

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF KITSAP

3  
 4 CLARENCE MORIWAKI, )  
 )  
 5 Appellee, ) Municipal Court No. 12-17  
 ) Superior Court No. 17-2-01463-1  
 6 v. )  
 )  
 7 RICHARD RYNEARSON, )  
 )  
 8 Appellant. )

9 VERBATIM REPORT OF PROCEEDINGS

10 Oral Argument on Appeal

11 December 14, 2017

12 Honorable Kevin Hull  
 13 Department No. 6  
 14 Kitsap County Superior Court

15 **APPEARANCES**

16 For the Appellee: Clarence Moriwaki  
 Self-Represented Litigant

17 For the Appellant: Alexander Savojni  
 Rhodes Legal Group

18 Eugene Volokh (pro hac vice pending)  
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 20 UCLA School of Law

21  
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 25

1 THE COURT: Okay. We are on the record in  
2 17-2-01463-1. Clarence Moriwaki is the petitioner in  
3 this case.

4 Sir, are you Mr. Moriwaki?

5 MR. MORIWAKI: Yes.

6 THE COURT: Am I pronouncing that correctly?

7 MR. MORIWAKI: Yes, very well.

8 THE COURT: The respondent is Richard  
9 Rynearson. Is he present?

10 MR. SAVOJNI: He's not present, Your Honor.

11 THE COURT: Okay. I did observe -- we had a  
12 notice of counsel via pro hac vice. And if you could --

13 MR. SAVOJNI: Sure.

14 First, for the record, Alexander Savojni. I'm the  
15 original attorney of record in this matter. And  
16 Mr. Eugene Volokh, who's sitting to my left.

17 THE COURT: How do you pronounce your name?

18 MR. VOLOKH: Volokh.

19 THE COURT: Not you.

20 MR. SAVOJNI: Mine is "Sav-o-jni."

21 THE COURT: Savojni. Thanks.

22 I received a number of materials with regards to  
23 the matters this afternoon. This matter is on appeal  
24 from an order issued by the Bainbridge Island Municipal  
25 Court.

1           Before I hear argument on the matters, are there  
2 any preliminary issues that either side would like to  
3 address?

4           Mr. Moriwaki, any preliminary matters?

5           MR. MORIWAKI: No.

6           THE COURT: Likewise, Counsel?

7           MR. SAVOJNI: I don't believe so, Your Honor.

8           THE COURT: On behalf of Mr. Rynearson, what  
9 would you like me to know?

10          MR. VOLOKH: Your Honor, this is a case  
11 involving a political speech about a heavily charged  
12 political topic and involving criticism of somebody  
13 who's a prominent local political figure.

14          THE COURT: Can you move the mic a little bit  
15 closer to you. I've got a fan above me.

16          MR. VOLOKH: So this speech is protected by  
17 the First Amendment and cannot form the basis under the  
18 constitution as well as the proper reading of the  
19 statutes.

20          THE COURT: When we talk about speech in this  
21 case, the variety of forums -- I mean, there is the  
22 speech that occurs on the internet, and then there is  
23 also the speech that occurs between the petitioner and  
24 the respondent via either private messages or texts or  
25 phones. So there are different types of speech in the

1 case, correct?

2 MR. VOLOKH: Yes, Your Honor. We believe all  
3 of them are protected by the First Amendment. Looking  
4 at item four in the conclusions of law of the Municipal  
5 Court, there was only one item that involved speech  
6 directly between -- between the -- Mr. Ryneerson and  
7 Mr. Moriwaki which is a text message. One text message  
8 that Ms. Ryneerson sent to Mr. Moriwaki because he was  
9 about to put up a site critical of Mr. Moriwaki and  
10 wanted to give Mr. Moriwaki a chance to respond.

11 So we think that is protected. It is a form of --  
12 it is the sort of thing that people who are journalists  
13 or would be -- citizen journalists would be normally  
14 expected to do.

15 All the other six items listed in this -- in this  
16 paragraph is a basis for the order. All of them involve  
17 speech that is not directly to Mr. Moriwaki alone, but  
18 speech that is said to a larger group of people, whether  
19 whoever sees various Facebook ads or the many readers of  
20 the Facebook page which it was posted.

21 So we think that that speech, all of that cannot  
22 form properly the basis for -- for a restraining order.  
23 Moreover, the restraining order by its terms also seeks  
24 to prohibit future speech. It does it in a  
25 content-based way that is unconstitutional because it

1 can't pass strict scrutiny which is the right test for  
2 content-based restrictions.

3 And in -- in particular, the speech -- the use of  
4 the photograph of petitioner and political criticism is  
5 fully protected by the First Amendment, as it would be  
6 if a newspaper were to do it.

7 And, likewise, the use of a name or a personal  
8 identifying information of the petitioner that, say, the  
9 petitioner, Mr. Moriwaki, in a title or a domain name is  
10 also fully protected. It is clear from context that  
11 this is criticism of him rather than impersonation of  
12 him, as it was in this instance.

13 THE COURT: There was a moment of  
14 impersonation where a Facebook page said -- referenced  
15 "Clarence Moriwaki of Bainbridge Island" or something  
16 and then shortly thereafter it were termed to "not,"  
17 right?

18 MR. VOLOKH: Your Honor, there was a page, and  
19 it was renamed. But we don't condone it was  
20 impersonation either. It was a classic example of where  
21 somebody puts up a page that refers to someone's name  
22 but in context, looking at it, it is clear that it is  
23 criticism.

24 The leading case on that is a case called  
25 *Lamparello v. Falwell*, I want to say, from the Fourth

1 Circuit some years ago when Jerry Falwell was alive. A  
2 critic of Mr. Falwell's, or Reverend Falwell's, put up a  
3 site that said -- called "Fallwell," with one extra "L"  
4 in the website name, dot-com. And the court said there  
5 was a trademark claim. The court said this is protected  
6 because this is something that in criticisms is clearly  
7 a critical -- excuse me, it is in context. This is  
8 clearly a critical suit.

9 THE COURT: The title of the website page you  
10 are suggesting is irrelevant. You have to look at the  
11 content of the page.

12 MR. VOLOKH: Yes, Your Honor. Now, of course,  
13 if the title, coupled with the content, makes it look  
14 like this is the person -- like this is the person who's  
15 mentioned in the title, that might form the basis  
16 possibly for a libel claim. Conceivably, an injunction  
17 respecting libel and controversy among state courts  
18 as to whether injunctions as to libel are admissible.

19 But this injunction clearly goes far beyond that.  
20 It doesn't require any evidence of likely confusion, any  
21 evidence of falsehood or anything along those lines.

22 So the injunction is both based on past speech,  
23 which is fully protected which is independent, that --  
24 an independent basis for some constitutionality and also  
25 it restricts future speech in a nonconstitutional way.

1           Also, we think the injunction is not justified by  
2           the anti-stalking statute and -- or by the criminal  
3           harassment statute. And to the extent that it can be  
4           seen as justified by the cyberstalking statute, that  
5           cyberstalking statute is itself unconstitutionally  
6           overbroad, because it restricts a wide range of speech  
7           that is repeated online so long as there is a finding  
8           that it is intended to embarrass. Now, the wide-range  
9           political dispute does not come in.

10           Your Honor, I would be happy to go further into  
11           either the legal reasons why this is so, or if you  
12           prefer to go through the particular items in -- listed  
13           in the conclusions of law in the order and show why  
14           which one is constitutionally protected.

15           THE COURT: Well, I do have a number of  
16           questions. But, I guess, the -- the communication that  
17           Mr. Moriwaki had with your client that was on the  
18           private messaging between just the two of them, and  
19           then, I think, there was a phone call -- and if I have  
20           my time line right -- and I think there was some dispute  
21           about the time line in the materials, but if I have the  
22           time line right, immediately after, or very soon after  
23           Mr. Moriwaki blocked Mr. Rynearson from his Facebook  
24           page, Mr. Moriwaki received a phone call from him; is  
25           that correct?

1 MR. VOLOKH: Your Honor, unless I'm mistaken,  
2 it was a text message.

3 THE COURT: Okay.

4 MR. VOLOKH: It was a text message comment on  
5 the upcoming critical story that Mr. Rynearson was going  
6 to be posting online.

7 THE COURT: Do you differentiate if I text you  
8 versus I call you on the phone? Do you differentiate a  
9 difference between those two things?

10 MR. VOLOKH: Your Honor, we think a phone call  
11 in that context would also have been constitutionally  
12 protected, but phone calls are more intrusive. They are  
13 more likely to wake someone up, distract them from the  
14 tasks, and the like.

15 But in any event, as to those things that were  
16 found by the lower court as a basis for the harassment  
17 order, the only one of these ones that were in context  
18 was that one text message.

19 And we don't think that one text message doing,  
20 again, what would probably be ethically the right thing  
21 to do; which is, if you are going to criticize someone,  
22 give them a chance to respond. Then that would give a  
23 proper basis for a harassment restraining order. Among  
24 others things, it is not repeated. It is not a course  
25 of conduct because it is not repeated.



1 THE COURT: Well -- but the course of conduct  
2 exists when they are having this banter, this private  
3 message banter. As I understand it, they are on private  
4 message on Facebook and they are going back and forth,  
5 and Mr. Moriwaki is saying you are a bully, you are  
6 bullying me, stop it, amongst other things. I think  
7 your client responds -- I think when Mr. Moriwaki says  
8 "Stop it. This is over," I think your client responds  
9 saying, "No, it's not." And then he's blocked. And  
10 then he gets the text. So that's a course of conduct,  
11 isn't it?

12 MR. VOLOKH: So, Your Honor, that is more than  
13 one incident. The Municipal Court did not find that --  
14 that the earlier messages were part of what it based its  
15 order on.

16 The -- that the -- he mentioned that Mr. Ryneerson  
17 repeatedly contacted Mr. Moriwaki by posting on the  
18 Facebook page, that's a public post, after being  
19 specifically asked to stop.

20 THE COURT: Well, the evidence presented was  
21 that -- I mean, do I have to -- am I -- to what extent  
22 is -- am I permitted de novo review of the record?

23 MR. VOLOKH: Your Honor, we think as to the  
24 question whether the order is constitutionally valid,  
25 de novo review is not just limited but mandated.

1           But I'm unaware of any basis for entering an order  
2 based on material in the record that the lower court did  
3 not **conclude**. And as I understand it, does not even  
4 argue it in an appeal, as should have been **concluded** as  
5 part of it.

6           THE COURT: My -- my initial review of all the  
7 materials -- and I'll share this with everybody -- is  
8 that -- Mr. Moriwaki may disagree with this as well.

9           But I view the -- I view the -- the communications  
10 specifically between Mr. Moriwaki and Mr. Rynearson more  
11 compelling for purposes of entering an order than  
12 Mr. Rynearson's subsequent postings of things related to  
13 Mr. Moriwaki on a website that he's created.

14           So in light of that comment, is that incorrect?  
15 Should I not be -- I mean, in other words, a lot of the  
16 focus was on all this material that was posted online  
17 after the fact, after Mr. Rynearson had been blocked  
18 from Mr. Moriwaki's Facebook account. And so I  
19 understand that.

20           But it seems to me that, in terms of issuing a  
21 protective order, the more compelling case is the actual  
22 communications between Mr. Moriwaki and Mr. Rynearson  
23 and not what Mr. Rynearson puts out to third parties.

24           MR. VOLOKH: So, Your Honor, we certainly  
25 agree that whatever is put out to third parties is -- is

1 the least permissible basis for -- for an order. We  
2 think that, in fact, it is not a constitutionally  
3 adequate basis for the order.

4 Now, certain kinds of person -- one-to-one  
5 communications in certain situations might well be --  
6 might well justify an order, especially if they are  
7 threatening. But also if they meet by themselves the  
8 particular statutory requirements as well as the  
9 constitutional requirements that they are provided.

10 So, for example, if one-to-one communications  
11 contain threats, that would indeed be punishable  
12 stalking because that would be reasonably perceived as  
13 threatening violence.

14 But in this situation, the one-to-one  
15 communications, such as they were, were basically  
16 disagreement about it, what somebody should be posting  
17 or not on -- on a web page.

