

Carl Bernofsky, Ph.D.
109 Southfield Road Apt. 51H
Shreveport, LA 71105

January 18, 2017

Lyle W. Cayce, Clerk
United States Court of Appeals
600 S. Maestri Place
New Orleans, LA 70130

RE: Misconduct Petition

Dear Mr. Cayce:

I hereby petition the Judicial Council for review of Judicial Misconduct Complaint No. 05-17-90013.

The subject document was originally submitted as a 26-page petition containing grounds for the impeachment of Judge Helen G. Berrigan, but construed by the Court as a Complaint of Judicial Misconduct and fashioned as my attempt "to supplement or reopen Complaint No. 99-05-372-0118," which had been reviewed and dismissed nearly 18 years ago. However, that is a mischaracterization of my intent.

The objective of my petition was to persuade the Judicial Council of the merit of requesting a de novo investigation into the conduct engaged in by Judge Berrigan during the period of time she adjudicated a series of cases from 1995 to 2001 in which the Administrators of the Tulane Educational Fund [Tulane] was defendant and I [Bernofsky] the plaintiff.

What the Court has pointed out in dismissing the present petition is that, despite allegations of misconduct that remain uncontested, Judge Berrigan would not be held accountable because her actions were part and parcel of an adjudication process over which she had authority.

One does not need a law degree to recognize the error of immunizing a judge against unlawful conduct merely because he or she has jurisdiction in a proceeding. That practice can erode the public's confidence in the ability of the Judiciary to monitor itself, and argues for oversight by an independent body with prosecutorial authority to examine genuine issues of material misconduct.

This Court has expressed doubt about the evidence that Judge Berrigan "filed a false and deceptive public record (by altering her biography in the *Almanac of the Federal Judiciary*)". Enclosed (see Enclosure 1, "Exhibits A8-A11") are copies of Judge Berrigan's curricula vitae as

published in the *Almanac of The Federal Judiciary*, showing that for the years of 1995, 1996, and 1997, Judge Berrigan indicated a continuing association with Tulane University's Amistad Research Center.

However, following Bernofsky's motion seeking her recusal from his lawsuits against Tulane, Judge Berrigan amended this credential in the 1998 edition of the *Almanac of the Federal Judiciary* to indicate that her official relationship with Tulane University's Amistad Research Center had ended in 1994. Bernofsky argues that the amended credential was intended to conceal Judge Berrigan's service on the Board of Directors of a Tulane University research center while she simultaneously adjudicated his lawsuits against Tulane.

Judge Berrigan also readily accepted Tulane's pretext for terminating Bernofsky. Documentation had thoroughly substantiated that Bernofsky had received notice of a new \$250,000 grant award from the U.S. Air Force 10 weeks before he was terminated. The grant had been officially accepted by Tulane months before his yearly contract expired, and the funds were not returned to the Air Force until eight months after Bernofsky was terminated.

Nevertheless, Tulane falsely claimed that Bernofsky had no grant funds with which to support his research, leading Judge Berrigan to state: "...Bernofsky was not qualified because of his lack of extramural funding...", and further, "...all undisputed facts support the simple explanation that Bernofsky was terminated for his inability to meet his salary needs...". The Judge's ruling was published as follows (see Enclosure 2):

Former research professor at medical school asserted race and age discrimination and state law claims in connection with denial of tenure and ultimate **termination for failure to obtain grant funding**. *Bernofsky v. Tulane University Medical School*, 962 F.Supp. 895 (E.D.La. 1997) at 895. (Bold emphasis added).

Once it became abundantly evident that Bernofsky had indeed been awarded a new \$250,000 grant from the Air Force, and that Tulane had lied about this in order to create a pretext for terminating him, Judge Berrigan cancelled the trial that had been scheduled to hear this and other contested issues of material fact. She then discarded the Pre-Trial Order that had already been signed by both parties, and subsequently ruled by Summary Judgment in favor of Tulane.

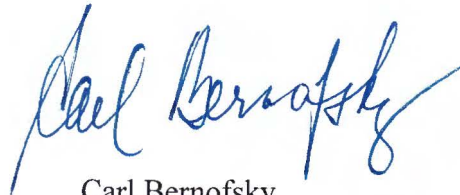
The characterization of Bernofsky's termination as a "failure to obtain grant funding" was false, defamatory and instrumental in poisoning his career opportunities as a research scientist.

