If the Law is a Jealous Mistress, What Ever Happened to Pay Toilets? A Digest of the Legally Profound

Scott M. Solkoff∗
If the Law is a Jealous Mistress, What Ever Happened to Pay Toilets? A Digest of the Legally Profound

Scott M. Solkoff

Abstract

In these days of religious skepticism and increased litigiousness, it was only a matter of time before someone sued the Devil.
If the Law is a Jealous Mistress, What Ever Happened to Pay Toilets? A Digest of the Legally Profound

Scott M. Solkoff

In these days of religious skepticism and increased litigiousness, it was only a matter of time before someone sued the Devil. So woe to Gerald Mayo, the wise Pennsylvania resident who, when all else failed, futilely attempted to defeat the evil deity with the brunt of the American civil justice system. Interestingly, Mayo was unable to find an attorney and was forced to sue the Devil pro se. Mayo alleged that Satan has, "on numerous occasions caused plaintiff misery and unwarranted threats, against the will of plaintiff, that Satan has placed deliberate obstacles in his path and has caused plaintiff's downfall." Perhaps due to Mayo's lack of legal finesse, he was unable to properly plead the case and his petition to proceed in forma pauperis was denied.

The court cited three reasons why it was unable to try the case on its merits. First of all, Judge Weber questioned whether the Western District of Pennsylvania was the proper judicial district in which to obtain personal jurisdiction over the defendant. Although the court could find no reported cases wherein the Devil was amenable to suit within the United States, it did note an unofficial account of a case wherein the Devil acted as plaintiff in a mortgage foreclosure action. Next, the court considered whether the case would more properly be brought as a class action. The Judge noted that the claim appears to meet the requirements of Federal Rule of Civil Procedure 23 in that the class is so numerous that joinder of all plaintiffs would be impracticable, that there are questions of law and fact common to the class, and that the claim of the representative party is typical of the

* Student of Law, Shepard Broad Law Center of Nova University. B.S., University of Florida and from listening to far too many lectures on legal conundrums.

2. The record is unclear as to whether Satan secured counsel for his defense. Either way, it would probably be safe to assume that Mayo fell short on legal resources.
4. Id.
5. Id.
6. Id.
7. Id. In that case, Daniel Webster acted as counsel for the defense. He alleged that the Devil was a foreign prince with no standing to sue in American courts. Judge Weber noted that the defense in that case was overcome by overwhelming evidence to the contrary.
claims of the class. The court stated, however, that it could not now determine whether Mayo would fairly protect the interests of the class. Lastly, the court, with some trepidation, noted that Mayo failed to properly instruct the United States Marshall for directions as to service of process. Although the case never progressed any further, it has provided the fodder for many a subsequent decision. No less than two state courts and ten federal courts have cited to Mayo for its ground breaking pronouncements of the law relating to Satan.

Take for example, Norman v. Reagan, in which the court referred to Mayo as it searched for a less obscene example of the legally profound. In that case, Kent © Norman sued Ronald Reagan, President of the United States for causing the plaintiff "great vexation" in derogation of his constitutional rights. Judge Redden had previously attempted to steer clear of the controversy by dismissing the action as frivolous, but had been reversed by the Ninth Circuit. On remand, the court dismissed for want of prosecution, but, prior to doing so, detailed all of Norman's claims to preserve them for the annals of legal history. Norman set forth six claims against Reagan, alleging among other things, that the President had caused Norman's "civil death" and had allowed "numerous abuses of plaintiff's person, property, and liberty . . . ."

In light of these masterful allegations, some would certainly agree that Norman had stated a claim. Yet, Reagan was not the only target of Norman's adept legal maneuvers. Kent Norman also requested an order requiring the Interstate Commerce Commission (ICC) to investigate a company doing business as the White Line Fevers From Mars. The court points out that, despite the name, this defendant is not of "genuine extraterrestrial origin, but is apparently a fruit company which shipped marijuana and cocaine in 'fruit boxes' for Mother's Day." It seems that Norman's trucking license had been suspended by the ICC when he was caught transporting some of White Line Fevers From Mars' fruit boxes. But wait—the case gets better. Norman included in the complaint one of his original poems.

The birds today
Are singing loudly,
The day is fresh
With the sounds
Upon the wind
The crickets
The blackbirds.
The woodpeckers
Beauty in every
Spark of life
Just so the sounds are beauty
The ants are silent
But always searching
The Birds noise a song
and the fade of the automobile tires
Chirp. A shadow from
a passing monarch butterfly
Breathless in Colorado.

