ESTTA Tracking number: **ESTTA643532**
Filing date: **12/10/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052260
Party	Defendant Edgar Alexander Barrera
Correspondence Address	EDGAR ALEXANDER BARRERA BY MELISSA BARRERA POWER OF ATTORNEY 22159 LADERA STREET GRAND TERRACE, CA 92313 UNITED STATES axlellism@netbusiness.com
Submission	Other Motions/Papers
Filer's Name	Edgar Alexander Barrera
Filer's e-mail	Axlellism@netbusiness.com
Signature	/EdgarAlexanderBarrera/
Date	12/10/2014
Attachments	policegazettepdf001.pdf(3399007 bytes) policegazettepdf002.pdf(3434598 bytes) policegazettepdf003.pdf(2670470 bytes) policegazettepdf004.pdf(5804984 bytes) policegazettepdf005.pdf(2382351 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

STEPHEN A. WESTLAKE,	)	
	)	
Petitioner,	)	Cancellation No. 92/052,260
	)	(Serial No. 77/378,015)
	)	
EDGAR ALEXANDER BARRERA	)	
	)	
Respondent.	)	

RESPONDENT'S RESPONSE TO OPPOSITION

MOTION ON BEHALF OF THE RESPONDENT TO DENY BRIEF IN SUPPORT OF JUDGMENT FOR PETITIONER

I am Edgar Alexander Barrera, the Respondent in this matter, being duly sworn deposed and states:

The Respondent, Edgar Alexander Barrera, (hereinafter the "Respondent") respectfully requests this Honorable Board to consider this motion as the interest of justice can be served.

The Petitioner and his attorneys have used subterfuge. The Plaintiff, Steven A. Westlake has consciously deliberately lied: he fabricated "evidence." False statements either were made recklessly or with knowledge of their falsity. Plaintiff committed perjury to the Trademark Trial and Appeal Board (TTAB).

COMES NOW, "Respondent's Response to Opposition" and files this Motion on Behalf of the Respondent to Deny Brief in Support of Judgment for Petitioner and also files as well another Motion to dismiss the Plaintiff's Petition for Cancellation and Petitioners Amended Petition to Cancel.

Motion for Judgment on behalf of the Respondent against the Plaintiff's failure to prosecute or prove case and an Order granting a Default Judgment against the Plaintiff, Steven A. Westlake.

For the foregoing reasons, I submit that Plaintiff's appearance in this litigation has completely been a sham; that he has never had a good-faith intention to participate.

The Plaintiff's claims are total shams and everything has been a figment of his crazed imagination, absolutely committed perjury.

The Petitioner has "unclean hands."

The "Dirty Hands Doctrine" refers to an equitable design available to a defendant against the plaintiff.

It is an affirmative defense that the defendant may claim the plaintiff has "unclean hands".

Plaintiff has acted in bad faith or in an unethical manner.

The Respondent has been harmed by this Petitioner.

WHEREFORE, I respectfully request that this Board enter an Order granting Judgment on behalf of the Respondent, Edgar Alexander Barrera.

Plaintiff was sent the "National Police Gazette-September 2005.pdf"

Plaintiff

Name: Steven Westlake
Correspondent: Steven Westlake
PO Box 372
Binghamton, NY 13902
UNITED STATES
saw@policegazette.us

July 16, 2010 at 4:35 PM EDT, to the Plaintiff, Steven A. Westlake, sent to his e-mail: saw@policegazette.us (SAW initials for Steven A. Westlake).

Riezman Berger P.C., R. Emmett McAuliffe, Attorney at Law, Chair, Intellectual Property and Media Law Practice Group, St. Louis (Clayton), Missouri 63105, from: "R. Emmett McAuliffe" rem@riezmanberger.com to: saw@policegazette.us, Subject: 2005 Edition

"Hi Mr. Westlake:

I see your attorney still has not entered an appearance. Please find enclosure the attached issue from 2005. If this issue is valid, it would seem to me your case goes away and therefore what are we fighting about? But I'd like to know your comments.

Feel to call and discuss."

"National Police Gazette-September 2005.pdf
294-4K"

See Exhibits A and B.

From "R. Emmett McAuliffe" rem@riezmanberger.com to: Les Euell <leseuell@gmail.com> and sent a copy to the Respondent:

"Subject: nothing from Westlake" See Exhibit C.

Defendant's 30-day Trial Period Ends September 27, 2014

Defendant's 30-day Trial Period Ends and Motion for Judgment on Behalf of the Respondent Against Plaintiff's Failure to Prosecute or Prove Case and an Order Granting Default Judgment, sent September 27, 2014 to the Plaintiff.

Lester A. Euell was the owner and publisher of the Police Gazette from 1977 until 2005. The Respondent is the Godson to Lester Euell, owner of Franklin Publishing Company that published the Police Gazette in 2005. See Exhibit D.

Respondent became the owner and publisher of the Police Gazette in 2006. See Exhibit E.

Police Gazette Collectibles 20-year License Agreement, 1987-2007

Also a 20-year license agreement that Lester Euell, my Godfather, signed in September 10, 1987 with a new corporation of which he was part owner, Police Gazette Sales Inc., of Farmingdale, N.Y.

It covered the production of Police Gazette-themed collectibles, including apparel, clocks, shaving mugs, calendars, music boxes, published new issues as well as reprints, and posters. See Exhibit F.

This agreement was entered into between L. Alfred Anish, the principal of Police Gazette Sales Inc., and Lester Euell, L. Alfred Anish, Lester A. Euell, and Police Gazette Sales Inc., a New York Corporation from June 19, 1989 to Sept. 29, 1993. See Exhibit G.

And afterward by Anish and Euell, with William B. Dana Company (principal of Lester A. Euell, a New York: Domestic Business Corporation, Initial DOS Filing Date: May 31, 1894 and Inactive-Dissolution by Proclamation/ Annulment of Authority (October 28, 2009), during this license agreement which ended on September 10, 2007. See Exhibit H.

It's strange that Plaintiff launched his raid on our trademark in 2007.

It is very clear and quite obvious what my Godfather, Lester Euell previously did with "The National Police Gazette" trademark and usage of the name. He had separate entities permitted to use the name on a limited basis and scope and also entered into long duration licensing agreements of 20 years.

Respondent has never entered into any agreement or license of any kind whatsoever with the Plaintiff, Stephen A. Westlake.

