

In the
United States Court of Appeals
for the Seventh Circuit
Chicago, Illinois

No. 06-2046

Zena D. Crenshaw,)	
<i>Plaintiff- Appellant,</i>)	Appeal from the
)	U. S. District Court for the
-vs-)	Northern District of Indiana
)	at Hammond
Joan S. Antokol; Ralph A. Cohen; Bonnie)	
L. Gallivan; Anita M. Hodgson; ICE)	
MILLER DONADIO & RYAN;)	Cause No. 3:04-CV-00182-PPS/APR
HOFFMANN-LaROCHE, INC.; Julie)	
McMurray; William P. Wooden;)	
WOODEN & McLAUGHLIN, LLP;)	The Honorable Philip P. Simon, Judge.
Robert F. Parker; Rehana Adat; BANK)	
ONE TRUST COMPANY, N.A.; James)	
W. Martin; Mary A. Paschen, and)	
SPANGLER JENNINGS &)	
DOUGHERTY, P.C.,)	
<i>Defendants-Appellees.</i>)	

**Appellant's Petition for Panel Rehearing
with Suggestion of Rehearing *En Banc*
and Sanctions Response**

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**Bar admission limited to the
U. S. Court of Appeals, Seventh Circuit.*

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Petition for Rehearing with Suggestion of Rehearing *En Banc*

Comes now the appellant, *pro se*, as class representative, and class counsel of record, and petitions the Court for panel rehearing with suggestion of rehearing *en banc* as this proceeding involves questions of exceptional importance, namely:

- I. Whether “dismissal of a complaint on the ground that it is unintelligible” corresponds to a ‘justiciable standard’;
- II. Whether the plaintiff’s statutory right of appeal proves illusory should she be sanctioned in this case for filing what the Court has determined to be a frivolous appeal.

ARGUMENT

- 1. Courts must venture beyond rules of pleading and subjective characterizations of at least conspiracy complaints as “unintelligible” or “pestilential” in assessing their theoretical soundness, lest “(t)he power given to them is not confided to their discretion in the legal sense of that term, but is granted to their mere will.”**
-

In seeking “. . . to ensure *from the inception of a lawsuit* that the litigants and the court are on notice as to the nature of the claims that the plaintiff is asserting”, Federal Rule of Civil Procedure 8(a) hardly alters the demands of Federal Rule of Civil Procedure 12(b)(6). *See, FRCP 8(a)* and *cf. FRCP 12(b)(6)*. Hence in noting that “. . . references to RICO, as well as the abundance of confusing language and vexing references to other irrelevant material, obfuscate Crenshaw’s amended complaint to the point that whatever claim was intended is unintelligible”, the Court leaves undisturbed the prospect of there being an “. . . interpretation . . . under which it can state a claim”. *See, 11/16/06 Order, p 4* and *cf. Flannery v. Recording Industry Assn. Of America*, 354 F3d 632 at 637 (7th Cir. 2004). Of course “the substantial subsidy of litigation . . . should be targeted on those litigants who take the preliminary steps to assemble a comprehensible claim”. *See, U. S. ex rel Garst v. Lockheed-Martin Corporation*, 328 F. 3d 374

at 378 (7th Cir. 2003). However, ‘dismissal of a complaint on the ground that it is unintelligible’ should correspond to what Supreme Court Justice Scalia describes as a ‘justiciable standard’ in a 1988 dissent. *See, Morrison v. Olson*, 487 U.S. 654 at 711 [Scalia dissent](1988) and *cf Garst*.

A convenient summary of this case derives from the Court’s indication that through it, ‘the plaintiff . . . demonstrated her inability to file a lucid complaint’. *See, 11/16/06 Order, p 4*. Tragic is any possibility that an acknowledged scholar¹ and graduate of renowned learning institutions² such as she is, would or could exhibit such incompetence more than twenty years after passing a state bar examination³ and serving more than fifteen years as a member of the bar of this Court⁴ despite her nearly two decades of continuing legal education and the scores of lawsuits she has filed as well as the twenty or more appeals she has prosecuted. In any event, “Rule 8(a) requires parties to make their pleadings straightforward, so that judges and adverse parties need not try to fish a gold coin from a bucket of mud”. *See Garst at 378*. “Evidently, the governing standard is to be what might be called the unfettered wisdom of (judges and adverse parties), revealed to an obedient people on a case-by-case basis” as the plaintiff could not confirm it in advance of this appeal. *cf. Morrison at 712*.

Supposedly “(l)ength may make a complaint unintelligible, by scattering and concealing

¹By 1984, the plaintiff-appellant had been designated an Indiana State Scholar, a National Merit Scholar, a Notre Dame Scholar, and an Earl Warren Scholar

²In 1981, the plaintiff-appellant graduated from the University of Notre Dame at Notre Dame, Indiana with a Bachelor of Arts Degree, having majored in both English and Philosophy. She received her Juris Doctorate in 1984 from Northwestern University School of Law in Chicago, Illinois. Six semester hours of her law school studies were completed at the Notre Dame Law Centre in London, England during the summer of 1983.

³The plaintiff-appellant passed the bar examination for the State of Indiana in 1984.