18 What's more -- precisely because Facebook makes it  
19 so easy to block someone from posting a web page. This  
20 communication is more a sign of, like, I'm not ready to  
21 block you yet. Let's see if we can work something out.  
22 That's not the sort of thing that by itself could be  
23 properly seen as stalking or cyberstalking, or  
24 harassment.

25 THE COURT: It's an interesting question. It

1 is an interesting question that if -- if by blocking you  
2 on my Facebook page -- because Facebook is so prevalent.  
3 I mean, how many users in the world?

4 MR. VOLOKH: Billions, I'm told.

5 THE COURT: Some have greater access than  
6 others in terms of what they can do with it. But be  
7 that as it may, if I block you on my Facebook page, am I  
8 telling you: Don't call me. Don't text me. You are  
9 blocked.

10 You are blocked from -- Mr. Moriwaki uses, I think,  
11 an interesting example, and probably a pretty good one.  
12 My Facebook page is my home. It is my party. I get to  
13 invite who I want. You're out.

14 Can we say that if I block -- if I'm blocking you  
15 from my Facebook page, I'm telling you, "Don't call me.  
16 Don't text me."

17 MR. VOLOKH: Your Honor, we don't think that  
18 would be so. But even if it were so. If you look at  
19 the post-block contact, there was exactly one,  
20 one-to-one communication between Mr. Rynearson and  
21 Mr. Moriwaki. Which is the post-block query from  
22 Mr. Rynearson, "Do you have anything to say about this  
23 page that I'm putting up that is critical of you?"

24 By itself, it is not actionable. It is not a  
25 course of conduct.

1           What's more, we don't think by itself it would be  
2           seen as threatening and therefore stalking. It wouldn't  
3           be repeated, so it wouldn't be cyberstalking. It,  
4           likewise, **wouldn't** probably be seen as serving a lawful  
5           or legitimate purpose for purposes of the harassment  
6           statute and the injunction statute.

7           It is actually not uncommon, for example, for  
8           journalists to try to reach out to somebody. And that  
9           person says, I don't want to talk to you.

10          And then maybe a little later the journalist is  
11          about to write a story and says, look, I want to give  
12          you one more chance to tell your side of the story. If  
13          there are many such incidents that might be maybe of  
14          this one-to-one communication that's unwanted.

15          THE COURT: Have we got to the point with the  
16          internet that anybody that has a blog is considered a  
17          journalist?

18          MR. VOLOKH: Your Honor, there is a case --  
19          I'm sorry, *Obsidian Finance v Cox*, a Ninth Circuit case  
20          from a few years ago, which makes clear that the First  
21          Amendment protects all people who speak online to the  
22          public at large.

23          THE COURT: I tend to agree. I think, in  
24          court if someone were to say, I want to photograph  
25          proceedings because I have a blog, I'm inclined to let

1       them do it. I'm not going to get into some argument  
2       whether they are credentialed journalists or not, if  
3       they are contributing to, I guess, the public forum.

4               MR. VOLOKH: Your Honor, I think that's right.  
5       But in any event, if you are looking at what happened  
6       after the block, there was exactly one communication.  
7       It just can't make sense that every time somebody is  
8       blocked -- blocked from a Facebook page that at that  
9       point that means never communicate with this person.

10       Again, and the statute doesn't suggest that. Among  
11       others things, this serving lawful purpose prong as well  
12       as the requirement of a course of conduct prevent that  
13       from happening and would render the statute inapplicable  
14       to that.

15       Certainly, nothing in that authorizes the terms of  
16       the injunction, which prohibit much more than this  
17       one-to-one communication. And clearly go -- restrict  
18       speech about Mr. Moriwaki and not just speech to him.

19               THE COURT: In reference to the scope of the  
20       order, hypothetically, if a court were to say that the  
21       communications -- the one-to-one communications between  
22       the parties was a basis for an unlawful harassment  
23       order. If so, I'm going to prohibit the respondent from  
24       having direct contact or electronic contact or  
25       communication directly to the petitioner.

1           Let's say a court were to order that because the  
2 court made a finding that there was unlawful harassment  
3 between two individuals.

4           By virtue of the court making that finding, can the  
5 court prohibit the respondent from engaging in  
6 third-party communications about the petitioner?

7           MR. VOLOKH: No, Your Honor. Even accepting  
8 that as a hypothetical, we hope would not stand with the  
9 result.

10          THE COURT: I understand.

11          MR. VOLOKH: In the sense **one** of the court --  
12 Supreme Court's two earliest freedom of expression  
13 cases, *Near v Minnesota*, in 1931, was -- there it was  
14 clearly wrongful -- mass wrongful conduct by their  
15 publisher of a small-time newspaper that he'd been  
16 guilty. I believe, he had been convicted of criminal  
17 libel. And he was guilty of libel. Therefore the court  
18 ordered him not to publish any further scandalous  
19 **newspaper**. And the Supreme Court reversed saying you  
20 cannot restrict speech going **forwarded**, that is an  
21 unconstitutional prior restraint.

22          THE COURT: Even if there was a finding of  
23 wrongdoing?

24          MR. VOLOKH: Yes, Your Honor, there was ample  
25 finding of wrongdoing in the past. In fact, the statute

1       there required a showing that this person's newspaper  
2       was essentially a nuisance because of libel and similar  
3       kinds of misconduct there.

4             And that -- that makes sense. The -- the standard  
5       in these orders is -- these are civil orders. It  
6       doesn't require proof beyond a reasonable doubt. It  
7       requires a judgment without a jury, generally, of -- of  
8       often a municipal court judge.

9             One can't, it seems to me, have one speech  
10       restricted going forward, including fully protected  
11       speech based on this judgment that something one has  
12       said in the past is improper.

13            THE COURT: Interesting.

14            Okay. Mr. Moriwaki, you've sat patiently listening  
15       to us have a conversation. What would you like me to  
16       know?

17            MR. SAVOJNI: Why --

18            MR. MORIWAKI: Okay. Very good. I have a  
19       written comment statement I would like to read.

20            THE COURT: Sure.

21            MR. MORIWAKI: First of all, it's not a  
22       de novo trial according to the Washington rules.

23            Rule 9.1 on basis of appeal. You are an  
24       unlimited -- Superior Court shall review the decision of  
25       the court of limited jurisdiction determining whether



1 that court has committed any errors of law. So we have  
2 to stick to what has been submitted as the findings of  
3 facts and conclusions of law, and new arguments that  
4 have been presented cannot really be considered, if they  
5 were not presented or part of the previous record.

6 THE COURT: What about issues of  
7 constitutionality?

8 MR. MORIWAKI: If they were not presented in  
9 the previous court record, they weren't used as the  
10 article to try to defend the unconstitutional actions  
11 so, therefore, they can't really be permitted.

12 So I would like to start. The respondent, Richard  
13 Lee Ryneerson, "Richard Lee," wants to make a case about  
14 the constitutionality of Washington state cyberstalking  
15 law. But he's chosen the wrong person, the wrong case,  
16 and the wrong set of facts which pursue this claim.

17 Simply put, the permanent protection order placed  
18 on the respondent has nothing at all to do with  
19 constitutionally protected speech. The Bainbridge  
20 Island Municipal Court correctly found it has everything  
21 to do with Ryneerson Lee's targeted illegal conduct and  
22 behavior against me as a private citizen.

23 The court correctly found that I am not a public  
24 figure and that, quote, "Prohibitions against harassing  
25 and stalking do not infringe on First Amendment free

1 speech rights. The court finds the stalking and  
2 protection order laws are not unconstitutional," end  
3 quote.

4 There's no reason to overturn the permanent  
5 protection order granted to me by the court, whose  
6 findings of fact and conclusions of law had no errors  
7 and were based on solid precedent and case law.

8 The court found the respondent, quote, "Engaged in  
9 course of conduct directed at me, when Lee repeatedly  
10 contacted, harassed, and stalked, and cyberstalked me.  
11 The court finds that all the elements of stalking,  
12 cyberstalking, subsection (1) be repeated contact and  
13 unlawful harassment have been proven by a preponderance  
14 of the evidence," end quote.

15 The findings of fact and procedural history are not  
16 disputed by the respondent, which outlines the record of  
17 harassment and stalking me.

18 At first, I was just annoyed when Rynearson Lee  
19 began highjacking my Facebook page for months with his  
20 posts. But as he increased his trolling and harassment,  
21 I became more and more anxious and concerned.

22 As I began to remove Rynearson Lee's posts, he  
23 simply accelerated his postings. At times I was  
24 receiving multiple notifications at all hours of the day  
25 and night, sometimes just minutes apart. Early on I

1 told Rynearson that I **did** welcome his trolling,  
2 bullying, and harassment. Quote, "You have crossed a  
3 line. You are not conversing but trolling. You've  
4 demonstrated it over and over. Along with being  
5 insulted and offended, you don't get to define when I  
6 feel harassed. You are clearly a passionate person, but  
7 please promote your own ideas and attract people to your  
8 own wall. Create your own party. Stop the bullying  
9 attempts to hijack my party," end quote.

10 My pleas for Rynearson Lee to stop his harassment  
11 were futile. He replied with this threat --

12 THE COURT: At what point did you say to him,  
13 stop contacting me. I don't want any contact.

14 MR. MORIWAKI: This was going on when he was  
15 putting up these posts. As fast as I would take them  
16 down, he would put them back up.

17 So as I was private messaging him saying, stop  
18 doing this on my page. Just stop it.

19 THE COURT: Was that part of the -- in other  
20 words, what part of the record -- and Bainbridge Island  
21 Municipal Court -- in other words, were there pages  
22 or --

23 MR. MORIWAKI: Yes.

24 THE COURT: What part of the --

25 MR. MORIWAKI: There's plenty. The procedural

1 history.

2 THE COURT: I tell you what, go ahead and  
3 finish your statement. I do have questions for you.

4 MR. MORIWAKI: I think I will address that.

5 THE COURT: Okay. All right.

6 MR. MORIWAKI: All right. So my pleas to stop  
7 this were futile, he replied with this threat, quote,  
8 "You are now about to cross my line. I promise you with  
9 everything that I am, your efforts to stifle free speech  
10 will fail you massively," end quote.

11 Then like a bizarre game of internet whack-a-mole,  
12 Rynearson Lee began to posts comments on my time line  
13 faster than I could remove them.

14 I told him in private messages, quote, "Stop. Stop  
15 trolling. Stop it. You are harassing, bullying, and  
16 relentless. Stop. Your self-righteous reposting is a  
17 definition of harassment. Knock it off. I've asked you  
18 to stop posting on my page," end of quote.

19 The postings continued, and I wrote them again.  
20 Quote, "This is my page. You are trying to hijack my  
21 page with your single issue obsession," end quote.

22 After more of his continued harassment, I finally  
23 had enough of it. And I said, quote, "We are now done."

24 I blocked Rynearson Lee after he threatened me  
25 with, quote, "Oh, we're not done," end quote. Less than

1 a minute after I blocked him, I got a text message from  
2 an unknown number which was Ryneerson impersonating a  
3 reporter doing a story from the domain name, Clarence  
4 Moriwaki Bainbridge Island dot com.

5 THE COURT: When you say "impersonating," did  
6 he give you a false name.

7 MR. MORIWAKI: He didn't identify himself at  
8 all. He said -- I'm trying to find the text.

9 He said, I'm doing a story and I would like your  
10 comments on blah, blah, blah. There was no name. He  
11 didn't identify himself. I had -- like I said -- I had  
12 to ask him: Who are you?

13 THE COURT: And then did he tell you --

14 MR. MORIWAKI: Yes, he said, this is Richard,  
15 of course.

16 After I got Ryneerson to reveal his identity, I  
17 replied, quote, "Yeah, and this isn't trolling or  
18 harassment. Richard, your obsession is getting  
19 disturbing," end quote.

20 Ryneerson immediately continued to stalk and harass  
21 me by hijacking numerous friends' Facebook pages and  
22 time lines, attacking and defaming me and bullying  
23 anyone who disagreed with him.

24 I also received a message informing me that  
25 Ryneerson Lee confirmed that he was physically stalking

1 my home.

2 Just 14 hours after I blocked him, Rynearson  
3 published a Facebook page "Clarence Moriwaki of  
4 Bainbridge Island" complete with photos of various means  
5 of me, some of them placed my images behind barbed wire.

