King County Superior Court

Council House v Trummel—June 21, 2002

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR KING COUNTY

PAUL TRUMMEL,

Petitioner,

vs.

STEPHEN MITCHELL,

Respondent.

STEPHEN MITCHELL, on behalf of the residents of Council House ,

Cross-Petitioners,

vs.

PAUL TRUMMEL,

Respondent.

KING COUNTY CAUSE No. 01-2-04698-5 SEA

REPORT OF PROCEEDINGS

June 21, 2002

BEFORE THE HONORABLE JIM DOERTY

APPEARANCES:

MR. BRAD MERYHEW,
Attorney at Law,
appeared on behalf of the Cross-Respondent;

MS. MAUREEN MITCHELL,
Attorney at Law,
appeared on behalf of the Cross-Petitioner.

DATE: June 21, 2002.

THE BAILIFF: Superior Court is again in session.

THE COURT: Good morning. Be seated, please.

THE COURT: Good morning. Be seated, please.

Counsel, I had one just brief preliminary matter, and that is, that the British Consul contacted us expressing a desire to speak with Mr. Trummel. I don't know if they got ahold of him, but we have passed the message along.

The Court has had the opportunity of reviewing the pleadings submitted on Mr. Trummel's behalf. That's the cross-respondent's motion to vacate findings of contempt. There is a response to the motion by Ms. Mitchell on behalf of Council House and the petitioners with a number of affidavits and declarations.

There is a reply submitted by Mr. Meryhew on behalf of Mr. Trummel, Mr. Trummel's declaration, and Mr. Meryhew's declaration. Does that sound like I got all of it?

MR. MERYHEW: Yes, your Honor.

THE COURT: Go ahead, Mr. Meryhew. It's your motion.

MR. MERYHEW: Well, your Honor, at this point, I really don't have anything to add to the written motions that I have filed. I would ask the Court to grant my motion to vacates the other relief I have requested within the body of the motion and, at

this time, make no additional changes to the order, and my objections are clearly stated in my reply.

THE COURT: All right. Thank you. Ms. Mitchell.

MS. MITCHELL: Your Honor, Council House also relies on the pleadings it has already submitted. In addition, it believes at this time that Mr. Meryhew's motion may be moot, given that Mr. Trummel has been conditionally released, and that in reviewing the contempt status at this time, it may become apparent that the order has been -- that was imposed in response to the violations may be lifted. In which case, there is no point to vacating that order at this time.

THE COURT: The Court did take a look at Contra Cabal.org yesterday and noted a new posting, apparently in response to the Court's order. I haven't looked at it today. I am assuming it's still there, so that will form part of the basis of the Court's findings and rulings that we will follow now.

With respect to the motion to vacate, Mr. Trummel's motion to vacate the contempt findings of February 27th, 2002, turn on whether the Court should have advised him of his right to representation at public expense at that occasion.

The motion also suggests that Mr. Trummel was asking for representation when he brought up his in forma pauperis funding request on that occasion. The IFP discussion cannot reasonably have been taken by the Court as a request for an appointment of trial counsel for several reasons.

Mr. Trummel had already demonstrated a certain amount of litigation ability and courthouse facility. We see from his writings that he is intelligent and precise, if not factual or truthful.

By February 27th, the Court knew that he had been in court pro se or with counsel on numerous occasions in at least two other antiharassment petitions, a landlord/tenant dispute, and one or more small claims matters.

The first time Mr. Trummel was cited for contempt in this case was when he intentionally took an IFP funding request

for production of a transcript to another judge in this courthouse after this court had already granted the cross-petition and retained jurisdiction.

Mr. Trummel later presented an IFP funding request to perfect his first appeal, which I granted on July 20th of last year. That IFP funding request was subsequently set aside by this Court on October 1st of last year, upon a finding that Mr. Trummel had lied about his financial resources. When his financial situation changed again, another IFP was authorized.

The Court believes that Mr. Trummel knows what to ask for and how to ask, based on this history.

The verbatim report of the proceedings, otherwise known as a transcript, from February 27th of 2002, at page 11, lines 16 through 21, is specifically probative on this issue, and I will read it into the record.

