



1 SAN JOSE, CALIFORNIA

FRIDAY, JANUARY 28, 2005

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3

PROCEEDINGS

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THE COURT: NUMBER 7, CITY OF SAN JOSE AND BRENDA

5

HERBERT VERSUS JOHN WEBSTER.

6

MS. LEE: GOOD MORNING, YOUR HONOR. SANDRA LEE FOR

7

THE CITY OF SAN JOSE FOR BRENDA HERBERT.

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THE COURT: YOU'RE MR. WEBSTER?

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THE DEFENDANT: YES, I AM JOHN WEBSTER.

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THE COURT: WE HAVE MISS HERBERT HERE?

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MS. LEE: MISS HERBERT IS NOT IN THE COURTROOM

12

PRESENTLY. IT WAS OUR UNDERSTANDING THAT JUDGE CAIN HAD

13

WANTED TO TREAT THAT AS A MODIFICATION OF AN EXISTING

14

RESTRAINING ORDER.

15

THE COURT: AND YOU'RE REPRESENTING TO THE COURT

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THAT EVERYTHING STATED IN THE DECLARATION BY MISS HERBERT IS

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TRUE AND CORRECT?

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MS. LEE: YES, YOUR HONOR.

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THE DEFENDANT: I HAVEN'T SEEN THIS, BY THE WAY.

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THE COURT: PARDON?

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THE DEFENDANT: I HAVE NOT SEEN THIS DECLARATION.

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THE COURT: WEREN'T YOU SERVED WITH THE PAPERS? IT

23

SAYS THAT YOU WERE SERVED.

24

THE DEFENDANT: I HAVE FOUR PIECES OF A STANDARD

25

FORM.

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THE COURT: LET ME SEE WHAT I HAVE.

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MS. LEE: YOUR HONOR, IT'S MY UNDERSTANDING THAT

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ALL OF THE PAPERWORK WAS SERVED ON MR. WEBSTER, AND THERE IS

1 A PROOF OF SERVICE ON FILE.

2 THE COURT: YES. THERE IS A DECLARATION WHICH IS  
3 AN ATTACHMENT CONSISTING OF FOUR PAGES AND A NUMBER OF  
4 EXHIBITS.

5 MISS LEE, APPARENTLY THE CLERK POINTED OUT TO ME,  
6 AND I DIDN'T NOTICE WHEN I READ THE PAPERWORK, MISS HERBERT  
7 DOES HAVE A RESTRAINING ORDER WHEN IT WAS GRANTED IN FAVOR OF  
8 THE CITY OF SAN JOSE. IF SHE WANTS IT TO CONTINUE TO HER  
9 PERSONALLY -- BUT IT DOES EXIST FOR HER PERSONALLY.

10 MS. LEE: YES, YOUR HONOR. THE CITY ALSO WANTED TO  
11 CLARIFY THE RESTRAINING ORDER TO APPLY TO INDIRECT CONTACTS  
12 WITH LT. HERBERT AS WELL.

13 THE COURT: YOU MEAN GET SOMETHING THAT WASN'T  
14 GRANTED IN THE ORIGINAL RESTRAINING ORDER?

15 MS. LEE: WELL, WE BELIEVE, YOUR HONOR, THAT IT WAS  
16 ANTICIPATED BY THE ORIGINAL RESTRAINING ORDER. HOWEVER,  
17 MR. WEBSTER'S CONDUCT SUBSEQUENT TO THE RESTRAINING ORDER'S  
18 ISSUANCE HAVE RAISED SOME QUESTION AS TO, YOU KNOW, THE  
19 ADEQUACY OF THE RESTRAINING ORDER, WHETHER IT DID INDEED  
20 ENCOMPASS INDIRECT CONTACTS. THE CITY BELIEVES THAT IT  
21 SHOULD AND DOES ENCOMPASS INDIRECT CONTACTS; HOWEVER, WE DID  
22 WANT CLARIFICATION FROM THE COURT IN THAT RESPECT.

23 THE COURT: SO YOU'RE NOT ASKING FOR A NEW  
24 RESTRAINING ORDER, JUST ASKING FOR CLARIFICATION OF THE  
25 EXISTING ORDER?

26 MS. LEE: WELL, WE HAD -- IT WAS MY UNDERSTANDING  
27 THAT JUDGE CAIN WAS TREATING IT AS A MODIFICATION, AND THE  
28 CITY WOULD ACQUIESCE IN THAT.

1 (OFF-THE-RECORD DISCUSSION BETWEEN THE COURTROOM CLERK  
2 AND THE JUDGE.)

