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Honorable Marco Hernandez

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

MAX ZWEIZIG, Plaintiff, vs. TIMOTHY C. ROTE, *et al.*, Defendants.	Case No.: 3:15-CV-2401-HZ DEFENDANT'S MOTION TO RECONSIDER THE COURT'S REFUSALTO VACATE JUDGMENT FOR FRAUD UPON THE COURT AND

ARGUMENT

As an opening statement, defendant Rote has not attempted to contact any juror after the court ordered him not to. As a further confirmation, two chapters of the blog identifying two of the jurors and exploring voir dire issues have been edited to redact the names of those jurors.

Defendant would further ask the court to take note that the Oregon State Bar PLF hired counsel to represent Max Zweizig and Sandra Ware in Rote's lawsuit for an abuse of a Civil Proceeding. As the court knows full well, Zweizig is not an attorney and Ware's New Jersey law license has been suspended. Records and reasoning for this representation are being sought via an FOIA request.

Denying Defendant's Motion to Vacate For Fraud Upon the Court was not a Hallmark moment for the court. Granting the Motion would have punished the perjury that the Zweizig incest team has engaged in for more than 15 years and more importantly would have sent a message to the Oregon State Bar that this court will not tolerate dishonest engagement by members of the BAR. Instead, the court has now endorsed the perjury and scheme of influence that must be logically interpreted as an act of retaliation…a classic do as I say and not as I do example.

There is no conceivable legal justification for denying the defendant's Motion to Vacate for Fraud Upon the Court. Christiansen's Motion In Limine sought to exclude the forensic evidence already in the record and that Motion was intended to allow Zweizig to engage in perjury. The forensic evidence supporting the defendant's position that Zweizig downloaded and disseminated child porn is irrefutable, as is Zweizig downloading movies and music in violation of copyright laws. Zweizig's perjury on this same topic and in his sworn testimony during the trial is also irrefutable.

There was a time when lying to the court by an attorney was a serious matter. "[s]ince attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court."[1] Defendant also suggests that had the court read the forensic reports the court would have been informed that Christiansen suborned perjury and Zweizig engaged in perjury on direct and cross examination.

This case has an undeniable taint of judicial prejudice, but the worst of this would be to look the other way on extremely clear evidence of perjury by Zweizig and Christiansen. Even judicial activism cannot long bear the weight of the appearance of judicially endorsed perjury.

[1] H.K. Porter Co. v. Goodyear Tire & Rubber Co., 536 F.2d 1115, 1119 (6th Cir. 1976).

A. The Clear and Convincing Standard Was Easily Satisfied

In order to establish fraud on the court, some courts require the movant to prove by clear and convincing evidence *intentional* fraudulent conduct *specifically directed* at the court itself.[2] The intentional act by Christiansen was to convince the court that the forensic reports were considered at the arbitration. That was a blatant lie as even a cursory review of the arbitration opinion would show.

Christiansen has not denied suborning perjury and he has not denied that Zweizig engaged in perjury when he denied downloading and disseminating movies, music and child porn using a peer to peer program registered to Zweizig. Rather, the Zweizig child incest team argument focused on whether the Zweizig perjury can be measured on the suppressed forensic reports. There is no legal support for a position that suppressed evidence cannot form the material evidence supporting perjury.

Defendant provided more than 20 specific references to the forensic reports and testimony of three computer forensic experts, one of whom was Zweizig's expert, which irrefutably supports that (1) Zweizig downloaded and disseminated music, movie and child porn using a peer to peer program registered to him; (2) that he destroyed programming owned by his employer, programming he claimed by email (provided) did not exist; (3) that he attempted to destroy that evidence by reformatting the hard drive (which he does not deny); and (4) that he falsely testified that the hard drive had crashed, which is the justification he used to reformat the hard drive…and it had not crashed.

That forensic evidence was extracted from the 120 gig hard drive exclusively used by Zweizig. The experts also opined that the 120 gig hard drive was only used during Zweizig's

[2] Herring v. United States, 424 F.3d 384, 386–87 (3d Cir. 2005).

period of possession. Since Zweizig worked from his home, Sandra Ware most certainly could have used the hard drive as well but only if Zweizig gave her the password and login id.