"Mr. Trummel," this is me speaking, "also, you sent an ex parte, another motion and order to proceed in forma pauperis, and I reviewed that. You did not, however, include what it's for. Is it because you are filing another appeal?" "Yes," says Mr. Trummel.

Subsequent to February 27th, the dialogue between Mr. Trummel and the Court about the IFP continued. On page 4 of the transcript from April 3rd of this year, he asks about it again here in court, clearly, in the context of his appeals.

At page 6, the Court reminded him that it had been returned to him at the earlier hearing for clarification. At page 8, line 14, I say, quote, "I don't know what you want this IFP for" close quote, and Mr. Trummel answers, quote, "Both the Supreme Court and the Appellate Court hearing. I thought I made that clear before," close quote.

We reviewed here in court in April the form that he had submitted, and I noted at page 11 on line 1 of the transcript from that occasion that the only thing that it asked for was the appeal filing fee. I told Mr. Trummel we would contact his lawyer, Mr. Siegel, for clarification of what he needed.

Lastly, regarding this point about the IFP, the Court notes that IFPs have not typically been used in this county to process or obtain counsel at public expense for the trial level. The Office of Public Defense conducts a financial eligibility interview.

The Court, therefore, finds that Mr. Trummel has not at any time asked for appointment of counsel at public expense to represent him before this Court. The Court also finds that had he asked, he would have been referred for an OPD screening interview the same day.

In addition, for this motion, the Court considers whether or not he had counsel. Since the beginning of the proceedings against him, Mr. Trummel has been represented by Robert Siegel and the firm of Merkle, Siegel & Friedricksen, serving pro bono.

At certain hearings, Mr. Siegel was not present, and Mr. Trummel clearly elected on the record to proceed pro se for that hearing. One such was April 10th, 2001, at the trial on the petition. On October 1st, 2001, they were both here in court.

A few days later on October 5th, only Mr. Siegel was here. Then, they were both here again on October 26th, 2001, and that's a very significant hearing because that's when the protection order was modified to prohibit Mr. Trummel from posting personal identifiers on the Internet. That was the hearing that counts under an Alabama versus Shelton analysis. I don't have a cite for Alabama versus Shelton because it was only published by the United States Supreme Court last month.

On February 27th of 2002, the hearing on which Mr. Trummel's Tetro analysis turns, Mr. Trummel considered himself still represented in these proceedings by Mr. Siegel but was again appearing pro se for that occasion. This is unequivocally established on page 2 of the transcript from that date.

The Court was aware of an attempt to provide notice by Mr. Siegel but had not analyzed it, and for reasons to follow, that

notice is without effect. When counsel of record did not schedule a compliance review after his client had been in jail for a month, this Court held one sua sponte.

On that occasion, I remarked to Mr. Trummel that Mr. Siegel had not been given notice because he wasn't representing him in these proceedings. At that time, the Court had still not analyzed the notice of intent to withdraw, but I was concerned that Mr. Siegel was not coming to court and, more importantly, had not communicated that he wasn't going to come before this Court to his client. I observed Mr. Trummel on that occasion to be surprised at my remarks about his attorney of record, Mr. Siegel.

Therefore, immediately after that hearing, I directed the bailiff to contact Mr. Siegel. Mr. Siegel has still, as of today, not responded to the Court. When I say responded, I mean in writing, which is the only way he may respond, pursuant to the Court's directive to him, Mr. Siegel, in August of last year. That's reflected in a letter which I have provided for counsel who were present here on Monday. The Court gives no weight to Mr. Siegel's declaration, but I will not strike it from the record. After several weeks of no response from Mr. Siegel, I appointed Mr. Meryhew's office to represent Mr. Trummel in the contempt part of the proceedings.

Council House in response to Mr. Trummel's motion today has made reference to Civil Rule 71, which governs the withdrawal of attorneys from a case. The Court has had occasion because of that to closely analyze Mr. Siegel's notice of intent to withdraw.

I find that as a matter of law, that the notice of intent to withdraw is invalid. On its face, it fails to provide the required opportunity for objections or for the Court to deny withdrawal, pursuant to CR 71(a) or (c)(4).

