

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DENNIS F. VILELLA, DONALD LEIGHTON,
HAROLD COHEN, and GEORGE SASSOWER,
Petitioners,

Docket No.
87 Civ. 1450
[GLG]

-against-
Hon. MARIE G. SANTAGATA; et al.,
Respondents.
-----X

S I R S:

PLEASE TAKE NOTICE, that upon the annexed affirmation of GEORGE SASSOWER, dated December 30, 1990 and all the pleadings and proceedings had heretofore herein, the undersigned will move this Court before Hon. GERARD L. GOETTEL, at the Courthouse thereof, 101 East Post Road, White Plains, New York, 10601, on the 18th day of January, 1991, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as Counsel may be heard, for an Order vacating, and declaring null and void the above proceedings in the within matter, subsequent to the filing and service of the complaint (FR Civ P 60(b)(4)(6)), and granting the relief sought therein, together with any other, further, and/or different relief as to this Court may seem just and proper in the premises.

PLEASE TAKE FURTHER NOTICE, that opposing papers,
if any, are to be served upon the undersigned and filed with the
Court as provided by the Rules of this Court.

Dated: December 30, 1990

Yours, etc.,

GEORGE SASSOWER
Attorney for petitioners
16 Lake Street,
White Plains, N.Y. 10603
914-949-2169

cc: Hon. Robert Abrams
Kreindler & Relkin, P.C.
Feltman, Karesh, Major & Farbman, Esqs.
Hon. Otto G. Obermaier
Schneck & Weltman, Esqs.
Hon. Denis Dillon
Nachamie, Hendler & Spizz, P.C.
Mr. Dennis F. Vilella
Mr. Harold Cohen

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The Bottom Line:

1a. DENNIS F. VILELLA ["Vilella"] has now been incarcerated for more than three (3) years for crimes never committed by him or anyone else. They were and are "phantom" crimes which simple never occurred as dramatically and conclusively demonstrated herein.

b. This, in and of itself, ex proprio vigore, mandates a re-examination of His Honor's dispositions in the above matter.

c. The legal issues presented to this Court for adjudication by Vilella, as well as the other plaintiffs, were never determined by this or any other court and remain viable, including the jurisdictional disqualification of His Honor, as well as every other judge in the Eastern and Southern District of New York (Liljeberg v. Health Services, 486 U.S. 847 [1988]).

2a. Along with the service of the complaint, affirmant moved this Court for an Order:

"compelling the state respondents to permit GEORGE SASSOWER, Esq., to continue his representation of three (3) petitioners in four (4) pending state criminal actions or criminally related proceedings, despite an Order of Disbarment issued by the Appellate Division, Second Judicial Department on February 23, 1987" [emphasis supplied].

b. The Court's disposition was contained in the Order of August 7, 1987 -- or more than one week after the Vilella trial had been completed, and reads as follows:

"Vilella faces serious state charges (attempted murder). At the time he retained Sassower to represent him, Sassower was still an attorney admitted to practice in this state. The disbarment of the attorney while the case is pending trial clearly required some relief from the court. The expected relief would be a postponement of the trial in order to allow the defendant to obtain new counsel. This would not apparently be satisfactory to Vilella, who continues to insist on having Sassower represent him at trial. It is difficult to determine which, if any of the present defendants are the appropriate ones from whom to seek this relief. Obviously, such an application would start with the trial judge and, if not granted, could either be appealed or pursued by mandamus in the state courts. ... We view this as being, in essence, a habeas corpus petition. As such, it is clearly premature ... Moreover, there is no indication that all state remedies have been exhausted. In any event, this Court clearly must abstain under the principles set in Younger v. Harris, 401 U.S. 37 (1971)."

c. Respectfully, neither habeas corpus nor comity were the issues presented in affirmant's complaint, which was filed a few days after affirmant had been informed that he had been disbarred "forthwith".

d. By the time His Honor rendered his dispositive decision, if the Younger doctrine was His Honor's "thinking", clear evidence of a bad faith exception could have been provided had affirmant been so advised and afforded the opportunity to make such presentment.

d. Vilella's prosecutors apparently knew about His Honor's intended disposition at least two (2) weeks before it was rendered, since they never would have proceeded to trial if there was any doubt about His Honor's disposition.

e. The real final line is that Vilella was and remains incarcerated because the court-appointed receiver for PUCCINI CLOTHES, LTD. ["Puccini"] -- "The Judicial Fortune Cookie" -- cannot account for its judicial trust assets without exposing the corruption in the New York-Second Circuit bailiwick.

