No.

IN THE SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 2021

In re PAUL M. MAHONEY on Contempt.

PAUL M. MAHONEY
Petitioner

vs.

COURT OF APPEALS OF THE STATE OF CALIFORNIA,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH APPEALLATE DISTRICT, DIVISION THREE AFTER DENIAL OF PETITION FOR HEARING AND REVIEW BY THE SUPREME COURT OF THE STATE OF CALIFORNIA

MAHONEY & SOLL LLP
By: Paul M. Mahoney, SBN 43531
150 West First Street, Suite 180
Claremont, California 91711
(909)399-9987; (909)399-0130 (fax)
Email: pmahoney@mahoneyandsoll.com
Attorneys for Petitioner PAUL M MAHONEY

QUESTIONS PRESENTED

This petition seeks review of the California Court of Appeal citing Petitioner for Civil Contempt for allegedly making contemptuous statements in a petition for rehearing. The questions presented:

1. Whether or not the California Court of Appeal citing petitioner for contempt for the statements he made violates this court's holdings in *In re McConnell, Craig v. Harney and Brown v. United States?*

2. Whether or not under the First Amendment of the United States Constitution, petitioner's statements in a petition for rehearing filed in a state court action in the California Court of Appeal are protected speech and thus not subject to the contempt citation issued by the California Court of Appeal?

3. Whether or not the statements made by the petitioner if stated by anyone not a lawyer would be permissible thus denying petitioner equal protection of the law by holding him in contempt?

4. Whether or not it denies petitioner equal protection of the law from the Court of Appeal to publish an opinion in connection with their holding petitioner in contempt citation but refusing to publish the case out of which petitioner's statements arose?

LIST OF PARTIES

The following parties appeared below.

Party Plaintiff:
Paul M. Mahoney

Party Defendant:
Court of Appeal of the State of California

TABLE OF CONTENTS

Page

INDEX TO APPENDICES

TABLE OF AUTHORITIES

Cases: **Page**

Statutes

No._____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2021

In re PAUL M. MAHONEY on Contempt.
Petitioner

v.

COURT OF APPEALS OF THE STATE OF CALIFORNIA,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFRONIA, FOURTH APPEALLATE DISTRICT, DIVISION THREE
AFTER DENIAL OF PETITION FOR HEARING AND REIVIEW BY THE SUPREME COURT OF THE STATE OF CALIFORNIA

OPINIONS BELOW

Appendix B contains two court of appeal opinions.
Appendix C contains ruling on petition for review.

JURISDICTION

The Supreme Court of the State of California denied review on August 18, 2021. This petition is timely filed. Jurisdiction is invoked under 28 U.S.C. 1254 (1) (certiorari) and Rule 10.1 (c) unsettled questions concerning a lawyer's right to free speech.

STATEMENT OF THE CASE

On May 22, 2015 Petitioner's client Salsbury Engineering filed a complaint against Consolidated Engineering for breach of contract in connection with a construction project owned by the Irvine Company. Salsbury was the subcontractor to Consolidated and the Irvine Company was the owner . There were three separate contracts between Salsbury and Consolidated. There was a contract for Jost One, Jost Two and Jost Three.

On all three contracts, there were alleged breaches. Consolidated, using its power, as the prime contractor held back monies on Jost One and Jost Two. The contracts were treated as separate in front of the jury and the jury had to make a decision as to breach of each contract. However, for reasons that are inexplicable, the trial court and the court of appeal did not separate the contracts post trial as the jury was required to do. Instead, the court just found there was just one integrated contract with no reason to support that. The jury ended up ruling for Salsbury on the Jost One and Jost Two subcontract and ruled for Consolidated on Jost Three. As to the late payment penalties, had the law been followed, Jost One and Jost Two would have invoked late payments and because of this appeal, the prevailing party on all three contracts would have been Salsbury. Instead, because of a judicial slight of hand with no factual basis, the trial court and the court of appeal

altered the landscape and created a windfall for Consolidated and Salsbury lost over $1 million in attorneys fees.

