

1970

In Re: George E. Bridwell, Disciplinary Proceeding : Reply Brief of Appellant

Utah Supreme Court

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Recommended Citation

Reply Brief, *In Re: Bridwell*, No. 11546 (Utah Supreme Court, 1970).
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IN THE SUPREME COURT OF THE STATE OF UTAH

IN RE:

GEORGE E. BRIDWELL,
Disciplinary Proceeding

} Case No.
11546

REPLY BRIEF OF APPELLANT

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FILED
MAR 9 - 1970

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REPLY BRIEF OF APPELLANT

POINT I

THE BAR BRIEF DOES NOT EVEN ATTEMPT TO ANSWER OUR LEGAL CONTENTIONS AS TO DEPRIVATION OF SPEEDY TRIAL AND PROCEDURAL DUE PROCESS.

The Bar has not responded to our claim that Bridwell was denied his Constitutional right to a speedy trial. In this particular argument, we are not complaining about the lack of promptness of Wagner in complaining to the Bar. *We are complaining of the way*

in which the matter was handled by the Bar after complaint. The record shows nearly six years from complaint to trial. Our contention is that lawyers are entitled to a speedy trial and other Constitutional safeguards every bit as much as persons charged with crimes in the courts. The authorities which we cited in our brief are conclusive that lawyers are entitled to the Constitutional right of a speedy trial. Bridwell was deprived of this right and accordingly is entitled to have these proceedings dismissed. The Bar has not answered this charge.

The Bar also has not answered the charge we made in Point VI of our brief where it was pointed out that the Bar was allowed to add a new charge by amendment at the hearing on this matter. Bridwell was denied his Constitutional right of being notified of the charge and having an opportunity to defend it. The *Ruffalo* case, cited in our brief, has clearly held that lawyers are entitled to this Constitutional right and Bridwell was denied it in regard to the conflict of interest charge as to the building transaction. The Bar has failed to answer this assertion and this charge should be dismissed.

POINT II

**THE BAR BRIEF CONTAINS NUMEROUS
UNWARRANTED INFERENCES AND INNU-
ENDOS AND PAINTS A GROSSLY UNFAIR
PICTURE OF BRIDWELL.**

1. BRIDWELL DID NOT KEEP WAGNER OUT OF THE COUNTRY, WAGNER KEPT HIMSELF OUT.

On page 2, the Bar infers that Bridwell sent Wagner out of the country and kept him out for the next four years so that he could have a free hand in stripping the company of its assets. This inference is not only unsupported by the evidence but it demonstrates a form of cynicism that should have no place in a proceeding of this nature.

In the first place, it was Wagner's idea to leave the country. He had not even seen Bridwell before he left. He left because he had been questioned at great length by Internal Revenue agents and apparently decided that it was better for him to leave. After taking over the representation of Wagner and Precisa, Bridwell did advise Wagner of the possibility of criminal prosecution, such as any good lawyer would do. However, on many occasions he made it clear to Wagner that remaining out of the country was strictly his own decision.

For instance, in Bridwell's letter of February 27, 1961, Exhibit M, he states in part:

"As you know, there is a fraud penalty proposed for 1957, and in my opinion these matters should all be resolved before you risk return to the States. That is, if you do not care to run the risk of criminal prosecution. However, that is your sole choice. There is no assurance that you would be prosecuted, and on the other hand,

there is no assurance that you wouldn't be prosecuted. The choice remains now as always and it must be you who makes up your mind as to what you want to do insofar as returning to the States is concerned."

Again, in Bridwell's letter to Wagner of October 30, 1957, Exhibit 1,

"I do, however, have every reason to believe that I would be successful in compromise and dismissal of criminal action against you so that the doors of the U.S.A. will not be forever closed to you."

And again in Exhibit 2, January 17, 1958:

"At this point, I do not feel it advisable for you to return to the United States unless you wish to risk criminal prosecution. You know more about that than I do and if you have no unreported income I would recommend that you do return as I am not concerned about being able to prove facts. You answer that question for me and be your own guide."

"In order to completely and successfully defend you in the tax court and remove any possibility of criminal prosecution, it would be necessary to show by your bank records in Switzerland, your personal account, that you had so much money when you came to this country and you should be able to show a source from which that money came. You should also be able to show further deposits and explain their source and show payment of taxes thereon. If you can do that, I unequivocally recommend to you that you immediately come back to the United States."

Wagner himself states in his letter of June 13, 1958 to Bridwell, Exhibit I,

“As long as they hold fraud against me, I think I should not return.”

With the record in this state and with the presumption of innocence to which Bridwell is entitled, it is grossly unfair to infer that Bridwell kept Wagner out of the country to further some diabolical scheme of his own. In addition to this, Wagner's later conduct shows his propensity in running out when prosecution is possible.

