

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 NOTICE TO THE COURT AS TO THE FLORIDA BAR'S
DEMAND THAT THOMPSON BE ASSESSED AS TO MENTAL CAPACITY**

COMES NOW plaintiff, John B. Thompson, hereinafter Thompson, as an attorney on his own behalf, and files this notice with the court, stating:

PREFACE

1. The court has been previously apprised, in the complaint herein, that since the early 1990s The Florida Bar has repeatedly abused its “disciplinary” powers to infringe upon plaintiff Thompson’s First Amendment-protected, faith-based speech against the illegal distribution of adult and adult-rated sexual and violent material to children. This material has included indecent material broadcast on the public airwaves in violation of 18 USC 1464 and “Mature-rated” video games fraudulently and illegally marketed and sold to children as young as ten years of age, despite their age-restricting rating.

2. The two companies engaged in this illegal commercial activity have been, Beasley Broadcast Group, Inc., (WQAM-AM) and Take-Two Interactive Software, Inc., whose lawyers have filed SLAPP Bar complaints against Thompson to “shoot the messenger” in an attempt to discredit his message and sully his success. The Bar has

enthusiastically and illegally pursued these SLAPP complaints and in doing so has violated not only Thompson's First Amendment petition, speech, religion, and assembly rights, but also his right to due process and equal protection by virtue of the over-the-top means by which The Bar is proceeding. The Bar's lunacy stunt is the worst example of how out of control, how violative of constitutional guarantees The Bar has been.

3. Thompson has enjoyed notable successes against these two scofflaw entertainment entities while allegedly *mentally incapacitated*. If Thompson has been mentally incapacitated while achieving these successes, that does not speak well of the abilities and the mental capacities of his opponents' counsel.

4. As this court has been apprised, the first time The Bar tried to pathologize Thompson's faith-based public activism, the illegal effort was done so with an order from the Florida Supreme Court and resulted, of course, in a formal, official finding by The Bar's own mental health care experts, who exhaustively examined Thompson, that he was perfectly sane and simply "acting out his Christian faith." The Bar's carrier paid Thompson money damages for the privilege of being Florida's only officially Bar-certified sane attorney.

5. Now, more than fifteen years after that illegal assault upon Thompson and his constitutional rights by The Bar collaborating with the porn industry, The Bar has recently and repeatedly insisted, in writing, that Thompson once again get onto its "couch" for the purpose of the evaluation of his mental competency and possible disability by the Florida Lawyers Assistance program. The Bar has, nonsensically, required Thompson to plead guilty to all sorts of ethics breaches he did not commit, and

to so plead while in a state of alleged (according to The Bar) mental incapacity. The assessment is to occur *after* the guilty plea, which sequence really is “crazy.”

6. Further underscoring The Bar’s foolish and illegal approach is that this plea-then-assessment scenario was approved by Florida Bar Governor Ben Kuehne, who is an ACLU ideologue, a recipient of a Department of Justice “target letter” alleging he is a Medellin cocaine cartel money launderer, and Thompson’s Bar “designated reviewer” during the three-year assault upon Thompson’s First Amendment and other constitutional rights. Kuehne is the last person that The Bar could and should have chosen to serve in this capacity, unless our judicial system is going to do away with removal from juries individuals with an abiding, demonstrated bias against defendants.

7. By way of final prefatory comment, The Bar, in repeatedly demanding that Thompson submit to a very public order that he be assessed for mental incapacity after he pleads guilty, has patently violated its own Bar Rule 3-7.13, which requires that such a demand can only be put forth to a respondent after The Bar has:

- a. Received a sworn complaint alleging mental illness;
- b. Opened a formal Bar file, with a case number;
- c. Conducted a full investigation of the sworn allegations as to mental incapacity;
- d. Informed the respondent of what the *specific* mental health allegations are and what *specific* acts have given rise to these concerns;
- e. Called the respondent before a grievance committee whose members can eyeball the allegedly impaired lawyer; and
- f. Then and only then made a demand for an assessment by experts after the Grievance Committee has found probable cause.

8. The Bar has done none of this, despite repeated requests from Thompson that The Bar follow its own Rules-mandated procedures. The reason The Bar is not following its own Rules in this mental health assessment ploy is that The Bar knows full well that Thompson is not incapacitated.

