IN THE UNITED STATES ELEVENTH CIRCUIT COURT OF APPEALS

In re:

John B. Thompson,

Petitioner,

v.

The Florida Bar, Dava J. Tunis,
Frank Angones, and John Harkness,

Respondents.

PETITION FOR WRIT OF PROHIBITION

COMES NOW petitioner, John B. Thompson, (Thompson) an attorney on his own behalf, and pursuant to Federal Rules of Appellate Procedure, Rule 21, petitions this honorable court for the entry of a writ of prohibition to be entered against U.S. District Court Judge Adalberto Jose Jordan, Southern District of Florida, stating:

THE PARTIES

Thompson is a citizen of the United States, more than eighteen years of age, a resident of the State of Florida, domiciled in Miami-Dade County, an attorney practicing law in continuous good standing in Florida since 1977, and plaintiff in District Court Case No. 07-21256, Southern District of Florida, Thompson v. The Florida Bar, *et alia*.

The Honorable Adalberto Jose Jordan (Jordan) is a United States District Court Judge, Southern District of Florida, presiding over the aforementioned case.

The Florida Bar (The Bar) considers itself an "arm" of the Florida Supreme Court, and as such regulates the practice of law in Florida.

Dava Tunis (Tunis) is a Miami-Dade County Circuit Court Judge serving as "referee" in certain Bar disciplinary proceedings against Thompson.

Frank Angones (Angones) is currently president of The Bar.

John Harkness (Harkness) is the long-time executive director of The Bar.

THE FACTS

Off and on for twenty years, The Bar has illegally and unconstitutionally used its "disciplinary" powers to try to infringe upon Thompson's First Amendment rights of speech and religion, in violation of federal civil rights laws. For example, in 1989, The Bar, at the behest of both a porn industry lawyer by the name of Norm Kent and the former chairman of the Florida ACLU, The Bar secured from the Florida Supreme Court an order threatening Thompson with his immediate suspension from the practice of law if he did not submit to a battery of psychiatric and psychological tests to be administered by The Bar's own chosen psychiatrist and psychologist.

The Bar's, the porn industry lawyer's, and the ACLU former chairman's assertion was that "Jack Thompson is so obsessed in his efforts against pornography that he is mentally disabled by that obsession and thus unfit and unable to practice law."

While allegedly mentally disabled, Thompson had secured the first decency fines ever levied by the Federal Communications Commission (FCC), against three "shock radio" stations in Miami whose peripatetic host, Neil Rogers, was represented by the aforementioned Norm Kent. Thompson had commenced efforts before the FCC because Rogers was, according the Adam Walsh Foundation, founded by John Walsh (*America's Most Wanted* host) "soliciting teenaged boys for sex on the public airways." That accurate statement was made in a letter to the FCC by the Foundation's Executive

Director after he listened to tapes provided the Foundation by Thompson. This led to testimony before the United States Senate Commerce Committee, which then led to the FCC fines, which would not have been levied and collected but for Thompson's *pro bono* efforts while, according to The Bar, "mentally disabled." The Bar also asserted that Thompson was suffering from "brain damage."

As a result of The Bar's coerced mental health examination of Thompson, reported in all major media in South Florida, Thompson is the only officially Bar-certified sane lawyer in the State of Florida. The Bar's insurance carrier paid Thompson damages for what it had done to sully Thompson's career. The psychiatrist and psychologist, chosen by The Bar and not by Thompson, found that Thompson's IQ was 150, that he suffered from no brain damage, and that "Thompson is simply a Christian acting out his faith in a public-spirited fashion."

On February 24, 2004, Thompson heard nationally-syndicated "shock jock" Howard Stern air the following comment on his program, while interviewing the man who had sexual intercourse with Paris Hilton and commercially distributed the video taped romantic interlude:

"Ever bang any famous nigger chicks? What do they smell like? Watermelons?

This indecent comment was aired outside the "safe harbor," at approximately 8 am, in violation of federal criminal statute 18 USC 1464, which statute has been held constitutional by the United States Supreme Court in *FCC v. Pacifica*.

Thompson transmitted a partial transcript of the above broadcast to Clear Channel Communications within an hour of its airing, and Clear Channel, the largest radio

broadcaster in America, withdrew the *Howard Stern Show* from all of its radio stations. In doing so, Clear Channel quoted verbatim Thompson's letter to it.

Thompson also provided this transcript to Jordan Goldstein, chief legal counsel to FCC Commissioner Michael Copps, a Democrat on the five-person FCC who has been the most active advocate on the Commission for the enforcement of broadcast decency standards. Goldstein promised Thompson that the Commission would act upon this latest criminal act by Stern.

