

{ 2012 08 08 }

/// Judicial “Hyperactivity” at the Federal Circuit

Judicial powers running amok next door to The White House?

Donna Kline *Now!*



/// Donna Kline is a reporter for *Pittsburgh Business Report* and a former reporter for *Bloomberg* New York.

LEADER V.

FACEBOOK PRESS

BACKGROUND

1. Brief Summary (PDF)
2. Backgrounder (PDF)
3. Facebook Secrets (PDF)
4. Instagram-scam? (PDF)
5. USPTO-gate? (PDF)
6. Zynga-gate? (PDF)
7. Insider Trading (PDF)
8. Discipl. Compl. (PDF)

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This blog has become a grassroots effort. My *Leader v. Facebook* patent infringement

BY DONNA KLINE August 7, 2012 *PITTSBURGH BUSINESS REPORT (PBR)* — Updated Aug. 17, 2012 (New false statement identified—right sidebar)



Aug. 15, 2012
1:41 PM EDT
Update—

Readers should know that the Federal Circuit’s docket site for *Leader v. Facebook* has been going up and down like a yo-yo (working and not working) over the last month. Today it

is displaying garbage data instead of the *Leader* docket. Do not be surprised when one of Clerk of Court Jan Horbaly’s excuses for not posting Dr. Lakshmi Arunachalam’s motions is their “website technical problems.” Such excuses can be classic bureaucrat excuses for hiding shenanigans. Remarkably, other PACER (federal court) sites are working fine. By the way, my techie friends tell me all it takes to cause a site to have “problems” is to misplace one comma on one line of program code. Whoops, did I delete that comma? Bwaaaahahahaha.

Breaking News! Shocking news from a Clerk of Court staff member – Valerie White – who has told a participant in OPERATION SPOTLIGHT that Dr. Lakshmi Arunachalam’s motions are not being logged as having ever been received! We’re digging in to this story now. [A Comment has been posted \(below\)](#) with information on how to telephone the Clerk’s office to make your own inquiry. Keep good records of your contacts with the Clerk’s office. Here’s a separate page with Steve’s comment so you can send it to others separately <http://www.donnaklinenow.com/steve-williams-conversation-with-valeri-white>.

Judges in a democracy need to be above reproach. A citizenry needs to be confident when they bring

Breaking News, Aug. 13, 2012
Disciplinary Complaint Filed Against The Federal Circuit At The U.S. Supreme Court
Former Sun Microsystems executive calls Federal Circuit’s *Leader v. Facebook* opinion a “train wreck,” files misconduct complaint at U.S. Supreme Court; alleges bias, conflicts of interest, foreign influence and breach of due process.

Updates Aug. 17, 2012:

1. More disciplinary complaints filed at the Washington D.C. Bar today

(Aug. 16, 2012)—In addition to her U.S. Supreme Court complaint (linked above), Dr. Lakshmi Arunachalam today filed more disciplinary complaints at the Washington D.C. Bar against the Federal Circuit (linked below). She is providing copies of these complaints to the House and Senate Judiciary Committees in addition to the media:

- Judge [Randall R. Rader](#),
- Judge [Alan D. Lourie](#),
- Judge [Kimberly A. Moore](#),
- Judge [Evan J. Wallach](#), and
- Clerk of Court [Jan Horbaly](#).

While preparing this update, we received the following news:

interview ([click here](#)) has mushroomed into a *major investigation*. Will you donate to the cause? Your donations will enable me to sustain this important news effort. Thank you! MEEP MEEP — Donna

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PREVIOUS POSTS

/// Judicial

“Hyperactivity” at the Federal Circuit

/// Hijinks At The High Court

/// Industry Leader Blasts Facebook’s Predatory Conduct

/// Facebook counterfeit from inception?

/// Leader filed petition for rehearing today

/// The Facebook Debacle – More Undisclosed Insider Secrets

/// Facebook IPO – Is the bubble over before it started?

/// Federal Circuit violates most basic tenents of GROUP ONE vs. HALLMARK CARDS re. validity of “on sale bar” evidence

/// Congratulations, Facebook. See you at the Supreme Court?

/// Are Facebook insiders mocking the Business Judgment Rule?

/// James W. Breyer’s tangled web of insider trading – AKA – “You’ve been Breyered”

/// Wal-Mart – Zynga

disputes to the court that [fairness](#) and [equity](#) will guide the proceedings. Our judges are vested with the power to make decisions as long as they are without [bias](#) and follow the law. When bias and disregard for the laws creep in, rulings are tainted, public trust is destroyed and justice is the victim. Judicial bias generates *only* bad results.

[Leader v. Facebook a poster child for Federal Circuit hyperactivity?](#)

Is the [Leader v. Facebook](#)[1] case a poster child for “Judicial Hyperactivity” at the Federal Circuit?[2] Decide for yourself:

1. Judges Lourie and Moore failed to disclose Facebook investments; those investments include close associations to Russian government leaders and oligarchs;
2. Russian oligarch Juri Milner has 20-year ties to Lawrence Summers, Obama bailout chief, former Treasury Secretary, former Harvard President (during Zuckerberg’s hacking) and former World Bank Chief Economist
3. Russian oligarch has 20-year ties to Sheryl Sandberg, Facebook COO
4. Clerk Horbaly and Judge Rader failed to disclose substantial extra-judicial associations with Facebook attorneys
5. Judge Rader and other judges failed to disclose prior associations with Leader witness Professor James P. Chandler on the very subject matter of this case
6. Court decisions were timed to media events favorable to Facebook
7. The Court denied *amicus curiae* motions without time to consider the motions
8. Jury Instruction 4.7 was confusing and fails to address basic law for on sale bar
9. Interpretation of Interrogatory No. 9 violated The Dictionary Act on use of tense
10. The Court ignored the legal basis of the appeal: clear and convincing evidence
11. The Court ignored new evidence that Facebook withheld evidence
12. The Court fabricated a new substantial evidence argument not argued or briefed by the

2. The Federal Circuit is in damage control; issues today a stunningly defensive 4-page denial to Dr. A.

Hallelujah! They found the motions that they never received! But wait, maybe not; still not sure. Court still has not posted the motions (but has posted the denials). Docket is still spewing junk.

In another stunning development yesterday, the court issued a 4-page *denial* of Dr. A’s renewed motion ([here the court’s denial](#)) posted on their website, but not yet provided to Dr. A. Here again, the court is denying a motion that Clerk staffer Valerie White said last week that they “had no record” of ever receiving (its linked in two places in this post). What is even more stunning is that this is *four more pages* than Leader received in the denial of their petition! (Leader received no explanation.)

CYA? You decide.

The court appears to be in damage control. As expected, they continue to play games with *form over substance*. Their arguments are defensive, incomplete and unconvincing. They are choosing to count words and pages rather than dispense justice. For example, they complain about word and page counts and filing times. Since an *en banc* hearing was not ordered, the court’s citing of Rule 35(g) is itself out of order—just proving that when a court wants to obfuscate, they will cite some rule... *any* rule, to throw the great unwashed off the track. However, their own Rule 29(d) *permits* longer briefs and later filings if *they* choose (for their friends?). So the bottom line is this court is attempting to avoid the substance of Dr. A’s arguments by citing petty, inconsequential procedures—procedures that they can *waive any time they like*.

Judicial Canons Misrepresented?

