SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

JOSEPH RAKOFSKY, *et ano.*

Plaintiffs,

-against-

THE WASHINGTON POST COMPANY, *et al.*

Defendants.

----------X

INDEX NO. 105573/2011

AFFIDAVIT IN OPPOSITION TO MOTION TO DISMISS OF THE WASHINGTON POST COMPANY, et al.

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

JOSEPH RAKOFSKY, being duly sworn, deposes and says:

PLAINTIFF

1. I am the individual plaintiff in the above-entitled action and have knowledge of the facts of this case.

2. I make this affidavit in opposition to the defendants' motion to dismiss. The averments set forth in this affidavit are true to the best of my knowledge, information and belief.

3. My knowledge of the case is based on a review of the pleadings and the other documents in the file, the investigation of the case, and my knowledge of the criminal case in Washington, D.C. indirectly related to the facts from which plaintiffs' causes of action arise.

4. I reside in New York County, New York, at 888 8th Ave., Suite 3-O, New York, New York 10019.

INTRODUCTION

5. This case is a civil action in which plaintiff lawyer seeks money damages and other appropriate relief.

6. All defendants who have appeared in this action have filed motions to dismiss the Amended Complaint or motions to dismiss the Original Complaint.

7. Plaintiffs constitute the responding party.

UNDERLYING FACTS

8. I attended Touro Law Center, and I graduated with the Juris Doctor degree in June 2009.

9. I sat for the New Jersey Bar Examination on July 29 and 30, 2010, and I was later notified that I had passed the examination.

10. I fulfilled all additional requirements for admission to the New Jersey Bar.

11. I was admitted to the New Jersey Bar by the Supreme Court of New Jersey on April 29, 2010.

12. During the entire second year of law school, I focused my studies on Trial Practice technique. I excelled in both courses, Trial Practice Technique and Advanced Trial Practice Technique. During my third year of law school, I interned at the Legal Aid Society for a period of seven months and watched trials and hearings involving my Legal Aid Society colleagues on a daily basis; it was during this time that I was exposed to a multitude of trial techniques and had the opportunity to discuss the trial techniques with the lawyers using them, my colleagues, their adversaries and even Trial Court Judges. At that time, I began building my personal law library and since then, have read countless

books, which teach various trial techniques and offer insights by famous trial lawyers; in addition, I have studied approximately 100 trial instruction videos, which are also a part of my personal law library. While still in law school, I paid to attend Continuing Legal Education ("CLE") workshops which focused on teaching Trial Lawyer skills; frequently, I was the only non-lawyer studying at the CLE workshop (and therefore, arguably, the only person in attendance who paid the course admission fee out of love for learning trial technique and conversely, not to receive necessary CLE credits, which, as a non-lawyer, I was not even eligible to receive). Further, upon graduating law school, I continued to attend CLE workshops which focused on and provided additional Trial Practice Technique instruction. Some of the trial lawyer workshops were 4-day events presented by Gerry Spence's Trial Lawyer College. I spent a considerable amount of time learning directly from Gerry Spence -- Gerry Spence is considered by many to be the preeminent trial lawyer in America -- as well as from other famous and very well-respected trial lawyers. I attended two Gerry Spence Trial Lawyer College workshops, in 2009 and 2010. In addition to the Gerry Spence Trial Lawyer's College workshops, I attended other workshops which taught trial technique and met one night a week for a period of several weeks to practice my technique. I was further trained by expert trial lawyers upon being hired and placed in the Trial Lawyer division at a very large law firm in New York. I have had the opportunity to discuss my cases with a number of very accomplished, very insightful and very experienced trial lawyers and have sought their insights on a regular basis. Some such lawyers were instructors for Gerry Spence's Trial Lawyer College and National Institute for Trial Advocacy ("NITA").

13. In May 2010 I was engaged to represent Dontrell Deaner, a defendant charged with Murder in the First Degree, at trial in the District of Columbia.

14. Although I had been previously engaged to represent other clients in other trials, those cases ultimately did not go to trial, and this turned out to be my first trial.

15. I was not -- and I still am not -- admitted to the District of Columbia Bar.

16. For these reasons, I associated myself with Sherlock Grigsby, Esq., an attorney who is a member of The Grigsby Firm, with offices at 601 Pennsylvania Avenue, Washington, D.C. 20004. I understand that Attorney Grigsby was admitted to the District of Columbia Bar in or about 2003, and has extensive experience in trying cases, including murder cases. Further, I consulted with a multitude of trial lawyers over a period of approximately 10 months when preparing for the *United States v. Dontrell Deaner.*

17. I was admitted *pro hac vice* for the purposes of the Deaner case.

18. For a period of approximately 10 months, I regularly appeared in hearings in connection with the Deaner case.

19. For the entire period of time prior to the trial during which I represented Dontrell Deaner, the Government refused to offer to the defendant any charge less severe than Murder in the Second Degree, which carried with it a potential sentence of 40 years imprisonment, which Mr. Deaner rejected out of hand. Such a charge was completely unacceptable to Mr. Deaner (given that he was charged with Murder in the First Degree, which carried with it a potential sentence of life imprisonment) and he, ultimately, decided to go to trial, instead of accepting the Government's offer to forgo a trial and plead guilty to Murder in the Second Degree. It was my understanding that, while Mr.

Deaner was being represented by another attorney-at-law approximately one year and a half prior to retaining me and my firm, Mr. Deaner had been offered an opportunity to plead guilty to a lesser charge that carried with it a penalty of no more than 5 years, which Mr. Deaner had rejected based upon the advice of his father. The charge on which Mr. Deaner entered a plea of guilty while represented by the court-appointed attorney following the mistrial in the proceeding in which I was acting as lead counsel for Mr. Deaner sentenced to imprisonment for up to 10 years.

20. I was not a "public figure"; I had never involved myself or participated in any way in any press conference (for any of my cases); furthermore, I had never given any interviews; I was strictly a private lawyer representing a client in the *United States of America v. Dontrell Deaner*, a case that was not a high-profile case. Mr. Deaner was never the subject of any news article prior to April 1, 2011. The *United States of America v. Dontrell Deaner* was a garden-variety murder case, which took place in one of the most dangerous cities in the United States.