Indeed it did, fining Clear Channel $495,000 for indecent material aired by Stern on its stations. Clear Channel paid the fine. Thompson was the official FCC complainant. The *Howard Stern Show* never returned to any Clear Channel stations. Stern complained, "This lunatic lawyer in Miami got me off the air."

On August 16, 2004, the *Howard Stern Show,* despite having been removed from South Florida airwaves by Clear Channel, returned to this part of the world because Beasley Broadcast Group, Inc., a 42 station broadcaster in Naples, Florida, decided to place it on its powerhouse station WQAM-AM. *Stern* aired in morning drive, with children in the audience, just before the WQAM mid-day host, the aforementioned Neil Rogers. Rogers' program had been fined by the FCC again in 2000 (with one of the few decency fines handed down during the Clinton Presidency) through no effort of Thompson. Some other "lunatic" had decided to proceed against Rogers' illegal activity. The Rogers fine was paid.

Stern while on WQAM had female amputees on his program describing the lubrication of their "stumps" and placement of them in men's anuses to achieve orgasm. This, and other "entertainment" like it was being aired by Stern on Beasley's WQAM-

AM outside the FCC's 10 pm to 6 am safe harbor in violation of federal criminal law 18 USC 1464.

When Thompson heard this indecent material, he filed formal FCC complaints against Beasley, and in doing so provided proof to the FCC that such material was indeed aired.

Upon filing such complaints, Thompson was immediately threatened in writing by the aforementioned porn industry lawyer, Norm Kent, who told Thompson that unless he "apologized" for filing a formal complaint with the FCC, then he, Kent, would file lawsuits and Florida Bar complaints against Thompson, and that he would seek new lunacy proceedings by The Bar like the one that turned out so disastrously for him and The Bar years earlier. Such a threat of filing an ethics complaint unless Thompson "apologized" is, of course, unethical under Florida Bar Rules and may constitute the criminal act of extortion.

Thompson did not apologize. The FCC proceeded. Mr. Kent filed his SLAPP Bar complaints. SLAPP is an acronym for "strategic litigation against public participation." The increase in retributive litigation by corporations intended to deter and silence critics has alarmed various legislatures, with the result that some of them, including Florida, have passed anti-SLAPP statutes.

The Florida Bar, eager apparently to try to "get it right this time," has now renewed its demand that Thompson be psychoanalyzed in yet another brazen attempt to pathologize Thompson's faith-based and successful activism against the shock radio industry. In other words, The Bar has taken Norm Kent's bait again.

Not certain of Kent's capabilities to pull this off, having failed once before, Beasley retained the prestigious Miami law firm of Tew Cardenas LLP to file a new wave of SLAPP Bar complaints against Thompson formally joined in by Beasley Broadcast Group's CFO Caroline Beasley. See http://www.bbgi.com. Tew Cardenas partner and SLAPP complainant Larry Kellogg informed Thompson's lawyer that Al Cardenas, former Florida GOP Chairman, joined in the SLAPP-happy activity to punish Thompson for writing then Florida Governor Jeb Bush about the criminal activity occurring on South Florida airwaves with the help of Cardenas' law firm, Tew Cardenas LLP. Cardenas does not really practice law but is a lobbyist in Washington and Tallahassee who has traded on his cash bundling for the Bush-Cheney campaigns and the Jeb Bush campaigns to gain access to both Bushes. Cardenas enjoys what is called "Super Ranger" status with the Republican National Committee because of this cash bundling. Tew Cardenas has bragged at its law firm web site, www.tewlaw.com, that it enjoys extraordinary access to certain politicians.

Thus, Beasley's Tew Cardenas SLAPP complaints against were designed to a) serve Beasley's corporate interests and b) protect Cardenas' influence in Tallahassee and in Washington.

Because of The Bar's decision to proceed with these SLAPP Bar complaints against Thompson, and because of The Bar's stunning violation of constitutionally-guaranteed due process, equal protection, and First Amendment rights in pursuing these SLAPP complaints, Thompson filed in the Southern District of Florida's District Court Case No. 07-21256, over which now presides Judge Jordan.

One of Thompson's grounds for his suit is The Florida Bar's selective prosecution of him, which a substantial line of cases from the U.S. Supreme Court on down, deem to be a denial of equal protection. Thompson will not burden this court now with citations of those cases.

