct, including *but not limited to*:

MR 1.1 incompetence, 1.3 Lack of Diligence, 3.3 Candor towards tribunal, 3.7 Lawyer as witness and 8.4(d) misconduct.

NE Statute 3-501.1 comment 5 and section 3-508.4 (c) misrepresentation.

1. Refusal to introduce or subpoena CPA documents showing employees who testified that Dr. Fleming didn't see 60 participants in the soy study, could not have truthfully testified as to the number of individuals included in the soy study, as these employees were not present in the Medical Office to receive soy participants.

2. Refusal to subpoena AMA documents, which demonstrate that Dr. Fleming specifically asked the AMA for the proper billing codes and was told that he billed correctly and in fact should consider additional billing beyond what he had billed for. (See Appendix D)

3. Failure to find and present Medicare Advantage Medical Policy Bulletin (R-5) showing that the Federal Government specifically stipulated that the procedures to which Dr. Fleming's holographic plea denotes MUST be billed as he billed.

Medicare Advantage Medical Policy Bulletin

Section:	Radiology
Number:	R-5
Topic:	Cardiac Radionuclide Imaging
Effective Date:	October 1, 2008
Issued Date:	January 26, 2009

Coding Guidelines
Use code 78478 with codes 78460, 78461, 78464, 78465.
Use code 78480 with codes 78460, 78461, 78464, 78465.
Use code 78496 in conjunction with code 78472.
Codes indicating multiple studies (Codes 78461, 78465, 78473) must be submitted with a quantity of one regardless of whether a one or two day protocol was used.
Code 78461 includes code 78460.
Code 78465 includes codes 78460, 78461, and 78464.

4. Failure to subpoena ORI documents which showed that the Federal Government research investigation arm found absolutely no evidence of data fabrication; a finding they reported to the Prosecuting attorneys who then failed to report that to the Court and defense counsel. (Supra)

5. Failure to find U.S. v Prabhu 442 F. Supp. 2d 1008 (D. Nev 2006), which shows that the Federal Courts had already ruled that when a physician bills according to the Federal Government instructions (R-5 manual), the physician CANNOT be guilty of billing fraud.

> …a Defendant does not "knowingly" submit a "false" claim when his conduct is consistent with a reasonable interpretation of ambiguous regulatory guidance. *See, e.g., United States ex rel. Swafford v. Borgess Med. Ctr.*, 98 F.Supp.2d 822, 831-32 (W.D.Mich.2000) *U.S. v. Prabhu*, 442 F. Supp. 2d 1008, 1029 (D. Nev. 2006)
>
> …a Defendant does not knowingly submit false claims when he follows Government instructions regarding the claims. *See United States ex rel. Butler v. Hughes Helicopters, Inc.*, 71 F.3d 321 (9th Cir.1995); *Wang v. FMC Corp.*, 975 F.2d 1412, 1421 (9th Cir.1992) *U.S. v. Prabhu*, 442 F. Supp. 2d 1008, 1029 (D. Nev. 2006)
>
> Courts have routinely ruled that where, at worst, all that exists are disputed legal issues regarding whether a service was properly billed, the Government cannot prove falsity as a matter of law.[22] *U.S. v. Prabhu*, 442 F. Supp. 2d 1008, 1031 (D. Nev. 2006)

6. Stipulation of appellant's data being "fabricated" when Hansen knew it wasn't. By so stipulating, Hansen would not have to serve as a witness the result of which excluded exculpatory evidence from the Jury. (Supra)

7. Emails that Hansen didn't have time to do the research and that he would withdraw if appellant didn't do what Hansen wanted appellant to do. Including proof that Dr. Fleming's data could not have been fabricated or

even plagiarized from prior data as defense counsel did with Dr. Fleming's data. (*inter alia* supra)

8. Hansen refused to show the three published soy cases emailed to him by Fleming during the trial to prove Fleming didn't "plagiarize data" from prior studies. Had Fleming "plagiarized data", it could not have been detected by Dr. Carriquiry's statistical test for "faked date." This would have provided further exculpatory evidence that Fleming's data was real. To do so would have raised questions during the trial about differences between "plagiarized data" and "fake data" which would have lead to the final admission of Hansen's role in "plagiarizing data" and Hansen would have undoubtedly been required to testify; something Judge Kopf and the prosecuting attorneys did not want to happen. It might also have exposed the side bar agreement between attorneys and Judge.

9. Failure finding ORI definition of data fabrication to present to Jury. Reiterating the significance between "fabricated data" and "fake data" and exposing the side bar conversation hiding exculpatory evidence from the jury. (supra)

10. Failure to find Federal Register definition of data fabrication to present to Jury. Reiterating the significance between "fabricated data" and "fake data" and exposing the side bar conversation hiding exculpatory evidence from the jury. (supra)

11. Failure to find CFR definition of data fabrication to present to Jury. Reiterating the significance between "fabricated data" and "fake data" and exposing the side bar conversation hiding exculpatory evidence from the jury. (supra)

12. Failure to find casework on 405(h). Determination of medical malpractice lies with HHS and not the courts. Medical practice issues are to be reviewed by HHS (social security administration). Case law. Medical questions HHS. Fraud with trial court.

13. Violation of Duty to Disclose Kaiser Soy Report by Hansen, resulting in Professor Carriquiry Soy Report being hidden from the Jury as noted by Judge Kopf when he stated the "Jury doesn't need to know the whole truth."(Rule 26, FRCP)

Sarbanes-Oxley Act of 2002. 42 US § 405(h)

1. Judge Kopf and Attorneys Everett, Russell and Hansen all entered false data on the record by excluding exculpatory evidence, presenting only information regarding the subordinate's report (Kaiser) and not his

superior's (Professor Carriquiry) report and agreeing that the "Jury didn't need to know the whole truth" and that the "wool could be pulled over their eyes" in addition to misleading the jury and the expert witness Dr. Carriquiry re: "faked data" and "plagiarized data" as discussed supra.

2. Judge Kopf, on the side bar record notes jury does not have right to know source of Hansen's data. Hiding of exculpatory evidence.

3. Judge Kopf, reprimands Hansen at side bar and tells Hansen, that Kopf will not allow Hansen to become a witness or recuse himself as counsel raising conflicts of interest and the hiding of exculpatory evidence from the jury, expert witnesses and Dr. Fleming. Stipulations and agreements were made by Kopf, Hansen, Everett and Russell hiding exculpatory evidence from the Jury.

Efforts by appellant to address these issues have been blocked *inter alia* by the original trial judge, Richard Kopf, but include *inter alia* (1) asking for professional review and evaluation of defense attorney, prosecuting attorneys and judge by the Ethics Committee, (2) submitted appeals, (3) filing under 28 U.S.C. § 2255 and (4) 28 U.S.C. § 2241; all of which could have been found by defendants had they conducted a substantial investigation as required under *Smoker*. Judge Kopf has prevented efforts by appellant to have an Ethical Review of defense counsel, the prosecutors or himself by the Nebraska Counsel on Discipline, stating:

> "This court has adopted its own ethical standards, and we have specifically declined to adopt other codes of professional responsibility such as those promulgated by the State of Nebraska." *Fleming v. U.S.*, 4:10-cv-3217 (2010)

The trial original Court from which all of this originates and which defendants base their subpar investigation, prevented appellant from further establishing "ineffective assistance of counsel" when appellant asked the Nebraska Counsel on Discipline to investigate. A substantial investigation by defendants would have revealed this as well. *Fleming v. U.S.*, 4:10-CV-03217 (2012). Dr. Fleming's efforts to file ethics grievances have been blocked by Judge Kopf (Appendix C and infra) who would have undoubtedly been investigated himself, as the

exculpatory evidence from the sidebar was uncovered. It would be hard to consider this blockage less than a threat given the tone and words by Judge Kopf.

> I now warn Dr. Fleming that the filing of any additional ethics grievances against Mr. Hansen with the Nebraska Counsel for Discipline or with this Court or otherwise will subject Dr. Fleming to substantial sanctions. Those sanctions may include, but are not limited to, holding Dr. Fleming in contempt of court or revoking or modifying his probation. The continued abuse of the legal process will not be tolerated.

Had defendants substantially investigated this case, they too would have found it enlightening and cause them to question the facts and matters of law that Ms. Palmer provided them. Given the blockage of Dr. Fleming's rights and remedies, both administratively and legally, appellant finds the following most interesting and believes both the defendant's and this court should as well. Not once since the trial (*USA v Fleming*; 4:07cr03005) has Judge Kopf denied Dr. Fleming's actual innocence; only that it should have been raised as a 28 U.S.C. § 2255 and under 28 U.S.C. § 2241.

> …Fleming's habeas action must be dismissed…a habeas action under § 2241 cannot be used as a substitute for a § 2255 motion. *Fleming v. U.S.*, 4:10-cv-03217 (2010).

It is interesting to note that two years later Judge Kopf (one year after the defendants subpar investigation incorrectly concluded that all litigation had concluded – further demonstrating defendants subpar investigation) legally held the opposite position ruling that actual innocence could be raised under 28 U.S.C. § 2241.

> "Fleming may be able to challenge his sentence or conviction in § 2241 petition…" *Fleming v. Wolfe*, 4:12-cv-03036 (2012)

Given that the original Federal Court does not deny appellant's actual innocence and given Judge Kopf's stipulation that 28 U.S.C. § 2241, (which may be used for violation of treaty law, may be used by appellant to prove actual innocence) may be used by Dr. Fleming to

challenge his case, the failure of this Court to previously allow this challenge shows an error of this Court which it has refused to acknowledge (12-2163) as well as a failure by the defendants to substantially investigate this case.

Given the failure of this Court to previously address appellant's criminal conviction and the failure of defendants to conduct a substantial investigation of the facts and matters of law relevant to this case who have by their own admission conducted a subpar investigation, appellant presents the violations of his due process rights and remedies under the U.S. Constitution and the International Covenant on Civil and Political Rights (ICCPR) Treaty including *inter alia* the intentional hiding of exculpatory evidence from *inter alia* the Jury, expert witnesses and Dr. Fleming, evidence of professional misconduct and Petitions this Court En Banc to reverse judgment as stipulated supra and to investigate and report these acts to the appropriate agencies and legal authorities.

VIOLATIONS OF APPELLANT'S CIVIL AND CONSTITUTIONAL AND ICCPR TREATY RIGHTS AND REMEDIES AND ORIGINAL JURISDICTION ISSUE FOR SCOTUS

The entire basis for dismissing appellants Civil and Constitutional Rights in the Courts under the ICCPR treaty including appellants rights and remedies for violation of appellants Civil and Constitutional by defendants and failure of the Courts to grant his rights and remedies under the ICCPR treaty, is a pre-ratification *declaration*, which has been perseverated absent consideration of the other *declarations*, *reservations*, *understandings*, or *Major Provision* of the ICCPR treaty.

It is completely unconscionable that any Court could argue that a "declaration" of a treaty is a "reservation" when by definition (infra) one can read what is and what is not a "declaration"

and "reservation." As recently as 9 October 2015 (appendix E), the U.S. Ambassador to the United Nations, Pamela K. Hamamoto stipulated that the U.S.A. is

> "…deeply committed to fulfilling its obligations under the International Covenant on Civil and Political Rights (ICCPR or Covenant)…" (Appendix E)

Declarations have no legal effect upon a ratified treaty, nor do they change the *understandings*, *intent* or *purpose* of the treaty and they do NOT legally bind U.S. Courts. U.S. Courts have held that treaties, which have the necessary legislation in place to provide for domestic effect under the law, are by definition *self-executing*. By the time the treaty was ratified by Congress, the necessary legislation required to make the treaty self-executing was in place as stipulated to by the U.S. Government and as confirmed on multiple occasions before Congressional sessions as expressly documented. *A review of these applicable documents* not previously considered by federal courts, show the necessary legislation required to provide for domestic effect of law, was not only required to be in place prior to ratification, **but was in fact in place** per U.S. stipulated documentation, before the ICCPR treaty was ratified on 8 June 1992. Such legislation *makes the* ***treaty self-executing by federal court definition***. This Court does NOT have the legal authority to alter that.

The ICCPR treaty provides for *Civil and Political Rights* of citizens within their legal country of residence. Cases considering non-U.S. citizens, or U.S. citizens, not within U.S. jurisdiction are not relevant (FRE Rule 401) to this case as the treaty is not applicable in these cases. The ICCPR treaty provides remedies to U.S. citizens for violations in U.S. territory, including violations by the U.S. government.

The focus of declaration 1, as demonstrated by a reading of *the entire record*, was not to limit individual rights under the treaty, but to express concern that the treaty not limit U.S.

citizen rights already established under the U.S. Constitution or U.S. law. The declaration has been used for the exact opposite purpose, i.e. to limit U.S. citizen rights.

After reviewing all available ICCPR treaty cases and the record of this treaty, *appellant brings to this Courts attention for the first time, the Federal Governments* ***intent*** *when it ratified the treaty and the position taken by the U.S. Government at the time of treaty ratification*. It is unconscionable, given the totality of statements made by the U.S. Government, Congressional statements and U.S. actions taken to date to address other governments violating their citizens rights based upon the ICCPR treaty, that anyone could conclude the ICCPR treaty was anything but self-executing with civil and political rights for U.S. citizens, with remedies enforceable through U.S. Courts when the U.S. government is the source of those violated rights.

The issue as to whether the ICCPR treaty is self-executing or not, is *not* dependent upon a declaration which has no affect upon (1) the treaty document, (2) domestic law, or (3) the federal courts but, whether (A) there was adequate legislation in place to provide for domestic effect of law at the time the treaty was ratified (or since) and (B) whether the ICCPR treaty provide for individual U.S. citizen rights for appellant.

a. Declaration 1 does not change the meaning or effect of the ICCPR treaty! Declarations are NOT law and do not bind the courts. The reservations, understandings and Major Provision clearly demonstrate the ICCPR treaty provides civil and political rights to U.S. citizens since its ratification.

The defendant and district Courts having based their entire argument for dismissal of a U.S. Citizen's rights and remedies under the treaty using a single *declaration* made on 2 April 1992, 138 Cong. Rec. S4781-01 without regard, consideration or referral to the multitude of other Congressional records, Senate Reports and the Common Core Documents filed by the U.S.

Department of State. Appellant recognizes that this *pre-ratification declaration* was made, viz. "that Articles I through 27… are not self-executing." However, that is moot. ***Treaty declarations do not alter treaties, do not affect treaty execution and are not the same thing as a treaty understanding***.

> A non-self-executing treaty, by definition, is one that was ratified with the **understanding** that it is not to have domestic effect of its own force. *Medellin v. Texas*, 552 U.S. 491, 527 (2008) (Emphasis added)

However, the treaty, its *reservations*, *understandings*, *Major Provision* and *post-ratification documentation* clearly stipulate that the position of the United States is that the treaty has domestic effect of law and is therefore self-executing by definition. Specifically noting that the necessary legislation was in place at the time of ratification to give domestic effect of law and as noted infra,. Based upon U.S. Government documentation (passim) the treaty would NOT have been ratified had the U.S. Government not believed that ALL the necessary legislation was in place at the time of ratification to give the treaty domestic effect of law in the courts. Any effort to deny this is the direct result of erroneous misinterpretation of the legal effect of a single declaration and the failure to consider the applicable record. Declarations *cannot and do not* alter the terms or intent of a treaty and they cannot bind the U.S. Courts by declaring a treaty non self-executing.

> … A declaration is not part of a treaty in the sense of modifying ….**The treaty is law. The Senate's declaration is not law**….the **Senate's power under Article II extends only to the making of reservations** that require changes to a treaty before the Senate's consent will be efficacious. ….(emphasis added) *See INS v. Chadha,* 462 U.S. 919, 103 S.Ct. 2764, 77 L.Ed.2d 317 (1983). *Igartua-De La Rosa v. U.S.*, 417 F.3d 145, 190-91 (1st Cir. 2005)

When read in context, the U.S. declarations actually reflected a concern that the treaty could limit the individual rights of U.S. citizens. Consequently, declaration 1 was followed by

declaration 2, which is never mentioned by those seeking to obfuscate the record on declaration 1.

> "That it is the view of the United States … refrain from imposing any restrictions or limitations on the exercise of the rights recognized and protected by the Covenant, even when such restrictions and limitations are permissible under the terms of the Covenant." (Declaration 2)

It is contradictory for any defendant or Court to attempt to limit U.S. citizen rights, when the focus was not to limit U.S. citizen rights under the treaty. Note it is the effect of *reservations*, which can alter a treaty and only when clearly stated for the other signatory parties to see; not *declarations*. Consequently, declaration 1 has no affect upon the treaty, nor upon the domestic effect under U.S. law. These declarations only show concern that U.S. citizen rights should not be limited. Article 50 of the treaty, which is not included in declaration 1, further stipulates:

> Article 50: The provisions of the present Covenant shall extend to **all parts of federal States without any limitation or exceptions** (emphasis added).

The first obligation in trying to understand the impact, or rather the lack of impact of declaration 1, as held by the SCOTUS in *Igartua* (supra) is to recognize that "The Senate lacks the constitutional authority to *declare* the non-self-executing character of a treaty…." It is critical to understand the meanings of the terms used by the Courts as they apply them to treaty law under Article VI of the U.S. Constitution; viz. *declarations*, *reservations* and *understandings*. These terms cannot be used interchangeably as they have different meanings, both legally and otherwise. Clearly, if they meant the same thing, we would only need one term.

A declaration, such as declaration 1 does NOT change a treaty and a non-self-execution declaration differs legally and materially from a reservation. *See Restatement,* (supra) at § 314, cmt. d. "*A declaration is not presented to the other international signatories as a request for a*

modification of the treaty's terms. Hence, the different signatories are operating under the original treaty and not some modification of it." Should the U.S. not agree with the terms of the treaty, it is not required to sign the treaty. As a ratified treaty, following Presidential signature (infra), the U.S. and its courts have the obligation to honor the treaty as it is written, seen and approved by other signatory nations. Under the U.S. Constitution, the mechanism for treaty ratification is clearly defined, just as legislative actions from the Congress to the President have been defined. Senate line item treaty veto is no more constitutionally valid than a Presidential line item veto.

As two leading commentators have explained and the SCOTUS has held, the Senate does not have the power to bind a court to such declarations, it only has the power to make *reservations* and it is the Courts responsibility to then apply the treaties to the law of the land under the *Supremacy Clause*.

