UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WILLIAM M. WINDSOR,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO:
	)	
UNITED STATES OF AMERICA,	)	1:09-CV-02027-WSD
JUDGE ORINDA D. EVANS,	)	
HAWKINS PARNELL THACKSTON	)	
YOUNG, CARL HUGO ANDERSON,	)	
PHILLIPS LYTLE, LLP,	)	
CHRISTOPHER M. GLYNN,	)	
TIMOTHY P. RUDDY,	)	
ROBERT J. SCHUL,	)	
JUDITH L. BERRY,	)	
MAID OF THE MIST	)	
CORPORATION,	)	
MAID OF THE MIST	)	
STEAMBOAT COMPANY, LTD.,	)	
SANDRA CARLSON,	)	
MARC W. BROWN,	)	
ARTHUR RUSS.	)	
AND DOES 1 TO 100,	)	
Defendants.	)	
	)	

RESPONSE TO MOTION TO DISMISS OF USA AND JUDGE ORINDA D. EVANS AND A MOTION FOR EXTENSION OF TIME TO RESPOND

William M. Windsor hereby files this RESPONSE TO MOTION TO DISMISS OF USA AND JUDGE ORINDA D. EVANS AND A MOTION FOR

EXTENSION OF TIME TO RESPOND ("Response to Judge Evans"). Windsor shows the Court as follows:

Windsor requests an extension of time to respond to the Motion to Dismiss.

Windsor has been having serious eye problems for several months. He has undergone two surgeries thus far with two more to come. Windsor has filed requests for specific approval to file motions for extensions of time, a "stay" (which should have said continuance), and an emergency motion for a continuance. These were filed on July 21, August 6, and August 12, 2010. The Emergency Motion for Continuance was filed on August 12, 2010 after Windsor was informed that he must undergo additional surgical procedures on his left eye. [Docs. 127, 128, 135, 136, 138, and 139 are referenced and incorporated herein as if attached hereto as are all docket numbers referenced herein.]

Windsor is pro se and has been unable to find an attorney, and he cannot afford one. Windsor has been unable to read for almost two months. He now has very limited sight in his left eye, and he has been suffering from excruciating headaches for the last three weeks. He has been physically unable to do legal research on the two motions to dismiss or anything else. He has been physically unable to read and type, and he is limited to what he has in Microsoft Word files with giant type on a huge computer monitor. Windsor requested Word copies of

the filings from Mr. Anderson and Mr. Huber, but they did not provide them. As a result, Windsor has not even been able to read them. It is 3:30 am on August 18, 2010, and Windsor is typing as best he can.

This document is taken from a five-month-old brief that was filed in Washington, DC. It is all that Windsor has. It should be supplemented with Eleventh Circuit citations, but Windsor has been unable to do so. If the Court denies the motions for continuance and extension of time, Windsor asks that the Court consider at least allowing Windsor to supplement this Response following his recovery from surgery.

FACTUAL BACKGROUND

The factual background of Civil Action 1:06-CV-0714-ODE ("MIST-1") was provided in the Verified Complaints and amended Complaints filed on July 27, 2009 [Doc. 1], July 30, 2009 [Doc. 25], August 3, 2009 [Doc.33], August 24, 2009 [Doc. 53], September 18, 2009 [Doc. 69], April 29, 2010 [Doc. 102], June 10, 2010 [Doc. 110], and July 8, 2010 [Doc. 116] (jointly "VC").

I. ARGUMENT AND CITATIONS OF AUTHORITY

Judge Evans is a criminal. She is evil and corrupt. She lies repeatedly. She has committed many criminal acts in MIST-1, and Windsor believes she has treated other parties in a similar manner. The case against Judge Evans cannot be

dismissed because we are not supposed to let criminals freely violate the law without recourse. Windsor has clearly provided sworn facts in the pleadings in the VC that establish the validity of the claim against the USA and Judge Evans, and these facts are uncontroverted.

District Court judges in the N.D.Ga. and the Eleventh Circuit commit crimes and manipulate the judicial system to deprive parties such as Windsor of their legal and Constitutional rights.

There is no adequate remedy at law. The judicial system supports this dishonesty and illegality. The "system" denies any form of valid recourse for an aggrieved citizen. Citizens find it next to impossible to take legal action against judges. Judges ignore perjury. There is no law that permits an aggrieved citizen to sue over perjury. The only recourse against a N.D.Ga. federal judge is to file a complaint with the Judicial Council, but the Judicial Council ignores valid complaints and claims there is no proof when there is plenty. Since the Supreme Court isn't really in the business of correcting errors by the lower courts, the N.D.Ga. and the Eleventh Circuit combine to have tyrannical power.

The issue of judicial immunity requires this Court to carefully consider justice, consider what previous cases on judicial immunity **really** said, and understand that the facts in this case are unlike any judicial immunity case ever

considered by a U.S. court. Windsor has therefore pleaded for extending, modifying, or reversing existing law or for establishing new law, if necessary.

JUDGE EVANS CANNOT HAVE JUDICIAL IMMUNITY IN THIS MATTER.

There is no statute that expressly confers judicial immunity. (***Nixon v. Fitzgerald***, 102 S.Ct. 2690, 457 U.S. 731 (U.S.06/24/1982).)

One of the problems with decisions of district courts and courts of appeals is that cases have been taken out of context, and the true issues have been misplaced.

This argument provides (a) an identification of the problem with judicial immunity in today's world; (b) a discussion of the five justifications that are given to have judicial immunity; (c) a review of the elements that the Supreme Court says are required for judicial immunity; (d) explanation of how the instant matter has facts different from every other case involving judicial immunity; and (e) a statement of the specific reasons why judicial immunity does not apply in this matter.