6 Rynearson Lee was then bombarded with messages and  
7 posts from many of my Facebook friends and complete  
8 strangers who asked him to stop harassing and slandering  
9 me and he ignored them all.

10 Rynearson Lee was warned that his page could be a  
11 violation of identity theft laws, so he changed the  
12 title to "Not Clarence Moriwaki of Bainbridge Island."

13 "Rynearson Lee is not Clarence Moriwaki of  
14 Bainbridge Island" was made not public after he was  
15 served with a temporary protection order.

16 Thus, when I chose to end all contact with  
17 Rynearson Lee, this was not a violation of  
18 constitutionally protected speech but to stop  
19 unwarranted harassment and stalking.

20 The court found that, quote, "Lee has no right to  
21 forcibly converse with me on my personal Facebook page.  
22 I have the right to limit contact with any person who I  
23 find offensive," end quote.

24 Claims by the respondent that the cyberstalking law  
25 is limited to fear of physical harm is an error and has

1 offered no evidence that it is so limited.

2 While as of yet, Rynearson Lee has made no direct  
3 threats of physical harm to me, Rynearson Lee did indeed  
4 threaten me, a fact erroneously reported by the media  
5 and repeated on Facebook pages and several web and  
6 blocked sites.

7 THE COURT: What were the threats?

8 MR. MORIWAKI: On January 27, 2017, after I  
9 repeatedly pleaded with Rynearson Lee to leave me alone  
10 and stop all contacting me. As I previously mentioned,  
11 he threatened me with, quote, "Now you are about to  
12 cross my line. I promise you with everything that I am,  
13 your efforts to stifle free speech will fail you  
14 massively," end quote.

15 The court also found that on February 25, 2017,  
16 quote, "Lee sent me a text message threatening to start  
17 a blog about me on a web page with my name," end quote.

18 Even without these threats, the respondent's  
19 document -- documented behavior and history was more  
20 than sufficient for the court to correctly find that  
21 Lee -- Rynearson Lee's, quote, "Behavior caused me to  
22 feel threatened, intimidated, and frightened, but I  
23 experienced extreme stress, anxiety, and fear that  
24 Rynearson Lee would damage my reputation and continue to  
25 stalk me. The court finds that these feelings are

1 reasonable under the circumstances given the facts," end  
2 quote.

3 Now, let's unpack the respondent's National Defense  
4 Authorization Act, or NDAA, argument.

5 It is Rynearson Lee's intention and twisted logic  
6 that since President Obama and former Congressman Jay  
7 Inslee supported the NDAA, and then since I have  
8 supported these two elected officials, that as a member  
9 of the Bainbridge Island Japanese American Exclusion  
10 Memorial Association, or BIJAEMA, Rynearson Lee demanded  
11 that I must unilaterally disavow the elected official,  
12 and if I do not do that, that I must be immediately  
13 removed from the association.

14 Besides Rynearson Lee's selective of partisan  
15 self-righteousness of just singling out two of the more  
16 than 535 other federal elected officials who also took  
17 stands on the NDAA, the longer Rynearson Lee tried to  
18 justify his forced harassment with his false definition  
19 that I was a public figure, that became a goalpost that  
20 just kept moving further and further away.

21 At first, Rynearson Lee claimed that I was a public  
22 figure and/or politician because I held an elective  
23 office more than a quarter of a century ago. And then  
24 in the past decade I attempted and failed to get  
25 appointed to a regional elective office.



1           However, since every elected official from the US  
2 professionals to sewer commissioners, we become private  
3 citizens once they leave office. Having any court find  
4 that a former elected official is a public figure for  
5 the rest of their lives and not private citizens would  
6 be a groundbreaking and rather chilling precedent.

7           THE COURT: Do you think you fit the  
8 definition of limited --

9           MR. MORIWAKI: I'm going to address that.

10          THE COURT: Okay.

11          MR. MORIWAKI: Rynearson Lee may have realized  
12 that following that argument, so he moved his public  
13 figure goalpost because he thought that I was president  
14 of the Bainbridge Island Japanese American Exclusion  
15 Memorial Association, or BIJAEMA.

16          Regardless of that fact, that all -- regardless of  
17 the fact that all private nonprofit 501(c)(3)  
18 organizations are prohibited by the IRS tax code to  
19 endorse or oppose any elected official or candidate. I  
20 was not and had not been president of the BIJAEMA for  
21 years.

22          THE COURT: He might be wrong, but isn't he  
23 offering opinions about these things? He might be wrong  
24 about them, but aren't these just opinions that he's  
25 asserting?

1 MR. MORIWAKI: Well, I would like to finish.  
2 May I finish?

3 THE COURT: No, I have lots of questions. So  
4 I'm sorry. Go ahead.

5 MR. MORIWAKI: I think I'm going to get to  
6 some of your questions.

7 THE COURT: Okay. All right.

8 MR. MORIWAKI: After I and many of our friends  
9 and my friends pointed out Ryneearson's errors, he then  
10 shifted the attention of public figure to defining me as  
11 a spokesperson for the BIJAEMA.

12 The court took a pointed exception to Ryneearson  
13 Lee's definition, finding that since there were several  
14 other officers, directors, and volunteers of the  
15 BIJAEMA, and that Ryneearson made no attempt to contact  
16 or demand any actions from anyone else associated with  
17 the BIJAEMA to impose the NDAA or -- other than me, the  
18 court found that Ryneearson Lee was targeting me as a  
19 personal retribution for being rejected.

20 For a court to find private citizen volunteers  
21 belonging to private nonprofit organization as public  
22 figures would also be a rather chilling and  
23 groundbreaking precedent.

24 Having lost that argument, Ryneearson Lee has moved  
25 the goalpost further, trying to cast me as a public

1 figure because I have been invited as a speaker and at  
2 times been interviewed by the media to tell the story of  
3 the World War II experience with Bainbridge Island  
4 Japanese American community.

5 Perhaps the goalpost will eventually move to the  
6 finding that I'm a public figure simply because I'm a  
7 Japanese American. Move those goalposts as you may. It  
8 doesn't matter. The court decisively found that, quote,  
9 "My volunteer role has not rendered me a limited purpose  
10 public official and that Rynearson Lee has no, quote,  
11 'right' to attack me as a public figure."

12 Indeed, even if I were a public figure, all  
13 citizens are granted constitutional rights and  
14 **perfections** to privacy and a right to be safe and secure  
15 in their lives and property from forced and unlawful  
16 harassment and stalking.

17 Now, on April 19, 2017. Rynearson Lee submitted a  
18 motion to stay sighting grave concerns that his past  
19 history would, quote, "Provide a roadmap for law  
20 enforcement and prosecutors informing exactly the link  
21 and the chain in evidence needing to prosecute him for  
22 current and possible charges that could supply an avenue  
23 for investigation by prosecutors," end quote.

24 The court granted Rynearson's stay which gave me  
25 time to find out what was it exactly that Rynearson Lee

1 was so worried about. As it turned out, he had every  
2 right to be concerned. I discovered that for years  
3 Rynearson Lee had been cyberstalking, hijacking  
4 websites, and harassing private citizens to the point of  
5 creating an infamous online reputation for being  
6 blocked, banned, and removed from so many websites,  
7 Facebook pages, and blogs that I simply lost count.

8 Just a few examples. One, Glock Talk, the leading  
9 firearms forum is a respected and expansive website that  
10 calls itself, quote, "The number one site to talk about  
11 the world's most popular pistol," end quote.

12 On July 30, 2012, Rynearson Lee became a member of  
13 the Glock Talk website, and in just one day, after  
14 posting more than 100 belittling and argumentative  
15 comments, Rynearson Lee became the first and only person  
16 to be blocked and banned from the Glock Talk website.

17 THE COURT: Did they obtain an antiharassment  
18 order against him?

19 MR. MORIWAKI: They didn't. They just blocked  
20 him.

21 THE COURT: So is that -- in the forums that  
22 we're talking about, is that the appropriate remedy to  
23 block and ban somebody, and are you aware if any of  
24 these other websites that have blocked and banned them,  
25 have obtained antiharassment orders against him or

1 cyberstalking orders or similar to what you obtained?

2 MR. MORIWAKI: Actually, some of them said  
3 they would talk about that, but it wasn't worth a  
4 bother.

5 THE COURT: Okay.

6 MR. MORIWAKI: Now, I am going to use this as  
7 another example of character.

8 THE COURT: Sure.

9 MR. MORIWAKI: Two years after that block, on  
10 October 26, 2014, Rynearson became the only person to be  
11 banned from the website "Flying Squadron Forums by Base  
12 Ops dot net."

13 It is a rather successful website that enjoys  
14 thousands of registered users, tens of thousands of  
15 posts, and tens of millions of views. And the web  
16 administrator discussed why they decided to block and  
17 ban Rynearson Lee. Quote, "Unfortunately, I think in  
18 this case Rynearson's conduct goes a little beyond  
19 merely being a jackass for a simple lack of humility.  
20 No amount of reason can right the defect in his mind.  
21 This is a bona fide mental illness readily identifiable  
22 by virtually everyone but himself.

23 He's used the exact same tactic of creating sock  
24 puppets at other forums, and he remains undaunted by the  
25 fact that virtually everyone immediately figures out and

1 gives him the same reaction.

2 When people fail to agree with him and appreciate  
3 the person he is in his own mind, they become the enemy.  
4 His hateful fantasy on the phone is a direct result of  
5 narcissism met by a peer group that will not tolerate  
6 his delusions of grandeur.

7 Narcissists are incapable of humility which, by all  
8 accounts, he's never been able to function in a social  
9 setting.

10 He's a full-grown man turning out mean pictures on  
11 a daily basis like kids of 4chan.

12 He's been manipulating who knows how many  
13 alternative logins on several forums many of which he's  
14 been banned from.

15 I don't have to do anything except watch the  
16 frustration and meltdown unfold in conversations with  
17 himself. Awesome and frightening to those he's calling  
18 out by name, "keep checking your six," end quote.

19 On March 16, 2014, another website Ryneerson  
20 overstayed his welcome was the popular John Q. Public  
21 blog site and his Facebook page, both created and  
22 administered by retired United States Air Force Colonel,  
23 Lieutenant Colonel Tony Carr.

24 Tony Carr's Facebook page has more than 45,000  
25 likes, and this, plus his web blog, has enjoyed more

1 than 1.1 million annual visitors.

2 Out of all of his followers, Tony Carr explained  
3 why Rynearson was only -- was one of only two people he  
4 has ever blocked and banned.

5 Quote, "After posting of some inappropriate  
6 comments of a failed remediation campaign, I banned Rick  
7 Rynearson from posting here. This is just to reassure  
8 those of you who have any concerns. It takes an awful  
9 lot to get banned from anything that I'm an  
10 administrator of. I promise you it wasn't done lightly  
11 in this case. Rynearson's conduct is why I don't  
12 associate with the guy anymore. He is incapable of  
13 reasonable disagreement and attacks on personal grounds  
14 constantly, almost always without a fact and the most  
15 caustic terms possible," end quote.

16 One day after being blocked and banned from John Q.  
17 Public's Facebook and web pages, Rynearson launched his  
18 Marshal Matters Media Facebook page and stalking and  
19 harassing and targeting. He was cyberstalking/harassing  
20 Tony Carr with the opening content, quote, "Can a person  
21 be a character assassin if his targets lack character?  
22 We will find out," end quote.

23 Nearly daily, all from multiple times a day,  
24 Rynearson would post comments of me attacking Tony Carr  
25 on his blog and Facebook pages, precisely the same exact

1 method of operation of relentless cyberstalking and  
2 online harassment that Ryneerson did with me when he  
3 created the Clarence Moriwaki of Bainbridge Island  
4 Facebook page one day after I blocked him.

5 THE COURT: Was he ordered to stop doing that  
6 in that particular case you just referenced?

7 MR. MORIWAKI: They just blocked him.

8 THE COURT: In these examples where he's gone  
9 onto these social media sites and they have -- they have  
10 either banned him, blocked him, or both, those entities  
11 did not seek antiharassment orders or a court did not  
12 order that he take down sites that he posted in response  
13 to being blocked and banned. He was permitted to do  
14 that?

15 MR. MORIWAKI: The -- I don't know -- I didn't  
16 write them in here. But they did comment: We're just  
17 glad he's gone. He's glad he's gone. Stopped dealing  
18 with him.