The Bar, represented ably by Barry Richard of the Greenberg Traurig law firm, has improperly asserted, at the motion to dismiss stage, that Thompson cannot prove "selective prosecution," nor can he prove "bad faith," "extraordinary circumstances," or any of the other clear exceptions to federal court "abstention" from interfering with state regulatory, judicial, or quasi-judicial proceedings. The Bar's decision to argue its own set of "facts" rather than merely asserting that Thompson's civil rights action fails to state a cause of action within its four corners has been allowed by Judge Jordan as he is presently decided whether to dismiss Thompson's well-pled complaint.

Of course, abstention turns on factual determinations of "bad faith," "selective prosecution," etc., after what should be evidentiary proceedings before either the court or the magistrate, as indicated in *Middlesex Ethics Commission, v. Garden State Bar Association*, 457 U.S. 423 (1982).

Since Judge Jordan has allowed an improper pleading of facts by The Bar, over the objection of Thompson, Thompson provided to the court the best evidence, which The Bar asserted did not exist, that The Bar was selectively prosecuting Thompson for alleged and fanciful "ethics" violations while ignoring real ethics violations by other lawyers, most notably Thompson's actual SLAPP complainants.

It is noted, parenthetically, that The Florida Bar has itself inadvertently and embarrassingly identified its chronic propensity to pursue Bar complaints against its

members selectively. A formal poll of Florida Bar members by then outgoing Florida Bar President Miles McGrane found that many within our ranks have been distressed by our Bar's practice of protecting influential lawyers while harassing sole practitioners like Thompson who are not part of what The Bar poll itself called "the good ol' boy network." Thompson calls it "The Club." Indeed, a former prosecutor for The Florida Bar has told Thompson that The Bar has a "Watch List" with which it monitors specific lawyers it finds inconvenient.

For example, Tom Tew, name partner in Tew Cardenas, stalked one of Thompson's clients, JR Rosskamp, to persuade her to drop Thompson as her lawyer. Despite repeated pleas both to The Bar and to Tew, Tom Tew would not stop stalking her. As a result, she has suffered a stroke and permanent physical disability. This matter is a subject of an upcoming mediation. The Bar, in refusing even to consider Tew's behavior, stated in writing that since he was possibly stalking Thompson's client but was not doing so on behalf of a billable client, The Bar was not interested. This is so bizarre that Thompson could not possibly make this up. Thompson has the letter.

The most shocking example of selective prosecution by The Bar, which if proven should result in a dismissal of all of the baseless SLAPP Bar complaints against Thompson, is found in The Bar's protection of the aforementioned porn lawyer, Norm Kent. Mr. Kent, for example, has admitted in a Broward County Circuit Court case that he consumes marijuana without a medical prescription. Mr. Kent is a national director of NORML. Mr. Kent owns and operates his official, Bar-regulated web site at www.normkent.com . The Florida Supreme Court has determined that such sites are to be operated in accordance with The Bar's advertising rules, which heretofore did not

apply to lawyer's Internet sites. The Florida Supreme Court now says, however, that such sites must not in any fashion impact deleteriously upon the "dignity of our profession.

On the home page of www.normkent.com, Mr. Kent encourages all visitors to visit his new site at www.nationalgaynews.com. This site is a gay porn portal featuring material such as that found at www.justusboys.com.

The Bar's referee, Ms. Tunis, has improperly blocked all meaningful discovery in the pending state disciplinary proceedings, denying Thompson thereby all of his constitutional defenses, including his selective prosecution defense.

Since The Bar was serially asserting, improperly, at the motion to dismiss phase before Judge Jordan that Thompson could not prove The Bar's selective prosecution of Thompson Kent and The Bar's unconscionable protection of Kent, Thompson submitted the best evidence available to him and to the court of The Bar's selective prosecution, since The Bar was being allowed to assert, improperly, that no such evidence exists.

On September 19, 2007, Thompson submitted to Judge Jordan three sexually graphic pictures offered by Norm Kent at his web site to people of all ages, with no age filters. In making this submission to the court, via the court's electronic CM/ECF system, Thompson preceded these three graphic pictures with a large **WARNING** in red that what followed on the next two pages were sexually graphic materials being lined to and offered through Kent's two web sites. Anyone proceeding further was warned what followed, and thus anyone who went further had chosen to do so.

It should be noted what this court knows: The CM/ECF/PACER electronic filing system is a system available only to record counsel and to members of the public who

pay for access to it. There is no "search engine" at PACER. A child, upon deciding to pay for the service, would have to know what file to go to and specific pleadings to go to in what are undoubtedly millions of filings in the PACER system. On the other hand, anyone can "Google" gay news and readily find the www.justusboys.com material offered by Norm Kent to people of all ages for free.

