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January 5, 2012

Catherine O'Hagan Wolfe
Clerk of Court
U.S. Court of Appeals
U.S. Courthouse
40 Foley Square
New York, NY 10007

Re: Book v. Connecticut Resource et al., CA #11-1970

Dear Ms. O'Hagan:

On December 27, 2011, I presented to this Court of Appeals a timely Motion for Reargument *En Banc* of Court Ruling to Deny Motion to Recall Mandate. On December 29, 2011, a notice was sent to me of Non-Jurisdiction (copy attached). The reason given was simple reference to a mandate issued by this Office of the Clerk on August 12, 2011. With reference to Fed. Rules of App. Pro., Rules 3 and 40 and the 5th and 9th Amendments, there is substantive constitutional error in such procedural action of having returned the Motion for which I hereby re-present the original Motion together with the two hard copies which were presented on December 27, 2011 (also with the respective Motion for Leave to File Excess Pages). Very simply, if there is jurisdiction for this Court to receive and hear a motion to recall mandate, then pursuant to FRAP, Rule 40 and other cited provisions, there is jurisdiction for this Court to receive and hear a timely motion for reconsideration/reargument. Some history and references are in order!

Notice of Appeal in this matter was properly filed on May 6, 2011. The Appeal was docketed by this Office of the Clerk on May 16, 2011 with a docket number assigned of 11-1970. On May 19, 2011, you issued an Order (copy attached). In that Order, you referred to a separate Court Ruling of January 30, 1998 (copy attached), that issued in several specific separate Appeals which had been filed at that date. You referred to that ruling which you explained required me "to file a motion seeking leave of this Court prior to filing any future appeals". Notwithstanding that such Court ruling of January 30, 1998 was erroneous (See my Motion of June 22, 2011 for Leave to Appeal, exp. Pgs. 17 - 18.), it was explicit only for "any further submissions from Book in these matters". In other words, the scope of that earlier ruling was only for the three Appeals which are specifically mentioned in the ruling. Thus, that ruling did not and should have not applied to "any future appeals". Nonetheless, in your recent order, you required me to present a motion for leave to appeal in this matter.

As a matter of my discretion, I challenged the appropriateness of your ruling as part of my Motion for Leave which I timely filed on June 22, 2011 (esp. at p. 8). On August 12, 2011, this Court issued a ruling to deny my Motion for Leave to Appeal. On the same day, a mandate was issued. A timely Motion for Reconsideration of August 24, 2011 was returned by the court case manager Connie Mazarriego on September 14, 2011 with a Notice of Non-Jurisdiction (that is, referring to the effect of the earlier issuance of the mandate). Upon my consultation with Ms. Mazarriego,

I was advised that where there is a Court ruling to deny a motion for leave to appeal, a mandate is issued by the Office of the Clerk on the same day (an apparent practice to which, with reference to FRAP, Rule 41(b), among other references, I take issue).

On September 21, 2011, I presented a timely Motion to Recall Mandate. Among other matters, I pointed out with reference to FRAP, Rule 41(b), the mandate was issued prematurely (at pgs. 15 - 17). Notwithstanding such proper arguments, on December 12, 2011, the Court issued a ruling to deny the Motion to Recall Mandate.

Explicitly pursuant to FRAP, Rule 40, on December 27, 2011, I timely filed the accompanying Motion for Reargument *En Banc.* As can be observed of the Motion, it is substantive and credible. It develops various relevant issues of personal and public interests in this matter which raises various significant issues regarding government accountability. However, on December 29, 2011, the Motion was returned together with the accompanying Notice of Non-Jurisdiction. I received the Court's notice yesterday upon which I promptly called the contact number and was referred to the assigned case manager Connie Mazariego. Notwithstanding FRAP, Rule 40, I was advised that the practice of the Office of the Clerk is that where a motion for recall of a mandate has been denied, the Office does not allow for any motion for reconsideration.

This morning, I spoke again with Ms. Mazarriego who referred me to her supervisor, Jeanine Cook. In discussing the present procedural issue together with the background as is summarized above, Ms. Cook explained that whenever the Court of Appeals issues a ruling for sanction, then the Office of the Clerk requires leave of the court for *any new appeal* regardless of the scope of the ruling for sanction.[1] As is apparent for the present, there is substantive error in such practice!

