No. 24-10287

In the United States Court of Appeals for the Fifth Circuit

James Dondero; Highland Capital Management Fund Advisors, L.P.; The Dugaboy Investment Trust; Nexpoint Real Estate Partners, L.L.C.; and Get Good Trust,

Plaintiffs-Appellants,

v.

Stacey G. Jernigan; Highland Capital Management, L.P.,

Defendants-Appellees.

On Appeal from the United States District Court for the Northern District of Texas, Dallas Division
No. 3:23-CV-0726-S

APPELLANTS' PETITION FOR REHEARING EN BANC

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CERTIFICATE OF INTERESTED PERSONS

Counsel of record certifies that the following persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made so that the judges of this Court may evaluate possible disqualification or recusal.

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INTRODUCTION AND RULE 40(b)(2) STATEMENT

The panel's decision, as revised on rehearing, raises two questions meriting *en banc* review.

First, the original and revised panel opinions hold that the decision not to recuse should be reviewed only for abuse of discretion.

That holding is contrary to statute. The recusal statute makes recusal mandatory, not discretionary, under specified circumstances. *See* 28 U.S.C. § 455. Reviewing recusal decisions for abuse of discretion deprives litigants of a decision from a judge whose impartiality has not been called into question. The Seventh Circuit has held that decisions not to recuse are reviewed *de novo*. *United States v. Balistrieri*, 779 F.2d 1191, 1216 (7th Cir. 1995).

Second, the panel's revised opinion presents important questions regarding the role of mandamus review over arguments about which court or judge presides. The Appellants had moved for rehearing *en banc*, focused on the extraordinary events of a bankruptcy judge writing novels with a protagonist bankruptcy judge indistinguishable from herself fighting against a hedge fund and its manager strikingly similar to the Appellant Mr. Dondero. In a revised opinion, the panel held that the novels presented a "strong argument" that the bankruptcy judge should recuse. Rev. Panel Op. at 15. The panel held, however, that such "strong arguments" do not warrant mandamus and should be deferred until final judgment unless they constitute a "clear and indisputable" abuse of discretion. *Id.* In so doing, the panel places layer upon layer of deference to a trial court's decision not to recuse. And the decision threatens

years-long proceedings, with the public questioning judicial impartiality, only to have to start over after reversal on direct appeal. That is a massive waste of judicial resources. These are precisely the circumstances where other panels of this Court have used mandamus to directly resolve serious issues about the structure, identity, or integrity of the tribunal early in the case. *See*, *e.g.*, *In re Clarke*, 94 F.4th 502, 516 (5th Cir. 2024). And other circuit courts have not placed another heightened burden for reviewing declinations to recuse on mandamus. *See*, *e.g.*, *In re Sherwin-Williams Co.*, 607 F.3d 474, 477 (7th Cir. 2010); *In re Hawsawi*, 955 F.3d 152, 157-58 (D.C. Cir. 2020).

Granting *en banc review* would "secure or maintain the uniformity of this Court's decisions," prevent a "conflict with authoritative decisions" of another circuit court, and, with the standard-of-review issue, address issues "of exceptional importance." Fed. R. App. P. 40(b)(2)(A), (C), & (D).

This is far from the ordinary case of a party seeking recusal when dissatisfied with a lower court's decisions: The bankruptcy court *is writing books clearly related to the subject matter of this litigation*. On this, the panel on rehearing agreed, noting that "to our knowledge, no court—apart from the district court that initially denied mandamus in this case—has ever analyzed § 455(a) on facts like these." Rev. Panel Op. at 15.

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2. Whether the court of appeals should defer determination of a "strong argument … that [a lower court judge] had a duty to recuse" until a final appealable judgment—after the consumption of years of court time, millions in party resources, and intolerable amounts of public confidence in the courts—or address the "strong argument" on mandamus review?

STATEMENT OF COURSE OF PROCEEDINGS AND DISPOSITION OF THE CASE

Judge Stacey G. Jernigan is presiding over the Chapter 11 bankruptcy of Highland Capital Management, L.P. Appellant James Dondero co-founded Highland and was serving as the company's CEO when it filed for bankruptcy. *See* Rev. Panel Op. at 2-3. But shortly after the bankruptcy proceedings began, Mr. Dondero resigned his positions at Highland and was replaced by an Independent Board. *See id.*

Judge Jernigan repeatedly has expressed unfavorable opinions of the business practices and character of Mr. Dondero, both in the proceedings below and a previous bankruptcy over which she presided regarding Acis Capital Management. *See* Brief of Appellants at 5-6, 8-10 & n.4. The Dondero Parties documented that those strong opinions resulted in severe and aberrant rulings that indicate a lack of impartiality. *Id.*

The Dondero Parties repeatedly moved to recuse Judge Jernigan. ROA.80-117; ROA.6221-6231; 2842-2870.

Ultimately, the Dondero Parties learned that Judge Jernigan had written two novels—*He Watches All My Paths* and *Hedging Death*—setting a bankruptcy judge as the protagonist against the hedge-fund industry. ROA.3207-3211.[1] The bankruptcy-judge hero in the books is clearly Judge Jernigan: The character is even married to a police officer, as Judge Jernigan is. App. at 39. *Hedging Death* also develops as a key villain a hedge fund and its manager, with striking parallels to Highland and Mr. Dondero:

- *Hedging Death*'s villain is Dallas hedge fund manager Cade Graham. Graham resembles Mr. Dondero, with the same hair color and stature, financial success following the 2008 Great Recession, philanthropic and political activities, litigation over credit-default swaps, and involvement with the Dallas Bankruptcy Court. *See* App. at 52, 67-68, 72-72, 76.

- Graham's company is called Ranger Capital. Highland was for years known as Ranger Asset Management. ROA.3209; *Kischner v. Dondero*, No. 3:21-03076-sgj (Bankr. N.D. Tex.), Dkt. 310 at 16-17. And the Ranger Asset Management name was prominently featured in the bankruptcy proceedings over which Judge Jernigan presided. ROA.3410, 3860.

- The book describes Ranger as a "multi-billion-dollar conglomerate, which manage[s] not just hedge funds, but private

1. Excerpts of the novels are attached as an appendix. The novels are available for sale at Amazon and elsewhere. *See* http://bit.ly/44hLueN; https://bit.ly/3S3mYa9. The Court may take judicial notice of published materials and their contents. *Jackson v. Godwin*, 400 F.2d 529, 536 (5th Cir. 1968).

> equity funds, CDOs, CLOs, REITS, life settlements, and all manner of complicated financial products." App. at 52. That combination of assets is extraordinarily rare, but Highland was the one of few hedge funds nationwide, and the only one in Texas, that managed the exact same unusual mix of investments. ROA.3209; *Kirschner*, Dkt. 310 at 16-17.

- The book describes "byzantine" international tax structures and off-shore transactions as pretexts for hiding illegal activity and money laundering. App. at 76. *Kirschner*, Dkt. 310 at 18. Highland and Mr. Dondero use international tax structures and off-shore transactions, and the bankruptcy judge repeatedly expressed her suspicion of them and called them "byzantine." *See, e.g.*, ROA.2924-2925 at 86:16-87:15.

Judge Jernigan admits in her books that "characters … herein are based loosely on actual persons and events." *See* App. at 39. The books also deride "[h]igh flying hedge fund managers" that "suck up money like an i-Robot vacuum" and display "outrageous amounts of hubris" as part of their "bro culture." App. at 45.

Three days after these books were cited as grounds for recusal, Judge Jernigan denied the recusal motion. ROA.44-79; 3207-3211.

The Dondero Parties petitioned the district court for mandamus relief, which it denied. ROA.18897-18899. With respect to the novels, the district court stated that no portion of the novels "could raise a doubt in the mind of a reasonable observer as to [her] impartiality," without further explanation. ROA.18901.

The Dondero Parties appealed. On November 5, 2024, a panel of this Court affirmed.

The panel held that "[r]ecusal decisions are reviewed for abuse of discretion." Panel Op at 7. The panel addressed whether Judge Jernigan's novels merited recusal in two paragraphs. The panel held that "[w]hile some similarities between the books and the cases before Judge Jernigan may raise cause for concern, the similarities are not close enough to find that the district court abused its discretion denying the petition." *Id.* at 15.

The Dondero Parties sought rehearing *en banc*, highlighting the circuit split created by reviewing a judge's declination of recusal only for an abuse of discretion. ECF 96. And the panel, pursuant to this Court's rules, took control of the petition for rehearing *en banc*. Fed. R. App. P. 40(e); Fifth Cir. I.O.P. Rule 40. The panel granted rehearing, withdrew its prior opinion, and substituted an amended opinion. ECF 141, 142. The panel acknowledged significant similarities between villains in the novels and the Highland hedge fund and Mr. Dondero. Rev. Panel Op. at 14. The panel also cited some dissimilarities. *Id.* It observed that *He Watches All My Paths* focuses on threats a federal judge receives from a young tort victim, that *Hedging Death* is most concerned with "the protagonist bankruptcy court judge," and that the hedge-fund manager in *Hedging Death*, unlike "the real-life James Dondero," "fakes his own suicide after linking up with Mexican drug cartels." *Id.* In the end, the panel appeared to hold that Judge Jernigan should not have been writing books about being a bankruptcy judge, presiding over hedge-fund bankruptcies, while she was doing precisely that. According to the panel, "a strong argument could be made that she had a duty to recuse." *Id.* at 15. But the panel held that this strong

argument did not rise to the level of resolving the recusal issue on mandamus now, as opposed to on direct appeal, because the petitioner must show "clear and indisputable" error. *Id.*

STATEMENT OF FACTS

The relevant facts are set forth in the Rule 40(b) statement, *see supra* at ii-iii, and the statement of the course of proceedings and disposition of the case, *see supra* at 1-5.

ARGUMENT

Central to the American justice system and its guarantee of due process is access to fair proceedings before a fair tribunal. For that reason, the federal recusal statute *requires* a judge to recuse whenever her "impartiality might reasonably be questioned." 28 U.S.C. § 455(a). "The purpose of section 455(a) … is apparent; it seeks to protect against even the appearance of impropriety in judicial proceedings and we are charged with determining 'whether a reasonable and objective person, knowing all of the facts, would harbor doubts concerning the judge's impartiality.'" *In re Chevron U.S.A., Inc.*, 121 F.3d 163, 165 (5th Cir. 1997). Contrary to the panel's conclusion that "[t]he bar for recusal under § 455 is a high one," Rev. Panel Op. at 8, this Court has held that "if the question of whether § 455(a) requires disqualification is a close one, the balance tips in favor of recusal." *Chevron*, 121 F.3d at 165.

The panel's decision puts in stark contrast whether this Court's standards for reviewing a judge's refusal to recuse protects the judicial system's integrity and serves the purposes of the recusal statute. The panel holds that decisions

not to recuse may be reversed only for abuse of discretion. This is one of the most deferential standards of review known to the law. *In re Bolar Pharms. Co., Inc., Sec. Litig.*, 966 F.2d 731, 732 (2d Cir. 1992). And, to avoid years of litigation before a judge whose impartiality is questioned through mandamus, a litigant must show that the abuse of discretion is "clear and indisputable." Rev. Panel Op. at 7. Even "a strong argument" that a judge should have recused (*id.* at 15) must await years for a final appealable judgment.

That approach cannot be squared with the federal recusal statute, whose text and policy support prompt *de novo* review by a panel of judges whose impartiality is not questioned. The congressional command for judges to recuse in certain circumstances is inconsistent with marking the decision as discretionary. The abuse-of-discretion standard of review—and the deferral of "strong argument[s]" that a judge should have recused to the end of the litigation—also thwart the statutory purpose to preserve the appearance of the judicial system's integrity. Against charges that a judge is not impartial, deferring to the judge accused of partiality does little to assure the public that the judiciary is impartial and independent.

At least one other circuit court requires *de novo* review of lower-court recusal decisions. *See*, *e.g.*, *United States v. Balistrieri*, 779 F.2d 1191, 1216 (7th Cir. 1995) ("Our standard of review under [28 U.S.C. § 455(b)(1)] is *de novo*."). And other circuits have not deferred "a strong argument" that a judge "had a duty to recuse" (Rev. Panel Op. at 15) until the end of the case, opting

instead to decide them promptly on mandamus. *See*, *e.g.*, *In re Sherwin-Williams Co.*, 607 F.3d 474, 477 (7th Cir. 2010).

En banc review is appropriate. The principles adopted by the panel regarding the abuse-of-discretion standard of review and the role of mandamus in resolving recusal issues bring the Fifth Circuit into conflict with other circuits. Fed. R. App. P. 40(b)(2)(C). Together and separately, the panel's standard-of-review holding and mandamus holding protect a judge's decision not to recuse, in tension with a congressional command on recusal, and present exceptionally important questions. *Id.* 40(b)(2)(D). The panel's decision is also the latest in conflicting decisions in this Court over the use of mandamus, such that *en banc* review would advance "the uniformity of" this Court's decisions. *Id.* 40(b)(2)(A).

This is not the ordinary case of appellants complaining about harsh decisions below and surmising the judge must have been biased. Here, the bankruptcy judge took the extraordinary act of *writing books of ostensible fiction regarding her role as a judge and her battle against a hedge fund in her court. Amid such exceptional*, *extrajudicial activity,* a "serious argument" that the judge "had a duty to recuse" should not be insulated from review by two layers of deference and shielded from appellate review until the end of the case.

I. An Abuse-Of-Discretion Standard of Review Is Incompatible with the Text and Purpose of the Federal Recusal Statute and Conflicts with Rulings From Other Courts of Appeals

The abuse-of-discretion standard can be applied only when the law confers discretion upon the decisionmaker being reviewed. But the federal recusal statute—28 U.S.C. § 455—*mandates* recusal whenever a judge's impartiality "might reasonably be questioned."

It provides that a judge "shall" recuse when certain circumstances are presented: "Any justice, judge, or magistrate judge of the United States ***shall*** disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a) (emphasis added). It also asks whether an objective observer might reasonably "question" a judge's actions. At a minimum, a panel of judges whose impartiality is not questioned should review the issue objectively, without deferring to the judge ruling on the recusal motion. But the abuse-of-discretion standard is incompatible with such review.