The declaration accompanying the notice confirms that Mr. Trummel was notified 7 days after the withdrawal. The Court must further find as a matter of fact that Mr. Trummel did not know about the withdrawal of Mr. Siegel until he was so advised in open court on April 3rd of 2002.

Mr. Trummel and Mr. Siegel together have presented a moving target on the issue of representation. Whether this is deliberate or by inattention, it's not possible to say. While purporting to withdraw, Mr. Siegel continued in negotiations with Miss Mitchell and representing his client to the media concerning matters that were ongoing here in this court.

The Court regards with skepticism the attempted withdrawal shortly before a noted hearing. The failure of Mr. Siegel to communicate properly with the Court or his client, or the opposition on this point in advance also raises concerns under the case of Kingdom versus Johnson, at 78 Wn. App. 154, an opinion from the Court of Appeals in 1995.

In allowing the withdrawal of the attorney in that case, the Court noted that the attorney gave his client months of notice and did everything possible to minimize the impact on the case. Here, Mr. Siegel made no efforts to find substitute counsel. He gave his client notice after the fact, and now, we have confusion, further litigation, and delay.

The minimum professional attention to this would have been a letter to the Court noting the withdrawal properly and suggesting consideration of appointed counsel for his client. Kingdom reminds us that withdrawal is subject to the Court's discretion, which may be based on the additional factors of the Rules of Professional Conduct and specific articulable facts.

Tetro versus Tetro is distinguished from the facts and circumstances here. That's the case that, I take it, Mr. Trummel's motion is relying on today. In the Tetro case, one of the appellants was jailed in a summary proceeding. This proceeding here was not summary but pursuant to an order to appear and show cause.

The other Tetro appellant was ordered to appear and show cause, but he specifically requested appointed counsel before the Court and was refused. As I have already noted, Mr. Trummel did not make any specific or implied requests.

There are some other distinctions that are not quite so important. In Tetro, the Court noted that the proceedings had

all the trappings of a criminal trial. The complaint was brought forward by a State prosecutor. There was a requirement to appear and defend against charges of illegal conduct in the past and imprisonment.

In our case, there is no State action. There's no illegal conduct, and it remained to be seen what Mr. Trummel's response would be at the February contempt hearing. At the time of the previous hearing on the exact same issue, he expressed willingness to remove the prohibited information, and no sanctions were necessary.

All of that said, jail was a definite possibility on February 27th of 2002, here in this court, and there was a question about legal representation, but a factor to consider in appointing counsel or allowing self-representation is how unequivocal the respondent is regarding the issue.

This requirement is well explained in Justice Sanders' dissent in Detention of Turay, at 139 Wn.2d 379, a 1999 opinion, which also cites the U.S. Supreme Court in Neder versus U.S. Mr. Trummel could not have been more unequivocal.

In conclusion, on this part of the motion, the Court finds as a matter of law in a civil proceeding, that where the respondent is unequivocal in wanting to continue pro se, where his attorney of record remains active in the case, and where the respondent does not in any manner indicate a desire for appointed counsel, that the Court has no obligation to provide affirmative notice of the right to counsel or to elicit an express waiver.

The motion to vacate the earlier contempt finding is denied. The briefs do not address double jeopardy, but it occurs to the Court that if the prior contempt were vacated, Mr. Trummel could still be prosecuted under the criminal part of the statute.

The motion to recuse on the grounds of bias: the core of this motion appears to the Court to be that the Court denied counsel at the contempt hearing. There was no denial of counsel for the reasons that I have already detailed.

The next part of the recusal motion is that the Court did appoint counsel but not until 63 days later. Now, there's no question that 63 days in jail without advocacy by one's lawyer is of great concern. Mr. Trummel was represented by Mr. Siegel all that time. There was an intervening hearing, where Mr. Trummel didn't ask for appointed counsel, and then, there was further delay while the Court waited for Mr. Siegel to respond to our inquiry.