3 THE COURT: APPARENTLY, THE CLERK WHO WAS WITH  
4 JUDGE CAIN AT THAT TIME SAID HE SPENT A HALF HOUR EXPLAINING  
5 TO THE CITY ATTORNEY OR WHOEVER WAS HERE THAT IT'S IN EFFECT  
6 FOR HER AS AN INDIVIDUAL, AND IF YOU WANT IT TO READ TO  
7 INCLUDE ANY INDIRECT CONTACT SUCH AS E-MAIL OR PUBLICATION  
8 AND MATERIALS, YOU CAN DO THAT, BUT THAT IS ALL --  
9 THE DEFENDANT: YOUR HONOR --

10 MS. FRIMANN: I'M SORRY, YOUR HONOR. NORA FRIMANN  
11 APPEARING ALSO ON BEHALF OF -- I'M CHIEF TRIAL ATTORNEY FOR  
12 THE CITY OF SAN JOSE AND WAS INVOLVED IN GETTING THE ORIGINAL  
13 RESTRAINING ORDER. WHAT OCCURRED IS THAT WE HAVE A SITUATION  
14 WHERE -- AND IT'S DETAILED IN THE APPLICATION TO THE COURT --  
15 MR. WEBSTER HAS CONTACTED -- SENT LETTERS TO LT. HERBERT'S  
16 NEIGHBORS ASKING THEM TO CONTACT HER. HE'S HAD CONTACT WITH  
17 THE POLICE DEPARTMENT THROUGH THE CYBER COPS AND ASKING OTHER  
18 POLICE OFFICERS TO CONTACT HER, AND IT'S A CONTINUING  
19 PATTERN.

20 THE COURT: DOESN'T THE RESTRAINING ORDER COVER  
21 THAT, THE ONE THAT EXISTS?

22 MS. FRIMANN: IT WASN'T ENTIRELY CLEAR TO THE CITY  
23 THAT IT DID. THAT WAS THE CLARIFICATION. WE APPLIED FOR A  
24 PERSONAL ORDER, AND JUDGE CAIN, IN PROVIDING THE NOTIFICATION  
25 IN THE NOTICE TO MR. WEBSTER THAT WE HAD TO SERVE, CHANGED IT  
26 AND INDICATED THAT IT WAS GOING TO BE A MODIFICATION OF THE  
27 EXISTING ORDER. SO WHAT WE'RE SEEKING AT THIS POINT IS  
28 CLARIFICATION OF THE EXISTING ORDER THAT PROHIBITS

1 MR. WEBSTER FROM HAVING OTHER PEOPLE CONTACT AND HARASS  
2 LT. HERBERT.

3 THE COURT: ALL RIGHT.

4 THE DEFENDANT: YOUR HONOR, I WOULD LIKE TO SPEAK  
5 TO THAT.

6 THE COURT: GO AHEAD, MR. WEBSTER.

7 THE DEFENDANT: FIRST OF ALL, THE ORIGINAL  
8 RESTRAINING ORDER WAS ESSENTIALLY -- THIS IS TO ESSENTIALLY  
9 SHUT DOWN MY FREE SPEECH RIGHTS.

10 THE COURT: I'M NOT GOING TO CHANGE THAT.

11 THE DEFENDANT: RIGHT. THAT'S CORRECT. OKAY. THE  
12 POINT WAS -- IS THAT NOWHERE DID I ASK EITHER HER NEIGHBORS  
13 OR OTHER POLICE OFFICERS TO CONTACT HER. FOR EXAMPLE, IN THE  
14 LETTER THAT I SENT TO THE NEIGHBORS I SAID SPECIFICALLY -- I  
15 SAID IT IS ABSOLUTELY IMPERATIVE THAT YOU DO NOTHING THAT  
16 COULD BE CONSTRUED AS HARASSMENT OF LT. HERBERT.

17 ALSO, IN THE CYBER COP COMMUNICATIONS, BASICALLY  
18 WHAT I'M DOING IS ESSENTIALLY MAKING SURE EVERYBODY KNOWS  
19 THAT LT. HERBERT COMMITTED SOME VERY SERIOUS CRIMES A WHILE  
20 BACK, AND THAT IF SHE DOESN'T LIKE ME MAKING THOSE  
21 ACCUSATIONS TO HER FRIENDS AND CO-WORKERS, THEN SHE NEEDS TO  
22 HIT ME WITH A SUIT OF DEFAMATION OF CHARACTER.

23 THE COURT: THE COURT DOESN'T LIKE IT EITHER. THAT  
24 IS WHERE THERE IS A RESTRAINING ORDER AGAINST YOU, AND SHE  
25 PROCEEDED PROPERLY TO HAVE YOU STOP THAT. APPARENTLY WE'RE  
26 NOT GETTING THROUGH TO YOU.

27 THE DEFENDANT: I'M SORRY, TO STOP WHAT?  
28 THREATENING --

1 THE COURT: STOP THE HARASSMENT THAT HAS OCCURRED  
2 UP TO JANUARY 5TH WITH LETTERS, FLIERS, E-MAILS, TALKING WITH  
3 NEIGHBORS, KNOCKING ON PLAINTIFF'S DOOR, ALL OF THOSE THINGS  
4 WHICH HAVE CONTINUED UP TO AND INCLUDING THE PASSAGE OF TIME  
5 OF THE LAST ORDER.

