

IN THE CIRCUIT COURT  
OF THE 17TH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO: 06-18980 CF10A  
JUDGE: DALE COHEN

STATE OF FLORIDA,  
Plaintiff,  
vs  
STEVEN GIBBS,  
Defendant.

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Broward County Courthouse  
201 Southeast Sixth Street  
Fort Lauderdale Florida  
August 6th, 2009

HEARING PROCEEDINGS

Proceedings held in the above-entitled cause,  
taken before CARRIE K. GIVEN, Stenographic Reporter  
and Notary Public within and for the state of Florida  
at Large, held before the HONORABLE JUDGE DALE COHEN.

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APPEARANCES:

MARDI LEVEY-COHEN, ESQ.

STEPHEN MELNICK, ESQ.

1 (Thereupon, the following proceedings were had,)

2 THE COURT: Okay. Let's see.

3 Rosendo Louis --

4 MR. MELNICK: He's not present but Mr. Gibbs is  
5 present and Diaphine Joseph (phonetic spelling) has filed.  
6 He's currently in custody in Palm Beach County, hopefully  
7 coming back soon.

8 THE COURT: All right. Mr. Gibbs is on Page 12 and  
9 he is present?

10 MR. MELNICK: Yes, he is present. He is in the  
11 back row, your Honor.

12 THE COURT: All right. Good afternoon, Mr. Gibbs.

13 THE DEFENDANT: Good afternoon.

14 THE COURT: All right. I have a sworn motion to  
15 recuse.

16 All right. Mrs. Cohen, have you had an  
17 opportunity to read the motion?

18 MRS. LEVEY-COHEN: No, I have not.

19 MR. MELNICK: Your Honor, prior to doing that I  
20 think there might be a problem in doing -- If the court  
21 does go forward in this, then what the court may have to  
22 do, besides Mrs. Cohen being subject to cross-examination,  
23 the court is going to have to make a judgement call as to  
24 credibility at this point in time and to decide whether  
25 Mrs. Cohen is credible versus counsel's credibility and

1 it's one of these, I believe, no-win situations that no  
2 matter which way the court rules there is going to be no  
3 --

4 THE COURT: You mean if I rule in your favor I  
5 don't get dinner tonight?

6 MR. MELNICK: No, not saying that but if you rule  
7 in my favor then the recusal stands.

8 THE COURT: Right.

9 MR. MELNICK: If you deny it, I believe then, the  
10 recusal would then stand because what you're saying is  
11 that my spouse is more credible than the undersigned  
12 counsel.

13 THE COURT: We'll approach that bridge when we get  
14 to it.

15 MR. MELNICK: Yeah, but that's what I believe is  
16 going to wind up happening and it's like a no-win  
17 situation. I don't know if we want to go that way  
18 because, no matter what, I believe it will result in the  
19 recusal granted.

20 THE COURT: Okay.

21 MR. MELNICK: If the court wants to go forward,  
22 that's fine but that's, and I've been looking this over,  
23 but I believe that is what the end result is going to be  
24 no matter what.

25 THE COURT: Okay. We'll approach that bridge when

1 we get there.

2 MR. MELNICK: Okay.

3 MRS. LEVEY-COHEN: Okay. I've read it.

4 THE COURT: Raise your right hand.

5 Do you solemnly swear or affirm the testimony  
6 your about to give is the truth, nothing but the truth, so  
7 help you God?

8 MRS. LEVEY-COHEN: I do.

9 THE COURT: State your name.

10 MRS. LEVEY-COHEN: Mardi Levey Cohen.

11 DIRECT EXAMINATION

12 BY THE COURT:

13 Q. All right. Mrs. Cohen, you were involved in an  
14 election with Pedro Dijols?

15 A. Correct.

16 Q. In 2006?

17 A. In 2008.

18 Q. 2008.

19 A. It was 2008, your Honor.

20 Q. All right. Did you have contact with an attorney  
21 named Stephen Melnick?

22 A. Yes.

23 Q. During the course of your campaign prior to the  
24 election?

25 A. Yes, I did.

1           Q. All right. Can you please tell me the  
2           circumstances surrounding that?

3           A. Yes, I don't remember the exact date. I think  
4           there was an advertisement for my opponent, Pedro Dijols,  
5           and it was posted on a courthouse blog and I did see it.  
6           Being that I am aware of the rules that govern candidates,  
7           it was missing a disclaimer. There needed to be a  
8           disclaimer on it that said this was a paid for political  
9           announcement by the candidate.

