IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

JOHN B. THOMPSON,

Plaintiff,

v. Case No. 07-21256 (Judge Adalberto Jordan)

THE FLORIDA BAR and
DAVA J. TUNIS,

Defendants.

PLAINTIFF'S RESPONSE TO THE COURT'S SHOW CAUSE ORDER AND MEMORANDUM OF LAW IN SUPPORT OF RESPONSE

COMES NOW plaintiff, John B. Thompson, hereinafter Thompson, as an attorney on his own behalf, and further responds to this court's September 24, 2007, Order to Show Cause, incorporating herein a memorandum of law in response to the court's order, stating:

THE PROFESSIONAL AND COURTEOUS PRACTICE AMONG LITIGATORS IS TO PROVIDE A COPY OF AN UNPUBLISHED OPINION TO PARTIES

This Honorable Court knows, as do knowledgeable litigation and trial lawyers, that when one cites as legal authority a case that is unpublished, then one provides a copy of the unpublished opinion to the parties involved so that they might have the opportunity to see the entire case. Such a courteous, professional practice serves a practical end—fairness. Otherwise, a party can "cherry pick" a sentence or phrase out of that obscure , unpublished opinion in order to falsely suggest that the opinion stands for a legal principal that it in fact does not.

This court cited in its Show Cause Order one and only one legal opinion, and an obscure one at that, which is not published. It is a 1990 case out of Alaska and thus it is

in a federal circuit whose rulings are not binding upon this District Court, since our District Court is in the Eleventh Circuit.

This court cited *Adams v. Nankervis*, 902 F.2d 1578 (Table), 1990 WL 61990 at *3 (9th Cir. 1990) and did so in order that it might supposedly reprove and threaten plaintiff herein with the following sentence from that unpublished opinion:

"No court need tolerate the use of obscene, indecent, and scandalous pleadings."

Plaintiff now does what this court did not do and which courtesy and fairness required it to do. He attaches for this court and for the parties and for whomever else will now read this filing the *actual* opinion in *Adams v. Nankervis* which plaintiff Thompson has had to spend a considerable amount of time and effort to secure. Anyone who thinks Thompson has acted improperly herein must read this opinion.

THE SOLE CASE CITED BY THIS COURT IN SUPPORT OF ITS ORDER TO SHOW CAUSE ISSUED AGAINST PLAINTIFF TURNS OUT TO CONSTITUTE *NO LEGAL AUTHORITY WHATSOVER* FOR ITS ERRONEOUS SHOW CAUSE ORDER

Any court, any lawyer, and any non-lawyer reading *Adams v. Nankervis* can readily ascertain, in a single reading of it, that the Ninth Circuit affirmed the authority of the trial court to enter sanctions against the *pro se* plaintiff not for doing what plaintiff Thompson herein has done—providing the best evidence of the selective prosecution by The Florida Bar and thus its denial to him of equal protection. Thompson provided this best evidence in response to this court's indication at the August 23 hearing, as well as the defendants' repeated and pled requests, that Thompson come forth with some *facts* supportive of the allegations of selective prosecution set forth in his Third Amended Complaint.

Instead of punishing what some predecessor in method to Thompson did, what the Ninth Circuit did was affirm the trial court's punishment of a *pro se* litigant who was abusing the discovery process and actually threatening the court and the parties with indecent, scandalous, arguably obscene statements like the following in the court's files. This is from the *Adams v. Nankervis* opinion:

> FN3. In his "Writ of Habaus (sic) Corpus to Challenge this Court for Cause" the plaintiff explained his answers: "The plaintiff has in fact written to leaders all over the world, so that they may very well ***shoot you white dogs like you should have been done the day you were born."*** He also indicated that "the plaintiff has been wanting to ***dump the beggar blood sucking United States*** and become a citizen of another country since the day he was born." *See* attachments to ER 21. Pursuant to this last statement, he filed a "Norice (sic) of Intent to Denounce Citizenship" elaborating that he wished to expose "***the corrupt and diseased mentality of the American anglican ... to the world, so that they can double team up on your kidnapper ass and extinct you from the face of the otherwise decent, earth***." *See* Record at Doc. 49. [emphases added]

