UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

ROBERT STEINBUCH,	)	
	)	
Movant,	)	
	)	
v.	)	Case No. 4:06-mc-0028-JMM
JESSICA CUTLER,	)	
	)	
Non-movant	)	

DEFENDANT'S RESPONSE TO
PLAINTIFF'S MOTION TO QUASH

The present motion[1] is in connection with Steinbuch v. Cutler, USDC, DDC, Civil Action File No. 1:05-cv-00970. This case is related (and remarkably similar) to the case currently pending on motion to dismiss and to stay discovery in this Court, Steinbuch v. Cutler, et al., USDC, EDAR, Index No.: 4-06-CV0000620-WRW.

In both of these cases, Mr. Steinbuch has sought damages for alleged harm to his reputation, including economic harm as a result of lost employment opportunities, because of the publication of his relationship with Ms. Cutler. He has claimed damages for emotional distress, even including damages for his alleged inability to have friends or get a date. Now that Defendant has actually undertaken to investigate his claims, he seeks to limit Defendant's ability to do anything other than take his statements at face value, an invitation Defendant is unwilling to accept.

It is apparent that "Plaintiff Law Professor Robert Steinbuch" has an odd notion of relevance. Plaintiff has alleged that Defendant's actions have severely harmed his personal

[1] The interested parties for purposes of this Motion are Mr. Steinbuch, Jessica Cutler, and the University of Arkansas at Little Rock and its Law School.

and professional reputation and caused him such severe emotional distress that he has had to seek medical treatment – all to the tune of ten million dollars ($10,000,000) in damages. [Amended Complaint, Exhibit 1]. Defendant has now inquired directly into his current professional circumstances – information directly relevant to his present reputation (good or bad) and to other potential causes of harm both to his reputation and to his emotional well being – and "Plaintiff Law Professor" has called foul. Apparently, Plaintiff is laboring under the impression that his wide-ranging allegations of reputational injury and emotional harm are not proper subjects of discovery.

With regard to the contention that Defendant should have sought the information which is the subject of this subpoena directly from Plaintiff, Plaintiff fails to mention that exactly this offer was made directly to his counsel, who has yet to respond. See August 23, 2003 email from Matthew C. Billips to Jonathan Rosen, Exhibit 2. Defendant offered to permit Plaintiff to produce the information and documents in question before serving the subpoena in question. There was no response, nor has there been up to and including the present date. Therefore, Defendant served the subpoena, including sending a service copy to the address that Plaintiff's counsel has indicated should be used for service of discovery materials. See August 22, 2006 email from Jonathan Rosen to Matthew C. Billips, Exhibit 3.[2] Plaintiff's contentions are without proper basis and entitle Defendant to an award of attorneys' fees and expenses.

[2] The undersigned (Billips) has, since this issue arose, noticed that the email Mr. Rosen sent gave the wrong address. Instead of "NY," Mr. Rosen apparently meant "NJ." This may explain the delay in receipt of the subpoena in question, assuming that it was not actually received.

ARGUMENT AND CITATION TO AUTHORITY

Rule 26(a)(5) of the Federal Rules of Civil Procedure provides:

> (5) Methods to Discover Additional Matter. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property under Rule 34 or 45(a)(1)(C), for inspection and other purposes; physical and mental examinations; and requests for admission. (emphasis added)

Rule 26(b)(1) defines the scope of permissible discovery as follows:

> (1) In General. Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(2)(i), (ii), and (iii).

Defendant's subpoena to Plaintiff's present employer fits well within the scope of permissible discovery under the Rules.

A. Discovery Regarding Plaintiff's Present Employment Is Permissible

Plaintiff has made very strong allegations of harm to his professional reputation, claiming in affidavit in opposition to Defendant's Motion to Dismiss that the following facts support his claims for damages:

> 12. I believe that my professional reputation in the Senate, while falling from its excellent level, did not fall below a good level because my co-workers knew me well.
>
> 13. In contrast, however, my professional reputation outside the Senate, and my personal reputation, was (sic) severely impacted.
>
> 14. As I applied for jobs outside the Senate, every prospective employer raised the issue of the blog--all before I filed the instant lawsuit. Prior to the filing of this action, prospective employers specifically told me that the blog hurt my chances to gain employment, and a Dean of a law

> school informed me that the blog prevented me from getting employment as a law professor at his law school. (emphasis in original).

[Steinbuch Declaration, Exhibit 4]. These allegations demonstrate the propriety of Defendant's discovery.

Plaintiff claimed in sworn testimony that **every** prospective employer raised the issue of the blog. According to information publicly available on the Internet, Mr. Steinbuch was being considered for the position he currently holds well before he filed the lawsuit in this case, a fact which the documents sought here will confirm or will call into question. See April 26, 2005 entry, which was updated as of April 28, 2005, which may be found at the internet address http://lsolum.blogspot.com/archives/2005_04_01_lsolum_archive.html. As a result, the documents in question will demonstrate at least two facts relevant to this case: First, is his testimony that "every" prospective employer asked about the blog consistent both with his claim to a severely tarnished reputation and the fact that he received the position at Little Rock? Second, did he deliberately wait to file suit until he had been offered and accepted the position because he knew that the lawsuit would dramatically expand the publicity this matter had received (relevant both to damages and waiver issues)? If so, what effect does this apparently strategic decision to delay filing have on the statute of limitations issues?

More importantly, he did not limit this allegation to prospective employers who refused to hire him. He did not identify which prospective employers are or are not at issue (not that Defendant would have to accept his representation). Moreover, he claimed **severe** harm to both his personal and professional reputation. As a result, discovery into his current professional reputation is clearly permissible.

1. The request for personnel records is reasonable

Defendant has requested the following records regarding Plaintiff's employment with the University of Arkansas:

> The complete application, personnel, complaint and/or other files or compilations of documents, including but not limited to all performance appraisals, credentials, commendations, reprimands, warning letters, correspondence relating to employment, work schedules, application for employment, and all other documents contained therein which relate to Robert E. Steinbuch. This specifically includes all records pertaining to correspondence, including letters of reference, relating to Steinbuch's efforts to seek employment with your organization. This also includes all allegations or complaints, whether formal or informal, of inappropriate conduct by or involving Steinbuch during his employment with you and all investigation documents including but not limited to interview notes, e-mails, papers, tapes, and all other documentation pertaining to the allegations against him, the investigation results and any disciplinary action taken against him related thereto.

These categories of documents are clearly calculated to lead to admissible evidence regarding Plaintiff's allegations of reputational and emotional injury.

"[P]erformance appraisals, credentials, commendations, reprimands, warning letters, correspondence relating to employment" and "all records pertaining to correspondence, including letters of reference, relating to Steinbuch's efforts to seek employment" specifically relate to Plaintiff's claim that his reputation at the Senate and elsewhere was harmed (his letters of reference may well contradict that assertion). They relate to his claim that that **every** employer questioned him about the biog. Records relating to his compensation are necessary to show the extent to which he has mitigated any claimed economic injury. Present performance appraisals relate to his present reputation, i.e., whether his appraisals show that it is suffering any harm or, on the contrary, whether there are reasons unrelated to Defendant's alleged conduct which have impacted his reputation. Similarly, allegations of misconduct– if they exist – would show a different reason, not attributable to Defendant, for his purportedly deteriorating reputation and emotional well-being. Breeze v. Royal Indem. Co., 202 F.R.D. 435 (ED Pa 2001).

Plaintiff also claims injury to his reputation extending well into the period of his present employment. In the affidavit previously submitted by Plaintiffs counsel's wife, Alyssa

Rosen [Rosen Declaration, Exhibit 5][3], she testified that Mr. Steinbuch was not permitted to write a book review of her book because of the Washingtonienne biog.[4] She testified that, at the rime, Plaintiff was a law school professor, obviously referring to Plaintiff's present position of employment. Defendant is obviously entitled to discovery of other facts or factors which may have affected the event Ms. Rosen claims to have occurred, or other facts about his reputation, including the existence of other reasons for a publisher not to want to be associated with Plaintiff or other opportunities which he did have which may serve to reduce an award of damages, in the unlikely event one should be entered.

The Court should be aware that Plaintiff has a quite malleable perception of his own reputation. In Paragraph 2 of the Declaration cited above, he testified that he believed he had an "excellent" reputation while working in the Senate. In Paragraph 12, he testified that his reputation did not fall below the "good" level because of his work, and gives his unsupported and self-serving opinion as to why. However, in his deposition in yet another case in which he claimed harm to his reputation, Stienbuch (sic) v. Kappel, USDC, D.D.C., Civil Action File No. 04-ev-00188-RMC-AK, he gave the same description of his reputation before the Kappel's began their defamatory letter writing campaign (as a result of which he sought $ 1,000,000 in damages) as he gave of his reputation at the time of that same deposition. Compare:

> Q Can you tell me anyone -- let me back up for a second. How would you describe your professional reputation before Mr. Kapell starting writing these letters?

