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2116 (Rev. 07/07)

STATE OF ILLINOIS UNITED STATES OF AMERICA COUNTY OF DU PAGE  
IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

ANDY MARTIN

PLAINTIFF

VS.

NEW YORK TIMES  
COMPANY, et al.

DEFENDANT

CASE NUMBER

2008 L 407

File Stamp Here

ORDER

This matter coming on to be heard, the Court being fully advised in the premises and having jurisdiction of the subject matter, ~~IT IS HEREBY ORDERED:~~ and the Court having read

Defendant New York Times Company's Motion to Dismiss the Action for Plaintiff's Violation of Injunction Order Requiring Him to Disclose His Pro Se Litigation History and for Extension of Time to Answer or otherwise Plead" (the "Motion") the Court having reviewed the Motion and the cases cited in the Motion, and plaintiff have failed to appear in Court by 9:20 a.m. or otherwise to object to the Motion.

IT IS HEREBY ORDERED that the Motion is granted, and this action is dismissed with prejudice as to all defendants for the reasons stated in the Motion.

Name: TIMOTHY M. McLEAN  PRO SE

ENTER:

DuPage Attorney Number: 16440

Attorney for: DEFENDANT THE NEW YORK TIMES

Address: 2100 MANCHESTER RD SUITE 1750

City/State/Zip: WHEATON IL 60187

Telephone: 630/871-2612

Judge

Date: 5/29/08



20

1 THE COURT: Martin case, No. 14.

2 MR. McCLAIN: Good morning, your Honor.

3 THE COURT: Good morning.

4 MR. McCLAIN: Tim McClain, on behalf of  
5 defendant, the New York Times Company, here with  
6 co-counsel, David Sanders, from Jenner and Block.

7 MR. SANDERS: Good morning, your Honor.

8 THE COURT: Good morning.

9 MR. McCLAIN: It's up before you on our motion  
10 to dismiss. I'll provide you with a courtesy  
11 copy.

12 THE COURT: The motion to dismiss was filed,  
13 and you were good enough to give me a courtesy  
14 copy well in advance of today, that I've read the  
15 motion, that I've read the cases cited in the  
16 motion.

17 I'm a little surprised that this  
18 particular plaintiff had sued the highest court in  
19 New York and he didn't disclose the injunction,  
20 but it is now after 9:20, there's no opposition to  
21 the motion, and pursuant to the cases cited in the  
22 motion, it's granted.

23 MR. McCLAIN: Very well, your Honor.

24 MR. SANDERS: Thank you, your Honor.

20

1           May we have 304(A) language, your Honor,  
2 because we are -- it resolves it as to the New  
3 York Times Company, but we'd like an order that  
4 says there's no just cause for delaying  
5 enforcement or appeal of this order.

6           MR. McCLAIN: I think --

7           THE COURT: You know, that's fine. This  
8 motion goes to all defendants.

9           MR. SANDERS: Okay.

10          MR. McCLAIN: Okay.

11          THE COURT: And you can put that language in.

12          MR. McCLAIN: Well, then it is a final order.

13          THE COURT: I understand, even though it's a  
14 final order, if there's a motion to reconsider  
15 filed within the time I have jurisdiction, --

16          MR. McCLAIN: Right.

17          THE COURT: -- that can be heard, but I think  
18 it should be final and appealable, you're right.  
19 Thanks.

20          MR. McCLAIN: Very well.

21          MR. SANDERS: Thank you very much, your Honor.

22                   (Which were all the proceedings had at  
23 the above-entitled cause this date.)

24

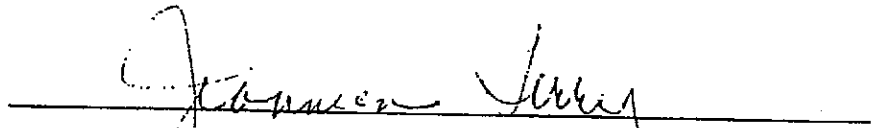
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1 STATE OF ILLINOIS )  
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 2 COUNTY OF DU PAGE )

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IN THE 18TH JUDICIAL CIRCUIT COURT  
 DU PAGE COUNTY, ILLINOIS

I, JEANNEEN TERRY, hereby certify that I reported in shorthand the foregoing Report of Proceedings in the above-entitled cause, consisting of Pages 1 through 3 inclusive, and that said Report of Proceedings is a true, correct and complete transcript of my shorthand notes so taken at the time and place hereinabove set forth.



Jeanneen Terry, CSR No. 84-1085  
 Official Court Reporter for the  
 18th Judicial Circuit Court  
 DuPage County, Illinois

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STATE OF ILLINOIS )

) SS.