That evidence is relevant to almost all of the Zweizig claims in this case. The court should have set a hearing to go over this evidence instead of refusing to consider it. Absent a hearing, there is no room to misinterpret the overwhelming body of evidence supporting the defendant's position.

B. The Unconscionable Plan or Scheme To Defraud Is Also Irrefutable

Other courts have held that an action for fraud on the court is available only when the movant can show an "unconscionable *plan* or *scheme*" to improperly influence the court's decision.[3]

That scheme in this case included filing the Kugler and Jones transcripts with a blatant request for judicial retaliation directed at defendant Rote. Doc #243-12 has been filed by Christiansen in this case several times, the first with the anti-SLAPP, and is tantamount to an admission that because of this exhibit the defendant did not receive a fair and independent trial on the merits of this case. Doc #243-13 has been filed several times, the first with the anti-SLAPP, and is tantamount to an admission that because of this exhibit the defendant did not receive a fair and independent trial on the merits of this case.

Brazen requests for bias challenges the credibility of the judiciary, and rightly so. Absent Judge Mosman or Kugler intervening, it is hard to imagine that Christiansen's indirect threats to the court to expose both Mosman and Kugler would have been entertained.

The Motion in Limine is also a component of that scheme. A reasonable interpretation of the requests for prejudice against Rote was for the court to suppress the forensic evidence so the

[3] Rozier v. Ford Motor Co., 573 F.2d 1332, 1338 (5th Cir. 1978) (emphasis added) (quoting England v. Doyle, 281 F.2d 304, 309 (9th Cir 1960)).

jury could not see it, thus supporting the plaintiff in what evolves to unsupported claims, the benefit of which goes to the plaintiff.

C. Kugler's Interference With Proceedings In Oregon Is Well Documented

Defendant Rote has no duty to comport his publications to protect the reputation of a Federal FISA Judge, or Judges, living closeted lives when that clandestine behavior may result in exploitation to acquire FISA warrants. There is arguably a compelling duty to bring this to the attention of Chief Justice Roberts and request an investigation. A foreign actor, or even the FBI, could use that information to secure FISA warrants and retaliating against defendant Rote, in this case, for publishing and contacting the Unites States Supreme Court only confirms the bias that seeps through the veins of the U.S. District Court of Oregon.

Defendant Rote has no duty to comport his publications to conceal the criminal behavior of attorneys representing Zweizig and as a side note those critiques are not a justification for a multiplier. Just the opposite is true. Attorneys like Christiansen who engage in perjury or suborn perjury at every turn and further solicit prejudice from the court need be reined in to preserve what little faith is left in litigation and the jury system. The court knows that and it was a horrendous decision to endorse Christiansen's behavior.

Kugler and Mosman asking this court to assist them in judicial retaliation is a matter of public interest and it is now a matter of public record. When is Kugler's influence going to stop? Defendant has documented Kugler's interference in this case, the arbitration, the New Jersey cases and the Denver litigation between NDT and Silicon Valley Bank.

Defendant Rote also reminds this court that Kugler attempted to hold Rote in contempt in 2005 for publishing to Kugler his clerk's meeting with Ware. Neither the clerk nor Ware denied meeting, where the Jones transcript was provided by Ware. Christiansen did not deny that

meeting. Moreover it was Kugler who identified the law clerk. The U.S. Attorney's Office refused then to punish free speech and Kugler had no choice but to dismiss his own allegation. It is particularly damning to the Portland Division that Zweizig's attorneys still ask for judicial retaliation for Kugler. But they do and they have not been sanctioned for it.

The U.S. House is itching to impeach a Judge appointed by a conservative president and the U.S. Senate would be inclined to impeach Judge Kugler for promoting child porn, pedophilia and cybercrime. The interstate actions by Kugler implicate uncontrolled First Amendment and Due Process violations over a pronounced period of time. The solicitation of these abuses to Crow, this court and to the Mosman court will not go unnoticed, nor will the court's refusal to vacate the Judgement for fraud upon the court and the objectively irrefutable perjury of the Zweizig incest team.

