

At a Special Term, Part I, of
the Supreme Court of the State
of New York, held in and for the
County of Suffolk on the 7th day
of May, 1968.

PRESENT:
HON.

JACK STANISLAW

Justice

VICTOR JOHN YANNAcone, jr.,

Plaintiff,

-against-

ORDER TO SHOW CAUSE

NEWSDAY, INC.,

Defendants

Upon the annexed affidavit of VICTOR JOHN YANNAcone, jr.,
sworn to May 6, 1968; the Summons and Verified Complaint, duly
verified on May 7, 1968; the exhibits annexed thereto including
the Affidavit of VINCENT S. ROSSITTO, sworn to May 6, 1968,
let the Defendants NEWSDAY, INC.,

SHOW CAUSE at a Special Term Part I, of this
Court, to be held at the Suffolk County Courthouse, Griffing
Avenue, Riverhead, New York, on the 9th day of May,
1968, at 9:30 o'clock in the forenoon of that day, or
as soon thereafter as counsel may be heard

WHY an Order should not be entered herein,

DIRECTING the Defendants, NEWSDAY, INC., to immediately
publish in their daily newspaper NEWSDAY, for the issue next
following the determination of this application, a full, fair,
and complete statement of the nature of the Plaintiff's
relationship with the Brookhaven Town Council on the Arts, the
Recording Industries, Music Performance Trust Funds, the
Associated Musicians of Greater New York, and the Town of
Brookhaven, in accordance with the facts set forth in the
affidavit of VINCENT S. ROSSITTO, designated EXHIBIT 6 herein,
the Plaintiff's letter designated EXHIBIT 1, the Defendants' letter
designated EXHIBIT 2, and the full and complete public disclosure
made by the Plaintiff on April 25, 1968 and May 1, 1968, as
set forth in the testimony offered at that time, utilizing the
same type size and style and substantially the same format as
that utilized by Defendants in publishing the defamatory
material contained in the issue of NEWSDAY for May 6, 1968
(Volume 28, N° 207) together with such other and further relief
as to this Court shall seem just and proper under the circum-
stances; and good and sufficient reason appearing therefor, it is
further

ORDERED that personal service of a copy of
this order and the papers in support thereof on any duly
employed news reporter of the Defendant NEWSDAY, INC., on
or before 10th o'clock on the 7 day of May, 1968,
shall be deemed good and sufficient service herein.

ENTER



[Signature]
J.S.C.

9. That heretofore and on April 27, 1968, the Plaintiff herein caused to be sent to the President and Editor in Chief, and the Vice President and Publisher of the Defendants' daily newspaper, NEWSDAY, a letter outlining his availability for examination on matters relative to his association with the Town of Brookhaven. A copy of that letter is annexed hereto, made a part hereof and designated EXHIBIT 1.

10. That heretofore and on May 2, 1968, Al Marlens, Managing Editor of Defendants' daily newspaper NEWSDAY, mailed a letter to the Plaintiff in response to the Plaintiff's letter of April 27, 1968. A copy of Defendants letter is annexed hereto, made a part hereof, and designated EXHIBIT 2.

11. That heretofore and on Wednesday, May 1, 1968, that issue of Defendants' daily newspaper NEWSDAY designated Volume 28, No 203 contained in a copyrighted story on page 3, therein, the following statements:

"OTHERS TOO

But the pattern of public position and private profit in Brookhaven is not limited to these three officials. Others who have profited from deals involving town actions or who had business dealings with persons who profited from town actions include Councilman Robert Hughes, Councilman William Rogers, District Judge William L. Underwood, Jr., Assistant State Attorney General Walter Babcock and State Senator Leon Guiffreda (R-Centereach). Even two town planning board employees and some members of the Brookhaven Council on the Arts, found profit in their connection with Brookhaven Town government.

Some of the officials whose deals will be detailed in this series include:

Members of the Brookhaven Council on the Arts who have been paying fees to themselves."

12. That heretofore and on May 1, 1968, at approximately 2:30 P.M., NEWSDAY reporter Kenneth C. Crowe telephoned the Plaintiff and requested the opportunity to examine the Plaintiff's records with respect to the Brookhaven Town Council on the Arts in accordance with the offer made in Plaintiff's letter designated EXHIBIT 1.

The Plaintiff agreed and advised NEWSDAY reporter Crowe that the other newspapers would be advised and given a similar opportunity to examine the same records, and that Maestro Earl Snow and James E. Colaneri would be invited to participate. The Plaintiff also agreed that he would answer questions about the activities of the Council on the Arts and the Plaintiff's relations therewith, in the absence of representatives other newspaper, in the presence of a stenotype reporter. NEWSDAY reporter Crowe agreed.

13. That during the afternoon and into the evening of May 1, 1968, in the presence of the Plaintiff, Maestro Snow and Mr. Colaneri as well as a reporter from the Suffolk Sun and Mr. Thoreen, the same Court Reporter who was present at the meeting of April 25, 1968, NEWSDAY reporter Kenneth C. Crowe examined the assembled copies of records of the Brookhaven Town Council on the Arts, together with copies of all of the Plaintiff's income tax returns from 1953 to date, all of which income tax return copies were full and complete and showed any and all income received by the Plaintiff from any source, including, for the years, 1965, 1966 and 1967, certain payments recorded on form W-2 from the Recording Industries Music Performance Trust Funds.

14. That when NEWSDAY reporter Crowe completed his examination of all the available records, the Plaintiff offered to answer any and all questions with respect to his activities on behalf of the Brookhaven Town Council on the Arts, the Brookhaven Town Long Range Study Committee, the Brookhaven Town Economic Opportunity Council, and as a Special Town Attorney for the Town of Brookhaven, in the absence of the presence of any other newspaper reporter, provided the interview was recorded by the Court Reporter then present. NEWSDAY reporter Crowe, then requested the opportunity to telephone his editor in private and using the Plaintiff's telephone in an adjacent room of the office, Defendants' reporter Crowe did make a telephone call.