> … The courts must undertake their own examination of the terms and context of each provision in a treaty … The Senate's declaration is not law. … the **Senate's power** under Article II **extends only** to the making of **reservations**…. (emphasis added) *See INS v. Chadha,* 462 U.S. 919, … *Igartua-De La Rosa v. U.S.*, 417 F.3d 145, 190-91 (1st Cir. 2005)

Clearly members of Congress and defense counsel should and the Courts must, comprehend the significance of differences between *declarations*, *reservations* and *understandings*. The SCOTUS has made it clear the Senate cannot change a treaty by introducing new terms and *declarations* are not law (*Igartua*, supra). Unfortunately, the SCOTUS has itself, introduced error into the ICCPR discussion by calling the *declaration* an *expressed understanding*. This was erroneously introduced in *Medellin* (infra). Neither the defendant, the district court nor apparently anyone else has corrected this, despite having erroneously referred to it.

This MAJOR SCOTUS error must be corrected, admitting the mistake that was made previously through the incorrect use of ICCPR treaty terms. Two wrongs do not make a right and misquoting incorrect statements, even when made by the SCOTUS does not make them correct. In medicine when attending physicians make mistakes, students and staff are encouraged to correct the mistake. If they do not, everyone will be confused and someone, usually the patient, could be seriously hurt or killed.

In two cases *not even applicable* to the ICCPR treaty (*Medellin* and *Sosa*, infra), *Sosa* was filed under the *Alien Tort Statute and FTCA*, while *Medellin* was filed under the *Vienna Convention,* neither of which are applicable to an ICCPR treaty case since neither of these cases involved a U.S. Citizen; the SCOTUS erred in calling the self-execution *declaration* an *express understanding*, instead of the *declaration* it is. As already established (supra) *declarations* and *understandings* have completely different legal effect upon the treaty. **The SCOTUS has erred**:

> … the United States ratified the Covenant on the **express understanding** that it was not self-executing and so did not itself create obligations enforceable in the federal courts. See *supra,* at 2763. (emphasis added) *Sosa v. Alvarez-Machain*, 542 U.S. 692, 735 (2004)

Had this truly self-executing limiting *declaration* been a treaty *understanding*, then this might have had an impact upon the treaty except for the fact that Congress cannot alter a treaty once signed by the President. President Carter signed the ICCPR treaty on 5 October 1977 prior to full Senate ratification of the treaty on 8 June 1992.

The *declarations*, *reservations*, *understandings* and *Major Provision* of the ICCPR treaty are noted (passim) and the self-executing comment was a *declaration*; NOT AN UNDERSTANDING! When the SCOTUS incorrectly called a *declaration* an *understanding* and then ruled on the cases (*Medellin* and *Sosa)* and then perpetuated that error by allowing

itself and other Courts to use these incorrect erroneous definitions, the Court has added legal insult to injury. This error promulgated by the SCOTUS and the lower Federal Courts does not justify the continued erroneous use of terms by defendants, defense counsel, the District Courts, Appellate Courts or the U.S. Supreme Court.

Had the Senate disagreed with the ICCPR treaty terms and conditions, it would have had to change them by adding a *reservation* (supra), thereby making other nations aware of a changed *intent* on the part of the U.S., however, the Senate did not. Therefore, all other parties to the ICCPR treaty, by virtue of Senate ratification of what *President Carter signed* and the failure of the U.S. Senate to change the treaty intent through the introduction of *reservations* (Supra, this cannot be done by *understandings*); have been guaranteed by the U.S. government and its courts, that the U.S. agrees with the terms of the treaty as signed and ratified; with the intent to be legally bound by the ICCPR treaty language.

> … concluded … treaty…self-executing…because **"the language of" the Spanish translation (***brought to the Court's attention for the first time***) indicated the parties' intent to ratify and confirm the landgrant "by force of the instrument itself.** (emphasis added) *Id.,* at 89. *Medellin v. Texas*, 552 U.S. 491, 514 (2008)

The Senate could also have refused to ratify the treaty if it disagreed with the treaty terms and conditions, but it did not. The Founding Fathers purpose for integrating the *Treaty Clause* into the U.S. Constitution was to establish a *different principle* from that used by the British Government; viz. that once signed and ratified, it would have a binding legal effect in the Courts. Since *declarations* are not seen by other countries (Restatement, supra) ratifying the treaty, other countries would not be aware of any changed U.S. intent after Senate ratification and as such the SCOTUS has held (supra) that as such, these *declarations* do not change the treaty terms and it would shock the conscience to think that such should be considered part of a treaty when as such it would represent a material provision known only to one party.

> There is something, too, which **shocks the conscience** in the idea that a treaty can be put forth as embodying the terms of an arrangement with a foreign power or an Indian tribe, **a material provision of which is unknown to one of the contracting parties**, and is **kept in the background to be used by the other** only when the exigencies of a particular case may demand it.…In short, … **cannot be considered a part of the treaty**. (emphasis added) *The Diamond Rings*, 183 U.S. 176, 183-84 (1901)

The SCOTUS has also held that terms, which alter a treaty, cannot be added later.

> The Senate **has no right to ratify the treaty and introduce new terms** … it may refuse its ratification, or make such ratification conditional upon the adoption of **amendments** to the treaty. (emphasis added) *The Diamond Rings*, 183 U.S. 176, 183 (1901)

President Jimmy Carter noting that the ICCPR treaty dealt with citizen rights within their own countries signed the ICCPR treaty on 5 October 1977; rights, which President Carter stated, were a matter of U.S. law.

> …the Covenant was "concerned about the rights of individual human beings and the duties of governments to the people they are created to serve." Parties to the Covenant, the President added, pledge, "**as a matter of law**,….Weissbrodt, United States Ratification of the Human Rights Conventions, 63 U. MInn. L. Rev. 35 (1978).

On 23 February 1978, President Carter submitted the ICCPR treaty to the Senate stating even then, that the ICCPR treaty was entirely consistent with the U.S. Constitution and laws and the DOJ concurred with the State Department.

> "[This Covenant] treats in detail a wide range of civil and political rights…. The great majority of the substantive provisions of [this Covenant] are entirely consistent with the letter and spirit of the [U.S.] Constitution and laws. … The Department of Justice concurs in the judgment of the Department of State …there are no constitutional or other legal obstacles to [U.S.] ratification."

Finally, the SCOTUS has also held that once a treaty has been signed by the President of the United States, the Senate can only ratify the treaty as signed to by the President. *The Senate may not alter the terms or conditions of the treaty as signed by the President of the United*

States. It is simply limited to ratifying that which the President has already agreed to or not ratifying it.

> By the Constitution (art. 2, § 2) … the treaty must contain the whole contract between the parties, **and the power of the Senate is limited to a ratification of such terms as have already been agreed upon between the President, acting for the United States, and the commissioners of the other contracting power. The Senate has no right to ratify the treaty and introduce new terms into it**, which shall be obligatory upon the other power, although it may refuse its ratification, or make such ratification conditional upon the adoption of amendments to the treaty. (emphasis added) *The Diamond Rings*, 183 U.S. 176, 183-85 (1901)

No *amendments* were added to change the ICCPR treaty and it should be obvious that *amendments* are not *declarations*. Since Article II of the U.S. Constitution only gives Congress the power to alter treaties under *reservations*, which would be added to the treaty where other ratifying parties may see the changed U.S. intent, it is important to look at the actual reservations made to the ICCPR treaty.

ICCPR Treaty Reservations

> (1) That article 20 does not authorize or require legislation or other action by the United States … protected by the Constitution and laws of the United States.
> (2) That the United States reserves the right, subject to its Constitutional constrains, to impose capital punishment on any person … below eighteen years of age.
> (3) That the United States considers itself bound by article ….
> (4) That because U.S. law generally applies to an offender …the United States does not adhere to the third clause of paragraph 1 of article 15.
> (5) … the United States reserves the right, in exceptional circumstances, to treat juveniles as adults… who volunteer for military service prior to age 18.

Not only is there NOTHING in the reservations which alter the obligations of the U.S. to enforce the individual U.S. citizen rights under the ICCPR treaty including articles 1-27, minus

specifically noted items as specifically stated supra, which have nothing to do with the present case; but, the very reservations themselves make it crystal clear that the ONLY limitations are (1) not restricting the "right of free speech and association protected by the Constitution and laws of the United States", (2) issues of "capital punishment," (3) specific issues regarding "juveniles in the criminal justice system" being treated as "adults" and (4) "individuals who volunteer for military service prior to age 18." Clearly, there is nothing within the reservations of the ICCPR treaty, which would limit the rights of a U.S. citizen under domestic law except for these very specifically noted *reservations* to the ICCPR treaty, none of which are applicable to this case.

Within this same Congressional report and the treaty itself we find the third important component required to Understand the ratified ICCPR treaty; viz. the *understandings* of the United States.

ICCPR Treaty Understandings

> II. The Senate's advice and consent is subject to the following understandings, which shall **apply to the obligations of the United States under this Covenant**:
>
> (1) That the Constitution and laws of the United States guarantee …those terms are used in Article 2, paragraph 1 and Article 26-to be permitted … rationally related to a legitimate governmental objective. The United States further understands the prohibition in paragraph 1 of Article 4 upon discrimination …effect upon persons of a particular status.
>
> (2) That the United States understands the **right to compensation** referred to in Articles 9(5) and 14(6) to **require the provision of effective and enforceable mechanisms… obtain compensation** from either the responsible individual or the appropriate **governmental entity** … of domestic law.
>
> (3) That the United States understands … paragraph 2(a) of Article 10 to permit …. The United States further understands …paragraph 3 of Article 10 does not diminish … penitentiary system.
>
> (4) That the United States understands that subparagraphs 3(b) and (d) of Article 14 do not require …. The United States further understands …paragraph 3(e) does not prohibit a requirement … to compel is necessary for his defense. The United States understands

> the prohibition … double jeopardy in paragraph 7 to apply … judgment of acquittal … same governmental unit….
> (5) That the United States understands that this Covenant shall be implemented … for the fulfillment of the Covenant. (emphasis added) 138 Cong. Rec. S4781-01, 1992 WL 65154

The *understandings* of the United States are not the least bit ambiguous. The treaty is enforceable in U.S. courts for U.S. citizens with compensation for wrongs. There is nothing in either the *reservations* or *understandings* that make the treaty non self-executing! Both the reservations and understandings address specific articles within the first 27 articles, stipulating specific rights under these articles as they apply to U.S. domestic law, including the right to compensation when U.S. citizen rights are violated under the treaty. Thus providing further proof the ICCPR treaty is self-executing and demonstrating the error introduced by confusing the terms *declaration*, *understanding* and *reservation*.

The 2 April 1992 Congressional Record also shows a *Major Provision* of *rights guaranteed* under the ICCPR treaty. This Major Provision appears within the same pre-ratification document. [U.S. Senate Executive Report 102-23 (102d Cong., 2d Sess.)]

> "Each Party to the Covenant undertakes "to respect and to ensure" **to all individuals within its territory and under its jurisdiction the rights recognized in the Covenant … to adopt legislation or other measures necessary to give effect to these rights; and to provide an effective remedy to those whose rights are violated** (emphasis added)."

It is clear from Congressional Reports (passim), officials at the Department of Justice (passim) and the U.S. Department of State (passim), that between the time of the *pre-ratification* Congressional Report of 2 April 1992 and the *ratification* of the ICCPR treaty on 8 June 1992, the position of the United States of America based upon the reservations, understandings and Major Provision of the Congressional record (passim) was that *the necessary legislation was to*

*be, **and in fact was**, in place to provide for the domestic rights of U.S. citizens at the time the ICCPR treaty was ratified.*

The *Declaration of Independence* was signed by the Continental Congress 4 July 1776, but it did not establish the laws of the land, it did not provide individuals rights or remedies, nor did it provide for courts under which it could have a binding effect. The *Declaration* was a combination of the 1128 *Flemish* (*Plakkaat van Verlatinge*, 1581) deposition of Count Flanders and *British* documents (James 2d) expressing dissatisfaction with James the 2nd; not King George. "Neither aiming at originality of principle or sentiment, … it was intended to be an expression of the American mind, and to give to that expression the proper tone and spirit called for by the occasion." (1825 letter from Jefferson to Henry Lee).

The SCOTUS has explicitly held that the Declaration of Independence was not law. [*Ware v. Hylton*, 3 U.S. 199, 208 (1796)] My GGGGF (a British Justice) as well as *Capt. Fleming*, who crossed the Delaware with Washington on Christmas Eve December 1776, would agree; a Declaration of War does NOT establish Law! The Articles of Confederation, *ratified* by Congress 15 November 1777, followed the Declaration of Independence establishing the law. The Articles were replaced by the U.S. Constitution, adopted on 17 September 1787 and went into effect 4 March 1789.

It was the United States Constitution, which established the *understandings* and *reservations* of Congress and defined the law of the land including treaties, citizen rights and remedies, limitations of government power, duties of the courts and it bound the courts, unlike the *Declaration* of Independence. It is this FINAL document of *understanding* and *reservations*, viz. the U.S. Constitution, which defines the law of the land, citizen rights and remedies,

government powers along with the limitations, responsibilities and obligations of the courts; not a *declaration* not even the *Declaration of Independence*!

Declaration 1 discusses potential concerns, which were legally addressed through the treaty *understandings*. As can be seen, these *understandings* are quite specific and anything considered in the *declaration* but not noted in these *understandings*, does not affect the treaty law or citizen rights and remedies. The *declaration* did not change nor alter the treaty in any manner. It did not change the *intent* of the treaty. It *did not and does not* bind the courts. *Declarations* do not amount to a Senate line item veto of treaties anymore than the President has the power to line item veto legislation so submitted.

The *understandings*, *reservations* and *Major Provision* entered into by the Senate are clear statements that the ICCPR treaty provides substantive, procedural and remedial rights to U.S. citizens in U.S. courts. They do not alter the treaty nor the U.S. obligations under the treaty as signed by President Carter on 5 October 1977. The Courts have erred in not providing appellant his ICCPR treaty rights, remedies and due process derived from the U.S. Constitution and stare decisis. The Courts have erred in not distinguishing between *declarations*, *understandings*, *reservations* and *major provisions* of the ICCPR treaty and their substantially different legal effects.

b. The ICCPR treaty is by definition self-executing. Upon ICCPR treaty ratification, the necessary legislation required to provide domestic effect of law for individual U.S. citizen rights under the treaty was in place.

The SCOTUS and the Ninth Circuit Court of Appeals have held that a treaty, which has the necessary legislation implemented to provide domestic effect of law, *is by definition self-*

executing. The pre-ratification documents reveal the Senates interest in refraining from limiting U.S. citizen rights.

> … view of the United States that States Party … should … refrain from imposing any restrictions or limitations on … the rights recognized and protected by the Covenant, … (Declaration 2)

Since declaration 2 like declaration 1 is merely a declaration, we need to look elsewhere for evidence of the necessary legislation, required for the ICCPR treaty to be self-executing. As discussed (passim), the *understandings* of the Senate included the *obligation to implement* the ICCPR treaty.

> (5) That the United States understands that this Covenant shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction …. 138 Cong. Rec. S4781-01, 1992 WL 65154

As stipulated (passim), many of the rights in the ICCPR treaty articles were understood to already exist, even at the time of this pre-ratification Congressional Report. These *understandings* show that U.S. citizen rights exist under the ICCPR treaty. The treaty "declarations" are made completely moot by President Carter's signature and the Department of State's (passim) Fourth periodic report.

Since declarations do NOT affect the treaty and the understandings ratified by the Senate clearly communicate to the world that the U.S. understands and agrees to these specific treaty obligations and since this treaty is a treaty concerning individual citizen rights for people within their own country; it is unconscionable to think that anyone could believe that U.S. citizens do not have individual rights under the ICCPR treaty which can be brought to U.S. federal courts for remedy.

As already stated, distinguishing which terms one is using is vitally important to understanding the legal significance of what is being said. This should be as obvious to the legal

profession, as it is to the medical profession, to which much attention is due single words and their meanings. This case is being no exception! The defendants, the district and other federal courts have erroneously switched terms without considering the ramification of doing so. Congress did not make a *reservation* or an *understanding* upon the ICCPR articles regarding execution of the treaty, but rather a pre-ratification *declaration*, which lacks legal affect.

It is important to differentiate between *understandings* and *declarations* and not to trivialize this distinction. If the terms are important enough to be used in treaties, they are important enough to comprehend and appreciate their significant differences. As a physician, appellant has been medically trained to understand the importance behind the proper use of terms and to appreciate the critical differences and potentially devastating outcomes resulting from the erroneous use of terms, procedures and medications. Appellant can only presume the significance is just as valid legally.

The Congressional Record makes it clear that the United States *understanding* was that the ICCPR treaty did in fact have substantive, procedural and remedial rights for U.S. citizens, with most if not all of the necessary legislation already in place by 2 April 1992. As the Ninth Circuit has held, the *understanding* of a treaty, is what the parties believe the treaty as a whole means in the their own language. Since *declarations* are not part of the actual treaty (supra), other parties ratifying the treaty would not be aware of them. The treaty would be read in accord with the meaning presented to the other signatories of the treaty; viz. according to the *reservations* and *understandings*. The Ninth Circuit has held that it has the responsibility to make certain treaties are carried out accordingly.

> It is our responsibility to see that the terms of the treaty are carried out, … **in accordance with the meaning they were understood to have** (emphasis added) …to protect the …people. *Cree v. Flores*, 157 F.3d 762, 769 (9th Cir. 1998)

> … **and in terms of the Treaty as a whole**. (emphasis added) *Cree v. Flores*, 157 F.3d 762, 770 (9th Cir. 1998)
>
> … would naturally have understood the terms of the Treaty **and resolved any doubts and ambiguities in their favor**. (emphasis added) *Cree v. Flores*, 157 F.3d 762, 771 (9th Cir. 1998)

Here the *understandings* of the U.S. are *unmistakable*, as are the statements made by the U.S. Department of State for the United States, which have been filed with the U.N. (infra) and placed on the world record; viz. that the necessary legislation was in place at the time the ICCPR treaty was ratified to provide for domestic effect of law. These documents further stipulate that the U.S. did not ratify the ICCPR treaty *until the U.S. knew the necessary legislation was already in place to provide for domestic effect in law*, at the time the ICCPR treaty was fully ratified on 8 June 1992; several months following the Congressional meeting and pre-ratification discussion of 2 April 1992, thereby **making the ICCPR treaty self-executing by legal definition.**

It is clear that at the time President Carter signed the treaty (5 October 1977) and during the Senate's pre-ratification discussion of the ICCPR treaty (2 April 1992), that most if not all of the necessary legislation was considered to be in place to provide domestic effect of law to the ICCPR treaty. This is stipulated by multiple Congressional Reports, officials at the Department of Justice (infra) and the U.S. Department of State. Between the pre-ratified Congressional Report of 2 April 1992 and the ratification of the ICCPR treaty on 8 June 1992, the position of the United States of America, in addition to the *understandings* on the Congressional record (passim) was *that the necessary legislation was in place to provide for the rights of individual U.S. citizens in U.S. Courts; otherwise the treaty would not have been ratified.*

> 121. Duly ratified treaties are binding on the United States …"supreme Law of the Land" under Article VI, cl. 2 of the U.S. Constitution. …. **In other instances, the United States does not take any new legislative action to accompany its ratification because the substantive obligations set forth in a particular treaty are already reflected in existing domestic law. For**

> **example, because the human rights and fundamental freedoms guaranteed by the International Covenant on Civil and Political Rights (other than those to which the United States has taken a reservation) have long been protected as a matter of federal constitutional and statutory law, it was not considered necessary to adopt special implementing legislation to give effect to the Covenant's provisions in domestic law** Thus, that important human rights treaty was ratified in 1992 shortly after the Senate gave its advice and consent. (Common Core Document of U.S.; Fourth Periodic Report to U.N. Committee on Human Rights concerning ICCPR. December 2011 (Emphasis added).

