

Benjamin Cunningham

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October 9, 2012

- * FRAUD Complaint
- * Misprision OF Felony Complaint
- * Breach OF Contract Complaint

AGAINST

Daniel A. Eigerman-Esq

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Jorge Dopico-Chief Counsel

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Supreme Court, Appellate Division

First Judicial Department

Departmental Disciplinary Committee

61 Broadway, 2nd Floor

New York, NY 10006

Charles E. Schumer

United States Senator (D-NY)

(202) 224-6542

322 Hart Senate Office Building

Washington, DC 20510



Charles E. Grassley
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(202) 224-3744
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Jose E. Serrano
United States Congressman (D-NY)
(202) 225-4361
2227 Rayburn HOB
Washington, DC 20515

John A. Boehner (Speaker)
(202) 225-0600
United States Congressman (R-Ohio)
U.S. Capitol Building
Washington, DC 20515

Dear Mr. Dopico-Chief Counsel:

I am hereby filing a Misconduct Complaint against my appellate attorney Mr Daniel A. Eigerman-Esq on October 9, 2012 because he willfully refused to obey my legal instructions by failing to file (on my behalf) a Petition Writ OF Certiorari located at the United States Supreme Courthouse in Washington DC concerning the following very important legal issues:

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POINT TWO:

Mr Eigerman Failed To Include Facts
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Judge Batts' Ratified Order Can Provide
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POINT THREE:

Mr Eigerman Failed To Include Facts About USMS Agency's Order Dated March 6, 2006 along with Judge Batts' Order Dated March 25, 2006 Have CONCEALED Legal Facts From ME Concerning USMS Agency Unlawfully Stolen/Removed My Protected Health Information (PHI) From St Barnabas Hosp WITHOUT my Knowledge/Consent Which USMS Agency's Internal Affairs Office Used My (PHI) In Washington DC As Agency's Evidence To Dismiss Misconduct Charges Against USMS Agency's Employees While Nobody Sent Notice OF Agency Appeal Rights To ME While Judge Batts' Order Dated November 10, 2009 Refused To Restore USMS Agency In To My Civil Rights Case.(10)

POINT FOUR:

Mr Eigerman Failed To Include Facts About Magistrate Judge Fox's Reports Attached With Judge Batts' Ratified & Adopted Orders Have CONCEALED A Police Bus Accident Federal Crime Away From Federal Law Enforcement's Agencies; Criminal Justice's Agencies; New York State Crime Victim Board's Agency Federal Crime Victim's Agency; NYC's Transit Authority's Agency and Department OF Health & Human Service's Agency.....(11-20)

(1)

Second Circuit Appeals Court's order dated January 13th, 2012 and February 2, 2012 (docket #11-3597-CV) has DENIED me a 14th Amendment Right to seek federal appellate review concerning illegal Summary Judgment decisions made by Magistrate Judge Kevin N. Fox's Report & Recommendation orders and Judge Deborah A. Batts' Ratified & Adopted orders:

December 5, 2005 my Civil Rights case commenced before Judge Deborah A. Batts (05 Civ. 10169 (DAB))

March 6, 2006 USMS Internal Affairs Agency's order DISMISSED all agency misconduct charges against its own police officer employees who violated my Civil Rights WITHOUT my Knowledge/Consent while I was being represented by a lawyer.

March 25, 2006 Judge Batts' order DISMISSED my Civil Rights case against USMS' Agency due to legal grounds under Lack OF Subject-Matter Jurisdiction.

“ For the foregoing reasons, Defendant United States Marshals Service's Motion to Dismiss for lack of subject matter jurisdiction is GRANTED. The complaint against Defendant USMS is DISMISSED. Plaintiff shall file an Amended Complaint within twenty days of the date of this order. “

May 11, 2007 USMS Agency's Police Officers filed a Motion To Dismiss against my Amended Complaint dated October 25, 2006 due to Insufficient Service OF Process because Amended Complaint dated October 25, 2006 was only served upon AUSA Peter M. Skinner's office.