Article III federal judges are appointed to life terms while serving "during good Behaviour," as stated in Section 1 of Article III of the United States Constitution. Though it does not expressly state in the Constitution that judges may be impeached and removed from office, they fall under the label of "Civil Officers" in Article II, Section 4.[1] That says:

"The President, Vice President and all Civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

There is of course a series of retaliatory acts that will be on display. Using the judicial office to retaliate against a litigant for publishing the conflict and crimes of a judicial actor is in itself an impeachable act. It does not need to be a crime. Alcee Hastings was convicted by the Senate for perjury and conspiring to accept a bribe. A bribe need not be financial in nature.

Samuel Kent resigned during the impeachment proceeding for Sexual assault, obstructing and impeding an official proceeding, and making false and misleading statements.

Assisting Kugler in his retaliatory behavior, even if he is being extorted by Ware and Zweizig, is an impeachable offense. This court refused to compel arbitration demanded by the FAA and as required by the U.S. Supreme Court and Oregon Court of Appeals case law. This court denied defendant discovery. This court denied defendant Rote's counterclaims. This court permitted the destruction of the trial recordings. This court quashed subpoenas on relevant evidence when no party had standing to oppose those subpoenas. This court suppressed evidence that paved the way for perjury by the Zweizig incest team. And this court has now endorsed that perjury and awards a group of people who support the dissemination of child porn and the acts of pedophilia.

The Mosman court dismissed a malpractice claim on a theory that there was no written contract, when the contract was in evidence. The Mosman court dismissed a RICO claim against the PLF and participating members on ten counts of perjury, false swearing, fraud and the solicitation of the abuse of a public office…all crimes. The RICO claim was adequately pled. The Mosman court back dated an order in response to ex-parte notice from the U.S. Attorney's Office that defendant Rote was going to file a Bivens action. All of these acts and Mosman not disclosing judicial conflicts in adjudicating these claims are impeachable offenses.

Somehow this cybercriminal and pedophile has convinced court after court to do his bidding and it is shocking that this court has been dragged into this filth. What is this court and the Mosman court going to when you find out that Kugler was being extorted? Why in the world would you get involved with this?

D. Defendant Naming and Critiquing the Jurors is a First Amendment Right

As the court appears to be following the blog through some party's communication, making no reference directly to that information, and further asserts that defendant Rote reached out to jurors after the courts order him not to, the perception must again be corrected. Defendant Rote has not reached out to any juror since being ordered not to. More importantly, defendant Rote has complied with every request of this court. To suggest otherwise is false.

Critiquing the jury's obvious refusal to read 96,000 pages (with only the two hours of deliberation) after Christiansen claimed all of it was about Zweizig is a First Amendment right and should not be breached by the court. Obviously Christiansen engaged in 17 counts of misconduct in closing argument and the effect that had on each juror is a topic of public interest and typically addressed by media.

1. The Juror Names Are Public Record

The jurors' names are published in the voir dire portion of the trial transcript. The transcript is a public record. Defendant again emphasizes that juror lists are judicial records to which the common law right of access attaches. Defendant Rote publishing their motivations and the information some of them withheld during voir dire is a matter of public concern and now a matter of record as outlined in the appeal briefs and in the blog. There is no ability to conceal their names at this point, even if all of their names are removed from the blog.

Although the United States Supreme Court has not yet directly addressed whether this constitutional right of access to judicial proceedings applies to civil proceedings or to court documents, numerous federal and state courts have extended the First Amendment right of access to civil proceedings and to court records filed in both criminal and civil cases. The following cases recognize a First Amendment right of access to civil proceedings: *United States v. A.D.*, 28 F.3d 1353 (3d Cir. 1994); *Westmoreland v. CBS, Inc.*, 752 F.2d 16 (2d Cir. 1984);

