

Macias, Wendy

From: [Redacted]  
it: Wednesday, May 27, 2009 10:36 PM  
to: negreg09  
Subject: Definition of USC 20 § 1088  
Attachments: attachments.pdf

This is a united states statute. It is not the 12 hour rule. 24 semester credit hours, 30 weeks of instruction. The committee must define a semester credit hour as 15 hours of instruction. This is because no one knows that a semester is half of an academic year.

Therefore, 20 USC § 1088 must be recoded. See my court case that I am reopening, due to fraud on the court; and why there is a necessity to redefine this rule. For profit schools provide 4 hours of instruction per week for 5 weeks for 3 semester credit hours. However the law states 45 hours of instruction for 3 semester credit hours.

What the for profits have done, is they provide 20 hours of instruction for 40 weeks being 800, when the law states 15 x 120 for the average bachelor of science degree program. There is a huge difference between 800 instructional hours at Phoenix vs other Title IV schools that must provide 1,800 hours of instruction. The fraud is so bad at Phoenix, that ed pays 1800 hours of instruction for only 800 hours while all non profits must provide 1,800 for the average bachelor of science degree.

But revisiting the 800 hours provided by Phoenix. Is not this 100 hours less of an associates degree of 60 semester credit hours, being 800 hours of instruction.

my case that went all the way to the Supreme Court and now I am reopening it due to fraud on the court for better explanation. See attached.

This document may be found in the Western District of Texas, El Paso as 02cv0237DB, document [140] as filed on May 20, 2009 and [141] May 26, 2009. What is important here is that ED can collect overpayments without any false claims violations of this act.

What is absolutely necessary is 15 instructional hours for 1 semester credit hour as mandated by this law; and the strict enforcement of this law. Ed can collect overpayments immediately without any kind of Court argument. The reason that the government looks the other way, is that the IRS receives 100's of millions of dollars in the form of kick backs from for profits and not a dime from public institutions.

[Redacted] El Paso, Texas



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10	<i>20 USC § 1088</i>	<b>ACADEMIC YEAR</b> mandating 15 hours of instruction per credit hour	5
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15	<i>Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed. P 512, ¶ 60.23.</i>	. . . <b>A decision produced by fraud upon the court is not in essence a decision at all, and never becomes final.</b> . . .	
16	<i>USA v. Poindexter, 725 F.Supp. 13: 1989</i>	Concealment, falsification statute applies to everyone.	4
17	<i>USA v. Sciuto, 521 F.2d, 842,845(7th, 1996)</i>	A judge who does not recuse is in violation of the <b>due process Clause of the U.S. Constitution.</b> ██████████ 18 USC § 1505.	3
18	<i>USA v. Simpson, 460 F.2d 5:15, 1972 (9cir)</i>	<b>WILLFULNESS</b> defined	3
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22	<i>Biography, Philip R. Martinez</i>	<b>EXHIBIT I</b> - Establishing ██████████ Link - 9/30/2002	17 18
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1 IN THE UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF TEXAS, EL PASO

3 [REDACTED]

4 Plaintiff

5 vs

6 Apollo Group, Inc., *doing business as*,  
7 University of Phoenix<sup>SM1</sup>  
8 Arthur Andersen, et al

9 Defendant

10 MOTION TO SET ASIDE  
11 JUDGMENT

12 Rule 60(d)(3) Fed. R. Civ. P.  
13 *Fraud upon the court*

14 Based on Falsification [17]  
15 and Concealment of the  
16 Original Service Docket entry [137],  
17 October 15, 2004

18 [REDACTED]

19 The Motion to Set Aside Judgment should be granted and must be granted. [REDACTED] is  
20 an action which indubitably has been plagued by fraud upon the Court committed by culpable  
21 party, [REDACTED] law firm of the Defendant, in collusion with the recused Honorable Judge  
22 [REDACTED] a former partner of [REDACTED]. The Counsel for the Defendant in this matter ac-  
23 cepted the original service [137] (*Certified Service 7000-1530-0003-3784-0692 delivered to the*  
24 *General counsel of the Apollo Group, Inc., [REDACTED], August 5, 2002 being concealed until*  
25 *October 15, 2004*) by its pleading on September 5, 2002, acquiescing to default, without ques-  
26 tion; too late to Motion the Court for a Definite Statement [16]. The day of default was not  
27 September 5, 2002 but rather August 27, 2002. The lie of remark is, if the Defendant were not  
28 lying it would have ignored the application to the clerk for default entry in its entirety, waiting  
29 to the last day to respond being September 26, 2002. Instead [REDACTED] presented itself as  
30 being very foolish when the only acknowledging service was the falsified service which was ac-  
31 cepted on September 6, 2002 [17] - a day later. [REDACTED] pleading in a panic move on  
32 September 5, 2002 to save [REDACTED] billion dollar tower of babble, Phoenix<sup>SM</sup> is based  
on the obvious, insider information from Judge [REDACTED] and the opportunity to embellish his  
coffers. The panic move of [REDACTED] was not necessary nor were it a 911 protocol. The fal-  
sified service by [REDACTED] [17] was initiated when the Defendant were 3 days into default  
by [137] and if the concealed original service would have not reappeared on October 15, 2004;  
would have allowed Counsel for Defendant to plead up to September 26, 2002 but not submit  
a Motion for Definite Statement till at least September 7, 2002. Even Judge [REDACTED] panicked  
coming down with [30] admitting to the original service. There was one more day of the 20  
day service left for the Defendants as well as the Plaintiff to amend. However, the insurmount-  
able flaw, that putting aside all the criminal activity, was the granting of the Motion for Definite

<sup>1</sup> University of Phoenix<sup>SM</sup> is the Service Mark of Apollo Group, Inc. No claim is made to the exclusive right to use, "University" apart from its trade mark logo.

