

08-628

IN THE COUNTY COURT OF LANCASTER COUNTY, NEBRASKA

THE STATE OF NEBRASKA,

Plaintiff,

vs.

DARREN J. DRAHOTA,

Defendant.

CR07-230
Case No. CR06-21284

BILL OF EXCEPTIONS

VOLUME 1 - TRIAL,
EXHIBIT NOS. 1 AND 2
(Pgs. 1 - 46, incl.)

Proceedings had before the HONORABLE GALE POKORNY, JUDGE at
Lincoln, Nebraska on December 13, 2006 and January 30, 2007.

A P P E A R A N C E S

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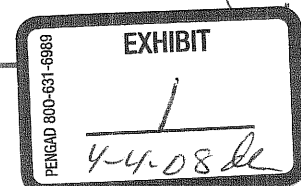
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FILED

OCT 16 2008

CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS

Jan Webb
Court Stenographer
Lancaster County Court



1	<u>TRIAL, 12/13/06:</u>				
2	<u>WITNESSES:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
3	<u>FOR THE PLAINTIFF:</u>				
4	William P. Avery	2	12	--	--
5	<u>TRIAL, 1/30/07:</u>				
6	William P. Avery	--	20	27	--
7	Edward E. Sexton	32	40	--	--
8					
9	<u>MOTIONS AND STIPULATIONS</u>			<u>Made</u>	<u>Ruled On</u>
10	Motion to sequester			1	1
11	Motion to dismiss			42	43
12					
13	<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled On</u>	<u>Found</u>
14	1. E-mails	7	9	9	10
15	2. Newspaper article	24	25	25	26
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C E R T I F I C A T E


I, Jan Webb, court stenographer for the Lancaster County Court in the Third Judicial District of the State of Nebraska, do hereby certify that the within and following bill of exceptions contains all of the proceedings had in this matter or all of the evidence adduced in the foregoing cause in said court, and the rulings of the Court thereon, that said bill of exceptions is a correct and complete transcription from the official tape recordings made at the time of the proceedings as indicated by the files and records of this court; that said bill of exceptions consists of:

VOLUME I - Trial of December 13, 2006 and January 30, 2007

Exhibit Nos. 1 and 2, (Pgs. 1 - 46, incl.)

That the cost of said bill of exceptions is \$159.25, said amount being that which is permitted to be charged by the Nebraska Supreme Court.

Dated this 11th day of December, 2007.



Court Stenographer

1 (At 11:08 a.m. on December 13, 2006, in the County
2 Court of Lancaster County, in Lincoln, Nebraska, before the
3 HONORABLE GALE POKORNY, one of the judges of said court, with
4 Ms. Maureen Hannon appearing as counsel for the plaintiff, Mr.
5 Thomas Keefe appearing as counsel for the defendant, and the
6 defendant being present in person, the following proceedings
7 were had:)

8 THE COURT: What are we going to do with Eric Miller's
9 disturbing the peace case?

10 MS. HANNON: I believe there's going to be a trial.

11 MR. KEEFE: That's correct, Your Honor.

12 THE COURT: Okay. Get over then, we'll have a trial.
13 Okay. Okay. That's fine. Have a chair ---

14 (At this time the tape recording
15 machine malfunctioned and some of
16 the proceedings may not have been
recorded.)

17 THE COURT: --- will be sequestered. You ready to go?
18 Fine. Call whoever you want to call.

19 MR. KEEFE: Your Honor, I have one other thing. Would
20 the Court check the file and let me know if there's a charge for
21 failure to appear?

22 THE COURT: No.

23 MR. KEEFE: No. 'Cause this could be (indiscernible)
24 appear with me for arraignment on November 1st. I had to
25 continue the arraignment. So it should not be ---

1 THE COURT: There's no failure to appear here. There
2 is no failure to appear. Ms. Hannon, call your first witness.
3 Ms. Hannon, call your first witness.

4 MS. HANNON: Pro -- Professor Avery. I'd like to call
5 Professor Avery.

6 WILLIAM P. AVERY

7 Called as a witness on behalf of the
8 plaintiff, having been first duly sworn, did
testify as follows:

9 THE COURT: Over there into that gray chair. Don't
10 know what you have there, sir, but turn it -- turn it upside
11 down, please.

