

No. 17-205

**In the
Supreme Court of the United States**

October Term, 2017

In re **CARL BERNOFSKY, Petitioner**

**DR. CARL BERNOFSKY,
*Petitioner,***

v.

**JUDICIAL COUNCIL OF THE UNITED STATES
FIFTH CIRCUIT COURT OF APPEALS,
*Respondent.***

Petition for Writ of Mandamus

**CARL BERNOFSKY
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Petitioner, Pro Se

QUESTION PRESENTED FOR REVIEW

Should judges be exempt from investigation and prosecution for commission of past high crimes and misdemeanors in connection with cases over which they presided?

PARTIES

Dr. Carl Bernofsky

- Petitioner

The Hon. Carl E. Stewart,

Judge, United States Court of Appeals for the Fifth
Circuit

The Hon. Priscilla R. Owen,

Judge, United States Court of Appeals for the Fifth
Circuit

The Hon. James L. Dennis,

Judge, United States Court of Appeals for the Fifth
Circuit

The Hon. James E. Graves, Jr.,

Judge, United States Court of Appeals for the Fifth
Circuit

The Hon. Ivan L. R. Lemelle,
Judge, United States District Court for the Eastern
District of Louisiana

The Hon. Philip R. Martinez,
Judge, United States District Court for the Western
District of Texas

The Hon. Debra M. Brown,
Judge, United States District Court for the Northern
District of Mississippi

All remaining Members of the Judicial Council of the
United States Court of Appeals for the Fifth Circuit.

- Respondents

The Hon. Helen G. Berrigan,
Judge, United States District Court for the Eastern
District of Louisiana

- Subject Judge

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JURISDICTION

Petitioner seeks this Court's review of the judgment entered on March 2, 2017 by the United States Circuit Court of Appeals for the Fifth Circuit pursuant to the jurisdiction conferred by 28 U.S.C. § 1651(a). This petition is timely filed because it was mailed within ninety days of the date the appeal for review was denied in the court below. Rules 13.1 and 29.2.

Jurisdictional basis for the Fifth Circuit is 28 U.S.C. § 1651(a) and Fed. R. App. P. 21(a).

STATEMENT OF THE CASE

Preface

The Hon. Helen “Ginger” Berrigan, Judge, Federal District Court for the Eastern District of Louisiana, was fully aware of being disqualified from hearing cases brought by Bernofsky during 1995 to 2001 against defendant, Tulane University, an institution with which she was professionally associated, both as an adjunct professor and board member of one of its research centers. Her most egregious act was accepting a paid, summer teaching position following the abrupt cancellation of an imminent trial and ruling, by summary judgment, in Tulane’s favor. (Appendix 1) Judge Berrigan appears to have ignored recusal laws in order to shield a venerated university from negative publicity over its fraudulent treatment of a scientist who was intent on the legitimate pursuit of his life’s work despite threatening circumstances.

Because Judge Berrigan made a conscious decision to break the law in order to achieve her

objective, it is imperative that an example be made of her misconduct as a message to other judges who might be similarly inclined to ignore recusal laws in order to pursue a personal agenda to protect one of the parties in a legal proceeding. The failure of the judiciary to prevent such misconduct paves the way for further, similar abuse of judicial power and the resulting obstruction of justice.

The issue prompting the present extraordinary writ concerns petitioner's 26-page petition to the Judicial Council of the Fifth Circuit, requesting that Judge Berrigan be investigated for impeachable offenses, committed with aforethought and malice, in connection with the above-mentioned series of cases against Tulane University during the 1995 to 2001 period. (Appendix 1,2)

That petition to the Fifth Circuit was reviewed by Chief Judge Carl E. Stewart who characterized it as a frivolous attempt to reopen an earlier complaint dismissed in 1999, and for which further review was

not available. It was docketed as Complaint No. 05-17-90013. (Appendix 3,4)

That petition was neither an attempt to reopen an earlier complaint, as Judge Stewart implied, nor was it intended to “substitute for the normal appellate review process,” or “used to obtain reversal of a decision or a new trial.” Instead, it was a call for the examination of what appears to be the illegal conduct of a judge which, if confirmed, is deserving of appropriate disciplinary measures as the law dictates. It is also a signal to both the public and other judges that such misconduct will not be tolerated.

