

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

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VICTOR JOHN YANNAcone, jr.,

Plaintiff,

-against-

ORDER TO SHOW CAUSE

NEWSDAY, INC.,

Defendants  
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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 9<sup>th</sup> 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<sup>o</sup>. 207) together with such other and further relief as to this Court shall seem just and proper under the circumstances; 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 10<sup>pm</sup> o'clock on the 7 day of May, 1968, shall be deemed good and sufficient service herein.

ENTER

GRANTED  
MAY 7 1968  
NORMAN E. KLIPP  
CLERK

*[Handwritten 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, N<sup>o</sup>. 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<sup>o</sup> 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