Judicial corruption experts tell me that the court’s citing of Canon 3 C (3) (c) (i) of the Code of Conduct for U.S. Judges ([online version](#) | [pdf version](#)) to justify their widely-publicized Facebook holdings in mutual funds is misleading. In other words, they cited a letter of the law, but missed its proper application in this set of circumstances. Instead, they’re acting like its no big deal. This isn’t just any “case brought before them” as the court states so dismissively. This case involves the largest tech IPO in history—an IPO that occurred during this court’s watch! What the court carefully failed to point out is the law’s new rules instructing judges to *disqualify* themselves even if their conduct and objectivity in the case *looks* questionable. Some of our Commenters have started citing those cases ([here](#) and [here](#)), so I won’t repeat them here. Why would the second highest court in the land *intentionally* misconstrue the laws on conflicts of interest? Are we now not to rely upon

– Facebook: Oh, the webs we weave
/// Facebook forces reexam order of Leader's patent through USPTO Director's office in wake of Instagram controversy
/// Instagram-scam?
/// Facebook's Orwellian (black-white) definition of "clear and convincing" evidence
/// Facebook countersues Yahoo with bogus patents? Confirms reckless mindset.
/// Facebook "Liked" Leader's source code ... before it didn't
/// Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook
/// MF Global + JP Morgan + Goldman Sachs + Harvard Grads + Politics = A big mess
/// What Facebook, Accel Partners, Goldman Sachs and Fenwick & West don't want us "muppets" to know
/// Make up your mind, Fenwick & West LLP
/// Muppet Mania
/// Haughtiness in the face of "literal infringement"
/// Facebook ordered pharma users to allow comments, yet will not return phone calls now
/// First thoughts after leaving courthouse March 5, 2012
/// Judges Selected
/// San Francisco CBS-TV KPIX Coverage
/// NBC-TV4 (Columbus) Interview with Leader founder

- parties
13. The Court ruled against its own substantial evidence argument
 14. The Court created new evidence never put before the jury
 15. The Court even failed to apply its own precedents to test the evidence it selected for consideration
 16. Clerk failed to respond to FOIA requests to disclose conflict of interest checking procedures within the court
 17. Clerk of Court acting outside his job description and assuming a judicial role
 18. Clerk of Court disconnects overnight the phone extension of a staffer who candidly answered questions about *Leader v. Facebook* docketing anomalies; namely why Dr. Arunachalam's original *amicus curiae* brief was received and denied on the same day, July 11, 2012, but the motion which was denied has never been made available on the docket for public review

The Clerk of Court staffer, Valerie White, said that it is impossible that Dr. A's *amicus brief* was received and denied the same day. She said the judges would not have had time to get it much less consider it. She seemed concerned and puzzled by the revelations. She asked for this website to see the documents. Here's the [USPS delivery receipt](#), here is the [Amicus Curiae Brief](#), here is the [Order denying the motion](#) ... all on the same day, July 11, 2012. Ms. White said "that can't be accurate ... wouldn't allow the judges time."

Do These Facts Pass The "Ordinary Person In The Streets" Test For Conflicts of Interest and Propriety?

Court Has "No Record" Of These Motions as of Aug. 8, 2012

(Docket Snapshot as of Aug. 10 2012 12:53AM) (Compare 7/11/2012 entry now to previous entry hurriedly entered on 7/11/2012; the same day the motion was received; names not capitalized and "Leave" spelled "Leaave")

Here are Dr. Arunachalam's three (3) motions and letter to Clerk of Court Jan Horbaly for which his staffer Valerie White told Steve Williams on Aug. 8, 2012 that they

interest in justice?

These experts point out another canon that *does not* support the court's intransigence, namely Canon 3 C (1) (a), which expressly states that "(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which: (a) the judge has a personal bias or prejudice concerning a party." This canon directs these judges to *disqualify* themselves because of their relationships and likely biases regarding their cozy relationships with Facebook's attorneys and with Leader's former director and patent attorney Professor James P. Chandler. If the newer "smell test" law regarding conflicts does not apply to *Leader v. Facebook*, during the largest tech IPO in history, then when would it apply? Is this another case of a "hyperactive" Federal Circuit making laws up on the fly? The court has so far avoided answering questions about their conflicts-checking procedure.

The law also says that civilian *pro se* filers like Dr. A. are to be granted procedural latitude. Not in this court apparently. In any event, they mis-cited their Rule 35(g) since they had not invoked that provision by ever inviting amicus briefs. Dr. A. was simply asking the court to consider their mistakes on her own initiative. Dr. A. filed an accompanying motion to file the brief as it was presented, so this court's choice to say "no, we're not interested in what you have to say because we don't like the number of words you used," is stunning in and of itself. This court evidently has no interest in being shown the error of its ways by laypeople like Dr. A.

False statement #1; court fabricates a "defect"

The court spends a whole paragraph on an easily proven false statement. They say that Dr. A. did not include a "certification that the purported amicus has no financial ties to any party in the case" However, *she did. It's PAGE "ii" of the brief right after the title page!!!* [Here it is](#) (Geesh, why can I find this stuff and the second highest court in the land cannot?)

False statement #2: Dr. A's brief was "moot"

The court stated "An earlier such *amicus curiae* brief [filed July 11, 2012] was denied entry by the court as moot because the court had already denied Leader's petition for rehearing." Here is the rub. Leader's petition was not denied until [July 16, 2012](#) (announced by this court on-air on *Fox Business*) Dr. A. filed her brief on July 11. Therefore, the public record proves that the court is lying. Perhaps this explains all the typos in the hurriedly filed entry on July 11? Dr. A. had preempted their scheme to deny Leader's hearing and therefore, her July 11 filing was still in play. They couldn't render her motion moot since their denial of Leader's petition had not yet occurred! Whoops.

Generated by [Leader's Fifth and 48th](#) 11/7/2012 3:02:18 PM
URL: <http://www.donnakinenow.com/investigation/judicial-hyperactivity-at-the-federal-circuit>

Michael McKibben
/// How Facebook tricked the jury – *YouTube*
/// New friends?
/// Did Someone Prod the Media?
/// Facebook: The New ‘Too Big To Fail?’
/// Big trouble ahead for the Facebook IPO? – PBR / *YouTube*
/// What happens on March 5th, 2012?
/// More on FB’s S-1 omissions & other conflicts of interest
/// Big trouble ahead for Facebook IPO? Backgrounder
/// My take on the MF Global debacle: It could have been a customer
/// Comments on EU reform announced Oct 27, 2011
/// Post Crackdown Update
/// Thoughts on rating agency S&P
/// Japan’s Debt Rating Cut to AA-
/// The Truth Behind Quantitative Easing? Ask Japan.
/// Reaching target?
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/// Panem et Circenses
/// Wrap up to the week
/// Stocks struggle as Treasuries lead the way
/// Business videos worth watching
/// Still hovering around pivots – A breakout coming?
/// Interest rates make new lows, stocks

“have no record” of ever receiving any of them; despite delivery receipts and court orders denying them. Is the court itself trying to hide behind this unconscionable sloppiness to avoid addressing the material conflicts of interest proven in Dr. A’s motions, not the least of which are judicial investments in Facebook, undisclosed associations with a key witness, tight relationships to Facebook attorneys and questionable associations to Russian oligarchs? You decide.

1. July 10, 2012, **NOT DOCKETED**, [Motion & Brief of Amicus Curiae Lakshmi Arunachalam, PhD, Proof of Delivery](#) (July 11, 2012 10:52 AM)
2. July 18, 2012, **NOT DOCKETED**, [Motion for Reconsideration of Amicus Curiae Brief, Proof of Delivery](#) (July 19, 2012 10:46 AM)
3. July 27, 2012, **NOT DOCKETED**, [Renewed Motion for Leave to File Amicus Curiae Brief, Proof of Delivery](#) (July 30, 2012 7:16 AM)
4. July 27, 2012, **NOT DOCKETED**, [Letter to Clerk of Court Jan Horbaly, Proof of Delivery](#) (July 30, 2012 7:16 AM), not answered as of Aug. 10, 2012

But, The Court Does Have A Record Of DENYING Motions It Says That It Does Not Have. Huhhhh???

1. July 11, 2012, **DOCKETED**, [Order DENYING Dr. Arunachalam’s Amicus Brief Motion](#) (document not available on the court’s website)
2. July 24, 2012, **NOT DOCKETED**, [Order DENYING Dr. Arunachalam’s Reconsideration Motion](#)

Amendment Due Process Rights?

The court is silent on Dr. A’s emphasis that the court denied Leader their Fifth and Fourteenth Amendment rights to due process. When the court created and denied its own substantial evidence argument (and utterly ignored Leader’s clear and convincing evidence argument), it denied Leader the opportunity to confront its accuser, which was then the Federal Circuit itself. Such fundamental American rights are unimportant when the court is busy excusing its misconduct by misrepresenting the circumstances and the law?