Other courts of appeals recognize that the mandatory nature of the recusal statute prevents courts from treating the recusal decision as discretionary or reviewing it only for abuse of discretion. The Seventh Circuit conducts *de novo* review of recusal decisions—even when reviewing recusal decisions in mandamus proceedings. *Balistrieri*, 779 F.2d at 1216; *Dunkley v. Ill. Dep't of Human Servs.*, No. 23-2215, 2024 WL 1155448, at *3 (7th Cir. Mar. 18, 2024); *Sherwin-Williams*, 607 F.3d at 477 (conducting *de novo* review of recusal decision under § 455(a) on petition for writ of mandamus); *Hook v. McDade*, 89 F.3d 350, 353

(7th Cir. 1996) (same); *Taylor v. O'Grady*, 888 F.2d 1189, 1201 (7th Cir. 1989). And Wright and Miller recognize that abuse-of-discretion review is inappropriate for recusal decisions: "Because the disqualification statutes are mandatory and reflect a societal interest in an impartial judiciary, there is a strong argument that appellate courts should apply a *de novo* standard in reviewing recusal decisions." 13D Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3553 (3d ed. 2008).

II. The Court Should Resolve "Strong Arguments" That a Judge Should Recuse on Mandamus

When addressing the first rehearing petition, the panel correctly held that the bankruptcy judge's novels raise "a strong argument" that "she had a duty to recuse." Rev. Panel Op. at 15. The panel incorrectly deferred that argument until direct appeal of the final judgment, rather than resolving it on mandamus. To do so, the panel imposed an additional level of deference, holding that the abuse of discretion in declining to recuse had to be "clear and indisputable" for the court to issue mandamus. *Id.* (requiring, in the same sentence, a showing of "abuse of discretion" and a "clear and indisputable right to relief").

As an initial matter, that extra layer of protection for the district judge's decision compounds the tension with congressional command for the courts to ensure recusal when impartiality may be reasonably questioned. For that reason, the Seventh Circuit reviews declinations to recuse *de novo* and *at the mandamus stage*. *Sherwin-Williams*, 607 F.3d at 477. And other courts of appeals have rejected the double layer of deference that the panel imposed at the

mandamus stage, which requires a showing of an abuse of discretion that was clear and indisputable. *In re Hawsawi*, 955 F.3d 152, 157-58 (D.C. Cir. 2020).

There are many reasons not to place extra burdens on petitioners seeking recusal on mandamus. First, the structure and identity of the lower-court decisionmaker should be reviewed promptly, when the decision rejecting a change is made. Any other structure would squander scarce judicial resources, leaving the parties to redo years of proceedings when error in a recusal decision is later found on direct appeal.

Second, the damage to the public's perception of the judicial system's integrity—precisely what the recusal statute was designed to protect against—will be done *as the lower court proceedings go on*. The public will be left scratching its head as to whether an impartial umpire is calling balls and strikes, and the harm of those doubts to the public's confidence in the judiciary will not be cured by appellate vindication years later.

The decision to let "strong arguments" regarding recusal linger until a direct appeal also is the latest in this Court's competing panel opinions regarding the appropriate role of mandamus. Several members of the Court have argued that mandamus review is necessary to resolve serious questions about the structure, location, or identity of lower court decisionmaking early in the litigation. *See, e.g.*, *In re Westcott*, No. 25-30088, 2025 WL 1135281, at *7-*8 (5th Cir. Apr. 17, 2025) (Ho, J., concurring) (arguing in favor of mandamus after "a district court presumed to seize control over a case of profound public interest that it had no lawful business deciding"); *id.* ("When a district judge acts

hastily, yet appellate courts are told not to 'rush in,' that's not a plea for judicial sobriety—it's a recipe for district judge supremacy."); *Clarke*, 94 F.4th at 516 (acknowledging, in transfer context, that "we have granted mandamus for less egregiously erroneous transfers," given the importance of determining the identity of the appropriate court early); *In re Am. Lebanese Syrian Associated Charities, Inc.*, 815 F.3d 204, 206 (5th Cir. 2016) (Jones, J., dissenting) (lamenting that mandamus denial will force charities "to litigate this case to conclusion, if they can afford it"). The Court's recent mandamus cases supervising transfer decisions, in particular, highlight that principle. *See Clarke*, 94 F.4th at 516; *In re Fort Worth Chamber of Com.*, 100 F.4th 528, 537 (5th Cir. 2024); *In re TikTok, Inc.*, 85 F.4th 352, 358 (5th Cir. 2023); *Def. Distributed v. Bruck*, 30 F.4th 414, 421 (5th Cir. 2022).

Others members of the Court have cautioned against all but the most sparing use of the writ. *See, e.g.*, *In re Westcott*, 2025 WL 1135281, at *9,*12 (5th Cir. April 17, 2025) (Haynes, J., dissenting) ("typical appellate process provides an adequate remedy" and the majority "fails to account for the exceptionally high standard that courts of appeals should use when evaluating if a writ is appropriate"); *In re Landry*, 83 F.4th 300, 309-12 (5th Cir. 2023) (Higginson, J., dissenting) (declaring that mandamus is being used to manage a district court's docket and as a substitute for appeal); *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 319 (5th Cir. 2008) (en banc) (King, J., dissenting) (court "utilizes mandamus to effect an interlocutory review of a nonappealable order committed to the district court's discretion").

This Court should grant *en banc* review to make progress in resolving disagreements regarding the appropriate rule of mandamus among this Court's members. In doing so, the Court should make clear that recusal decisions, like transfer decisions, constitute a special area of the law where mandamus intervention is often necessary to protect the sanctity of the judicial process and conserve judicial resources.

III. Judge Jernigan's Novels Separate This Case from the Mine Run of Recusal Cases

Contrary to the panel's suggestion, the similarities between the books and the litigants here are too great to defer until direct appeal review. Rev. Panel Op. at 14.

The panel determined that the novels are "largely about other topics" than the hedge fund and its manager resembling Highland and Mr. Dondero. Rev. Panel. Op. at 14. Reaching other subject matter does not absolve broadcasting in the book negative views about a hedge fund and its manager eerily similar to a litigant in a pending case. And it was a prominent topic. After all, the title ***Hedging*** *Death* is clearly about a hedge fund. In the book, the hedge fund manager doppelganger for Mr. Dondero, Cade Graham, is mentioned no fewer than 305 times. *Hedging Death*, available at http://bit.ly/44hLueN.

The panel discounts *Hedging Death* as grounds for recusal because it "is largely about the protagonist bankruptcy court judge." Rev. Panel. Op. at 14. But that is a big problem counseling recusal, not an answer. The judge is writing about herself, sitting on a case regarding a hedge fund, dramatically setting

forth her distaste for hedge funds in general and a hedge fund and its manager indistinguishable from Mr. Dondero in particular. An objective observer would be hard pressed not to view the bankruptcy-judge protagonist as Judge Jernigan's own author surrogate. Both are bankruptcy judges in the Northern District of Texas, both are married to retired police officers, and both own two Cavalier King Charles dogs. App. at 39. Judge Jernigan even admits that the fictional judge "may resemble herself." ROA.79. Inserting a version of herself into her novels with such clear distaste for hedge funds, their managers, and the Dondero-esque Graham, could only lead an objective observer to question JudgeJernigan's impartiality in the instant case.

That the Graham character in *Hedging Death* "fakes his own suicide after linking up with Mexican drug cartels"—and the real-life Mr. Dondero has not and does not—provides no comfort. *Id.* Judge Jernigan added a couple features making the book a little more interesting. But she otherwise borrowed the character from Mr. Dondero, with the same stature and hair color (App. at 67-68), the same former name of his hedge fund (Ranger Capital) (*id.* at 67), the same mix of assets as Mr. Dondero's hedge fund (*id.* at 52), and the same life story of relocating his business to Highland Park in Dallas (*id.* at 67), the same use of offshore jurisdictions for certain financial transactions like Malta and the Cayman Islands (*id.* at 73, 76), and the same type of litigation over credit default swaps as Mr. Dondero's with UBS (*id.* at 72).

These are not coincidences. *Judge Jernigan wrote Hedging Death while presiding over the all-consuming Highland Capital bankruptcy*. A judge cannot *both*

write a book about being a bankruptcy judge, with disdainful views of the industries litigating before her, using characters resembling herself and a litigant before her, *and* continue to preside over a case with that industry and that litigant.

CONCLUSION

The petition for rehearing *en banc* should be granted.

Respectfully submitted.

/s/ Jonathan F. Mitchell

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CERTIFICATE OF COMPLIANCE

with type-volume limitation, typeface requirements,
and type-style requirements

1. This motion complies with the type-volume limitation of Fed. R. App. P. 40(d)(3)(A) because it contains 3,891 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This motion complies with the typeface and type-style requirements of Fed. R. App. P. 27(d)(1)(E), 32(a)(5), and Fed. R. App. P. 32(a)(6) because it uses Equity Text B 14-point type face throughout, and Equity Text B is a proportionally spaced typeface that includes serifs.

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Dated: April 30, 2025

CERTIFICATE OF ELECTRONIC COMPLIANCE

Counsel also certifies that on April 30, 2025, this brief was transmitted to Mr. Lyle W. Cayce, Clerk of the United States Court of Appeals for the Fifth Circuit, via the court's CM/ECF document filing system, https://ecf.ca5.uscourts.gov

Counsel further certifies that: (1) required privacy redactions have been made, 5th Cir. R. 25.2.13; (2) the electronic submission is an exact copy of the paper document, 5th Cir. R. 25.2.1; and (3) the document has been scanned with the most recent version of VirusTotal and is free of viruses.

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CERTIFICATE OF SERVICE

I certify that on April 30, 2025, this document was electronically filed with the clerk of the court for the U.S. Court of Appeals for the Fifth Circuit and served through CM/ECF upon all counsel of record in this case.

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No. 24-10287

United States Court of Appeals for the Fifth Circuit

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APPENDIX IN SUPPORT OF APPELLANTS' PETITION FOR REHEARING EN BANC

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James Dondero, Highland Capital Management Fund Advisors, L.P., The Dugaboy Investment Trust, Nexpoint Real Estate Partners, L.L.C.. and Get Good Trust ("Appellants") file this Appendix in Support of Appellants' Petition for Rehearing En Banc. The Appendix has been consecutively paginated App. 001 – App. 076 as follows:

Respectfully submitted.

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Certificate of Electronic Compliance

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Certificate Of Service

I certify that on April 30, 2025, this document was electronically filed with the clerk of the court for the U.S. Court of Appeals for the Fifth Circuit and served through CM/ECF upon all counsel of record in this case.

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United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
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Clerk

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Stacey G. Jernigan; Highland Capital Management, L.P.,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:23-CV-726

ON PETITION FOR REHEARING

Before Wiener, Willett, and Duncan, *Circuit Judges*.

Per Curiam:[*]

[*] This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

The petition for rehearing is GRANTED. We withdraw our prior opinion, *Dondero v. Jernigan*, No. 24-10287, 2024 WL 4678879 (5th Cir. Nov. 5, 2024), and substitute the following.

Appellants James Dondero and affiliated entities Highland Capital Management Fund Advisors, L.P., The Dugaboy Investment Trust, NexPoint Real Estate Parnters, L.L.C., and Get Good Trust ("the Dondero Parties") are parties to a bankruptcy proceeding in the Northern District of Texas. They appeal a district court order denying their petition for mandamus that sought the recusal of the presiding bankruptcy judge.

The order of the district court is AFFIRMED.[1]

I

Highland Capital Management, L.P. was a Dallas-based investment firm that managed billion-dollar, publicly traded investment portfolios for nearly three decades. *Matter of Highland Capital Mgmt., L.P. (Highland I)*, 48 F.4th 419, 424 (5th Cir. 2022). James Dondero was Highland's CEO. In 2019, after facing a $180 million adverse judgment in an arbitration, Highland voluntarily filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the District of Delaware. Shortly after, the Creditors Committee for Highland moved to transfer the bankruptcy case to the United States Bankruptcy Court for the Northern District of Texas on the basis that Chief Judge Jernigan was "already intimately familiar with the Debtor's principals and complex organizational structure," having presided over involuntary bankruptcy cases commenced against Acis Capital Management, L.P. and Acis Captial Management GP, L.L.C.—entities where Dondero had also

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served as an executive. The motion was granted, and the case was assigned to Chief Judge Jernigan.

In January 2020, Chief Judge Jernigan held the first hearing in the Highland case, regarding approval of a settlement between Highland and the Creditors Committee under which Dondero would surrender his control positions at Highland and be replaced by an Independent Board. *Highland I*, 48 F.4th at 425. Chief Judge Jernigan approved the agreed order, and Dondero stepped down as officer and director of Highland. *Id*. He remained an employee of Highland as a portfolio manager until October 2020, when the Independent Board demanded he step down.

Throughout 2020, Dondero proposed several reorganization plans, which the Committee and Independent Board opposed. *Id.* at 426. The Committee and Board instead formed their own plan. *Id.* Meanwhile, Dondero made various filings objecting to settlements, appealing orders, and seeking writs of mandamus. *Id.* He and other creditors filed over a dozen objections to the Independent Board's plan. *Id.* Chief Judge Jernigan confirmed the plan over objections at a hearing in February 2021, and it took effect on August 11, 2021. *Id.* The confirmation order included findings that Dondero was a "serial litigator," that he did not have a "good faith basis to lob objections to the Plan," and that the other board members were "marching pursuant to the orders of Mr. Dondero." *Id.* at 428.

Dondero appealed the confirmation order directly to this court, "objecting to the Plan's legality and some of the bankruptcy court's factual findings." *Id.* We affirmed the reorganization plan and confirmation order in full, with the exception of finding that the bankruptcy court exceeded its statutory authority in exculpating non-debtors in anticipation of "Dondero's continued litigiousness." *Id.* at 427, 432, 439. Though we vacated the exculpatory order as to non-debtors, we clarified that "[n]othing in [our]

opinion should be construed to hinder the bankruptcy court's power to enjoin and impose sanctions on Dondero and other entities by following the procedures to designate them vexatious litigants." *Id.* at 439 n.19.

Since then, we have dealt with multiple appeals in this matter. *See, e.g.*, *Matter of Highland Capital Mgmt., L.P.*, 57 F.4th 494 (5th Cir. 2023); *Matter of Highland Capital Mgmt., L.P.*, 98 F.4th 170 (5th Cir. 2024); *Matter of Highland Capital Mgmt., L.P.*, 105 F.4th 830 (5th Cir. 2024).

The instant appeal focuses on a series of recusal motions filed by the Dondero Parties beginning in March 2021—after the reorganization plan had been confirmed but before it took effect. The motions argued that Chief Judge Jernigan had developed an animus against the Dondero Parties that caused her impartiality to be reasonably questioned and thus required recusal under 28 U.S.C. § 455.