Respondent admits that the word mark and logo design claimed by Respondent is identical to Petitioner's mark, this causes Plaintiff to be infringing on Respondent's mark. Since Respondent's use of the mark in question has priority over Plaintiff's mark, this causes Plaintiff to be infringing on Respondent's mark.

The Plaintiff is damaging the Respondent's trademark, good will and business.

It is quite obvious we own the goodwill and own the trademark. The Plaintiff has never owned the goodwill, any rights, any title and interest.

The complete fabrication is that the Plaintiff has ever owned the Respondent's trademark and never has. Everything by the Plaintiff is completely deceptive and totally illegal.

"Copyright 2007 by William A. Mays, Proprietor" Only copyright notice and not about the National Police Gazette in the Plaintiff's website during 2007 to 2010.
See Exhibit I.

The Respondent to the USPTO in January 23, 2008

The Respondent sent the U.S. Patent and Trademark Office on January 23, 2008 with the application, four specimens and a drawing. See Exhibits J and K.

The Plaintiff claims to have started on April 8, 2007. The Plaintiff's complete ruse to the TTAB and made up their fabricated "evidence" deliberately that "the application including two digital images as specimens, which Registrant alleged were magazine covers." And the Plaintiff can't even tell the TTAB the amount specimens and stating it to be "two" when in reality it was four specimens in their false statements.

Sent a signal that the Plaintiff was calculating to mislead the TTAB by a statement that was carefully crafted. The Plaintiff thought he was shrewdly in to under evade the real truth in this matter.

Which were false statements either were made recklessly or with knowledge of their falsity and it the Plaintiff state began to use the mark, National Police Gazette what would make any difference because of the actual dates sent to the U. S. Patent and Trademark Office to the application were valid.

The Plaintiff, Steven Westlake lied under oath to the TTAB:

"6. On January 23, 2008, Registrant Edgar Alexander Barrera applied to the USPTO to register the National Police Gazette mark used as evidence a pair of digitally created images that supposedly represented magazine covers."

The Plaintiff's Attorney, Mark Levy lied under oath to the TTAB:

"II. The record shows the absence of any genuine issue of material fact."

"4. Nine months after Petitioner's first use of the mark (i.e., on January 23, 2008), Registrant an application to register NATIONAL POLICE GAZETTE THE LEADING ILLUSTRATED SPORTING JOURNAL IN AMERICA in the U.S Patent and Trademark Office, the application including two digital images as specimens, which Registrant alleged were magazine covers.

Plaintiff was Not Register as a DBA in NYS until 2009

Stephen A. Westlake did not register as a DBA until October 16, 2009. All this time he used the name William A. Mays, Proprietor so he could conceal his identity in the meantime and showed Mays as the Proprietor all the time and still does on the site. That is very deceptive. This means he was using an alias from 2007 until October 18, 2009. And was not registered in New York State before that which was illegally during that time before.

Broome County.com Document Number: 2009000450355
Recorded Date/Time: 10/18/2008 15:59:34 Cert. Date: 10/18/2008.

See Exhibit L.

NYS Department of State

Division of Corporations

Current Entity Name: NATIONAL POLICE GAZETTE ENTERPRISES, LLC

Name History

Filing Date	Name Type	Entity Name	
MAR 26, 2010	Actual	NATIONAL POLICE GAZETTE ENTERPRISES, LLC	
JUL 23, 2003	Actual	WESTLAKE PROPERTIES, LLC	See Exhibit M.

Petitioner's Motion for Default Judgment, November 1, 2013

January 16, 2014, the Honorable Board, Wendy Boldt Cohen, Interlocutory Attorney, ruled against the Petitioner's motion for sanctions in the form of default judgment (filed November 1, 2013) for Respondent's failure to file initial disclosures and his delay of these proceedings: "Accordingly, petitioner's motion for sanctions in the form of default judgment is **DENIED**."

Petitioner's Proceedings with the Board

In this entire matter the Petitioner's Petition and Amended Petitioner to Cancel

one shred that the Plaintiff has not shown any Printing Periodicals, Clothing, Dishware, Wall Art or Books to the TTAB. Because from 2007 until 2008 did nothing during this time whatsoever.

Plaintiff has not given any Expert Disclosures, Discovery Closed, No Pretrial Disclosures Closed, No 30-day Trial Period Ended, Plaintiff's Rebuttal Disclosures, Plaintiff's 15-day Rebuttal Period Ended. Nothing was in any of these by the Plaintiff.

Expert Disclosures Due	3/ 31/ 2014
Discovery Closes	4/ 30/ 2014
Plaintiff's Pretrial Disclosures	6/ 14/ 2014
Plaintiff's 30-day Trial Period Ends	7/ 29/ 2014
Plaintiff's Rebuttal Disclosures	10/12/2014
Plaintiff's 15-day Rebuttal Period Ends	11/11/2014

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125, there were no transcript of testimony together documentary exhibits. As there were none whatsoever.

Briefs shall be filed in accordance with Trademark Rules 2.128 (a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129. No briefs or an oral hearing or requested, whatsoever.

Petitioner: Steven A. Westlake,
National Police Gazette Enterprise, LLC
d/b/a William A. Mays
P. O. Box 372
Binghamton, New York 13902

"William A. Mays" is not registered as being a DBA, Fictitious Business Name (FBN) in New York State, which is required to be in NYC if you use a business name.

Petitioner's Amended Petition to Cancel September 15, 2010
Petition for Cancellation ESTTA TRACKING number: ESTTA339488
Filing date: March 3, 2010.

Grounds for Cancellation:
Deceptiveness - Trademark Act section 2 (a)
False suggestion of a connection - Trademark Act section 2 (a)
Priority and likelihood of confusion - Trademark Act section 2 (d)

What is unbelievable are the so-called Grounds for cancellation the Petitioner,

Westlake is using exactly what he is totally doing himself, and it is said: — "When you point one finger, there are three fingers pointing back to you."

Trademark Class 16: Paper Goods

Class 16 includes paper, cardboard and goods made from these materials. Class 16 is one of 45 classes used by the U.S. Patent and Trademark Office (USPTO) when grouping products or services.

The Petitioner first printed periodical issue was published May 1, 2011. Nothing was issued any periodical before then. Likewise no books were printing before March 21, 2012. A book called: "The Plot To Assassinate Barack Obama," by William A. Mays, Published by The Police Gazette House. William A. Mays is not real, phony and completely bogus. Exhibits N and O.

Nobody in their right mind would publish something so bizarre.