19 THE COURT: Was it, from your perspective, was  
20 his response from being blocked and banned, creating his  
21 own blog where he's critical of those who did that to  
22 him, do you think that falls within the realm of  
23 cyberstalking?

24 MR. MORIWAKI: Absolutely.

25 THE COURT: Why isn't it permissible speech?



1 MR. MORIWAKI: Because he's -- the  
2 cyberstalking statute, as written, with the intent to  
3 harass, intimidate, or torment, or embarrass a person.  
4 That's how the statute is written.

5 THE COURT: What if the intents are mutual?  
6 In other words, what if -- what if he takes some  
7 demented and twisted pleasure in knowing that you have  
8 been emotionally distressed because of his actions, but  
9 be that as it may, his dialogue with regards to these  
10 issues that he raises in these forums is considered  
11 protected political speech.

12 MR. MORIWAKI: Well, I would just disagree. I  
13 would simply disagree.

14 THE COURT: Well, but --

15 MR. MORIWAKI: And because --

16 THE COURT: How do we know if -- all right.  
17 Go ahead.

18 MR. MORIWAKI: Now, he was banned from this  
19 blog site, and two years later he came back to it. On  
20 July 5, 2016, Ryneerson Lee unwelcomingly came back and  
21 resurfaced on the blog, even after being banned all  
22 these years.

23 One commenter described Ryneerson's conduct and  
24 behavior as if he was actually talking about what was  
25 happening to me. This was written last year.

1           Quote, "Rynearson, you write entire articles and  
2           run entire pages on the character of private citizens  
3           based on their online comments and casual conversation.  
4           You do this not because you actually care about  
5           anything, but because you simply find it entertaining to  
6           harass people online. This makes you petty and useless,  
7           which is how most people define you these days when the  
8           name Rick Rynearson comes up. It is no mistake you get  
9           banned from basically every website that you frequent.  
10          It is not because everyone is a fascist or a sensor.  
11          You exist purely online to entrap, harass, defame and  
12          vilify others. There's nothing constructive or  
13          inspiring or even stimulating about that, which is why  
14          your efforts have failed to gain much of a following."

15                 THE COURT: Does speech have to be  
16                 constructive or inspiring?

17                 MR. MORIWAKI: I'm just saying what this  
18                 person -- this is what this person said.

19                 THE COURT: I'm asking you. Do you think that  
20                 speech, to be permissible, has to be constructive or  
21                 inspiring?

22                 MR. MORIWAKI: It would be nice if it was.

23                 THE COURT: It would be nice if it was. But  
24                 we live in a world where people are allowed to state  
25                 things that aren't constructive and inspiring, don't we?

1 MR. MORIWAKI: Yes. Except if you are a  
2 private citizen. I'm not a public figure. You don't  
3 have that right to vilify me, because I'm not a public  
4 figure. I agree with that, because I make comments  
5 about political individuals all the time.

6 THE COURT: Well, let me ask you about this.  
7 Because I think this is an interesting case that's  
8 cited. It is *State v. Noah*, have you read it or are you  
9 familiar with it just by name or no?

10 MR. MORIWAKI: No.

11 THE COURT: So in *State v. Noah* -- are you at  
12 a breaking point?

13 MR. MORIWAKI: No.

14 THE COURT: Finish, that's fine. Keep going.

15 MR. MORIWAKI: Finish this -- just a little  
16 bit more.

17 THE COURT: Sure, no problem.

18 MR. MORIWAKI: The comments continue.

19 "If you had any principles, you'd contain your case  
20 to the facts you can observe rather than pretending  
21 knowledge you don't have and pretending that you are  
22 some kind of shaman in morality and patriotism. You  
23 claim nothing more than personal opinion and you advance  
24 as poorly as anyone attempting to support with hate  
25 rather than evidence.

1 "Continuing to argue some Facebook exchange with  
2 Tony Carr from years ago makes you look like an idiot.  
3 It also makes you look weirdly obsessed, given that Tony  
4 Carr is a private citizen with zero direct influence on  
5 the government.

6 "Maybe at some point you'll admit what this is all  
7 about. You getting pissed off when people ban you from  
8 social media outlets after you make an ass of yourself  
9 in a way that they are not willing to tolerate. You  
10 pick your battles rationally, opportunistically,  
11 targeting the same people who don't have any official  
12 power," end quote.

13 My research also uncovered a disturbing and  
14 alarming contempt and disregard for the order of law,  
15 law enforcement authority, and the judicial system.

16 While serving in the United States Air Force,  
17 Rynearson Lee was officially reprimanded multiple times.  
18 First of my knowledge was October 27, 2009, for being  
19 stopped by the San Antonio Police Officers for a minor  
20 infraction, of which he escalated into being arrested  
21 due to his aggressive and unwarranted behavior,  
22 disregard for authority, and unwillingness to cooperate  
23 with the lawful requests of the police officers.

24 Rynearson's superior Air Force officers were  
25 especially disturbed by his, quote, "Post-arrest boasted

1 taunting of the police officer, quote, 'I am military  
2 and fought in wars and killed people and you had better  
3 watch out while violating constitutional rights,' end  
4 quote. Your future conduct will be closely scrutinized  
5 as you have identified yourself as someone requiring  
6 close supervision. Harsher measures may be taken if  
7 your behavior does not improve immediately. This could  
8 include court marshal or ultimately discharge. Be  
9 assured that I will react strongly to any future  
10 misbehavior on your part," end quote.

11 Five months after that reprimand, Rynearson was  
12 officially disciplined for an unwarranted display of  
13 anger that forced superior officers to once again  
14 question Rynearson's poor judgment and appropriate  
15 conduct.

16 Seven months after that disciplinary letter for  
17 unacceptable anger and poor judgment, once again  
18 Rynearson was officially reprimanded, this time for  
19 disobeying classified orders from superior officers and  
20 violating a lawful order stating, in part, that, quote,  
21 "The seriousness of this matter, together with the poor  
22 judgment displayed by you on this occasion, compels me  
23 to caution you that recurrence of this type of behavior  
24 can jeopardize your career," end quote.

25 Less than two months after receiving that

1 reprimand, Rynearson was deemed a security risk and his  
2 clearance to classified information and unescorted entry  
3 to all restricted areas was suspended stating that,  
4 quote, "This action is being taken because you failed to  
5 obey a lawful order forcing me to question your motives  
6 and ability to protect classified information. The  
7 security information file will be established," end  
8 quote.

9 In an event nearly identical to his October 27,  
10 2009 arrest in San Antonio, less than five months later  
11 on March 18, 2010, Rynearson Lee was once again arrested  
12 for not cooperating and unnecessary escalating and  
13 confrontation with law enforcement officers at a routine  
14 and legal stop by U.S. Boarder Patrol Agents.

15 Rynearson Lee took his case all the way to the U.S.  
16 Fifth Circuit Court of Appeals where on February 26,  
17 2015, he lost the two-to-one ruling that the routine  
18 U.S. Boarder Patrol stop was legal.

19 Not pleased with this ruling, on this web blog,  
20 "PickYourBattles.Net," Rynearson Lee placed a  
21 full-colored photograph of a tapeworm hugging the walls  
22 of the human colon. And in the manifest that he wrote  
23 entitled "Upholding our Constitutional Rights Too  
24 Unorthodox for Supreme Court of the United States,"  
25 Rynearson rallied against the two federal judges who

1 rules against him, U.S. Fifth Circuit Court of Appeals  
2 Judges Thomas Reavley and Leslie Southwick, quote, "I  
3 have killed many foreign enemies overseas who are far  
4 better men than Judges Reavley and Southwick. I mean  
5 that with the utmost sincerity.

6 "Turncoat cowards Reavley and Southwick attack  
7 America from the inside like tapeworms in the bowels of  
8 our once healthy nation that is now malnourished, dying,  
9 and beyond the ability of medical science. Parasitic  
10 domestic enemies like Judges Leslie Southwick and Thomas  
11 Reavley worm around in the corpse that they killed from  
12 the interior and are a far more difficult threat to  
13 defeat than Al Qaeda or the Iraqi Republican Guard.

14 "While they may seem like they are part of  
15 ourselves, they are most certainly not, and they are  
16 very difficult to remove. They do great damage to  
17 America.

18 "There isn't enough tar and feathers in this world  
19 to sufficiently coat those two worthless deserters," end  
20 quote.

21 Finally, let's address the court's order that ban  
22 Rynearson Lee's use of his condo walkway easement.

23 I requested that the stay-away buffer from between  
24 myself and respondent be increased from the 100 feet to  
25 the more traditional 500 feet.

1           At the July 17, 2017 hearing, Rynearson Lee's wife,  
2           Hyland Hunt, requested that the state buffer be reduced  
3           to 300 feet to be measured from the board of our  
4           adjacent properties to their condo entrance.

5           The protection order has not forced the respondent  
6           from his home, but it does precisely the opposite. The  
7           court recognizing the unusually close proximity of our  
8           homes and that the 300-foot stay-away buffer would  
9           encompass a broad swath of the respondent's complex, the  
10          court found that, quote, "These stay-away provisions do  
11          not prevent the respondent from using his real property  
12          located at 217 Shepard way northwest, Bainbridge Island,  
13          including the driveway, garage and common areas of his  
14          condo complex," end quote.

15          Given that a dense and penetrable greenbelt and a  
16          sturdy fence separates our properties, I feel protected  
17          and the court granted a fair and reasonable solution.  
18          Rynearson Lee and his wife, Hyland Hunt, must have been  
19          aware that their walkway easement, which does not have a  
20          dense and penetrable landscape screening or a fence  
21          abuts the western border of my complex property placing  
22          it within 80 feet of my front door, clearly within their  
23          own suggested and ultimately approved 300-foot stay-away  
24          buffers.

25          Rynearson Lee has multiple points of access to



1 Winslow and beyond from his condo far outside the  
2 stay-away buffer, and thus the nonuse of this walkway  
3 easement does not place an undue burden on him.

4 In summation of my statement, the Bainbridge Island  
5 Municipal Court clearly found that the facts of this  
6 case clearly meet the provisions of the statute  
7 addressing the unpermitted conduct against a private  
8 citizen.

9 While the respondent attempts to challenge the  
10 constitutionality of the Washington state statutes on  
11 cyberstalking, he's chosen the wrong case, the wrong  
12 person, and the wrong set of factors in which to engage  
13 the courts.

14 The respondent's constitutionally protected speech  
15 argument does not have merit. It is not a supportable  
16 defense for his indefensible illegal conduct and should  
17 be rejected.

18 The Bainbridge Island Municipal Court, after  
19 exhaustive review of voluminous documents, documentation  
20 of exhibits, has found by a preponderance of the  
21 evidence that the respondent is guilty of unlawful  
22 conduct of stalking, unlawful harassment, and  
23 cyberstalking, and that the protection order addressing  
24 the unlawful conduct is lawful and correct.

25 So I respectfully request that the protection order

1 remain in place as granted.

2 THE COURT: Let me ask you. I've got a couple  
3 questions. Let me ask you. So this was a case that was  
4 cited in the materials, *State v. Noah*. And in this  
5 case, this individual, Charles Noah, accused him of  
6 having sexually abused her when she was a child. And he  
7 denied that.

8 The accusations came about through a therapist the  
9 child was seeing who engaged in some memory -- recovered  
10 memory therapy.

11 So Mr. Noah went to a recovered memory therapist's  
12 office. Stood outside his office with a picket and a  
13 sign. On various occasions the sign said, "Voodoo  
14 Therapy Practiced Here," "David Calof, Mr. Windbag!  
15 Psychotherapist," "Big Bucks for Therapy Spreading Child  
16 Abuse Hysteria," and "David Calof, Voice of Hatred and  
17 Revenge."

18 So in -- this doctor, of course, is a private  
19 individual. So there was no limited public argument  
20 about this person or public for that matter.

21 And so he was picketing outside this -- this  
22 doctor's office with some -- obviously, some pretty  
23 strong words about his feelings about the doctor.

24 And the doctor obtained an order of protection.  
25 The order was based on Mr. Noah's picketing, and also

1 the fact that Mr. Noah had engaged in surveillance and  
2 photograph and things.