So much time passed that eventually the Court became concerned about two things. First, there was the fact of Mr. Trummel's incarceration with absolutely no advocacy by Mr. Siegel, his lawyer, on his behalf, except to the media. Aggravating that was the unusual appearance of another IFP funding request for an appeal already taken.

Second, all of what I have described led to some concern about Mr. Trummel once more manipulating vagaries and distortions to frame an issue. The Court decided to bring the matter to a head and appointed a qualified counsel on its own initiative.

The Court finds no bias in this sequence of events, either in appearances to an informed, reasonable observer or in actuality. As the Court understands the motion to recuse, the order limiting telephone use in jail except for lawyer contact is proposed as evidence of bias.

The record should be quite clear that this order about the use of the telephone was not done in response to Mr. Trummel misusing the telephone. The Court is unaware of any allegations of Mr. Trummel using the telephone.

The purpose of Mr. Trummel being in jail was to force him to comply. It's what the statute terms a "coercive sanction." The phone restriction was intended to ratchet up the coercion. There remain additional such measures that have not been used.

The order that I directed to the Department of Adult Detention with respect to the telephone says, "Based on the coercive purposes of the incarceration and in furtherance thereto and the respondent continuing to be in contempt of court, he is

restricted from the use of the telephone while in custody, except for purposes of contacting his attorney at SCRAP."

I also indicated that because I did that sua sponte that it could be reconsidered at any time on a request without regard to the time lines for motions to reconsider.

Mr. Trummel has claimed a bias since the very first time he appeared here, and I wouldn't let him use his personal tape recorder to record the proceedings. He has in varying levels of invective maintained bias consistently for the last 14 months.

The Court has previously noted that Mr. Trummel's worldview is that anyone who doesn't agree with him is biased. I have previously found that adverse rulings are not evidence of a bias. Nothing has changed.

The Court is not biased, merely determined that, like everybody else, Mr. Trummel must obey the protection order until or if it is set aside by a higher court. Mr. Trummel has always known that, and his current Web publication seems finally to acknowledge it.

There are a list of points in this case that indicate that there is no bias. The first protective order made no attempt to restrict Mr. Trummel's writing or publishing in any way. There has been no prior restraint of speech at any time. There has been no directive to remove or edit content, except that which can be used to contact the petitioners.

The Court elected not to prejudice Mr. Trummel by filing in the record the exhibits discussed here today that I gave the lawyers on Monday. Those are Mr. Trummel's harassing letter to a court reporter and my letter to Mr. Siegel. Those two documents will be included as exhibits for purposes of this hearing on the record now.

Perhaps most importantly, on the question of being biased against Mr. Trummel, I rejected the petitioners' pleas to make him stop saying nasty things about them on the Internet, and I agreed with Mr. Trummel, if they don't like it, they don't have to read it. Most simply put, the protective order prohibits him

from contacting them directly or through third parties. He has reached out through the Internet or in some other way and he has contacted them yet again.

The idea that a protective order cannot forbid certain types of speech is absurd. If that were so, every battered woman or abused child, every person protected by a domestic violence no-contact order would be at risk because the perpetrator could walk up to them or send them an E-mail saying, "I am back" and then claim: That's not contact, that's free speech. And the courts would be helpless to enforce those protective orders.

As to expanding the 500-foot limit around Council House, I am very mindful of the circumstances in Mr. Trummel's declaration, and prior to seeing the proposed order from Council House had actually delineated a no-contact zone described by street boundaries that was a little bit narrower, and we will end up with one or the other of those approaches, I think.

There's no reason to prohibit Mr. Trummel from accessing public facilities or services that are up on Capitol Hill or his health care provider at Group Health.

I didn't have the opportunity to review the reply brief until this morning. The lawyers here, I am sure, are aware that not all of the proceedings have been transcribed. Typically, only the Court's findings have been transcribed. I have not gone back through 14 months of my notes to locate when I was advised of that boundary dispute.

I recollect that I heard it from Mr. Trummel, but I cannot use that episode as the basis of any kind of an order today, because I haven't located where it is in the record, and I will defer to Mr. Meryhew's position that it is not in the record.