THE PROBLEM WITH JUDICIAL IMMUNITY IN TODAY'S WORLD: THERE IS A CONFLICT BETWEEN THE CONCEPT OF JUDICIAL IMMUNITY AND THE GUARANTEE OF CONSTITUTIONAL AND LEGAL RIGHTS.

Our founding fathers expressed noble principles in the Constitution -- freedom, justice, and the protection of individual rights. However, in the

administration of the laws, something has gone dreadfully wrong. The lofty principles have been usurped by officials with improper intentions. The United States of today is not the benign society that the founding fathers aspired to create.

Two sets of standards have developed in the execution of the laws – one set of standards applicable to the general public, the other applicable to those in the federal judiciary. Our founding fathers did not intend for judges to be able to lie, cheat, and help others "steal" from parties they are sworn to protect through fairness and impartiality.

> "Few more serious threats to individual liberty can be imagined than a corrupt judge. Clothed with the power of the state and authorized to pass judgment on the most basic aspects of everyday life, a judge can deprive citizens of liberty and property in complete disregard of the Constitution. The injuries inflicted may be severe and enduring." (***Judicial Immunity vs. Due Process***, Robert Craig Waters, Cato Journal, Vol.7, No.2 (Fall 1987).)

Judges who abuse their positions and the law are being allowed to do so with impunity. This has become the norm, and there is currently no effective recourse available to the common man. The judicial system and certain laws protect the abusers from accountability. This encourages even more corrupt behavior.

The most quoted case on judicial immunity is ***Bradley v. Fisher***, an 1867 case. It was a kinder and gentler country in 1867. Our world has changed, and judicial immunity is now a serious issue for reasons not contemplated way back then.

JUSTIFICATIONS GIVEN TO HAVE JUDICIAL IMMUNITY

Justifications that have been used for judicial immunity are: (1) preventing threats of suits from influencing decisions when judges are acting upon their own convictions; (2) providing appellate review for a satisfactory remedy; (3) protecting judges from liability for honest mistakes; (4) relieving judges of the time and expense of defending suits; (5) removing an impediment to responsible men entering the judiciary. (See generally Jennings, ***Tort Liability of Administrative Officers***, 21 Minn.L.Rev. 263,271-272 (1937).)

PREVENTING THREATS OF SUITS FROM INFLUENCING DECISIONS WHEN JUDGES ARE ACTING UPON THEIR OWN CONVICTIONS – MAINTAINING THE INDEPENDENCE OF THE JUDICIARY .

This is one of the two primary reasons given for why judicial immunity is needed. Judges should be independent and protected from honest mistakes. Honest judges must have the freedom to make decisions without fear of lawsuits against them. However, this has become a bogus excuse because in today's world. With no fear of any consequences, it has become easy and painless for dishonest judges to violate the law. Judges should not be given immunity when the independence of the judiciary is not an issue.

> In ***Shore v. Howard***, 414 F. Supp. 379 (N.D.Tex.1976), the court reasoned that when the "initiative and independence of the judiciary is not effectively

impaired," the doctrine of judicial immunity does not apply. Accord ***Clark v. Campbell***, 514 F.Supp. 1300 (W.D.Ark.1981).

Existing case law will continue to provide needed protection, but a landmark decision is needed to provide a deterrent to criminal activities from the bench.

ADEQUATE REMEDY AT LAW.

The second key justification for judicial immunity is that aggrieved parties have an adequate remedy at law through appeal. This was probably a real remedy back in 1867, but it is not valid today, at least not in the federal courts in Atlanta, Georgia. In reality, officers of the courts who break the law at the expense of the common man are unassailable because of the lack of honesty and decency by the other officers of the courts who must be approached in an attempt to seek justice. The guarantee of Constitutional rights is being illegally revoked.

Officials who are tasked with administering the laws simply fail to take action against offenders in their midst. They protect their lawbreaking peers. This collusion amongst officialdom to protect colleagues from criminal and civil accountability is widespread throughout the federal judiciary in Atlanta, Georgia.

This sweeping immunity doctrine is at odds both with American legal history and the Constitution.

> "Congress never intended to exempt state judges from suit when it passed the 1871 Civil Rights Act. Moreover, the judiciary is wrong when it asserts that immunity was a settled doctrine, incorporated into the 1871 Act by

> implication. To the contrary, the doctrine in its present form did not exist in the United States or England when the civil rights legislation was passed in 1871. Moreover, the immunity doctrine is inconsistent with the due process clause of the Fourteenth Amendment. Even if the doctrine had existed in common law, constitutional supremacy dictates that it must bow before the American idea of procedural justice embodied in the guarantee of due process." (***Judicial Immunity vs. Due Process***, Robert Craig Waters, Cato Journal, Vol.7, No.2 (Fall 1987).)

It simply isn't right to grant judges immunity in a case where the judges have intentionally violated a party's Constitutional rights and have intentionally committed crimes in order to do so.

THE REMAINING JUSTIFICATIONS

Judges should be protected from honest mistakes. Judges should not have to spend time on anything but legitimate cases against them. Existing case law will continue to provide these protections. If dishonest people do not want to enter the judiciary, then we will all be better off as a result.

ELEMENTS REQUIRED FOR JUDICIAL IMMUNITY.

The Supreme Court says the question of judicial immunity requires two elements: (1) Does the court have subject matter jurisdiction? (2) Is the act a judicial act? To properly apply this test, one must understand what constitutes "jurisdiction" and a "judicial act."

JURISDICTION

Black's Law Dictionary defines "jurisdiction" as a "court's power to decide a case or issue a decree." (***Black's Law Dictionary*** 855 (7th ed.1999).) The five cases do not provide a definition of "jurisdiction," but the ***Black's*** definition seems appropriate, thought not comprehensive.