The Dondero Parties filed the first recusal motion on March 18, 2021. Chief Judge Jernigan denied the motion and reasoned that it was untimely, having been filed 15 months after the case was transferred to the Northern District of Texas and on the eve of Dondero's contempt hearing. She nevertheless analyzed the recusal motion on the merits and determined that recusal wasn't warranted. She reasoned that her presiding over the prior *Acis* case did not create bias because during that proceeding she only learned generalities about the industry and Highland's business structure, and it is appropriate for a bankruptcy court to preside over cases of affiliated business entities of a party. She also stated, citing *Lieb v. Tillman*, 112 B.R. 830, 835–36 (Bankr. W.D. Tex. 1990), that she did not believe that "she harbors, or has shown, any personal bias or prejudice" against Dondero and that the Dondero Parties' assertions did not "rise to 'the threshold standard of raising a doubt in the mind of a reasonable observer' as to the judge's

impartiality." The Dondero Parties appealed to the district court, which concluded that the order was interlocutory and not immediately appealable.

Five months later, the Dondero Parties filed a second recusal motion asking Chief Judge Jernigan to issue a final appealable order and supplementing the first recusal motion with additional evidence of alleged bias. Chief Judge Jernigan denied the motion without prejudice on procedural grounds. She noted that the Dondero Parties could file another "simple motion" asking the court to revise the first recusal order to make it final and appealable but without including the supplemental evidence. Alternatively, they could file a new recusal motion based on any alleged new evidence.

The Dondero parties chose to file a third, renewed recusal motion. Chief Judge Jernigan again denied the motion, determining that it was untimely and failed on the merits for the same reasons as the previous recusal motions. Additionally, she catalogued several instances in the motion where the Dondero Parties misstated or mischaracterized events of alleged bias. Chief Judge Jernigan also addressed the Dondero Parties' new accusations regarding her two published novels, which the Dondero Parties contended were patterned after Dondero and expressed exceedingly negative views about his industry. Chief Judge Jernigan stated that her novels "are not about Mr. Dondero or the hedge fund industry in general" and declined to recuse on that basis.

The Dondero Parties filed a petition for writ of mandamus in the district court seeking an order directing Chief Judge Jernigan to recuse herself.[2] The district court denied the petition, finding that the Dondero

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[2] The Dondero Parties initially filed the mandamus petition in the same case as their previous appeal of Chief Judge Jernigan's recusal order. The district court unfiled it and directed the Dondero Parties to file a new action for mandamus relief. The new action is the relevant petition in this appeal.

Parties had "not proved 'exceptional circumstances' sufficient to justify the extraordinary remedy of a writ of mandamus.'" The Dondero Parties timely appealed.

II

Mandamus relief is a "drastic and extraordinary" remedy "reserved for really extraordinary causes." *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380 (2004) (internal quotation marks omitted); *see also U.S. v. U.S. Dist. Ct. for S. Dist. of Tex.*, 506 F.2d 383, 384 (5th Cir. 1974). Three conditions must be satisfied before the writ may issue:

> First, the party seeking issuance of the writ must have no other adequate means to attain the relief he desires . . . . Second, the petitioner must satisfy the burden of showing that his right to issuance of the writ is clear and indisputable. . . . Third, even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.

In re LeBlanc, 559 F. App'x 389, 392 (5th Cir. 2014) (per curiam) (citing *Cheney*, 542 U.S. at 380–81).

We review the denial of mandamus for abuse of discretion. *United States v. White*, 67 F. App'x 253, at *1 (5th Cir. 2003) (per curiam) (citing *United States v. Denson*, 603 F.2d 1143, 1146 (5th Cir. 1979) (en banc)); *see also Cheney*, 542 U.S. at 380.

III

A

As to the first requirement for mandamus relief, the Dondero Parties must show that they have no "other adequate means to attain the relief." *Cheney*, 542 U.S. at 380–81. In other words, they must show that any error by Chief Judge Jernigan is "irremediable on ordinary appeal." *In re Occidental*

Petroleum Corp., 217 F.3d 293, 295 (5th Cir. 2000) (emphasis removed). The Dondero Parties' petition easily meets this condition.

We have held that "a petition for mandamus is the appropriate legal vehicle for challenging denial of a disqualification motion." *In re Chevron U.S.A., Inc.*, 121 F.3d 163, 165 (5th Cir. 1997); *see also United States v. Gregory*, 656 F.2d 1132, 1136 (5th Cir. 1981); *In re Placid Oil Co.*, 802 F.2d 783, 786 (5th Cir. 1986); *In re Cameron Int'l Corp.*, 393 F. App'x 133, 134–35 (5th Cir. 2010). That is because "remedy by appeal is inadequate" in instances of apparent bias. *Berger v. United States*, 255 U.S. 22, 36 (1921). If a party could not challenge bias until appealable final judgment has issued, prejudice will have already "worked its evil." *Id.* As the Second Circuit has held, "[a] claim of personal bias and prejudice strikes at the integrity of the judicial process, and it would be intolerable to hold that the disclaimer of prejudice by the very jurist who is accused of harboring it should itself terminate the inquiry until an ultimate appeal on the merits." *In re Int'l Bus. Mach. Corp.*, 618 F.2d 923, 926–27 (2d Cir. 1980); *see also* CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 3553 (3d ed.).

Claims of judicial bias cannot wait for the ordinary appeals process to run its course. Mandamus is thus the appropriate means for relief here.

B

As to the second requirement for mandamus relief, the Dondero Parties must show that their right to the writ is "clear and indisputable." *Cheney*, 542 U.S. at 380–81. That is, it must be clear and indisputable that Chief Judge Jernigan is required to recuse.

Recusal decisions are reviewed for abuse of discretion, and in general, "if a matter is within the district court's discretion, the litigant's right to a particular result cannot be 'clear and indisputable.'" *Kmart Corp. v. Arends*, 123 F.3d 297, 300–01 (5th Cir. 1997); *Chevron*, 121 F.3d at 165. The Dondero

Parties fail to meet this high burden. *See Chevron*, 121 F.3d at 165 (explaining that mandamus relief of disqualification is "granted only in exceptional circumstances").

Federal law requires a judge to recuse "in any proceeding in which [her] impartiality might reasonably be questioned" or "[w]here [she] has a personal bias or prejudice concerning a party . . . ." 28 U.S.C. § 455(a), (b)(1). The bar for recusal under § 455 is a high one. "[J]udicial rulings and comments standing alone rarely will suffice to disqualify a judge." *Chevron*, 121 F.3d at 165 (citing *Liteky v. United States*, 510 U.S. 540, 555 (1994)). Even comments "that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge." *Id.* (quoting *Liteky*, 510 U.S. at 555). Recusal is not required when the judge's comments about a particular party are based on proceedings in open court or information learned in earlier proceedings. *See Liteky*, 510 U.S. at 551. Bias requiring recusal must be *personal* rather than *judicial*. *United States v. Scroggins*, 485 F.3d 824, 829–830 (5th Cir. 2007). Judicial bias in the form of adverse rulings and comments on the record ordinarily does not constitute grounds for recusal, unless it "reveal[s] an opinion based on an extrajudicial source or demonstrate[s] such a high degree of antagonism as to make fair judgment impossible." *United States v. Brocato*, 4 F.4th 296, 302 (5th Cir. 2021) (quoting *Scroggins*, 485 F.3d at 830); *see also* WRIGHT & MILLER, at § 3542.

The Dondero Parties cite various instances throughout the case that they contend show Chief Judge Jernigan "harbors an actual and enduring bias and animus" against them "that is 'personal rather than judicial in nature.'" Placed in their proper context, none of these instances suffice to show that Chief Judge Jernigan's impartiality might be reasonably questioned or that she had a personal bias against the Dondero Parties requiring recusal under § 455.

The Dondero Parties first take issue with Chief Judge Jernigan's statements expressing negative opinions about Dondero based on information she learned while presiding over the *Acis* case. They cite specifically Chief Judge Jernigan's statement at the January 2020 settlement hearing:

> I can't extract what I learned during the *Acis* case, it's in my brain, and we did have many moments during the *Acis* case where the Chapter 11 trustee came in and credibly testified that, whether it was Mr. Dondero personally or others at Highland, they were surreptitiously liquidating funds, they were changing agreements, assigning agreements to others. They were doing things behind the scenes that were impacting the value of the Debtor in a bad way.

Based on those concerns, Chief Judge Jernigan ordered that the settlement contain language reading, "Mr. Dondero shall not cause any related entity to terminate any agreements with the Debtor" and that "his role as an employee of the Debtor will be subject at all times to the supervision, direction, and authority of the Debtors." She noted from the bench (though did not order it be included in the settlement language) that if Dondero "violates these terms, he's violated a federal court order, and contempt will be one of the tools available to the Court."

Chief Judge Jernigan's comments regarding the *Acis* case and resulting orders are insufficient to show bias. Her statements about Dondero's role and reliability were judicial, rather than personal, in nature and relevant to her determination that the settlement was proper. And they were based not on any extrajudicial personal bias against Dondero, but on arguments raised by the Creditors Committee and U.S. Trustee about the *Acis* case and on credible testimony from the *Acis* case itself. Chief Judge Jernigan's comments about potentially holding Dondero in contempt of court did nothing but emphasize the law—that failure to follow a court order

constitutes contempt. None of this was improper. *See Liteky*, 510 U.S. at 551 (holding that recusal is not required when the judge's comments are based on proceedings in open court); *see also Tejero v. Portfolio Recovery Assocs., L.L.C.*, 955 F.3d 453, 463–64 (5th Cir. 2020) (holding that a judge's knowledge of a party gained from previous cases involving that party does not qualify as extrajudicial knowledge); WRIGHT & MILLER, at § 3542 ("Nor is the judge disqualified because [s]he has presided over some other case involving the same party or closely-related facts.").

Next, the Dondero Parties take issue with Chief Judge Jernigan's *sua sponte* questioning of the parties about a headline she saw about Dondero or Highland affiliates receiving Paycheck Protection Program loans. At that hearing, Chief Judge Jernigan acknowledged that she is "only supposed to consider evidence [she] hear[s] in the courtroom," but since she inadvertently came upon the headline while reading the news she "needed to ask about this," including about the potential that Dondero was implicated. However, as she later noted in her order denying the third recusal motion, "Neither Mr. Dondero nor any of his affiliated entities were directed to provide any information, no action was taken against them, and the issue was never raised again by the bankruptcy court." A newspaper article is certainly an "extrajudicial" source. *See Brocato*, 4 F.4th at 302. But Chief Judge Jernigan never expressed an opinion on it or took any prejudicial action against Dondero based on it. Her brief comments about the article would not lead a reasonable person to question her impartiality toward Dondero and certainly do not show bias so clear and indisputable as to warrant mandamus.

The Dondero Parties also take issue with Chief Judge Jernigan's various comments characterizing Dondero as "transparently vexatious" and litigious. However, comments disapproving of or hostile to a party aren't sufficient to support a partiality challenge, especially not when they are based on information learned in the judicial process. *See Liteky*, 510 U.S. at 551, 555.

And there is ample evidence in the record to support these comments. Such evidence, as laid out in Chief Judge Jernigan's order denying the third recusal motion, includes testimony from one of the Highland independent directors and from Highland's new CEO, Dondero's filing 50 proofs of claim (which were later withdrawn), and "the many dozens of motions; the many dozens of objections; and the many dozens of appeals" Dondero pursued throughout the bankruptcy case. Chief Judge Jernigan's comments, though certainly critical of Dondero, were based on this record evidence and not on any improper extrajudicial information and as such can't constitute grounds for recusal. *See Brocato*, 4 F.4th at 302.

The Dondero Parties also accuse Chief Judge Jernigan of bias because she often speculated that Dondero was behind motions filed by other parties in the case. For example, Chief Judge Jernigan stated at one hearing that she "agree[d] with part of the theme . . . asserted by the Debtor here today that this is Mr. Dondero, through different entities, through a different motion." And at another hearing on a motion to release funds of a non-debtor party, Chief Judge Jernigan speculated that "likely Mr. Dondero . . . had some involvement" in the decision to bring the motion, which she ultimately denied. Such speculation doesn't constitute grounds for recusal. *See Blanche Road Corp. v. Bensalem Tp.*, 57 F.3d 253, 266 (3d Cir. 1995) (explaining that the court's "suggestion that plaintiffs' counsel had somehow 'maneuvered' to ensure [someone's] appearance as a witness" and its general skepticism of plaintiffs' witnesses weren't grounds for recusal).

The Dondero Parties cite various other instances where Chief Judge Jernigan made rulings or comments adverse to them as evidence of her bias. But in each case, the Dondero Parties largely mischaracterize the context of Chief Judge Jernigan's comments, and there is at least some evidence in the record to support her judgments.

For example, the Dondero Parties cite the following rulings and comments as evidence of bias, none of which are supported by the record:

- The Dondero Parties argue that Cheif Judge Jernigan was biased in making certain findings adverse to Dondero after a February 2021 hearing. But Chief Judge Jernigan's order explicitly stated that her findings were based on "all of the proceedings had before this Court, the legal and factual bases set forth in the Debtor's Papers, and the evidence submitted at the Hearing."

- The Dondero Parties argue that Chief Judge Jernigan appeared biased when she expressed concern that Dondero improperly exercised "powers of persuasion" on the Highland board. But, notwithstanding that comment, Chief Judge Jernigan stated that her adverse ruling was because she just "[did]n't think the evidence has been there to convince [her]" on the merits of the motion.

- The Dondero Parties argue that Chief Judge Jernigan showed bias when she threatened to hold Dondero in contempt at a preliminary injunction hearing. But the record shows Chief Judge Jernigan contemplated holding him in contempt based on evidence including he and his entities doing "things like . . . filing a motion for an examiner 15 months into the case."

- The Dondero Parties argue that Chief Judge Jernigan showed bias when she criticized the Dondero-controlled entities' decision to each retain separate counsel. But Chief Judge Jernigan stated a valid basis for her criticism—concern for judicial economy because the Dondero-controlled entities were each filing the same types of motions or objections when perhaps their resources could have been consolidated.

- The Dondero Parties argue an appearance of bias in what they characterize as "punitive" orders requiring Dondero and certain Dondero-affiliated entities to appear personally at all

hearings. But Chief Judge Jernigan explained in her order denying the third recusal motion that she ordered Dondero to attend hearings only after he failed to attend a hearing on or even read a temporary restraining order entered against him.