After the court of appeal opinion Salsbury filed a petition for rehearing with the court of appeal and petitioner Paul M. Mahoney, Salsbury's lawyer wrote the following statement:

> "When counsel for Plaintiff started law school in the fall of 1965 (he has now practiced law over 52 years) he had an idealistic view that the law would be applied fairly and that clients would be treated fairly. In other words, he did not believe that a case such as this one, which is essentially a construction project with numerous twists, would turn into a $1 million dollar plus windfall for one side, not on the facts but based on the rulings of a judge or judges. Our society has been going down the tubes for a long time, but when you see it in so black and white as in the opinion in this case, it makes you wonder whether or not we have a fair and/or equitable legal system or whether the system is mirrored by ignored by the actions of people like Tom Girardi.
> I can be proven wrong and granting a petition for rehearing would be a plus. In this case, to put it bluntly, the Plaintiff, a construction company and working as a subcontractor, signed three contracts with Consolidated, not one. Consolidated had three contracts with The Irvine Company, who we all know wields a lot of legal and political clout in Orange County."

The comments pertaining to Tom Girardi a disgraced California lawyer who stole millions from clients and The Irvine Company drew the contempt from the of the Court of

Appeal even though Plaintiff believes they were true. In Petitioner's view, there's no way Petitioner's statements constitute contemptuous speech.

REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

Petitioner's firm represents Salsbury Engineering. The Court of Appeal filed an Opinion regarding the case of Salsbury Engineering, Inc. v. Consolidated Contracting Services, Inc. Petitioner objected to the Opinion and filed a Petition for Rehearing. In the Petition for Rehearing attached hereto as Appendix A, the Justices of the Court Appeal found comments that were offensive to them and issued an Order to Show Cause Re Contempt. Petitioner had a hearing on the Order to Show Cause Re Contempt on May 4, 2021 and also filed an Opposition to the Order to Show Cause re Contempt.

In the meantime, Petitioner filed a Petition for Review of this case with the California Supreme Court. Sadly, the Supreme Court refused to grant a review even though it is an extremely serious case for contractors.

On June 10, 2021, the Court of Appeal issued its Opinion holding Petitioner in criminal contempt, attached hereto as Appendix B.

On June 14, 2021, the Los Angeles County Public Defender's office wrote a letter to the Court of Appeal pointing out their error in holding Petitioner in civil contempt and in doing so, stating they should change their order and to hold Petitioner in civil contempt under *Code of Civil Procedure* Section 1209.

On June 16, 2021, the Court of Appeal changed its Order and held Petitioner liable in civil contempt, attached hereto as Appendix B.

Petitioner believes that Petitioner's statements are not the type that warrant contempt. They were in a writing

and are protected by the free speech provisions of the United States Constitution.

The words themselves, were not contemptuous. A lawyer should have the right of free speech and the comments that were made were legitimate comments by a lawyer.

As the United States Supreme Court said in the case of *In re McConnell, 370 U.S. 230, 82 S.Ct. 1288, 8 L.Ed.2d 434 (1962)*, there is no indication, and the State does not argue, that petitioner's statements were uttered in a boisterous tone or in any wise actually disrupted the court proceeding. Therefore, 'The vehemence of the language used is not alone the measure of the power to punish for contempt. **The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil . . .. (T)he law of contempt is not made for the protection of judges who may be sensitive to the winds of public opinion. Judges are supposed to be men of fortitude, able to thrive in a hardy climate**.' *Craig v. Harney, 331 U.S. 367, 376, 67 S.Ct. 1249, 1255, 91 L.Ed. 1546 (1947).* **'Trial courts . . . must be on guard against confusing offenses to their sensibilities with obstruction to the administration of justice**.' *Brown v. United States, 356 U.S. 148, 153, 78 S.Ct. 622, 626, 2 L.Ed.2d 589 (1958).*" Under United States Supreme Court precedent, Petitioner's comments do not warrant contempt.

Also, the Appeal Court should have published the Opinion. It is very unfair to Petitioner, as a lawyer, who has practiced law 52 years representing citizens throughout the state, to not have the citizens and taxpayers know what the controversy was all about. The Opinion was an extremely important opinion to contractors and subcontractors in this state and to not publish it is shameful and very unfair to Petitioner.