I was then referred to Operations Manager Lucille Carr (curiously the one who signed the Court's attached order of January 30, 1998) who essentially reaffirmed what Ms. Mazarriego and Ms. Cooke had advised.

I further point out that shortly following my submission on June 22, 2011 of my Motion for Leave to Appeal, I received a separate notice from Ms. Mazarriego. In that, she advised that I must present a motion for leave to file excess pages. When I promptly called her to point out that the number of pages of the Motion was within the established limit, she reviewed that and then acknowledged that I was correct. She then said that I must file an original Motion together with two additional hard copies. I explained to her that I had filed the original with two additional hard copies. She again reviewed that and acknowledged that I was correct.

Based on what I observe, the Office of the Clerk is systematically acting to overreach reasonable procedural guidelines in a manner which tends to delay and obstruct a reasonable right of appeal.

In addition, I refer to several relevant references. The Black's Law Dictionary (6th) definition of "arbitrary" includes the following:

> In an unreasonable manner, as fixed or done capriciously or at pleasure. Without adequate determining principle; not founded in the nature of things; nonrational; not

done or acting according to reason or judgment; depending on will alone; absolutely in power; capriciously; tyrannical; despotic . . . Without fair, solid, and substantial cause; that is, without cause based on the law . . . not governed by any fixed rules or standard. Willful and unreasoning action, without consideration and regard to facts and circumstances presented . . . Ordinarily, "arbitrary" is synonymous with bad faith in failure to exercise honest judgment and an arbitrary act would be one performed without adequate determination of principle and one not founded in nature of things . . . .

I also refer to the established legal definition of "equity". Black's Law Dictionary (6th) begins its lengthy definition as follows:

Justice administered according to fairness as contrasted with the strictly formulated rules of common law. It is based on a system of rules and principles which originated in England as an alternative to the harsh rules of common law and which were based on what was fair in a particular situation. . . .

Further, various long-term substantive public issues which are apparent both from the matter of this Appeal, both with respect to judicial actions as well as conducts of officials and employees of various Clerk's offices are reflected in the campaign platform of my official candidacy for the United States Senate [such as is the subject of the related Ethan Book et al. v. Susan Bysiewicz et al., Case No. 3:10-cv-1228 (PCD); CA #11-2739]. In April of 2010, I published a summary Campaign Platform which includes a campaign plank of the need for judicial reform. What is discussed there follows:

State and federal agencies and courts tend to be elitist, that is they tend to favor larger, more powerful entities such as corporations and governments, a situation which too often is to the detriment of individuals, particularly those of minority groups. Over the long term, this situation is wholly destructive to society, to families, to the economy, to our international interests and eventually even to government organization.

(See also accompanying Motion for Reargument, at pgs. 2 – 19.). Over time, this platform plank has been observed to be both pungent and correct, applying not only to judicial actions but also to procedural matters (See also accompanying Motion for Reargument, esp. at pgs.13 – 14.).

I further refer to a portion of the accompanying Motion for Reargument (at p. 23):

Thus, this Court has acted here to impose an overly rigid and pro-government/ establishment posture regarding the recall of a prematurely and improperly issued mandate in a manner similar to overly rigid or pro-government/establishment positions which it had applied previously for considerations of Rooker-Feldman and judicial immunity, of applications of 28 U.S. Code, Sec. 1915, of dismissing an appeal for untimely filing and of sanction of this litigant, among other matters. Likely areas of prejudice/predisposition by this Court include that Book is a self-represented litigant, that there is establishment (i.e., pro-government and big business) bias, that there is reverse-gender bias and further that Book is challenging a local political power base

> *of which primary participants and beneficiaries are Joseph Lieberman, Richard Blumenthal and David Chase* (See above Background Information and Notice of Appeal; letter sent to Judge Squatrito on May 3, 2011, its Exhibit 4).