May 18, 2007 Judge Batts' order DISMISSED my Civil Rights case WITHOUT-prejudice and directed my prior attorney to serve Amended Complaint dated October 25, 2006 ONLY upon the USMS Agency NOT AUSA Peter M. Skinner:

“ Once plaintiff has properly filed the Amended Complaint and served it on all Defendants and all Defendants have filed an Answer, the Court will schedule a conference in this matter pursuant to Fed. R. Civ. P. 16. “

July 18, 2007 Judge Batts' order DISMISSED my Civil Rights case WITH-prejudice because my prior attorney filed the same Amended Complaint dated October 25, 2006 once again at the AUSA Peter M. Skinner's office:

“ Plaintiff's misguided attempt to serve the Defendants again at the United States Attorney's office is in blatant disregard of the information provided to him regarding the proper place to effect service. Accordingly, based upon the Defendants' renewed motion dated July 11, 2007 and pursuant to the Court's order dated May 18, 2007, this matter is DISMISSED WITH PREJUDICE. “

Subsequently, Judge Batts' order DENIED my (pro-se) Rule 60B Reconsideration Motion.

My civil appeal was timely filed in Second Circuit Court under docket # (07-4007-CV) against Judge Batts' order dated July 18, 2007. Appellate Attorney was Daniel A. Eigerman-Esq.

Meanwhile, on the Southern District Court level, my prior attorney Gary S. Fish-Esq commenced a Civil Rights case on behalf of my wife (Reena Cunningham) docket (#07 Civ. 6870 (GEL)). Gerald E. Lynch was the assigned judge.

Judge Lynch's order directed the parties to commence discovery proceedings immediately and the parties complied.

AUSA Peter M. Skinner provided very important legal documents from the USMS Agency's Internal Affairs Office over to Reena Cunningham which concerns federal police officers' DOB; addresses where they reside with their families; federal employment information and how federal police officers have UNLAWFULLY removed/stolen my Protected Health Information (PHI) from St. Barnabas Hospital on November 29, 2009 while I was seeking medical treatment linked to federal police officers' Police Bus Accident Federal Crime WITHOUT seeking my Knowledge/Consent.

Subsequently, federal police officers transferred my (PHI) to USMS Agency's Internal Affairs Office in Washington DC WITHOUT my Knowledge/Consent where USMS Chief Inspector Ms Alonda A. Guilbeau's order dated March 6, 2006 DISMISSED all agency misconduct charges pending against federal police officer who violated my secured Civil Rights at my home.

March 6, 2006 Alonda A. Guilbeau's order has NEVER provided any Notice OF Agency Appeal Rights over to me:

“ OII received a complaint forwarded to us from NYPD Internal Affairs. I contacted Internal Affairs and requested copies of the police reports generated by NYPD regarding the complaint made by Benjamin Cunningham against USMS employees. I was informed that as soon as they realized the allegation was against USMS employees they closed the case and referred it to the USMS. According to NYPD, there were no police reports generated by their office. Their files reflect the complaint was referred to the USMS Internal Investigations' Office. “

(Alonda A. Guilbeau- Chief Inspector (202) 307-9597

April 16, 2009 the Second Circuit Court's order has REVERSED Judge Batts' WITH-prejudice order dated July 18, 2007 and REMANDED back to Judge Batts' court docket:

“ While the appeal was pending, this Court received a written communication from the district court advising that the district court was not aware of all the pertinent facts when it dismissed this case with prejudice. The district court suggested that this Court vacate the district court's order of dismissal of July 18, 2007 and reinstate the case on the district court's docket. “

June 12, 2007 Judge Batts received my Civil Rights case from the Second Circuit Appeals Court's order dated April 16, 2009

I alerted Judge Batts about the USMS Agency's willful violations made against my secured Civil Rights from inside the St. Barnabas Hospital in Bronx County down to USMS Agency's Internal Affairs Office located in Washington DC

My Motion To Restore USMS Agency back in to my Civil Rights case was filed to Judge Batts.

November 10, 2009 Judge Batts' order has DENIED my Motion To Amend Complaint and Restore USMS Agency.

I filed a timely (pro-se) Interlocutory Appeal inside the Second Circuit Appeals Court against Judge Batts' order dated November 10, 2009.