This court defends the right to appear bias

They spend a half-page justifying why the well-publicized T.Rowe Price and Fidelity Contra-Fund holdings in Facebook enjoyed by Judges Moore and Lourie are not a conflict. They totally ignored Dr. A’s citing of law on “judges need to flee even the *appearance* of impropriety.” They say the Facebook-friendly timing of their decisions were pure coincidence (yeh, right). Finally, they justify their cozy relationships with Facebook attorneys by citing general rules. Here again, they ignore Dr. A’s citing of the “average person” law. That law says that if something looks like a conflict to the average person on the streets, then that judge should disqualify himself or herself.

Does it pass the “smell test?”

Flip Wison said “The Devil made me do it.” Tommy Flannagan said, “Yhhhhhe, that’s the ticket.” Bernie Madoff asked, “Is that wrong?” Mark Zuckerberg is attempting to make lying and cheating “the new normal.” These judges quote general laws that they know all have exceptions when those rules don’t pass the “smell test.” Ask yourself, “Does this denial pass the smell test?”


Truth is, Dr. A’s renewed motion is a much more thorough treatise on judicial conflicts of interest than this “don’t bother us, we’re above this” opinion. These judges are trying to dismiss the substance of Dr. A’s arguments and evidence with arrogance and petty procedural whitewash. Will the Washington D.C. attorney-judge club circle the wagons around the Federal Circuit, or around justice? Time will tell. OPERATION SPOTLIGHT continues.

Wow. Stay tuned.

Table of Leader v. Facebook Appeal Posts & Filings

still holding 'Death
Cross' gains

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record" of receiving? How can the Court deny the *amicus curiae* brief motion within hours of receiving it on July 11, 2012; especially since staffer Valerie White says such swiftness is just not possible? Also, the page count excuse on the July 24, 2012 Order is a red herring since the motion was only six (6) pages and the Rules permit 20 pages for motions—the Court is mis-citing its own rules. In any event, *pro se* filers are to be given latitude; no such grace in this court—only punishment for laypeople who dare to enter the inner sanctum? The "filed out of time" excuse is also a red herring since the Court's denial of Leader's petition on July 16, 2012 (timed a few hours ahead of [Michael McKibben's nationally televised interview on Fox Business](#) where he was informed about the denial on-the-air by the Fox interviewer) had not permitted adequate time for the parties to respond to Dr. Arunachalam's July 11, 2012 motion (we think this is why they rushed everything—they had not planned on Dr. A's *amicus curiae* brief nuisance). So the Court itself jumped the gun. Finally, since the Court jumped the gun, Dr. A's filing cannot be moot as the order states. Strangely, two weeks later, the Court has still not docketed this order. This is more clerk negligence in dramatic fashion.

Readers are reminded that the Court's original decision not to overturn the jury was announced the same day Facebook began its public offering road show. Bottom line is that the Court's announcements of their two key decisions against Leader were *perfectly* timed to accommodate Facebook media needs. Clerk of Court Jan Horbaly has cozy undisclosed relationships with Facebook's attorneys, as does Chief Judge Randall Rader; not to

1. [Leader's Appeal \(White Brief\)](#)
2. [Facebook's Response \(Red Brief\)](#)
3. [Leader's Reply \(Gray Brief\)](#)
4. [March 5, 2012 Hearing in Wash. D.C.](#)
5. [Federal Circuit's Decision](#)
6. [Leader's Petition for Rehearing](#)
7. [Amicus Curiae Lakshmi Arunachalam, Ph.D. Brief \(Green Brief\)](#)
8. [Amicus Curiae Motion for Reconsideration](#)
9. [Amicus Curiae Lakshmi Arunachalam, Ph.D. Renewed Motion](#)

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13. [Facebook's Orwellian \(black-is-white\) definition of "clear and convincing" evidence](#)
14. [Facebook "Liked" Leader's source code ... before it didn't](#)
15. [Proof Fenwick & West LLP did not disclose Leader as prior art to Facebook](#)
16. [MF Global + JP Morgan + Goldman Sachs + Harvard Grads + Politics = A big mess](#)
17. [What Facebook, Accel Partners, Goldman Sachs and Fenwick & West don't want us "muppets" to know](#)
18. [Haughtiness in the face of "literal infringement"](#)

Federal Circuit
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mention undisclosed Facebook stock held by the various judges, and questionable associations with the Russian government facilitated by former Obama bail-out director Lawrence Summers and Facebook COO Sheryl Sandberg.

"Judicial hyperactivity erodes confidence in the courts"

Authors William Rooklidge and Matthew Weil use the term "judicial hyperactivity" to describe Federal Circuit misconduct, the same misconduct that we are seeing in living color in *Leader v. Facebook* (Fig. 2 below).[2] Another empirical study by Ted Field, just published by the *University of San Francisco Law Review* on Jan. 12, 2012, also shows that the Federal Circuit is dramatically overstepping its bounds.[3]

In conclusion, this study tends to confirm what practitioners, judges, and commentators have suspected for a long time—that the Federal Circuit is more judicially hyperactive than other circuits. As warned by William C. Rooklidge and Matthew F. Weil, judicial hyperactivity tends to "increase unpredictability and uncertainty, erode confidence in the courts, and ultimately encourage more unmeritorious appeals." The purpose of this study was to use empirical data to either confirm or refute the widely held belief that the Federal Circuit is a judicially hyperactive court. This study succeeded in empirically demonstrating that this widely held belief is likely true. Therefore, this study replaces mere anecdotal evidence with actual empirical evidence that supports the notion that the Federal Circuit is a judicially hyperactive court.

A Dictatorship on Lafayette Square?

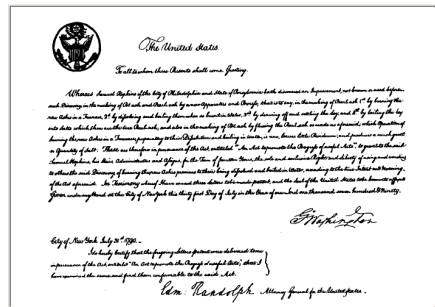


Fig. 1 – President George Washington signed the first U.S. patent on July 1, 1790. The Federal Circuit appears ready to abandoned these sacred property rights in a hyperactivity that is ignoring due process. (The right to confront one's accuser.

When the Federal Circuit creates new arguments and evidence without being fully briefed, it violates fundamental Due Process rights guaranteed by the Fifth and Fourteenth Amendments). Such activity is tantamount to decisions by fiat that one would expect to see in a totalitarian regime.



In plain English, the Rooklidge-Weil essay describes, and Field's study verifies, an almost dictatorial Federal Circuit with little accountability, located in chambers adjacent to The White House on Lafayette Square. America's founding fathers knew that such unchecked power deteriorates into corruption and abuse like we are seeing in *Leader v. Facebook*.

* * *

Most of us have heard the phrase "judicial activism" — judges overstepping their bounds and attempting to make law from the bench. As a hypothetical example, sometimes courts use the excuse that a law that mentions overuse of buggy whips must be reinterpreted for the modern world. Strict constructionists would argue that the need for laws to control speeding haven't changed, and that a horse-loving judge should not use a law that mentions the use of buggy whips as an opportunity to write new law about animal cruelty.

"Judicial Hyperactivity" is an extreme form of judicial activism where an appeals court gets bored with its corrective role, ignores existing law, and acts by pure fiat with no concern for precedent, injecting nothing but uncertainty into the legal process. *Leader v. Facebook* is a poster child for the Federal Circuit's judicial hyperactivity.

Has the Federal Circuit become a House of Lords, accountable to no

government body?

The Federal Circuit was established in 1982 by Congress to foster uniformity in the enforcement of patent law and is accountable only to the Supreme Court. Its jurisdiction is defined by 28 U.S.C. 1295 (1994). However, since the Supreme Court hears so few cases, practically speaking, the Federal Circuit appears to be an unaccountable House of Lords attached to the White House.

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OPINION

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national and international laws.

