

Law Offices of Anthony Boskovich 28 North First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150

1 Anthony Boskovich, No.121198
Law Offices of Anthony Boskovich
2 28 N. First Street, 6th Floor
San Jose, California 95113-1210
3
4 408-286-5150
5 Attorney for defendant John Webster

ENDORSED
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KIRI TOBRE, CJD
SUPERIOR COURT OF CA.
CO. SANTA CLARA
BY Vonnie Halford DEPUTY

8 **IN THE SUPERIOR COURT OF THE STATE OF CAUFORNIA**
9 **COUNTY OF SANTA CLARA**

12 CITY OF SAN JOSE,)
13 *Plaintiff.*)
14 v.)
15 JOHN WEBSTER,)
Defendant.)
_____)

No. CV 815401
DEFENDANT'S OPPOSITION TO
MOTION FOR PROTECTIVE ORDER
Date: 13 June 2003
Time: 9:00 A.M.
Department: 3
Judge: Honorable Thomas Cain

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2 Weil & Brown, *Cal. Prac. Guide: Civ. Pro. Before Trial* (The Rutter Group 2002) 10

INTRODUCTION

1
2
3 John Webster believes, and has proof, that San Jose Police Lieutenant Brenda Herbert
4 falsified evidence against him in 1990. Since that time, Mr. Webster has attempted to get the
5 attention of the San Jose Police Department and the general public in the protected American
6 tradition of political debate and pamphleteering, including the use of a mobile billboard and a
7 website. Not once has Mr. Webster ever committed anything resembling a violent act, nor has
8 he made any threat of violence, but instead has engaged in nothing but protected and privileged
9 speech. In a further attempt to shield Lieutenant Herbert from public scrutiny, the City of San
10 Jose hereinafter “City”) brought this action to obtain a restraining order against Mr. Webster
11 and prevent him from petitioning his government about what is a most serious allegation in the
12 public interest. Now, after it brought this action, the City wants to further stymie Mr. Webster
13 and prevent him from deposing Lieutenant Herbert and from making a reasonable inquiry into
14 relevant material. One must wonder after reading their papers: what is it that they are afraid of?
15 It certainly is not reasonable to believe that the City is afraid of Mr. Webster being violent. The
16 truth is that the City is most afraid of the dissemination of a dissenting opinion, and this case is
17 nothing more than a tyrannical government attempting to silence a critic. This Court simply
18 must not allow this to occur; all that protects us from the tyranny is the open discussion of ideas
19 and disclosure of the truth, and civil discovery is a very valuable means of achieving that end.
20 The motion must be denied, and Lieutenant Herbert ordered to appear for deposition without
21 restriction.
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FACTUAL BACKGROUND¹

Defendant John Webster believes that San Jose Police Lieutenant Brenda Herbert entrapped him and falsified evidence in 1990, leading to Mr. Webster's conviction. According to the plaintiff, Mr. Webster first committed any act in furtherance of his belief in September 1994 when he had a conversation with San Jose Police Lieutenant Glenn McCourtie where he claimed that he had been wrongly arrested and prosecuted and that Brenda Herbert was primarily responsible. He was concerned for Ms. Herbert, and he immediately told her of the conversation.² (McCourtie Declaration) A year later, Mr. Webster went to the San Jose Police Department and dropped off a flyer offering a "reward" to San Jose Police Officers "[f]or information or actions leading to the arrest and conviction of the Officers who participated in fabricating evidence as part of an illegal entrapment scam run five years ago in San Jose. (Exhibit B to Declaration of Lieutenant Ken Ferguson) Five months later, in January 1996, Mr. Webster left a petition for San Jose police officers to sign asking for a grand jury investigation into police misconduct. (Paragraph 5 to Declaration of Ferguson)

Mr. Webster additionally has a website which contains the following material. A review of the website material shows that Mr. Webster complains of police and governmental corruption, and explains why. He requests the address of Lieutenant Herbert as follows:

A MAILER TO THE FAMILY - When they ignore messages to the Public. It is becoming obvious that the City of San Jose, the police Department, and Lt. Brenda Herbert herself couldn't care less what the public believes so I will be attempting to inform people in the Herbert and Wells family directly of Brenda's evil deeds. Hopefully there will be someone who receives it that will be able to apply family pressure on Lt. Herbert to "Do the right thing."