12 THE WITNESS: These are my own personal notes.

13 THE COURT: Just turn it upside down, please. If you
14 cannot remember what happened and you need to refer to personal
15 notes, why there's a -- we have a process for that and we'll do
16 it. Ms. Hannon, go ahead.

17 DIRECT EXAMINATION

18 BY MS. HANNON:

19 Q Would you please state your full name for the record, and
20 spell your last.

21 A William P. Avery, A-V-E-R-Y.

22 Q And what is your address?

23 A 1925 "E" Street, Lincoln, Nebraska.

24 Q And what is your current occupation?

25 A That's an interesting question. I am in my last month

1 as a professor of political science at U-N-L. And I will
2 take office on January 3rd as a newly elected State
3 Senator.

4 Q From ---

5 A So I'm in between.

6 Q --- from January '06 to June, 2006 were you a professor
7 then?

8 A Yes.

9 Q And -- and did you receive -- in -- in the course of your
10 teaching, did you receive e-mails from any of your students?

11 A Yes, frequently.

12 Q And did you receive any e-mails from someone named Darren
13 Drahota?

14 A Yes.

15 Q And could you recognize Darren Drahota?

16 A Yes.

17 Q And could you do so now?

18 A He is sitting at this table here in the red jacket.

19 MS. HANNON: Please let the record reflect that he's
20 identified the defendant.

21 THE COURT: The record will so reflect.

22 Q And do you recall when you first received an e-mail from
23 Mr. Drahota?

24 A I can't say I recall when I first did, because a lot
25 of my students e-mail me from time to time, mundane

1 questions about exams, or perhaps commenting on something
2 that happened in class. I do remember, though, that the
3 sequence of e-mails that became disturbing to me began on
4 the 27th ---

5 THE COURT: You -- you ask another question.

6 A --- of January. January.

7 Q Okay. At any point, did you start saving the e-mails from
8 Mr. Drahota?

9 A Yes.

10 Q And why did you start saving e-mails from Mr. Drahota?

11 A Because the na -- the nature of the e-mails was
12 hateful, racist and vile. And I found them offensive, and
13 in some cases threatening.

14 Q And at what point did you start -- do you know the time
15 period in which you started saving these e-mails?

16 A The 27th of January, was the first one I saved.

17 Q And did you respond to Mr. Drahota's e-mails?

18 A Usually I would respond with a short response. I
19 think -- when I received the 27th of January e-mail, I
20 responded by saying I am not going to participate in this
21 hate dialog, sorry. Something like that.

22 Q At any point, did you make a request for Mr. Drahota to
23 stop contacting you?

24 A Yes.

25 Q And do you remember on what date that was?

1 A I think it was the 9th of February.

2 Q And do you remember what you -- the words you used to ---

3 A I think at one point I said let's end this. That was
4 after I said I don't want to participate in this kind of
5 dialog. And I -- then I think later I said do not send me
6 any more e-mails, that I had saved them and that if I
7 received any more e-mails from him of this nature that I
8 would turn them over to the police.

9 Q And do you have anything -- and did you save that e-mail
10 then?

11 A Yes.

12 Q And do you have those e-mails with you?

13 A Yes.

14 THE COURT: I'm not clear. Are you talking about the
15 he sent, or the ones he received?

16 MS. HANNON: Both.

17 Q Do you have the ones you saved and then the ones that you
18 sent him?

19 A I do.

20 Q And did you -- after you made the request that he not
21 contact you anymore, did you receive any other e-mails ---

22 A I did.

23 Q --- from Mr. Drahota?

24 A And that's what prompted me to act. Two e-mails came;
25 one on the 14th of June and one on the 16th of June from a

1 e-mail address entitled Avery loves Al-Qaeda. That
2 disturbed me a great deal. I was in the middle of a
3 political campaign.

4 THE COURT: Okay. He says yes. Another question.

5 Q Okay. Regarding the e-mails that you received in June of
6 2006, what was the substance -- do you recall what the substance
7 of those e-mails were?

8 A It had to do with developments in Iraq.

9 Q And were -- did it -- did either of those e-mails -- were
10 either of those e-mails directed at you personally?

11 A Yes, both of them were.

12 Q And what did they -- specifically, what did they say about
13 you?

14 A Essentially saying that I should be upset that Zargawi
15 had been killed, which, of course, is ridiculous. And
16 suggesting that somehow I was sympathetic to Al Qaida.