3 So on appeal, the court said the order can stand  
4 because the surveillance and photographing of him was a  
5 basis to enter -- to enter the order.

6 But in terms of the emotional distress that the  
7 court found with regards to the picketing, the court  
8 said that the -- the picketing in front of the office  
9 was not a basis to enter an anti-harassment order  
10 because it was protected speech.

11 So here we have an individual who's standing in  
12 front of a doctor's office with signs accusing the  
13 doctor of essentially being a hack and a danger, a  
14 danger to the community, quite frankly, and that was  
15 deemed by the court in Noah to be protected speech.

16 What's the difference between that case and this  
17 case, other than the fact that the medium is the  
18 internet and not a picket fence -- or a picket sign.

19 MR. MORIWAKI: I think this whole thing is  
20 rather conflated, Your Honor. Because this is all about  
21 behavior. It is not about the content. It is about the  
22 conduct.

23 This individual, as I've shown and proven, has  
24 had -- he's done this almost as a professional, as a  
25 professional cyberstalker.

1           THE COURT: It is interesting you say that.  
2           The content -- as I look through the materials, I think  
3           we have two different content in here. We have the  
4           content of the speech that he directed to you through  
5           private means, and then we have the content of the  
6           speech that was directed about you through the --  
7           through the social media mechanisms. And I viewed those  
8           to be different.

9           But when I looked at the content, the actual words  
10          that he chose to use when he was no longer welcome on  
11          your Facebook page, I didn't see anything in terms of  
12          content that might be erroneous opinions that he has.  
13          He might be entirely misinformed by your opinions about  
14          things. What he might be saying, may not be, in fact,  
15          what the case is. But the words, themselves, in large  
16          part, seem to be political speech. Critical of you, but  
17          political speech.

18          Because of that, it seems to me that the conduct in  
19          what you just mentioned is important. Is what -- is  
20          what your -- is the emotional distress and what you've  
21          indicated with regards to this case involving  
22          Mr. Rynearson, is it the content of what he's saying, or  
23          is it the seemingly obsessive, repetitive, practically  
24          instantaneous responses to what you have to say about  
25          things, is that the -- the crux of the problem?

1 MR. MORIWAKI: It is the latter. You're  
2 correct, Your Honor. Because what he was doing -- and  
3 that's -- let me -- let me --

4 THE COURT: I have a follow-up question. But  
5 go ahead.

6 MR. MORIWAKI: I want to articulate it a  
7 different way. Let's say -- because this -- it gets  
8 clouded -- it's this kind of gaslighting argument of  
9 this protected speech about the National Defense  
10 Authorization Act blah, blah, blah.

11 Let's say he was pinging me because he liked Star  
12 Wars and I liked Star Trek. Well, I don't agree with  
13 him. Okay. You can't make me agree with you. You  
14 disagree with me. No, Clarence, you are wrong. Star  
15 Wars is better than Star Trek better, you are an idiot.

16 THE COURT: I'm not going to settle that  
17 dispute.

18 MR. MORIWAKI: I'm a Star Trek fan.

19 THE COURT: I like them both.

20 MR. MORIWAKI: I do too, but I prefer one.

21 So let's follow this through. Let's assume it was  
22 this way.

23 He says -- we had a talk and why don't you think  
24 Star Wars is better? I don't agree. Well, you say you  
25 are some science fiction fan, so you must agree that

1 Star Wars is better? No, I don't. And I don't have to  
2 listen to this any more. And I block him. And then he  
3 claims to be a reporter, saying I'm a science fiction  
4 writer and I'm going to write a hit piece on you saying  
5 you hate Star Wars. I say, well, that's just  
6 ridiculous. Leave me alone.

7 And then he puts up a Facebook page, "Clarence  
8 Moriwaki Hates Star Wars," and starts harassing me on  
9 that. And other people try to stop him from doing that.

10 And then he says, I'm going to do it "Not Clarence  
11 Moriwaki Hates Star Wars."

12 I mean, as silly as the Star Wars argument is, it  
13 is an illustration of the harassment. That's where we  
14 get clouded in these very clever and trying to find  
15 issues as he's done in the past to all these countless  
16 other people to finding something he can wrap the flag  
17 around when it is really the behavior.

18 And so you can't make me agree with you, and nobody  
19 can force you to do that. Especially since I'm a  
20 private citizen, and he was trying to run out of  
21 defenses. That's when he keeps coming up with I'm  
22 politically connected and all that nonsense, of which  
23 he's done this to others.

24 Just -- for example, he closely pointed out, you  
25 are always attacking people who have no political power

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1 or to do anything that can effect change.

2 Even if he wanted me to do it, I'm not the person  
3 that can effect the change that he wants. So it is all  
4 the conduct. It is a matter of him -- you can feel the  
5 glee from him.

6 THE COURT: It may very well be that he takes  
7 some twisted pleasure in all this. I don't know.

8 But if the content of what he's saying is  
9 permissible, is there -- is there any limitation to how  
10 often he can say it?

11 MR. MORIWAKI: I don't think the conduct is  
12 permissible. Because I, as a private citizen, also have  
13 constitutional rights to privacy. I have constitutional  
14 rights for protection for safety and security. And you  
15 can't relentlessly do this to private individuals.

16 THE COURT: So why can't -- in the *Noah* case,  
17 this doctor, he's got a guy outside the door of his  
18 office with somebody holding up signs who's saying  
19 hateful things about him, accusing him of being a danger  
20 to society. And the court said, you know what, that's  
21 permissible. He can do it.

22 So in this case, we don't -- he's not claiming,  
23 well, I don't know -- I don't think he's claiming you  
24 are a danger to society, or he's not saying that you are  
25 a threat or that -- you know, but be that as it may, if

1 someone can stand in front of a doctor's office with a  
2 sign that says this doctor is dangerous, paraphrasing,  
3 why can't -- who's a private individual -- why can't  
4 someone go to the internet and say this individual is  
5 wrong or doesn't know what he's talking about or is  
6 misguided and is a hypocrite, whatever he wants to say  
7 about somebody.

8 That's my struggle. That's where I'm having a hard  
9 time with this, because I think that -- well, for  
10 example, could he -- instead of putting this on the  
11 internet -- and does the medium matter to you?

12 Could he -- let's say you wrote a letter to the  
13 editor and it was put in the Kitsap Sun. And you  
14 print -- he went to Staples, got a thousand copies of  
15 your letter to the editor and wrote on the paper "This  
16 guy is an idiot." And he made a thousand copies and he  
17 stood at the Bainbridge Island ferry and handed them out  
18 to commuters and he said this guy -- see what this guy  
19 wrote in the Kitsap Sun, he's an idiot, and handed them  
20 out. Could somebody do that? Even --

21 MR. MORIWAKI: It's still -- you are hung up  
22 on the harassment statute. The unlawful harassment  
23 statute is really what a lot of this is based on.

24 And it doesn't really -- cyberstalking, yes.  
25 Cyberstalking, anonymously, repeatedly, whether or not



1 the conversation occurred, is that's what the judge  
2 narrowly defined the cyberstalking statute on that part  
3 of the law, on section 1 --

4 THE COURT: To your credit, maybe I'm hung up  
5 on the harassment statute. But that's only because it  
6 says that -- harassment in the cyberstalking statute  
7 says "see the harassment statute."

8 How is "harassment" defined in the cyberstalking  
9 statute? It says, well, go see the harassment  
10 definition in the harassment statute.

11 And I look at the definition, and it says, a  
12 knowing or willful course of conduct directed at a  
13 specific person which seriously alarms, annoys,  
14 harasses, or is detrimental to such person and which  
15 serves no lawful or legitimate purpose.

16 And so if somebody is engaged in political speech  
17 outside the Bainbridge Island ferry terminal saying I  
18 can't believe what this guy wrote on this issue, it  
19 seems like that would be a legitimate or lawful purpose  
20 and therefore not harassment.

21 MR. MORIWAKI: I would disagree because the  
22 argument that they are making is I'm a public figure.

23 THE COURT: No. I don't find that.

24 MR. MORIWAKI: They have.

25 THE COURT: I know that's the argument they

1 are making. I don't think you are a public figure.

2 I think there could be argument made, perhaps  
3 limited. But let's just say you are not even a  
4 limited -- I think it is certainly possible that someone  
5 could say, as it relates to the topic of -- we've never  
6 met before, I don't think. But I know who you are,  
7 because I've lived in this community a long time. I  
8 have an understanding of the Japanese internment that  
9 occurred. And by virtue of that way, somewhere along  
10 the way I've read stuff that you have written or  
11 whatever.

12 So I think that -- there could be an argument  
13 made -- and I certainly have -- I undoubtedly am not  
14 alone in that regard. So perhaps there's some argument  
15 to be made that on that specific topic, you might be a  
16 limited public person.

17 But let's just say that you're not. Let's say you  
18 are a private person. It seems like that if a private  
19 individual can have -- has to tolerate somebody standing  
20 out of their office with a picket sign saying they are a  
21 danger to the community, it seems like a private citizen  
22 would have to tolerate someone on the internet saying  
23 this person is wrong. He's a hypocrite. He doesn't  
24 know what he's talking about.

25 Am I wrong about that? You can tell me I'm wrong.

Argument by Mr. Moriwaki

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1 I hear it all the time. I don't have a problem with  
2 that.

3 MR. MORIWAKI: I'll certainly challenge it,  
4 because I agree with what the court find in their  
5 findings. Obviously.

6 THE COURT: And I -- I have empathy with  
7 regards to that, because I think if I'm in your shoes,  
8 it's not -- and you pointed it out, it's not necessarily  
9 the content. And I'm talking about the stuff that he  
10 published in social media. I'm not talking about the  
11 content of your communications with him directly. I  
12 think those are separate. I've indicated that.

13 But it's the continuous, seemingly obsessive,  
14 instantaneous, you know, this guy is watching my every  
15 move on the internet. That -- that -- that I understand  
16 why that causes you emotional distress.

17 My problem is, is that if the content of his  
18 messages is permissible as political speech or  
19 contributing to the public dialogue or ever how you want  
20 to characterize it. Then, by statute, it's not  
21 harassment.

22 MR. MORIWAKI: That's where we have a  
23 disagreement. Because it is not political speech. He's  
24 making up an issue.

25 I really think -- this is just my supposition.

1       Because I've found he's been doing this for seven, eight  
2       years, however long it's been. I'm actually -- and it  
3       is a very good question to raise, Your Honor, why didn't  
4       some of these people -- you know, these websites with  
5       millions and millions of views, they are probably just  
6       tired with it. They probably said, fine, our viewers,  
7       our readers, they don't have to read him anymore. Done.  
8       They probably were just happy with it.

9             The fact is they are in cyberspace. This guy lives  
10       300 feet away from me. I can't ignore it. You know,  
11       this is in my backyard, literally. And the fact that  
12       all the things you just mentioned are exactly what's  
13       going through my mind. It wasn't the conduct. I knew  
14       every time someone was out there because he was saying  
15       all these things online beyond my ability to even have  
16       any control over it.

17            And that's the definition of the stalker, net  
18       stalking. And there's the report of naturally,  
19       physically stalking my home, which is also worthy of  
20       consideration.

21            THE COURT: That, to be fair, wasn't that  
22       immediately after -- in the context of the analogy that  
23       you made to him, which I think is a very fair one, but  
24       when you say my Facebook page is my home; you are no  
25       longer welcome in my home. And then he goes into

1 cyberspace and says, according to Mr. Moriwaki, I'm no  
2 longer in his home. I'm just outside his home.

3 To be fair about that --

4 MR. MORIWAKI: Well, yes and no. There was a  
5 person who did confront him online. "You are speaking  
6 metaphorically, are you not?" And he said, "No, I'm  
7 not."

8 So she sent that. Her name was Bonnie McBryant.  
9 She also testified. She said, No -- she texted me  
10 saying, "I've confirmed it. He confirmed that he's  
11 outside your home." That's the message I got from her.  
12 So that is the information I had at that moment.

13 THE COURT: What about this issue of -- you  
14 know, the internet, it is real interesting, right? You  
15 are on the internet. You are on some website. You are  
16 reading the New York Times in the morning, and you get  
17 some ad that pops up. And you don't really have control  
18 over what necessarily pops up in your -- on your web  
19 page all the time. You hit the little "x" and you close  
20 the box. You've seen the material or whatever.

