

Five justices of the Supreme Court of Washington considered (04 Sep 02) a motion for discretionary review.<sup>1</sup> They unanimously accepted the arguments in the pleadings made by attorneys in behalf of Paul Trummel, a Seattle journalist. That decision remanded the case to Washington State, Court of Appeals. The Supreme Court effectively reinstated the appeal. The Appellate Court had previously rejected it on motions brought by Council House using a variety of delay and deny tactics.

The Court remedied a travesty of justice by reversing the appellate court decision. It considered the specter of preventing journalists from publishing information then jailing them for satirical commentary. This case has captured the interest of national media and broached a worldwide outrage in the journalism community. This decision forces the appellate court to address the questions related to the issues that it previously avoided.

The questions:

Should trial courts allow the anti-harassment statutes to be misused as a prior restraint to abridge a citizen's constitutional right to free speech?

Should the trial courts allow the anti-harassment statutes to be used in a retaliatory manner to circumvent other laws, such as actions for defamation, or the landlord-tenant statutes?

Should the trial courts interfere with the right of pro se litigants to representation by counsel?

The appeal involves significant questions of constitutional law under both state and federal constitutions, primarily, First Amendment rights to free speech. The trial court improperly denied those rights by entering an anti-harassment order that constituted a significant prior restraint upon free speech.

National Council of Jewish Women (NCJW) formed a non-profit corporation then built and later refurbished Council House, a residence for senior citizens on Capitol Hill, Seattle. They obtained federal financial assistance through HUD for the original construction and rehabilitation.

The trial court order permanently barred the reporter from ever returning to his home at Council House, an independent living facility with about 200 residents, many of them his friends and acquaintances. Impetus for the draconian order came from his protected writings in a newsletter. Those writings, critical of the administration of Council House, caused the administrator and directors to seek and obtain the original anti-harassment order.

Trial court, on motions brought by Council House, later entered several contempt orders against him. They all based upon alleged violations of the original flawed and unconstitutional anti-harassment order. The court then jailed him for 111 days without a right to counsel, again on motions brought by Council House.

State law specifically exempts constitutionally protected activity from consideration as a basis for anti-harassment orders. Nonetheless, the trial court almost totally based its decision upon protected activity. The court used a classic prior restraint on free speech in the guise of an anti-harassment order.

An endemic misuse of anti-harassment statutes existed during the journalist's residency at Council House. He spent a considerable amount of time investigating abuse of residents by administrators then reporting it to government authorities. In retaliation, the administrator (and several residents acting in his behalf )intentionally and systematically disparaged and harassed him. That culminated in a physical assault upon him encouraged by the administrator. Both HUD regulations and Seattle Municipal Code proscribe such behavior. Those authorities have specific procedures that apply to landlord-tenant disputes. The administrator chose to ignore them.

Instead, the administrator used the anti-harassment statute to brand the reporter as a malcontent and troublemaker, to discount his credibility, and to have him removed from the residence. He effectively tried to silence him using non-applicable laws. He has since conducted a malicious and vindictive campaign by distributing propaganda to destroy his credentials and to malign him.

The administrator had a clear remedy at law if he could prove the published material malicious, false, and misleading, as he claims. His sole complaint rested upon such claims. Moreover, the trial court based its anti-harassment order on those claims without any evidence to support them. Council House directors could have brought an action for defamation but chose not to do so, probably because they could find no evidence of malice or libel and would surely lose it.

The courts should neither use nor tolerate misuse of anti-harassment statutes directed at elderly citizens. Courts need to clarify the appropriate time to use those statutes for trial courts and for litigants. The allegations against the reporter related mainly to his efforts to report his concerns about the administrator to government agencies - absolutely privileged communication.

Washington legislature declared that the law protects individuals who in good-faith report malfeasance to appropriate governmental bodies. Council House retaliated by using unlawful SLAPP (Strategic Litigation against Public Participation) techniques. The administrator and his directors designed their complaint to penalize the reporter for invoking governmental procedures to criticize and challenge them. They used economic sanctions instead of allowing due process of law.

Trial courts should not interfere with a *pro se* litigant's right to counsel. The court denied the reporter, a *pro se* litigant, a reasonable continuance in order to obtain counsel. This denial occurred after he had indicated to the court that an attorney had already agreed to represent him but could not attend the hearing on that day.

In particular, the court had absolutely no justification to deny the right to counsel at a first hearing. In denying that right, the court did not consider the severe nature of the order it entered

against the reporter - constructive eviction from his home and eventual jail time. Higher courts need to make it clear to the judiciary when it may and when it may not deny litigants the right to counsel.

This supreme court decision forces Council House to address the real issues by answering four appeals pending before the Washington appellate court. They must now allow due process of law for the first time since the case started (20 Mar 01) and cease their administrative disingenuousness.

*Nmesis.*

1. The Supreme Court of Washington considered the Motion for Discretionary Review of the decision by the Court of Appeals not to hear an appeal of the decision by Judge James A. Doerty. (In the Superior Court of the State of Washington (King County) 01-2-04698-5 SEA. Paul Trummel, Petitioner v. Stephen (aka Stefan) Albert Mitchell et al, Respondent, Stephen (aka Stefan) Albert Mitchell et al, and Council House Inc., Cross-Petitioners v. Paul Trummel, Respondent).

*Justices*

Gerry L. Alexander, *Chief Justice.*

Charles C. Smith, *Associate Chief Justice.*

Barbara A. Madsen

Faith Ireland

Tom Chambers

*Attorney-at-Law*

Robert J. Siegel, Merkel, Siegel, and Friedrichsen, Seattle.

*Pleadings*

Petition for Discretionary Review

*Robert J. Siegel, Merkle, Siegel and Friedrichsen, Seattle.*

Answer to Petition for Discretionary Review of Decision Terminating Review

*Richard A. Du Bey, Short Cressman and Burgess, Seattle.*

Reply on Petition for Discretionary Review

*Robert J. Siegel, Merkle, Siegel and Friedrichsen, Seattle.*

Order of the Supreme Court of Washington.

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Feedback: [webmaster@contracabal.org](mailto:webmaster@contracabal.org)