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[3] Defendant assumes that they are husband and wife based on the allegations in the Amended Complaint in Rosen, et al v. Bradford & Associates, USDC, DNJ, Index File No. 06-2604, in which Jonathan and Alyssa Rosen brought suit based on efforts to collect a court reporting bill from them in the Steinbuch v. Kappel matter. Exhibit 6, Par. 1 and 6-8.

[4] She does not, however, indicate the effect that this lawsuit and Mr. Steinbuch's self-identification as "RS" had on her publisher's views.

A Good. Fine.

[Steinbuch depo., Steinbuch v. Kappel, p. 136].

Q What is your current professional reputation, as far as you know?

A In the Senate?

Q Yes.

A **I think it is good.** (Emphasis added)

[Steinbuch depo., Steinbuch v. Kappel, p. 143-144]. He testified, when asked about the damage to his reputation from the Kappel's letters, that "you are never whole after something like this," although he now claims that his reputation was better than whole prior to that deposition. [Compare Steinbuch depo., Steinbuch v. Kappel, p. 24 to Steinbuch Declaration, Par. 2, 12]. As to his personal reputation, he testified as follows:

Q What is your perception of your personal reputation, as we sit here today?

A I don't know. Okay.

[Steinbueh depo., Steinbuch v.Kappel, p. 145]. However, in his Declaration, Mr. Steinbuch testified that his "personal reputation was severely impacted" by the publication of the Washingtonienne blog—which happened **four months before** the deposition testimony he gave in the Kappel case. These claims are inconsistent and require thorough investigation.

Plaintiff has thus claimed that his reputation, which started as "good, fine" was severely damaged by the Kappels letters and could "never [be] whole" again and yet (he now claims) had become "excellent" prior to May 18, 2004, and was back to "good" or "okay" by September. Obviously, Defendant is entitled to discover what others believed about his reputation, particularly since his own claims are so ever evolving and inconsistent. Davis v. Bemiston-Carondelet Corp., 2006 U.S. Dist. LEXIS 9951 (ED Mo. 2006). It is

hard to understand how Plaintiff could contend that discovery from third parties as to his present reputation is not permissible, given his own testimony about that same reputation.

Plaintiff is also demanding damages for emotional injury which he claims was so severe that he claims to have had to seek medical treatment. In Paragraph 10 of the Declaration cited above, Mr. Steinbuch claims a litany of ills, all of which he attributes to the publication of Ms. Cutler's blog. As he testified:

> The invasions of privacy resulting from the blog caused me significant emotional distress and physical pain for which I sought medical treatment. I have suffered from lost appetite, lost weight, nausea, vomiting, insomnia, stress, anxiety, feelings of violation and mortification, humiliation, embarrassment, mental distress and anguish, feelings of degradation, feelings of scorn, feelings of ridicule and shunning by people in the community, nightmares, shame, headaches, and other ailments.

Steinbuch Declaration, Par. 10. This litany is similar to that which he (initially) attributed to the Kappel's letters. [Steinbuch depo., Steinbuch v. Kappel, pp. 150]. Obviously, his work schedule and other employment records are likely to contain information about any time off of work he has had to take as a result of this supposedly "severe" emotional distress, as well as the information he gave at the time to his employer which may serve to explain any need he may have had for medical leave.

It should be noted that his testimony in the Kappel deposition contradicted his claim to have sought medical treatment for emotional distress. He admitted that — as of September of 2004 — he had not sought medical treatment for any emotional distress. [Steinbuch depo., Steinbuch v. Kappel, pp. 151-153]. Obviously, either his testimony was false or he must have sought this medical treatment after September 14, 2004. Either way, Defendant is entitled to discover other reasons which may have contributed to his emotional distress for which he either did or did not seek treatment and any information in his personnel records which may serve to shed light on his contentions in this regard. Defendant is obviously

entitled to discovery of other facts relating to his claimed "severe emotional distress," including events occurring in his present employment.

2. The request for emails is reasonable

Just as obviously, statements that Plaintiff made to others about a host of matters are going to be admissible in this case. The admissible statements include discussions of how he views his current employment and professional prospects (as he is claiming damages from not getting **different** jobs), discussions of his present and past emotional states, discussions of his professional opportunities, discussions with Alyssa Rosen and others which may serve to support and/or contradict her testimony that he has trouble getting dates [Rosen Declaration, Par. 18], discussions with his friends which may shed light on his claim that he was ostracized [Steinbuch Declaration, Par. 11], communications regarding the claims in this lawsuit, and numerous other matters. The email communications which Defendant sought are clearly calculated to lead to discovery of communications which would reveal admissible evidence. Defendant has requested:

> Each and every email, in electronic form, sent to or from (including cc's and/or bcc's) any email account assigned by you to Robert E. Steinbuch, including but not limited to the email address resteinbuch@ualr.edu.

These email communications are likely to contain a wealth of information about his claims to have suffered harm and may also contain statements by Mr. Steinbuch which contradict the claims he has made in this case both as to liability and damages.

In addition, these emails, using his work email address and the email server at the University of Arkansas, are the property of the University of Arkansas, a unit of the Board of Regents of the State of Arkansas, and are **not** that of Plaintiff. Ark. Code Ann. §§ 25-19-103(1), 25-19-105(a) (Repl. 1992); Biby v. Bd. of Regents, 419 F.3d 845 (8th Cir. 2005); United States v. Thorn, 375 F.3d 679, 2004 U.S. App. LEXIS 14295 (8th Cir. Mo. 2004),

vacated on other grounds by, remanded by, motion granted by, Thom v. United States, 543 U.S. 1112, 125 S. Ct. 1065 (2005), reinstated by United States v. Thorn, 413 F.3d 820 (8th Cir. 2005). He has shown no expectation of privacy in these emails and, given the public nature of these records under Arkansas' Freedom of Information Act, can show none. As held in United States v. Bailey, 272 F. Supp. 2d 822, 835-836 (D.Neb. 2003):

> An employee cannot claim a justified expectation of privacy in computer files where the employer owns the computer; the employee uses that computer to obtain access to the internet and e-mail through the employer's network; the employee was explicitly cautioned that information flowing through or stored on computers within the network cannot be considered confidential, and where computer users were notified that network administrators and others were free to view data downloaded from the internet. United States v. Angevine, 281 F.3d 1130 (10th Cir. 2002) (professor had no Fourth Amendment right to suppress evidence of child pornography located on the erased files on his office computer which was part of university network). See also, United States v. Simons, 206 F.3d 392 (4th Cir. 2000) (CIA division's official Internet usage policy eliminated any reasonable expectation of privacy that employee might otherwise have in copied files); Muick v. Glenayre Electronics, 280 F.3d 741 (7th Cir. 2002) (employee had no reasonable expectation of privacy in laptop files where employer announced it could inspect laptops it furnished to employees and employer owned laptops); Garrity v. John Hancock Mut. Life Ins. Co., 2002 U.S. Dist. LEXIS 8343, 18 I.E.R. Cas. (BNA) 981, 2002 WL *974676* (D. Mass. 2002) (employees had no reasonable expectation ofprivacy where they admitted knowing employer had ability to look at e-mail on company's intranet system, and knew they had to be careful about sending e-mails; Wasson v. Sonoma County Junior Coll., 4 F. Supp. 2d 893, 905-06 (N.D. Cal. 1997) (employer's computer policy giving it "the right to access all information stored on [the employer's] computers" defeats employee's reasonable expectation ofprivacy in files stored on employer's computers); United States v. Monroe, 52 M.J. 326 (C.A.A.F. 2000) (sergeant had no reasonable expectation of privacy in his government e-mail account because e-mail use was reserved for official business and network banner informed each user upon logging on to the network that use was subject to monitoring).

Given the presumption under Arkansas law that records created by public employees using public property are public records, Plaintiff can show no privacy or other personal right in preventing the disclosure of these records.