Also, as stated previously, Petitioner's comments are protected by the Doctrine of Free Speech. They were

honestly made; they were not pointed at any particular Justice and, therefore, Petitioner hereby request the petition for Writ of Certiorari be granted.

CONCLUSION

Petitioner is aware of the many cases submitted to the court for review. This case may not seem like many of the controversial cases submitted for review but it is. It deals with a lawyer's right of free speech to make the same statement a citizen could make.

Free speech must prevail. You can not yell "Fire!" in a crowed theater and that was not done here. A lawyer filing statements in a petition for rehearing, one of which regarding Girardi was confusing, should not suffer a different fate of contempt than an ordinary citizen making the same statement. There is something very wrong with punishing a lawyer and this court recognized it when it made its prior holdings on free speech. Petitioner did nothing wrong in this case and made no statements that warrant contempt. Therefore, this court is asked to reaffirm its prior holdings because apparently the California court has forgotten them and respectfully request the court grant this Petition for Writ of Certiorari.

Respectfully submitted,

s/ Paul M. Mahoney
Paul M. Mahoney
Counsel of Record
MAHONEY & SOLL, LLP
150 West First Street, Suite 180
Claremont, CA 91711
(909) 399-9987
Attorney for Appellant SALSBURY ENGINEERING, INC.

Appendix A

Appendix A

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE FOURTH APPELLATE DISTRICT

DIVISION THREE

SALSBURY ENGINEERRING, INC Plaintiff, Cross-defendant, and Appellant v. CONSOLIDATED CONTRACTING SERVICES, INC Defendant, Cross-complainant, and Respondent	**G057832** consol. w/G057966 (Super. Ct. No. 30-2015-00789263

APPEAL FROM THE SUPERIOR COURT
OF THE COUNTY OF ORANGE
HONORABLE CRAIG L. GRIFFIN, DEPARTMENT N17

PLAINTIFF, CROSS-DEFENDANT AND APPELLANT'S PETITION FOR REHEARING

MAHONEY & SOLL LLP
Paul M. Mahoney, SBN 43531
150 West First Street, Suite 180
Claremont, California 91711
(909) 399-9987; (909) 399-0130 (fax)

CERTIFICATE OF INTERESTED ENTITIES

This form is being submitted on behalf of Plaintiff, Cross-defendant, and Appellant Salsbury Engineering, Inc.

Interested entities or persons required to be listed under rule 8.208 as follows:

	Name of Interested Entity	**Nature of Interest**
(1)	Salsbury Engineering, Inc.	Plaintiff, Cross-defendant and Appellant,
(2)	Consolidated Contracting Services, Inc.	Defendant, Cross-complainant, and Respondent

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Dated: March 17, 2021

MAHONEY & SOLL LLP

s/ Paul M. Mahoney

PAUL M. MAHONEY

Attorneys for Plaintiff, Cross-defendant, and Appellant Salsbury Engineering, Inc.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

None.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE FOURTH APPELLATE DISTRICT

DIVISION THREE

SALSBURY ENGINEERRING, INC Plaintiff, Cross-defendant, and Appellant v. CONSOLIDATED CONTRACTING SERVICES, INC Defendant, Cross-complainant, and Respondent	**G057832** consol. w/G057966 (Super. Ct. No. 30-2015-00789263

PLAINTIFF, CROSS-DEFENDANT AND APPELLANT'S PETITION FOR REHEARING

Plaintiff, Cross-Defendant and Appellant's Salsbury Engineering, Inc. ("Salsbury") hereby submits its Petition for Rehearing of the Court of Appeal's Opinion filed on March 2, 2021, in favor of Defendant, Cross-Complainant,

Respondent, Consolidated Contracting Services, Inc. ("Consolidated").