2. WAGNER WAS NOT IN THE DARK AS TO THE FEES AND EXPENSES DRAWN BY BRIDWELL.

The Bar brief infers that Bridwell kept Wagner in the dark as to fees and expenses which were drawn. Again, this inference is unreasonable in the light of this record and in regard to the presumption of innocence which should be given to Bridwell.

The record is clear that the bank statements were being sent to the company office where there were two employees who owed their loyalty strictly to the company. We can certainly assume that Wagner received these bank statements. Bridwell did not and does not know of their whereabouts. In addition to this, Nellie Wagner was employed in this office during the period of time in question. Throughout the correspondence of Bridwell and Wagner one thing keeps appearing over

and over again, and that is that there was numerous correspondence between Wagner and his ex-wife, Nellie. Time and again it appears that Nellie has written to Wagner and informed him as to certain matters involved in the tax litigation. (Exhibits I, M, 4, 38, 39) In addition to this, it appears that Wagner corresponded with Nielson (Exhibit 5) whom he knew to be the accountant working on the case. In view of these facts plus the unchangeable fact of Wagner's personality as an inquisitive bookkeeper, we certainly cannot assume that Wagner just sat like a lump in Switzerland without making inquiries, without receiving information and being kept completely in the dark. This does not comport with the logic of this record.

3. BRIDWELL DID NOT WITHHOLD INFORMATION ABOUT THE BUILDING GOING INTO DEFAULT.

The Bar brief infers that Bridwell intentionally kept Wagner and the corporation in the dark as to the building going into default. This is simply not true. The brief states on page 3,

“In May, 1961, he informed Wagner for the first time of the disposition of the property which had been accomplished two years before (Exhibit 5). Wagner was furious (Exhibit 6). He thought the payments were still being made.”

The Bar's own Exhibit 40 proves the fallacy of the foregoing statements and shows how grossly unfair they

are. This is a letter dated *July 20, 1959* from Bridwell to Wagner, where Bridwell states:

"The payments on the building are not current for the reason that there is no point in my advancing money to pay on the building in the event that the tax cases cannot be won, as that money would just inure to the benefit of payment of taxes, and unless we obtain the testimony that you know we need, there is no point in throwing good money after bad." (Italics ours).

In light of this letter, can Wagner and the Bar really assert to this Court that Wagner was completely uninformed about the building? Not only as above stated, did Wagner have access to the bank statements and should have known of the condition of the bank balance, but in this letter, Bridwell specifically told him that the payments were not being kept current and that he advised against making any further payments.

Then, on *May 19, 1961*, Bridwell stated:

"Also, as you undoubtedly are aware, Mr. Hines foreclosed the contract on the Precisa building approximately two years ago." (Italics ours)

4. THE THREE CHECKS FLASHED ON BRIDWELL AT THE HEARING WERE DEPOSITED IN BRIDWELL'S ACCOUNT BECAUSE THERE WAS NO OTHER PLACE TO DEPOSIT THEM.

The Bar makes much of the charge of Bridwell

depositing the three checks in his own account. Yet, the Bar's brief states on pg. 3,

"By May, 1959 or earlier, the bank account was entirely depleted (Ex. 5." (Italics ours).

What the Bar failed to realize at that point was that if the account were inactive, closed or attached by the Government, Bridwell could not be expected to deposit the checks in the company account. The dates of these three checks are 12-16-58, 7-21-59 and 8-7-59. Just as Bridwell stated in his testimony, had the checks been shown to him while the facts were fresh, he would have had a satisfactory explanation. Is this giving Bridwell the benefit of the doubt to which he is entitled?

5. BRIDWELL KEPT WAGNER FULLY INFORMED OF THE PROGRESS OF THE TAX SETTLEMENTS.

The Bar brief infers that Bridwell kept Wagner in the dark as to the progress of the tax settlements. This inference is without basis in the record. Some four to five months prior to the correspondence pertaining to the September, 1961 trip to Switzerland, Bridwell, in a letter to Wagner dated *February 27, 1961*, Exhibit M, informs Wagner of the settlement:

"As yet, although all of the mechanics of the settlement of our tax cases through the year 1956 have been agreed to as per my previous correspondence to you, the formal documents have not been executed. However, I expect and be-

lieve that the reason for that is that the Government counsel in San Francisco are swamped with matters on the tax docket. I do not anticipate any trouble in having our agreement finally executed and adhered to by the Government. I do not, however, want to push the matter, but should let it go in its own time.” (Italics ours).

And again in Exhibit 5, dated *May* 19, 1961, Bridwell states:

“At that time the company had absolutely no money, of course, so one of my clients advanced the money, which was very risky, because as you will recall there was a great deficiency determined against the corporation. *However, that has been resolved and the corporation is no longer in jeopardy as pertains to any property it might own.*” (Italics ours)

These letters show complete revelation of facts on Bridwell's part with no desire to hide anything from Wagner. Bridwell informed Wagner the the mechanics of the settlement through the year 1956 had been worked out and that it was merely a matter of time until it was finished, with the year 1957 still unsettled. These were and are the true facts of the situation.

