

SHARON NOONAN KRAMER, PRO PER

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FOURTH DISTRICT COURT OF APPEALS FOR THE STATE OF
CALIFORNIA, DIVISION ONE

SHARON KRAMER,

Appellant

v.

BRUCE J. KELMAN,

Respondent

**APPELLATE COURT CASE NO.
DO54496**

**SUPERIOR COURT CASE NO.
GINO44539**

APPLICATION AND REQUEST FOR AN
ORDER THAT THE COURT OF APPEAL
TAKE JUDICIAL NOTICE;

**NATIONAL APARTMENT ASSOC.
POLITICAL ACTION COMMITTEE
AMICUS CURIAE BRIEF
SUBMITTED AUGUST 31, 2009, To
STATE OF ARIZONA, COURT OF
APPEAL DIVISION ONE & PG 175
OF TRIAL EXHIBIT NO. 64**

**UNLIMITED CIVIL CASE
FILED: MAY 16, 2005**

TRIAL DATE: August 18, 2008

**SHARON KRAMER, APPELLANT, RESPECTFULLY REQUESTS this
Court to take judicial notice as pursuant to Evidence Code 451(f), 452(d)(2),
453(b), 454(a)(1) and 459 of the following two documents that are attached to this
request:**

APPLICATION AND REQUEST FOR AN ORDER THAT THE COURT OF APPEAL
TAKE JUDICIAL NOTICE

1 1. The National Apartment Association political action committee (“Amicus”)
2 Curiae Brief submitted August 31, 2009, to the State of Arizona Court of Appeal
3 Division One on behalf of Wasatch Property Mgmt Inc., in the case of Mason, Morris,
4 Abad, Stewart et. al, v. Wasatch Property Mgmt Inc., consolidated case nos.
5 C20035581, C20041766, C20024299, C20024542. The Amicus cites to “A Scientific
6 View of the Health Effects of Mold” US Chamber of Commerce Institute For Legal
7 Reform (2003) as a scientific source for the Appellate Court to consider.

8 2. Page 175 of Trial Exhibit 64 that is lodged on disc with the San Diego Court of
9 Appeal, Fourth District, Division One. It is the deposition of Andrew Saxon MD, in
10 the matter of Hake v. Coleman Homes, November 28, 2006, Las Vegas, Nevada. Dr.
11 Saxon’s testimony states that he is falsely listed as an author of “A Scientific View of
12 the Health Effects of Mold”, United States Chamber of Commerce Institute for Legal
13 Reform (2003)
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16 **Dated December 3, 2009**

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18 **Sharon Kramer, Appellant Pro Per**
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1 connection to a wicked sister of a mold policy paper - also penned by Bruce Kelman
2 and Brian Hardin for a trade organization of workers compensation physicians - the
3 American College of Occupational and Environmental Medicine - was the buried
4 lead found within the last two paragraphs of my writing, purportedly libelous for the
5 words "altered his under oath statements" of March 2005.

6 From my March 2005 writing in relevant part:

7
8 "Jury Finds "Toxic Mold" harmed Oregon family, builder's
9 arbitration clause not binding

10 Sharon Kramer

11 March 9, 2005

12 Oregon City, OR - The case is a first in the Northwest to award
13 personal injury damages to a family exposed to toxic mold in a
14 newly built home. This verdict is significant because it holds
15 construction companies responsible when they negligently build
16 sick buildings....

17 Dr. Bruce Kelman of GlobalTox, Inc, a Washington based
18 environmental risk management company, testified as an expert
19 witness for the defense, as he does in mold cases throughout the
20 country.

21 Upon viewing documents presented by the Hayne's attorney of
22 Kelman's prior testimony from a case in Arizona, Dr. Kelman
23 altered his under oath statements on the witness stand. He
24 admitted the Manhattan Institute, a national political think-tank,
25 paid GlobalTox \$40,000 to write a position paper regarding the
26 potential health risks of toxic mold exposure. Although much
27 medical research finds otherwise, the controversial piece claims
28 that it is not plausible the types of illnesses experienced by the
Haynes family and reported by thousands from across the US,

1 could be caused by "toxic mold" exposure in homes, schools or
2 office buildings.

3 In 2003, with the involvement of the US Chamber of Commerce
4 and ex-developer, US Congressman Gary Miller (R-CA), the
5 GlobalTox paper was disseminated to the real estate, mortgage
6 and building industries' associations. A version of the Manhattan
7 Institute commissioned piece may also be found as a position
8 statement on the website of a United States medical policy-
9 writing body, the American College of Occupational and
10 Environmental Medicine.”