I additionally point to the discussion which I gave in the accompanying Motion for Reargument of Calloway v. Marvel Entm't Group, 854 F.2d 1452, 1475 (2nd Cir. 1988) (cited in this Court's ruling of December 12, 2011. The decision recognizes this Court's authority and disposition to reinstate an appeal [at p. 1475 citing Cf. Avlon v. Greencha Holding Corp., 232 F.2d 129 (2nd Cir. 1956)]. The same decision also affirms the Fed.F.App.P. 2 advisory committee notes "which clearly authorizes us to relieve litigants of the consequences of default 'where manifest injustice would otherwise result'".

I further refer to Archie v. City of Racine, 847 F.2d 1211, 1217 (7th Cir. 1988) (discussed at Motion for Leave to Appeal, pgs. 19 – 20), The case affirms the following:

> Where government does not monopolize avenues of relief, or where government has already afforded process sufficient to yield accurate decisions, government has no further obligation to give aid under the Constitution itself. (at p. 1212, hn. 9)

The decision also explains the difference between mere reckless negligence and deliberate indifference. "Deliberate indifference" in constitutional law is an act so egregious that "the [actor's] knowledge of the risk can be inferred" [at p. 1219; affirmed in Bass v. Jackson, 790 F.2d 260, 262-63 (2nd Cir. 1986)]. The distinctions which we consider here are further explained in the case with the comment that although the Due Process Clause of the Constitution (i.e., the Fourteenth Amendment) is phrased in the negative such that a state shall not "deprive" residents of life, liberty or property without due process, it is also explains that "[t]he Fourteenth Amendment, adopted in 1868 at the height of laissez-faire thinking, *sought to protect Americans from oppression by state government* . . . " (at p. 1220, italics added). The Court additionally comments that that the Due Process Clause is "designed to protect the people from government, to cut it down to size lest it repeat the excesses of George III and the slave states" [at p. 1221; Compare with Krulewitch v. United States, 336 U.S. 440, 445-48, 69 S.Ct. 716, 719-20 (1949).]. The case further comments that "[h]aving put the citizen on the defensive, or having stripped away avenues of self-help, the state must afford a procedure reasonably likely to reach an accurate conclusion even if that means the implication of positive rights from negative ones" (at p. 1222). The case further defines such a "special relationship" of "cases in which the state either deliberately inflicted injury or greatly increased risk while constricting access to self-help" (at p. 1223). A suitable summary follows:

> When the state puts a person in danger, the Due Process Clause requires the state to protect him to the extent of ameliorating the incremental risk. When a state cuts off sources of private aid, it must provide replacement protection. (at p. 1223)

That which is discussed here of the "due process" clause of the 14th Amendment can similarly be applied to the "due process" clause of the 5th Amendment.

There is an unaddressed long-term political cancer in Connecticut state government, a matter for which full and open review has been delayed and obstructed because of systematic biases and political preferences of individuals with interrelationships and influence with officials and employees of these federal courts, a matter involving great accumulated prejudice and injury to me (as a financing specialist whom has been particularly impacted) as well as substantial prejudice to the general public.

Further, what you have described as your procedural policy, for the various references cited above, cannot be a matter of mandatory jurisdictional limitation. At most, it could only be a directive procedural matter. However, I don't even observe sufficient reference to support that. Fundamentally, what has been described to me is nothing more than a procedurally and politically convenient docket clearing overly narrow application of presumed references.

For such reasons, various matters which are discussed above of practices of this Office of the Clerk are not ministerial which raises therefore various other issues.

Therefore, for all such causes, I respectfully re-present the cited Motion for Reargument *En Banc* of Court Ruling to Deny Motion to Recall Mandate and the respective Motion for Leave to File Excess Pages with the request that these be fully entered and filed for full court review.

Sincerely,

Ethan Book Jr.

[1] Ms. Cook also commented that sometimes the court will issue an order of sanctions where there have been frivolous appeals or where a litigant has filed a lot of motions. Her comment failed to consider that my appeal of Book v. Human Rights, CA #95-7999 is not frivolous and that multiple pleadings which I presented in Book v. Connecticut Resource, CA #95-9014 were good faith discretionary and conservative attempts to effect correction of judicial errors. And for that I am excessively penalized! There's something very wrong with this picture! As I perceived in October 2011 at Zucatti Park, the Occupy Wall Street protesters raise some good points.