"THE PHANTOM CRIMES"

3a. Vilella, a college graduate, married, with two (2) small children, and active in local civic affairs defended himself, as a pro se defendant, when there was no disposition forthcoming from His Honor, although Vilella had no knowledge or experience in the law or its procedures.

b(1) For whatever reasons, even before the perfidious conduct of others surfaced in his criminal matter, affirmant was the only attorney Vilella trusted, and so he advised the media.

(2) Affirmant personally investigated the Vilella case, exuded with confidence about its outcome, and was ready to proceed to trial when he was disbarred "forthwith" by the state judiciary because of his persistence in the matter revolving around Puccini.

c. When the trial court failed to discharge affirmant of his obligations to Vilella, professionally or contractually, while simultaneously refusing to permit affirmant to represent him at trial, affirmant witnessed the trial proceedings, as a spectator.

d. Vilella, very powerfully built, was indicted and convicted of attempted murder and assault upon Nappi "with a tire iron".

e. District Attorney DENIS DILLON ["Dillon"] of Nassau County claimed that Ms. THERESA NAPPI ["Nappi"] was "repeatedly", "violently", assaulted on her head by Vilella, with a "tire iron", which certainly would have resulted in a fragmented, splintered and depressed skull with extensive brain damage, at the very least.

f. After this alleged "repeated", "violent", "tire iron" assault upon Nappi she was removed to Community Hospital at Glen Cove, Nassau County, New York ["Hospital"].

g. The following are among the Hospital Records which were intentionally concealed from the Grand Jury, the Trial Jury and thereafter from the Appellate Division by the "Dillon Gang".

(1) In haec verba, the Hospital x-ray report for Nappi, following this "tire iron" assault, reads as follows:

"Skull shows no evidence of fracture. Sutures and vascular markings are normal. Sella turica is regular in appearance. Petrous pyramids and sphenoid wings are intact. IMPRESSION: Normal examination of the skull."

(2) In haec verba, the Hospital CAT Scan for Nappi, following this "tire iron" assault, reads as follows:

"CT scan non-contrast of the brain was performed. No shift of midline structures is seen. No subdural collection is identified. No blood in the white or grey matter is seen. Soft tissues of the brain fail to demonstrate any gross soft tissue swelling. IMPRESSION: See above report."

(3) The Hospital Trauma Assessment Record, also made the same day Nappi was admitted, reveals normal pupils, normal leg and hand reactions and movements, and the highest possible non-coma score.

(4) The Hospital consultation report of Nappi states:

"coherent ... no overt thinking disorder. She is cooperative and fairly verbal. No auditory trouble ..., no delusions. ... Sensories intact. Short term memory good. ... Insight good."

(5) In the entire Hospital record there is an absence of any showing of "tire iron" bruises on Nappi's skull.

(6) The Hospital records reveal that there was absolutely no treatment rendered to Nappi for any skull fracture injuries.

h(1) Insofar as the alleged assault was concerned, Nappi's uncorroborated direct trial testimony, in full, was as follows:

"Q What did he hit you with?
A A tire iron.
Q How many times did he hit you?
A About eight or twelve.
Q What parts of your body did the
blows land?
A My head and my hands, protecting
myself. [SM-91] ...
Q Please continue.
A And then he hit me some more.
Q What did he hit you with?
A The tire iron.
Q Back in the van again?
A Yes.
Q How many times did he hit you the
second time?
A About six or seven. [SM-92]
Q What were your injuries?
A I sustained six skull fractures.
..." [SM-93] [emphasis supplied]

(2) Nappi's testimony on cross-examination, conducted by Vilella, a pro se defendant, was as follows:

"Q Mrs. Nappi, you testified that I
hit you in the van approximately eight to ten times or
six to ten times?
A About that. [SM-98] ...

Q Mrs. Nappi, you were hit, you said, again six to ten times in the van?

A I said anywhere from eight to twelve times.

Q Eight to twelve times in the van? you opened the door and ran out? How far did you run?

A Not too far.... I saw a car coming and I screamed for help, but you came behind me and dragged me back in the van.

Q Would you say you're a strong person?

A I do, but not when you're hit twelve times in the head with a tire iron when you're not expecting it. [SM-101]

Q ... You say somewhere in the Grand [Jury] Minutes I covered your mouth.