In criticizing the petition, Judge Stewart casts doubt on petitioner’s assertion concerning Judge Berrigan’s board membership in Tulane’s Amistad Research Center. His doubt about her tenure of service appears grounded in misleading hearsay, rather than fact.

Bernofsky's appeal of Judge Stewart's opinion included evidence from Judge Berrigan herself, which documents her continued membership on Amistad's board well into 1997, *i.e.*, while she was adjudicating the lawsuit brought by Bernofsky against Tulane in 1995. Judge Berrigan's downstream alteration of her credentials in an attempt to conceal her actual board membership on Tulane's Amistad Research Center both falsifies a public record and further suggests her dishonesty and intention to evade federal laws. (Appendix 5)

The second compelling reason for this extraordinary writ is the uncritical endorsement by Judge Priscilla R. Owen (Appendix 6,7) of Judge Stewart's order of Dec. 28, 2016. Judge Owen's cursory dismissal of Feb. 23, 2017 failed to address any of the issues raised by petitioner's appeal of Judge Stewart's order, and appears to continue the whitewash of Judge Berrigan's serious misconduct and conflict of interest, which clearly merits further investigation. (Appendix 5)

Disqualification of Appellate Review Panel Members of the Judicial Council

Petitioner avers that the entire Fifth Circuit Judicial Council should be disqualified from participating in any actions resulting from this extraordinary writ. Alternatively, the following parties in particular should be disqualified, and substitute judges appointed in their place.

1. District Judge Ivan L. R. Lemelle

From *Rules for Judicial-Conduct and Judicial-Disability Proceedings*, Rule 12(a): “If the complaint is about a district judge ... then, when possible, the district-judge members of the committee must be from districts other than the district of the subject judge.”

Judge Lemelle and Judge Helen G. Berrigan have been longstanding colleagues in the Eastern District of Louisiana. Thus, based on Rule 12(a) above, Judge Lemelle is disqualified from ruling on petitions

seeking to investigate Judge Berrigan for potentially impeachable offenses.

2. Circuit Judge James L. Dennis

In 1985, Judge Dennis's son, Stephen, was awarded the first of a series of legislative scholarships to Tulane University School of Law, from which he graduated in 1989.¹ The scholarships were awarded by then-representative Charles D. Jones of Monroe, Ouachita Parish. At the time, Judge Dennis was an associate justice (1975 to 1995) of the Louisiana Supreme Court.

Judge Dennis had previously served as a state legislator from Monroe, Ouachita Parish from 1968 to 1972 and, as a member of the Louisiana House of Representatives, was authorized to award Tulane

¹ Joan McKinney, "Justice James Dennis denies wrongdoing in scholarship case," *The Advocate*, Baton Rouge, August 3, 1995.

scholarships to two worthy students during each year of his tenure.

The significant financial emoluments from Tulane University to a family member disqualifies Judge Dennis from ruling in cases in which Tulane University is an underlying party, as in the present instance.

Judge Dennis was also an adjunct faculty member of Tulane University Law School and was paid to teach a summer course on the Greek isle of Rhodes in 2003.² As a faculty member of the defendant party in proceedings that underlie the current case, he is further disqualified from ruling in the present matter.

Both Judge Dennis and Judge Lemelle are also members of Tulane University Law School's Judicial Externship faculty, as is the subject judge of the present petition, the Hon. Helen G. Berrigan.

² "Financial Disclosure Report," Dennis, James L., dated May 3, 2004. (Appendix 8)

(Appendix 9) These associations additionally disqualify Judges Dennis and Lemelle as panel members in the present case.

It is also significant that Judges Dennis and Berrigan have, for many years, shared common responsibilities as concurrent board members of the George W. & Jean H. Pugh Foundation of Louisiana State University's Law School. (Appendix 10) Both are also members of the Board of Trustees of LSU's Law School. (Appendix 11)

3. The U. S. Court of Appeals for the Fifth Circuit

The Fifth Circuit court of Appeals has maintained a long-standing relationship with Tulane University, and it meets regularly on the university's campus to hear oral arguments on cases that are before it and to interact with Tulane Law School faculty and students, both in professional and social forums. Reproduced in the Appendix are meeting announcements for the years 2013 to 2017, taken from

the websites of both the Fifth Circuit (Appendix 12) and Tulane University School of Law (Appendix 13).