- The Dondero Parties argue that Chief Judge Jernigan's *sua sponte* order requiring the Dondero-affiliated entities to make disclosures to establish their standing shows bias. But further review of the order shows Chief Judge Jernigan required these disclosures "in the interests of judicial economy" and in the interest of "reducing administrative expenses of the estate" because the entities "frequently file lengthy and contentious pleadings."

The Dondero Parties haven't shown that Chief Judge Jernigan based any of the above rulings on any extrajudicial information or pursued them for any personal, rather than judicial, reasons. As a district court judge, Chief Judge Jernigan is entitled to make credibility judgments based on the evidence before her, and it is not our duty to second guess those judgments. *See Ayers v. United States*, 750 F.2d 449, 456 (5th Cir. 1985). Indeed, most of Chief Judge Jernigan's rulings have been upheld on appeal to the district court and our court.[3] *See Regions Bank v. Legal Outsource PA*, 800 F. App'x 799, 800 (11th Cir. 2020) (per curiam) (finding judicial ruling didn't constitute bias where appellate court had affirmed the ruling). Though the Dondero Parties may disagree with her decisions, that is not evidence of bias, or even the appearance of bias. *See Crummey v. Comm'r of Internal Revenue*, 684 F. App'x 416, 422–23 (5th Cir. 2017) (per curiam). Chief Judge Jernigan's adverse rulings alone—or even paired with negative comments

[3] For example, the Dondero Parties argue that bias is apparent in one of Chief Judge Jernigan's orders holding him in contempt of court. But we have already affirmed Chief Judge Jernigan's finding of civil contempt. *In re Highland Capital Mgmt., L.P.*, 98 F.4th 170, 172–75 (5th Cir. 2024).

about Dondero—are not sufficient to warrant recusal. *See Litecky*, 510 U.S. at 555.

Finally, the Dondero Parties argue that Chief Judge Jernigan was required to recuse under § 455 because she published two novels which they argue espouse negative views of Dondero and the financial industry in which he operates. The Dondero Parties cite three parallels between the books and their case which they find problematic. First, Chief Judge Jernigan's novel *Hedging Death* involves a Dallas-based investment fund that manages the same mix of investments as Highland. Her novel *He Watches All My Paths* is also about the financial industry. Second, *Hedging Death* describes certain international tax structures used by Highland and Dondero as "byzantine," a word that Chief Judge Jernigan used several times on the record to describe Highland and Dondero's tax activities. Third, *Hedging Death* describes the life settlement industry as "creepy," and Highland and Dondero invested in the life settlement industry.

The texts of the novels are not in the record before us. But we find the three parallels cited by the Dondero Parties on their own are insufficient to show that they are *clearly and indisputably* entitled to mandamus relief in the form of a recusal order. As the district court emphasized, the novels are fiction. And Chief Judge Jernigan explains in her order denying the third recusal motion that the books are largely about other topics. *He Watches All My Paths* is about a federal judge who receives death threats from a young, former tort victim. *Hedging Death*, though it involves a bankruptcy case and a firm that received funding from a hedge fund manager, is largely about the protagonist bankruptcy court judge. The hedge fund manager character who the Dondero Parties believe is patterned on Dondero is an individual who fakes his own suicide after linking up with Mexican drug cartels—far from the real-life James Dondero.

From the information we have in the record before us, whether a reasonable reader and observer of these proceedings could question Chief Judge Jernigan's impartiality in this case is debatable. Due to the similarities between the characters in Chief Judge Jernigan's novel and the litigants currently before her court, a strong argument could be made that she had a duty to recuse. But, while some similarities between the books and the cases before Chief Judge Jernigan may raise cause for concern, the similarities are not close enough to find that the district court abused its discretion denying the petition.

To our knowledge, no court—apart from the district court that initially denied mandamus in this case—has ever analyzed § 455(a) on facts like these. Even assuming that the Dondero Parties have shown possible error in the district court's denial of a writ of mandamus, it is not certain that the district court has "*clearly and indisputably* erred." *In re Avantel, S.A.*, 343 F.3d 311, 317 (5th Cir. 2003) (emphasis added). Under § 455(a), judges have a duty to recuse. But we will not issue a writ of mandamus "to correct a duty that is to any degree debatable." *In re Corrugated Container Antitrust Litig.*, 614 F.2d 958, 962 (5th Cir. 1980). The district court thus didn't abuse its discretion in finding that the Dondero Parties lack a clear and indisputable right to mandamus relief.

C

As to the third requirement for mandamus relief, having found that the Dondero Parties lack a clear and indisputable right to mandamus, we also find that mandamus is not "appropriate under the circumstances." *Cheney*, 542 U.S. at 380–81.

IV

Because the Dondero Parties failed to show they have a clear and indisputable right to mandamus relief, the order of the district court denying the petition for writ of mandamus is AFFIRMED.

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
November 5, 2024
Lyle W. Cayce
Clerk

No. 24-10287

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Dondero stepped down as officer and director of Highland. *Id*. He remained an employee of Highland as a portfolio manager until October 2020, when the Independent Board demanded he step down.

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Since then, we have dealt with multiple appeals in this matter. *See, e.g.*, *Matter of Highland Capital Mgmt., L.P.*, 57 F.4th 494 (5th Cir. 2023); *Matter of Highland Capital Mgmt., L.P.*, 98 F.4th 170 (5th Cir. 2024); *Matter of Highland Capital Mgmt., L.P.*, 105 F.4th 830 (5th Cir. 2024).

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Five months later, the Dondero Parties filed a second recusal motion asking Chief Judge Jernigan to issue a final appealable order and supplementing the first recusal motion with additional evidence of alleged bias. Chief Judge Jernigan denied the motion without prejudice on procedural grounds. She noted that the Dondero Parties could file another "simple motion" asking the court to revise the first recusal order to make it final and

appealable but without including the supplemental evidence. Alternatively, they could file a new recusal motion based on any alleged new evidence.

The Dondero parties chose to file a third, renewed recusal motion. Chief Judge Jernigan again denied the motion, determining that it was untimely and failed on the merits for the same reasons as the previous recusal motions. Additionally, she catalogued several instances in the motion where the Dondero Parties misstated or mischaracterized events of alleged bias. Chief Judge Jernigan also addressed the Dondero Parties' new accusations regarding her two published novels, which the Dondero Parties contended were patterned after Dondero and expressed exceedingly negative views about his industry. Chief Judge Jernigan stated that her novels "are not about Mr. Dondero or the hedge fund industry in general" and declined to recuse on that basis.

The Dondero Parties filed a petition for writ of mandamus in the district court seeking an order directing Chief Judge Jernigan to recuse herself.[2] The district court denied the petition, finding that the Dondero Parties had "not proved 'exceptional circumstances' sufficient to justify the extraordinary remedy of a writ of mandamus.'" The Dondero Parties timely appealed.

II

Mandamus relief is a "drastic and extraordinary" remedy "reserved for really extraordinary causes." *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380 (2004) (internal quotation marks omitted); *see also U.S. v. U.S. Dist.*

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[2] The Dondero Parties initially filed the mandamus petition in the same case as their previous appeal of Chief Judge Jernigan's recusal order. The district court unfiled it and directed the Dondero Parties to file a new action for mandamus relief. The new action is the relevant petition in this appeal.

Ct. for S. Dist. of Tex., 506 F.2d 383, 384 (5th Cir. 1974). Three conditions must be satisfied before the writ may issue:

> First, the party seeking issuance of the writ must have no other adequate means to attain the relief he desires . . . . Second, the petitioner must satisfy the burden of showing that his right to issuance of the writ is clear and indisputable. . . . Third, even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.

In re LeBlanc, 559 F. App'x 389, 392 (5th Cir. 2014) (per curiam) (citing *Cheney*, 542 U.S. at 380–81).

We review the denial of mandamus for abuse of discretion. *United States v. White*, 67 F. App'x 253, at *1 (5th Cir. 2003) (per curiam) (citing *United States v. Denson*, 603 F.2d 1143, 1146 (5th Cir. 1979) (en banc)); *see also Cheney*, 542 U.S. at 380.

III

A

As to the first requirement for mandamus relief, the Dondero Parties must show that they have no "other adequate means to attain the relief." *Cheney*, 542 U.S. at 380–81. In other words, they must show that any error by Chief Judge Jernigan is "irremediable on ordinary appeal." *In re Occidental Petroleum Corp.*, 217 F.3d 293, 295 (5th Cir. 2000) (emphasis removed). The Dondero Parties' petition easily meets this condition.

We have held that "a petition for mandamus is the appropriate legal vehicle for challenging denial of a disqualification motion." *In re Chevron U.S.A., Inc.*, 121 F.3d 163, 165 (5th Cir. 1997); *see also United States v. Gregory*, 656 F.2d 1132, 1136 (5th Cir. 1981); *In re Placid Oil Co.*, 802 F.2d 783, 786 (5th Cir. 1986); *In re Cameron Int'l Corp.*, 393 F. App'x 133, 134–35 (5th Cir.

2010). That is because "remedy by appeal is inadequate" in instances of apparent bias. *Berger v. United States*, 255 U.S. 22, 36 (1921). If a party could not challenge bias until appealable final judgment has issued, prejudice will have already "worked its evil." *Id.* As the Second Circuit has held, "[a] claim of personal bias and prejudice strikes at the integrity of the judicial process, and it would be intolerable to hold that the disclaimer of prejudice by the very jurist who is accused of harboring it should itself terminate the inquiry until an ultimate appeal on the merits." *In re Int'l Bus. Mach. Corp.*, 618 F.2d 923, 926–27 (2d Cir. 1980); *see also* CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 3553 (3d ed.).

Claims of judicial bias cannot wait for the ordinary appeals process to run its course. Mandamus is thus the appropriate means for relief here.

B

As to the second requirement for mandamus relief, the Dondero Parties must show that their right to the writ is "clear and indisputable." *Cheney*, 542 U.S. at 380–81. That is, it must be clear and indisputable that Chief Judge Jernigan is required to recuse.

Recusal decisions are reviewed for abuse of discretion, and in general, "if a matter is within the district court's discretion, the litigant's right to a particular result cannot be 'clear and indisputable.'" *Kmart Corp. v. Arends*, 123 F.3d 297, 300–01 (5th Cir. 1997); *Chevron*, 121 F.3d at 165. The Dondero Parties fail to meet this high burden. *See Chevron*, 121 F.3d at 165 (explaining that mandamus relief of disqualification is "granted only in exceptional circumstances").

Federal law requires a judge to recuse "in any proceeding in which [her] impartiality might reasonably be questioned" or "[w]here [she] has a personal bias or prejudice concerning a party . . . ." 28 U.S.C. § 455(a), (b)(1). The bar for recusal under § 455 is a high one. "[J]udicial rulings and

comments standing alone rarely will suffice to disqualify a judge." *Chevron*, 121 F.3d at 165 (citing *Liteky v. United States*, 510 U.S. 540, 555 (1994)). Even comments "that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge." *Id.* (quoting *Liteky*, 510 U.S. at 555). Recusal is not required when the judge's comments about a particular party are based on proceedings in open court or information learned in earlier proceedings. *See Liteky*, 510 U.S. at 551. Bias requiring recusal must be *personal* rather than *judicial*. *United States v. Scroggins*, 485 F.3d 824, 829–830 (5th Cir. 2007). Judicial bias in the form of adverse rulings and comments on the record ordinarily does not constitute grounds for recusal, unless it "reveal[s] an opinion based on an extrajudicial source or demonstrate[s] such a high degree of antagonism as to make fair judgment impossible." *United States v. Brocato*, 4 F.4th 296, 302 (5th Cir. 2021) (quoting *Scroggins*, 485 F.3d at 830); *see also* WRIGHT & MILLER, at § 3542.

The Dondero Parties cite various instances throughout the case that they contend show Chief Judge Jernigan "harbors an actual and enduring bias and animus" against them "that is 'personal rather than judicial in nature.'" Placed in their proper context, none of these instances suffice to show that Chief Judge Jernigan's impartiality might be reasonably questioned or that she had a personal bias against the Dondero Parties requiring recusal under § 455.

The Dondero Parties first take issue with Chief Judge Jernigan's statements expressing negative opinions about Dondero based on information she learned while presiding over the *Acis* case. They cite specifically Chief Judge Jernigan's statement at the January 2020 settlement hearing:

> "I can't extract what I learned during the *Acis* case, it's in my brain, and we did have many moments during the *Acis* case where the Chapter 11 trustee came in and credibly testified that, whether it was Mr. Dondero personally or others at Highland, they were surreptitiously liquidating funds, they were changing agreements, assigning agreements to others. They were doing things behind the scenes that were impacting the value of the Debtor in a bad way."

Based on those concerns, Chief Judge Jernigan ordered that the settlement contain language reading, "Mr. Dondero shall not cause any related entity to terminate any agreements with the Debtor" and that "his role as an employee of the Debtor will be subject at all times to the supervision, direction, and authority of the Debtors." She noted from the bench (though did not order it be included in the settlement language) that if Dondero "violates these terms, he's violated a federal court order, and contempt will be one of the tools available to the Court."

Chief Judge Jernigan's comments regarding the *Acis* case and resulting orders are insufficient to show bias. Her statements about Dondero's role and reliability were judicial, rather than personal, in nature and relevant to her determination that the settlement was proper. And they were based not on any extrajudicial personal bias against Dondero, but on arguments raised by the Creditors Committee and U.S. Trustee about the *Acis* case and on credible testimony from the *Acis* case itself. Chief Judge Jernigan's comments about potentially holding Dondero in contempt of court did nothing but emphasize the law—that failure to follow a court order constitutes contempt. None of this was improper. *See Liteky*, 510 U.S. at 551 (holding that recusal is not required when the judge's comments are based on proceedings in open court); *see also Tejero v. Portfolio Recovery Assocs., L.L.C.*, 955 F.3d 453, 463–64 (5th Cir. 2020) (holding that a judge's knowledge of a party gained from previous cases involving that party does not

qualify as extrajudicial knowledge); WRIGHT & MILLER, at § 3542 ("Nor is the judge disqualified because [s]he has presided over some other case involving the same party or closely-related facts.").