Plaintiff Thompson asks this court, not rhetorically, as the October 5 deadline for Thompson to show cause approaches, what in the name of Heaven did Thompson do that in any fashion falls within the court's opinion in *Adams v. Nankervis*? Allow Thompson to answer that question with the only possible answer: NOTHING. Thompson did no threaten this court. He did not threaten the parties with obscene or indecent speech. He did not abuse the discovery process. There has been no discovery. Thompson gave the factual proof of The Bar's scandalous selective prosecution that is allowing a Florida SLAPP Bar complainant to distribute obscenity.

Thompson is not trafficking in obscenity or hurling obscenities at the court or the parties, as did Mr. Adams in the attached opinion. Thompson is simply calling upon this court to behold the obscenity trafficking of others, and the collaboration of The Bar in it, in order that Thompson might actually have a real hearing on his preliminary injunction.

This court, however, has turned the facts upside and misrepresented an opinion in a case to do great harm to Thompson to make one wonder how a court could do such a thing.

What is more, anyone reading *Adams v. Nankervis* (Thompson presumes this court read it before it cited it!) sees that near the bottom of page 2 of 3 in the attached opinion that the Ninth Circuit says this:

"This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3."

A reading of the Ninth Circuit's Rule 36-3 shows that this Eleventh Circuit District Court, in the person of Judge Jordan, has gone beyond even the violation that Rule in citing a case that the Ninth Circuit found non-authoritative ***EVEN IN THAT CIRCUIT!*** This is very troubling judicial behavior in a federal civil rights action in which the legal ethics *of the plaintiff* are being questioned not just by The Bar but now by this judge.

With all respect for this court and *because* of Thompson's respect for this court and its awesome duties, what is truly "scandalous" is that this judge presiding in this case would so thoroughly misconstrue and miscite an unpublished case, never providing it to anyone, and in doing so cherry pick one sentence from that obscure case to generate the misconception that what this district court was doing was simply following the lead of the Ninth Circuit in seeking punishment of Thompson for doing what a certain Willie Adams did in Alaska. Not only is this *Adams* case not apposite to the facts herein; it is not even authority in Alaska.

Thompson, then, in 31 years of practicing law, is not accused even by The Florida Bar of doing what this court has now done—knowingly misrepresenting a

holding in a case in order to unfairly achieve a result that is supported neither by the law nor the facts. It breaks Thompson's heart that this court would stoop to such a thing.

PROTECTING "CHILDREN"

It has been pointed out in Thompson's earlier responses to the court's Show Cause Order that the court knows full well that Thompson did not expose "children, "as it alleges, to "obscenity" by his filing. That assertion by this court flies in the face of the *fact* that another lawyer, The Bar's favorite SLAPP Bar complainant against Thompson, has been and is now again disseminating this "obscene" material to people of all ages at a site that at least one user of the site says is a site for "pedophiles."

The federal PACER court filing system, in which Thompson filed the evidence of The Bar's selective prosecution, is a paid-access site that most likely *not a single child* on planet Earth would access in order to find "obscenity." Why would any child do so when he or she can Google "gay news" and be taken right to this other lawyer's depictions of oral and anal sex get this material not only with no age verification but free of charge? There is not even a "search engine" at the PACER site to find such material. A child, having paid to get on the PACER site, would have to *know the specific case* to go to and *then* rummage through the pleadings, paying for access to specific pleadings as he or she goes, looking for something that is even beyond the proverbial needle in the haystack.

But what did ***this court*** manage to accomplish to put real, not imaginary "children" at risk? By entering its erroneous Show Cause Order and basing it upon a 17-year-old Alaska case that does not even remotely authorize what this court seeks to do to Thompson, the court has generated scores of Internet-reported stories on video game industry web sites, visited by tens of thousands of minors, many of which sites are

mentioning the obscenity-trafficking porn lawyer's web site and his gay porn portal site. Any young video gamer can read those stories and now go to the obscene material and be harmed by it, thanks not to Thompson but thanks to this court.