¹The "facts" are based upon the evidence tendered by the City of San Jose in its Petition for Injunction and supporting declarations. Defendant respectfully requests that this court take judicial notice of those pleadings on file in this matter pursuant to Evidence Code section 452, subdivision (d).

²It is important to note that nothing has happened to Lieutenant Herbert in the 8 1/2 years since that conversation.

1 If anyone reading this happens to know the address of someone living in Northern
2 California with either of those last names please send me the address by email at:
3 Jwebster@ix.netcomm.com. I will only use these addresses for sending the mailer.
(Exhibit A to Declaration of Ferguson [emphasis added])

4 Three years later, in July 1999) Mr. Webster sent to Lieutenant Herbert at the San Jose
5 Police Department a postcard which challenged her to a “duel to the truth!” It went on to explain:
6 “With polygraph tests being the weapon of choice.” (Exhibit C to Ferguson Declaration) Over a
7 year later, a campaign flyer for Mr. Webster, running as the Libertarian candidate for State Senate,
8 came to the police department where Mr. Webster again accused Lieutenant Herbert of official
9 misconduct. (Exhibit D to Ferguson Declaration)

10 Two years later, in June 2001, Lieutenant Herbert received a Libertarian newsletter once
11 again accusing her of falsifying evidence. (Exhibit E to Ferguson Declaration) Six months later, Mr.
12 Webster subpoenaed Lieutenant Herbert to testify in United States Tax Court, again to prove that
13 she had falsified evidence.

14 In August 2002, Mr. Webster began using a mobile billboard, again accusing Lieutenant
15 Herbert of falsifying evidence. This truck was driven around and parked near the San Jose Police
16 Department.

17 In February 2003, Mr. Webster allegedly went to the Herbert home twice and rang the
18 doorbell and knocked on the door. The door was not answered, and no other attempt to speak with
19 the residents was ever made. (See Declaration of Samuel Herbert³)

20 In the last act complained of; Mr. Webster wrote Lieutenant Herbert a letter and delivered
21 it to her place of work. (See Exhibit A to Declaration of Samuel Herbert) The letter begins that it
22 was written at the suggestion of Assistant San Jose Police Chief Thomas Wheatley. The letter
23 proclaims Mr. Webster's innocence and accuses her falsifying evidence. It explains why he acted
24 the way he did. He states that he believes that Lieutenant Herbert only "reluctantly" participated

25
26 ³Defendant respectfully objects to paragraph 4 of the Herbert declaration. It is
27 inadmissible hearsay, and should be stricken and not considered by the court for any purpose.
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1 in the fabrication. He states that "I can't prove that without getting you on the witness stand first."

2 He also states:

3 I see you as somewhat of a victim yourself; a victim of a system that punishes good
4 cops and rewards the police officers that are willing to sell their soul to get the
criminal.

5 He suggests that they write book together about the experience. He states that even if he gets a
6 monetary settlement due to the falsification of the evidence that it "will not buy my silence." There
7 is no mention of any violence of any kind. Enclosed with the letter was a flyer which mirrored the
8 website. Included was the following:

9 **Bad Cops turn good citizens into Terrorists.**

10 When Law Enforcement Agencies like the USPIS and Police like Lt. Brenda Herbert
11 hide or alter evidence to supposedly get the "bad guys" they will unavoidably also
12 destroy the lives of a few good citizens. Add to that our local court's willingness to
13 cover-up police wrong doing as long as it was done "with good intentions." The once
14 "good citizen" is left with no way to get a peaceful redress of grievances. When this
15 occurs repeatedly that "Government Gone Bad" loses its legitimacy and gives moral
justification for its overthrow by force. This is what was happening to cause the
16 Oklahoma bombing where hundreds of innocent people were killed as "collateral
17 damage" in an effort to send a message to the FBI and BATF for violating people's
18 rights.

