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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,)	
)	No. 87-7554
Plaintiff/Appellee,)	
)	No. 88-1140
v.)	DC# CR 87-124 RAR
)	NOTICE OF MOTION
RODNEY F. STICH,)	FOR BAIL PENDING
)	APPEAL
Defendant/Appellant.)	18 U.S.C., 3143
_____)	<u>EMERGENCY REQUEST</u>

TO: PRESIDING JUSTICE, NINTH CIRCUIT COURT OF APPEALS

Appellant requests that this court render an order staying the sentence of incarceration pending further appeals on the order of criminal contempt, arising from appellant's filing of Civil Right/RICO actions seeking relief.

It is possible that such request is not necessary, on the basis of this court's prior order granting bail pending appeal, copy of which is attached as Exhibit "A."

Appellant has requested bail pending appeal from Judge Raul Ramirez, which was denied on _____, 1988.

Therefore, this motion for bail is made to the Court of Appeals.

October , 1988.

Rodney F. Stich
Appellant in pro se

MOTION FOR BAIL
PENDING APPEAL

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EXHIBITS:

Exhibit "A" Prior order granting bail pending appeal.

Exhibit "B" Front cover and back page of October 4, 1988 denying appeal from judgment of the magistrate to the United States District Court.

MOTION FOR BAIL PENDING APPEAL

INTRODUCTION

Appellant makes the following emergency request for bail pending appeal of the September 16, 1987 judgment of criminal contempt, by magistrate John Moulds, the November 4, 1987 sentence of incarceration, and Judge Raul Ramirez's October 4, 1988 denial (Exhibit "A") of the appeal to the district court.

It is appellant's belief that the April 14, 1988 granting of bail by the United States Court of Appeals, as shown in this court's April 15, 1988 order (Exhibit "A"), continues the stay pending appeals before the United States Court of Appeals, and if necessary, before the United States Supreme Court. The possibly duplicate and unnecessary request is required because Appellant is without legal counsel, and cannot be expected to know the intricacies of all criminal appellate procedures. The Ninth Circuit courts are themselves responsible for the denial of legal counsel.

DEPRIVED OF LEGAL COUNSEL

The federal courts have insured that appellant would be without legal counsel. Judge Ramirez refused to provide legal counsel after former counsel Clifford Tedmon refused to submit any briefs at the two deadline dates, refused to obtain necessary evidence, and refused to provide any defense. Prior legal counsel, Carl Larson, had performed in like manner. Other legal counsel have confided to appellant that the gravity of the judicial scandal and their attacks upon appellant were such that their entire legal career would be adversely affected if they defended appellant. In addition, the federal courts of the Ninth Circuit insured absence of funds to hire legal counsel by illegally, unconstitutionally, and corruptly, seizing appellant's multi-million dollar estate.¹

¹ After appellant was forced to seek relief in chapter 11 bankruptcy from the repeated violations of the Civil Right and RICO Acts, and federal courts refused to provide mandatory jurisdiction and relief, the same federal courts withholding relief then seized the valuable estate without the case being on the calendar; without the statutory requirement of a noticed hearing, legally recognized cause, and other statutory requirements, and openly violating constitutional due process.

INTRODUCTION

Appellant had been held guilty of criminal contempt by part-time magistrate John Moulds, and sentenced to six month's imprisonment. The alleged crime was defendant's filing of two federal actions,² which raised serious federal causes of action relating to criminal misconduct related to a series of airline crashes which appellant originally uncovered as part of his official air safety duties. In these two federal actions, for which appellant has been sentenced to prison, appellant identified the criminal misconduct directly related to a series of fatal airline crashes, which continues to play a causative and permissive role in airline crashes. Appellant's federal actions also identified those involved in obstruction of justice--including parties in the Justice Department and federal judges of the Ninth Circuit.

Appellant's actions sought relief for those who will continue to perish in fraud-related airline crashes, and relief for himself from the great and irreparable harm inflicted through criminal misuse of the judicial process, and which were major Civil Rights and RICO Acts violations.

Without legal counsel, appellant was forced to file the appeals in pro se. Appellant simultaneously disqualified Judge Ramirez, based upon the history of major violations of federal and constitutional law, and the certainty of a Kangaroo Court proceeding if he judged the appeal. Appellant also requested in the briefs, and at oral argument, that findings of facts and conclusions of law be directed to the multiple controverted issues of fact and law. None of these requests were honored.

Judge Ramirez, who appellant had disqualified, rendered a decision which was filed on October 4, 1988, denying the appeal. On October 10, 1988, appellant filed a notice of appeal to the United States Court of Appeals in the United States District Court.

² Under the authority of Titles 42 U.S.C. 1983, 1985, 1986; 18 U.S.C. 1961 and 1962; and under Fifth Amendment of the United States Constitution.

ARGUMENT

I. **APPELLANT IS ENTITLED TO BAIL PENDING APPEAL**

The request for bail pending appeal is provided by Title 18 U.S.C. Section 3143. Title 18 U.S.C. 3143. Release or detention of a defendant pending sentence or appeal

(b) Release or detention pending appeal by the defendant.--The judicial officer shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the judicial officer finds--

(1) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3143(b) or (c) of this title; and

(2) that the appeal is not for purpose of delay and raises a substantial question of law or fact likely to result in reversal, an order for a new trial, or a sentence that does not include a term of imprisonment.

If the judicial officer makes such findings, such judicial officer shall order the release of the person in accordance with section 3142(b) or (c) of this title.

RAISING OF SUBSTANTIAL QUESTIONS INVOKES BAIL REQUIREMENTS

The Ninth Circuit held in *United States v. Handy*, 761 F.2d 1279 (9th Cir. 1985), that the raising of any arguable issue raises the mandatory bail requirements. Bail cannot be denied on the basis that the judge finding the party guilty does not agree with the argument. The Handy court held:

... requiring the appellant to demonstrate to the district court that its ruling is likely to result in reversal is tantamount to requiring the district court to certify that it believes its ruling to be erroneous.

The Handy court held that bail must be granted if a "substantial question" was raised, and then proceeded to define the meaning of substantial question:

MOTION FOR BAIL PENDING APPEAL

Historically the phrase "substantial question" has referred to questions that are "fairly debatable." ... The question may be "substantial" even though the judge or justice hearing the application for bail would affirm on the merits of the appeal. The question may be new and novel. It may present unique facts not plainly covered by the controlling precedents.

The number of issues raised by appellant are substantial, and in addition to invoking the mandatory right to bail, raises grave questions about the conduct of proceedings to this date.

II. **APPELLANT'S APPEAL RAISED NUMEROUS SUBSTANTIAL QUESTIONS OF LAW.**

The substantial questions raised on appeal include the following:

- a. The Trial Court Lacked Jurisdiction To Conduct the Contempt Trial, Or To Hold Appellant Guilty Of Contempt, When Notice Of Appeal Was Pending.

The law is crystal clear in the Ninth Circuit that once a notice of appeal is filed, the court loses jurisdiction of the case, or the issues raised or affected by the appeal.

It is the policy of the Ninth Circuit that filing notices of appeal deprives the court of jurisdiction over the matters affected by the appeal. (See *Donovan v. Mazzola*, 761 F.2d 1411, 1414, 1415 (9th Cir. 1985); *Matter of Thorp*, 655 F.2d 997, 999 (9th Cir. 1981).)

This rule is articulated in *Cowans Bankruptcy Law and Practice*, (1987), Section 18.7, entitled "Loss of Jurisdiction by the Bankruptcy Court on Appeal.

The jurisdiction of the bankruptcy court terminates once an appeal is taken just as the district court loses jurisdiction once an appeal is taken to the circuit.

Citations are to *In re Reddis* 37 B.R. 217 (E.D.Pa. 1984); *In re Butcher Boy Meat Market, Inc.*, 10 B.R. 258 (Bkrtcy.E.D.Pa. 1981); *In re Excavation Construction Inc.*, 8 B.R. 752 (D.Md 1981).

The lower court retains only such jurisdiction as will help the appellate court.

- b. The Notice Of Appeal Also Divested the Trial Court Of Jurisdiction To Punish For Contempt.

Again, the law is crystal clear, and the trial court, and Judge Ramirez knew that the law was settled in the Ninth Circuit, that once a notice of appeal is filed, the trial court loses jurisdiction to order anyone held in contempt, or to conduct a trial on the subject. Even Judge Schwartz, who rendered the injunctive order, held that he lacked jurisdiction to hold appellant in contempt, based upon the appeal.