9. In point of fact, The Bar has threatened Thompson with permanent disbarment, in writing, if he does not first plead guilty and then submit to The Bar's own mental health assessment. The disbarment threat hangs over Thompson like a stolen sword of Damocles, used by The Bar to try to intimidate Thompson into the psych evaluation, the public reportage of which will alone end his legal career. This is criminal extortion, and Thompson has gone to law enforcement officials about it.

**FILING OF FORENSIC PSYCHOLOGICAL EVALUATION
BY OREN WUNDERMAN, PH.D.**

10. Thompson has decided to beat The Bar at its own extortion game. Commencing on August 6, 2007, Thompson underwent an extensive forensic psychological evaluation by Dr. Oren Wunderman, who is a well-known and widely-respected forensic psychologist here in Miami, Florida.

11. Dr. Wunderman is the Executive Director of the Family Resource Center of South Florida, Inc., 155 South Miami Avenue, Suite 500, Miami, Florida 33130. What he does and what the Center does is found at <http://www.frcflorida.org/contactus.html>.

Thompson, who had never met Dr. Wunderman before until this month, asked a number of trial lawyers in this jurisdiction who would be the best, most respected forensic psychologist who could evaluate Thompson fully and fairly. Dr. Wunderman conducts such evaluations routinely for the Florida court system. In fact, Dr. Wunderman has formally lectured, of all people, The Florida Bar as to how forensic evaluations are to be

professionally and reliably done. If The Bar were to criticize Dr. Wunderman, it would not have a leg to stand on because it has acknowledged him as a fine expert in this field.

12. Dr. Wunderman's impressive and extensive *curriculum vitae* can and will be provided upon appropriate request. But The Florida Bar knows full well who this man, this reliable expert in such matters, is.

13. Dr. Wunderman's five-page report of the results of Thompson's forensic psychological evaluation will be filed with this federal court when it is received today in a form that allows it to be filed in the court's required "pdf" format, but here is the bottom line, in Dr. Wunderman's words, *verbatim*, found in his "Summary and Impressions," as to whether The Bar's hurtful allegations and demands as to Thompson's incapacity have any basis whatsoever:

"Concerning Mr. John Thompson, the overall impression is that of a socially committed, and religiously devout man, of Superior Intellectual Functioning, who does not suffer from any major mental illness or impairment. He is deeply committed to personal betterment and social progress which he feels involves the regulation of exposure of minors to pornography, obscenity and violence.

Concerning the accusations that Mr. Thompson displays 'obsession' with pornography, obscenity and/or violence presented to minors, Mr. Thompson does not report or display any of said obsessions. That is, his self-report, his clinical presentation and his relationships with his wife and two close personal friends reveal no evidence of fixation with pornography, obscenity and/or violence. To the extent that testing data may reveal such obsessions [which testing was extensively

done by Dr. Wunderman of Thompson in administering widely-accepted psychological evaluation tests], there was no evidence of this theme in his ideation.

Mr. Thompson appears to be a thoughtful, prosocial and erudite man whose life is anchored, fortified and enriched by his Evangelical Christianity. I find no evidence that his faith distorts, clouds or impairs his personal or professional judgment.

While Mr. Thompson displays certain areas of personal distress and difficulty, such problem areas are well within the range from which attorneys can and do practice competently and even expertly.”

14. Thompson would add to the above by stating the obvious: “the personal distress” under which he labors, but obviously competently so, has been caused by The Bar and its chronic, recidivist, and illegal harassment of Thompson, increasingly intensified as it has panicked by its inability to prove his alleged “unethical” conduct. During this harassment, Thompson’s wife, Patricia Thompson, a law partner at Carlton, Fields has been aggressively treated for ovarian cancer, and The Bar has now twice refused continuances to Thompson because of difficulties caused for her husband by virtue of her medical needs.

CONCLUSION

15. The Bar’s own able counsel herein, Barry Richard of Greenberg, Traurig, has admitted to this court in its and his formal court filings, that this federal court can enjoin a state bar proceeding if “bad faith” is shown on the part of The Bar. Well, here it is:

16. The Bar, in patent bad faith, is presently threatening Thompson with renewed efforts to pathologize his faith-based social activism. So *bad* is the *faith* of The Bar in doing so that it is violating its own procedures found in Rule 3-7.13 which set forth how

it is to be done. The Bar is violating its own Rules, when it comes to Thompson, as to how to diagnose and treat impaired lawyers, because it knows there is absolutely no factual basis whatsoever for its assertion that Thompson is mentally ill, impaired, obsessed, incapacitated, incompetent, or whatever other pejorative terms The Bar would like to throw around willy-nilly. The findings of Dr. Wunderman, found upon actual tests rather than in tea leaves or the entrails of pigeons, dispel any possible notion and extortionate threat by the highly-motivated Bar to harass him with lunacy proceedings. The Bar's extortion has now come back to bite it on its exposed flank.