1 Statement which effectively annulled every Pleading by the Plaintiff in the court, including the  
2 three amended complaints by order of Judge [REDACTED] on September 25, 2002. It also pre-  
3 cluded any Final Judgment in the future, especially the one that Judge [REDACTED] ruled on. As a  
4 fact the Defendants never responded to the Definite Statement [42] on October 7, 2002 the day  
5 Judge [REDACTED] recused. Awaiting the mandatory 10 day period for the Defendants to respond  
6 to the Definite Statement would be October 21, 2002 proving that Defendant's motion to dis-  
7 miss on October 22, 2002 was untimely and void causing Judge [REDACTED] Final Judgment to fail  
8 in its entirety on January 30, 2003.

9 There is little citing to go with when identifying Fraud Upon the Court or how to tem-  
10 plate it. This citing is derived on the standard applied in a reopened 50 year old case in *United*  
11 *States v. Reynolds*, 345 U.S. 1, in which the government claimed military secrets of family mem-  
12 bers killed in a B-29 crash. Years later documentation was discovered showing that no military  
13 secrets had been compromised. One family commenced a new suit entitled *Herring v. United*  
14 *States*, [REDACTED], claiming *fraud upon the court*. Of little importance is this case, but of sub-  
15 stantial importance is the standard used in defining fraud upon the court.

16 Speaking for the 3rd Circuit Justice Aldisert found, that *the bar in defining fraud upon the*  
17 *Court must be set very high, stating that:*

18 *"In order to meet the necessarily demanding standard for proof of fraud upon the court*  
19 *we conclude that there must be: (1) an intentional fraud; (2) by an officer of the court; (3)*  
20 *which is directed at the court itself; and (4) in fact deceives the court," Aldisert wrote in an*  
21 *opinion joined by Circuit Judges [REDACTED] and [REDACTED]*

22 In affirming *Herring v. United States* [REDACTED] and Rule 60(d)(3) Fed. R. Civ. P., in  
23 applying this standard to 02cv0237 are the following facts:

- 24 (1.) *an intentional fraud to conceal [137]* by Judge [REDACTED] caught in collusion with former  
25 law Firm, [REDACTED] representing Defendant when Defendant had been in default,  
26 for three days [137], August 27, 2002, August 28, 2002, and August 29, 2002  
27 and Judge [REDACTED] reserving a falsified service [17] after Defendant had been in default  
28 knowing the certified service 7000-1530-003-3784-0692 had been sitting in his  
29 court for 25 days.
- 30 (2.) *by an officer of the court; Judge [REDACTED] Judge [REDACTED] and Pro Se Law Clerk*  
31 *[REDACTED] Knowing the existence of the original service the Court did not sua sponte*  
32 *correct the concealment or the falsification spelled out in the Affidavit, page number 3*  
*of September 5, 2002 and docket [35] Motion to Recuse Judge [REDACTED]*
- 33 (3.) *which is directed at the court itself; felony concealment, falsification 18 USC § 2071*  
*and obstruction of justice, 18 USC § 1505. Original complaint put back in the Court,*  
*October 15, 2004.*
- 34 (4.) *in fact deceives the court.* The Court was unaware of docket [137] and deceived  
35 the Court by docket [17-1] for 20 months after Final Judgment of Judge [REDACTED]  
36 of January 30, 2003 denying the Plaintiff of a default entry.

37 Federal District Court Judge [REDACTED] did, willingly and knowingly, falsify and con-  
38 ceal documents in a United States Court House in violation of United State Statues 18 USC §  
39 2071 and obstructed Justice pursuant to 18 USC § 1505 to prejudice the outcome of this

1 action. The motive of Judge [REDACTED] was to entertain business for his former law firm [REDACTED]  
2 [REDACTED] that represented the Defendant, Apollo Group, Inc., doing business as the University of  
3 Phoenix<sup>SM</sup> that went into default on August 26, 2002 [137-1] and by falsifying that service on the  
4 3rd day of default by docket [17] to deny the Plaintiff a default entry. This concealment has cost  
5 the United States government billions of dollars every year since the year 2002, which means  
6 over 7 billion dollars to date. Defendant violates 20 USC § 1088, which mandates a semester  
7 credit hour as 15 hours of instruction in the Title IV Federal Student Loan Program. Because of  
8 the mechanical nature of this regulation this case is only an overpayment issue; in which the  
9 United States of America could immediately collect without trial.

9 Federal District Court Judge [REDACTED] knowingly and willingly continued to conceal the  
10 original service in collusion with Federal District Court Judge [REDACTED], and Law Clerk [REDACTED]  
11 proving default. Even though Judge [REDACTED] pathologically lied about his recusal as to recus-  
12 ing perhaps violating 18 USC § 1001 to Judge [REDACTED], his Pro Se Clerk [REDACTED] affirms the lie  
13 by continuing on now becoming a conspirator in the [willful] obstruction, concealment and fal-  
14 sification of documents manipulated in the United States Court House and is equally involved.  
15 *See United States of America vs [REDACTED], aka [REDACTED], 460 F.2d 515:*  
16 *1972 (9th Cir), which the Ninth Circuit States, that the statutory requirement of willfulness is satis-*  
17 *fied if the accused acts intentionally, with knowledge that he is breaching the statute. Both of the*  
18 *accused Federal Judges and the Pro Se Clerk [REDACTED] acted with knowledge that they had*  
19 *concealed [137] on September 5, 2002 as written on affidavit in support of Default Entry, page*  
20 *13. By October 1, 2002 document [35] informed the Court for the second time. Judge [REDACTED]*  
21 *willfully concealed this document till October 15, 2004. When Judge [REDACTED] recused he*  
22 *should have docketed [137] which should have been docket [8] instead he and his Pro Se Clerk*  
23 *Amanda anted the count of concealment to obstruct justice.*

21 Plaintiff demands a void judgment for the sake of Justice. Plaintiff demands time to  
22 amend the complaint to comply to 31 USC § 3730, as ordered by Judge [REDACTED] granting the  
23 Plaintiff the right to proceed under 31 USC § 3729.