COUNTY OF DU PAGE )

IN THE CIRCUIT COURT OF DU PAGE COUNTY  
FOR THE 18TH JUDICIAL CIRCUIT OF ILLINOIS

ANDY MARTIN, )  
)  
Plaintiff, )

vs. )

No. 08 L 407

NEW YORK TIMES COMPANY, )  
)  
DALLAS MORNING NEWS, )  
)  
FARHAD MANJOO, )  
)  
JOHN WILEY & SONS, )  
)  
Defendants. )

REPORT OF PROCEEDINGS had and  
testimony taken at the hearing of the  
above-entitled cause, before the Honorable  
Hollis L. Webster, Judge of said Court, recorded  
on the DuPage County computer based digital recording  
system, DuPage County, Illinois, transcribed by  
Rosemary Stephens, Certified Shorthand Official Court  
Reporter, commencing on Wednesday, the 1st of October,  
A.D., 2008.

Rosemary Stephens, CSR# 84-2515  
Official Court Reporter

1 PRESENT:

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MR. ANDY MARTIN

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appeared pro se;

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MR. TIMOTHY M. MCLEAN,

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MR. DAVID SANDERS,

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appeared on behalf of the

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New York Times Company.

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1 THE CLERK: Martin versus Blagojevich.

2 THE COURT: Good morning.

3 MR. MCLEAN: Good morning, your Honor, Tim  
4 McLean, M-C-L-E-A-N, counsel on behalf of New York  
5 Times Company.

6 MR. SANDERS: Good morning, your Honor, David  
7 Sanders for the New York Times Company.

8 THE COURT: Okay, good morning.

9 MR. MARTIN: Andy Martin, your Honor. Good  
10 morning. I am the plaintiff in this action.

11 THE COURT: Okay.

12 MR. SANDERS: Your Honor, before we begin,  
13 there's a clerical matter that Mr. Martin and I have  
14 discussed that we'd like to enlist the Court's  
15 assistance, if we may.

16 THE COURT: Sure.

17 MR. SANDERS: And that is when Mr. Martin  
18 filed the original complaint in this action, he  
19 mistakenly used an improper caption for this case  
20 number, which is 08 L 407. That's why the case was  
21 called as the Blagojevich name. That was a clerical  
22 error.

23 MR. MARTIN: Your Honor, it's a template error  
24 or may I say a word processing error, and I apologize

1 to the Court. It is absolutely my fault. It had  
2 nothing to do with the clerk.

3 MR. SANDERS: All we are asking is when we are  
4 done with the other business before the Court, if we  
5 may ask the Court to include in our order an order to  
6 the Clerk of the Court, and we will give the correct  
7 names to change the caption because we have had some  
8 problems when we have appeared with this case number.  
9 It doesn't match what the case is, which is Martin  
10 versus the New York Times Company.

11 THE COURT: Okay, that's fine. That is  
12 probably more properly addressed to the judge who will  
13 be assigned to handle this case pending the outcome of  
14 the hearing on this motion. But it's not going to be  
15 a problem no matter who. We can straighten that out.

16 MR. MARTIN: It's not like we are fighting.  
17 He knows that he has been sued and it's absolutely my  
18 fault, your Honor, vis-a-vis the --

19 THE COURT: Well, that can be addressed. No  
20 problem. My understanding is my role in this case is  
21 as Presiding Judge of the Civil Division to hear a  
22 motion for substitution of judge for cause from Judge  
23 Elsner, which has been briefed. I have received both  
24 the motion from plaintiff and a response. I did not

1 receive a reply. I don't know whether one has been  
2 filed. If so, I have not reviewed it.

3 MR. MARTIN: Your Honor, I just received the  
4 defendant's response yesterday. And I have received a  
5 call from your assistant asking me if I was going to  
6 file a response, very efficient, and I said that I  
7 would. I have been traveling and as often happens  
8 when you have stuff, you say I am sure it's in my file  
9 and I will go to court. I did get a copy from  
10 attorney Sanders yesterday.

11 What's kind of interesting is that when  
12 it was transmitted to the Court on June 26, attorney  
13 McLean transmitted it to the Court with a cover letter  
14 and he says he sent it to me by fax. Now, I have a  
15 small office and almost routinely, I don't know if  
16 it's in the boilerplate of this case, but almost  
17 routinely on every case that I am involved in I put at  
18 the bottom, take faxes up to 10 pages, because  
19 sometimes law firms will file 100 pages and it just  
20 knocks me out of business.

21 It wasn't faxed to me. I can assure  
22 your Honor that had I received this as a fax, first my  
23 fax machine couldn't accept it, just physically  
24 doesn't have that much paper in it. It doesn't work

1 that well that it could get something like this.  
2 Secondly, I didn't get it because I would have been  
3 complaining. If I had gotten this, I would have  
4 called Mr. McLean and said, Mr. McLean, I am going to  
5 accept faxes up to a reasonable page number. I can't  
6 accept whatever this is. It's 50 or 100 pages. I  
7 haven't counted. I never got it. It doesn't even  
8 purport that it was sent by mail. It just says that  
9 it was sent only by fax. I didn't get it. I did get  
10 it yesterday. I am willing to go forward because I  
11 don't think there's anything in here that has anything  
12 to do with the issue here. And I will address the  
13 issue of what's in here because I think it's a  
14 continuation of the problem we are having with the  
15 defendant's attorneys.

16 THE COURT: Okay, so you are going to proceed  
17 and make any oral arguments in support of your motion  
18 for SOJ for cause?