Upon completion of the call, NEWSDAY reporter Crowe advised all present that his editor had refused to continue the interview if it was to be recorded by the Court Reporter, whereupon Defendants' reporter Crowe left the conference.

15. That heretofore and on the evening of May 1, 1968, NEWSDAY reporter Mike Unger telephoned the office and home of the Plaintiff and requested a return call at any time. The Plaintiff telephoned NEWSDAY reporter Unger at approximately 11:20 P.M., that evening and was questioned extensively on the subject of attorneys fees charged by Special Town Attorneys in the Town of Brookhaven, including those charged by the Plaintiff.

The Plaintiff quoted the text of his letter to the Supervisor of the Town of Brookhaven with reference to the matter of the fees charged by Special Town Attorneys dated August 26, 1967, and the reply of the Supervisor dated August 30, 1967. Copies of both letters are annexed hereto, made a part hereof and designated EXHIBIT 3.

The Plaintiff advised NEWSDAY reporter Unger of the letter designated EXHIBIT 1 herein, in which the Plaintiff offered to permit the examination of all Plaintiff's files relating to work performed for the Town of Brookhaven in any capacity, and the Plaintiff advised NEWSDAY reporter Unger that the offer was still open and he was welcome to examine Plaintiff's files with reference to determining the reasonable value of Plaintiff's services or for any other reason.

16. That heretofore and on Monday, May 6, 1968, that issue of Defendants' daily newspaper, NEWSDAY designated Volume 28, N^o 207 contained in a copyrighted story on page 5, therein, under the following headline:

"B'HAVEN ART: PLAY FOR PAY

the following statements:

"For centuries, artists of all sorts have struggled in poverty for the sake of their work. But in Brookhaven Town, not surprisingly, the system works somewhat differently.

Three years ago, some of the town's politicians took time out from granting profitable rezonings to themselves and to their friends to create a town-sponsored Council on the Arts. Its purpose, they said, was to help local amateurs put on plays and concerts.

But several of the local amateurs, as it turned out, were not interested in art strictly for art's sake, nor were they interested in remaining amateurs. And so, scarcely had a line been written or a note been played before the group began paying fees for various services to several of its key members.

The fee system, to be sure, did not come close to matching the enormous profits being made at the time through politically influenced rezonings. It was, however, a long way from starving in a garret.

The council members' artistry is not evident in their methods of keeping records. Documents relating to the council's activities are scattered in at least four locations at the Brookhaven Town Hall. A full set of the council minutes could not be located, despite repeated requests. But among the examples, pieced together from the fragmentary records available, are these:

One arts council member, Victor Yannacone, Jr., who is also a special town attorney, was paid \$950 by the town to write a legal opinion that cleared the way for him to become both the council's paid contractor for arranging concerts and a paid musician in the events he organizes.

and continuing on page 61, under the bold faced headline,

B'HAVEN: PLAY FOR PAY OR ART FOR WHOSE SAKE?

"Yannacone, the special town attorney and council member, submitted his \$950 legal opinion to the town on July 9, 1965. It said that the town could legally "accept gifts and contributions toward the furtherance of the Council on the Arts.

At the same time he was negotiating a deal with a New York City union, Local 802 of the American Federation of Musicians, in which the union would contribute 40 per cent of the cost of town concerts. It was under that arrangement that Yannacone became the official contractor, collecting union wages both for his organizing work and for playing the baritone saxophone.

A union spokesman said that it was as a result of that arrangement, sanctioned by Yannacone's own legal opinion, that Yannacone was chosen by Snow and the union to become the paid concert contractor. As the contractor, in turn, Yannacone in effect hired himself as a musician.

Available records show that Yannacone was paid \$1,461 for performances in 1965 and 1967. The records for 1966, however could not be found. Yannacone said that the town controller's office had them. The controller's office, though, insisted that Yannacone had them.

Asked to discuss his fees, Yannacone at first agreed to an interview with Newsday. But later he refused, saying that he would answer questions only if reporters from other newspapers could be present as well."

17. That the foregoing statements contained in Defendants' daily newspaper, NEWSDAY, for May 6, 1968 (Volume 28, N° 207) were made with wanton and reckless disregard for the character and reputation of the Plaintiff.

18. That the foregoing statements contained in Defendants' daily newspaper, NEWSDAY, for May 6, 1968 (Volume 28, N° 207) were made in spite of sufficient information already in the possession of the Defendant, its agents or servants or employees, or which, with the exercise of reasonable care should have been in the possession of the Defendant, its agents or servants or employees, such as should have caused sufficient doubt to lead to further investigation of the allegations prior to publication.

19. That the foregoing statements contained in Defendants' daily newspaper, NEWSDAY, for May 6, 1968 (Volume 28, N° 207) were made with wanton and reckless disregard of the truth of the allegations.

20. That the foregoing statements contained in Defendants' daily newspaper, NEWSDAY, for May 6, 1968 (Volume 28, N° 207) were made with actual knowledge of the falsity of certain statements, in particular the following:

- (a) "Its (town-sponsored Council on the Arts) purpose, they said, was to help local amateurs put on plays and concerts."
- (b) "A full set of the council minutes could not be located, despite repeated requests."