11 Contrary to the National Apartment Association Amicus, “A Scientific View of
12 the Health Effects of Mold” was not authored by a “panel of scientists”. Only Bruce
13 Kelman and Brian Hardin authored the paper. Two co-owners of a litigation defense
14 support corporation does not make “a panel of scientist”. The US Chamber’s
15 “Scientific View” falsely cites authorship of being co-written by a physician, Andrew
16 Saxon, MD. Dr. Saxon did not co-author “A Scientific View” for the US Chamber of
17 Commerce. Bruce Kelman and Brian Hardin are not physicians.

18 Bruce Kelman and Brian Hardin were paid by the Manhattan Institute Center for
19 Legal Policy think-tank for this fraudulent paper. The Manhattan Institute told Bruce
20 Kelman they wanted something specifically written for judges.

21 The US Chamber of Commerce and the Manhattan Institute via the National
22 Apartment Association are misleading the Arizona Appellate Court to believe they
23 are reviewing an unbiased scientific document that was written by “a panel of
24 scientists” including a physician. The purpose of this fraud is so the Arizona justices
25 will think that it is scientifically proven by “a panel of scientists” and a physician that
26 all claims of illness from mold are only being made by people who are in cahoots

1 with unscrupulous trial lawyers, hype selling media, and quack physicians who
2 practice junk science.

3 The concluding sentence of the “Scientific View” that was expressly paid for by a
4 think-tank, was expressly written for judges, and cites false authorship states,

5
6 “Thus the notion that ‘toxic mold’ is an insidious secret ‘killer’ as so many
7 media reports and trial lawyers would claim is ‘Junk Science’ unsupported
8 by actual scientific study.”

9 I am aware that there is no foundation for the absurd concept it has been
10 scientifically proven the poisons of mold do not poison. It is a scientific fraud being
11 perpetrated on the Arizona courts by two political action committees (US Chamber
12 of Commerce Institute for Legal Reform and National Apartment Association) and a
13 think-tank (Manhattan Institute Center for Legal Policy) who are all located in the
14 strategic area of our nation’s capital, Washington, DC. The fraudulent “Scientific
15 View” is used for the intent of instilling judicial bias in unwary judges and justices
16 overseeing mold litigation, to make rulings favorable to financial stakeholders of
17 moldy buildings and in support of expert witness testimony for the defense in mold
18 litigations.

19 I am aware that Bruce Kelman is an expert witness for the defense in the Arizona
20 litigation, now before the Arizona Appellate Court and involving two new born
21 infant deaths, an apartment building documented to have an atypical amount of mold
22 and a \$25,000,000 insurance policy issued by Travelers Insurance.

23
24 I am aware that Bruce Kelman does not list the “Scientific View” he was paid for
25 and penned on behalf of the US Chamber of Commerce on his Curriculum Vitae
26

1 among his scientific accomplishment - even though the National Apartment
2 Association is now interjecting the paper into a legal proceeding to be a definitive
3 source of science over the mold issue.

4 The National Apartment Association Amicus serves to illustrate the deception and
5 continued adverse ramifications on US courts by the seven San Diego judges and
6 justices making rulings in this libel litigation while refusing to acknowledge my
7 uncontroverted evidence of Bruce Kelman's perjury on the issue of malice within his
8 declarations. These were submitted to the San Diego courts three times while
9 strategically litigating to silence me from exposing the exact fraud of the US
10 Chamber of Commerce et. al, that is now being perpetrated on the Arizona Appellate
11 Court. This continued deception on courts is caused by errors of the San Diego courts
12 that have wrongfully and legally deemed me to be a "malicious liar"; thereby
13 discrediting all of my words and the words of many others, about the deceit
14 perpetrated on the courts by the US Chamber of Commerce et.al.
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16 Bruce Kelman's criminal perjury and his legal counsel, Keith Scheuer's, willful
17 suborning of Bruce Kelman's criminal perjury in this libel action, that has been
18 successfully used to discredit me, predicate the fraud now being perpetrated on the
19 Arizona Appellate Court by the National Apartment Association.
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21 Again, the perjury within Bruce Kelman's declarations submitted to the San
22 Diego courts in September 2005, April 2006, and March 2008 falsely stating what
23 my 23 exhibits of uncontroverted evidence proves is perjury; ie, Kelman never even
24 gave the purported malice causing testimony in my family's litigation with Mercury
25 Casualty of 2003 as claimed in his declarations submitted in this libel action. The San
26

1 Diego courts have been informed of this since September 21, 2005. The false
2 statements, false reason for malice made under penalty of perjury by Bruce Kelman
3 within his declarations in this libel litigation are:

4 “She [Sharon Kramer] apparently felt that the remediation work
5 had been inadequately done, and that she and her daughter had
6 suffered life-threatening diseases as a result.