However, the fear expressed by the residents in current declarations and the escalation of threats brought about by cyber creeps and web tabloids are grounds enough for another modification of this protection order.

A manifestation of the escalation of harassment due to

misinformation on the Internet is the extra security that you see here today and that you saw here Monday. I regret the difficulty and delay you all had in entering the courtroom, and that you had to be gone over by a metal detector. In my view, the halls of justice should be open, and they should be safe.

The Court has received hundreds of E-mails about this case. Of course, I am not permitted to engage in any discourse about the case outside of the record, and I haven't done so. So I can't answer the E-mails. These E-mails have generally fallen equally into about three groups.

First are inquiries from folks concerned about the First Amendment. Many of these are very polite. Some are rather abrupt. My personal favorite is, "Your law school ought to refund your tuition money." In this category of E-mails, there's a lot of shrill invective from self-described investigative journalists, who scurried to defend a perceived frontal assault on free speech without, ironically, doing any sort of investigating before mouthing off.

The second group of E-mails expresses appreciation for the Court's findings and orders, especially now that they are widely accessible on the Court's home page. Unfortunately, we are some years away from having all our records on the Internet, although we do have a plan in operation to accomplish that. This case is a fine example of why we must accomplish that, but taxpayers in King County are facing severe reductions in services. They are concerned about closing parks and swimming pools, and so forth. So funding for technological improvements in the justice system is not quite what we would like it to be.

The third sort of E-mails that we have been receiving from the cyber creeps, as I call them, are the ones of great concern here. I cannot put these into the record, because they are under review by court security. E-mails are like cell phone messages. Law enforcement finds the sender every single time. Since I am unable to place those E-mails into the record, I cannot use them as a basis for any additional contempt finding or any additional sanctions. However, the broad discretion I have under the antiharassment statute does permit me to modify the existing order on that basis.

As to the new allegations in the declarations of Mr. Trummel's new article being pushed under apartment doors at Council House, I think that that sort of thing is not amendable to coercive contempt. It's a crime, and it should be prosecuted.

The Court has previously directed Mr. Trummel's attention to RCW 63.30, which establishes that individuals have a protected private property interest in their name, and photographs of them, in images of them, and so forth. By using such information without permission, Mr. Trummel is essentially infringing on a copyright.

If a book were published with copyright protected information in it, the courts could recall the entire printing. The petitioners may wish to consider pursuing a similar remedy directed at any future Internet publications.

The motion to recuse is denied. The Court will amend the October 27th, 2002, order with respect to the boundaries -- well, let me say the boundaries that I had proposed were an area described by East Cherry Street on the south, East Pine Street on the north, 22nd Avenue on the east, and 12th Avenue on the west.

Since Mr. Trummel likes to quibble, I want to be clear. A street is defined by the middle line running down the center, whether it's painted on there or not, and street and avenue are the same for purposes of this order.

The conditional release part of my order on Monday is vacated. Mr. Trummel is free to go, and I would like to hear from the lawyers about which one of the two ways of drawing a line on the map might be preferable. Mr. Meryhew.

MR. MERYHEW: I am sorry. I was writing as fast as I could. Could you give me the boundaries again? I saw Cherry on the east.

THE COURT: I am going to hand you down a map. I think you might have one with Ms. Mitchell's proposal, but I don't know. We have got another one up here that might be --

MR. MERYHEW: If I may just --

THE COURT: Why don't you both come up and look at the map, if you want. Then, we can figure it out. East Cherry on the south, East Pine on the north, 22nd Avenue on the east, and 12th Avenue on the west.

That would define a zone a bit more than 500 feet, but it would not include any of the concerns that Mr. Meryhew raised in his brief.

MR. MERYHEW: East Cherry?

MS. MITCHELL: Your Honor, was the north boundary Pine Street?

THE COURT: East Pine -- well, actually, it is East Pine on the north. Were you able to draw an overlay?

MS. MITCHELL: I have a highlighter that helps define this.

THE COURT: Why don't you show that to Mr. Meryhew.

MR. MERYHEW: Pine, Cherry, 22nd, and the Fourth Street, your Honor --

THE COURT: 12th. It's an awkward thing to spring on possibly map-challenged individuals at the last minute. Not everybody was in scouts.