19 MR. MARTIN: Absolutely.

20 MR. SANDERS: Your Honor, just as a technical  
21 matter, I have two things. I have the fax  
22 confirmation page from June 26 to Mr. Martin showing  
23 that we sent him the notice, showing that we sent him  
24 the opposition. We also have the certificate of

1 service to show as a courtesy, we sent it by mail. We  
2 served it to him two ways on June 26.

3           Second of all, to clarify the record and  
4 make sure there is no misunderstanding as to the  
5 notice, this was scheduled before your Honor on August  
6 20. Mr. Martin called me on August 18 to say he was  
7 busy and couldn't make it on the 20th, a date that he  
8 himself participated in selecting. We were set for  
9 hearing then. Mr. Martin didn't say anything about I  
10 don't have notice. He just simply had failed to file  
11 a reply brief. We agreed, we continued it, extended  
12 him the courtesy to continue it to a date that he  
13 selected which is today. It's up for hearing. I have  
14 the letter to Mr. Martin on August 20 saying that.  
15 Mr. Martin never said until yesterday that he didn't  
16 have the papers. He has had them since June 26, two  
17 different ways of service.

18           MR. MCLEAN: Your Honor, I would simply add,  
19 your Honor, it was a 14-page fax. I told him exhibits  
20 would follow by mail and I have the confirmation that  
21 he received it.

22           MR. MARTIN: Never got them, your Honor.  
23 Never got them. They weren't faxed to me. I didn't  
24 get them by mail. This is a prodigious document. If

1 you got something like that, you would remember it.  
2 Furthermore, he may have sent this notice of filing,  
3 but the reason I had notice of the 20th of August was  
4 not because of his document here but because I was in  
5 court when we agreed on that date in your Honor's  
6 chambers as I remember. We set that hearing and I had  
7 a problem with the schedule. Yes, I had notice of the  
8 20th of August but for no reason having to do with  
9 what he faxed me, number one.

10                   Number two, as I say, they may have  
11 faxed me the notice -- may I examine the notice that  
12 he just handed up and see how many pages he purports  
13 to have faxed.

14                   MR. MCLEAN: It's 14.

15                   MR. MARTIN: This is clearly not 14 pages,  
16 your Honor.

17                   THE COURT: Okay, why don't we stop the  
18 argument about whether you got it or not since you  
19 have agreed to proceed with the hearing. And to make  
20 the record further more amplified, I did ask the  
21 secretary that works with me to follow up to see if  
22 there was a reply that I could review before the  
23 hearing, and she reported to me and I will report to  
24 all counsel that she was able to reach you, Mr.

1 Martin, on several occasions and she did get mixed  
2 messages. One was that the reply was almost complete,  
3 and it would be faxed to us. Another was that there  
4 would not be a reply, if I remember correctly.

5 So I left my office yesterday  
6 understanding that I had reviewed everything that was  
7 available for me to review. So let's proceed to the  
8 substantive matter, the motion for substitution.

9 MR. MARTIN: One matter of confusion, your  
10 Honor, you indicated that it was only for cause but  
11 it's my belief that under the statute, before we get  
12 to a cause substitution of judge, you can always have  
13 a substitution of right before a judge.

14 THE COURT: That's not something that I deal  
15 with, though.

16 MR. MARTIN: It's right in the motion. You  
17 said it was only for cause but it says --

18 THE COURT: It may be in your motion, sir, but  
19 it's not something that I as the Presiding Judge of  
20 the Civil Division deal with. That's something that  
21 Judge Elsner, the assigned judge, would deal with.  
22 It's my understanding in reviewing the papers that  
23 have been filed, that it's already been dealt with,  
24 that he has denied the motion for substitution as a

1 matter of right because he has made a substantive  
2 ruling in the case prior to the filing of that  
3 motion. I simply noted that in the record.

4           So my limited involvement here will be  
5 to rule upon, to hear the arguments, I read the  
6 briefs, and to rule upon the motion for SOJ for  
7 cause.

8           MR. MARTIN: Your Honor, the defendants and  
9 there apparently is now a practice of filing things  
10 through the Court that I don't receive. I can see  
11 it's getting to be quite irritating, conducted a  
12 hearing where they knew I was across the hall. I had  
13 not received notice of this hearing. As your Honor is  
14 aware, if I have a hearing, I will call opposing  
15 counsel if I can't make it or I show up. I am not in  
16 the habit of being across the hall and not crossing  
17 the hall. I mean, this morning I had a very minor  
18 matter that I had to reschedule, and I was bouncing  
19 back and forth between your Honor's courtroom and this  
20 courtroom and the other one and got it taken care of.  
21 I have a history, a long history, Mr. -- will attest  
22 of showing up in court of when I receive notice. I  
23 don't have a practice of ignoring notices, and if I  
24 can't make it, I notify counsel and I have appeared



1 many times in cases with counsel and we have done so.  
2 I never received notice of this hearing.

