

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

DAVID RUDOVSKY and)	09-CV-0727
LEONARD SOSNOV,)	
)	
)	
Plaintiffs,)	
)	
vs.)	
)	
)	
WEST PUBLISHING)	
CORPORATION, WEST SERVICES,)	
INC., and THOMPSON LEGAL)	
AND REGULATORY, INC., t/a)	
THOMPSON WEST,)	Philadelphia, PA
)	December 13, 2010
Defendants.)	10:13 a.m.

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE JOHN P. FULLAM
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: RICHARD L. BAZELON, ESQUIRE
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For the Defendants: AARON M. ZEISLER, ESQUIRE
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Audio Operator: DENNIS TAYLOR

1 individuals or author groups who were doing -- who was doing
2 this project.

3 Q Did that function remain after the first edition was
4 published?

5 A No. I had no further involved with this project.

6 Q And do you have any knowledge about how Professor Sosnov
7 became involved in this project, in the treatise?

8 A I don't know that I have firsthand knowledge. I -- if I
9 -- if my memory serves me, and this did not involve me
10 directly, as I recall, Professor Sosnov became involved at a
11 subsequent time, at the invitation of Professor Rudovsky, but I
12 -- I don't think I -- I don't recall that I was directly
13 involved.

14 THE COURT: All you have to do is say you don't know.

15 MR. BAZELON: No further questions. Thank you so
16 much, Professor.

17 THE COURT: Any questions?

18 CROSS-EXAMINATION

19 BY MR. RITTINGER:

20 Q West enjoys an excellent reputation in the publishing
21 industry, isn't that correct?

22 THE COURT: Keep your voice up, please. We couldn't
23 hear your question. The jury couldn't hear it. I couldn't
24 hear it.

25 MR. RITTINGER: Oh, I'm sorry.

1 THE WITNESS: West enjoys an excellent reputation in
2 the publishing industry. West is certainly a very large
3 publisher and publishes lots of things that we use at the
4 University, so I -- I would say that their reputation is good,
5 yes.

6 BY MR. RITTINGER:

7 Q Excellent?

8 THE COURT: Superb. Superb. Go ahead.

9 THE WITNESS: If you want me to say excellent,
10 excellent.

11 BY MR. RITTINGER:

12 Q Well, if it's excellent, that's what I want you to say.

13 A It's -- it's certainly -- it's certainly one of the
14 publishers one would consider having publishing work.

15 Q And are you a subscriber to the treatise?

16 A I'm not.

17 MR. RITTINGER: No further questions, Your Honor.

18 THE COURT: As an afterthought is arising. Any
19 further questions?

20 MR. RITTINGER: May I ask one further question?

21 Then, Your Honor, I -- perhaps I didn't phrase the question
22 correctly.

23 BY MR. RITTINGER:

24 Q The Penn Law Library is a subscriber?

25 THE COURT: What about the Penn Law Library?

1 years.

2 BY MR. BAZELON:

3 Q Were you present when Professor Frenkel testified?

4 A I was, yes.

5 Q Can you pick up where he left off, so to speak? That is,
6 how did you become involved with the treatise, which is the
7 subject of this case?

8 A Well, as he said, and I think it was in 1986-87, he
9 approached me, and said he had been approached by West. West
10 Publishing Company wanted to put out a series of publications
11 in Pennsylvania, covering a variety of subject matter areas,
12 family law, civil procedure, trusts and estates, I think, wills
13 -- the issue of wills. A number of different areas. And one
14 of the books they wanted to put out was a book on criminal
15 procedure, a book that would be used by prosecutors, defense
16 lawyers, judges, and indeed by individuals, who just had some
17 interest, or might find themselves on the wrong side of the
18 law, and want to find out what the procedure is.

19 So, he asked me if I would undertake that project,
20 and ultimately, we talked about it. I was intrigued. I
21 thought there was a need in Pennsylvania for a good treatise on
22 that area. It's a big area of the law. As I said,
23 prosecutors, judges, defense lawyers, and others are interested
24 in that.

25 In looking at what was out there already, I was not

1 terribly impressed with the books that were out there that were
2 being used to educate lawyers and to keep lawyers up-to-date in
3 that area. And I thought that would be an interesting project,
4 useful to me. I would learn more, but more important, useful
5 to the community of lawyers. I have a real stake in teaching;
6 teaching law students, teaching lawyers, and I thought this
7 would be a way to do that.

8 My main concern, and Mr. Frenkel mentioned this, was
9 a commitment to do it. It's easy to say you'll do it. As
10 you'll see, that's a 600 page book. It's a -- it's a big
11 undertaking. I had a lot of other commitments. I was
12 teaching. I was practicing, family and everything else, and I
13 thought it wasn't something I could do by myself. To do it
14 justice, I really thought, and I like to collaborate with other
15 lawyers when I -- when I work. Both in my cases, and in my
16 publications, I often involve other people.