Publicker Industries, Inc. v. Cohen, 733 F.2d 1059 (3d Cir. 1984); *In re Continental Illinois Sec. Litig.*, 732 F.2d 1310 (7th Cir. 1984); *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165 (6th Cir. 1983). The following cases recognize a First Amendment right of access to judicial records: *Republic of the Philippines v. Westinghouse Elec. Corp*., 949 F.2d 653 (3d Cir. 1991); *Public Citizen v. Liggett Group Inc.*, 858 F.2d 775 (1st Cir. 1988); *Rushford v. New Yorker Magazine*, 846 F.2d 249 (4th Cir. 1988); *In re New York Times Co*., 828 F.2d 110 (2d Cir. 1987); *Associated Press v. U.S. District Court*, 705 F.2d 1143 (9th Cir. 1983); *United States v. Dorfman*, 690 F.2d 1230 (7th Cir. 1982).

2. Impartiality Demands Juror Identities

Knowledge of juror identities allows the public to verify the impartiality of key participants in the administration of justice, and thereby ensures fairness, the appearance of fairness, and public confidence in that system. See *Globe Newspaper Co.*, 920 F.2d at 94."It is possible, for example, that suspicions might arise in a particular trial (or in a series of trials) that *jurors were selected from only a narrow social group*, or from persons with certain political affiliations, or from persons associated with organized crime groups. It would be more difficult to inquire into such matters, and those suspicions would seem in any event more real to the public, if names and addresses were kept secret. Furthermore, information about jurors, obtained from the jurors themselves or otherwise, serves to educate the public regarding the judicial system and can be important to public debate about its strengths, flaws, and means to improve it. . . . Juror bias or confusion might be uncovered, and jurors…understanding and response to judicial proceedings could be investigated. Public knowledge of juror identities could also deter intentional misrepresentation at voir dire." [*Id*.]

3. Nancy Walker's Editing Of The Transcript Demands Juror Interviews

Defendant's efforts to correct the record point squarely to the need to allow media to interview the jurors. Although Walker's edits were limited to a few highly prejudicial statements made by Christiansen to the jury, a judicial culture that endorses edits of a trial transcript puts Portland in a state of constitutional crisis. I am reminded that one of our assistant U.S. Attorneys questioned the veracity of providing recordings of the trial because almost all the criminally convicted want a recording. Defendant's response is that they should get a copy of trial recordings if they want one, because withholding such information is the first step to a court manipulating the record.

We don't have to look too far for confirmation that court records are being manipulated and destroyed. The trial recordings and Walker's recordings in this case were destroyed while under subpoena and notice to not destroy. And again Judge Mosman back dated an order to dismiss Walker and the United State with prejudice in 3:19-CV-00082, a manipulation of the record. These constitutional violations are not made in a vacuum.

Defendant appreciates that the court has great affection for Walker and believes she has been unjustly accused. Even if that were true, the constitutional question revolves around the control the court has to modify a trial record while the deputy clerk cleans the court's trial recordings, which are distinguished from Walkers recordings. In this case, both sets of independent recordings appear to have been destroyed. Appearance against a series of quid pro quo suggestions by opposing counsel makes the defendant more the messenger than the accuser. The facts fit the narrative and if trial recordings are going to be destroyed the jurors must be interviewed.

E. Structurally Flawed Arguments Corrupting Due Process Implicates Prejudice

In the appeal in this case, Christiansen actually argued to the 9th Circuit Court of Appeals that since defendant Rote is critical of arbitration that he should not be allowed to access arbitration. It is certainly not the first time a stupid argument has been advanced by either party but it appears to be infectious. Defendant's lack of eloquence is for lack of training, but an attorney advocating for abuses of due process because of first amendment complaints on litigation is a stunningly admission that serves to indict the balance of equities the court is charged to preserve.

The question is why the court is embracing ridiculous arguments by opposing counsel and why does the PLF feel so comfortable asking the court to do so?

F. The Interference and RICO activity of the OSB PLF

Defendant reminds the court that Christiansen and Marshall falsely accused defendant of plotting to assassinate Judge Jones. Defendant has great affection for Judge Jones and it's not because the Judge ruled in his favor.