MR. MERYHEW: Your Honor, Ms. Mitchell has provided me prior to this hearing with a proposed new order. It does seem to me that the cleanest way to do this is probably with a new order.

Having stated my objections and having been given a choice between the two options, for obvious reasons, I think I prefer the Court's, which I think is more narrowly tailored. It certainly leaves, it appears to us, outside of the boundaries his primary medical provider which is Group Health, allows him an access to the Broadway business district, and I think addresses many of the issues that Mr. Trummel raised in his declaration and is, perhaps, more of a bright line than it is a major enlargement of the original order.

So having reviewed that order, I guess I would ask the Court to enter the order proposed by Short & Cressman with modifications written in to the streets that are proposed within the text of that order.

The only thing I would note is that it enjoins it from using Social Security numbers, which he has never used and is, of course, a violation of other laws, as the Court points out. I don't think that's necessary to include.

Your Honor, I guess, what I would like the Court to do if you could, and I tried to do it myself, is to explain to Mr. Trummel what the rather vague term "indirect" means, because, as you know, others have taken up Mr. Trummel's cause. He is not directing them to do so, is not requesting them to do so, but they have.

So I have some concerns about the very issues the Court raises about the -- well, I think you put most of them into category one, but certainly, some are in category three of the E-mails that the Court has received.

So what I have explained to Mr. Trummel is that he cannot ask, direct, request, imply, suggest, or in any way foster a belief that another party should act on his behalf, and I would just ask the Court for your own interpretation or clarification of that.

THE COURT: You know, I think Ms. Mitchell has been a little more careful in her drafting than I was on my other order because I don't see -- where is the word "indirect"?

MS. MITCHELL: The word indirect is in subparagraph F.

MR. MERYHEW: G.

MS. MITCHELL: G, yes, "posting to the

Internet directly or indirectly."

THE COURT: What do you think about Mr. Meryhew's point?

MS. MITCHELL: I believe that Mr. Meryhew's understanding of "indirectly" seems to fit with what Council House believes as indirect behavior from doing anything that would constitute a request, a suggestion, an implication, or an acquiescence, perhaps, in people undertaking to contact Council House board members, residents, or staff in an effort to violate their privacy.

I would feel more comfortable if Mr. Trummel understood that the people who he has harassed are entitled to their right to privacy and a statement that he wishes others to respect that privacy.

THE COURT: I know Mr. Trummel is very concerned about copyright because all of his material is copyrighted. I hope that he will understand the analogy that a person's name and home address and private information about them has exactly the same protection by statute.

MS. MITCHELL: With regard to the order, I realize there is an ambiguity. I also included a modification to prevent him from going within a hundred feet of any past, current, or future Council House board member or resident or employee in order to allow people to go beyond the boundaries of this geographic restriction and be able to feel secure that they will not be approached or even confronted by Mr. Trummel.

Under the terms of the order currently, it says he may not contact them. I think that might be a bit vague. It's particularly distressing to individuals who have been harassed by him to even be within the immediate vicinity of Mr. Trummel.

There are a number of people here in the audience and a number of people back at Council House who still feel uncomfortable even being in the same room with him. So I included that provision.

Unfortunately, I said "other than Stephen Mitchell," believing that paragraph C prevented him from coming within 1,000 feet of Stephen Mitchell. There's an ambiguity because it refers only to his residence and workplace.

THE COURT: I will strike "other than Stephen Mitchell."

MS. MITCHELL: I would ask that the Court clarify, "Going within a thousand feet of Stephen Mitchell, his residence, and his workplace."

MR. MERYHEW: Your Honor, Ms. Mitchell pointed that out to me, and it's obviously an appropriate clarification of the order.

THE COURT: All right. On Page 2, Section 2.1, line 20, paragraph C, "Going within one thousand feet of Steve Mitchell or his residence and workplace." So commensurate with that, on line 22, I struck Steve Mitchell out of the parentheses.