The Petitioner "The Plot To Assassinate Barack Obama" Book

Threatening the President of the United States is a class D felony under United States Code Title 18, Section 871. It consists of knowingly and willfully mailing or otherwise making "any threat to take the life of, to kidnap, or to inflict bodily harm upon the President of the United States." The United States Secret Service investigates suspected violations of this law and monitors those who threatening the President.

The U.S. Court of Appeals for the Seventh Circuit held that a threat was knowingly made if the maker comprehended the meaning of the words uttered by him. It was willingly made, if in addition to comprehending the meaning of his words, the maker voluntarily and intentionally uttered them as a declaration of apparent determination to carry them into execution.

According to the U.S. Attorney's Manual, "Of the individuals who come to the Secret Service's attention as creating a possible danger to one of their protectees, approximately 75 percent are mentally ill."

Plaintiff's Site was Only a "Homage" to the Police Gazette, 2007-2010

As for the "William A. Mays, Proprietor" needs to characterize his Internet site as a "fan site" or "tribute site." The Internet is loaded with places where people can share their enthusiasm for sport teams, entertainers, movies, television shows, comic books, games, or virtually anything that's part of American popular culture.

These sites have occasionally gotten in trouble for unauthorized use of copyrighted material. But the Internet is still a fairly wild and unregulated place,

and Hollywood certainly feeds off the publicity

Precisely because the "William A. Mays, Proprietor" for all practical purposes declared it to be a "fan site" or "tribute site."

Significantly, "William A. Mays, Proprietor" characterized his site as a "homage" to the Police Gazette, without any claims to ownership. Here's the full text, posted to the front page of his Internet site:

> "As American as baseball, gunfire, apple pie, drugs, George Washington, Jesse James, and secret sex, the National Police Gazette informed, shocked, outraged and entertained its way into the hearts of millions for over 130 years. This website is an homage to the National Police Gazette in its coverage of current events, as well as an archive of historical materials from the original publication. Current items can be found in Today's News, Eccentric Tantrums, and the Sports Page, while historical articles and illustrations from the original National Police Gazette can be found in The Morgue."

But certainly by 2010, the Plaintiff had completely changed his tune and began making ownership claims, even beyond his action against us. This included the bold assertion: "America's Original Tabloid™ Covering crime, sports, celebrities, and all things sensational since 1845."

The Plaintiff subsequently added after our trademark registration: "Legal and contact information" as well as "Welcome to National Police Gazette Enterprises, LLC, a company dedicated to the preservation, promotion, and continuation of the National Police Gazette."

In view of these facts, the Respondent believe that we can make a meaningful claim that "William A. Mays, Proprietor," started his online venture as nothing more than a fan site or tribute site.

The most troubling is the Plaintiff's who raise their hands, take an oath to tell the truth and then fail to do that. An analogy might be made to termites that get inside your house. Nobody sees it, nobody knows about it until the house collapses around you."

The Respondent will bring the Plaintiff "back to the mark, to flush out the whole truth."

The Plaintiff was trying to pull the wool over their eyes of the Honorable Trademark Trial and Appeal Board, and only will end up fooling their self.

Plaintiff **"Brief in Support of Judgment"** has consciously deliberate lied: he fabricated "evidence":

I. First use of the mark.1, 2 and 3 are false statements.
II. The record shows the absence of any genuine issue of material fact. 4, 7, 8, 9, 10, 11, 12 are false statements. **III. On the basis of the uncontested facts, the law entities Petitioner to relieve.** 13, 14, 15, 16, 17 are false statements. **Steven Westlake, being duly sworn deposes and states:** 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 are false statements and fabricated "evidence."

Introduction

There is substantial and credible information that the Plaintiff committed acts under oath before the United States Patent Trademark Office, and submitted affidavits in support of their "Brief in Support of Judgment for Petitioner."

Evidence that Plaintiff Lied Under Oath to the TTAB

The Respondent hereby submits substantial and credible information that the Plaintiff and his Attorneys obstructed justice by lying under oath and concealing evidence. The Plaintiff and his Attorneys lied under oath and obstructed justice before the United States Patent Trademark Office (USPTO), and submitted affidavits in support of their "Brief in Support of Judgment for Petitioner."

Plaintiff's Statements Under Oath to the TTAB

There is substantial and credible information supporting the following five possible grounds (**A** to **F**) for concealing evidence:

A. The Plaintiff, Steven Westlake lied under oath to TTAB:

"Steven Westlake, being sworn deposes and states:

1. I am the petitioner in the instant matter before the United States Patent and Trademark Office (USPTO), and I submit this affidavit in support of the Brief in Support of Judgment for Petitioner, concurrently submitted.

2. On April 7, 2007, no other party was used the National Police Gazette mark in commerce in any channel and no periodical under that name and/or mark had been published since January, 1977."

"15. For the foregoing reasons, I submit that Registration's appearance in this litigation has completely been a sham; that he has never had a good-faith intention to participate. He is merely prolonging this proceeding so that he can help his name attached to a notable trademark. Therefore to a notable trademark. Therefore, I respectfully ask that the USPTO cancel

Registration No. 3.662,484."

"Dated: October 24, 2014 Steven Westlake, Petitioner"

"Sworn and subscribed to before me this 24th day of October, 2014

Susan McLain
Notary Public, State of New York
Commission Expires 11/20/2017"

B. The Plaintiff, Steven Westlake lied under oath to the TTAB:

"Steven Westlake, being duly sworn deposes and duly sworn and states: --

1. I am the petitioner in the instant matters before the United States Patent and Trademark Office (USPTO), and I submit this affidavit in support of my instant application for Default Judgment."

"39. Internet Google searches on numerous Police Gazette keywords from 2007 through 2010 revealed no Police Gazette publications, other than the petitioner's after 1977, and no current Police Gazette goods or services of any kind other than the petitioner's."

"42. No Company or individual other than National Police Gazette, LLC, publisher a National Police Gazette periodical from 1977 through 2009."

"43. On April 8, 2007, content went live on www.PoliceGazette.US, the website of National Police Gazette Enterprises, LLC, and its trade name William A. Mays."

C. The Plaintiff's Attorney, Mark Levy, lied under oath to the TTAB:

"BRIEF IN SUPPORT OF JUDGMENT FOR PETITIONER"

"The undersigned attorney for Petitioner, Steven A. Westlake, hereby submits this Brief in Support of Judgment for Petitioner to the Honorable Trademark Trial and Appeal Board because the record shows no genuine issue of material fact and the law entities Petitioner to judgment in his favor."