WASHINGTON POST'S FABRICATED SENTENCE CONSTITUTES DEFAMATION PER SE

21. On Friday, April 1, 2001, Alexander, the reporter from the Washington Post, stopped me in the hallway and asked me whether Judge Jackson's statement about the document Bean chose to deliver to a Judge (who was not the presiding Judge), in a different Court, instead of Judge Jackson (who was the presiding Judge) was true. At that time, he informed me that he would be reporting about the Bean Document. (It bears mentioning that, at the time of the April 1, 2011 proceeding, the "delivered" document

was not a "filing," nor could it ever be, given that Mr. Bean was a non-party and lacked standing; upon information and belief, the Washington Post described it as such so that it could rely on Section 74 defense, which sometimes is used to protect the reporting of in-Court communications.) Judge Jackson neutrally stated that the investigator's eleventh-hour allegation "raises ethical issues,"[1] but said absolutely nothing beyond this.

22. At that time, I declined to comment. However, Alexander persisted. I asked Alexander whether he had any respect for my wish not to give a comment. Alexander replied in sum or substance, "I'm going to make sure you regret your decision; just wait until everyone reads my article," which constitutes an obvious reckless disregard for truth (my declining to comment) as well as the intention to cause harm to me, which, of course, bespeaks malice and the absence of good faith in Alexander's intentions.

23. Washington Post, through Alexander and Jenkins, fabricated their own sentence (to make it appear that I attempted to engage in witness tampering, a Federal and State crime), deviously placed quotation marks on either side of the sentence and published that I wrote the sentence (i.e., forgery). The Washington Post published: "Thank you for your help. Please trick the old lady to say that she did not see the shooting or provide information to the lawyers about the shooting" and alleged the "old lady" referred to in the fabricated email was a "Government Witness."[2] However, I *never* wrote or sent any such email; therefore, neither The Washington Post, nor Alexander, nor Jenkins, could possibly have seen such an email.

24. In its April 1, 2011 report, the Washington Post, through Alexander and

[1] *See* Exhibit 6, Page 7, Line 3.
[2] *See* Exhibit 7.

Jenkins, published: "[w]hat angered [Judge] Jackson even more was a filing he received early Friday from an investigator hired by Rakofsky in which the attorney told the investigator via an attached e-mail to "trick" a government **witness** into testifying in court that she did not see his client at the murder scene (emphasis added)." This is not the only time the Washington Post referred to the woman as a "witness." It also reported "[a]ccording to the filing, Rakofsky had fired the investigator and refused to pay him after the investigator refused to carry out his orders with the **witness** (emphasis added)."

25. Following the Washington Post's fabricated sentence deviously presented in quotation marks, to further create the impression that I wrote the fabricated sentence and thereby, squeeze more impact out of the forgery, the Washington Post states, "[t]he e-mail came from Rakofsky's e-mail account, which is registered to Rakofsky Law Firm in Freehold, N.J." [3]

26. The publication of the aforementioned fabricated sentence constitutes an act of defamation per se because it accuses me of committing a crime (i.e., witness tampering). It also constitutes an act of forgery because the Washington Post intended to defraud and deceive its readers and to injure me as well as my law firm and falsely made (or altered) a written instrument to accomplish this.[4]

27. In addition, in its April 1, 2011 article, the Washington Post, through Alexander and Jenkins, reported, "Rakofsky did not speak during Friday's hearing." However, this sentence is false. The Washington Post created the false impression that, when Judge Jackson addressed the specific email that was written by me, I was too ashamed to say anything. Contrary to the false and unfair report published by the

[3] *See* Exhibit 7.
[4] *See* Exhibit 9.

Washington Post, at that time, I did speak; I was not surprised to hear about the allegation and was willing to discuss it. "During Friday's hearing," I expressly asked the Judge, "Your Honor, is that something you wanted to discuss?"[5] He said that he did not want to discuss it. Instead of reporting this, the WP clearly lied and wrote: "Rakofsky did not speak during Friday's hearing." It is obvious that the Washington Post wanted its readers to believe that I could not help but admit that what the Investigator alleged was true, so instead, I "did not speak."

WASHINGTON POST'S ADDITIONAL DEFAMATION

28. I do not know whether Alexander was actually in Court on Friday, April 1, 2011.

29. Upon information and belief, Alexander was in Court on Thursday afternoon, March 31, 2011 and reported what was "visible" to him. In the Washington Post article published on April 1, 2011, Alexander wrote, "On Thursday [March 31, 2011], Deaner became visibly frustrated with Rakofsky's performance after witnessing disagreements between Rakofsky and Sherlock Grigsby."[6]

30. Not only did Alexander and Jenkins report that, "On Thursday, Deaner became visibly frustrated with Rakofsky's performance," but they presumed to report on the precise event that led to Deaner's becoming "visibly frustrated," the reason being the "witnessing [of] disagreements between Rakofsky and Sherlock Grigsby." Alexander and Jenkins reported that Deaner was "visibly frustrated with Rakofsky's performance after witnessing disagreements between Rakofsky and Sherlock Grigsby." However, the

[5] *See* Exhibit 6, Page 7, Line 7.
[6] *See* Exhibit 7.

"disagreement" that existed was not between me and Grigsby, but rather between me and Dontrell Deaner, our client.

31. If the Washington Post, through Alexander and Jenkins, made any report at all, it had a responsibility to report a "Full, Fair and True" report. However, Alexander and Jenkins ignored and omitted events which occurred, both on Thursday, March 31, 2011 and on Friday, April 1, 2011, which resulted in their commission of grossly irresponsible acts.