Despite all this clear law, magistrate John Moulds knowingly acted without jurisdiction, and the Department of Justice knowingly prosecuted appellant and insured that he would go to prison, knowing that they lacked jurisdiction! Judge Ramirez obviously knew this, as the law was repeatedly brought to his attention. But he was above the law, approving the illegal acts, and denying appellant the protection of the laws and constitution of the United States. This has grave implications as to the motives of the participants.

It is the established and settled rule in the Ninth Circuit that the filing of a proper and timely Notice of Appeal divests the court of jurisdiction over those matters that are on appeal or subject to the appeal. *Donovan v. Mazaola*, 761 F.2d 1411, 1414, 1415 (9th Cir. 1985) *Matter of Thorp*, 655 F.2d 997, 999 (9th Cir. 1981). The *Donovan* court held: The Ninth Circuit follows the general rule, with some exceptions, that the filing of a notice of appeal divests the district court of jurisdiction over the matters appealed. *See, e.g., Miranda v. Southern Pacific Transportation Company*, 710 F.2d 516, 519 (9th Cir. 1983); *Davis v. United States*, 667 F.2d 822, 824 (9th Cir. 1982). This rule has been recently applied to contempt orders. *Shuffler v. Heritage Bank*, 720 F.2d 1141, 1145 n. 1 (9th Cir. 1983) (order quantifying sanction is void for lack of jurisdiction during pendency of appeal); *Matter of Thorp*, 655 F.2d 997, 999 (9th Cir. 1981) (criminal contempt finding void because mandate from appellate decision on civil contempt on same issue had not yet issued).

In *Matter of Thorp*, 655 F.2d 997 (1981), the Ninth Circuit dismissed criminal contempt on the holding that "When a proper notice of appeal has been timely filed, the general rule is that jurisdiction over any matter involved in the appeal is immediately transferred from the district court to the court of appeal. (Id. at 998.) The *Thorp* court

held:

"it is not significant that ... Thorp was convicted of criminal contempt and in Flores he was held in civil contempt. The controversy in each instance was the same ... By refusing to answer the question and subjecting himself to a civil contempt order, Thorp had followed the proper route for obtaining appellate review of the issue. ... And he was entitled to pursue his appellate remedies before being subjected to questioning on the same matter. ... Therefore, the district court was without authority to proceed at trial with respect tot he matters giving rise to the adjudication of contempt on the part of Thorp, which was still on appeal, and we deem the trial court's actions in relation to the question of Thorp's being in contempt to be a nullity." Id. at 999.

Therefore, the district court was without authority to proceed at trial with respect to the matters giving rise to the adjudication of contempt on the part of Thorp, which was still on appeal, and we deem the trial court's actions in relation to the question of Thorp's being in contempt to be a nullity. ... The failure of the district court to allow the appellate process to run its course left Thorp with no alternative but to refuse to answer if he wished to preserve the issue for appellate review.

Other decisions stating this general proposition are legion. See *United States v. Hitchman*, 587 F.2d 1357 (1979), *State of New York v. Nuclear Regulatory Comm.* (1977) 550 F.2d 745, *Jan M. v. Newburn* (1973) 488 F.2d 742, *Aanousek v. Doyle* (1963) 313 F.2d 916, *Masalo v. Stonewall Ins. Co.* (1983) 718 F.2d 955.

In *Taylor vs. Sterrett* (1981) 640 F.2d 663, enforcement proceedings were begun following a successful civil rights prisoner's class action suit. In *Jason Foods, Inc. vs. Peter Eckrich & Sons, Inc.*, 768 F.2d 189 (1985), the court held that filing Notice of Appeal divests Court of jurisdiction over the case. The court held this was intended to prevent duplication of effort and confusion that would be created if two Courts simultaneously had jurisdiction over the same case.

In *Matter of Thorp*, 655 F.2d 997 (1981), it was held that good faith pursuit of

remedies is established by the filing of the appeal. In Greyhound the court approvingly repeated the holding, "Willfulness, for the purpose of criminal contempt, which does not exist where there is a '[g]ood faith pursuit of a plausible though mistaken alternative.' *In re Brown*, 454 F.2d at 1007." If Appellant had considered his air safety and civil right actions within the clear limits of the injunctive order, his belief that filing the appeal stayed the order shows the absence of willfulness.

**ABSENCE OF JURISDICTION WAS EVEN ADMITTED BY THE
JUDGE RENDERING THE INJUNCTIVE ORDER**

Even Judge Milton Schwartz, who rendered the injunctive order of May 30, 1987 in action 86-210, which served as the basis for holding appellant in contempt, held in a September 16, 1987 decision, that was signed on November 13, 1987 and filed on December 9, 1987 (Exhibit "C") that a trial court "lacks jurisdiction to entertain the motion [for contempt] since the underlying judgment in this case rendered by this Court is currently on appeal."

Despite this absence of jurisdiction, newly appointed bankruptcy judge Edward Jellen proceeded head on to hold that a citizen who exercises his federal and constitutional due process remedies, in the face of illegal seizing of a multi-million dollar estate, should go to prison!

c. The Underlying Injunctive Order Invalidates the First, Fifth, Ninth, and Fourteenth Amendments To The United States Constitution--Which Is Beyond the Jurisdiction Of Any Federal Judge.

Surely the protections of the United States Constitution and congressionally legislated protections, as well as United States Supreme Court decisions, override any subversive orders by a district judge!

The injunctive order rendered by Judge Milton Schwartz, as written, or as applied, was illegal, unconstitutional, and beyond the authority of any federal judge. The May 30, 1986 injunctive order, as written, barred Defendant, forever, from seeking relief from the major

Civil Right Act violations that had occurred in the past, that were then occurring, and those that had yet to occur, and which did occur. Appellant was suffering terminal destruction of numerous important civil liberties protected by the Civil Rights Act and federal and constitutional law.

The great Civil Right and RICO Act violations repeatedly committed in the California courts deprived appellant the right to marry for over five years, continuing to this date. His sole source of income has been and continues to be halted for this period of time, depriving appellant the right to earn any income. Appellant's properties and assets were taken from him, and his losses are in the multi-millions. His privacy has been invaded by judicial persecution. His moral and legal right to report airline crash causing felonies has been obstructed and he has been sentenced to prison for reporting crash-related felonies. His privacy and dignity has been trampled. He has been subjected to orders rendered by parties acting under color of law, without personal and without subject matter jurisdiction, and in violation of every relevant protection in state, federal and constitutional law. Judge Schwartz believes that it is within his jurisdiction to override and usurp the power of the Constitution and laws of the United States, and subject a citizen to these judicial outrages, while depriving the party of judicial relief! This is clear judicial subversion of our form of government.

THE SCHEME: DEPRIVE APPELLANT OF HIS DAY IN COURT!

There had never been a hearing on the merits of the serious allegations, and the injunctive order insured that there NEVER would be a hearing. The injunctive order judicially gridlocked Appellant from seeking relief, while simultaneously (a) protecting the parties from the Civil Right Act and RICO Act violations; (b) denying Appellant the right to defend against the future violations which continued to occur under the protective umbrella of the injunctive order. No federal judge has authority to subject any citizen to these unconstitutional and unlawful outrages.

d. An Order Beyond the Court's Jurisdiction Is Absolute Void and

Incapable Of Supporting Contempt.

An illegal order, commanding an act that violates a clear statutory or decisional right, or fundamental constitutional protections, is a void order. There is no statutory or decisional authority permitting a judge to emasculate the constitutional rights existing for the past 200 years, or federal rights in federal and decisional laws.

An illegal order is forever void. An order that exceeds the jurisdiction of the court, is void, or voidable, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue. (See *Rose v. Himely* (1808) 4 *Cranch* 241, 2 L ed 608; *Pennoyer v. Neff* (1877) 95 US 714, 24 L ed 565; *Thompson v. Whitman* (1873) 18 Wall 457, 21 1 ED 897; *Windsor v. McVeigh* (1876) 93 US 274, 23 L ed 914; *McDonald v. Mabee* (1917) 243 US 90, 37 Sct 343, 61 L ed 608;

FEDERAL DECISIONS ADDRESSING VOID STATE COURT JUDGMENTS

A judge who acts without jurisdiction if he violates clearly and settled statutory or case law. In *Rankin v. Howard*, 633 F.2d 844, 849 (9th Cir. 1980) the Ninth Circuit held: ... when a judge knows that he lacks jurisdiction , or acts in the face of clearly valid statutes or case law expressly depriving him of jurisdiction, judicial immunity is lost. *Bradley v. Fisher*, 80 U.S. (13 Wall.) at 351. ("when the want of jurisdiction is known to the judge, no excuse is permissible"); *Turner v. Raynes*, 611 F.2d 92, 95 (5th Cir. 1980) (*Stump* is consistent with the view that "a clearly inordinate exercise of unconferrred jurisdiction by a judge--one so crass as to establish that he embarked on it either knowingly or recklessly--subjects him to personal liability").

