

IN THE UNITED STATES DISTRICT COURT IN AND FOR
THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-22603-CIV-JUDGE COOKE/MAGISTRATE BANDSTRA

JOHN B. THOMPSON,

Plaintiff,

v.

THE FLORIDA BAR, *et alia*,

Defendants.

**PLAINTIFF'S VERIFIED MOTION FOR THE COURT
TO TAKE JUDICIAL NOTICE OF GOVERNMENTAL DOCUMENTS, ETC.**

COMES NOW PLAINTIFF, on his own behalf, and moves this court to take judicial notice of certain facts, as well as certain governmental documents and findings, as follows, as a further basis for granting his emergency motion for a stay of the Disbarment Order:

1. The Florida Supreme Court's September 25, 2008, a copy of which is attached hereto, lists on page 2 what the court considers to be some of the more egregious acts that Thompson engaged in. Not a single one of these acts occurred. Not one. Rather than burden this federal court, however, with the proff that the Referee's Report and the subsequent Disbarment Order are complete acts of fiction, plaintiff herein now simply asks this court to take judicial notice of certain documents that are completely independent of plaintiff that disprove just one of the Supreme Court's "findings." In doing so, serious doubt should then be cast upon this September 25 Order in its entirety.

Why does plaintiff do this? He does it because of the very nature of this 42 USC 1983 action. Plaintiff asserts that he was denied certain federal rights, including certain

constitutional rights, not the least of which are his *procedural due process rights* under the Fifth and Fourteenth Amendments to the U.S. Constitution.

More specifically, Bar Referee Dava Tunis prohibited Thompson from presenting any witnesses and any documentary evidence to disprove the false charges of The Bar. In such a setting, Mother Teresa could have been convicted of prostitution. The Bar didn't want a fair trial. It wanted only one side to present evidence, and thereby end a career. Goering and Goebbels got more due process than this at Nuremburg.

Thus, the court should understand, which of course The Florida Bar understood, as Justice Brandeis noted, that the "the history of liberty is the history of due process." We are not talking here about an inconsequential failure on the part of a Referee who had never tried a Bar disciplinary matter before to cross her t's and dot her i's about which Thompson is fastidiously griping. We're talking about a lawyer who was brought to trial and prevented from presenting any evidence on his own behalf, and the consequence of that is his disbarment by a Supreme Court that neither knows the facts of this case nor cares what they are. But the federal government has generated the proof of the kangaroo nature of the Referee's proceedings.

So we come to a falsehood that the federal government proves to be just that. The Supreme Court boldly states the following in its September 25 Order:

"(8) respondent falsely and publicly accused various attorneys and their clients of engaging in a conspiracy/enterprise involving 'the criminal distribution of sexual materials to minors' and attempted to get prosecuting authorities to charge these attorneys and their clients for racketeering and extortion;"

John Adams said “facts are stubborn things.” Here are the facts, courtesy of the US government:

HOWARD STERN/VIACOM/INFINITY/TEW CARDENAS/BEASLEY/WQAM

The first set of attorneys whom Thompson accused of facilitating their clients’ distribution of sexual material harmful to minors were the lawyers in the Miami law firm of Tew Cardenas. Tew Cardenas had been representing Miami radio station WQAM-AM, owned by Beasley Broadcast Group, Inc., of Naples, Florida, for years. This attorney-client relationship existed in September 2003. In September 2003, WQAM-AM morning drive shock jock Scott Ferrall (who now broadcasts on Howard Stern’s Sirius Satellite Radio Station Channel 101), was graphically describing, on the air, the placement of his scrotum on his girlfriend’s forehead, calling for the shooting of homosexuals, and describing ultimate sexual acts too gross to mention here.

Thompson complained not only to the Federal Communications Commission about the illegal airing of this material, violative of 18 USC 1464, but also to the Tew Cardenas law firm because of its longstanding representation here in Miami of WQAM-AM and Beasley Broadcast Group which holds its FCC license. Thompson also was successful to persuading dozens of advertisers to drop their ads on Ferrall’s pornographic show.

This court needs to understand that the purpose of 18 USC 1464 is to prohibit the airing of sexual material harmful to minors, as set forth in *FCC v. Pacifica Foundation*, 438 US 726 (1978). In that Supreme Court ruling holding constitutional 18 USC 1464, the court upheld the right of Congress to proscribe the airing of pornographic material when there is a likelihood that “there are substantial numbers of children in the broadcast

audience.” Ferrall was broadcasting his pornographic material outside the FCC’s 10 pm to 6 am “safe harbor” for indecent material. He was broadcasting it as kids were getting up and going to school. The whole purpose of the *FCC v. Pacifica* case is to protect these kids. Thompson secured the first such FCC fines in our nation’s history back in 1989.