The SCOTUS has specifically held that it is the clear treaty language (supra, *"declarations" do NOT change the language of the treaty or its meaning*), which determines if a treaty is self-executing. The language of the ICCPR treaty clearly provides *civil and political rights* to citizens of the nation States who ratify the treaty. The Senate of the U.S. received notification of this in accord with 1 U.S.C. §112b(a) and 22 C.F.R. §181.7 and have not objected nor passed legislation to change the effect of the treaty. NO records suggest or imply, that the U.S. did not *understand* the meaning and intent of the ICCPR treaty based upon the terms and language of the treaty. The courts must honor that intent; they have erred in not doing so.

> Our role is limited to giving effect to the intent of the Treaty parties. When the parties to a treaty both agree as to the meaning of a treaty provision, … we must, … defer to that interpretation. *Sumitomo Shoji Am., Inc. v. Avagliano*, 457 U.S. 176, 185 (1982)

Congress was not ambivalent about it's intent or the outcome of ratifying the ICCPR treaty, when during Congressional hearings the Chairman of the Senate Foreign Relations Committee entered the following onto the record.

> …rights guaranteed by the covenant … cornerstones … democratic society…ratifying the covenant now … promote democratic rights and freedoms … rule of law in the former Soviet Republics, Eastern Europe, … democracy is taking hold. 138 Cong. Rec. S4781-01, 1992 WL 65154

Congress was also very clear about what these specific rights and remedies were.

> "…, **obtain compensation from … the appropriate governmental entity**." (emphasis added) U.S. Senate **Executive** Report 102-23 (102d Cong., 2d Sess.)

The Restatement of Foreign Relations clearly defines a self-executing treaty as one, which has domestic effect of law.

> 2) When an international agreement to which the United States is a party, manifests an **intention** that its provisions shall be **effective under the domestic law** … interpreted by the courts as self-executing under the law of the United States… Restatement (Second) of Foreign Relations Law § 154 (1965) (Emphasis added)

Specifically, the ICCPR Treaty is legally binding:

> (1) A treaty made on behalf of the United States in conformity with the constitutional limitations indicated in § 118, that manifests an **intention that it shall become effective as domestic law** of the United States at the time it **becomes binding** on the United States (a) is self-executing in that it is effective as domestic law of the United States Restatement (Second) of Foreign Relations Law § 141 (1965) (Emphasis added)

The 2 April 1992 pre-ratification hearing included a Major Treaty Provision. Since Major Provisions are not considered a required component of treaties, it is clear that the Senate went out of its way to deliberately establish for the record this Major Provision; specifically providing that the ICCPR treaty would have *domestic effect of law providing an effective remedy* for U.S. citizens whose ICCPR treaty rights are violated in U.S. jurisdiction.

> … to adopt legislation or other measures necessary to give effect to these rights; and to **provide an effective remedy** to those whose rights are violated. U.S. Senate Executive Report 102-23 (102d Cong., 2d Sess.) (Emphasis added)

The Federal Government has established through multiple statements, documents and actions, which have been unmistakably recorded for U.S. citizens, U.S. Courts and the World to see, that the necessary and proper legislation is and was in place to provide for domestic effect of

law under the ICCPR treaty, in keeping with the provisions of the treaty and the U.S. Constitution.

> To make all Laws … necessary and proper for carrying into Execution …. U.S. Const. Art. I, § 8, cl. 18

When the *Supremacy Clause* (Article IV, § 2) was intentionally placed into the U.S. Constitution, it was added to address problems associated with British treaties; viz. British treaties required additional legislative action to be active and were therefore of little importance and essentially considered useless. To remove this problem, the *Supremacy Clause* was formulated to make all treaties judicially enforceable. (*Cf. 2* Max Farrand, The Records of the Federal Convention of 1787 at 393.)

> He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties,….U.S. Const. art. II, § 2, cl. 2

The documentation (passim) and enacting legislation (passim) of the ICCPR treaty is not only in keeping with the intent of the Founding Fathers and the *Supremacy Clause*, but is consistent with the multiple reports presented by appellant to the Courts, in addition to the treaty proper. Given the Fourth periodic report and other documents (passim), it is clear that the necessary legislation was in effect at the time of ICCPR treaty ratification. Independent of any other position, the Fourth Periodic Report (supra) *supersedes* any earlier statements or actions, including e.g. any non-legally binding declaration.

> (1) A treaty … in conformity with the constitutional limitations indicated in § 118, that manifests an intention that it **shall become effective as domestic law** of the United States at the time it becomes binding on the United States **(a) is self-executing in that it is effective as domestic law of the United States, and (b) supersedes, inconsistent provisions of earlier acts of Congress** … Restatement (Second) of Foreign Relations Law § 141 (1965) (Emphasis added)

The complete record *clearly states* that the treaty was ratified *only after* it was determined that there was sufficient constitutional and statutory law to provide substantive rights for U.S. citizens in U.S. jurisdiction under domestic law, qui pro domina justitia sequitur, *that the treaty when ratified was by definition, self-executing*. Post-ratification Congressional Reports, Department of State documents and Department of Justice documents presented to the Law Committee on the Judiciary, all make it clear that the ICCPR treaty, has and had the necessary legislation in place to give effect under domestic law and by definition made it self-executing, effective 8 June 1992.

> …the Court reasoned that it "has traditionally considered as aids to a treaty's interpretation its negotiating and drafting history…and **the post-ratification understanding of the contracting parties**." (emphasis added) 525 U.S. at 156. Northwest Austin Municipal Utility District Number One v. Holder, 2009 WL 788635 (U.S.), 21 (U.S. 2009)

Despite multiple post-ratification documents, the courts have failed to consider post-ratification or even ratification *understanding of the contracting parties*, when considering ICCPR treaty cases. Nonetheless, Nevada Courts *have held* that the U.S. State Departments view (supra) is to be respected as to international treaties.

> We are also persuaded by **the State Department's interpretation** (emphasis added)…. ("Respect is ordinarily due the reasonable views … the meaning of an international treaty."). *Garcia v. State*, 17 P.3d 994, 997 (Nev. 2001)

This Nevada position has been upheld by the SCOTUS ruling that the State Department view should be given great weight, since it is the responsible agency for executing and enforcing treaties.

> … the meaning attributed to treaty provisions by the Government agencies charged with their negotiation and enforcement is entitled to great weight, *id.* at 184-85., Northwest Austin Municipal Utility District Number One v. Holder, 2009 WL 788635 (U.S.), 20 (U.S.,2009)

Given the mass confusion, misuse and abuse of terminology, one should expect the State Department to clarify, as it did on the record, that ALL the necessary legislation was in place at the time the treaty was ratified to provide for domestic effect of law. It is the responsibility of the Executive Branch and its State Department to clarify this chaos to make certain the Laws of the Land are faithfully executed.

> He shall … such Measures as he shall judge necessary and expedient; … take Care that the Laws be faithfully executed, ….
> U.S. Const. art. II, § 3

From these relevant records previously not considered by the courts, it is transparently clear that the Government of the United States of America, *has stated on the record without hesitation* that the ICCPR treaty was NOT ratified until the "substantive laws set forth [in the ICCPR] treaty…already…exist[ed in] domestic law, making the treaty "self-executing" (supra).

On 2 April 1992 Congress may not have considered the ICCPR treaty completely self-executing, but by 8 June 1992 the current position of the U.S. Department of State is that the necessary legislation required for domestic effect WAS in place or the treaty would not have been ratified; the declaration from 8 April 1992 notwithstanding. The Senate, the President and all other components of the U.S. government have NEVER disputed this! Since the U.S. Government ratified the treaty with this stipulation, the ICCPR treaty was by definition self-executing upon its ratification. This has not changed!

There is no ambiguity in the U.S. State Department written records, which specifically stipulate the ICCPR treaty was not ratified until the United States had ALL the necessary legislation in place to establish substantive rights under domestic law. As we can read, no additional legislation was deemed necessary given the existing legislation, which already provided domestic effect of law; ergo, the ratified ICCPR treaty was deemed by the Federal Government to be legally self-executing by definition.

> …the United States does not take any new legislative action to accompany its ratification … the substantive obligations … are already reflected in existing domestic law. (Fourth Periodic Report)

The Ninth Circuit has also held that a treaty is self-executing when it is enforceable in domestic courts without implementing legislation.

> A treaty is self-executing when it is automatically enforceable in domestic courts without implementing legislation. *Serra v. Lappin*, 600 F.3d 1191, 1197 (9th Cir. 2010)

Since no additional legislation was required to provide domestic effect of law to the ICCPR treaty, *as legally defined by the Ninth Circuit and the SCOTUS, the ICCPR treaty is legally self-executing*. Defendant has submitted no evidence that the United States Congress has amended any of the ICCPR treaty. The treaty remains intact and *self-executing by definition as ratified*.

Had the U.S. Senate NOT agreed with the terms of the treaty, it was NOT forced to ratify the treaty! The ICCPR treaty began with Eleanor Roosevelt, was unanimously adopted by the United Nations General Assembly on 16 December 1966 and entered into force on 23 March 1976. On 5 October 1977, President Jimmy Carter signed the treaty. The Senate didn't ratify the treaty until 8 June 1992, after it had been determined that the necessary legislation existed to provide for individual U.S. citizen rights under domestic law (Fourth Periodic Report, passim).

The Congressional *understandings* of the treaty as well as the statements made by Congress proves that the opinion of Congress on 2 April 1992 was that much of the needed legislation was already established for the guarantee of individual rights under the treaty. Upon ratification of the treaty months later, the position of the United States as noted in the Fourth Report (passim) is that the necessary legislation to ensure individual U.S. citizen rights *was in place* and both the Ninth Circuit and SCOTUS have ruled that such is the definition of a self-

executing treaty. Under the *Supremacy Clause* of the U.S. Constitution this makes the ICCPR treaty with its individual rights and remedies, the *law of the land*.

In addition to the stipulated admission by the U.S. Government that the ICCPR treaty is self-executing, given the necessary legislation required to provide for domestic effect in law was in place at the time of treaty ratification, we now look to other court decisions to provide further confirmation that the ICCPR treaty is self-executing. Both the Seventh and Ninth Circuits have emphasized the legal significance of looking at *what the treaty was intended to do* in deciding if a treaty is self-executing.

> Whether a treaty is self-executing is an issue for judicial interpretation, Restatement (Second) of Foreign Relations Law of the United States, § 154(1) (1965), and courts consider several factors in discerning **the intent of the parties** to the agreement: (1) the **language and purposes of the agreement as a whole** (emphasis added); .... *Frolova v. Union of Soviet Socialist Republics*_, 761 F.2d 370, 373 (7th Cir. 1985)
>
> The extent to which an international agreement establishes affirmative and judicially enforceable obligations without implementing legislation must be determined in each case by reference to many contextual factors .... *People of Saipan, By and Through Guerrero v. U.S. Dept. of Int.*, 502 F.2d 90, 97 (9th Cir. 1974)

The SCOTUS followed the *Saipan* decision by holding that the *purpose* of the treaty and its *objectives* are key to determining if a treaty is self-executing.

> There are at least four relevant factors … is **self-executing: (1) "the purposes of the treaty and the objectives of its creators,"** …**We conclude, however, that it is the first factor that is critical to determine** ... **is self-executing**, ... *Islamic Republic of Iran v. Boeing Co.*, 771 F.2d 1279, 1283 (9th Cir. 1985) (Emphasis added)

The Third Circuit concurred with its sister jurisdictions.

> … our role in treaty interpretation is limited to ascertaining and enforcing the **intent of the treaty parties**.....*MacNamara v. Korean Air Lines*, 863 F.2d 1135, 1143 (3d Cir. 1988) (Emphasis added)

The SCOTUS has further emphasized the *purpose* of the treaty in making such decisions.

> …adherence to the language of the Treaty would not "overlook the **purpose of the Treaty**." 638 F.2d, at 556. *Sumitomo Shoji Am., Inc. v. Avagliano*, 457 U.S. 176, 185 (1982) (Emphasis added)

There is no doubt from a detailed review of the record, that the United States understood that the purpose of the ICCPR treaty was to establish U.S. citizen *civil and political rights* and the United States has confirmed this *intention* by making it clear that the necessary legislation was in place at the time of treaty ratification to provide for domestic effect of law resulting in the ICCPR treaty being self-executing by definition, with rights and remedies for U.S. Citizens enforceable in U.S. Courts.

> A proposal by the United States at the Second Session of the Commission regarding the enforcement of the rights created by the ICCPR pursuant to Article 2 also sheds light on the intentions of the United States regarding both the question of **self-execution and the enforcement of these rights by the courts of the United States**. …
> a) … to all persons under its jurisdiction, including citizens ..., the enjoyment of these human rights and fundamental freedoms;
> b) that any person whose rights or freedoms are violated *shall have an effective remedy,* whether the violation has been committed by persons acting in an official capacity;
> c) that such remedies *shall be* ***enforceable by a judiciary*** (emphasis added) whose independence is secured....[53] *Igartua v. U.S.*, 626 F.3d 592, 631-32 (1st Cir. 2010)

The documents surrounding the ICCPR treaty confirm the U.S. intent that the ICCPR treaty is in fact the law of the land providing rights and remedies for U.S. Citizens in U.S. Courts.

> The negotiating history of the ICCPR reinforces the clear language of this treaty establishing individual, enforceable rights on behalf of persons situated as are Appellants, and obligating the United States to provide a judicial remedy in its courts to vindicate their violation. **To conclude otherwise is to ignore the plain words of the treaty as well as our basic constitutional duty to interpret international agreements as the Law of the Land**. (emphasis added) *Igartua v. U.S.*, 626 F.3d 592, 633 (1st Cir. 2010)

Here, there can be no doubt that the *purpose* of the ICCPR treaty is to provide for the *Civil and Political Rights* of individuals with legal remedies within their own country. It is impossible to read the treaty and not understand this purpose. Since treaty ratification is a voluntary action, as demonstrated by the amount of time between Presidential signature and Senate ratification of the treaty and given the Fourth Report (passim) confirmation that all necessary legislation was in place at the time of ratification, it would be incomprehensible, unconscionable and myopic for anyone to conclude that the ICCPR treaty did not have the necessary legislation in place to provide for domestic effect of law in U.S. courts, for U.S. Citizens in U.S. territory/jurisdiction as of the time of treaty ratification; thereby making the treaty self-executing by definition.

There is NOTHING in the treaty proper, nor the Fourth Periodic report by the United States (passim) that would suggest anything but a self-executing treaty. It is by definition self-executing pursuant to the federal courts (supra). It is also clear that the purpose and the objective of the treaty are to establish civil and political rights for citizens within their own countries under domestic effect of law. The court has erred in failing to recognize ratification and post-ratification documentation, which by definition makes the ICCPR treaty self-executing.

c. The ICCPR treaty provides civil and political rights and remedies for U.S. Citizens in U.S. territory. It does not provide legal rights for non-U.S. citizens in U.S. jurisdiction, or for violations against U.S. Citizens in non-U.S. jurisdiction.

The agreement between nation States that ratify the ICCPR treaty is that the treaty establishes Civil and Political Rights for individual citizens within their own nations. It is clear from reading the ICCPR treaty and responses from the U.S. Government, that ICCPR provides rights to U.S. citizens in U.S. jurisdiction. In the **Advance Version** of the **Fourth Periodic**

Report (passim), the U.S. made it clear that ICCPR treaty rights for U.S. citizens must be acknowledged and respected. With specific detail given to jurisdictional issues, the U.S. further stipulated:

> 504. Article 2(1) of the Covenant states that "[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind."

This same report specified that the United States is *legally obligated under articles 2 and 26* to ensure these individual rights; consistent with the treaty *understandings*.

> 605. In paragraph 25 of its Concluding Observations, … acknowledge its **legal obligation under articles 2 and 26** to ensure to everyone the rights recognized by the Covenant…(Emphasis added)

There is no confusion as to (1) the *understanding* of the treaty intent or (2) to what the United States was agreeing to when the Senate fully ratified the ICCPR treaty as signed by President Carter or (3) that the entirely treaty, including articles 1-27, is expressly self-executing by legal definition. It would be the ultimate hypocrisy and unconscionable to the appellant, for the U.S. to call for action to be taken upon other countries violating the rights of their citizens under the ICCPR treaty and then for the U.S. to violate these same rights with its own citizens and expect no action to be taken by U.S. or International Courts. The record shows the U.S. has been working diligently to bring to the attention of the world those nation States that are violating the ICCPR treaty. A few examples, which are by no means inclusive, include:

> 1. Calling for a renewed focus on the Government of the Islamic Republic of **Iran's** violations of internationally-recognized human rights as found in the Universal Declaration of Human Rights. 111th CONGRESS, 2nd Session 02/11/2010 PASSED SENATE: CR S592; CR S571).
>
> 2. Whereas the Government of **Syria**, led by President Bashar al-Assad, responded to protests by launching a violent crackdown, committing human rights abuses, and violating its international

> obligations, including the International Covenant on Civil and Political Rights (ICCPR) and …112th CONGRESS, 1st Session
>
> 3. Whereas the Government of the Islamic Republic of **Iran** is a signatory to the United Nations International Covenant on Civil and Political Rights, adopted December 16, 1966 (ICCPR)… the Government of the Islamic Republic of Iran regularly violates its obligations under the ICCPR,… 113th CONGRESS, and 1st Session.

In fact, in June of 2012, the U.S. issued an independent report wanting *inter alia*, the following ICCPR treaty violations to be addressed including actions to be taken against those violating the ICCPR treaty.

