

JOHN CAVICCHI TO FRIENDS OF BORDER PATROL

Mr. Ramirez, distinguished panel, Friends of the Border Patrol.

America needs more people like Andy Ramirez who has given us the opportunity to voice our concerns.

The problems in Customs and Border Protection run much deeper than the agency. I believe that the root of the problem is dishonest government lawyers who protect corrupt management officials and the judges who protect them and each other.

The most serious threat to our democracy is the trend towards an unequal application and enforcement of the law and the lack of the appearance of impartiality and appearance of impropriety by those sworn to uphold, enforce and adjudicate the law.

In 1947, Einstein said, “[E]ven the most perfectly planned democratic institutions are no better than the people whose instruments they are.”¹

Nearly sixty years later, Judge Edith Jones of the United States Court of Appeals for the Fifth Circuit stated that, “The American legal system has been corrupted almost beyond recognition.”²

¹ ROBERT P. WEEKS, *COMMONWEALTH VS. SACCO AND VANZETTI*, 273 (Prentice-Hall, Inc.) (1958). “Everything should be done to keep alive the tragic affair of Sacco and Vanzetti in the conscience of mankind. They remind us of the fact that even the most perfectly planned democratic institutions are no better than the people whose instruments they are....”

Referring to lawyers, the judge said:

[O]thers seem uninhibited about making misstatements to the court or their opponents or destroying or falsifying evidence. When lawyers cannot be trusted to observe the fair processes essential to maintaining the rule of law, how can we expect the public to respect the process?

How can a system founded on law survive if the administrators of the law daily display their contempt for it?

In 2005, the American Bar Association found that “More than half of Americans are angry and disappointed with the nation’s judiciary....Nearly half agreed with a congressman who said judges are ‘arrogant, out-of-control and unaccountable.’”³

According to Founding Father Alexander Hamilton,⁴ judges are given permanency in office because they are above politics and are immune to outside interference. Article III, Section 1 of the Constitution states that “[J]udges ... shall hold their offices during good Behavior...” However, there is no definition of “good Behavior.”

Congress has abdicated its authority by allowing judges to create judicial councils and to define “good Behavior.” It is naïve to believe that

² Speech before the Federalist Society of Harvard Law School on February 28, 2003. Geraldine Hawkins, *American Legal System is Corrupt Beyond Recognition, Judge Tells Harvard Law School*. www.massnews.com. Click archives, search Judge Edith Jones.

³ Martha Neill, *Half of U.S. Sees ‘Judicial Activism Crisis,’* ABA Network Journal, October 3, 2005. www.abanet.org/journal/ereport/s30survey.

⁴ THE FEDERALIST NO. 78.

judges can be trusted to police themselves. Elected officials are accountable to the voters. Judges are burdened with the same shortcomings as the rest of us, but are accountable only to other judges. It is un-American, undemocratic and possibly unconstitutional to allow the judiciary to secretly police itself. Judicial independence does not mean freedom to depart from the facts, logic, reason and the rules of court. Judicial independence does not mean judicial tyranny. The judiciary is no longer a co-equal branch of government. It has surpassed the other two branches and governs according to the rule of judges. It has become a nation within a nation.

The Constitution must be amended to require term limits for judges and to require that judges be American born.

Is it good behavior to feign lack of understanding of basic English, to disregard facts, to create facts and arguments, to ignore Supreme Court precedent, to openly associate with a representative of a litigant while the opposing litigant has a case pending before the same judge, and to protect a judge who publicly invited only one counsel into the privacy of his chambers? When a judge signs a decision, does he do so under the pains and penalties of perjury? Can a judge be criminally prosecuted or impeached for writing fiction, or is the only remedy an appeal alleging an “abuse of discretion.”?

I submit that the aforesaid conduct constitutes judicial perjury and obstruction of justice. They are impeachable offenses.

Congressman Tom Tancredo's description of Miami as a Third World country is an understatement. Only in Miami would six federal judges and fifty-eight state judges commit to attend the criminal defense bar's headline event—a post-indictment, lifetime award ceremony for a lawyer federally indicted for Columbian drug money-laundering and wire fraud.⁵ Where else would Customs and Border Protection continually promote an individual who tampered with evidence and “placed” marijuana in a black cruise ship passenger's luggage? Only in Miami would CBP promote an official who was caught in a sex act with another CBP official on government time, in a government car and in a government garage.