Tew Cardenas and Beasley responded to Thompson’s contacting the FCC by giving the green light to Scott Ferrall to threaten Thompson on the air with physical violence. Ferrall also threatened a Miami orthopedic surgeon who had similarly complained about the indecent and thus illegal broadcasts by Ferrall on WQAM.

What was the consequence of this illegal pornographic activity? The Federal Communications Commission formally found in its attached September 22, 2004 Order that Beasley/WQAM/Ferrall not only broadcast indecent material, as Thompson alleged but also that Ferrall, during his broadcasts, threatened physical violence in retaliation for the FCC complaints filed against the station. ***Plaintiff asks this court to take judicial notice of this crucial government document which Referee Tunis refused to be allowed to be presented as evidence at his trial.***

Plaintiff asks at least rhetorically, the Referee, The Bar, and the Florida Supreme Court what about the phrase “engaged in an enterprise to distribute sexual harmful to minors” do they not understand? That is precisely what the FCC found that station had done in its September 22, 2004 finding.

Plaintiff now asks this court to take judicial notice of another attached FCC Order, this one dated April 7, 2004, whereby Thompson secured a \$495,000 decency fine against Clear Channel radio stations in Ft. Lauderdale and elsewhere arising out of the

Howard Stern's Show's broadcast discussions of a product called "sphincterine" which purportedly made oral anal intercourse more palatable. What prompted that FCC fine that vindicated Thompson was Stern's broadcast comment:

"Ever bang any famous nigger chicks? What do they smell like? Watermelons?"

Despite Thompson's FCC success against *Stern* and Clear Channel in this South Florida radio market, Beasley put his show on its WQAM station in August 2004 to fill the void, such as it was, left by the *Scott Ferrall Show* when Thompson forced it off the air and the *Stern Show* itself when Clear Channel pulled it out of the South Florida broadcast market because of Thompson's FCC fine.

Thompson then filed new complaints with the FCC about these *Stern* broadcasts on Beasley's WQAM. Thompson asks this court to take judicial notice of the attached Consent Decree, dated November 9, 2004, between the FCC and Viacom/Infinity by which the latter agreed to pay \$3.5 million in fines arising out of indecent broadcasts, some of which were the *Howard Stern Show*.

Referee Tunis would not allow the introduction of this document into evidence to prove the validity of Thompson's assurance, based upon yet another official federal government document, that his description of the content of the *Howard Stern Show* as "sexual material harmful to minors" was not only correct but agreed to by Viacom/Infinity itself and found in an official government document.

Indeed, The *Stern* broadcasts on WQAM-AM included descriptions on the morning show after 8 am by female amputees as to how they lubricated their "stumps" and then placed them into the anuses of men to help them achieve orgasm. Now that's family-friendly entertainment!

With all of these governmental findings that what was going out over Beasley's airwaves on WQAM-AM were indecent, Thompson wrote a letter to Governor Jeb Bush complaining that the law firm of his good friend Al Cardenas, former Chairman of the "Family Values" Florida GOP, was representing a radio broadcaster that was airing indecent material. Cardenas, in retaliation, filed a Bar complaint, signed also by the CFO of Beasley and by Cardenas' Tew Cardenas partner, Larry Kellogg, in which all three asserted that Thompson's characterization of WQAM's broadcasts as containing sexual material harmful to minors was false. All three swore in their formal Bar complaints that Thompson had made this all up. Apparently Thompson had also hallucinated about the formal FCC findings, attached hereto and which Beasley had and which The Bar had.

This is important: Al Cardenas, in his sworn testimony at Thompson's Bar trial which began on November 26, 2007, said under oath thereat that he had *no idea* that the FCC had found Stern's broadcasts indecent. He swore that he had *no idea* that Beasley/WQAM had been fined by the FCC for the *Ferrall* broadcasts. He said he had *no idea* that Beasley/WQAM had been fined by the FCC in 2001 for airing indecent material and that Beasley paid the fines. Yet Cardenas/Kellogg/ Beasley CFO had all sworn in their formal Bar complaints that Beasley had never aired *any indecent material*, and based upon that perjury it asserted Thompson had made it all up.