7 I testified that the type and amount of mold in the Kramer house
8 could not have caused the life-threatening illnesses that she
9 claimed.”

10 As then ratified and suborned in Keith Scheuer’s briefs as the false reason
11 for me to harbor personal malice for Bruce Kelman:

12 “Dr. Kelman testified in a deposition that the type and amount of
13 mold in the Kramer house could not have caused the life-
14 threatening illnesses that Kramer claimed. Apparently furious that
15 the science conflicted with her dreams of a remodeled house,
16 Kramer launched into an obsessive campaign to destroy the
17 reputation of Dr. Kelman and GlobalTox.”

18 As merely one example of the 23 uncontroverted exhibits provided to the courts
19 that refute the above never corroborated statements, is the declaration of John Richard,
20 Esq, who took Bruce Kelman’s deposition on October 1, 2003. Mr. Richards states:

21 In 2003, I represented the Kramer family as co-counsel in the case
22 of Mercury vs. Kramer, GIN024147, San Diego Superior Court, North
23 County Division, Honorable Judge Michael P. Orfield presiding.

24 On October 1, 2003, I took the deposition of Bruce J. Kelman of
25 GlobalTox, Inc. Dr. Kelman is a toxicology who holds a PhD but not a
26 medical degree. He had been retained as an expert witness for Mercury
27 Insurance. This was the only time Dr. Kelman was deposed in the case.

1 The evidence in this case was that Sharon Kramer suffered from
2 hypersensitivity pneumonitis. Mrs. Kramer claimed that this caused her
3 significant medical problems. However, Mrs. Kramer did not contend
4 that this condition was terminal or life threatening to her. Nor did she
5 ever claim that she had acquired toxicological illness from the mold in
6 her home. Nor did her daughter make such a claim. Toxicological illness
7 was not at issue in the case.

8 There were approximately seven other expert witnesses for the
9 defense in the case of Mercury vs. Kramer. I am not aware that any of
10 these other experts have ever claimed Mrs. Kramer has exhibited
11 personal malice for them or has ever “launched into an obsessive
12 campaign to destroy their reputations” because of their testimony as
13 experts for the defense in the case of Mercury vs. Kramer.

14 **2. DEPOSITION TESTIMONY OF DR. ANDREW SAXON**

15 Although Andrew Saxon MD, is listed as co-authoring “A Scientific View” for
16 the US Chamber of Commerce; on page 175 (bated as pg. 31) of his
17 deposition in the matter of Hake v. Coleman Homes, Dr. Saxon stated under oath that
18 he had nothing to do with the US Chamber of Commerce Institute for Legal
19 Reform’s “Scientific View” (that was in reality only authored by Bruce Kelman and
20 Brian Hardin) and did not even know his name was put on it.

21 Testimony of Andrew Saxon:

22 Q. When the lay version of the ACOEM paper was printed by the Institute
23 For Legal Reform, the ACOEM again did not have any conflict-of-interest
24 waiver on your part, did it?

25 A. I have no idea. I've never seen that version. I'll call it the nonscientific
26 piece that has my name on it.

27 Q. From your view, did you make any efforts, despite anyone calling you or
28 anything else, to make sure that a conflict-of-interest waiver was included

1 with the lay version put out by the Institute For Legal Reform?

2 A. No, because I didn't even know my name was on it.

3 It is a bizarre interpretation of the term legal “reform” to submit documents into
4 legal proceedings that deceptively cite false physician authorship in the interest of
5 financial stakeholders of moldy buildings. It is a bizarre interpretation of the term
6 “legal” counsel when Keith Scheuer has willfully suborned Bruce Kelman’s “illegal”
7 declarations to create a fictional theme for personal malice. “Legal” Counsel, Keith
8 Scheuer, continued with the violation of Business and Profession Code 6068 even as
9 late as September 10, 2009. On page 21 of his Appellate Reply Brief submitted to
10 this Court, Keith Scheuer wrote:

11 “...she ignores the actual forest and obsesses on the imaginary
12 trees; i.e., even if her factual assertions about the Mercury
13 Casualty case were true (which, emphatically, they are not), she
14 closes her eyes to the clear and convincing evidence of her actual
15 malice, and her lack of credibility.”

