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February 10, 2011

To the:

- Honorable Justice Judith McConnell, Chair of the CA Commission on Judicial Performance,. Admin Presiding Justice, Fourth District Div. One
- Honorable Justice Patricia Benke, Fourth District Division One
- Honorable Jerry Brown, Governor of California, President of the Regents of UC
- Honorable Kamala Harris, California Attorney General
- Honorable Tani Cantil-Sakauye, Chief Justice California Supreme Court
- Honorable Bill Hebert, President of the California State Bar,
- Honorable California Commissioners on Judicial Performance
- Honorable James Towery, Cal State Bar Chief of Trial Counsel, Intake Unit,
- Honorable San Diego County District Attorney, Bonnie Dumanis, Board Member Ca State Bar and Advisor to the Attorney General Harris
- Honorable Justice Richard Huffman, Fourth District, Division One and California Judicial Council Member
- Honorable Justice Joann Irion, Fourth District Division One
- Honorable Justice Cynthia Aaron, Fourth District Division One
- Honorable Justice Alex McDonald, Fourth District Division One
- General Counsel, Regents of the University of California, Mary MacDonald
- Honorable Judge Kevin Enright, Presiding Judge of the Superior Court of California, County of San Diego, Judicial Council Advisor
- Honorable Eric Holder, Attorney General of the United States

The Death Of Democracy In The California Legal System On Behalf Of The Affiliates Of The US Chamber Of Commerce, While Leaving California and US Workers & Citizens Maimed and Deceased

Re: Letter received from the Honorable Justice Judith McConnell, January 19, 2011, regarding her and the Fourth District Division One Appellate Court's role in aiding insurer unfair advantage in California policy, aiding strategic litigation carried out by criminal means, bias in the courts & using the courts to promote the political whims of the past Governor of California, Arnold Schwarzenegger, adverse to the public's best interest. The ongoing saga of Kelman v. Kramer,

Honorable Justice McConnell (and Honorable Justice Benke et. al.),

Thank you for your reply letter of January 21, 2011, in response to my January 19, 2011 letter. In your letter, you state that as the Presiding Justice of the Fourth District Division One Appellate Court you have no duty under Local Rule 1.2.1 Policy Against Bias because my *"complaint deals with dissatisfaction with legal rulings"* you *"do not think it appropriate to comment further"*; and the policy against bias *"rules [I] refer to apply to the trial courts and not to the Court of Appeal"*.

With all respect due, I disagree. By law, it is more than appropriate that you comment further, Justice McConnell. It is not my *"dissatisfaction with legal rulings"*. It is my dissatisfaction with your and Justice Benke's et. al., *illegal rulings* in your unpublished Opinions written in 2006 along with Justices McDonald & Aaron; and Justice Benke's in 2010 along with Justices Huffman and Irion. Your Opinions, when compared against the undisputed facts in the court records, are like reading tales of two different lawsuits.

Both of your unpublished Opinions ignored the undisputed evidence of the crimes of perjury and suborning of perjury by an author of environmental policy for the US Chamber of Commerce, Bruce ("Kelman") and his "legal" counsel, Keith ("Scheuer") to establish false yet needed reason for malice in a libel litigation. Both ignored there is no evidence in the case of me even once being impeached as to the subject belief in the validity of my words that Kelman *"altered his under oath statements"* to hide the true connection of how the ('US Chamber") of Commerce got their unclean hands into health policy over the mold issue, by being closely associated with the American College of Occupational and Environmental Medicine ("ACOEM"), to propagate biased thought based on scant scientific foundation for the purpose of limiting insurer liability for causation of illness and death.

Both Opinions ignored the fact that in this libel litigation, the courts cannot even state what is incorrect of my purportedly libelous writing of March 2005. Both ignored there is a stealth party to this litigation, Bryan ("Hardin"). He is the never disclosed on Certificates of Interested Parties, sixth owner of VeriTox, Inc and retired Deputy Director, Centers for Disease Control & Prevention, National Institute for Occupational Safety and Health, ("NIOSH"). VeriTox was formerly known as ("GlobalTox"). He is also a co-author of the fraud in policy on behalf of the affiliates of the US Chamber and ACOEM.

As you are both evidenced of being aware, this litigation has aided with the continuance of the false concept in California workers comp policy and US public health policy that it is scientifically proven water damaged buildings ("WDB") pose no harm to human health. Under the premise of workers comp "reform" Governor Schwarzenegger endorsed this false scientific concept into occupational medicine policy in October of 2005.

This endorsement came one month after the first lower court judge denied my anti-SLAPP motion over the first public writing (mine) to expose how the scientific fraud in health policy was being marketed. This was the first of many courts to ignore the evidence of perjury by the US Chamber & ACOEM policy author, Kelman, and suborning of perjury by his California licensed attorney, Keith ("Scheuer") to establish malice. As you are aware, Kelman claimed to have given a testimony in my own mold litigation of long ago that made me "launch into an obsessive campaign" to destroy his reputation. All of you have been provided direct and impeaching evidence proving he never even gave the purported malice causing testimony. He committed perjury to make up a reason of why I would write of the fraud in policy, and the courts turned a blind eye to the irrefutable evidence of the perjury for *six years*.

All of the judiciaries to have overseen this case have been evidenced of the criminal perjury to establish false extenuating circumstances for malice in a strategic libel litigation. One will find this referenced and evidenced extensively in the court records, on tape of oral argument before the Appellate Court and even on video in Kelman's own words while in deposition. But one will never find any mention of this irrefutable evidence in any ruling or Opinion.

This is called: Judiciaries aiding and abetting criminal activity in malicious litigation over a matter adverse to public health, while aiding enterprises of insurer unfair advantage in claims handling practice and litigation, interstate. This is also called: RICO.

As endorsed into policy by Arnold Schwarzenegger, Governor State of California, Kimberly Belshé, Secretary Health and Human Services Agency, Sandra Shewry, Director Department of Health Services, John Rea, Acting Director Department of Industrial Relations in October of 2005:

> "Physicians can refer to the American College of Occupational and Environmental Medicine (ACOEM) statement, Adverse Human Health Effects Associated with Molds in the Indoor Environment. www.acoem.org/guidelines/article.asp?ID=52."

The following are falsehoods in science and policy as found within the ACOEM statement that have aided workers comp insurers to shift cost of illness from water damaged buildings ("WDB") onto state and federal taxpayer funded disability and social service programs, while adding to the debt burden on taxpayers in the State of California:

> In recent years, the growth of molds in home, school, and office environments has been cited as the cause of a wide variety of human ailments and disabilities. So-called "toxic mold" has become a prominent topic in the lay press and is increasingly the basis for litigation when individuals, families, or building occupants believe they have been harmed by exposure to indoor molds. ...**Except for persons with severely impaired immune systems, indoor mold is not a source of fungal infections. Current scientific evidence does not support the proposition that human health has been adversely affected by inhaled mycotoxins in home, school, or office environments.**

There is no scientific foundation what so ever that only the severely immune compromised are harmed by molds and their toxins found in WDB's, nor was this ever current accepted science. It is a scientific fraud used by the insurance industry to deny liability for causation of illness. It was legitimized by ACOEM in 2002, who writes California workers comp policy occupational physicians must follow under Senate Bill 899. It was then mass marketed to the courts in 2003 by the US Chamber of Commerce in an insurer cost shifting scheme of epic proportion; of which you both are evidenced of being well aware.