Because he has no personal right or privilege in preventing disclosure of the email communications sought by Defendant's subpoena, he is without standing to object to their production. Laxalt v. McClatchy, 809 F.2d 885, 891 (D.C. Cir. 1987):

> A litigant "generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." Warth v. Seldin, 422 U.S. 490, 499, 45 L. Ed. 2d 343, 95 S. Ct. 2197 (1975). This rule clearly applies to discovery proceedings. See e.g., Diamantis v. Milton Bradley Co., 772 F.2d 3, 4-5 (1st Cir. 1985). Thus, where, as here, a subpoena duces tecum is directed to a nonparty, "unless a party to the action can make a claim to some personal right or privilege with respect to the subject matter of such subpoena directed to a nonparty witness, the party to the action has no right to
>
> relief under these rules, [26(a), 30(b), 45(b) and 45(d)]." Taylor v. Litton Medical Prods., Inc., 19 Fed.R.Serv. 2d (Callaghan) 1190, 1192 (D. Mass. 1975) (bracketed material in original).

Id, at 891. Thus, Plaintiff does not have standing to object to the production of these emails and certainly does not have standing to raise the privacy interests of students, assuming any would be implicated, as that would be for the University of Arkansas to assert.[5]

B. The Subpoena Was Served On Plaintiff's Counsel

Plaintiff has claimed that he did not receive the subpoena in question until the day before the documents were due to be returned in response to the subpoena. Defendant will take him at his word, although the subpoena was served on his counsel. Moreover, prior to serving the subpoena, Defendant asked Plaintiff whether he would voluntarily produce the documents in question, in lieu of service of a subpoena, so it is clear that he was aware that such a subpoena would be forthcoming.

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[5] A representative of the University of Arkansas has contacted the undersigned (Billips) and, by agreement, any information contained in these emails which would be "education records" or otherwise protected under the Family Educational Rights and Privacy Act will be redacted from the emails prior to their production. Thus, this issue has been resolved.

> As requested in Defendant's email to Plaintiff:
>
> Before I send a subpoena to Little Rock, will you agree to voluntarily produce, in the next couple of weeks, Mr. Steinbuch's emails (incoming and outgoing, including cc's or bee's) using his University of Arkansas email address and all records relating to his application and employment at the University of Arkansas?
>
> I'm willing not to send the subpoena to them if we can get the records produced by him voluntarily.

[Exhibit 2, hereto]. No response was ever received to that email. In any event, it is clear that Plaintiff has received a copy of the subpoena; Plaintiff has moved to quash; and the issue has been presented to the Court for resolution.[6]

C. Plaintiff's Motion Is Without Substantial Justification

In moving to quash the subpoena, Plaintiff makes two arguments: First, that Defendant is not entitled to use subpoenas duces tecum as a discovery device to obtain documents from third parties and, second, that the subpoena served in this instance seeks documents which are not discoverable in any event.

1. A subpoena duces tecum was proper

Plaintiff cites Trammell v. Anderson College, 2006 WL 1997425 at * I (D.S.C. 2006) for the proposition that "the items sought by the defendants should have been requested under the provisions of Rule 34 [discovery of the party] and not by subpoena under Rule 45"). Plaintiff's citation to this case selectively misquotes the case and ignores what the Court actually held. The complete quotation — in a case in which a subpoena was served **on** a party and not on a third party — is as follows:

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[6] Although the question is now moot, Defendant notes that counsel for Plaintiff, in the Rosen v. Bradford & Associates Amended Complaint, also alleged that he had never seen a copy of the deposition transcripts, which he, by then, filed in the Steinbuch v. Kappel matter. Exhibit 6, Par. 5.

> On June 20, 2006, plaintiff Dr. Trammell moved to quash that subpoena arguing inter alia that the subpoena is an improper method of obtaining the production of tangible things from a party. Since **Dr. Trammell is a party** to this case, the items sought by the defendants should have been requested under the provisions of Rule 34 and not by subpoena under Rule 45. (emphasis added).

Defendant in this case sought documents from a third party,–the University of Arkansas – using the correct method of obtaining discovery from a third party, which is a subpoena duces tecum. See Rule 26(a)(5):

> Parties may obtain discovery by one or more of the following methods: production of documents or things ... under Rule 34 or 45(a)(1)(c) ...

Plaintiff's misquote of Trammell for a proposition which is the opposite of that for which it stands is sanctionable conduct and shows the absence of substantial justification for Plaintiff's motion, justifying an award of attorneys' fees under Fed.R.Civ.P. Rules 26 and 37.[7]

2. As shown above, the documents are discoverable

Plaintiff's primary argument that the documents are not discoverable is that he is only – he claims – seeking harm for injury to his reputation during his employment with the United States Senate and **not** during his present employment. As shown above, this is not consistent with either his own Declaration or the Declaration submitted by Ms. Rosen, claiming that the harm to his reputation extends into his present employment. She testified that, in Par. 16 and 18 of her Declaration, that –present tense – she is reluctant to work with him and women will be reluctant to date him as a result of the blog. Obviously, documents regarding his personal and professional life during the past year are relevant to those claims.

[7] This same motion was previously filed in the District of Columbia District Court. The undersigned (Billips) drafted a response and emailed it to Steinbuch's counsel, including the section set forth above. [Exhibit 7, September 6 email from Matthew C. Billips]. This motion – and the misquote set out above – were thereafter refiled in this Court without correction.

His present position – that he is only seeking damages for the window of time during May 18, 2004 and the point at which he sought employment with the University of Arkansas (whenever that was) – is also inconsistent with his prior testimony. In his Declaration, he claimed to have suffered emotional distress for which he sought medical treatment. In his deposition in the Kappel case, he testified that he had never sought medical treatment for any emotional distress as of September 14, 2004. He testified as follows:

Q Did you receive any counseling from anyone as a result of any such emotional stress?

A Well, I mean, to the extent that receiving counseling from the people that I talked to, and that I referenced earlier, constitutes receiving counseling, I did.

Q Talking about friends and family?

A That is right.

Q Any professionals, clergy -- members of the clergy, anything like that?

A I don't recall whether I spoke to a friend of mine, who is a professional counselor, or not. I just don't recall if I spoke to him about it or not. I might have.

Q Nothing formal, I take it?

A No.

Q Did you take any sort of medication prescription, or otherwise, to deal with any emotional distress?

A Well, I took some medication to deal with the symptoms. You know, I took things — as I said, I had difficulty eating, so I took things for upset stomach, that kind of thing.

Q Over-the-counter type thing?

A Over-the-counter, yeah. I had difficulty sleeping, and I tried to take something to assist that. Generally I try to take vitamins for that, or herbal supplements for that. I don't recall whether I also took over-the-

> counter sleeping pills, or Benedryl. I might have. They make me groggy, so I try not to take them too much. I think I might have.

[Steinbuch depo., Steinbuch v. Kappel, pp. 151-153]. The **only** way this testimony can be reconciled with his Declaration in this case is if he first sought medical treatment for emotional distress after the date of his deposition in the Kappel case.

Moreover, there is nothing in Plaintiff's Complaint which in any way indicates he is limiting his claims for reputational injury to a particular time period of approximately one year. Given that, in his Amended Complaint, Plaintiff seeks damages of not less then ten million dollars ($10,000,000), it seems unlikely, to say the least, that his pleadings could be so construed. His present contention to the contrary is simply calculated to permit him to prevail in the present dispute and bears no reasonable relationship to the contentions previously made. These ever changing claims, made without even nodding recognition of prior testimony, are without substantial justification and entitle Defendant to an award of attorneys' fees and expenses.

CONCLUSION

Plaintiff apparently is laboring under the misapprehension that both Defendant and the Courts of Arkansas and the District of Columbia are obligated to accept uncritically and at face value the overwrought claims he has made regarding the alleged harm to his reputation and well-being, without conducting a critical and searching investigation of his contentions. He apparently believes that he is entitled to seek millions of dollars in damages, without thereby exposing to discovery by Defendant at least that portion of his life which may shed light on those claims. In doing so, he arrogates his own claimed right to privacy above everything else, ignoring the extent to which his claims constitute at the very least a partial waiver of those interests. Plaintiff should take heed of the District of Columbia Court's words on this subject:

> Perhaps the plaintiff should have considered that fact before he filed suit. Perhaps plaintiffs counsel should consider that fact before filing motions in which he repeats salacious details and allegations seemingly without regard for the distress that other persons might feel at these public filings. See Plaintiffs Motion to Disqualify Counsel; Plaintiffs Motion for Protective Order.

[Exhibit 7, April 14, 2006 Order, pp. 2-3].

By voluntarily subjecting himself to the Court's jurisdiction, Plaintiff has waived much of the privacy which he claims to hold so dear. While it is certainly not Defendant's intention to unreasonably burden Plaintiff even with the fruits of his own decisions, it cannot be questioned that there will be some burden on him. That was a choice which, unlike Defendant, he freely and voluntarily made. His claim that the subpoena in question is improper relies on misquoted case law, deliberate rewriting of the facts upon which he bases his claim, and is without substantial justification. Defendant should, therefore, be awarded her attorneys' fees and costs for having had to respond.

