

**Batra v Wolf**

2012 NY Slip Op 33057(U)

December 7, 2012

Supreme Court, New York County

Docket Number: 116059/2004

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: L. J. ...  
Justice

PART 46

Index Number : 116059/2004  
BATRA, RAVI  
vs.  
WOLF, DICK  
SEQUENCE NUMBER : 006  
QUASH SUBPOENA, FIX CONDITIONS

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_  
MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to 4, were read on this motion to/for quash subpoenas

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...  
Answering Affidavits — Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED
<u>1-3</u>
<u>4</u>

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that ~~this motion~~:  
*The court grants nonparty Judge Ann Pfan's motion to quash subpoenas in part, grants plaintiff's cross-motion to compel compliance with the subpoenas in part, and otherwise denies the motion and cross-motion. C.P.L.R. §§ 2307, 2308, 3103(a), 3120(4).*

**FILED**  
DEC 26 2012  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 12/7/12

L. J. ...  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE  
 SUBMIT ORDER/JUDG.  SETTLE ORDER /JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 46

-----x

RAVI BATRA,

Index No. 116059/2004

Plaintiff

-against-

DECISION & ORDER

DICK WOLF, LYDIA MAYBERRY, ERIC OVERMYER,  
NOAH BAYLIN, MARY GAMBARDELLA, JENNIFER  
VON MAYRHAUSER, RUTH PONTIOUS, SANDY  
DEBLASIO, ANNE NEWTON-HARDING, MICHAEL  
STRUK, PARK DIETZ, WOLF FILMS, RICHARD  
SWEREN, PETER JANKOWSKI, JEFFREY HAYES,  
MATTHEW PENN, MICHAEL S. CHERNUCHIN,  
DAVID POST, LORENZO CARCATERRA, AARON  
ZELMAN, MARC GUGGENHEIM, GARY KARR,  
WILLIAM N. FORDES, ROZ WEINMAN, ARTHUR W.  
FORNEY, WENDY BATTLES, KATI JOHNSTON,  
RICHARD DOBBS, LYNN KRESSEL CASTING, NBC  
TELEVISION, UNIVERSAL NETWORK TELEVISION  
LLC, NBC UNIVERSAL NY, AND UNIVERSAL  
STUDIOS,

Defendants

**FILED**

-----x DEC 26 2012

NEW YORK  
COUNTY CLERK'S OFFICE

APPEARANCES

Plaintiff

Ravi Batra Esq.  
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For Defendants

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Shawn Kerby, Assistant Deputy Counsel  
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LUCY BILLINGS, J.S.C.:

## I. INTRODUCTION

Plaintiff, a New York attorney, sues defendants, all associated in various capacities with the television series Law & Order, for defamation arising from the depiction of a lead character in the "Floater" episode of Law & Order. He claims the episode was based on the corruption scandal involving crimes of bribery by attorney Paul Siminovsky and Justice Gerald Garson, with which news media falsely had linked plaintiff, and cast an Indian American of his age with similar physical features and the same first name in the Siminovsky role.

Plaintiff has served a deposition subpoena and a subpoena duces tecum on Acting New York State Supreme Court Justice Ann Pfau, the state's Deputy Chief Administrative Judge during the events from which this action arises, and subsequently the Chief Administrative Judge. She now moves to quash both subpoenas, claiming that each subpoena seeks irrelevant and privileged information and that the subpoena duces tecum is invalid because it was not issued by the court and is overbroad and unduly burdensome as well. C.P.L.R. §§ 2307, 3103(a), 3120(4). Plaintiff cross-moves for issuance of the subpoena duces tecum by the court and to compel Judge Pfau's deposition and production of the documents sought. C.P.L.R. §§ 2307, 2308. For the reasons explained at oral argument on the record April 26, 2012, and below, the court grants Judge Pfau's motion and plaintiff's cross-motion to the extent and on the conditions set forth and otherwise denies the motion and cross-motion.