In *Dykes v. Hoseman*, 743 F.2d 1488 (11th Cir. 1984), the court held:

We also agree with the *Rankin* court that immunity for judicial acts in the clear absence of jurisdiction is lost ... if the judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes or case law expressly depriving him of jurisdiction.

The bankruptcy judges rendered orders clearly in violation of settled statutory law when (a) they rendered orders appointing a receiver without jurisdiction, in violation of the statutory requirements of title 11 U.S.C., 1104; (b) transferred venue from Las Vegas to Oakland without jurisdiction having been accepted, when appeal had been filed which

halted the change of venue and halted the subsequent orders rendered by the Oakland courts; (c) when injunctive orders were rendered without jurisdiction, and which violated clear and settled statutory and case law and constitutional rights providing for filing appeals and oppositions.

THE BANKRUPTCY JUDGES KNEW THE CALIFORNIA ORDERS WERE VOID

The California money orders and the orders halting debtor's income for the past five years violated over 20 statutes, over ten Rules of Court, California Supreme Court decisions, federal question rights stated in federal statutory and case law, and fundamental constitutional protections. Obviously, these multitudes of violations occurred without jurisdiction. Further, California law clearly deprived the state judges of personal and subject matter jurisdiction on the basis there was no jurisdiction under the Family Law Act to void prior judgments rendered by foreign courts to residents of such foreign courts.

A STATE JUDGE WHO VIOLATES FEDERAL STATUTORY OR CASE LAW ACTS WITHOUT JURISDICTION.

In *Jordon v. Gilligan*, 500 F.2d 701, 707 (9th Cir. 1974), the court held: Decisions of the United States Supreme Court rendered by written opinion are binding on all courts, state and federal. The Court's holding is stare decisis and cannot be overruled except by the court itself.

The United States Supreme Court has made it repeatedly clear that a person cannot be stripped of personal and property rights adjudicated in a prior divorce judgment when he thereafter exercises his constitutional right to travel. The Court also held that refusal to recognize prior judgments by refusal to recognize residence as a basis for jurisdiction is prohibited, and violative of due process and equal protection rights. Judgments violating these protections are void, as are the California orders and judgments refusing to recognize personal and property rights adjudicated 22 years ago, established in multiple divorce judgments, and recognized under California and federal law.

Williams v. North Carolina (1945) 325 US 226, 65 S Ct 1092, 89 L ed 1577

(prohibiting state judge from voiding prior divorce judgment or personal and property rights adjudicated therein); *Coe v. Coe* (1948) 334 U.S. 378 (prohibited state judge from attacking prior divorce judgments and rights adjudicated in the judgment); *Sherrer v. Sherrer* (1948) 334 U.S. 343 (prohibiting state judge from voiding prior divorce judgment); *Vanderbilt v. Vanderbilt* (1957) 354 U.S. 416 (prohibiting state judge from voiding prior divorce judgment); *Estin v. Estin* (1948) 334 U.S. 541 (prohibiting state judge from voiding prior divorce judgment); *Perrin v. Perrin*, 408 F.2d 107 (3rd Cir. 1969) (prohibiting state judge from voiding personal and property rights adjudicated in foreign country judgment and refusal to recognize one day residence as basis for exercising jurisdiction or recognizing validity of judgment and adjudicated personal and property rights).

Other cases addressing void judgments include *Jordan v. Gilligan* (CA6th, 1974) 500 F2d 701, 18 FR Serv2d 1280, cert denied 421 US 991, 95 S Ct 1996, 44 L ed 2d 481; *Wyman v. Newhouse* (CAA2d, 1937) 93 F2d 313, 115 ALR 460, cert denied (1938) 303 US 664, 58 S Ct 831, 82 L ed 1122; *Bass v. Hoagland* (CA5th, 1949) 172 F2d 205 (1949) 338 US 816; *Graciette v. Star Guidance, Inc.* (SD NY 1975) 66 FRD 424, 19 FR Serv2d 1429, citing Treatise. A void judgment does not create any binding obligation. Federal decisions addressing void state court judgments include *Kalb v. Feuerstein* (1940) 308 US 433, 60 S Ct 343, 84 L ed 370;

Where federal court had removed a state action to federal court, a state court judgment was null and void. *Barrett v. Southern Ry.* (D SC 1975) 68 FRD 413 (State court default judgment was null and void because federal court, and not state court, had jurisdiction, due to removal, at time of entry. Debtor had filed a section 1983 removal action in 1986, which is still pending in the Ninth Circuit, prohibiting any further actions by the California courts. (*Rodney F. Stich v. William Jensen, et al.*, CA 86-2261; E.D. Cal CV-S-86-715-MLS)

A void judgment is not entitled to the respect accorded a valid adjudication, but may be entirely disregarded, or declared inoperative by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication. It has no

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legal or binding force or efficacy for any purpose or at any place. ... It is not entitled to enforcement ... All proceedings founded on the void judgment are themselves regarded as invalid. 30A Am Jur Judgments 44, 45.

In *Jordon v. Gilligan*, 500 F.2d 701, 710 (6th Cir. 1974) the court held: "a void judgment is no judgment at all and is without legal effect. *Lubben v. Selective Service System Local Bd. No. 27*, 453 F.2d 645 (1st Cir. 1972). A party cannot be precluded from raising the issue of voidness in a direct or collateral attack because of the failure to object prior to, or at the time of, entry of the judgment. ... a court must vacate any judgment entered in excess of its jurisdiction.

In *U.S. v. Holtzman*, 762 F.2d 720 (9th Cir. 1985), the court held:

Portion of judgment directing defendant not to import vehicles without first obtaining approval ... was not appropriately limited in duration and, thus, district court abused its discretion by not vacating it as being prospectively inequitable." *Id* at 722.

The *Holtzman* court articulated the requirement that a federal court has . "the power to enjoin otherwise lawful activity when necessary and appropriate in the public interest to correct or dissipate the evil effects of past unlawful conduct." *Id* at 724.

CALIFORNIA LAW RELATING TO ORDERS ILLEGALLY RENDERED

An order rendered in violation of law is a nullity under state court proceedings, as it is in federal proceedings. *Forbes v. Hyde* 31 C. 343; *People v. Greene*, 74 C.400; *In re Estate of Pusey*, 180 C.368, 181 P 648; *Lang v. Lang*, 182 C. 764, 190 P 181; *Carter v. Carter*, 148 CA2d 845, 307 P2d 630; *Sato v. Hall* 191 C. 510, 217 P 520; a void judgment is not rendered valid by a mere affirmance on appeal. *Pioneer Land Co. v. Maddux*, 109 C.633, 42 P 295; Where the record shows that a judgment was rendered without personal or subject matter jurisdiction it is void and subject to collateral attack. *Armstrong v. Armstrong*, 15 C.3d 942, 126 Cal.Rptr 805, 544 P2d 941; If a court grants relief it has no authority to grant under any circumstances, its judgment to that extent is void. *People v. Good*, 223 CA2d 298, 35 Cal.Rptr 825; A personal judgment in an action in which no

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jurisdiction over the person has been acquired is void and ineffective. *Brown v. Campbell*, 100 C.635, 35 P 433; *1st Natl. Bank v. Eastman*, 144 C. 487, 77 P. 1043.

Where the restraining order or injunction is beyond the power of the court, the court cannot punish the person. (*U.S. v. United Mine Workers of America*, (1947) 67 S.Ct. 677. Disobedience of an order which is void or issued by a court without jurisdiction (as held by Judge Schwartz on December 9, 1987), is not contempt, but disobedience of an erroneous order. *U.S. v. Barker*, D.C. Cal. 1951 11 F.R.D. 421. It is not "contempt" to disobey a void order. *Western Fruit Growers v. Gotfried*, C.C.A. Cal. 1943, 136 F.2d 98.

In California proceedings a party cannot be punished for contempt for a void order. (See e.g., *Kreling v. Superior Court* (1941) 18 Cal.2d 884, 885.

Contempt Powers Must Be Exercised With Regard For Constitutional Rights.