> "Accountability and redress for human rights violations …the USA notes whether there is "access to an independent and impartial court to seek damages for or cessation of an alleged human rights violation." On accountability,…to investigate human rights violations and to bring perpetrators to justice. For example, inter alia, the State Department reported the following":
>
> **Afghanistan**: "Official impunity and lack of accountability were pervasive"
> **Belarus**: "the government often did not investigate reported abuses or hold perpetrators accountable."
> **Cuba**: "Members of the security forces acted with impunity in committing numerous, serious civil rights and human rights abuses."
> **Democratic Republic of the Congo**: "Impunity remained a severe problem, … despite credible evidence of their direct involvement in serious human rights abuses or failing to hold subordinates accountable for such abuses."
> **Kyrgyzstan**: "The central government's inability to hold human rights violators accountable allowed security forces to act arbitrarily and emboldened law enforcement to prey on vulnerable citizens."
> **Mauritania**: "The government rarely held security officials accountable or prosecuted them for abuses."
> **Myanmar**: "The government generally did not take action to prosecute or punish those responsible for human rights abuses, with a few isolated exceptions."
> **Pakistan**: "Lack of government accountability remained a pervasive problem. Abuses often went unpunished, fostering a culture of impunity".

> **Turkmenistan**: "… complaints of abuse by law enforcement agencies did not conduct any known inquiries that resulted in members of the security forces being held accountable for abuses." **Zimbabwe**: "Security forces were rarely held accountable for abuses."

Clearly it is and has been the position of the U.S. that the ICCPR treaty establishes individual citizen rights and remedies enforceable in Courts of Law for people within their own countries.

This position is supported and confirmed by the U.S. *verbatim report* to the U.N. by Matthew Waxman, Head of the U.S. Delegation, U.N. Human Rights Committee. Mr. Waxman states the U.S. recognizes the requirement to provide individual U.S. citizen rights in U.S. territory under the treaty.

> It is the long-standing view of my government that applying the basic rules for the interpretation of treaties … establishes that States Parties are required to respect and ensure the rights in the Covenant only to individuals who are BOTH within the territory of a State Party and subject to its jurisdiction … and I quote, "within its territory and subject to its jurisdiction." 2006 WL 2007216

Both Mr. Waxman's statement and the Department of State's Congressional Report are consistent with Senior Counsel at the Department of Justice (DOJ); e.g. on 16 December 2009, it is clear that the DOJ held the exact same view, a position that has not been recanted. In a statement before the Subcommittee on Human Rights and the Law Committee on the Judiciary, to the U.S. Senate, Mr. Thomas E. Perez, **Assistant Attorney General for the DOJ**, presented a statement at the hearing entitled "*The Law of the Land: U.S. Implementation of Human Rights Treaties*."

> **"The International Covenant on Civil and Political Rights**, adopted by the U.N. General Assembly in 1966, and ratified by the United States Government in 1992, proclaims that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, **justice**

> and peace in the world." This recognition is **at the heart** of the civil rights movement and of the civil rights law enforcement program **headed by the Department of Justice"** (Emphasis added).

Mr. Perez also stated:

> "… that within the Department of Justice, the Criminal Division and the National Security Division share the commitment of the Civil Rights **Division to conduct our activities in a manner that is consistent with the human rights treaties discussed above**." (Emphasis added)

Said treaties specifically included the ICCPR treaty. These statements made by the Assistant Attorney General for the DOJ and Mr. Waxman (supra) clearly state that the ICCPR treaty provides legal rights and remedies to U.S. Citizens whose Civil rights are violated in U.S. territory, including the defendants.

Consistent with the ICCPR treaty, the U.S. has long held that the ICCPR treaty provides no rights to non-Americans or to Americans whose treaty rights are violated in non-U.S. territory. The frequently cited cases of *Cornejo* and *Sosa* are not applicable to the ICCPR treaty as both involved Mexican nationals, not U.S. citizens. These cases are therefore irrelevant (FRE Rule 401) and misleading (FRE Rule 403) when considering ICCPR treaty cases in U.S. Courts. They further demonstrate court errors, by failing to grant the MSJ with SUFs, default and default judgment (passim) entered by appellant. The frequently cited ICCPR cases include:

CASES INVOLVING NON-U.S. CITIZENS. **(NOT RELEVANT)**

a. *Cornejo v. County of San Diego,* 504 F.3d 853 (9th Cir. 2007). Mexican national and the Vienna Convention, which (infra) does not provide individual treaty rights.

b. *Medellin v. Texas*, 552 U.S. 491 (2008). Mexican national and the Vienna Convention, which (infra) does not provide individual treaty rights. Incorrectly introduced Judicial error calling a *declaration* an *understanding*. **This SCOTUS legal error has not yet been but MUST be corrected!**

c. *Sosa v. Alvarez-Machain*_, 542 U.S. 692 (2004).
A Mexican national and the Alien Tort Statute and Federal Tort Claims Act. Incorrectly introduced Judicial error calling a *declaration* an *understanding*. **This SCOTUS legal error has not yet been but MUST be corrected!**

d. *Padilla-Padilla v. Gonzales*, 463 F.3d 972 (9th Cir. 2006).
Aliens petitioned under Board of Immigration Appeals (BIA).

e. *Martinez-Lopez v. Gonzales*, 454 F.3d 500 (5th Cir. 2006).
Alien petitioned for review from order of the Board of Immigration Appeals

f. *Guaylupo-Moya v. Gonzales*, 423 F.3d 121, 136 (2d Cir. 2005).
Alien denied waiver under the Illegal Immigration Reform and Immigrant Responsibility Act.

g. *Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242 (11th Cir. 2005).
Guatemalan labor unionists sued under Alien Tort Act and Torture Victim Protection Act.

CASES INVOLVING NON-U.S. TERRITORY. **(NOT RELEVANT)**

a. *Igartua-De La Rosa v. U.S.*, 417 F.3d 145 (1st Cir. 2005).
Puerto Rico a Commonwealth and not in U.S. jurisdiction.

DIFFERENT ISSUES COMPLETELY UNRELATED TO AMERICAN CITIZENS SEEKING RIGHTS IN AMERICAN JURISDICTION. **(NOT RELEVANT)**

a. *Whitney v. Robertson*, 124 U.S. 190 (1888).
This case addresses the effect of statutory changes to a treaty. Not the subject of this case.

b. *Robertson, Collector, etc.*, 112 U.S. 580, 598 (1884).
The "Head Money Cases" Like *Whitney v. Robertson*, this case has to do with statutes passed following a treaty, which changes the treaty. Again, not applicable to this case.

c. *Islamic Republic of Iran v. Boeing Co.*, 771 F.2d 1279 (9th Circ. 1985).
This involves Executive Order and the country of Iran and an American aircraft manufacturer; not U.S. citizens.

CASES INVOLVING DECLARATION ONE. **(PRE-RATIFICATION DECLARATION ERROR)**

a. *Rotar v. Placer County Super. Ct.,* CIV S07-0044 DFLEFBP, 2007 WL 1140682 (E.D. Cal. 2007) report and recommendation adopted, CIV-S07-0044DFLEFBPS, 2008 WL 4463787 (E.D. Cal. 2008).
Plaintiff seeks to bring a claim under 42 U.S.C. § 1983 for violations of his constitutional rights. There is a mention of ICCPR and declaration 1 *referring to White* (infra) case.

b. *White v. Paulsen,* 997 F. Supp. 1380 (E.D. Wash. 1998).
Former prisoners sued physician, alleging in part that they were subjected to nonconsensual medical experimentation (radiation) while in custody of State of Washington, in violation of international law's prohibition of crimes against humanity. *Since Rotar is based upon this case, this is the only actual case, which considers an American citizen in U.S. territory*. Interestingly enough the ICCPR treaty was originally developed (supra) to prevent atrocities of this kind, which was pervasive in Nazi Germany.

In these frequently Federally discussed ICCPR treaty cases, eleven (11) are completely irrelevant (FRE 401) to U.S. citizens whose rights are violated in U.S. territory and who have remedies due in Federal Courts. Of the remaining two (2) frequently cited cases, one simply refers to the other case, leaving a single (1) case (*White*) for discussion. *White* again introduces the pre-ratification declaration error (passim) with Shades of Josef Mengele.

If it is the *intent* of the U.S. Senate to make the ICCPR treaty non self-executing, it must be so stated *within the treaty itself*, the *understandings*, or the *reservations*. Declarations (1) are NOT part of the treaty, (2) do NOT change the intent of the treaty, (3) its effect under domestic law, (4) nor bind the courts. It is truly unconscionable to the appellant who is a physician, research scientist and grant reviewer for HHS-HRSA, that any Court would rule that *White* had no rights or remedies under the ICCPR treaty. Clearly, if in fact *White* was medically experimented upon as the facts of the case indicate and we as a people agree that following

Tuskegee and other such atrocities conducted upon U.S. citizens by the U.S. Government, that such violations are wrong then clearly these violations of human civil rights violate our ICCPR treaty rights and remedies.

The importance of distinguishing between U.S. citizens and non-U.S. citizens cannot be overemphasized. Aliens do not have U.S. Constitutional, Statutory or Treaty rights and U.S. citizens do not have legal rights in other countries. In addition to Waxman's report (supra), a more recent case was taken up by the Federal District of Columbia in July of 2013 clearly defining the difference between cases involving U.S. citizens and non-citizens and the Federal Courts recognition of ICCPR treaty rights and remedies for U.S. Citizens. Here Justice Kessler points out that she lacked jurisdiction to act *only because* the plaintiff was an alien citizen.

> [N]o court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the **detention,** transfer, **treatment,** trial, or **conditions of confinement** of an **alien.** *Dhiab v. Obama*, CIV.A. 05-1457 GK, 2013 WL 3388650 (D.D.C. 2013) (Emphasis added)

Justice Kessler held that individual rights of the plaintiff had been violated in this case, and she would have acted upon these violations under Article 7 of the ICCPR treaty, had the petitioner been a U.S. citizen.

> …the Court feels just as constrained now, as it felt in 2009, to deny this Petitioner's Application for **lack of jurisdiction**. The Court also feels constrained, however, to note …Petitioner has set out in great detail … force-feeding of prisoners violates Article 7 … International Covenant on Civil and Political Rights *Dhiab v. Obama*, CIV.A. 05-1457 GK, 2013 WL 3388650 (D.D.C. 2013) (Emphasis added)

Justice Kessler specifically addressed Article 7 of the ICCPR treaty, **further supporting the execution of the ICCPR treaty** with treaty rights and remedies for U.S. citizens in the Federal District of Columbia. The Court went on to reprimand President Obama for violating the ICCPR rights of the prisoner, which could not be addressed by the Court due to jurisdictional

limitation only; not a failure of the treaty to be executable. Such is NOT the case here! Here, appellant IS a U.S. citizen, filing for indemnification in a U.S. Court, for violations of his ICCPR treaty rights and remedies within U.S. jurisdiction.

In fact, there is an *actual duty of the courts* to examine government and agency actions in cases involving U.S. citizens in U.S. territory, consistent with the terms, conditions and violations of the ICCPR treaty. *As yet another Court example, the U.S. military tribunal has also recognized ICCPR treaty rights and remedies.*

> A trial of Mr. Hicks in either of these forums would likely have met the procedural requirements of U.S. law as stated in the ICCPR … and **provides remedies** for the accused if the government violates those procedural rights.
>
> … nothing in U.S. law that relieves this commission from the responsibility of providing the procedural safeguards **required by U.S. law as stated in the ICCPR**… an accused's procedural safeguards at trial set forth in these treaties the U.S. has ratified apply to a military commission **just as they do to trials in federal court** ….
>
> The commission has the **power and duty** to examine the actions of the government in this case, and **formulate a remedy** … *Title: U.S. of Am.*, 2004 WL 3088501 (D.O.T.C.A.B. Oct. 23, 2004) (Emphasis added)

As shown in Appendix E, the U.S. Ambassador Pamela K. Hamamoto, as recently as 9 October 2015 specifically stated that it is the position of the United States of America, that:

> "The United States is deeply committed to fulfilling its obligations under the International Covenant on Civil and Political Rights (ICCPR or Covenant)…"

The report continues by providing specific case examples of how the Federal Government including law enforcement and the Courts IS and HAS BEEN addressing violations of U.S. Citizens rights under the ICCPR treaty, providing remedies for such individuals in U.S. Courts.

Again, as held by the 11th Circuit Court of Appeals, it is the relationship of the citizen to his or her own nation State, which guarantees ICCPR treaty rights and remedies in the Courts.

> The Court's "first focus interpreting the ICCPR is its plain language." *Duarte-Acero,* 208 F.3d at 1285 (citations omitted). Article 2(1) of the ICCPR defines to which individuals the signatory state must give these rights: Each State Party to the present Covenant undertake to respect and to ensure to all individuals *within its territory and subject to its jurisdiction* the rights recognized in the present Covenant ....
>
> Moreover, as the Government correctly notes, the Eleventh Circuit's recent interlocutory opinion provides some guidance in interpreting this provision. In *Duarte-Acero,* the Circuit stated that the provisions of the ICCPR "**are to govern the relationship between an individuals and his state**.... In other words, the ICCPR is concerned with conduct that takes places [sic] within a state party. *Duarte-Acero,* 208 F.3d at 1286 (11th Cir. 2000) (Emphasis added)

The present case before this Court involves a U.S. citizen, within U.S. territory, whose Civil rights under the ICCPR treaty and U.S. Constitution have been violated, with legislation implemented to give the ICCPR treaty domestic effect in law in accord with the U.S. Constitution. As held by the 11th Circuit *et al* (*Supra*), appellant has legal rights and remedies under the U.S. Constitution and the ICCPR treaty.

> On September 8, 1992, the United States became party to the ICCPR. As Defendants correctly point out, a properly ratified treaty is the supreme law of the land. U.S. Const. art VI, § 2, cl. 2." ... *U.S. v. Benitez*, 28 F. Supp. 2d 1361, 1363 (S.D. Fla. 1998) *aff'd sub nom. U.S. v. Duarte-Acero*, 208 F.3d 1282 (11th Cir. 2000)

furthermore:

> On September 8, 1992, the United States, … became a party to the ICCPR, at which time the treaty became, coexistent with the United States Constitution and federal statutes, the supreme law of the land. *U.S. v. Duarte-Acero*, 208 F.3d 1282, 1284 (11th Cir. 2000)

The 11th Circuit Court of Appeals has further held that *the legislative history and ratification* of the ICCPR treaty clearly shows a guarantee of civil and political rights for individuals within their own countries.

> Moreover, as the Government correctly notes, … In other words, the ICCPR is concerned with conduct that takes places [sic] within a state party." *Duarte-Acero,* 208 F.3d at 1286. …**This construction is reinforced if the legislative history of the ratification of the ICCPR by the Senate is examined**. *See U.S. Sen. Exec. Rep. 102-23,* 31 I.L.M. 645, 648 (102d Cong, 2d Sess, 1992). The Senate Executive Report states that the ICCPR "**guarantees a broad spectrum of civil and political rights, rooted in basic democratic values and freedoms, to all individuals *within the territory or under the jurisdiction of the States Party***." *Id. U.S. v. Duarte-Acero*, 132 F. Supp. 2d 1036, 1041 (S.D. Fla. 2001) aff'd, 296 F.3d 1277 (11th Cir. 2002) (Emphasis added).

These Federal and Appellate Court decisions have not been overturned, questioned or considered vague *by any court including the SCOTUS*. U.S. Ambassador Hamamoto was explicit in establishing the execution of the ICCPR treaty in U.S. Courts with her full letter providing evidence of same. No Court has questioned the Ambassador letter and the evidence she provided. If this Court holds differently, then this case MUST be referred to and accepted by the SCOTUS as a case of Original Jurisdiction.

> "The Supreme Court shall have original ...(b)(1) All actions or proceedings to which ambassadors...are parties;" 28 U.S.C. § 1251
>
> "In all cases affecting **ambassadors**, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction." Article III, § 2, U.S. Constitution.

d. The ICCPR treaty provides remedies for U.S. Citizens, when their ICCPR Civil and/or Political Rights have been violated in U.S. territory.

The *understandings* and *reservations* of the ICCPR treaty do NOT limit the remedies of U.S. citizens, whose rights under the ICCPR treaty have been violated. One need not be a scholar

of Constitutional Law, International Law or Treaty Law to distinguish between the Vienna Convention, (*Medellin*, passim) where there are no rights or remedies available to U.S. citizens and the ICCPR treaty itself. Clearly, the Vienna Convention does not establish individual rights.

> "Realizing that the purpose of such privileges and immunities **is not to benefit individuals** but to ensure the efficient performance of the functions of diplomatic missions as representing States," (Vienna Convention on Diplomatic Relations done at Vienna on 18 April 1961) (Emphasis added)

The use of the Vienna Convention cases to refute U.S. citizen rights under the ICCPR treaty, shows either an unreasonable, reckless, or deceptively bad-faith approach. By *contrast* the ICCPR treaty Preamble clearly articulates what the entire treaty is about; viz. *individual citizen rights.* The *intent* (passim) of those reading and signing this treaty is unquestionable.

> ICCPR PREAMBLE -- The States Parties to the present Covenant
>
> Considering that, in accordance with …recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice …,
>
> Recognizing that these rights derive from the inherent dignity of the human person,
>
> Recognizing that, … the ideal of free human beings enjoying civil and political freedom and … can only be achieved if … everyone may enjoy his civil and political rights, …,
>
> Considering the obligation … promote …respect … observance of, human rights and freedoms,
>
> Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive … rights recognized in the present Covenant,

The defendants have submitted no evidence that the United States has amended the ICCPR treaty or its *intent*. Hence the ICCPR treaty remains completely intact as ratified, which according to the Fourth Report submitted from the U.S. Department of State (passim), was ratified by the Senate only after it was determined that all the necessary legislation was in place

to provide for domestic effect of law, providing for individual U.S. citizen rights and remedies as provided for by the treaty.

Appellant has brought to the Court's attention the necessary documents, statutes, reports, et cetera, which have demonstrated that the *understandings* and *actions* taken by the U.S., affirm that many of the legislative requirements were deemed to already existed by 2 April 1992 and that all the necessary legislation existed by 8 June 1992 at the time of full Senate treaty ratification; consequently making the ICCPR treaty self-executing by legal definition. That having been proven, it follows that the *rights* of U.S. citizens follow the plain language, including *the actual expressed understandings* of the treaty and that it is the Courts and in particular this Courts Constitutional obligation to guarantee and protect plaintiff's rights and remedies under the ICCPR treaty.