"1. First use of the mark.

"2. In addition, on the same date in 2007, Petitioner began to use the mark, NATIONAL POLICE GAZETTE, in various channels of commerce including, but not limited to, printing periodicals, clothing, dishware, wall art, and books.

"3. Registration, to date, has failed to provide evidence of the existence of any

magazine(s), much less any magazine published prior to the Petitioner's first use of the mark, NATIONAL POLICE GAZETTE, on April 8, 2007."

"III. On the basis of the uncontested facts the law entities Petitioner to relieve.

14. Petitioner has priority to the mark.
15. There is no genuine issue of material fact."

"Respectfully submitted,
Dated: October 27, 2014 By: Mark Levy
HINMAN, HOWARD & KATTELL LLP"

D. The Plaintiff's Attorney, Mark Levy, lied under oath to the TTAB:

"**ATTORNEY AFFIRMATION**"

"Mark Levy, affirming under the penalties of perjury to New York CPL§ 2106 and FRCP 11, states the following in true:"

"1. I, along with Kevin F. Guyette, represent the petitioner, Stephen A. Westlake in this action for cancellation as I make this affirmation in support of the instant application for sanctions pursuant to Rule 227 and FRCP 37(b)(2) and seek an order grant default judgment."

"3. As stated in the accompanying Attorney Affirmation by Kevin F. Guyette, Esq., the petitioner has continued to publish the National Police Gazette magazine and there has been no such other activity other than the petitioner's.

"WHEREFORE, I respectfully request that this Board enter an Order Granting Default Judgment on behalf of the Petitioner, Stephen A. Westlake."

"Respectfully submitted
Dated: October 31, 2013 By: Mark Levy
HINMAN HOWARD & KATTEL, LLP
Attorney for Petitioner"

E. The Plaintiff's Attorney, Kevin F. Guyette, lied under oath to the TTAB:

"**ATTORNEY AFFIRMATION**"

"Kevin F. Guyette, affirming under the penalties of perjury to New York CPL §2106 and FRCP 11, states the following in true:

I, along with Mark Levy, represent the petitioner, Stephen A. Westlake in this action for cancellation as I make this affirmation in support of the instant

application for sanctions pursuant to Rule 227 and FRCP 37(b)(2) and seek an order grant default judgment."

"24. Logically, a default judgment is the only sanction which makes sense;

- Striking all or part of respondent's pleadings
- Refusing to allow respondent to support his claim.
- Prohibiting respondent from introducing evidence (whatever it may be)"

"All result in respondent being unable to present a case, and are therefore Tantamount to a default."

F. The Petitioner, Steven A. Westlake and his attorneys, Mark Levy and Kevin F. Guyette, to support false statements and lied under oath.

The Petitioner endeavored to obstruct justice to the TTAB and lying to the Honorable Board with knowledge that they would fabricate evidence with false statements to the Board lying under oath -- and did thereby deceive, obstruct, and impede the TTAB.

There is substantial and credible information that the Petitioner and the attorneys lied under oath and committed perjury to the Trademark Trial and Appeal Board (TTAB).

There is substantial and credible information that Petitioner lied under oath to the TTAB.

Plaintiff's Testimony

The detail is critical. The detail provides credibility and corroboration to the Plaintiff's testimony. It also demonstrates with clarity that the Plaintiff lied under oath both in their "Brief in Support of Judgment for Petitioner" (filed October 27, 2014) and to the Petitioner's motion for sanctions in the form of default judgment (filed November 1, 2013) for Respondent's failure to file initial disclosures and his delay of these proceedings.

There is substantial and credible information that the Petitioner lied to the TTAB and were abundant and calculating.

The Petitioner lied under oath with an affidavit to purposely "misleading" the TTAB.

In sum, based on all of the evidence and considering the Plaintiff's various testimony, there is substantial and credible information that the Plaintiff lied under oath and committed perjury to the TTAB.

WHEREFORE, the Respondent requests this Honorable Board to:

a. Motion to Deny the Brief in Support of Judgment for Petitioner.

b. Dismiss the Petitioner's Amended Petition to Cancel.

c. Dismiss Petition for Cancellation.

d. Motion for Judgment on behalf of the Responded against the Plaintiff's failure to prosecute or prove case.

c. An Order granting a Default Judgment against the Plaintiff, Steven A. Westlake.

d. An Order for Sanctions against the Plaintiff for committing perjury to the Trademark and Appeal Board (TTAB) and fabricated "evidence."

e. Logically, a default judgment is the only sanction which makes sense;

- Striking all or part of Plaintiff's pleadings
- Refusing to allow Plaintiff to support his claim.
- Prohibiting Plaintiff from introducing evidence (whatever it may be.)

Sworn and subscribed before me this 5th day of December, 2014 WHEREFORE, I respectfully ask this Board for a Motion on Behalf of the Respondent to Deny Brief in Support of Judgment for Petition and declare the Plaintiff's Amended Petition be cancelled.

WHEREFORE, I respectfully request that this Board enter an Order Granting a Default Judgment on behalf of the Respondent, Edgar Alexander Barrera against the Plaintiff, Steven A. Westlake.

WHEREFORE, Respondent respectfully asks for a Motion against the Plaintiff to enter an Order Granting Default Judgment on behalf of the Respondent based upon the foregoing reasons.

With a dismissal with prejudice is dismissal of a case on merits after adjudication. The Plaintiff is barred from beginning an action on the same claim. Dismissal with prejudice is a final judgment and the case becomes *res judicata* on the claims that were or could have been brought in it.

The Respondent respectfully requests that the TTAB "Dismiss with Prejudice" the instant case and any other relief the Board deems just and proper.

Certified and Respectfully submitted by:

Edgar Alexander Barrera, Respondent
22159 Ladera Street
Grand Terrace, CA 92313

Dated: December 5th 2014 Telephone (321) 747-8565

STATE of FLORIDA
County of VOLUSIA

Sworn and subscribed before me this 5th day of December, 2014

Notary Public, State of Florida
Commission Expires 13 Oct 2017

ROGER LEE TIFFANY
MY COMMISSION # FF 062333
EXPIRES: October 13, 2017
Bonded Thru Budget Notary Services

ROGER LEE TIFFANY
Notary Public State of FLORIDA

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing instrument has been served upon all parties, at their address record by **Priority Mail 3-Day**, with **USPS Certified Mail 9502 6000 1663 4339 0004 63**, U.S. Postage, **$9.05** prepaid, this 5th day of December 2014, addressed to:

Mark Levy, Hinman Howard & Kattel, LLP, 700 Security Mutual Bldg., 80 Exchange Street, Binghamton, NY 13902.