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History tells us that such regal bodies are susceptible to influence peddling. The Federal Circuit has few checks and balances and it is managed by a sort of "Executive" Clerk of Court who operates more like a monarch. This unelected and unappointed monarch is now even signing opinions and orders—even though by law his duties are restricted to "nonjudicial activities," according to the Federal Judicial Center.^[4]

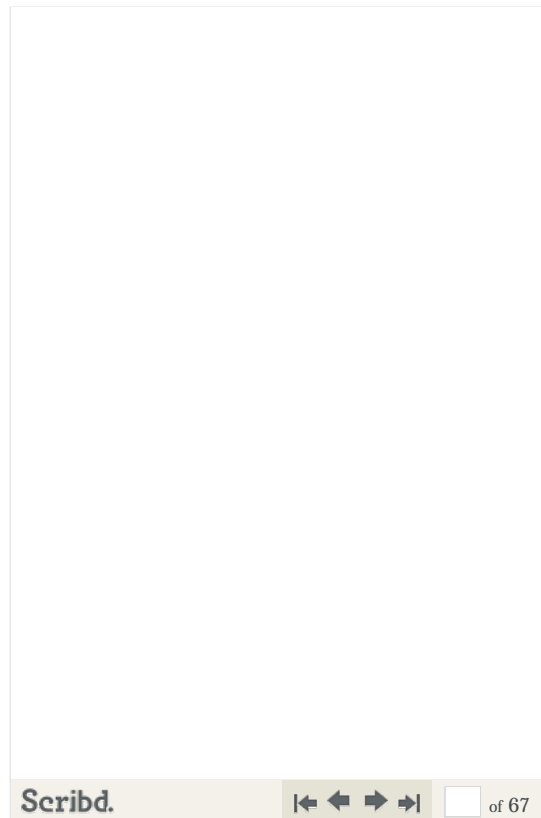
The Federal Circuit is currently conducting itself like a totalitarian judicial fortress within a stone's throw of The White House.

Totalitarianism uses the court system to perpetuate power. A totalitarian court ignores the written law and makes up rules capriciously, generally at the direction of a strong central figure. Such capriciousness leaves the populace guessing and allows the legal process to degenerate to one of influence peddling and bribery.

Will the Supreme Court use the Leader appeal in *Leader v. Facebook* to discipline the misconduct overflowing from the Federal Circuit? Is the Federal Circuit an American court run amok?

– End –

[Judicial Hyperactivity in the Federal Circuit: an Empirical Study](#)
by Ted L. Field, Univ. of San. Fran. Law ...



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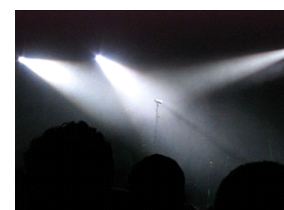
Fig. 2 – "Judicial Hyperactivity: The Federal Circuit's Discomfort with Its Appellate Role; Rooklidge, William C.; Weil, Matthew F." Univ. of California, Berkley, 15 *Berk. Tech. L.J.* 725 (2000). Accessed Aug. 4, 2012.

OPERATION SPOTLIGHT continues.

[Here is a new FAIR Media Contact List](#) for your OPERATION SPOTLIGHT activity (networks, cable television, national radio programs, national newspapers, magazines, newsservices and wires). It's a very good list. [Here's the previously compiled OPERATION SPOTLIGHT CONTACT LIST.](#)

[Here's one sample OPERATION SPOTLIGHT Letter.](#)

See a [NEW OPERATION SPOTLIGHT LETTER](#) being proposed to be sent to President Obama, Mitt Romney, Ohio Senate candidates in Leader Technologies' district, and key media regarding *Leader v. Facebook* and American property rights.



**OPERATION SPOTLIGHT -
Industry Expert Says
American Property Rights
Are Threatened**

Here is Dr. Arunachalam's motion sent today via U.S. Express Mail. You can track the delivery yourself (EI 081 023 653 US) online at [USPS Track & Confirm](#).

[Here is Dr. A's Motion For Reconsideration](#) that was just denied on July 24, 2012 . . . in record time. Who can believe the judges are even reading these motions? It would appear that Clerk of Court Jan Horbaly rules the roost.

Federal Circuit Advisory Council: <http://www.ca9.uscourts.gov/the-court/advisory-council.html>

Contacting the Congress

Official addresses and phone numbers for Members of the U.S. Congress

Footnotes:

¹ *Leader Technologies, Inc., v. Facebook, Inc.*, 08-cv-862-JJF-LPS (D.Del. 2008) and *Leader Tech v. Facebook*, Case No. 2011-1366 (Fed. Cir.).

² "Judicial Hyperactivity: The Federal Circuit's Discomfort with Its Appellate Role; Rooklidge, William C.; Weil, Matthew F." *Univ. of California, Berkley*, 15 Berk. Tech. L.J. 725 (2000). Accessed Aug. 4, 2012
<<http://www.law.berkeley.edu/journals/btlj/articles/vol15/rooklidge.pdf>>.

³ Field, Ted L., 'Judicial Hyperactivity' in the Federal Circuit: An Empirical Study (January 22, 2012). *Univ. of San Francisco Law Review*, Vol. 46, 2012. Available at SSRN: <<http://ssrn.com/abstract=1990014>>. Note: Mr. Field's document has been published by the *Social Science Research Network (SSRN)*, presumably preempting the request to author's request to seek permission for citations and quotes; a request that was presumably contained on the pre-release versions and not intended to be included on the published version. This site will reach out to Mr. Field nonetheless.

⁴ Circuit Executives. History of the Federal Judiciary, Judicial Administration and Organization. Federal Judicial Center. Accessed Aug. 4, 2012
<http://www.fjc.gov/history/home.nsf/page/admin_03_10.html>.

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Posted by [Donna Kline](#) on Wednesday, August 8, 2012, at 6:40 am.

Filed under [Investigation](#).

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{ 39 }

Comments

1. **Steve Williams** | August 8, 2012 at 7:36 am | [Permalink](#)



From an OPERATION SPOTLIGHT activist Steve Williams:

[DLK: Here's a link to this comments on its own separate page <http://www.donnaklinenow.com/steve-williams-conversation-with-valeri-white>. Also, in case you want to send a link to a specific comment to someone, that's what the "Permalink" is for. Just right click on Permalink, then select "Copy Link Address/Location/Shortcut." That copies the link into clipboard, then you just paste that link into your email or tweet.]

Tuesday, Aug. 7, 2012

Hey everyone!

I had a particularly interesting telephone conversation with Valerie White at the Clerk of Courts office at the Federal Circuit Court today. Apparently, the Federal Circuit Court of Appeals has no record of Dr. A's

having ever filed an *Amicus Curiae* brief. Generated by [words.RDFrom5.com](#) at 8/17/2012 3:02:18 PM
URL: <http://www.donnaklinenow.com/investigation/judicial-hyperactivity-at-the-federal-circuit>

on the phone were: "Yes, Dr. A filed an Amicus brief on behalf of Leader Technologies, in the *Leader v Facebook* case. The USPS Express Mail delivery ticket was dated and timed on Wednesday, July 11, 2012 and the Court's denial of the motion was turned around and mailed back THE SAME DAY! [DLK: [Here are all these filings and the amicus curiae brief delivery receipt.](#)]

Valerie White: "That can't be accurate, because that wouldn't allow the judges time to even see it, yet alone rule on it; nor would it even be enough time to have it filed within our office, given it was a Saturday."

Steve Williams: "Exactly! So what gives?"

Valerie White: "Has she refilled it?"

Steve Williams: "I believe she has for the third time!"

Valerie White: "Well, we have no record of that either."

I, then, went on to give Valerie a detailed accounting of this case history, and she seemed very curious as to the timing of the judges' rulings (at both courts).

I asked Valerie how it was that Facebook and *Fox Business* knew of the ruling ahead of Mike's appearance on said network.

I asked Valerie if they knew of anyone filing a "Freedom of Information Act (FOIA)" request, given new revelations of conflicts of interests of 2 of the 3 presiding judges...

Valerie White: "No"

I then directed Valerie to Donna Kline's site and suggested that she and anyone else in that office read up on what's going on.