21 But, you know, there's a case -- let me get it.  
22 Hold on a second. I printed it out. I think it might  
23 have been Cassidy. Okay. So *Cassidy*. *U.S. v Cassidy*.  
24 2011 case. Talked about the unconstitutionality of a  
25 federal cyberstalking statute as applied in this case,

1 not a blanket -- not a blanket determination that the  
2 statute was unconstitutional, just applied in this  
3 particular case.

4 But it kind of goes back and it says, look,  
5 Twitter -- it specifically references Twitter -- and a  
6 blog.

7 But we do have control over what we get from these  
8 things to some extent. Right? In other words, you can  
9 block people from your Facebook page. You can block  
10 people from Twitter. You don't have to go read "Not  
11 Clarence Moriwaki Bainbridge Island." You are not  
12 compelled or have to go read that.

13 And the case talks about the fact that we -- hold  
14 on a second. Let me get to the point here.

15 "Where the designed benefit of a content-based  
16 speech restriction is to shield the sensibilities of  
17 listeners, the general rule is that the right of  
18 expression prevails, even where no less restrictive  
19 alternative exists. We are expected to protect our own  
20 sensibilities simply by averting [our] eyes. Here,  
21 A.Z." -- that's the individual -- "had the ability to  
22 protect her 'own sensibilities by averting' her eyes  
23 from the defendant's blog and not looking at, or  
24 blocking his tweets."

25 So we do have some control.

1 MR. MORIWAKI: Of course you do.

2 THE COURT: So the fact that he's out there on  
3 social media writing things that are unfavorable -- that  
4 cast you in an unfavorable light, there's no obligation  
5 that you or your friends or anybody have to -- have to  
6 read his material.

7 MR. MORIWAKI: The fact that you don't see  
8 them though does not mean that harassment isn't taking  
9 place.

10 And earlier this last year was a -- the Marines, I  
11 believe -- I think it was the Marines. They had a  
12 private web blog where they had nude pictures of some of  
13 their colleagues. I don't know -- I can't remember the  
14 case exactly. But, they said it was private and no one  
15 could get in there.

16 But they determined that even though it is out  
17 there, the chance that someone can leak it, now it  
18 becomes public.

19 If one of those private 30,000 members in that blog  
20 releases one of these pictures, just the fact you try to  
21 keep it under wraps or try to keep it as a blocked page  
22 or a private page, does not mean that material is not  
23 there to harass you or defame you later. So there's the  
24 threat of that always there.

25 And that was hidden. They got caught. They got

1 prosecuted, and they -- those materials were then  
2 removed. They were hiding it.

3 In this situation, it is not hiding. It is out in  
4 the open. And it is indeed, as the cyberstalking  
5 statute reads, it has the intent to harass, intimidate,  
6 or torment.

7 THE COURT: But how do I know what his -- how  
8 do I know what his true intent is? I mean, he's  
9 engaging in this dialogue about internment and  
10 incarceration without due process. And he's going into  
11 all this stuff. I mean, on its face -- on its face, it  
12 is political speech, isn't it?

13 MR. MORIWAKI: The argument though was --  
14 remember, he has this issue about this law. I may agree  
15 with him, actually.

16 But he says, you have to deny your support for  
17 President Obama and Jay Inslee, and if you don't, you  
18 are a hypocrite. As a member of this association, I  
19 don't.

20 Well, there's a lot of -- thousand reasons why I  
21 support someone. They are not perfect politicians, -  
22 but it doesn't mean I have to disavow them because it is  
23 the one issue you don't like about them. That is not  
24 political speech; that is just harassment.

25 You must agree with me. And I say I don't agree



1 with you. And you can't make me. And he says, well, if  
2 you don't agree with me, you must resign. You must  
3 resign from the memorial association.

4 It wasn't a political speech. It was a reason to  
5 have an argument.

6 THE COURT: It seems to me that -- it may be a  
7 reason to have an argument. But the topic itself is a  
8 very political topic.

9 Obviously, I mean, the fact that who cares about  
10 the issue if it is about politics themselves. It seems  
11 like it is protected. It doesn't matter who you  
12 support. It doesn't matter to me who you support or you  
13 don't support.

14 MR. MORIWAKI: You are right, Your Honor. And  
15 I was trying to explain it the other way, back to the  
16 Star Wars/Star Trek analogy. That was the conversation.

17 The content, the Star Wars/Star Trek fight is  
18 ridiculous, but the pattern was exactly the same.

19 And that's what this is about.

20 THE COURT: And when you say "pattern," you  
21 are talking about -- I don't want to put words in your  
22 mouth, but you are talking about the repetitive -- one  
23 might argue the obsessive nature of the postings?

24 MR. MORIWAKI: Yes. And the demands for me to  
25 do something and agree to something with which I don't

1 agree with. Nobody can be forced to do that. Everybody  
2 has the right not to agree with someone.

3 THE COURT: But isn't the remedy to walk away  
4 and block your website?

5 MR. MORIWAKI: So I tried.

6 THE COURT: So after you blocked him from the  
7 website, did he come back onto your website? Do you  
8 know if he came back onto your website?

9 MR. MORIWAKI: You mean my Facebook page?

10 THE COURT: Yeah. I'm sorry. Facebook page.

11 MR. MORIWAKI: He didn't have to.

12 What he did was he bought ads that then put it up  
13 on my page.

14 When you buy a Facebook ad, Your Honor, it gets  
15 broadcast to everyone. And then I would see that on my  
16 Facebook page, because it is a broadcast ad. So it did  
17 come up on my page, actually.

18 THE COURT: Okay. But -- okay.

19 What about that point -- you know, he -- sorry, did  
20 I wake you up?

21 MR. VOLOKH: No. No, Your Honor.

22 THE COURT: Mr. Moriwaki blocks your client  
23 from his Facebook page, and your client buys ads that --  
24 and I don't know if I can say presumably, maybe I can,  
25 I'm not sure how it works necessarily, but buys ads that

1 one might reasonably infer would end up on  
2 Mr. Moriwaki's Facebook page. So thereby, to some  
3 extent, averting him being blocked.

4 MR. VOLOKH: Your Honor, buying political ads  
5 is fully protected speech. *New York Times v. Sullivan*  
6 involves an ad bought in the *New York Times*.

7 THE COURT: What if I told you, you are  
8 blocked. I don't want to see you on my Facebook page  
9 anymore.

10 MR. VOLOKH: Your Honor, that cannot stop one  
11 from using means of mass communications to talk to the  
12 world at large just because that may also land in  
13 your -- on your Facebook page.

14 To offer an example, there is a case *Rowan v. Post*  
15 *Office Department* which upheld the federal statute that  
16 barred people from continuing to mail things in people's  
17 homes once they got a demand saying stop mailing things  
18 to my home.

19 But let's say that somebody then bought an ad in  
20 the *New York Times*, which he happens to know that  
21 someone subscribed to, and then it arrives in the  
22 person's home and the same speech appears in the *New*  
23 *York Times*. That has got to be constitutionally  
24 protected. But it is now speech to the public, which  
25 may happen to include somebody, you know, doesn't much

1 care for it.

2 Another example, a lot of --

3 THE COURT: Seems like, though, is that -- is  
4 it fair or unfair to say, though, that  
5 when Mr. Rynearson buys the ad that one can reasonably  
6 infer for purposes of, perhaps, harassment that the  
7 intent was -- was to disturb, cause emotional distress  
8 to Mr. Moriwaki?

9 MR. VOLOKH: Your Honor, we don't think so.  
10 And I don't think there is any evidence in the record.

11 I also don't know how Facebook advertising works,  
12 and it is not clear to me that Mr. Rynearson would have  
13 known that this ad would actually appear on that page.  
14 I just don't think there's anything in the record on  
15 that.

16 But to the extent that the person knows that this  
17 will be seen by some who don't want to see it, that --  
18 whatever it may be speaking about the person's intent,  
19 they cannot strip speech of constitutional protection.

20 To take another -- I think the *State v. Noah* case  
21 that you pointed out is an excellent example, as are  
22 *Organization for a Better Autism v. Keefe*, and *NAACP v.*  
23 *Claiborne Hardware*, all of the incidents involving  
24 private figures.

25 THE COURT: I know you spent a lot time on

1 that. As I read those cases, it really seems like it  
2 falls more in the realm of defamation-type cases, as  
3 opposed to what we're talking about here.

4 MR. VOLOKH: Well, Your Honor, so I think the  
5 *Organization for Better Autism v. Keefe* and *State v.*  
6 *Noah* are very closely connected. They both involved  
7 orders that purport to restrict speech.

8 Part of the plaintiff's concern in those cases, I'm  
9 sure, was a fear of danger to his reputation.

10 Mr. Moriwaki acknowledged that he's concerned about  
11 people supposedly defaming him, slandering him. The  
12 fear that this is engendering his fear of defamation.

13 But instead of filing a libel lawsuit, which he  
14 could have filed, and I think would have lost because  
15 the statements about it are either true or opinion, he's  
16 trying to use this and run around the limitations  
17 imposed by libel law in order to try to block speech  
18 that he says he fears would cause injury to his  
19 reputation.

20 In that respect, those are kind of libel cases in  
21 that they say you can't use these injunctions in order  
22 to suppress speech just because you think it damages  
23 your reputation. Your remedy to the extent those ones  
24 are libel.

25 THE COURT: How broad is the -- how big is the

1 scope of one who might be considered a limited public  
2 person? For example, if one lives in Western Washington  
3 or the Kitsap Peninsula and has an interest in the topic  
4 of internment, one might know Mr. Moriwaki. One who  
5 lives in Miami, Florida, who has similar interest in  
6 that topic may not.

7 How big -- how big does the scope have to be for  
8 one to be considered an individual of limited public  
9 purpose for a particular controversy?

10 MR. VOLOKH: Your Honor, we don't think the  
11 geography really matters so much.

12 THE COURT: Because of the internet?

13 MR. VOLOKH: No. No, Your Honor. The general  
14 purpose public figure. Sometimes there are people who  
15 have achieved pervasive fame and notoriety. And one of  
16 the questions, how pervasive does it have to be? And  
17 some cases say it's enough that it's pervasive within  
18 the community; others say otherwise.

19 But for a limited purpose of public figure, the  
20 question is the extent to which one has voluntarily  
21 injected himself into a particular debate. And we think  
22 that in this instance Mr. Moriwaki has voluntarily  
23 injected himself into a particular debate having to do  
24 with the lessons of internment for the past. And there,  
25 the question isn't the geography, because the question

1 has to do with the voluntary injection. But even if we  
2 are mistaken and even if he's just a private figure,  
3 the -- for First Amendment purposes, the only difference  
4 that private figure status makes is under *Gertz v.*  
5 *Robert Welch*. It has to do with whether you have to  
6 show the full statements of fact that injure a person's  
7 reputation and you are seeking proven compensatory  
8 damages. Do you need to show a mens rea of negligence,  
9 or do you need to show a mens rea of an actual --

10 THE COURT: Defamation case?

11 MR. VOLOKH: That is a defamation case.

12 Outside of defamation law, the private public figure  
13 line doesn't matter, as you pointed out.

14 So that's why we think that he's a limited purpose  
15 public figure. But even if you disagree with us, speech  
16 criticizing him is still fully protected, setting aside  
17 libel lawsuits as was seen in *Noah*, as was seen in  
18 *Keefe*, and then *NAACP v. Claiborne*, and *Snyder v.*  
19 *Phelps*, and *Sudz v. Sudz* [phonetic], the Washington  
20 Supreme Court case as well.

21 Your Honor, may I mention one -- one --

22 THE COURT: Sure. I'm just reading my notes.

23 MR. VOLOKH: I don't want to interrupt you  
24 reviewing your notes.

25 THE COURT: Go ahead.

Further Argument by Mr. Volokh

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1 MR. VOLOKH: So I heard from what you were  
2 saying that you were particularly interested in this  
3 distinction, the one-to-one communications and the  
4 communications of the public.

5 And we agree the communications of the public are  
6 clearly protected, but one-to-one, in some situations,  
7 might not be. That's the classic unwanted telephone  
8 harassment.

9 But the one thing that is important and perhaps  
10 this is the reason why the Municipal Court did not  
11 mention any of the pre-block one-to-one communications,  
12 is many of them were parts of conversations that were  
13 initiated by Mr. Moriwaki himself.