32. By failing to report that:

a) On Thursday, March 31, 2011, I moved to withdraw as counsel,

b) I moved to withdraw because a conflict of interest existed between me and our client (which indicates that my eventual withdrawal from the representation of Deaner was not the result of a "D.C. Superior Court judge declares mistrial over attorney's competence" as the Washington Post, through Alexander and Jenkins, published),

c) Judge Jackson initially refused to permit me to withdraw as counsel (which indicates (or should have indicated to Alexander) that, at the time I moved to withdraw, Judge Jackson did not behave in a manner which suggested that my representation was improper or inadequate; it further indicates that my eventual withdrawal from the representation of Deaner was not the result of a "D.C. Superior Court judge declares mistrial over attorney's competence" as the Washington Post, through Alexander and Jenkins, published),

d) I, nevertheless, persisted and was able to convince Judge Jackson to agree to *voire dire* our client,

e) Judge Jackson, out of the presence of counsel, conducted a *voire dire* of Deaner,

f) Deaner confirmed that there was, indeed, a conflict between me and him,

g) Judge Jackson stated on Thursday, March 31, 2011, on the record, that "[T]here appears to be a conflict that has arisen between counsel and the defendant...,"

h) Judge Jackson confirmed on Thursday, March 31, 2011, on the record, that, "[T]his is **not** an issue of manifest necessity (emphasis added)...," (which indicates (or should have indicated to Alexander) that, at the time I moved to withdraw, Judge Jackson did not behave in a manner which suggested that my representation was improper or inadequate; it further indicates that my eventual withdrawal from the representation of Deaner was not the result of a "D.C. Superior Court judge declares mistrial over attorney's competence" as the Washington Post, through Alexander and Jenkins, published),

i) On Thursday, March 31, 2011, Mr. Deaner refused to waive his Sixth Amendment right to be represented by counsel of his choosing and, simultaneously, agreed to waive his Fifth Amendment right against being subjected to Double Jeopardy, so that a mistrial could be effectuated.

j) On Thursday, March 31, 2011, as a direct result of Mr. Rakofsky's motion to be relieved as counsel, Judge Jackson scheduled a proceeding for Friday, April 1, 2011, a day on which there were no proceedings scheduled in the case until Mr. Rakofsky moved to withdraw as counsel[7] for the sole purpose of giving the defendant the opportunity,

---

[7] (*See* Exhibit 2, Page 32, Line 20.) On Monday, March 28, 2011, AUSA Bryant stated to Judge Jackson:

> "I had specifically requested of [the previous Judge] that we not sit on Friday, April 1st because of a personal matter that will take me out of the jurisdiction on that date...she had granted that request of the Government; so I made plans accordingly."

At that time, Judge Jackson replied: "All right...we won't be sitting on Friday."

overnight, to decide on his decision to enable the effectuation of the mistrial Judge Jackson stated on the record repeatedly he was inclined to grant.

k) On Friday, April 1, 2011, Judge Jackson stated that:

> "Let me say that this arose in the context of counsel, Mr. Rakofsky, approaching the bench and indicating that there was a conflict that had arisen between he [*sic*] and Mr. Deaner. Mr. Deaner, when I acquired [*sic*] of him, indicated that there was, indeed a conflict between he [*sic*] and Mr. Rakofsky. **Mr. Rakofsky actually asked to withdraw mid-trial**... (emphasis added),"[8]

(which indicates (or should have indicated to Alexander and Jenkins) that I "asked to withdraw"; it further indicates that my eventual withdrawal from the representation of Deaner was not the result of a "D.C. Superior Court judge declares mistrial over attorney's competence" as the Washington Post, through Alexander and Jenkins, published),

l) further, Judge Jackson, repeatedly, stated, "So I'm going to grant the motion," which indicates (or should have indicated to Alexander and Jenkins) that my eventual withdrawal from the representation of Deaner was the result of a "*motion*" and not the result of a "D.C. Superior Court judge declares mistrial over attorney's competence" as the Washington Post, through Alexander and Jenkins, published; clearly, Alexander and Jenkins either made no inquiry as to whether I moved to withdraw or conversely, knew that I moved to withdraw because of a conflict that existed between me and the client and subsequently, refused to publish such facts, which resulted in the report being grossly unfair and almost entirely untrue,

and instead, reporting that:

---

[8] *See* Exhibit 6, Page 3, Line 12.

m) "D.C. Superior Court judge declares mistrial over attorney's competence"[9] (when it is clear that Judge Jackson expressly stated that "[T]his is **not** an issue of manifest necessity (emphasis added)...,"and that Judge Jackson initially refused to permit me to withdraw, which indicates (or should have indicated to Alexander and Jenkins) that, at the time I moved to withdraw, Judge Jackson did not behave in a manner which suggested that my representation was improper or inadequate, and

n) Judge Jackson "allowed the defendant to fire his New York based attorney"[10] (when it is clear that I moved to withdraw, which motion was ultimately, granted by Judge Jackson; as previously mentioned, on Friday, April 1, 2011, Judge Jackson stated, "So I'm going to grant the motion.").

Washington Post, through Alexander and Jenkins, failed to publish a report that was "substantially accurate," much less "fair and true."

33. Alexander did not make the statements in good faith.

34. Alexander made the statements with malice.

35. It should be noted that, in addition to the defamation per se and the unfair and untrue report comprised of additional defamatory statements published by the Washington Post, it engaged in other unlawful behavior; that is, the Washington Post undertook a classic "bait and switch" con technique by holding itself out as the publisher[11] of such defamation per se, but following the filing of the case at Bar, stated that the wrong entity was named in the instant action.[12]

---

[9] *See* Exhibit 7.
[10] *See* Exhibit 7.
[11] *See* Exhibit 37.
[12] *See* The Washington Post Company's motion to dismiss the Amended Complaint.

36. Before the briefing schedule for the instant motion was established, Washington Post Company moved to dismiss the Amended Complaint on the ground, *inter alia*, that it is not the owner and publisher of The Washington Post newspaper and website; that the owner and publisher thereof is a wholly-owned subsidiary of Washington Post, LLC, as a result of a 2003 transaction between Washington Post Company and Washington Post, LLC; and, therefore, that Washington Post Company is not the proper party defendant with respect to the claims asserted by plaintiffs in their Amended Complaint that relate to and arise from matter published in The Washington Post newspaper and website. Plaintiffs believe and intend to contend, based upon facts and for reasons they intend to set forth and support in opposition to Washington Post Company's motion, that Washington Post Company's motion on such ground, and the matter introduced by Washington Post Company in support thereof, are factually and legally insufficient to entitle Washington Post Company to the relief sought by Washington Post Company on such ground or to support the assertions made by Washington Post Company in support thereof. However, inasmuch as Washington Post Company has, by and in its said motion, asserted that Washington Post, LLC is a proper party defendant in this action, plaintiffs believe that it is in the interest of judicial economy that Washington Post, LLC be joined as a party defendant, as it would have been in plaintiffs' Amended Complaint had plaintiffs then been aware of Washington Post Company's aforesaid contention and assertions in its later-filed motion to dismiss, so that the issue created by such contention and assertions may be resolved at the earliest stage of pleading.