Valerie gave me her supervisor's name and number

Valerie White: "James Benjamin, (202) 275-8031; Valerie told me that all the information that I had given to them would definitely be forwarded on to him.

I suggest that everyone involved in OPERATION SPOTLIGHT call the Clerk of Court's Office. We need to barrage them day and night until they listen. Federal employees are people too, no matter how crooked some may be, and they do not want to deal with aggravation, anymore than you and I do.

I believe Valerie was sincere and seemed very curious. She had concern in their voice—that something was amiss here. She did tell me that it was not the court's practice to arbitrarily deny motions without being reviewed by the judges. So, either Clerk of Court Jan Horbaly acted out-of-bounds, or the whole office is in on this cover-up. Either way, calling them does get their attention, I believe.

Keep the faith! We will prevail!

—Steve

2. **gg** | August 8, 2012 at 9:46 am | [Permalink](#)



Steve: Very Nice... As a layperson, I'm not sure how to word the phone call I hope to make. I'm assuming keeping it short and sweet is the right way to go but have no idea how to minimize this HOT MESS. Any thoughts as to how to help us do this in a professional manor would be appreciated:)

3. **Incredulous** | August 8, 2012 at 10:12 am | [Permalink](#)



Excellent work, Steve! And Donna, this is the most comprehensive blog posting yet! This is a "one stop shop" to lay it all out there for every journalist, attorney, judge, and legislator.

This link will go out to my extensive list of the above and the Clerk of Courts office will hopefully receive a new wave of calls.




Ditto! Great Job Steve. Maybe we should send you in to clean up Washington! Here's my two cents on calls to the Federal Circuit Clerk's Office. I think we want to know:

1. How the judges, clerk and employees perform "conflicts checks" before working on or being assigned to a case (its the professional obligation of an attorney to do a conflicts check before working on any matter... judges, clerks and court employees included);
2. We want to see documentation of the conflicts checks performed before employees or judges were assigned to work on the Leader v. Facebook appeal;
3. Once conflicts are discovered in a case, what is the procedure for peeling back any decisions rendered prior to the conflicts being discovered; now that it is proven that Judge Moore and Judge Lourie had Facebook stock, Judge Rader and the other judges had prior associations (good or bad we don't know) with a Leader witness, the judges had close prior associations with Facebook's attorneys, information was leaked multiple times out of the Clerk's office to the press improperly, and filings unfavorable to Facebook are not being docketed, what is this court going to do to fix these injustices?
4. Why *Amicus Curiae* Lakshmi Arunachalam's motions are being censored and who is censoring them?
5. When will Dr. A's motions be posted on the docket for public download?
6. How is it possible that Dr. A.'s original Motion for Leave to File her Amicus Curiae Brief was received and ruled upon the same day it was received? (July 11, 2012), and
7. Why Dr. A. has not received a reply to her letter ot Clerk of Court Jan Horbaly about why her motions and pleadings have not been docketed, while the denials of her motions and pleadings HAVE been docketed.
8. How is it possible that a clerk is routinely signing Order and Decisions instead of the judges? Is Mr. Horbaly making the decisions too?

That should get the wheels turning.

–Sally

P.S. Just in case anyone is wondering. Our courts are public bodies and are accountable to the public—which means you and me! A judge's and clerk's actions regarding the Federal Rules of Civil Procedure in a case are not supposed to be hidden from either party or from the public. The first telltale sign that they are hiding something is if they (a) refuse to answer timely, (b) get haughty and treat your questions as an annoyance, (c) invoke this or that confidentiality blanket to avoid accountability, (d) make rulings that are inconsistent with the law. Sound familiar?

5. **bg761** | August 8, 2012 at 1:12 pm | [Permalink](#) 


This is not the first time Jan Horbaly has been delinquent in his duties.

In [John Wallace v. Richard Abell and Jan Horbaly, Case No. 08-3484](#). “Wallace claimed that Clerk of Court Horbaly did not timely inform him that Special Master Abell had dismissed his case, causing his appeal of the decision to be untimely.” John Wallace lost this case because Jan Horably hid behind Rule 12(b)(6). “Dismissal of defendants Special Master Abell and Clerk of Court Horbaly was proper under Rule 12(b)(6).”

“An individual acting in a judicial capacity is absolutely immunized from a suit for money damages” [Stump v. Sparkman](#), 435 U.S. 349 (1978). This is true even if they are acting erroneously, corruptly or in excess of jurisdiction! 😊

So the question is, who does Clerk Jan Horably have to answer to? Since he can't be sued for monetary damages even if he is corrupt. What rules apply to him?


The search will continue. Any lawyers want to help on this?

6. **Winston Smith** | August 8, 2012 at 5:17 pm | [Permalink](#) 

I had connected with Valerie White yesterday, the same Valerie that Steve spoke with at the clerk of court's office. This number was her direct line (202-275-0775). As of 5:30 pm on the 8th of August, it has now been “disconnected or changed.” James Benjamin's number (202-275-8031) is still up and running and is also a direct line to his personal voice mail. I just left a detailed message concerning Valerie and asked why her number has now been disconnected. I shared with him that I wanted to follow up with my questions concerning Dr. A's Amicus Brief having never been recorded after 3 times of her filing and other concerns, etc.etc.

FYI, Mr. Benjamin's email at the court is jbenjamin@akingump.com.

I do wish Valerie well on her administrative leave... Hopefully, this is not the case, but It does seem to be the ugly standard operating procedure, to put it nicely.

7. **Amy** | August 8, 2012 at 5:35 pm | [Permalink](#) 

<http://www.cafc.uscourts.gov/the-court/advisory-council.html>

Emailed everyone one of these guys (in the list linked above), including Board members that were located on this site. At least 20 email links Very easily accessible. Emailed Donna's bullet points.

Subject: *The Federal Circuit is currently conducting itself like a totalitarian judicial fortress within a stone's throw of The White House.*

“Judicial hyperactivity erodes confidence in the courts” Source: <http://www.donnaklinenow.com>

Judicial “Hyperactivity” at the Federal Circuit

1. Judges Lourie and Moore failed to disclose Facebook investments; those investments include close associations to Russian government leaders and oligarchs;
2. Russian oligarch Juri Milner has 20-year ties to Lawrence Summers, Obama bailout chief, former Treasury Secretary, former Harvard President (during Zuckerberg's hacking) and former World Bank Chief Economist

4. Clerk Horbaly and Judge Rader failed to disclose substantial extra-judicial associations with Facebook attorneys
5. Judge Rader and other judges failed to disclose prior associations with Leader witness Professor James P. Chandler on the very subject matter of this case
6. Court decisions were timed to media events favorable to Facebook
7. The Court denied amicus curiae motions without time to consider the motions
8. Jury Instruction 4.7 was confusing and fails to address basic law for on sale bar
9. Interpretation of Interrogatory No. 9 violated The Dictionary Act on use of tense
10. The Court ignored the legal basis of the appeal: clear and convincing evidence
11. The Court ignored new evidence that Facebook withheld evidence
12. The Court fabricated a new substantial evidence argument not argued or briefed by the parties
13. The Court ruled against its own substantial evidence argument
14. The Court created new evidence never put before the jury
15. The Legal Court even failed to apply its own precedents to test the evidence it selected for consideration
16. Clerk failed to respond to FOIA requests to disclose conflict of interest checking procedures within the court
17. Clerk of Courts acting outside his job description and assuming a judicial role


This is HORRIFIC! You so called honorable people need to clean this mess up!

Copy and paste away!!!!

8. [Tex](#) | August 8, 2012 at 5:41 pm | [Permalink](#)



Well bg761 you will be delighted to know that our crack DOJ (Eric Holder) is on the case ... Since they have nothing else to ship to the drug lords and the country appears to be doing just fine on abiding to our Constitution, they will contact Horably and the Federal Circuit gang about this issue... as soon as they get back from their all paid vacation to the Caribbean , that is. Remember, this is the America we've all been waiting for !