3           They went into the judge and filed all  
4 their confusing slime and conducted an ex parte  
5 hearing. I had no opportunity to be heard. No  
6 opportunity to do anything and I am in court across  
7 the hall, a lawsuit over -- an election related  
8 lawsuit. The other lawyer in that case knew about it,  
9 I didn't. He is in court with these guys and then he  
10 runs across the hall and he says look, I have an order  
11 that was just signed, the ink is still wet. Blah,  
12 blah, blah, blah, blah.

13           Judge Wheaton ignored that. It was  
14 outrageous. Now, immediately upon hearing that, I  
15 went and filed a motion to set it aside. It should  
16 have been a simple matter. Mr. Martin, I'm sorry you  
17 didn't get notice. Counsel says they sent it. I am  
18 sure you will get it. I did get it in due course. It  
19 reached me. I am not denying that I eventually got  
20 it. It was sent. But we have problems in Chicago.  
21 We have problems getting mail downtown. We should  
22 have just gone back and held the hearing on the merits  
23 and I would have needed a little bit of time to  
24 respond and I would have filed my memo and that would

1 have been the end of it.

2           Now, Judge Elsner just didn't want to  
3 give me an opportunity to defend myself against these  
4 personal attacks and these unfounded, completely  
5 malicious and misleading arguments. That's wrong.  
6 Now, initially I did file, as you say, for  
7 substitution as of right. I put them both in one  
8 motion. He didn't think that was a basis for  
9 substitution, that he conducted an ex parte hearing.  
10 I do because the problem the litigant gets involved  
11 in, all of a sudden the Court's impartiality is in  
12 question if you are conducting an ex parte hearing,  
13 particularly when they are sliming their opposing side  
14 and getting up and lying and misrepresenting things as  
15 Jenner & Block usually does. It's very hard for  
16 everybody, particularly for the Court because it  
17 compromises the independence and integrity of the  
18 Court. I don't know what Judge Elsner's problem is.  
19 I really don't. But I am not comfortable being in  
20 front of a judge that conducts ex parte hearings, and  
21 I am not comfortable if he will hear local counsel,  
22 apparently they get a break in front of him, I don't  
23 know. But when local counsel conduct themselves in  
24 this manner, that's inappropriate. It really demeans

1 the tribunal. They knew where I was. They knew darn  
2 well I was across the street because they were working  
3 on this with the other law firm. They were  
4 coordinating themselves but they didn't tell me.

5           So they are working their little game,  
6 the lawyer who is on the other side of the hall in  
7 front of Judge Wheaton, he had a copy of the order  
8 that I didn't see until I got it in the mail.  
9 Eventually they sent me a copy of the order and yes, I  
10 got it. It may have even been faxed to me. Mr.  
11 Sanders does frequently fax me things, and I accept  
12 them because they are under 10 pages.

13           So, I think that Judge Elsner, for  
14 whatever reason and I don't want to be seen as coming  
15 in here today and attacking Judge Elsner. You know,  
16 he has ruled in my favor on occasion and he has ruled  
17 against me on occasion and I don't take it  
18 personally. But I think he was quite wrong to try and  
19 enter a partially dispositive order because there are  
20 other parties in here that are in default, Mr. Manjoo  
21 is in default, and I don't know what we are going to  
22 do with the other two, we will see what happens.  
23 There are parties in default, and I didn't get  
24 notice. It would have been a simple matter. I didn't

1 come in initially and say this is outrageous, blah,  
2 blah, blah. I said come on, let's do something about  
3 this. Didn't want to do it. Didn't think I had a  
4 right to have a re-hearing in front of somebody that  
5 had not heard an ex parte hearing.

6           With all due respect, your Honor, I  
7 think that's legal error and I believe it's also  
8 Constitutional error. I don't want to get involved --  
9 I mean, this is a simple matter. One of the things  
10 that I have found in DuPage County is that people  
11 treat themselves very courteously and there's a  
12 concern for the appearance of justice as well as the  
13 minutiae. Now, if they want to file this kind of  
14 junk, I can't stop them. It's irrelevant to the  
15 issue, has nothing do to do with the lawsuit and, you  
16 know, that's fine. They can file, we used to say the  
17 Howard Johnson's menu but I don't know if Howard  
18 Johnson's is still in business, they want to file an  
19 old copy of the Howard Johnson's menu. I don't care.  
20 I am used to being slimed by Mr. Sanders and I answer  
21 and I am getting ready to go back and slime him later  
22 this afternoon on a case that's still going on. We  
23 will do some more on this but that's not the way it  
24 should be.

1                   At the very least a litigant has the  
2 right to notice and has the right to be heard. What's  
3 interesting is that they did mail this out but they  
4 didn't fax it. I didn't have that. Because had I  
5 known, my God, all I would have done is I would have  
6 gone to Judge Elsner and said, Judge, I am across the  
7 hall on an injunction hearing. Can I have a little  
8 breathing space or because I had maybe short notice, I  
9 would have said, gentleman, can we adjourn this, can I  
10 come back and can I have some time to file a  
11 response.