GOVERNMENT REFUSES TO RE-TRY DONTRELL DEANER:

37 During Dontrell Deaner's trial, I elicited testimony from the Government's lead witness which destroyed his credibility. The testimony, which was preserved on the record, proves that the Government's "star witness," who was testifying against Mr. Deaner, did not see the shooting. The witness stated that he saw the victim shot in the chest,[13] when the victim was actually shot in the back with a single bullet.[14]

38. Recognizing that, if the Government were to insist on re-trying Mr. Deaner, the attorney who would represent Mr. Deaner at the second trial would rely on the testimony I elicited during the first trial, the Government offered Dontrell Deaner a charge of Involuntary Manslaughter instead, provided he would agree to waive his right to a trial. On January 13, 2012, Mr. Deaner pled guilty to Involuntary Manslaughter.

39. As a result of pleading guilty to Involuntary Manslaughter (instead of Murder in the First (or Second) Degree(s)), his punitive exposure (of a maximum term of 10 years) was a small fraction of what it would have been had he been convicted of either Murder in the First Degree, which carried with it a maximum sentence of life in prison, or Murder in the Second Degree, which carried with it a maximum sentence of 40 years.

FRAUD AND BLACKMAIL PERPETRATED BY ADRIAN BEAN

40. In or about early October 2010, I hired Investigator Bean ("Investigator") to assist us in our defense; subsequently, I discharged the Investigator for incompetence.

41. On October 6, 2010, nearly seven months before Dontrell Deaner's trial, I sent an email, which was hastily written on my handheld mobile device that used an

[13] *See* Exhibit 4, Page 91, Line 5.
[14] *See* Testimony of Medical Examiner, Exhibit 3, Page 127, Line 8.

ambiguous choice of the word "trick" to Adrian Bean, who was then an investigator who my co-counsel and I were using to assist us in the Dontrell Deaner defense. [15]

42. Bean had been made aware by both, me and co-counsel, Sherlock Grigsby, that the reason we wished him to speak with the person referred to in the email as "old lady" was so that he could, if necessary, testify as to what she had said to him. He also knew that by my using the unfortunate choice of word "trick," I meant that he should not disclose to her that he was working for the Deaner defense. There was absolutely nothing improper or unethical about my request; it referred only to my suggestion to the investigator to understate the fact that he was employed by the defense.

43. I requested that Bean do this because I was concerned that if the "old lady" knew he was asking on behalf of Dontrell Deaner, she might give information contrary to what she told me, co-counsel, Sherlock Grigsby and Dontrell Deaner's mother, several months earlier, that she (a) was not present during the shooting and therefore, did not witness the shooting, (b) was not being compensated with money by the Government (unlike other Government witnesses in the Deaner case) to participate in its prosecution of my and Sherlock Grigsby's client and (c) was off the premises and gambling at the time of the shooting.

44. Bean sought to exploit, for the purpose of receiving compensation that was not due him, one of the emails I sent to him that used the word "trick," which, as previously mentioned, Bean knew only too well, was a shorthand word that meant only that Bean should underplay the fact that he worked for the defense. This email memorialized an earlier conversation between Bean and me concerning the woman who was a **non-witness**, referring only to my suggestion to Bean to understate the fact that he

[15] *See* Exhibit 13.

was employed by the defense while endeavoring to get the non-witness to **repeat**, for a second time, what she had already admitted "a couple of months" previously to me, Sherlock Grigsby (*i.e.* the "2 lawyers" referred to in the email) and Dontrell Deaner's mother, and not with respect to *changing* anything, irrespective of whether it may or may not have concerned the substance of her statements. (Further, it is axiomatic that, because she was never a witness, she never gave testimony; despite this, Bean mendaciously stated to the Court that she was, in fact, a witness, that she gave testimony and that I attempted to change such testimony.)

45. While it is true that the actual email that I sent to the investigator (before I dismissed him for incompetence) used an ambiguous word (*i.e.*,"trick"), there was absolutely nothing improper or unethical about my request. It referred only to my suggestion to the investigator to understate the fact that he was employed by the defense.

46. However, not only did Bean fail to complete any of the 4 tasks I assigned to him, he never even *began* to do any work assigned to him, whatsoever.

47. Ultimately, an investigator hired subsequent to Investigator Bean's termination accomplished the very same tasks previously assigned to Investigator Bean quickly, without ever being required to engage in trickery; despite Bean's duplicitous and patently false allegations, there are now 5 individuals who will affirm that the non-witness merely repeated statements (to the subsequent investigator) that she had already admitted "a couple of months" earlier to the "2 lawyers" and the client's mother: 1) non-witness, 2) subsequent investigator, 3) client's mother, 4) Grigsby and 5) I.

48. Bean undertook a persistent course of action to blackmail me and the Rakofsky Law Firm, which he communicated in writing (in emails) and orally to me, Mr. Grigsby and other individuals.

49. Knowing full well that Bean would attempt to destroy my reputation if I refused to be complicit in committing fraud under the Criminal Justice Act, I refused to acquiesce to Bean's threats.

50. On March 16, 2011, in response to one of many acts of blackmail perpetrated by Bean, **2 weeks before** Bean ever underhandedly and completely improperly delivered to a different judge, presiding in a different trial Court a specious and illegal document, I wrote in an email to Bean: "You repeatedly lied to us and did absolutely no work for us... *file what you need to file* and I will do the same (emphasis added)."