17 Q Did the e-mails contain any threats or anything of that
18 nature?

19 A Not those particular ones, but previous e-mail had
20 threatened physical violence.

21 Q And you don't remember the exact wording of the e-mail from
22 January 16th of 2006, do you?

23 A I know how it started, using the "F" word. I think
24 that might have been the 16th. That was the physical
25 threat that you're talking about?

1 Q No, that's not.

2 MS. HANNON: Your Honor, may I approach?

3 THE COURT: Sure.

4 MS. HANNON: May I approach the witness?

5 THE WITNESS: Copy of the e-mail?

6 MS. HANNON: Yes.

7 THE WITNESS: Can I see which one you're referring to?

8 MS. HANNON: Actually, I was just going to offer them
9 all to show

10 MR. KEEFE: These are all of them.

11 MS. HANNON: Oh. Okay, then. (indiscernible)

12 COURT STENOGRAPHER: Exhibit 1 is marked.

13 (Exhibit No. 1 was marked.)

14 Q And I'm showing you what's been marked as an Exhibit 1. Do
15 you recognize this document?

16 A I do.

17 Q And can you tell the Court what this is?

18 A These are copies of e-mails that I received from Mr.
19 Drahota beginning on the 27th of January.

20 Q And can you look through them to see if they're true and
21 accurate copies of all the e-mails that you received?

22 THE COURT: How many have you got there, Exhibit --
23 Exhibit 1?

24 MS. HANNON: I'm sorry?

25 THE COURT: How many -- how many pieces of paper have

1 you got there? How many different e-mails?

2 MS. HANNON: Your Honor, there's 12 pieces of paper.
3 The e-mails do kind of overlap.

4 THE COURT: Okay.

5 MS. HANNON: Some take up more than one page and some
6 take up less.

7 THE COURT: So you believe there are 12 different e-
8 mails there?

9 MS. HANNON: Well, there's ---

10 MR. KEEFE: There should be a total of 20 e-mails,
11 Your Honor.

12 THE COURT: I'm asking her what the exact ---

13 MS. HANNON: Okay.

14 THE COURT: --- is. What do you have there, Ms.
15 Hannon? Twelve different e-mails?

16 MS. HANNON: Your Honor, you're asking -- 'cause they
17 show up as ---

18 THE COURT: I don't know what you've got there.

19 MS. HANNON: --- okay.

20 THE COURT: You've got Exhibit 1 and you're talking
21 about something that's multiple ---

22 MS. HANNON: Okay.

23 THE COURT: --- plural. So I'm asking how many have
24 you got?

25 MS. HANNON: Okay.

1 THE COURT: 'Cause I don't know what you've got there.
2 Presumably you have e-mails. I'm asking how many different ones
3 you have. Can you tell? Can't you tell here? I mean I don't
4

5 MS. HANNON: I'm counting 20.

6 THE COURT: Twenty. So you believe that Exhibit 1 is
7 20 different e-mails. That's all I wanted to know. Thank you.
8 Go ahead.

9 MS. HANNON: Thank you.

10 Q If you could look through these and see if they're an
11 accurate copy of the e-mails that you both received and sent.

12 A Yes.

13 MS. HANNON: Thank you. Your Honor, I'd like to offer
14 Exhibit 1.

15 MR. KEEFE: No objection, Your Honor.

16 THE COURT: Exhibit 1 is received, being, apparently,
17 20 different e-mails. Thank you.

18 (Exhibit No. 1 is hereby made a
19 part of this bill of exceptions
and may be found on page 10.)