- (c) "One arts council member, Victor Yannacone, Jr., who is also a special town attorney, was paid \$950 by the town to write a legal opinion that cleared the way for him to become both the council's paid contractor for arranging concerts and a paid musician in the events he organizes."
- (d) "Yannacone, the special town attorney and council member, submitted his \$950 legal opinion to the town on July 9, 1965."
- (e) "At the same time he was negotiating a deal with a New York City union, Local 802 of the American Federation of Musicians, in which the union would contribute 40 per cent of the cost of town concerts. It was under that arrangement that Yannacone became the official contractor, collecting union wages both for his organizing work and for playing the baritone saxophone."
- (f) "A union spokesman said that it was as a result of that arrangement, sanctioned by Yannacone's own legal opinion, that Yannacone was chosen by Snow and the union to become the paid concert contractor. As the contractor, in turn, Yannacone hired himself as a musician."
- (g) "The records for 1966, however, could not be found. Yannacone said that the town controller's office had them. The town controller's office, though, insisted that Yannacone had them."
- (h) "...But later he (Yannacone) refused, saying that he would answer questions only if reporters from other newspapers could be present as well."

21. That the foregoing statements contained in Defendants' daily newspaper, NEWSDAY, for May 6, 1968 (Volume 28, N° 207) were generally false and defamatory, and the Defendants knew, or by the exercise of reasonable care, could have ascertained the falsity, in particular of the statements hereinbefore set forth in paragraph 20 of this Complaint under subdivision designations:

- (a) by examining records offered at the meetings of April 25, 1968, and again at the meeting of May 1, 1968, relating to the organization and establishment of the Brookhaven Town Council on the Arts, in particular two statements issued by the Council on the Arts following its creation in May, 1965. Copies are annexed hereto, made a part hereof and designated EXHIBIT 4.
- (c) by examining a copy of the voucher submitted by the Plaintiff herein for payment of the sum of \$950.00 for the fair and reasonable value of services rendered to the Town of Brookhaven as Special Town Attorney, a copy of which voucher is annexed hereto, made a part hereof, and designated EXHIBIT 5.

The Defendants, their agents, servants or employees failed to accurately report the information furnished them by VINCENT S. ROSSITTO, a member of the Executive Board of the Associated Musicians of Greater New York, Local 802 of the American Federation of Musicians, AFL-CIO, the Supervisor for Local 802 in Nassau and Suffolk Counties and the Supervisor of the Music Performance Trust Fund Committee, whose affidavit is annexed hereto, made a part hereof, and designated EXHIBIT 6.

- (g) An examination of the correspondence in the Plaintiffs files indicates that all communications between Local 802 and the Town of Brookhaven were from Mr. Rossitto to the Brookhaven Town Supervisor.
- (h) On May 1, 1968, the Plaintiff agreed to be interviewed by the Defendants' reporter Crowe in the absence of any other reporter.

22. That the foregoing statements contained in Defendants' daily newspaper, NEWSDAY, for May 6, 1968 (Volume 28, N° 207) were made in bad faith, without justification, in wanton and reckless disregard of Plaintiff's character and reputation and with intent to injure the Plaintiff professionally, and personally.

23. That the foregoing statements contained in Defendants' daily newspaper, NEWSDAY, for May 6, 1968 (Volume 28, N° 207) were motivated by actual malice.

24. That the Plaintiff, VICTOR JOHN YANNACONE, jr., is an attorney duly licensed to practice law in the State of New York, and admitted to practice before the Supreme Court of the United States of America and the United States District Courts for the Southern and Eastern District of New York.

That the Plaintiff is engaged in the general practice of law with special emphasis on trial and litigation, and the handling of workmen's compensation claims.

That the Plaintiff is a member of the American Trial Lawyers Association, the New York State Workmen's Compensation Bar Association, the New York State Trial Lawyers Association, the Suffolk County Bar Association, and the American Bar Association.

That at the present time the Plaintiff is acting as General Counsel for the ENVIRONMENTAL DEFENSE FUND, Incorporated, as a public service.

That at the present time, Plaintiff is acting as legal advisor to the Long Island Musicians Society, Inc., the Brookhaven Town Natural Resources Committee and the Brookhaven Town Economic Opportunity Council, as a public service.

That since 1961, the Plaintiff has been actively engaged in the trial of major litigation including:

1961 - Recovery of workmen's compensation benefits for occupational disease arising from exposure to ionizing radiation.

1962 - Recovery of damages to a racing sloop caused by the wake of a passing high speed ferry boat;

Restatement of the rights of the Freeholders & Commonalty of the Town of Brookhaven guaranteed by seventeenth century colonial charters, in and to the benefit, use and enjoyment of certain hitherto private beaches.

1963 - Incorporation of the Village of Port Jefferson.

1964 - Successful defense of the Port Jefferson Sentinel in an action for libel arising out of a topical, satirical poem published by the Sentinel.

Successful defense of Plaintiffs' counsel accused of libel for allegations contained in a complaint asserting that the Freeholders & Commonalty of the Town of Brookhaven had been denied the full benefit, use and enjoyment of the waters of Port Jefferson Harbor, the shores adjacent and the lands thereunder, by conspiracy among certain oil companies, sand and gravel interests and landowners.

1965 - Stay of enforcement of the Parade & Assembly Ordinance of the Town of Riverhead upon constitutional grounds, on behalf of the National Association for the Advancement of Colored People. (NAACP)

1966 - Successful defense of the rights of the Trustees of the Freeholders & Commonalty of the Town of Brookhaven, in and to the ownership and control of the lands under the waters of the Great South Bay, for the benefit, use and enjoyment of the Freeholders & Commonalty of the Town of Brookhaven.

- Injunction against the continued use of DDT by the Suffolk County Mosquito Control Commission.

1967 - Prevention of the proposed application of the biocide dieldrin in Berrien County, Michigan, by the United States Department of Agriculture and the Michigan Department of Agriculture.