Enclosures (including my Motion for Reargument *En Banc* of Court Ruling to Deny Motion to Recall Mandate and my Motion for Leave to File Excess Pages, also this court's orders of May 19, 2011 and January 30, 1998 and this court's Notice of Non-Jurisdiction of December 28, 2011)

c: Senators Harry Reid, Chuck Grassley, Patrick Leahy and Congressman Jim Himes (with all attachments) and
Attorneys Douglas A. Cho, Charles W. Fleischmann, Robert A. Izard, Jr., Carl R. Nasto and Charles H. Walsh, Jr. (with letter and mentioned orders and notice)

United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

DENNIS JACOBS
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: December 28, 2011
Docket #: 11-1970mv
Short Title: Book v. Connecticut Resource

DC Docket #: 95-cv-1344
DC Court: CT (NEW HAVEN)
DC Judge: Squatrito

NOTICE OF NON-JURISDICTION

This is to acknowledge receipt of papers dated December 27, 2011, in the case referenced above. Because this case was mandated on August 12, 2011, this Court no longer has jurisdiction to entertain your request. For this reason, your papers are returned unfiled.

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 19th day of May , two thousand and eleven,

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Ethan Book,

Plaintiff - Appellant,

v.

Connecticut Resources Recovery Authority, CRRA, First Boston Corp., Attorney General, Dept of Envir Protection, Chief State's Atty, State Treasurer, Department of Transportation, Town of Fairfield,

Defendants - Appellees.

ORDER
Docket Number: 11-1970

On 1/30/1998 this Court entered an order in Book v. Connecticut Resource, 96-9014 requiring appellant to file a motion seeking leave of this Court prior to filing any future appeals.

A notice of appeal in the above referenced case was filed. The Court has no record that appellant sought the Court's permission to appeal prior to filing the notice of appeal.

IT IS HEREBY ORDERED that this case is dismissed effective 06/09/2011 unless a motion seeking leave of this Court is filed by that date.

For The Court:

Catherine O'Hagan Wolfe,
Clerk of Court

Catherine O'Hagan Wolfe

UNITED STATES SECOND CIRCUIT COURT OF APPEALS

CTDC
Squatrito
95-cv-1344

FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 30th day of January, one thousand nine hundred and ninety-eight.

Before: Hon. Amalya L. Kearse,
Hon. Pierre N. Leval,
Hon. José A. Cabranes,

Circuit Judges.

UNITED STATES COURT OF APPEALS
FILED
JAN 30 1998
GEORGE LANGE III, CLERK
SECOND CIRCUIT

- -

Ethan Book, Jr.,

Plaintiff-Appellant,

-v.-

No. 96-9014

Hartford
Conn
95-cv-1344
Squatrito

Connecticut Resources Recovery Authority, The First Boston Corporation, Department of Environmental Protection, Office of the Chief State's Attorney, State Treasurer, Department of Transportation, Office of the Attorney General, Town of Fairfield,

Defendants-Appellees.

- -

In Re: Ethan Book, Jr.,

Petitioner.

No. 96-3108

Hartford
Conn
95-cv1344
Squatrito

- -

Ethan Book, Jr.,

Plaintiff-Appellant,

-v.-

No. 95-7999

Hartford
Conn
95-cv-421
Squatrito

Commission on Human Rights and Opportunities,

Defendant-Appellee.

- -

This Court having received more than 20 motions from Ethan Book, Jr. in the above-captioned appeals, including more than 15 motions for reconsideration or "articulation,"

And having on October 28, 1997, ordered Book to show cause both why he should not be required to pay double costs to the appellees in these matters and why an order should not be entered restraining him from filing any further papers in these matters without first obtaining leave to file from this Court,

And having considered Book's response to the Court's order to show cause, and finding that Book has not presented any legitimate reason why a monetary sanction and a "leave to file" requirement should not be imposed,

IT IS HEREBY ORDERED that Book shall pay double costs to the appellees in these matters, see Fed. R. App. P. 38,

AND IT IS FURTHER ORDERED that the Clerk of the Court is directed to refuse to accept for filing any further submissions from Book in these matters unless he first obtains leave of this Court to file such papers, see In re Martin-Trigona, 9 F.3d 226 (2d Cir. 1993).

FOR THE COURT:
GEORGE LANGE III, Clerk
by: Lucille Carr

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