Respectfully submitted this 8th day of September, 2006.

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COUNSEL FOR DEFENDANT JESSICA CUTLER

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[Exhibit 7, April 14, 2006 Order, pp. 2-3].

By voluntarily subjecting himself to the Court's jurisdiction, Plaintiff has waived much of the privacy which he claims to hold so dear. While it is certainly not Defendant's intention to unreasonably burden Plaintiff even with the fruits of his own decisions, it cannot be questioned that there will be some burden on him. That was a choice which, unlike Defendant, he freely and voluntarily made. His claim that the subpoena in question is improper relies on misquoted case law, deliberate rewriting of the facts upon which he bases his claim, and is without substantial justification. Defendant should, therefore, be awarded her attorneys' fees and costs for having had to respond.

Respectfully submitted this 8th day of September, 2006.

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CERTIFICATE OF SERVICE

I certify that on this 8th day of September, 2006, that a copy of the foregoing was served on plaintiff via U.S. mail, postage prepaid, by sending a copy to his attorney at the following address:

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Attorney for Plaintiff

Beth Deere

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Robert Steinbuch	:	**Index No.: 1:05-CV-970 (PLF)**
Plaintiff,	:	**Judge Paul L. Friedman**
	:	
-v-	:	
	:	
Jessica Cutler & Ana Marie Cox,	:	
Defendants.	:	

FIRST AMENDED COMPLAINT

I. Introductory Statement

1. This civil action for invasion of privacy for public revelation of private facts and false light arises from the dissemination, on the World Wide Web, of an X-rated blog by describing in graphic detail the intimate amorous and sexual relationship between Cutler and the Plaintiff and by making false statements about Plaintiff.
2. Defendant Cutler outrageous actions, setting before anyone in the world with access to the Internet intimate and private facts regarding Plaintiff, constituted a gross invasion of his privacy, subjecting him to humiliation and anguish beyond that which any reasonable person should be expected to bear in a decent and civilized society.
3. Cutler and Cox worked together to invade Plaintiff's privacy.

II. The Identity of the Parties

4. Plaintiff was an attorney employed on the staff of United States Senate Judiciary Committee.
5. The Defendant Jessica Cutler was employed as a member of the staff of Senator Dewine.

EXHIBIT 1

6. The Defendant Ana Marie Cox spread gossip on the Internet on a website named "Wonkette."

7. The parties are diverse.

III. Jury Trial

8. Plaintiff demands a jury trial.

IV. Jurisdiction and Venue

9. Jurisdiction is founded on diversity of citizenship and amount in controversy.

10. Plaintiff was a citizen of the state of Maryland.

11. The Defendants are citizens of other states, none of them Maryland.

12. The matter in controversy far exceeds, exclusive of interests and costs, the sum of $75,000.

13. Venue is proper in this Court because acts giving rise to the claims and the residence of the Defendant Cutler was at the time in the District of Columbia.

V. Factual Allegations

14. Cutler created and maintained a "blog," an internet site, on which she disclosed private facts of Plaintiff and portrayed Plaintiff in false light.

15. In her blog, Cutler identified herself as the "Washingtonienne."

16. Cutler chose this name due to its similarity to the "Wonkette" blog's name, which belonged to Defendant Ana Marie Cox.

17. Blogs and other internet sites may be "password protected," permitting only authorized users to have access. Cutler, however, declined the option of password protection, instead intentionally making her blog publicly available to anyone who hit upon the site on the Internet.

18. Cutler's Washingtonienne blog was accessible and open to the public.

19. Cutler intended her Washingtonienne blog to be accessible and open to the public.

20. Cutler's Washingtonienne blog was searchable and discoverable on the internet.

21. Cutler intended her Washingtonienne blog to be searchable and discoverable on the internet.

22. In the public blog, Cutler maintains ongoing conversations with strangers, explicitly recognizing the public nature of her blog.

23. Any part of a blog can be altered at any time.

24. Cutler routinely edited all aspects of he blog, up an until May 18, 2004.

25. The dates and times accompanying different statements in he blog do not refer to the last time that those specific parts of the whole blog were written or edited, because Cutler changed those parts of the complete blog thereafter.

26. Cutler explicitly informed others of her public X-rated blog.

27. Cutler discussed with friend(s) commercializing her blog.

28. Cutler's friends told other people about Cutler's X-rated blog.

29. Cutler approved of her friends informing others about her X-rated blog.

30. Regardless of the number of people that Cutler explicitly informed (both known and unknown to her) about her X-rated blog, she made the blog available to the public at large by her putting it directly on the internet and not seeking any password protection or other security or using email instead.

31. Cutler readily granted permission for her friend(s) to direct other person(s) completely unknown to Cutler to read Cutler's public X-rated blog.

32. Cutler wanted as many people as possible to read her blog.

33. Cutler wanted to make money from her blog.

34. Cutler maintained no privacy of her blog. She freely let anyone read it and wanted to gain additional readers.

35. The blog was available on the internet for anyone to read.

36. People unknown to Cutler read her blog.

37. Cutler's public blog described in graphic detail her ongoing sexual relationships with six men, including Plaintiff. At the time of his relationship with Cutler, Plaintiff did not know that Cutler was simultaneously engaged in sexual relationships with another man, let alone with five other men, and let alone that she was prostituting herself to some of them; and Plaintiff did not know that Cutler was recording the details of her relationship with Plaintiff on a public blog, making those details available to the public.

38. At the time of Plaintiff's relationship with Cutler, Cutler was simultaneously engaged in sexual relationships with five other men, and prostituting herself to some of them.

39. At the time of Plaintiff's relationship with Cutler, Cutler never disclosed that she was recording the details of her relationship with Plaintiff on a public blog, making those details available to the public. Indeed, Cutler claimed that she would never do such a thing.

40. Cutler's public blog provides cumulatively identifying characteristics of Plaintiff, culminating with the disclosure of Plaintiff's name at the very end of the blog.

41. Plaintiff was ultimately clearly identifiable to a substantial segment of the community as one of the sexual partners of Cutler described in her public blog.

42. Cutler referred to Plaintiff by his first name in her publicly available blog.

43. Cutler referred to Plaintiff by his initials, "R.S." in her publicly available blog.

44. Cutler identified Plaintiff in her public blog through his religion, Jewish; his job, Committee Counsel to the Senate Committee on the Judiciary; his place of residence, Bethesda; the fact that he has a twin; his general appearance; and details of Cutler's intimate relationship with Plaintiff that Cutler had previously disclosed to colleagues and co-workers.

45. Plaintiff's identity became clear upon the reading of the complete blog.

46. Cutler's public blog contained, *inter alia*, the following passages of and concerning Plaintiff:

Item!

A new contender for my fair hand. He works in one of the Committee offices. We will call him RS.

To answer The Question, no, RS and I did not fuck. (It is my "week off," if you recall.)

BUT...

RS looks just like George Clooney when he takes off his glasses. I am serious.

Has a great ass.

Number of ejaculations: 2

He likes spanking. (Both giving and receiving.)

I put the moves on HIM. That is, I brought him back to MY place, I was the one

who jumped on HIM.

I was drunk, but he was totally sober. (At least I have an excuse for my behavior!)

So I'm seeing ANOTHER person on the Hill. At least this one is counsel, and not an aide.

OMG. RS just came in here to say hi.

But I got nervous and acted weird.

Shit!

I told my coworkers about the spanking over lunch, but left out the nasty parts. (We were eating.)

So they were shocked. Not sure I should have told them.

One of them told me that RS wore a purple turtleneck with a bright blue fleece over it at a recent staff retreat. Now I wonder if he's crazy or what.

Then she mentioned that RS is very discrete, so I am taking that as a hint to keep quiet.

RS just e-mailed me: Hey, had a nice time yesterday. going to NY tonight, but let's get some dinner or something next week. interested?

I said yes.

What am I getting myself into?

Yes, I like him, but am I attracted to him or the impending drama??

I really don't get myself sometimes.

I take weekends off from this blog. So before I go, this is the plan:

Take cab over to W's place in Georgetown. Fuck. Get dinner someplace expensive.

W drives me home to Cap Hill.

Go to keg party at coworker's house. (RS will not be there. Maybe fuck somebody else?)

I told MD I had some news, so he sat down with me in the cafeteria and I told him about RS.

So I leave the cafeteria and start walking back to the office, and I see RS. We stopped and talked in the hall and he asked me out for a drink tonight. (Except he doesn't drink?) I look really good today, so I'm glad I hit two birds with one stone during my lunch hour.

I am so busted.