The above formal relationship, coupled with the participation of Fifth Circuit judges as volunteer faculty in Tulane Law School programs,³ further disqualifies the judges of the Fifth Circuit Court of Appeals from ruling in cases in which Tulane University is an underlying party, as in the present instance. Loyalties created through collegial relationships established with Tulane personnel could potentially compromise the objectivity of opinions concerning the university.

Finally, there is some indication of a racial bias in the appointment of Council members. Only four of the 19 members of Fifth Circuit's Judicial Council are black. Notably, all four black members were assigned to the present case, creating the appearance of implicit support for Judge Berrigan, a well known civil-rights crusader and former head of the American Civil

³ See, for example, "Judicial Externship Faculty," Tulane University Law School (Appendix 9).

Liberties Union (ACLU) of Louisiana. The appearance of any bias supports the disqualification of the present Judicial Council and argues for the transfer of the present case to an alternative federal judicial circuit.

Argument

Article III, Section 1 of the U. S. Constitution states, in pertinent part: “The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.”

Clearly, the Constitution demands “good Behaviour” on the part of judges as a condition of continuing to hold office; and the holding of office is a condition for receiving compensation. It follows that a failure to maintain the “good Behaviour” standard is cause for a judge to lose his or her office and its associated compensation.

The refusal of a judge to observe controlling federal laws must be viewed as a breach of the “good Behaviour” requirement for remaining in office and continuing to receive compensation.

The petitioner has presented documented evidence of why Judge Helen “Ginger” Berrigan should be investigated for serious breaches of judicial conduct in connection with her adjudication of his earlier lawsuits against Tulane University. (Appendix 1)

When that petition was dismissed (Appendix 3,4), the petitioner appealed (Appendix 5), citing errors of fact upon which the dismissal was based. However, without further comment, the appeal was also dismissed. (Appendix 6,7) The present petition for mandamus addresses the legitimacy of both the initial dismissal as well as the dismissal of the appeal.

To maintain the integrity of the federal judicial system, the Court must be concerned whether the parties received fair and impartial treatment of their

claims. At the risk of undermining the public's confidence in the judicial process, the welfare of the parties must receive priority over other considerations should a violation of federal statutes occur. "The guiding consideration is that the administration of justice should reasonably appear to be disinterested as well as be so in fact." *Liljeberg*, 486 U.S. 847, at 870 quoting *Public Utilities Comm'n of D.C. v. Pollak*, 343 U.S. 451, 466-467, 72 S.Ct. 813, 822-823, 96 L.Ed. 1068 (1952). (Frankfurter, J., in chambers).

As outlined in the petition to the Fifth Circuit, (Appendix 1), Judge Berrigan's conduct has cast a long shadow on the integrity of the institution that she represents, and a full and complete investigation of her alleged misconduct would be the principal means for renewing the public's faith in the integrity and fairness of the judicial system and persuading other judges to more carefully evaluate personal prejudices that might compromise their impartiality toward litigants seeking judicial review.

The petitioner's current request is appropriate because the alleged conduct of the subject judge has clearly been prejudicial to the administration of justice, is verifiable through independent investigation, and involves serious allegations, some of which were not previously made or appreciated.

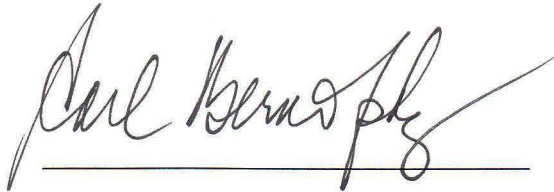
Further investigation may reveal that the subject judge's actions were indeed designed to yield a predetermined outcome favoring the defendant, the law and the facts notwithstanding. The subject judge had close associations with the defendant, both through employment and service on the board of one of its research centers. Her callous disregard of federal statutes and other offenses that disqualified her from hearing the cases brought by Bernofsky against Tulane University in 1995 to 2001 were committed with deliberate aforethought and malice, and justifies a full investigation of her actions if for no other reason but to define the parameters of what is acceptable conduct for federal judges, and remind them that "no one is above the law".