Both ACOEM's and the US Chamber's papers carry the name "University of California" in implied credentialed endorsement that sways courts to believe the science is legitimate, intrastate and interstate. The Regents of the UC have been profiting from this scientific fraud for years. When their employees testify as insurer defense witnesses in mold litigations the Regents keep over half the monies generated from the expert witness fees, while families of the sick and deceased can receive no restitution for the true causation of illnesses and death.

The UC has also accepted federal funds from NIOSH used to hold mock mold trials in physician "educational" seminars at UCLA/UC Irvine, based on the teaching of the ACOEM mold statement. These seminars are taught by ACOEM members who are also employees of the Regents and who also generate income for the Regents by serving as expert defense witnesses in mold litigations.

The following are excerpts from my purportedly libelous writing of March 2005 that the California courts have done everything possible to try to discredit and gag me for *six years* for daring to write the truth of a fraud in health and workers comp policy that Governor Schwarzenegger endorsed, adverse to workers' and the public's best interest:

> "Upon viewing documents presented by the Hayne's attorney of Kelman's prior testimony from a case in Arizona, Dr. Kelman altered his under oath statements on the witness stand. **He admitted the Manhattan Institute, a national political think-tank, paid GlobalTox $40,000 to write a position paper regarding the potential health risks of toxic mold exposure.** Although much medical research finds otherwise, the controversial piece claims that it is not plausible the types of illnesses experienced by the Haynes family and reported by thousands from across the US, could be caused by "toxic mold" exposure in homes, schools or office buildings. **In 2003, with the involvement of the US Chamber of Commerce and ex-developer, US Congressman Gary Miller (R-CA), the GlobalTox paper was disseminated** to the real estate, mortgage and building industries' associations. **A version of the Manhattan Institute commissioned piece may also be found as a position statement on the website of a United States medical policy-writing body, the American College of Occupational and Environmental Medicine."**

The San Diego Reader recently ran an article titled *"Well Behaved Women Rarely Make History"*. It writes of your pioneering role, Justice McConnell, in stopping bias against women in the legal profession. With all respect due, I did not walk into a restaurant in downtown San Diego with a couple of my girl friends in the seventies like you did; bluff and intimidate a maître d' by citing known irrelevant case law from New York; and demand that females in the legal profession in San Diego deserve a spot at the table in the local Good Ole Boys Club.

I walked into Washington DC in 2005, armed with legitimate legal documents; evidence of innocent people losing everything from a fraud in policy; and ethical scientists and knowledgeable physicians supporting that I was telling the truth. I demanded that the federal government stop Good Ole Boys and Good Ole Girls from promoting false science that one could apply math to data from a single rat study and prove health policy should be that thousands of sick and deceased workers and citizens were just liars out to scam insurers as to what caused their illnesses and deaths. From the new book *"Surviving Mold"* by Dr. Ritchie Shoemaker on the subject:

> "That area of enquiry subsequently led to a request from Senator Kennedy's office in October 2006 to the General Accountability Office for a review of the Federal effort. Again, Sharon Kramer's incredible effort was instrumental in the GAO request that led in turn to the 2008 US GAO report that completely destroyed the defense or government Nay-sayers' credibility in mold illness issues. Thanks to Sharon and Senator Kennedy's staff, the longstanding idiotic arguments about mycotoxins alone being the problem from WDB have now been put to rest, with the exception of some really primitive defense attorneys who don't know that the old ACOEM-quoting defense and the old AAAAI quoting defense are a prescription for a loss in court."

My purportedly libelous writing of March 2005 speaks for itself as being completely accurate, as you are both evidenced of being well aware. Double speak used in Opinions, when one reads between the lines, the courts cannot even cite what is inaccurate in the writing. As accurately stated in my writing, Kelman and GlobalTox were paid by the Manhattan Institute to write a paper that was mass marketed by the US Chamber of Commerce. A version of this think-tank paid for hire work was another marketing piece of propaganda in medical science legitimized by ACOEM. ACOEM mass marketed into health policy.

As evidenced above, I knocked the scientific fraud that was caused by White Collars teaming up with White Coats to perpetrate a fraud in policy, out of federal ball park by being instrumental in causing a Federal Government Accountability Office audit into the true current understanding of the health effects of mold. You are both evidenced of being made aware of this fact many times over. Although one would never know that from reading your Opinions and letters.

In your unpublished Opinion of 2006, Justice McConnell, covered up by your unpublished Opinion in 2010, Justice Benke, you deemed that a prima facie showing of the falsehood of my writing had been established; while interpreting Kelman's testimony in question, *exactly* how I had written it. From your 2006 anti-SLAPP Opinion, page 10, Justice McConnell:

> "This testimony supports a conclusion Kelman did not deny he had been paid by the Manhattan Institute to write a paper, but only denied being paid by the Manhattan Institute to make revisions of the paper issued by ACOEM. **He admitted being paid by the Manhattan Institute to write a lay translation.**..In sum, Kelman and GlobalTox presented sufficient evidence to satisfy a prima facie showing the statement in the press release was false" And on page 20, "The order is affirmed. Kelman is awarded costs on appeal". McConnell, McDonald, Aaron, November 16, 2006.

From my purportedly libelous writing of March 2005 stating the same thing:

> He admitted the Manhattan Institute, a national political think-tank, paid GlobalTox $40,000 to write a position paper regarding the potential health risks of toxic mold exposure... A version of the Manhattan Institute commissioned piece may also be found as a position statement on the website of a United States medical policy-writing body, the American College of Occupational and Environmental Medicine."

From your unpublished Opinion of 2010, Justice Benke, covering up for what Justice McConnell et al, did in 2006, that has aided with insurer unfair advantage remaining in California workers comp policy and US public health policy since 2006, now five years:

> "In our prior opinion, we found sufficient evidence Kramer's Internet post was false and defamatory as well as sufficient evidence the post was published with constitutional malice. We also found there was sufficient evidence to defeat Kramer's claim she was protected by the fair reporting privilege provided to journalists by Civil Code section 47, subdivision (d)(1). Under the doctrine of the law case, these determinations are binding on us and compel us to find there is sufficient evidence to support the jury's determination Kramer libeled Kelman and was not entitled to the fair reporting privilege.