24 The Court deliberately precluded this action to give an unfair advantage to Defendant's  
25 counsel and Judge [REDACTED] former law firm [REDACTED] [REDACTED]  
26 [REDACTED] when Defendant had been in default since August 27, 2009, docket no [REDACTED]  
27 [REDACTED] - [Concealment]) and Judge [REDACTED] reserved the Defendant August 29, 2002,  
28 to obstruct justice in order to deny a default entry on September 5, 2002, knowing the Defen-  
29 dant was in default since August 27, 2002, willfully knowing the existence of [137-1] or the origi-  
30 nal service not posted to the docket [REDACTED]

29 Regardless, it is a given, that Judge [REDACTED] and Judge [REDACTED] colluded in conspiracy  
30 involving [REDACTED] with its [REDACTED]; and [REDACTED] LLP with its [REDACTED]  
31 [REDACTED] and [REDACTED] to entertain business for his former law firm who now represents the  
32 Defendant and Judge [REDACTED] being fully aware that the Defendant was in default and the origi-  
33 nal service had been removed.

1 An affidavit made on September 30, 2002, summarizes a conversation with Plaintiff and  
2 [REDACTED] on September 6, 2002, that establishes that the Apollo Group, Inc.,  
3 through [REDACTED] received the original service on August 6, 2002. This is the same  
4 Gerald Giordano who reversed the truth and deliberately violated 18 USC § 1001, lying to a ju-  
5 dicial officer, Judge [REDACTED] in open court, in order to get docket entry [123] into the record  
6 during the Void Judgment Hearing enumerated by hyphen [- -] on May 20, 2004. The tran-  
7 script works against the interests of [REDACTED] as well. [REDACTED] in admitting that  
8 service was made on August 6, 2002 means that the Apollo Group, Inc., was in default by  
9 August 26, 2002 .

10 The activity of Judge [REDACTED] is very similar, in part, to the case in *United States vs [REDACTED]*  
11 [REDACTED], [REDACTED] where [REDACTED] believed he could  
12 falsify and conceal with impunity, 18 USC § 2071; and in the same light obstruct justice, 18 USC  
13 § 1505 no different than Judge [REDACTED] colluding with Judge [REDACTED] mentioned through out  
14 the proceeding of 02cv0237 in which prima facie evidence works against the best interests of  
15 both judges. Judge [REDACTED] was caught in the act of entertaining business for a former law  
16 partner that represented the Defendant; even a federal district court judge shall be held ac-  
17 countable for "obstruction of Justice" at least by the Plaintiff who believes that truth, justice  
18 and the American way is not dead. In [REDACTED]: The Court determined in its count 1 argu-  
19 endo activity that which parallels the activity of Judge [REDACTED] to wit:

20 *Count 1 Argument, 18 USC § 2071. Defendant's argument regarding "custody" suf-*  
21 *fers from similar artificiality. There is no warrant for supposing, and no legislative*  
22 *history suggesting, that Congress meant to subject to punishment under section*  
23 *2071 only those who are the custodians of records in the technical sense, such as*  
24 *clerks or librarians, but to permit others working in a government agency who have*  
25 *access to sensitive documents to destroy or alter them with impunity [Judge [REDACTED]*  
26 *[REDACTED]. The obvious purpose of the statute is to prohibit the impairment of sensitive*  
27 *government documents by those officials who have access to and control over them,*  
28 *and no court has ever held to the contrary. See generally, Coplon, supra, where the*  
29 *defendant was found to have custody of classified documents to which she gained*  
30 *access in the course of her employment as an attorney in the Internal Security Sec-*  
31 *tion of the Department of Justice. Not only was she not the official "custodian" of the*  
32 *records, but she had specifically been told that she no longer had routine access to*  
*them.*

33 In addition the striking of factual document [58] by District Court Judge [REDACTED] willingly  
34 and knowingly, that it is full of criminal allegations is no different than criminally destroying evi-  
35 dence when the material is true and correct, which it [were]. A Judge does not have the author-  
36 ity to strike a legitimate document especially one reporting remarkable crime committed by  
37 Judge [REDACTED] his COHORTS and staff in addition to Judge [REDACTED] It is evidentiary and factual  
38 and a rock solid allegation that Judge [REDACTED] obstructed justice, not on one count; but on many  
39 counts pursuant to 18 USC § 1505; and not recusing is an acquiescence to committing the crime  
40 of obstruction; and is prima facie evidence that could lead to indictment.

1 Those issues addressing 20 USC § 1088 by the Plaintiff, can be investigated by the United  
2 States. In case 04cv0452, the United States never specifically investigated 20 USC § 1088 or the  
3 averment of fraud stated with particularity pursuant to Rule 9(b) Fed. R. Civ. P. The Court had  
4 imposed a safe harbor sanction pursuant to Rule 11 Fed. R. Civ. P., based on the concealed serv-  
5 ice of this case; and never ever addressed the violation of the Academic Year by Defendant  
6 Phoenix. Judge [REDACTED] being compromised by his remarkable temperament allowed the Defen-  
7 dant to steal billions from the Title IV Student Loan Program by hiding his ignorance in doing sim-  
8 ple multiplication. Unfortunately, Judge [REDACTED] knows that the University of Phoenix only pro-  
9 vides 800 instructional hours on a 120 semester credit hour BS degree while his University of  
10 Texas at El Paso has to provide 1800 instructional hours or 120 hours x 15 hours of instruction  
11 mandated by law. For example why should Phoenix at \$300 a semester credit hour in a 120 se-  
12 mester credit hour bachelor of science program receive \$54,000 (18000 x \$300) when it has only  
13 done \$ 24,000 worth of work (800 x \$300). The law is 15 hours of instruction for each semester  
14 credit hour course pursuant to 20 USC § 1088. Almost 3 billion dollars in the Title IV Student  
15 Loan Program, 2008, last year went to the University of Phoenix!