16 **Is a Bad Cope like Lt. Brenda Herbert putting your freedom in danger?
Absolutely!**

17 If you have nay contact with Lt. Herbert or the San Jose police Department please
18 urge them to come clean and to admit to the hiding and alteration of evidence that
has occurred in the past.

19 Nowhere in the pamphlet was Lieutenant Herbert threatened with any sort of violence.
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22 **STANDARD FOR DISCOVERY**

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24 Discovery is allowed in all civil cases. (Code Civ. Proc. § 2017) The basic purpose of
25 discovery is to take the "game" element out of litigation and allow the parties to obtain sufficient
26 evidence to evaluate their case, prepare for trial, and resolve the dispute beforehand, if possible.
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1 (*Greyhound Corporation v. Superior Court (Clay)* (1961)56 Cal.2d 355, 376 [15 Cal.Rptr. 90, 99]) The right
2 to discovery is to be liberally construed so as to uphold the right to discovery wherever possible. (*Id.*
3 at 377-78 [15 Cal.Rptr. at 100]; *Emerson Electric Company v. Superior Court (Grayson)*(1997) 16 Cal.4th
4 1101, 1108 [68 Cal.Rptr.2d 883, 886]) A court is empowered to issue a protective order for whatever
5 “justice requires” to protect a party or deponent against “unwarranted annoyance, embarrassment
6 or oppression, or undue burden and expense.” (Code Civ. Proc. § 2025, subd. (i)) A party may seek
7 a protective order to limit discovery, and the may be granted only if “the burden, expense or
8 intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead
9 to the discovery of admissible evidence.” (Code Civ. Proc. § 2017, subd. (c)) The burden of showing
10 the protective order is necessary is on the moving party, here, the City. (*Emerson Electric, supra*, 16
11 Cal.4th at 1110 [68 Cal.Rptr.2d at 888])
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13

14 **ARGUMENT**

15
16 **A. MR. WEBSTER SHOULD BE ALLOWED TO TAKE THE**
17 **DEPOSITION OF BRENDA HERBERT BECAUSE ACTUAL**
18 **EMOTIONAL DISTRESS IS REQUIRED IF THE BASIS FOR THE**
19 **RESTRAINING ORDER IS STALKING.**

19 In its Petition for Injunction in this matter, plaintiff City of San Jose claims that Mr. Webster
20 “stalked” or “made a credible threat of violence against [Brenda Herbert]...” (Petition of Employer
21 for Injunction, filed 3 March 2003, ¶ 5) In its argument, however, the City has conveniently
22 neglected to inform the court of the stalking allegation, because it is this allegation that requires a
23 finding of actual emotional distress on the part of Brenda Herbert.

24 Code of Civil Procedure section 527.8 provides in relevant part:

- 25 (a) Any employer, whose employee has suffered unlawful violence or a credible threat
26 of violence from any individual, that can reasonably be construed to be carried out
27 or to have been carried out at the workplace, may seek a temporary restraining order

1 and an injunction on behalf of the employee prohibiting further unlawful violence
2 or threats of violence by that individual,

3 (b) For the purposes of this section:

4 (1) "Unlawful violence" is any assault or battery, or stalking as
5 prohibited in Section 646.9 of the Penal Code, but shall not include
6 lawful acts of self-defense or defense of others.

7 (Emphasis added)

8 Thus, for the stalking violation, reference must be made to Penal Code section 646.9,
9 which provides in relevant part:

10 (a) Any person who willfully, maliciously, and repeatedly follows or harasses another
11 person and who makes a credible threat with the intent to place that person in
12 reasonable fear for his or her safety, or the safety of his or her immediate family, is
13 guilty of the crime of stalking, ...

14 ...