> We find no error in the trial court's award of costs. Accordingly, we affirm the judgment....
>
> Application of the law of the case doctrine disposes of Kramer's initial argument on appeal that the trial court erred in relying on our prior opinion in framing the issues tried on remand. The trial court was bound by our determinations of law and thus did not err in relying on those determinations in framing the issues for trial...
>
> We do not propose to catalogue or to attempt to conjure up all possible circumstances under which the 'unjust decision' exception might validly operate, but judicial order demands there must at least be demonstrated a manifest misapplication of existing principles resulting in substantial injustice before an appellate court is free to disregard the legal determination made in a prior appellate proceeding."...
>
> Our review of our prior opinion does not show our analysis of the evidence of falsity and malice or our application of the fair reporting privilege were in any sense manifestly incorrect or radically deviated from any well-established principle of law. Thus any disagreement we might entertain with respect to our prior disposition would be no more than that: a disagreement. Given that circumstance and the fact that only nominal damages were awarded against Kramer, the value of promoting stability in decision making far outweighs the value of any reevaluation of the merits of our prior disposition. Benke, Huffman, Irion September 13, 2010.

In the case of Kelman v. Kramer, GIN044539/ D054496, the sole claim of the case was that my phrase *"altered his under oath statements"* was a maliciously false accusation of perjury (coincidentally in the first public writing to expose how ACOEM and the US Chamber were connected to market a fraud in health policy that gives insurers unfair advantage, interstate). Now we have a new malicious lawsuit, Case No. 37-2010-00061530-CU-DF-NC Kelman v. Kramer, North San Diego Superior Court, Department 30, the Honorable Judge Thomas Nugent presiding, filed November 4, 2010.

As you are both evidenced of being aware, Kelman is now seeking an injunctive relief that I be gagged from *"stating, repeating, publishing or paraphrasing, by any means whatsoever, any statement that was determined to be libelous in the action titled Kelman v Kramer, San Diego Superior Court Case No. Gin 044539"* As you both are evidenced of being aware, he then goes on to deem that I should be gagged from writing words far beyond only the five for which I was sued, *"altered his under oath statements."*

To quote from the injunctive relief motion, the following is what Kelman and his California licensed attorney, Scheuer, are seeking I be gagged from ever writing again:

> "The libelous passage of the press release states: 'Dr. Bruce Kelman of GlobTox, Inc, a Washington based environmental risk management company, testified as an expert witness for the defense, as he does in mold cases through the country. Upon viewing documents presented by the Hayne's [sic} attorney of Kelman's prior testimony from a case in Arizona, Dr. Kelman altered his under oath statements on the witness stand. He admitted the Manhattan Institute, a national political think tank, paid GlobalTox $40,000 to write a position paper regarding the potential health risks of toxic mold exposure."

I was only sued for five words, *"altered his under oath statements"*. I am published in a peer reviewed medical journal using most of the above words that are of how it became a fraud in US (and California health policy) that WDBs do not harm people. From my writing that was published in the International Journal of Occupational and Environmental Health, September 2007, *"ACOEM A Professional Association In Service To Industry"* that you have both seen:

> "In the spring of 2003, Veritox, [formerly known as GlobalTox] a risk-management company that provides defense testimony in mold litigation, and of which two of the authors of the JOEM article are principals, was paid $40,000 by the Manhattan Institute to convert the ACOEM Statement on Mold into a "lay translation" to be shared through the United States Chamber of Commerce with stakeholder industries—real estate, mortgage, construction, and insurance. The authors unfairly presented the essence of the mold controversy as, 'Thus the notion that 'toxic mold' is an insidious secret 'killer' as so many media reports and trial lawyers would claim is 'junk science' unsupported by actual scientific study."

So who benefits from seeing me gagged from writing of this case and for words which I was never even sued, in this new malicious litigation? Answers:

> **Those California judiciaries who have established new stealth case law in the State of California that if one is an author of policy for the US Chamber and it aids the insurance industry under the whims of governors to shift cost onto the public, they and their attorneys are permitted to maliciously and strategically litigate by criminal means to silence, vex, harass, demean discredit and financially cripple anyone who speaks out of fraud in the governor's policy that is harming the public.**
>
> **Those judiciaries who have established new stealth case law that if a California citizen dares to speak and write of the fraud in policy that has been aided to continue by the courts; the courts will deem them a liar and malicious aid to force them into silence without a shred of evidence required impeaching them of the subjective belief in the validity of their words; or even any evidence required to establish that their words are incorrect.**
>
> **Those judiciaries who have sold the First Amendment of the Constitution to the US Chamber of Commerce; and the California legal system policing agencies who have turned a blind eye in incestuous Deliberate Indifference.**

"Well behaved women rarely make history". Justice McConnell and Justice Benke, what your misbehavior is pioneering as your future legacy in history is fear of retribution from Good Ole Girls in black robes for any California citizen who dares to speak out for the public good against the interests of the affiliates of the US Chamber of Commerce. You are pioneering fear of retribution for any California judiciary who dares to try to follow the law for the public good and for the sake of Democracy, if it is adverse to your interests and the interests of the US Chamber of Commerce.

You both took an under oath pledge to uphold the Constitution on behalf of the citizens of California and the United States. As taken from the website of the San Diego Lawyer's Club which you, Justice McConnell, helped to form forty years ago to stop bias in the courts:

> "Section 3 of article XX of the California Constitution requires that judges, among others, take and subscribe an oath that, in pertinent part, reads as follows: ''I,_____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter."

You have now both become threats to the cherished Democracy you were elected and appointed to uphold and protect. Once you have given your robes to whims of politicians and the political fervor of the moment, they will never let you wear them again without always monitoring and influencing your actions as judiciaries in reviewing courts and on reviewing committees. Your robes will show as being soiled in your future rulings and reviews of the works of other judiciaries until the day you step down from the bench.

What you have both proven along with four other justices of the Fourth District Division One Appellate Court, is that you are not concerned of protecting the public's health and safety; or protecting women or children from bias; or upholding the Constitutions of California and the United States; or protecting speech for the public good. You are only concerned of keeping your seats at the table of the Good Ole Boys Club that has now also become the Good Old Girls Club. You have become the epitome of what you set out to change many, many, long years ago.

By law, Justice McConnell, it is more than appropriate that you comment. Our courts (including the California Supreme Court that refused to hear this case, *twice*, as signed by Chief Justice Ron George) and the state agencies that are to police our courts are not playgrounds for those who would put the whims of politicians over the best interest of the public, over the Constitution of California and the over the Constitution of the United States. It is wrong of you and it is *illegal*, Justices McConnell and Benke, to put others in positions of having to choose between loyalties to you in your good ole positions of power and influence; or of upholding the Constitutions of California and of the United States.

You need to fall on your political swords as you step down from the bench, Sisters. Because of you, some good people are unnecessarily dying while other good people and Democracy are being dragged along by you down a murky, twisted path of no return.

The Honorable Thomas Nugent who as been assigned this newest malicious litigation is soon to retire. He has a long and distinguished career and is well known as being an honest, ethical judge. The tangled web you have woven places him in the precarious position in this newest malicious litigation of either following Constitutional law and protecting my First Amendment rights; or covering up for the two of you by ordering I should be gagged from writing the truth of the fraud in policy and the truth of your fraudulent Opinions in lawsuit of Kelman v. Kramer.