16 The Plaintiff intends on amending this complaint, serving the United States Attorney Gen-  
17 eral the complaint in camera, seeking an order to seal the case, and changing the captioning to  
18 United States ex [REDACTED] [REDACTED] vs the Apollo Group, Inc., doing business as University of  
19 Phoenix<sup>SM</sup>.

20 In light of all the animus of the Court, all sanctions, bonds and penalties against the Plaintiff  
21 should and must be removed. 02cv0237 was a bad day for the United States. The Court chose  
22 the wealth of the Defendant, who acquired such wealth by stealing from the government billions  
23 of dollars per year. It is pathetic that no one except the Plaintiff knows the difference between  
24 800 vs 1800 hours of instruction as applied to 20 USC § 1088.

25 In conclusion and hedging on the truth based on the criminal minds judging criminal  
26 minds and the overabundance of fraud upon the Court in the Federal District Court; the Judg-  
27 ment in this case is a civil one and void and has always been void and must be set aside. The  
28 original service was never timely posted to the docket as a result of a criminal act of falsification of  
29 a second service in violation of the public trust when the Defendant had been in default for 3  
30 days as proven by prima facie evidence; to wit, prima facie docket entry [35] telling the Court that  
31 the original service had been concealed. Indeed it was; reappearing two years later as docket  
32 [137]. The cruelty applied towards this Plaintiff is a pain long gone. As to Judge [REDACTED] Judge



1 [REDACTED], [REDACTED] the Pro Se Law Clerk, [REDACTED] - counsel for the Apollo Group,  
2 Inc., [REDACTED] - counsel for the Apollo Group, Inc., represented by [REDACTED]  
3 [REDACTED], Counsel for the Apollo Group, Inc., doing business at the University of Phoe-  
4 nix<sup>SM</sup> who manipulated Judge [REDACTED] with [REDACTED] they have forever earned their identity  
5 by their clandestine behavior which neither opens the door by scripture nor closes the door by  
6 the law. Need more be said, they have their rewards.

7 The disservice by Judge [REDACTED] the Counsel for Defendant and others requires this  
8 Court to Set Aside the Final Judgment of January 30, 2003. Fraud upon the Court by Judge  
9 [REDACTED] in collusion with [REDACTED] and the Defendant has been proven and perfected as  
10 well as the double-bubble, double trouble criminally concealed document [137], the original  
11 service and the falsified service [17] pursuant to the double-bubble, double trouble law known as  
12 18 USC § 2071. Can't have one without the other!

13 Respectfully submitted,

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15  
16 [REDACTED]  
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18 A true and correct copy of this Motion to Set Aside Judgment pursuant to Rule 60(d)(3) Fed. R. Civ. P., was served to  
19 the court, May 20, 2009 and mailed to all other parties on May 21, 2009.

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22 [REDACTED]  
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[REDACTED] Pro Se, )  
Plaintiff )  
VS )  
THE APOLLO GROUP dba )  
UNIVERSITY OF PHOENIX, and )  
[REDACTED] et al, )  
Defendants )

FILED  
2007 OCT - 11 PM 2:09  
UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO, TEXAS  
Docket Number [REDACTED]

MOTION FOR RECUSAL  
OF [REDACTED]

Enters the Plaintiff who moves for a recusal of [REDACTED] pursuant to Title 28  
USCA 455. A letter for recusal has gone unanswered. This motion is based on several  
incidences harming Plaintiff in which Judge [REDACTED] impartiality is reasonably questioned;  
and by the fact that at one time, the accused, had ownership as a shareholder into the legal firm  
representing defendant as well as specializing in the matter of commercial litigation, to wit:

[REDACTED] law firm. The Defendant is represented by [REDACTED]  
[REDACTED] law firm.

Politically, the judge is an appointee of President Bush, a Republican.. The Law firm of  
[REDACTED] has made political contributions to the campaign electing  
President Bush, Republican Party, to wit: [REDACTED] \$1000.00, [REDACTED]  
\$500 [REDACTED] \$250 and [REDACTED] \$250.00. The Defendant, and its President [REDACTED]  
[REDACTED] tributed \$1,000.00 to the Bush Campaign as well. The second highest position in  
the Department of Education is occupied by a prior lobbyist for defendant appointed by President  
Bush, Sally L. Stroup. Such an appointment shall lead to obvious corruption within the  
department of education and collusion with defendant. This person has power over student

EXHIBIT  
A-1

EXHIBITS A - K

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financial aid issues affecting Plaintiff. It is important for Defendant to quash this complaint, at any cost, as any judicial decision may adversely affect defendant.

Judge [REDACTED] is a President Bush appointee. Because Plaintiff entered en forma pauperis, the scope of the judge would be limited to the narrow scopes of the Republican Party. The policy of the republican party stands opposed to anyone who is in a position appearing to be or requiring public assistance. There is no question to partiality in this instance, it is a given.

Pursuant to Plaintiff's case is the known history based on the record of Judge [REDACTED] partiality.

- On September 5, 2002, instructing the clerk to violate Rule 55(a), obstructing due process and justice, by ordering the clerk to impede Plaintiff's entry of default to preventing the entry from ever getting on the docket. The clerk stated that Judge [REDACTED] had given them orders not to sign the default entry.
- Most of the communication from Defendant in the form of ex parte. The defendant is not the Plaintiff and should not be courted as such.
- Not answering the Motion to Compel the Government to investigate.
- Defendant on the record objecting to the letter of recusal
- By allowing the untimely denial for the Motion to Compel Discovery, knowing that service by mail were August 12, 2002 and that it were untimely, still ruling in favor of Defendant.
- Forcing Plaintiff to reconstruct a new complaint by order for a More Definite Statement demeaning Plaintiff to the position of Defendant.