Next, the Dondero Parties take issue with Chief Judge Jernigan's *sua sponte* questioning of the parties about a headline she saw about Dondero or Highland affiliates receiving Paycheck Protection Program loans. At that hearing, Chief Judge Jernigan acknowledged that she is "only supposed to consider evidence [she] hear[s] in the courtroom," but since she inadvertently came upon the headline while reading the news she "needed to ask about this," including about the potential that Dondero was implicated. However, as she later noted in her order denying the third recusal motion, "Neither Mr. Dondero nor any of his affiliated entities were directed to provide any information, no action was taken against them, and the issue was never raised again by the bankruptcy court." A newspaper article is certainly an "extrajudicial" source. *See Brocato*, 4 F.4th at 302. But Chief Judge Jernigan never expressed an opinion on it or took any prejudicial action against Dondero based on it. Her brief comments about the article would not lead a reasonable person to question her impartiality toward Dondero and certainly do not show bias so clear and indisputable as to warrant mandamus.

The Dondero Parties also take issue with Chief Judge Jernigan's various comments characterizing Dondero as "transparently vexatious" and litigious. However, comments disapproving of or hostile to a party aren't sufficient to support a partiality challenge, especially not when they are based on information learned in the judicial process. *See Liteky*, 510 U.S. at 551, 555. And there is ample evidence in the record to support these comments. Such evidence, as laid out in Chief Judge Jernigan's order denying the third recusal motion, includes testimony from one of the Highland independent directors and from Highland's new CEO, Dondero's filing 50 proofs of claim (which were later withdrawn), and "the many dozens of motions; the many dozens

of objections; and the many dozens of appeals" Dondero pursued throughout the bankruptcy case. Chief Judge Jernigan's comments, though certainly critical of Dondero, were based on this record evidence and not on any improper extrajudicial information and as such can't constitute grounds for recusal. *See Brocato*, 4 F.4th at 302.

The Dondero Parties also accuse Chief Judge Jernigan of bias because she often speculated that Dondero was behind motions filed by other parties in the case. For example, Chief Judge Jernigan stated at one hearing that she "agree[d] with part of the theme . . . asserted by the Debtor here today that this is Mr. Dondero, through different entities, through a different motion." And at another hearing on a motion to release funds of a non-debtor party, Chief Judge Jernigan speculated that "likely Mr. Dondero . . . had some involvement" in the decision to bring the motion, which she ultimately denied. Such speculation doesn't constitute grounds for recusal. *See Blanche Road Corp. v. Bensalem Tp.*, 57 F.3d 253, 266 (3d Cir. 1995) (explaining that the court's "suggestion that plaintiffs' counsel had somehow 'maneuvered' to ensure [someone's] appearance as a witness" and its general skepticism of plaintiffs' witnesses weren't grounds for recusal).

The Dondero Parties cite various other instances where Chief Judge Jernigan made rulings or comments adverse to them as evidence of her bias. But in each case, the Dondero Parties largely mischaracterize the context of Chief Judge Jernigan's comments, and there is at least some evidence in the record to support her judgments.

For example, the Dondero Parties cite the following rulings and comments as evidence of bias, none of which are supported by the record:

- The Dondero Parties argue that Cheif Judge Jernigan was biased in making certain findings adverse to Dondero after a February 2021 hearing. But Chief Judge Jernigan's order

explicitly stated that her findings were based on "all of the proceedings had before this Court, the legal and factual bases set forth in the Debtor's Papers, and the evidence submitted at the Hearing."

- The Dondero Parties argue that Chief Judge Jernigan appeared biased when she expressed concern that Dondero improperly exercised "powers of persuasion" on the Highland board. But, notwithstanding that comment, Chief Judge Jernigan stated that her adverse ruling was because she just "[did]n't think the evidence has been there to convince [her]" on the merits of the motion.

- The Dondero Parties argue that Chief Judge Jernigan showed bias when she threatened to hold Dondero in contempt at a preliminary injunction hearing. But the record shows Chief Judge Jernigan contemplated holding him in contempt based on evidence including he and his entities doing "things like . . . filing a motion for an examiner 15 months into the case."

- The Dondero Parties argue that Chief Judge Jernigan showed bias when she criticized the Dondero-controlled entities' decision to each retain separate counsel. But Chief Judge Jernigan stated a valid basis for her criticism—concern for judicial economy because the Dondero-controlled entities were each filing the same types of motions or objections when perhaps their resources could have been consolidated.

- The Dondero Parties argue an appearance of bias in what they characterize as "punitive" orders requiring Dondero and certain Dondero-affiliated entities to appear personally at all hearings. But Chief Judge Jernigan explained in her order denying that third recusal motion that she ordered Dondero to attend hearings only after he failed to attend a hearing on or even read a temporary restraining order entered against him.

- The Dondero Parties argue that Chief Judge Jernigan's *sua sponte* order requiring the Dondero-affiliated entities to make disclosures to establish their standing shows bias. But further review of the order shows Chief Judge Jernigan required these disclosures "in the interests of judicial economy" and in the interest of "reducing administrative expenses of the estate" because the entities "frequently file lengthy and contentious pleadings."

The Dondero Parties haven't shown that Chief Judge Jernigan based any of the above rulings on any extrajudicial information or pursued them for any personal, rather than judicial, reasons. As a district court judge, Chief Judge Jernigan is entitled to make credibility judgments based on the evidence before her, and it is not our duty to second guess those judgments. *See Ayers v. United States*, 750 F.2d 449, 456 (5th Cir. 1985). Indeed, most of Chief Judge Jernigan's rulings have been upheld on appeal to the district court and our court.[3] *See Regions Bank v. Legal Outsource PA*, 800 F. App'x 799, 800 (11th Cir. 2020) (per curiam) (finding judicial ruling didn't constitute bias where appellate court had affirmed the ruling). Though the Dondero Parties may disagree with her decisions, that is not evidence of bias, or even the appearance of bias. *See Crummey v. Comm'r of Internal Revenue*, 684 F. App'x 416, 422–23 (5th Cir. 2017) (per curiam). Chief Judge Jernigan's adverse rulings alone—or even paired with negative comments about Dondero—are not sufficient to warrant recusal. *See Litecky*, 510 U.S. at 555.

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[3] For example, the Dondero Parties argue that bias is apparent in one of Chief Judge Jernigan's orders holding him in contempt of court. But we have already affirmed Chief Judge Jernigan's finding of civil contempt. *In re Highland Capital Mgmt., L.P.*, 98 F.4th 170, 172–75 (5th Cir. 2024).

Finally, the Dondero Parties argue that Chief Judge Jernigan was required to recuse under § 455 because she published two novels which they argue espouse negative views of Dondero and the financial industry in which he operates. The Dondero Parties cite three parallels between the books and their case which they find problematic. First, Chief Judge Jernigan's novel *Hedging Death* involves a Dallas-based investment fund that manages the same mix of investments as Highland. Her novel *He Watches All My Paths* is also about the financial industry. Second, *Hedging Death* describes certain international tax structures used by Highland and Dondero as "byzantine," a word that Chief Judge Jernigan used several times on the record to describe Highland and Dondero's tax activities. Third, *Hedging Death* describes the life settlement industry as "creepy," and Highland and Dondero invested in the life settlement industry.

The texts of the novels are not in the record before us. But we find the three parallels cited by the Dondero Parties insufficient to show that they are clearly and indisputably entitled to mandamus relief in the form of a recusal order. As the district court emphasized, the novels are fiction. And Chief Judge Jernigan explains in her order denying the third recusal motion that the books are largely about other topics. *He Watches All My Paths* is about a federal judge who receives death threats from a young, former tort victim. *Hedging Death*, though it involves a bankruptcy case and a firm that received funding from a hedge fund manager, is largely about the protagonist bankruptcy court judge. The hedge fund manager character who the Dondero Parties believe is patterned on Dondero is an individual who fakes his own suicide after linking up with Mexican drug cartels—far from the real-life James Dondero. Because the three parallels are so minor when compared to the larger discrepancies between the books and the case, from the information we have in the record before us, it seems that a reasonable reader and observer of these proceedings would not necessarily question Chief

Judge Jernigan's impartiality in this case. While some similarities between the books and the cases before Chief Judge Jernigan may raise cause for concern, the similarities are not close enough to find that the district court abused its discretion denying the petition.

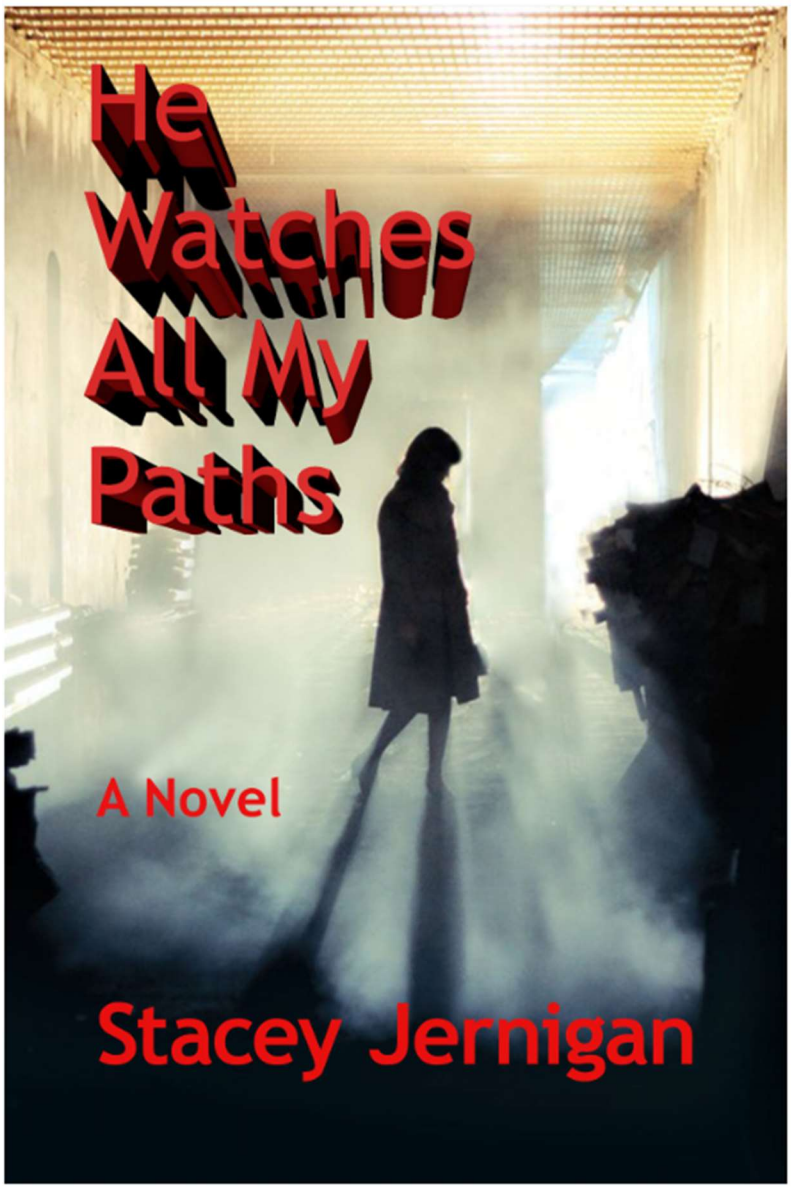
Altogether, none of Chief Judge Jernigan's actions or comments "reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." *Liteky*, 510 U.S. at 555. It is not clear and indisputable that Chief Judge Jernigan had personal bias against the Dondero Parties or that her impartiality might be reasonably questioned requiring recusal under 28 U.S.C. § 455. The district court thus didn't abuse its discretion in finding that the Dondero Parties lack a clear and indisputable right to mandamus relief.

C

As to the third requirement for mandamus relief, having found that the Dondero Parties lack a clear and indisputable right to mandamus, we also find that mandamus is not "appropriate under the circumstances." *Cheney*, 542 U.S. at 380–81.

IV

Because the Dondero Parties failed to show they have a clear and indisputable right to mandamus relief, the order of the district court denying the petition for writ of mandamus is AFFIRMED.



Excerpts from *He Watches All My Paths*
By Stacey Jernigan
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Excerpt 1:
Author's Note
(emphasis added in **bold**)

AUTHOR'S NOTE

Because I am a sitting United States judge, and I am also married to a police officer, I feel compelled, at the outset, to clarify certain points regarding this novel.

First, the following is a work of fiction. **Some of the characters and events herein are based loosely on actual persons and events,** and some of the places (in my home state of Texas and in various other faraway spots) are certainly very real. Moreover, in my capacity as a judge, I have been the recipient of death threats that ultimately required United States Marshal Service protection, like the main character in this novel. But, the human characters in this novel are absolutely fictional. Judge Avery Lassiter, the main character in this novel, is not me and my own situation with threats did not transpire in the same manner as hers.

Second, one should not assume that any statement or opinion expressed or implied by any characters in this novel are necessarily mine or are somehow a reflection on how I might rule on any particular issue in any case in the future.

Third—and perhaps most importantly—the references herein to certain federal judges, public officials, and lawyers (and families) who have been assassinated in this country in the past are, sadly, true—as are certain facts presented regarding the United States Marshals Service. As mentioned earlier, these honorable souls are among those to whom this novel is dedicated.

The author, Stacey G. C. Jernigan, has served as a federal bankruptcy judge, since the year 2006, in Dallas, Texas. Before that, she practiced law many years at a large international law firm, Haynes and Boone, LLP, based in Texas. **She is married to a police officer and has a son and a daughter who are both young adults now.** She writes and travels extensively in her spare time.

Excerpt 2:
Pages 60-62
(emphasis added in **bold**)

The man's thoughts were suddenly distracted when the clerk told the jury panel to listen and turn their attention to the overhead monitors where they would be shown a 15-minute video about the importance of jury service. After that, folks would be told where to go next. The man shifted in his chair uncomfortably and glared up at the nearest screen. Good God. The video featured some of the pillars of the Dallas community, telling him how special jury duty was and how important they all were. He'd go through the motions today. But what a joke.

About an hour later, the clerk finally started calling people for jury panels. The man had a low number, so he suspected his chances were pretty high of being put on a jury panel. He was right. He was in the second group called. He was told to report to a courtroom on the 5th floor. He followed the line of people moving like sheep toward the outrageously slow elevators. He avoided eye contact and speaking with the masses. He didn't want to be there with them.