Thus, this court has accomplished what Thompson wanted to avoid and which would have been avoided if this court had not lurched into an ill-considered, unauthorized extra-legal abuse of its power to try to punish Thompson. If the court was *really* concerned about children and also concerned about what was in its court file, it would have summoned all the parties and told Thompson not to do it again, and Thompson would have abided that request. That is how a court that really wanted to "protect children" would have handled it. The court knew full well that the video game industry and the aforementioned obscenity trafficking lawyer are looking to seize upon anything this court does to Thompson to pile on, with this court's help. Thompson attaches as an exhibit hereto the incredibly false and defamatory article by the real obscenity trafficking lawyer which he wrote because this court has, at least *de facto*, made itself a collaborator in what he and The Bar trying to do to Thompson.

THIS COURT SHOULD EMULATE ANOTHER SOUTHERN DISTRICT OF FLORIDA JUDGE, U.S. DISTRICT COURT JOSE A. GONZALEZ, JR.

In 1987, when the honorable judge herein was still in law school, the undersigned undertook to secure, despite the threats made against him by the very lawyer who now distributes "obscenity" (the court's word) via his law firm web site to children of all ages, the first decency fines levied by the Federal Communications Commission.

Three years later, because of his success in doing so and despite the assault then upon Thompson not only by the aforementioned Bar SLAPP complainant but by The Bar itself (see Third Amended Complaint for the insanity ploy, etc.), plaintiff Thompson

undertook an effort to stop the illegal distribution of Miami rap group 2 Live Crew's obscene album *As Nasty As They Wanna Be* to children in 1990.

U.S. District Court Judge Jose A. Gonzalez, Jr., nominated as was Judge Adalberto Jordan to the federal bench by a Democratic President, entered the first verdict in history on planet Earth that a sound recording was obscene. Plaintiff herein, Thompson, was the successful *amicus curiae* in that case.

Why is this "ancient history" recited? Because U. S. District Court Judge Jose A. Gonzalez, Jr., a judge in this same Southern District of Florida, had no problem whatsoever with a ***public*** court file's containing obscene, sexually graphic lyrics, as the best evidence of what was on 2 Live Crew's album. Judge Gonzalez understood that if children as young as ten years of age were going to be mentally molested with this obscene material by commercial interests trafficking in this obscenity, then the public not only had a right but a duty to know what obscenity they were being molested with. Judge Gonzalez had no problem allowing the best evidence of the obscenity to be placed in a *public* court file. *Thompson and others put it there*. Judge Gonzalez, rather than threatening Thompson, thanked him. My, how times have deteriorated.

Furthermore, Judge Gonzalez did not go to some obscure, unpublished case which didn't stand for what he said it did, to try to slap down Thompson for putting this "obscene" material into a public court file as part of the proof of the recklessness of others disseminating it to children in the public square. Indeed, Judge Gonzalez himself allowed *the public* into the trial, and he put graphic descriptions of the sexual content of the obscene album right into his opinion, as Thompson recalls. Further, the Eleventh Circuit, which heard the appeal of the verdict, didn't prudishly sanitize the public court

file in that case as this court has in this one. Even in that marginally more innocent age, Judge Gonzalez and the Eleventh Circuit understood what Justice Potter Stewart was getting at when he said "I know obscenity when I see it." What you don't see, you can't see.

In entering its legally unsupported and unsupportable show cause order, this court fails to follow the lead of Judge Gonzalez and the Eleventh Circuit in the 2 Live Crew case, which the undersigned counts as a triumph for America's parents because finally it became known to parents how vile the material was that was being distributed to their children behind their backs. The album was depicted as "a party album," just as miscreants like the SLAPP-happy lawyer depicts this as "adult material for your pleasure." It is straight from Hell, and it smells like smoke. And yet this court would have Thompson submit only a sterilized "link" to this sewage, which it would then ignore.