EXHIBIT  
A-1

EXHIBITS A - K

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- Deliberately with holding evidence from the record. As of September 26, 2002 the default entry by the clerk had not been entered by the clerk or inserted into the record.
- By allowing entry of Defendant knowing that Defendant had already defaulted
- Knowing that all of Defendants material should have been rejected after default
- By permitting Defendant to perjure itself in the Objection to the Default Judgment, knowing that the citing were not based on law but distortion.
- By arbitrarily annulling the original summons and proof of service usurping the Plaintiff of its rights. By instructing the clerk, without Plaintiffs permission to send out a new summons and proof of service after the old return receipt had come in on August 8, 2002
- By withholding and not inserting the return receipt August 29, 2002

Plaintiff prays that given the above that the judge should recuse himself and must recuse himself in the interest of justice and impartiality.

Respectfully Submitted,

*M*  


EXHIBIT  
A-1

EXHIBITS A - K

02Cv0237DB		ANNOTATED DOCKET		
1	7/18/02	5	Complaint filed. I.F.P. Motion granted (Pages 9) (aq) [Entry date 7/18/02]	
2	7/24/02	6	Amended complaint by [REDACTED] Amending complaint [5-1] (dll) [Entry date 7/25/02]	
3	7/26/02	7	Amended complaint by [REDACTED] amending complaint [5-1] (pages 7) (aq) [Entry date 7/29/02]	See the initials (aq)
4	8/08/02	8	Motion by [REDACTED] to compel discovery (jm) [Entry date 8/08/02]	
5	8/08/02	137	Return of Service executed as to the Apollo Group on 8/5/02 Re: <u>document #7</u> (ma) [Entry date 10/15/04]  <b>THIS IS THE ORIGINAL SERVICE CONCEALED BY [REDACTED] UNTIL OCTOBER 15, 2004 ESTABLISHING THE APOLLO GROUP, INC., BEING IN DEFAULT SINCE AUGUST 27, 2002 ESTABLISHING THE FACT THAT ON SEPTEMBER 5, 2002 THE APOLLO GROUP, INC. HAD BEEN IN DEFAULT SINCE AUGUST 27, 2002.</b>  <b>PROOF OF VIOLATION OF 18 USC § 2071 BY [REDACTED]</b>	(aq) did the service on this. See return receipt 7000-1530-003 -3784-0692 and the name (aq) annotated on the return service addressed to [REDACTED] General Counsel for the Apollo Group Inc.
6	8/12/02	9	Motion by [REDACTED] to compel an Officer of the United States to do his duties (aq) [Entry date 8/12/02]	
7	9/5/02	10	Motion by [REDACTED] for default Judgment against The Apollo Group, [REDACTED] (aq) [Entry date 09/05/02]	
8	9/5/02	11	Affidavit by [REDACTED] in support of motion for Default judgment against the Apollo Group. [REDACTED] [10-1] (aq) [Entry date 9/05/02]	
9	9/5/02	12	Notice of filing by [REDACTED] Affidavit of Amount Due upon Application for Default Judgment to Clerk (aq) [Entry date 09/05/02]	
10	9/5/02	13	Notice of filing by [REDACTED] Application to Clerk For Entry of Default (aq) [Entry date 9/05/02] -THIS IS NOT A NOTICE, THIS IS AN APPLICATION TO THE CLERK (aq) WHO DID THE ORIGINAL SERVICE [137]; AND ATTACHED TO IT IS AN ENTRY OF DEFAULT THAT (aq) REFUSED TO SIGN IN VIOLATION OF RULE 55(a) Fed. R. Civ. P. THE DEFENDANT THE APOLLO GROUP, INC, HAD ALREADY BEEN IN DEFAULT 10 DAYS WHEN THIS APPLICATION WAS MADE - . It is customary for one in default to take leave before filing any documentation upon entry in the Court. The Apollo Group did not follow the proper procedure and the clerk had the duty to reject all filings except to file a Motion to set aside default entry.	See Exhibit C - this is an Application to Clerk for Entry of Default and Exhibit D - with the Attached received Stamped Entry the clerk was supposed to make, Exhibit D. (aq) is the one who should have entered the default by the Clerk, and (aq) sent the complaint knowing that Phoenix was in default.
11	9/5/02	14	Motion by the Apollo Group for [REDACTED] and [REDACTED] Jr. To appear pro hac vice (aq) [Entry date 9/06/02]	
12	9/5/02	15	Response by the Apollo Group motion to compel discovery [8-1] (aq) [Entry date 9/06/02]	
13	9/5/02	16	Motion by The Apollo Group for more definite statement (aq) [Entry date 09/09/02]	
14	9/6/02	17	Return of service executed as to The Apollo Group on 8/29/02 (aq) [Entry date 9/09/02] - Where did this service come from and why is it not referenced to any Document number like [137]? The reason is simple it is a falsified service by [REDACTED] 18 USC § 2071, so he could entertain business for his former law firm [REDACTED] when the Defendant had already been in default for 3 days, and the service in the court for 25 days.	<b>This is a falsified Service</b>

EXHIBIT B

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[REDACTED] Pro Se, )  
Plaintiff )  
VS )  
THE APOLLO GROUP dba )  
UNIVERSITY OF PHOENIX, and )  
[REDACTED] et al, )  
Defendants )

FILED  
UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO, TEXAS PM 1:49  
CLERK, US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
Docket Number DEPUTY

Application to Clerk for Entry of Default

The clerk of the above entitled court will enter default against the Apollo Group, Inc., of America , a corporation, in the above cause, for failure of the said defendant to plead, answer or otherwise plead in said cause, as required by law, and oblige.

[REDACTED SIGNATURE]

EXHIBIT  
C

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RECEIVED

██████████ Pro Se, )  
SEP 05 2002 Plaintiff )  
CLERK, U.S. DISTRICT COURT )  
WESTERN DISTRICT OF TEXAS )  
BY: THE APOLLO GROUP dba )  
UNIVERSITY OF PHOENIX, and )  
██████████ et al, )  
Defendants )

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO, TEXAS

██████████  
Docket Number

Entry of Default

It appearing that the defendant herein the Apollo Group, Inc., a Corporation of America,  
is in default for failure to plead or otherwise defend as required by law.