Certified and Respectfully submitted by:

Edgar Alexander Barrera, Respondent
22159 Ladera Street
Grand Terrace, CA 92313

Dated: December 5th 2014 Telephone (321) 747-8565

EXHIBIT A

From: R. Emmett McAuliffe <rem@riezmanberger.com>
To: Les Euell (leseuell@gmail.com) <leseuell@gmail.com>; E. Alexander Barrera (axlellism@aol.com) <axlellism@aol.com>
Subject: FW: 2005 Edition
Date: Fri, Jul 16, 2010 4:36 pm
Attachments: National_Police_Gazette-September_2005.pdf (5767K)

FYI

From: R. Emmett McAuliffe
Sent: Friday, July 16, 2010 3:33 PM
To: saw@policegazette.us
Subject: 2005 Edition

Hi Mr. Westlake:

I see your attorney still has not entered an appearance. Please find enclosed the attached issue from 2005. If this issue is valid, it would seem to me your case goes away and therefore what are we fighting about? But I'd like to know your comments.

Feel free to call and discuss.

EXHIBIT B

160th Anniversary Edition

ISSN 0047-9039

VOL. 161, NO. 1 NEW YORK-LOS ANGELES-LAS VEGAS: SEPTEMBER 2005 PRICE $5.00

The Immortal Irving Berlin

HE CREATED A NATIONAL TREASURY OF SONG

Classical composer Douglas Moore ranked Berlin with Stephen Foster, Walt Whitman, and Carl Sandburg as a "great American minstrel," who "caught and immortalized in his songs what we say, what we think about, and what we believe."

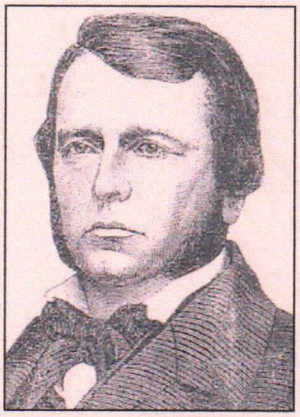
160 YEARS AND STILL IN THE PINK!

Police Gazette Pioneered Modern Journalism

George Wilkes (1817-1885) co-founded the* Police Gazette *in 1845. Publishing the sensational crime sheet was a relatively brief chapter in Wilkes' remarkable career as pioneer sports editor, transcontinental railroad promoter, and confidante of statesmen like Abraham Lincoln and Ulysses S. Grant.

NATIONAL POLICE GAZETTE.

***This is the front page of the first known edition of the* Police Gazette, *dated Oct. 18, 1845. Publishers Wilkes and Camp launched the paper with the idea of publicizing the low life of New York, already one of the world's great centers of trade but suffering from overcrowding, filth, and crime. Almost at once, their reporting brought threats and worse from criminals afraid of exposure. This first edition featured a "Lives of the Felons" story about one Robert Sutton, a.k.a. "Bob the Wheeler." The story incited a free-for-all between Sutton's supporters and enemies at an underworld dive called the Gin and Calumus Hall. The evening's score was one barfly dead, the owner missing two fingers and the tip of one ear, and many other drinkers bruised and bloodied. The fight was stopped by the timely arrival of a squad of police with a paddy wagon. No surprise, an account of the melee was published in the next edition of the* Police Gazette.**



Enoch E. Camp (1811-1853) shares credit with Wilkes as founder of the Police Gazette — evidence suggests it was he who persuaded Wilkes that New York needed a newspaper exclusively devoted to exposing crime. But his posthumous reputation came more from his practice as a top criminal attorney.

By NAT K. PERLOW

For more than 130 years The National* Police Gazette *has been an eyewitness to the American scene. A* Police Gazette *reporter was there when Lincoln was shot. . . .when Jesse James terrorized the West. . . when John L. Sullivan won the heavyweight title. . . when the first man to die in the electric chair was electrocuted. . . when America's first Olympic team brought glory to the Stars and Stripes…

Yes, the *Police Gazette* was everywhere, reporting on everything from the secret life of America's First Sex Symbol to the trails and tribulations of America's First Underworld Czar.

It all began in 1844, when a young journalist named George Wilkes was in a New York jail for the sixth time, after a campaign of exposing vice and corruption in that great city, and upsetting police authorities as much as criminals. His lawyer Enoch E. Camp suggested they start a new journal to combat crime.

So *The National Police Gazette* was born. The first number appeared September 13, 1845, and this new weekly was dedicated to the exposure of crime and corruption. The journal named criminals and those who shielded them. A regular feature from the first number onwards was a series entitled "The Lives of the Felons," compiled from police records. An early issue stated:

We offer this week a most interesting record of horrid murders, outrageous robberies, bold forgeries, astounding burglaries, hideous rapes, vulgar seductions and recent exploits of pickpockets and hotel thieves in various parts of the country.

What more could one expect for a nickel? Within a few weeks the *Gazette* reached a circulation of 13,000.

Editors Camp and Wilkes were obliged to maintain a private bodyguard at the *Gazette* offices, which were besieged by angry gangs on several occasions. In an 1850 assault on the Gazette there were six deaths, among them the paper's star reporter Andrew Frost.

The *Gazette* also waged war on lax authorities, and even had the temerity to attack Police Chief George W. Matsell. Ironically, Matsell himself was to become proprietor of the Gazette in 1857.

After initial success, the *Gazette* circulation dropped alarmingly after the Civil War, when the paper no longer met a national mood. When Chief Matsell bought the *Gazette* he introduced more sport and sex, and devoted a section to "Beauties of the Stage." It was the right formula, but Matsell was obliged to dispose of the paper to the engravers, who kept it afloat for another couple of years.

The man who eventually rejuvenated the ailing Gazette and established its familiar pink format was Richard K. Fox, one of the most colorful popular journalists of the 19th century. Fox was a Belfast man, who emigrated to New York without any capital. He became business manager of *The National Police Gazette*, existing somehow without a salary, and in 1877 borrowed enough capital to become proprietor.

So began the great Pink Period of *The National Police Gazette*, nearly half a century of daring journalism that built a circulation of over 2,500,000 copies, with additional distribution in twenty-six different countries. It made Richard K. Fox a full-fledged millionaire.