20 Q Did all these events occur in Lancaster County, Nebraska?

21 A I presume they did. I mean, my events certainly did.

22 Q And you received them in Lancaster ---

23 A Yes.

24 Q --- County, Nebraska?

25 THE COURT: Mr. Keefe? Are -- are you done?

1 MS. HANNON: Oh, just one moment.

2 THE COURT: Oh.

3 MS. HANNON: I just want to make sure ---

4 THE COURT: Alright.

5 MS. HANNON: --- I didn't have anything else I wanted
6 to ask.

7 Q At -- at one point in the e-mail in -- on June 16th, 2006
8 do you recall whether the e-mail ---

9 THE COURT: What -- what -- what date, what day again?

10 MS. HANNON: June 16th.

11 THE COURT: June 15th?

12 MS. HANNON: 16th.

13 THE COURT: June 16th, thank you.

14 MS. HANNON: Of 2006.

15 Q Do you recall the e-mail telling you that people like you
16 should be forced out of this country?

17 A Yes, I do.

18 Q And were you disturbed then by both -- by the e-mails that
19 you received in June of 2006 from the defendant?

20 A Yes.

21 MS. HANNON: No further questions.

22 THE COURT: Mr. Keefe.

23 MR. KEEFE: Thank you, Your Honor.

24 CROSS EXAMINATION

25 BY MR. KEEFE:

1 Q How long have you been a professor at U-N-L?

2 A U-N-L?

3 Q How long have you been a professor of political science?

4 A Thirty four years.

5 Q Thirty-four years.

6 A Thirty-two at U-N-L.

7 Q And you receive lots of e-mails frequently, you said, from
8 students, I believe?

9 A Yes.

10 Q So you correspond with students about issues of the day?

11 A Sometimes.

12 Q Sometimes? And is that what you did with Mr. Drahota? Is
13 correspond with him about some issues of the day, would you
14 characterize it?

15 A No. They --

16 Q Do you have ---

17 A they related ---

18 Q --- Exhibit 1 in front of you?

19 A Pardon?

20 Q Do you remem -- do you recall the first -- the first --
21 nature of the first exhibit -- first e-mail you received from
22 Mr. Drahota?

23 A I don't remember the specifics. But it had something
24 to do with ---

25 Q Do you remember something to the effect ta' I think Bush's

1 wire taps are illegal but I'm glad it's being done?

2 A I do remember that.

3 Q (indiscernible) secret wire taps for anything else, and I
4 mean anything else, I would go after him to the fullest extent
5 of the law. Do you remember ---

6 A I do ---

7 Q --- (indiscernible)

8 A --- remember that. Yes.

9 Q And your response, as I recall, you were gung-ho for the
10 impeachment of Bill Clinton for lying about a B-J, a B-J being a
11 blow job. Is that right?

12 A Mm-hmm.

13 Q In the White House. Ironical that you're willing to give
14 Dubya a pass on something like this. Strange.

15 A Mm-hmm.

16 Q Would you characterize that as a political discussion about
17 the issues of the day? Impeachment of a president for various
18 issues?

19 A I wouldn't descibe -- describe it as a issue of that
20 date. Not -- not Bill Clinton, but in the context of his
21 defense of President Bush, yes, it was a issue of the day.

22 Q And would -- it's the second e-mail that he sent to you
23 alonging (sic) -- talking about wire taps and Mr. Clinton and
24 Al-Qaida, the Palestinians, U.S. and (indiscernible)

25 MS. HANNON: Objection, this is already in evidence in

1 Exhibit 1.

2 MR. KEEFE: Can I ask him about what's in Exhibit 1,
3 Your Honor.

4 THE COURT: That's not the -- that's not the
5 objection. Look, these people seem to be having a conversation
6 -- a political conversation, a dialog. Some of these terms are
7 probably salty, some of these terms, or whatever. I don't know
8 what to call 'em. They're having a dialog. But at a given
9 point in time, he says stop threatening. Anything before that,
10 I don't really care. At a point in time, he says to him stop.
11 So, it's just immaterial as to Bill Clinton versus George Bush.
12 Half the country will argue with the other half of the country,
13 or I don't know what the latest poll was this morning, but it's
14 probably two thirds of the country is now going to argue with
15 one third. What he says on February 9 or 10, this has gone on
16 far enough, I regard it as disturbing, stop. All the quoting I
17 care about is what did or didn't happen after he says stop.

18 MR. KEEFE: May I, Your Honor, just one thing. 'Cause
19 there is one e-mail on response that Professor Avery did not
20 talk about on February 9th. Most of these took place on
21 February 9th. Just before he tells Mr. Drahota to stop.

22 Q Do you remember writing to him I'm tired of this shit.
23 You've accused me of being anti-American, unpatriotic, etc. He
24 talked to you about Chicken Hawks. He says that you're so pure,
25 so un-pro-American, so absolutely correct why don't you sign up

1 for duty in Iraq right away?

2 MS. HANNON: Objection, irrelevant.

3 THE COURT: Go ahead and answer that question.

4 A I -- I wrote that, yes.

5 Q Okay. And so -- then you ask -- later on you ask him to
6 stop. The two e-mails we're talking about that you say disturb
7 your peace occurred to you on June 14th and June 16th, right?