PRELIMINARY STATEMENT

When counsel for Plaintiff started law school in the fall of 1965 (he has now practiced law over 52 years) he had an idealistic view that the law would be applied fairly and that clients would be treated fairly. In other words, he did not believe that a case such as this one, which is essentially a construction project with numerous twists, would turn into a $1 million dollar plus windfall for one side, not on the facts but based on the rulings of a judge or judges. Our society has been going down the tubes for a long time, but when you see it in so black and white as in the opinion in this case, it makes you wonder whether or not we have a fair and/or equitable legal system or whether the system is mirrored by ignored by the actions of people like Tom Girardi.

I can be proven wrong and granting a petition for rehearing would be a plus. In this case, to put it bluntly, the Plaintiff, a construction company and working as a subcontractor, signed three contracts with Consolidated, not one. Consolidated had three contracts with The Irvine

Company, who we all know wields a lot of legal and political clout in Orange County.

There were three separate prime contracts between The Irvine Company and Consolidated; Jost One, Jost Two and Jost Three. There were three separate subcontracts between Consolidated and Salsbury, one for Jost One, one for Jost Two, and one for Jost Three.

Hopefully, this court will re-look at its decision and consider the consequences of its ruling and the facts and grant a rehearing. If this result stands, it is a black mark on the legal system.

I. THERE WERE THREE SEPARATE CONTRACTS ALL OF WHICH INVOKED THE LATE PAYMENT PENALTIES. THEREFORE, THIS COURT ARBITRARILY UPHOLDING THE ERRONEOUS TRIAL COURT RULING THAT THERE WAS ONLY ONE INTEGRATED CONTRACT IS NOT SUPPORTED BY THE FACTS

There were three separate contracts between Salsbury and Consolidated. There was a contract for Jost One, one for Jost Two and one for Jost Three.

On all three contracts, there were alleged breaches. Consolidated, using its power, is the prime contractor and held back monies on Jost One and Jost Two, and the jury rejected that conduct in finding for Salsbury, thus, presumably invoking the late payment penalties. The contract was separated out for jury purposes and the jury has to make a decision as to breach each contract. However, for reasons that are inexplicable, the trial court and this court did not separate the contracts as the jury was required to do. Instead, this court just found there was just one integrated contract with no reason to support that. The jury ended up ruling for Salsbury on the Jost One and Jost Two subcontract and ruled for Consolidated on Jost Three. As to the late payment penalties, had the law been followed, Jost One and Jost Two would have invoked late payments and because of this appeal, the prevailing party on all three contracts would have been Salsbury. Instead, because of a judicial slight of hand with no factual basis, this court has altered the landscape and created a windfall for Consolidated.

This court admits that there was no lopsided result with Consolidated winning one contract and Salsbury two. From that, the court reaches the conclusion, "This meant that the trial court had the discretion to use any of the

options available under 1717." Who made that law? We have facts to decide this case. Consolidated refused to timely pay on Jost One and Jost Two and should have been charged with the penalties mandated by the law. Because Consolidated alleges that it had reasons internally to treat the contracts as one has nothing to do with Salsbury, who entered into three contracts.

For this court to hold there was one integrated contract rather than three, ignores all of the facts. Had something gone wrong in contract two, Consolidated could have removed Salsbury and had a number of remedies available to it. That is why the contract was so detailed. That a court can come in and basically emasculate the deal between the parties and in turn, cause the unbelievable result which is trying to mandate in this case, is really sad and is causing irreparable harm. The court shows Consolidated as the prevailing party resulting in $1 million in damages to the smallest party, the subcontractor. The jury was instructed on three contracts. Why does the trial court have the right to emasculate the jury dealings and create a windfall winner?

This case is about three separate subcontracts. It is about the ability of a general contractor who put pressure on a subcontractor by holding monies. Salsbury is entitled

to be paid. That this court basically gave the trial court the discretion to decide this case rather than a jury, even though the jury is instructed in three contracts is laughable.

Also, this court makes a comment that because the contracts with Consolidated were signed within days of one another shows one contract. That makes no sense. Anyone that has done anything in contracting knows that you want to plan and a lot of times contractors want to get all of their contracts in a row, regardless of whether they are separate or not. Anyone who has been in construction knows that that has no bearing whatsoever.