## II. APPLICABLE STANDARDS

The standard allowing disclosure of "all matter material and necessary," C.P.L.R. § 3101, is by those terms broad and to be "interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity." Allen v. Crowell-Collier Publ. Co., 21 N.Y.2d 403, 406 (1968); Osowski v. AMEC Constr. Mgt., Inc., 69 A.D.3d 99, 106 (1st Dep't 2009); Kooper v. Kooper, 74 A.D.3d 6, 10 (2d Dep't 2010). Although this standard is liberal, it is not a limitless carte blanche. Albert v. Time Warner Cable, 255 A.D.2d 248 (1st Dep't 1998); Zohar v. Hair Club for Men, 200 A.D.2d 453, 454 (1st Dep't 1994); Kooper v. Kooper, 74 A.D.3d at 10; Lopez v. Huntington Autohaus, 150 A.D.2d 351, 352 (2d Dep't 1989). "The test is one of usefulness and reason . . . to permit discovery of testimony which is sufficiently related to the issues in litigation to make the effort to obtain it in preparation for trial reasonable." Allen v. Crowell-Collier Publ. Co., 21 N.Y.2d at 406-407 (quotation omitted). See Keith v. Forest Labs., Inc., 72 A.D.3d 519, 520 (1st Dep't 2010); Kooper v. Kooper, 74 A.D.3d at 10.

The specific allowance for depositions, even of nonparties, is similarly liberal. "Any party may take the testimony of any person by deposition," without an initial showing of materiality. C.P.L.R. § 3106. See Seltzer v. Bayer, 272 A.D.2d 263, 266 (1st Dep't 2000); Fasciglione v. D.C.D. Advert., Ltd., 256 A.D.2d 215

(1st Dep't 1998). As long as the deposition is are not unduly burdensome or prejudicial to the nonparty, plaintiff is entitled, as C.P.L.R. § 3101(a)(4) mandates, to "full disclosure of all matter material and necessary in the prosecution" of the action, from nonparties as well as parties. See Velez v. Hunts Point Multi-Serv. Ctr., Inc., 29 A.D.3d 104, 111-12 (1st Dep't 2006); Schroder v. Consolidated Edison Co. of N.Y., 249 A.D.2d 69, 70 (1st Dep't 1998); BAll Banking Corp. v. Northville Indus. Corp., 204 A.D.2d 223, 224 (1st Dep't 1994).

Although C.P.L.R. § 3103(a) also confers "broad discretion" on the court to issue protective orders denying or limiting disclosure, including depositions, "to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person," see Lipin v. Bender, 84 N.Y.2d 562, 570 (1994); Jones v. Maples, 257 A.D.2d 53, 56 (1st Dep't 1999), the rule disfavors limitations. Emile v. Big Brothers/Big Sisters of New York City, Inc., 292 A.D.2d 297, 298 (1st Dep't 2002). As demonstrated by the exploration of the parties' positions on the record April 26, 2012, the court has thoroughly considered whether the potentially relevant and useful information to be gleaned from an oral deposition of Judge Pfau would be equally available through interrogatories or a deposition upon written questions. C.P.L.R. §§ 3108, 3109, 3130, 3131, See Button v. Guererri, 298 A.D.2d 947. Her attorney and plaintiff, however, have persuaded the court that the potential objections to plaintiff's questions and the controversy they likely will

engender would only consume more of her and the parties' time and resources. Therefore the court resorts to time limits to prevent "unreasonable annoyance" or harassment. C.P.L.R. § 3103(a). See Bielat v. Montrose, 249 A.D.2d 103 (1st Dep't 1998). Rather than wasting the parties' and nonparty's time and resources on irrelevant questions, plaintiff will be required to use his limited time wisely, to focus his questions, or lose his opportunity for inquiry.

### III. POTENTIAL RELEVANCE AND USEFULNESS OF THE INFORMATION SOUGHT

#### A. The Deposition

Among the media's accounts associating plaintiff with Garson's bribery was a report that Garson, to curry favor with prosecutors, falsely claimed that plaintiff, a member of the Kings County Democratic Party judicial screening committee, was participating in a criminal scheme seeking payment from judicial candidates in exchange for the Democratic nomination. To support that claim, Garson surreptitiously taped a conversation with plaintiff in which Garson unsuccessfully attempted to incriminate plaintiff in this corruption of the judicial selection process.