Went out w/ RS after work yesterday. He took me out for drinks, took me back to my place, and we fucked every which way. THEN he tells me that he heard I've been spreading the spanking rumor around the office!

But last night was fun. He's very up-front about sex. He likes talking dirty and stuff, and he told me that he likes submissive women. Good, now I can take it easy in bed. Just lay back and watch him do freaky shit.

By popular demand, I have finally created a key to keeping my sex life straight.

In alpha order:

AJ=The intern in my office whom I want to fuck.

F=Married man who pays me for sex. Chief of Staff at one of the gov agencies, appointed by Bush.

J=Lost my virginity to him and fell in love. Dude who has been driving me crazy since 1999. Lives in Springfield, IL. Flies halfway across the country to fuck me, then I don't hear from him for weeks.

MD=Dude from the Senate office I interned in Jan. thru Feb. Hired me as an intern. Broke up my relationship w/ MK (see below).

MK=Serious, long-term boyfriend whom I lived with since 2001. Disastrous break up in March, but still seeing each other.

R=AKA "Threesome Dude." Somebody I would rather forget about.

RS=My new office bf with whom I am embroiled in an office sex scandal. The current favorite.

W=A sugar daddy who wants nothing but anal. Keep trying to end it with him, but the money is too good.

Shit. I'm fucking six guys. Ewww.
Oooh, RS just called me. He asked me out again tonight, but I have plans w/ MK @ 9pm. (We're watching the ANTM special together.)

Two nights in a row. I like him, but WTF?

RS just called again. Bad news: the rumor has spread to other offices. This is bad.

We went to his house after dinner, a four bedroom in Bethesda. Needs work, but v. cute.

So it turns out that RS cannot finish with a condom on. He can barely stay hard. So he ends up taking it off and humping away at me. Maybe I forgot to tell him that I'm on the Pill. Note to self...

I also learned that he was a cop, so he has scary police shit like handcuffs in his closet. He implied that we would be using them next time, which is intriguing, but I know I'm going to get scared and panicky. (Which would probably turn him on.)

I like this crazy hair-pulling, ass-smacking dude who wants to use handcuffs on me. Shit.

So my friend AS met up with me at RR and I had two genius ideas:

1. We should go to Saki.
2. AS should meet RS.

So I called RS and told him to come over so AS could get a look at him. This morning she says (via IM), "He does look like George Clooney, but he's totally Woody Allen."

She also said, "He will do anything to make you happy."

Isn't that sweet? And it's true: he stood in line with us at Saki for 1 1/2 hours!

When Saki closed, we got some nasty Pizza Mart slices that tasted really good at the time. Then AS went home and RS took me back to his place for the second night in a row. I passed out as soon as I lay down, so we didn't do anything.

I woke up with an awful hangover and barfed up my Pizza Mart. (I'm losing weight!) Then RS drove me home and made me promise to call him again today.

So I called RS after MK left in a huff. I ended up sleeping over in Bethesda for the third night in a row.

He wants us to get tested together so we can stop using condoms. Isn't that sweet? Hope I don't have anything!

He's Jewish, I'm not. And we have nasty sex like animals, not man and wife.

I really just want to be a Jewish housewife with a big rock on my finger.

Going to see the movie Troy tonight. RS told me to call him afterwards. Wants sex. We've only been dating a week, and we already have a routine.

Oh, I forgot: I learned that RS has a twin! (Unf, nobody finds this as fascinating as I do.)

Getting involved in a new relationship really just means ruining your nightlife. I resolve not to let this happen to me: I got bored and restless in my last relationship, and look what happened. Call it Madame Bovary Syndrome. Going out and getting trashed at least three times a week is the only cure.

RS called last night. He had a visitor flying in from NYC who was stuck in a holding pattern over DC for an hour. (Who flies from NY to DC anymore? Take the train! Or the $10 Chinatown bus.)

He was bored, so he picked me up and took me back to his house. His friend arrived around 11:30pm, and was exhausted from his hellish plan ride. So Rob and I went upstairs and got ready for bed.

Warning: the following passage is extremely corny. Get ready to vom.

So I get into bed and by then, it's midnight.

"What time is it?" RS asks.

"Midnight," I reply.

"Do you know what that means?"

"Uh...no."

"That means it's your birthday." And he pulls out this pink and green package, and I just know it's a new Lilly dress.

And it was. Then we fucked missionary. And he came. With a condom on.

Then he was like, "Who the hell comes missionary anymore?!"

Is that the quote of the day or what?

47. At the same time that Cutler was posting her public blog, she was also writing on her Senate computer a journal on how to exploit men for financial and materialistic gain.

48. In her public blog Cutler admiringly referenced Anna Marie Cox's "Wonkette" blog.

49. In her public blog Cutler hyper-linked to Anna Marie Cox's "Wonkette" blog.

50. Cutler wanted to have Cox spread the word regarding Cutler's blog.

51. Sure enough, on May 18, 2004, the Wonkette described the Cutler blog's contents, republished excerpts on the Wonkette web site, and linked back to Cutler's public blog.

52. Cutler and Cox saw the X-rated Washingtonienne blog as their route to riches.

53. Cox admitted on her Wonkette blog that the material on Cutler's blog might "invade someone's privacy."

54. That notwithstanding, Cox linked to Cutler's Washingtonienne blog.

55. That notwithstanding, Cox republished parts of Cutler's blog.

56. Cutler's "Washintonienne" public blog became notorious throughout Washington, D.C. and the nation.

57. Cutler always wanted to have her blog gain notoriety.

58. Within days, the full identification of Plaintiff was repeated through other internet sites, through numerous mainstream newspapers and tabloid publications published in the United States and abroad, and through various broadcast and cable television media beginning immediately. The dissemination including stories published or broadcast by such mass media outlets at *The Washington Post*, *The New York Times*, the Cable News Network, Fox Television News, *The Scotsman*, *The Guardian*, *The India Times*, *The New York Post*, *The National Enquirer*, and *The Star*.

59. Within three days of Cox's linking back to Cutler's blog, Cutler called Cox and granted Cox permission to post on her website (Wonkette) that Cutler was the source of the Washingtonienne public blog.

60. Cox published Cutler's identity with Cutler's express permission – giving her the notoriety she coveted.

61. Cutler went out on a late-night drinking spree with Cox.

62. Cutler posed for sexually suggestive photos with Cox that Cox put on -- and later removed from -- her website.

63. Cutler spent the night at Cox's house in Arlington, Virginia.

64. Cutler and Cox used the private facts of Plaintiff for their personal profit and exploitation.

65. Cutler got an agent, with Cox's help.

66. Cox paid Cutler to write for her website.

67. Cox and Cutler went on television together.

68. Cutler and Cox discussed posing jointly for *Playboy Magazine.*

69. Cutler sought widespread public attention and publicity for herself; she further disseminated the contents of the public blog through the channels of mass media; she granted print, broadcast, and Internet interviews, capitalizing on her newfound fame and attention.

70. On June 2, 2004, Cutler authored an article in the Guardian Newspaper online, in which she linked to and republished the full contents of her Washingtonienne blog again.

71. Cutler signed a deal with *Playboy Magazine* which included a nude photo spread of Cutler posted on Playboy's Internet site, capitalizing on the publicity generated by her public blog and her relationship with Plaintiff.

72. Cutler signed a book contract, receiving a $300,000 advance, with Hyperion Press, a division of the Disney Corporation, to write a book, of the roman a clef genre, based on her blog.

73. Cutler commented in the press that she feels sorry for those people that write public blogs for years and never obtain a book deal.

74. Cutler said: "With a blog, you can't expect your private life to be private anymore."

75. Cutler said: "Some people with blogs are never going to get famous, and they've been doing it for, like, over a year. I feel bad for them."

VI. Causes of Action for Invasion of Privacy – Including Public Disclosure of Private Facts and False Light

76. Plaintiff repeats the previous paragraphs here.

77. Defendants' actions constitute an invasion of Plaintiff's privacy.

78. Defendants' actions constitute the publication of private facts.

79. Defendants' actions constitute false light.

80. Defendants caused widespread publication of private intimate facts concerning Plaintiff in a manner that would be deemed outrageous and highly offensive to an ordinary reasonable person of average sensibilities, subjecting Plaintiff to severe emotional distress, humiliation, embarrassment, anguish and other damages.

81. Defendants placed Plaintiff in a false light, subjecting Plaintiff to severe emotional distress, humiliation, embarrassment, anguish and other damages.