The power to punish for contempt must be exercised with due regard for constitutional rights. *U.S. v. Moore*, C.C.A.N.Y. 1924, 294 F.852. Defendant's constitutional rights to due process, to equal protection of the law, to the courts, and many more, were trampled by the injunctive order as written, and as applied by the part time magistrate. Appellant had a net worth of five million dollars before the Civil Right and RICO Act violations commenced. Because of those violations, combined with the imprisonment of Defendant, Defendant's lifetime estate has been seized, and is now being looted and liquidated. Every meaningful right under the laws and constitution have been violated, and protection and relief denied by the judicial gridlock which arises from Defendant's public spirited attempts to report deeply entrenched airline crash felonies associated with a series of specific airline crashes. It is believed that the gridlock, the attacks upon Appellant in the California courts constituting the Civil Right and RICO Act violations, the denial to Appellant of every protection in the laws and constitution of the United States arise from the judicial involvement of the cover up.

e. As Applied, the Injunctive Order Was Felonious.

Appellant's RICO actions addressed corruption and conspiracies associated with a series of major airline disasters, the evidence of which appellant initially acquired while a government air safety investigator. Under federal law, the allegations must be accepted as true at that stage of the proceedings. Over 1000 persons perished in fraud related airline crashes on programs for which appellant had air safety responsibilities. Many died on other programs in which appellant had no knowledge, but which occurred due to direct causes that would be caused to occur by the nature of the highly sensitive misconduct appellant alleged to exist.

No concern whatsoever was shown for the loss of life that had already occurred, and which would escalate if the allegations are true. Appellant was sentenced to prison for seeking to reduce the great loss of life in fraud-related airline disasters. Absolutely incredible! What does it imply!

f. Criminal Contempt Is Intended To Protect Lawful Orders and the Public, and Not To Protect Criminal Misconduct Resulting In Fraud-Related Airline Crashes and Subversion Of the Federal Judiciary.

The legal basis for criminal contempt is to vindicate the court's authority where a appellant violated and willfully disobeyed a lawful order. *U.S. v. Greyhound Corp.*, 363 F.Supp. 525. The foundation for the criminal contempt power is the need to protect the judicial process from willful impositions, particularly those designed to hobble the normal machinery of justice.

A criminal contempt proceeding is punitive in nature and a drastic remedy, which cannot be used to deprive one of his liberty unless it rests upon a firm and proper basis. *Martin v. Waters*, 259 S.E.2d 153 151 Ga.App. 140 (1979). The principal beneficiaries of an injunctive order are the courts and the public interest. *Ager v. Jane C. Stormont Hospital & Training School for Nurses*, 622 F.2d 496, 500 (10th Cir.1980); *In re Dinnan*, 625 F.2d 1146, 1149 (5th Cir. 1980).

There is a traumatic dichotomy between the moral and legal responsibilities for
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reporting airline crash related felonies, and six months in prison for exercising this responsibility.

Appellant is one of the nation's most competent and active air safety experts, whose official government duties uncovered deeply entrenched corruption and conspiracies associated with a series of major airline disasters. To this date there has never been a trial on his allegations and never has he been allowed to produce his evidence. Placing Appellant in prison solely on his reports of the crash-related felonies is obviously for the unlawful purpose of silencing Defendant. Another term for this is obstruction of justice, and clearly outside the authority of any federal judge.

g. A Citizen Cannot Be Held In Criminal Contempt If Compliance With the Injunctive Order Required Waiving A Right That Would Otherwise Be Lost.

Federal case law holds that a party cannot be held in criminal contempt if compliance with the order required waiving a right that would otherwise be lost. If Appellant had complied with the order as written, or as retroactively applied and expanded, Appellant would have waived and lost major federal and constitutional rights associated with

(a) Civil Right Act violations causing terminal destruction of major personal and property rights and liberties;

(b) RICO Act violations extending from Defendant's reporting of major felonies associated with a series fatal airline crashes;

(c) Committed the felony of cover up, and become a party to cover up of air safety felonies responsible for a series of fatal airline crashes. . Appellant would have been required to abandoned the foundation protections of our constitution and laws, and simultaneously, play a felonious part in cover up of misconduct that has caused incalculable horror and deaths to unsuspecting persons in fraud-related airline disasters.

h. Appellant Was Denied Legal Counsel For His Defense, Against the Powerful Judicial and Justice Department Block That Seeks To Obstruct At Any Cost Appellant's Exposure Of What Has

Become the World's Worst Air Disaster Scandal and the Nation's Worst Judicial Scandal.

The Sixth Amendment to the United States Constitution provides that parties shall "have the Assistance of Counsel for his defense." The right to effective counsel was stated in *Wheat v. United States* (1988) _____ U.S. _____ (Nr. 87-4), as the Court held that the Sixth Amendment insured the right to effective counsel. The Court enlarged on its holdings in *Flannery v. United States* (1985) 465 U.S. 259.

This protection and right was violated in the following manner:

1. Judge Ramirez denied appellant's request for legal counsel when attorney Clifford Tedmon was allowed to withdraw.* Attorney Tedmon had failed to file any appeal briefs, despite the two briefing dates given to him. Attorney Tedmon had not even obtained the file on the date the second brief was due. He had not obtained needed evidence. When appellant questioned him on this, attorney Tedmon requested to withdraw on the basis there were serious differences between him and the client, reflecting the deplorable state of legal competence and conduct in the Ninth Circuit, repeated many times. Judge Ramirez held that it was unreasonable for a client, appellant in this case, to expect legal counsel to submit briefs when the two deadlines passed without any filings or even preparation!

2. Prior counsel, Carl Larson, also refused to provide any defense, refused to file any papers, refused to request statutory right to bail pending appeal. The intent was to protect the heavily infested legal fraternity's misconduct that was tied in with the judicial misconduct, all of which were part of the underlying air disaster scandal. Other legal counsel who were afraid to represent appellant admitted the gravity of the judicial misconduct and advised their careers would be literally destroyed if they represented appellant.

3. The illegal seizure of appellant's valuable properties insured that he could not obtain legal counsel. The seizure of the properties were grossly illegal and unconstitutional, and a part of the overall judicial scandal and conspiracy that has infested the Ninth Circuit courts

in a manner that subversion of our form of government is well advanced.

i. Appellant Was Denied the Right To An Impartial Judge Or Jury In the Contempt Trial, and In the Appeal To the United States District Court

The Fifth Amendment guarantees to every person "The [right to] an impartial judge or jury ... and to have the verdict supported by the evidence presented" The Sixth Amendment provides the right to "an impartial jury ..."

Appellant was denied a jury trial on the initial contempt action, being forced to appear before the Justice Department prosecutor, and a part time federal magistrate, both of whom representatives entities that were involved in one of the nation's worst government and judicial scandals, made worst by the related horror and deaths in the underlying air disaster scandal.

Then, appellant was forced to appear before Judge Ramirez for the appeal, who appellant had disqualified. Judge Ramirez was instrumental in a long series of violations of important federal and constitutional protections, commencing with his dismissal of the first Civil Right Act complaint (84-0084 RAR). That complaint raised multiple federal causes of action of constitutional magnitude, which invoked mandatory federal court jurisdiction to provide relief under the Civil Rights Act, under statutory relief for declaratory judgment, and under constitutional provisions for constitutional violations. Rules of Court 12 and 56 were openly violated, the persons committing the violations--who have since been identified as "fronts" for the extension of the air disaster scandal to silence appellant's reporting the national scandals.

He has upheld every violation by part-time magistrate John Moulds. Even though there was clearly no jurisdiction following the filing of the appeal, Judge Ramirez upheld the serious constitutional wrongs and harm inflicted upon appellant. He was willing to sacrifice additional lives in the fraud related airline safety environment, to continue the impeachable misconduct.

Obviously, appellant had a Kangaroo tribunal from "day-one," and hardly met the

constitutional requirements of a fair and impartial tribunal.

j. The Evidence Did Not Show Beyond A Reasonable Doubt That Appellant Willfully Violated the Injunctive Order.

Appellant did not believe he violated the injunctive order. It was not necessary to violate the order, in Defendant's thinking, as he relied upon the following:

1. Filing Notice of Appeal halted the effects of injunctive order. (which is supported by Judge Schwartz's December 9, 1987 filed decision.)
2. The injunctive order was limited to issues raised in the action which sought to void personal and property rights adjudicated in 1966, and established in three judgments.
3. The RICO and Civil Right Act complaints raised federal claims which had never been adjudicated, for which California courts lacked jurisdiction.
4. A party cannot be held in criminal contempt when the injunctive order required waiving a right that would be lost.

