

**EXHIBIT 12**



REPUBLIC OF PANAMA  
THE JUDICIARY

SUPREME COURT OF JUSTICE – EN BANC

PANAMA, OCTOBER EIGHT (08) TWO THOUSAND EIGHT (2008).

**WHEREAS:**

The Supreme Court of Justice en banc entertains the appeal filed on Judgment No. 51 of November 26, 2007, issued by the Second Superior Court for the First Judicial District in the Habeas Corpus action filed by Atty. Carlos Eugenio Carrillo Gomila on behalf of **RICHARD SAM LEHMAN** against the Fourteenth Prosecutor's Office for the First Judicial Circuit of Panama.

**DECISION OF THE LOWER COURT**

The appealed judgment declares the arrest warrant issued by the Fourteenth Prosecutor's Office for the First Judicial District of Panama against **RICHARD SAM LEHMAN** is legal, accused of crimes against Honor (defamation and slander), the Administration of Justice and Against Property (Extortion) to the detriment of Hector Infante Bonilla inasmuch as it has been issued by a competent authority and through a reasoned, written decision which complies with the formalities and requirements stipulated by law for its decision.

**APPEAL**

The appellant states his disagreement with the decision of the lower court inasmuch as the reasons given by the Fourteenth Prosecutor's Office for the First Judicial Circuit of Panama in the Order dated October 2, 2007 does not explain how the alleged facts are subsumed in the extortion offense. In addition to the fact that the agency conducting the preliminary investigation, in the decision dated October 2, 2007, ordered the arrest of **RICHARD SAM LEHMAN** based on the alleged offenses against Honor and Defamation in legal proceedings, criminal offenses that by virtue of the punishment do not admit preventive detention.

He affirms that, furthermore, the arrest ordered by the Fourteenth Prosecutor's Office for the First Judicial Circuit of Panama is arbitrary given the fact that **RICHARD SAM LEHMAN** cannot be investigated or prosecuted in the Republic of Panama, but in the place where the alleged offense occurred, to wit, Florida, United States.

The appellant moves for censure, therefor, for reversal of Habeas Corpus Judgment No. 51 of November 26, 2007, issued by the Second Superior Court of Justice and that [the Court] declare the order for the preventive detention of **RICHARD SAM LEHMAN** is illegal.

**CASE BACKGROUND**

To better understand the criminal issue, we must remit ourselves to the background of the case as set forth hereunder:

On June 12, 2007, the law firm Infante & Perez Almillano filed a formal complaint against Mr. **RICHARD SAM LEHMAN** with the Fourteenth Prosecutor's Office for the First Judicial Circuit of Panama for defamation and slander in legal proceedings to the detriment of Mr. Hector Ernesto Infante.

One gleans from the contents of the complaint that Wilson Charles Lucom (R.I.P.), the husband of Hilda Piza, granted a will which is on record in Public Deed No. 6646 of June 20, 2005, modified in Public Deeds No. 11191 of October 20, 2005 and Public Deed 1131 of February 3, 2006; public deeds prepared at the Office of the Second Notary Public for the Circuit of Panama.

Therein, the said public deeds establish the appointment of Messrs. **RICHARD SAM LEHMAN**, Christopher Ruddy and Hilda Lucom as executors, and Fundacion Wilson C. Lucom as the heir.

In those same terms, the legatees are Messrs. Hilda Piza Lucom, Isabel Maria Clark, Robert Clark, Alexander Clark, Lanny Clark, Cassandra Clark, the Mayo Clinic of Rochester Minnesota, Melinda Isabel Arias de Morrice, Hilda Julie Arias de Abdelnour, Madeline Antonia Piza, Gilberto Arias Piza, Margarita del Carmen Arias Piza, Norah Garner, James Gibbons, Ann Smith, Walter Garner, Gaby Elkins, Christopher Ruddy, Dr. Peter Hibberd, Mario Boyd, Andrea Ospina, Tanya Itzel Ramos Herrera, Israel del Carmen Tejada Cuervo, Edilberto Soto and Fundacion End War Trus.