If it were up to this court or to the obscenity trafficking attorney who is distributing this material to anyone of any age, no one would know how vile is the material that The Bar is protecting. That was the point in filing it. No judge could then stick his head in the sand.

CONCLUSION: KISMET AT THE UNIVERSITY OF MIAMI LAW SCHOOL LIBRARY

With this court's entry of its September 24 show cause order, plaintiff Thompson has had to spend most of yet another of his Sundays he would have liked to have spent with his family at the University of Miami Law School's Library. But doing so provided the following serendipitous events, for which he is thankful to God if not to this court:

Upon walking into the front door of the law school library at noon, Thompson was assaulted by the following words, at least eight inches high, on the large tote bag of a female student:

MY BIG FUCKING TOTE BAG.

The undersigned, who thought he had seen it all, walked up to the student, surrounded by her fellow students, and asked her, "Are you a law student here?" "Yes I am," she said smiling. "And you think it appropriate, as an aspiring lawyer, to have the 'F" word on the side of your tote bag?" She had no response.

This is what we have come to, Your Honor. When a Florida lawyes can use his official law firm web site to distribute "obscenity" to kids despite The Bar's and the Florida Supreme Court's insistence that lawyer web sites must not diminish "the dignity of our profession," and when courts of law perform the moral equivalent of citing Paul Revere for disturbing the peace as a penalty for sounding the alarm, then we have a judicial system, a legal education system, and a society that have all lost their way.

This court now threatens Thompson, because he brought it a) evidence of a crime and b) the best evidence of The Bar's selective prosecution, when what this court should have done was immediately called or written the U.S. Attorney and demanded that a lawyer trafficking in "obscenity" (this court's own word) to people of all ages be prosecuted.

Back to U of M: Thompson then sat down with the always helpful and sunny lady at the U of M Law Library who helps law students and lawyers alike find even unpublished, inapposite opinions scrawled in the Alaskan ice fields. When the

undersigned asked her about the *Adams v. Nankervis* case she asked what this was about, and the undersigned told her. "Why would any judge possibly think that placing material in the PACER federal court filing system would be seen by a single child?" Good question, to which there is ***no*** answer.

The undersigned then told her about the "MY BIG FUCKING TOTE BAG." This lady, who shares the undersigned's generation and not this court's, suggested, "I wish you would write the Dean of the Law School and mention that it is inappropriate for people who want to be lawyers to represent themselves in such a way, at the law school no less!" Good point, and Thompson will do just that.

Now, does this court think that the Dean of the U of M law school, from which Judge Adalberto Jordan graduated, will be offended by Thompson's use of the 'F" word or rather by his student's plastering of it, in giant letters, on her tote bag with which she parades on the law school campus? Is Dean Lynch going to report Thompson to The Florida Bar for *his* use of obscene language, and in doing so borrow the illogical logic of this court?

If U of M's Dean Lynch is more troubled by the message than by the messenger, then he will be a Dean who understands that any law student who rejects even the notion of common decency is unfit to practice law in a legal system that presumes there is such a thing as "right and wrong."

Only in a world turned upside-down by moral relativism and convenience at all costs, would a federal district court cite *Adams v. Nankervis* and in doing so adopt the methods of The Florida Bar and an obscenity trafficker in Ft. Lauderdale.

This court has proven, inadvertently, it cannot be fair. For that he is grateful.

WHEREFORE, Thompson respectfully asks this court, in light of all of the above, especially in light of the fact that the legal "authority" it cites for the purpose of harming and threatening Thompson, immediately do one of the following: a) either vacate its baseless, erroneous order, or b) enter an order finding that Thompson has satisfied its concerns expressed in the order.

If this court fails to do one or both of the above, then other remedies, necessary and proper, will have to be sought. Thompson has done nothing wrong, and this court knows it.

I HEREBY CERTIFY that this has been served upon record counsel this 30th day of September, 2007, electronically.

/s/ JOHN B. THOMPSON, Plaintiff
Attorney, Florida Bar #231665
1172 South Dixie Hwy., Suite 111
Coral Gables, Florida 33146
Phone: 305-666-4366
amendmentone@comcast.net