51. On the morning of Friday, April 1, 2011, instead of going through proper channels, Bean delivered a document containing baseless allegations to a different judge, sitting in a different court, (not the Judge presiding in our case, *United States v. Dontrell Deaner*). In his document, Bean sought to obtain a "voucher," which is a method of compensation made available by the Criminal Justice Act which provides funds issued by the Government and **not** money from me, my law firm or the family of the defendant. (Such Criminal Justice Act funds would not have even been available to Bean or any other provider of services in the case, but for my efforts during one of the many hearings that preceded the trial, which began on March 28, 2011.) The Investigator lied in this document (and thereby lied to the Court) when he stated in it that I instructed him to "trick a witness into *changing* her testimony" (emphasis added).

52. Even though it was not my money with which any of the investigators were to be paid, I declined to authorize the issuance of a voucher to Bean for the full amount of money Bean demanded (despite many emails and messages sent to me by Bean which sought to blackmail me and my law firm) primarily because Bean refused to

make any attempt to begin the work assigned to him, instead, relying on the value of blackmail and the power he believed and hoped the email which contained the word "trick" would have over me.

53. I offered to authorize a voucher for Bean for a lesser amount of money (even though Bean's claim to any "compensation" was specious and amounted to a "shake down"); however, Bean preferred to engage in blackmail to obtain even more money than I was willing to authorize, and ultimately, sought both to deceive the Court and to extort money to which he was not entitled under the Criminal Justice Act.

54. Bean perpetrated 4 criminal acts: 1) blackmailed me and RLF, 2) attempted to defraud the Government and steal from the Criminal Justice Act ("CJA") Fund, 3) misused a pleading to offer false statements to the court by stating (in his "motion") "Mr. Rakofsky instruct[ed] him to try to 'trick' a witness into *changing* her testimony" and 4) violated the client's constitutional rights by providing confidential and privileged material concerning defense strategy and tactics to the Court.

55. Consequently, Bean has been suspended by the agency that governs investigators working on criminal cases and is CJA-ineligible.

THE TRIAL

56. During the trial, a conflict-of-interest arose when my client insisted that I pose certain questions which, in my judgment, were inappropriate and contrary to his penal interests.

57. As a result, I was ethically compelled to ask the Trial Judge to effectuate a mistrial and made a motion for His Honor to allow me to withdraw from the representation.[16] His Honor did both of those things.

THE ONSLAUGHT OF DEFAMATION AND OTHER TORTS

58. On Friday, April 1, 2011, The Washington Post published a story in its paper edition concerning the *Deaner* trial, and was severely critical of my professional performance.[17]

59. The story spread like wildfire both on the Internet and in traditional paper publications; I was vilified in the worst of terms, and this included the assertions that I am allegedly incompetent to practice law and/or that I committed the crime of attempted witness tampering and/or that I am associated with other illegal and illicit activity including Child Pornography and Bestiality.

60. Some of said Defendants have attempted to rely upon the anonymity they believe the Internet has afforded them or, through the use of pseudonyms, to conceal their identities when participating in their unlawful activities, such as publishing in the section of their website, which they created and dedicated to Joseph Rakofsky, despicable, obscene and illegal **Child Pornography** content[18] and associating plaintiff with such content by superimposing Plaintiff Rakofsky's face on various images,[19] as well as their repeated oppression of plaintiffs in complete and reckless disregard of their duties under the law and the legal rights of the plaintiffs.

---

[16] *See* Exhibit 5, Page 3, Line 23.
[17] *See* Exhibit 7.
[18] *See* Alayon Affidavit and Exhibit 19.
[19] *See* Alayon Affidavit and Exhibit 20.

61. Some of said Defendants have co-opted the image of Joseph Rakofsky and superimposed his image on other images, including but not limited to images of young children, have published photos of a young girl in a bathing suit, who is described as being "Jailbait,"[20] jailbait being a girl with whom sexual intercourse is statutory rape in the section of their website they created and dedicated to Joseph Rakofsky. Also contained in the section of their website they created and dedicated to Joseph Rakofsky are defendants' statements "Joseph Rakofsky **rapes** donkey's," "**Rape**-ofsky,"[21] and have published child pornography, with the intention to associate plaintiff Rakofsky with it. The child pornography was subsequently hidden by the owners and/or agents and/or controllers of certain Defendants. Following below (see ¶¶ 62-71) are nine (9) examples:

62. On April 1, 2011, Defendant The Washington Post, acting by and through Defendant Alexander and Defendant Jenkins, with malice and hate, in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties, and in reckless disregard for the truth, published that I allegedly wrote and sent an email to an investigator in which I allegedly stated, "Thank you for your help. Please trick the old lady to say that she did not see the shooting or provide information to the lawyers about the shooting" and referred to the "old lady" as a "Government Witness." I *never* wrote or sent any such email; therefore, neither The Washington Post, nor Alexander, nor Jenkins, could possibly have seen such an email.

63. On April 4, 2011, Defendant City Paper, acting by and through Defendant Smith, with malice and hate, and in a grossly irresponsible manner without due

[20] *See* Alayon Affidavit and Exhibit 21.
[21] *See* Alayon Affidavit and Exhibit 22.

consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties, and in reckless disregard for the truth, published in an article that: "A Friday hearing fell apart when Judge William Jackson declared a mistrial, partially because Rakofsky's investigator filed a motion accusing the lawyer of encouraging him to 'trick' a witness." However, the record is clear that I moved to withdraw as lead counsel for Deaner because a conflict of interest arose between my client and me; that Judge Jackson granted my motion to be relieved as lead counsel for Deaner; and that Judge Jackson never "declared a mistrial," even in part, because "Rakofsky's investigator filed a motion accusing the lawyer of encouraging him to 'trick' a witness." I *never* encouraged anyone to trick a witness.

64. On April 4, 2011, Defendant ABA, acting by and through Defendant ABA Journal and Defendant Weiss, with malice and hate, in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties, and in reckless disregard for the truth, published an article in which they stated that: "The judge declared a mistrial after reviewing a court filing in which an investigator had claimed Rakofsky fired him for refusing to carry out the lawyer's emailed suggestion to 'trick' a witness." My suggestion allegedly read: "Thank you for your help. Please trick the old lady to say that she did not see the shooting or provide information to the lawyers about the shooting."