Finally, about thirty minutes after being forced to sit shoulder-to-shoulder with strangers on the cold, hard pews in the courtroom of the Honorable Wayne T. Barnes, there was some activity. Approximately a half-dozen lawyers came into the front of the courtroom, exiting from the chamber doors of Judge Barnes, and started settling into places at the counsel table. There were dozens of banker boxes piled up around the walls of the courtroom, and lawyers began pulling files and notepads and laptop computers out of them. **It was obvious that one group of lawyers (four of them) represented a deep pocket corporation, and the other two lawyers were likely representing a humbler client. One group of lawyers (all men) wore slicked back perfect hair and expensive dark wool suits with tailor made shirts, silk red ties, cufflinks, and Italian loafers. They each had a polished, fraternal, athletic look. They had similarly well-dressed clients who were sipping Starbucks lattes, constantly checking cell phones, and looking incensed about being in a courtroom. They no doubt had billion-dollar companies that they needed to be running, or a golf game or three-martini lunch at the Dallas Country Club that they would be missing. Or maybe they were**

hedge fund managers—they had that air of hubris about them that was so characteristic of those Wall Street assholes. The two other lawyers had bad haircuts and cheap, ill-fitting suits (one wearing Seersucker in January), with brown, smudged loafers, and looked as though they had been up all night. They had an elderly man and three blue collar looking adults in their 30's or 40's sitting next to them. A courtroom deputy suddenly jerked to attention and yelled "all rise; the 199th Judicial District Court of Dallas County, Texas is now in session. The Honorable Wayne T. Barnes presiding." A tall, lanky African American, bald man in a black robe said hello and kindly smiled, telling the jury panel members and lawyers to take a seat.

The man found the next thirty minutes to be absolutely excruciating. During this phase of jury duty, the lawyers informed the jury panel a bit about the trial for which they were seeking jurors. The lawyer in the Seersucker suit starting things off, standing up and wandering toward the jury panel with a lumbering gait and an exposed large girth. He began speaking in a velvety Baritone voice with a very Southern drawl: "May it please the court. And ladies and gentlemen. Let me share with you fine citizens of Dallas County some of the salient facts of the case at bar."

"Why did fucking lawyers have to talk that way?" the man thought. "Salient facts. Why can't they just say 'hey, here's what happened."

The lawyer soon shared that the plaintiffs were the surviving widower (age 74) and three adult offspring of Mrs. Dottie Wilson. The plaintiffs alleged that they had suffered damages due to the death of Mrs. Wilson, on August 6, 2015, allegedly caused by Mrs. Wilson's exposure to asbestos dust and fibers when she handled and laundered the allegedly asbestos-laden clothing of her husband, Myron Wilson. Mr. Wilson had been employed for 30 years at a large natural gas field and processing facility in East Texas, known as the Chandler Lake Refinery. In the course of performing his work, Mr. Wilson allegedly was occupationally exposed to large quantities of asbestos-containing insulation products that were utilized and/or handled by, or in the close proximity of, Mr. Wilson. Mr. Wilson's initial job for Chandler was a switcher. When he

was a switcher, he worked with steam coils on certain flow lines and each of them was covered with insulation containing asbestos. Also, certain heaters within the work area had insulation in them. Mr. Wilson later became a compressor operator and then a chief operator. When he was a compressor operator, he worked with turbochargers, engines, and compressors that had insulation on them. Mr. Wilson later became a member of a maintenance crew (fixing anything that broke throughout the plant). Mr. Wilson also believed that he was exposed to asbestos at the Chandler Lake Refinery through certain pipe insulation—specifically "hot oil piping" used in the process of "drying" natural gas—that is, getting propane and pentanes out of the hydrocarbon gas. Mr. Wilson believed, in particular, that he may have been exposed to asbestos dust in the compressor building at the Chandler Lake Refinery where, once a year or so, he would have to pull out, repair, or rip off pipe insulation. Upon completion of Mr. Wilson's daily work, he would leave the worksite and return home with asbestos dust and fibers on his clothing and person. Mrs. Dottie Wilson was allegedly then exposed to the asbestos dust and fibers when she gathered, handled, and laundered Mr. Wilson's dust-laden clothing and ultimately sustained a very serious injury to her body. In 2015, Mrs. Wilson suddenly developed pain and trouble breathing. Shortly thereafter, Mrs. Wilson was diagnosed with the asbestos-related lung cancer known as mesothelioma. Mrs. Wilson's contraction of mesothelioma resulted in immediate disability, physical pain and suffering, and severe mental stress, and she soon passed away, on August 6, 2015.

The plaintiffs soon filed their petition for survival and wrongful death damages in Dallas County, Texas, where the behemoth Chandler Corporation was headquartered. Chandler Corporation somehow had avoided mass tort litigation from the plaintiffs' bar until the Wilson lawsuit, and they were not going to go down without a fight. If they lost this suit, it would be the tip of the iceberg and they would soon be fighting hundreds or thousands of copycat lawsuits just like this one. They had to stop the floodgates.

Excerpt 3:
Pages 78
(emphasis added in **bold**)

She was dealing with a nasty dispute involving two feuding hedge fund managers. There were several SMU law students in her courtroom observing the court proceedings. The students had wanted to learn something about what hedge funds were and how they made their money. **Avery had been explaining to the students before court about how hedge funds work—describing how they are a less-regulated side of capital finance.** Avery had further lectured to the students that hedge funders raise money from wealthy "accredited" individuals and institutions, such as government pension funds or university endowments, and the hedge funders deploy (that is, invest) that money as they see fit. **These high-flying hedge fund managers essentially suck up money ("fresh powder" they call it) like an i-Robot vacuum cleaner from every corner of the universe and invest it, generally earning compensation of 20% of the assets they invest and another 2% of the profits that the assets earn. They make money no matter what—whether their investments are successful or not—because of their 20% cut.** Avery explained, to the law students' surprise, that lawyers, physicians, and investment bankers were now yesteryear's rich, esteemed professions. The law students were probably starting to re-think their decision to attend law school (that had not been Avery's intention). **Avery had been quietly daydreaming about whether one of these hedge fund manager guys (they are mostly men—in a stereotypically competitive "bro culture") could somehow have been connected to her death threats—she was recalling the comment in the second threat letter about the "rich who rule the universe."** Hedge fund managers were certainly worthy of that description. The hedge fund managers in her courtroom right now were rich alright—they were centimillionaires. They probably thought of anyone making $1-$5 million per year as middle class. Some of these managers were intelligent with impressive academic credentials. **They all were bombastic talkers imbued with an outrageous amount of hubris.** They vacationed in places like Lake Como and Bora Bora and consulted meditation gurus in places like the Bay of Bengal. They sailed catamarans around the world and bought airplanes and race horses like it was candy. **Everything in their life was about winning. In the current lawsuit Avery had before her, the hedgies were accusing**

each other of being greedy sociopaths. As Avery's mind drifted deeper toward wondering if perhaps someone in her court involving one of these hedgies had perhaps sent her the death threats, Annalise quietly slipped into the courtroom and handed her a note, telling her that she needed to take a recess. That was never a good sign. Avery had a call holding from one of Mad Max's police department colleagues, saying that Officer Max was at a local hospital emergency room, because he had been injured in a mishap while on duty, but it appeared that he was going to be alright. Avery would probably want to come to the hospital—but he thought Mad Max would be fine.

Excerpt 4:
Pages 165 to 168
(emphasis added in **bold**)

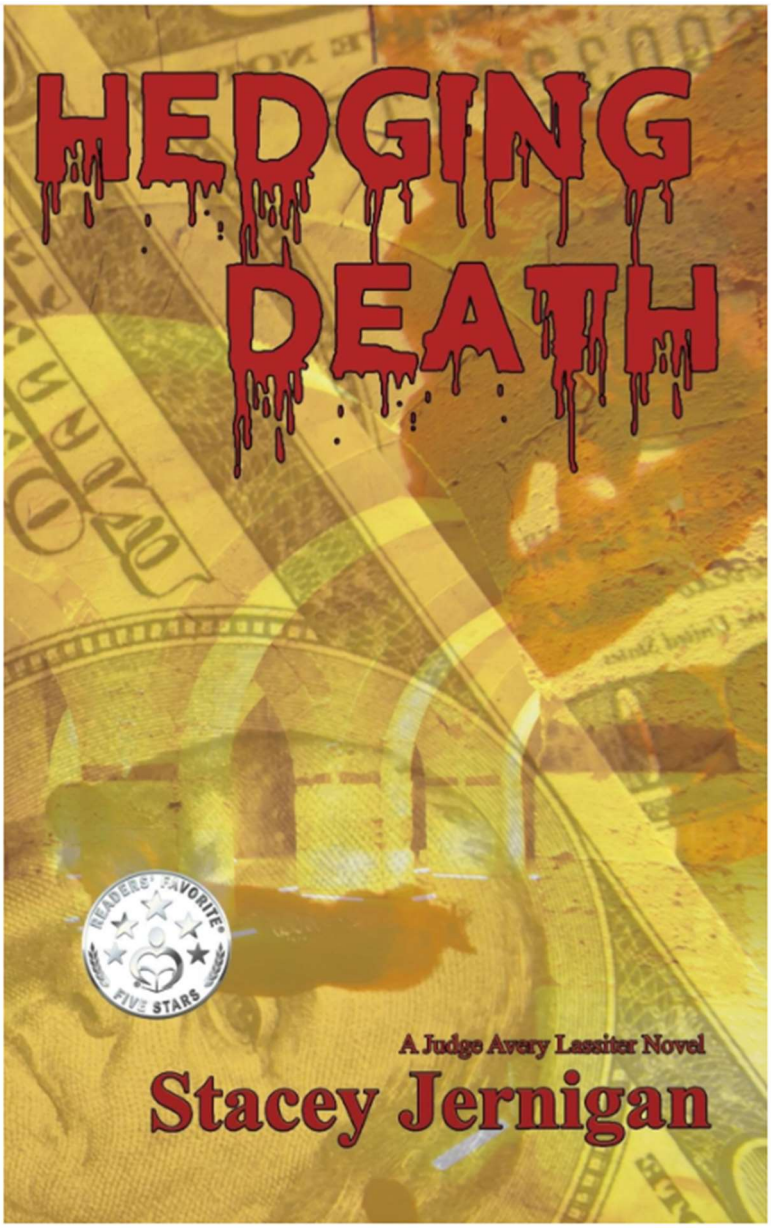
Avery was packing up a bag in her bedroom at home on an especially nice warm Wednesday in November. She would be driving down to Austin with Ward Scott and the Deputy Marshals mid-morning. She and Ward were going to be making a presentation at a bankruptcy law conference in Austin. She and Ward would be speaking to 300 or so lawyers and other professionals in the restructuring and insolvency community regarding oil and gas law issues. "A riveting subject, to be sure," Avery joked.

The Deputy Marshals hated it when Avery engaged in public speaking, but she didn't really care. She did a lot of it—it is expected of judges. Avery went down to this particular law conference in Austin every November. She had an old law professor from her University of Texas Law School days that she always enjoyed seeing. She also always took the opportunity to visit with some of her former law clerks, interns, and externs who were still in the Austin area or who otherwise traveled to the conference for continuing legal education. And, best of all, she seized the opportunity to stay a couple of days at the Four Seasons Hotel and Spa on Lady Bird Lake and visit some of her old law school haunts on nearby Sixth Street in downtown Austin.

As Avery packed, she stopped to listen to the latest daily cable news coverage about Karl Lee. There was still no proof of his death, and the legal and family drama engulfing the Lee empire had now reached an absolute crisis level. The quarreling among Lee's wife and his grown children was more rancorous than ever. They had all taken to Twitter on an almost hourly basis, publicly airing their disputes in a very distasteful and embarrassing way. The boards of directors at all of Lee's corporations were bickering as well. **Meanwhile, certain extremely aggressive hedge funds were starting to buy up blocking positions in the shares of his companies, as well as debt all over the capital structure of the Lee empire—an obvious sign that they smelled opportunity. Hedge funds are drawn to distressed companies like sharks are drawn to blood.** The Regent Hotel & Casino was particularly hard hit. Bondholders of the casino were starting to form ad hoc committees consisting of the largest holders of the debt and would soon be conducting "beauty contests"—that is, interviewing legal counsel and financial advisors for a possible out-of-

court restructuring and likely Chapter 11 bankruptcy case. It barely made any sense to Avery. Lee disappeared three months ago, and it was as though all of his companies fell off of a financial cliff. How could one man be so indispensable to his companies? Avery guessed it was really true, that companies needed to have succession plans for this type of thing and Lee's companies—as well run as they were—did not have any. Avery wondered how Judges Lupinaci and Murphy would feel if one of their most high profile and successful corporate restructuring cases ended up being a "Chapter 22" (lawyer-lexicon for a second Chapter 11 case; 11 times 2).

Avery imagined that the lawyers at the conference in Austin would be gossiping nonstop about the possibility of another Regent bankruptcy case and other possible Lee companies that might need to be run through the cleansing bath of bankruptcy. Lawyers in the corporate restructuring field can be like vultures, waiting to swoop onto the carcass of a dying company. A variation of "barbarians at the gate," as some have called it. They are in the misery business for sure. Ward sometimes grumpily called them "the lowest common denominator" in the lawyer food chain. Avery always chastised him that this was not entirely fair. Actually, the lawyers in the corporate restructuring field tended to be creative problem solvers who were great at cleaning up financial messes. They were the "fixers." They were often brilliant—having chosen an area of law practice that was far more complex than something like tort law or criminal law. One had to be both a financial wizard and legal wizard to be successful in the field. Still, Avery hated how the lawyers in this field loved to gossip about tragedy. The only thing that this group of lawyers loved to do more than gossip about corporate calamity was talk about how busy they were and how many billable hours they racked up in the preceding month. Toxic chest pounding. It was Avery's personal belief that lawyers tended to lie spectacularly to one another about how many hours they billed. Just like the cliché of the fisherman who lies about the size of the fish he catches daily.



Excerpts from *Hedging Death*
By Stacey Jernigan
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Excerpt 1:
Pages 18-23
(emphasis added in **bold**)

Faked deaths. Also known as "staged deaths." Evanescing without a trace.

"Yes, feigning one's own death is a 'thing,'" Avery was explaining to Julia one Saturday afternoon while the two of them rinsed and diced vegetables for a salad. Avery was apprising Julia as to why her father would be away from home for an indeterminate length of time, while next coaching Julia through preparation of Baba Jo's favorite recipe for meaty, cheesy manicotti.

"No, silly, your dad is not faking his own death! Oh my gosh, Julia!"

Julia looked back at her mother with a kittenish half smile.