I did not even bother filing an anti-SLAPP motion in this newest litigation. I could not, as any anti-SLAPP appeal would go right to you, Justice McConnell, as the Fourth, One, Administrative Appellate Presiding Justice. You, the one who would benefit most by seeing me be gagged by this newest Strategic Litigation Against Public Participation.

I cannot even get an attorney to represent me in this newest malicious litigation. They are afraid of you and retaliation by the Good Ole Boys and Girls Club when the interests of the US Chamber of Commerce are involved. They know that once you have shared your Black Robes with the White Collars and White Coats, you never fully own them again. It could ruin their careers and their families' lives to become involved in this case. Democracy and freedom of speech for the public good in California have been strangled to death by your unclean hands.

California Rules of the Court ,10.1004(b) states, **"**The administrative presiding justice is responsible for leading the court, establishing policies, promoting access to justice for all members of the public, providing a forum for the fair and expeditious resolution of disputes, and maximizing the use of judicial and other resources."

Canon 3D(1). Disciplinary Responsibilities states, "Whenever a judge has reliable information that another judge has violated any provision of the Code of Judicial Ethics, the judge shall take or initiate appropriate corrective action, which may include reporting the violation to the appropriate authority".

Canon 3D(2) states, " 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."

The court records and the certified letters I have sent to you and others, speak for themselves of how many times you, in the capacity of Chair of the California Commission on Judicial Performance and elected Administrative Presiding Justice of the San Diego courts, have been provided irrefutable evidence of the crimes of perjury and suborning of perjury by Kelman and his lawyer, Scheuer, going ignored in your courts. The court rulings and Opinions also speak for themselves by their willful omission of the undisputed and irrefutable evidence found in the court records of crime in a strategic litigation over a matter of public health. Your Opinions are fraudulently beneficial to the interests of the affiliates of US Chamber of Commerce.

This crime and the California courts' *illegal rulings* have cost my family everything we own for me not to be silenced of a deceit in science and policy that aids with a multi-billion dollar intrastate and interstate insurer cost shifting scheme, while leaving the sick nowhere to turn for help. I have no intention of being forced into silence by your illegal rulings and Opinions going ignored in the California "legal" system.

Justice McConnell and Justice Benke (along with the other Justices of the Fourth, Div. One), you now have personally vested interests in seeing me be *illegally gagged* by the courts from ever being able to write of this case and the following truthful words that are at the heart of how it became a fraud in policy that mold does not harm; and involving a California medical policy writing body and a paid for hire endeavor on behalf of the affiliates of the US Chamber of Commerce:

> "He admitted the Manhattan Institute, a national political think-tank, paid GlobalTox $40,000 to write a position paper regarding the potential health risks of toxic mold exposure.... A version of the Manhattan Institute commissioned piece may also be found as a position statement on the website of a United States medical policy-writing body, the American College of Occupational and Environmental Medicine."

If I showed you that other pioneering women in the legal profession are dying, would you and the State of California then be interested in following the laws that govern proof of libel and what courts and legal system governing bodies are required by law to do when a litigant is irrefutably evidenced to be litigating by criminal means adverse to the public's best interest? Because judges *are* dying and you and your courts' willful disregard for the laws that govern proof of libel with actual malice used to discredit a truthful whistle blower are aiding and abetting it to continue. From the Miami Herald, January 11, 2011:

> "Concerning that a 52-year-old Florida jurist's death from lung cancer last month may have been linked to courthouse mold, three of Judge Cheryl Aleman's colleagues on the ninth floor have moved their chambers out of the Broward County Courthouse and are seeking environmental testing. 'There were issues with a serious illness with one or more judges in the area,' Judge Patti Englander Henning tells the Miami Herald. 'Prudence suggested that we request to be moved until they can test and determine what the problem is and how it can be remedied. And obviously, it was a valid enough claim that they were good enough to move us."

Odds are that this deceased judge just needed some anti-fungals to kill the mold growing in her lungs and she would still be here today. But by aiding with a malicious litigation carried out by criminal means by authors of the ACOEM and US Chamber policies on mold; you have aided in keeping the physicians misinformed of this fact. You have aided to promote the continuance of fraud in medical teaching universities that aids insurers to deny proof of causation of illness and death, that ***"Except for persons with severely impaired immune systems, indoor mold is not a source of fungal infections"*** ACOEM Mold Statement 2002, authors, Bruce Kelman and Bryan Hardin of VeriTox, Inc along with Andrew Saxon, UCLA.

I am a citizen of the State of California who went above and beyond for my fellow man and who has been maliciously and falsely deemed a *"malicious liar"* by the courts with not a shred of evidence to support this finding, adverse to the public's best interest and to the benefit to the financial interests of the affiliates of the US Chamber of Commerce, primarily the insurance industry.

I am a victim of crime in the California courts that judiciaries have aided for *six years* by repeatedly pretending they were not undisputedly evidenced of the crimes of perjury and suborning of perjury to try to silence me of a fraud in health policy.

The Commission on Judicial Performance has not stopped it. The State Bar has not stopped. The California Supreme Court has not stopped it. The San Diego County District Attorney, Bonnie Dumanis, has not stopped it.

As such, I am now being victimized again by a new malicious prosecution that would gag me of writing of the courts' involvement in aiding insurer fraud by aiding with a malicious litigation carried out by criminal means; of which not only the courts would now benefit from seeing me gagged; but all the California government legal system policing agencies who have turned a blind eye to crime in the courts by author of policy for the US Chamber of Commerce and ACOEM, in incestuous Deliberate Indifference.

Canon 2 A. Promoting Public Confidence
A judge shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Canon 2 B. Use of the Prestige of Judicial Office
(1) A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge.

Canon 3 B. Adjudicative Responsibilities
(2) A judge shall be faithful to the law* regardless of partisan interests, public clamor, or fear of criticism, and shall maintain professional competence in the law.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (1) bias or prejudice, including but not limited to bias or prejudice based upon...disability.... [Sic, bias against a class of people - those disabled by molds who are costly for insurers and affiliates of the US Chamber of Commerce; along with bias to the point of aiding criminal activity in legal proceedings against their advocates].

(8) A judge shall dispose of all judicial matters fairly, promptly, and efficiently. A judge shall manage the courtroom in a manner that provides all litigants the opportunity to have their matters fairly adjudicated in accordance with the law.

Canon 3 C. Administrative Responsibilities
(1) A judge shall diligently discharge the judge's administrative responsibilities impartially, on the basis of merit, without bias or prejudice, free of conflict of interest, and in a manner that promotes public confidence in the integrity of the judiciary.

Canon 3 D. Disciplinary Responsibilities
(1) Whenever a judge has reliable information that another judge has violated any provision of the Code of Judicial Ethics, the judge shall take or initiate appropriate corrective action, which may include reporting the violation to the appropriate authority.