9. **Kathy C** | August 8, 2012 at 9:33 pm | [Permalink](#) 
- The Rules of Professional Conduct for attorneys dictate that when they learn that a fellow attorney or judge is engaged in unethical conduct, they are *duty-bound* to file a complaint against that attorney. This site has PROVEN misconduct. I wonder if any of the attorneys reading this website are going to file complaints against the Federal Circuit judges and the Clerk? This Rule is a joke because attorneys don't report each other. "Self-policing" is a hoax designed to fool us laypeople. However, nothing stops us laypeople from holding their feet to the fire.


Maintaining The Integrity Of The Profession
Rule 8.3 Reporting Professional Misconduct


(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

In any event, *anyone* (attorney or layman) can file a disciplinary complaint against any of these judges or the clerk in the jurisdiction where they maintain their licenses. For sure in the District of Columbia where these individuals currently work. Suggest everyone contact the Bar Association in the District of Columbia to get the complaint filing procedure. Once the complaint is filed, that authority is duty-bound to investigate. Let us know and we will publicize the complaint and dig into that person's history. Once you get the procedure, let everyone know please.

10. **law blogger** | August 8, 2012 at 10:14 pm | [Permalink](#) 
- Hey Kathy, good thought, but the problem is that these complaints are buried inside the "old boy" network. These attorneys just politik their way out of this kind of misconduct. This requires congressional inquiries, the light of public opinion, and whatever else we can do to "out" them. Impeachment is the ultimate weapon to get rid of bad apple judges. Not sure what the discipline is for a misbehaving clerk since he is theoretically appointed by misbehaving judges.

11. **JohnC** | August 8, 2012 at 11:49 pm | [Permalink](#) 
- I hope you realize that by publicly outing Ms. White you have likely cost her her job.
- The conspiracy theories here have reached X Files levels. You don't seem to understand that unless the federal circuit grants Dr. A LEAVE to file an amicus brief, she has no right to do so. Why has her motion for leave not been posted on this blog? Presumably that motion was denied because she failed to establish valid grounds to file the brief. A non litigant cannot just willy nilly file a brief in a case in which that person is not involved.
- Because Dr. A failed to meet her initial burden, that's it. None of her subsequent motions are permitted to be filed. They are not permitted to appear on the docket. And the clerk has no obligation to log anything. She does not have permission to participate in this case.
- This is not some grand conspiracy. This is simple court procedure.

12. **Bill Cran** | August 9, 2012 at 9:15 am | [Permalink](#) 
- Yes, John C, spoken like a true legal BS artist. When you get caught, you hide behind procedure and find something, anything to criticize and demean to divert attention from the damning facts that bury you. Nice try. Throw around jargon like "failed to establish grounds for a motion to deny a motion to investigate judicial activity at the federal circuit"

massive conflicts of interest exist, that no conflicts checks were performed, no conflicts were disclosed, Facebook's attorneys were cozy with the clerk, that the clerk fed information to Facebook timed to media events, that evidence was withheld... only the important omissions of this court. We've got your number now. Give it up. We're not going to let you off the hook with more BS.

And oh by the way, the last time I checked, court employees are PUBLIC servants and work for us. Since this is not a dictatorship yet, Ms. White is permitted to discuss court procedures with the PUBLIC. (Sorry to burst your bubble, I know you guys think the courts are your personal playgrounds.) No more buddy.

Hmmmm. X-Files. You're giving away your age. Which X-Files episode dealt with Eric Holder's people interfering in the Black Panther voter intimidation case? LOL. You're so predictable my man. You think you are so clever and every one else is so dumb. When you are losing, you get haughty, dismissive and demeaning. I hate to break it to you, but your hubris is same old same old. Suggest you spend your time more productively by pulling out your college books on ethics and morals and take a refresher.

On Attorney General Eric Holder's interference in a case:

<http://online.wsj.com/article/SB10001424052970203550604574361071968458430.html>
<http://washingtonexaminer.com/federal-court-finds-obama-appointees-interfered-with-new-black-panther-prosecution/article/2503500>

BTW, if you are an attorney, you have an ethical duty to report the Clerk and judges for disciplinary investigation. I wonder if you will. LOL. So much for your standing on procedure.

13. **1 Opinion** | August 9, 2012 at 10:56 am | [Permalink](#)



Defective logic? A woman lost her job because she simply stated what her supervisor would confirm, that the filings haven't been posted? The only way she would lose her job is if there is a "conspiracy" and she wouldn't go along with the cover-up.

In reference to the X-files type conspiracy theory, how's this:

Sitting president has a ten-fold advantage over his challenger in the use of Facebook providing access to their constituents. A ruling in favor of Leader means a potential injunction to shut down Facebook only months before the election. Sitting president appoints Judge that presides over unpopular, on this blog, ruling against Leader. Federal Court system actions seem inexplicable. Stall tactics?

Anyone still think justice in this matter can possibly be acquired prior to 11-6-12?

Or per JohnC Leader lost fair and square.

14. **Chris** | August 9, 2012 at 11:41 am | [Permalink](#)



There's a new URL <http://www.fbcoverup.com> that points back to this site. LOL.

Sad, but LOL nonetheless.

15. **Anonymous** | August 9, 2012 at 1:50 pm | [Permalink](#)



Hey all, this article outs JohnC:

Elena Ruth Sassower, "On Judicial Misconduct and Discipline, WITHOUT MERIT: THE EMPTY PROMISE OF JUDICIAL DISCIPLINE." Tulanelink.com.

http://www.tulanelink.com/tulanelink/sassower_01a.htm.

"And once on the bench, these judges reward their friends and punish their enemies. Although ethical codes require judges to disclose facts bearing upon their impartiality, they don't always do so. They sit on cases in which they have undisclosed

outcome, and do so deliberately because they wish to advantage either one side or another or sometimes themselves.

They exercise their wide discretion in that side's favor. That's the side for whom deadlines are flexible and for whom procedural standards and evidentiary rules don't apply. A common thread running through judicial misconduct cases is litigation misconduct by the favored side. Meanwhile, the other side struggles to meet inflexible deadlines and has its worthy motions denied. In extreme cases, a judicial process predicated on standards of conduct, elementary legal principles, rules of evidence, simply ceases to exist."

Sound familiar?

16. **newbe** | August 9, 2012 at 5:04 pm | [Permalink](#)



"When plunder becomes a way of life for a group of men living together in society, they create for themselves in the course of time a legal system that authorizes it and a moral code that glorifies it."

FB still going down broker <http://cnet.co/MQhyGY>

The IPO is a jack up. These judges reward themselves and their friends.

17. **BG** | August 9, 2012 at 10:11 pm | [Permalink](#)



Dear Valerie White:

Thank you for bringing things to light for us. I am hoping that you did not lose your job over honesty. But if you did... I have been offering a reward for some missing email. That offer extends to you for any new information you can provide on the courts handling of the Leader case. To hell with them.... take the reward, retire in paradise and don't look back.

Thank you

bg121263@yahoo.com

18. **SacktheZack** | August 10, 2012 at 10:10 am | [Permalink](#)



BG, thks for your efforts. Hopefully, these people will come forward. They should have moons ago by now. Plse take advantage of BG 's offering. This is no lie. Take the plunge. If you don't, you will regret "the voice " what if?. Great things happen to great people! Be that someone that makes a difference and go live the life you have dreamed of! God knows, I wish I had the information. Speak the truth. Without truth, what kind of foundation do any of us have to live and make right choices??

19. **newbe** | August 12, 2012 at 6:36 am | [Permalink](#)



New Novel named: "Facebook the Fracking Lie and the Crack Bots" (Using actual quotes from the Facebook Crack Bots themselves,)

ZUCK AT STANFORD ON Oct. 26, 2005: "Yes, I don't really call it social networking."

BREYER AT STANFORD: "No, I know that. Nor do I."

DAVID LONDON: "You did not want to call it 'social networking' because you stole the ideas and the platform and are a thief and a liar. You stole a full copy of the platform from Leader's actual source code. Chris Hughes, you gave a Davide a full copy of this."

"Zuck stated in sworn ConnectU testimony that he was the one working on Facebook in the beginning."