Since I became involved in Title VII cases several years ago in Miami Federal District Court, I have monitored the Eleventh Circuit Court of Appeals and its repeated attempts to explain away discrimination. Consider the following telephone call to an African-American woman regarding a pizza delivery. Judge Martinez threw out the woman's case, which was explained-away and affirmed on appeal:

[S]o funny ... [a] nigger trying to sound important. When

⁵ Julie Kay, *Miami criminal defense group rallies to embattled attorney's cause*. 2008 National Law Journal Online, May 17, 2008.

I'm finished with you, you're not gonna look like yourself. We can't even resell the pizzas because your pathetic people, the people you work with, touched the food. I can't wait to find you. You don't know who you're dealing with. We're like the old fashioned kind of Italian restaurant people. It's gonna be beautiful. Can't wait to find you, you piece of shit nigger. Nigger bitch.⁶

I began representing my brother Eugene in federal court in 2002. A supervisor, Myra Quirk, without authority to do so, had called our 86 year old mother's doctor in 2000. Our mother had suffered from an incurable form of heart disease. When challenged, Quirk falsely accused my brother of filing falsified medical documents in support of an FMLA request. My brother reported her to Internal Affairs for making the false criminal allegation. IA did nothing.

Instead, it disregarded that it had provided my brother with a high risk public trust reinvestigation in 1999. IA resurrected 1998 false allegations of misconduct by Helen Calvit, his former supervisor and a friend of Quirk. The allegations had been found to be "unsubstantiated" in 1999.

In defense of my brother's age and gender discrimination case wherein the agency hired two entry level females in their twenties for a position for which he applied, IA "un" concluded its investigation and

⁶ *Kinnon v. Arcoub, Gopman & Associates*, 490 F.3d 886, 889 (11th Cir. 2007)

coordinated its new investigatory activity with the timing of his litigation in 2001 and 2002.

In defense of the discrimination case, CBP lawyers falsely claimed that Gene was subject to a “lengthy and ongoing Internal Affairs investigation,” and that the selecting official was unaware of his age and gender. My brother’s first and middle names appeared on the application—Eugene Alfred. The application showed that he graduated from college in 1972.

The Eleventh Circuit Court of Appeals ignored our brief, adopted the agency’s false arguments and went to impermissible extremes. Prior to litigation, my brother had received numerous awards and commendations, including one from former President Bush for his efforts on the war on drugs. Although my brother’s ethnicity was never raised as an issue in any pleading, and although our grandparents were born in America in the 1870s, the court took judicial notice of our ethnic heritage and engaged in offensive ethnic stereotyping. It stated that Gene is an Italian-American male over 40 who was suspected of associating with persons connected to criminal activity. In truth, there were no such persons connected to any criminal activity. The court ignored that five days after the IA investigation had

concluded in 1999, the same office of Internal Affairs had provided him with his favorable “high risk public trust” reinvestigation.

Jose Martinez was one federal district court judge who decided our case. Born in the Dominican Republic, Judge Martinez broadcasts baseball, football and basketball games for the University of Miami. Judge Martinez did not disclose to labor union lawyers suing Coca-Cola that Coke sponsors the University of Miami sports website. Neither did he disclose his former law firm’s association with Coke. While Columbian Coke workers were tortured, kidnapped or illegally detained, the judge sat in the broadcast booth for nearly four years before finally deciding in Coke’s favor.⁷

Judge Martinez is the federal judiciary’s “pastor problem.” A Eucharistic minister, he threw out a jury verdict against the Catholic archdiocese in a child abuse case, but did not disclose his association to lawyers suing the archdiocese.⁸

In 2006, we won a petition for a writ of certiorari in the Supreme Court. On remand from the court of appeals, although both parties had consented to have the case decided by a United States magistrate judge, Judge Martinez reached out, assigned the case to himself and ignored the Supreme Court. Although Panelist Mark Conrad filed a declaration stating

⁷ Report by Campaign to Stop Killer Coke, *Judge Jose Martinez and Coca-Cola: Conflict- of- Interest Pattern Emerges*, December 1, 2007.

⁸ Trevor Aaronson, *Religious Conviction*, Miami New Times. October 12, 2006.

that the assistant United States attorney admitted that she had nothing to support her allegations and that she had, in effect, fabricated the case, Judge Martinez ruled that the declaration, written in plain English by a seasoned criminal investigator, was “vague and conclusory.” A first year high school student could have understood what Mark Conrad wrote.

In another case, Judge Martinez allowed the same assistant United States attorney to manipulate the random judge assignment procedure by falsely stating that the Supreme Court had remanded our case to the district court. In truth, the case had been pending in the court of appeals. Judge Martinez took no action against the assistant United States attorney for her mendacity, and appeared at Miami DHS Headquarters to receive an award.

He also appeared at a Miami DHS sponsored event, gave the keynote address, and openly associated with a named hostile witness, District Field Officer Winkowski—the agency’s retaliator-in-chief.