(2) Whenever a judge has personal knowledge that a lawyer has violated any provision of the Rules of Professional Conduct, [sic, a defendant's uncontroverted evidence of willful and repeated suborning of perjury by the plaintiff's attorney to create false extenuating circumstances, false theme of personal malice to inflame the courts for *six years* in the San Diego Court system] the judge shall take appropriate corrective action.

Again, from your 2006 unpublished anti-SLAPP opinion, Justice McConnell, falsely deeming my truthful whistle blowing as evidence of personal malice for Kelman; and as evidenced for you in 2010, Justice Benke, but not mentioned in your Opinion:

> "Further, in determining whether there was a prima facie showing of malice, the trial court also relied on the general tone of Kramer's declarations. These declarations reflect a person, who motivated by personally having suffered by mold problems, is crusading against toxic mold and against those individuals and organizations who, in her opinion, unjustifiably minimized the dangers of indoor mold. Although this case involves only the issue of whether the statement *"Kelman altered his under oath statements on the witness stand"* was false and made with malice, Kramer's declarations are full of language deriding the positions of Kelman, GlobalTox, ACOEM and the Manhattan Institute. [Sic, the Appellate Court neglected to mention the US Chamber of Commerce and US Congressman Gary Miller (R-Ca)]
>
> For example, Kramer states that people 'were physically damaged by the ACOEM Statement itself' and that the ACOEM Statement is a document of scant scientific foundation; authored by expert defense witnesses; legitimized by the inner circle of an influential medical association, whose members often times evaluate mold victims o[n] behalf of insurers and employers; and promoted by stakeholder industries for the purpose of financial gain at the expense of the lives of others.' (Appellant Appendix Vol.1 Ex.12:256, 257) [from the McConnell unpublished anti-SLAPP Opinion, 2006]
>
> Both the Honorable Judge Michael P. ("Orfield") (retired) and the Appellate Court violated Kramer's constitutional rights of freedom of speech right out of the gate by deeming her a liar for her truthful words written in her defense within her declarations that are to be protected in a legal proceeding under review by a judicial body. C.C.P 425.16(e) (2) states, 'As used in this section, 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue' includes: (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law'. Are litigants who are trying to blow a whistle not permitted to state their defense without fear of retribution?" (My Reply To Court's Query, Justice Benke,, January 2010, page 3)

In summary, Tom Donahue's mother could not have written more biased, flawed, illegal and insurance industry beneficial Opinions. Please let me know how the new California Attorney General, the new Governor, the new Chief Justice of the California Supreme Court, the new President of the State Bar, the new State Bar Chief of Trial Intake Unit, the new US Attorney General, the CJP and the Regents of the University of California, will be addressing this. It has cost my family all we own to defend the truth of my words for the public good in the face of unbridled criminality in malicious litigations that are politically motivated and have been aided by the California courts.

I especially look forward to your replies to this letter, Honorable Justice McConnell and Justice Benke; and yours, District Attorney Dumanis, who refused to take action against sisters in the San Diego Lawyers' Club. Your courts have stolen six years from me as I have been forced to watch in horror as innocent people lose everything, sometimes even their lives. You have willfully ruined my good name in the process by avoiding rules of law you are *all* in place uphold on behalf of the public you have been elected and appointed to serve. You have stolen my First Amendment rights and given them to the US Chamber of Commerce.

Now, if none of you, who have been sent this letter, move to stop this new malicious litigation; then *you are all aiding* with the California courts being *illegally used again* to try to gag me from ever writing of this shameful history made by misbehaving women in the California legal system; while aiding the Regents of the UC and the insurance industry to profit off of the misery and death of others at the expense of California and US taxpaying citizens. Now that you know what I know, for you to remain silent could only be deemed more Deliberate Indifference.

Your silence on the matter is not silent when you are where you are to implement actions that protect the public from corrupt judges, corrupt lawyers and corrupt professional witnesses with connections to write frauds policy that support their expert witnessing enterprises, favorable to the interests of insurance industry and the US Chamber of Commerce. Your jobs are to protect me from corruption.and to protect Democracy in California and the United States.

If there is any evidence in existence that refutes my above well evidenced statements, now would be a good time to bring it to my attention. I will not be silenced. It is not going to happen. On behalf of myself, my family, and the citizens, workers and taxpayers of California and the United States and their families; I look forward to your prompt replies with your intents of how you will be rectifying this gravely serious matter.

Sincerely,

Mrs. Sharon Noonan Kramer
Thirty-three year resident, San Diego County
Citizen of the State of California,
Citizen of the United States of America

Attached:
January 21, 2010 letter from Justice McConnell
January 19, 2010 letter to Justice McConnell
Brief Overview of what the Fourth District, Division One Appellate Court *Knows They Have Illegally Done* to Aid Strategic & Criminal Libel Litigation; while Aiding to Adversely Impact Public Health and Threaten Democracy on Behalf of the Affiliates of the US Chamber of Commerce
Past Governor Arnold Schwarzenegger's Hair-Brained Scheme of Workers Comp "Reform" Bringing in the Medical Front Men of the Insurance Industry to Write California Policy.

Court of Appeal

FOURTH DISTRICT, DIVISION ONE
750 B STREET, SUITE 300
SAN DIEGO, CALIFORNIA 92101-8196

CHAMBERS OF
JUDITH McCONNELL
PRESIDING JUSTICE

January 21, 2011

Sharon Kramer
2031 Arborwood Place
Escondido, CA 92029

Dear Ms. Kramer:

I have received your letter dated January 19, 2011. The rules you refer to apply to the trial courts and not to the Courts of Appeal. We do not have subordinate judicial officers.

Because your complaint deals with dissatisfaction with legal rulings, I do not think it appropriate to comment further.

Very truly yours,

JUDITH McCONNELL
Presiding Justice

JM/jp

January 19, 2011

Sharon Kramer
2031 Arborwood Place
Escondido, CA 92029
760-746-8026

Justice Judith McConnell
Administrative Presiding Justice
Fourth District Division One Appellate Court

Honorable Justice McConnell,

I am attaching a Motion to Recall and Rescind The Remittitur. I am filing a complaint under Local Rule of the Court, Policy Against Bias, 1.2.1. This policy states,*"It is the policy of the court to provide an environment free of all types of bias, prejudice, any kind of discrimination, or unfair practice. All judges, commissioners, referees, court officers, and court attachés must perform their duties in a manner calculated to prevent any such conduct, either by court personnel or by those appearing in court in any capacity....Any violation of this policy by any judge, commissioner, referee, court officer, or court attaché should be reported directly to the presiding judge or executive officer, or assistant executive officer of the division in which the alleged violation occurred."*

. I would like for you to review how it is even remotely possible that your court can repeatedly ignore evidence of criminal perjury in a strategic litigation by authors of fraudulent health policy for the American College of Occupational and Environmental Medicine (ACOEM) and the US Chamber of Commerce.