As to the issue of the *harassment* of Thompson by Beasley/WQAM/Tew Cardenas, Referee Tunis refused to allow the introduction into evidence of a smoking gun document from WQAM's "FCC Public File" that proves the orchestration of a civil lawsuit filed by Beasley's lawyer against Thompson in order to extort his abandonment of his FCC decency complaints against Beasley. When Thompson sent those smoking

gun documents to the FCC, Kellogg and Cardenas threatened new Bar complaints against Thompson for daring to share these incriminating documents with the FCC, claiming Thompson had unethically observed them in a "Public File" during an FCC-mandated document inspection. This proved the strategy of bringing utterly baseless Bar complaints by Tew Cardenas against Thompson in order to protect Beasley's many licenses at the FCC.

Further, in a remarkable act of stupidity, Larry Kellogg crowed in a letter that the document Thompson found in the FCC Public File of WQAM had been removed from the file and destroyed. This is a violation of Sarbanes-Oxley, of obstruction of justice statutes, the latter of which is a predicate act under federal RICO statutes. But the Bar Referee heard none of this because she didn't want it heard. She wouldn't allow into evidence the documents that proved it.

The Bar complaint by Tew Cardenas arising out of Thompson's transmission of the smoking gun document to the FCC was so clearly baseless that even The Bar dismissed that Tew Cardenas Bar complaint against Thompson, and in doing so The Bar itself legitimized and proved Thompson's assertion that Tew Cardenas, on behalf of its client, had used a baseless SLAPP Bar complains against him to protect the airing of "sexual material harmful to minors."

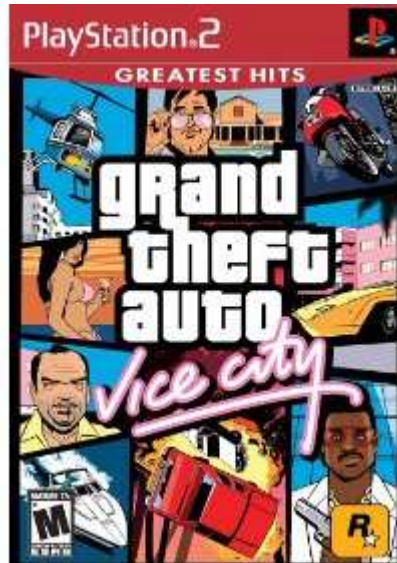
Referee Tunis would hear none of this. The Supreme Court then heard none of this, and so it has entered this Disbarment Order of September 25 asserting that *as a matter of fact* these radio station clients of Tew Cardenas were *not* distributing pornographic/indecent/sexual material harmful to minors and that they were *not* harassing Thompson in any fashion, despite the threats of physical violence against him and his

wife on the air, the filing of civil lawsuits, the filing of Bar complaints, and even a written threat to depose Thompson's 12-year-old son if Thompson didn't back off.

The Referee's Report, and with it the Disbarment Order, are thus the sound of only one hand clapping. The authority of the United States government, found in the attached official documents, makes the Disbarment Order a house of cards built upon quicksand. Is it any wonder that a Disbarment Order was entered against a lawyer after a Referee even excluded official federal government findings from the evidence that should have been before her?

TAKE-TWO/BLANK ROME

On March 6, 2005, Thompson appeared on CBS' 60 Minutes upon the personal request of Ed Bradley, who had had Thompson on *60 Minutes* six years earlier the Sunday after "Columbine." Thompson appeared on this national television program to blow the whistle on the widespread marketing and distribution of Take-Two Interactive Software, Inc's, *Grand Theft Auto* video games rated "Mature" by the Entertainment Software Rating Board (ESRB) to minors. Here, below, is the actual cover of the *Grand Theft Auto: Vice City* game on which an Alabama teen trained to kill three cops in Fayette, Alabama. Note the large "M" in the lower left-hand corner of the game's cover:



Here is what is called the ESRB “Descriptor” on this game that more fully describes the specifics as to why this game is rated “Mature”:



This title has been rated **Mature** for:

- Strong Language
- Strong Sexual Content
- Violence
- Blood and Gore

[Learn more about ESRB Ratings](#)

Note the “Strong Sexual Content” portion of the Descriptor, keeping in mind the Supreme Court’s blithe assertion that Thompson had falsely claimed that Take-Two, with the assistance of its law firm, was distributing this game “containing sexual material harmful to minors” to kids under 18.