An important question arises. Would appellant have the right to violate the injunctive order if he knew that the public was being harmed, and some were being killed, from the effects of deeply entrenched air safety misconduct? Would appellant have the right to violate the injunctive order, knowing the horror and tragedies arising from the misconduct, if he knew the judge was acting in a conspiracy and outside the lawful functions of his office?

To whom does appellant's moral and legal responsibilities belong? Under the laws of the United States, or the illegal and corrupt actions of a federal judge!

k. The Beyond Reasonable Doubt Requirement Did Not Exist.

In civil contempt proceeding, contempt must be proven by clear and convincing evidence, but in criminal contempt the proof of contempt must go beyond that, and beyond

any doubt. *United States v. Powers*, 629 F.2d 619, 626 (9th Cir. 1980), n. 9; *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F.2d 770, 782 (1983). There cannot even be a reasonable doubt that a person willfully violated a contempt order; or that the judge had jurisdiction; or that the act had to be done to avoid losing a right; or that the filing of an appeal deprived the court of jurisdiction; or the great and irreparable harm in airline crashes and deaths, which is part of the attacks upon appellant, superseded the wishes of a particular judge.

1. Appellant Was Denied the Jury Trial That Was Part of the Stipulation Waiving District Court Trial.

During the May 7, 1987 arraignment, appellant agreed to a trial before a magistrate instead of a district court judge, on condition of a jury trial. The Justice Department was the prosecutor, and a federal judge determined whether appellant was guilty, in an environment where appellant was reporting in his published books and on hundreds of radio and television appearances the mechanics of the misconduct--and cover-up by the Justice Department and federal judges.

This waiver was conditioned upon a jury trial, and shown by the two-page waiver and jury trial writing. This condition was more clearly shown by the typed copy of the waiver, which was shown to appellant during the November 4, 1987 sentencing. The United States Attorney now refuses to produce a copy of that form, and fraudulently stated to the Ramirez court on February 17 (or 24th) that the document does not exist.

Immediately before start of the September 16, 1987 trial, the Magistrate denied Appellant the jury trial that was agreed upon when signing the waiver to trial before a district court judge. The denial of the jury trial was based upon the argument that a requested penalty of six months or less did not require a jury trial. However, the agreement to waive a trial before a district court judge was separate and distinct from the penalty issues, and was conditioned upon a jury trial.

Appellant was then forced to appear for trial before a part-time magistrate, who sought

full time status as a magistrate, the accomplishment of which depended upon pleasing the Justice Department and federal judges who were seeking to imprison Defendant.

m. Appellant Was Further Prejudiced By Ineffective Counsel During the Initial Trial, and Absence of Any Counsel On Appeal.

Appellant's legal counsel Joel Pegg, sought to withdraw from the case shortly before the start of trial, requiring a hearing before magistrate Moulds. It was decided that Pegg had to remain until the end of trial, and then could withdraw. This made it obvious to Moulds that appellant would be without legal counsel to file any appeals or bail motions, and that counsel would not put up any resistance to a guilty verdict.

This conduct prejudiced appellant's defenses. Counsel made no attempt to obtain the typed version of the waiver of trial before a district court judge that was conditioned upon a jury trial. This typed two-page document was shown to Appellant and his legal counsel during the November 4, 1987 sentencing, which clarified the requirement for a jury trial more so than the handwritten document in the clerk's record. Counsel made no attempt to introduce that document into the court proceedings on November 4, 1987.

Counsel Pegg made no motion for reconsideration after the September 16, 1987 decision finding appellant guilty of criminal contempt, even though the evidence was overwhelming. Counsel made no motion for bail pending appeal under Title 28 U.S.C., 3143, leaving appellant to perform this important legal task in pro se. Counsel Pegg agreed to a trial before a United States magistrate, despite appellant's strong objections. (desire of the part-time magistrate to obtain full-time magistrate position, and the obvious bias toward pleasing the Justice Department and federal judges seeking to imprison Defendant).

For the last three decades the United States Supreme Court has held a party has the right to effective legal counsel, as first articulated in *Gideon v. Wainwright* (1963) 372 U.S. 335. Decisions subsequent to that landmark decision expanded that right to other types of cases, including misdemeanors, emphasizing the right to effective assistance of counsel.

DENIAL OF DUE PROCESS WAS COMPOUNDED BY ILLEGALLY

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SEIZING APPELLANT'S MULTI-MILLION DOLLAR ASSETS, AND THEN DEPRIVING HIM OF LEGAL COUNSEL FOR THE APPEAL

As a result of the order of contempt and prison by the federal government, the same federal court system illegally seized appellant's property which was in chapter 11 bankruptcy proceedings. The multi-million dollar properties were seized without the corporate case on the calendar, without the statutory requirement of a noticed hearing, legally recognized cause, and other requirements. The federal judge simply sized the property, showing the extent of the judicial insurrection in the Ninth Circuit courts.

Assistant federal defender Carl Larson was appointed to represent appellant, paid by the Justice Department who is gravely threatened by appellant's allegations in the complaints that served as the basis for the prison sentence. Larson (a) refused to file a motion for the statutory right to bail pending appeal; and (b) spent his entire discussions with Appellant stating Appellant had no rights under the Civil Rights and RICO Act, and for Appellant to prepare for prison. While appellant was in prison other legal counsel was appointed, who made no effort to get appellant released; who made no effort to submit appeal briefs despite given two briefing dates; made no effort to obtain the file; and insured that the continued legal sabotage of appellant would continue.

n. The Injunctive Order Sought Support In the Illegal Dismissal Of the Underlying Action, the Reverse Interpretation Of Frivolous.

The injunctive order barring appellant from ever again seeking relief from the escalating civil right and RICO violations sought support by placing a frivolous label on the complaint. But the complaint clearly raised multiple federal questions for which federal courts had mandatory jurisdiction and for which relief could be granted. The complaint alleged that the state judges and private parties acting with the judge, acted without personal and without subject matter jurisdiction, violated over 20 different California statutes, over ten California Rules of Court, numerous California Supreme Court decisions.

In addition, United States Supreme Court decisions* prohibition the sham California action from taking place. Appellant was suffering great and irreparable harm, from a

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continuing barrage of illegal orders rendered without jurisdiction. There was no other source of relief other than federal courts from the multiple federal causes of action that were raised. Judge Schwartz admitted to the gravity of the allegations at a May 9, 1986 hearing, but then, suddenly--as if induced to change his position--he suddenly called the allegations that he identified as serious--frivolous. Obviously, the frivolous label was a ploy to deprive appellant of his due process and equal protection, and to protect those committing the Civil Right and RICO violations.

The fact that no reasonable persons could possibly reach the conclusion that the allegations were frivolous, and the fact that the dismissal violated federal law--which Judge Schwartz was not empowered to do--his dismissal order was either void or voidable, and certainly, no basis for the injunctive order.

III. APPELLANT WAS IMPROPERLY DENIED A JURY TRIAL, FORCED INTO A TRIAL WHERE THE PROSECUTOR AND TRIER OF FACTS PROTECTED THOSE WHO APPELLANT IDENTIFIED IN THE RICO ACTION WITH MISCONDUCT IN AN UNDERLYING AIR DISASTER AND JUDICIAL SCANDAL.

a. Jury Trial Was Required To Meet the Constitutional Right To A Fair and Impartial Trial.

The RICO Act complaint filed by Appellant, which constituted Count One of the information, identified corrupt actions and conspiracies associated with violations of air safety laws and with a series of fatal airline disasters. The corrupt acts and conspiracies focused on (a) criminal actions by specific individuals directly related to violations of federal air safety laws; (b) cover up of these crash-related acts of misconduct by persons within the Department of Justice and by certain federal judges; and (c) extension of the corrupt acts by persons seeking to destroy Defendant's reporting of the misconduct, and including persons within the Justice Department and federal judiciary.

The air safety irregularities that Appellant reported revealed the nation's, if not the world's, worst airline crash scandal ever reported. The allegations against persons allegedly

corrupting the Justice Department and the federal courts were of such grave implications that it would be preposterous to be forced into a non-jury trial before a Prosecutor and trier of facts who represented those identified in the RICO action with grave misconduct.

Under these conditions, the constitutional fair and impartial hearing could not possibly be obtained, making a jury trial an absolute necessity. Even with a jury trial, under such serious circumstances, a jury trial would continue to suffer the consequences of a Prosecutor with powerful interests in corrupting the trial process.