I would like for you to review how it is even remotely possible your court could deem one who has helped to change US public health policy for the good of the public to be a "malicious liar" without a shred of evidence ever presented that she was ever impeached as to the subjective belief in the validity of her words.

I would like for you to review how it is even remotely possible that a retired high level CDC NIOSH employee could be an undisclosed party to a litigation for six years; and still end up awarded costs by a party that prevailed over him and four other owners of the corporation VeriTox, Inc., in trial.

I would like an explanation of why your did not acknowledge a prior complaint on the same matter, filed on September 17, 2010; or take any action.

Under California Rules of the Court 10.603(f)(3).*"The presiding judge must give written notice of receipt of the complaint to the complainant."*

California Rules of the Court 10.603(g)(4) states, *"The court must maintain a file on every complaint received, containing the following:(A) The complaint;(B) The response*

of the subordinate judicial officer, if any;(C) All evidence and reports produced by the investigation of the complaint, if any; and(D) The final action taken on the complaint."

California Rules of the Court 10.603(i)(5) states, *"If the presiding judge terminates the investigation and closes action on the complaint, the presiding judge must:(A) Notify the complainant in writing of the decision to close the investigation on the complaint. The notice must include the information required under (I)" which states: "When the court has completed its action on a complaint, the presiding judge must promptly notify the complainant and the subordinate judicial officer of the final court action.(2) The notice to the complainant of the final court action must:(A) Provide a general description of the action taken by the court consistent with any law limiting the disclosure of confidential employee information; and (B) Include the following statement: If you are dissatisfied with the court's action on your complaint, you have the right to request the Commission on Judicial Performance to review this matter under its discretionary jurisdiction to oversee the discipline of subordinate judicial officers. No further action will be taken on your complaint unless the commission receives your written request within 30 days after the date this notice was mailed. The commission's address is: Commission on Judicial Performance 455 Golden Gate Avenue, Suite 14400 San Francisco, California 94102"*

Sincerely,

Mrs. Sharon Noonan Kramer

Attachment (1)
CC: California Commission On Judicial Performance

health toxicologist for sixteen years for the State of Washington Department of Health...As a senior toxicologist for two agencies of the State of Washington, I have been required to act to protect the health of Washington citizens through analyses of environmental exposures and real and potential health effects associated with such exposures.....I was a member of ***National Academy of Sciences, Institute of Medicine,*** *Damp Indoor Spaces and Health, which produced the report "Damp Indoor Spaces and Health"* ***[("IOM Report")]. I authored the chapter on Toxic Effects of Fungi and Bacteria*** *and contributed to the chaper Damp Buildings,and the chapter on Human Health Effects Associated with Damp Indoor Environments. I am a section editor for Section 1, Underlying Principles and Background for Evaluation and Control in the 2008 American Industrial Hygiene Association [("AIHA")] Book, Recognition, Evaluation and Control of Indoor Mold, and a contributing author to chapter 1. Indoor Mold Basis For Health Concerns...*

I traveled to Vista, California on August 19, 2008.. specifically in order to testify...on issues related to health effects.... *I was prepared to testify regarding issues of mold and health that had been raised in* ***testimony by Dr. Kelman in this case as it related to his prior testimony in October of 2003, in the case of Mercury Insurance vs. Kramer, which was, in part, used to establish grounds for the finding of personal malice in the trial of Kelman and Veritox v. Kramer.*** *I was not called to testify since issues of science were not permitted to be discussed in the trial..."*(Appellant Appendix Vol.IV Ex.27:880)

IX.
THE SIX KEY FACTS OF THIS STRATEGIC LITIGATION

Much like a Santa Ana wind blowing into the San Diego Appellate court. When the static, immovable airs and visibility blocking smut are purged from this strategic litigation; six facts remain in evidence, clear as day, for this Reviewing Court's opened eyes.

After five years of litigation:

A. Kelman cannot even state how Kramer's phrase "altered his under oath statements" translates into a false accusation of perjury – the sole claim of the case.

B. Kelman cannot direct any court's eyes to one piece of evidence of Kramer ever being impeached as to her belief of her validity and logic of her use of her March 2005 phrase "altered his under oath statements" when describing Kelman's testimony given in a legal proceeding in Oregon, February, 2005.

C. Kelman cannot direct this court's eyes to a single piece of evidence of Kramer even uttering a harsh word of him, personally, before she wrote in March of 2005. To speak out of the "positions" of many entities involved in mass marketing a scientific fraud to US courts (scientifically proven the toxins of mold are not toxic) is not evidence of personal malice for one of the many entities and individuals involved. It is a First Amendment right guaranteed to all US citizens to freely speak truthful words that are for the public good.

D. This Court has been provided with uncontroverted and irrefutable evidence that since September of 2005, Kramer has provided all judges and justices to oversee this litigation with uncontroverted and irrefutable evidence that Kelman has committed criminal perjury in this libel action to establish a fictional theme of Kramer having malice for him, personally. She has provided all courts with uncontroverted and irrefutable evidence that Scheuer has willfully suborned Kelman's perjury. *"Uncontradicted and unimpeached evidence is generally accepted as true."* Garza v. Workmen's Comp. App. Bd. (1970) 3 Cal.3rd 312 317-318

E. Kelman cannot state a reason for this Reviewing Court that Kramer would harbor malice for him, personally. Now that the

"Foaming At The Mouth, Vindictive Ninny of a Litigant Out To Get an Esteemed Scientific Expert Witness From Her Personal Mold Litigation of Long Ago" theme for Kramer's malice is gone with the Santa Ana winds by the exposing of the criminal perjury and suborning of criminal perjury (Perjury by Kelman: *"I testified that the types and amounts of mold in the Kramer house could not have caused the life threatening illnesses she claimed*" & Suborning Perjury by Scheuer: *"Apparently furious that the science conflicted with her dreams of a remodeled home, Kramer launched into an obsessive campaign to destroy the reputations of Dr. Kelman and GlobalTox"*); the replacement absurd and character assassinating theme for Kramer's purported malice is "An Unquenchable Desire To Be Known as 'Queen of the Chatboards". *"A state of mind, like malice, "can seldom be proved by direct evidence. It must be inferred from objective or external circumstantial evidence."* (Drum v. Bleau, Fox & Associates (2003) 107 Cal.App.4 1009, 1021.

However, this would indicate that the late Honorable Senator Edward Kennedy was only motivated to request a Federal Government Accountability Office audit into the health effects of mold at Kramer's urging because he too, held the same unquenchable desire. And it would indicate that the reporters and editors of the Wall Street Journal published at Kramer's urging and with Kramer's research input, *"Amid Suits Over Mold, Experts Wear Two Hats Authors of Science Paper Often Cited by Defense Also Help in Litigation"* with Kelman and Hardin being the subject author/experts with ACOEM's and the US Chamber of Commerce's oxes getting rightfully gored; because the respected newspaper professionals also were motivated to be known as "Queens of the Chatboards."