12                   Obviously you couldn't file a response  
13 to that in 5 minutes. They didn't care. With all due  
14 respect, your Honor, that's inadequate adjudication.  
15 It's inadequate service as an impartial hearing  
16 officer and a judicial officer. I believe that Judge  
17 Elsner shouldn't hear further parts of this because if  
18 you go back to him, he has poisoned the well with this  
19 and we are going to be fighting over all this stuff  
20 and motions to vacate and whatever and whatever. And  
21 it compromises it.

22                   I'm sorry I had to file this motion. I  
23 apologize. I don't like doing that. I mean, you  
24 know, I accept that judges sometimes rule in your

1 favor and sometimes they don't. I have won my share  
2 and I have lost my share. I don't like having to  
3 challenge him, but I just think his sense of justice  
4 and taking an action and purportedly dismissing part  
5 of this case and now putting me in the position where  
6 I have to go back and question him again and his  
7 behavior and tell him that he was wrong and they were  
8 wrong with what they did is inappropriate. I don't  
9 see why the case -- it should have been -- we are kind  
10 of in a peculiar situation here. He says it's not a  
11 right. The only reason he is saying I don't have a  
12 right to a new judge is because he violated my rights  
13 and I didn't have notice. Now, that to me is the most  
14 ludicrous kind of reasoning.

15                   Now, Judge, it says because I violated  
16 your rights, you don't have your statutory rights, you  
17 know. I mean, look, I filed my motion. Is it really  
18 that much of a motion just because they didn't give me  
19 notice, more slime. And I am sure that if we take  
20 this to the Supreme Court of Illinois, we will have  
21 another mountain of slime over a simple case. I get  
22 libeled all the time. I am an author and that's what  
23 this book is about and that's what they are trying to  
24 hurt. I am an author and people write about me and

1 they attack me. And if it's just that they don't like  
2 me or they think that I am, you fill in the blanks  
3 with whatever worse words you ever heard in your life,  
4 I can't help that. That's protected. That's  
5 Constitutionally protected. But when somebody makes a  
6 statement of fact that's false and tries to undermine  
7 my integrity as a writer and says that I have been  
8 debunked when I haven't been, then it should be  
9 resolved.

10 Now, I have resolved little minor --  
11 this is a minor glitch. It should have been resolved  
12 with the lawyers but they are arrogant. You know,  
13 instead of saying let's see if we can make this right  
14 and keep out of court, no, let's go to court. You go  
15 ahead and sue us and right away they are going to  
16 file, I don't know, hundreds of pages over a simple  
17 matter where they may not have even caught the error  
18 in the first instance because it was an article about  
19 me they published and they made a mistake and I said  
20 look this is wrong, can we resolve it, they didn't.

21 Now, if they want to make a Supreme  
22 Court case out of it, that's fine. But then Judge  
23 Elsner looks pretty bad because he heard a hearing  
24 when the lawyers knew I was across the hall and he

1 went ahead and conducted himself ex parte. I don't  
2 think that's right. And I think anyone that would  
3 hear that that went on would have a lot more  
4 unappetizing language to characterize that kind of  
5 behavior that I have used this morning. The bottom  
6 line is if they want to fight, I have no choice but to  
7 fight them. It's not like I have been drawn into --  
8 it's not like I attacked them; they attacked me. Now  
9 first they attacked me with lies in a national  
10 publication. Then they make money by selling these  
11 lies around the country and then when I come in to  
12 court to defend my right to the truth, I get, I don't  
13 know, 3 or 4 or 5 pounds of lies and  
14 misrepresentations and distortions and now I didn't  
15 know this thing existed until yesterday. You have  
16 been prejudiced by it. You read all this garbage.  
17 You have to be wondering what does all this mean and  
18 what does this -- it has nothing to do with the issue  
19 of whether or not I was defamed by an article that  
20 they published six or eight months ago. It's all a  
21 smear campaign. Let's smear Andy.

22 Now, I would respectfully -- you know  
23 what their answer is, we are going to fight him right  
24 back and we are going to sue Jenner & Block and we are



1 going to sue Mr. McLean for violating my rights and,  
2 you know, fixing a judge in DuPage County and having a  
3 secret hearing. It's going to go on all out of a  
4 small matter that could have been settled courteously  
5 with a correction and an apology and never needed to  
6 go to court. They just the minute they hear it's me,  
7 they want to fight. These guys, they have stunted  
8 egos and any time they can get into court with Andy  
9 Martin, it makes them think they are big shots because  
10 they are litigating with me. I am the writer, they  
11 are not. They are sitting in their offices there  
12 worrying how they are going to pay the rent and  
13 whether they are going to dissolve the law firms.  
14 It's wrong, your Honor. It's wrong to indulge this  
15 kind of abusive professional behavior.