> (The five cases are: ***Bradley v. Fisher***, 80 U.S. 335 (1871); ***Pierson v. Ray***, 87 S. Ct. 1213, 386 U.S. 547 (U.S.1967); ***Stump v. Sparkman***, 98 S. Ct. 1099, 435 U.S. 349 (1978); ***James Clark, v. D. Justin Taylor, Et Al.*** (D.C.Cir.02/27/1980); ***Michael Sindram, v. John H. Suda; Paul R.*** (D.C.Cir.03/16/1993).)

Judicial bias also presents a jurisdiction issue. The Supreme Court has expressed that judges should have proceeded no further in cases when they have been accused of bias or prejudice. (***Berger v. United States***, 255 U.S. 22 (1921).)

Biased judges are automatically disqualified and thus have no jurisdiction. (28 U.S.C. §455.)

> ANY doubt regarding whether recusal is required must be resolved in favor of recusal. Section 455 creates a "**self-enforcing obligation**" for judges to recuse themselves, and doubt regarding whether recusal is required must be resolved in favor of recusal. (***Murray v. Scott***, 253 F.3d 1308, 1310 (11th Cir.2001).) (See ***Liteky v. U.S.***, 114 S.Ct. 1147, 1162 (1994); ***Liljeberg v. Health Services Acquisition Corp.***, 486 U.S. 847, 108 S.Ct. 2194 (1988); ***Offutt v. United States***, 348 U.S. 11, 14, 99 L. Ed. 11, 75 S.Ct. 11 (1954); ***Levine v. United States***, 362 U.S. 610, 80 S.Ct. 1038 (1960),
>
> Should a judge not disqualify himself, then the judge is violation of the Due Process Clause of the U.S. Constitution. ***United States v. Sciuto***, 521 F.2d 842, 845 (7th Cir.1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.")

> Under 28 U.S.C.§455(a), "the standard is whether a reasonable and informed observer would question the judge's impartiality." (***United States v. Microsoft Corp.***, 346 U.S.App.D.C. 330, 253 F.3d 34 (D.C.Cir.2001).)

So, judges lose jurisdiction when a reasonable and informed observer would question the judge's impartiality. If reasonable people were allowed to make this decision, many judges would be disqualified. Unfortunately, judges make this decision about themselves, and abuse of power has seized control.

JUDICIAL ACTS

> The issue is: "What constitutes a 'judicial act?'"
>
> "...whether an act by a judge is a 'judicial' one relates to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity." 435 U.S. at 362. See also ***Forrester v. White***, 484 U.S., at 227-229. ...a judge "will not be deprived of immunity because the action he took was in error . . . or was in excess of his authority." (***Raymond Mireles v. Howard Waco***, 112 S. Ct. 286 (U.S.1991).) (See also ***Stump v. Sparkman***, 98 S. Ct. 1099, 435 U.S. 349 (1978).)

THERE IS A SIGNIFICANT ISSUE WITH THE LEADING PRECEDENT – *BRADLEY V. FISHER*.

Courts blindly cite ***Bradley v. Fisher*** to indicate that judges may be malicious and corrupt, but the case has nothing to do with corruption. ***Bradley v. Fisher*** is about an attorney accosting a judge and accusing him of insulting him from the bench. The judge then ordered that the attorney's name be stricken from the roll of attorneys allowed to practice in the court. The actions taken were all

clearly judicial. There was never any proof of ANY wrongdoing by the judge. The attorney claimed the judge had "corrupt" intentions in removing him, but there was no proof. A jury ruled in favor of the judge. The case had nothing to do with corruption!

Bradley v. Fisher says that a judge must be "free to act upon his own convictions without apprehension of personal consequences to himself." There is a big difference between personal convictions and corruption as we define that word today. The case cited that used the term "maliciously and corruptly" was from kinder and gentler England. The court said that any justice acting maliciously or corruptly may be called to account by impeachment or suspended from office.

The problem with ***Bradley v. Fisher*** today is that judges are acting illegally without apprehension of personal consequences, and there is no way to call criminal judges to account. Citizens are powerless. At trial, Windsor will be able to prove that the Eleventh Circuit has issued false and erroneous orders that served to illegally protect Judge Evans.

As to how to identify what constitutes a "judicial act," the Supreme Court says it is the character of the act that is key, not the position of the actor. So, it is what the judge does, not the fact that he/she is a judge.

> Where officials seek absolute exemption from personal liability for unconstitutional conduct, the "bear the burden of showing that public policy

requires an exemption of that scope." Id. at 501 (quoting ***Butz v. Economou***, 438 U.S. 478, 506, 57 L.Ed. 2d 895, 98 S.Ct. 2894).

In ***Shore v. Howard***, 414 F. Supp. 379 (N.D.Tex.1976), the court reasoned that when the "initiative and independence of the judiciary is not effectively impaired," the doctrine of judicial immunity does not apply. Accord ***Clark v. Campbell***, 514 F. Supp. 1300 (W.D.Ark.1981).

In ***Ex parte Virginia***, 100 U.S. 339, 25 L.Ed. 676, the Supreme Court declined to extend immunity to a judge who was criminally prosecuted for his actions in selecting jurors. The Court determined that whether the act was judicial depends on the character of the act and not the character of the actor. Id. at 342. Because the selection of jurors could as easily have been committed to a private person as a judge, the act was not "judicial." Id. at 343.

JUDICIAL FUNCTIONS DO NOT INCLUDE CRIMINAL ACTS.

Courts have repeatedly ruled that judges have no immunity for their criminal acts. (***O'Shea v. Littleton***, 414 U.S. 488, 503 (1974).)