In addition to Judge Pfau's duties as Deputy Chief Administrative Judge, during these events Judge Pfau also assumed the duties of Administrative Judge for Kings County. On May 3, 2003, the New York Post reported:

Brooklyn's administrative judge has warned fellow jurists to steer clear of Ravi Batra, a veteran lawyer who has close ties to Brooklyn Democratic leader Clarence Norman.

. . . .

One source quoted Pfau as saying, "If I ever get a call from Ravi Batra it won't be returned. Anyone who deals with him is on his own."

Aff. of Ravi Batra Ex. 2, at 1.

Insofar as the "Floater" episode of Law & Order may be found to depict plaintiff and link him to the Garson bribery scandal, plaintiff will bear the further burden to prove that the "Floater" account is false. Defendants may maintain that it is true, but, even if it is false, they interpose the defense that, because the media already had so sullied plaintiff's reputation, "Floater" caused him little further harm. E.g., id. Ex. 8 (V. Answer) ¶¶ 83, 87. To meet his burden and to counter defendants' defenses, plaintiff seeks to show that, even though the news media had linked plaintiff to the Garson bribery scandal, such a link was absolutely false, and he nonetheless enjoyed a positive reputation in the legal profession.

Given Judge Pfau's stature and influence in the legal profession, it is potentially relevant and useful for plaintiff to find out whether or not she in fact cast him in such a poor light to her fellow jurists: as a person to be avoided and a person associated with criminal activity, as portrayed by the New York Post article. Since the newspaper may not be compelled to disclose its sources for its report, Judge Pfau is plaintiff's only source for this information. N.Y. Const. art. 1, § 8; N.Y. Civ. Rights Law § 79-h; O'Neill v. Oakgrove Constr., 71 N.Y.2d 521, 527 (1988); CBS Inc. v. Vacco, 232 A.D.2d 291, 292 (1st Dep't 1996). See Phoenix Life Ins. Co v. Irwin Levinson Ins.



Trust II, 70 A.D.3d 476, 477 (1st Dep't 2010); Tannenbaum v. City of New York, 30 A.D.3d 357, 358-59 (1st Dep't 2006); Monica W. v. Milevoi, 252 A.D.2d 262, 263-64 (1st Dep't 1999); Kooper v. Kooper, 74 A.D.3d at 16-17. Therefore plaintiff may ask her whether she made the statements reported and, if she did, to whom she made them and the information on which she based the statements.

In this last regard, plaintiff may inquire whether his prior meetings with Judge Pfau in her capacity as Kings County Administrative Judge formed any part of her information base. Otherwise, he fails to show the potential relevance of those meetings, which are remote in time compared to other events relevant to this litigation. Sonsini v. Memorial Hosp. for Cancer & Diseases, 262 A.D.2d 185, 186-87 (1st Dep't 1999). Judge Pfau's personal opinion of plaintiff's ethical or professional stature is irrelevant, except insofar as her opinion was disseminated to the legal profession or the public so as to affect his reputation. See 22 N.Y.C.R.R. § 100.2(C); Metropolitan N.Y. Coordinating Council on Jewish Poverty v. FGP Bush Term., 1 A.D.3d 168 (Dep't 2003). Finally, assuming Judge Pfau made the statements in the Post article to other judges in the performance of her official duties, as reported, she may claim that her reasons for such communications with her fellow state officials are privileged. Gould v. New York City Police Dept., 89 N.Y.2d 267, 276-77 (1996); Marro v. Bartlett, 46 N.Y.2d 674, 682 (1979); New York Water Serv. Corp. v. Nassau County, 54

A.D.3d 368, 369-70 (2d Dep't 2008). See United States v. Roth, 332 F. Supp. 2d 565, 567 (S.D.N.Y. 2004).