One user of this site calls it a site designed for "pedophiles," given its clear emphasis of older men have sex with younger ones. This is particularly troubling in light of the recent arrest of a Florida Assistant US Attorney, Mr. Atchison, who flew from the Panhandle to Michigan to have sex with what he thought was a four-year-old girl. Mr. Atchison's exploits would have been impossible, in the form they took, without the Internet which Mr. Kent fully aware of the dangers.

Judge Jordan was apparently shocked by what he saw that Thompson had filed. Thompson's purpose was to show, in dramatic and irrefutable fashion, The Bar's protection of Kent, its selective prosecution of Thompson, and the consequences thereof. The Bar had been asked to investigate and inquire into Mr. Kent's use of his law firm web site to promote this material. The Bar was not interested and still is not interested. The "enemy of its enemy is its friend," it seems. Thompson, before, submitted this material to Judge Jordan, solicited and obtained an opinion from a nationally recognized and respected member of the law enforcement community familiar with obscenity prosecutions. This expert stated to Thompson that the material being trafficked in by Mr. Kent is clearly "obscenity" under *Miller v. California*.

Indeed, Judge Jordan entered an order (attached hereto) as soon as he saw this material, calling it "indecent," "offensive," and "obscenity." However, Judge Jordan

entered a Show Cause Order against Thompson, telling him that he had until October 5 to show cause why Thompson should not be turned over by him to the Sothern District's *Ad Hoc* Committee for disciplinary action against Thompson.

In this show cause order, Judge Jordan cites an Alaska case, *Adams v. Nankervis* as the legal basis for his threat against Thompson. As the attached exhibits show, this case involved a *pro se* criminal defendant who was threatening, in the court file, to kill the judge and the litigants. The Ninth Circuit, in issuing the opinion, stated that it was not to be cited as authority. *Nankervis* has nothing to do with what Thompson did.

Judge Jordan, in his show cause order, this court will note, states that Thompson has exposed "children" to "obscenity" with his filing in the paid-for PACER system. This is demonstrably false for the above and other reasons.

Even though Judge Jordan gave Thompson until October 5 to show cause why he should not be turned over to the *Ad Hoc* Committee, Judge Jordan short-circuited his own order and turned Thompson over to the Committee three days early on October 2, prior to having any hearing on the matter.

Norm Kent, of course, generated national publicity claiming that Thompson's legal career was now over, since a federal judge had found him to be an "obscenity trafficker."

When Thompson plaintively requested a hearing on the show cause order, after Judge Jordan had violated his own deadline therein, and upon Thompson's showing that sitting on the Committee were law partners of Greenberg Traurig's Barry Richard, law partners of Florida Bar President-Elect John White, law partners of Thompson's designated reviewer, Steven Chaykin, who has called people who oppose gay adoption

"enemies of The Bar" and "outside the core values of The Bar," Judge Jordan apparently had second thoughts about his precipitous referring to Thompson to the *Ad Hoc* Committee for the purpose of disciplining him.

Thompson had asserted, in asking for a hearing on the matter, that what the court had done was akin to citing Paul Revere for disturbing the peace with his Midnight Ride.

At an October 9 hearing, Judge Jordan asserted that he never said Thompson had endangered "children." That assertion is right in the order. Judge Jordan demanded that Thompson admit that he had done something wrong in submitting this evidence of criminal activity to it. Thompson informed the court that it had, appropriately, tremendous power, but it did not have the power to command Thompson and violate his conscience by stating that he had done something morally, ethically, or legally wrong.

Judge Jordan retorted and asked "How can I permanently vacate my show cause order" if you do not admit you acted improperly?" Thompson responded, as best he can recall his comments, as follows:

"At the risk of offending Mr. Kent, who is eagerly sitting in this courtroom to see what this court will do, as Mr. Kent has actually sought, in the past, a court order commanding Thompson to cease quoting Scripture, I should like to quote one passage of Scripture to answer the court. When Jesus Christ was confronted with the trick question from the Pharisees whether a person of faith should pay taxes to Rome, Jesus asked, 'Whose face is on that coin?' Someone answered, 'Caesar's.' Then render unto Caesar what is Caesar's and unto God what is God's.' The point, Your Honor, in this context, is that if you order me not to do this again, then I, being a lawyer as well as a Christian, have no choice but to obey the civil authority, as the Apostle Paul, echoing Jesus,

counseled. The fact that I may disagree with this court's opinion and findings in this or any regard does not entitle me to violate the law and violate court orders. Others do that. So if you tell me you want me, and you order me, not to do this again, then I would be as crazy as The Bar says I am, to do otherwise. The problem, Your Honor, is that what you should have done is summon me down here, along with counsel for the other parties, if you wanted it not to be *ex parte* and tell me your concerns, and then I would have done what you ordered me to do. Instead, you went immediately to Defcon One and gave Mr. Kent the opportunity to smear me as an 'obscenity' trafficker nationally."