16 One could say of Keith Scheuer’s eloquent prose:

17 “He ignores the actual forest of evidence of his client’s perjury and his
18 own willful suborning of it in the hopes that judicial perception bias
19 instilled by the US Chamber of Commerce will cause this Court to
20 obsess on the imaginary; even when his client’s perjury is substantiated
21 by no less than 23 pieces of uncontroverted evidence, (which,
22 emphatically, it is).

23 Keith Scheuer closes his eyes to the clear and convincing fact that one
24 cannot legally use criminal perjury to prove they were falsely accused of
25 being one who would commit criminal perjury; and the malicious intent
26 of a prolific expert witness and a California licensed attorney become
27 evidenced by a fraudulent Amicus Curiae Brief in a legal proceeding
28 with a physician who states under oath he had nothing to do with the
fraud.”

1 Law and logic dictate that one cannot use perjury to legally prove they were
2 falsely accused of being one who would commit perjury. Submitting fraudulent
3 documents into a legal proceeding in an attempt to silence a whistleblower so that
4 more fraudulent documents may be presented in other legal proceedings before other
5 courts is a very serious matter that should not be taken lightly by this Court.
6

7 I want the deceit perpetrated on the courts by the US Chamber of Commerce et al,
8 over the mold issue that is adverse to the health and safety of the American public to
9 be stopped. If at anytime in this four and a half year old litigation, even one of the
10 seven judges and justices overseeing this litigation has acknowledged the
11 uncontroverted evidence that Bruce Kelman has been committing criminal perjury to
12 create a fictional theme for my malice while strategically litigating; the deceit
13 perpetrated on US courts by the US Chamber of Commerce et al, would have come
14 to a screeching halt.
15

16 The seven judges and justices that have overseen this litigation are:

- 17 1. The Honorable Justice Judith McConnell, Presiding Justice San
18 Diego Court of Appeal Fourth District Division One and Chair of
19 the California Commission on Judicial Performance.
- 20 2. The Honorable Justice Cynthia Aaron, San Diego Court of
21 Appeal Fourth District Division One
- 22 3. The Honorable Justice J. McDonald, San Diego Court of
23 Appeal Fourth District Division One
- 24 4. The Honorable Judge Michael P. Orfield (retired) San Diego
25 North County Superior Court, Department 28. (Judge Orfield also
26 presided over my family's litigation with Mercury Casualty in

1 2003. He signed the settlement agreements in which we received
2 approximately \$500,000 from the three defendants)

3 5. The Honorable Judge Lisa C. Schall, (trial judge now in Family
4 Court) San Diego North County Superior Court, Department 31.

5 6. The Honorable Judge Joel Pressman, Presiding Judge San
6 Diego North County Superior Court.

7 7. The Honorable Judge William S. Dato, San Diego North
8 County Superior Court, Department 31.

9 I want my family's half of a million dollars (plus) back that this litigation has cost
10 us from the San Diego courts' failure to protect my speech for the public good from
11 retribution and attempted coercion into silence.

12 I want my good name cleared from being legally and falsely labeled a "malicious
13 liar" for daring to speak out of a deception on the courts adverse to the health and
14 safety of the American public, so that I may make a living again as a real estate
15 agent.

16 The above is what is at stake with this Court's ruling. It is why two people have
17 been in litigation for over four years over the little word "altered".

18 If this Court proves to be the first San Diego court not to ignore the overwhelming
19 and uncontroverted evidence of Bruce Kelman's criminal perjury on the issue of
20 malice – while professing to legally prove he was maliciously and falsely accused of
21 being one who would commit criminal perjury – then the face of mold litigation will
22 change throughout the United States. It will come inline with current accepted
23 science and health policy under the new administration.
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1 This is why this reviewing Court should grant my request for judicial notice of
2 the National Apartment Association Amicus Curiae Brief submitted to the Arizona
3 Appellate Court while citing to the US Chamber of Commerce Institute for Legal
4 Reform's "A Scientific View of The Health Effects of Mold" (2003) as a definitive
5 source to "educate" the justices.

6 This is why this reviewing Court should grant my request for judicial notice of
7 Dr. Andrew Saxon's testimony stating he is falsely listed as an author the US
8 Chamber of Commerce Institute for Legal Reform's "A Scientific View of The
9 Health Effects of Mold" (2003). No physician authored this "science" paper.
10

11 The two documents together serve to prove the continued deception on US courts
12 that was predicated by perjury and suborning of perjury on the issue of malice in this
13 libel litigation by the true author of "A Scientific View of the Health Effects of
14 Mold" US Chamber of Commerce Institute for Legal Reform (2003).