(See also ***United States v. Isaacs***, 493 F.2d 1124 (7th Cir.), cert. denied, 417 U.S. 976 (1974); ***Imbler v. Pachtman***, 424 U.S. 409, 429, 47 L. Ed. 2d 128, 96 S.Ct. 984 (1976); ***Gravel v. United States***, 408 U.S. 606, 627, 33 L.Ed. 2d 583, 92 S.Ct. 2614 (1972); ***United States v. DiCarlo***, 565 F.2d 802, 806 (1977); ***United States v. Anzelmo***, 319 F.Supp. 1106, 1118-19 (E.D.La.1970).

No federal official has ever been held exempt from prosecution for his commission of a federal crime. (***United States v. Manton***, 107 F.2d 834 (2d Cir.1938).)

In ***McPherson v. Kelsey, et al.*** U.S. District Court case number 5:93-cv-166, Judge G. Michael Hocking ordered an attorney jailed for contempt when she argued against his unlawful conduct in a custody and visitation matter. The

attorney was literally dragged from the courtroom where deputies beat her. She sustained brain damage from the assault. Her client, the father involved in the visitation dispute, protested the action. At one point the Judge ran from the Courtroom, instructed his deputies to seize the father, search him at gunpoint and expel him from the courthouse. The father and attorney filed separate 42 U.S.C. §1983 actions. On June 23, 1995 Judge Richard A. Enslen of the U.S. District Court for the Western District of Michigan entered a directed verdict against Judge Hocking on First, Fourth and Fourteenth Amendment claims and four days later, the jury found against Judge Hocking on these claims and awarded the father money damages. So in this case, **a judge was performing judicial functions but performed a non-judicial criminal act and was denied immunity**. (***McPherson v. Kelsey***, No. 95-2234 (6th Cir.1997).) [**emphasis added**.]

> In ***Ex parte Virginia***, 100 U.S. 339, 342, 343, 25 L. Ed. 676, the Supreme Court declined to extend immunity to a judge who was criminally prosecuted. (See ***Lynch v. Johnson***, 420 F.2d 818 (6th Cir.1970); ***Richardson v. Koshiba***, 693 F.2d 911 (9th Cir.1982).) The ***Richardson*** court noted that a balance existed between the need to protect citizens from constitutional violations and the need to protect officials in the performance of their duties.
>
> "We are not persuaded that ... absolute judicial immunity from federal criminal prosecution is a necessary complement to the Constitution's explicit protections. Indeed, the miniscule increment in judicial independence that might be derived from the proposed rule would be outweighed by the tremendous harm that the rule would cause to another treasured value of our constitutional system: no man in this country is so high that he is above the

law. 'It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy.'" ***United States v. Lee***, 106 U.S. 196, 220, 1 S.Ct. 240, 261, 27 L.Ed. 171 (1882). "A judge no less than any other man is subject to the processes of the criminal law." ***United States v. Isaacs***, 493 F.2d at 1133; ***Dennis v. Sparks***, 449 U.S. 24, 28 n.5, 101 S.Ct. 183, 187 n.5, 66 L.Ed. 2d 185 (1980); ***Imbler v. Pachtman***, 424 U.S. 409, 429, 96 S.Ct. 984, 994, 47 L.Ed. 2d 128 (1976); ***O'Shea v. Littleton***, 414 U.S. 488, 503, 94 S.Ct. 669, 679, 38 L.Ed. 2d 674 (1974). (See also ***Chandler v. Judicial Council of the Tenth Circuit***, 398 U.S. 74, 140, 90 S.Ct. 1648, 1682, 26 L.Ed. 2d 100 (1970) (Douglas, J., dissenting); id. at 141-42, 90 S.Ct. at 1682-83 (Black, J., dissenting); ***Braatelien v. United States***, 147 F.2d 888, 895 (8th Cir.1945); ***Strawbridge v. Bednarik***, 460 F. Supp. 1171, 1173 (E.D.Pa.1978).) (***United States v. Hastings***, 681 F.2d 706 (11th Cir.1982).)

Justices Stevens, Scalia, and Kennedy dissented in ***Mireles v. Waco***. They stated that "ordering police officers to use excessive force is 'not a function normally performed by a judge.'" (quoting ***Stump v. Sparkman***, *435* U. S., at 362).

These are functions never to be performed by a judge:

Perjury in violation of 18 U.S.C.§1621; Perjury in violation of 18 U.S.C.§1623; Obstruction of Justice -- Conspiracy to Defraud United States – 18 U.S.C.§371; Obstruction of Justice and Witness Tampering -- 18 U.S.C.§1503; Obstruction of Justice -- Conspiracy to Defraud United States – 18 U.S.C.§371; False Unsworn Statements – Violation of 18 U.S.C.§1746; False Swearing – Making False Statements – Violation of 18 U.S.C.§1001; Subornation of Perjury – Violation of 18 U.S.C.§1001; Subornation of Perjury – Violation of 18 U.S.C.§1503; Subornation of Perjury – Violation of 18 U.S.C.§1621; Subornation of Perjury – Violation of 18 U.S.C.§1623; Conspiracy to Suborn Perjury – Violation of 18 U.S.C.§1622; Misprision of Felony; Treason to the Constitution; and Accessory after the Fact.

These are all acts intentionally taken by Judge Evans.

The concept of immunity established by The Supreme Court was that "a judicial officer, **in exercising the authority vested in him**, [should] be free to act upon his own convictions, without apprehension of personal consequence to himself." (***Bradley v. Fisher***, supra.) [**emphasis added**.]

Immunity was not established to enable judges to repeatedly commit illegal activities. The intent has never been to excuse judges for illegal activities.