B. The Documents

C.P.L.R. §§ 2307 and 3120(4) require that a subpoena seeking documents from a state official as part of disclosure be issued by the court. Therefore, insofar as the court denies Judge Pfau's motion to quash plaintiff's subpoena duces tecum and grants plaintiff's cross-motion for production of the documents sought by that subpoena, it is ordered by the court.

Consistent with the potential relevance or usefulness of information regarding plaintiff's association or disassociation with the Garson bribery scandal and his reputation in the legal profession, Judge Pfau shall produce the following documents in her possession, custody, or control requested by plaintiff's subpoena:

(1) Any documents regarding any allegations by Garson related to plaintiff's misconduct in the judicial selection process, as limited by plaintiff on the record April 26, 2011, or Garson's taping of a conversation with plaintiff in an attempt to incriminate him with corruption in judicial selection, also mentioned in the Post article of May 3, 2003.

(2) Any documents regarding Judge Pfau's statements reported in the Post article.

Insofar as any of the above documents pertain to Garson's judicial misconduct, they would not be confidential under New

York Judiciary Law § 45(1) if in the Deputy Chief Administrative Judge's possession, custody, or control. That statute protects only documents in the Commission on Judicial Conduct's possession, custody, or control. Insofar as Judge Pfau claims any document to be produced is privileged on any ground, however, she shall support that claim with a privilege log. C.P.L.R. § 3122(b). E.g., Matter of Subpoena Duces Tecum to Doe, 99 N.Y.2d 434, 442 (2003); Matter of Astor, 62 A.D.3d 867, 870 (2d Dep't 2009).

Plaintiff also seeks documents regarding letters to Judge Pfau from attorneys Randy Mastro and Jageshwar Sharma, both critical of the statements that the Post article attributed to her. She maintains that, other than the letters themselves, which plaintiff already possesses, no related documents are in her possession, custody, or control. Rather than securing an affidavit from her to this effect, as plaintiff will have an opportunity to depose her, he may ask her to confirm the absence of any such documents at the deposition. Likewise, should she find that no documents in one or both of the two categories delineated above are in her possession, custody, or control, she may so state at her deposition.

Plaintiff insists that, because attorney Mastro's letter refers to plaintiff's prior meetings with Judge Pfau, her documents regarding those meetings in turn relate to that letter. Again, except insofar as the meetings formed any part of the basis for her statements reported in the Post, if she made them,

an inquiry plaintiff may pursue at her deposition, he fails to show the potential relevance of those meetings to this litigation.

#### IV. CONCLUSION

Consistent with these standards and with the court's prior decisions compelling and limiting disclosure, the court grants Judge Pfau's motion and plaintiff's cross-motion to the extent of regulating Judge Pfau's deposition as follows, unless Judge Pfau and the parties stipulate otherwise. To minimize interference with Judge Pfau's official duties and disruption of judicial operations, plaintiff shall be limited to 90 minutes, and defendants shall be limited to 60 minutes, for Judge Pfau's deposition. Because defendants did not seek her deposition, the court allocates them less time than plaintiff, the requesting party. These time limits shall cover the time spent on questions and the witness' answers, exclusive of objections or attorneys' colloquy, as well as interruptions or breaks off the record.

Within 20 days after service of this order with notice of entry, Judge Pfau shall designate to the parties two or more alternative times, from which plaintiff may select, and a place in New York or Kings County for her deposition. The times may include evenings and weekends, subject to plaintiff's ability to secure a reporter. If Judge Pfau fails to make these designations, plaintiff may re-serve a subpoena with notice of the time and place for the deposition, consistent with C.P.L.R. §§ 3107 and 3110. Judge Pfau shall produce to plaintiff the

documents specified above at or before her deposition.

The court otherwise denies Judge Pfau's motion and plaintiff's cross-motion. This decision constitutes the court's order. The court will provide copies to plaintiff and to defendants' and Judge Pfau's attorneys.

DATED: December 7, 2012



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LUCY BILLINGS, J.S.C.

LUCY BILLINGS  
J.S.C.

**FILED**  
DEC 26 2012  
NEW YORK  
COUNTY CLERK'S OFFICE