The Bar brief infers that Bridwell withheld this information and kept Wagner and the corporation in the dark, particularly in regard to its argument concerning Bridwell's second trip and the need therefor. The Bar has taken Wagner's word, the word of a layman unschooled in tax litigation. Bridwell's explanation of the necessity of the trip is believable and should

have been believed by the Bar. Bridwell testified that though the settlements had been completed through year 1956, Wagner's tax liability for the year 1957 was still unsettled and that accordingly things were in a fine state of balance, and that the entire matter could have been easily upset if the I.R.S. came to suspect that all of the representations which had been made to it were not entirely true. This was the reason why Bridwell wanted to have the voluminous affidavit, Exhibit E, signed by the corporation and Wagner, especially since he had represented to I.R.S. that it would be. That failing, he felt that he needed some further documentation, especially as to the building transaction to keep the Government satisfied. This reason is perfectly plausible and should have been believed over the unsupported word of a layman attempting to pass hindsight judgment on the lack of need for Bridwell to come to Switzerland.

Incidentally, the Bar brief infers that we are dealing with a small corporation and an orthopedic limb factory in Switzerland. The true fact is that the factory in Switzerland which produces calculating machines distributes its machines in every country in the world with the exception of Iron Curtain countries. (See par. 2, Exhibit E)

**6. PART OF THE REFUND OF PRECISA'S
MONEY WAS USED TO PAY WAGNER'S
PROPERTY TAX — THIS WAS A LOAN TO
WAGNER.**

The Bar brief has misstated the facts in regard to this item. To begin with, *the property on Redwood Road was owned by Wagner and not the corporation.* Next, the Bar brief infers that Wagner was entitled to the \$15,520.70 refund. *This money did not belong to Wagner but belonged to the corporation.* Bridwell used part of this money to pay the property tax on property owned by Wagner on Redwood Road and, therefore, Bridwell's statement concerning loaning the money to Wagner was entirely correct. The entire tenor of the Bar brief is to the effect that Wagner was and is the corporation. This fact is simply not so. Wagner owned less than one-fifth of the stock of the corporation. The corporation paid all but \$2,000 of the fees and costs, and the corporation has made no complaint concerning Bridwell's fees and costs. Wagner would have us believe that he was the corporation. This is a far different Wagner than the one who wrote the letter to Bridwell on October 22, 1957 while the heat was on. With characteristic chameleon-like agility, Wagner then stated, Exhibit G:

"That night I had a heart attack and a nervous condition and I thought it best to fly to Switzerland immediately to report to Mr. Jost in behalf of the factory and let Mr. Grothe take care of the tax revision. I am not a member of the Board for over a year. Two members of the Board are in Salt Lake, Mr. Grothe and Mr. Bruderer. They are the head and have all legal authorities to deal with these people and I will explain to the factory to get all those papers which we will need to solve that tax problem.

Mr. Grothe probably will call on you as soon as he feels that he is in need of legal help. I know you will give him your best assistance."

7. BRIDWELL DID NOT AND COULD NOT COERCE WAGNER, JOST AND PRECISA A.G. TO SIGN THE MINUTES AND POWER OF ATTORNEY.

The Bar brief blithely states that Bridwell coerced Wagner and Precisa A.G. to sign the minutes and general power of attorney. The brief also states that "Wagner and his colleagues signed the minutes prepared by Bridwell." These statements are not supported by the record.

To begin with, Wagner's "colleagues" were the principals of a giant Swiss corporation selling calculating machines in every country in the world except for the Iron Curtain countries. The corporation had its own legal counsel advising it. Wagner also had his own legal counsel advising him. After the discussion with Bridwell, according to Bridwell, Wagner accepted the full revelation which was made to him by Bridwell orally and in the accountings prepared by Nielson which were furnished to Wagner. Wagner not only accepted this report but helped by typing the minutes and general power of attorney and helped to convince the Board members of Presica A.G. that they should sign the minutes and general power of attorney.

It is absolutely ridiculous for the Bar to hold that Bridwell, going into a foreign country, could over-

whelm all of these people and their legal counsel. Even in Wagner's own self-serving letter of December 25, 1961, Wagner refutes his testimony in this proceeding that Bridwell was entitled to nothing more than \$17,000.00 for fees and costs. Even at that time, Wagner agreed to everything except additional fees for Bridwell. These additional fees were specifically authorized in the minutes. Bridwell had absolute authority under the general power of attorney to make the distribution that he did.