16                   And with all respect, I don't think  
17 Judge Elsner looks very good. You know, the next step  
18 if we don't get it resolved here, we are going to the  
19 Illinois Supreme Court under a supervisory order, and  
20 we are going to have hundreds more pages and they are  
21 going to be wondering what's going on. So sometimes  
22 it's nice to have a judge that thinks about being  
23 practical, and the practical thing to do is to say  
24 look, forget it, it was a mistake, let somebody else

1 hear it and be done with it. That to me, and you  
2 know, I am going to have to sit now and listen to all  
3 these lies and personal attacks, none of which have  
4 anything to do with the merits of the lawsuit. And I  
5 have to say to you as I said, your Honor, this is not  
6 a case that should ever have come to court. They  
7 forced it into court, and by golly, I am going to  
8 force them to resolve it and force the court system to  
9 protect my rights. But I don't want to be here. I  
10 have more important things to do today. I have people  
11 calling around the world, they want comments. I don't  
12 have the time. But as a matter of moral principle, I  
13 am not going to let the New York Times lie about me,  
14 and I am not going to let them sneak into a judge  
15 secretly and conduct a secret hearing, and if that  
16 isn't cause to ask for a separate judge and to avoid  
17 conflict, because surely there will be conflict if  
18 this case bounces back to Judge Elsner, we are going  
19 to be fighting over this and he is going to be in the  
20 middle of it. It's not fair to him either. They  
21 compromised him.

22 I honestly think that he was abused in  
23 this process because as I say, I know Judge Elsner, I  
24 know that Mr. McLean knows him, and they took

1 advantage of him. So the bottom line is the  
2 practical, simple way to resolve this is assign it to  
3 a different judge. We will go in, we will explain to  
4 the judge we didn't get notice. Most judges would say  
5 well, let's set it for hearing. How much time do you  
6 need to file an answer, and then I will file my answer  
7 and we will come in and we will fight and he can throw  
8 his smears at me and I will throw my smears at him and  
9 the judge will roll his eyes or her eyes and that will  
10 be the end of it or maybe we will settle it, I don't  
11 know.

12 But the bottom line is it should be  
13 heard in an adversary posture and not in an ex parte  
14 posture. A judge that doesn't understand that has  
15 created cause in my opinion. With all due respect,  
16 and I know that judges hate these recusal motions, and  
17 you know, last thing you want to do is substitute out  
18 a colleague. But in this case it's the right thing to  
19 do. I'm sorry. I apologize. Thank you, your Honor.

20 THE COURT: Okay. Thank you, Counsel.

21 MR. SANDERS: I will be brief, your Honor.

22 THE COURT: Sure. Take as much time as you  
23 like.

24 MR. SANDERS: The only issue before your Honor

1 is whether Mr. Martin has satisfied his statutory  
2 burden of showing that Judge Elsner is prejudiced  
3 against him and biased. The only argument that Mr.  
4 Martin made in his motion to show bias is that Judge  
5 Elsner supposedly conducted an ex parte proceeding.  
6 That's the grounds that's stated in the motion. That  
7 is it.

8           Mr. Martin says in his motion that Judge  
9 Elsner has a history from prior proceedings, I gather  
10 that I am not aware of, treating him with respect and  
11 fairly. So the only grounds that he is asserting now  
12 is this purported ex parte proceeding. There is no  
13 legitimate basis to that argument because there is no  
14 dispute on the facts that there was no ex parte  
15 proceeding.

16           Facts are few and they are simple, your  
17 Honor. We filed our motion to dismiss on May 19. We  
18 served it by mail. We served it on May 19. We gave  
19 more notice of the hearing than either the local rules  
20 or the Illinois Supreme Court rules require precisely  
21 to avoid problems with Mr. Martin claiming inadequate  
22 notice as he has done before. I also note that Mr.  
23 Martin just now this morning in front of you said that  
24 he is adamant, adamant that he doesn't want to receive

1 anything more than 10 pages by fax because that jams  
2 up his machine, and I think he used the words, "puts  
3 him out of business."

4           So, your Honor, our motion to dismiss,  
5 which is attached as Exhibit 1 to our response, you  
6 can see the length of it. It's a motion. It's got a  
7 number of exhibits. It's probably 50 or 60 pages. We  
8 served him in accordance with the rule by mail, which  
9 Mr. Martin now says is what he prefers for documents  
10 of any length. But in any event, we fully complied  
11 with the rules by service.

12           Mr. Martin did not appear in court on  
13 the noticed hearing date of May 29. I heard about  
14 three or four different reasons for Mr. Martin, but  
15 the principal point that he asserts in his motion is  
16 that he never got our papers because he was away on an  
17 extended vacation and maybe he was and maybe he  
18 wasn't. I am willing to give him the benefit of the  
19 doubt and assume for the moment that he might have  
20 been away on vacation when we served our papers. He  
21 doesn't claim that he never got them. He claimed that  
22 he was away when they came in, didn't receive them  
23 until after the notice date of May 29. So on the  
24 hearing date of May 29, your Honor, we appeared before

1 Judge Elsner as we stated in our papers. Judge  
2 Elsner, knowing I gather Mr. Martin from prior cases  
3 before him, we called the case at 9:00 o'clock. Mr.  
4 Martin wasn't there. Judge Elsner said let's give him  
5 more time to see if he appears. We waited until 9:20  
6 or 9:22, something like that. When he didn't appear,  
7 the case was called. We appeared before Judge  
8 Elsner. Judge Elsner said that he had reviewed, this  
9 is all in open court, he said that he had reviewed the  
10 motion that had been filed. He had read the cases  
11 that had been cited there and he granted the motion.  
12 This is all done in open court pursuant to notice that  
13 complied with both the Illinois Supreme Court rules  
14 and the county or I should say this court's local  
15 rules.