In this game, the player has sex with women and then kills them by various means, including machetes, shotguns, handguns, or driving over them with his car. The “Mature” rating itself is an admission that such a game combining sex and violence

should not be sold to minors. Thompson, a political conservative, at one point journeyed to the largest National Organization for Women Chapter in the world, in New York City, because of their request to educate them as to the objectifying and targeting of women as a class by the *Grand Theft Auto* video games. Referee Tunis, allegedly an advocate against domestic violence, would hear none of this testimony.

However, even a full two years after plaintiff decried the sale of these pornographic and violent “Mature-rated” video games to teens, the attached April 2007 Federal Trade Commission Report states that there was even then, two years after Thompson sounded the alarm on *60 Minutes*, a 35% failure rate among major retailers to intercept the sales of these games to underage kids. See Page 23 in FTC Report under “Mystery shops.”

The attached FTC Report also found that nearly all teen video game magazines were featuring huge numbers of ads for Mature-rated games, including the *Grand Theft Auto* games, despite promises made by the video game industry, including Take-Two, not to do such marketing in teen magazines. See page 21 of the FTC Report under “Print Ads.”

In July 2005, Senator Hillary Clinton contacted plaintiff Thompson, and he, at her staff’s request, prepared her for a major news conference at which she asserted that Take-Two had inserted into its new *Grand Theft Auto: San Andreas* video game graphic sex mini-games called “Hot Coffee” that depicted interactive oral and anal sex. Take-Two had hidden the existence of this illegally embedded material even from the ESRB. Because of Thompson’s preparation of Senator Clinton and her faith in his credibility, she was proven absolutely correct, and all copies of *GTA: San Andreas* were recalled

worldwide. See http://www.gamespot.com/news/2005/07/13/news_6129021.html. This recall resulted in the loss of tens of millions of losses to Take-Two. But for Thompson, this recall never would have occurred. This effort through the pliant Bar, then, was never about Thompson's ethics. It was about what had to be done to destroy the one man who had cost it tens of millions of dollars.

As a result of Hillary Clinton's effort, the FTC ultimately found that Take-Two had knowingly and illegally embedded these graphic sex scenes in games that were sold to minors worldwide. Thompson asks this court to take judicial notice of the attached FTC finding in that regard. It vindicates Thompson in all that he has done to this company and their lawyers.

Record counsel for Take-Two in the Alabama lawsuit in which plaintiff was admitted *pro hac vice* for the makers of the *Grand Theft Auto* games, was the Philadelphia law firm of Blank Rome. The follow Internet link proves that Blank Rome was in 2005 the official registered lobbyist in both the US House of Representatives and the US Senate for Take-Two Interactive Software, Inc. See <http://www.implu.com/lobby/175713>

Blank Rome decided to strike back against Thompson, by hatching an extortionate "shoot the messenger" strategy because of Thompson's appearance on *60 Minutes*, his securing of a *Reader's Digest* story about the *Grand Theft Auto* games (see *Deadly Games: Are Kids So Hooked on Video Game Violence That It Becomes Their Reality?*" at <http://www.rd.com/your-america-inspiring-people-and-stories/video-game-violence/article27207.html>, and his success with Senator Clinton. Total war on Thompson was declared, and in fact Take-Two CEO Strauss Zelnick, in front of a

witness, told Thompson on May 15, 2007, that “This is a war, and we will do whatever it takes to sell our games to whomever we want.”

Blank Rome committed perjury when it moved Alabama Judge James Moore to revoke Thompson’s *pro hac vice* admission in Alabama on the basis that Thompson had allegedly “hidden his Florida Bar disciplinary history from the Alabama court.” Judge Moore, proving this was a lie, testified at Thompson’s Bar trial that Thompson had in fact disclosed more of his disciplinary history than he even had to! This datum is deleted from the Referee’s Report. That single deletion alone indicts the Referee and The Bar.

But importantly for this analysis, Blank Rome went on to file Florida Bar complaints against Thompson, all for the purpose of driving him out of the Alabama case completely and to strip him of his law license that was useful in alerting the American people, by various means, that Take-Two continued to market and sell Mature-rated video games to minors. Take-Two’s latest *Grand Theft Auto IV* features sadomasochistic sex in a “Gentlemen’s Club,” graphic sex performed in vehicles, and then graphic murders of the women with whom the teen player has had virtual sex. One prostitute states, “I can suck your cock real good,” which she then does and is killed.