15 (c) For the purposes of this section, "harasses" means a knowing and willful course
16 of conduct directed at a specific person that seriously alarms, annoys, torments, or
17 terrorizes the person, and that serves no legitimate purpose. This course of conduct
18 must be such as would cause a reasonable person to suffer substantial emotional
19 distress, and must actually cause substantial emotional distress to the person.

20 (f) For purposes of this section, "course of conduct" means a pattern of conduct
21 composed of a series of acts over a period of time, however short, evidencing a
22 continuity of purpose. Constitutionally protected activity not included within the
23 meaning of "course of conduct,"

24 (Emphasis added)

25 Thus, by the terms of the statute, in order for this Court to determine that there was stalking,
26 it must be determined if Mr. Webster harassed Lieutenant Herbert as defined by the Penal Code
27 section 646.9, and that section clearly requires that Lieutenant Herbert actually have suffered
28 emotional distress. It is critical for Mr. Webster to learn, therefore, whether Lieutenant Herbert has
actually suffered "substantial emotional distress" in order to defend against the City's petition. The
motion for protective order must be denied.

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B. THIS COURT MUST ALLOW MR. WEBSTER TO INQUIRE INTO HIS ALLEGATIONS OF ENTRAPMENT AND FALSIFICATION OF EVIDENCE BECAUSE THEY GO TO THE HEART OF HIS CONSTITUTIONAL AND STATUTORY DEFENSES.

A central defense claimed by Mr. Webster is that his conduct is protected by the Constitution as well as the litigation privilege of Civil Code section 47. For nearly 13 years Mr. Webster has petitioned the San Jose Police Department and engaged in traditional First Amendment activity in order to expose the corruption in that department, only to be met with deaf ears. He has always done so by peaceful means, and has not once ever committed anything that could even be claimed to be an act of violence. He has never threatened anything other than exposing police misconduct by the use of words.⁴ Now, he faces being prevented from going near all local government offices because the police department is located in our City and County civic centers, and being forbidden from going to the police department established to protect him from crime.

Code of Civil Procedure section 527.8 contains two critical safeguards:

(b) for the purposes of this section:

...

(2) "Credible threat of violence" is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety his or her immediate family, and that serves no legitimate purpose.

...

(c) Nothing in this section shall be construed to permit a court to issue a temporary restraining order or injunction prohibiting speech or other activities that are constitutionally protected, or otherwise protected by Section 527.3 or any other provision of law.

(Emphasis added)

⁴The City's claim of "veiled threats" is ludicrous. A "Duel to the Truth" with a polygraph as a weapon of choice is hardly a threat. Additionally, Mr. Webster's mentioning of the Oklahoma city bombing, when taken in context, is clearly not even remotely a threat. It is a very sad statement of fact that has been embraced by the mainstream in our society. (See, e.g., *McVeigh Letter Shows Anger Over Waco Fire*, San Jose. Mercury News (9 April 1997), p. 6A) The City attempts to inflate this political statement into some form of veiled threat of violence, but if that were the case, most political speech would be doomed.

1 Thus, whether Mr. Webster's conduct serves a legitimate purpose or is protected by law are clearly
2 relevant issues, and therefore he should be allowed to inquire into the underlying facts of his
3 allegations in order to prepare and present this defense. And, it should not be forgotten: Mr.
4 Webster did not institute these proceedings. Ms. Herbert's employer, plaintiff City, did. The City
5 simply cannot have it both ways: if it wants to pursue litigation in a judicial forum, Mr. Webster must
6 be allowed to fully prepare and present his defense. Fundamental and crucial rights are at stake, and
7 Mr. Webster must be allowed to conduct discovery to present his defense.

8 Exposing police corruption and misconduct certainly serves a legitimate purpose.

9 “It is our opinion that the plaintiff is within the 'public official' classification.
10 Although as a patrolman he is 'the lowest in rank of police officials' and would have slight
11 voice in setting departmental policies, his duties are peculiarly 'governmental' in character
12 and highly charged with the public interest. It is indisputable that law enforcement is a
13 primary function of local government and that the public has a far greater interest in the
14 qualifications and conduct of law enforcement officers, even at, and perhaps especially at, an
15 'on the street' level than in the qualifications and conduct of other comparably low-
16 ranking government employees performing more proprietary functions. The abuse of a
17 patrolman's office can have great potentiality for social harm; hence, public discussion and
18 public criticism directed towards the performance of that office cannot constitutionally
19 be inhibited by threat of prosecution under State libel laws.” (Emphasis added.)