65. However, the aforementioned ABA article, which was communicated, in whole or in part, to members of the ABA in a weekly email to its members was and is a complete fabrication that is factually untrue in all respects. Judge Jackson never declared a mistrial that was based, either in whole or in part, upon the "investigator's" "motion," which, at the time of the so-called "newsworthy event," was never formally filed with the

Court. Instead, it was improperly "delivered" by and on behalf of a non-party to a different judge, presiding in a different trial Court, and, as such, was completely improper. Rather, the record is clear that I moved to withdraw as lead counsel for Deaner because a conflict arose between my client and me, and that the only action taken by Judge Jackson with respect to me was to permit me to withdraw as lead counsel for Deaner for reasons entirely unrelated to any claims of the "investigator" referred to by the ABA and its employees. At no time did Judge Jackson grant a mistrial after reviewing any "court filing in which an investigator had claimed that [I] fired him for refusing to carry out [my] supposed emailed suggestion to 'trick' a witness" as ABA, ABA Journal and Weiss maliciously published.

66. On April 4, 2011, Defendant Kravet and Defendant Simple, acting by and through Defendant Greenfield, with malice and hate, in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties, and in reckless disregard for the truth, published in their article entitled "The Truth Free Zone Eats One Of Its Own," that: "To put it another way, the judge not only found Rakofsky too incompetent to handle the case, but too dishonest." However, the record is clear that I moved for leave to withdraw as lead counsel for Deaner because a conflict of interest arose. Judge Jackson granted my motion solely because a conflict of interest arose between my client and me, and not because His Honor found me to be either "too incompetent to handle the case" or "too dishonest," much less both, as Defendants Kravet, Simple, and Greenfield erroneously published.

67. In addition, on April 4, 2011, Defendant Kravet and Defendant Simple, acting by and through Defendant Greenfield, with malice and hate, in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties, and in reckless disregard for the truth, published in their article entitled "The Truth Free Zone Eats One Of Its Own," that "no one should be surprised that Rakofsky's willingness to lie on the internet is reflected in his character as a lawyer." However, I never "lied" on the internet, and my character is not a reflection of "lies," as Kravet, Simple, and Greenfield erroneously and maliciously published.

68. Further, on April 4, 2011, Kravet and Simple, through Greenfield, further maliciously states: "You aren't willing to pay the price that Joseph Rakofsky is now going to pay. The internet will not be kind to Rakofsky, nor should it. If all works as it should, no client will ever hire Rakofsky again. Good for clients. Not so much for Rakofsky, but few will cry about Rakofsky's career suicide." In that statement, Defendants Kravet and Simple, acting by and through Greenfield, recognize the extraordinary damage that has been done to my career, yet erroneously and maliciously publish such damage as "suicide," when, in truth it is "character assassination" and the "murder" of my reputation by Defendants Kravet and Simple, through Defendant Greenfield, and other publishers similarly situated, including, but not necessarily limited to, the defendants named in the Amended Complaint. Defendants Kravet and Simple, through Defendant Greenfield, further recognized the extraordinary damage that has been done to my career by publishing, "Think about Joseph Rakofsky. And know that if you do what he did, I will be happy to make sure that people know about it. There are

probably a few others who will do so as well. What do you plan to do about those loans when your career is destroyed?"

69. On April 4, 2011, Defendant Mayer Law, through Defendant Mayer, with malice and hate, in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties, in reckless disregard for the truth, published in their article entitled, "Lying Piece of $%^& with Screenshot as Evidence" that "the mistrial was because of Rakofsky's blatant ineptitude." However, the record is clear that I moved for leave to withdraw as lead counsel and was permitted to do so. Judge Jackson granted my motion because a conflict of interest occurred between my client and me, and never granted a mistrial "because of [my] blatant ineptitude."

70. On April 13, 2011, Defendant Reiter & Schiller, acting by and through Weaver, with malice and hate, in a grossly irresponsible manner without due consideration for the standards of information gathering and dissemination ordinarily followed by responsible parties, with reckless disregard for the truth, published in their article entitled "Competence" that "The final straw for Judge Jackson was a filing he received on Friday, April 1 from an investigator hired by Rakofsky, who Rakofsky later fired and refused to pay when the investigator failed to carry out his request to "trick" a witness "to say that she did not see the shooting or provide information to the lawyers about the shooting." However, I neither "fired" nor "refused to pay" an investigator "when the investigator failed to carry out [my] request to 'trick' a witness 'to say that she did not see the shooting or provide information to the lawyers about the shooting.'" I

never did this, as Defendants Reiter & Schiller and Weaver would have known had they read the email containing the alleged request to the "investigator."

71. None of these stories was the expression of an opinion as opposed to a statement of alleged fact.

72. Each of these stories was obviously "of and concerning" me.

73. None of these stories was a fair and true report of the subject judicial proceeding in that every one of them was embellished with commentaries that deprived them of fairness and truth and/or stated assertions of alleged fact that were patently and provably false.

74. Dozens of additional publications of the same defamatory character are alleged with precision in Plaintiffs' Amended Complaint (see Exhibit 12).

LINKAGE NETWORK

75. Many of the defendants in the case at bar have caused their specific defamatory article(s) to connect to other specific defamatory article(s) written and/or published by other defendants via "hyperlinks." A hyperlink permits the reader of an article on the Internet to click on a phrase in that article -- which is usually highlighted, underlined or in bold-face font – and, automatically, connect to a different article, or "target article"; the reader is "spoon-fed" and transported directly to the target article, without ever being required to know of the target article's existence in the first place.

76. The defendants in the case at bar created a network of hyperlinks (i.e., "Network") which transported the reader from one defamatory article, written by one defendant, to another defamatory article, written by a different defendant. Many of the

target articles constituted defamation *per se* because they accused me of committing crimes both under Federal and State law (i.e. "witness tampering"); other publications published by certain defendants (or their agents) associated me with Child Pornography and Bestiality and such defendants provided a hyperlink to the website of Attorney Turkewitz and the Turkewitz Law Firm. (Attorney Turkewitz is acting as local counsel for some 35 defendants in the case at bar.) The reason the Network was created by the defendants is two-fold: 1) to advance their own pecuniary and business interests and 2) to silence and intimidate me from, and retaliate against me for, resorting to the legal processes available to me and my law firm under the law, thereby interfering with my legal and constitutional rights, a practice known as "cyber-bullying," while engaging in an open and notorious act of "mobbing," which is a practice in which the Defendants conspired with each other and acted in combination and concert with each other for the purpose of intimidating, injuring grievously and destroying my reputation, business and profession.