Max Lassiter was taking an extended trip down to Mexico to investigate what was believed to be a pretend death of a man named Cade Graham, a well-known wealthy playboy and high-flying, Dallas hedge fund manager. Graham was the founder and CEO of Dallas-based Ranger Capital, a multibillion-dollar conglomerate, which managed not just hedge funds but private equity funds, CDOs, CLOs, REITs, life settlements, and all manner of complicated financial products. This investigation was part of Max's new post-retirement gig—working as an investigator for Premier Mutual Life Insurance Company.

Max had "escaped the confinement of the police department" and retired a couple of years ago—not long after the July 2016 police massacre. He had started this "strange new endeavor," as Avery called it, last January. He now referred to himself as a professional "finder." And he was referring to this Mexico assignment of his as "Operation Hedge Hog." His investigative assignments always had some catchy code name. Just like with the corporate transactional lawyers Avery used to work with at her old law firm. It appears one could not ever use actual names for their projects—whether there were legitimate confidentiality concerns or not. "Project Orion," "Juno," "Calypso"—there was never any rhyme or reason to them. At least "Operation Hedge Hog" had a meaningful tie to Cade Graham's profession.

"Why do people fake their own deaths, Mom?"

"Well, it happens often enough that there is even an official term for it: 'pseudocide.'"

"I have never heard of that word."

"I hadn't either until your dad started this. Anyway, why, you ask, would a person execute such a hoax? Honey, I could spend all day answering that question. There have been plenty of reasons people have orchestrated their own deaths throughout history. **People who engage in this come from all walks of life—from ordinary, everyday people, to egomaniacs, eccentrics, to well-known authors, to women escaping domestic abuse (a *donna fugata*, as they say in Italian), to corporate titans, to hedge fund managers, to former Nazis. Most often, though, they are middle class, middle aged, heterosexual white males with families."**

"You've just described Dad!"

"Yes, I suppose I have."

"But why, Mom? Why do people do something so weird?"

"It's usually about escaping some undesirable situation, sweetie. But I would say it is most often about money—such as someone falling into financial distress and trying to escape the consequences. Conversely, sometimes someone has had the good fortune of coming into a lot of money—like an inheritance or winning the lottery—and is trying to escape a spouse or family or friends seeking a share. This is sad, but I have even heard of young people with significant amounts of student loan debt faking their deaths to get out of the burden of having to pay it."

"You mean like if Heath did it, because he chose to attend such an expensive private college and has such huge student loans now, Mom?"

"Not funny, Julia!"

"Can you get arrested for faking your own death?"

"Well, faking your death—just basically going missing off the grid—is not by itself a crime. Technically, a person can go missing if he or she chooses. You know, just check out of life, so to speak. But most of the time, a fraud is going to be committed somehow in the process, or the person is going to end up committing some other crime as part of faking his death."

"Like how?"

"Well, a 'pseudocide' usually starts with a person leaving random evidence to mislead people into thinking that he or she is dead, but there is usually no corpse (for obvious reasons). Sometimes, the evidence that they leave to mislead people ends up being fraudulently created and so that fraudulent evidence can be a crime. Sometimes, the death-faker will next assume the identity of an actual dead person with similar vital statistics and age. That would also be a crime."

"Oh yeah, I've seen that in a TV show before."

"Ha! I bet you have. And insurance fraud is very high on the list of reasons that people are known to fake their deaths—that is, as part of an attempt to fraudulently collect life insurance policy proceeds. And that's why your father is getting involved in the alleged death of this fellow, Cade Graham."

"I'm not sure I get what you mean, Mom."

"Let's see. I assume you know what life insurance is, or no?"

Julia raised her right eyebrow and shrugged her shoulders. Julia had never been very childlike—always an old soul—so much so that sometimes Avery forgot that she was a child and didn't already know some basic things that adults know.

"Okay, I'll explain. I pay premiums every month for a life insurance policy, so that if I die before you are grown up, a pot of money will be paid out by the insurance company that will support you, since if I am dead, I

am not around making money anymore to support you. Just like car insurance is for the situation when you are in a car wreck, life insurance is for when someone dies—there will be money to pay out to people who depended upon that person."

"You're being so morbid, Mom."

"No, not really. The concept of life insurance came into existence a couple of hundred years ago. It's generally quite a good thing that can give parents peace of mind for their families. But, like any other commercial enterprise in life, there are always going to be dishonest people who figure out a way to exploit the system. There are many documented cases, from the very beginning of the industry, of schemes where people have faked their deaths, or the deaths of friends and loved ones, to receive life insurance money."

"How do people do it usually?"

"Well people are sometimes good at it and people are often terrible at it. According to your father, people most often fake a water accident—a drowning or falling off a boat far out in the ocean from the shore. Presumably, the perpetrators believe that drowning out at sea provides a plausible reason for the absence of a body. These cases are almost always suspicious, especially if the person has been in legal or financial trouble. In a drowning, a body will typically wash up, usually in the first few days. So, if there's a drowning and no corpse ever appears, it's very suspicious in the eyes of law enforcement. Of course, sometimes people just leave a suicide note and disappear—causing suspicion about whether foul play was involved."

"The character Juliet from Romeo and Juliet faked her death, Mom!"

"Yes, Julia. At least, initially. That didn't work out very well, did it? And some people think Elvis and Michael Jackson might have faked their own deaths."

"Huh?"

"Oh, never mind. Before your time, sweetie. Anyway, it is really very hard to get away with faking your death. People think they are geniuses at staying hidden, but they leave breadcrumbs everywhere. Digital footprints. Technology has been an absolute gamechanger when it comes to ferreting out missing people—well, at least missing adults. A person really must completely do away with all technology and go completely off the grid. That's why the U.S. Marshals almost always find their fugitives because people can't stay off their phones or computers or avoid ATMs or credit cards or video cameras."

"I bet I could disappear, Mom."

"Oh please. You can't stay off your phone for five minutes."

In fact, Julia had just put down her vegetable peeler and was doing internet searches on her phone. **She had just Googled Cade Graham's name and saw plenty of pictures of him—mostly standing with beautiful and extremely young women in exotic locations. He looked fifty-something and had slicked back, collar-length, silver hair, a tanned complexion, sparkling green eyes, and fluorescently glowing white teeth.**

"I found pictures of Cade Graham, Mom. He apparently wears nothing but black turtlenecks. And only hangs out with girls who look barely older than me."

"Lovely. Anyway, there is a creepy, underground market out there with resources to help a person orchestrate a fake death. For example, you can obtain a fake death certificate through these underground markets. Mexico is one place where people have been known to easily get a fake death certificate. It's usually accomplished through people who work for the government providing the documents that people need. It might cost you $150 to get a fake death certificate. Then the person just arranges for it to be filed with the U.S. Embassy down there. 'John Doe was killed in a car wreck while vacationing in Mexico.' There are also certain countries where there are corrupt morgues, where the operators

take in dead homeless people and keep them on ice until someone comes around and wants to buy a body to pass it off as himself."

"That's so disgusting!"

"Yep, it is all right."

"So, what's the deal with Cade Graham? Why do Dad and the insurance company think that he faked his own death?"

"Oh, Mr. Graham is, or was, a real piece of work. A real hedonistic, narcissistic playboy. He has—or had—fashion model or actress girlfriends on almost every continent, it seems. As you noticed from your internet search, they all look disturbingly young. **And he seems, over time, to have developed a reputation as being a hustler working the bottom rungs of Wall Street. A ton of people hate him, don't trust him, and can't figure out how on earth he manages to make so much money in both good times and bad times. Other people think he's magic and will write him a blank check to invest money with him any time he asks.** He supposedly went vacationing in Mexico recently and died in a fiery, single-car crash. But the facts just don't all add up."

"How so?"

"Well, not only is Mexico not Cade Graham's type of vacation hot spot—he is more the French Riviera, Marbella, or Amalfi Coast type—but **there was recently a lot of strange activity in some of his hedge funds—a lot of money disappearing. People were suing him, and the Feds were investigating him for all sorts of things. His world was crumbling around him. All kinds of problems were mounting up."**

Excerpt 2:
Pages 82 to 86
(emphasis added in **bold**)

"Oh nothing. Max, I doubt a lawyer invented the life insurance settlement business. Actually, I have no idea. Maybe a lawyer did create the whole idea. But I do know that law makers, both in Washington and at the state level, have certainly investigated this industry on occasion. And truthfully, the insurance policy holders typically end up getting a lot more cash than they otherwise would from the cash surrender value that the insurance company itself would pay. So, again, I guess it's not unreasonable to think of this as a win-win type of transaction. And there is some regulation of the industry. I am by no means an expert at all, but I recall that there are some restrictions on what you can and can't do."

"Okay, stop there. I want to hear about the restrictions."

"Well, let's see. There's a concept that you must have an 'insurable interest' in the subject matter of any insurance policy. So, for example, you cannot be the original purchaser of a life insurance policy on a stranger or some other random person with whom you don't have any kind of a relationship."

'Like, I could not go out and take out an original life insurance policy on my next-door neighbor."

"Exactly. Also, you cannot enter one of these life settlement transactions at the very same time that a policy is issued. In other words, you can generally only purchase another person's life insurance policy after it has legitimately been in place for several years."

"Aha! So, there is a line you can cross where it's not legal! Told you, Dave."

"Sure. But, again Max, I am not an expert on this. Max, what in the world is going on with Cade Graham and life insurance settlements? Why all these odd questions? I thought you were going down to Mexico just to investigate his apparent pseudocide."

"**Well, as I understand it, Cade Graham, Mr. Hedge Fund Genius, created a specific hedge fund at his company, Ranger**

Capital, that was purchasing life insurance policies. He drummed up dozens of investors to contribute money for his 'life settlements hedge fund,' and, through a broker, the fund acquired more than 5,000 policies having over one billion dollars of face value."

"Okay. I understand. I have certainly heard of hedge funds getting involved in the life insurance settlements business. It is not in and of itself problematic, Max."

"Well, as it turns out, Graham, in connection with buying up these life insurance policies, was using a supposed 'expert' who was inputting life expectancy data that suggested that the people selling the policies would die much sooner than they were, based on actuarial tables. The result was the hedge fund was not collecting funds on the policies as expected. It was a frigging disaster. The Wall Street Journal wrote an expose on it and reported policy holders were living two and three times beyond projections."

"Oh, how terrible. People were living longer than expected," Avery said sarcastically.

"I'm telling you. I don't know how in the world this is legal. It certainly doesn't feel legal—or at least not moral or ethical."

"Okay. Well, go on. I've got to hear the rest of this."

"Anyway, for a couple of years, the hedge fund was paying about $1 million per month just on the premiums on these 5,000 life insurance policies and collecting nothing, zippo, because basically no one was dying. **The hedge fund eventually ran out of cash. Graham was losing his shirt on this business—or rather his investors were. People were getting really pissed off at Graham. The SEC was investigating him. The situation was becoming untenable. Cade was having to cover the cost of maintaining this fund from other resources. He was robbing from Peter to pay Paul in his hedge fund empire—by borrowing from unrelated hedge funds in the Ranger Capital empire, he managed to pay the premiums on the life insurance policies."**

"Okay. Well, you and everyone else in Dallas knew that Graham was on the financial precipice. This was just one of many reasons that he was, I guess. Right? Oh, wait, don't tell me. Do you think Cade Graham started putting hits out on people that had the life insurance policies owned by his hedge fund, so that some of these policies would start paying off? He's hiding out in Mexico and playing dead while ordering hits on people? Good God, I feel guilty just suggesting something so terrible. I'm going to be struck by lightning any moment."

"It's actually not a bad guess, Avery. But no. For some reason, Premier—which was the issuer on a lot of these policies—started noticing that Graham's hedge fund had recently started buying up a lot of policies on people who were American citizens now living in Mexico. These were middle class folks who had retired in Mexico. Mostly on the Yucatan Peninsula near Cancun, Cozumel, and Playa del Carmen. Nice weather. Low cost of living. And there is a nice senior living community down there called *Isla Valladolid* where many of these ex-pats retired. *Isla Valladolid* has extremely nice, posh independent living condos, assisted living facilities, and a nursing home for the residents when they start to eventually need that type of care. All high-rises overlooking the ocean."

"Sounds like a place I might like to live someday."

"Uh, better hold that thought. I don't think you'll feel that way when I'm finished with my story."

Dave Carrillo chimed in from across the table. "Tell her the part about the REIT. Ask her what the hell a REIT is." Dave had now abandoned any reservations he might have had about eavesdropping. Realizing this, Max put his phone on speaker.

"Oh yeah, Dave wants me to tell you that a REIT—which I understand means a 'real estate investment trust'—happens to own this bougie *Isla Valladolid* property, and the REIT is minority-owned by Graham and majority-owned by some Mexican nationals who have close ties to one of the big drug cartels. The *Oscuro* Cartel. And then this Mexican-cartel controlled REIT leases the property to another entity—

an operator/tenant—that Graham mostly owns and controls through offshore companies."

"Welcome to the world of structured corporate finance, Max—well except for the drug cartel part. Lots of interconnecting relationships and frequently offshore companies. That's interesting, but let's get to the really good stuff, Max. I feel you're building to a punch line here."

Excerpt 3:
Pages 105 to 106
(emphasis added in **bold**)

Despite its history of standing its ground and keeping people out, **Malta is now a place where a person can rather easily worm himself in and disappear forever**. Malta is part of the Schengen Treaty of countries and, thus, if one flies there from anywhere in the European Union or other Schengen Treaty countries (which one nearly must), no one checks for a passport upon one's arrival. It is also an easy, short boat ride from the porous borders of places such as Tunisia and Libya.

Malta, while beautiful, exotic, and an all-around lovely place, is a haven for a variety of criminal financial activity and other at least questionable practices (the government has considered officially backing Bitcoin in recent times). Gambling (there are casinos there) and the mafia are now ubiquitous.

Richard Braden (n.k.a. Rasmus Aavik) had arrived in Malta before Matthew and Marcus Braden had ever stepped foot in Texas. He had read books, as a child living in a Catholic orphanage, about the Knights of St. John and the Great Siege at Malta, and the place had captivated his imagination. He moved to a spot called St. Julian's Bay, overlooking the tranquil blue Mediterranean. He moved there shortly after the State of New Jersey reported him as having died, in the year 2002, from a Staph infection—this had been a report fictitiously created by the young Richard Braden, who very early became a skillful cyber-criminal. Still somewhat young when he arrived, Richard managed to endear himself to the staff at a beautiful gothic style church facing the bay there— The Parish Church of Our Lady of Mount Carmel—with an imposing bell tower that chimed portions of Nearer My God to Thee every fifteen minutes. There was a feral cat colony right by the church along the promenade on the beach which Richard helped maintain for many years. There was an easily accessible ferry in St. Julian's Bay that could take one to the historic capital of Malta, Valletta.