20 (*Gomes v. Fried* (1982) 136 Cal.App.3d 924, 933 [186 CalRptr. 605, 610], quoting *Coursey v. Greater
21 Niles Township Publishing Corporation* (1968) 40 Ill.2d 257 [239 N.E.2d 837, 841])

22 This case is no different. Mr. Webster's efforts are clearly designed to expose police
23 misconduct, and this state's harassment statutes, simply cannot be used to prevent this fundamentally
24 protected speech.

25 It is fundamental that the government may not prosecute a citizen because he complains
26 against the police.

27 The Government may not prosecute for the purpose of deterring people from
28 exercising their right to protest official misconduct and petition for redress of
grievances. Moreover, a prosecution under such circumstances would be barred by
the equal protection clause, since the Government employs an impermissible
classification when it punishes those who complain against police misconduct and
those who do not.

(*Dixon v. District of Columbia* (D.C. Cir. 1968) 394 F.2d 966, 968 [footnotes omitted])

Additionally, Mr. Webster's conduct is protected under the litigation privilege of Civil code
section 4.7. The litigation privilege is absolute; it applies, if at all, regardless whether the

1 communication was made with malice or intent to harm. (*Wise v. Thrifty Payless, inc.* (2000) 83
2 Cal.App.4th 1296, 1302 [100 Cal.Rptr. 2d 437, 441]) Put another way, application of the privilege
3 does not depend upon the publisher's "motives, morals, ethics, or intent." (*Silberg v. Anderson* (1990)
4 50 Cal.3d 205, 220 [266 Cal.Rptr. 638, 647]) Although originally applied only to defamation
5 actions, the privilege has been extended to *any* communication, not just a publication, having "some
6 relation" to a judicial proceeding, and to all causes of action other than malicious prosecution.
7 (*Rubin v. Green* (1993) 4 Cal.4th 1187, 1193-94 [17 Cal.Rptr.2d 828, 831-32]) Nor does it help that
8 there was no litigation pending or contemplated by Mr. Webster when he spoke. The privilege is
9 given broad application. It applies to statement made outside pending or contemplated litigation
10 as well as to orthodox petitions for redress of grievances. (*Wise v. Thrifty Payless, Inc.* (2000) 83
11 Cal.App.4th 1296, 1303 [100 Cal.Rptr. 2d 437, 442])

12 There can be no question that Mr. Webster was engaging in protected speech - petitioning
13 the government and attempting to influence public opinion by pamphleteering. -- in every step he
14 took and about which the City complains. He spoke with police command personnel. He drove a
15 mobile billboard around the police department in an attempt to publicize his grievance. He wrote
16 police officers asking that they come forward in exposing corruption. He informed the public
17 through his pamphlets, brochure, and articles, as well as his website, that Brenda Herbert falsified
18 evidence and perjured herself. He has attempted to alert her family and neighbors that she has
19 engaged in this activity, all in the hopes that she will admit her misconduct. All of this was done
20 peacefully, respectfully, and in traditional manners. But, as the City makes very clear, Brenda
21 Herbert has never denied the allegations, nor has she confirmed them. It is a potential position that
22 the City might raise that Brenda Herbert did not engage in the conduct, and that Mr. Webster's
23 claims are outrageous and serve absolutely no legitimate purpose, and are not constitutionally
24 protected. Because of this, Mr. Webster is entitled to inquire into this potential position that may
25 be taken by the City, and it is simply irrelevant that the City might not raise that issue. A party
26 cannot "prevent discovery by stipulating to whatever issue is involved. While such stipulation may
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1 render evidence on the issue inadmissible at trial, that is *not* the test for discovery purposes.” (2 Weil
2 & Brown, *Cal. Prac. Guide, Civ. Pro. Before Trial* (The Rutter Group 2002), § 8.70) The only person that
3 can testify as to whether Brenda Herbert engaged in misconduct is Ms. Herbert herself, and she is the
4 only one who can testify as to whether what Mr. Webster complains of has any factual basis. In
5 order to present his defense, Mr. Webster must show that his conduct served a legitimate purpose,
6 and Ms. Herbert's testimony regarding entrapment and falsification of evidence is critical to this
7 defense.