The trial court has totally distorted the law of retention. The idea that it is giving a stamp of approval for Consolidated to hold onto Consolidated's money on Jost One and Jost Two until the whole project was done is absurd. Nobody would be in the construction industry if they tied up all the retention on all their work on various segments of the project until the whole thing was done. That is not how construction projects operate. For this court to side with Consolidated in keeping Salsbury's money on Jost One and Jost Two is really wrong and not correct.

A lot of the Court's decision is based on the flawed assumption that despite three contracts and everything

that went on during the course of this trial, the court in its infinite wisdom, could decide that there was really one contract. Not true. However, that assumption lead to the heavy-handed treatment by Consolidated in holding onto retention and disregarding the jury finding that Salsbury was entitled to its money. The opinion appears to be written with the idea that the prime contractor's rights supercede those of the subcontractor. That is not in the law.

Consolidated could have had one contract if it wanted instead of three, but they did not. For this court to reach a conclusion that Consolidated is the prevailing party, though losing on two of the three contracts, and that the horrendous result according to Salsbury by virtue of the result which is to drive Salsbury out of business, is really horrendous and must not occur.

Had the court followed the law and given Salsbury its late payment penalties on the Jost One and Jost Two contracts, Salsbury would be the prevailing party.

Salsbury suggested (and still suggests) that the numbers in this case are close enough that there does not have to be a prevailing party and each side should bear their own attorney's fees and costs.

There were three separate lawsuits for breach of contract against Consolidated. One for Jost One, one for Jost Two, and one for Jost Three. They were separated out for jury purposes so that the jury had the ability to decide each issue separately. However, this Court did not separate the contracts and somehow we have given a Judge the power to say there is only one contract and that therefore they can prevail. As it admits, there was no lopsided result that Consolidated won one contract and Salsbury won two. From that, the Court reaches the conclusion, "This made the trial court have the discretion to use any of the options available to it under 1717." From that result, from a close situation, the court issued a ruling allowing the lopsided attorney fee award to Consolidated and causing by affirming the judgment over $1 million in damages. That is not why counsel went to law school, to have courts so indiscriminately screw one party to the extent of another when the jury result and the jury findings are so close.

CONCLUSION

The court said there was one integrated contract rather than three. That is totally contrary to facts of this case.

Salsbury urges this court to grant a rehearing and treat this case the way it was tried until after the jury verdict, i.e. a breach of contract action involving three separate contracts.

Respectfully submitted,

DATED: March 17, 2021

MAHONEY & SOLL LLP

By: s/ Paul M. Mahoney
PAUL M. MAHONEY
Attorneys for
Plaintiff, Cross-Defendant,
and Appellant
Salsbury Engineering, Inc.

CERTIFICATE OF WORD COUNT

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 1,495 words, including footnotes. In making this certification, I have relied on the word count of the WordPerfect X9 program used to prepare the brief.

s/ Paul M. Mahoney
PAUL M. MAHONEY

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 150 West First Street, Suite 180, Claremont, California 91711.

On March 17, 2020, I caused to be served the foregoing document described as **Plaintiff, Cross-Defendant and Appellant's Petition for Rehearing** on the parties in this action as follows:

[X] ELECTRONICALLY. I transmitted a PDF version of the document(s) identified above based on a court order or an agreement of the parties to accept service by electronic transmission to the email service address(es) provide by registration with TrueFiling which constitutes consent to receive service through TrueFiling via Court's Electronic Filing System (EFS) operated by ImageSoft True Filing as follows:

Michael J. Baker, Esq. SNELL & WILMER, LLP 600 Anton Blvd., Suite 1400 Costa Mesa, CA 92626-7689 (714) 427-7000; (714) 427-7799 (fax) mjbaker@swlaw.com	Attorneys for Defendant and Cross-complainant Consolidated Contracting Services, Inc. and Cross-defendant Western Surety Company

California Supreme Court

[X] MAIL. I caused such envelope with postage thereon fully prepaid to be placed in the U.S. mail at Claremont, California. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It

is deposited with the U.S. Postal Service on that same day in the ordinary course of business.