8 A My peace was disturbed before those.

9 Q Pardon me?

10 A I -- I found those e-mails long before then
11 disturbing. And had asked ---

12 Q So it's kinda like ---

13 A --- at least twice to end it.

14 Q So, but that was in February. You didn't contact the
15 police at that time, did you?

16 A Not until the -- the last two.

17 Q Okay. So, four, five months later you contact the police
18 because ---

19 A It was not my interest to get Darren in trouble.

20 Q --- pardon me?

21 A I was not interested in causing Darren trouble at that
22 point.

23 Q Did you -- the discussion -- the June 14th, Al-Zarqawi's
24 dead; and talks about Michael Moore, Ted Kennedy, John Murtha,
25 the A-C-L-U and more discussion of things that were going on,

1 correct? I mean these are -- these are political science
2 issues, are they not?

3 A But you have to look at the origin. Avery loves Al-
4 Qaida. That was disturbing to me and offensive. But very
5 disturbing. That's where -- and I didn't know who they
6 were coming from.

7 Q You have a spam filter on your e-mail?

8 A I do.

9 Q Does it filter out -- didn't filter out these that come
10 from unknown sources?

11 A No, it did not.

12 Q But you have a choice whether you open it or not?

13 A When it -- let me correct that. It might've -- it
14 might have filtered it, but I have the ability to go back
15 and see what has been filtered out. And can restore
16 anything that I want to look at.

17 Q So, if you want to look at it, you can open it up?

18 A Yes.

19 Q So, it intrigued you, so you looked it up?

20 MS.HANNON: Objection ---

21 A Why, of course.

22 THE COURT: Mr. Keefe, let's do this one more time.
23 February 9, February 10 he says stop.

24 MR. KEEFE: Correct.

25 THE COURT: Okay. All I care about ---

1 MR. KEEFE: (indiscernible) June 14th and June 16th,
2 Judge.

3 THE COURT: Alright. So let's go on.

4 MR. KEEFE: Judge, there's only two -- two e-mails. I
5 understand it.

6 THE COURT: Alright.

7 MR. KEEFE: You want the focus on what happened after
8 Professor Avery told him to stop, correct.

9 THE COURT: Yes.

10 MR. KEEFE: And that was -- well, there was actually
11 one more e-mail Mr. Drahota sent back to him after that time.
12 After Professor told him to stop.

13 Q On February 10th actually, 11:12:06, he said please
14 consider this e-mail request you do not contact me again for
15 purpose of spilling more vile. If you do this again, I'll turn
16 it over to the police. Mr. Avery (sic) wrote back to you, did
17 he not, and said I won't contact you any more regarding
18 politics. I don't think that what I did was illegal. I should
19 have not had a knee jerk reaction to your comments and should
20 have collected myself before I e-mailed you back.

21 THE WITNESS: Mr. Avery did not do that.

22 MR. KEEFE: Pardon me?

23 THE WITNESS: Mr. Avery did not do that.

24 THE COURT: I think you mean Mr. ---

25 MR. KEEFE: Excuse me.

1 THE COURT: --- Drahota.

2 MR. KEEFE: Sorry.

3 THE COURT: Alright.

4 Q So, Mr. Drahota sent -- left you an apology, did he not?
5 It's also the reason, I understand, why you're so upset when I
6 inferred that you were Benedict Arnold. I do the extreme left
7 of your party. Will you at least accept my apology. Did he
8 apologize to you?

9 A Is that -- did you just read that?

10 Q That is from an e-mail that he sent back to you ---

11 A I ---

12 Q --- after you asked him to ---

13 A --- I did not respond to that e-mail. And for my
14 purposes, it was over there. And it would have stayed
15 where it was, had the previous two -- the last two e-mails
16 not arrived. I was willing to end it. And I had asked him
17 to stop more than once. I said let's end this. I will not
18 engage in this dialog. And it's not a dialog when somebody
19 is -- is -- is arguing with you. It was more an argument
20 than it was ---

21 Q But if you want to talk about you asking him to stop and
22 not a dialog, you did go back and forth with him, did you not?

23 A I did.

24 Q Because you responded to some other e-mails.

25 A I did. I did.

1 Q You know, he said to you let's go drink some beers ---

2 MS. HANNON: Objection ---

3 Q --- and discuss your senate runs ---

4 MS.HANNON: --- relevance.

5 Q --- now that sounds like a much better plan.

6 THE COURT: I'm asking ---

7 MR. KEEFE: I'm sorry. The witness went back to that,
8 Your Honor. He's not telling the truth about what he said. I
9 know you're out of time.

