

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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JOSEPH RAKOFKSY, and  
RAKOFKSY LAW FIRM, P.C.,

Plaintiffs,

Index No.: 105573/11

-against-

AFFIDAVIT OF  
HARMONY KENNEY  
IN SUPPORT OF MOTION  
TO DISMISS THE  
COMPLAINT

THE WASHINGTON POST COMPANY  
KEITH L. ALEXANDER  
JENNIFER JENKINS  
CREATIVE LOAFING MEDIA  
WASHINGTON CITY PAPER  
REED SMITH  
BREAKING MEDIA, LLC  
ABOVETHELAW.COM  
ELIE MYSTAL  
AMERICAN BAR ASSOCIATION  
ABAJOURNAL.COM  
DEBRA CASSENS WEISS  
SARAH RANDAG  
MYSHINGLE.COM  
CAROLYN ELEFANT  
SIMPLE JUSTICE NY, LLC  
BLOG. SIMPLE JUSTICE.US  
KARVET & VOGEL,  
SCOTT H. GREENFIELD  
LAW OFFICE OF ERIC L, MEYER  
ERIC L. MAYER, *individually*  
GAMSO, HELMICK & HOOLAHAN  
JEFF GAMSO, *individually*  
CRIMEANDFEDERALISM.COM  
"JOHN DOE #1"  
ORLANDO-ACCIDENT LAWYER.COM  
"JOHN DOE #2"  
LAW OFFICE OF FARAJI A. ROSENTHALL  
FRAHJI A. ROSENTHALL, *individually*  
BENNETT AND BENNETT  
MARK BENNETT, *individually*  
SEDDIQ LAW  
MIRRIAM SEDDIQ, *individually*  
THE MARTHA SPERRY DAILY  
ADVANTAGE ADVOCATES  
MARTHA SPERRY; *individually*  
ALLBRITTON COMMUNICATIONS

COMPANY  
TBD.COM  
RESTORINGDIGMTYTOTHELAW.BLOGSPOT.  
COM  
"J.DOG84@YMAIL.COM"  
ADRIAN K. BEAN  
HESLEP & ASSOCIATES  
KOEHLER LAW  
JAMISON KOEHLER, *individually*  
THE TURKEWITZ LAW FIRM  
ERIC TURKEWITZ, *individually*  
THE BEASLEY FIRM, LLC  
MAXWELL S. KENNERLY  
STEINBERG MORTON HOPE & ISRAEL, LLP  
ANTONIN I. PREBETIC  
PALMIERI LAW  
LORI D. PALMIERI, *individually*  
TANNEBAUM WEISS, PL  
BRIAN TANNEBAUM, *individually*  
WALLACE, BROWN & SCHWARTZ  
GEORGE M. WALLACE, *individually*  
DAVID C. WELLS, P.C. and  
DAVID C. WELLS, *individually*  
ROB MCKINNEY, ATTORNEY-AT-LAW  
ROB MCKINNEY, *individually*  
THOMSON REUTERS  
DAN SLATER  
BANNED VENTURES, LLC  
BANNINAYION.COM  
"TARRANT84"  
UNIVERSITY OF ST. THOMAS SCHOOL OF  
LAW  
DEBORAH K. HACKERSON  
LAW OFFICES OF MICHAEL T. DOUDNA  
MICHAEL T. DOUDNA, *individually*  
MACE J. YAMPOLSKY & ASSOCIATES  
MACE J. YAMPOLSKY, *individually*  
THE LAW OFFICE OF JEANNE O'HALLERAN,  
LLC  
JEANNE O'HALLERAN, *individually*  
REITER & SCHILLER, PA.  
LEAH K. WEAVER  
AVVO CORPORATION  
JOSHUA KING  
ACCELA, INC.  
COLIN SAMUELS

THE BURNEY LAW FIRM, LLC and  
NATHANIEL BURNEY, *individually*

Defendants.

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State of California            )  
  )        ss.:  
County of Orange            )

Harmony Kenney, being sworn, deposes and says:

1.       Prior to April 2011, I was the principal of Kenney and Associates (“KA”), a marketing services company located in Costa Mesa, California. (KA went out of business in April 2011.) I make this affidavit in support of defendants Law Offices of Michael T. Doudna and Michael T. Doudna’s motion to dismiss the complaint.

2.       In or about March 2011, KA was retained by the Law Offices of Michael T. Doudna to set up and maintain a blog to promote the firm. KA created a blog using the self-hosted blogging tool, WordPress (wordpress.org).