The Pink Paper gave the *Gazette* a unique flavor. Although claimed as an original idea, tinted paper may have been suggested by the British journal *The Sporting Times* (also known as *The Pink 'Un*), which had flourished ever since 1865. *The Pink 'Un*, in turn, was reminiscent of risqué French journals on colored paper, like the Parisian *Le Piron*. Pink was suggestive of flesh or fashionable lingerie, and it was the astonishing infusion of sex which made the *Gazette* rank as the supreme stag journal of its time.

Each issue of the 16 page paper featured a full-page cover engraving, usually illustrating a dramatic news story involving shapely feminine limbs. The *Gazette's* major circulation was saloons, hotels, and barber shops. The standard vaudeville gag was: "Seen the latest Gazette?—"No I shave myself!"

Of course, the *Gazette* had rivals, but they lacked the editorial genius of Richard K. Fox. The *Gazette* became the leading popular weekly of the gaslight era.

It fearlessly exposed crime and corruption, and revelled in the sins and follies of the day. It opened

(Continued on next page)

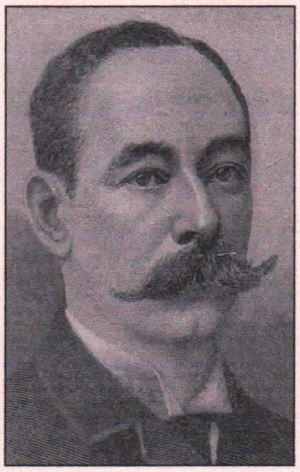
THE NATIONAL POLICE GAZETTE
THE LEADING ILLUSTRATED SPORTING JOURNAL IN AMERICA

PUBLISHED BY FRANKLIN PRINTING COMPANY

EDITORS SINCE 1845

Enoch E. Camp and George Wilkes, 1845-1848; George Wilkes, 1848-1852; R. Lexow, 1853-1855; Robert A. Seymour, 1855-1857; George W. Matsell and William Mackellar, 1857-1874; Herbert R. Mooney and Charles A. Lederer, 1873-75; Mooney, Lederer & Co., 1875-1877; Richard K. Fox, 1877-1922; Ralph D. Robinson, 1922-1932; Merle Hersey Williams, 1933-1935; George A. Wells, Editor, H. H. Roswell, Executive Editor, 1935-1937; H. H. Roswell, 1937-1968; N. K. Perlow, 1968-1988; Police Gazette Printing House, 1988-1991; Franklin Printing Company, 1991-current.

George W. Matsell (1811-1877) became New York's first police chief in 1845, losing his job in 1857 in a turf fight with Albany. He then purchased the* Police Gazette *and ran it until 1873, with the paper's coverage of the Lincoln assassination its major accomplishment.



Richard K. Fox (1846-1922) took the* Police Gazette *to new heights during the Gilded Age of the 19th century. His greatest accomplishment was creating the first dedicated sports section in an American newspaper, with the emphasis on boxing and baseball.

Fox was a tireless promoter of sporting events, less for the money they made than the publicity that increased the value of the* Police Gazette's *advertising space. Although Fox did more than any promoter of his era to legitimize boxing, he was also willing to put his money behind oddball events like hair-cutting and oyster-shucking competitions. Fox also promoted sports that were prominent in the 19th century but have since lost popularity — for example, walking races. In this woodcut, champion walker Frank Miller and his dog both seem undistracted by a crowd of admirers.

The style-setter in sensational news

(Continued from previous page)

up a new world of sport in prize-fighting. Most of all it depicted the amazingly progressive women of the period in pictures that make modern tabloids seem out of date. Here are vivid illustrations of female abortionists, blackmailers, fencers, cigar smokers, side by side with stage beauties, and honest working girls living in frightful poverty and exposed to every conceivable peril.

The *Gazette's* wood engravings had a tremendous impact lacking in present-day half-tone photographs, and although these illustrations were produced at top speed there was considerable skill and verve in their execution. The regular artists included George G. White, author of a book on drawing, George E. McEvoy, a well-known cartoonist, and an Englishman Matt Morgan., and others. There were special *Police Gazette* belts or medals for champion singers, dancers, oyster openers, drink mixers, and barbers (fastest haircut was under thirty seconds!) Most of all, Fox did more than anyone else to legalize the status of public boxing contests in New York, defending prize fighters in court, and promoting contests that have become legendary.

Boxing was an underground sport boxing bouts and defied the law to stop them—and the police did. *Gazette* lawyers argued in court that the matches were an "exhibition in the art of self defense." The judges agreed and, because of it, boxing became a legalized sport.

It was the *Police Gazette* which took the unknown Boston Strong Boy, John L. Sullivan, and publicized his battles until he became a household name—the greatest sports hero of the 1890s.

Of course, the *Gazette* also reflects more emancipated American origins, particularly depicting women in a way well ahead of the time. Girls were featured doing unusual, courageous, or desperate acts, and invading the world of men with a verve and competence that makes modern Women's Liberation look dowdy and boring by comparison.

The sexiness of the *Gazette* illustrations also has a peculiar innocence which today has a great period charm. There is nothing nasty about these pictures. They were certainly titillating to young men of the period who realized that girls not only had delicately turned ankles but also delicious waists and swelling thighs.

went flying and cleavage was exposed. Whether the artist depicted the awful temptations of working-girls or the gilded vice of demi-modaines, there was a sheer voluptuousness about it all that made the pulse beat faster. Today's blue movies and nudist magazines are peculiarly cold and passion-killing by comparison.

The importance of the *Police Gazette* in our journalism is profound. It developed editorial formulas which remain the basis for many leading magazines. It is the grand daddy of today's sensational tabloids. Its sports pages were imitated by newspapers, making it the inventor of the modern sports page, and the forerunner of modern sports magazines.

The true detective magazines are an outgrowth of the popularity achieved by the crime stories originating in the *Police Gazette*. The first pinup of leg art appeared in the *Gazette*. Its woodcuts of buxom beauties in tight corsets shocked Victorian America in the 1890s. The *Police Gazette* girls became famous in song and legend. They prompted Irving Berlin to write a popular tune of the day, "The Pretty Young Brunette on the Pink Police Gazette."

Although the *Gazette* is identified with America's scarlet past, it still is a potent voice in the modern era. The last U.S. Senator Estes Kefauver credited the *Police Gazette's* exposure of gangsterism with giving him the idea for his famous investigation into organized crime.