By way of Order No. 1025/173-06 of July 5, 2006, the Fourth Civil Court decrees the opening of the testamentary succession proceeding, and among other items, appoints Mr. **RICHARD SAM LEHMAN** as the executor of the said estate and the Administrative Law Office of Alvarez, Crosbie y Asociados as legal counsel for Mr. **SAM LEHMAN**.

From the complaint one gleans that the referenced offenses occurred on April 13, 2007, in depositions given by Mr. **RICHARD SAM LEHMAN** before the Circuit Court in and for the Fifteenth Judicial Circuit in Palm Beach County, Florida, United States of America, wherein he made defamatory and slanderous statements against Hector Ernesto Infante in the motion for the removal of the executor of the estate of Wilson Lucom (R.I.P.), which are before the Court for Palm

Beach County, Florida, United States of America.

Subsequent thereto, on May 4, 2007, **RICHARD SAM LEHMAN** sent an email to Atty. Hector Ernesto Infante, containing the translation into Spanish of his defamatory and slanderous statements.

By way of a proceeding dated August 29, 2007, the taking of the unsworn statement of **RICHARD SAM LEHMAN** was ordered as the alleged violator of legal provisions set forth in Chapter I, Title III in Book II of the Criminal Code and Chapter I, Title XI in Book II of the Criminal Code. Likewise, by way of a proceeding scheduled for September 7, 2007, the agency conducting the preliminary investigation ordered taking the unsworn statement of Mr. **RICHARD SAM LEHMAN** on finding he was involved in the alleged commission of a crime against property, set forth in Chapter III, Title IV in Book II of the Criminal Code, extortion. In a proceeding scheduled for September 10, 2007, the agency conducting the investigation ordered taking the unsworn statement of **RICHARD SAM LEHMAN** for his involvement in the offense stipulated in Title IV, Chapter IV in Book II of the Criminal Code and ordered the immediate arrest of Victor Crosbie, Paola Ospina de Tejada and **RICHARD SAM LEHMAN** and decreed a writ of ne exeat.

The Fourteenth Prosecutor's Office for the Circuit of Panama, in a proceeding dated October 2, 2007, ordered the preventive detention of Mr. **RICHARD SAM LEHMAN** for his involvement in crimes against honor, the administration of justice and against property to the detriment of Hector Ernesto Infante, basing the said order on the fact that the crime involved provides for a sentence of three (3) to five (5) years imprisonment, in addition to the fact that Mr. **LEHMAN** has been charged with crimes against honor and the administration of justice.

**DECISION OF THE FULL COURT**

It is incumbent on this Judicial Body to examine whether the preventive detention applied to **RICHARD SAM LEHMAN** is in keeping with the constitutional and legal premises for its decision.

In this legal endeavor, the Supreme Court of Justice en banc, reiterates that the Habeas Corpus is a constitutional action whose object is to protect the personal freedom of all individuals against arbitrary detentions or threats; that is, that the said constitutional guarantee specifically and concretely protects personal freedom from restrictions that are arbitrary and violate the Constitution and the Law when constitutional and legal presumptions are not met; that is, it has been imposed in a written order, issued by the competent authority, therein detailing the offense charged, the supporting evidence as well as the involvement of the accused in the attributed illegal conduct. Likewise, one must consider that the offense charged has a minimum sentence of four (4) years imprisonment and that the possibility of flight or ignoring the process exists, the danger of the destruction of evidence, or there is a risk of an attack against the life or health of another person or against himself, as required by Article 2140 of the Judicial Code.

Therefore, preventive detention applied for the crime of extortion concerns examining if the same has been shown in the preliminary investigation, therefore, the following elements are on record in the preliminary investigation:

1. The direct accusation by Attorney Hector Infante Bonilla as the person who defamed and slandered him before foreign judicial authorities.
2. A letter dated August 20, 2007, wherein **RICHARD SAM LEHMAN** demands that Attorney Hector Infante Bonilla resign as legal counsel for Hilda Lucom; elements that do not reveal any criminal violation inasmuch as in the crime of extortion, there must be an intent to profit and damage to assets, which are the subjective elements.