1968 - Injunctions against the use of DDT for Dutch elm disease control by more than 43 cities in the State of Michigan.

25. That the Plaintiff, VICTOR JOHN YANNACONE, jr., has established and maintained a reputation for integrity in his personal and professional life.

26. That the foregoing statements published in Defendants' daily newspaper, NEWSDAY, for May 6, 1968 (Volume 28, N° 207) were defamatory in nature and exposed the Plaintiff and his family to ridicule, contempt, scorn, obloquy, and caused the Plaintiff and his family, serious, permanent and irreparable damage.

27. That by reason of the publication and distribution of the Defendants daily newspaper, NEWSDAY, for May 6, 1968, (Volume 28, N° 207), the reputation of the Plaintiff has been caused serious, permanent and irreparable damage.

28. That the Defendants, as publishers of the widely circulated daily newspaper, NEWSDAY, owe a duty to the public at large and the Plaintiff herein, and all others similarly situated, to report the news fairly and accurately.

29. That the Defendants, as publishers of the widely circulated daily newspaper, NEWSDAY, owe a duty to the public in general at large, and to the Plaintiff herein, and all others similarly situated, to take every available opportunity to ascertain all the facts with reference to a matter under investigation.

30. That the Defendants, as publishers of the widely circulated daily newspaper, NEWSDAY, owe a duty to the public at large, and to the Plaintiff herein and all others similarly situated, to accept any and all offers to furnish information relevant to matters under investigation, prior to publication.

31. That by reason of the Defendants, as publishers of the widely circulated daily newspaper, NEWSDAY, failure to ascertain all the available facts with respect to the relations among the Plaintiff, the Brookhaven Town Council on the Arts, the Town of Brookhaven, the Associated Musicians of Greater New York, and the Recording Industries Music Performance Trust Funds, and the misrepresentation of those facts actually in its possession and its failure to fairly and accurately report the substance of the information furnished by VINCENT S. ROSSITTO, in his official capacity as a member of the Executive Board of the Associated Musicians of Greater New York, supervising the activities of the union in Nassau and Suffolk Counties and Supervisor of the Music Performance Trust Funds Committee, the reputation of the Plaintiff has been caused serious, permanent and irreparable damage.

32. That by reason of the Plaintiff's professional occupation and standing in the community, the damage caused by the publication and distribution of the Defendants' daily newspaper, NEWSDAY, for May 6, 1968 (Volume 28, N° 207) can be mitigated only by a similar publication and distribution of the Defendants' daily newspaper, NEWSDAY, in the immediate future, containing a full and complete disclosure of the nature of the Plaintiff's relationship with the Brookhaven Town Council on the Arts, the Recording Industries Music Performance Trust Fund, the Associated Musicians of Greater New York, and the Town of Brookhaven, in accordance with the facts set forth in the affidavit of VINCENT S. ROSSITTO, a copy of which is annexed hereto, made a part hereof, and designated EXHIBIT 6., the text of Plaintiff's letter designated EXHIBIT 1, the text of Defendants' letter designated EXHIBIT 2, as well as the substance of the full and complete public disclosure made on April 25, 1968 and May 2, 1968, as set forth in the testimony offered at those times.

33. That there is no adequate remedy at law whereby the immediate serious, permanent and irreparable damage to the Plaintiff and his family resulting from the defamatory publications circulated by the Defendants through the widespread distribution of the daily newspaper NEWSDAY, for May 6, 1968 (Volume 28, N° 207)

WHEREFORE, the Plaintiff, VICTOR JOHN YANNAcone, jr., demands judgment of the Defendants, NEWSDAY, INC.,

DIRECTING said Defendants, NEWSDAY, INC., to immediately publish in their daily newspaper, NEWSDAY, a full, fair and complete statement of the nature of the Plaintiff's relationship with the Brookhaven Town Council on the Arts, the Recording Industries Music Performance Trust Funds, the Associated Musicians of Greater New York, and the Town of Brookhaven, in accordance with the facts set forth in the affidavit of VINCENT S. ROSSITTO, designated EXHIBIT 6, the Plaintiff's letter designated EXHIBIT 1, the Defendants' letter designated EXHIBIT 2, and the full and complete public disclosure made on April 25, 1968 and May 2, 1968, as set forth in the testimony offered at that time, utilizing the same type style and size and substantially the same format as that utilized in publishing the defamatory material contained in the issue of NEWSDAY for May 6, 1968 (Volume 28, N° 207);

TOGETHER with such other and further relief as to this Court shall seem just and proper under the circumstances;

ALL together with the costs and disbursements of this action.

DATED: Patchogue, New York
May 7, 1968

YANNAcone & YANNAcone
Attorneys for Plaintiff
Office & P.O. Address
39 Baker Street
P.O. Drawer 109
Patchogue, New York 11772
516 GROver 5-0231

EXHIBITS ANNEXED:

1. Letter dated April 27, 1968
from Plaintiff -to- Defendants
2. Letter dated May 2, 1968
from Defendants -to- Plaintiff
3. Letter dated August 26, 1967
from Plaintiff -to- Supervisor Barraud
Letter dated August 30, 1967
from Supervisor Barraud -to- Plaintiff
4. Statements of the Brookhaven Town Council on the Arts
with reference to the municipal music program
5. Claim voucher of Victor John Yannacone, jr.
6. Affidavit of VINCENT S. ROSSITTO, 3 pages
sworn to May 6, 1968

YANNAcone & YANNAcone

Attorneys and Counsellors at Law

VICTOR J. YANNAcone
VICTOR JOHN YANNAcone, JR.