14 So just to give one example, just for  
15 convenience -- you can see it in the record. But for  
16 convenience, you can -- let me point to the Municipal  
17 Court finding of fact.

18 Paragraph 14 has Lee responding to a private  
19 message to -- Mr. Rynearson, to a message that was sent  
20 by Mr. Moriwaki.

21 So what often happens in these messages and  
22 Mr. Moriwaki sends a message saying I don't like what  
23 you are posting, doesn't get banned, Mr. Rynearson, but  
24 seems to be kind of negotiating about that or at least  
25 condemning him for it. And Mr. Rynearson saying, well,



1       you should like what I'm posting.

2               Now, at some point, it makes sense that that would  
3       be cut off. But here, the one legitimate purpose to  
4       these communications is simply responding to a statement  
5       that somebody had sent you. Presumably that's a sign  
6       that while they may not agree or may not even much care  
7       for the response, they are kind of inviting your  
8       response.

9               THE COURT: So on Facebook -- on Facebook, I  
10       have this feeling that 30 years from now there's going  
11       to be all kinds of Facebook case quotes cited in our case  
12       law books because it is so prevalent.

13               But on Facebook, if I tell someone to stop it, stop  
14       posting on my Facebook page, but I don't block them. I  
15       just say stop posting on my page. Even though I have  
16       the remedy of blocking them, but I say stop it, and they  
17       post. And I say stop it, and they post.

18               Is simply saying stop it enough, or do I have to  
19       block them?

20               MR. VOLOKH: Your Honor, we think that even if  
21       you say stop it, a lot depends on the context. One  
22       important part of the context is you could have blocked  
23       the person.

24               Why did you say stop posting, period, instead of  
25       just blocking me. And one possible answer is maybe the

1 stop it isn't the stop it. So, for example, a statement  
2 that says "stop trolling" sounds like I don't like the  
3 particular posts you've been posting. I happen to think  
4 that they are trolling. I am warning you, or I'm sort  
5 of asking you not to do something similar. But that's  
6 not a categorical "stop contacting me."

7 And, in fact, if you see the exchange up until the  
8 final block, it would be a "stop trolling." But then  
9 there might be a message sent with a sign of saying "to  
10 be continued," which seems to suggest that there is open  
11 to further conversation.

12 There was at one point, I think, where Mr. Moriwaki  
13 liked one of the comments that Mr. Rynearson --

14 THE COURT: It may not -- it may not be part  
15 of the record, but one -- it wouldn't be irrational,  
16 would it, for one who maybe was fearful of somebody else  
17 to like something that that person posted, right?

18 I mean, you could understand the human nature of I  
19 don't like this person. I'm afraid of them. But if I  
20 like something they post, maybe that will get them off  
21 my back.

22 MR. VOLOKH: Your Honor, that's possible. It  
23 may just be politeness in some situations. The  
24 important thing is if we are going to turn something --  
25 some speech that's otherwise constitutionally protected

1 and something that is now illegal, there's got to be  
2 some really clear notes.

3 And when the block on the Facebook page is -- is  
4 available as an option, that will be very clear notice.  
5 And a message that says, Well, stop trolling. Stop  
6 saying rude things. But then saying to be continued,  
7 that isn't such a clear -- clear communication.

8 And again, especially when the -- the post --  
9 posted on the Facebook page weren't just sent to  
10 Mr. Moriwaki. They were posted in part because they  
11 were readable by a lot of other people. Some of whom  
12 like -- presumably for political reasons, some of the  
13 things that Mr. Rynearson had posted. At least in one  
14 instance.

15 So in that situation, if you are going to try to  
16 block -- or take another example, if somebody is saying  
17 something at my home or at a party I'm hosting, and I  
18 don't like what he's saying, I can throw him out. But  
19 short of throwing him out, I'm saying you are saying  
20 rude things. I don't like it. Stop it. It can't be  
21 the case that I can then have him prosecuted for  
22 continuing to say rude things when I had the option of  
23 throwing him out if I didn't.

24 THE COURT: If I physically remove somebody,  
25 physically, from my actual home, and then they call me

1 five minutes later, what do you think about that?

2 MR. VOLOKH: Well, Your Honor, so if it is  
3 repeated contact, especially one for which there is no  
4 legitimate purpose, then, in fact, that might be  
5 punishable under the telephone harassment statutes.

6 But in this instance, that would not be punishable  
7 harassment because it is not a course of conduct. And  
8 it seems there is a legitimate purpose.

9 For example -- to work from your example. Let's  
10 say that I eject somebody from my party. And then he  
11 calls me up sometime later saying, you know, I'm going  
12 to tell all our friends that you ejected me from the  
13 party because I think you are being rude. But I want  
14 you to have a chance to explain your side of the story.  
15 I might still say, I just don't want to talk to you any  
16 further.

17 But it seems to me that's something that does have  
18 a legitimate purpose. Because again, when you are going  
19 to publically condemn someone, you ought to give them an  
20 opportunity. Even if they said I don't like you; I  
21 don't want to talk to you.

22 THE COURT: The hard part is that I think, you  
23 know, where Mr. Moriwaki comes from, and I have empathy  
24 for this position, is that, you know, it is the  
25 repetitive nature of this.

1 I don't know that I can crawl into your client's  
2 mind and know whether or not the political dialogue is  
3 sincere or intending to harass Mr. Moriwaki or both.

4 In the *Noah* case, you've got the guy standing in  
5 front of the doctor's office and whether he actually  
6 cares about recovered memory therapy or not or he just  
7 wants to really irritate this doctor, hard to say,  
8 right?

9 MR. VOLOKH: Your Honor, that's exactly right.  
10 And that is why the court has dealt with this by  
11 rejecting the theory that otherwise protected speech can  
12 lose its protection because of its intent.

13 The case that I have in mind, *Garrison v.*  
14 *Louisiana*, which specifically said that on matters of  
15 public concern, much that is said may be said with bad  
16 motives, but beyond that, nobody can be safe.

17 THE COURT: What is the cite?

18 MR. VOLOKH: I'm sorry. It's *Garrison v.*  
19 *Louisiana*. I believe we said it in one of our briefs.

20 THE COURT: I'm sure it is, but do you have it  
21 handy?

22 MR. VOLOKH: It is a follow-up to *New York*  
23 *Times v. Sullivan*, which made clear speech can't become  
24 libel simply because of ill will of hostility.

25 *Hustler v. Falwell* is another example. And *Snyder*

1        *v. Phelps* applies to private figures, where the court  
2        says, Look, speech can lose its protection, because even  
3        if it is intended to include emotional distress.

4                In *FEC v. Wisconsin Right to Life*, both the two  
5        justice lead opinion and the three justice concurrence,  
6        and expressly talked about how purpose-based speech  
7        don't offer sufficient security for free discussion  
8        because they put this speaker in a position where they  
9        are afraid they are going to be second-guessing later on  
10       as to what their true heart of hearts was.

11               So for those reasons, otherwise protected speech  
12       can lose its protection, generally speaking, because of  
13       supposed intent to embarrass, for example, under the  
14       cyberstalking statute or to torment.

15               THE COURT: Mr. Moriwaki, do you have anything  
16       you want me to know about the situation?

17               MR. MORIWAKI: What's that? I'm sorry.

18               THE COURT: Anything else you want me to know  
19       about the situation?

20               MR. MORIWAKI: Plenty. I mean, defense has  
21       stated -- I love that he pointed out 14.

22               The reason why I private messaged him. When you  
23       are on Facebook, everybody can read the posts that are  
24       coming up and down, right?

25               So I went to private messaging to have a side

1 conversation. If we follow this party analogy -- and I  
2 thank you for -- it is a good one -- it's like pulling  
3 him aside at the party, taking him out into the hallway  
4 and saying, hey, knock it off. Because everybody can't  
5 hear if we're off on the side, right?

6 That's why I initiated the private message. It  
7 was the -- the professor trying to make it as some sort  
8 of, wow, he's doing ours [verbatim]. No, I was actually  
9 trying to stop the harassment.

10 I didn't want to go online -- I didn't want to go  
11 on my Facebook page and have this conversation so all  
12 the other hundreds or thousands of friends that might be  
13 looking have to look at it. So that's why I went to the  
14 private message to have this discussion with him to try  
15 to change his conduct and behavior toward me. Because  
16 not only is he doing it to me, but everybody on the page  
17 has seen it as well. That's something that's been lost  
18 in this whole discussion.

19 THE COURT: Why not block him?

20 MR. MORIWAKI: I eventually did, sir.

21 THE COURT: Yeah.

22 MR. MORIWAKI: If I might add, this comes up  
23 in cases of real harassment, and we're having this now  
24 with a me-too moment. When does no mean no? When does  
25 stop mean stop? You put it in capital letters with

1 exclamation points.

2 THE COURT: Presumably, comments in the  
3 context of sexual harassment wouldn't be protected  
4 speech.

5 MR. MORIWAKI: But this is behavior  
6 nonetheless.

7 THE COURT: No, I understand -- I  
8 understand where you're coming -- you are saying that  
9 you've got to look at the behavior to get the true  
10 motive of why he's doing this. For him, it is not be  
11 the politics; it is about harassing you.

12 MR. MORIWAKI: That is exactly my belief, sir.

13 THE COURT: I understand that.

14 My problem is that I don't know that the case law  
15 lets me get into his head to figure that out. I think  
16 the case law is that I have to look to see what it is  
17 that he's saying. That's the dilemma I have.

18 MR. MORIWAKI: I would like to point out that  
19 I think you missed the professor misspoke. *Hustler* did  
20 not deal with private figures. *Hustler* was about very  
21 public figures. I hope you misspoke there. Because it  
22 was not. And it is not analogous to this case. Jerry  
23 Falwell --

24 THE COURT: I'm sure Jerry Falwell is a public  
25 figure.



1 MR. MORIWAKI: And Larry Flint as well.

2 THE COURT: Sure. They both were.

3 MR. VOLOKH: Your Honor, if I may just -- I  
4 hope I spoke accurately and said *Hustler v. Falwell* has  
5 applied to private figures by *Snyder v. Phelps*.

6 *Snyder v. Phelps* made clear that the doctrine of  
7 *Hustler* be followed by just as much as private figures  
8 because the plaintiff there was a private figure.

9 THE COURT: Okay. Let me go through my notes  
10 here. Sorry.

11 Mr. Moriwaki, what was the time line -- I'll ask  
12 both of you in case there's a dispute about this.

13 But in terms of the record, what was the time line  
14 between when you blocked Mr. Rynearson and when he  
15 texted you?

16 MR. MORIWAKI: One minute.

17 THE COURT: Counsel, is that your  
18 understanding as well, from the record?

19 MR. VOLOKH: Your Honor, I'm sorry, I was --

20 THE COURT: No, my question.

21 MR. VOLOKH: I do not know the time, but  
22 perhaps co-counsel might enlighten me. I know it was a  
23 short time, but I don't know.

24 MR. SAVOJNI: It was close. I don't know off  
25 the top of my head.

1 THE COURT: All right. That's all right.

2 MR. MORIWAKI: We could pull up the text and  
3 time stamps to validate that.

4 THE COURT: I think it's in the materials. It  
5 wasn't one day or one week; it was fairly  
6 contemporaneous.

7 Mr. Moriwaki, to the extent you know, after you  
8 blocked him, just so I get the time line right, there  
9 was a text you received from him about a minute later.  
10 And then, was there any -- to your knowledge, was there  
11 any other communication by Mr. Rynearson directly to  
12 you, e-mail, text, phone call, Facebook.

13 MR. MORIWAKI: No. He spent those next 14  
14 hours getting that Facebook page up.

15 THE COURT: Okay. How long was the -- the  
16 Facebook page that the banner indicated it was -- the  
17 content may be obvious it wasn't you, but the banner  
18 indicated it was you. How long was that up?

19 MR. MORIWAKI: The first one or --

20 THE COURT: Yes, the first one.

21 MR. MORIWAKI: Several weeks, I think.

22 THE COURT: I thought -- was it that long?

23 MR. MORIWAKI: It was quite a while.

24 THE COURT: Do you know, Counsel?

25 MR. VOLOKH: Your Honor, this is something I

1       tried to look into. Apparently, the information, as  
2       best I can tell, it is not clear. I think that  
3       information may not be in the record.