A You hit me from behind in the van and you kept hitting me and hitting me and then I somehow got out of the van and I screamed, and I couldn't do anything. You came behind me and dragged me back. I couldn't fight you. I wasn't expecting you to hit me. ... When you're hit like that and you don't know what's coming, you can't do anything. You don't have the strength to do anything, not the way you were hitting me.

Q Would you describe to the Court how it was that I was hitting you?

A Violently with everything you had to hit me.

Q Could you show us, please? [SM-103]

A Show you? You took the thing and hit me.

Q Which way? Just go through the motions.

A I didn't see the first hit because I was under the blanket, but I saw afterwards because I protected myself from it.

Q Show us the second hit.

A You stood over me and hit me like this (indicating)

Q With the tire iron?

A With the tire iron that looks similar to that.

THE COURT: For the purpose of the record, did he raise his hand up over his head with the tire iron?

THE WITNESS: No, not all the way down over his head. ...

THE COURT: ... So he raised his hand halfway up to the head and struck down with the tire iron?

THE WITNESS: Right. ...

Q Were they tapping motions or you say violent?

A Violent." [SM-103-4]

i(1) Obviously, even the Russian mystic, Grigory Rasputin, could not have survived such "tire-iron" assault, as testified to by "Nappi-The Lady Rasputin", and obtained such negative results.

(2) To state that Dillon nor anyone else can produce any physician who, specifically confronted with such Hospital record, would state that such "tire-iron" assault took place, as testified by The Lady Rasputin, would only state the obvious.

j. The misconduct of the Dillon Gang reached vertiginous heights, although any enumeration would be supererogatory in view of the "phantom" nature of the crimes charged.

"Treason to the Constitution".

4a. This Court's Vilella analysis could not be applied to HAROLD COHEN ["Cohen"] where incarceration was not an ultimate result and who came to your affirmant by way of a court assignment.

b. Affirmant received from Cohen, for his assigned representation, only \$50 to cover actual disbursements, although affirmant expended thousands of dollars worth of legal effort.

c. To replace affirmant with new counsel, Cohen would probably have to pay an attorney more than \$10,000 simply to have him educate himself as to the facts already within the knowledge of your affirmant.

d. To have new counsel complete the Cohen matter would probably cost him many more thousands of dollars, which affirmant under his contractual and professional obligation, was

willing to undertake free of charge, as was his assumed contractual obligation.

5. The basic arguments advanced by affirmant, clearly understood by His Honor, simply were not addressed by the Court.

a. Not a single word was expressed by His Honor concerning the "contractual" rights of Vilella and Cohen to affirmant's services until completion of their matters.

b. While His Honor had no difficulty in directing that affirmant continue representing Vilella and Cohen in the litigation before His Honor, despite the interim suspension by U.S. District Judge VINCENT L. BRODERICK, somehow His Honor could not find any reason for not directing that same procedure be followed where the situation was more compelling.

c. In the words of Chief Justice John Marshall, His Honor committed "treason to the constitution" (Cohens v. Virginia (19 U.S. [6 Wheat] 264, 404 [1821]) by not determining legitimate issues presented.

6. DONALD LEIGHTON ["Leighton"] abandoned affirmant after this Court, in the early stages of the proceedings, failed to resolve the issues in his peculiar situation.

Affirmant's Standing.

7a. To the credit of His Honor, at least His Honor recognized the Vilella problem, and also recognized that Vilella had "rights" caused by affirmant's "forthwith" state disbarment, a fact ignored by other courts and jurists.

b. Affirmant's position has always been that he could not abandon either client or his cause, absent a judicial order

rendered after due process was afforded to the client, or a discharge by the client, particularly when the relationship was contractually based and there was no police power necessity involved in not permitting affirmant from completing uncompleted matters.

c. Kirkland v National Mortgage, 884 F.2d 1367 [11th Cir.-1989]), although not exactly on point, supports affirmant's view, as does as basic contract concepts which are constitutionally protected (U.S. Constitution, Art. 1, §10[1], Amendment V).

d(1) Whitmore v. Arkansas, 495 U.S. , 110. S.Ct. 1717 [1990]) would support the view that there is no constitutional impediment for independent third party standing.