Default is hereby entered as against the said defendant this the \_\_\_\_\_ day of

\_\_\_\_\_

\_\_\_\_\_  
Clerk

EXHIBIT  
D

EXHIBITS A - K

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[Redacted] Pro Se, )  
Plaintiff )  
VS )  
THE APOLLO GROUP dba )  
UNIVERSITY OF PHOENIX, and )  
[Redacted] t al, )  
Defendants )

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO, TEXAS  
[Redacted]  
Docket Number

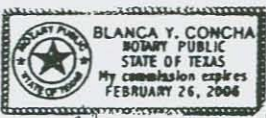
Affidavit of Failure to Plead or Otherwise Defend in  
Support of Application for Entry of Default

State of Texas }  
County of El Paso }

I, [Redacted] being duly sworn deposes and says:

1. That he is the plaintiff, pro se, and has personal knowledge of facts set forth in this affidavit.
2. That the plaintiff herein, on the 22 day of July 2002, filed in this cause his complaint against the defendants herein.
3. That examination of the court files and record in this cause shows that the defendants herein were served by certified mail, 7000-1530-003-3784-0692 with a copy of summons, together with a copy of plaintiff's complaint, on the 5th Day of August, 2002.
4. That more than 20 days have elapsed since the date on which the said defendants herein were served with summons and a copy of the complaint, excluding the date thereof.
5. That the defendants herein have failed to answer or otherwise defend as to plaintiff's complaint, or serve a copy of any answer or other defense which it might have had, upon [Redacted] Pro Se, Plaintiff of record.
6. That this affidavit is executed by affiant herein in accordance with Rule No. 55(a) of the Federal Rules of Civil Procedure, for the purpose of enabling the plaintiff herein to obtain an entry of default against the defendants herein, for their failure to answer or otherwise defend as to the plaintiff's complaint.

EXHIBIT  
E



[Redacted Signature]  
*September 5, 2002*

[Redacted]  
*September 5, 2002*

Page Number 3.



EXHIBITS A - K

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City of El Paso  
Country of El Paso  
State of Texas

AFFADAVIT OF [REDACTED]

I, [REDACTED] state under penalty of perjury that on September 6, 2002 I called Tuscon, Arizona to the Law Firm of [REDACTED] I requested to speak with [REDACTED] and the person answering the phone stated that [REDACTED] were out of town.

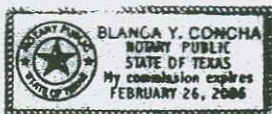
I then asked to speak to [REDACTED], disclosed who I was, and I was connected to [REDACTED] the out of town attorney representing The Apollo Group. I talked at length on the telephone over several issues.

*I then inquired as to which date that the Apollo Group had received the summons and complaint. [REDACTED] stated, that he was answering the complaint dated August 6, 2002.*

We talked a little more and then the both of us hung up the phone. It was Friday evening.

Signed this 30 day of September 30, 2002

[REDACTED]



[REDACTED]

*September 30, 2002.*

EXHIBIT  
F

EXHIBIT AAA

EXHIBITS A - K

1 18 USC § 2071. Concealment, removal, or mutilation generally (Criminal)

2  
3 (a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys,  
4 or attempts to do so, or, with intent to do so takes and carries away any record, proceeding,  
5 map, book, paper, document, or other thing, filed or deposited with any clerk or officer of  
6 any court of the United States, or in any public office, or with any judicial or public officer of  
7 the United States, shall be fined under this title or imprisoned not more than three years, or  
8 both.

9 (b) Whoever, having the custody of any such record, proceeding, map, book, document, pa-  
10 per, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsi-  
11 fies, or destroys the same, shall be fined under this title or imprisoned not more than three  
12 years, or both; and shall forfeit his office and be disqualified from holding any office under  
13 the United States. As used in this subsection, the term "office" does not include the office  
14 held by any person as a retired officer of the Armed Forces of the United States. [137]

15 20 USC § 1088 Academic Year

16 (a) Academic and award year

17 (1) For the purpose of any program under this subchapter and part C of subchapter I of chap-  
18 ter 34 of title 42, the term "award year" shall be defined as the period beginning July 1 and  
19 ending June 30 of the following year.

20 (2)

21 *(A) For the purpose of any program under this subchapter and part C of subchapter I of*  
22 *chapter 34 of title 42, the term "academic year" shall*

23 *(i) require a minimum of 30 weeks of instruction time for a course of study that*  
24 *measures its program length in credit hours; or*

25 (ii) require a minimum of 26 weeks of instructional time for a course of study  
26 that measures its program length in clock hours; and

27 (iii) require an undergraduate course of study to contain an amount of instruc-  
28 tional time whereby a full-time student is expected to complete at least—

29 **(I) 24 semester or trimester hours or 36 quarter credit hours**  
30 **in a course of study that measures its program length in**  
31 **credit hours; or**  
32

EXHIBIT  
G

EXHIBITS A - K

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

[Redacted]

Plaintiff,

v.

THE APOLLO GROUP, dba,  
THE UNIVERSITY OF PHOENIX, and

[Redacted]

Defendants.

§  
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§  
§  
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FILED  
OCT 10 2002  
10:13  
WESTERN DISTRICT OF TEXAS  
BY [Signature]  
DEPUTY

[Redacted]

ORDER OF RECUSAL

On this day, the Court considered Plaintiff's "Motion for Recusal," filed October 1, 2002, in the above-captioned cause. Plaintiff [Redacted] filed a Complaint with the District Clerk on July 18, 2002, alleging various fraud claims against Defendants. The case was subsequently assigned to this Court.

On October 1, 2002, Plaintiff filed a Motion for Recusal requesting that the current district judge, the Honorable [Redacted] recuse himself from the case due to his past employment with Defendant's attorneys, [Redacted], C.

Although this Court disagrees with the assertions made in the Plaintiff's Motion, the Court, out of an abundance of caution, recuses itself from this matter.