10 THE COURT: You go get yourself another trial date
11 here. I said I'm not interested in anything. We're going to
12 continue this to the officer's next date.

13 ** ** ** ** **

14 (At 10:38 a.m. on January 30, 2007, in the County
15 Court of Lancaster County, in Lincoln, Nebraska, before the
16 HONORABLE GALE POKORNY, one of the judges of said court, with
17 Mr. Eric Miller appearing as counsel for the plaintiff, Mr.
18 Thomas Keefe appearing as counsel for the defendant, and the
19 defendant being present in person, the following proceedings
20 were had:)

21 THE COURT: Let's have the witness comes back up here
22 to the witness chair. Far as I see Mr. Keefe, are you cross
23 examining Mr. Avery?

24 MR. KEEFE: That's correct, Your Honor.

25 THE COURT: Alright. I'll remind you ---

1 MR. KEEFE: (indiscernible)

2 THE COURT: --- I'll remind you that you still are
3 sworn in these proceedings. Just state your name, when you get
4 up there.

5 THE COURT: Okay. Go ahead, Mr. Keefe.

6 THE WITNESS: My name is William P. Avery.

7 CROSS EXAMINATION

8 BY MR. KEEFE:

9 Q I believe last time we met it was Professor. Now it's
10 Senator, is that correct?

11 A That's correct.

12 Q And, let me just confirm, because it has been awhile,
13 Senator Avery, that you -- that 35 years as a political science
14 professor. Is that correct?

15 A I say 32 here at U-N-L. Two years at a previous
16 university.

17 Q Okay. Thank you. During your tenure as political science
18 professor, you would receive e-mails from students and send e-
19 mails to students?

20 A Yes.

21 Q You -- was Darren Drahota a student of yours in one or more
22 classes, that you recall?

23 A He was.

24 Q He -- and -- there are two messages, I believe, that are
25 part of Exhibit 1, Senator Avery, sent on June 14th and June

1 16th that, I believe you testified before, were filtered by your
2 spam filter at the time they were received? Does that make
3 sense to you?

4 A I -- I do have a spam filter. But I don't know that
5 those two were filtered.

6 Q Did you ---

7 A They might have been ---

8 Q --- you don't recall?

9 A --- but I have -- I have the ability to restore them.

10 Q I'm sorry. Say that again?

11 A I said they may have been filtered, but I have the
12 ability to restore.

13 Q Okay. And -- and to restore those, you need to go through
14 steps to bring those messages so that you -- up so that you can
15 read them. Is that correct?

16 A Yes. My standard practice was to periodically review
17 all filtered e-mails and then to try to identify those that
18 may have come from students, or anything that looked
19 interesting. If there's something I should see and
20 restore. Frequently, spam will take out certain e-mails
21 that have -- that may be coming from "G" mail, or hot mail,
22 or Yahoo.com.

23 Q Okay.

24 A And those are often student e-mails.

25 Q Did you also have the option then, as I understand it, if

1 you wanted to, to delete all those messages without reviewing
2 them?

3 A Sure.

4 Q You could. Okay. Were there other e-mails? Or did you
5 receive a lot of these e-mails that were filtered by the spam
6 filter?

7 A Oh, yes.

8 Q On a variety of topics?

9 A On a variety of topics. A lot of it would be spam,
10 and you can identify that pretty easily. But I thought
11 that if -- if it looked like it could be a communication
12 from a student, I would always restore it and look at it.

13 Q Very good. The -- during June, you had been in the midst
14 of a political campaign for the seat that you now hold in the
15 Nebraska Legislature, is that correct?

16 A Yes.

17 Q Now, I -- I guess just let me ask you specifically, did --
18 is there -- what is it about the messages on June 14th and June
19 16th that disturbed you?

20 A I do not recall the exact content of those messages.

21 Q You do not recall the content of those?

22 A Not exactly, no. But I can tell you that the tone of
23 the e-mail messages became more hateful, more vile, and
24 more objectionable over time.

25 Q Would you consider the -- the message to have been at any

1 time threatening to you?