(2) Third party standing is nothing more than a dispensable rule of practice (Barrows v. Jackson, 346 U.S. 249, 257-260 [1953]).

e. Mallard v U.S. District Court, 490 U.S. , 109 S.Ct. 1814 [1989] supports the view that the issues presented to His Honor were threshold issues, which should have been adjudicated by His Honor.

"Judicial Misconduct"

8a. FELTMAN, KARESH, MAJOR & FARBMAN, Esqs. ["FKM&F"] and KREINDLER & RELKIN, P.C. ["K&R"] -- "the criminals with law degrees" -- brought with them, a criminal contempt proceeding based upon the wholly irrelevant, inflammatory and defamatory 1985 decision of U.S. District Judge WILLIAM C. CONNER in Raffe v. Doe (619 F. Supp. 891 [SDNY-1985]).

b. Had His Honor followed proper procedure, of constitutional magnitude (Backo v. Local, 308, F. Supp. 172 [NDNY], aff'd 438 F.2d 176 [2d Cir.]), by promptly dismissing such criminal contempt proceeding or ordered an immediate trial, some of the prejudice may have been neutralized.

c. Not overlooked is the fact at the outset of this proceeding, Judge Conner, a respondent in this action, had communicated with His Honor, ex parte.

d. Affirmant was aware that Judge Conner was engaged in a "fixing" operation on behalf of "the criminals with law degrees", but at that point in time affirmant could not reveal such information without betraying his promise of confidentiality and divulging his sources.

e. Had His Honor read Raffe v. Doe (supra) or even thought about the matter, His Honor would have dismissed the criminal contempt proceeding out-of-hand.

f(1) Raffe v. Doe (supra) states the obvious, to wit., a judge cannot immunize future tortious conduct, and as set forth in the Judge Conner decision reads as follows:

"However, these complaints also allege certain improprieties by state court judges in connection with respect to Puccini proceedings after the date of Judge Nickerson's decision Since these alleged misdeeds after Judge Nickerson's decision, they were not and could not have been litigated in that action. However, all of these alleged improprieties apparently could have been, and perhaps still can be, reviewed by appeal in the state courts, it would be wholly inappropriate for this Court to consider them here. Accordingly, the Court on its own motion hereby dismisses the complaints in" [at p. 897] [emphasis supplied]

(2) Liability insurance insures future tortious conduct, not judicial injunctions.

g. Clearly the Vilella, Leighton and Cohen matters arose after the 1985 Judge Conner decision.

i. Affirmant was anxious to expose the Judge Conner fraud and hoax for its true nature -- a proceeding wherein affirmant was not a party, where his interests were not in issue and where affirmant was not permitted to appeal, and consequently desired a trial or hearing.

j. For the purpose of such trial or hearing, affirmant interposed the following response.

"PLEASE TAKE NOTICE, that with respect to the criminal contempt proceedings, the undersigned pleads 'not-guilty', 'double jeopardy', and 'invidious and selective discrimination'.

PLEASE TAKE FURTHER NOTICE that the undersigned demands the immediate service of all Brady v. Maryland (373 U.S. 83) material.

PLEASE TAKE FURTHER NOTICE, that the undersigned demands a trial by jury.

PLEASE TAKE FURTHER NOTICE, that all other proceedings, including those for civil contempt must be held in abeyance pending the determination of the criminal contempt charges (United States v. Mine Workers, 330 U.S. 258, 299-300)."

k. Backo v. Local (supra) expressly relied upon United States v. Mine Workers (supra), and clearly supported an immediate criminal contempt disposition before any further proceedings were entertained by His Honor.

l. Thus the failure of His Honor to hold affirmant in criminal contempt at the end of the proceeding deprived affirmant of his desired hearing, and deprived Vilella and Cohen of

representation by one not himself in the midst of a criminal proceeding and who did not desire to forfeit his right of silence.

m. Instead of the concrete issues presented by affirmant to His Honor for determination, those issues were diverted by the sham Conner diatribe and criminal contempt proceedings.