8. OTHER MISSTATEMENTS IN THE BAR BRIEF.

(a) Throughout the brief, the Bar refers to Frank Nielson as "his accountant." This is not entirely correct inasmuch as Nielson was working for both Wagner and the corporation and was an independent certified public accountant hired by Bridwell pursuant to the carte blanche authority which he mentioned at the outset that he would need. In addition, in Exhibit 5 we see that Wagner is corresponding directly with Nielson, as he was entitled to do, and it is inconceivable to us that a man of Wagner's business background could not correspond directly and ask Nielson any question he desired. For him to attempt to hoodwink the Bar of this State into believing that he was kept under a cloak of darkness is ridiculous.

(b) The Bar brief states that Bridwell withdrew the \$4,000 received from the Metropolitan Finance

Loan “ostensibly” to finance a trip for himself and his accountant. This statement is grossly unfair in view of the fact that the Bar knows that this trip was specifically authorized and necessary. It appears to us ridiculous that anyone could think for one minute that a lawyer and an accountant making a trip to Switzerland to work on the tax cases for a period of three weeks would be expected to advance their own money for the trip. It is certainly understandable for Bridwell to believe that he could use corporate money for this purpose and later account for it. This is what he did and his accounting was approved. The Bar brief complained that he has not furnished the Bar with receipts showing expenditures for meals, hotel bills and every other expense incurred on this trip. Our response is that the I.R.S. had to approve of these expenditures and did.

(c) The Bar brief states that Bridwell did not inform Wagner or Precisa of the receipt of the refund until Wagner’s return and that then he did not divulge its disbursement. This is in the face of direct evidence from Bridwell that he did divulge the disbursement to Wagner and that part of it was actually used for payment of real property taxes on property owned by Wagner. Certainly Wagner and the corporation knew that the refund was coming, and Bridwell was given the general power of attorney to deal with it in accordance with the minutes of the corporation. He did this by paying the accountant and the additional fees to himself and loaning the money to Wagner for the payment of Wagner’s property taxes.

Wagner has not shown us any more than one attempt to get information from Nielson. Certainly Nielson's door was open to him during all of this period of time and he would have given him a complete accounting at any time desired. Why must we assume that Nielson refused to give Wagner any information until October 1962? We assume that the information was available any time that Wagner wanted it.

(d) The Bar brief complains that Bridwell withheld information and did not keep Wagner informed. Yet, all of the correspondence introduced into evidence in this case, most of which was introduced by Wagner, shows Bridwell continually explaining to Wagner what was going on. Indeed, in the letter of July 18, 1961, Exhibit 7, in speaking of the necessity of making the trip to Switzerland, Bridwell states:

"There are many and important matters that I must discuss with the majority stockholders in Precisa Calculating Machine Company at the earliest possible time. Of course, I would also like to give you a run down on all that has happened to date."

The Bar brief infers that Bridwell did not reveal the progress of the tax settlements, and in Exhibit 17, the letter of October 27, 1961, Bridwell states:

"Bear in mind that the additional tax comes about by arbitrary agreement as being one-half of the fraud penalty due to those items as referred to in said letter. That was the concession I made in order to get the settlement and in

order to avoid having the label of fraud appear anyplace in the settlement, which of course, goes a long way toward preventing prosecution. If this is not clear to you, please read the September 11, 1961 letter again very carefully as the tax matters are related that pertain to you."

Incidentally, where is this letter of September 11, 1961? Wagner produced no such letter. The only conclusion we can draw from this failure in view of the fact that he produced every other letter that he felt to be important, was that this letter must have inured to the benefit of Bridwell. As we have stated in our brief, due to the unusual length of time for the prosecution of this matter and two changes of partnerships, Bridwell has been unable to find much of the correspondence in regard to this matter. However, we can only assume that the meticulous bookkeeper, Wagner, kept everything, and we ask, why did he not produce the letter of September 11, 1961 which contained a complete breakdown as to the tax settlements and a thorough explanation?

(e) Wagner would have us believe that not one word had been said about even the existence of a refund and yet, in Exhibit 16, Bridwell's letter of October 12, Bridwell speaks of the interest of I.R.S. in whether or not any of the refunded money would go to Switzerland. This indicates that all parties knew that a refund was coming and the lack of any inquiry at all by Precisa A.G., the majority stockholder, indicates that they felt

that this matter was entirely taken care of pursuant to the minutes and the general power of attorney.

We submit that the foregoing statements, inferences and innuendoes designed to prejudice this Court against Bridwell are not supported by the record of this case and are not in keeping with the burden of proof which the Bar has in this case to prove the charges by clear and convincing evidence. We submit that Bridwell, as any member of the Bar under attack by disgruntled ex-clients, is entitled to the benefit of the doubt and is entitled to a presumption of innocence. The Bar brief has not accorded him that right and is grossly unfair.

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