Orange County Superior Court
Civil Division
700 Civic Center Drive West
Santa Ana, CA 92701

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 17, 2020, at Claremont, California.

s/ Veronica Valles
VERONICA VALLES

Appendix B

Appendix B

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re PAUL M. MAHONEY on Contempt

G057832
(Consol. With G057966)
(Super. Ct. No.
30-2015-00789263)
O P I N I O N

THE COURT:

These contempt proceedings arise from a petition for rehearing filed by Attorney Paul Mahoney on behalf of his client Salsbury Engineering Inc., in which he impugned the integrity of both the trial court and this court. In that petition, he cited not a single statute or opinion and made no attempt to explain, distinguish, or otherwise reply to the cases and statutes relied upon by the trial court and this one. Instead he filed nine pages of text that more closely resembled a rant than a petition.

We issued an order to show cause to give Attorney Mahoney an opportunity to explain why he "should not be held in contempt for language 'impugning the integrity of the court in a document filed with the court.' (*In re Koven* (2005) 134 Cal.App.4th 262, 271; see also *In re Buckley* (1973) 10 Cal.3d 237, 248.)"

In that order, we made clear the language the court felt impugned its integrity. We specified that:

"On March 17, 2021, Attorney Paul M. Mahoney and Mahoney & Soll LLP filed a petition for rehearing in this matter on behalf of appellant Salsbury Engineering, Inc.

(Salsbury). The petition did not analyze a single statute or decision. It made no effort to deal with the specific language of the contract at issue in this case, which supports the trial court's ruling. It made no effort to explain why notices of completion for the first two phases of construction were not recorded until the end of the JOST project, an indicator the parties involved viewed the project as integrated. It made no effort to explain why retainage was not returned to Salsbury on completion of phases 1 and 2, as would have been expected if they had been regarded by the parties as separate contracts. It made no effort to explain why, if these were separate contracts, the owner did not release to Consolidated Contracting Services, retention funds upon completion of each phase. It made no effort to explain where we had erred in distinguishing the *Hunt* and *Arntz* cases upon which Salsbury had relied. (*Arntz Contracting Co. v. St. Paul Fire & Marine Ins. Co.* (1996) 47 Cal.App.4th 464; *Hunt v. Fahnestock* (1990) 220 Cal.App.3d 628.)

"In short, rather than attempt to convince the court its reasoning was faulty, you indulged in an unprofessional rant that impugned the integrity of the court, including casting the following aspersions regarding the court's opinion filed March 2, 2021:

- " 'Our society has been going down the tubes for a long time, but when you see it in so black and white as in the opinion in this case, it makes you wonder whether or not we have a fair and/or equitable legal system or whether the system is mirrored by [sic] ignored by the actions of people like Tom Girardi.' (Pet. at p. 6.)
- " Insinuation that respondent Consolidated Contracting Services, Inc. (Consolidated) may have prevailed because it had contracts with a third party 'who . . . wields a lot of legal and political clout in Orange County.' (Pet. at p. 6.)

- "'. . . [B]ecause of a judicial slight [sic] of hand with no factual basis, this court has altered the landscape and created a windfall for Consolidated.' (Pet. at p. 8.)
- " Suggestion that this court did not 'follow the law.' (Pet. at p. 11.)
- " Assertion that the court 'ignores the facts' in its opinion. (Pet. at p. 8.)
- " Conclusion that this court 'indiscriminately screw[ed]' Salsbury. (Pet. at p. 11.)"

We expected contrition of the type displayed – but found inadequate – in In re Koven, supra. Instead, Attorney Mahoney "doubled down" on his original petition. He asserted that he had merely, "mentioned the obvious things that go on in Orange County which has a lot to do with The Irvine Company, plain and simple."

We are simply unable to read that statement as anything but a second insinuation that political clout accounted for the trial court's actions and our affirmance of them. When read in conjunction with his similar allegation in the petition for rehearing, this would serve as a perfect exemplar in any law school class in which the instructor was attempting to illustrate the phrase "impugn[] the integrity of the court."