9a. The events before U.S. District Judge CHARLES S. HAIGHT, JR. more clearly exemplify the modus operandi of "the criminals with law degrees" with Judge Conner.

b. The Judge Haight action (Sassower v. Sapir, 87 Civ. 7135 [CSH]) was based on events which occurred in 1987, and clearly were not covered by the Judge Conner Injunction Order.

c. However, FKM&F met with Judge Conner, ex parte, and as a result thereof, Judge Conner caused a private "fixing memorandum" to be sent to Judge Haight -- "Bill to Terry".

d. Upon receipt to the "Bill to Terry Memorandum", Judge Haight stayed affirmant's action.

e. Obviously, Judge Conner knew that his 1985 Order did not control 1987 events, the statements in his ex parte "fixing memorandum" to the contrary notwithstanding.

f. Indeed, a copies of such defamatory "Bill to Terry" diatribe was sent to "Chief Judge Charles L. Brieant, Judge Edward Weinfeld, Judge Whitman Knapp, Judge Howard Schwartzberg, Judge Howard Schwartzberg, Judge Gerard L. Goettel, Dorothy R. Guranich and Raymond K. Sexton".

10a. "The criminals with law degrees", as well as Judge Conner, had the duty to clearly disclose, that in addition to the infirmities of Raffe v. Doe (supra), it was irrelevant with respects to acts occurring thereafter.

b. In Oppenheimer v. Westcott, 47 N.Y.2d 595, 419 N.Y.S.2d 908 [1979]), the Court stated (p. 604, 912):

"The withholding of that information from the court was, therefore, clearly misconduct, if not fraud, warranting vacatur of the judgment."

11a. The "death-knell" to the prejudice of affirmant's rights was Sassower v. Sheriff, 824 F.2d 184 [2d Cir.-1987]), a decision whose infamy exceeded, by quantum leaps, that of Art Metal v Abraham & Straus (70 F.2d 641 [2nd Cir.-1934]), the decision which caused the conviction and incarceration of Chief Circuit Judge MARTIN T. MANTON of the Second Circuit Court of Appeals.

b. In any event, such determination should not have affected the rights and remedies of Vilella or Cohen, although clearly it did.

c. The panel in Sassower v. Sheriff (supra), in addition to a fabricated and concocted statement of facts, absolutely contrary to the Record on Appeal, did not disclose that HYMAN RAFFE ["Raffe"], in a mirrored Report by Referee DONALD DIAMOND ["Diamond"], was convicted of the same 63 counts as affirmant, plus 8 more in addition.

d. However, for the payment of "millions of dollars" to "the criminals with law degrees", correlated to affirmant's

activities, and other unlawful consideration, Raffé was not incarcerated, as was affirmant.

e. Thus, as His Honor was informed Raffé, under threats of incarceration, was compelled to underwrite the litigation in His Honor's forum and underwrote their appeal from the failure of His Honor to adjudicate affirmant in contempt.

12a. As part of the consideration exacted from Raffé by "the criminals with law degrees" under threats of incarceration, Raffé was compelled to agree to release (Agreement December 5, 1985):

"The Justices of the Supreme Court of the State of New York, and any judicial employees thereof and the Judges of the United States District Court of the Southern and Eastern Districts of New York ..."

b. As affirmant reads Liljeberg v. Health Services (supra), the compelled agreement by Raffé with "the criminals with law degrees" to execute a release to, inter alia, His Honor, with the concomitant refusal of affirmant to negotiate any civil dispute based upon, in whole or in part, a criminal proceeding renders the instant proceeding jurisdictionally invalid.

13. Because "the criminals with law degrees" cannot render an accounting for the judicial trust assets of Puccini, "Raffé, The Hostage" has been compelled to pay "millions of dollars" in extortion payments, and "Vilella, The Hostage" has been incarcerated for more than three (3) years for crimes that never occurred.

14. The proceeding before His Honor, wherein no hearing was afforded to petitioners, is manifestly void (Hazel-

Atlas v Hartford, 322 U.S. 238 [1944]; Averbach v Rival, 809 F2d 1016 [3d Cir.-1987], cert. den. 482 U.S. 915 [1987]).

15a. The pendency of a 28 U.S.C. §1651[a] writ of habeas corpus at the United States Supreme Court in the Vilella matter, does not preclude this instant motion.

b. As everyone will shortly know the "phantom" accounting approved by Referee Diamond for "the criminals with law degrees" is as "phantom" as the crimes for which Vilella is presently incarcerated.

c. His Honor's extant decisions, unless vacated, as well as those of His Honor's colleagues, will be judged by the vox populi accordingly.

16. The aforementioned is stated to be true under penalty of perjury.

WHEREFORE, it is respectfully prayed that "right be done" and this motion be granted in all respects.

Dated: December 30, 1990

GEORGE SASSOWER [GS-0512]