8 Lieutenant Herbert's testimony regarding the allegations that she falsified evidence is also
9 relevant to the issue of whether there was a credible threat of violence. The test for a true threat,
10 which is not protected speech under the First Amendment, is "whether a reasonable person would
11 foresee that the statement would be interpreted by those to whom the maker communicates the
12 statement as a serious expression of intent to harm or assault. (*In re Steven S.* (1994) 25 Cal.App.4th
13 598, 608 [31 Cal.Rptr.2d 644, 648]; see also *In re M..S.* (1995) 10 Cal.4th 698, 710 [42 Cal.Rptr.2d
14 355, 361] [“When a reasonable person would foresee that the context and import of the words will
15 cause the listener to believe he or she will be subjected to physical violence, the threat falls outside
16 First Amendment protection.”]) In assessing whether a statement is a credible threat of violence, “the
17 entire factual context, including the surrounding events, and the reaction of the listeners must be
18 considered." (*People v. Falck* (1997) 52 Cal.App.4th 287, 298 [60 Cal.Rptr.2d 624, 630] [emphasis
19 added]) Certainly Lieutenant Herbert's involvement in the alleged entrapment and falsification of
20 evidence are relevant and necessary as “surrounding events” that led up to the statements allegedly
21 made by John Webster.

22 Thus, facts regarding Brenda Herbert's investigation of John Webster are relevant and
23 discoverable, and the motion must be denied,

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1 **C. BRENDA HERBERT MUST BE REQUIRED TO PERSONALLY**
2 **ATTEND HER DEPOSITION, AND JOHN WEBSTER MUST BE**
3 **ALLOWED TO BE PRESENT.**

4 The City contends that the deposition must not be allowed to go forward because it is
5 calculated to harass Brenda Herbert, and, in the alternative, that she should not be required to
6 attend and sit face-to-face with Mr. Webster. These are curious arguments.

7 First, Mr. Webster did not initiate the proceedings, so it is puzzling how the City can seriously
8 complain that he wants to examine Ms. Herbert when it is the City hailed him into Court attempting
9 to restrain his important rights. As the above argument makes clear, Brenda Herbert's testimony
10 is critical to Mr. Webster's defense. If the City wants to prevent her from being confronted and
11 questioned, their remedy is simple: dismiss the proceedings.

12 The City also is duplicitous when it asks that Ms. Herbert be allowed to appear by telephone
13 or that Mr. Webster not be allowed to attend. The City makes much of the fact that Brenda Herbert
14 has not supplied a declaration. (Memorandum of Points and Authorities, p.7:1-3, 11-13) The City
15 seems to be arguing in its papers, however, that the deposition of Ms. Herbert would simply be too
16 stressful for her, and compare her to a child witness in a molestation case. Please. Brenda Herbert is
17 a 28 year police officer in a command position, not a young child who was raped by a caregiver.
18 There is no evidence that Brenda Herbert has any qualms whatsoever about testifying in front of
19 John Webster, and Mr. Webster's presence is critical to assist counsel in the deposition. Instead, it is
20 crystal clear that the City is doing everything in its power to prevent Mr. Webster from questioning
21 the key witness in this entire matter.