82. The private facts revealed include such facts as the number of times he ejaculated, his difficulty in maintaining an erection while wearing a particular condom provided by Cutler, spanking and hair pulling during their sexual activity (but conveniently leaving out Cutler's request of both), his intimate personal conversations with Cutler during sexual activity and during the course of their relationship, physical descriptions of his naked body, the physical details of the sexual positions assumed by Cutler and Plaintiff during sexual activity, Plaintiff's suggestion that he and Cutler be tested for sexually transmitted diseases so that they would not have to make use of a condom, statements made by Plaintiff

regarding sexual positions. Illustrative of these statements are passages in the Cutler public blog, *inter alia*, such as:

Has a great ass.

Number of ejaculations: 2

He likes spanking. (Both giving and receiving.)

I put the moves on HIM. That is, I brought him back to MY place, I was the one who jumped on HIM.

Went out w/ RS after work yesterday. He took me out for drinks, took me back to my place, and we fucked every which way. THEN he tells me that he heard I've been spreading the spanking rumor around the office!

But last night was fun. He's very up-front about sex. He likes talking dirty and stuff, and he told me that he likes submissive women. Good, now I can take it easy in bed. Just lay back and watch him do freaky shit.

We went to his house after dinner, a four bedroom in Bethesda. Needs work, but v. cute.

So it turns out that RS cannot finish with a condom on. He can barely stay hard. So he ends up taking it off and humping away at me. Maybe I forgot to tell him that I'm on the Pill. Note to self...

I also learned that he was a cop, so he has scary police shit like handcuffs in his closet. He implied that we would be using them next time, which is intriguing, but I know I'm going to get scared and panicky. (Which would probably turn him on.)

I like this crazy hair-pulling, ass-smacking dude who wants to use handcuffs on me. Shit.

So I called RS and told him to come over so AS could get a look at him. This morning she says (via IM), "He does look like George Clooney, but he's totally Woody Allen."

She also said, "He will do anything to make you happy."

When Saki closed, we got some nasty Pizza Mart slices that tasted really good at the time. Then AS went home and RS took me back to his place for the second night in a row. I passed out as soon as I lay down, so we didn't do anything.

I woke up with an awful hangover and barfed up my Pizza Mart. (I'm losing

weight!) Then RS drove me home and made me promise to call him again today. I need to take it easy tonight, which means I might not go out, and I am sitting out the taco contest for sure.

Going to see the movie Troy tonight. RS told me to call him afterwards. Wants sex. We've only been dating a week, and we already have a routine.

So I called RS after MK left in a huff. I ended up sleeping over in Bethesda for the third night in a row.

He wants us to get tested together so we can stop using condoms. Isn't that sweet? Hope I don't have anything!

He's Jewish, I'm not. And we have nasty sex like animals, not man and wife.

I really just want to be a Jewish housewife with a big rock on my finger.

RS called last night. He had a visitor flying in from NYC who was stuck in a holding pattern over DC for an hour. (Who flies from NY to DC anymore? Take the train! Or the $10 Chinatown bus.)

He was bored, so he picked me up and took me back to his house. His friend arrived around 11:30pm, and was exhausted from his hellish plane ride. So Rob and I went upstairs and got ready for bed.

Warning: the following passage is extremely corny. Get ready to vom.

So I get into bed and by then, it's midnight.

"What time is it?" RS asks.

"Midnight," I reply.

"Do you know what that means?"

"Uh...no."

"That means it's your birthday." And he pulls out this pink and green package, and I just know it's a new Lilly dress.

And it was. Then we fucked missionary. And he came. With a condom on. Then he was like, "Who the hell comes missionary anymore?!" Is that the quote of the day or what?

Oh, I forgot: I learned that RS has a twin! (Unf, nobody finds this as fascinating as I do.)

83. Other private and personal facts were scandalized in Cutler's public blog, the Washingtonienne, to attract more attention; For example, Plaintiff's response to Cutlers question "am I too lazy in bed?" of "I don't mind passive" was presented as "*he told me that he likes submissive women.*"

84. Cutler's X-rated blog contained wholly apocryphal (false) statements about Plaintiff.

85. These statements were not made for any purposes relating to the dissemination of news or material published in the public interest. These statements were instead cruel and malicious exposures of the most intimate details of Plaintiff's life to a world-wide audience.

86. The disclosures of private facts would be highly offensive to any reasonable person. No reasonable person would want the intimate physical, verbal, emotional, and psychological details of his or her sexual life and romantic relationships life exposed against his or her will on the Internet for the entire world to read.

87. The invasion of privacy have caused Plaintiff to suffer economic damages, professional and personal harm, severe emotional distress, humiliation, embarrassment, anguish and other damages.

VII. Cause of Action for Intentional Infliction of Emotional Distress

88. Plaintiff repeats the previous paragraphs here.

89. Defendants' actions constitute outrageous conduct.

90. Plaintiff suffered severe emotional distress.

91. Defendants acted intentionally.

92. Defendants were reckless.

93. Defendants intended to cause Plaintiff to suffer damages.

94. Defendants' actions caused Plaintiff to suffer damages.

VIII. Prayer for Relief

Wherefore Plaintiff seeks compensatory damages in excess of ten million dollars, punitive damages in excess of ten million dollars, and such other declaratory and injunctive relief as the court shall deem appropriate, attorneys fees, costs and disbursements.

Dated: July 9, 2006

/s/ Jonathan Rosen
Jonathan Rosen (NY0046)
1200 Gulf Blvd., #1506
Clearwater, FL 33767
(908) 759-1116
Attorney for plaintiff

Matt Billips

From: Matt Billips
Sent: Wednesday, August 23, 2006 9:53 AM
To: 'Jonathan Rosen'
Subject: RE: Steinbuch v. Cutler

Before I send a subpoena to Little Rock, will you agree to voluntarily produce, in the next couple of weeks, Mr. Steinbuch's emails (incoming and outgoing, including cc's or bcc's) using his University of Arkansas email address and all records relating to his application and employment at the University of Arkansas?

I'm willing not to send the subpoena to them if we can get the records produced by him voluntarily.

-----Original Message-----
From: Jonathan Rosen [mailto:xjonathan@mac.com]
Sent: Tuesday, August 22, 2006 5:28 PM
To: Matt Billips
Cc: xjonathan@mac.com
Subject: RE: Steinbuch v. Cutler

Matt,
Thanks. I'm less concerned with those documents that might trail in a few days late and am more concerned with any objections to discovery that you might have so that I can file my motions to compel. Accordingly, why don't you get me all of your objections to discovery by the dates you have listed, and we can agree on an additional week to gather remaining documents (Sept. 5 & 13, respectively). As for the experts, we had 15 days remaining when the stay was put into effect, so we will serve our report within 15 days of today. Indeed, we may send it sooner than that. We will be deposing Defendant in NY, her place of abode. If you like, I can try to arrange for Plaintiff to meet us in NY for his deposition, as well. Jonathan

On Tuesday, August 22, 2006, at 04:56PM, Matt Billips <mbillips@mbalawfirm.com> wrote:

>Your first set of discovery was served on June 4, meaning the response
>would have been due on July 7. Your second set of discovery was not
>served until June 12, making the response due July 15. The stay was
>entered on June 30 and was lifted on August 22.
>
>Therefore, the first discovery responses are due, at the earliest, on
>August 29 and the second set, at the earliest, on September 6. I can
>get responses out by those deadlines, although I doubt that all of the
>documents you are requesting (even those my client is able to obtain)
>will be producible by that date.
>
>I disagree about your need for discovery on the identities of the other
>people identified in her blog. I will serve objections to those
>interrogatories, as the Complaint does not identify anything as to
>which the Defendant's veracity in general or the accuracy of her blog
>in particular is at issue. I don't understand how the identities of
>the other men on the blog supports your claim that Ms. Cutler
>orchestrated her outing by Wonkette, since she has not identified them.
>Maybe once I get your written responses to our discovery back we will
>have a better picture of that issue and how you contend that these
>identities matter.
>
>
>As far as expert disclosure deadlines, I realize that there was a stay.
>However, what is the effect of that stay on deadlines which ran in the
>interim? I think you are correct that you can show good cause for not