> "The current American immunity doctrine not only was a serious departure from its common law antecedents but also broke with early American case law." (***Judicial Immunity vs. Due Process***, Robert Craig Waters, Cato Journal, Vol.7, No.2 (Fall 1987).)
>
> The words of Chief Justice Marshall in ***Marbury v. Madison***, 5 U.S. 137 (1803), must be heeded: "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection.

Judges have no authority to violate their oath of office or the CJC. When their actions are not the actions that a judge is permitted to do, those actions are not judicial. A DC Circuit decision confirms that authority does not exist for perjury.

> Decisions since ***Bradley v. Fisher*** have adhered, either explicitly or implicitly, to the proposition that official immunity, whether absolute or qualified, extends only so far as the affected government official's authority. (See, e.g., ***Scheuer v. Rhodes***, 416 U.S. 232, 250, 40 L.Ed. 2d 90, 94 S.Ct. 1683 (1974); ***Apton v. Wilson***, 165 U.S.App.D.C. 22, 506 F.2d 83, 90-95 (1974).) A government employee is not to be protected merely by virtue of his official position for conduct undertaken outside the scope of his authority. In ***John Briggs, Et Al. v. Guy Goodwin, Individually***, No. 75-1642 (D.C.Cir.1977), government employee Goodwin allegedly perjured

himself. **The court found that perjury is never within a government employee's authority and was wholly outside his authority**. (Maj. op. at 19, 21.) [**emphasis added**.]

"Judges cannot invoke judicial immunity for acts that violate litigants civil rights." ***Robert Craig Waters. Tort & Insurance Law Journal***, Spr. 1986.

THIS CASE HAS A DIFFERENT SET OF FACTS FROM EVERY CASE REGARDING JUDICIAL IMMUNITY THAT WINDSOR HAS REVIEWED. THERE IS NO PRECEDENT.

This Court must recognize that this case is different from the many cases where judges have been granted judicial immunity, so this case must be viewed on its own. None of the Supreme Court and DC Circuit decisions on judicial immunity have dealt with a judge who has committed hundreds of criminal acts, so there is no precedent. When Judge Evans acted as she did in MIST-1, she went way past the point at which judicial immunity could be justified. The actions of Judge Evans were criminal, and this civil action appears to be the only way that the legal or judicial system will ever do anything about it.

This is not a case where "a judicial officer, in exercising the authority vested in him, [should] be free to act upon his own convictions, without apprehension of personal consequence to himself."

Crimes committed by Maid and their attorneys were first reported to Judge Evans and U.S. agencies in 2007. Crimes by Judge Evans were first reported in

2008. Since then, no investigations have taken place; no arrests have been made; no trials are pending; ongoing crimes have not been terminated; and the conspiracy by officials to conceal the crimes has not been exposed and dealt with.

IMMUNITY DOES NOT APPLY WHEN A JUDGE IS NOT ACTING UPON HIS OR HER PERSONAL CONVICTIONS.

Judge Evans has not acted upon her own personal convictions. She doesn't believe the positions she has taken on the facts and the law. She knows she is committing crimes, and she knows she is completely ignoring the legal precedents so she can damage Windsor. She will do anything to hurt Windsor because he has had the guts to report her criminal acts and to seek her impeachment.

There has been no "act or process of forming an opinion after consideration or deliberation." (***Houghton-Mifflin Dictionary*** – definition of convictions.) Judge Evans has not made mistakes or "errors" of law. She has CONSCIOUSLY committed crimes and intentional torts for the purpose of damaging Windsor and shielding herself from conviction and impeachment. The proof is in the record before the courts. There is a significant national ramification when the courts sanction acts to defeat the ends of justice. It is of national interest that judges be compelled to abide by the Constitution and by the law, and that the criminals are dealt with decisively. Windsor argues for a modification to laws, should it be

needed. Do not allow immunity in egregious cases such as this. Do not allow this judge to avoid answering for her criminal acts.

THIS IS A CASE OF A JUDGE COMMITTING INTENTIONAL TORTS AND JUDGES COMMITTING INTENTIONAL CRIMES.

The traditional concept of judicial immunity does not apply in this case because Judge Evans has intentionally violated both civil and criminal laws.

These crimes are detailed in the VC. Judge Evans understands that these crimes violate clear statutory and Constitutional rights. Providing protection to criminals is a crime, and failure to report them is a crime. Judge Evans has provided protection to criminals. Judge Evans has failed to perform that legal duty and has violated multiple counts of misprision of felony. She obstructed and impeded the due and proper administration of the law and violated the statutes on obstruction of justice. (18 U.S.C. §1505). By her criminal conduct, knowing that an offense against the U.S. had been committed, she assisted the offenders in order to hinder or prevent their apprehension, trial, and punishment, and became an accessory after the fact. (18 U.S.C. §3). There is a need to stop judges from hiding behind immunity to repeatedly commit criminal acts as Judge Evans has done.

> "We hold these truths to be self-evident, that **all men are created equal**, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, **deriving their just powers from the consent of the governed**. That whenever any Form of

> Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness." The ***Declaration of Independence***, second paragraph, July 4, 1776.

Judge Evans deserves no rights any greater than Windsor's. Windsor submits to this Court that this "Form of Government" that allows judges to wreak havoc on litigants has "becomes destructive of these ends," and "it is" Windsor's right and the right of this Court "the Right of the People to alter or to abolish it, and to institute new Government." (***Declaration of Independence.***) Windsor argues for a modification to laws, if needed. Abolish all immunity in egregious cases such as this, and do not let these judges avoid answering for their illegal acts.

Judge Evan cannot be given immunity for violating Constitutional rights.

WHEN A JUDGE DOES NOT COMPLY WITH THE LAW, SHE IS NOT ACTING AS A JUDGE UNDER THE LAW.

When a judge does not comply with the law, she is not acting as a judge under the law. She does not hold any office for the U.S. because she has failed to meet the federal statutory prerequisites that would support the Constitutional mandate to which all judges shall be bound.