CONSTITUTIONAL REQUIREMENT FOR FUNDAMENTAL FAIRNESS WAS A FARCE IN THESE PROCEEDINGS

The standards of due process and "fundamental fairness" apply to criminal contempt proceedings. *United States v. Bukowski*, 435 F.2d 1094, 1101 (7th Cir. 1970). In *United States v. Tijerina*, 412 F.2d 661 (Tenth Cir. 1969), quoting *In Estes v. Texas*, 381 U.S. 532, 540-541, the Court said:

We have always held that the atmosphere essential to the preservation of a fair trial--the most fundamental of all freedoms--must be maintained at all costs.

Mr. Justice Frankfurter stated in *Offut v. United States*, 348 U.S. 44, 14:

"Justice must satisfy the appearance of justice."

Could anyone possibly question the absence of the appearance of justice when the Prosecutor and trier of facts are identified in the RICO Act complaint, which then serves as the basis for charging the one exposing the nation's worst airline crash scandal with misconduct for reporting the felonies?

Appellant had authored two exposé books, *The Unfriendly Skies--an Aviation Watergate*, and appeared as guest on over 1000 radio and television shows, identifying the specific criminal acts associated with specific airline crashes. The cover up of these crash-causing felonies by the United States Attorney General, the Department of Justice, and certain federal judges, were described in these activities, just as they were identified in the

federal RICO Act complaint (86-2523) which served as Count One, for which Appellant was sentenced to six months imprisonment.

In *U.S. v. Hamdan*, 552 F.2d 278 (9th Cir. 1977), the court addressed the importance of a jury interposed to protect accused from power of Government when charge against him is a serious one. The *Hamdan* court held that the offense may be serious enough to require jury trial because of severity of penalty aside from inherent nature of crime.

The constitutional rights to a jury trial is found in Article III, section 2 of the Constitution, as it relates to money fines, which reads:

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury....."

Neither Article III nor the Sixth Amendment distinguishes between crimes punishable by imprisonment and crimes punishable by fine. Both types of punishment are subject to abuse through government bias or arbitrariness. In the present case, where Appellant argues that he is targeted by persons corrupting government to silence his reporting of misconduct associated with a series of specific airline disasters, a non-jury trial by those representing the accused in the airline crash RICO action, would be constitutionally obscene.

Federal Rule of Criminal Procedure 42 provides for a jury trial for criminal contempt:

Rule 42. Criminal Contempt

The defendant is entitled to a trial by jury in any case in which an act of Congress so provides.

Title 18 U.S.C. 3691 also provides for a jury trial in criminal contempt proceedings:

18 U.S.C. 3691. Jury trial of criminal contempt

Whenever a contempt charged shall consist in wilful disobedience of any lawful writ, process, order, rule, decree, or command of any district court of the United States by doing or omitting any act or thing in violation thereof, and the act or thing done or omitted also constitutes a criminal offense under any Act of Congress, or under the laws of any state in which it was done or omitted, the accused, upon demand therefor, shall be entitled to trial by a jury, which shall conform as near as may be to the practice in other criminal cases.

Because of the gravity of the allegations of wrongdoings by federal judges of the

Ninth Circuit, and the Department of Justice--which if true, constitutes the most serious by far judicial scandal yet reported since the founding of this country. Obviously, a jury trial was necessary.

But it was denied. Why, because no jury would have convicted a citizen under these conditions, and such jury could very well blow the whistle on the widening scandal in the Ninth Circuit courts.

The Intrinsic Nature Of the Alleged Crime Requires A Jury Trial.

The intrinsic nature of the alleged "crime," reporting airline crash related felonies, and the right to make such reports, constitutes a need for a jury trial. The need for a jury trial under these conditions of taking six month's out of the life of a senior citizen, suffering from six coronary bypasses, and suffering the concurrent illegal seizure of his multi-million dollar estate by other tentacles of the judicial scandal, and the offense be called "petty," and thus not entitled to a jury.

It is preposterous to argue that a person can be forced to commit the felony of coverup related to airline crash misconduct, ordered to prison for exercising moral and legal responsibilities, and that it be considered petty in nature. The "extent of the possible deprivation" faced by a contemnor plays a major role in determining the need for a jury trial. (See dissenting opinion in *United States v. Hamdan*, 552 F.2d 276, 280, 282 (9th Cir. 1977).

The deprivations include the seizure of Defendant's multi-million dollar estate; the sequestering of felonies continuing to play a causative role in ongoing airline disasters and near-disasters; the taking of valuable personal liberties; and a multitude of other human rights, demands protection from corrupted government.

The dissent in *Hamdan* held that "as a matter of historical analysis, 18 U.S.C. 1(3) has little to recommend it as a standard for determining when a jury trial is constitutionally

required. ... The legislative history of the statute does not indicate that 18 U.S.C. 1(3) was meant to define the crimes for which there is no right to a jury." The footnote states: "This definition of petty offense was added in 1930 in order to identify a special class of misdemeanors of minor gravity to be tried, as proposed by other legislative which failed, by United States Commissioners. The dissent then states that the six month rule "is not supported by the cases. ... that section has no 'talismanic significance.'"

Unsuitable For Measuring Constitutional Rights

The dissent states that the "rigidity [is] unsuitable for measuring constitutional rights, ..." The dissent further states: "When Congress by statute distinguishes between serious offenses, requiring a jury trial, and petty offenses, requiring no jury trial, it is the duty of the courts to review the distinction made by Congress in order to determine whether it comports with the Sixth Amendment. See *Duncan v. Louisiana*" [(1969) 391 U.S. 391.] The instant case provides one of the most graphic examples of the unconstitutional nature of determining the right to a jury trial solely by the length of imprisonment. Appellant had been forced into a trial before a Prosecutor and trier of facts that had an overpowering interest in sending him to prison. Appellant has lost a majority of his life's estate for exercising his rights and obligations to report what he perceives as major criminal acts closely associated with a series of ongoing airline disasters. It is crystal clear that the Prosecutor, and the federal courts, have obstructed every attempt to exercise these rights and responsibilities, irregardless of the grievous harm to the public, and finally, after destroying Defendant's estate, sent him to prison to silence him.

A Loss of \$501 Demands A Jury Trial.

The requirement exists under statutory and decisional law where the fine is greater than \$500. But by an obviously unjust ruling in some cases, imprisonment for six months is considered less violative of important human rights than a \$501 fine. This is constitutionally preposterous. In *Baldwin v. New York* (1970) 399 U.S. 66, 72, the importance is stated of a jury trial interposed to protect the accused when the charge is

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serious. Six month's imprisonment, concurrent with a taking and liquidation of a multi-million dollar estate, is very serious! It has been held in decisional law that a fine of \$501 or more entitles a person to a jury trial.

The right to an impartial trier of facts is shown by the Sixth Amendment which states: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury."

Obviously, a trial conducted by the Prosecutor and the court, wherein both represent those stated in the RICO Action serving as Count One with misconduct of an infamous nature, could not, would not, and obviously did not, provide the constitutionally required fair and impartial trial.

When A Common DWI Charge Requires A Jury Trial The Judge Made Rule That Jury Trial Is Not Necessary In Contempt Proceedings Is A Holdover From the Dark Ages Before Recognition Of Civil and Constitutional Rights.

The right to a jury trial when charged with the relatively minor offense of driving under the influence of alcohol in a national park was upheld by the Ninth Circuit in *U.S. v. Craner*, 652 F.2d 23 (9th Cir. 1981). The offense carried a maximum term of six months imprisonment and a \$500 fine, as in criminal contempt. It was held that the constitutional right to a jury trial was required. But old judge-man law holds themselves above the law, as they argue that the same punishment and more does not require the constitutional right to a jury trial.

The seriousness of the allegations play a role in the protection of a jury trial. Rule 12 of Federal Rules of Civil Procedures requires that allegations be accepted as true for the purpose of dismissal. In addition, Defendant's background experience as a government air safety investigator for the Federal Aviation Administration, and his 46 years of military and airline piloting experience, certainly augments the Rule 12 requirements to indicate that matters of grave national and constitutional importance are involved. Certainly interests far

greater than the matter of a person charged with DWI are involved, and makes the charge and the consequences very serious indeed.