39 BAKER STREET
PATCHOGUE, N. Y. 11772
AREA CODE 516 - GROVER 5-0231

April 27, 1968

NEWSDAY
Garden City,
New York 11530

ATTENTION Harry F. Guggenheim, President, Editor in Chief
Bill D. Moyers, Vice President, Publisher

re: Brookhaven Town Council on the Arts

Gentlemen:

In the hope that the actions of NEWSDAY reporters Crow and Donovan at our office on the evening of April 25, 1968, do not represent the policy of NEWSDAY, the undersigned, together with Maestro Earl Snow and James B. Colaneri, are still willing to answer any and all questions which NEWSDAY may care to ask, to such extent as we are individually or collectively knowledgeable concerning the Brookhaven Town Council on the Arts and our activities on its behalf. We are also prepared to permit the examination of any and all records which we possess relating to the activities of the Brookhaven Town Council on the Arts, and our activities as individuals in connection with the Council.

In view of the public service nature of the activities of the Brookhaven Town Council on the Arts, and its unique position in the cultural development of Brookhaven Town and Suffolk County, it was agreed in preliminary discussions with NEWSDAY reporter Greene on April 18, 1968, and NEWSDAY reporter Crow on April 23, 1968, that the activities of the Council would be discussed at length in a manner which would not compromise the non-political nature of the Council's activities.

To that end, it was agreed conference would be recorded, transcribed and certified by a Stenotype Reporter employed professionally as an official Court Reporter. We agreed to provide the Court Reporter and furnish copies of the transcript without charge to NEWSDAY, as well as make the transcript available to the general public for examination on request. It was also agreed, that, by way of introduction, the entire development of the Brookhaven Town Council on the Arts would be traced, as would all the activities of the Council since it was created. It was further agreed there would be no limit to the questions NEWSDAY might ask, and all would be answered without reservation to the extent of the individual and collective knowledge of the Council members present at the conference.

VICTOR J. YANNAcone
VICTOR JOHN YANNAcone, JR.

39 BAKER STREET
PATCHOGUE, N. Y. 11772

AREA CODE 516 GROSS 5-0231

NEWSDAY

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April 27, 1968

NEWSDAY reporter Greene indicated that the information had to be furnished during the week of April 22, 1968 to conform to NEWSDAY's publishing schedule, and the undersigned agreed to contact those members of the Council on the Arts who could contribute information and who were not elected officials or appointees of the Brookhaven Town political administration.

The undersigned contacted Maestro Snow and Mr. Colaneri who both agreed to attend, and Paul Olinkiewicz who said that he would not be able to attend. Mr. Colaneri contacted Robert Leahy and Mrs. Jane Des Grange who both said that they would be unable to attend.

In view of the commercial position of NEWSDAY, as one of three daily papers generally concerned with reporting the local activities of the Town of Brookhaven, and in view of the public record nature of all the material assembled by the undersigned, Maestro Snow and Mr. Colaneri, as representatives of the Brookhaven Town Council on the Arts, representatives of THE SUFFOLK SUN and the LONG ISLAND PRESS were also invited and advised that they too would be permitted to question at will with reference to the Brookhaven Town Council on the Arts.

When NEWSDAY reporters Crow and Donovan arrived, they were introduced to all present, the Reporter, Mr. Thoreen, an official reporter for the New York State Workmen's Compensation Board, Maestro Snow, Mr. Colaneri, SUFFOLK SUN reporter Bruce Reisman, and LONG ISLAND PRESS reporter Don Meyers.

NEWSDAY reporters Crow and Donovan stated that they would not participate in any discussion about the Brookhaven Town Council on the Arts at which any other representatives of the press were present, stating that they did not intend to reveal the results of their investigations for NEWSDAY to any other newspaper.

Recognizing the intensely competitive nature of the daily newspaper business, the undersigned immediately advised NEWSDAY reporters Crow and Donovan that no attempt would be made to question them or secure information as to any investigations they might have conducted, but that all the records of the Council on the Arts of the Town of Brookhaven had been assembled that were available to those representatives of the Council present (an accumulation of file folders approximately ten feet in length) and that the representatives of the Council were present not for the purpose of asking questions but answering them, and would stand ready, willing and able to answer any and all questions on which they had knowledge concerning the Brookhaven Town Council on the Arts.

YANNAcone & YANNAcone

Attorneys and Counsellors at Law

VICTOR J. YANNAcone
VICTOR JOHN YANNAcone, JR.

39 BAKER STREET
PATCHOGUE, N. Y. 11772

AREA CODE 516 - GROVER 5-0231
April 27, 1968

NEWSDAY

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NEWSDAY reporters Crow and Donovan said they were not interested in hearing any statements or speeches and would not participate in any conference in which any other representatives of the press would be present. The undersigned again offered to answer any questions about the Council on the Arts without any attempt to ascertain private NEWSDAY information, at which point, NEWSDAY reporters Crow and Donovan rudely left the meeting.

For more than two hours, Maestro Snow, Mr. Colaneri and the undersigned recounted the development and activities of the Brookhaven Town Council on the Arts. Any and all fees received by the undersigned, Maestro Snow or Mr. Colaneri for any services performed for the Town of Brookhaven were disclosed and the undersigned presented for examination his personal income tax returns from 1953 through 1967.

Any and all questions raised during the course of the conference by SUFFOLK SUN reporter Reisman and LONG ISLAND PRESS reporter Meyers were answered, and a full stenotype record of the conference was made. A certified copy of the transcript will be furnished to NEWSDAY without charge in accordance with our original agreement as soon as it is transcribed.