To state a claim under 42 U.S.C.§1983 and ***Bivens***, a plaintiff must allege "the violation of a right secured by the Constitution or laws of the United States and must show that the alleged deprivation was committed by a person acting

under color of ... law." (***West v. Atkins***, 487 U.S. 42, 48 (1988) (citing ***Parratt v. Taylor***, 451 U.S. 527, 535 (1981)).) Windsor did this in the VC.

Judge Evans was personally involved in committing these wrongs. The Third Circuit has held that "[a] defendant in a civil rights action must have personal involvement in the alleged wrongs; liability cannot be predicated solely on the operation of respondeat superior." (***Rode v. Dellarciprete***, 845 F.2d 1195, 1207 (3d Cir.1988); *see* ***Monell v Dep't of Soc. Servs.***, 436 U.S. 658 (1978).) (See also ***Evancho v. Fisher***, 423 F.3d 347, 353 (3d Cir.2005) (citing ***Boykins v. Ambridge Area Sch. Dist.***, 621 F.3d 75, 80 (3d Cir.1980)).) Windsor has alleged personal involvement in the alleged wrongs with particularity in the VC.

WINDSOR HAS NO ADEQUATE REMEDY AT LAW.

Windsor has tried tirelessly to obtain justice. In every instance Windsor's appeals for justice and protection of the laws have been rejected in favor of a cover up of attorney and judicial wrongdoing and protection of the lawbreaking officers of the court. In every instance Windsor's rights, ostensibly protected by the Constitution and the laws, have been scorned, and Windsor's appeals to the authorities have been ignored or rejected with contempt. In every instance where legal actions were filed with the courts, the courts have ignored the crimes. The courts have failed to ever even allow Windsor to be heard and to present his

evidence or examine the evildoers. The courts have never even considered the facts and the overwhelming evidence that Windsor has amassed.

Although evidence of the crimes was provided to Judge Evans and various authorities of the federal government, Judge Evans and officers from these authorities failed to perform their legal duties to investigate. Judge Evans had a statutory duty, the capacity, and the authority, to address the crimes. She willfully failed to act and instead covered up the crimes.

Windsor submits that there are at least eight reasons why judicial immunity does not apply in the instant matter.

REASON #1: JUDGE EVANS HAS COMMITTED FRAUD UPON THE COURTS.

Judge Evans has committed fraud upon the courts. FRCP Rule 60(d) and the Court's Inherent Powers give Windsor the legal right to file an independent action for relief from a judgment and orders due to fraud upon the courts. (Doc.1.) Judge Evans cannot be given judicial immunity for this fraud because Windsor's entire case depends upon his ability to prove the fraud by her.

Judge Evans is an officer of the court. The ***Law Encyclopedia*** defines "officers of the court as "an all-inclusive term for any type of court employee including judges, clerks, sheriffs, marshals, bailiffs, and constables. An attorney is also regarded as being an officer of the court and must therefore comply with court

rules." A federal judge is a federal judicial officer, paid by the federal government to act impartially and lawfully.

Lawmakers did not intend for the term "officers of the court" used in FRCP Rule 60(d) to exclude the primary officers – the judges. If lawmakers intended FRCP Rule 60(d) to pertain only to attorneys and staff members of judges, that is what the lawmakers would have said.

Courts have repeatedly ruled that judges have no immunity for their criminal acts. Since acts complained of in the VC are criminal acts, Judge Evans has no immunity to engage in such acts.

> "Judges have no immunity for crimes committed by them during the terms of their office or prior thereto." ***United States v. Isaacs***, 493 F.2d 1124 (7th Cir.), cert. denied, 417 U.S. 976 (1974); ***United States v. Manton***, 107 F.2d 834 (2d Cir.1938). Nor have the judges any privilege to exclude evidence of crimes committed by them. In ***Manton*** the judge did not even question evidence showing that his opinions favored bribers. No federal official has ever been held exempt from prosecution for his commission of a federal crime.
>
> "Protection against liability for official acts does not extend to criminal prosecutions." ***Imbler v. Pachtman***, 424 U.S. 409, 429, 47 L.Ed. 2d 128, 96 S.Ct. 984 (1976); ***O'Shea v. Littleton***, 414 U.S. 408, 503 (1974); ***Gravel v. United States***, 408 U.S. 606, 627, 33 L.Ed. 2d 583, 92 S.Ct. 2614 (1972.

Fraud upon the courts has been specifically identified to include cases "where the judge has not performed his judicial function." In the underlying

action, Windsor has alleged that Judge Evans has failed to perform judicial functions.

Bulloch v. United States makes it **CLEAR** that fraud upon the courts is a proper action against a judge:

> "Fraud upon the courts is fraud which is directed to the judicial machinery itself. It is where the court or a member is corrupted or influenced or influence is attempted **or where the judge has not performed his judicial function** --- thus where the impartial functions of the court have been directly corrupted." (***Bulloch v. United States***, 763 F.2d 1115, 1121 (10th Cir.1985).) (See also ***United States v. Smiley***, 553 F.3d 1137 (8th Cir.2009); ***Weese v. Schukman***, 98 F.3d 542, 552 (10th Cir.1996); ***Campbell v. Meredith Corp.***, No. 09-3067 (10th Cir.2009).) [**emphasis added**.]

Judge Evans and the attorney Defendants are officers of the court who committed fraud. Whenever any officer of the court commits fraud during a proceeding in the court, he/she is engaged in "fraud upon the courts."