Judge Berrigan, as an adjunct professor in Tulane's Law School, then received an emolument having the appearance of a *quid pro quo* when she accepted \$5,500 from Tulane to teach a summer course in 2000 on the Greek Isle of Thessaloniki. Nevertheless, and despite the objections of then Chief Judge Carolyn D. King, the two other panel members of the Fifth Circuit Court of Appeals deemed Judge Berrigan's conduct in this matter as not disqualifying.

Bernofsky cites the above as examples of a long train of abuses that begs to be examined and properly rectified if the Judiciary would preserve a future semblance of "Equal Justice Under Law" and deter other judges from abusing their authority. Judges need to recognize their responsibility to bring potential conflicts of interest to the attention of all concerned parties.

Petitioner prays that the Court will distribute this Misconduct Petition in accordance with its Rules 18(c)(2) and 18(c)(3). Bernofsky also asks that the Judicial Council reconsider his request to recommend an investigation into the conduct of Judge Berrigan over what he believes is a grave miscarriage of justice, motivated by a conflict of interest resulting from her association with Tulane University.

Respectfully yours,



Carl Bernofsky
Tel: (318) 869-3871
cbernof@aol.com

cc: Judge Carl E. Stewart

Enclosures:

1. Exhibits A8-A11 from: *Carl Bernofsky v. Tulane University School of Medicine*, U.S. Supreme Court, Case No. 99-372, (Petitioner's Reply Brief, Oct. 7, 1999, Re: Writ of Mandamus).
2. *Bernofsky v. Tulane University Medical School*, 962 F.Supp. 895 (E.D.La. 1997) at 895 (With emphasis added).

No. 99-372

In the
Supreme Court of the United States

October Term, 1999

In re **CARL BERNOFSKY, Petitioner**

DR. CARL BERNOFSKY,
Plaintiff - Petitioner,

v.

**ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND
(TULANE UNIVERSITY SCHOOL OF MEDICINE),**
Defendant - Respondent,

Petition for Writ of Mandamus

Petitioner's Reply Brief

**CARL BERNOFSKY
6478 General Diaz Street
New Orleans, Louisiana 70124
(504) 486-4639**

Petitioner, Pro Se

Exhibit 8

Judge Berrigan's curriculum vitae for **1995**, showing her continuing board membership on Tulane's Amistad Research Center, excerpted from the *Almanac of the Federal Judiciary, 1995*, Vol. 1, 5th Circuit, p. 3.

Education Univ. of Wisconsin, B.A., 1969; American Univ., M.A., 1971; Louisiana State Univ., J.D. 1977

Private Practice Gravel Brady & Berrigan, New Orleans, 1978-94

Government Positions Staff Attorney, Governor's Pardon, Parole and Rehabilitation Commission, 1977-78; Law Clerk, Louisiana Department of Corrections, 1975-77; Legislative Aide Senator Joseph E. Biden, 1972-73; Staff Researcher, Senator Harold E. Hughes, 1971-72

Public Office Member, Louisiana Sentencing Commission, 1987-1994

Other Employment Assistant to Charles Evers, Mayor of Fayette, Miss., 1973-74; Graduate Assistant, Department of Communications, American Univ., 1971; Administrative Secretary, Boston College; Staff Assistant, Univ. of Wisconsin

Professional Associations Louisiana State Bar Assn., 1977-present; Bar Assn., Federal Fifth Circuit, 1986-present; Louisiana Assn. of Criminal Defense Lawyers, 1985-1994; New Orleans Assn. for Women Attorneys, 1987-1994; Louisiana Capital Defense Project, 1986-88

Other Activities Committee of 21, 1989-1993; American Civil Liberties Union of Louisiana, 1989-1993; Forum For Equality, 1990-1994; Amistad Research Center, Tulane Univ., 1990-present

Lawyers' Evaluation Lawyers with a limited number of appearances before Berrigan since her 1994 appointment are very impressed with her ability and willingness to work hard. "She is always well-prepared." "She is very bright and very thorough." "In terms of ability, she's the best." "She's very bright and very hard-working." "Her legal ability is excellent." "She has a brilliant legal mind." "She is very involved in the legal aspects of the case. She reads the briefs and the cases—the authorities, and is very prepared." "She's very good."