Nor can we find any other way to interpret his comparison of the courts in this case to Los Angeles Attorney Thomas Girardi – whose alleged transgressions have received a great deal of media attention of late – than as an insult to the integrity of the court. He said, "Our society has been going down the tubes for a long time, but when you see it in so black and white as in the opinion in this case, it makes you wonder whether or not we have a fair and/or equitable legal system or whether the system is mirrored by [sic] ignored by the actions of people like Tom Girardi."

The only uncertainty about how contemptuous that statement is relates to the muddled language marked by

our [sic]. We tried to figure out whether he was saying that we were indistinguishable from Girardi and his ilk or that we ignored conduct such as his, but finally abandoned the effort because either one was contemptuous.

Nor did Attorney [1] Mahoney recant at the hearing. We tried to nudge him toward a more temperate position but were unsuccessful. Every time he seemed ready to moderate his stance, he would change direction and return to it.

The result is that we cannot even say, as did the Koven court, "We accept Koven's apology. Nevertheless, we do not purge Koven of the contempts . . . ." (In re Koven, supra, 134 Cal.App.4th at p. 265.) Unlike the Koven court, which dealt with an attorney who had conceded her statements were "both improper and inexcusable on their face," and who "apologizes for the improper statements in the petitions, [and] expresses deep regret for impugning the [integrity of this] Court, and accepts the embarrassment she has brought upon herself," (id. at p. 264) we are confronted with a member of the bar who, after 52 years of practice, believes this is legitimate argument.[1]

We do not. We have elsewhere lamented the fact modern law practice is "rife with cynicism, awash in incivility." (Kim v. Westmoore Partners, Inc. (2011) 201 Cal.App.4th 267, 293.) This kind of over-the-top, anything-goes, devil-take-the-hindmost rhetoric has to stop.

If you think the court is wrong, don't hesitate to say so. Explain the error. Analyze the cases the court relied upon and delineate its mistake. Do so forcefully. Do so con brio; do so with zeal, with passion. We in the appellate

---

[1] We mention Attorney Mahoney's occupation in every reference to him to emphasize the dimension of his offensive conduct. We would have been shocked by this had he been in propria persona; for an attorney at law to repeatedly denigrate the system in this manner is beyond the collective century-and-a-half of this panel's experience Our District Courts of Appeal are not especially thin-skinned. Koven, decided 16 years ago, was the only published decision we could find of this type, and inquiries to other Courts of Appeal turned up no unpublished cases. Thankfully, this does not come up much.

courts will respect your efforts and understand your ardor. Sometimes we will agree with you. That's why you file a petition for rehearing – because they are sometimes granted.

But don't expect to get anywhere – except the reported decisions – with jeremiads about "society going down the tubes" and courts whose decisions are based not on a reading of the law but on their general corruption and openness to political influence. ""The judge of a court is well within his rights in protecting his own reputation from groundless attacks upon his judicial integrity and it is his bounden duty to protect the integrity of his court.' [Citations.] 'However willing he may be to forego the private injury, the obligation is upon him by his oath to maintain the respect due to the court over which he presides.' [Citation.]" (In re Ciraolo (1969) 70 Cal.2d 389, 394-395.)2 This isn't some New Age civility initiative. Recognition of the need to protect the institutional respect accorded the courts is a concept that goes back to the Middle Ages. Society's need for confidence in its courts – and the concomitant requirement not to undermine that confidence – was an accepted truism at a time when Latin was still the lingua franca of our profession. Edward Coke, who made the arguments in 1581 that resulted in the Rule in Shelley's case we all studied so assiduously, knew the necessary distinction between questioning a decision and questioning the institution as, "De fide et officio judicis non recipitur question sed de scientia, sive sit error juris, sive facti." (Bacon's Maxim, number 17.) As interpreted most commonly, "The bona fides and honesty of purpose of a judge cannot be questioned, but his decision may be impugned for error either of law or fact. The law doth so much respect the certainty of judgments, and the credit and authority of judges, that it will not permit any error to be assigned which impeacheth them in their trust and office, and in willful abuse of the same; but only in ignorance and mistaking either of the law, or of the case and matter of fact." (Black's Law Dict., 5th ed. 1979), p. 380, col. 1.)