If NEWSDAY is sincerely interested in examining the activities of the Brookhaven Town Council on the Arts and is interested in hearing of those activities from those who were responsible for the actual presentation of the public performances and participated in the organization and development of the Brookhaven Town Council on the Arts, then the undersigned, Victor John Yannacone, jr., Maestro Earl Snow and James E. Colaneri, are still ready and willing to meet with representatives of NEWSDAY, in the public interest, to discuss the activities of the Brookhaven Town Council on the Arts. We are still willing to answer any and all questions relating to the Brookhaven Town Council on the Arts and our activities in connection therewith, so far as we are individually and collectively knowledgeable, provided that the full conference is recorded and transcribed by a Stenotype Reporter, professionally employed as an Official Court Reporter, and that the meeting is open to any of the representatives of the daily press serving Brookhaven Town.

In addition, as originally agreed with NEWSDAY reporter Greene, the undersigned is willing, at the same occasion, or a different occasion, subject to the same conditions of personal knowledge and full public disclosure, to review any and all work performed on behalf of the Town of Brookhaven since the undersigned's first assignment as a special Town Attorney in 1960, and continuing through this date.

YANNAcone & YANNAcone

Attorneys and Counsellors at Law

VICTOR J. YANNAcone
VICTOR JOHN YANNAcone, JR.

39 BAKER STREET
PATCHOGUE, N. Y. 11772

AREA CODE 516 - GROVER 5-0231

April 27, 1968

NEWSDAY

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Any and all files in the possession of the undersigned relating to services performed for the Town of Brookhaven are, of course, public records, and may be examined as public records by NEWSDAY reporters or any other interested resident of the Town of Brookhaven.

Very truly yours,

VICTOR JOHN YANNAcone, jr.

REGISTERED MAIL :
RETURN RECEIPT REQUESTED

cc: Maestro Earl Snow
Belle Terre, New York 11777

Mr. James E. Colaneri
Shoreham, New York 11786

THE SUFFOLK SUN
Attention: Mr. Bruce Reisman
Deer Park, New York 11729

THE LONG ISLAND PRESS
Attention: Mr. Don Meyers
92-24 168th Street, Jamaica, N.Y.

C
O
P
Y

Newsday

Garden City, Long Island, New York 11530, Telephone, Pioneer 1-1234

Harry F. Guggenheim, *President and Editor in Chief*

Al Marlens, *Managing Editor*

May 2nd
19 68

Mr. Victor J. Yannacone, Jr.
39 Baker Street
Post Office drawer 109
Patchogue, New York 11772

Dear Mr. Yannacone:

Your very long and self-serving letter to Mr. Guggenheim and Mr. Moyers has been turned over to me for reply. I will do my best to be briefer and more to the point than you were.

As I understand your letter it says:

- 1) You agreed to an interview under certain conditions.
- 2) When our reporters arrived as scheduled for the interview, they found you had unacceptably altered those conditions by having present reporters from two other newspapers.
- 3) They walked out.

Mr. Crowe and Mr. Donovan displayed the good judgment they have. It is unfortunate that the readers of this newspaper will not have the information that you and your colleagues might have provided, but that is clearly your choice and not ours.

Sincerely,



Al Marlens

AM:jb

cc: Mr. Bill D. Moyers
Maestro Earl Snow
Mr. James E. Colaneri
Mr. Bruce Reisman, The Suffolk Sun
Mr. Don Meyers, The Long Island Press

Town of Brookhaven ~

GRover 5-5500



Town Hall-Patchogue, Long Island, New York 11772

August 30, 1967

Mr. Victor John Yannacone, Jr.
Attorney at Law
39 Baker Street
Post Office Drawer 109
Patchogue, New York 11773

Dear Mr. Yannacone:

I received your letter concerning Brookhaven Town Attorneys Fees. I have taken the liberty to send your letter on to the Brookhaven Town Lawyers Club President, Mr. Melvin Jacoby for dicussion by their club.

I am sure that their executive committee will take your suggestions into consideration and come up with an answer to the items you listed in your letter of August 26th.

Very truly yours,

Charlie

Charles W. Barraud
Supervisor

CWB:GCD:lb

cc:Councilman R. Reid

Everett Dorfmann, Comptroller

Kurt Behme, Purchasing Director

YANNAKONE & YANNAKONE

Attorneys and Counselors at Law

VICTOR J. YANNAKONE
VICTOR JOHN YANNAKONE, Jr.

39 Baker Street -
Post Office Drawer 109
Patchogue, New York 11773
Area Code 516 GR 3-8231

August 26, 1967

Hon. Charles W. Barraud,
Brookhaven Town Supervisor
Brookhaven Town Hall
Patchogue, New York 11772

re: Brookhaven Town Attorneys
Fees

Dear Mr. Supervisor:

Since 1960, I have had the privilege of serving as a Special Town Attorney in a number of matters, through three different administrations. The matter of establishing an office of Town Attorney has been a recurrent problem during each of these years, becoming most vexing each election year.

Although it is rather obvious from an analysis of Town Attorney systems in other areas, that independent assignment generally leads to more independent legal advice, and in theory, is the finest method of obtaining the best legal advice and service for the Town, nevertheless, independent attorney assignment has a peculiar inherent difficulty - cost. Just what is a reasonable fee for a municipal assignment? It is in this area that the real difficulty arises. Most advocates of a formal Town Attorney's Office feel that it will cost the Town less for legal services, this belief arises because of a failure to be able to determine the cost of legal services on a per-service basis to the Town.