Mr. Trummel, the business about going a hundred feet means if you happen to encounter one of the people that are covered by this protection order downtown or in some other neighborhood, it's your responsibility to turn around and walk away under this or, at least, to stay a hundred feet away.

This is not an unusual provision in a protection order like this. On line 15 of page 3, I have put an asterisk by the word "indirectly" and footnoted it to say, "Indirectly means requesting, agreeing, or eliciting anybody else to do this."

MR. MERYHEW: Pardon me, your Honor.

THE COURT: Sure.

MR. MERYHEW: Mr. Trummel was speaking. I didn't hear.

THE COURT: Sure. Indirectly means requesting, agreeing, or eliciting anyone else to do this. I am reminded once again of the copyright distinction. Waiving your copyright and letting somebody else publish this stuff would constitute a violation if it's got this prohibited information in it.

MR. MERYHEW: Yet, there's not an affirmative obligation for him to pursue a copyright remedy. I mean, your Honor, the fact is that the Internet being what it is --

THE COURT: Yes, I understand. That was my concern all along that this is one of those things where once the cat is

out of the bag, the damage is done, and now that it's off the Internet, that's the most I can expect of Mr. Trummel.

He can never repair the damage. This has cost the taxpayers in this county, I am sure, about $30,000 just to house him in jail and process him here in court. MS. MITCHELL: Regarding the traffic restrictions, Council House had presented to the Court a slightly larger area with the boundaries of Cherry Street, Broadway, 23rd, and Republican streets with a carve-out down to East John Street.

This was based on Mr. Trummel's declaration that says that he occasionally stays with friends on 12th Avenue and also on 15th and Malden, although I wasn't sure where that was. There is a commercial district on 15th Avenue right around where Council House residents frequently go, and it's the closest commercial district to them within walking distance.

The intent of Council House was not to focus so much on the restrictions on Mr. Trummel's freedom to travel but also on the restrictions that Council House residents have, when they are fearful that they will encounter Mr. Trummel out when they go about their daily business and to provide an area where they can feel reasonably safe that they will not run into him.

For this reason, Council House wrote an exception to allow Mr. Trummel access to Group Health for medical appointments and emergency medical needs, restricted to time and places necessary to receive medical services, and this would also accommodate or Mr. Trummel's medical needs and Council House residents' needs to feel private within their own communities.

MR. MERYHEW: Your Honor, the Court can't order safety or the feeling of personal safety. What the Court can do is enjoin Mr. Trummel from having contact with those individuals. This order clearly puts upon him an affirmative obligation as the Court has just described to immediately retreat should he encounter one of those individuals.

Mr. Trummel's concern has been twofold, if I could raise

those issues in the context of this discussion. The first is that it has been his allegation that many of them have somewhat aggressively initiated contact with him, and he knows that the Court, as I have explained to him, cannot affect that contact, but he just wanted the Court to understand that sometimes he suddenly finds himself in contact with those individuals against his own wishes.

Secondly, as the Court, I think, has also pretty clearly put it, if Mr. Trummel violates this order, there are criminal proceedings if he intentionally has contact with those individuals. I have explained to Mr. Trummel and will further explain in light of what the Court has had to say today exactly what kind of contact might put him in criminal jeopardy and how to avoid it.

So I think that that, at least, until Mr. Trummel shows some violation of that which might be a factual basis for it, should be sufficient. There is a business district there, and I think that Mr. Trummel will be fully advised, your Honor, in addition to what the Court has said to him today about the risks to him and the consequences of that kind of behavior.

Mr. Trummel doesn't want to go back to jail, your Honor. I am going to do everything I can to make sure he doesn't.

MR. TRUMMEL: May I consult with my attorney, please?

THE COURT: Sure.

OFF-THE-RECORD DISCUSSION BETWEEN MR. TRUMMEL AND COUNSEL.

MR. TRUMMEL: Thank you.

MR. MERYHEW: I am sorry, your Honor.

THE COURT: I am going to accept Mr. Meryhew's argument on behalf of Mr. Trummel and enter the order with the narrower description that I have described, and I would attach that to the order. It's kind of a tiny, little attachment because on the bottom half of the piece of paper I had written some notes that shouldn't be attached to any of them.