Litigators familiar with Berrigan said she is extremely cordial to lawyers. "She is the nicest judge to members of the bar. She has juice and coffee and donuts." "She's very cordial." "She is very courteous." "She talks to defendants—she is very cordial, she will greet them and wish them good luck." "She is the most pleasant judge. She is very lawyer-friendly." "She's extremely friendly to members of the bar. She makes you feel at home in her courtroom and chambers."

Berrigan keeps control of her courtroom, but lets attorneys present their cases, according to those familiar with her. "She takes her time to listen to everyone and

magistrate

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Exhibit 9

Judge Berrigan's curriculum vitae for **1996**, showing her continuing board membership on Tulane's Amistad Research Center, excerpted from the *Almanac of the Federal Judiciary, 1996*, Vol. 1, 5th Circuit, p. 3.

District Judge; Louisiana, Eastern
500 Camp Street
Room 556
New Orleans, LA 70130
(504) 589-7410
Fax: (504) 589-2643
Born 1948; appointed in 1994 by President Clinton

Education Univ. of Wisconsin, B.A., 1969; American Univ., M.A., 1971; Louisiana State Univ., J.D. 1977

Private Practice Gravel Brady & Berrigan, New Orleans, 1978-94

Government Positions Staff Attorney, Governor's Pardon, Parole and Rehabilitation Commission, 1977-78; Law Clerk, Louisiana Department of Corrections, 1975-77; Legislative Aide Senator Joseph E. Biden, 1972-73; Staff Researcher, Senator Harold E. Hughes, 1971-72 •

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Other Activities Committee of 21, 1989-1993; American Civil Liberties Union of Louisiana, 1989-1993; Forum For Equality, 1990-1994; Amistad Research Center, Tulane Univ., 1990-present

Media Coverage 1996: Berrigan was assigned to oversee a class-action lawsuit against the nation's largest tobacco companies. Berrigan replaced Okla. B. Jones 2d, who died in January of leukemia. Berrigan's appointment to the case had no immediate effect because the class-action status was before a Federal appeals court in New Orleans at the time of Jones' death. Berrigan said of her assignment, "This is certainly a challenge, and I expect to work very hard." New York Times, January 18, 1996

Lawyers' Evaluation Lawyers with a limited number of appearances before Berrigan since her 1994 appointment are very impressed with her ability and willingness to work hard. "She is always well-prepared." "She is very bright

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Exhibit 10

Judge Berrigan's curriculum vitae for **1997**, showing her continuing board membership on Tulane's Amistad Research Center, excerpted from the *Almanac of the Federal Judiciary, 1997*, Vol. 1, 5th Circuit, p. 3.

Helen Ginger Berrigan

District Judge; Louisiana, Eastern

500 Camp Street

Room 556

New Orleans, LA 70130

(504) 589-7410

Fax: (504) 589-2643

Born 1948; appointed in 1994 by President Clinton

Education Univ. of Wisconsin, B.A., 1969; American Univ., M.A., 1971; Louisiana State Univ., J.D. 1977

Private Practice Gravel Brady & Berrigan, New Orleans, 1978-94

Clerkships Law Clerk, Louisiana Department of Corrections, 1975-77

Government Positions Staff Attorney, Governor's Pardon, Parole and Rehabilitation Commission, 1977-78; Legislative Aide Senator Joseph E. Biden, 1972-73; Staff Researcher, Senator Harold E. Hughes, 1971-72; Member, Louisiana Sentencing Commission, 1987-1994

Other Employment Assistant to Charles Evers, Mayor of Fayette, Miss., 1973-74; Graduate Assistant, Department of Communications, American Univ., 1971; Administrative Secretary, Boston College; Staff Assistant, Univ. of Wisconsin

Professional Associations Louisiana State Bar Assn., 1977-present; Bar Assn., Federal Fifth Circuit, 1986-present; Louisiana Assn. of Criminal Defense Lawyers, 1985-1994; New Orleans Assn. for Women Attorneys, 1987-1994; Louisiana Capital Defense Project, 1986-88

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Exhibit 11

Judge Berrigan's curriculum vitae for **1998**, indicating that her board membership on Tulane's Amistad Research Center ended in 1994, excerpted from the *Almanac of the Federal Judiciary*, 1998, Vol. 1, 5th Circuit, p. 3.