10                    Being that I know Steve Melnick, I've worked  
11           on many cases with him when I was a prosecutor, and I've  
12           known him from around the courthouse and I always thought  
13           that we were friends. I called him up and explained to  
14           him that it was missing a disclaimer and asked if he could  
15           please add the disclaimer to it because I'm well aware of  
16           what the rules are and I've been told in the past, by the  
17           committee that supervises the rules in Tallahassee, that  
18           the best approach is to contact somebody that is either a  
19           campaign manager of that candidate or whoever it is that  
20           is posting that notice and let them know what the rules  
21           were and essentially I told them here's what the rules  
22           were.

23                    I told them that you need a disclaimer and  
24           I'm just letting you know that I don't want, you know, to  
25           have to file -- I don't think I said that -- I just said,

1 because the bottom line is that this could violate rules  
2 and Pedro Dijols needs to follow the rules just like  
3 everyone else.

4 Q. And that would be --

5 A. Mr. Melnick has absolutely nothing. He does not,  
6 by under any requirement by any agency whatsoever, to  
7 follow those rules. He can do whatever he wants on behalf  
8 of his candidate.

9 Q. Who would suffer consequences if Mr. Melnick  
10 didn't follow the rules that are --

11 A. The rules -- The campaign rules state that  
12 whatever -- If someone is working for you, whether they be  
13 a treasurer or one of your people that work for you, if  
14 they don't follow the rules it's as if you, yourself, are  
15 not following the rules. So, by Mr. Melnick leaving that  
16 disclaimer out, it had nothing to do with Mr. Melnick, but  
17 Mr. Dijols would have been the one responsible for any  
18 violation.

19 Q. Would you explain that to me?

20 A. Absolutely.

21 It was a very friendly conversation. As I've  
22 said, Mr. Melnick and I have been -- I considered friends  
23 for many years.

24 Q. Did you make any threats to Mr. Melnick?

25 A. Absolutely not.

1 Q. Are you aware that Mr. Melnick was working as an  
2 attorney on the legal staff of Pedro Dijols through  
3 litigation?

4 A. Not until I read it just now, five minutes ago.

5 THE COURT: Mr. Melnick, do you have any  
6 questions?

7 MR. MELNICK: Yes.

8 CROSS-EXAMINATION

9 BY MR. STEPHEN MELNICK

10 Q. Mrs. Cohen, back when I received a telephone call  
11 to you, you're stating that you called me up very  
12 pleasantly and made a pleasant mark about the disclaimer,  
13 is that correct?

14 A. It was a friendly conversation in my opinion.

15 Q. Did -- Number one, it was not the disclaimer. Do  
16 you remember stating "you cannot put re-elect and you must  
17 put the word, retain?" Do you remember if that's what the  
18 problem with the posting was and not the disclaimer?

19 A. I don't remember what the actual -- I know you  
20 can put re-elect.

21 Q. You can or cannot?

22 A. You cannot put re-elect.

23 Q. Okay.

24 A. But if you're saying that's what the conversation  
25 was, you said it was the disclaimer, I'm not going to

1 argue that.

2 Q. And you don't remember --

3 A. It said re-elect?

4 Q. It said re-elect.

5 A. All right. So she phoned you up to correct that?

6 Q. And it was more than correct and I don't know if  
7 I can just testify but it was not --

8 THE COURT: I'll let you testify.

9 BY MR. STEPHEN MELNICK:

10 Q. -- In a very friendly tone. Okay. So you're  
11 saying it was a very friendly, nice, pleasant tone, this  
12 conversation, correct?