The display of patriotism by wearing the American flag on one’s lapel has become an issue in this year’s presidential campaign. Consider DHS’s publicly distributed flyer—the American flag is displayed at the bottom of the page and below the flags of nineteen other nations. Judge Martinez’s picture appears on the opposite page.

Chief Judge Federico Antonio Moreno, born in Venezuela, gives new meaning to the term “judicial activism.” In one case, he allowed his clerk to write his decision and sign his name—without apparently reviewing what the clerk wrote and signed. As a result, Judge Moreno’s clerk adversely impacted the economy and stopped the trade of certain goods to Latin America for three months.⁹

In our case, Judge Moreno protected Judge Martinez from publicly responding to allegations regarding his appearance of impropriety and lack of impartiality. Judge Moreno subverted the rules of court, gave himself a “Christmas present,” as he stated in court, assigned the cases to himself and denied motions to recuse Judge Martinez as moot.

Judge Moreno promptly repeated the same errors which caused the Supreme Court to vacate and remand the case, and became the third judge to deny an outstanding discovery motion as moot. The motion would have collapsed CBP’s house of cards. It had been pending since 2004.

In 1994, Jose Ramirez, a GS-14, tampered with evidence and admitted to “placing” marijuana in a black couple’s luggage. CBP denied his request for a downgrade to a GS-12, stating that he could not fulfill duties in a “credible and effective manner.”

⁹ John Pacenti, The Judiciary, *Unauthorized court order halts PlayStation shipments*. Daily Business Review, February 15, 2008

In 2003, Judge Moreno approved a decision against Ramirez, which condemned both Ramirez and the agency stating:

Without question, Defendant [Customs] could have relied on Plaintiff's [Ramirez's] actions related to the 1994 cruise ship incident not only to deny Plaintiff's reassignment request, but also to terminate Plaintiff's employment... [T]he parties have produced disturbing evidence, including the fact that in spite of Plaintiff's conduct, Defendant has not only continued to employ him, but has repeatedly promoted him.¹⁰

After the court's scathing decision, CBP promoted Ramirez to Port Director, a GS-15.

We filed the agency's findings and Judge Moreno's decision in court. However, Judge Moreno refuted them and claimed that they were "bombastic insinuations and accusations."

On September 12, 2006, I called and questioned CBP Commissioner Ralph Basham on C-Span. I asked Mr. Basham the following question:

[H]ow an individual who admitted to placing marijuana in a black couple's luggage in a cruise ship in 1994 would receive three promotions up until the point where he is presently the port-director for the Port of Miami, and what does that say about the integrity of the individuals who are chosen to ensure the security of our ports?

Commissioner Basham responded:

[W]e take every allegation of integrity, violation of integrity,

¹⁰ *Ramirez v. Snow*, at 22 n.9, No. 01-0173-CIV-MORENO/GARBER (S.D. Fla. June 11, 2003).

corruption very, very seriously ... If you are aware of one ... an issue that someone has, in fact, done what you've said they've done, I suggest that you report it ...to ICE or the Inspector General of Homeland Security.

Judge Martinez would state that Commissioner Basham's answer was "vague and conclusory." Judge Moreno would call it "bombastic insinuations and accusations."

In May 2008, however, Commissioner Basham posed for a group photo op with the same Jose Ramirez.

Finally, how would Congress define an impeachable offense? Congress should summon these judges and order them to explain their conduct and their decisions. To define an impeachable offense, Congress could allude to former Supreme Court Justice Potter Stewart's attempt to define hard core pornography, "I know it when I see it."¹¹

Congress will know an impeachable offense when it sees it.

Thank you,

John Cavicchi
Houston, June 8, 2008

¹¹ *Jacobellis v. Ohio*, 378 U.S. 184, 196-97, 84 S.Ct. 1676 (1964) (Stewart, J. concurring) "I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it."