We offer this suggestion, suitable for immediate implementation and perhaps the ultimate solution to the problem:

1. Convene a meeting of all the attorneys who are now, or who have served as Special Town Attorneys in the past six years, since Brookhaven Town has become a first class Town.
2. Prepare a list of those legal services common to the daily administration of the Town, and by agreement and consensus establish a minimum fee schedule for such services.
3. Prepare a list of those legal services capable of a fixed fee determination and establish a minimum fee schedule for such services.
4. Review the services of an irregular and/or extraordinary nature that have been performed on occasion and which might be required in the future, and determine an agreed method of computing the fees for such services.
5. Establish a standard method of itemized billing for legal services acceptable to the attorneys and the Town and State fiscal authorities.
6. Review the departmental legal needs of the Town and define

YANNACONE & YANNACONE

Attorneys and Counselors at Law

Hon. Charles W. Barraud

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the exact nature of the general duties required of counsel serving each Town Department and an agreed basic retainer fee for such services. (This is the method now utilized by Smithtown with some success particularly with those department which have regular meetings such as the Zoning Board of Appeals and the Planning Board)

7. Prescribe the nature of the supporting evidence to be submitted by counsel when application is made for a fee in excess of the agreed minimum fee. (This is the method used with considerable success by the Courts in condemnation and negligence matters)

It is our opinion that this program would eliminate the constant embarrassment occasioned the legal profession by accusations made to a large extent by those seeking political advantage, and without any real awareness of the complexity of providing the best legal advice to a municipality as large and complex as Brookhaven Town. The attorneys serving the Town could then operate under a well defined and publicly known fee schedule without any criticism inspired by political ambition. It appears that this proposal would do a great deal to eliminate the claim that the use of independent Town Attorneys on a per-case or per-department basis is a form of political patronage.

We feel that the Brookhaven Town Lawyers Club is a ready vehicle to represent the profession in this matter, and since its executive structure is essentially bi-partisan, and it does represent most of the attorneys resident in Brookhaven Town, it should be a relatively easy matter to arrange the meeting and ultimately establish the fee schedule.

May I respectfully request, in the interests of maintaining a proper image of the Town and the legal profession, particularly those members of the profession who serve the Town, that you consider this proposal at the next Town Board meeting. Thank you very much for your cooperation.

Very truly yours,

YANNACONE & YANNACONE



Victor John Yannacone, Jr.

VJYjr:y
cc:

Councilman Robert E. Reid, C.P.A.
Comptroller Everett Dorfman, C.P.A.
Purchasing Director Kurt Behme

THE BROOKHAVEN TOWN COUNCIL ON THE ARTS

MUNICIPAL MUSIC PROGRAM

Recognizing that the arts require municipal support because they are essential to the ornament and happiness of human life and the prosperity of the State, the Town of Brookhaven has established a Council on the Arts

. . . to recommend ways to maintain and increase the cultural resources of the Town of Brookhaven

. . . to propose methods to encourage private initiative in the arts

. . . to advise and consult with State, Federal and Local agencies in order to coordinate existing cultural resources and facilities and to foster artistic and cultural efforts, aware that men and women need the arts to remind them of who they are and what they can become

. . . to conduct studies and make recommendations toward formulating ways to encourage creative activity, high standards and increased opportunities in the arts and develop greater appreciation and enjoyment of the arts by the residents.

At the present time in the Town of Brookhaven, professional musical activity does not exist on an organized level. Community Concerts during the winter with soloists on tour from around the Country, and the Stony Brook Concert series during the summer represent the only professional musical efforts in the Township. On the other hand, amateur musical productions abound. The North Shore Chorus and Symphony Orchestra present such ambitious works as the Verdi "Requiem" and Mendelssohn's "Elijah," while the Suffolk Symphony and other choral groups present programs of light classics. Most of these orchestras utilize the services of professional musicians who are residents of the area and whose major activities are in other fields such as teaching and industry.

The Town of Brookhaven is concerned with the professional area of artistic activity, particularly in the field of music. Vital as the amateurs are to our cultural health, the fact remains that it is on the professional artist that ultimate responsibility for the highest level of creative output and quality rests.

No man can produce great art on a part time basis while driving a taxicab, or working in a factory to support his family. The first concern of the Town in its government program is to find a way to put its musicians, actors, dancers, and other artists to work on a full time sustaining basis.

A recent survey has shown that more than fifty professional musicians, members of Local 802 of the American Federation of Musicians reside in the Town of Brookhaven. Most have never performed professional, in any program presented in the Town of Brookhaven, although some lend their talents to the amateur productions.

The Town of Brookhaven intends to establish a permanent professional chamber orchestra and concert band, employing a total of fifty professional musicians, with a weekly rehearsal schedule and between twenty and twenty-five concerts annually. Some of these concerts will be in conjunction with programs presented by the Town's amateur choral groups, augmented by professional soloists. The Town also intends to develop a program of Saturday young people's concerts in conjunction with the public school system to develop music appreciation among even the youngest children.

The Town is providing a Symphonic Shell for outdoor concerts and developing facilities for the proper presentation of concerts indoors during the winter months.

A copy of the budget indicates the extent of the Town's commitment to the support of professional musical activity in the Town of Brookhaven. The Town is seeking assistance on a matching basis from the Music Performance Trust Fund of the American Federation of Musicians and additional help from private sources, the New York State Council on the Arts and the National Council on the Arts.

The effort of the Town of Brookhaven represents the only attempt in the suburban metropolitan area to develop local professional musical talent at the present time. It represents, in our dizzy computerized age, a municipal effort to enhance what it is we have as human beings, and conserve what has been left to us. Although it is so easy to sit back and accumulate an endless string of evenings before the television set without wondering what it is all for, it would be profoundly disappointing if we found that the only comfort of our civilization was watching what we were.

STATE OF NEW YORK)
COUNTY OF SUFFOLK) ss:

VINCENT S. ROSSITTO, being duly sworn, deposes and says that he is a member of the Executive Board of the Associated Musicians of Greater New York, Local 802 of the American Federation of Musicians, AFL-CIO, and is the Supervisor of Nassau-Suffolk, and Supervisor of the Music Performance Trust Fund Committee.