EXHIBIT 2

>identifying him previously (depending on whether you could have
>identified him and provided his report, of course), but by what date do
>you anticipate being able to provide the expert disclosures which the
>scheduling order contemplates? I'm certainly willing to work with you
>to set a reasonable deadline and hoped you would be willing to do the
>same.
>
>As far as depositions go, why don't we see if we can arrange the
>depositions of Mr. Steinbuch and Ms. Cutler to occur back to back, so
>as to get them done in the same trip to DC?
>
>
>
>-----Original Message-----
>From: Jonathan Rosen [mailto:xjonathan@mac.com]
>Sent: Tuesday, August 22, 2006 4:21 PM
>To: Matt Billips
>Cc: xjonathan@mac.com
>Subject: RE: Steinbuch v. Cutler
>
>Matt,
>The disclosure of our expert witness is not late because, as you may
>recall, the case was stayed until today. Your calculation on the
>response dates is not correct. The date that the motion is filed does
>not toll the counting of the days, only the actual stay does. I will
>consent to one week, until August 29 for all outstanding discovery.
>Our interrogatories are calculated to lead to the discovery of
>admissible evidence. Among other things, the discovery will allow
>Plaintiff to test the veracity of Defendant and her claims that her
>blog was completely true, that the other characters exist, and
>Defendant's claim that her actions were not orchestrated to gain the
>media attention that she coveted. Jonathan
>
>
>
>On Tuesday, August 22, 2006, at 01:01PM, Matt Billips
><mbillips@mbalawfirm.com> wrote:
>
>>I think that disclosure is late under the scheduling order, but in the
>>meantime, please send that to me in the form of a Rule 26 disclosure,
>>with all information that would entail.
>>
>>I have the Interrogatories and Requests for Production and, by my
>count,
>>it looks like I've got either another week or another three weeks to
>>respond (discovery served June 4; motion to stay discovery filed June
>>13; order granting motion dated June 30). Will you consent to the
>>responses and objections being due three weeks from today?
>>
>>With respect to Interrogatories Nos. 1 and 3, could you please tell me
>>how you believe this information is relevant to your client's claims
>or,
>>in the alternative, withdraw them? From reading the April transcript,
>I
>>don't believe that the Court is favorably inclined to grant discovery
>on
>>this kind of thing nor can I figure out how it advances your case.
>>
>>
>>
>>-----Original Message-----
>>From: Jonathan Rosen [mailto:xjonathan@mac.com]
>>Sent: Tuesday, August 22, 2006 12:54 PM
>>To: Matt Billips
>>Cc: xjonathan@mac.com
>>Subject: RE: Steinbuch v. Cutler
>>

>>Matt,
>>
>>Given the lift of the stay of proceedings, oue expert witness is:
>>
>>Alex Cohen, PhD
>>University of California
>>Berkeley, CA 94720
>>
>>Thanks,
>>Jonathan
>>
>>This email and any files transmitted with it are confidential and
>intended solely for the use of the individual or entity to whom they
>are addressed. If you have received this email in error please notify
>the system manager. This message contains confidential information and
>is intended only for the individual named. If you are not the named
>addressee you should not disseminate, distribute or copy this e-mail.
>If you have any questions, please contact Jennifer McNeil at
>404-969-4111.
>>
>>
>This email and any files transmitted with it are confidential and
>intended solely for the use of the individual or entity to whom they
>are addressed. If you have received this email in error please notify
>the system manager. This message contains confidential information and
>is intended only for the individual named. If you are not the named
>addressee you should not disseminate, distribute or copy this e-mail.
>If you have any questions, please contact Jennifer McNeil at
>404-969-4111.
>
>

Matt Billips

From: Jonathan Rosen [xjonathan@mac.com]
Sent: Tuesday, August 22, 2006 11:09 AM
To: Matt Billips
Cc: xjonathan@mac.com
Subject: RE: Steinbuch v. Cutler

Dear Matt,
Given the Court's Order, please immediately provide responses to all outstanding discovery requests. Please mail them to: Jonathan Rosen, Esq. 1645 Lamington Road Bedminster, NY 07921

Thanks,
Jonathan

EXHIBIT
3

Affirmation of Robert Steinbuch

Pursuant to 28 U.S.C. § 1746, I declare:

1. I worked in the United States Senate as a committee staff attorney.
2. After working with other staff members, I believe that I developed an excellent reputation in the Senate.
3. On May 18, 2004, I discovered the existence of, and read, Jessica Cutler's actual "Washingtonienne" blog.
4. Specifically, on May 18, 2004, my colleague told me about the blog and said: "Someone that you're dating wrote an intimate blog about you. She used your name in it."
5. The blog was one single web-page.
6. In reviewing the single web-page, I read one whole evolving story.
7. As I read the blog, it gave hints as to my identity as the individual initially denominated in the blog as "RS."
8. However, the blog did not confirm my identity until its very end, in the section labeled "May 18." In that section, Jessica Cutler for the first time identified me by name. Absent this information, I do not think that my identity would have been discernible in the blog. Indeed, I received numerous phone calls from various people, many whom I did not know, telling me that they were able to identify me from the use of my name Rob in the blog.
9. The blog invaded my privacy by disclosing my private facts and by portraying me in a false light.
10. The invasions of privacy resulting from the blog caused me significant emotional distress and physical pain for which I sought medical treatment. I have suffered from lost appetite, lost weight, nausea, vomiting, insomnia, stress, anxiety, feelings of violation and mortification, humiliation, embarrassment, mental distress and anguish, feelings of degradation, feelings of scorn, feelings of ridicule and shunning by people in the community, nightmares, shame, headaches, and other ailments.
11. I have been ostracized. One friend refused to talk to me as a consequence of the blog.

12. I believe that my professional reputation in the Senate, while falling from its excellent level, did not fall below a good level because my co-workers knew me well.
13. In contrast, however, my professional reputation outside the Senate, and my personal reputation, was severely impacted.
14. As I applied for jobs outside the Senate, every prospective employer raised the issue of the blog - all before I filed the instant lawsuit. Prior to the filing of this action, prospective employers specifically told me that the blog hurt my chances to gain employment, and a Dean of a law school informed me that the blog prevented me from getting employment as a law professor at his law school.
15. I spoke to Jessica Cutler after May 18, 2004. I asked Jessica Cutler why she would use my name in her blog. At that point, Jessica Cutler specifically told me that she routinely edited her entire blog - suggesting that she might have taken my name out of the blog at a later point.
16. Instead of trying to minimize the harm to me, Jessica Cutler and others affirmatively acted to further invade my privacy by publishing a book that did further invade my privacy that caused me additional and separate harm, which is the subject of a separate legal proceeding.

Robert Steinbuch

Affirmation of Alyssa Eidelberg Rosen

Pursuant to 28 U.S.C. § 1746, I declare:

1. I am an attorney and professional author of legal treatises and books.
2. On or about May 18, 2004, I read Jessica Cutler's "Washingtonienne" blog.
3. The Cutler's blog contains explicit, salacious, graphic, and extremely offensive content.
4. The X-rated blog was accessible and open to the general public, not password protected, nor protected by other security methods, and was available for anyone with access to the Internet to read.
5. The X-rated blog appeared on one single web-page. I read the X-rated blog as a whole evolving story and in its entirety.
6. As I read the X-rated blog, it revealed hints as to Rob's identity as the individual initially denominated in the blog as "RS."
7. The X-rated blog, however, did not confirm Rob's identity with certainty until I read the portion labeled "May 18." In that portion, Cutler for the first time identified Rob by his name, "Rob." It was at this point that Rob's identity in the blog was, for the first time, confirmed with certainty for me. Absent this information, I do not think that Rob's identity would have been discernible in the blog with certainty.
8. Rob suffered significant damage as a result of the private intimate facts revealed in Cutler's X-rated blog entry labeled "May 18" because it revealed Rob's identity with certainty.
9. I co-author a legal treatise entitled *Colorado Causes of Action – Elements, Defenses, Remedies, and Forms* published by Bradford Publishing Co., a well established legal publishing company founded in 1881.
10. I know Rob both professionally and personally for more than fifteen years.
11. After the above-mentioned book was published, Rob approached me regarding his writing a book review of my recent publication.
12. I informed my publisher, Bradford Publishing Co., that Rob, who was at that time a Professor at a law school, was interested in writing and publishing a book review of our text.
13. The Managing Editor of Bradford Publishing Co. informed me that Bradford was not interested in Professor Steinbuch writing a book review because of the Cutler X-rated blog.
14. The Managing Editor of Bradford Publishing Co. told me that Bradford did not want to have any association whatsoever with Professor Rob Steinbuch because Bradford, independently and with out my prior knowledge, did an Internet search on Rob's name and found the Cutler blog.
15. Bradford Publishing Co. was so opposed to any contact with Professor Steinbuch that they even refused to provide Professor Steinbuch with a copy of my book, and a book review of my book was never written or published.

16. I, unfortunately, am reluctant to work with Rob as a co-author of a new publication because of the damage that his reputation suffered as a result of the Cutler blog. Legal publishers will be less likely to accept a manuscript for publication with Rob's name as an author because of the Cutler blog.
17. Rob professional reputation in the legal publishing community was significantly damaged by Cutler's X-rated blog.
18. Rob's personal and social reputation was severely damaged by the intimate private facts revealed in Cutler's blog. I have met and know women who have dated Rob prior to Cutler publicizing her X-rated blog. Women would be less inclined to date or become socially involved with Rob because of Cutler's X-rated blog.
19. I know that Cutler and others published a book invading Rob's privacy that caused Rob further significant harm.