⁴The plaintiff-appellant was admitted to this Court on April 12, 1991.

in a morass of irrelevancies the few allegations that matter”. *See Garst at 378*. “The amended complaint (at issue) is 35 pages, has 135 numbered paragraphs, and even features seven endnotes”. *See, 11/16/06 Order, p 4*. Nonetheless, the Court reports that “. . . attorney Zena Crenshaw filed an amended complaint claiming under 42 U.S.C. § 1983 that several . . . litigants and attorneys . . . conspired with participating judges to deprive her of fair use of the judicial system on account of her race.” *See, 11/16/06 Order, p 1*. “The existence or nonexistence of a conspiracy is essentially a factual issue that the jury, not the trial judge, should decide.” *See, Adickes v. S.H. Kress & Co., 398 U.S. 144 at 176 [Black concurring] (1970)*. Yet “. . . the fact that the district court was still understandably confused two years into the litigation only highlights (for this judicial circuit) how warranted the court was in dismissing under Rule 8”. *See, 11/16/06 Order, p 4*. Borrowing again from Justice Scalia, the plaintiff respectfully submits that “. . . even as an ad hoc, standardless judgment the Court’s conclusion must be wrong”. *cf. Morrison at 712*.

“All pleadings shall be so construed as to do substantial justice”. *FRCP 8(f)*. The Court suggests realizing that goal entails, *inter alia*, the crafting of lawsuits beyond the plaintiff’s drafting capabilities. While “(s)uch (complaints may) give the defendant(s) the notice to which (they are) entitled”, they would also adhere to a standard, inconsistent with Federal Rule of Civil Procedure 12(b)(6). *cf. 11/16/06 Order, p 3*. “Dismissal under Rule 12(b)(6) is only appropriate when there is no possible interpretation of (a) complaint under which it can state a claim”. *See, Flannery at 637*. That “. . . it is difficult to tell what claims it raises, and it is replete with confusing language, redundancies, and irrelevant material” is not dispositive. *cf. 11/16/06 Order, p 3*.

Apparently courts must venture beyond rules of pleading to assess the theoretical soundness of complaints under Federal Rule of Civil Procedure 12(b)(6) as opposed to Federal Rule of Civil Procedure 9. *cf. FRCP 9 & 12(b)(6)*. “Federal judges (may) have better things to do”, but it seems the subjective characterization of at least conspiracy complaints as “unintelligible” or “pestilential” should not trigger their dismissal under Federal Rule of Civil Procedure 8. *cf. Garst at 378*. Such labeling “. . . power given to (federal judges would not be) confided to their discretion in the legal sense of that term, but . . . granted to their mere will”. *See, Yick Wo v. Hopkins*, 118 U.S. 356 at 366-367 (1886). Perhaps not because “(i)t is purely arbitrary, and acknowledges neither guidance nor restraint”, but because it can be wielded without predictable “criterion”. *cf. Id. and Morrison at 711*.

2. As the federal trial and appellate courts for the District of Columbia never suggested this case is a mere plague on the judiciary and the plaintiff’s trial counsel as well as her many learned advisors discerned and condoned its basis, the statutory right of appeal proves illusory should she be sanctioned because this Court, the Indiana district court, and the appellees disdain her contentions.

“Crenshaw argues that the (Indiana) district court must have realized that she asserts only a § 1983 claim – and thus dismissal under Rule 8 was improper – because the allegations in the complaint (1) have been briefed through three rounds of multiple motions to dismiss, (2) were the subject of several district court opinions, and (3) were the subject of two petitions for writs of mandamus”. *See, 11/16/06 Order, p 3*. Even to the extent “(t)his argument misapprehends Rule 8”, it suggests the plaintiff never considered her pleadings to be “unintelligible” or “pestilential” as she repeatedly expounded on their basis. *cf. 11/16/06 Order, p 3*. Alas, this Court has determined that in doing so she advanced clearly frivolous arguments to support an incomprehensible lawsuit. *See, 11/16/06 Order*. As a result, “Crenshaw (was) ordered to show

cause . . . why she should not be sanctioned for filing this frivolous appeal”. *See, 11/16/06 Order.*

In resolving the novel venue question it presented over the course of nearly a year, the federal trial and appellate courts for the District of Columbia never suggested this case is a mere plague on the judiciary which only federal courts for Indiana are empowered to halt. *See, Crenshaw v. Antokol, et al., 238 F.Supp.2d 107 (D.D.C. 2002); Crenshaw v. Antokol, et al., 298 F.Supp. 2d 37 (D.D.C. 10/20/03); and In re Crenshaw, No. 03-5276 (U.S. Ct. of Appeals, D.C. Cir.).* Plaintiff’s trial counsel and her many learned advisors certainly discerned and condoned its basis. Hence she defended the case on appeal, only to learn within 24 hours of its submission that this Court, the Indiana court below, and the appellees share essentially the same disdain for her contentions. Should that less than inevitable consensus translate into grounds for sanctioning the plaintiff, her statutory right of appeal proves illusory. *See, 28 U.S.C. §1291.*

Wherefore, the appellant prays:

- (1) that the Court grant her this petition for panel rehearing pursuant to Federal and Circuit Rules of Appellate Procedure 40;
- (2) or heed her suggestion under FRAP 35 for rehearing *en banc*; and
- (3) accordingly grant her the relief requested by the Appellant’s Brief;
- (4) plus consider the foregoing as her showing of cause as to why she should not be sanctioned.

Respectfully Submitted,

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Certificate of Service

Comes now the plaintiff-appellant and certifies that on November 30, 2006, two true and accurate copies of her foregoing petition was duly served upon each party of record herein by placing them in the United States Mail, adequate postage prepaid, and addressed as follows:

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