15 The two documents together serve to prove the tremendous adverse impact not
16 only on me, but on mold litigation as a whole; caused by seven San Diego judges and
17 justices ignoring the uncontroverted evidence of a plaintiff's criminal perjury on the
18 issue of malice in a libel action while strategically litigating to silence a
19 whistleblower.
20

21 I declare under the penalty of perjury under the laws of the State of
22 California that the foregoing is true and correct to the best of my knowledge.
23 This declaration is executed Respectfully submitted
24 on December 3, 2009

25 _____
Sharon Kramer, Pro Per
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I**

3 **The Court May Take Judicial Notice as Requested**

4
5 California Evidence Code § 451(f) states:

6 Judicial notice shall be taken of the following:

7 (f) Facts and propositions of generalized knowledge that are so universally known that
8 they cannot reasonably be the subject of dispute.

9 California Evidence Code § 452(d) states:

10
11 Judicial notice may be taken of the following matters to the extent that they are not
12 embraced within Section 451:

13 (d) Records of (1) any court of this state or (2) any court of record of the United States
14 or of any state of the United States.

15
16 California Evidence Code § 453(b) states:

17 The trial court shall take judicial notice of any matter specified in Section 452 if a
18 party requests it and:

19 (b) Furnishes the court with sufficient information to enable it to take judicial notice of
20 the matter.

21
22 California Evidence Code § 454(a)(1)states:

23 (a) In determining the propriety of taking judicial notice of a matter, or the tenor
24 thereof:

25 (1) Any source of pertinent information, including the advice of persons learned in the
26 subject matter, may be consulted or used, whether or not furnished by a party

1 California Evidence Code § 459 gives that same authority to the reviewing court:

2 a) The reviewing court shall take judicial notice of (1) each matter properly noticed by
3 the trial court and (2) each matter that the trial court was required to notice under
4 Section 451 or 453. The reviewing court may take judicial notice of any matter
5 specified in Section 452. The reviewing court may take judicial notice of a matter in a
6 tenor different from that noticed by the trial court.

7 (b) In determining the propriety of taking judicial notice of a matter, or the tenor
8 thereof, the reviewing court has the same power as the trial court under Section 454.

9 (c) When taking judicial notice under this section of a matter specified in Section 452
10 or in subdivision (f) of Section 451 that is of substantial consequence to the
11 determination of the action, the reviewing court shall comply with the provisions of
12 subdivision (a) of Section 455 if the matter was not theretofore judicially noticed in
13 the action.

14 (d) In determining the propriety of taking judicial notice of a matter specified in
15 Section 452 or in subdivision (f) of Section 451 that is of substantial consequence to
16 the determination of the action, or the tenor thereof, if the reviewing court resorts to
17 any source of information not received in open court or not included in the record of
18 the action, including the advice of persons learned in the subject matter, the reviewing
19 court shall afford each party reasonable opportunity to meet such information before
20 judicial notice of the matter may be taken.

21 The deposition testimony of Dr. Andrew Saxon in Hake v. Coleman Homes was
22 discussed in the deposition of Bruce Kelman, taken on July 22, 2008. The transcript of
23 this testimony was one of the trial exhibits that Keith Scheuer and former counsel for
24 Appellant, Lincoln Bandlow, jointly put together in numbered sequence in preparation
25 for trial. Therefore, it is a fact of generalized knowledge that is so universally known
26 to the parties to this litigation that it cannot reasonably be the subject of dispute.

27 The deposition of Dr. Andrew Saxon and the National Apartment Association
28 Amicus Curiae Brief are both records of courts from states within the United States.
Together, they help to illuminate pertinent information for the reviewing court to
understand why Respondent desperately wanted Appellant to be silenced and

1 discredited to the point that Respondent was willing to commit criminal perjury on the
2 issue of malice in a libel action to accomplish this goal.

3 The National Apartment Association Amicus and the testimony of Dr. Andrew
4 Saxon in Hake v. Coleman serve to show the truth of what was in Appellant's writing
5 of March 2005 that was far more damaging than the word "altered" to Respondent's
6 interest and in furtherance of the enterprises of several interested parties.

7 Therefore, the application for judicial notice is well-taken, is well documented as to
8 its significance and it is requested that this Court take judicial notice as prayed.
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10 DATED: December 3, 2009

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12 Sharon Kramer, Appellant Pro Per
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