When Christiansen and Marshall were sued for defamation, the PLF represented them. The PLF filed knowing false pleadings to prevail on the anti-SLAPP, a set of pleading Christiansen adopted for his own anti-SLAPP in this case. When Christiansen was further sued for defamation and filing the false declaration in this case, which was discovered via the U.S. Marshals evidence, the PLF represented him. When the anti-SLAPP was appealed to the Oregon Court of Appeals, noting for the court the false information filed by Christiansen and the PLF, the PLF represented him. When he was sued for being a member of the RICO enterprise engaged in perjury and other crimes to advance the financial interests of the PLF enterprise, the PLF represented him. Christiansen and Marshall are being sued for the abuse of a civil proceeding and the PLF represents them. When Brandsness was sued for malpractice, the PLF represented

him and then lied about the existence of a contract (which was in evidence) and Judge Mosman dismissed the malpractice claim on that basis alone. The PLF has become the leader in tactical perjury and bribery and defendant would remind the court that the PLF is a tax exempt organization organized under the Oregon Judicial Branch.

Exhibit 1 is an email from Nena Cook admitting that Carol Bernick and the PLF hired her to represent Zweizig and Ware in Clackamas County case 19cv14552. Exhibit 2 is an email defendant Rote sent to Clackamas County Court, before Exhibit 1 was received, noting that Rote believed the PLF hired Nena Cook to simply interfere with Rote's motion for default against Zweizig and Ware.

Defendant has filed an FOIA request for records from the PLF disclosing the amounts paid for college tuition and costs for the benefit of Judges (and their families) in this state. There is of course a conflict any time a Judge who received a direct or indirect benefit of these college funds also sits in Judgment on claims the PLF may need to pay.

CONCLUSION

The Court's opinion denying the Motion to Vacate intimates knowing that Christiansen would suborn, and Zweizig would commit, perjury if the forensic evidence was suppressed…mean a fraud cannot be perpetrated by a court that endorses the fraud. The court should clarify that position. This is a bigger issue than a social activist agenda.

Any citizen, and certainly a journalist, has a right to attack a juror's undisclosed animus or motivations. Juries in Portland on employment claims award 10-20 times what the more educated BOLI attorneys award and find in favor of employees more than 85% of the time. Portland it the most biased jury pool in the country. The question is why? Court's have long

recognized the media's role in post-trial follow up to keep juror's honest and it is rare when names are sealed and post-trial interviews not allowed.

The jurors' lives are not threatened, as in a criminal case involving the mob. Oregon live and other media agencies published the jury award. It is clearly a matter of public interest. While defendant recognizes that as Portland left wing culture is trending to socialism, we aren't there yet as a country and ordering media to not critique a jury's deliberation will not survive appeal.

Half the jurors were selected from a narrow social group that is highly indifferent to child porn or pedophilia. This is a specific historical concern mandating the open sharing of jurors' names and voir dire details. Some of the jurors are repulsed by the Zweizig perjury, the deception of the court in suppressing the forensic reports and they certainly want to be heard. The LGB community should be repulsed by child porn and pedophilia, but large factions of that community are not. More than a dozen Portland area educators have been indicted for child porn in the last year. The court should not be seen as an endorser of child porn, pedophilia or perjury.

These are pronounced moral and legal issues that support full transparency. The court has now awarded $666,666 to the incest team, an altogether poetic amount.

Defendant requests the court reconsider the order denying the Motion to Vacate, to then Vacate the Judgment, to hold the incest team in contempt and to disbar Christiansen from Federal Practice. Defendant also requests that the court order Kugler to stop meddling in Oregon litigation.

Finally, the defendant requests the court reconsider any order demanding critiques and identities of the jurors be removed. The identity of the jurors is a separate issue of what defendant has discovered about the jurors through their social media. Finding out that selected

jurors lied in voir dire, that the jury was stacked and publishing the results is the first amendment role of media, even when the court does not like what is being written.

Dated: November 15, 2019

s/ *Timothy C. Rote*
Timothy C. Rote
Pro Se Defendant

Certificate of Service

I hereby certify that on November 15, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Joel Christiansen and the other attorneys promoting the raping of children, perjury and cybercrime.

and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

s/ Timothy C. Rote
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