> … not self-executing. ... rests on a shaky foundation. Firstly, in *Medellín,* the Supreme Court was dealing with the Vienna Convention and not the ICCPR, … does not demonstrate that the Supreme Court intended to express a view as to whether the ICCPR, in particular, is or is not self-executing.[26] The Supreme Court,…did not engage in an analysis of either the ICCPR's text or it history, … did not inquire into the post-ratification understanding of the signatory nations as to whether the ICCPR is self-executing. … did not, however, present a comparable analysis with respect to the ICCPR because this was not an issue before the Court. ….It is the courts and not other branches of government that, upon examining a treaty's text (or when its meaning is not apparent from the text, its history), must determine whether the treaty creates individual rights …. *Igartua v. U.S.*, 654 F.3d 99, 108-09 (1st Cir. 2011)

Medellin's interpretation of the ICCPR treaty was flawed, not only because it was not about a U.S. citizen, but also because it addressed a treaty (viz. the Vienna Convention), which did not provide for individual rights. The post-ratification ICCPR documents were never considered. Post-ratification documents have clearly established that the terms and subject of the

ICCPR treaty itself is to provide individual citizens with their treaty rights and remedies. The ICCPR treaty is substantively different from the Vienna Convention. Appellant has spent considerable time and effort **making the Courts aware** that the ICCPR treaty is not dependent upon (1) the FTCA or (2) the Vienna Convention and (3) to make the Courts aware of the confusion which has occurred following the introduction of Judicial error produced in the cases of *Medellin* and *Sosa,* where the attorneys and subsequently the Federal Courts erroneously called a *declaration* an *understanding*. Consequently this legal error has been introduced and perpetuated as the result of the State and Federal Courts not differentiating between *declarations*, *reservations*, *understandings* and the clear treaty *intent* (viz. the actual terms of the ICCPR treaty); not to mention completely ignoring the documentation by the branches of the Federal Government and the record of the ICCPR treaty (passim).

> 122. ….Whether treaty provisions give rise to individually enforceable rights in U.S. courts depends on a number of factors, including the **terms**, structure, history and **subject of the treaty**. (Common Core Document of the U.S.A.: Submitted with the Fourth Periodic Report of the USA to the United Nations Committee on Human Rights concerning the International Covenant on Civil and Political Rights. 30 December 2011) (Emphasis added)

As has been demonstrated, the Vienna Convention does not implement individual rights. In contrast, the Preamble and even the very title of the *International Covenant on Civil and Political Rights* (ICCPR) treaty, clearly and boldly establishes that this treaty is entirely about human rights and remedies, specifically the individual rights of people living within the nation states that ratify this treaty.

To determine if such rights exist for U.S. citizens one need merely read (1) the language of the treaty, (2) ALL the legislative history (not just parts of it), (3) reports made to Congress, including (4) those by the DOJ and (5) the record of the United States, as required by its periodic

reports concerning the ICCPR treaty. ALL of these must be taken into account, not just some of them. It is the failure to look at all of this material, which has resulted in so much harm, injustice and error to date, both attorney and judicial.

These records clearly show that U.S. citizens have substantive, procedural and remedy rights under the ICCPR treaty, consistent with what the Founding Fathers intended when they established the *Supremacy Clause of the Constitution*. The Courts have erred by not reviewing these documents and recognizing (1) the ICCPR treaty was ratified by the Senate of the United States *only after the Senate had determined that all necessary legislation already existed (supra) to give legal effect to U.S. citizens with rights defined by the treaty itself*, (2) the treaty was signed by the President of the United States but not ratified until the necessary legislation was in place to give full legal effect to the ICCPR treaty, (3) making it self-executing by definition and (4) the law of the land under the *Supremacy Clause* of the United States Constitution, to which (5) the court has the obligation to enforce U.S. citizen rights. The Courts have also erred in failing to find for the plaintiff's MSJ with SUFs, default and default judgment against defendants (passim).

The United States of America through its District Court for the Northern District of Iowa and the State Courts of Iowa have denied appellant his ICCPR treaty rights both procedurally and substantively as proven supra. **The lower Court has even admitted (supra) that it failed to read all of the record of the case.** Specifically appellant's rights and remedies under the ICCPR treaty include but are not limited to the following.

> Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are **violated** shall have an **effective remedy**, notwithstanding that the violation has been committed by persons acting in an **official capacity**; (*International Covenant on Civil and Political Rights (Ratified 8 June 1992), Article 2(3)*) (Emphasis added)

Clearly appellant's original and all subsequent civil case complaints brought against defendants and appellant's ability to obtain remedies have been violated by the Courts and the defendants following a subpar investigation by defendants (supra).

> All persons shall be equal before the courts and tribunals. In the **determination of any criminal charge against him**, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a **competent**, **independent** and **impartial tribunal** established by law. *Id*, Article 14(1) (Emphasis added)

With compensation subsequently due

> … the person who has suffered punishment as a result of such conviction **shall be compensated** according to law, …. *Id*, Article 14(6) (Emphasis added)

Defendants and prior Courts and attorneys have failed to substantially investigate and introduce to a jury exculpatory evidence proving actual innocence and that a crime had not been committed and therefore no action should have been taken against appellant (*Prabhu, et cetera, Supra)*.

> **No one shall be held guilty of any criminal offense … any act or omission which did not constitute a criminal offense**, under national or international law, at the time when it was committed…. *Id*, Article 15(1) (Emphasis added)

The 1st Circuit Court of Appeals has specifically held that legislative history makes it abundantly clear that U.S. citizens have rights and remedies enforceable in U.S. courts under the ICCPR treaty.

> Further, the conclusion that the ICCPR creates individual rights, enforceable in the courts of the United States, is **abundantly clear from the negotiating history of the Treaty**. (emphasis added) *See generally* Bossuyt, *supra* note 34. Illustrative of this is the Report of the Commission on Human Rights, 5th Session (1949), 9th Session (1953) …. *Igartua v. U.S.*, 626 F.3d 592, 630-31 (1st Cir. 2010) (Emphasis added)

It has been and remains the position of the United States Government that ICCPR treaty remedies in the United States applies only to U.S. citizens within U.S. jurisdiction. In fact, on 22 May 2012, the United States again emphasized individual U.S. citizen rights under article 2(1).

> Each State Party to the present Covenant undertakes to respect and to ensure to all individuals … its jurisdiction **the rights recognized in the present Covenant** (emphasis added),….
> [Human Rights Comm., Fourth Periodic report: United States of America, ¶505, U.N. Doc. CCPR/C/USA/4 (May 22, 2012) available at http://daccess-ddsny.un.org/doc/ UNDOC/GEN/G12/429/66/PDF/ G1242966.pdf?OpenElement (Emphasis added)

Inter alia, *Benitez* and *Duarte-Acero* have never been overturned or even questioned and neither is considered vague. Both cases fully agree with the Fourth Periodic Report (passim), U.S. Ambassador Hamamoto's documentations, letters and reports as well as the other federal reports and documents discussed supra. The Federal Government through multiple statements, documents and actions have clearly established on both the U.S. and World records, that the necessary legislation is and has been in place to provide for domestic effect of law for U.S. citizens under the ICCPR treaty in keeping with the provisions of the treaty and the *Supremacy Clause* of the U.S. Constitution.

There is no question that the ICCPR treaty legislation has satisfied the *necessary and proper* requirements and consequently is self-executing by definition with remedies available to U.S. citizens in U.S. courts for violations occurring within U.S. jurisdiction. This case is not about (A) the FTCA, (B) declarations, which have no affect upon the treaty or the courts, (C) the Vienna Convention or (D) any other obfuscating (FRE 403) issue. This case is about a U.S. citizen having his ICCPR treaty rights violated in U.S. territory, for which the U.S. Courts are obligated to provide indemnification, independent of the origin of that violation.

The Legal Standard for stating a claim has been met!

As stipulated to by the Federal Courts [*Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007), the Fed. R. Civ. P. 8(a)(2) or *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)] there are two required elements to state a claim pursuant to *Iqbal*. The *first element* focuses on the assumption of truth (*Id.* at 679) of the well-plead factual allegations. The defendant's and the Courts, which have heard this case, as discussed supra have not specified a deficiency to this element of the case.

Under *Smoker* (supra) and the expressed confession of the defendants in their docketed briefs, the defendants failed to substantially investigate the facts and matters of law in this case. Furthermore, they have expressly stipulated on the record that there is substantial evidence presented by the appellant that defendants have conducted a subpar investigation, violating appellant's administrative and legal rights.

Since this first element has not been ruled deficient by the Courts, appellant notes the MSJ with SUFs, which were filed with the District Court on 7 January 2013 (Appendix B) and served on defendant on that date. Appellant has therefore satisfied this first element required to state a claim for relief.

> (a) Claim for Relief. A pleading that states a claim for relief must contain:
> **(1)** … unless the court already has jurisdiction and the claim needs no new jurisdictional support;
> **(2)** a short and plain statement of the claim showing that the pleader is entitled to relief; and
> **(3)** a demand for the relief sought, …. Fed. R. Civ. P. 8

and as held by the 7th Circuit Court of Appeals.

> "The complaint would have to indicate … ("a short and plain statement of the claim showing **that the pleader is entitled to relief,**" Rule 8(a)(2))" *Am. Nurses' Ass'n v. State of Ill.*, 783 F.2d 716, 723 (7th Cir. 1986) (Emphasis added)

The defendant has *consented* to the MSJ with SUFs, pursuant to the Fed. R. Civ. P. and Iowa Local Rules as well as the State and Federal case law, supra. Since, defendant has *consented* to these facts pursuant to the Fed. R. Civ. P. time limits, the Iowa Local Rules, and per SCOTUS precedent cases (*Anderson*, et al., infra), said consent by defendant equals a finding that the facts and matters of law are true and not disputed.

> In addition, *when ruling on a defendant's motion to dismiss*, **a judge must accept as true all of the factual allegations contained in the complaint**. *Bell Atlantic Corp., supra,* at 555 – 556, 127 S.Ct. 1955 … *Erickson v. Pardus*_ 551 U.S. 89, 93-94 (2007) (Emphasis added)

The *second element*, requires that these facts must allow the court to reasonably conclude the defendant is liable for the misconduct. This has been established pursuant to *Erickson*.

> Specific facts are not necessary; **the statement need only " 'give the defendant fair notice of what the ... claim is and the grounds upon which it rests.' "** *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (quoting *Conley v. Gibson,* 355 U.S. 41, 47, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)). *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (Emphasis added)

The ICCPR treaty specifically provides for remedies to U.S. citizens, in U.S. jurisdiction for violations of the treaty rights. The U.S. Government has stipulated, *on the record*, that the necessary legislation was in place at the time the ICCPR treaty was ratified, thereby providing for these rights and redress of such wrongs and liabilities. Appellant has therefore met the *second element* under the ICCPR treaty, required to establish the legal standard for stating a claim.

CONCLUSION

Defendants have admitted on the record that their investigation was subpar. The Courts have erred in failing to maintain the rule of law as established by *Smoker* and have failed to find for appellant and as such are promoting inequitable outcomes and forum shopping. The Courts

have erred in failing to find for appellant given defendants consent of MSJ and SUFs as noted. The facts and matters of law have demonstrated exculpatory evidence has been hidden from the original jury and subsequent Courts. This exculpatory evidence would have been uncovered had a substantial investigation been conducted as called for in *Smoker*. A substantial investigation as called for in *Smoker* would also have unmasked the Professional Violations of Ethics described and would have required action be taken by ALL attorneys and Judges involved in accord with the Professional Rules of Conduct.

Defendant's subpar investigation and the Courts failure to act upon this violation of appellants civil rights has denied appellant his Civil and Constitutional rights as established by the U.S. Constitution and the ICCPR treaty. Having had those rights violated, appellant is due remedies under *inter alia* the ICCPR treaty.

Appellant petitions the 8th Circuit Court of Appeals *En Banc* for (1) the reversal of its 31 January 2017 Judgment, (2) the finding for appellant's MSJ and SUFs, (3) the granting of remedies to appellant pursuant to the ICCPR treaty and U.S. Constitution and (4) as required of the Courts (viz. the Judges) and the attorneys involved in this Case, (a) the appropriate notification of parties and agencies responsible for addressing the violation of Professional Ethics and (b) the concealment of exculpatory evidence as mandated by law and the Rules of Professional Conduct, resulting in defamation of appellant.

Dated 7 February 2017

Respectfully submitted

Richard Max Fleming, M.D., J.D.

Richard Max Fleming, M.D., J.D.

APPENDIX A

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
Richard M Fleming

(b) County of Residence of First Listed Plaintiff Los Angeles
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Pro se

DEFENDANTS
Iowa Board of Medicine, Julie J. Bussanmas, Theresa Marie Weeg, Iowa Board of Medicine Board Members from 2009 to Present, State of Iowa.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☒ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☒ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	☐ 625 Drug Related Seizure of Property 21 USC 881	☐ 422 Appeal 28 USC 158	☐ 375 False Claims Act
☐ 120 Marine	☐ 310 Airplane	☐ 365 Personal Injury - Product Liability	☐ 690 Other	☐ 423 Withdrawal 28 USC 157	☐ 400 State Reapportionment
☐ 130 Miller Act	☐ 315 Airplane Product Liability	☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability		PROPERTY RIGHTS	☐ 410 Antitrust
☐ 140 Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability		☐ 820 Copyrights	☐ 430 Banks and Banking
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 330 Federal Employers' Liability	PERSONAL PROPERTY		☐ 830 Patent	☐ 450 Commerce
☐ 151 Medicare Act	☐ 340 Marine	☐ 370 Other Fraud		☐ 840 Trademark	☐ 460 Deportation
☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)	☐ 345 Marine Product Liability	☐ 371 Truth in Lending	LABOR	SOCIAL SECURITY	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 350 Motor Vehicle	☐ 380 Other Personal Property Damage	☐ 710 Fair Labor Standards Act	☐ 861 HIA (1395ff)	☐ 480 Consumer Credit
☐ 160 Stockholders' Suits	☐ 355 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability	☐ 720 Labor/Management Relations	☐ 862 Black Lung (923)	☐ 490 Cable/Sat TV
☐ 190 Other Contract	☐ 360 Other Personal Injury		☐ 740 Railway Labor Act	☐ 863 DIWC/DIWW (405(g))	☐ 850 Securities/Commodities/ Exchange
☐ 195 Contract Product Liability	☐ 362 Personal Injury - Medical Malpractice		☐ 751 Family and Medical Leave Act	☐ 864 SSID Title XVI	☐ 890 Other Statutory Actions
☐ 196 Franchise			☐ 790 Other Labor Litigation	☐ 865 RSI (405(g))	☐ 891 Agricultural Acts
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	☐ 791 Employee Retirement Income Security Act	FEDERAL TAX SUITS	☐ 893 Environmental Matters
☐ 210 Land Condemnation	☒ 440 Other Civil Rights	Habeas Corpus:	IMMIGRATION	☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 895 Freedom of Information Act
☐ 220 Foreclosure	☐ 441 Voting	☐ 463 Alien Detainee	☐ 462 Naturalization Application	☐ 871 IRS—Third Party 26 USC 7609	☐ 896 Arbitration
☐ 230 Rent Lease & Ejectment	☐ 442 Employment	☐ 510 Motions to Vacate Sentence	☐ 465 Other Immigration Actions		☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
☐ 240 Torts to Land	☐ 443 Housing/ Accommodations	☐ 530 General			☐ 950 Constitutionality of State Statutes
☐ 245 Tort Product Liability	☐ 445 Amer. w/Disabilities - Employment	☐ 535 Death Penalty			
☐ 290 All Other Real Property	☐ 446 Amer. w/Disabilities - Other	Other:			
	☐ 448 Education	☐ 540 Mandamus & Other			
		☐ 550 Civil Rights			
		☐ 555 Prison Condition			
		☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 U.S.C. § 2241(c)(3), 5th and 14th Amendments (Procedurally and Substantively), defamation of character.
Brief description of cause:
Defendants stipulated a subpar investigation defaming plaintiff, violation of plaintiff's due process.

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND $ 12,000,000.00
CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*
JUDGE Brent R. Appel DOCKET NUMBER 14-0975

DATE 07/26/2016
SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Print Save As... Reset

About These Forms

1. **In General.** This and the other pleading forms available from the www.uscourts.gov website illustrate some types of information that are useful to have in complaints and some other pleadings. The forms do not try to cover every type of case. They are limited to types of cases often filed in federal courts by those who represent themselves or who may not have much experience in federal courts.

2. **Not Legal Advice.** No form provides legal advice. No form substitutes for having or consulting a lawyer. If you are not a lawyer and are suing or have been sued, it is best to have or consult a lawyer if possible.

3. **No Guarantee.** Following a form does not guarantee that any pleading is legally or factually correct or sufficient.

4. **Variations Possible.** A form may call for more or less information than a particular court requires. The fact that a form asks for certain information does not mean that every court or a particular court requires it. And if the form does not ask for certain information, a particular court might still require it. Consult the rules and caselaw that govern in the court where you are filing the pleading.

5. **Examples Only.** The forms do not try to address or cover all the different types of claims or defenses, or how specific facts might affect a particular claim or defense. Some of the forms, such as the form for a generic complaint, apply to different types of cases. Others apply only to specific types of cases. Be careful to use the form that fits your case and the type of pleading you want to file. Be careful to change the information the form asks for to fit the facts and circumstances of your case.

6. **No Guidance on Timing or Parties.** The forms do not give any guidance on when certain kinds of pleadings or claims or defenses have to be raised, or who has to be sued. Some pleadings, claims, or defenses have to be raised at a certain point in the case or within a certain period of time. And there are limits on who can be named as a party in a case and when they have to be added. Lawyers and people representing themselves must know the Federal Rules of Civil Procedure and the caselaw setting out these and other requirements. The current Federal Rules of Civil Procedure are available, for free, at www.uscourts.gov.

7. **Privacy Requirements.** Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns over public access to electronic court files. Under this rule, papers filed with the court should not contain anyone's full social-security number or full birth date; the name of a person known to be a minor; or a complete financial-account number. A filing may include only the last four digits of a social-security number and taxpayer identification number; the year of someone's birth; a minor's initials; and the last four digits of a financial-account number.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA

Richard Max Fleming, M.D., J.D.

v.

Iowa Board of Medicine, Julie J. Bussanmas, Theresa Marie Weeg, Iowa Board of Medicine Board Members from 2009 to Present, State of Iowa.

Complaint for a Civil Case

Case No. _____
(to be filled in by the Clerk's Office)

Jury Trial: X Yes ☐ No
(check one)

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	Richard Max Fleming
Street Address	4055 Lankershim Blvd, #422
City and County	Studio City
State and Zip Code	CA, 91604
Telephone Number	(818) 821-9576
E-mail Address	rmfmd7@hotmail.com

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name	Iowa Board of Medicine
Job or Title (if known)	
Street Address	400 SW 8th Street, Ste C
City and County	Des Moines, Polk
State and Zip Code	Iowa 50309-4686
Telephone Number	
E-mail Address (if known)	

Defendant No. 2

Name	Julie J. Bussanmas
Job or Title (if known)	
Street Address	1305 E. Walnut Street

City and County	Des Moines, Polk
State and Zip Code	Iowa 50319
Telephone Number	
E-mail Address (if known)	

Defendant No. 3

Name	Theresa Marie Weeg
Job or Title (if known)	
Street Address	1305 E. Walnut Street
City and County	Des Moines, Polk
State and Zip Code	Iowa 50319
Telephone Number	
E-mail Address (if known)	

II. Basis for Jurisdiction

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation and the amount at stake is more than $75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal court jurisdiction? *(check all that apply)*

X Federal question X Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

A. If the Basis for Jurisdiction Is a Federal Question

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

28 USC 2241 ©(3), 5th and 14th Amendments (Procedurally and Substantively),

defamation of character.