F. Kelman and undisclosed party to this litigation, VeriTox owner Hardin, are the authors of the US mold policy paper "*Adverse Human Health Effects Of Molds In An Indoor Environment*", ACOEM (2002). They are also the authors of the legal mold policy paper, *"A Scientific View Of The Health Effects Of Mold"* US Chamber of Commerce

Institute For Legal Reform & Manhattan Institute Center For Legal Policy (2003).

This means an author of influential US medical and legal mold policy papers has been proven by uncontroverted and irrefutable evidence to have been committing criminal perjury before the San Diego courts, in a libel action against the first person to publicly write of how these two "questionable" policy papers were closely connected and how they are used in litigation; while the other author did not disclose he was a party to the strategic litigation.

The anti-SLAPP Appellate Panel ignored the evidence of both of these facts when ruling over a strategic litigation impacting US public health policy as they deemed Kramer had falsely accused Kelman of perjury about taking money to make edits in a medical association paper without apparently reading Kramer's writing to see it is 100% correct about who paid whom for what.

In other words, the anti-SLAPP Appellate Panel ignored the evidence one party was committing a fraud on the courts, while ingoring other evidence that the other party was telling the truth about the other party lying. *"If the remittitur issues by inadvertence or mistake, or as a result of fraud or imposition practiced on the appellate court, the court has inherent power to recall it and thereby reassert its jurisdiction over the case. This remedy, though described in procedural terms, is actually an exercise of an extraordinary substantive power. ...its significant function is to permit the court to set aside an erroneous judgment on appeal obtained by improper means. In practical effect, therefore, the motion or petition to recall the remittitur may operate as a belated petition for rehearing on special grounds, without any time limitations."* (9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 733, pp. 762-763.)

This Court has the ability to fashion orders with origin in Article VI, section 1 of the California Constitution which gives this Court broad inherent power *"not confined by or dependent on statute."* Slesinger,

American College of Occupational and Environmental Medicine (ACOEM):

A Professional Association in Service to Industry

JOSEPH LADOU, MD, DANIEL T. TEITELBAUM, MD, DAVID S. EGILMAN, MD, MPH, ARTHUR L. FRANK, MD, PHD, SHARON N. KRAMER, JAMES HUFF, PHD

The American College of Occupational and Environmental Medicine (ACOEM) is a professional association that represents the interests of its company-employed physician members. Fifty years ago the ACOEM began to assert itself in the legislative arena as an advocate of limited regulation and enforcement of occupational health and safety standards and laws, and environmental protection. Today the ACOEM provides a legitimizing professional association for company doctors, and continues to provide a vehicle to advance the agendas of their corporate sponsors. Company doctors in ACOEM recently blocked attempts to have the organization take a stand on global warming. Company doctors employed by the petrochemical industry even blocked the ACOEM from taking a position on particulate air pollution. Industry money and influence pervade every aspect of occupational and environmental medicine. The controlling influence of industry over the ACOEM physicians should cease. The conflict of interests inherent in the practice of occupational and environmental medicine is not resolved by the ineffectual efforts of the ACOEM to establish a pretentious code of conduct. The conflicted interests within the ACOEM have become too deeply embedded to be resolved by merely a self-governing code of conduct. The specialty practice of occupational and environmental medicine has the opportunity and obligation to join the public health movement. If it does, the ACOEM will have no further purpose as it exists, and specialists in occupational and environmental medicine will meet with and be represented by public health associations. This paper chronicles the history of occupational medicine and industry physicians as influenced and even controlled by corporate leaders. *Key words*: American College of Occupational and Environmental Medicine; industry influence; public health; policy; conflicts of interest.

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With the passage of the Occupational Safety and Health Act in 1970 we came under public scrutiny as never before, as to how we practice occupational medicine. "Whose agent is the occupational physician—the employer's or the employee's?" The workers are the company—what's best for them is best for the enterprise.—IRVING R. TABERSHAW, MD, delivered the C. O. Sappington Memorial Lecture entitled "The Health of the Enterprise" to the annual meeting in 1977.[1]

The American Association of Industrial Physicians and Surgeons was organized in 1915 as a professional association of physicians concerned with health hazards in the workplace.[2] As a result of the positive image industrial medicine projected during the First World War, the new specialty was guardedly embraced by organized medicine.[3] Again during the Second World War, because of their contribution to wartime industry, physicians working in the war effort enjoyed a high level of esteem.[4] Moreover, industrial medicine was viewed as an attractive opportunity by military physicians returning to civilian life.[5] The transition of so many physicians to company employment was met with surprising endorsements. The AMA Council on Medical Education ventured that, "given proper compensation, professional experience should be as stimulating and attractive in industrial medicine as in other medical specialties."[6]

By 1959, renamed the Industrial Medical Association (IMA), the association had a membership of 4,000 physicians, almost as large as the American College of Occupational and Environmental Medicine (ACOEM) of today. Then, as now, the majority of IMA members practiced occupational medicine on less than a full-time basis. Only a small percentage of the members had any formal training or board certification in occupational medicine. On the other hand, most officers and Directors of the IMA and its successors were an elite group of full-time medical directors of major industrial corporations.[7,8]

and AOEC often work jointly, and advance policy recommendations that go into government proposals and health directives.[112,115,177]

Because of concern about conflicts of interests, AOEC sought to develop a position on ethical conduct. It is a disappointment that AOEC turned to the International Commission on Occupational Health (ICOH) for a code of ethics to emulate. The AOEC board of directors in 1996 recommended that the organization adopt the ICOH International Code of Ethics, one noted for its entirely voluntary and unenforceable provisions.[115,118] Goodman had warned that, "A bad or shallow code is worse than none at all."[114] Goodman's warning went unheeded. Many of the same people who met on behalf of AOEC later met again, this time representing ACOEM, and followed the ICOH precedent since it had served their purposes before.[112] The ICOH is widely recognized for its support of industry.[153,178] ICOH committees have advanced the interests of asbestos mining and manufacture, chemicals, and pesticides.[179–182] The ICOH membership and activities are similar to those of ACOEM, only conducted on a global scale. ACOEM and ICOH conduct joint meetings and share common philosophies and practices.[183]

STATEMENT ON MOLD

The ACOEM Statement on Mold was introduced in 2002 as an evidence-based statement and published in JOEM.[184] The policy statement by ACOEM is that mold exposure in an indoor environment could not plausibly reach a level of exposure to cause toxic health effects. Reported to be a review of scientific literature on the subject of illnesses caused by molds and the toxins they may produce, ACOEM concluded that,

> Levels of exposure in the indoor environment, dose–response data in animals, and dose-rate considerations suggest that delivery by the inhalation route of a toxic dose of mycotoxins in the indoor environment is highly unlikely at best, even for the hypothetically most vulnerable subpopulations.

However, none of the references cited in the JOEM paper and in the ACOEM Statement on Mold arrive at this conclusion.[185,186] To form this conclusion, the authors made their own calculations from a single rodent study conducted by other investigators.