16 What it comes down to, your Honor, is  
17 that Mr. Martin thinks that because he personally  
18 didn't receive the properly noticed filings, that the  
19 Court cannot go forward at all in his absence and that  
20 if he does go forward, it is ex parte and it is  
21 improper and it shows bias towards him. We have cited  
22 the authority in our response. There is absolutely no  
23 law whatsoever in support of that notion. It is not  
24 an ex parte proceeding to proceed in accordance with a

1 notice that's been tendered in accordance with the  
2 rules. So what we are left with is that Mr. Martin  
3 feels aggrieved by the ruling on the motion to  
4 dismiss, which as you know from the exhibit we have  
5 attached, is a motion to dismiss to enforce a federal  
6 court injunction. That's what the underlying motion  
7 was that Mr. Martin has been referring to.

8           ... But a ruling on the merits under all  
9 authority in Illinois cannot serve as the basis for a  
10 motion for substitution of judge for cause. So, your  
11 Honor, that's about all that I have to say. It's all  
12 in our papers. I have nothing further to add.

13           THE COURT: Okay.

14           MR. MARTIN: May I respond, your Honor?

15           THE COURT: Certainly.

16           MR. MARTIN: I will start from backwards  
17 because I think Mr. Sanders, without realizing it,  
18 just undermined your Honor's earlier understanding of  
19 this matter. He just said that Judge Elsner did not  
20 rule on the merits. He said that himself just now.  
21 He said he ruled on enforcing a federal court  
22 injunction. He dismissed the case.

23           THE COURT: That's not what I understood he  
24 said.

1 MR. MARTIN: Oh, okay. Well, I understood  
2 what he said was that there was no ruling on the  
3 merits.

4 MR. SANDERS: Just so there is no  
5 misunderstanding, because I understand we are on the  
6 record here.

7 THE COURT: Certainly.

8 MR. SANDERS: The substance of the motion to  
9 dismiss we presented was not in essence a 615, 2-615  
10 or 2-619 motion, it was an administrative matter to  
11 dismiss the action for Mr. Martin's noncompliance in  
12 our view with a federal court injunction. We cited  
13 ample authority. The courts around the country have  
14 dismissed his actions as a sanction. It was really a  
15 motion to dismiss as a sanction. That's what I was  
16 referring to.

17 MR. MARTIN: Your Honor, I heard him right the  
18 first time. The judge never addressed the merits of  
19 the lawsuit. He just admitted again that he filed a  
20 motion to dismiss on some collateral matter having  
21 nothing to do with the merits of the case. It would  
22 seem to me that that was not a ruling on the merits of  
23 the case. By his own admission the judge should have  
24 granted the SOJ as a matter of right. We shouldn't



1 even be here. But what I find interesting is he says  
2 that the judge supposedly conducted an ex parte  
3 hearing. It wasn't supposed.

4           What he leaves out of his litany is ten  
5 days is not a lot of notice to get something in  
6 Chicago. I sometimes get stuff that takes three  
7 weeks. Sometimes I get bills that don't even arrive.  
8 Ten days is not a lot of notice. Had he sent me a fax  
9 as is his normal practice or has sent me a letter and  
10 said we are sending you a voluminous matter, here's  
11 the notice of motion, I would have known about it and  
12 I would have called him the way I did yesterday. And  
13 near as I can tell, he is perfectly willing to  
14 contradict me if he wants, Sanders and I are nasty to  
15 each other in court, but we have always been cordial  
16 out of court in dealing with administrative matters  
17 and the flow of the paperwork.

18           I would have had no problem calling him  
19 and saying such and such or I am going to be there.  
20 They knew where I was. That's what's the trick here.  
21 That's the skunk in the wood pile. Forget the notice  
22 that was mailed. I didn't get it and I would have  
23 been in court had I received it. Common sense tells  
24 you that. I was across the hall. They knew where I

1 was. They tricked the judge because they knew I was  
2 across the hall. You notice he didn't deny that  
3 because he was here with the other law firm that was  
4 handling the injunction hearing. They gave him, the  
5 other lawyer, a copy of this bogus order and I have a  
6 transcript that proves that because he comes into  
7 court and he waives the copy of their order in front  
8 of judge Wheaton. I have an order, your Honor, it was  
9 judge entered in Judge Elsner's court. That was when  
10 I found out about the proceeding. I said to Judge  
11 Wheaton, I don't know anything about this, what  
12 hearing, what across the hall.

13                 It begs common sense that a lawyer is on  
14 one side of the hall and he knows he has a hearing on  
15 the other side of the hall and he wouldn't cross the  
16 hall and say to Judge Elsner, your Honor, I got a  
17 conflict, can you help me. I know what Judge Elsner  
18 would have said. He would have said, oh, all right.