Valletta fascinated the young Richard Braden when he first arrived, with its narrow, cobblestone streets and amazing high views of the island's cities and fortresses. He eventually bought a Vespa so that he could ride around the island and explore. As a young man, he

eventually left the Church that had taken him in and took on the identity of Rasmus Aavik. He was able to get a job at the Bank of Valletta, rising from clerk to teller to account manager in time. He managed to pose well as an Estonian ex-pat and learned the Maltese way of life quite well.

Everyone speaks both English and Maltese in Malta. Maltese is difficult (it is a Semitic language written in Latin script, derived from an Arabic dialect that first appeared during the Ninth Century Muslim conquest of Sicily), but Richard, like his two brothers, was highly intelligent so he had no problem mastering the language. Eventually, Richard purchased a quaint small sidewalk café which he named Deheb Qumar, serving mostly Italian and Sicilian cuisine, but also a few local specialties like rabbit and garlic octopus. He adorned the walls of his café with posters and memorabilia from movies like The Godfather, Good Fellas, and Scarface. Frank Sinatra tunes were always playing softly in the background. There were cigarette vending machines and a small bar in the front of the café, and several video cameras hidden in random spots around the café. Richard (Rasmus) drove a cobalt blue Land Rover Defender that, every day, he parked in front of the cafe. Most days, Richard (Rasmus) sat at the bar, taking notes, with a pencil in an old-style ledger pad with carbon paper, seemingly adding up figures and occasionally handing pieces of paper to men who would randomly walk in. He led a discreet but interesting life. Restauranteur. Bookie. Money launderer. Financier. Investor. And, of course, former Estonian sailor.

Excerpt 4:
Pages 107 to 111
(emphasis added in **bold**)

Cade Graham had led a rather charmed life for his fifty-plus years, until his troubles of the past two years. He grew up in the exclusive Highland Park enclave in Dallas, Texas. He was the only child of a workaholic heart surgeon and an alcoholic mother, and the grandson of a storied East Texas oil wildcatter—the latter of whom had mostly raised him. He was tall, well-built, and handsome, with a confident Texas swagger. He still looked rather boyish in middle age. He went to Princeton for undergraduate studies, played football for the Tigers, and was president of the exclusive Cottage Eating Club, as had been his father and grandfather before him. After graduation, he worked several years at the New York Stock Exchange, then earned an MBA from Wharton, and went from there to Bear Stearns on Madison Avenue. **He eventually came home to his native Dallas after the Bear Stearns implosion. Once back in Dallas, he started working in private equity and, ultimately, the largely unregulated hedge fund industry. Both private equity and hedge funds thrived in the freewheeling business culture of Big D—a perfect fit for Graham. He also liked that it was still a male dominated world. He liked the gambling and risk-taking that are inherent with hedging and distressed investing. Perhaps it was something in his DNA or a learned trait from his wildcatter grandfather.**

After a few years of feeling like he was working round-the-clock, making other people fabulously wealthy (Graham was a mere millionaire while his bosses were billionaires), he decided to form his own company—Ranger Capital. Graham had weathered the capital markets crash of 2008 quite well, despite losing big in mortgage securitization at Bear Stearns. He almost always came out on top in his life. It astounded everyone who knew him. Even as his colleagues were licking their wounds in 2008 and ratcheting themselves down to a more pedestrian lifestyle, Graham had acquired a mansion on Strait Lane in Dallas with a sixteen-car garage full of Lamborghinis, Ferraris, McLarens, and Aston Martins. He also owned a villa overlooking Lake Como in Italy, an apartment in Paris in the Eight District, on the Right Bank (a.k.a. "VIII arrondissement" or huitieme), and a small, moated Norman country home near Lisieux, where he enjoyed boar hunting. He

played golf with celebrities and politicians. He gave to all the right charities. He had young girlfriends everywhere and allegedly had a couple of illegitimate children whose existence and identity were closely guarded secrets. But he was mostly a loner. A prosperous and hedonistic—and hardworking—loner. Tabloids and internet gossip blogs described him as a Gatsby-like enigma. He had sensibly and cannily never given an interview to any of the usual high-finance media outlets. Among other things, it was impossible to accurately approximate the fortune he had amassed.

But times had, for once, finally turned hard for the ordinarily Teflon-coated Cade Graham a few years back. His boyish brown hair had turned silver, and his sun-kissed smooth skin had grown weathered. In recent years, Graham's Ranger Capital had specialized in the "SPAC" and "de-SPACing" segment of the capital markets, where investors essentially give an investment manager a blank check to create a special purpose acquisition company ("SPAC"), that will then go out and find a company with which to merge ("de-SPAC"). Among the vehicles that Ranger Capital ended up using these blank checks for were: (1) a fund that invested in life insurance policy settlements; (2) REITs that owned real estate on which hospitals, medical buildings, senior living communities, and rehab facilities were built— which were then leased at lucrative prices to tenant operators; (3) funds that lent money for medical research and development projects; and (4) funds that invested in pharmaceutical companies. In other words, Graham essentially just used the SPAC blank checks for whatever he wanted and whenever he wanted, until he found good companies with which to de-SPAC. In any event, the REITS and the pharmaceutical companies had performed fabulously well. But the life insurance settlement fund was an unmitigated disaster, as was the fund that had been investing in medical R&D.

The medical R&D fund was especially bothersome to Graham. One of Graham's illegitimate sons had gone to Emory University (on his dime) and majored in Biology before going to Harvard for an MBA to follow in his father's footsteps in the world of high finance. While at Emory, he had worked as a research assistant for a grad student there named Dmitry Basayev. Basayev was supposedly a genius who was now on the verge of

coming out with revolutionary break throughs in the areas of infectious diseases and state-of-the-art protocols to destroy super bugs. Graham's son introduced him to Basayev. While Graham had long ago learned that great ideas were a dime a dozen, Basayev's extravagant claims about revolutionizing the medical care world in general seemed to have legs. The young, handsome Chechen immigrant had the kind of hubris and charisma that Graham liked.

Graham, at the urging of his illegitimate son, invested several million dollars in early 2015 in a project of Basayev's known as DB Biocontainment, LLC. Graham not only made large loans to DB Biocontainment, LLC, but he also created an offshore company that would buy the aforementioned land in Ellis County, Texas and lease the land to DB Biocontainment, LLC, as tenant. The land would be used as an unconventional, state-of-the-art, underground research facility. Graham made this investment not only at the encouragement of his illegitimate son, but also at the encouragement of another hedge fund, Toro Capital (which had been formed by several of Graham's old buddies from Bear Stearns). Toro Capital had invested heavily in another one of Basayev's companies called BASA, Inc., which was supposedly working on the ultraviolet and air purification disinfectant system that would effectively destroy super germs in medical facilities and public spaces like no other product on the market. Toro Capital had a track record of investing its clients' money extremely well. So, Graham felt optimistic about Dmitry Basayev. Of course, by late March 2017, BASA, Inc. was in a Chapter 11 case and, thereafter, was accused of orchestrating a massive Ponzi scheme. And Toro Capital was later sued for its role in funding the alleged Ponzi scheme.

Luckily, at least for Graham, he did not buy much debt in BASA—and what little debt he did purchase he had hedged by buying credit default swaps. A credit default swap, or "CDS," is similar to insurance for people who loan money or invest in debt. A debt holder who buys a CDS is guaranteed by the CDS issuer that if the CDS-covered debt goes into default, the CDS issuer will buy the debt from the debt holder for the full amount (face value) of the debt. **Thus, the CDS issuer was left "holding the bag," so to speak, on the BASA, Inc. debt that Graham had owned. It had become a very common thing, over**

the last few years, for Cade Graham to leave others holding the bag.

Excerpt 5:
Pages 120 to 127
(emphasis added in **bold**)

For a few months, in 2016 and into early 2017, Cade Graham's life generally—and specifically, arrangements at *Isla Valladolid*—seemed to be going quite well. Graham's financial missteps seemed to have been curbed a bit. His beautiful, bougie, Yucatan retirement community was ninety percent occupied with residents who all timely paid their rent. Thus, the tenant-operator of *Isla Valladolid* (which was, of course, a company owned and controlled by Cade Graham) was able to timely pay its monthly rent to the REIT (the landlord/trust that owned the underlying property). Cade Graham's majority co-owners in the REIT (the *Oscuro* Mexican crime cartel) were partially pleased. However, it is never good enough to only partially please a Mexican crime cartel.

How in the world did a Dallas, Highland Park-bred, Ivy League educated, white privileged male—with all of his enormous wealth, beautiful girlfriends, and continental panache—ever get entangled with a Mexican crime cartel? How did *Oscuro* become the majority owners of the *Isla Valladolid* REIT?

It started innocently enough. **Cade Graham had become entangled in some nasty litigation with some major players in the credit default swap (CDS) industry. Graham had been accused of misrepresentations, bad faith, and outright fraud in some cases. After a couple of years of this, no one in the CDS industry would deal with Graham or his various hedge funds anymore. He had become persona non grata. Radioactive. Fallen from grace.** None of the usual CDS issuers would touch any of Graham's deals. This was problematic. It is difficult to operate hedge funds without the ability to acquire credit default swaps or have similar products in place, now and then. Graham's illegitimate son once again entered the picture.

The illegitimate son went by the name of Ethan Alves. Cade Graham had a contractual arrangement with Ethan and his mother, Marisol Alves, such that Graham would provide generous monetary support to Ethan and Ethan's mother, a former Brazilian model, but Ethan could never use Graham's last name. As it turned out, Ethan had a friend from Harvard Business School from an affluent family in Mexico City that had an investment firm that catered to wealthy Mexican

nationals. According to Ethan, that friend owed Ethan some favors, as a result of past trading tips that Ethan had sent his way. Ethan bet Cade that he could arrange for some of his friend's cash-rich Mexican clients to enter into a credit default swap transaction with Cade *in connection with buying the BASA debt*. In fact, young Ethan had made it happen. Thus, Cade Graham originally got involved with Dmitry Basayev (and DB Biocontainment, LLC and BASA, Inc.) at the urging of Ethan—first, due to Ethan's connection to Dmitry Basayev from their days at Emory University together and, second, because Ethan sweetened the deal by finding some wealthy Mexican investors to provide credit default swaps in connection with his father's loans to BASA.

The problem now was that those wealthy Mexican investors—primarily friends and associates of Senor Mateo Guerrero, the leader of the *Oscuro* crime cartel—had lost their shirts on the BASA credit default swaps. And now Senor Mateo Guerrero and all his investing *amigos* from the cartel were out for blood from Graham—literally and figuratively. Under immense pressure, Graham satisfied his blood debt to the *Oscuro* cartel by giving them a majority interest in the REIT that owned and served as the landlord of *Isla Valladolid*.

Graham could always trust himself to come up with clever solutions, but, this time, his usually quick mind was barren of ideas. One day, when sitting in an airport bar, he remembered a story he had heard a while back about another hedge fund manager, Sam Israel, who faked his own death, when he was facing criminal fraud charges. Israel did not get away with the hoax. As Graham recalled, Israel had a girlfriend assisting him in the hoax—he figured the girlfriend probably screwed things up for him. **Graham was of the general view that women always screwed things up. Misogyny was among Graham's many qualities.** Graham also vaguely recalled another guy who faked his own death in a plane crash but was later captured. The more bourbon that Graham drank, the more he began to like this macabre idea of faking his own death. He figured he was smarter than those other fools and could successfully pull it off. He had enough money stashed away in Cayman and Isle of Man bank accounts that he could easily start a new life. Maybe it was time to exit stage left and live anonymously in some new place. Perhaps the Cook Islands.

Graham carefully did his research. He learned that there were consultants who would, for about $30,000, make you disappear. These were known as invisibility or disappearance services. One could also essentially buy do-it-yourself death kits, where you could order fake death certificates and make arrangements with black market morgues, and even funeral parlors who would do a fake wake for you if you wanted. The Philippines seemed to be the epicenter for pseudocide services like this. But Graham had no appetite for going to the Philippines. Besides, that would not make any sense. He had no reason to be in the Philippines. On the other hand, people knew he had investments in Mexico—at least the people that he wanted to believe he was dead—and, thus, there would be no reason for folks to be suspicious if he suddenly died in Mexico.

After a few weeks of more research and soul-searching, Graham decided to go with a disappearance service in Mexico. In his research, Graham learned about certain disappearance services that could be found on the Dark Web with all communications occurring through ProtonMail (an encrypted email program). Graham had a personal laptop that was loaded with "TOR" anonymity software and which, thus far, he had dedicated solely to his occasional Dark Web and ProtonMail communications that were necessitated with the *Oscuro* cartel folks. Graham had learned of a site on the Dark Web called Enos.onion. **It looked like whomever was behind Enos.onion was into every black market imaginable: hit men for hire; hackers for hire; blackmail through "deep fakes"; bitcoin exchanges; offshore shell company formation; laundering funds through management of offshore accounts; shady investment opportunities; insider trading tips; sex trafficking; and disappearance services.** Basically, any illicit thing that one could think of could be arranged through Enos.onion. And the site looked surprisingly sophisticated, unlike a lot of the other options out there. No misspellings; no propaganda concerning government-insurrection or end-of-the-world; and none of the other tell-tale signs of so many of the bush-league fraudsters on the Dark Web.

Excerpt 6:
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(emphasis added in **bold**)

Marcus returned to his villa outside Rosarito, Mexico and began his nightly trolling of the internet. On this night, he did searches for Cade Graham. He knew that was who "St. Jude" was. He figured it out soon into their long meeting. His internet searches confirmed it. He found countless pictures of him. The paparazzi loved Graham. Moreover, Braden found some articles in the financial press about Graham's forays into the healthcare sector and the recent troubles he was confronting with angry investors, the SEC, and his disputes with rating agencies regarding various comments and positions they had taken regarding companies in Graham's vast business empire. Nowhere could Marcus find any reference to Graham's investments in the DB Biocontainment underground facility or in *Isla Valladolid*—and certainly no hint of an association with *Oscuro*. **Marcus grinned thinking about how Graham had kept all this information secret with his byzantine web of offshore companies.** And now Marcus had insider information, so to speak, about Graham's widespread endeavors. He liked having insider information. That was his *modus operandi* in life. His stock in trade.