17. The SLAPP Bar complainants who have proceeded against Thompson through and with The Bar, have repeatedly, for years, both to The Bar and to others, asserted the mental illness of Thompson, and in doing so they have betrayed the overarching strategy by which Thompson is to be stigmatized and his social activism sullied, not only by them but by their collaborators within The Bar.

18. All The Bar has on Thompson is its abiding, ideology-driven animus that stretches back to 1987 when it lost its first attempt to combine ethics proceedings with lunacy proceedings to get results it deserved in neither.

19. Thompson did not wed these two ends together. The Bar did. The Bar did just that by making any possible resolution of the ethics issues fully dependent, interlocked with, inextricably intertwined with a psych evaluation commanded by The Bar to occur *after* Thompson pleads guilty to ethics charges that are baseless, propped up by perjury, and brought for the purpose not to protect the public but rather to protect pornographers from the consequences of peddling their porn to children.

20. As Thompson was preparing this very pleading, he received this morning a bizarre e-mail from The Bar's Director of Lawyer Regulation, Kenneth Marvin, telling Thompson that it refused to dismiss the Tew Cardenas/Beasley Bar complaint, as it has offered to do, because Thompson had not acceded to The Bar's lunacy stunt. So, we have proof as late as this morning that The Bar has wrapped up its entire ethics pursuit of Thompson in a fraudulent lunacy package that no one—no one—in his right mind would go along with.

21. The Executive Director of The Florida Bar who superintended the first attempt to pathologize Thompson's faith-based activism in the early 1990s is a man by the name of John F. "Jack" Harkness, Jr. Mr. Harkness is still the Executive Director of The Bar, and in fact he sat there in the Tallahassee offices of Greenberg Traurig on May 15, 2006, when then Bar President Hank Coxe spoke face-to-face to Thompson and his lawyer, on behalf of The Bar officials there, telling Thompson that he should be suspended from the practice of law because of his "vitriol."

22. In light of the findings of Dr. Wunderman, acknowledged by The Bar itself as an expert in forensic psychology, even to the point of assessing lawyers for mental incompetency, Jack Harkness and the rest of The Bar should acknowledge their mistake, stop their illegal harassment of Thompson, and move on to real problems regarding truly unethical lawyers who pose a threat to the public. The biggest threat to The Bar and its "disciplinary system," known throughout the country and among its own Florida members for its chronic abuses, is The Bar itself.

23. If The Bar does not “knock it off,” get on with its legitimate functions, and leave Thompson alone, finally, then Thompson, whether he is disbarred or not, be delighted to bring The Bar’s “disciplinary” system crashing down around its ears.

24. Dr. Wunderman, in his assessment of Thompson, a full copy of which will be provided, repeatedly uses the word “erudite” to describe Thompson. It means “learned” in the sense of well-instructed. The Latin root word from which “erudite” comes is the same as that for the word “rude.” Thompson has clearly been rude to The Bar and his SLAPP Bar complainants. Why? Because to know what Thompson knows about the arrogance of power which Lord Acton identified, he sees in a Bar that combines all three functions of government and thus thinks it is above the law. It is hard not to be rude in share what one knows about the methods of such tyranny with the tyrants who practice it.

25. Jesus Christ *rudely* called the Pharisees “liars, hypocrites, a brood of vipers, fools, whited sepulchers.” Thompson, as best he can, as a fallen creature, follows his Savior’s lead, not the lead of hypocritical Bar presidents like Hank Coxe who speak of the rights of terrorists at Guantanamo while denying lawyers basic constitutional rights here in Florida. It is hard not to be rude when one is erudite, as Thompson is well-instructed as to how The Bar tried to pull this lunacy stunt the last time. The Bar’s learning curve is flat; Thompson’s is steep, by necessity.

24. Thompson has had enough of the idiotic, pathologizing techniques of The Bar’s *gulag*. The Ancient Greeks noted that anger is the emotion closest to reason, which explains why Thompson is the sanest player in this unfolding tragedy.

I CERTIFY that the foregoing has been sent to opposing counsel by the court’s electronic filing system, this August 20, 2007.

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