Whatever Norman's intentions, he may have figured out a new way of gaining publication in a tough poetry market. Indeed the court was quite perplexed by Norman's poetic inclusion. It noted that, with the liberal

9. Id.
10. Id.
11. Id.
13. 95 F.R.D. 476 (D. Or. 1982).
14. Among other quirks, the plaintiff apparently incorporated the copyright symbol into his name.
15. Id. at 476. Norman is another beautiful example of proceeding pro se in forma pauperis. The lack of financial disincentive often provides for causes which defy legal convention. I say this, of course, tongue in cheek, for frivolous law suits eat much of the courts' valuable time. Still, what would the study and practice of law be like without such prizes as Norman and Mayo.
16. Judge Redden, the deciding judge, was not a Reagan appointee.
17. Thank you, Judge Redding!
18. Norman, 95 F.R.D. at 476.
claims of the class. The court stated, however, that it could not now
determine whether Mayo would fairly protect the interests of the class.

Lastly, the court, with some trepidation, noted that Mayo failed to properly
instruct the United States Marshall for directions as to service of process.

Although the case never progressed any further, it has provided the fodder
for many a subsequent decision. No less than two state courts and ten
federal courts have cited to Mayo for its ground breaking pronouncements
of the law relating to Satan.

Take for example, Norman v. Reagan, in which the court referred
to Mayo as it searched for a less obscene example of the legally profound.
In that case, Kent @ Norman sued Ronald Reagan, President of the
United States for causing the plaintiff "grote vexation" in derogation of his
constitutional rights. Judge Redden had previously attempted to steer
clear of the controversy by dismissing the action as frivolous, but had been
reversed by the Ninth Circuit. On remand, the court dismissed for want
of prosecution but, prior to doing so, detailed all of Norman's claims to
preserve them for the annals of legal history. Norman set forth six
claims against Reagan, alleging among other things, that the President had
cause Norman's "civil death" and had allowed "numerous abuses of
plaintiff's person, property, and liberty .... 

In light of these masterful allegations, some would certainly agree that
Norman had stated a claim. Yet, Reagan was not the only target of
Norman's legal maneuvers. Kent Norman also requested an order
requiring the Interstate Commerce Commission (ICC) to investigate a

company doing business as the White Line Fevers From Mars. The court
points out that, despite the name, this defendant is not of "genuine
extraterrestrial origin, but is apparently a fruit company which shipped
marijuana and cocaine in "fruit boxes" for Mother's Day." It seems that
Norman's trucking license had been suspended by the ICC when he was
cought transporting some of White Line Fevers From Mars' fruit boxes. But
wait—the case gets better. Norman included in the complaint one of his
original poems.

The birds today
Are singing loudly,
The day is fresh
With the sounds
 Upon the wind
 The cricket.
 The blackbirds.
 The woodpeckers
Beauty in every
 Spark of life
 Just so the sounds are beauty
 The ants are silent
 But always searching
 The Birds noise a song
 and the fade of the automobile tires
 Chirp. A shadow from
 a passing monarch butterfly
 Breathless in Colorado.

Whatever Norman's intentions, he may have figured out a new way of
 gaining publication in a tough poetry market. Indeed the court was quite
 perplexed by Norman's poetic inclusion. It noted that, with the liberal

19. To be sure, it is a slap to legal comedians the world over that the case name does
 not denote that defendant. Kent @ Norman v. White Line Fevers From Mars would be
 rivaled only by United States v. 11¼ Dooen Packages of Article Labeled in Part Mrs.
 Moffat's Shoo Fly Powders for Drunkenness, 40 F. Supp. 208 (W.D.N.Y. 1941). I won't
 1971) (see discussion supra), is nothing to sneeze at. However, the Fifth Circuit bestowed
 the title for the "most delightful of case names," to Easter Seal Society for Crippled Children
 and Adults of Louisiana, Inc. v. Playboy Enter., 815 F.2d 323, 324 n.1 (5th Cir. 1987), cert.


21. Id. at 477.
federal rules of pleading, "the references to the birds, crickets, and butterfly could constitute a Bivens claim." For some reason, however, Norman seems to have disappeared. He took no further action on the case since remand and mail addressed to him was returned. The court opined that perhaps Mr. Norman has elected to pursue his remedies in a more convenient forum. More likely, Norman may have contracted a chronic case of white line fever from Mars. Pro se litigants proceeding in forma pauperis have nothing to lose and everything to gain by filing even the most profound of suits. This is especially true for convicted prisoners with much idle time and free paper. In one case, a prisoner brought a civil rights claim due to unfavorable prison conditions. The prisoner alleged that allowing female personnel to work among male prisoners stimulated sexual drives to frustration in violation of the Eighth Amendment prohibition against cruel and unusual punishment. Apparently cognizant of this danger, the court in *Holdman v. Olathe* upheld a Hawaii prison regulation requiring female visitors to be "fully clothed, including undergarments." The case got started, when, during a routine visit, it was discovered—and was freely admitted—that the visiting plaintiff was not wearing a bra. The woman alleged that the prison directive was facially discriminatory on the basis of sex. In rejecting the claim, the court recognized that there were many unanswered questions such as whether men were required to wear briefs and what the plaintiff's actual measurements were.