Apparently satisfied, Thompson, opposing counsel, and the court got on with a hearing on defendants' motions to dismiss.

But apparently Judge Jordan could not let the issue go. He has since entered an Omnibus Order, attached hereto, attacking Thompson personally, as has been his custom in his orders. Thompson filed a new motion to recuse, Judge Jordan having repeatedly gone out of his way to engage in wholly improper, injudicious, prejudicial, and baseless *ad hominem* attacks upon Thompson. Jordan's latest order contains numerous factual errors and knowing misstatements which would convince any lay person, familiar with the facts, that Judge Jordan cannot be reasonably expected to be impartial toward Thompson.

Then, Thompson was delivered on October 17, 2007, the "last straw" than convinced him that seeking the extraordinary writ of prohibition from this Circuit Court of Appeals must be done. Because of the national news coverage generated by Judge Jordan's show cause order, most notably at the ABA Journal's Internet site, Thompson was contacted by a number of constitutional experts stunned by Judge Jordan's improper

order and actions. The news coverage was picked up by ALM's *Daily Business Review*, which is the South Florida legal community's newspaper. On the afternoon of October 17, the *Review's* reporter interviewed Thompson about the "obscenity" matter, and in doing so, the reporter informed Thompson that the Southern District's Chief Judge Federico Moreno had entered an administrative order pertaining to CM/ECF/PACER filings *subsequent* to Judge Jordan's show cause order. The Administrative Rule 6 (c) declared it improper to file sexually explicit materials in such court files for any reason whatsoever. It is not clear if the Rule is improper and if it was properly formulated and imposed. That is of little concern to Thompson.

What is extremely troubling is what is now known: Judge Jordan collaborated with Chief Judge Moreno to come up with this new rule after Thompson did his filing, and then Judge Jordan sought to impose it upon Thompson, claiming there was some rule against filing such materials. This is an *ex post facto* stunt by Judge Jordan prohibited, clearly, by Article I, Section 9 of the United States Constitution. Because there was no such rule against doing what Thompson did, Judge Jordan had come up with this obscure, non-authoritative, inapposite *Adams v. Nankervis* case out of Alaska to assert the pretence that there was such a rule.

Putting it another way, if what Thompson did was so clearly unethical and so deserving of public humiliation by means of a show cause order, then why in the world did Chief Judge Moreno have to enact and impose a new rule that declared improper what Thompson had done. In other words, the imposition of this new rule proves there was no rule when Thompson did what he did. Thompson also reads Rule 83, Federal

Rules of Civil Procedures as strictly forbidding a District Court from imposing a "rule" in just this fashion.

Thompson has moved Judge Jordan to recuse himself from this case, as his serial attacks upon Thompson, his patent misstatement of the law, his fabrication of facts that are not facts, his entry of orders that patently conflict with one another, his violation of his own show cause order by closing the window on October 2 that he ordered would be open until October 5, and so on, show a lack of impartiality.

Judge Jordan will not disqualify himself. Thompson is entitled to a fair judge. He does not have one, as the actions of Judge Jordan indicate. Thompson, in practicing law for nearly 31 years, is used to adverse rulings from judges. That goes with the territory. That is not what prompts this petition.

What we have, sadly, in Judge Jordan, who enjoys, a fine reputation, who has, for whatever reason, gone off kilter in this case. Judge Jordan has borrowed some of the methods of The Florida Bar in using "discipline" against Thompson in a case about "discipline." Judges make mistakes. That's fine. There are no Solomons among us. But when a judge fabricates a "rule" that doesn't exist and then gets in place a new rule, never disclosing to the target of his wrath the new passage of the new rule, and when that judge attacks the whistleblower rather than the one who is truly trafficking in "obscenity" to all people of all ages, then plaintiff clearly has, presiding over him, a judge who cannot be fair because he has inserted himself into the case in an improper and unthinkable fashion.

Wherefore, petitioner Thompson petitions this court for entry of the writ of prohibition, thereby ordering Judge Adalberto Jose Jordan to step down from this case so that another distinguished jurist might preside in this matter.

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