The matter of ACOEM conflicts of interest was detailed in a front page *Wall Street Journal* article, January 9, 2007, "Court of Opinion Amid Suits Over Mold, Experts Wear Two Hats: Authors of Science Paper Often Cited by Defense Also Help in Litigation."[187] The result of a six-month investigation, the *Wall Street Journal* article outlined how three authors who frequently testified in mold lawsuits as experts for the defense were specifically selected by ACOEM to write the ACOEM position statement on mold. One of the three, Bryan Hardin, had recently retired from NIOSH. The *Wall Street Journal* quoted a senior toxicologist for the Washington State Department of Health, "They [the ACOEM authors] took hypothetical exposure and hypothetical toxicity and jumped to the conclusion there is nothing there." ACOEM predictably defended its message and the authors, stating that it was not alone in its interpretation of the evidence.[188]

The issue that ACOEM refused to address was that the ACOEM Statement on Mold was written with no apparent effort to determine the conflicts of interest among the authors. One of the authors had published a review article on mold in 2000 stating that there were no health effects.[189] The authors had extensive experience as consultants to many industries and as defense witnesses in court cases. Authorship of the ACOEM Statement on Mold advanced the interests of industry and advanced the reputations with industry of the authors, who went on to aid the industry in defending against claims.

Jonathan Borak, in charge of the peer review of the ACOEM Statement on Mold, reported to the ACOEM officers and executive director in 2002,

> I am having quite a challenge in finding an acceptable path for the proposed position paper on mold. Even though a great deal of work has gone into it, it seems difficult to satisfy a sufficient spectrum of the College, or at least those concerned enough to voice their views. I have received several sets of comments that find the current version, much revised, to still be a defense argument. On the other hand, Bryan Hardin and his colleagues are not willing to further dilute the paper. They have done a lot, and I am concerned that we will soon have to either endorse it or let it go. I do not want to go to the Board of Directors and then be rejected. That would be an important violation of Bryan. I have assured him that if we do not use it he can freely make whatever other uses he might want to make. If we "officially" reject it, then we turn his efforts into garbage.[190]

In the spring of 2003, Veritox, a risk-management company that provides defense testimony in mold litigation, and of which two of the authors of the JOEM article are principals, was paid $40,000 by the Manhattan Institute to convert the ACOEM Statement on Mold into a "lay translation" to be shared through the United States Chamber of Commerce with stakeholder industries—real estate, mortgage, construction, and insurance. The authors unfairly presented the essence of the mold controversy as, "Thus the notion that 'toxic mold' is an insidious secret 'killer' as so many media reports and trial lawyers would claim is 'junk science' unsupported by actual scientific study." The Chamber of Commerce presents the benign Veritox interpretation of mold as,

> Hardin and his team of scientists provide a detailed primer on mold in A Scientific View of the Health

> Effects of Mold. Fungi, they point out, play an "essential role in the cycle of life as the principal decomposers of organic matter, converting dead organic material into simpler chemical forms that can in turn be used by plants for their growth and nutritional needs. Without fungi performing this essential function, plant and animal debris would simply accumulate." Mold is everywhere.[191]

The authors and many other ACOEM members have cited the JOEM paper and the ACOEM Statement on Mold before the courts in an effort to deny illness claims when testifying as experts on behalf of those with financial stakes in the building and finance industries.[192] Although the defense testimony has been deemed to be an unscientific nonsequitur by the Institute of Medicine[186] and by the courts,[193] ACOEM continues to deny that there is any basis in fact to dispute its position statement.[188]

To make matters worse, ACOEM and AOEC together mocked the mold victims who gave interviews to the *Wall Street Journal* in an Internet message that they falsely attributed to the *FDA News* as an April Fool's joke. Government symbols appeared on the ACOEM-AOEC message, and the contact information was a legitimate FDA phone number.[194] Principals in both organizations later sent a note of apology to the mold victims, saying that they were the sole authors, but the note of apology was not sent to the international distribution of the phony *FDA News* that was received by thousands of occupational and environmental physicians around the world, who would not be expected to notice the potential significance of an April 1 date on official FDA letterhead.[195]

As a result of the organizational biases, the close affiliations with industry, funding and contracts from government agencies, and the perverse influence over the practice of medicine and the appearances in court of company-sponsored experts, the ACOEM Statement on Mold has exerted far too much influence.[196–198] The ACOEM Statement on Mold brings into serious question the objectivity of those formulating position papers; and of equal concern, the ethics of those who profit from the position taken by ACOEM and AOEC.[199]

REFORM

The workers' compensation model of occupational and environmental medicine should be converted to a public health model. Occupational and environmental medicine, as a part of the public health infrastructure, could play a much more substantive part in bringing about a national program to deal with occupational and environmental health. Abolishing workers' compensation would remove the perverse incentives that currently undermine the practice of occupational medicine.[89] If occupational physicians were not protected from litigation by workers' compensation law, there would be much less attention paid to the interests of employers, and a lot more concern for the wellbeing of workers. It is also likely that there would be far fewer health and safety professionals working for companies. The vacuum could be filled by health and safety professionals with public health training working in settings that are much less likely to respond to the influence of corporations and insurers. Medical care for workers should be provided without question or clearance criteria by health care professionals who are not subject to influence by employers or insurers. ACOEM has supported, "changes in regulatory and procedural areas that have made recovery from injuries unnecessarily complicated in the workers' compensation system," but has not supported fundamental change to the system itself.[200]

In the area of professional competence, ACOEM publishes lofty recommendations for competencies, but is woefully short on ideas of how to provide them to its members.[201] The primary purpose of the sketchy training offered by ACOEM is to increase membership in a failing organization. The short courses and introductory sessions conducted by ACOEM at its annual gatherings are wholly insufficient, and merely provide the pretence of training and background that assures the membership of new physicians to replace the losses of recent years.

BACK TO THE FUTURE

In 1977, Irving R. Tabershaw gave an address entitled "The Health of the Enterprise" to the ACOEM annual meeting. He noted that occupational medicine had come under public scrutiny with the passage of the OSHAct. The public, according to Tabershaw, wondered whether the occupational physician was the agent of the employer or the employee. His answer became a historic defense of industry-supported medicine, and initiated the stunning growth in industry consultants in the years that followed that continues to the present.

> It is evident that the basic ethical and moral responsibility of all physicians, including occupational physicians, is to safeguard the health of the individual—the worker. There is, however, another consideration—'the health of the enterprise'—in which the employee earns his livelihood and which retains and pays for the services of the occupational physician.[1]

Although mindful of the difficulty in doing so, Tabershaw defended the practice of occupational medicine, and if anything, called for a major expansion of its breadth and scope. He referred to, "our responsibility for the total health of the enterprise, be it a corporation, a conglomerate, a multinational, a nonprofit institute, an educational institution, or a privately owned company." This clever sleight of hand drew