22 The City's argument that Mr. Webster should be prevented from being present during the
23 deposition because this Court has issued a restraining order is as dangerous as it is ludicrous. The
24 restraining order was issued ex parte, and Mr. Webster had no opportunity to defend against it. The
25 City's argument is, therefore, that because it got the remedy it wanted based upon its version of the
26 facts that it can preclude Mr. Webster from exercising his statutory right. A comparison of the actual
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1 facts to the City's spin in its Petition shows the danger. In its papers, the City proclaims that Mr.
2 Webster's challenge to a "Duel to the Truth" is a threat. The City omitted, however, that the
3 weapon of choice was a polygraph. The City complains that Mr. Webster offered some sort of
4 reward on Brenda Herbert's head, but quietly refuses to acknowledge that it was a request for
5 information from San Jose Police Officers that would lead to a criminal conviction for entrapment
6 and police misconduct, much same as used by law enforcement. The City claims that it is terrifying
7 that Mr. Webster asked for addresses of people, but omits that Mr. Webster made clear that he
8 would only use the information to mail pamphlets, which the Declaration of Officer Alford makes
9 clear is all that happened. The City, in it points and authorities for this motion, embellished the
10 incident of Mr. Webster coming to her home with distortions that Mr. Webster knocked "loudly...
11 for some time" and "persistently". Reference to the true facts contained in Mr. Herbert's declaration
12 prove otherwise. Mr. Webster came to the door and rang the bell. When nobody came to the door,
13 he simply knocked. Isn't that what we all do? Mr. Webster should not be prevented from assisting
14 in the defense of his case because the City chose to spin the facts to get an ex parte order.

15 The City is correct, however, when it states that a purpose for the deposition is to confront
16 Brenda Herbert, but that is the purpose of all examinations, either in the courtroom or in the
17 deposition room. Mr. Webster has not asked to pay tens of thousands of dollars to fend off a
18 government that wants to silence him, and indeed has asked all along to confront these issues in a
19 judicial forum. The City, and Ms. Herbert, cannot have it both ways. If they wish to avoid the
20 judicial forum and its established processes they should not file lawsuits. Brenda Herbert must have
21 knowledge of this case, and most certainly must have concurred in its filing. She must present herself
22 for deposition so that Mr. Webster can adequately prepare his defense.

23 In sum, the City has within its possession the absolute power to prevent the deposition of
24 Brenda Herbert; it can dismiss this action. Absent that, there are no grounds for a protective order.
25 The motion must be denied.
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1 **CONCLUSION**

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3 If nothing else is clear, it is obvious that the City of San Jose desires to squelch the dissent of

4 John Webster, and also to prevent him from exposing in a judicial forum what he believes to be the

5 truth. They seek to shield the wrongdoer from any scrutiny whatsoever. They accuse Mr. Webster

6 of making violent threats when he uses strong political rhetoric. Sixty years ago, Justice Robert

7 Jackson wrote:

8 As governmental pressure toward unity becomes greater, so strife becomes more

9 bitter as to whose unity it shall be.... Ultimate futility of such attempts to compel

10 coherence is the lesson of every such effort from the Roman drive to stamp out

11 Christianity as a disturber of its pagan unity, the Inquisition, as a means to religious

12 and dynastic unity, the Siberian exiles as a means to Russian unity, down to the fast

13 failing efforts of our present totalitarian enemies. Those who begin coercive

14 elimination of dissent soon find themselves exterminating dissenters. Compulsory

15 unification of opinion achieves only the unanimity of the graveyard.

16 (*West Virginia State Board of Education V. Barnette* (1943) 319 U.S. 624, 641 [63 S.Ct. 1178, 1186-87])

17 If John Webster had uttered these words, would it have been a threat of violence? In the

18 City's view, the answer is yes. But Justice Jackson's words, even though forceful, are only strong

19 statements of truth. The City has chosen to attempt to coercively eliminate a dissenter, and

20 American justice requires that the dissenter be allowed to mount a vigorous defense and discover the

21 truth. The motion must be denied,

22 Dated: 3 June 2003

23 -- signature of Anthony Boskovich --

24 _____

25 Anthony Boskovich

26 Attorney for defendant John Webster

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Law Offices of Anthony Boskovich 28 North First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150