6 THE DEFENDANT: JUST A COMMENT: IN YOUR OFFICE DID  
7 YOU IN THE OATH OF OFFICE -- DID YOU SAY THAT YOU WERE GOING  
8 TO DEFEND THE CONSTITUTION?

9 THE COURT: THIS ISN'T A PLACE WHERE YOU QUESTION  
10 THE JUDGE. I ASK YOU QUESTIONS, SIR. I CAN SEE WHAT YOUR  
11 ATTITUDE IS.

12 THE DEFENDANT: I'M SORRY. WHAT WAS YOUR QUESTION?

13 THE COURT: DO YOU HAVE ANYTHING ELSE TO SAY  
14 CONCERNING THE ALLEGATIONS WHICH THE COURT IS SATISFIED WITH  
15 WERE PROPERLY SERVED ON YOU?

16 THE DEFENDANT: FIRST OF ALL, I WOULD LIKE TO GET A  
17 COPY OF THAT.

18 THE COURT: YOU DIDN'T ANSWER YES OR NO.

19 THE DEFENDANT: I'M SORRY.

20 THE COURT: ANYTHING FURTHER?

21 THE DEFENDANT: ANYTHING FURTHER? JUST THAT I'M  
22 DOING NOTHING BUT FREE SPEECH AND --

23 THE COURT: IT GOES BEYOND FREE SPEECH. I GUESS  
24 YOU'RE HUNG UP ON THAT, BECAUSE YOU ARE HARASSING AN  
25 INDIVIDUAL BY CONTINUING THIS, AND YOU HAVE BEEN SINCE 1990.

26 THE DEFENDANT: WHEN I -- WHEN I TALKED TO THE  
27 NEIGHBOR OF LT. HERBERT ON THE TELEPHONE, HE EVEN AGREED WITH  
28 ME THAT IT'S NOT HARASSMENT WHEN ALL YOU'RE DOING IS MAKING

1 ACCUSATIONS AND YOU'RE FULLY WILLING TO APPROACH THOSE IN  
2 COURT.

3 THE COURT: WELL, I DON'T THINK THAT NEIGHBOR IS IN  
4 A POSITION TO MAKE A LEGAL CONCLUSION ON WHETHER THAT IS  
5 HARASSMENT OR NOT. THE COURT WILL GRANT FURTHER MODIFICATION  
6 BY ORDERING, MR. WEBSTER, YOU'RE NOT TO DIRECTLY OR  
7 INDIRECTLY CONTINUE THE CONDUCT THAT HAS BEEN GOING ON, WHICH  
8 I'VE JUST READ, SUCH AS LETTERS, FLIERS, E-MAILS, DRIVING A  
9 CAR, MAKING ANY LOUD -- ANY NOISES OR CLAIMS WITH NEIGHBORS;  
10 STAY AWAY FROM THE PLAINTIFF'S DOOR OR RESIDENCE, EITHER  
11 DIRECTLY OR INDIRECTLY THROUGH A THIRD PARTY.

12 THE DEFENDANT: COULD I ASK -- COULD I ASK YOU A  
13 COUPLE OF QUESTIONS?

14 THE COURT: WELL, YOU CAN. GO AHEAD.

15 THE DEFENDANT: CAN I HAVE SOMEBODY ELSE DRIVE THE  
16 "BAD COPS" BILLBOARD TRUCK AROUND THE POLICE DEPARTMENT?

17 THE COURT: NO. I JUST SAID THIRD PARTIES, SO THAT  
18 WOULD BE SOMEONE ELSE.

19 THE DEFENDANT: I'M SORRY. SO THAT WOULD BE OKAY?

20 THE COURT: NO, IT WOULD NOT, BECAUSE I JUST SAID  
21 THIRD PARTIES CAN'T DO IT FOR YOU EITHER.

22 THE DEFENDANT: OKAY. WELL, THEN, ONE QUESTION IS  
23 HOW DO I -- WHAT IS A LEGITIMATE WAY FOR ME TO FIND OUT WHEN  
24 LT. HERBERT HAS RETIRED? THEN I CAN START DRIVING THE  
25 BILLBOARD TRUCK AROUND THE POLICE DEPARTMENT AGAIN?

26 MS. FRIMANN: WE WILL ADVISE MR. WEBSTER AND THE  
27 COURT OF THAT, YOUR HONOR.

28 THE COURT: THEY'LL LET YOU KNOW. THANK YOU.

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MS. FRIMANN: THANK YOU, YOUR HONOR.

THE COURT: PREPARE AN ORDER AND I'LL SIGN IT.

MS. FRIMANN: THANK YOU.

THE DEFENDANT: I WOULD STILL LIKE A COPY OF THAT.

THE COURT: WHY DON'T YOU PROVIDE HIM A COPY OF THE  
DECLARATION.

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