Alyssa Eidelberg Rosen

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Jonathan Rosen, Esquire 1645 Lamington Road Bedminster, NJ, 07921 Plaintiff	:	Index No. 06-2604 (MLC)
AND Alyssa Rosen, Esquire 1645 Lamington Road Bedminster, NJ, 07921 Plaintiff	:	
-v-	:	
Bradford Associates 2622 North Fairfax Drive Arlington, VA 22201, Defendant	:	
AND Credit Management Services 5090 North 40th St., #170 Phoenix, AZ 85018, Defendant	:	
AND Tom Black, an employee of Defendant Credit Management Services, 5090 North 40th St., #170 Phoenix, AZ 85018, Defendant	:	

EXHIBIT
6

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial.

JURISDICTION

Jurisdiction is founded on diversity of citizenship and amount in controversy.
Plaintiff is a citizen of the state of New Jersey.
Defendant is a Bradford Associates is a citizen of the state of Arizona.
Defendant Credit Management Services is a citizen of the state of Arizona.
Defendant Tom Black is a citizen of the state of Arizona.
The matter in controversy exceeds, exclusive of interests and costs, the sum of $75,000.

In Addition, Jurisdiction is also founded on Federal Question jurisdiction, for violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1601 et seq. and the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 et seq.

CAUSES OF ACTION

1. In August of 2004, Bradford Associates provided court reporting services at a deposition regarding the legal action in the United States District Court for the District of Columbia, Case Number 1:04-cv-00188RMC. Plaintiff Jonathan Rosen, Esq. represented a client in that action (hereinafter the "Client").

2. Plaintiff Jonathan Rosen, Esq. did not hire Bradford Associates for these services, as he merely represented his Client, one of the parties being deposed.

3. After the deposition was concluded, the Client wanted a copy of the deposition transcripts.

4. The only contact that Plaintiff Jonathan Rosen, Esq. had with Bradford Associates regarding ordering the transcript was one phone call in which he inquired as to how to get

copies of the depositions for his Client. During that telephone conversation, Bradford Associates informed Plaintiff that they would not provide him with copies of the depositions without payment first. They instructed Plaintiff Jonathan Rosen, Esq. to have his Client contact them directly, that the Client could pay for the transcripts first, and that they would send the Client the copies. Plaintiff Jonathan Rosen, Esq. thanked Bradford Associates for the information and passed it along to his Client.

5. Plaintiff Jonathan Rosen, Esq. never ordered copies of transcripts from Bradford Associates, never ordered copies on behalf of his Client, and has never even seen copies of such transcripts. The Client dealt with Bradford Associates. Bradford Associates never sent or delivered such transcripts to Plaintiff Jonathan Rosen, Esq. and Plaintiff Jonathan Rosen, Esq. never received copies of such transcripts.

6. Defendant Bradford Associates, through their agents, Defendants Credit Management Services, repeatedly called the home phone number of Plaintiff Jonathan Rosen, Esq., during the month of August 2005, on the weekends, and used abusive language to the wife of Plaintiff Jonathan Rosen, Esq. The Defendants falsely told his wife that he owed a debt to Bradford Associates for court reporting services, and that he was evading payment.

7. Specifically, several of Defendant Credit Management Service's employees, including one who identified himself as Tom Black, called Plaintiffs' home phone number, addressed Plaintiff's wife by her first name without first identifying himself or inquiring as to whom he was speaking, and began to yell and use abusive language.

8. The name of the wife of Plaintiff Jonathan Rosen, Esq. is not listed in the phone book with their home phone number. Defendants would have had to research her first name with the purpose of intimidating and misleading her when she answered the phone.

9. Next, when Plaintiff Jonathan Rosen, Esq. contacted Defendant Credit Management Services via telephone, Defendant Credit Management Service's employees conducted themselves in the same manner, yelling, harassing, and using abusive language.

10. Plaintiff Jonathan Rosen, Esq. instructed Defendant Credit Management Services during that telephone call, and via a letter dated August 30, 2005, that (a) he did not owe Bradford Associates any money, (b) the falsely alleged debt concerned his business, and it was not appropriate to call his home number regarding the debt, (c) he requested them to cease tormenting his wife at home, on the weekend, with harassing and threatening telephone calls regarding this falsely alleged debt, and to only contact him directly on my business phone during regular business hours.

11. Despite the numerous requests of Plaintiffs, Defendant Credit Management Associates and Tom Black continued to call his home phone number, leaving voice mail messages.

Eventually, the Plaintiffs disconnected their home phone so that they, and their two-year old child, would not be disturbed by the harassing phone calls at their home.

12. Defendant Bradford Associates never responded to the letters that Plaintiff Jonathan Rosen, Esq. faxed and sent "return receipt requested" to them. Plaintiff Jonathan Rosen, Esq. received proof that the letter was actually received by Defendant Bradford Associates.

13. Shortly after sending the letter to Bradford Associated, the Plaintiffs followed up with phone calls. Bradford Associates refused to investigate their records on the matter and never attempted to contact Plaintiff Jonathan Rosen, Esq. to resolve the matter.

14. In the Spring of 2006, Credit Management Associates continued their phone call campaign. Plaintiff Jonathan Rosen, Esq. followed up with a phone calls and letters attempting to resolve this matter.

15. After all of his exhortations, Plaintiff Jonathan Rosen, Esq., has no choice but to conclude that the Defendant are conspiring in a scheme of fraud to force the him to pay a debt that he never incurred. The Defendants had also violated, and conspired to violate the federal Fair Debt Collection Practices Act, and have conspired to intentionally cause emotional distress to both the Plaintiff and his wife through their actions.

FIRST CAUSE OF ACTION

Violation of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1601 et seq.

16. Plaintiffs repeat paragraphs 1-15 here.
17. Defendants violated the FDCPA by harassing, oppressing and abusing the Plaintiffs.
18. Defendants used abusive language, and called on the telephone repeatedly to abuse and harass the Plaintiffs.
19. As a result of the Defendants' violations of the FDCPA, the Plaintiffs suffered damages.

39. As a result of the above communications, Plaintiffs has suffered, and continues to suffer, sever emotional and physical distress and damages as a result of the Defendants false statements.

Seventh Cause of Action

Invasion of Privacy / False Light

40. Plaintiffs repeat paragraphs 1-15 here.

41. Defendants communicated and gave publicity to matters regarding Plaintiffs failure to pay a debt owed to others before the public in a false light.

42. These statements regarding Plaintiffs failure to pay a debt owed would be highly offensive to a reasonable person.

43. The Defendants had knowledge of and acted in reckless disregard as to the falsity of the publicized matter and the false light in which the Plaintiffs were placed.

44. The communications have been re-published to other credit agencies and creditors and have negatively affected their view of Plaintiffs and Plaintiff's credit score.

45. As a result of the above communications, Plaintiffs has suffered, and continues to suffer, sever emotional and physical distress and damages as a result of the Defendants false statements.

DEMAND

Plaintiff demands a jury trial.

WHEREFORE, plaintiff prays for judgment for:

(a) monetary damages in the amount in excess of $1,000,000;

(b) any such relief that this Court considers just, proper and equitable;

(c) attorneys fees, costs and disbursements.

Dated: July 28, 2006

/s/ Jonathan Rosen

Jonathan Rosen

1645 Lamington Road
Bedminster, NJ 07921

(908) 759-1116

Attorney for plaintiffs

Matt Billips

From: Matt Billips
Sent: Wednesday, September 06, 2006 2:00 PM
To: 'Jonathan Rosen'
Cc: John R. Ates
Subject: RE: Call

Quash subpoena response.pdf (9...

This is the draft response I intend to file. If you will, by COB today, agree to withdraw your motion, I will not need to file the response and will, further, agree not to seek fees for the time spent in drafting the response.

-----Original Message-----
From: Jonathan Rosen [mailto:xjonathan@mac.com]
Sent: Wednesday, September 06, 2006 9:04 AM
To: Matt Billips
Cc: xjonathan@mac.com
Subject: Call

Matt,
Pursuant to the Rules, I called you to determine whether you would consent to Plaintiff's Motion to Quash, which I was forced to file given that I just got notice of your third-party subpoena with your response date of today. The subpoena is overbroad, and discovery of Plaintiff should be taken from him not third parties. Pursuant to Rules, should you want to resolve this matter prior to going to Court, please let me know. Jonathan