A series of articles in the 1950s, in which the *Gazette* exposed the use of dangerous additives in food, prompted former U.S. Senator Tom Hennings to crusade for stronger food and drug laws throughout the country.

The best known *Police Gazette* shocker of recent years was its series, "Hitler is Alive!" It sparked renewed interest in Nazi war criminals and influenced the West German government to extend its statute of limitations so that the hunt for fugitives could go on.

Critics may call the *Gazette* naughty, gaudy and bawdy—but nobody, at any time, ever said it was dull.

One of the last old-time newspapermen, Nat K. Perlow served as managing editor of* The National Police Gazette *from 1945 to 1968, and editor from 1968 until his death in 1988. Among other accomplishments in a colorful career, Perlow helped U.S. Senator Estes Kefauver set up the famous organized crime hearings of 1950.

Berlin disappointed his legions of fans by becoming reclusive late in life. This rare shot of Berlin in his 86th year was taken by noted New York photographer Jill Krementz. Berlin was, of course, his own lyricist, so he was a good entry in Krementz's lifelong project of photographing famous American writers. Krementz's 1974 pictures are believed to be the last professional photographs of Berlin.

Meet Irving Berlin

By SIDNEY SKOLSKY

THE easiest thing in the world to write is a song. The hardest thing in the world to write is a song hit. Sixty million copies can't be wrong.

No matter how well he is dressed, if his hair is a trifle mussed he doesn't look well dressed.

Never writes anything in longhand but his signature on a check. He prints everything.

He was born in Molzne, Russia, May 11, 1888. Came to this country at the age of four, the youngest of eight children. His mother was Leah Lipkin. His father, Moses, whose business it was to say prayers over meat to make it kosher, died when Irving was eight.

Is five feet six inches tall. Weighs 130 pounds. When working on a score of a show, he loses ten pounds.

Hasn't a hat face. Never owned a hat that looked good on him or sat properly on his head.

He ran away from home when he was fourteen. Went to Callahan's

(Continued on next page)

After enduring an impoverished childhood on the streets of New York, Berlin found early success as a Tin Pan Alley tunesmith. His 1911 breakthrough hit was "Alexander's Ragtime Band," which actually wasn't ragtime at all but a bouncy little song about the new style of syncopated music pioneered by African-American musicians like Scott Joplin. "Alexander's Ragtime Band" became such a standard that it served as a the namesake for a 1938 musical film that featured no less than 27 other Berlin songs. Here Berlin is at the piano with stars Alice Faye, Tyrone Power, and Don Ameche.

Originally published in THE NATIONAL POLICE GAZETTE, April 1953

"White Christmas" is not only the top-selling Christmas song of all time, but the top single, period. Bing Crosby's initial reaction to the tune was lukewarm: "I don't think we have any problems with that one, Irving." Crosby introduced it to radio audiences in the Christmas Day, 1941 broadcast of "The Kraft Music Hall," then recorded it as part of an album of six songs released in July, 1942. But "White Christmas" didn't really catch on until later that summer, when Crosby reprised it in a duet with Marjorie Reynolds in the movie "Holliday Inn."

The nostalgic "White Christmas" achieved immortality because it hit a nerve with thousands of homesick American servicemen and the families awaiting their return. On the other hand, "Annie Get Your Gun" was the perfect Broadway show for post-war audiences just looking for a good time. Trumpet-voiced Ethel Merman (right) starred as Annie Oakley, trick-shot artist of the "Buffalo Bill's Wild West" shows. Oakley herself (left) was from the wild west of Ohio, but mastered rifle marksmanship better than any buffalo hunter, winning national fame and a chestful of medals -- including one from The National Police Gazette, whose publisher, Richard K. Fox, promoted her career.

Berlin was a great admirer of Stephen Foster, America's first master of popular song. And just like Foster, Berlin's best creations aren't just songs but bits of Americana.

Rivaling "White Christmas" as the greatest Berlin song is "God Bless America," beloved for generations as a sort of alternate national anthem. Kate Smith's 50-year career in radio, television, and recording was built largely on her heartfelt rendition of this one patriotic tune.

Berlin became a lifelong fan of the Police Gazette *right at the source. Publisher Richard K. Fox was one of Berlin's regular customers when he worked as a singing waiter in Mike Salter's saloon. Through Fox and Salter, young Berlin befriended a host of colorful New York characters — and none more so than Chuck Connors, the unofficial "Mayor of Chinatown." Connors, shown here in a characteristic pose holding forth to barrom buddies, made an unusual living as an urban tour guide to the low life of Mott and Doyers streets, with an occasional staged tong war thrown in for thrills.*

Berlin Learned Craft in NYC's Tough Bowery

(Continued from previous page)

saloon on the Bowery. Here he sang "The Mansion of Aching Hearts." His salary was the coins tossed at him. Next stop, Mike Salter's saloon, where he was a singing waiter. The guide on the trip to Chinatown now points out the spot.

For the past two years he has been wearing glasses when reading.

Is a very nervous man. Generally chews gum. When alone in a room he'll cover miles pacing the floor. Floor pacing is his only exercise.

On January 4, 1926 he married Ellin Mackay (whose father owned Postal Telegraph). They have a daughter Mary Ellin. He hasn't any pet name for the wife, and she hasn't any for him.

He's a bad sleeper. Can go to bed in time to get twelve hours sleep and gets only four.

(Continued on next page)

Berlin would sometimes write songs to fill a particular need in a movie or Broadway musical. But more often, he would dictate any promising idea to his copyist, in the hope that it might eventually find a niche in a show. One such "trunk song" was "The Girl on the Police Gazette" written in 1935 to celebrate neighbor Harold Roswell's purchase of the old scandal sheet. It was finally sung by Dick Powell (center) in the 1937 movie "On the Avenue."

Greatness Never Came Easy

(Continued from previous page)

One of his hit songs, The Little Things In Life," was written while he was on his honeymoon.

Originally his name was Israel Baline. When fifteen he changed Baline to Berlin because everyone pronounced it that way. Later he changed Izzy to Irving. When he wrote his first song, "Marie From Sunny Italy" (he wrote only the first lyric) he was still working at Mike Salter's saloon. Was afraid to sign the song Irving Berlin. Though the boys would throw bar rags at him for puttin' on the ritz, That initial song is signed I. Berlin.

Working on a Lyric

Crowds frighten him. So do certain individuals.