"Well bull crap, Zuck, you know full well that David London started conversing with Dustin Moskowitz and Chris Hughes about the idea, actually coming up with the name "facebook" and actually suggested the idea for an online social service where students can post pictures and information about themselves and use it as a directory."

a business thing until like six months after we started it. I mean we. I guess like I programmed the original version um and launched it in February 04."

Um yes, um, no, um I don't know... I mean maybe um impressive visionaries of a um cowardly new world of um liars and thieves, um dude.

http://www.youtube.com/watch?v=WA_ma359Meg

20. **Steve Williams** | August 12, 2012 at 1:13 pm | [Permalink](#)



I'd like to take a few moments of this site's time to address an issue that seems to be of a consensus opinion. Per my telephone conversation with a Valerie White, I've received both praise and indignation over what transpired. I received praise from several people who post on here, saying that I did a great job! Right on!, etc. etc. I've also received a little (not so unexpected) boos and hisses from the Facebook gallery...whatever JohnC.

My point in this post is to not argue the merits of these comments, other than to say I appreciate both positive and negative feedback...we learn from either or.

I would like to direct this message to aforementioned Ms. White: Valerie, please know that you were (are) a very professional and courteous staff member of the Clerk of Court's Office. You legitimately answered questions that I asked of you, concerning Leader v. Facebook, and in specific, Dr. A's amicus brief filings. You were kind and very well mannered in your conversation with me, and for that, I applaud you. Please know that you made my time on the phone with you less stressful, given the magnitude of the situation. You should be very proud of having done nothing less than answering honestly questions from a citizen seeking nothing more than an honest answer.

If you have been terminated or disciplined, because of our interaction, then I humbly apologize; that was never my intention. But you now see the fight we are enduring. If the case may be that you have been punished for your (actions), then I, again, humbly beg of you to take BG up on his offer. It feels so good to fight the good fight. We see many setbacks, many seemingly dead-ends, but through it all, we, on this end, strive forward for that better prize...that prize that only awaits the faithful.

Do not let the courts be your conscience; that is a God-given thing that no Man can touch. You did right by me; please do right for yourself this time.

And now I address this site: Donna posted nothing more than my conversation with a staff member from the Clerk of Court's office. Nothing she said was taken out of context or content. I asked Valerie questions and she answered. I only asked these questions to get answers, the same answers that we have all been seeking. Quite frankly, I think I got lucky; I actually spoke with someone who took their time to genuinely help me. For that, it appears that she was punished...shame on the Clerk of Courts' office –not me, JohnC, or any other naysayer. As I have been told personally, the courts work for us; it is their job to answer questions that we (the public) may have of them. I didn't ask any personal or confidential information; only that of court proceedings, which, I think, is supposed to be public knowledge anyway. The mere fact that she has been (apparently) pushed aside, shows the actions of a major cover-up, and the blame lies solely at the doorstep of one Jan Horbaly's office.


So, again, Ms. White, please seek out BG and take his offer. If you feel intimidated, then please allow Donna, or anyone else here assist you in this matter. Valerie, you have my number as well.

God Bless all!!

21. **Dubya** | August 13, 2012 at 12:17 am | [Permalink](#)




Hmm, could JohnC be Jans alter ego????

22. **Mike Strall** | August 13, 2012 at 3:45 pm | [Permalink](#) 

Nothing in the current President's administration surprises me. As Paul Ryan stated Saturday on 60 minutes. The White House & Congress are the most unorganized and off-the-rails bunch that he has seen in his 14 years in Congress (too many attorneys? – what do they know how to do besides keep things stirred up and generating more fees?) Our President has had only one formal staff meeting with his cabinet in 2012. Can you imagine any CEO only having one staff with their executive reports in 6 months?

Doesn't surprise me if that the 2nd highest court in the land has no records of Dr A's Brief. Just like the country, the economy and the courts are run amok 😞

23. **law blogger** | August 14, 2012 at 8:57 am | [Permalink](#) 

Hey Folks. Did you know that ANYBODY can file a disciplinary complaint against these attorneys? We need to start pelting them with ETHICS COMPLAINTS until these attorneys, judges, law schools and bar associations clean up their acts. I notice the DC guidelines are over 100 pages LOL. Fertile playground to give one's fellow attorneys a pass? The rule of thumb is the longer the rules are, the easier it is to find a loophole to excuse misconduct.


Here's the one for the District of Columbia Bar:

http://www.dcbbar.org/for_lawyers/ethics/discipline/bpr_rules.cfm

Here's the one for California where Facebook's attorneys are:

<http://www.calbar.ca.gov/Attorneys/LawyerRegulation/FilingaComplaint.aspx>


Although the complaint process focuses on "your attorney," in this matter the unethical conduct is public information and can be reported as a breach of their "I swear I will be good and do right" Rules of Professional Conduct, which is their oath taken before the public. Therefore, they are accountable to the public for that oath.

24. **ConflictsChecker** | August 14, 2012 at 9:21 am | [Permalink](#) 

To Mike Strall and law blogger. There's a self-serving rule in many of these disciplinary rules that tries to keep the complaint "confidential." Forget that rule. These attorneys put a blanket over their misconduct with that rule. Suggest when you file it, be sure and send it also to the Judiciary Committees and other public watchdog bodies. If the disciplinary body then rejects your complaint based on you not keeping it confidential, so be it, at least the attorney's misconduct has been exposed so that others in the public know about it. The way it is now, these guys can live like profligates and the public will never know it if these disciplinary committees never start formal proceedings, which they rarely do. Wink, wink, nod, nod.

25. **holn8or** | August 14, 2012 at 4:52 pm | [Permalink](#) 

I have been reading all the blogs and the over-all thoughts seems to be that the courts and Judges are not doing their jobs correctly. Could this be because if Facebooks horse changes its rider in the middle of the race all will be lost ? Since its all about FB and its success for ALL THOSE WHO INVESTED and I am pretty sure we all know who they are, maybe we should support their investments and continue the FB ill-gotten traditions just change the rider from Zuckerberg to the true Man Behind the Legend, Mike McKibben, Maybe he could give his assurance that if they will help right this huge wrong that they will not lose anything except the guilt.

26. **bg761** | August 15, 2012 at 3:08 pm | [Permalink](#) 

There would have been no shame if Judge Lourie and Judge Moore would have recused themselves because of there stock holdings in Facebook. They are required to stay in

Disclosures. Other Judges have recused themselves. What makes them any different?


In *TARE v. Bank of America*, Dist. Court, D. New Jersey 2008, the judge recused herself for owning just 30 shares of stock. The court went on to point out,

“Section 455(d)(4) defines the financial interest prohibited by Section 455(b)(1) as “ownership of a legal or equitable interest, however small, ... in the affairs of a party” or in the subject matter in controversy. 28 U.S.C. § 455(d)(4). The Supreme Court has noted that 455(b)(4) **requires disqualification “no matter how insubstantial the financial interest and regardless of whether or not the interest actually creates the appearance of impropriety.”** *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 860 n.8 (1988).”


The court in *Chase Manhattan Bank v. Affiliated FM Ins Co.*, 343 F.3d 120, 130-31 (2d Cir. 2003) noted:

“Judges bear the principal burden of compliance with Section 455(b)(4) and it is expected that judges will disqualify themselves under this Section without a formal motion.”


I guess the Federal Appeals Court Justices that have Facebook stock think these rules don't apply to them! 🙄

27. **Steve Williams** | August 15, 2012 at 6:20 pm | [Permalink](#) 

When a judge(s) does have a conflict of interest (or in this case [interests]), and they do not recuse his/herself from presiding over a case, then, in my humble opinion, that should illegitimize any ruling. And BG, correct me if I'm wrong, when one of these judges actually invests during a hearing (trial), shouldn't that be considered Insider Trading, punishable by fines, imprisonment, and disbarment? I mean, what better way to pad your retirement than ruling favorably for the party that better lines your already deep pockets?

28. **newbe** | August 15, 2012 at 7:04 pm | [Permalink](#) 

holn8or
Mark Zuckerberg stole the name, concept and execution of facebook from David London. Zuck stole the platform from Mike McKibben/Leader. We had been working on the idea during 2003 and he waited until he got Leader's platform code to steal the student photos, put them in Leader's platform and launched Facebook.