In addition thereto, the objective elements consist of the use of violence or intimidation; that the passive subject is forced to act in a way he does not want; consummation; conducting or omitting a legal act and coincidence, which elements are not shown in the preliminary investigation in the evidence provided thereto.

Another necessary premise which is not fulfilled to order detention concerns the minimum punishment applicable to the offense charged inasmuch as Article 2140 of the Judicial Code, modified by Law 27 of May 21, 2008, provides:

**Article 2140.** Preventive detention may be decreed when prosecuting a crime that has a minimum punishment of four years imprisonment and the crime and involvement of the accused have been shown through probative means that provide legal certainty of the said act, and furthermore there is a possibility of flight, ignoring the process, a danger evidence will be destroyed, or the person may attack the life or health of another person or himself.

If the accused is handicapped, the officer, additionally, will take the necessary precautions to protect his personal safety.

Exceptionally, when it involves a person whose permanent residence is not in the national territory, or in cases where in the judgment of the competent authority the life or personal integrity of a third party is threatened, preventive detention may be decreed even if the minimum sentence for the crime charged is less than four years imprisonment.

In this last case, at the request of the accused or his legal counsel, the measure shall be reviewed by the Judge presiding over the case, who without further proceedings shall decide if he confirms, revokes or modifies it.

From the foregoing article one gleans that preventive detention is applicable when the crime foresees a sentence of a minimum four (4) years imprisonment, a presumption that is not fulfilled inasmuch as the crime of extortion provides for a sentence of one (1) to four (4) years.

Another argument that must be refuted involves the application of criminal law in space. Article 9 in the Criminal Code provides the possibility of applying Panamanian criminal law to punishable acts committed abroad, provided these are committed against a Panamanian or his rights.

**Article 9.** Panamanian criminal law shall be applied for punishable acts committed overseas when:

1. ....
2. they are committed against a Panamanian or his rights.
3. ....
4. ....
5. ....

With regard thereto, the habeas corpus Court concludes that inasmuch as Hector Infante is a Panamanian national and argues the possible violation of his rights, criminal law is perfectly applicable wherefor the appellant's argument in respect of this aspect is unfounded.

The foregoing allow us, in the Court's judgment, to establish that the factual and legal bases in support of the preventive detention order against **RICHARD SAM LEHMAN** and the probative elements that thus far have been provided in the investigation are not sufficient to establish there is a crime against property as set forth in Chapter III, Title IV in Book II of the Criminal Code; based thereon, this full court of the Supreme Court of Justice overturns Habeas Corpus Judgment No. 51 of November 26, 2007, issued by the Second Superior Court for the First Judicial District in the Habeas Corpus action, in favor of Mr. **RICHARD SAM LEHMAN**, and declares the ordered preventive detention is illegal.

#### **DECISION OF THE FULL COURT**

Based on the foregoing, **THE SUPREME COURT OF JUSTICE EN BANC**, administering justice on behalf of the Republic and as vested by Law, **OVERTURNS** Habeas Corpus Judgment No. 51 of November 26, 2007, issued by the Second Superior Court for the First Judicial District



in the Habeas Corpus action in favor of Mr. **RICHARD SAM LEHMAN**; in its stead, **DECLARES ILLEGAL** the preventive detention of **RICHARD SAM LEHMAN**, if there is no other pending case.

**SERVE NOTICE.**

/s/ Illegible  
**HARLEY J. MITCHELL D.**

/s/ Illegible  
**GISELA AGURTO AYALA**

/s/ Illegible  
**ANIBAL SALAS CESPEDES**

/s/ Illegible  
**WINSTON SPADAFORA FRANCO**

/s/ Illegible  
**ADAN ARNULFO ARJONA**

/s/ Illegible  
**ESMERALDA AROSEMENA DE TROITIÑO**

/s/ Illegible  
**VICTOR L. BENAVIDES P.**

/s/ Illegible  
**ALBERTO GIGARRUISTA CORTEZ**

/s/ Illegible  
**LUIS MARIO CARRASCO**

/s/ Illegible  
**CARLOS H. CUESTAS G.**  
**SECRETARY GENERAL**