CONCLUSION

Plaintiff Thompson has burdened this court with an analysis of just one of the Supreme Court’s findings, in this case finding #8, that Thompson fabricated the notion that the clients of Tew Cardenas and Blank Rome were distributing sexual material inappropriate and harmful to minors. The Supreme Court also concludes, in a vacuum, that Thompson fabricated the harassment of him by these two law firms with Bar complaints, civil suits, and threats on the life of him and his family.

The Court then moves on to harumpf about how Thompson actually, in its finding #8, had **“attempted to get prosecuting authorities to charge these attorneys and their clients for racketeering and extortion;”**

To borrow comedian Steve Martin’s famous line: “Well, excuuuuuuuuuuuse me!”

It is a crime in this country to distribute sexual material harmful to minors. Forty-eight states and the federal government have laws that make it a crime to distribute a digitalized product, like a pornographic video game, to a minor, that contains adult sexual material. Distribution of sexual material harmful to minors is a predicate act under RICO, and the “R” stands for racketeering.

We have already seen that 18 USC 1464 prohibits the airing of indecent material.

Here is the actual statute, which is a criminal statute:

[TITLE 18](#) > [PART I](#) > [CHAPTER 71](#) > § 1464
[Prev](#) | [Next](#)

§ 1464. Broadcasting obscene language

Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined under this title or imprisoned not more than two years, or both.

It happens to be Thompson’s view that these two sets of porn-to-kids entertainment companies chose to litigate the person of Thompson with their respective “shoot the messenger” strategies rather than the merits of their legal positions because they found their legal positions to be untenable. When a broadcaster threatened to rape plaintiff’s wife on the air, in retaliation for filing an FCC complaint, that’s extortion. That’s another predicate act under RICO.

When Tew Cardenas attorney Larry Kellogg stupidly admits to Thompson's prior counsel, Ray Reiser, that Al Cardenas filed his Bar complaint in retaliation for Thompson's letter to Jeb Bush, then that is an admission that a Bar complaint has been filed to chill Thompson's First Amendment petition the government speech. That is extortion.

When Take-Two states on its corporate web site that Thompson is a homosexual pedophile and then directs its lawyers to file what proved to be perjured Bar complaints, then that's extortion as well. These two companies and their lawyers repeatedly made it clear to Thompson: If you persist in your complaints about what we are doing, we will destroy you.

BUT NOT ONCE DID THEY BRING A LIBEL ACTION, BECAUSE THEY KNEW THAT WHAT THOMPSON WAS SAYING WAS TRUE. SO THEY BROUGHT THE BAR IN TO DO WHAT THEY KNEW THEY COULD NOT DO IN A COURTROOM.

These scofflaw, extortionate entities—companies and their lawyers—are certainly entitled to their view that their entertainment materials are perfectly fine for minors, but the federal government, as has been seen herein, strongly and officially disagrees. They are also entitled to their view that rather than harassing Thompson they were simply engaging in a celebration of free speech in the public square when they targeted his law license, which use of Bar complaints is prohibited by The Florida Bar's Preamble to its Rules. And they are certainly more than welcome to assert that they should not be held accountable for their threats, their extortion, and their perjury.

But the government is there for a reason, and Thompson sought to avail himself of its remedies as to the underlying criminal distribution of porn to kids and the targeting of him as a whistleblower.

THOMPSON WAS ENTITLED AT HIS NOVEMBER 2007 BAR TRIAL TO DEFEND HIMSELF, WITH THE FACTS. DUE PROCESS DEMANDS IT. THOMPSON HAD NO DUE PROCESS, AND THE DISBARMENT ORDER IS THE LOGICAL RESULT.

Referee Tunis didn't want to hear it. The Supreme Court's Justices, too busy with giving one another awards for what fabulous jobs they have done on the bench of this state's highest court, cannot be bothered either with due process or the facts. That is why they ordered Thompson that he could not even challenge the Referee's Report. Why? Because they knew and they know it is flawed. They are like the simian that "hears no evil." Ted Bundy was allowed to defend himself in this state, but Jack Thompson was not.

And this is what you get as a result, a September 25 Disbarment Order, that is the functional equivalent of a Papal Order to Galileo and Copernicus that the Earth is flat and that the Sun revolves around the Earth.

"The history of liberty is the history of due process." This federal court must take judicial notice of all of this, and Thompson must, finally, have his day in court to undo this ridiculous Disbarment Order. In the meantime, it must be stayed.

I SOLEMNLY SWEAR THAT THE FOREGOING FACTS ARE TRUE, CORRECT, AND COMPLETE, SO HELP ME GOD.

I HEREBY CERTIFY that this has been provided to opposing counsel this
October 17, 2008.

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