ICCPR Treaty

28 USC § 1251(b)(1), Art. I, § 8, cl 18, Art 1, § 9, cl 2, Art II, § 2, cl 2, Art II, § 3, Art IV, §2, cl 1, Art VI, § 2, 1 USC § 112b(a), 28 USC § 2107(b)(1-4), 28 USC § 2241(c)(3), 28 USC § 2242, 22 CFR § 181.7(a)-(c), 49 CFR § 1103.27(b)-(d), NRS § 686A.020

B. If the Basis for Jurisdiction Is Diversity of Citizenship

1. The Plaintiff(s)

   a. If the plaintiff is an individual

   The plaintiff, *Richard M. Fleming,* is a citizen of the State of *California*

2. The Defendant(s)

   a. If the defendant is an individual

   The defendant, *Julie J. Bussanmas* is a citizen of the State of *Iowa.*

   The defendant, *Theresa Marie Weeg*, is a citizen of the State of *Iowa.*

   b. If the defendant is a corporation

   The defendant *Iowa Board of Medicine* is incorporated under the laws of the State of *Iowa,* and has its principal place of business in the State of *Iowa.*

3. The Amount in Controversy

   The amount in controversy—the amount the plaintiff claims the defendant owes or the amount at stake—is more than $75,000, not counting interest and costs of court, because *(explain)*:

   $12,000,000 (Twelve Million Dollars)

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

Plaintiff submitted a holographic plea, which did not stipulate a crime to protect his youngest son who was physically, emotionally and verbally abused. The abuser then submitted to defendant that plaintiff had admitted to criminal acts. Defendant conducted a subpar investigation and so stipulated on the record. Defendant furthermore misrepresented facts and matters of law and attempted to hide the facts and matters of law from the Appellate Court and misrepresented the cause of action brought by appellant. The Iowa Court of Appeals has held that under such circumstances the District Court must be reversed. The Iowa Court of Appeals initially denied appellant's case. Efforts to rehear and to submit to the Iowa Supreme Court were either not addressed or deemed to be submitted 3 days late for consideration. Due process was denied plaintiff, defendant misrepresented it's investigation and facts and matters of law, defaming plaintiff and depriving him of a method of earning a living.

IV. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

$375,000 yearly income for 30 years is being sought IN ADDITION to an amount determined by this Court for the defamation and emotional harm to plaintiff and his children.

V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for

extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 26 July, 2016.

Signature of Plaintiff _____

Printed Name of Plaintiff Richard Max Fleming, MD, JD

APPENDIX B

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

Richard Max Fleming, M.D.,	)	05771 CVCV 009488
	)	
Petitioner,	)	
	)	
v.	)	Motion for Summary Judgment
	)	
Iowa Board of Medical Examiners,	)	and Statement of Undisputed Facts
	)	
Respondent.	)	

Petitioner submits the following Motion for Summary Judgment (MSJ) with Statement of Undisputed Facts (SUFs). Summary judgment should be granted against respondent for failure to substantially investigate accusations made against Dr. Fleming and for compensation for such failure and damage to Dr. Fleming's practice of medicine and professional reputation.

1. Respondent failed to substantially investigate the accusations made against Dr. Fleming, as required by *Smoker v. Iowa Board of* Medicine, No. 3-222/12-1216.
2. Respondent demonstrated bad faith in its investigation of Dr. Fleming, demonstrating willful, wanton and malicious actions with scienter.
3. The holographic plea stipulated to by Dr. Fleming does not state a crime.
4. Respondent unjustifiably and unreasonably depended upon two individuals with a vendetta and failed to investigate sources of validated facts and matters of law.
5. Respondent prevented Dr. Fleming from providing for his family by prohibiting his practicing Medicine.
6. Respondent failed to substantially investigate Dr. Fleming's medical care and failed to demonstrate medical malpractice or concerns with patient care and management.

7. Respondent failed to investigate FHRWW to determine if Dr. Fleming had developed a better method for detecting heart disease, reducing morbidity, mortality, costs, time and radiation exposure of patients and health care providers.

STATEMENT OF UNDISPUTED FACTS

Appendix A shows multiple instances where respondent failed to substantially investigate the facts and matter of law regarding Dr. Fleming. Respondent has never disputed the facts submitted in Appendix A of this motion, nor the memorandum of law submitted to the Court on this date. Specifically, but not limited to (1) the holographic plea does not state a crime,

> What acts did you do that cause you to think you are guilty of the charge(s) to which you want to plead GUILTY?
> *¿Cuáles son los actos que cometió que, a su parecer, lo hacen culpable del (los) cargo(s) al (los) cual(es) quiere declararse CULPABLE?*
> I billed for 78465 when I did not do a rest & stress tomographic study. I submitted this claim on May 30, 2002 Knowing I did not do two tomographic studies. On March 8, 2004 I used Federal Express to deliver documents that falsely Reported 60 people in the Soy Chip Study.

(2) that the Carriquiry Report (Appendix E of Memorandum of Law filed with the Court on this date) ***CONCLUDED*** the data were innocent, specifically noting

> "…there is simply no data-driven evidence that the Fleming data set is other than would be expected under a legitimate study." P. 25

(3) that the R-5 "Medicare Advantage Medical Policy Bulletin" detailed in Appendix D of the Memorandum of Law submitted to the Court on this date specifically notes that the procedures performed by Dr. Fleming, were properly billed according to instructions,

"Code 78465 includes codes 78460, 48461 and 78464."

(4) that Federal Courts have held that physicians who bill according to the instructions provided are not guilty of filing a false claim and the Government CANNOT prove falsity as a *matter of law*.

> …a Defendant does not "knowingly" submit a "false" claim when his conduct is consistent with a reasonable interpretation of ambiguous regulatory guidance. *See, e.g., United States ex rel. Swafford v. Borgess Med. Ctr.*, 98 F.Supp.2d 822, 831-32 (W.D.Mich.2000) *U.S. v. Prabhu*, 442 F. Supp. 2d 1008, 1029 (D. Nev. 2006)
>
> …a Defendant does not knowingly submit false claims when he follows Government instructions regarding the claims. *See United States ex rel. Butler v. Hughes Helicopters, Inc.*, 71 F.3d 321 (9th Cir.1995); *Wang v. FMC Corp.*, 975 F.2d 1412, 1421 (9th Cir.1992) *U.S. v. Prabhu*, 442 F. Supp. 2d 1008, 1029 (D. Nev. 2006)
>
> Courts have routinely ruled that where, at worst, all that exists are disputed legal issues regarding whether a service was properly billed, the Government cannot prove falsity as a matter of law.[22] *U.S. v. Prabhu*, 442 F. Supp. 2d 1008, 1031 (D. Nev. 2006)

And (5) that Dr. Fleming billed these studies in accord with Federal instructions and the Courts have held that as a matter of law, such actions cannot constitute a crime.

These facts and matters of law substantively, procedurally and substantially support the seven claims (supra) made for MSJ with the attached SUFs as specified and demonstrate beyond a doubt that respondent failed to provide a substantial investigation as defined in *Smoker v. Iowa Board of* Medicine, No. 3-222/12-1216.

CONCLUSION

Summary judgment should be granted for failure of respondent to substantially investigate the accusations made against Dr. Fleming, for damage to Dr. Fleming's reputation and ability to practice medicine and to provide for his family and patients and for failure to recognize that the holographic plea does not state a crime. Respondent has intentionally demonstrated bad faith in the investigation and response to the Court and Petitioner. Dr.

Fleming requests compensation as described in the Memorandum of Law submitted 7 January 2014 to begin with the date Dr. Fleming stopped practicing medicine at the respondent's demand.

Date: 7 January 2013

Respectfully submitted,

Richard Max Fleming, M.D.
7000 Mae Anne Avenue, # 523
Reno, Nevada 89523
rmfmd7@hotmail.com

CERTIFICATION

I CERTIFY THAT THIS DOCUMENT HAS BEEN SERVED ON THE RESPONDENT BY PRIORITY MAIL TO THE IOWA BOARD OF MEDICINE, 400 SW 8TH STREET, SUITE C, DES MOINES, IOWA 50309-4686.

Date: 7 January 2013

Richard Max Fleming, M.D.

APPENDIX C

oo

UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

Chambers of
Richard G. Kopf
United States District Judge

Room 586, Robert V. Denney Federal Building
100 Centennial Mall North
Lincoln, Nebraska 68508
Phone: 402-437-1640
Fax: 402-437-1641
Judge's E-Mail: Richard_Kopf@ned.uscourts.gov
Assistant's E-Mail: Kristin_Leininger@ned.uscourts.gov

December 15, 2010

Dennis Carlson
State of Nebraska Counsel for Discipline
3808 Normal Blvd.
Lincoln, Nebraska 68506

Re: Richard Fleming's Complaint Against Michael Hansen

Dear Mr. Carlson:

Enclosed please find a Memorandum and Order resolving Dr. Fleming's complaint against Mr. Hansen from the federal perspective, as well as denying Fleming substantive relief. I respectfully request that you deny Fleming's state ethics complaint against Mr. Hansen without requiring any further response from Mr. Hansen.

I also call your attention to the extended discussion in the Memorandum and Order of the appropriate referral process that should be followed for most ethics complaints lodged with your office regarding the conduct of a lawyer in a federal case. That is, and except for unusual circumstances, state bar complaints regarding the conduct of a lawyer in a federal case will be referred to the federal judge to whom that case is or was assigned so that the federal interest may be vindicated first. This referral will be made prior to requesting that the lawyer provide you with a response to the complaint. Furthermore, this referral practice will be followed for pending and closed federal civil and criminal cases.

It is my understanding that Chief Justice Heavican has agreed in principle to the foregoing referral process and, accordingly, I understand that you will follow the protocol except in unusual circumstances. If my understanding is incorrect, I respectfully request an explanation.

Sincerely,

Richard G. Kopf
United States District Judge

Nebraska Supreme Court
Counsel for Discipline
3808 Normal Blvd.
Lincoln, NE 68506
Phone: (402) 471-1040
Fax: (402) 471-1014

Re: A Question of Professional Misconduct

To Whom It May Concern:

According to what I read on your website (https://supremecourt.nebraska.gov/4805/counsel-discipline) I should be able to ask you a question regarding concerns I have with professional misconduct. If that is not the case or if I will be placed in a position of fear or apprehension of an immediate harm to my family and/or myself as a result of asking this question, then please proceed no further. If however, like other citizens I am entitled to inquire further, then I should like to ask the following: If a Judge at sidebar discussing submission of evidence with the attorneys in question and without defendant being able to hear the conversation or knowing what was said until after a review of the audio tapes following the trial, states to the attorneys that the jury does not need to know the "whole picture" if "by pulling the wool over the juries eyes" defense counsel will not have to testify and if that same Judge then "warns" the defendant that filing additional ethics grievances with this Counsel, against said defense attorney will result in sanctions being taken against the defendant including possible revocation of probation; does this or does this not constitute judicial conduct on the part of the Court and/or the attorneys?

After completing Law School in an effort to better understand and try to protect others and myself, it appears to me – although I could be wrong, that there might be Professional Misconduct here, but you are the experts, so I defer to you! Previous queries made to this counsel by myself have only resulted in the Judge threatening me with sanctions including revocation of probation.

Probation ended a year ago, yet I remain fearful of the Court. Should you wish, I am able to provide exact audiotape reference and documented material and references but I remain fearful of the Court, even in the submission of this query, as the Court's sanction comment caused and continues to cause an immediate, substantial and persistent fear or apprehension of harm to family and myself.

I await your response and thoughts on this matter.

Dated: 29 August 2015

Respectfully but fearfully submitted,

Richard M. Fleming, M.D., J.D.
4055 Lankershim Blvd, #422
Studio City, CA 91604

4 September 2015

Attn: Corey R. Steel
Judicial Qualifications Commission
Room 1213 State Capitol Building
P.O. Box 98910
Lincoln, NE 68509-8910
Tele: (402) 471-3730
Fax: (402) 471-2197

Re: Questions of Judicial and Attorney Misconduct and § 3-508.3

To Mr. Steel,

I am attaching several documents for your review including (1) Mr. Weber's response to my letter and fax enquiring about potential Judicial and Attorney Misconduct where he *refuses to investigate*, (2) a copy of § 3-508.3 which I believe requires me to report such questions or be in violation of the rules myself, (3) my letter dated 24 August 2015 regarding my concerns where pursuant to Court directions to two Counsels meet with their clients, made an oral agreement and reduced the agreement to writing but then failed to follow my directive to sign and file the documents with the Court, (4) a list of Judicial Ethics Committee members showing the Judge in question is on the Committee, raising further questions as to the failure to investigate these matters, (5) my correspondence of 29 August 2015 raising questions of Judicial and Attorney misconduct, (6) a Washington Post article written by Professor Orin Kerr (Professor of the George Washington University Law School), where Professor Kerr points out that a Federal Judge has violated Cannon 5, followed by (7) The Courts denial that Cannon 5 was violated and finally (8) an exert from the Court's BLOG where the Court admits that during a retreat, under "honesty in the workplace" that employees felt he "had become an embarrassment to our Court." This same blog includes topics where the Court tells the SCOTUS to STFU and finally an admission that the Court did in fact violate Cannon 5(A)(2).

Given the above documents, the refusal by the Nebraska Counsel on Discipline to investigate these matters, my concern for my personal harm by the Courts and my obligation as an attorney to submit these questions to you to avoid being in violation of Professional Ethics myself, I now submit these matters to you regarding Judicial and Professional misconduct.

As an attorney I respectfully submit these matters for your consideration and investigation. I have fulfilled my professional responsibility and obligation. I look forward to hearing your thoughts on these matters.

Respectfully and fearfully submitted,

Richard M. Fleming, M.D., J.D.
4055 Lankershim Blvd, #422
Studio City, CA 91604

APPENDIX D

11 June 2009

Re: Reconfirmation of July 15, 2004 question posed regarding 78464 vs. 78465

Dear Regina,

Thank you for returning my telephone call regarding the prior question posed to Ms. Trajkovski on July 15, 2004. I appreciate your looking for the original question/document and can understand that items from that time period are missing. As I mentioned during our telephone conversation earlier today, I would like to reconfirm Jennifer's response to me as noted in the July 23, 2004 correspondence – see attached. The protocol used during 2002 which Jennifer and I corresponded on consisted of taking a static and then dynamic image as noted below and which she conclude, that 78465 was the correct billing code. The protocol is as follows:

1. Obtain blood pressure, ECG and start IV
2. Administer dipyridamole over 4 minutes
3. Wait 2 minutes
4. Administer sestamibi
5. Wait 5 to 10 minutes and take static (planar) image of the heart
6. Wait 30 to 60 minutes and take dynamic (SPECT) image in addition to wall motion and ejection fraction determination.

I would be happy to supply any additional information that you might need. Can you reconfirm, Jennifer's statement that 78465 was/is the proper billing code for this protocol?

Thank you,

Dr. Richard M. Fleming
6850 Sharlands Avenue
A2001
Reno, NV 89523
Tele: 775-770-4328
Rmfmd7@hotmail.com

American Medical Association
Physicians dedicated to the health of America

CPT Information Services 515 North State Street Chicago, Illinois 60610 800 634-6922 312 464-4841 Fax

July 23, 2004

Dr. Richard M. Fleming
Elgin Cardiology
915 Center Street, Suite 2001
Elgin, IL 60120

Dear Doctor Fleming:

This is written in response to your inquiry dated and received by CPT Information Services on July 15, 2004. I apologize for the delayed reply to your inquiry. For your information your account has been debited one inquiry for this response.

From a CPT coding perspective, based upon the information submitted for review and comments received from our physician advisor, the appropriate codes to report are as follows:

78465, *Myocardial perfusion imaging; tomographic (SPECT), multiple studies, at rest and/or stress (exercise and/or pharmacologic) and redistribution and/or rest injection, with or without quantification;*

78478, *Myocardial perfusion study with wall motion, qualitative or quantitative study (List separately in addition to code for primary procedure);*

78480, *Myocardial perfusion study with ejection (List separately in addition to code for primary procedure);*

Additionally, with regard to your question concerning multiple injections required to report code 78465, please note that CPT code selection is based upon the number of studies being performed. For example, multiple studies as referenced in the code descriptor of 78465, means more than one study is being performed as opposed to a single study, described by code 78464, *Myocardial perfusion imaging; tomographic (SPECT), single study at rest or stress (exercise and/or pharmacologic), with or without quantification.*

American Medical Association
Physicians dedicated to the health of America

CPT Information Services
515 North State Street
Chicago, Illinois 60610
800 634-6922
312 464-4841 Fax

Thank you for your inquiry and I hope this information is of assistance to you.

Respectfully,

Jennifer Trajkovski, BS, RHIT
Coding Associate
CPT Information Services

APPENDIX E

THE PERMANENT MISSION
OF THE
UNITED STATES OF AMERICA
TO THE
UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS
IN GENEVA

October 9, 2015

Mr. Yadh Ben Achour
Special Rapporteur, Human Rights Committee
Human Rights Treaties Division (HRTD)
UN Office of the High Commissioner for Human Rights
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva, Switzerland

Dear Mr. Achour:

The Permanent Mission of the United States of America to the Office of the United Nations and other International Organizations in Geneva presents its compliments to the Human Rights Committee and has the honor of conveying to the Committee the U.S. government's reply to your letter sent on August 6, 2015 regarding the United States' one-year follow-up response on certain concluding observations of the Human Rights Committee on the United States' Fourth Periodic Report on its implementation of the International Covenant on Civil and Political Rights.

The Permanent Mission of the United States avails itself of the opportunity to express once again the commitment of the United States to the protection and promotion of human rights and to the work of the Committee.