A case testament to the true nature of the beast in *Gordon v. Secretary of State of New Jersey*, in which a prisoner alleged that he was denied the office of the Presidency due to his illegal incarceration. The rub of the complaint alleged that "had there been a free legal 1976 Presidential election, J. John Gordon would now be the President of the United States." As a consequence, Gordon asked the court to invalidate the elections. The court denied the claim, so let that serve as a caveat to those with political aspirations.

For some reason prisoners in New Jersey seem to have a flair for the profound. In *Seabright v. New Jersey*, a prisoner filed a civil rights suit alleging that the defendants unlawfully injected him in the left eye with a radium electric beam. As a result of involuntary high-fidelity, the prisoner alleged that he now picks up voices inside his brain. The court considered whether Seabright's claim would more properly be brought under the exclusive jurisdiction of the Federal Communications Commission at a presumably unlicensed radio broadcast. Dismissing the action on other grounds, the court nevertheless attempted to be helpful by leading the plaintiff to an alternative remedy. It suggested that he could block the broadcast to his brain by simply grounding his antenna with the use of a paperclip chain extending from the back of the plaintiff's trousers to the floor.

Courts often bend over backwards to make valuable suggestions to those who stand before them. Salvatore Albanese was one man in need of such guidance. Mr. Albanese was convicted in 1969 along with three other men in the hijacking of a trailer loaded with valuable merchandise. Rather than being jailed, Albanese was given five years probation during which time he could not associate with known criminals. This proved too much for Albanese who was found associating with some of New York's biggest crime bosses. His only defense was that these were his friends and were the only people he knew. In Mr. Albanese's words, "It
federal rules of pleading, "the references to the birds, crickets, ants, and butterfly could constitute a Bivens claim." For some reason, however, Norman seems to have disappeared. He took no further action on the case since remand and mail addressed to him was returned. The court queried that perhaps Mr. Norman has elected to pursue his remedies in a more convenient forum. More likely, Norman may have contracted a chronic case of white line fever from Mars.

Pro se litigants proceeding in forma pauperis have nothing to lose and everything to gain by filing even the most profound of suits. This is especially true for convicted prisoners with much idle time and free paper. In one case, a prisoner brought a civil rights claim due to unfavorable prison conditions. The prisoner alleged that allowing female personnel to work among male prisoners stimulated sexual drives to frustration in violation of the Eighth amendment prohibition against cruel and unusual punishment.

Apparently cognizant of this danger, the court in Holdman v. Olin upheld a Hawaii prison regulation requiring female visitors to be "fully clothed, including undergarments." The case got started, when, during a routine search, it was discovered—and was freely admitted—that the visiting plaintiff was not wearing a bra. The woman alleged that the prison directive was facially discriminatory on the basis of sex. In rejecting this claim, the court recognized that there were many unanswered questions such as whether men were required to wear briefs and what the plaintiff's actual measurements were.

A case testament to the true nature of the beast is Gordon v. Secretary of State of New Jersey, in which a prisoner alleged that he was denied the office of the Presidency due to his illegal incarceration. The nub of the complaint alleged that: "Had there been a free legal 1976 Presidential election, J. John Gordon would now be the President of the United States." As a consequence, Gordon asked the court to invalidate the elections. The court denied the claim, so let that serve as a caveat to those with political aspirations.

For some reason prisoners in New Jersey seem to have a flair for the profound. In Searight v. New Jersey, a prisoner filed a civil rights suit alleging that the defendants unlawfully injected him in the left eye with a radium electric beam. As a result of involuntary high-fidelity, the prisoner alleged that he now picks up voices inside his brain. The court considered whether Searight's claim would more properly be brought under the exclusive jurisdiction of the Federal Communications Commission as a presumably uncensored radio broadcast. Dismissing the action on other grounds, the court nevertheless attempted to be helpful by leading the plaintiff to an alternative remedy. It suggested that he could block the broadcast to his brain by simply grounding his antenna with the use of a paperclip chain extending from the back of the plaintiff's trousers to the floor.