29. **bg761** | August 15, 2012 at 9:17 pm | [Permalink](#) 

Steve, the court's claim not to have conflicts over Facebook shares is pure poppycock.

You'd think some harsh consequences would be the case, but these guys have more outs and excuses than you can shake a stick at. In this opinion they're hiding behind Canon 3 C (3)(c)(i) of the Code of Conduct for the United States Judges expressly provides that “ownership in a mutual or common investment fund that hold securities is not a ‘financial interest’ in such securities unless the judge participates in the management of the fund”. Judge Lourie's financial disclosure form shows that he was very active in adding and deleting funds during the time that the pre-IPO Facebook stocks were available. The opinion also states that the three judges own no Facebook stock. That, as Donna points out, does not pass the smell test. The fact that they acquired stock that had highly publicized its holding in Facebook is smelly enough. One fund (T. Rowe Price) had so much Facebook stock that it had to be disclosed in Facebook's S-1 filing. Their assertion of innocence, sugar and light certainly doesn't pass the “flee even the appearance of impropriety.” The law says err on the side of recusal if questions like this arise. The fact that they are doing the opposite, and trying to justify not recusing, makes matters worse for them. It's like [www.donnaklinenow.com](http://www.donnaklinenow.com/investigation/judicial-hyperactivity-at-the-federal-circuit)

just removed from the cookie jar with crumbs all over his fingers, listening to him deny it. **Amazingly, as Donna said, they are defending their right to be bias!!! THESE ARE OUR JUDGES FOLKS.**

In *Lopez Dominguez v. GULF COAST MARINE & ASSOCIATES*, 607 F.3d 1066 (5th Circuit 2010) the judge recused himself; in his own words,

“But all of a sudden—in the middle of the night a couple of days ago, I all of a sudden—it suddenly clicked, and I started looking.... [R]ecently, due to the death of my mother, I had acquired some Schlumberger Limited stock, not a great deal. But under the Code of Judicial Ethics, **just one share is enough to disqualify me** from any case involving Schlumberger Limited” (emphasis added).

That is an example of a Judge with “REAL ETHICS!”

As you have probably arrived at the same conclusion, none of the three judges wrote this opinion, it was probably written by a Clerk told to justify his and their position with misdirection of the actual facts. 🙄

Did you also notice how they avoided any mention of the conflicts with Professor James P. Chandler, or their abuse of Leader's due process by making up a new argument and then ruling against it without an opportunity for rebuttal? So much for the truth. Why do we pay them a salary for this tripe trying to pass itself as cogent legal opinion... and some of these people were law professors?

30. **Kathy C** | August 15, 2012 at 10:41 pm | [Permalink](#)



All, Just a reminder to everyone that we need to help Donna with her expenses for keeping us informed. This is high quality, in-depth, non-trivial reporting that must surely take time. Thank you Donna and your team for your tireless efforts. Blessings to you and your family. – Kathy P.S. I sent Donna one donation several months back, but I have neglected to do it again. Sorry Donna. (There's a donation link above.)

31. **ConflictsChecker** | August 16, 2012 at 7:25 am | [Permalink](#)



I try to give courts the benefit of the doubt, but in this case the Federal Circuit is just being plain pathetic. They couldn't be bothered to give Leader a single reason for denying its petition for rehearing. But, they do find the time to write four pages of self-justification for maintaining their Facebook bias. They threw the rules about maintaining the integrity of the courts out the window. What did it for me was their arrogant “don't bother us, peasants, we can do whatever the hell we want” treatment of the Facebook stock issue; having been so evidently exposed by the public record. Then, the way they ignored so many of Dr. A's points. This truly is banana republic justice. This must be stopped.

PATHETIC AND SAD. I really am sorry Leader Technologies, Michael McKibben, your shareholders and all inventors. Dr. A has proved that our courts are up for sale to the highest bidder. Thank you Dr. A for performing an intervention and slapping us enablers across the head and telling us to wake up. We are enabling this judicial dysfunction by excusing their misconduct.

32. **blogmeister** | August 16, 2012 at 8:31 am | [Permalink](#)



Corruption at the Federal Circuit. Who is going to root it out?

Anyone notice how these jokers repeat their *earlier* misconduct as facts to justify their *later* misconduct? They are clearly counting on no one checking their bogus “facts.”


You bad boys are going to get yours.


33. **Bill C** | August 16, 2012 at 9:38 am | [Permalink](#)




Yes, notice how they ignored the elephant in the room. <http://www.bonfakim.com/wordpress/wp-content/uploads/2012/08/Corruption-judicial-hyperactivity-at-the-federal-circuit>


Clerk of Court staffer Valerie White's admission to Steve Williams that the judges could not have even seen Dr. A's original amicus brief on July 11, 2012 before it was denied. That's good proof that these "facts" they're quoting are absolutely bogus. Does the legal profession have any scruples left anywhere?
The Federal Circuit is reminding me of a garage full of crooked car mechanics who try and hoodwink you into paying to fix things that aren't broken. Crooked. Crooked. Crooked. People.


34. **gg** | August 16, 2012 at 9:48 am | [Permalink](#) 
I'm curious to know what happened to Valerie White. Does anyone know how we can inquire about the situation?

35. **mike kennedy** | August 16, 2012 at 4:23 pm | [Permalink](#) 
Damage control? I think not. It would appear to me that they basically told the Dr. to "pack sand". It just stinks when people in this judicial position just can't admit an oversight or mistake and just take another look.

36. **Kathy C** | August 16, 2012 at 5:15 pm | [Permalink](#) 
This Bloomberg article gives two of their journalists who want feedback. Let's enlighten them:
<http://www.businessweek.com/news/2012-08-16/zuckerberg-fortune-drops-600-million-as-facebook-flops>
To contact the reporter on this story: David De Jong in New York at ddejong3@bloomberg.net
To contact the editor responsible for this story: Matthew G. Miller at mmiller144@bloomberg.net

37. **Dubya** | August 16, 2012 at 9:28 pm | [Permalink](#) 
Wow, with today's further collapse in share price FB needs some damage control and a makeover. How about a new name honoring their leadership, call it "Facecrooks", yuk,yuk,yuk!

38. **Linda K** | August 17, 2012 at 11:10 am | [Permalink](#) 
Donna's discovery of a second outright court lie today proves these people can't tell lies very well. Are they so used to the attorneys never questioning them that they don't know how to coordinate a good lie?
Give it up judges, there are too many of you to tell a coordinated lie. We encourage all the Federal Circuit staffers to take good notes and keep your evidence off-site for the coming investigation. We laypeople want to trust our justice system, but cannot as long as disingenuous individuals don those robes we pay for.

39. **BG** | August 17, 2012 at 2:07 pm | [Permalink](#) 
FB heading no where but down.
<http://video.cnn.com/gallery/?video=3000109568&play=1>
Message: It's hard to run a criminal enterprise in the public eye. Notice how he calls the criminal part euphemistically as "lack of transparency." Translated: "crooks don't share." LOL. This site has been warning us about Peter Thiel for a long time. He took almost a billion dollars out of the IPO, now he is cashing out more of his position. IMHO the FB insiders like Thiel, Breyer, Hoffman, Zuckerberg, Milner, Goldman, Morgan, Sandberg, Summers and others like Cohler had no business plan other than to fleece the public for as long and as much as they could get away with. (Sound like the 2008 Bail Out????? Same people benefited in that.... Goldman, Morgan, Summers' (Generated by NewsBDS.com) <http://www.donnaklinenow.com/investigation/judicial-hyperactivity-at-the-federal-circuit> at 8/17/2012 3:02:18 PM

they go to jail for this biggest con of the century? Notice how the one journalist tried to defend the kid, but got shot down? Good for the others on that panel. They haven't drunk the Kool-Aid I guess. He is probably one of the bevy of "journalists" (Facebook pitchmen) that Breyer and Summers have been buying off over the last decade. Nicholas Carlson and David Kirkpatrick are two more of their hired liars IMHO.

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