Accordingly, **IT IS HEREBY ORDERED** that the above-referenced cause be **TRANSFERRED** to the docket of the Honorable [Redacted] for final disposition. Pursuant to the most current Order Assigning the Business of the Court, the Clerk shall credit this case to the percentage of business of the receiving Judge.

SIGNED this 6 day of October, 2002.

[Redacted Signature]

UNITED STATES DISTRICT JUDGE

38 [Signature]

EXHIBIT  
H



U.S. Department of Justice  
Office of Legal Policy

About Us

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- History
- Functions
- Staff Bios



Biography

Resources

- Judicial Nominations
- Employment/ Internships
- DOJ Homepage

[Redacted] is currently serving his third term as Judge of the 327th Judicial District Court in El Paso, Texas. He was first elected to judicial office in November of 1990 as Judge of County Court at Law No. 1 at the age of 33. Ten months after assuming office, he was appointed to his current position, a position to which he has been re-elected without opposition on three separate occasions.

Judge [Redacted] is a former shareholder of the [Redacted] firm where he was a member of the Litigation Department specializing in commercial litigation. As an attorney, he was involved in numerous professional organizations, having served as a Director and Treasurer of the El Paso Bar Association, and as a Director of the El Paso Mexican-American Bar Association. He also served on the El Paso Legal Assistance Society Board of Directors, having been elected as Chairman of the Board in 1986-87.

Last Updated: 1/8/02

Judge [Redacted] currently serves as Chairman of the El Paso County Juvenile Board and Chair-Elect of the Juvenile Law Section of the State Bar of Texas. He is a past Director of the Texas Center for the Judiciary, having served as Chairman of the Indigent Defense Representation Committee of the Judicial Section of the State Bar of Texas, a past member of the Funding Parity Task Force of the Texas Commission on Judicial Efficiency, and a past Chairman of the Office of Court Administration Strategic Planning Committee. He is a member of numerous professional organizations, including the American Law Institute, the American Bar Association, the Hispanic National Bar Association, the National Council of Family & Juvenile Court Judges, the Judiciary Relations Committee of the State Bar of Texas, and the Texas Bar Foundation.

Judge [Redacted] also served as the Local Administrative Judge of the El Paso Council of Judges. He has been instrumental in the creation of the El Paso County Statutory Probate Court, the Juvenile Court Referee position, numerous new state district courts, and the Associate Judge position for Child Abuse and Neglect cases.

<http://www.usdoj.gov/olp/martinezbio.htm>

9/20/2002

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EXHIBITS A - K

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In addition to his professional accomplishments, Judge [REDACTED] has been active in community organizations throughout his life. He currently serves as a member of the El Paso Holocaust Museum and Study Center Board of Directors. Other community organizations in which he has been involved include the Hispanic Leadership Institute, the UTEP Alumni Association, the National Conference of Christians & Jews, the El Paso Cancer Treatment Center, and the Ascarate Junior Golf Tournament.

Judge [REDACTED] is a frequent author and lecturer at continuing education conferences and has been honored with numerous awards, including the Outstanding Ex at Burges High School (2000), the UTEP College of Liberal Arts Gold Nugget Award (1995), the Law Enforcement Achievement Award (1995), and was named El Paso's Outstanding Young Lawyer (1992).

Born and raised in El Paso, Judge [REDACTED] received his high school diploma from Burges High School, graduating in the top two percent of his class. He received a B.A. Degree from the University of Texas at El Paso, graduating with Highest Honors. He earned his Doctorate of Jurisprudence Degree in 1982 from Harvard Law School.

He is married and has two daughters.

FOIA Privacy and Security Notice

EXHIBIT  
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<http://www.usdoj.gov/olp/martinezbio.htm>

03/07/07

EXHIBITS A-K

DOCKET YEAR 2002

Note concealment of Original Service which later becomes [137] after [8]  
Note [11], Exhibit E, page 13, making Court Aware of Original Service  
September 5, 2002

Proceedings include all events.

3:02cv237 [REDACTED] v. The Apollo Group, et al

INTAPP

6/7/02 -- Case assigned to Judge [REDACTED] (aq)  
[Entry date 06/10/02]

6/7/02 1 Motion by [REDACTED] to proceed in forma pauperis (jm)  
[Entry date 06/10/02]

7/8/02 2 Order denying motion to proceed in forma pauperis [1-1] (aq)  
[Entry date 07/09/02]

7/12/02 3 Motion by [REDACTED] for reconsideration of motion  
to proceed in forma papueris (aq) [Entry date 07/12/02]

7/18/02 4 Order granting motion for reconsideration of motion to  
proceed in forma papueris [3-1] (aq) [Entry date 07/18/02]

7/18/02 5 Complaint filed. I.F.P. Motion Granted (Pages: 9) (aq)  
[Entry date 07/18/02]

7/24/02 6 Amended complaint by [REDACTED] amending complaint  
[5-1] ) (dl1) [Entry date 07/25/02]

7/26/02 7 Amended complaint by [REDACTED], amending complaint  
[5-1] (Pages: 7) (aq) [Entry date 07/29/02]

8/8/02 8 Motion by [REDACTED] to compel discovery (jm)  
[Entry date 08/08/02]

8/12/02 9 Motion by [REDACTED] to compel an Officer of the  
United States to do his duties (aq) [Entry date 08/12/02]

9/5/02 10 Motion by [REDACTED] for default judgment against  
The Apollo Group, Arthur Andersen (aq) [Entry date 09/05/02]

9/5/02 11 Affidavit by [REDACTED] in support of motion for  
default judgment against The Apollo Group, [REDACTED]  
[10-1] (aq) [Entry date 09/05/02]

9/5/02 12 Notice of filing by [REDACTED] Affidavit of Amount  
Due upon Application for Default Judgment to Clerk (aq)  
[Entry date 09/05/02]

9/5/02 13 Notice of filing by [REDACTED] Application to Clerk  
for Entry of Default (aq) [Entry date 09/05/02]

9/5/02 14 Motion by The Apollo Group for [REDACTED] and [REDACTED]  
[REDACTED] to appear pro hac vice (aq)  
[Entry date 09/06/02]

9/5/02 15 Response by The Apollo Group motion to compel discovery  
[8-1] (aq) [Entry date 09/06/02]

9/5/02 16 Motion by The Apollo Group for more definite statement (aq)  
[Entry date 09/06/02]

EXHIBIT  
J

Docket as of October 21, 2002 1:02 pm

Page 2

EXHIBITS A-K

1 Falsified Docket [17] by Judge [REDACTED] Concealed [137]  
2 To make business for [REDACTED], when Defendant was already 3 days in default.  
3  
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5 Proceedings include all events.

