

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 ROBERT J. GRODEN

4 Plaintiff,

5 v.

93 Civ. 1074 (JSM)

6 RANDOM HOUSE, et al.,

7 Defendants.

8 -----x

9 October 21, 1994
10 3:00 p.m.

11 Before:

12 HON. JOHN S. MARTIN, JR.

13 District Judge

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APPEARANCES

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ROGER BRUCE FEINMAN
Attorney for Plaintiff
Of counsel

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LANKENAU KOVNER & KURTZ
Attorney for Defendants Random House, Gerald Posner
and the New York Times

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VICTOR A. KOVNER
ALEXANDRA NICHOLSON
Of counsel

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1 (Case called)

2 THE COURT: We are really here on a very limited
3 matter. In my memorandum opinion order dated September
4 23rd, I denied the motion to reconsider as well as dismissed
5 the amended complaint, and left open solely the question as
6 to whether Rule 11 sanctions should be imposed because of
7 counsel's unequivocal statement in his motion to recuse that
8 "the learned trial judge is or was related by blood or/and
9 is or was the brother of Terrence L. (Terry) Martin, with
10 whom counsel worked and who would be aware of unfavorable
11 and conceivably pejorative facts relating to counsel for
12 plaintiff."

13 It seems to me this is a factual assertion in a
14 document signed by counsel, which in the papers is referred
15 to as an affidavit, though it is not signed, and it comes
16 within the purview of Rule 11, which says that a lawyer's
17 signature on a paper is a certification that, to the best of
18 the signer's knowledge, information and belief, formed after
19 reasonable inquiry, the factual assertion is true.

20 I wanted to hear from Mr. Feinman what factual
21 basis there was that gave him a reasonable belief as to the
22 truth of that statement. I reviewed the papers that you
23 have submitted, Mr. Feinman. It seems to me the only thing
24 that you rely on is the fact of some physical resemblance I
25 may bear to some person you knew some time ago. But I will

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1 hear you with respect to that issue.

2 MR. FEINMAN: Your Honor, first, I would like to
3 inform the Court, in case there has been a delay in the
4 mail, a section 144 affidavit was filed earlier today with
5 the clerk's office.

6 That having been said, I, upon personal
7 experience and observing the Court, formed the conclusion
8 that the Court bore a strong physical resemblance to someone
9 I worked with.

10 THE COURT: I have been told I bear a strong
11 physical resemblance to Chuck Colson, to Teddy Kennedy, and
12 to others. I find that hard to accept as a reasonable
13 inquiry.

14 MR. FEINMAN: I would like to point out, I
15 anticipated there would be a conference before submitting
16 any supporting papers pursuant to the Court's individual
17 rules. Unfortunately, there was no such conference. At
18 such time, I would have inquired of the Court, and had the
19 Court set me straight on the true facts, I would have been
20 more than happy to withdraw that specific allegation, and I
21 have so stated in my papers, and I have also apologized for
22 the error.

23 THE COURT: But I take it that is, in fact, the
24 sole basis for that factual assertion.

25 MR. FEINMAN: Well, the other basis was that I

1 had written to Mr. Kovner at the very beginning of this
2 litigation and advised him of my belief. Mr. Kovner did not
3 have any objection, and I never had any reason to believe,
4 based upon whatever acquaintance the Court has had with
5 Mr. Kovner, that my belief was untrue.

6 And the important point is that, given the
7 jurisdictional time limitations of filing a notice of motion
8 to reconsider, reargue, et cetera -- which is ten days --
9 and the fact that I had to get those papers out and filed on
10 time, and the fact that I did anticipate a conference, at
11 which time further inquiry would have been made before
12 filing any papers, I feel that, as counsel, it is always
13 safer to put in a little more than too little, and that I
14 took objectively reasonable steps to protect my client and
15 all of his possible rights in this matter.

16 THE COURT: Well, it seems to me that the real
17 purpose in having this proceeding was for me to determine
18 whether there was any reason to go any further. It seems to
19 me, since the allegation is one made in the context of a
20 personal attack on the Court, that it would be inappropriate
21 for me to actually rule with respect to the application of
22 sanctions with respect to this factually inaccurate
23 statement.

24 The choice here might simply be to send this
25 matter to another judge. Rather than do that, it seems to

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1 me, since I already referred part of this to the Grievance
2 Committee of this court, I will simply send the record of
3 this proceeding to the Grievance Committee and they can
4 consider it for whatever weight they wish to give it in the
5 course of this proceeding.

6 Is there anything further?

7 MR. KOVEN: No, your Honor.

8 THE COURT: Thank you.

9 MR. KOVEN: Thank you, your Honor.

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