Helen Ginger Berrigan

District Judge; Louisiana, Eastern

500 Camp Street

Room 556

New Orleans, LA 70130

(504) 589-7515

Fax: (504) 589-2643

Born 1948; appointed in 1994 by President Clinton

Education Univ. of Wisconsin, B.A., 1969; American Univ., M.A., 1971; Louisiana State Univ., J.D. 1977

Private Practice Gravel Brady & Berrigan, New Orleans, 1978-94

Clerkships Law Clerk, Louisiana Department of Corrections, 1975-77

Government Positions Staff Attorney, Governor's Pardon, Parole and Rehabilitation Commission, 1977-78; Legislative Aide Senator Joseph E. Biden, 1972-73; Staff Researcher, Senator Harold E. Hughes, 1971-72; Member, Louisiana Sentencing Commission, 1987-1994

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Other Activities Committee of 21, 1989-93; American Civil Liberties Union of Louisiana, 1989-93; Forum For Equality, 1990-94; Amistad Research Center, Tulane Univ., 1990-94

Noteworthy Rulings 1996: Berrigan presided over a double death penalty case involving a New Orleans police officer accused of hiring a drug dealing friend to kill a woman who had filed a police brutality complaint against him. It was the first trial in the country for civil rights violation capital murder since Congress broadened the federal death penalty jurisdiction in 1994. Both defendants

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Code Art. 3499 (West 1996). Thus, plaintiffs' claims have not prescribed.

Accordingly,

IT IS ORDERED that defendants' motion for summary judgment is GRANTED regarding § 301 preemption of plaintiffs' state law claims. Defendants' motion for summary judgment is DENIED regarding prescription of plaintiffs' § 301 claims.



Dr. Carl BERNOFSKY

v.

TULANE UNIVERSITY MEDICAL
SCHOOL

Civil Action No. 95-358.

United States District Court,
E.D. Louisiana.

April 15, 1997.

Former research professor at medical school asserted race and age discrimination and state law claims in connection with denial of tenure and ultimate **termination for failure to obtain grant funding**. On motion of university for summary judgment, the District Court, Berrigan, J., held that: (1) professor, who was Jewish and was 61 at time of termination, and who was hired in nontenure track research position, failed to show race or age discrimination in denial of tenure or in termination; (2) professor failed to show retaliatory discharge; (3) professor had no contractual entitlement to tenure; (4) professor failed to show justifiable reliance; and (5) professor failed to show entitlement to recovery under Louisiana environmental statutes in the flooding of his laboratory.

Motion granted.

1. Civil Rights ⇌144

Master and Servant ⇌30(6.10)

Right to make contracts under § 1981 does not protect employee from any conduct by employer after contractual relationship has begun, and § 1981 does not extend to discriminatory discharge claims or retaliatory discharge claims. 42 U.S.C.A. § 1981.

2. Civil Rights ⇌116

Right to enforce contracts under § 1981 involves right of access to legal process. 42 U.S.C.A. § 1981.

3. Civil Rights ⇌142, 171

Jewish research professor allegedly promised tenure by department chair at about age 55 failed to show race or age discrimination in denial of tenure; as research professor, he was not on tenure track, seven-year limit for conversion to tenure track had passed, another research professor for whom exception to seven-year rule was made had previously been on tenure track, and fact that new department chair was of Lebanese lineage was insufficient proof of discriminatory intent. Age Discrimination in Employment Act of 1967, § 2 et seq., 29 U.S.C.A. § 621 et seq.; 42 U.S.C.A. § 1981; LSA-R.S. 23:972 et seq.

4. Master and Servant ⇌30(6.10)

Employee has engaged in "protected activity" for purposes of retaliation claim if he has either opposed any practice made unlawful employment practice or made charge, testified, assisted or participated in any manner in investigation, proceeding or hearing under antidiscrimination statute, and plaintiff must show that he had at least reasonable belief that opposed practices were unlawful. Age Discrimination in Employment Act of 1967, § 2 et seq., 29 U.S.C.A. § 621 et seq.; 42 U.S.C.A. § 1981; Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

See publication Words and Phrases for other judicial constructions and definitions.

5. Civil Rights ⇌142, 171

Colleges and Universities ⇌8.1(2)

Research professor failed to show retaliation, harassment, interference or retaliatory discharge grounded on race or age discrimi-