

STATE OF NEW HAMPSHIRE

CHESHIRE, SS

SUPERIOR COURT

Case No. 213-2011-CR-00216

*State v.
Jason Talley*

RESPONSE TO THE STATE'S MOTION TO QUASH SUBPOENAS

The State of New Hampshire, through its agent Associate Attorney General Richard Head, has filed a limited appearance and motion with this honorable Court to “quash” the subpoenas issued to New Hampshire’s two chief trial court judges. Jason Talley responds as follows:

1. Part I, Article 8 of New Hampshire’s Constitution reads as follows:

[Art.] 8. [Accountability of Magistrates and Officers; Public’s Right to Know.] All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive. To that end, the public’s right of access to governmental proceedings and records shall not be unreasonably restricted. (emphasis added)

2. Mr. Talley believes that magistrates being held accountable pursuant to the New Hampshire Constitution, at the very minimum, should stand for the proposition that if the magistrates he is attempting to present to his jury themselves enact rules restricting his rights under Part I, Article 22 of the New Hampshire Constitution three days after their associate violates statutory law, the New Hampshire Constitution, the Federal Constitution, and Supreme Court Rule 38 without any consequence, their status as judges

should be irrelevant and they should be required to appear and testify truthfully as any other citizen would be.

3. Associate Attorney General Head eloquently pointed out in his motion, and Mr. Talley was already well aware, that case law is not favorable to the premise that judges should be subject to depositions and/or subpoenas which require their providing evidence and testimony during a criminal trial. It is understandable that this honorable Court would be reluctant to open the “flood gates” of allowing all future criminal defendants such latitude so as to be able to call judges to be deposed and be witnesses in their trials.

4. This case presents what Mr. Talley believes is a question of first impression for the New Hampshire Judiciary: “Can the longstanding tradition of judges being completely immune from appearing as witnesses and/or being deposed for a criminal trial be reversed when the appearance of impropriety is so strong that the judges who enacted orders resulting in a criminal defendants arrest did so to cover for another judge who flagrantly broke the law on video three days prior?” Mr. Talley believes that fundamental fairness, not blind adherence to tradition and case-law, *requires* that very question be answered in the affirmative.

5. Commentary on New Hampshire Supreme Court Rule 38 (The Code of Judicial Conduct), Judicial Canon 2, is as follows:

“Public confidence in the judiciary is promoted by responsible and proper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny.”

6. Imagine this scenario: A supervisory judge who has the power to make rules that have the force and effect of law (pursuant to NH Constitution Part II, Article 73-a

and Supreme Court Rule 54) enacts a rule banning Wrigley's gum in New Hampshire court facilities due to receiving a multimillion dollar bribe from the manufacturer of Trident. A citizen, favoring Wrigley's Doublemint, chooses to disregard the corrupt ban on his and bravely enters the court facility with a pack of his favorite chewing gum in his pocket. The bailiffs at the security checkpoint arrest the citizen for what later will be labeled indirect criminal contempt by using their authority to enforce the criminal laws. A trial is scheduled and commences. Should the political climate not be sufficient to stop the state from prosecuting the citizen for possession of some unauthorized gum for what is easily provable to be a corruption laced court order, using the states logic, the jury would never know the corruption that stemmed the creation of the law and might blindly find their peer guilty when in reality, would they have had all the information, they would have been inclined to find him not-guilty as a way of holding the New Hampshire Judicial Branch accountable for the misuse and abuse of their vast constitutional authority. Mr. Talley believes this fantasy and almost ridiculous scenario, not completely unlike his present predicament, is a huge miscarriage of justice that can only be fixed by the proper knowledge possessed by a jury of his peers.

7. 1. Part I, Article 10 of New Hampshire's Constitution reads as follows:

[Art.] 10. [Right of Revolution.] Government being instituted for the common benefit, protection, and security, of the whole community, and not for the private interest or emolument of any one man, family, or class of men; therefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought to reform the old, or establish a new government. The doctrine of nonresistance against arbitrary power,

and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.
(emphasis added)

8. Mr. Talley believes judicial officers are a “class of men” that should not enjoy special protection from accountability. He believes the two head judges of New Hampshire’s two criminal trial courts (paid by the people \$146,917 per year), of all people in society, should be held to the highest standard of accountability imaginable for their public acts (that may be classified as criminal themselves under 18 USC 1346 depending on the United States’ interpretation of *Skilling v. United States - No. 08-1394 554 F. 3d 529*) which easily appear to be connected to a colleagues **criminal** acts which restrict the constitutional rights of all, not a lower standard of accountability than faced by a private non-public citizen.