3:02cv237 [REDACTED] v. The Apollo Group, et al

INTAPP

6 9/6/02 17 Return of service executed as to The Apollo Group on  
8/29/02 (aq) [Entry date 09/09/02]  
7 9/6/02 18 Order granting motion for [REDACTED] and [REDACTED]  
8 [REDACTED] to appear pro hac vice [14-1] (aq)  
[Entry date 09/09/02]  
9 9/9/02 19 Ex Parte Motion by [REDACTED] to Correct Clerical  
Error (aq) [Entry date 09/09/02]  
10 9/9/02 20 Motion by [REDACTED] to strike Motion for more  
11 Definite Statement (aq) [Entry date 09/09/02]  
[Edit date 09/09/02]  
12 9/12/02 21 Amended Motion by [REDACTED] to strike Defendant's  
13 motion for more definit statement (aq)  
[Entry date 09/12/02]  
14 9/16/02 22 Response by [REDACTED] motion for more definite  
15 statement [16-1] (aq) [Entry date 09/16/02]  
16 9/16/02 23 Response by [REDACTED] to motion response [15-1]  
17 (aq) [Entry date 09/16/02]  
18 9/16/02 24 Response by [REDACTED] motion for [REDACTED] and  
19 [REDACTED] to appear pro hac vice [14-1] (aq)  
[Entry date 09/16/02]  
20 9/16/02 25 Response by The Apollo Group motion to Correct Clerical  
21 Error [19-1] (aq) [Entry date 09/17/02]  
22 9/16/02 26 Objection by The Apollo Group o Plaintiff's Application to  
23 Clerk for Entry of Default and Plaintiff's Motion for  
24 Judgment by Default by the Court [10-1] (aq)  
[Entry date 09/17/02]  
25 9/16/02 27 Memorandum by The Apollo Group in support of motion for  
26 more definite statement [16-1], and Response to Plaintiff's  
27 Related Pleadings (aq) [Entry date 09/17/02]  
28 9/17/02 28 Certificate of service by The Apollo Group, regarding The  
29 Apollo Group's Combined Objection to Plaintiff's  
30 Application to Clerk for Entry of Default and Plaintiff's  
31 Motion for Judgment by Default by The Court (aq)  
32 [Entry date 09/17/02]  
9/23/02 29 Notice of filing by [REDACTED], Protest of District  
Court Not Rejecting Defendant's Pleading (aq)  
[Entry date 09/24/02]  
9/25/02 30 Order granting motion for more definite statement [16-1]  
(aq) [Entry date 09/26/02]

Docket as of October 21, 2002 1:02 pm

Page 3

EXHIBIT  
J

EXHIBITS A-K

Proof of Concealed original service [137], October 15, 2004. However court was aware of document on September 5, 2002 by affidavit [11] establishing willful concealment.

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Proceedings include all events.  
3:02cv237 White v. The Apollo Group, et al APPEAL

6/7/02 -- Case assigned to Judge [REDACTED] (aq)  
[Entry date 06/10/02]

6/7/02 1 Motion by [REDACTED] to proceed in forma pauperis (jm)  
[Entry date 06/10/02]

7/8/02 2 Order denying motion to proceed in forma pauperis [1-1] (aq)  
[Entry date 07/09/02]

7/12/02 3 Motion by [REDACTED] for reconsideration of motion  
to proceed in forma papueris (aq) [Entry date 07/12/02]

7/18/02 4 Order granting motion for reconsideration of motion to  
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7/18/02 5 Complaint filed. I.F.P. Motion Granted (Pages: 9) (aq)  
[Entry date 07/18/02]

7/24/02 6 Amended complaint by [REDACTED], amending complaint  
[5-1] (dl1) [Entry date 07/25/02]

7/26/02 7 Amended complaint by [REDACTED], amending complaint  
[5-1] (Pages: 7) (aq) [Entry date 07/29/02]

8/8/02 8 Motion by [REDACTED] to compel discovery (jm)  
[Entry date 08/08/02]

8/8/02 137 Return of service executed as to The Apollo Group on  
8/5/02 Re: document #7 (ma) [Entry date 10/15/04]

8/12/02 9 Motion by [REDACTED] to compel an Officer of the  
United States to do his duties (aq) [Entry date 08/12/02]

9/5/02 10 Motion by [REDACTED] for default judgment against  
The Apollo Group, [REDACTED] (aq) [Entry date 09/05/02]

9/5/02 11 Affidavit by [REDACTED] in support of motion for  
default judgment against The Apollo Group, [REDACTED]  
[10-1] (aq) [Entry date 09/05/02]

9/5/02 12 Notice of filing by [REDACTED] Affidavit of Amount  
Due upon Application for Default Judgment to Clerk (aq)  
[Entry date 09/05/02]

9/5/02 13 Notice of filing by [REDACTED] Application to Clerk  
for Entry of Default (aq) [Entry date 09/05/02]

9/5/02 14 Motion by The Apollo Group for [REDACTED] and [REDACTED]  
[REDACTED] to appear pro hac vice (aq)  
[Entry date 09/06/02]

9/5/02 15 Response by The Apollo Group motion to compel discovery  
[8-1] (aq) [Entry date 09/06/02]

EXHIBIT  
K