QUESTIONS OF INTEGRITY OF THE PROSECUTOR, OR THE JUDGE, RAISED THE NEED FOR A JURY TRIAL

In *United States v. Moon*, 718 F.2d 1210 (2d Cir. 1983) the prosecutor held that the claims by the appellant that he was being prosecuted based upon racial and religious prejudice against him. The prosecutor argued that questions were raised about the integrity of the prosecution and therefore a jury trial was necessary. The prosecutor refused to consent to a waiver of jury trial. The Second Circuit upheld this argument, holding that the reasons were valid and justified.

Surely, in the instant case, where appellant alleges bias and important self interests arising from Defendant's allegations of obstruction of justice in fraud related airline disasters, the same argument would apply, even more so. The chronology of events leaves no question in any reasonable person's mind that appellant is being persecuted by misuse of the judicial process, while simultaneously denying appellant the protection of the process.

In *U.S. v. Saadya*, 750 F.2d 1419 (9th Cir. 1985), the Ninth Circuit addressed the importance of a jury trial and that a written waiver expressly given with intelligent consent was necessary.

THE CHARACTER OF THE OFFENSE REQUIRES JURY TRIAL

The United States Supreme Court looked to the nature of the offense and the risks posed to the community by the alleged violations, to determine the need for a jury trial. If appellant's allegations are correct, there are certainly major risks posed by the community if corruption related to airline disasters are sequestered by those identified in appellant's RICO and Civil Right Act complaints.

THE IMPACT UPON THE COMMUNITY FOR SENTENCING AN AIR SAFETY EXPERT AND LEADING FIGURE BEHIND IMPROVING AIR SAFETY TO PRISON FOR REPORTING GRAFT AND CORRUPTION ARISING FROM AN AIR DISASTER SCANDAL IS NOT QUITE WHAT THE LAWS AND CONSTITUTION PERMITS

The impact upon the community of imprisonment for exercising remedies under the civil rights act; or of reporting felonies associated with a series of fatal airline disasters by exercising remedies under the RICO Act, are serious community interests, for which a jury trial is requires.

In *District of Columbia v. Colts* (1930) 282 U.S. 63, the Court held that reckless driving is a "serious offense" requiring trial by jury because of the risks posed to the community by the violation. In *Callen v. Wilson* (1888) 127 U.S. 540, 556, it was held that an illegal conspiracy in the context of a labor dispute was a "serious offense" because of its "grave character, affecting the public at large," similar to the air safety misconduct that Appellant sought to expose.

THERE IS NOTHING PETTY ABOUT SENTENCING A CITIZEN TO PRISON FOR SIX MONTHS, ESPECIALLY WHILE OTHER TENTACLES OF THE RICO SCANDAL ARE SEIZING AND DESTROYING APPELLANT'S ASSETS.

The Court held in *Cheff v. Schnackenberg* (1966) 384 U.S. 373, that the outer limits when a jury trial is absolutely required may not be adequately addressed by applying only the \$500 or less fine or six months or less imprisonment. The Cheff court held that the nature of the offense may require it being excluded from the petty offense category, and require a jury trial when it is otherwise not required. (See also *Duncan v. Louisiana*, 391 U.S. at 69-70. In *Columbia v. Clawans* (1947) 300 U.S. 617, the Court again said that factors to be considered in requiring a jury trial include (a) the severity of the penalty; the moral quality of the action; and its relation to common law crimes.

In California courts, any traffic offense for which imprisonment may occur provides for jury trials. (See *State v. Auen*, 342 N.W.2d 236, 238 (S.D. 1984); *City of Pasco v. Mace*, 653 P.2d 618, 625-626 (Wash. 1983);

Under Rule 1, Procedure for the Trial of Misdemeanors Before United States Magistrates, procedures and practice for the conduct of proceedings are established for

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misdemeanor cases, including petty offenses. (18 U.S.C. 3401.) The rule provides for the application of Federal Rules of Criminal Procedures and "govern all proceedings except those concerning petty offenses for which no sentence of imprisonment will be imposed."

Rule 1(c) defines petty offenses:

(c) Definition. The term "petty offenses for which no sentence of imprisonment will be imposed," as used in these rules, means any petty offenses, regardless of the penalty authorized by law, as to which the magistrate determines that, in the event of conviction, no sentence of imprisonment will actually be imposed in the particular case.

Moore's Federal Practice, Rules of Criminal Procedure, (p.682, 1987 edition), states: "... it must be emphasized that the Federal Rules of Criminal Procedure do apply to those petty offenses for which it is possible that a penalty of imprisonment will be imposed. Thus, these rules employ the standard adopted by the Supreme Court for determining when appointment of counsel is constitutionally required. Scott v. Illinois (1979) 99 S.Ct. 1158

Precisely the reasons given by the Court for concluding that such cases are important and significant enough to require assistance of counsel have led the Advisory Committee to conclude that these cases are deserving of all the procedural protections provided by the Federal Rules of Criminal Procedure. As with Scott, the "imprisonment will be imposed" test in these rules, as defined in subdivision (c), presents the difficulty that the distinction being made refers to an event which has not yet occurred--sentencing. However, in most cases it will be apparent from the nature of the charge or other circumstances, readily ascertainable by inquiry of the U.S. Attorney or law enforcement officer or otherwise, whether imprisonment (if authorized by statute for the offence charged) is a realistic possibility. If it is, the safer course of action is full compliance with the Federal Rules of Criminal Procedure, as only then will it be possible to sentence to imprisonment it later appears that such a sentence would be appropriate in the particular case.

Making reference to subdivision (b), Rule 1, and to a 1980 Advisory Committee Note, the Magistrate Rules are made applicable to trial of all misdemeanors before the United States magistrates. Subdivision (b) draws a critical distinction between petty offenses for which no sentence of imprisonment will be imposed and other misdemeanors.

The United States Supreme Court held in *Bloom v. Illinois*, 391 U.S. 194, 201-202, 88 S.Ct. 1482:

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Given that criminal contempt is a crime in every fundamental respect, the question is whether it is a crime to which the jury trial provisions of the Constitution apply. We hold that it is, primarily because in terms of those considerations which make the right to jury trial fundamental in criminal cases, there is no substantial difference between serious contempts and other serious crimes. (*Id. United States v. Bukowski*, 435 F.2d 1094, 1101 (7th Cir. 1970)).

The *Bukowski* court continued:

The Court in *Bloom* balanced, on the one hand, the fundamental right of the accused to a jury trial, as an independent check on arbitrary punishment, against the interests of the judiciary in independent, swift, and economic powers over disobedience.

The right to a jury trial is found in the Sixth Amendment:

In all criminal prosecutions, the accused shall enjoy the right to a ... public trial, by an impartial jury... and to have the Assistance of Counsel for his defense.

IV. **APPELLANT HAD A MORAL AND LEGAL RESPONSIBILITY TO REPORT GOVERNMENT MISCONDUCT, WHICH THE INJUNCTIVE ORDER WAS INTENDED TO THWART**

Criminal statutes requiring parties to report crimes, whistleblower statutes that encourage and protect parties who report government misconduct, were obstructed by the injunctive order. It has become a standard tactic in the judicial conspiracy rampant in this and related actions to render an injunctive order barring appellant from seeking judicial relief while the same judiciary is being used to destroy appellant.

Oakland bankruptcy judge Edward Jellen, for instance, rendered two injunctive orders barring appellant from filing oppositions and appeals to the illegal seizure of his multi-million dollar estate which was being liquidated and destroyed. Then, when appellant exercised the relief provided under the constitution and laws of the United States, he was held guilty of criminal misconduct and sentenced to prison. All of these constitutional outrages were committed when the court lacked jurisdiction on the basis of prior appeals.

Judges Milton Schwartz, Samuel Conti, Marilyn Petal--all Ninth Circuit judges, duplicated these tactics. Each of them illegally dismissed federal actions desperately

seeking relief from infliction of grave harm, all of which clearly stated multiple federal causes of action of constitutional magnitude. The actions were illegally dismissed, violating clear and settled statutory and case law and rules of civil procedure, and well settled constitutional rights and protections.

The gravity of the air disaster and superimposed judicial scandal requires a total judicial gridlock, with the destruction of appellant's properties, his liberties, his privacy, and in light of his age and health, his death, via imprisonment.

CRIMINAL AND OTHER WHISTLEBLOWER LAW REQUIRES THAT APPELLANT REPORT THAT WHICH HE STATED IN THE FEDERAL ACTIONS FOR WHICH HE IS NOW SENTENCED TO PRISON

The legal and moral right of one of the nation's most active air safety experts to report evidence of felonies associated with a series of fatal airline disasters is sufficiently important that imprisonment for exercising this federal and constitutional right, obviously cannot be entrusted to those representing the accused (Justice Department and the federal courts). The instant action is prima facie evidence of that fact.