June 28, 2010 and October 7, 2010 the Second Circuit Appeals Court's Interlocutory Appeal orders under dockets (10-378-CV) and (10-379-CV) DISMISSED my appeal because:

“ This Court has determined sua sponte that it lacks jurisdiction over these appeals because final orders have not been issued by the district court as contemplated by 28 U.S.C. Section 1291 Coopers & Lybrand V. Liversay, 437 U.S. 463, 467 Upon due consideration, it is hereby ORDERED that the appeals are DISMISSED. “

(2)

Magistrate Judge Fox's Nunc Pro Tunc **Report** order dated November 19, 2010 and February 25, 2011 attached with Judge Batts' Waived Service OF Process **Adopted** order dated March 28, 2011 have unlawfully provided permission for Government NOT to file an ANSWER against my attorney's Amended Complaint dated October 25, 2006 which conduct has willfully violated the Second Circuit Appeals Court's order dated April 16, 2009 (docket #07-4007-CV)

January 11, 2010 Judge Shira A. Scheindlin's NOLLE PROSEQUI order (09 CR 889 (SAS) has rightfully DENIED Qualified Immunity over to USMS Nicholas Ricigliano for inventing a Reliable Confidential Informant that NEVER existed in order to conduct illegal Search/Seizure upon Manhattan County Home belonging to Thomas Luckey.

March 16, 2010 John G. Koeltl's NOLLE PROSEQUI order (09 CR 883 (JGK) has DENIED Qualified Immunity over to USMS Nicholas Ricigliano for inventing a Reliable Confidential Informant that NEVER existed in order to conduct an illegal Search/Seizure upon Manhattan County Home belonging to Donald P. Owens.

June 21, 2011 Magistrate Judge Fox's **Report** order DENIED USMS Nicholas Ricigliano's Summary Judgment motion invoking Qualified Immunity doctrines for conducting an illegal Search/Seizure upon my Bronx County Home while refusing to provide legal documents concerning North Carolina State's Reliable Confidential Informant.



June 22, 2011 USMS Nicholas Ricigliano's objection/letter admitted mistake for conducting illegal Search/Seizure upon my Bronx County Home while he REFUSED to provide any material concerning his North Carolina State's Reliable Confidential Informant.

August 8, 2011 Judge Batts' Ratified order GRANTED USMS Nicholas Ricigliano's Summary Judgment motion by claiming a jury trial can determine USMS Nicholas Ricigliano's conduct was innocent.

Therefore, it was USMS Nicholas Ricigliano's illegal Summary Judgment motion dated September 8, 2010; Magistrate Judge Fox's Report dated June 21, 2011; USMS Nicholas Ricigliano's letter Objections dated June 22, 2011 and Judge Batts' Ratified order dated August 8, 2011 who willfully CONCEALED from me:

- * Judge Scheindlin's order pending against USMS Nicholas Ricigliano
- * Judge Koeltl's order pending against USMS Nicholas Ricigliano
- * Inside my Civil Rights case (Bronx County) and in the federal criminal case from (Manhattan County) USMS Nicholas Ricigliano invented a Reliable Confidential Informant person who NEVER existed.

(3)

March 6, 2006 the USMS Agency's Internal Affairs Office located inside Washington DC DISMISSED all agency misconduct charges against all federal police officers who unlawfully conducted Search/Seizure upon my home; conducted an unlawful Search/Seizure upon my Protective Health Information (PHI) from St Barnabas Hospital WITHOUT my contacting me and federal police officers who CONCEALED a Police Bus Accident Federal Crime that occurred at my Bronx County Home. USMS Agency never provide agency appeal rights over to me.

March 25, 2006 Judge Batts' order DISMISSED my Civil Rights case against USMS Agency under Subject Matter Jurisdiction legal grounds while no ANSWER was ever filed against my Original Complaint or Amended Complaint.

November 10, 2009 Judge Batts' order REFUSED to restore the USMS Agency back in to my Civil Rights case.

February 28, 2011 Magistrate Judge Fox's Report order:

“ August 9, 2010, the plaintiff filed motions to: (1) add additional United States Marshals Service Agency's employees in to the plaintiff's civil complaint for UNLAWFULLY seizing/using the plaintiff's Protective Health Information; and (2) RESTORE defendant United States Marshal Service Police Agency back in to plaintiff's civil case. Fed. R. Civ. P. 1 provides that the Federal Rules OF Civil Procedure should be “construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.” It is appropriate to deny plaintiff's motion.”

(4) March 3, 2011 Magistrate Judge Fox's Report order my Summary Judgment motion concerning USMS Agency's Police Bus Accident Federal Crime that caused injury to my body:

“ On August 9, 2010, the plaintiff, proceeding pro-se, filed a motion for summary judgment “against TWO unnamed defendants and SIX named defendants because they all UNLAWFULLY instructed the MTA Bus's driver to leave bus accident scene and not report Bus Accident to anybody(.)”

