

No. 17-818

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

David Roemer, pro se
Plaintiff-Appellant

v.

Attorney Grievance Committee; Jane E. Booth; Lee C. Bollinger
Defendants-Appellees

Appeal From the United States District Court
For the Southern District of New York

Case No. 17-cv-000703-PCK
The Honorable Judge P. Kevin Castel

BRIEF OF
PLAINTIFF-APPELLANT, DAVID ROEMER

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I. Preliminary Statement

To explain this lawsuit and the misconduct of the three defendants, Judge Castel, and the only attorney who has filed a notice of appearance, I will describe a hypothetical complaint that is analogous to the actual complaint. The analogy is that I was abducted by aliens from outer space, and offered to tell the Columbia University community about this experience. Columbia declined my offer, and I sued the President and General Counsel of Columbia for violating the First Amendment. Such a complaint is totally incredible and would cause mental and emotional stress to nobody. The actual complaint is only slightly less incredible and causes a considerable amount of emotional and mental stress to many people.

The actual complaint is that I want to explain the cosmological argument for God's existence to the Columbia community. In declining this offer, President Lee Bollinger and General Counsel Jane Booth violated the academic freedom of the Columbia community because there is no other way the faculty and students of Columbia could learn what the cosmological argument for God's existence is. My complaint proves this almost totally incredible statement by explaining the cosmological argument in paragraph 11 and giving references to entries in two online encyclopedias titled "Cosmological Argument." These two entries fail to state the cosmological argument. The entry in the Stanford Encyclopedia of Philosophy is 38 pages

long. No one reading that entry or the references in the bibliography would learn what the cosmological argument for God's existence is.

This reality conflicts with the belief that philosophy professors at major secular American universities are knowledgeable about the arguments for God's existence and are paragons of intellectual integrity. A conflict between reality and belief causes what is called *cognitive dissonance*.

People suffering from cognitive dissonance are consciously or unconsciously inhibited from being as honest, rational, and intelligent as they usually are.

II. Jurisdictional Statement

Federal courts have jurisdiction over this case because it concerns the freedom of speech and the establishment of religion clauses of the First Amendment. Upon information and belief, the Court of Appeals has jurisdiction over this case because on March 22, 2017, Judge Castel denied my motions filed on February 25 and March 2 to disqualify Judge Castel.

III. Issues Presented for Review

A. Whether Judge Castel should have recused himself immediately because of his past association with the Attorney Grievance Committee and Columbia University.

- B. Whether Andrew Schilling, Jane Booth's attorney, is deceiving the district court by claiming he represents Lee Bollinger.
- C. Whether Judge Castel is turning a blind eye to Mr. Schilling's deception by failing to sign the Default Judgment I filed on March 17, 2017.
- D. Whether this statement in Judge Castel's Order of Dismissal is totally irrational: "Lest there be any doubt on the subject, this Court expresses no views on Mr. Roemer's religious and philosophical beliefs."
- E. Whether this statement in Judge Castel's Order of Dismissal is an exercise in circular reasoning to justify dismissing my complaint: "There is no basis in law for this court to Order the Attorney Grievance Committee to discipline a particular attorney or hold it accountable for failing to do so."

IV. Statement of Case

On September 15, 2016, I sent an email to the University Chaplain of Columbia University with an offer to give a lecture/lesson on the arguments for God's existence. The email included the lesson plan I would use and a link to an article I published on Academia.edu titled, "Why People Believe God Caused the Big Bang." The University Chaplain did not respond to this email, but I got a call from a member of the staff of Columbia's Department of Public Safety, Deidre Fuchs. In a meeting in her office on September 22, Ms. Fuchs told me no one at Columbia was interested in my lesson/lecture and that I should not contact anyone about my offer. I sent an email of

complaint to the President of Columbia, Lee Bollinger, the same day, and mailed a copy to Jane Booth. I did not get a response from Mr. Bollinger or Ms. Booth.

On October 13, Ms. Booth sent me a letter saying, “If you continue to reach out to members of the community, further contact could be construed as harassment.” On October 18, I filed an ethics complaint against Ms. Booth with the Attorney Grievance Committee saying, “My complaint against Ms. Booth is that she is conspiring with the University Chaplain and the President to deprive the students and faculty of Columbia of the opportunity to learn and understand the arguments for God’s existence.” On January 5, 2017, the Attorney Grievance Committee sent me a letter stating that my complaint, which included 9 exhibits, failed to indicate any violation of the New York Rules of Professional Conduct.

On January 11, I sent an email to Ms. Booth giving reasons why my proposed lecture/lesson had social value why her threatening letter violated the academic freedom of the Columbia community. This email included commendations from two prominent Catholic scholars of my essay and lesson plan. On January 18, I sent an email to Lee Bollinger complaining about the violation of my rights and suggesting he invite me to give the lesson/lecture. There was no response to these two emails.