This was already considered axiomatic by Sir Francis Bacon (1561-1626) who included it in his collection of legal maxims five centuries ago. It was a given, a matter about which there simply could not be any argument. And, as a general rule, it still is. Practicing law without understanding this is like practicing medicine without understanding the circulatory system.

We publish this decision as a cautionary tale. The timbre of our time has become unfortunately aggressive and disrespectful. Language addressed to opposing counsel and courts has lurched off the path of discourse and into the ditch of abuse. This isn't who we are.

We are professionals. Like the clergy, like doctors, like scientists, we are members of a profession, and we have to conduct ourselves accordingly. Most of the profession understands this. The vast majority of lawyers know that professional speech must always be temperate and respectful and can never undermine confidence in the institution. Cases like this should instruct the few who don't.

Respect for individual judges and specific decisions is a matter of personal opinion. Respect for the institution is not; it is a sine qua non.

Contempt of court is a criminal violation under Penal Code section 166. It is punishable by a fine of up to $1,000 per count and/or six months in jail. (Mitchell v. Superior Court (1989) 49 Cal.3d 1230, 1240.) We find Attorney Mahoney in direct contempt under subdivision (a)(1) for his implication that the court below was influenced by the political influence of the Irvine Company (1 count) and for his aspersion that the court was indistinguishable from or inclined to ignore the unethical conduct attributed to Attorney Thomas Girardi (1 count) and order him to pay a fine of $1,000, each for a total of $2,000, payable in the clerk's office of this court within 60 days after this decision becomes final for all purposes. Pursuant to Business and Professions Code section 6086.7, the clerk of this court is directed to forward to the State Bar a copy of this judgment

of contempt. Upon the finality of judgment, the clerk shall issue the remittiturs in case numbers G057832 and G057966.

[2] Before Bedsworth, Acting P.J., Aronson, J., and Goethals, J.

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re PAUL M. MAHONEY on Contempt SALSBURY ENGINEERING, INC., Plaintiff, Cross-defendant and Appellate, v. CONSOLIDATED CONTRACTING SERVICES, INC.,	Defendant, Cross-complainant and Respondent G057832 (Consol. With G057966) (Super. Ct. No. 30-2015-00789263) ORDER MODIFYING OPINION; NO CHANGE IN JUDGEMENT

THE COURT:[‡]

The opinion filed in this matter in June 10, 2021, is hereby modified as follows:

[‡] Before Bedsworth, Acting P.J., ronson, J., and Goethals, J.

On page 6, the last full paragraph that finishes on page 7, delete the entire paragraph and replace with the following paragraph:

"Contempt of the court is a violation os Code of Civil Procedure section 1209. It is punishable by a maximum of 5 days jail and/or $1000 fine (Code Civ. Proc., § 1218.) We find Attorney Mahoney in direct contempt for his implication that the court below was influenced by the political influence of the Irvine Company (1 count) and for his aspersion that the court was indistinguishable from or inclined to ignore the unethical conduct attributed to Attorney Thomas Girardi (1 count) and order him to pay a fine of $1,000 each, for a total of $2,000, payable in the clerk's office of this court within 60 days after this decision becomes final for all purposes. Pursuant to Business and Professions Code section 6086.7, the clerk of this court is directed to forward to the State Bar a copy of this judgment of contempt. Upon the finality of judgment, the clerk shall issue the remittiturs in case numbers G057832 and G057966."

This modification does not effect a change in the judgment.

Appendix C

Appendix C

Court of Appeal, Fourth Appellate District, Division Three -

No. G057832, G057966 (filed AUG 18 2021)

S269418

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re PAUL M. MAHONEY on Contempt.

SALSBURY ENGINEERING, INC., Plaintiff, Cross-defendant, and Appellant,

v.

CONSOLIDATED CONTRACTING SERVICE, INC., Defendant, Cross-complainant, and Respondent.

AND CONSOLIDATED CASE

The petition for review is denied.

Corrigan, J., was absent and did not participate.

s/ Cantil-Sakauye

Chief Justice