77. The Defendants advanced their own pecuniary and business interests by first, creating and then, permitting their website articles to participate in the Network. Because Google (and any other search engine) operates like a meritocracy, the websites with the most readers advance in their respective *position* (on the search engine) and therefore, improve their visibility to potential clients. The Defendants believed that, if their *position* on the search engine improved, their visibility would, in turn, also improve, until, ultimately, their profit levels would improve (because more readers would visit their website, learn about their law practice (or other business) and eventually, hire them). Further, by creating a Network (of defamation), prospective clients could not escape the

uniform message that each of the defendants benefitted from and sought to advance to any prospective client: *if you hire a young lawyer who charges a much lower fee, you will end up being represented by an individual who commits crimes and "lies and lies and lies" and is so incompetent that your Judge will declare a mistrial.* Each of the defendants stood to benefit (and did benefit) by promulgating their libel, which, quite intentionally ruined me and my business – in their April 4, 2011 article, Defendants Scott Greenfield, Simple Justice NY, LLC, Blog.SimpleJustice.US and Kravet & Vogel, LLP (who is represented by local counsel Attorney Turkewitz) wrote, "You aren't willing to pay the price that Joseph Rakofsky is now going to pay. The internet will not be kind to Rakofsky, nor should it. If all works as it should, no client will ever hire Rakofsky again."

78. For example, Attorney Turkewitz's article contained links to 9 different defamatory articles about me, by at least, 9 different defendants. Thus, a reader of 1 article (in this example, Attorney Turkewitz's article) could be transported to 9 different additional target websites (from Attorney Turkewitz's article), read 9 different additional defamatory articles about me (resulting in a pecuniary benefit to a total of 10 defendants), simply because they read Attorney Turkewitz's initial defamatory article. Each time any of these 10 websites were visited, each of the 10 Defendants benefitted; in each instance that a reader clicked on a hyperlink from Attorney Turkewitz's website, the owner of the target website received credit for a new visit (or a "hit") which resulted in scoring another point (for him or her and his or her respective law practice or business) with the search engine on which their website was linked, which contributed to more visibility (for their law practice) because of a new and better *position*. As Defendant Brian Tannebaum

admits in Defendant Jamison Koehler's article on February 1, 2010 (which was published approximately 1 year and 3 months prior to the filing of the instant action), "I realized long ago that it's not about the profession anymore, it's about Google [search engine], and *positioning* (emphasis added)" (http://koehlerlaw.net/2010/01/on-ghostblogging-west-berlin-and-the-internet/#comments).[22] Further, because Turkewitz's article contained 9 different hyperlinks to 9 different additional defamatory target articles, Turkewitz (and his law firm) benefitted each and every time a reader returned to his website, when that reader clicked on any of the 9 different hyperlinks. (Incidentally, Defendants Jamison Koehler and Koehler Law published a number of defamatory articles of and concerning me, one of which contained 12 hyperlinks connecting to 12 different additional defamatory target articles.)

79. If, for instance, the same reader who was first presented with the libel published by Attorney Turkewitz later clicked on a hyperlink that transported him or her to the defamatory article published by Defendants Elie Mystel, AboveTheLaw.com and Breaking Media (who are also represented by Attorney Turkewitz), that reader would now be presented with 7 new hyperlinks, each connecting to a defamatory and false target article. Between only the Turkewitz article and the Elie Mystel, AboveTheLaw.com and Breaking Media article, a reader would be presented with 16 different hyperlinks, each connecting to a defamatory and false target article of and concerning me. Indeed, it is easy to see how destructive such a Network can be when it is created and used specifically to destroy the reputation and careers of young lawyers who charge much lower fees.

[22] See Exhibit 39.

80. Without the existence of the hyperlinks, the Defendants' readership might never have discovered another individual defendant's website and therefore, might never have been aware of that respective defendant's existence or services that defendant offered. Conversely, as a direct result of the hyperlinks, readers and potential clients alike were exposed to the law practices of a number of defendant lawyers who, otherwise, would never have received as many hits, scored as many points (for him or her and his or her respective law practice or business) with the search engine or enjoyed as much visibility and/or a better *position* on the various search engines.

THE WASHINGTON POST

81. All major newspapers contain a masthead on which the name of the owner and, usually, certain principal officers and/or directors of the owner that publishes the newspaper are listed. The Washington Post newspaper as published on September 2, 2011[23] sets forth the name of "The Washington Post Company." It lists a number of individual officers or directors by their respective titles, indicating that they hold their respective positions in The Washington Post Company. Nowhere in the Washington Post masthead (as it was published on September 2, 2011) is there any reference to Washington Post LLC or any other entity. The Washington Post newspaper thereby represents to the public at large that The Washington Post Company is the only party holding an ownership interest in The Washington Post Company. More particularly, nowhere in the masthead does the name Washington Post, LLC appear.

MR. RAKOFSKY IS ELIGIBLE TO PRACTICE LAW

[23] *See* Exhibit 37.

82. Payment was made to the New Jersey Lawyers' Fund for Client Protection, but apparently had not been received by it. I was not made aware of this fact until a later date. I did not have adequate proof of having already paid the fees; therefore, I paid twice. The situation has been cured retrospectively.

MR. RAKOFSKY STATED ALL KNOWN DEFENDANTS WERE SERVED

83. Of the dozens of defendants named in this action, there are only a couple of defendants whose identities I do not know because they libeled me anonymously. I stated to the Court on September 15, 2011 that all *known* defendants were served.[24] Conversely, I never represented to the Court that I had served the 2 or 3 anonymous defendants in this action who are determined to evade liability. Obviously, these 2 or 3 defendants who insisted on concealing their identities were never served. I never represented that the anonymous entities were served and have never made any false representation to any Court.