The plaintiff's application arises out of events which occurred on November 29, 2005. On that date, the defendants conducted a search of the plaintiff's home, which the plaintiff alleges was unreasonable. During the search, the plaintiff, handcuffed, ran from his home into the street, where he “sustained injuries from a passing MTA Bus loaded with NYC's recruiting transit police (30-60) officers(.)”

The officers on the bus returned the plaintiff to the defendants' custody and, according to the plaintiff, the defendants instructed the officers to leave the scene and not report the “accident,” thereby violating the plaintiff's Civil Rights.” In a follow-up motion, filed on August 16, 2010, the plaintiff contends the defendants conspired with the officers on the bus to conceal the “Accident,” and seeks summary judgment on this issue as well. In fact, there are no allegations at all about a bus or the plaintiff's collision therewith in the Amended Complaint. Inasmuch as the plaintiff's August 9, 2010 and August 16, 2010 motions for summary judgment do not address any claims at issue in this action, there is no basis for granting the relief requested. “

March 28, 2011 Judge Batts' Adopted order agreed with Magistrate Judge Fox's Report dated March 3, 2011:

“ Plaintiff next objects to the Report’s finding that his August 9, 2010 and August 16, 2010 Motions for Summary Judgment should be dismissed on the grounds that his Amended Complaint does not contain a claim for relief based on the alleged bus collision on which those Motions seek summary judgment.

In addition to again arguing that there is no operative complaint in this matter, plaintiff specifically alleges that “plaintiff’s Original/Amended complaints have claimed that part of plaintiff’s sustained injuries are from defendants’ MTA Bus Accident issue.”

This Court has reviewed the Amended Complaint, and it contains no reference to the alleged bus accident.

Accordingly, plaintiff’s objection is without merit. “

August 8, 2011 Judge Batts' Adopted order DISMISSED
my Civil Rights case WITH-prejudice concerning Police Bus crime:

“ As the Court has repeatedly found, most recently in adopting Judge Fox’s March 3, 2011 report, the Amended Complaint does not contain a claim for relief based on the alleged bus collision. Accordingly, plaintiff’s objection based on the alleged bus accident is without merit and appears to have been raised in bad faith, to harass, or with a purpose to delay resolution of this action. Moreover, were the court to reach the merits of plaintiff’s claim for damages based on having run into a bus while fleeing custody, it would find the claim to be without merit, since plaintiff’s unprovoked, independent, and unforeseeable decision to run into the road while handcuffed was a superceding cause of his injuries, if any Higazy V. Templeton, 505 F. 3d 161, 176-178 (2d Cir. 2007) applying tort causation concept of “superceding cause” to BIVENS action to vindicate constitutional rights. “

Amended Complaint dated October 25, 2006 claim:

“ As a direct result of defendants’ Fourth Amendment violations, the plaintiff sustained personal injuries including injuries to his hands, wrists, neck, stomach, shoulder, back and legs, which will long continue. “

Benjamin Cunningham’s Declaration dated June 29, 2006:

“ I ran into a New York City Transit Bus as it was driving by, and injured my left shoulder, both my wrist, arms, and back, as I bounced off the bus. “

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Benjamin Cunningham's 911 Sprint Report #08PL104373
Reported Police Bus Accident Federal Crime to NYC's
911 Emergency Operator on November 29, 2005:

“ 10-53H PEDSTER STRUCK. HIS APT WAS
SEARCHED HE WAS HANDCUFFED STS
WAS HIT BY BUS FULL OF PD ACADEMY
TRAINEES. “

EMS' Report #70244167 dated November 29, 2005
has reported the Police Bus Accident Crime incident:

“ Arrested by federal agents, in search for
fugitive brother, struck on (L) side by bus. “

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“ OII received a complaint forwarded to us from NYPD Internal Affairs. I contacted Internal Affairs and requested copies of the police reports generated by NYPD regarding the complaint made by Benjamin Cunningham against USMS employees. I was informed that as soon as they realized the allegation was against USMS employees they closed the case and referred it to the USMS. According to NYPD, there were no police reports generated by their office. Their files reflect the complaint was referred to the USMS Internal Investigations’ Office. “

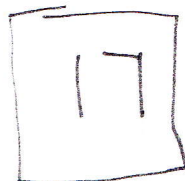
March 6, 2006

(Alonda A. Guilbeau- Chief Inspector (202) 307-9597)

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New York State Crime Victim Board Agency's decision dated November 13, 2008 filed by General Counsel Mr John Watson-Esq under file (#508119) (518) 457-8062 has clearly stated:

