Civil Case No. GIN044569
Appellate Case No. D054496
Appellate anti-SLAPP Case No. DO47758

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT – DIVISION ONE

SHARON KRAMER
Appellant
v.
BRUCE KELMAN
Respondent
Appeal after trial, the Honorable Lisa C. Schall, Presiding
San Diego Superior Court, Department 31,
Trial Date, August 18, 2008
Case Filed, May 6, 2005
Appellate anti-SLAPP Ruling Affirming Denial, November 16, 2006
The Honorable Michael P. Orfield Presiding, MSJ Denial June 22, 2008

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# APPELLANT'S RESPONSE TO COURT'S QUERY: 1.) WAS KRAMER'S DESCRIPTION OF KELMAN'S TESTIMONY PRIVILEGED & 2.) DOES ANYTHING IN OUR PRIOR UNPUBLISHED OPINION IN THIS MATTER, KELMAN V. KRAMER (2006) DO47758, NOVEMBER 16, 2006, PREVENT US FROM REACHING THE QUESTION OF WHETHER APPELLANT'S STATEMENTS WERE PRIVILEGED?

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## Query # 2.) DOES ANYTHING IN OUR PRIOR UNPUBLISHED OPINION IN THIS MATTER, KELMAN V. KRAMER (2006) DO47758, NOVEMBER 16, 2006, PREVENT US FROM REACHING THE QUESTION OF WHETHER APPELLANT'S STATEMENTS WERE PRIVILEGED?

The answer to this question appears to be both "Yes" and "No".

A. No, there is no reason this Reviewing Court should not reach the question of privilege in the Appellate anti-SLAPP ruling. This is because the Appellate anti-SLAPP opinion is where the errors of the case are best spelled out with all subordinate courts "following their guidance" in violation of C.C.P. 425.16(b)(3).

The Appellate Panel ruled incorrectly on the issues of privilege by wrongfully determining malice was rightfully established while ignoring uncontroverted evidence that the malice was established by fraud.....

B. "Yes", this Reviewing Court has reason not revisit the question of privilege in the anti-SLAPP opinion. This is because there is no need to revisit the issue of privilege when determining judicial "appropriate corrective action" in this five years worth of unbridled strategic litigation.

The issue of uncontrovertable and irrefutably proven fraud by Kelman, VeriTox and Scheuer, not the issue of privilege, triggers appropriate legal reversal of all motions. (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 733, pp. 762-763.) Fraud by Scheuer, not privilege, triggers undoing his deceptive deeds by California Code of Judicial Ethics, Canon 3.D.(2) which states, Disciplinary Responsibilities 'Whenever a judge has personal knowledge that a lawyer has violated any provision of the Rules of Professional Conduct, the judge shall take appropriate corrective action."

## VI.
## MR. SCHEUER'S REPLY TO THE COURT'S QUERY

Reminiscent of the tale of the husband who attempted to sneak in the back door of his home early one morning wearing his crumpled suit from the day before, and who replied to his wife's questioning of where he had been, with, "I got home at 1a.m. and did not want to wake you, so I slept out back in the hammock". When informed by his wife that she had taken the hammock down three months earlier, the husband then replied, "Well that's my story and I'm sticking to it". The following is Scheuer's Appellate Reply Brief, directly lying to this Appellate Court and suborning Kelman's criminal perjury yet again on September 10, 2009:

> "Appellant's theory apparently is that Dr. Kelman bamboozled several trial court judges and this Court about the substance of his testimony in her Mercury Casualty case and that this bamboozlement irretrievably tainted this entire lawsuit – creating what Appellant calls "unsurmountable judicial perception bias in the case." (Appellant's Errata Opening Brief, page 33.) ..."...the judicial perception bias went from court to court, ruling to ruling causing a manifest destiny verdict that the press release was wrong and Appellant had maliciously lied with the word altered". There are many, many problems with Appellant's theory. First, it has no factual basis". (Respondent's Appellate Reply Brief P.20)
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> .....
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> ...she ignores the actual forest and obsesses on the imaginary tree; i.e., even if her factual assertions about the Mercury Casualty case were true (which, empathically, they are not), she closes her eyes to the clear and convincing evidence of her actual malice, and her lack of credibility. (Respondent's Appellate Reply Brief P.21)

Unless Scheuer's reply to this Reviewing Court's queries of privilege, the MSJ and the anti-SLAPP motion includes a Mea Culpa for willfully suborning criminal perjury and perpetrating a fraud on the San Diego courts while strategically litigating for five years to vex, harass, coerce, discredit, demean, denigrate, financially cripple and silence a Whistleblower; then this Reviewing Court should consider Scheuer's answer to be one more attempt at bamboozlement of judges and justices, one more attempt to benefit from prior improvidently entered orders and one more violation of Business and Professions Code 6068 of "sticking to his story" while causing Sharon Kramer, this Reviewing Court and all courts much additional time, money and unnecessary work while aiding and abetting the US Chamber of Commerce et al, to perpetrate an interstate fraud on US courts adverse to public safety. By law, "..once the attorney realizes that he or she has misled the court, even innocently, he or she has an affirmative duty to immediately inform the court and to request that it set aside any orders based upon such misrepresentation; also, counsel should not attempt to benefit from such improvidently entered orders." Datig v. Dove Books, Inc. (1999) 73 Cal.App.4th 964, 981