Finds songwriting a hard job. More perspiration than inspiration. Often while the nation is singing one of his songs, he's sill working on it and will change a line in the lyric. The only mark on his body is a scar on his forehead. It was received on a Washington's birthday in Cherry Street, trying to start a bonfire.

Can play the piano in F Sharp only. Has a specially constructed piano with a sliding keyboard. This enables him to play in other keys although still playing in F Sharp. He had the piano for fifteen years. Recently had a copy of it built for his home.

A barber can do more for him than a doctor. Has had the same barber for years. After a hard day's work he runs to his barber.

His daughter Mary Ellin was taught by father to play scale on the piano. Once at four, before company, Mary Ellin was asked to play the piano. She banged away on the keys with both hands. "Darling," said Mrs. Berlin, "play with one finger." Mary Ellin looked up and said, "Oh, you mean like daddy plays."

Is always complaining about his stomach and eats everything. His favorite restaurant is the Far East. Here, for many years, the chef has been preparing a special chop suey for him. Loves Chinese food. He eats it with chopsticks.

High Spot of Career

Considers "What'll I Do" as good as he ever wrote, Thinks "Alexander's Ragtime Band" was the high spot of his career. Of all the songs ever written he'd love to be the author of "The Rosary" and "The St. Louis Blues."

Doesn't read much, and has a difficult time finishing a book. When he attends the theatre he prefers to see a melodrama,

Has his clothes made in London. When it arrives he puts it on. No alterations are necessary.

Doyers Street, shown around 1909, was the heart of New York's colorful but sometimes violent Chinatown. Not all businesses were Chinese, however. Both Irving Berlin and vaudeville immortal Al Jolson got their start singing at Callahan's saloon, which may be one of the buildings on the right.

His secret and great ambition was to be a musician. He'd give anything—even many of his song hits—to be able to play the piano.

(P.S. He's written more than 1,000 songs. All the proceeds from his famous "God Bless America" go to the Boy Scouts. His best-selling hit is "White Christmas," which sold more than 3,500,000 copies since 1942.

In 1937, he wrote "The Girl on the Police Gazette," hit song for the musical movie "On the Avenue," starring Alice Faye and Dick Powell. This tune is still a juke-box favorite.

He also wrote a Broadway musical comedy in collaboration with playwright Robert Sherwood, titled "Miss Liberty," featuring a *Police Gazette* reporter.

Berlin lives in a mansion on New York's Beekman Place. Loves to mess around the kitchen; cooking is his hobby.

At 65, he's working on a couple of movies for Hollywood and a new Broadway musical. — THE EDITOR.)

"Carefree" (1938) was the eighth and shortest of the Fred Astaire-Ginger Rogers musicals, and the third with music by Irving Berlin. Only four musical numbers were included in the final cut, with "Change Partners" easily the best of the lot. The dance duo would collaborate for the last time with Berlin in 1939's "The Story of Vernon and Irene Castle."

About the Author

In more than a half-century in show business, Sidney Skolsky (1905-1983) worked his way up from Broadway press agent to one of the top columnists covering the movie industry.

Skolsky is one of several show business people who claimed to have given the name "Oscar" to the Academy Award statuette. In his 1975 memoir *Don't Get Me Wrong—I Love Hollywood*, Skolsky recounted that he was in a hurry to send his copy from the 1934 award ceremony. Having trouble spelling "statuette," Skolsky decided to write that Katherine Hepburn "won the Oscar" for her performance in "Morning Glory." Skolsky wrote that the name Oscar came from an old vaudeville routine —"will you have a cigar, Oscar." Over the following months, Skolsky kept calling the award Oscar in his columns. By 1939, the Academy of Motion Picture Arts and Sciences had adopted the name officially.

Skolsky's 1954 book Marilyn: The Marilyn Monroe Story helped boost the legendary actress' early career. Heavily illustrated, it's considered a collectible piece of Monroe memorabilia.

TOP: *In 1950, Berlin teamed again with Ethel Merman in "Call Me Madam," a musical satire on international politics. Merman played a Washington socialite appointed ambassador to the fictional postage stamp country of Lichtenburg. Some of the comedy in "Call Me Madam" is still topical — notably the American penchant for shoveling billions at impecunious nations. "Call Me Madam" was made into a successful 1953 movie, also starring Merman.*

RIGHT: *Archie and Edith Bunker (Carroll O'Connor and Jean Stapleton) introduced each weekly episode of television's "All in the Family" by singing "Those Were the Days." Late in life, Berlin said he wished he had had a chance to write a song for the hit 1970s series. "Those Were the Days" was actually written by Charles Strouse, noted composer of "Bye Bye Birdie" and "Annie." Berlin also remarked about a certain resemblance between Archie Bunker and his old friend Richard K. Fox — despite being guilty of an occasional bigoted remark, both men were basically decent when dealing with real people of all backgrounds.*

Gmail by Google

Les Euell <leseuell@gmail.com>

Fwd: 2005 Edition

Les Euell <leseuell@gmail.com> Mon, Sep 29, 2014 at 4:33 PM
To: Les Euell <leseuell@gmail.com>

Sent from my iPad

Begin forwarded message:

From: "R. Emmett McAuliffe" <rem@riezmanberger.com>
Date: July 16, 2010 at 4:35:53 PM EDT
To: "Les Euell (leseuell@gmail.com)" <leseuell@gmail.com>, "E. Alexander Barrera (axlellism@aol.com)" <axlellism@aol.com>
Subject: FW: 2005 Edition

FYI

From: R. Emmett McAuliffe
Sent: Friday, July 16, 2010 3:33 PM
To: saw@policegazette.us
Subject: 2005 Edition

Hi Mr. Westlake:

I see your attorney still has not entered an appearance. Please find enclosed the attached issue from 2005. If this issue is valid, it would seem to me your case goes away and therefore what are we fighting about? But I'd like to know your comments.

Feel free to call and discuss.

National Police Gazette-September 2005.pdf
2944K

EXHIBIT C

Les Euell <leseuell@gmail.com>

Fwd: nothing from Westlake

Les Euell <leseuell@gmail.com> Wed, Nov 12, 2014 at 11:55 PM
To: axlellism@gmail.com
Cc: axlellism@outlook.com

Sent from my iPad

Begin forwarded message:

From: "R. Emmett McAuliffe" <rem@riezmanberger.com>
Date: June 30, 2010 at 5:07:55 PM EDT
To: "Les Euell (leseuell@gmail.com)" <leseuell@gmail.com>
Subject: nothing from Westlake

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EXHIBIT D