Sincerely,

Pamela K. Hamamoto
Ambassador

OHCHR REGISTRY

12 OCT 2015

Recipients : HR Committee

Reply of the United States of America
To the Special Rapporteur for Follow-up
On Concluding Observations of the Human Rights Committee
On its Fourth Periodic Report on Implementation of the
International Covenant on Civil and Political Rights
October 9, 2015

1. The United States is deeply committed to fulfilling its obligations under the International Covenant on Civil and Political Rights (ICCPR or Covenant) and appreciates the opportunity to participate in the Committee's follow-up process.[1]

2. The United States considers its exchanges with the Committee to be part of an important, long-term dialogue as we continue our ongoing work of protecting human rights and fundamental freedoms at all levels of our government. We welcome the Committee's observations and will continue to take its ideas and recommendations into consideration. Although there remain matters regarding the interpretation or application of the Covenant on which the United States and members of the Committee may not be in full agreement, we have found the process of review and reflection to be useful as we continue to improve our efforts to protect civil and political rights in the United States. It is in this spirit of cooperation that the United States provides the following more recent information to address a number of the Committee's concerns, whether or not they bear directly on States Parties' obligations arising under the Covenant.

Paragraph 5:

3. Consistent with its international obligations and domestic laws, the United States has conducted and will continue to conduct thorough and independent investigations of credible allegations of crimes committed during international operations and of credible allegations of mistreatment of persons in its custody. It will also continue to prosecute, consistent with its international obligations and domestic laws, persons legally responsible for such crimes when

[1] Reference is made to Co-Rapporteur Yadh Ben Achour's recent letter and the decision of the Human Rights Committee at its 114th session on the follow-up report of the United States submitted March 31, 2015. Although the letter is dated October 6, 2015, it was sent on August 6, 2015.

JCP 08-17-90048

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
- JUDICIAL COUNCIL
OF THE EIGHTH CIRCUIT

Richard Max Fleming, M.D., J.D. Complainant, v. Richard G. Kopf Judicial Defendant.	No: 17-9548 Motion for the Immediate submission of Judge Richard G. Kopf to the U.S. House Judiciary Committee for Investigation and Impeachment, independent of any actions taken by this Court.

Complainant submitted materials 20 April 2017 to this Court regarding the Judicial Misconduct of Federal Judge Richard G. Kopf of the Federal District Court of Nebraska including but not limited to violations of the Due Process and Equal Protection rights of the U.S. Constitution, violations of Amendment 14, the hiding of substantive expiratory evidence from a jury, expert witness and defendant, the conspiracy to hide said evidence with public defender Hansen and federal prosecutors Everett and Russell, obstruction of justice, potential public corruption, obstruction of Nebraska ethics violations investigations, assault of complainant following said obstruction constituting civil and criminal actions, potential destruction of Court records and blockage of public documents on PACER, violation of Cannon 5, vulgar and profane use of language in the public forum, directing the SCOTUS and Congress to "stfu", and abusive conduct to female counsel/attorneys.

The CM/ECF docket reveals that this case was docketed on 4 May 2017 and has been under review by Chief Justice Lavenski R. Smith since. It has not reached the Judicial Council review level.

Since the filing of this case *and after Judge Kopf knew he was being investigated* for Judicial Misconduct, additional evidence of inappropriate conduct/behavior has come to light including but not limited to:

Insulting Justices in the Second Circuit:

https://blog.simplejustice.us/2017/07/05/kopf-sometimes-its-necessary-to-slap-the-government-upside-the-head/#more-33334

He has even gone so far as to call Thomas Jefferson an "asshole."

http://mimesislaw.com/fault-lines/thomas-jefferson-was-an-asshole-a-reply-to-josh-kendrick-on-the-aedpa/9532

He has called the ABA without intellectual heft and honesty and has insulted all lawyers, particularly younger ones.

https://blog.simplejustice.us/2017/07/19/kopf-a-letter-to-a-young-practicing-lawyer/

Is this the ethical behavior you believe the Founding Fathers wanted emulated by Federal Judges or do you believe this violates the "behavior" referred to in Article III, § 1 of the U.S. Constitution?

Complainant has concerns that given the tendency of the Judicial system, as demonstrated by Judge Kopf himself, to block any actions taken to correct Judicial Misconduct, and the fact that Judge Kopf clerked at the 8th Circuit for Judge Ross, that any Misconduct actions taken as a result of this case will be limited and ineffective. Complainant is also concerned that the recidivism of Judge Kopf makes him dangerous to complainant and others. Complainant believes Judge Kopf has already demonstrated civil and criminal assault upon complainant and there is no reason to believe that Judge Kopf will change his behavior at this

junction of his life. The only potential option is the removal of Judge Kopf from the bench to avoid harming complainant and others. However, to do so and allow him to retain benefits is disrespectful of those Judges and public officials who have behaved according to their Oath and Ethics.

At this time, complainant believes there is more than enough evidence to support Impeachment of Judge Richard G. Kopf independent of any actions taken by Chief Justice Lavenski R. Smith and/or any further judicial council actions.

Complainant hereby moves for the immediate referral of Judge Richard G. Kopf to the U.S. House Judiciary Committee for immediate investigation and impeachment proceedings. Complainant also calls for the immediate cessation of judicial actions in current and pending litigation assigned to Judge Kopf. Perhaps this is the epitome of justice since Judge Kopf is well known for his role as lead counsel for the State of Nebraska, impeaching then Nebraska Attorney General Paul Douglas in 1984. Interestingly enough Mr. Douglas was later acquitted of the charges brought by Richard G. Kopf. While raising other questions, this case clearly shows Judge Kopf is familiar with the Impeachment process and cannot feign misunderstandings or innocence for his actions.

Respectfully submitted,

Dated: 22 August 2017

Richard Max Fleming, M.D., J.D.

Richard Max Fleming, M.D., J.D.(Pro se)
4055 Lankershim Blvd., #422
Studio City, CA 91604
rmfmd7@hotmail.com
(818) 821-9576

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-17-90048

In re Complaint of John Doe[1]

This is a judicial complaint filed on May 4, 2017, against a United States district judge who presided over the complainant's criminal trial. The complaint alleges that the district judge held a sidebar conference with defense counsel and government counsel in which the district court excluded certain exculpatory evidence. As a result, the complainant contends that the jury deemed an expert witness "worthless." According to the complainant, the district judge rejected his efforts to raise claims of ineffective assistance of counsel based on this exclusion of evidence. Furthermore, the complainant alleges that the district court restricted his access to case documents. The complainant also asserts that attorneys involved in the case violated their ethical obligations, although he is "[u]ncertain how to address the conspiracy between" the district judge, defense counsel, and government counsel. In his supplemental complaint, the complainant alleges that the district judge has insulted other judges and lawyers and used profane language in extrajudicial writings.

The original complaint's allegations are "directly related to the merits of a decision or procedural ruling" and therefore must be dismissed. 28 U.S.C. § 352(b)(1)(A)(ii); *accord* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(c)(1)(B); *see also* J.C.U.S. Rule 3(h)(3)(A) ("An allegation that calls into question the correctness of a

---

[1]Under Rule 4(f)(1) of the Rules Governing Complaints of Judicial Misconduct and Disability of the Eighth Circuit, the names of the complainant and the judicial officer complained against are to remain confidential, except in special circumstances not here present.

judge's ruling . . . without more, is merits-related."). To the extent the original complaint implicates attorneys, the rules only apply to federal circuit, district, bankruptcy, and magistrate judges. 28 U.S.C. § 351(a), (d)(1); *see also* J.C.U.S. Rule 4. As to the original complainant's bare, speculative allegation that the district judge conspired with defense counsel and government counsel, such allegation "lack[s] sufficient evidence to raise an inference that misconduct has occurred." 28 U.S.C. § 352(b)(1)(A)(iii); *accord* J.C.U.S. Rule 11(c)(1)(D). With regard to the supplemental complaint's allegations, none concern "[c]ognizable misconduct." *See* J.C.U.S. Rule 3(h).

The complaint is dismissed.

August 29, 2017

Lavenski R. Smith, Chief Judge
United States Court of Appeals
for the Eighth Circuit

JCP 08-17-90048

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
- JUDICIAL COUNCIL
OF THE EIGHTH CIRCUIT

Richard Max Fleming, M.D., J.D.	)	
	)	
Complainant,	)	
	)	Petition Judicial Council for review of Chief
v.	)	
	)	Judge Lavenski R. Smith's order of Aug. 31, 2107
Richard G. Kopf	)	
Judicial Defendant.	)	& Motion to Submit Judge Richard G. Kopf
	)	
	)	Immediately to the House Judiciary Committee

Complainant has received Chief Justice Lavenski R. Smith's order of August 31, 2017 and pursuant to Rule 18, complainant Petitions the Judicial Council for review of the Order *and* to Petition the Judicial Counsel to initiate an investigation of Judge Richard G. Kopf and submit Judge Kopf to the House Judiciary Committee for investigation and initiation of Impeachment proceedings.

The Order of August 31, 2017 additionally failed to address the Motion submitted by complainant, dated 22 August 2017 and received by this Court pursuant to U.S.P.S. tracking on 24 August 2017 at 8:54 A.M. The Court received this motion one week before the Order, allowing more than adequate time for review, consideration and discussion in said order.

Accordingly, complainant now directs the attention of the Judicial Council to all documents filed by complainant including (1) the "Complaint of Judicial Misconduct" form, (2) the single page violation of Due Process and Equal Protection....U.S. Constitution, which detailed additional Misconduct by defendant filed with the Complaint, (3) the 8th Circuit Petition for Rehearing En Banc, also filed with the complaint (numbered documents 1-3 were

submitted to this Court with said case, docketed 4 May 2017) and (4) the Motion noted *supra* received by this Court on 24 August 2017 but not docketed by this Court until 30 August 2017 and not addressed by the Order.

The order/decision to dismiss is based upon "An allegation that calls into question the correctness of a judge's ruling...without more, is merits-related." The material provided in the above documents, as well as that noted *infra*, clearly prove that Judge Richard G. Kopf violated his Judicial Code of Ethics, *inter alia* when he held a sidebar conversation as to conspire with attorneys Hansen, Everett and Russell to "pull the wool over the juries eyes" stating "the jury doesn't need to know the whole truth" and to intentionally mislead the jury, expert witness and complainant **BY REPEATEDLY AND INTENTIONALLY PRESENTING FALSE EVIDENCE TO THE JURY AND EXPERT WITNESS** by repeatedly stating that Hansen's "plagiarized" data was actually "fabricated" data. *This is clearly a violation of Judicial Ethics, Public Corruption and an abuse of Judicial Authority*.

1. *Judge Kopf's actions violated Canon 1:* A Judge Should Uphold the Integrity and Independence of the Judiciary. Specifically, "A judge should maintain and enforce high standards of conduct and should personally observe those standards..." "The integrity and independence of judges depend in turn on their acting without fear or favor."

    a. Clearly Judge Kopf acted with favor when he protected public defender Hansen and acted in favor of the prosecutors buy intentionally and repeated allowing the attorneys to intentionally present false evidence, while hiding the substantive exculpatory evidence. Additionally, Judge Kopf intentionally introduced false evidence into the case by stating that

Hansen's data were "fake" when Judge Kopf in fact, knew from the side bar conversation that the data were actually "plagiarized."

2. *Judge Kopf violated Canon 2:* Judge Should Avoid Impropriety and the Appearance of Impropriety in all Activities.
    a. If Courtrooms, Judges and Lawyers are to represent only the truth in what they propagate in the Courtroom, then the actions so detailed *passim* are the epitome of impropriety for by the very definition, they are improper, incorrect, erroneous and indecorous.
3. *Judge Kopf violated Canon 3:* A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently.
    a. By intentionally excluding substantive exculpatory evidence and intentionally presenting false evidence to the jury and expert witness, Judge Kopf violated his adjudicative responsibilities.
4. *Finally Judge Kopf violated Canon 5:* A Judge Should Refrain from Political Activity.
    a. As detailed in the Kerr documentations provided to this Council within the stipulated documents (*supra*).

Pursuant to the order, Chief Justice Smith defends his order by stating that the allegations "lack sufficient evidence to raise an inference that misconduct has occurred." Complainant believes more than adequate evidence was provide but now accordingly, will provide further specific information and audio recording information to address any "lack of evidence" questions or concerns that might exist. Additionally C.J. Smith states: "With regard to the supplemental complaint's (although I believe he meant complainant's) allegations, none

concern "[c]ognizable misconduct." Pursuant to J.C.U.S. Rule 3(h), complainant submits they do in fact "violat(e)... mandatory standards of judicial conduct. Complainant will now address each of the items/statutes and rules raised by Chief Justice Smith. Should this Council require additional information, material, evidence, audio recordings, complainant will be more than happy to provide such material.

28 U.S.C. § 352(b)(1)(A)(ii)

The U.S. Code which C.J. Smith uses to justify his dismissing of this case, is:

> (b)Action by Chief Judge Following Review.—After expeditiously reviewing a complaint under subsection (a), the chief judge, by written order stating his or her reasons, may—
> (1) dismiss the complaint—
> (A) if the chief judge finds the complaint to be—
> (ii) directly related to the merits of a decision or procedural ruling;

However, **the evidence shows that the Judge and attorneys conspired to hide substantive exculpatory evidence from the jury and expert witness and then actually presented false evidence to the jury and expert witness.** This is not a discussion of the merits of a decision or procedural ruling **but a blatant falsification of the record**, and violation of the law and Judicial Ethics, which had a witness done, they would have been found guilty of perjury and criminal proceedings would have ensued.

The Judge and attorneys are not immune to criminal violation of the law. To rule this is an issue of merits of a decision or procedural ruling is to state that Judges have the right to violate Constitutional guarantees of Justice as established by the U.S. Constitution and amendments under the pretense of 28 U.S.C. § 352(b)(1)(A)(ii) and to violate the law.

J.C.U.S. Rule 11(c)(1)(B)

Discussed *passim* as this case is not related to the merits of a decision or procedural ruling unless this Court now holds that it is within the Judicial power of a Federal Judge to conspire to hide substantive exculpatory evidence, intentionally present false evidence to the Jury and Expert witnesses and that he may assault defendants seeking legal remedies (*passim*), in other words, to commit crimes without being held legally accountable.

J.C.U.S. Rule 3(h)(3)(A)

As this rule limits what this Court and this Judicial Council, may consider in a Judicial Misconduct investigation, this is NOT " an allegation that calls into question the correctness of a judge's ruling,..." Conspiracy to hide substantive exculpatory evidence, the intentional presentation of false evidence in a trial to the jury and expert witness, assault of defendant and violation of Judicial Cannons 1,2,3 and 5 have NOTHING to do with the correctness of a Judges ruling. These actions are clear violations of Judicial Misconduct and the Judge must be held criminally accountable for his actions. There are no statutes, Court rulings or Constitutional rights protecting Federal Judges who break the law. The fact that he clerked for this Court earlier in his life does not provide him with immunity.

28 U.S.C. § 351 (a), (d)(1)

Complainant recognizes that attorneys Hansen, Everett and Russell are not Federal Judges; however, Judge Richard G. Kopf conspired with these attorneys and they conspired with him and Judge Kopf has blocked any and all investigations of these attorneys or of himself. Judge Kopf has assaulted complainant in his efforts to address these issues both in Courts of

Law and through the applicable Bar Associations and investigative agencies responsible for such investigations.

J.C.U.S. Rule 4

See 28 U.S.C. § 351 *supra*.

28 U.S.C. § 352(b)(1)(A)(iii)

C.J. Smith states that under 28 U.S.C. § 352(b)(1)(A)(iii) he may dismiss the case under:

> (iii) frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred, or containing allegations which are incapable of being established through investigation;

as "complainant's **bare speculative allegation** (emphasis added) that the district judge conspired with defense counsel and government counsel, such allegation "**lack[s] sufficient evidence to raise an inference** (emphasis added) that misconduct has occurred."

Since this statute stipulates that this follows an "expeditious" review by the Chief Justice, it is clear that it is not the result of a thorough review of the materials submitted. Therefore, complainant is compelled to provide the following detailed evidence, which is "more than sufficient evidence to demonstrate conspiracy, misconduct, the hiding of substantive exculpatory evidence, assault **AND the intentional, knowing and malicious presentation of false evidence to the jury and expert witness.** This evidence also details Judge Kopf's blocking of investigations of himself and the attorneys involved as detailed verbatim in case 16-9473 before the SCOTUS:

a. It is a violation of petitioners Due process and Equal Protection rights for the Judge and attorneys in the original trial to hide from witness and jury substantive exculpatory evidence.

The SCOTUS must find that the Judge and attorneys involved in the original case intentionally hid exculpatory evidence from Dr. Fleming, the expert witness Dr. Alicia Carriquiry and the jury who subsequently concluded that the expert witness's testimony was "worthless" given the inability of the expert witness to understand that the public defenders "fake" data was in fact "not fake" but "fabricated" and therefore could not have been detected by a test made to detect "fake" data, anymore than cancer can be detected by testing for diabetes. The Judge, prosecuting attorneys and public defender thereby violated their Professional Code of Ethics *inter alia* M.R. 1.1 and Rules 1.3, 3.3, 3.7 and 8.3 and denied Dr. Fleming Due Process and Equal Protection under the Law and denied him a fair trial. The SCOTUS must submit the names of the Judges and attorneys involved in this case from inception through the present to the applicable administrative agencies and Courts including but not limited to the U.S. Senate Judiciary Committee.

All attorneys, including Judges, prosecuting attorneys and public defenders have a Professional Code of Conduct, which they must abide by or be penalized for violating. Attorneys who fail to notify the applicable agencies and Courts are themselves in violation of that Professional Code and can be disciplined for violating their Ethical Code of Conduct. It is a denial of petitioner's Due Process and Equal Protection rights and ICCPR treaty rights and remedies for this substantive exculpatory evidence to have been hidden from petitioner, the expert witness dependent upon this evidence and the jury.

It is a violation of a Fundamental Constitutional right by both State and Local Governments as applied and incorporated against the State through the Due Process and Equal Protection Clause of the 14th Amendment and of the Federal Government itself.

> The Due Process Clause states that "[n]o State shall ... deprive any person of life, liberty, or property, without due process of law." U.S.

Const. Amendment XIV.

This Court has held that prosecuting attorneys must disclose substantive exculpatory evidence and failure to do so represents denial of Due Process.

> "...the suppression by the prosecution of evidence favorable to an accused... **violates due process** where the evidence is material either to guilt or to punishment, ..." *Brady v. Maryland*, 373 U.S. 83 (1963) (emphasis added)

Such "Brady material" or evidence the prosecutor is required to disclose under this rule, includes any evidence favorable to the accused *including evidence going to the credibility of a witness*.

> "When the 'reliability of a given **witness** may well be determinative of guilt or innocence,' nondisclosure of **evidence affecting credibility** falls within th[e] general rule [of *Brady*]" *U.S. v. Bagley*, 473 U.S. 667 (1985) (emphasis added)

During a side bar discussion and agreement between Judge Richard Kopf, public defender Michael Hansen and prosecuting attorneys Alan L. Everett and Steven A. Russell, the four men conspired to hide substantive exculpatory evidence from Dr. Fleming, expert witness Dr. Alicia Carriquiry and the Jury.

