

JUDGE SANCTIONS ALINA HABBA FOR MISREPRESENTING IGOR DANCHENKO INDICTMENT

There are a number of reasons why Judge Donald Middlebrook sanctioned Alina Habba and Peter Ticktin for the frivolous claims they made against Chuck Dolan in the omnibus lawsuit against Hillary Clinton and a bunch of other people.

In reverse order, Middlebrook found that the lawsuit was filed for improper purpose: to advance a political grievance.

Every claim was frivolous, most barred by settled, well-established existing law. These were political grievances masquerading as legal claims. This cannot be attributed to incompetent lawyering. It was a deliberate use of the judicial system to pursue a political agenda.

[snip]

The rule of law is undermined by the toxic combination of political fundraising with legal fees paid by political action committees, reckless and factually untrue statements by lawyers at rallies and in the media, and efforts to advance a political narrative through lawsuits without factual basis or any cognizable legal theory.

He ruled that it's not RICO, it's never RICO (or any of the other conspiracies Habba alleged, either).

In the RICO count of the Amended Complaint, Plaintiff realleged the

previous 619 paragraphs, and it was a mystery who he intended to sue. In the caption to Count II, he named 22 defendants but in the prayer for relief for that count 28 were named. Added were HF ACC, Inc., the DNC Services Corporations, James Comey, Peter Strzok, Lisa Page, and Andrew McCabe. (Am. Compl. ¶ 633). Whoever he intended to sue, Plaintiff alleged that each of them “knew about and agreed to facilitate the Enterprise’s scheme to harm the Plaintiff’s political career, tarnish his electability, and undermine his ability to effectively govern as the President of the United States” (Am. Compl. ¶ 627).

The RICO conspiracy claims were entirely conclusory. Moreover, there is no standing to bring a RICO conspiracy claim unless injury resulted from violation of a substantive provision of RICO.

Of greatest interest to me, however, to substantiate a finding that the lawsuit’s allegations against Chuck Dolan lacked any reasonable factual basis, Judge Middlebrook laid out how Habba misrepresented the Igor Danchenko indictment to include Dolan in her conspiracy theories. Middlebrook focused closely on Habba’s claims that the pee tape allegation in the Steele dossier “was derived from Dolan.” He rejected Habba’s defense of the allegations against Dolan by pointing to stuff she left out.

Mr. Trump’s lawyers claim “nearly all” of the allegations against Mr. Dolan were sourced directly from the Indictment brought against Igor Danchenko by special counsel John Durham. (DE 270-2 at 6). But this is simply not so. As was the practice throughout the Amended Complaint, Plaintiff cherry-picked portions which supported his narrative while ignoring

those that undermined or contradicted it.¹ Mr. Trump's lawyers persisted in this misrepresentation after being warned by the sanctions motion, and they doubled down on this falsehood in their response to the motion.

[snip]

Even more telling are the portions of the Indictment ignored by Plaintiff. The Indictment alleges that Mr. Dolan and others were planning a business conference to be held in Moscow on behalf of businessmen seeking to explore investments in Russia. (DE 270-2 ¶ 21). Mr. Danchenko was introduced to Mr. Dolan in connection with business activities. (Id. ¶ 18).

Significantly the Indictment alleges two other facts relevant to and, if true, fatal to Plaintiff's claim of conspiracy.

According to [Mr. Dolan], individuals affiliated with the Clinton Campaign did not direct, and were not aware of, the aforementioned meetings and activities with Danchenko and other Russian nationals.

According to [Mr. Dolan], he [Mr. Dolan] was not aware at the time of the specifics of Danchenko's 'project against Trump,' or that Danchenko's reporting would be provided to the FBI.

And with regard to the allegation about sexual activity, the Indictment alleges that Mr. Dolan and another individual were given a tour of a Moscow hotel in June 2016, told that Mr. Trump had previously stayed in the Presidential suite, and according to both Mr. Dolan

and the other individual, the staff member who gave the tour did not mention any sexual or salacious activity. (Id. ¶¶ 60-61). The Indictment does not allege that the information concerning sexual activity was provided by Mr. Dolan.

The May 31, 2022 warning letter told the Trump lawyers that Mr. Dolan had been questioned by the FBI on multiple occasions, that the Danchenko Indictment detailed his contacts with Mr. Danchenko but did not indicate he “discussed any sexual rumors with Mr. Danchenko – because he did not.” (DE 268-1 at 2). The Indictment confirms that Mr. Dolan spoke to the FBI, and not only was he not charged with any falsehood, but his statements are included within the Indictment. The Indictment contradicts rather than supports Plaintiff’s allegations against Mr. Dolan. Far from being “sourced directly” and cited “word-for-word,” (DE 270 at 5), Plaintiff’s use of the Indictment is nothing short of a deliberate disregard of the truth or falsity of their claims. This is a textbook example of sanctionable conduct under Rule 11.