13 A. Yeah, you're putting those words in my mouth.

14 Q. No. I'm asking you, was it a friendly  
15 conversation tone?

16 A. It was a friendly conversation in my opinion.

17 Q. In your opinion?

18 A. Yes.

19 Q. But could it have been taken in another way that  
20 it was not friendly, polite, and nice?

21 A. I don't know how someone else can interpret a  
22 conversation I'm having. I can't tell what someone else  
23 is thinking.

24 Q. And you had no idea during the entire election,  
25 while the election was going on, that I was involved with

1 Pedro, in any of this with Pedro, is what you're saying?

2 A. No, not aware of it at all.

3 Q. Not aware of it at all. You never made any  
4 comments to anyone else about that either?

5 A. I did not know until today that you were involved  
6 in that and I don't know if you're aware but I didn't show  
7 up at any of the recounts. I think I was there for five  
8 minutes.

9 Q. We're not discussing -- I'm not discussing the  
10 recounts. It was discussing the hearing that was involved  
11 in the lawsuit that was filed that Bill Sheir (phonetic  
12 spelling) and I think Bruce Ruego (phonetic spelling)  
13 argued involving that that went on up to the Fourth DCA  
14 and the research involved with that. You don't know --  
15 You really don't know who was involved in that research at  
16 all, do you?

17 A. No, I just thought it was Bruce Ruego and Bill  
18 Sheir.

19 Q. And you're saying under, I guess it's cross-  
20 examination, that you had no idea I had any involvement in  
21 any of this, correct?

22 A. Other than that fund raiser you had, no.

23 Q. I have nothing further.

24 THE COURT: Thank you. Did you want to --

25 MR. MELNICK: I guess I'll tell you what

1 had happened. It was posted on a blog. I notified Jeff  
2 Ivonshuk because I guess Jeff was the one posting it and  
3 the difference, it said re-elect not retain, and within  
4 about three to five minutes of it hitting the blog and  
5 being posted, I received a telephone call from Mrs. Cohen  
6 and the tone of the conversation was not very friendly,  
7 nice, and polite. And basically I was threatened that you  
8 better do --

9 THE COURT: How were you threatened?

10 MR. MELNICK: It's -- The exact words  
11 were, you can't do that. You're making a big mistake and  
12 you will be sorry if it's not changed and I was hung up  
13 on. Those were the terms that were said and I kind of  
14 laughed and said, what can be done to me? But that tone,  
15 being stated to me alone, implicates a threat. And I  
16 don't like being threatened at all, especially when I'm  
17 not doing anything wrong but I received a threat from  
18 Mrs. Cohen. During the campaign, yes, I was directly and  
19 heavily involved in Pedro Dijols' unsuccessful retention  
20 campaign and was directly involved in all the research  
21 involved with that litigation.

22 THE COURT: Well, how did she know you  
23 were behind the scenes working --

24 MR. MELNICK: I don't --

25 THE COURT: -- with Pedro Dijols --

1 MR. MELNICK: My belief is that she knew.  
2 I can't say whether she knew or not.

3 THE COURT: How could she possibly know  
4 what goes through -- this entire law firm and he --

5 MR. MELNICK: I was with Pedro during the  
6 campaign. I was sitting in the courtroom and was there  
7 with Pedro the entire time and --

8 THE COURT: So were about a hundred other  
9 lawyers.

10 MR. MELNICK: Not a hundred lawyers, but  
11 there were a few on his team and our office was his  
12 headquarters and whether Mrs. Cohen will admit it or not,  
13 she knew what our entire involvement was. And what I  
14 believe -- My belief and my client's belief is that based  
15 on those threats, whether real or not, that its human  
16 nature to believe somebody's spouse will look with a  
17 different view at somebody whether it's on purpose or not,  
18 it's normal human nature and nobody can block human nature  
19 out because we all are humans. And what this comes down  
20 to, and I believe I said at that beginning, it's  
21 credibility as to whether you're going to believe what  
22 Mrs. Cohen said to me or what I know she said to me. And  
23 that's, you know, the bridge we didn't want to cross and I  
24 didn't want to cross that but that's what it comes down  
25 to, then if the court finds Mrs. Cohen more credible than