> Judge Kopf stated at side bar that "the Jury didn't need to know the whole truth" if "the wool" was "pulled over their eyes." (*USA v Fleming*; 4:07cr03005, docket 117 @ 1:18:00-1:29:00, 1:24:40; 1:26:00, 1:43:30 & 118)

Judge Kopf would later admit he intentionally would not let Hansen testify and continued to refer to Hansen's "plagiarized" data and "fake" data thereby hiding substantive exculpatory evidence from Dr. Fleming, the expert witness dependent upon it and the jury.

> "At a bench conference ... I ruled that the government could use the "fake" data and Kaiser's analysis during cross-examination and I also ruled that Hansen would not be allowed to testify." *Fleming v. U.S.*, 755 F.Supp.2d 1019 (D.Neb. 2010)

Judge Kopf would not allow a mistrial and he would not allow Mr. Hansen to be placed on the witness stand to testify that the "fake" data as titled by Mr. Hansen was actually Mr. Hansen's "plagiarized" data, which he plagiarized from Dr. Fleming's real data. Dr. Carriquiry's expert analysis of the Fleming data was that it was real.

> "...there is simply no data-driven evidence that the Fleming data set is other than would be expected under a legitimate study." P. 25 Professor Carriquiry Statistical Examination
>
> "...the data are innocent..." *USA v Fleming*, 4:07cr03005

However, Dr. Carriquiry could not explain why the data entitled "fake" data was not detected by her test for "fake" data. Dr. Gordon Harrington showed the Hansen data was "plagiarized" from Fleming data back in May of 2008. He told Hansen this in an email. Hansen refused to have Prof. Harrington testify at trial. Dr. Carriquiry was unaware of this and had developed her test specifically to test whether Dr. Fleming's data were "fake" data, not whether it was "plagiarized" data and she did not know that Hansen's data wasn't "fake" but instead was "fabricated" from Dr. Fleming's. This was clearly substantive exculpatory evidence Dr. Carriquiry required to explain why her test didn't detect the "Hansen fake data."

It was also an intentional misleading of the expert witness and the jury to call Hansen's data "fake" when it was in fact "fabricated." This resulted in Dr. Carriquiry loosing credibility in the eyes of the jury (*infra*) who then considered her testimony "worthless," while denying Dr. Fleming his Civil rights including his Due Process and Equal Protection rights.

INVESTIGATIVE
MEMORANDUM

to: Michael J. Hansen
from: Tim Domgard
subject: Richard Fleming
date: April 28, 2009

Katherine Stewart, a juror in the Fleming trial was contacted on 4-27-09. After I confirmed my identity and the purpose for the contact, Stewart provided the following information. (Please note: Katherine Stewart was one of the 12 jurors in the trial.)

Stewart advised the jury first started talking about counts 1-10 and could not agree on what the verdict would be concerning those counts. Therefore, the jury started looking at the research or the soy study counts.

Stewart advised that the statistician seemed like she had some valuable information to support the doctor. However, on cross-examination it came out that she could not really determine if the fake data was real or not and therefore she described the statistician as "worthless".

The oral record (*USA v Fleming*; 4:07cr03005, docket 117 & 118, *supra*) of the side bar discussion, clearly demonstrates that Judge Kopf was upset with public defender Hansen and was not going to allow a mistrial or for Hansen to be placed on the witness stand. In an effort by Hansen to avoid further consequences, Mr. Hansen agreed to a stipulation that he not disclose that the "fake" data was his "plagiarized" data or that it came from him, thereby further violating the Rules of Civil Procedure and case law.

> "Rule 244(h), Rules of Civil Procedure, ... there have been "errors of law occurring in the proceedings, or mistakes of fact by the court" . ... **failed to effectuate substantial justice** between the parties. (Emphasis added) Schmitt v. Jenkins Truck Lines, Inc., 170 N.W.2d 63 2 (Iowa). Thompson v. Rozeboom, 272 N.W.2d 444, 446-47 (Iowa 1978) (emphasis added)

As a consequence Dr. Fleming, the expert witness Dr. Carriquiry and the Jury were intentionally provided with false obfuscating evidence instead of the substantive exculpatory evidence, which would have allowed Dr. Carriquiry to correctly address the results of her statistical analysis of Dr. Fleming's data and Hansen's "plagiarized" data and thereby maintain her credibility as an expert witness and Dr. Fleming's actual innocence. The public defenders refusal to clarify the record and accept responsibility for his actions, as well as Judge Kopf's and

prosecuting attorneys Everett and Russell, denied Dr. Fleming his Due Process and Equal Protection rights and violated their duties as Judge and officers of the Court.

> "The duty of the lawyer, subject to his role as an 'officer of the court,' is to further the interests of his clients by all lawful means...." *In re Griffiths*, 413 U.S. 717 (1973)

These actions not only denied Dr. Fleming his Civil and Due Process rights but they will substantially eviscerate the public confidence in the legal profession and justice system.

> "[t]he courts not only demand [lawyers'] loyalty, confidence and respect, but also require them to function in a manner which will foster public confidence in the profession and, consequently, the judicial system." *In re Griffiths*, 413 U.S. 717 (1973)

While this Court has held that "harmless" exclusion of evidence does not affect the parties, the hiding of this substantive exculpatory evidence from Dr. Fleming, Dr. Carriquiry and the jury was anything but harmless as shown by the juror statement (*supra*), providing no immunity for those culpable.

> "which do not affect the substantial rights of the parties" *U.S. v. Hasting*, 461 U.S. 499, 506 (1983).

By hiding the substantive exculpatory evidence from expert witness Dr. Carriquiry, she spent her time trying to answer why her test couldn't detect the "fake" data, instead of being able to address differences between "plagiarized" and "fake" data relevant to the case. In reality, Dr. Carriquiry's test correctly identified Hansen's data as not being "fake" because it wasn't "fake," it was "plagiarized;" thereby hiding substantive exculpatory evidence from witness and jury proving her test statistically proved Dr. Fleming's actual innocence.

By hiding substantive exculpatory evidence and by misrepresenting facts to the witness and jury, Judge Kopf, public defender Michael Hansen and prosecutors Alan L. Everett and Steven A. Russell are in clear violation of 42 C.F.R. § 1103.27(b)-(d). As a result of hiding this

substantive exculpatory evidence from Dr. Carriquiry, her credibility was lost and the Jury comments subsequently showed they considered her expert testimony "worthless" (*supra*) - this was anything but harmless and anything but Due Process or Equal Protection.

The absolute denial of Due Process and Equal Protection both by the original Court and by the IMBE (*passim*) in their investigation of the originating case, in what they admit was a "subpar" investigation and the successive hiding of this (*infra*) defies the conscious and denies Due Process and remedies.

Petitioner asks the SCOTUS to find that Due Process and Equal Protection has been denied Dr. Fleming and to reverse the IBME discipline and the findings original case, which precipitated the IBMEs involvement through Kathy Palmer and to submit those in question to the appropriate agencies, disciplinary counsels and Courts of Law.

i. It is a further violation of Professional Ethics for attorneys and judges to hide substantive exculpatory evidence and to interfere with the investigation of their actions.

The SCOTUS must find that Judges and attorneys who have interfered with efforts to investigate Judges and attorneys who have hidden substantive exculpatory evidence, must not only be reported to the applicable agencies and Courts, but must find these Judges and attorneys guilty of obstruction of justice and hold them criminally guilty. They are not immune under the color of office for such offenses.

Judges and attorneys who intentionally block efforts to investigate professional ethics violations and the hiding of substantive exculpatory evidence from defendants, expert witnesses dependant upon that exculpatory evidence and the jury, are criminally guilty of obstruction of justice and violating their professional code of ethics and must subsequently be found guilty of doing so and sentenced accordingly.

As the result of the side bar agreement (*supra*), Judge Kopf would not allow (1) a mistrial, (2) withdraw of defense counsel or (3) for defense counsel to be placed on the witness stand to provide substantive exculpatory evidence, which in and of itself would have been produced a Professional Ethics Violation **(Rule 3.7)** for Hansen. Judge Kopf intentionally and maliciously blocked efforts by Dr. Fleming to prove this hiding of substantive exculpatory evidence and his raising legal questions of Ineffective Assistance of Counsel. In fact, ***the Judge actually threatened Dr. Fleming*** that should he continue trying to prove these ethics grievances he would be punished. *Fleming v. U.S.*, 4:10-cv-3217 (2010):

> I now warn Dr. Fleming that the filing of any additional ethics grievances against Mr. Hansen with the Nebraska Counsel for Discipline or with this Court or otherwise will subject Dr. Fleming to substantial sanctions. Those sanctions may include, but are not limited to, holding Dr. Fleming in contempt of court or revoking or modifying his probation. The continued abuse of the legal process will not be tolerated.

Having been intentionally blocked from obtaining Due Process through the Courts ***by the very Judge who was part of the side bar agreement*** (*passim*), Dr. Fleming's legal efforts to address both Ineffective Assistance of Counsel and the side bar agreement to hide substantive exculpatory evidence in *Fleming v. U.S.*, 755 F.Supp.2d 1019 (D.Neb. 2010), *supra* **and** in *Fleming v. U.S.*, 4:10-cv-3217 (2010), were blocked. The language of Judge Kopf made it crystal clear that Judge Kopf would imprison Dr. Fleming if Dr. Fleming tried to obtain Due Process through the Courts. Judge Kopf also made it abundantly clear that his Court had "adopted its own ethical standards" and he was not going to adopt those of the "State of Nebraska" nor allow an investigation by the others.

> "This court has adopted its own ethical standards, and we have specifically declined to adopt other codes of professional responsibility such as those promulgated by the State of Nebraska." *Fleming v. U.S.*, 4:10-cv-3217 (2010)

When Dr. Fleming filed requests for investigation with the appropriate agencies, including *inter alia* Mr. Dennis Carlson (State of NE Counsel for Discipline) and Mr. Corey R. Steel (Judicial Qualifications Commission), Judge Kopf blocked these efforts as well, effectively hiding any evidence of the sidebar agreement and any other questions regarding ineffective assistance of counsel or the hiding of substantive exculpatory evidence, attorney misconduct, prosecuting attorney misconduct or judicial misconduct. Respondents and the Courts have failed to address these issues, depriving petitioner his Constitutional Rights and remedies.

> "... claims of ineffective assistance of counsel ... "an evidentiary hearing on the merits is ordinarily required." *Foster v. State*, 395 N.W.2d 637, 638 (Iowa 1986); see also *Watson v. State*, 294 N.W.2d 555, 556 (Iowa 1980); *State v. Smith*, 282 N.W.2d 138, 143 (Iowa 1979). "Such a hearing affords the parties an opportunity to adversarily develop all of the relevant circumstances attending counsel's performance, including those circumstances and considerations which may be pertinent but are not a part of the criminal record." *Watson*, 294 N.W.2d at 556. Manning's claims, even if the district court deems them improbable, **require that he be allowed to present whatever proof he may have to support those claims.** See id. at 557. (emphasis added) *Manning v. State*, 654 N.W.2d 555, 562 (Iowa 2002)

Judge Kopf has also restricted Dr. Fleming's access to Court documents, which prove Dr. Fleming had submitted requests for Ethics Evaluations of Judge Kopf, public defender Hansen and Prosecuting Attorneys Everett and Russell. These documents include *inter alia* documents (see exhibit #202) presented to Kopf's Court and allowed the destruction of Court exhibits (see exhibit #204) without notification of Dr. Fleming (*USA v Fleming*; 4:07cr03005).

Clearly Judge Kopf feels immune from investigation of Ethics Violations by the State of Nebraska and feels confident that he can block any investigation of those involved in the side bar agreement. He apparently also feels confident that this Court will not engage in an investigation of him or discipline or find him criminally or civilly responsible for his actions.

> "... **the Supreme Court** ... now causing more harm (division) to our democracy than good ...," Kopf wrote. "**As the kids say, it is time for the Court to stfu.**" (Federal Judge Tells Supreme Court to 'STFU', ABC World News 7 July 2014) (emphasis added)

Even when it is clear that Judge Kopf has violated his Professional Ethics, no actions are taken as demonstrated by his involvement in the last Presidential election where he violated his Judicial Ethics (Canon 5: "A Judge Should Refrain from Political Activity") by calling Senator Ted Cruz "unsuited to become President." Readable in either the Washington Post or Judge Kopf's blog, which he ceased writing after Chief Justice Laurie Smith Camp had a meeting with those working in the Courts, where the clear consensus what that Judge Kopf "had become an embarrassment to our Court", he appears to have no fear of nor has he been disciplined for such violations. The only person to stand up to Judge Kopf and raise questions regarding violations of Judicial Ethics is Orin Kerr of George Washington University Law School. A full review of that exchange shows Judge Kopf did not go gently into that goodnight and continued to deny allegations of ethics violations until the last post, where he conceded he had violated Canon 5. Again, no action has been taken.

This Court needs to address the persistent ethical violations made by Judge Kopf and to recognize that Dr. Fleming's attempt to obtain Due Process and Equal Protection through administrative agencies, the Courts and Counsel's for Discipline of attorneys and Judges has been blocked from beginning to now. When Dr. Fleming attempted to seek the Due Process denied him and to address these violations of Professional Ethics (*supra*), the very Judge who was involved in the side bar agreement and the hiding of substantive exculpatory evidence blocked him again. The IBME and their counsel have failed to investigate or report these violations as required by their Professional Code of Ethics and the subsequent Courts and

attorneys at law have failed to either report these violations or to provide Dr. Fleming his Due Process and Equal Protection rights and remedies under the Iowa Constitution, the U.S. Constitution, administrative law and the ICCPR treaty. They are each additionally culpable for violation of their own Professional Ethics independently and collectively as detailed *passim*.

ii. It is a violation of Professional Ethics for subsequent judges and attorneys to not report such violations.

The SCOTUS must find that attorneys, including Judges who are made aware that there is a question of Professional Ethics violations, must report those violations to the applicable administrative and Court authorities or be in violation of their Professional Ethics themselves.

It is a violation of Professional Ethics for an attorney or Judge who has been notified of a reportable violation of Ethics by another attorney or Judge, to not report such violations to the appropriate agency and/or Court.

The clear consensus including the review of cases in the press, or the reading of any review of discipline for attorneys who violate the rules of disclosure of exculpatory evidence ("Prosecutor's Duty to Disclose Exculpatory Evidence" Lisa M Kurcias, Fordham Law Review, vol 69, Issue 3, Article 13, 2000), or consideration of "The Congressional Oversight of Judges and Justices" Congressional Research Service (by Elizabeth B. Bazan, Legislative Atty.) shows Judges and Attorneys have very little to worry about either disciplinary wise or legally, when they violate their Ethical and Legal obligations.

In addition to the Professional Code of Ethics, the Office of the U.S. Attorneys has established "Standards of Conduct" (1-4.000), Protections of Government Integrity (9-85.000) and statutory requirements for attorneys to report professional misconduct while statutes in Nebraska is § 3-508.3 and Iowa § 622.10, Professional Rule 8.3 makes it very clear that conduct

by either a Judge or attorney which raises substantial questions, "shall" be reported to the appropriate professional authority.

> (a) A lawyer who knows that another ***lawyer*** has committed a violation of the Rules of Professional Conduct ... ***shall*** inform the appropriate professional authority.
>
> (b) A lawyer who knows that a ***judge*** has committed a violation of applicable rules of judicial conduct ... ***shall*** inform the appropriate authority. Rules of Professional Conduct: Rule 8.3--Reporting Professional Misconduct. (emphasis added)

Notwithstanding the failure of the system to address these Ethical violations and denial of Due Process and Equal Protection and ICCPR Treaty rights and remedies Dr. Fleming petitions this Court under its Ethical and Statutory Obligations to report and address the ethical violations of those who have violated their ethical and statutory obligations through the hiding of substantive exculpatory evidence, obstruction of justice and those who have violated their ethical obligations and statutory obligations by failing to report such concerns to the appropriate agencies and courts whose responsibility it is to address such matters.

Given this detailed evidence from SCOTUS case # 16-9473, the Judicial Council is encouraged to verify the facts and matters of law, including the audio recordings, conspiracy to hide substantive exculpatory evidence and the actual presentation of false evidence by the Judge and attorneys involved.

J.C.U.S. Rule 11(c)(1)(D)

Accordingly, Chief Justice Smith's dismissal under this rule

> JCUS Rule 11(c)(1)(D) "is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred..."

This is itself without merit, as the detailed evidence laid out *supra* and in the previously

submitted Court documents provides more than adequate evidence including written and oral documentation of the conspiracy, assault, hiding of substantive exculpatory evidence and the intentional, knowing and malicious presentation of false evidence, for this Judicial Council to conclude violations of Judicial Cannons and Misconduct by Judge Richard G. Kopf and more than adequate reasons to submit Judge Kopf to the House Judiciary committee for investigation and initiation of impeachment proceedings..

J.C.U.S. Rule 3(h)

If a conspiracy to hide substantive exculpatory evidence, assault, and the intentional, knowing and malicious presentation of false evidence to the jury and expert witness by *inter alia* a Federal Judge does not constitute "Cognizable misconduct" then it needs to be specifically written into your rules because if this is not the very definition of "Cognizable misconduct" then nothing is and if nothing is, then these "Rules" have no substantive or procedural meaning.

PETITION FOR JUDICIAL COUNCIL ACTION FINDING
FOR JUDICIAL MISCONDUCT OF JUDGE RICHARD G. KOPF AND FOR THE IMMEDIATE
SUBMISSION OF JUDGE RICHARD G. KOPF TO THE HOUSE JUDICIARY COMMITTEE
FOR INVESTIGATION AND INITIATION OF IMPEACHMENT PROCEDDINGS

If the conspiratory hiding of substantive exculpatory evidence and the intentional, knowing and malicious introduction of false evidence to the jury and expert witness, violations of Judicial Cannons 1,2,3 and 5, and assault are not considered sufficient Judicial Misconduct to produce action by this Judicial Council, then there are undoubtedly no actions taken by a Federal Judge, which may be held accountable by the American people.

Complainant calls for this Judicial Council to find that Judge Richard G. Kopf has in fact

violated Judicial Cannons 1, 2, 3 and 5, has demonstrated beyond a shadow of a doubt "Judicial Misconduct, " should be held criminally accountable for assault and the intentional, knowing and malicious presentation of false evidence in a Court of law and should be removed from the Federal Judiciary with his name submitted directly and immediately to the House Judiciary Committee for investigation and initiation of impeachment proceedings.

Respectfully submitted,

Dated: 31 August 2017

Richard Max Fleming, M.D., J.D.

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