19                 But then he goes and puts words in the  
20 judge's mind. He says that the judge said he read the  
21 cases. There is no evidence that the judge read the  
22 cases. I have the transcript. And I just went  
23 upstairs to the third floor to order it. Do you have  
24 a copy of the transcript?

1 MR. SANDERS: I certainly do.

2 THE COURT: Then why don't you give it to the  
3 judge and see what it says.

4 MR. SANDERS: I will give you the order.

5 MR. MARTIN: They drafted the order, that's  
6 not what the judge -- let's see what the judge says  
7 in court. It was a 3 or 4 page situation. If he did  
8 that, again we are not fighting over the merits of the  
9 case. We are sitting here bashing each other with  
10 voluminous attacks and irrelevant material, none of  
11 which -- now he said we didn't ask the Court.

12 MR. SANDERS: Excuse me. "My credibility has  
13 been attacked. The motion to dismiss was filed and  
14 you were good enough to give me a courtesy copy well  
15 in advance of today that I have read the motion, I  
16 have read the cases cited in the motion."

17 MR. MARTIN: I stand corrected. I read it  
18 recently and I didn't remember that.

19 MR. SANDERS: Uh, hum.

20 MR. MARTIN: I apologize to you, Mr. Sanders.  
21 I don't often apologize for making a mistake.

22 THE COURT: Do you have any new information  
23 that you would like to give to me?

24 MR. MARTIN: Yes, I just think it's arrogance,

1 your Honor, at the end of the day it's arrogance to be  
2 conducting a hearing on one side of a courthouse.  
3 This is going to go up to the Supreme Court I am  
4 afraid, one side of the hall and the lawyers know that  
5 the opponent is on the other side of the hall and they  
6 bamboozle the judge, and the judge for whatever reason  
7 isn't willing to review and undo his behavior.

8 I think that it makes this judicial  
9 system look bad. It's cases like this that make  
10 judges and courts look silly. Courtesy would have  
11 eliminated the problem. We didn't need to be in court  
12 with a lawsuit to begin with and we shouldn't even be  
13 here today. They knew where I was. They gave a copy  
14 of their order to the opposing counsel in that case,  
15 there were two cases, they weren't related cases but  
16 local lawyers know each other. It's wrong and it  
17 smells and it shouldn't have happened, and I had a  
18 right to present my defenses to a judge that did not  
19 conduct an ex parte hearing.

20 THE COURT: Okay. I have reviewed the written  
21 pleadings that were sent to me and certainly  
22 considered the oral arguments made today. My limited  
23 role here is to determine whether the plaintiff, Mr.  
24 Martin, has met his burden to show me by specific

1 evidence that Judge Elsner has demonstrated bias or  
2 prejudice against him. The only issue that I am asked  
3 to determine is whether he has done so by conducting  
4 an ex parte hearing in this case. I find, Mr. Martin,  
5 that you have failed to meet your burden. I find that  
6 no ex parte hearing occurred, and I deny the motion  
7 for substitution of from Judge Elsner for cause and  
8 order that the parties return to Judge Elsner's  
9 courtroom to have this case appropriately set, if  
10 there are any further issues that need to be dealt  
11 with.

12 MR. SANDERS: Thank you, your Honor.

13 MR. MARTIN: Will you be entering an order or  
14 is your order going to be on the record?

15 THE COURT: You can prepare a written order  
16 that I will be happy to sign reflecting the oral  
17 ruling.

18 MR. MARTIN: I would only ask that they do not  
19 submit an order to the court that I haven't previously  
20 seen.

21 MR. SANDERS: I will do it right this minute,  
22 your Honor.

23 MR. MARTIN: Thank you, your Honor.

24 MR. SANDERS: Your Honor, was it your

1 preference that we not have your Honor included in  
2 this order as a matter of administrative functioning?

3 THE COURT: That should be handled by the  
4 judge assigned to the case.

5 MR. SANDERS: Thank you, Judge.

6 (Which were all the proceedings had  
7 in the above-entitled cause.)  
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1 STATE OF ILLINOIS )

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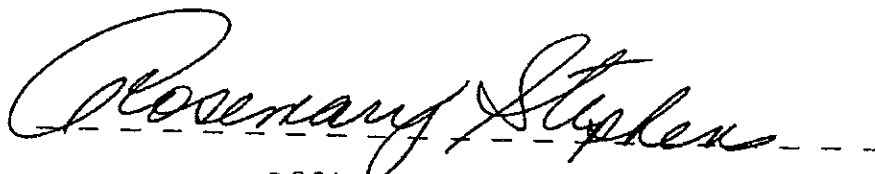
I, ROSEMARY STEPHENS, hereby certify  
I am a Certified Shorthand Official Court Reporter  
assigned to transcribe the computer based digital  
recording of proceedings had of the above-entitled  
cause, Administrative Order, 99-12, and Local Rule  
1.01(d). I further certify that the foregoing,  
consisting of Pages 1 to 33, inclusive, is a true and  
accurate transcript hereinabove set forth.

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Official Court Reporter

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