On January 30, I filed a complaint in the SDNY against Ms. Booth and the Attorney Grievance Committee, and asked both defendants for a waiver of service of the summons. Mr. Schilling gave me the waiver, but I did not get a waiver from the Attorney Grievance Committee. On February 13, I filed an amended complaint and added Mr. Bollinger as a defendant. On February 22, Mr. Schilling filed a Notice of Appearance claiming he represented Ms. Booth and Mr. Bollinger and sent a letter to Judge Castel asking to dismiss the complaint. On February 28, an Affidavit of Service upon Mr. Bollinger was filed stating that the amended complaint was delivered on February 23 at 3:58 PM. An Order of Dismissal was written on February 23 and filed on February 24.

On February 24, I sent a letter to Judge Castle asking him to disqualify himself because of his prior association with the Attorney Grievance Committee. I also refuted the two statements referred to in the Issues Presented for Review, and questioned his right to dismiss the complaints against Mr. Bollinger and the Attorney Grievance Committee since the summons had not been served upon them when he dismissed the complaint. On March 2, I followed this letter up with a motion and memorandum of law with 7 exhibits to disqualify Judge Castle.

On March 17, I filed a motion for a Default Judgment as to Lee Bollinger. The proposed Default Order prohibited Mr. Bollinger from

causing civil or criminal legal action against me for contacting the dozen ministers appointed by the University Chaplain about my offer of a lesson/lecture about God's existence. On March 20, Mr. Schilling filed a letter with two exhibits opposing the Default Judgment. This letter does not contain any letter or email from Mr. Bollinger saying that he authorized Mr. Schilling to argue against the Default Judgment. On March 21, I filed a letter of rebuttal to Mr. Shilling's letter. In an Order dated March 21, Judge Castel denied my motion for disqualification. On March 22, I filed a notice of appeal to the Second Circuit.

V. Arguments

A. Judge Castel Should Be Disqualified

My complaint accuses the defendants of violating the establishment of religion clause in the First Amendment and does not ask for money. Far more relevant than Judge Castel's personal and professional relationships with the defendants in deciding whether he is biased are his opinions and beliefs about religion and the opinions and beliefs of the individuals in his social, familial, and professional life. I think it is reasonable to say that no judge can be perfectly objective about a case involving religion. This means that Judge Castel's decisions and actions should be scrutinized for signs of bias in favor of the defendants rather than his past associations. I note that my request for a hearing made to Judge Castel and the Magistrate Judge

assigned to the case was denied. Also, it took Judge Castel only one day after Mr. Schilling's motion to decide that my lawsuit is frivolous. My motion for a Default Judgment as to Mr. Bollinger was filed on March 13, 2017. Mr. Schilling responded to this on March 20, and I replied to this on March 21. Judge Castel did not rule on this motion. Instead, Judge Castel denied my motion for disqualification in an order dated March 21.

B. Mr. Schilling Does Not Represent Mr. Bollinger

On September 22, 2016, I sent an email of complaint to Mr. Bollinger about my interactions with the Department of Public Safety and the University Chaplain. Mr. Bollinger did not respond to the email. He had every right not to respond and to let the chips fall where they may. Sometime after 3:58 PM, February 23, 2017, Mr. Bollinger got the amended complaint. Mr. Bollinger is a lawyer with a special expertise in the First Amendment, and he knows perfectly well how the chips fall in such a situation.

Mr. Schilling filed a Notice of Appearance for Ms. Booth and Mr. Bollinger with the court on February 22, one day before the summons was served on Mr. Bollinger. Let's suppose, for the sake of argument, that Mr. Bollinger was aware of the Notice of Appearance. When Mr. Bollinger got the summons and complaint, there are two possible decisions he may have

made. He may have decided, like Mr. Schilling and Judge Castel, that the complaint is frivolous and that Mr. Schilling should represent him.

The other possibility is that he read the complaint with its six footnotes and the articles referred to in the footnotes carefully. He realized that indeed no one could learn about the cosmological argument by reading these entries and decided that the University Chaplain showed poor judgment in declining my offer. Since the complaint only asks for an injunction, Mr. Bollinger decided to let the court issue whatever injunction it deemed just. If this is so, Mr. Schilling is quite wrong to claim he represents Mr. Bollinger.

C. Judge Castel Should Have Signed the Default Judgment

Suppose Jill files a frivolous lawsuit against Jack demanding \$1,000. Jack, regretting the misunderstanding, does not answer the complaint and pays the \$1000 required by the default judgment. Did the judge have the right to refuse to sign a default judgment on the grounds that the lawsuit was frivolous? Since Jill won by default, Jill can tell the entire world that Jack is a deadbeat. If the judge dismissed the case and Jack paid the \$1000 anyway, Jack can tell the entire world Jill's lawyer is a dope.