> "Fraud upon the courts" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is **a fraud perpetrated by officers of the court** so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." (***Kenner v. C.I.R.***, 387 F.3d 689 (1968); 7 ***Moore's Federal Practice***, 2d ed., p. 512, ¶ 60.23.) (See also ***Lockwood v. Bowles***, 46 F.R.D. 625, 631 (D.D.C.1969).) [**emphasis added**.]

Under Federal law, when any officer of the court has committed "fraud upon the courts," the orders and judgment of that court are void, of no legal force or effect. (See ***Cobell v. Norton***, 226 F.Supp.2d 1 (D.D.C.2002).)

> "Fraud upon the courts" makes void the orders and judgments of that court. It is also clear and well-settled law that **any attempt to commit "fraud upon the courts" vitiates the entire proceeding**. ***The People of the State of Illinois v. Fred E. Sterling***, 357 Ill. 354; 192 N.E. 229 (1934); ***Allen F. Moore v. Stanley F. Sievers***, 336 Ill. 316; 168 N.E. 259 (1929); ***In re Village of Willowbrook***, 37 Ill.App.2d 393 (1962); ***Dunham v. Dunham***, 57 Ill.App. 475 (1894), affirmed 162 Ill. 589 (1896); ***Skelly Oil Co. v. Universal Oil Products Co.***, 338 Ill.App. 79, 86 N.E.2d 875, 883-4 (1949); ***Thomas Stasel v. The American Home Security Corporation***, 362 Ill. 350; 199 N.E. 798 (1935); ***Manufacturers Hanover Trust Co. v. Yanakas***, 7 F.3d 310 (2nd Cir.1993).) [**emphasis added**.]

Windsor respectfully submits that a judge cannot be given immunity for committing fraud upon the courts. There is no precedent in the Supreme Court or the DC Circuit or Eleventh Circuit on this issue.

REASON #2: DEFENDANTS HAVE VIOLATED WINDSOR'S CONSTITUTIONAL RIGHTS.

The Defendants have violated Windsor's Constitutional rights: First Amendment Right to petition; Fifth Amendment right to due process; Sixth Amendment right to a fair trial; Seventh Amendment right to a trial by jury; Ninth Amendment right to fundamental rights; Fourteenth Amendment right to due process. Judge Evans committed crimes for the purpose of depriving Windsor of his Constitutional rights. There is no immunity.

> In ***O'Shea v. Littleton***, 414 U.S. 488, 503 (1974), the Supreme Court stated: Whatever may be the case with respect to civil liability generally, see ***Pierson v. Ray***, 386 U.S. 547, 18 L.Ed. 2d 288, 87 S.Ct. 1213 (1967), or civil liability for willful corruption, see ***Alzua v. Johnson***, 231 U.S. 106, 110-111, 58 L.Ed. 142, 34 S.Ct. 27 (1913); ***Bradley v. Fisher***, 80 (13 Wall.)

U.S. 335, 347, 350, 354, 20 L.Ed. 646 (1872), **we have never held that the performance of the duties of judicial, legislative, or executive officers, requires or contemplates the immunization of otherwise criminal deprivations of constitutional rights**. Cf. ***Ex parte Virginia***, 100 U.S. 339, 25 L. Ed. 676 (1880). On the contrary, the judicially fashioned doctrine of official immunity does not reach "so far as to immunize criminal conduct proscribed by an Act of Congress...." ***Gravel v. United States***, 408 U.S. 606, 627, 33 L.Ed. 2d 583, 92 S.Ct. 2614 (1972). (***United States v. Gillock***, 587 F.2d 284 (6th Cir.1978).) [**emphasis added**.]

REASON #3: WINDSOR HAS BEEN DENIED DUE PROCESS

Windsor has been denied due process; this has continued through MIST-1.

Denying Windsor access to important records, evidence, and witnesses and mistreating Windsor as a pro se party are violations of due process and equal protection. The Defendants violated Windsor's civil and constitutional rights under color of law.

> "The Due Process Clause serves two purposes...One is to produce, through the use of fair procedures to prevent the wrongful deprivation of interests; ...the other is a guarantee of basic fairness, i.e.: to make people feel that they have been treated fairly."
>
> "[t]rial before an 'unbiased judge' is essential to due process." ***Johnson v. Mississippi***, 403 U.S. 212, 216 (1971); accord ***Concrete Pipe & Prods. V. Constr. Laborers Pension Trust***, 508 U.S. 602, 617 (1993) "due process requires a neutral and detached judge in the first instance." (citation omitted)
>
> See also ***Levine v. United States***, 362 U.S. 610, 80 S.Ct. 1038 (1960), citing ***Offutt v. United States***, 348 U.S. 11, 14, 75 S. Ct. 11, 13 (1954); ***Mathews v. Eldridge***, 424 U.S. 319, 344 (1976); ***Peters v. Kiff***, 407, U.S. 493, 502 (1972); See ***Marshall v. Jerrico, Inc.***, 446 U.S. 238, 100 S.Ct 1610 (1980).)

REASON #4: JUDGES DO NOT HAVE IMMUNITY FROM CRIMINAL ACTS.

As detailed above, judges do not have immunity from criminal acts. Windsor submits that Judge Evans has violated many criminal laws. Windsor has sued for RICO, and Windsor has identified a number of predicate criminal acts.

The 2005 case of Judge Mary Waterston has some similar facts to the underlying case.