Rather than express any regret, Plaintiff doubled down on his claims: “Plaintiff’s allegation that Defendant was the source of the salacious sexual activity rumor has a legitimate factual basis and is based upon a well-reasoned theory that may well be proven correct during the [Office of Special Counsel’s] upcoming trial of Danchenko.” (DE 270 at 10).

It was never to be. In the Danchenko trial, Mr. Dolan was called as a witness by the government about matters unrelated to the Ritz Carlton rumors. The government never alleged that Mr.

Dolan was a source for the Ritz Carlton story. See Order, United States v. Igor Y. Danchenko, Case No. 21-cr-00245-AJT at 5 (Oct. 4, 2022). And Mr. Danchenko was ultimately acquitted by the jury.

1 The “sourced directly” claim is untrue. For example, the Indictment says: “In or about April 2016, Danchenko and [Mr. Dolan] engaged in discussions regarding potential business collaboration between PR Firm-1 and UK Investigative Firm-1 on issues related to Russia.” (DE 270-2 ¶ 23). The Amended Complaint, however, states: “In late April 2016 Danchenko began having discussions with Dolan about a potential business collaboration between Orbis Ltd. and Kglobal to create a ‘dossier’ to smear Donald J. Trump and to disseminate the false accusations to the media.” (Am. Compl. ¶ 96(c)).

The order as a whole generated a lot of attention on the failed birdsite. But there was no self-awareness that the exercise that Habba engaged in with respect to Dolan and the Danchenko prosecution was similar to what a number of journalists (and a great number of right wingers and other frothers) themselves did, when the Danchenko indictment was rolled out last year.

For example, here’s what the WaPo claimed in a still-uncorrected report last year:

Durham says Danchenko [1] made up a conversation [2] he claimed was the source of one of the dossier’s most salacious claims, that Trump paid prostitutes at a Moscow hotel room to urinate on a bed in which President Barack Obama had once slept. The dossier also suggested Russian intelligence agencies had secretly recorded that event as potential blackmail material. Trump has denied any such encounter.

The indictment [3] suggests that story came from Dolan, who in June 2016 toured a suite at a hotel in Moscow that was once occupied by Trump. According to the indictment, Danchenko [4] falsely told Steele and the FBI that the information came from the president of the U.S. Russian-American Chamber of Commerce at the time.

All four of the above claims are not supported by the indictment, much less Danchenko's published interviews with the FBI, which attributed the pee tape claim to someone else – though it is definitely the case that Durham encouraged such unsupported inferences.

Jonathan Swan condensed the same kinds of claims that Habba just got sanctioned for in one tweet.



Jonathan Swan ✓
@jonathanvswan

The charges are that not only did Clinton/Democrats fund the dossier but a longtime Clinton/Dem operative was one of the sources for the rumors about Trump. Doesn't get much worse.
[washingtonpost.com/national-secu...](https://www.washingtonpost.com/national-security/)



Igor Danchenko, source for Steele dossier, arrested as part of Durham probe
[washingtonpost.com](https://www.washingtonpost.com)

1:50pm · 5 Nov 2021 · Twitter Web App

Just one “rumor” was attributed to Dolan in the Danchenko indictment, the most provably true one

(because it came from media coverage), and one about which – as the trial established – the FBI never once asked Danchenko, in significant part because it had nothing to do with Russia.

And while Middlebrook notes that Danchenko was acquitted, he doesn't note that Judge Anthony Trenga dismissed the single Dolan count because the allegedly false statement Danchenko made about Dolan was "literally true." That should not have been a surprising judgment. I noted problems with that charge exactly a year ago, when I catalogued all the sloppy reporting on the Danchenko indictment.

Middlebrook's order makes for great reading. It's fun to laugh at Habba getting called out.

But it should bring some reflection from the journalists who made the same kind of logical jumps that Habba did, but who cannot be sanctioned for professional failures.

Middlebrook may not be done. The other defendants have asked for sanctions, as well (though without doing the same preparation in advance to ask for Rule 11 sanctions). So Donald Trump's lawyers may yet have the privilege of paying Peter Strzok and Hillary Clinton for the privilege of having sued them.

Update: Corrected Middlebrook's name.