9. Mr. Talley believes the commonly used “maintaining the independence of the judiciary” would be an insufficient and patently offensive justification to use when declaring that judges themselves cannot be questioned about the string of events they partook in, involving crimes against the peace and dignity of New Hampshire, that resulted in their abusing the public trust and his ensnarement in criminal charges. To the contrary, Mr. Talley believes that the judiciary is incapable of being trusted to be independent for the aforementioned reasons.

10. Mr. Talley publicly, officially, judicially, politely, and respectfully, asserts his New Hampshire Part I, Article 10 constitutional right to reform the existing government into one that does not allow judicial officers to break the law on video, get protected from prosecution, enact orders restricting his constitutional rights, and then be protected from appearing in his defense of what he believes to be an abuse of the public trust. Mr. Talley

believes this constitutional right, combined with the facts of this case, preempts any case law to the contrary and should allow him to rid the government system of a “class of men” who are, by all available evidence, unaccountable to The People.

11. Counsel for Mr. Talley (a trained and experienced former law enforcement officer who has arrested hundreds of individuals for violation of New Hampshire law) has filed a request for a full criminal investigation regarding the behavior of Superior Court Chief Judge Tina Nadeau and Circuit Court Administrative Judge Edwin Kelley with the New Hampshire Attorney General. Counsel would be subject to arrest for the unspecified misdemeanor of False Reports to Law Enforcement (RSA 641:4) were his report to be done without proper evidence and/or malice.

12. Mr. Talley recognizes and will respect without objection the 5th Amendment and Part I, Article 15 rights of Administrative Judge Kelley and Chief Judge Nadeau to not answer specific questions during examination.

13. Mr. Talley, through counsel, is considering the initiation of a *qui tam pro domino rege quam pro se ipso in hac parte sequitur* action against government officials involved in this case pursuant to *State of New Hampshire (Rita Premo, Complainant) v. Angela Martineau (2002)*.

14. Part I, Article 15 of the New Hampshire Constitution reads, in part:

***“Every subject shall have a right to produce all proofs that may be favorable to himself; to meet the witnesses against him face to face, and to be fully heard in his defense, by himself, and counsel.*”** (emphasis added)

15. Because Mr. Talley is alleging a “breach of the public trust” defense to the court in order to seek a jury nullification instruction his jury, in order for him to be fully

heard and produce proof to the jury that notwithstanding any case law, statutory law, or any other blindly followed legal “authority” the state may present as reasoning to find him guilty, the jury should find him not-guilty because that is the moral thing to do.

16. The Office of the Attorney General has made a limited appearance on behalf of witnesses Mr. Talley wishes to examine. This appearance violates Rule 1.7 of The New Hampshire Rules of Professional Conduct as it is a conflict of interest for the Office of the Attorney General to represent third party witnesses, who happen to be members of the Judicial Branch, who may already be under criminal investigation. It is a further violation of Rule 1.7 as since the Attorney General has statutory oversight of the case pursuant to NH RSA 7:6 and represents the State, it is a conflict to represent third party witnesses.

17. New Hampshire Rule of Professional 1.7 “Conflicts of Interest” reads, in part:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

*(1) the representation of one client **will be directly adverse to another client**; or*

*(2) there is a significant risk that the representation of one or more clients **will be materially limited by the lawyer's responsibilities to another client**, a former client or a third person or by a personal interest of the lawyer.*

(emphasis added)

18. Mr. Talley believes the NH Attorney General being allowed to represent two judges that may be under official criminal investigation would be materially limited by

the responsibility of the Attorney General to investigate crimes against citizens of the State of New Hampshire.

Prayer for Relief

WHEREFORE, Jason Talley, requests this honorable Court to order the following relief:

- A. Deny the appearance of the Attorney General as legal representative of Superior Court Chief Judge Tina Nadeau and Circuit Court Administrative Judge Edwin Kelley due to the conflict of interest presented, or
- B. Deny the state's "Motion To Quash" without a hearing, or
- C. Schedule a hearing regarding the state's "Motion To Quash", and
- D. Authorize the transfer of the question of whether or not judicial officers can be questioned by a criminal defendant for a potential jury nullification defense when an abuse of the public trust is alleged by those same officers and those same officers have found themselves subject to an official criminal investigation, to the New Hampshire Supreme Court pursuant to New Hampshire Superior Court Rule 79; and
- E. Grant any other relief this honorable Court deems just and proper.

Respectfully submitted,
Jason Talley

03/19/12

By
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I hereby certify that on the above date, a copy of this motion was mailed to both New Hampshire Associate Attorney General Richard Head and Assistant Cheshire County Attorney John Webb.

Bradley Jardis