That this affidavit is submitted in explanation of the relations among the Recording Industries Music Performance Trust Fund, the Associated Musicians of Greater New York and the Town of Brookhaven, Suffolk County, New York.

1. That the Recording Industries Music Performance Trust Fund (MPTF) was created as part of the settlement of the American Federation of Musicians strike against the recording industry in 1948. The Funds receive from recording companies a payment of a percentage of the total dollar volume of record sales at suggested retail price levels. The Funds are administered by an independent trustee named by the recording companies. In recent years the Trust Funds have received payments exceeding \$5 million a year, which must be expended currently. Since establishment of the Funds in 1949, the money has been used for single engagement free concerts in all parts of the country.

2. That the Town of Brookhaven made application to the MPTF in 1965 for 50% matching assistance to provide for free concerts utilizing professional symphony orchestra musicians at the Bald Hill Ski Bowl in Brookhaven Township, Suffolk County. These applications have been renewed each year since that time and grants have been made on a 50% matching basis for the years 1965, and 1966, and a 40% basis in 1967.

3. That all musicians are engaged by the Trustee of the Recording Industries Music Performance Trust Fund, on the recommendation of your deponent as Supervisor of MPTF for the Associated Musicians of Greater New York. Your deponent and the Trustee have the absolute right to veto the engagement of any musician recommended by any local conductor.

4. That the Brookhaven Town Council on the Arts was organized, so far as is known to your deponent, to foster the development of professional performing arts activities in Brookhaven Town and Suffolk County. To this end, local musicians were given preference in the organization of musical groups including the Brookhaven Town Symphony Orchestra and the Brookhaven Town All-Star Jazz Bands. Your deponent saw to it that all the musicians engaged for Trust Fund Concerts were of professional competence.

5. That the function of "Contractor" for performances co-sponsored by the Music Performance Trust Fund does not involve the actual engagement of musicians for any performance. It involves solely the maintenance of attendance records, performance schedules, and the furnishing of social security and withholding information to the Trustee of the MPTF, and to the co-sponsoring institution, in this case the Town of Brookhaven.

6. All negotiations among the Trustee and Local 802 with the Town of Brookhaven were conducted through the office of the Supervisor of the Town of Brookhaven, and not with the Brookhaven Town Council on the Arts, so far as your deponent was concerned.

7. That the Contractor for any musical organization is paid, by virtue of the regulations of Local 802, double union scale, and this amount is to compensate the contractor for the additional paper work, business management and personnel administration required.

8. That Victor John Yannacone, jr., has been a member of the Associated Musicians of Greater New York, and a professional musician since 1952, and to the personal knowledge of your deponent was instrumental in the organization and development of the Long Island Musicians Society, and in activities designed to promote the development of job opportunities for professional musicians in Suffolk and Nassau Counties.

9. That your deponent has personal knowledge of the efforts that Mr. Yannacone expended in development of MPTF support for the establishment of the Brookhaven Town Symphony Orchestra, which represents the first wholly professional symphony orchestra wholly organized and employed by a municipality anywhere within the jurisdiction of Local 802, and to the best of my knowledge anywhere in the United States.

10. That to the personal knowledge of your deponent Mr. Yannacone performed in each of the concerts given by the Brookhaven Town Symphony Orchestra and the Brookhaven Town Jazz All-Stars in 1965, 1966, and 1967, and acted as contractor in each case. That although Mr. Yannacone could have received the same pay for simply being a non-playing contractor, he performed his part in each concert as well.

11. That Mr. Yannacone was recommended as a player in the Brookhaven Town Symphony Orchestra and approved by your deponent, and Mr. Yannacone was recommended as a player in the Brookhaven Town Jazz All-Stars, and approved by your deponent. Your deponent further recommended Mr. Yannacone as Contractor for each of these concerts because he is familiar with Union payroll procedures having been a former employee of Local 802 while he was a student at Law School, and competent to deal with the complexities of payroll, and personnel administration.

12. That the Brookhaven Town Symphony Orchestra represents a major contribution to the cultural development of Suffolk County, and its success in bringing symphonic music to the people of Brookhaven Town is in large measure due to the efforts of Mr. Yannacone, who received, to the best of your deponent's knowledge, no remuneration other than that which would be received by any other member of Local 802 in a similar position.

13. That the foregoing represents the substance of a conversation had with a reporter from the Long Island daily newspaper NEWSDAY, a little over a month ago.

Vincent S. Rossitto

VINCENT S. ROSSITTO

Sworn to before me, this
6th day of May, 1968

Victor John Yannacone, Jr.

VICTOR JOHN YANNAKONE, JR.
NOTARY PUBLIC, State of New York
No. 52-9763630
Qualified in Suffolk County
Commission Expires March 30, 1970

TOWN OF BROOKHAVEN COUNCIL ON THE ARTS

THE BROOKHAVEN TOWNSHIP MUNICIPAL MUSIC PROGRAM

Recognizing that the arts require municipal support because they are essential to the ornament and happiness of human life, and the prosperity of the community, the Town of Brookhaven established a Council on the Arts as a permanent agency of Town government charged with

- recommending ways and means to develop the cultural resources of the Town of Brookhaven
- encouraging private initiative in the arts
- obtaining the assistance of Federal State and other governmental agencies, to foster the artistic and cultural efforts of the community
- fostering creative activity, maintaining high standards of performance, and increasing opportunities in the arts
- developing greater appreciation and enjoyment of the arts throughout Long Island, awakening among the residents an awareness that men and women need the arts to remind them of who they are and what they can become

The Town of Brookhaven is concerned with the professional area of artistic activity particularly in the field of symphonic music. Vital as amateur symphony orchestras are to our cultural health, the fact remains that it is on the professional artist that ultimate responsibility for the highest level of creative output and performing skill rests.