“ In order to receive an award from the Crime Victim Board, criminal justice agency records must show that the crime was reported to the proper authorities less than one week after the crime, unless the Board finds good cause for the delay. We have investigated your case but cannot located a criminal justice agency report on this incident. Therefore, this claim must be disallowed. However, your file may be reopened if you submit a criminal justice agency report that was filed within a week of the crime or, if filed after that time period, you can provide good cause for the late filing. “



” This is in response to your request for assistance in identifying a New York City Transit bus operator. You reported that on November 29, 2005, at 5:30am, while federal police searched your home, you ran into street seeking help and boarded a bus which was transporting police recruits to/from the training academy. You indicated that you requested that the bus operator call “911”. As everyone on the bus was a police officer, they responded, “we are 911”. You further reported that the federal police carried you off the bus by your hands and feet and you were injured. They told the bus operator to drive away and not to file any report. You have subsequently filed a federal lawsuit and need to identify the bus operator to support your case. On December 16, 2008, you met with two members of my staff and provided them with all the information you had regarding the incident. In our effort to identify bus operator, we conducted an extensive investigation of our records. Unfortunately, in the absence of a bus number or badge number, we are unable to identify the bus operator. Our operational records do not indicate any report filed for the incident. In addition, there is no record of a bus being loaned to the police or used to transport police on the date in question. As this incident occurred a few years ago, we also checked our records for the day before and the day after the date you indicated”

(New York City Transit’s letter dated December 23, 2008)

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“ We also had to searched a dark, unfinished basement. Mr Cunningham attempted to interfere with the search on more than one occasion, repeatedly ordering us to leave his house. At some point, he was placed in handcuffs to prevent him from impeding the search, and because we believed he might have been the person we were looking for. As we were searching the home and after he had been handcuffed, Mr Cunningham fled out of the front door of the house, yelling loudly and trying to attract attention to himself. He managed to board a bus of NYPD Transit Officers, who briefly detained him and transferred him back into our custody. Shortly thereafter, we found his identification and verified that he was Benjamin Cunningham and not his brother Terrence. The aforementioned confidential informant provided the Task Force with additional information in early January 2006, which led deputies in Maryland area to arrest Terrence Cunningham in January 2006.

(USMS Ricigliano's Declaration dated September 8, 2010)

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Misprision OF Felony Statute
Title 18 U.S.C. Section 4
Title 28 U.S.C. Section 1361
Reads As Follows:

“ A federal judge, or any other government official, is required as part of the judge’s mandatory administrative duties, to receive any offer of information of a federal crime. If that judge blocks such report, that block is a felony under related Obstruction OF Justice statutes and constitutes a serious offense. Upon receiving such information, the judge is then required to make it known to a government law enforcement body that is not themselves involved in the federal crime. “

Therefore, Magistrate Judge Fox’s Report orders attached with Judge Batts’ Ratified & Adopted orders have committed a federal crime against my secured Civil Rights by CONCEALING a Police Bus Accident Federal Crime from:

- * New York State Crime Victim Board’s Agency
- * Federal Crime Victim’s Agency
- * Criminal Justice’s Agencies
- * Department OF Health & Human Service’s Agency
- * Federal Law Enforcement’s Agencies

CONCLUDED STATEMENT:

Please Investigate Daniel A. Eigerman-Esq's illegal conduct which violated my Statement OF Client's Rights which concerns:

August 8, 2011 Judge Batts' Ratified & Adopted orders have DISMISSED my Civil Rights case WITH-prejudice.

November 7, 2011 I hired this federal appellate attorney (Daniel A. Eigerman-Esq) to provide professional services to ME by perfecting a Writ Petition concerning Magistrate Judge Fox's Report orders and Judge Batts' Ratified & Adopted orders have committed a Misprision OF Felony crime by CONCEALING USMS Agency's Police Bus Accident Federal Crime attached with USMS Agency's illegal Seizure upon my Protective Health Information (PHI) from St Barnabas Hospital and transported to USMS Agency's Internal Affairs Office in Washington DC from Federal and State agencies and Law Enforcement's agencies.

Second Circuit Appeals Court's order DENIED appellate review rights to me under 14th Amendment.

United States Supreme Court's DENIED certiorari status.

I paid several thousand dollars to Mr Eigerman-Esq for unprofessional conduct services and now I owe him \$36,642.35

Respectfully,