CONCLUSION

Judges must abide by the oath of office they took during Senate confirmation and, as public servants entrusted with great authority, they have a duty not to abuse their power or ignore laws created to ensure that duty. In like manner, the U. S. Department of Justice, as respondeat superior, has a responsibility to enforce that duty of federal judges; hence, this extraordinary writ.

In conclusion, petitioner, Carl Bernofsky, respectfully prays that a writ of mandamus be issued by this High Court to direct the Judicial Council of the Fifth Circuit, or preferably an equivalent alternative body, to conduct an investigation of the Hon. Helen “Ginger” Berrigan, Judge of the United States District Court for the Eastern District of Louisiana, for the potentially impeachable offenses outlined in the accompanying petition under review.

Respectfully submitted,

A handwritten signature in black ink, reading "Carl Bernofsky", written over a horizontal line.

Carl Bernofsky, Petitioner *Pro Se*
109 Southfield Road, Apt. 51H
Shreveport, LA 71105
(318) 869-3871

CERTIFICATE

I certify that one copy each of this Petition for Writ of Mandamus was mailed to each respondent Member of the Judicial Council of the United States Fifth Circuit of Appeals via priority mail, United States Postal Service, on or about May 31, 2017, at addresses furnished through the Office of the Clerk, United States Court of Appeals for the Fifth Circuit and affiliated websites. A copy was also mailed to the Subject Judge at the address of the District Court for the Eastern District of Louisiana.

Hon. Debra M. Brown
United States Courthouse
305 Main Street, Suite 329
Greenville, MS 38701

Hon. Ron Clark
United States Courthouse
300 Willow Street, Suite 221
Beaumont, TX 77701

Hon. Edith Brown Clement
United States Courthouse
600 Camp Street, Room 200
New Orleans, LA 70130

Hon. Gregg J. Costa
United States Courthouse
515 Rusk Street, Room 4627
Houston, TX 77002

Hon. James L. Dennis
United States Courthouse
600 Camp Street, Room 219
New Orleans, LA 70130

Hon. Shelly D. Dick
United States Courthouse
777 Florida Street, Suite 301
Baton Rouge, LA 70801

Hon. Jennifer Walker Elrod
United States Courthouse
515 Rusk Avenue, Room 12014
Houston, TX 77002

Hon. David C. Godbey
United States Courthouse
1100 Commerce Street, Room 1504
Dallas, TX 75242

Hon. James E. Graves, Jr.
United States Courthouse
501 E. Court Street, Suite 3.550
Jackson, MS 39201

Hon. S. Maurice Hicks, Jr.
United States Courthouse
300 Fannin Street, Suite 5101
Shreveport, LA 71101

Hon. Stephen A. Higginson
United States Courthouse
600 Camp Street, Room 300
New Orleans, LA 70130

Hon. E. Grady Jolly
United States Courthouse
501 E. Court Street, Suite 3.850
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Hon. Ivan L. R. Lemelle
United States Courthouse
500 Poydras Street, Room C525
New Orleans, LA 70130

Hon. Philip R. Martinez
United States Courthouse
525 Magoffin Avenue, Suite 661
El Paso, TX 79901

Hon. Priscilla R. Owen
United States Courthouse
903 San Jacinto Boulevard, Room 434
Austin, TX 78701

Hon. Halil S. "Sul" Ozerden
United States Courthouse
2012 15th Street, Suite 714
Gulfport, MS 39501

Hon. Lee H. Rosenthal
United States Courthouse
515 Rusk Street, Room 11535
Houston, TX 77002

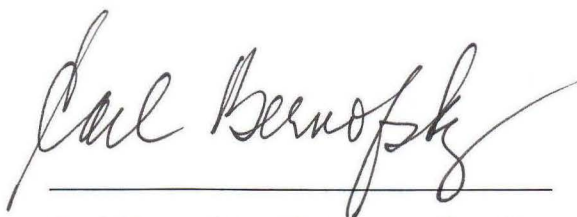
Hon. Leslie H. Southwick
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Hon. Carl E. Stewart
United States Courthouse
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- Respondents

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New Orleans, LA 70130

- Subject Judge

A handwritten signature in black ink, reading "Carl Bernofsky". The signature is written in a cursive style with a long, sweeping tail that extends to the right. Below the signature is a solid horizontal line.

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