Courts often bend over backwards to make valuable suggestions to those who stand before them. Salvatore Albanese was one man in need of such guidance. Mr. Albanese was convicted in 1969 along with three other men in the hijacking of a trailer loaded with valuable merchandise. Rather than being jailed, Albanese was given five probation years during which time he could not associate with known criminals. This proved too much for Albanese who was found associating with some of New York’s biggest crime bosses. His only defense was that these were his friends and were the only people he knew. In Mr. Albanese’s words, "I

22. Id; see Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971).
24. As of 1986, Kent O. Norman was an involuntary resident of the Oregon State Hospital. He continued, even after confinement, to correspond with Judge Redden, now Chief Judge for the District of Oregon.
26. Id. at 264-65.
27. 581 F.2d 1164 (Haw. 1978).
28. Id. at 1166.
29. Id. In a recent survey conducted by Women for Undergarment Equality, it was determined that men generally wear only one undergarment, while women must generally wear two. Gives one pause, doesn't it.
30. Id. The plaintiff also happened to occupy the office of Executive Director of the American Civil Liberties Union of Hawaii.
32. Id.
33. Id. at 1027.
34. Id. at 1026.
36. Id.
37. Id.
38. Id. This reminds me of the true story of the elderly woman who sought her lawyer’s advice on how to stop the train from crashing through her living room in the middle of the night. Rather than seeking an injunction, the Deerfield Beach attorney successfully recommended to his client that she install a red light at her doorstep.
40. Id.

Published by NSUWorks, 1993
don’t make sense, who am I supposed to associate with? Who do I know in my life? Your honor, will you hang around with me? Will you associate with me? Will you go to dinner with me?" Counsel for Mr. Alphonse added that if the defendant had been having dinner with Spino Agnew, "You wouldn’t have complained." To this the judge replied, "I would certainly wonder why Mr. Alphonse was having dinner with the vice-president who had pleaded guilty of a criminal offense." Interestingly, a man by the name of Salvatore Albanese became a New York City alderman in the mid-1980’s. To be fair, it has never been verified whether these men are one and the same. It is also unclear as to whether Coatclimas Alphonse had anything to do with the disappearance of pay toilets.

Once upon a time, if we needed to relieve ourselves outside the comfort of our own homes, there was a good chance that some pocket change might prove a valuable commodity. There were those of us who could enter limbo under the locked door, but for many, they were up the creek without a nickel. Due to their relative mobility, men generally fared better than women during this era. There was always the secluded bush. The problem was especially acute in New York City, affectionately known by some as the "city of fluids." Not surprisingly, New York was among the first states to take legislative action. The law mandated a hefty penalty for those who permitted pay toilets to be operated on their property. Predictably, this upset the Nuk-o-lok Company and the Advance Pay Toilet Lock Company who immediately filed suit. They claimed that the law violated the equal protection clause in that it applied only to pay toilets, not to toilets that were locked with a key. The court upheld the statute, stating that the equal protection clause applies to people not toilets. Before doing so, however, the court examined the statute’s legislative history which contains the following passage: "Pay toilets are essentially a tax on human biological functions. In addition, it is a discriminatory tax, in that women often have no choice but to use the facilities, while men frequently have access to free toilet facilities." These words show remarkable legislative insight but beg...
don’t make sense, who am I supposed to associate with? Who do I know in my life? Your honor, will you hang around with me? Will you associate with me? Will you go to dinner with me?44 Counsel for Mr. Albanese added that if the defendant had been having dinner with Spiro Agnew, ‘You wouldn’t have complained.”45 To this the judge replied, “I would certainly wonder why Mr. Albanese was having dinner with the one vice-president who had pleaded guilty of a criminal offense.”46 Interestingly, a man by the name of Salvatore Albanese became a New York City councilperson in the mid-1980’s. To be fair, it has never been verified whether these men are one and the same. It is also unclear as to whether Councilman Albanese had anything to do with the disappearance of pay toilets.

Once upon a time, if we needed to relieve ourselves outside the comfort of our own homes, there was a good chance that some pocket change might prove a valuable commodity. There were those of us who could deftly limbo under the locked door, but for many, they were up the creek without a nickel. Due to their relative mobility, men generally fared better than women during this era. There was always the secluded bush. The problem was especially acute in New York City, affectionately known by some as the “city of fluids.” Not surprisingly, New York was among the first states to take legislative action.44 The law mandated a hefty penalty for those who permitted pay toilets to be operated on their property.45 Predictably, this upset the Nik-o-loc Company and the Advance Pay Toilet Lock Company who immediately filed suit.46 They claimed that the law violated the equal protection clause in that it applied only to pay toilets, not to toilets that were locked with a key. The court upheld the statute, stating that the equal protection clause applies to people not toilets.47 Before doing so, however, the court examined the statute’s legislative history which contains the following passage: “Pay toilets are essentially a tax on human biological functions. In addition, it is a discriminatory tax, in that women often have no choice but to use the facilities, while men frequently have access to free toilet facilities.”48 These words show remarkable legislative insight but beg the question as to how many of the state’s congressmen have relieved themselves in the streets of New York. Regrettably, the court never reached this issue, nor did it address whether pay toilets constitute cruel and unusual punishment. In any event, New Yorkers have one less thing to worry about.

41. Id.
42. Id.
43. Id.
44. N.Y. GEN. BUS. LAW § 399(a) (McKinney 1975).
45. Id.
47. Id. at 936.
48. Id. at 938.

Published by NSUWorks, 1993