THE INJUNCTIVE ORDER CLEARLY HAD AN ILLEGAL INTENT

The injunctive order was intended to silence appellant's reporting of the government and judicial misconduct in which the corrupt seizure of appellant's properties is one tentacle of the tragedy riddled misconduct. But this silencing intent is contrary to the considerable attention and law that has recently developed to aid those public spirited citizens whose concern for the public's welfare causes them to blow the whistle to protect the public interest, and who are then subjected to abuses.

Appellant was forced to seek relief in Chapter 11 bankruptcy from the extension of the corrupt acts and conspiracies in the air disaster scandal, when the federal district courts protected the persons committing the silencing violations. After appellant sought relief in bankruptcy, the same Ninth Circuit courts that appellant had identified with the air disaster

scandal then illegally and corruptly seized appellant's properties. The same Ninth Circuit, through Judge Jellen, then rendered an order depriving appellant of the due process right to seek relief. Now, after appellant sought relief under federal and constitutional rights, the Ninth Circuit courts seek to charge him with a criminal act. This is, of course, judicial insurrection and tyranny, constituting a threat to the United States, similar in nature that the air disaster scandal posed to those who then perished in fraud related air disasters.

THE FEDERAL COURTS OF THE NINTH CIRCUIT ARE THEMSELVES THE BEST ADVERTISEMENT FOR THE NEED OF THE WHISTLEBLOWER PROTECTIONS

Never has there been such a concerted effort and conspiracy to silence a whistleblower, nor have the lives of the public been so directly affected, as in the instance case. The growing body of case law³ protecting public spirited persons, such as debtor, leaves no doubt that any order barring a citizen from exercising the right to expose misconduct--such as the injunctive order, is an illegal order, for corrupt purposes, clearly prohibited by the laws and constitution of the United States.

The whistleblower statutes themselves, and their reference to the first and fourteenth amendments to the U.S. Constitution, precludes state and federal governments from barring or retaliating against whistleblowers.⁴ This protection against punishment also includes protection from federal judges seeking to silence misconduct within the judicial system.

In 1968 the United States Supreme Court held that the first amendment protects present and former government employees, and private citizens, who express public

³ Silkwood v. Kerr-McGee Corp (1984) 464 U.S. 238; Farmer v. Carpenters (1977) 430 U.S. 290; Olguin v. Inspiration Consolidated Copper Company, 740 F.2d 1468 (9th Cir. 1984); Garibaldi v. Lucky Food Stores, Inc., 726 F.2d 1367 (9th Cir. 1984); Walsh v. Consolidated Freightways, Inc., 278 Or. 347, 563 P.2d 1205 (1977); Hentzel v. Singer Co., 138 Cal.App. 290 (1982); Stokes v. Bechtel North American Power Corp., 614 F. Supp. 732 (N.D. Cal. 1985); Wheeler v. Caterpillar Tractor Co., 108 Ill.2d 502, 485 N.E.2d 372 (1985), cert. denied, -- U.S. __ (1986).

⁴ Antioch Law Journal, Vol. 4, Summer 1986. pp. 99-152.

dissent⁵ or expose misconduct. Debtor initially sought to expose tragedy related graft and corruption within the Federal Aviation Administration, involving a conspiracy with United Airlines. The cover-up by the National Transportation Safety Board, the Justice Department, and federal judges in the Ninth Circuit, then followed--which permitted over 1000 deaths in crashes in programs for which debtor has air safety responsibilities or of which debtor has knowledge of misconduct. Now, the Ninth Circuit judges are retaliating, as a sham California action is protected by the cooperating federal judges, and who violate federal and constitutional law as if the judges were above the law.

FIRST AMENDMENT RIGHT TO SPEAK OUT

It has been held that the first amendment also protects those who express public dissent.⁶ Decisional law protecting whistle-blowers have made reference to first amendment protections,⁷ prohibiting obstructing to the filing of federal actions reporting the alleged misconduct.

Whistleblowing is essentially the exercise of a first amendment free speech right. Consequently, where there is state action, a whistleblower victimized by retaliation or any other form of discrimination, has a potential Civil Rights Section 1983 action.⁸ Even if there is no state action, whistleblower retaliation which concerns a private conspiracy to retaliate may have a valid cause of action.⁹ Under the state common law public policy exception, even in the absence of state action the exercise of free speech rights might also

⁵ Pickering v. Board of Education (1968) 391 U.S. 563.

⁶ Grivhan v. Western Line Consolidated School District (1979) 439 U.S. 410.

⁷ Bush v. Lucas, 103 S. Ct. 2404, 2418 (1983) (concurring opinion of J. Marshall); Bartel v. Federal Aviation Administration, 725 F.2d 1402, 1415 (D.C. Cir. 1984); Doe v. U.S. Department of Justice, 753 F.2d 1092, 1109, n. 17 (D.C. Cir. 1984); Pope v. Langhorne Bond, et al., Civil Action No. 84-2922 (D.C. DD.C. June 20, 1985).

⁸ Pickering v. Board of Education, 391 U.S. 563 (1968).

⁹ See, e.g., 42 U.S.C. 1985; Griffin v. Breckenridge, 403 U.S. 88 (1971).

be protected.¹⁰

These important rights are prostituted by the injunctive order and the threat of criminal contempt. Congress articulated and professed concern to protect whistleblowers by passage of title 31 U.S.C. 3734, providing for federal district court remedies. Debtor is in the position of seeking relief against retaliation, from the same judicial parties committing the actions! Obviously, debtor is unsure of the answer to that serious problem. Impeachment proceedings against those federal judges violating the law may be the only remedy.

SEEKING TO AVERT DISASTERS THAT DEBTOR WITNESSED

Congress voted to protect whistleblowers so as to facilitate communications of key information to avert disasters. Debtor was a government employee, responsible for air safety at United Airlines, and other air carriers, uncovering fraud and corruption at United which played a part in a dozen fatal airline crashes. Stunned by the heavy loss of life in fraud-related airline crashes, intent on meeting his moral and legal responsibilities, debtor addressed the powerful conspiracy that he thought was limited to the FAA and United Airlines.

V. THE APPEAL DECISION AND INADEQUATE FINDINGS OF FACTS AND CONCLUSIONS OF LAW REQUIRES VACATING THE JUDGMENT

A decision rendered without adequate findings must be vacated, when major issues have not been addressed. The findings of fact and conclusions of law did not address such matters as (a) withholding of material evidence; (b) validity of the underlying dismissal by Judge Schwartz upon which the injunctive order sought support; (c) the validity of the frivolous finding by Judge Schwartz, upon which the injunctive order sought; (d) the right and obligations of a citizen to report government misconduct, especially in an area in which the violations are alleged to have caused the deaths of hundreds of persons; (e) whether the related heavy loss of life from appellant's failure to seek relief overrides the questionable

¹⁰ *Novosel v. Nationwide Ins. Co.*, 721 F.2d 894 (3rd Cir. 1983); *Joney v. Memorial Hospital System* 677 S.W. 2d 221 (Tex. App. 1984).

injunctive order by a judge; (f) whether the injunctive order violated such rights as the First, Fifth, Ninth, and Fourteenth amendments, the Civil Rights Act, the RICO Act; (g) whether exercising rights that would otherwise be lost precludes ordering a party held in criminal contempt; and other matters.

SUMMARY

Major prejudicial errors were made. Appellant was without legal counsel during the appeal, forced to appear and defend himself before a court in which appellant has uncovered, and threatens to expose, what would surely be the nation's worst reported judicial scandal since the founding of our country. Appellant was forced to appear before Judge Ramirez, who has a long history of violating important constitutional due process and equal protection rights. He has openly protected major violations of the Civil Rights Act and the RICO Act, while simultaneously punishing appellant for seeking relief.

Every effort has been made to fraudulently imprison the nation's most active air safety investigator to silence his exposure of a major aviation, government, and judicial scandal. To accomplish this goal, every right to bail pending appeal has likewise been denied. Appellant has obviously raised major and substantial questions that statutorily entitles him to bail.

Dated: October 5, 1988.

RODNEY F. STICH, pro se

DECLARATION

I, RODNEY F. STICH, declare:

That the statements made in this Motion For Bail Pending Appeal are true to the best of my knowledge and belief.

Executed this 5th day of October, 1988, in the County of Contra Costa, State of California.

MOTION FOR BAIL PENDING APPEAL

Rodney F. Stich