MS. MITCHELL: Your Honor, I have a clearer --

THE COURT: I am going to ask you to mark up another map as well to attach to the order, and I have left that reference in it.

Mr. Meryhew reminded me about something else. The Court recognizes that the residents of Council House are not unanimous in their desire to be protected by this order and that Mr. Trummel has friends there. That has always been the case, and the earlier orders on the part about not contacting anybody there always had a provision in it that said "unless they ask for it."

So if there's a friend of Mr. Trummel at Council House who wants to get his stuff in the mail and wants to meet Mr. Trummel outside of the boundary, the order does not preclude that. He can't go there to visit any of his friends, but if they want to receive his publications or his newsletter in the mail, they can do that, and that wouldn't be a violation.

So on paragraph F, the contact, the no-contact clause, I have added, "except by specific invitation," which is not quite the same as the one used before, but I think that it will take care of it.

MS. MITCHELL: Actually, your Honor, I would ask that you reconsider the Pine Street on the boundary. On the map, that is barely half a block north of Council House, and I would ask that it begin with, at least, one or two streets north of there so that Council House residents may go beyond the 500 feet and still feel safe.

THE COURT: How about taking it straight across, east/west on East John? That leaves out the business district that we have been talking about where the restaurants and -- the one that is a little bit north of Group Health and QFC and the shops, but it does extend things to the north.

MS. MITCHELL: Council House would agree to John Street, but I think actually Group Health runs a little bit south of John Street, and perhaps, Denny Way would be a continuous boundary that would be more workable.

MR. MERYHEW: Your honor, what that means is that if Mr. Trummel were to use the arterial that Denny is to get to that organization, at least, while he was going up to that, he would be in violation of the order.

THE COURT: Well, that's -- actually, Denny isn't the arterial anymore on that side of Broadway. It's John. John has got the lights and is the one that runs up the hill and comes right out in front of --

MR. MERYHEW: But even Howell Street, your Honor. I know I use Denny all the time to avoid John, if I can just add in my own way to get around the traffic on Capitol Hill.

THE COURT: Sure. Howell doesn't go all the way through, but we can describe it as a line east and west defined by Howell Street.

MS. MITCHELL: That would be fine, your Honor.

MR. MERYHEW: The last concern, your Honor, that Mr. Trummel has that I just wanted to put on the record is that any past, current, or future Council House board member, or resident, or employee arguably applies to in excess of a thousand people and many of those people are people who are not yet on that list.

Some of them are people who have been on that list in the past and Mr. Trummel has never seen or had any personal contact with. I understand the intention for the scope of the order, but particularly, since the discussion has moved into the criminal arena, I am concerned that there is some breadth here that may really exceed an appropriate order where criminal prosecution may be a result.

So I just -- if I am to be his criminal attorney as well, your Honor, I am concerned about that language. I think it's extremely broad.

THE COURT: I think it would certainly be a defense if there were a criminal prosecution if he found himself in a crowded bus hanging on to the strap, rubbing shoulders with

somebody that he never seen before and didn't know who it was and they turn out to be a former board member or resident, so I think that we should be clear that these have to be intentional contacts.

You know, it's not -- we don't live in a very big town, and that's why this 100-foot business is in there, and so I think that's the parameter that we ought to be considering.

MR. MERYHEW: Could we then add to 2.1(d) at line 21 of page 2 the words "intentionally going within 100 feet." I understand it's a defense, although I will advise the Court that the State doesn't always agree, and I have certainly defended on that very issue and fought for the instruction and not always succeeded.

MS. MITCHELL: Could we add "intentionally or knowingly"?

MR. MERYHEW: I don't object to that either.

THE COURT: Okay. "Intentionally or knowingly."

MS. MITCHELL: It can be a high threshold to show intent.

THE COURT: Anything else? The Court has entered the order. It can be filed when you two lawyers affix the new map to it, and we will be in recess.

MS. MITCHELL: Thank you, your Honor.

PROCEEDINGS ADJOURNED.

Judge James Doerty
KING COUNTY SUPERIOR COURT