> "In relation to a 2005 cocaine case, presiding Judge Mary Waterstone was charged with conspiracy, perjury, subornation of perjury, and misconduct in office. Judge Waterstone's attorney filed a motion to dismiss the charges on the ground that a judge's rulings during a trial, even if wrong, cannot be the basis for a criminal prosecution. That argument would have merit under most circumstances. If a judge could be prosecuted for getting the law wrong, nearly all judges would be criminals. Judges have immunity from civil liability for decisions they make from the bench, and Waterstone's lawyers argue that the policy underlying immunity -- protecting judicial independence -- should apply to criminal prosecutions that are based on a judge's judicial rulings. But **Waterstone didn't just make a bad ruling; she conspired with a prosecutor who suborned perjury to conceal the perjury, and in the process assured the violation of an accused person's due process right to a fair trial and to the disclosure of exculpatory evidence**. The government's position is the fact that she wore a robe while doing so should not excuse her criminal conduct. The integrity of the criminal justice system depends upon lawyers and judges playing by the rules -- particularly rules that prohibit the knowing submission of untruthful testimony to juries. If anything, **it is more detrimental to justice for a judge, whose duty is to remain impartial, to conspire to suborn perjury than it is for a lawyer, whose job is to act as an advocate**." (http://www.foxnews.com/story/0,2933,510391,00.html) [**emphasis added**.]

Windsor asked the U.S. government to investigate Judge Evans and other defendants for perjury and wrongdoing. Nothing was done. They acquiesced. They are liable. Judge Evans has excluded evidence of crimes. She has pretended the evidence doesn't exist, and she has told the appellate courts that the evidence doesn't exist. Judge Evans suborned the perjury of Maid and Maid's Attorneys.

REASON #5: DEFENDANTS ARE MEMBERS OF AN ENTERPRISE INVOLVED IN RICO VIOLATIONS.

Defendants are members of an enterprise involved in RICO violations. Judge Evans is an indispensable parties to this litigation.

RICO is the only vehicle for a citizen to take legal action over criminal violations. Judges should not have immunity in a RICO action in which the judges have committed crimes and are named as enterprise participants. Windsor has not found any case law to indicate that judges may be given immunity for criminal acts or RICO violations in which the predicate acts are criminal acts. If a judge has no immunity from criminal acts, it makes no sense at all for them to have immunity from criminal acts in a civil RICO action since citizens do not have the right to take criminal action against a judge. Judicial immunity does not apply to criminal violations, and one of the basic tenets used to justify judicial immunity is that there is supposed to recourse against corrupt judges. So, RICO actions must be allowed.

There is no Supreme Court, DC Circuit, or Eleventh Circuit precedent against including judges in RICO actions.

REASON #6: JUDGE EVANS HAS BEEN ACTING WITHOUT JURISDICTION.

Judge Evans has been acting without jurisdiction.

REASON #7: JUDGES DO NOT HAVE IMMUNITY FOR NON-JUDICIAL ACTS.

As discussed above, judges do not have immunity for non-judicial acts.

Judge Evans has committed many acts that are not judicial. For example, perjury and obstruction of justice are not judicial acts.

REASON #8: THERE MUST BE RECOURSE AGAINST CORRUPT JUDGES.

Bradley v. Fisher's justification for immunity was premised on the existence at that time of legal recourse against corrupt judges. As Windsor has explained above, he has been denied any form of recourse. As he has proven a prima facie case against Judge Evans, this civil action must be allowed to move forward to ultimately let a jury decide.

The Response to the so-called "Motion to Dismiss" of the other Defendants is incorporated herein.

WHEREFORE, Windsor respectfully requests that the Court do as follows:

(1) grant this Motion;

(2) grant Windsor an extension of time to respond to the Motion to Dismiss of the USA and Judge Evans;
(3) issue a Continuance until October 15, 2010 or when Windsor informs the Court that his eye problems have been resolved;
(4) issue an order stating that the Court will establish response dates on pending motions at the time the Continuance expires;
(5) deny the Motion to Dismiss of the USA and Judge Evans; and
(6) grant such other relief as the Court deems appropriate.

Respectfully submitted, this 18th day of August, 2010.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WILLIAM M. WINDSOR,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO:
	)	
UNITED STATES OF AMERICA,	)	1:09-CV-02027-WSD
JUDGE ORINDA D. EVANS,	)	
HAWKINS PARNELL THACKSTON	)	
YOUNG, CARL HUGO ANDERSON,	)	
PHILLIPS LYTLE, LLP,	)	
CHRISTOPHER M. GLYNN,	)	
TIMOTHY P. RUDDY,	)	
ROBERT J. SCHUL,	)	
JUDITH L. BERRY,	)	
MAID OF THE MIST	)	
CORPORATION,	)	
MAID OF THE MIST	)	
STEAMBOAT COMPANY, LTD.,	)	
SANDRA CARLSON,	)	
MARC W. BROWN,	)	
ARTHUR RUSS.	)	
AND DOES 1 TO 100,	)	
Defendants.	)	
	)	

CERTIFICATE OF COMPLIANCE

As required by Local Rule 7.1D, N.D. Ga., I hereby certify that this pleading has been prepared in Times New Roman 14-point font, one of the font and point selections approved by this Court in Local Rule 5.1B, N.D. Ga.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WILLIAM M. WINDSOR,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO:
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JUDGE ORINDA D. EVANS,	)	
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STEAMBOAT COMPANY, LTD.,	)	
SANDRA CARLSON,	)	
MARC W. BROWN,	)	
ARTHUR RUSS.	)	
AND DOES 1 TO 100,	)	
Defendants.	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing RESPONSE TO MOTION TO DISMISS OF THE USA AND JUDGE EVANS by depositing the same with the United States Postal Service with sufficient postage and addressed as follows:

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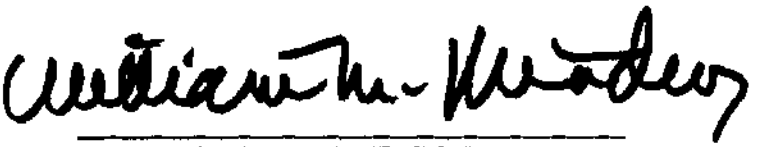
This 18th day of August, 2010.



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