17 Leonard Sosnov, who you've met, was someone I had
18 know, at that point, for about 15 or 16 years. We had worked
19 together on cases. He had been at the Public Defender Office
20 for a number of years. He was about to start a teaching career
21 at Widener, someone I truly respected, and thought we would be
22 a good team. And I thought it was really essential to have two
23 people, because there was a lot of material, and it would just
24 be a more effective product, and better for everybody, if we
25 had two minds, as opposed to -- as opposed to one. He agreed

1 whatever the trial of the case, but we would also give a
2 description of the case. And we'd say, this is what the court
3 ruled, you know, in kind of a synopsis way, a couple of
4 sentences.

5 And I mentioned context before. Where we thought the
6 Court really was now signaling that things are changing in this
7 area, we would alert the reader to our views, and say, we think
8 you could look for more changes in this area. A prosecutor
9 might want to argue this. A defense lawyer might want to argue
10 this, because it's a -- it's an area that's now somewhat
11 undeveloped. It's open, and we don't know where it's going to
12 be in five years. Very important for lawyers, not only to know
13 what the law is, but where it might change in the future,
14 that's what we try to do on a yearly basis.

15 Q Who is the audience, or the constituencies that subscribe
16 to or use the treatise?

17 A For our treatise, the -- the audience is, as I mentioned
18 before, prosecutors. There are hundreds of prosecutors across
19 the state. Defense lawyers, which includes both private
20 defense lawyers, lawyers who are in the private practice and
21 represent clients. Public defenders, and I mentioned before,
22 those are -- in every county in Pennsylvania there's a public
23 defender office, where lawyers represent, and that's all they
24 do, they represent people accused of crime, who can't afford
25 counsel. They're part of the audience. Judges, have purchased

1 the book. Individuals, as I've said before, who are faced with
2 criminal consequences. Some who are in prison, who have no
3 lawyers often purchase the book.

4 It's also been purchased by law libraries. So, the
5 Philadelphia Bar Association has the book in its library. Most
6 of the prisons around the state have the book in their library.
7 Most law schools have the book.

8 And then in large firms. Remember, in -- for example
9 in Philadelphia you have a lot of firms that you may have 200,
10 300, 400 lawyers; some do civil work, some do criminal work, in
11 their libraries, you will find often this volume and other
12 treatises to help lawyers in that particular firm with a
13 particular problem.

14 Q What can you tell us about the extent of use of the
15 treatise? Number of subscribers, et cetera.

16 A Well, there have been hundreds of subscribers over the
17 years, and sometimes, people will subscribe to the book for
18 three years, five years. There are probably some who've
19 subscribe right from 1990 to 2010. Others who subscribe for a
20 few years and then move out, stop practice, stop their
21 subscriptions. So, it's a kind of ebb and flow in terms of who
22 subscribes. But as I said, it's been hundreds of subscribers
23 over the years, and has been mentioned, we not only have the
24 hard copy, the volume that you can purchase and use, but
25 through -- West has an electronic service. So that if you

1 that preparation, and yet our names were still on it.

2 (Pause)

3 Q Other than what you have already explained, were there --
4 well, let -- have you explained all of the deficiencies or the
5 omissions in the 2008 pocket part?

6 A Not completely, probably. As I said, they included three
7 new cases, and that would be -- it ignored major cases in the
8 Supreme Court. It ignored cases in the Superior Court, which
9 were important. The 140, 150 cases that we would normally
10 include, none of that was there. To my recollection, there
11 were no indications of rule changes, and yet there have been
12 multiple rule changes over that year. So the reader would not
13 have known there were new rules that were operation in the
14 court system. And there was no reference to new statutes that
15 had been passed by the legislature. So, in sum, none of the
16 material that you would normally include was there.

17 Q And what was your reaction upon receiving and realizing
18 this?

19 A I was stunned. And when I began to think about it,
20 somewhat angry and somewhat humiliated. I can tell you, I
21 teach at the University of Pennsylvania Law School. We teach
22 ethics. I'm on the disciplinary committee for --

23 MR. RITTINGER: Objection, Your Honor.

24 MR. BAZELON: He's explaining why he's stunned, Your
25 Honor.

1 THE COURT: The objection is overruled.

2 THE WITNESS: I sit on a disciplinary committee that
3 hears charges against students, who plagiarize or use the same
4 paper twice, or whatever it might be. I take that very
5 seriously. And what I was thinking when I read this, and how
6 this would appear to the purchasers of my book, if they saw
7 that this was a sham product, was that I was being put in the
8 same position in their eyes, as someone who is trying to put
9 something over on them to get money, not giving them anything
10 of value, in the same way I was trying students, who were there
11 on plagiarism or other charges. I thought, how hypocritical of
12 me if that was true. So there was a sense of humiliation.

13 There was a sense of anger, I have to say. And I
14 thought -- you often hear a reputation is probably the best
15 thing a lawyer has going for them, or lack of it is the worst
16 thing. It's probably true in any profession, any trade. If
17 you don't have your reputation, you have nothing. And now, we
18 were being associated with a sham product. And so for all
19 those reasons, I felt pretty awful.

20 Q And what, if anything, did you do?

21 A Len Sosnov and I talked about it, you know, reviewed it
22 and make sure we -- we really had read it correctly. And then,
23 you know, at that point, we knew we had to do something. The
24 question is whether we just call West and see what went wrong,
25 and we thought, this was really a major breach of our