

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, SS.

DISTRICT COURT DEPARTMENT
PALMER DIVISION
CIVIL ACTION NO. 1143CV293

Brian Johnson,)
Plaintiff)
v.)
Peter Frei,)
Defendant)

Proposed statement to be read to the jury:

This case started eight and a half years ago.

Brian Johnson is the plaintiff in this matter, Peter Frei is the defendant. Brian Johnson is the elected Highway Surveyor in the town of Holland; Peter Frei maintained an interactive Blog about the ongoings in Holland on the Internet.

In response to several postings Frei wrote on his blog sharply criticizing Johnson, Johnson repeatedly and aggressively confronted Frei. Johnson called Frei “with trash,” “a scumbag,” a “loser,” and “the dumbest person [he’d] ever met.” In one instance, Johnson, told him to “cut out that bullshit ... on your blog,” and aggressively stood near Frei’s car.

In the winter of 2011, Frei was informed by one of the readers of his blog that Johnson allegedly hired his neighbor to operate a 21 thousand pound front-loader to plow the streets of Holland. This neighbor of Johnson had not the required training and licenses to operate a 21 thousand pound front-loader. Frei wrote about Johnson hiring the unlicensed neighbor on his blog on January 20, 2011. According to Google analytics, more than 400 computers logged onto Frei’s blog on a daily basis.

Just one month later, on February 19, 2011, the Holland Rod and Gun club organized a fishing derby on the lake where Frei lives. Participating in this derby, Johnson with seven of his close friends and employees of the

Highway Department chose, of all the places the lake offers, to ice-fish surrounding Frei's house which sits at the edge of a peninsula surrounded by water less than three feet away from the shoreline. Johnson and his friends started drilling holes with three power augers at dawn, just a mere few feet away from Frei's house. The group displayed a sign pointed at Frei's home that read "EAT ME."

The men were loud and boisterous. One individual even urinated on Frei's property. This behavior persisted until around 3PM when Frei went to pick-up his mail and found two men of the group trespassing his property. Frei walked back from his mailbox about 800 feet away from his house along the path through the snow where he walks when there is too much snow and Frei is unable to drive to his house. The path which marks the shortest distance between his house and his mailbox and the place he parks his car, leads over the ice. Johnson and his group set-up camp right on this path. As Frei walked up to the men to ask them not to trespass his property, he was intentionally knocked to the ground. While Frei was down on the ice, Johnson was about to kick him but stopped when Frei announced that the group was videotaped.

Frei's left hand was cut by his violent fall to the ground, his girlfriend, who was observing the entire incidence from the house, called the police.

Johnson claimed towards the police that it was Frei who was the aggressor and that Frei threatened to kill him [Johnson], and that he would now be in fear of his life. Frei could prove otherwise and posted his recording on his blog for everybody to hear. Johnson tried to press criminal charges against Frei for his surreptitious recording of the encounter on the ice, but the Holland Police Department refused to do so.

Johnson then filed this civil action against Frei for damages resulting from Frei's surreptitious recording of him.

In his answer to Johnson's complaint, Frei raised counterclaims for assault and battery, defamation, libel and slander, negligent and intentional infliction of emotional distress, abuse of process and obstruction of justice, and violation of civil rights actionable under the civil rights act.

After a two and a half day jury trial, Frei was found guilty of surreptitiously recording Johnson.

However, the jury found that Frei's recording did not violate any of Johnson's personal or property interests. The jury also found that Frei's

recording did not violate Johnson's privacy. After the jury asked whether they need to award any damages to Johnson, the judge ordered them to award the statutory minimum of \$100.00 which the jury did. Johnson was found guilty of defamation by knowingly and falsely accuse Frei of having committed a crime and awarded 100.00 in damages; Johnson was also found guilty of intending to inflict negligent and intentional emotional distress. The jury further found that Johnson's conduct was extreme and outrageous, and that his conduct was beyond the bounds of decency and intolerable in a civilized society. The jury also found that a reasonable person under the circumstances of this case would have suffered emotional distress.

The jury further found that Frei exercised or enjoyed rights secured to him by the Constitution or laws of the United States or by the Constitution or laws of the Commonwealth. Johnson was found guilty of interfering or attempted to interfere with those rights by threats, intimidation or coercion and awarded Frei \$1,500.00 for Johnson's violation of Frei's civil rights.

After trial it came to light that the members of the Board of Selectmen who were also frequently criticized by Frei on his blog secretly paid Johnson's attorney with taxpayers funds. Johnson's attorney, who was also frequently criticized on Frei's blog, was secretly appointed to special town counsel to represent Johnson in his private civil suit against Frei.

Frei's girlfriend requested an investigation by the State Ethics Commission for a possible violation by Johnson and other actors of the Conflict of Interest Law by using taxpayer's money (\$23,023.00) to pay for Johnson's attorney.

Johnson appealed the jury's verdict to the Appellate Division of the District Court. Frei filed his cross-appeal pro se (representing himself, without an attorney. After spending \$63,500 in attorney's fees to his attorney, he could not afford to pay more. In his brief, Frei included case-law to the point contradicting Johnson's attorney's case law she used to support her argument. Johnson's attorney simply but falsely claimed that her case law would overrule Frei's case-law. A simple check of Westlaw, an on-line legal service for attorney's would have exposed Johnson's attorney's lie, but Court's trust there officer's and failed to do so. Pro se litigants are in general considered as being ignorant of the law.

The Appellate Division of the District Court affirmed the jury verdict.

Two years after the trial, the Ethics Commission of the Commonwealth issued a so called “Public Education Letter,” (“PEL”).

In their PEL the State Ethics Commission made the finding that Johnson violated the conflict of interest law by accepting the \$23,023.00 in funds to pay his attorney, Tani Sapirstein.

This PEL also reveals that Johnson filed his civil suit against Frei “to deter and discourage Frei” from exercising his Constitutional Rights.

Johnson thereafter appealed to the Appeals Court of the Commonwealth; again, Frei cross-appealed, again representing himself.

Despite an all-out effort on Johnson’s part, Frei was allowed to include a copy of the PEL in his record of appeal. The Appeals Court of the Commonwealth affirmed all jury verdicts against Johnson, but ruled in Frei’s favor on his appeal, appealing the District Court Judge’s decision to throw out Frei’s counter claim for abuse of process against Johnson.

This is why you are here today, the Appeals Court remanded the erroneous decision by the District Court Judge on Frei’s counter-claim against Johnson for abuse of process and remanded that claim back to this Court.

Instead of having a trial on all issues again, you will only have to decide whether Johnson abused the legal process for an ulterior motive. Everything in this statement you have to accept as fact. There is no question whether any of the facts mentioned in this statement are true.

Respectfully submitted by the Defendant and plaintiff in the counter-claim of abuse of process

Peter Frei
101 Maybrook Road
Holland, MA 01521
phone (413) 245 4660
August 29, 2011

Peter Frei

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the following by hand delivery:

Tani E. Sapirstein, Sapirstein & Sapirstein, P.C.

1350 Main Street, 12th Floor

Springfield, MA 01103

August 29, 2011

Peter Frei