The Lunaris Caeruleus Caseus Journal: 2

February 26, 2013 By Jay Vithalani

This is the second of seven sections.

The irony of it: someone tells the truth about someone who lies, and then the liar accuses the truth-teller, the actual whistleblower in a sense, of being a liar. This is an oversimplification of course. Defamation, libel, lying, slander -- there are subtle but important linguistic, and legal, distinctions to be made with these words. There are also the matters of bias, intent, irresponsibility, malice, and negligence Additionally, Celia Farber sued not only Richard Jefferys but also two somewhat controversial figures once associated with Emory University: Kevin D. Kuritzky (sometimes misspelled "Kuritsky"), an expelled medical student, and James J. Murtaugh, M.D. The legal matters that I've mentioned pertain to Richard Jefferys *alone*. Welcome to the wonderfully wacky world of nuisance suits -- certainly *not* Hedi Slimane for Dior Homme, sorry but I needed to be at least momentarily frivolous -- and the tortuously complicated torts of slander et cetera.

Farber didn't actually file suit until May 2009 -- what's a year between soon-to-be legal disputants? -- but after that the judicial machinery started operating, slowly and tediously at times, but seriously too. (Jefferys was ably represented, pro bono, by the attorney Joseph Evall.) Motion to dismiss, opposition to the motion to dismiss, conversion of motion to summary judgment... Well. Finally, on 2 November 2011, Justice Louis B. York of the New York State Supreme Court (New York County) pronounced: "Now, after careful consideration, the Court grants the motion and dismisses the action as it applies to Jefferys." In other words, Celia Farber didn't have grounds to file a defamation suit in the first place, and certainly couldn't claim that she was owed legal remedy.

The end? Not so, because Farber appealed. And it was only *last* week, on 19 February 2013 -- nearly five years after the (truthful) "liars and frauds" remark, nearly four years after Farber sued, and more than 15 months after the first decision -- that a five-member (appellate) panel of the State Supreme Court *unanimously* agreed with Justice York. They dismissed the complaint (made by Farber) and affirmed "with costs." ("Costs" here means filing and copying and other fees associated with the bureaucratic aspect of a lawsuit, not "damages" awarded, and also not Joe Evall's fees -- which anyway were zero since he was representing Jefferys pro bono. In other words, Farber, the loser, has to pay, and nothing comes out of Jefferys's pocket.)

The end? One would certainly hope so. Technically, however, Celia Farber could drag this on -- and

on -- further, if she and her legal team want to. The name notwithstanding, the Supreme Court, in New York, is not the highest court in the state: it's a "trial-level" court. The Appellate Division of the Supreme Court is, in practice, an intermediate appeals court; and its First Department (there are four in total), with 19 justices, has jurisdiction over Manhattan and the Bronx. The highest court in New York State is the Court of Appeals: one chief judge, seven associate judges. (Yes, the nomenclatural stuff is confusing, as is almost everything about the vagaries of legal terminology.)

Farber has the theoretical possibility of appealing again: that's the bad news. She could ask that all 19 justices of the Appellate Division's First Department consider her complaint (in legalese: en banc). Or, she could take her case to the Court of Appeals; or both. However: the good news is that en banc hearings are granted pretty rarely (I don't have New York's precise statistics at hand) and also that the Court of Appeals agrees to listen to less than 5% of the cases that are presented for petition. As that Court's website has it: "New York's highest appellate court was established to articulate statewide principles of law in the context of deciding particular lawsuits. The Court thus generally focuses on broad issues of law as distinguished from individual factual disputes."

The facts are not in dispute here as, first, Justice York, and then (in order of seniority) Justices Tom, Moskovitz, Richter, Manzanet-Daniels, and Clark, found, citing copious case law; a broad issue of law -- who can fairly be called a liar? in what context? what is defamation-in-general? what are the binding precedents? -- is not, it would seem, at stake. So: Jefferys is home safe (let's hope and trust) and Farber has lost and is free to lick her wounds as publicly as she wishes -- apparently, she is a good friend of the *New York Post*'s former Page Six editor, Richard Johnson.

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