4               THE COURT: But your client -- it is  
5       acknowledged that your client built a Facebook page that  
6       had -- it said "Clarence Moriwaki of Bainbridge Island"  
7       that was the banner, correct?

8               MR. VOLOKH: Yes, Your Honor.

9               THE COURT: And then the content of that, I  
10      guess what you are -- well, it is an interesting  
11      question, because I think you indicated -- if you read  
12      the content, it would be obvious that it wasn't this  
13      Mr. Moriwaki.

14              MR. VOLOKH: Yes.

15              THE COURT: But that's true only if you knew  
16      Mr. Moriwaki, right?

17              What if the person didn't know Mr. Moriwaki?

18              MR. VOLOKH: No. As I understood, the content  
19      made it quite clear that this is a criticism of  
20      Mr. Moriwaki.

21              THE COURT: How did it make it clear?

22              MR. VOLOKH: So I'm very sorry. My  
23      recollection is not perfect, but my understanding was  
24      this was something -- that this was Mr. Moriwaki's doing  
25      bad things. But I'm sorry, perhaps co-counsel might

1 enlighten me.

2 While he's doing that, if I can refer Your Honor to  
3 a case called *Levitt v. Felton*. I participated in  
4 litigating it. It is a Michigan Court of Appeals case.

5 THE COURT: Just a cite is all I need.

6 MR. MORIWAKI: What's the name?

7 MR. VOLOKH: Levitt, L-e-v-i-t-t, versus  
8 Felton, F-e-l-t-o-n. It's a Michigan Court of Appeals.  
9 It would have been in the last two or three years. And  
10 it involved somebody who put up a Twitter feed that  
11 parodied a local -- a local lawyer. And the lawyer sued  
12 the parodist.

13 And the Twitter feed included this person's -- the  
14 lawyer's name in the Twitter handle. And the court said  
15 the context, anybody who looks at these posts would  
16 understand that those are -- that they are essentially a  
17 mockery of Mr. Levitt.

18 I'm sorry. Counsel is referring me -- co-counsel  
19 is referring me, which I appreciate, to -- that the  
20 Clarence Moriwaki page, the introductory post written  
21 February 6, stated, "This page is meant to be a  
22 discussion concerning our view of the public figure,  
23 Clarence Moriwaki, President of Bainbridge Island."  
24 Clearly, one can dispute that --

25 THE COURT: I didn't hear what you said.

1 MR. MORIWAKI: He said public figure.

2 MR. VOLOKH: Yes.

3 THE COURT: What does it say? Say it again,  
4 Counsel.

5 MR. VOLOKH: "This page is meant to be a  
6 discussion concerning our view of the public figure,  
7 Clarence Moriwaki, President of the Bainbridge Island  
8 Japanese Exclusion Memorial, is unfit to be president or  
9 board member for our memorial."

10 So that is what I had in mind as a statement that  
11 makes clear that this is about him.

12 THE COURT: He's not a public figure.

13 MR. VOLOKH: He claimed to be.

14 THE COURT: You concede that Mr. Moriwaki is  
15 not a public figure?

16 He might be, arguably, a -- a limited -- a public  
17 figure for a limited purpose. But we wouldn't say he's  
18 a public figure in the traditional sense, would we? I  
19 mean, he's not an elected official. He's not a  
20 celebrity.

21 MR. MORIWAKI: Sports star.

22 THE COURT: Yeah, exactly.

23 MR. VOLOKH: Your Honor, our argument in the  
24 brief was that he is a limited purpose public figure,  
25 which is one form of a public figure.

1 MR. MORIWAKI: You're not stating it right  
2 there. There is two unfactual statements in that thing.  
3 Public figure. No, I'm not.

4 I was not president of the Japanese American  
5 Memorial Association. I was not.

6 He put those out there. Those are total lies. And  
7 even -- it was pointed out they were incorrect, he still  
8 did it.

9 So that doesn't stand.

10 Also, I'm really concerned about the proceedings  
11 here. Because I thought this was not a de novo  
12 situation. And a lot of information is being brought up  
13 that was not in the previous record that determine --

14 THE COURT: I don't have a transcript.

15 MR. MORIWAKI: But some of these cases were  
16 not.

17 THE COURT: I know. But I'm saying -- well,  
18 I -- I'm fairly sure, Mr. Moriwaki, that I can look at  
19 cases that -- I can look at case law that Judge  
20 McCulloch didn't look at.

21 And so I know you mentioned that earlier, but I can  
22 look -- I can look at cases that I think are relevant to  
23 the proceedings that Ms. -- that Judge McCulloch did not  
24 look at.

25 In terms of facts, that's why I'm asking, what does

1 the record say about this? Because I don't have the  
2 record.

3 When I asked about the time line --

4 MR. MORIWAKI: So I want to make sure I  
5 understand the statute. I'm reading from the Washington  
6 court rules.

7 And it says Rule 9.1, basis for decision of appeal.  
8 The first is (a) errors of law. Superior Court may  
9 review the decision of the court of limited  
10 jurisdiction, the Municipal Court, to determine whether  
11 that court has committed any errors of law. And, two,  
12 factual determination. Superior Court shall accept  
13 those factual determinations supported by substantial  
14 evidence on the record. Which means everything up to  
15 the rule of the order.

16 THE COURT: Right.

17 MR. MORIWAKI: Which were expressly made by  
18 the court of limited jurisdiction that may be inferred  
19 from the judgment of the court of limited jurisdiction.

20 THE COURT: As a matter of fact, I think I'm  
21 limited to the record. Certainly.

22 But the fact that maybe, as a matter of fact,  
23 that's correct. That's why I'm asking my questions  
24 couching in terms of what does the record say? What did  
25 the record say about the time line? What did the record

1 say about this?

2 But the fact that there may be some case that's  
3 relevant to my analysis on appeal that wasn't looked at  
4 by the Bainbridge Island court, I can look at new case  
5 law. Yeah, I can do that. You disagree or agree?

6 MR. VOLOKH: Your Honor, I agree entirely.

7 THE COURT: I mean, that's crystal clear,  
8 Mr. Moriwaki. But I am limited to the record that --  
9 that Judge McCulloch had.

10 MR. MORIWAKI: Thank you.

11 MR. VOLOKH: Your Honor, if I could respond to  
12 your earlier question. Co-counsel helpfully pointed  
13 out, the *Garrison* citation was at, *Garrison v.*  
14 *Louisiana*, is 379 U.S. 64, 1964.

15 Also, to return to this -- to this metaphor of  
16 standing outside Mr. Moriwaki's house. And the -- the  
17 post by Mr. Rynearson specifically said following --

18 THE COURT: He referenced a metaphor.

19 MR. VOLOKH: Right. But Bonnie McBryant -- so  
20 we have on page 175 of Exhibit 1. We have an exchange  
21 and Bonnie McBryant says, "I'm really concerned about  
22 your statement that you are outside of Clarence  
23 Moriwaki's house and talking to his guests and mutual  
24 neighbors, I assume that is rhetorical. If not, it  
25 sounds a bit threatening. I appreciate your respect."



1           And his response was, "Bonnie McBryant, now, that  
2           is just silly."

3           It seems that, in context, this appears to be sort  
4           of, like, how can you possibly think that I was being --  
5           that I'm actually being threatening.

6           THE COURT: What page number is that?

7           MR. VOLOKH: This is 175 of Exhibit 1. And  
8           that is probably why the Municipal Court concluded there  
9           was no finding of threat of violence or injury or  
10          anything along those lines.

11          And, I'm sorry, 173 is the original post. 175 is  
12          the later exchange with Ms. McBryant.

13          THE COURT: Okay.

14          MR. MORIWAKI: Let's follow that up. The only  
15          information I got was from her. She texted me and  
16          said that "Richard announced that he's outside your  
17          home. You might unblock him and take a screenshot and  
18          consider calling the police."

19          That's the information I got from her. She had her  
20          confirmation from him, as she said. This is in the  
21          record. It is in the findings of fact and conclusions  
22          of law under Section 19.

23          THE COURT: But he did, in fairness to him,  
24          Mr. Moriwaki, he did reference that using Mr. Moriwaki's  
25          analogy. I'm now standing outside his home. He couched

1 it in those terms, correct?

2 MR. MORIWAKI: Yes. But to me, as the person  
3 being targeted, the information I get is that I get a  
4 message from a friend saying, as quote, "Richard  
5 announced he is outside your house. You might unblock  
6 him, take a screenshot, and consider calling the  
7 police."

8 How else -- I'm not going to consider, as any sane  
9 person would, if you got that message, that you are  
10 being threatened and stalked. How else was I supposed  
11 to interpret that message?

12 THE COURT: I think at the moment, you  
13 definitely could interpret it that way.

14 And in hindsight, you say, well, wait a minute,  
15 that really wasn't the situation.

16 But at the moment, you're right. Of course. Yeah,  
17 I agree.

18 Okay. Very interesting. All right.

19 So as I typically would, I would invite either  
20 side, if they want, to provide proposed findings and  
21 conclusions for me to review. You don't have to do it.

22 Mr. Moriwaki, do you have an interest in doing  
23 that? Do you know what that is?

24 MR. MORIWAKI: No.

25 THE COURT: It is a document that you would

1 want me to sign, which indicates, essentially, the  
2 findings, conclusions that I would need to make to  
3 affirm Judge McCulloch's decision. You don't need do it  
4 if you don't want.

5 I offer it to people, because oftentimes the  
6 prevailing party, which whomever it may be in this case,  
7 likes to prepare those documents so that they are better  
8 prepared in case there's an appeal on the case.

9 That's why I allow the lawyers or litigants the  
10 first crack at it. Because ultimately the prevailing  
11 part will have the burden -- perhaps not the burden but  
12 have the duty to defend the decision on further appeal.

13 Counsel, do you want to do that?

14 MR. VOLOKH: I'll defer to co-counsel.

15 MR. SAVOJNI: We're willing to. We don't have  
16 anything prepared at this time.

17 THE COURT: No, absolutely. Everyone is  
18 entitled to a prompt decision. You are also entitled to  
19 a reasoned decision. I need to review some of these  
20 cases a bit more.

21 So no, you are not going to get a decision today or  
22 tomorrow. But I do like to give the parties an  
23 opportunity to do that.

24 Typically, I would say two weeks or so. Do you  
25 want to do that?

1 MR. VOLOKH: Yes, Your Honor.

2 MR. SAVOJNI: Sure.

3 THE COURT: Mr. Moriwaki, do you have any  
4 desire to do that? You don't have to. I'm certainly  
5 going to offer you the opportunity.

6 MR. MORIWAKI: I might. I don't have the  
7 resources, however.

8 But I -- as I stand by -- I stand by the decision  
9 of the court.

10 THE COURT: Sure. Okay. Make sure that what  
11 you sent to me in terms of proposed findings and  
12 conclusions are e-mailed or provided to Mr. Moriwaki so  
13 he sees them as well. And then, ultimately, you will  
14 get something from me in the mail, an order, indicating  
15 my decision with some explanations regarding the  
16 decision.

17 Anything else?

18 MR. VOLOKH: No, Your Honor.

19 THE COURT: Okay. These are interesting  
20 issues. Challenging issues. I definitely understand  
21 they are real people involved in these issues. I take  
22 it very seriously.

23 And then you will be getting an order from me as  
24 soon as I get one out. But it wasn't -- I'm not going  
25 to delay it too long. Okay. It should be a few weeks.

1 A few weeks, perhaps, after you submit something that  
2 you want to submit, if you want to submit anything.

3 MR. VOLOKH: We'll be prompt, Your Honor.

4 THE COURT: All right. Thank you all very  
5 much. I appreciate it. And we'll be adjourned for the  
6 day.

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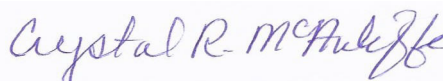
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C E R T I F I C A T E

STATE OF WASHINGTON            )  
  ) ss.  
COUNTY OF KITSAP            )

I, Crystal R. McAuliffe, a certified court reporter, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken by me in the above-entitled matter.

Dated this 23rd day of December, 2017.



CRYSTAL R. McAULIFFE, RPR, CCR  
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