DOUDNA DEFENDANTS' SPOLIATION OF POTENTIAL EVIDENCE

84. The Doudna defendants removed their allegedly defamatory statements from the Internet after they were named in this suit. I believe they participated in the Link Network, but I am unable to state so with certainty because Mr. Doudna undertook to remove the website before I had an opportunity to retain our investigator, who was hired to make copies of the Defendants' articles and to construct the 7 diagrams,[25] which depict merely a small swath of the Link Network.

---

[24] *See* Exhibit 38.
[25] *See* Exhibit 1 (p.1) - (p.7)

CONCLUSION

85. For all of the foregoing reasons, plaintiff respectfully requests that the defendants' motion to dismiss be denied in its entirety.

86. I am the individual plaintiff in the above-captioned matter; I have read the foregoing affidavit and know the contents thereof; the allegations are true and accurate to the best of my knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters, I believe them to be true.

Dated: New York, New York
May 15, 2012

Respectfully Submitted,

Shahid Mahmood
Notary Public, State of New York
No. 01MA6221276
Qualified in Kings County
Commission Expires May 03, 2014

Sworn to before me on the
15 day of May, 2012

Written by:
Joseph Rakofsky, Esq.
RAKOFSKY LAW FIRM, P.C.
4400 US-9
Freehold, NJ 07728
Tel: (877) 401-1529
Fax: (212) 618-1705
JosephRakofsky@gmail.com

/s/
Matthew H. Goldsmith, Esq.
ATTORNEY OF RECORD
FOR PLAINTIFFS
Goldsmith & Associates, PLLC
350 Broadway, 10th Floor
New York, NY 10013
Tel: (212) 217-1594
Fax: (212) 226-3224
MHGoldsmith@MGAPLAW.com

TO:
James Rosenfeld
Davis Wright Tremaine LLP
1633 Broadway, 27th Floor
New York, NY 10019
Tel: (212) 603-6455
Fax: (212) 489-8340
Email: jamesrosenfeld@dwt.com

Attorneys for Defendants:
THE LAW OFFICE OF JEANNE O'HALLERAN, LLC and JEANNE O'HALLERAN

Robert Balin
Davis Wright Tremaine LLP
1633 Broadway, 27th Floor
New York, NY 10019
Tel: (212) 603-6440
Fax: (212) 489-8340
Email: robbalin@dwt.com
Attorneys for Defendants:
CREATIVE LOAFING MEDIA, WASHINGTON CITY PAPER and REND SMITH

Jennifer L. Jones
Proskauer
Eleven Times Square
New York, NY 10036-8299
Tel: (212) 969-3704
Fax: (212) 969-2900
jljones@proskauer.com
Attorneys for Defendants:
AMERICAN BAR ASSOCIATION, ABAJOURNAL.COM, DEBRA CASSENS WEISS and SARAH RANDAG

Chetan Patil
Williams & Connolly LLP
725 Twelfth Street, N.W.,
Washington, DC 20005
Tel: (202) 434-5811
Fax: (202) 434-5029
cpatil@wc.com
Attorneys for Defendants:
THE WASHINGTON POST COMPANY, KEITH L. ALEXANDER and JENNIFER JENKINS

Thomas A. Catalano

Lester Schwab Katz & Dwyer
120 Broadway
New York, New York 10271
tcatalano@lskdnylaw.com
Tel: (212) 341-4298
Fax: (212) 267-5916
tcatalano@lskdnylaw.com
Attorneys for Defendants:
LAW OFFICES OF MICHAEL T. DOUDNA and MICHAEL T. DOUDNA

David Brickman P.C.
1664 Western Avenue
Albany, New York 12203
Tel: (518) 464-6464
Fax: (518) 464-6688
davidbrickman@verizon.net
Attorneys for Defendants:
KOEHLER LAW, JAMISON KOEHLER, SEDDIQ LAW, MIRRIAM SEDDIQ, THE BEASLEY FIRM, LLC and MAXWELL S. KENNERLY

John H. Teschner
132 Nassau St., Apt. 900
New York, NY 10038
Tel.: 212 964 8822
Fax: 212 619 2340
jhtesq@yahoo.com
Attorneys for Defendants:
MACE J. YAMPOLSKY & ASSOCIATES
MACE J. YAMPOLSKY

Eric Turkewitz
The Turkewitz Law Firm
228 East 45th Street - 17th Floor
New York, NY 10017
(212) 983-5900
Eric@TurkewitzLaw.com
Attorneys for Defendants:
Eric Turkewitz, The Turkewitz Law Firm, Scott Greenfield, Simple Justice NY, LLC, Blog.SimpleJustice.US, Kravet & Vogel, LLP, Carolyn Elefant, MyShingle.com, Mark Bennett, Bennett and Bennett, Eric L. Mayer, Eric L. Mayer, Attorney-At-Law, Nathaniel Burney, The Burney Law Firm, LLC, Josh King, Avvo, Inc., Jeff Gamso, George M. Wallace, Wallace, Brown & Schwartz, "Tarrant84," Banned Ventures Banni, Brian L. Tannebaum, Tannebaum Weiss, Colin Samuels, Accela, Inc., Crime and Federalism, "John Doe" #1, Antonin I. Pribetic, Steinberg Morton, Elie Mystel, AboveTheLaw.com, Breaking Media, LLC, David C. Wells and David C. Wells, P.C.

Mark Weissman
Herzfeld & Rubin, P.C.
125 Broad Street, New York, NY, 10004
Tel: (212) 471-8503
Fax: (212) 344-333
MWeissman@herzfeld-rubin.com
Attorneys for Defendants:
REUTERS AMERICA
DAN SLATER

Edward F. Westfield, P.C.
274 Madison Avenue, Suite 1601
NY, NY 10016
(212) 532-6625
Attorneys for Defendants:
Gamso, Helmick & Hoolahan

Allbritton and TBD.com
represented by:
Levine Sullivan Koch & Schulz, LLP
Jacob P. Goldstein
321 West 44th Street
Suite 510
New York, NY 10036
Phone (212) 850-6134
Fax (212) 850-6299