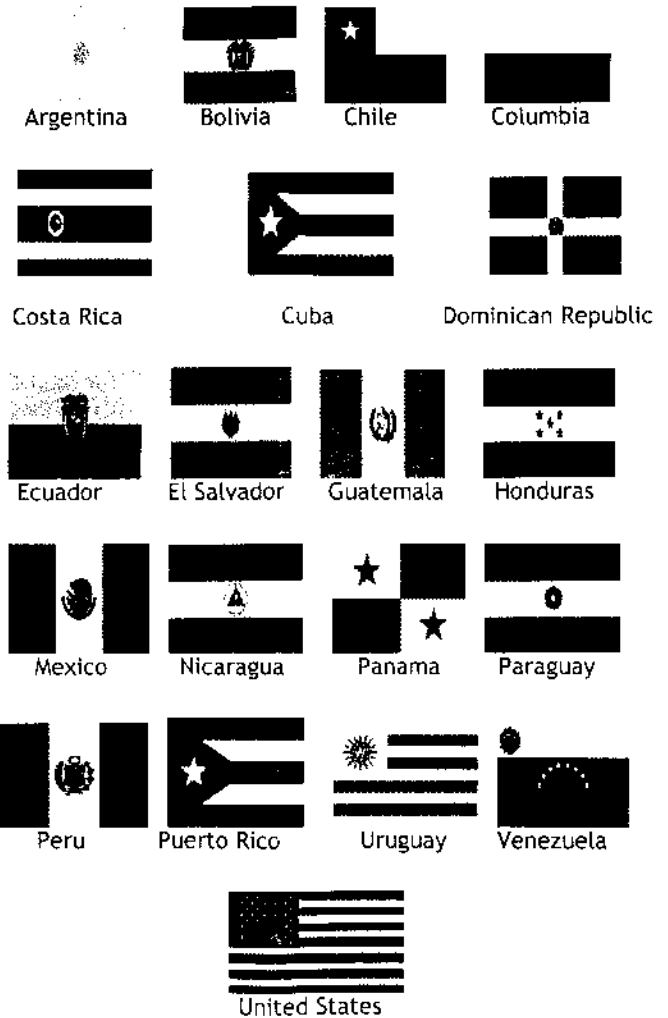


THE HONORABLE JOSE E. MARTINEZ
U.S. District Judge for the Southern District of Florida



Jose E. Martinez was born on July 28, 1941 in the Dominican Republic. He moved to the Miami area in 1949 and has lived here most of his life. He attended St. Theresa High School in Coral Gables and subsequently the University of Miami. At UM, he was very active in school affairs, including serving as president of Kappa Sigma and Chief of Iron Arrow. While at UM, he was a business major, with an emphasis on marketing and foreign trade. Judge Martinez graduated from the University of Miami School of Law, after becoming a naturalized citizen in 1961. He then joined the U.S. Navy and was stationed at the Key West Naval Station. After completing his active duty tour in 1968, Judge Martinez continued his service in the U.S. Naval Reserves, where he ultimately retired at the rank of Captain. He was recalled to Active Duty for special assignments on several occasions to teach in South America. After Judge Martinez finished his active duty tour, he began his civilian legal career as an Assistant U.S. Attorney for the Southern District of Florida. In 1969, he served as a Special Assistant U.S. Attorney for the District of Puerto Rico. Judge Martinez left government service in 1970 for private practice. However, in April of 1972, Judge Martinez took a position as Regional Director in the Department of Justice Office for Drug Abuse Law Enforcement (ODALE), a precursor to the Drug Enforcement Agency (DEA). Judge Martinez later returned to private practice, until his appointment to the federal bench in September 2002. He has served as an adjunct professor at Florida International University in School Law and taught Business Law at Barry College. Among many other activities, Judge Martinez has been active in UM matters, serving as class representative to the Law Alumni Association and as a member of the Governing Board of the UM Hurricane Club. He also serves as the color commentator on University of Miami athletic broadcasts in Spanish on the Radio.

Judge Martinez is as equally successful in his private life as he is in his professional life. He married his wife, "Mitzi" in 1966. They have two daughters, Jan Elizabeth and Anne-Marie.





Judge Federico Moreno

Judge Moreno threw out a case that would help protect South Florida foster children. This ruling was extremely questionable:

U.S. judge rejects class-action lawsuit on behalf of foster children in Florida

December 5, 2001

Florida 's rate of abuse in foster care - about one in every 11 children is 15 times higher than the national standard. The rate of abuse has gotten worse in the last three years according to an analysis the government documents by the Florida Times-Union.

Tallahassee attorney Karen Gievers described the foster-care system as the worst ``abuser, neglecter and exploiter of children in Florida ." She and other child advocates hoped to force sweeping change in the state's foster-care system by filing a class-action lawsuit on behalf of about 20,000 children in state care in Florida .

U.S. District Judge Federico Moreno dismissed the suit **ruling that that federal oversight of Florida 's child-welfare system was unnecessary** because individual state court judges had the power to protect and order services for children under their jurisdiction. "The relevant question is not whether the state courts can do all that [advocates] wish they could, but whether the available remedies are sufficient" to protect children in state care. **"This court declines to hold that the allowable remedies are inadequate."**

Carolyn Salisbury, associate director of the University of Miami Law School's Children and Youth

WHO SAYS
I'M **BIASED**?



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