3.       The blog went live on the internet in March 2011, at the internet address (URL) “doudnalaw.wordpress.com.” The blog contained information about the firm, including the types of cases Mr. Doudna handled (i.e, criminal defense and bankruptcies), and his contact information, namely his office address, telephone and fax numbers, email address, and URLs.

4.       The blog also included at least one “Leave a Reply” section in which a visitor could post a “comment” to the blog. A poster would be required to provide his email address, which address would have been forwarded to me but not published on the blog. I do not recall if the blog had more than one “Leave a Reply” section. In any event, I did not at any time receive any notification that anyone had posted a comment to the blog.

5.       A “Criminal Law News” section was included in the blog. In order to provide interesting content for that section, I reviewed articles that were publically available online, such

as those published by the ABA Journal (Online) of the American Bar Association. (See, <<http://www.abajournal.com/news>>).

6. When I located an article I considered interesting and noteworthy, I would draft an appropriate heading and summarize its contents in a short paragraph. Immediately below my summary I placed a hyperlink to the source article. Below that, I placed hyperlinks to the Doudna firm's which were, at the time <<http://jailout.com/>> for its criminal defense practice and <http://bankruptcyout.com> for its bankruptcy practice.

7. One of the articles I found interesting appeared in the "Criminal Justice" section of the ABA Journal (Online). The article still exists online<sup>1</sup>, and is reproduced here in its entirety:

**'Astonished' Judge Declares Murder Mistrial Due to Defense Lawyer Who Never Tried a Case**

Posted Apr 4, 2011 6:00 AM CDT

By Debra Cassens Weiss

A Washington, D.C., judge declared a mistrial in a murder case Friday, saying he was "astonished" at the performance of the defense lawyer who confessed to jurors he'd never tried a case before.

Judge William Jackson said lawyer Joseph Rakofsky did not have a good grasp of legal procedures, citing as an example the attorney's rambling opening statement in which he told of his inexperience, the Washington Post reports. Rakofsky graduated from Touro law school in 2009 and obtained a law license in New Jersey less than a year ago, the story says.

Rakofsky had repeated disagreements with his local D.C. counsel, causing his client, Dontrell Deaner, to become "visibly frustrated," the Post says. On Friday, Deaner told the judge he wanted a new lawyer.

The judge declared a mistrial after reviewing a court filing in which an investigator had claimed Rakofsky fired him for refusing to carry out the lawyer's emailed suggestion to

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<sup>1</sup><[http://www.abajournal.com/news/article/astonished\\_judge\\_declares\\_murder\\_mistrial\\_cites\\_inexperienced\\_lawyer\\_who\\_ne](http://www.abajournal.com/news/article/astonished_judge_declares_murder_mistrial_cites_inexperienced_lawyer_who_ne)>

"trick" a witness, the story says. Rakofsky's suggestion allegedly read: "Thank you for your help. Please trick the old lady to say that she did not see the shooting or provide information to the lawyers about the shooting."

Afterward, Rakofsky refused to comment and rushed out of the courthouse, the story says.

Annexed as Exhibit E.

8. On or about April 8, 2011, I drafted a synopsis of the ABA Journal article and posted it to Mr. Doudna's blog, under the title: "*D.C.'s Lawyer's Inexperience Obvious; Judge Declares Mistrial*".

9. To the best of my knowledge, the summary I posted is accurately set forth in paragraph 187 of the amended complaint:

Rakofsky described his inexperience the jury, saying that "he had never tried a case before". This behavior, as well as other tell-tale signs of inexperience led the judge on this case to declare a mistrial. Another disquieting fact is that Rakofsky fired an investigator for refusing to get a witness to lie about the crime in question. Talk about a breach of ethics.

10. As I did for every article posted, I placed a hyperlink to the source article immediately below my summary.

11. On April 14, 2011 Mr. Dounda cancelled our blog maintenance services, as there had been very little traffic on the blog. From that point, I did not edit nor add to the blog. However, since WordPress does not charge to keep the blog online, I did not take any action to remove it from the site.

12. On Wed, May 18, 2011, Mr. Doudna advised me that he had been named as a defendant as a result of the blog, and directed me to take it down from the internet. I did so immediately.

\_\_\_\_\_  
Harmony Kenney

State of California        )  
                                  )  
County of Orange         )       ss.:

Subscribed and sworn to before me on this \_\_\_\_ day of June, 2011,  
by Harmony Kenney, proved to me on the basis  
of satisfactory evidence to be the person who appeared before me.

\_\_\_\_\_  
Notary Public