In this lawsuit, my proposed Default Judgment does not ask for money. It only orders Mr. Bollinger not to cause civil or criminal complaints to be filed against me for offering to give a lesson/lecture on God's existence

to 12 named individuals appointed by the University Chaplain. If a federal judge does not sign the Default Judgment, I can and will tell the entire world that Mr. Bollinger does not want the Columbia community to understand the arguments for God's existence. If a federal judge does sign the Default Judgment, I have no grounds for calling Mr. Bollinger a stooge for humanists and so-called atheists and agnostics.

D. Judge Castel Is Irrational

Judge Castel's expression of respect for my religious and philosophical beliefs quoted in section III.D is quite absurd. My complaint only refers to scientific and philosophical facts. There is no reference to religion except for the religion called *humanism* in paragraph 12 of the complaint. I think that Judge Castel was referring to paragraph 10 when he mentioned my religious beliefs:

The science establishment in the United States disseminates the misinformation that human beings evolved from animals. The truth is that *homo sapiens* evolved from animals. Homo sapiens are hypothetical creatures that lack free will and the conscious knowledge of human beings as opposed to the sense knowledge of animals.^{3 and 4}

The footnotes are supportive quotes from a biology textbook widely used by biology majors in college and Stephan Jay Gould, who is famous for his contributions to evolutionary biology and who happens to be a humanist. If Judge Castel thinks I am wrong about this, he should have said so in his

decision. His reference to my religious beliefs indicates he doesn't understand the case.

Concerning my philosophical beliefs, Judge Castel was probably referring to paragraph 11:

Many philosophers in the United States disseminate misinformation about the cosmological argument for God's existence. The only version of the cosmological argument that makes sense is based on the scientific fact that human beings did not evolve from animals. This argument, which is from Thomas Aquinas as explained by Etienne Gilson, assumes that the universe is intelligible and that human beings are finite beings. From these assumptions, it can be argued that an infinite being (*God*) exists.^{5 and 6}

Ms. Booth and Mr. Bollinger are guilty of violating the academic freedom of the Columbia community because my lesson/lecture has social value. How much social value my lesson/lecture has depends on how true paragraph 11 is. This is what the court has to decide to render a legal and just verdict. Dismissing paragraph 11 by saying it is a philosophical belief indicates Judge Castel is confused and biased.

E. Judge Castel Is Wrong

Judge Castel and Mr. Schilling are saying there is no cause of action for my lawsuit. I had an exchange of emails and letters with Mr. Schilling about this question. I am certain I am right because Mr. Schilling did not answer the question I put to him in my last letter, which was faxed to the Attorney Grievance Committee. In a letter dated February 1, 2017, he wrote:

While the draft complain alleges that Ms. Booth violated the First Amendment, only the government can violate the Constitution; a private actor cannot.

I responded by letter on the same day:

Today I had a meeting with an attorney from the New York Legal Assistance Group and we discussed whether or not Ms. Booth is state actor. As I recall the conversation, the attorney was unsure about the question of whether Ms. Booth is a state actor or an employee of Columbia U.

The next day I wrote in a letter:

I read the two cases you cited and could not find anything indicating that Ms. Booth is an employee of Columbia U. As I understand it, she is an officer of the New York State Unified Court System.

On February 12, I got this letter:

Like Ms. Booth, Mr. Bollinger is a private actor; neither is a state actor. And there is no factual basis to allege any "entanglement" between either of them and the State of New York

On February 13, I sent this email:

I don't understand why Ms. Booth is a "private actor." She is an officer of the court, no? Are you telling me that Lee Bollinger is Jane Booth's boss? Are you telling me that if Lee Bollinger orders Jane Booth to threaten someone with a bogus lawsuit, Ms. Booth has to follow orders?

On February 14, I got this email:

In response to your email below, please note that courts have consistently held that private attorneys are not "state actors.".....We therefore would urge you to withdraw, rather than expand, the frivolous lawsuit you have brought

This is the letter I faxed on the same day it to the Attorney Grievance Committee and sent to Mr. Schilling. This is the question Mr. Schilling did not answer:

In the first place, the original complaint and the amended complaint do not accuse Bollinger and Booth of violating my rights. My accusation against them is that they harmed the Columbia U. community by behaving unethically and immorally. The state actor in my complaint is the Attorney Grievance Committee.

In the second place, *Licari v. Voog* is just a malpractice case against an attorney. When I got the email from the Catholic Minister threatening me with legal action, I did not feel threatened at all because there was no grounds for legal action against me. However, when I got Jane Booth's letter I did feel threatened. I felt a need to defend myself and the only way I saw for doing this was to file an ethics complaint against her with the Attorney Grievance Committee. Are you telling me I was wrong to tell the Attorney Grievance Committee about her actions?

VI. Conclusion

I want a judge to sign the Default Judgment I filed in the district court against Lee Bollinger. If this happens, I will consider the complaint against Jane Booth and the Attorney Grievance Committee settled.

s/ David Roemer, pro se

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Dated this 27th day of March, 2017