2 A Yes.

3 Q In what way?

4 A At one point, an e-mail was sent that threatened me
5 with physical violence.

6 Q And -- and what was that? That was -- that threatened you?
7 What kind of violence?

8 A Well, it was -- well, basically saying if I -- if --
9 if you were here now I would whip your ass, or something
10 like that.

11 Q Do you recall when that e-mail was sent?

12 A The date? No, I do not.

13 Q Did you consider the e-mails profane?

14 A Often, yes.

15 Q Consider them fighting words?

16 A Well, yes. If -- if I were an African American, some
17 of those e-mails would've been fighting words. If I were
18 Islamic, some of those e-mails would've been fighting
19 words. Yes.

20 Q Are you African American?

21 A (There was no audible response.)

22 Q You're not.

23 A No.

24 Q Okay.

25 A But there were fighting words contained in those e-

1 mails. And I did not want to participate in that. And I
2 said so.

3 Q Are you a reader of the -- any newspapers, Professor -- or
4 Senator?

5 A Yes.

6 Q Do you read the Lincoln Journal Star?

7 A Sure.

8 MR. KEEFE: May I approach, Your Honor?

9 THE COURT: Sure.

10 COURT STENOGRAPHER: Exhibit 2's marked.

11 (Exhibit No. 2 was marked.)

12 Q Professor, I'm handing you what has been marked as Exhibit
13 2 by the court reporter. Do you -- does this look familiar to
14 you? Can you look at that and tell what it is?

15 A I know it's a guest column, but I have not read it.

16 Q Okay. It -- could -- does it -- does it indicate on there,
17 I know you probably need to open it up a little bit as to what
18 newspaper it is and the date.

19 A I can tell by the newsprint that it's the Journal
20 Star.

21 Q Does it indicate a date on there somewhere?

22 A November 18, '06.

23 Q Now, you have not read this before?

24 A No, I have not.

25 Q Could you please take a look at the first paragraph -- the

1 first two paragraphs in the community column start -- in
2 Exhibit 2?

3 A The first two paragraphs? Or the first two bullets?

4 Q First two bullets, yes, thank you.

5 A I've read it.

6 Q Thank you. Can you -- can you describe briefly what it --
7 the tone that the -- the letter is?

8 THE COURT: I don't know what this is. What is this?
9 Looks like a newspaper column?

10 MR. KEEFE: It is.

11 THE COURT: What's this got to do? How about if you
12 offer it before you start getting into the substance ---

13 MR. KEEFE: I would offer Exhibit 2 into evidence,
14 Your Honor.

15 MR. MILLER: Judge, I'm going to object on the basis
16 of relevance. I don't know how it's relevant.

17 THE COURT: Sustained.

18 (Exhibit No. 2 is hereby made a
19 part of this bill of exceptions and
may be found on page 26.)

20 MR. KEEFE: I have nothing further of this witness,
21 Your Honor.

22 THE COURT: Mr. Miller?

23 MR. MILLER: I don't have any further questions,
24 Judge.

25 THE COURT: You and I go out here and talk. Mr.

1 Miller and Mr. Keefe, let's go out here.

2 (Off the record.)

3 THE COURT: Does anybody have any other questions?

4 MR. MILLER: Well, Judge, I -- I guess -- if I could
5 approach the witness and -- and ask some questions regarding
6 Exhibit (indiscernible).

7 REDIRECT EXAMINATION

8 BY MR. MILLER:

9 Q Senator Avery, you've previously testified with regard to
10 e-mails that you received from Mr. Drahota. Is that correct?

11 A That is correct.

12 Q And do you recall the earlier e-mails that you received
13 from him, what was the address that you received?

14 A You mean from the sender?

15 Q From the sender, yes.

16 A I think it was a hot mail account, under his name.

17 Q So it'd be like "D" Drahota?

18 A Yes.

19 Q Okay. And so it'd show to -- and you're Waver -- Waver --
20 excuse me ---

21 A Wavery.

22 Q --- "W" Avery one?

23 A Right.

24 Q So it'd show up as to Wavery one from "D" Drahota, is that
25 correct?

1 A Right. It would be -- it would be clear to me who was
2 sending the e-mail.

3 Q Now, at some point during these e-mails, you e-mail back
4 and forth and eventually you said I don't want to participate in
5 this any more. Is that true?

6 A Three times. On the 31st of January I said let's not
7 engage in this kind of hate discussion and vile material.
8 On the 9th of February I -- I said let's put an end to
9 this. And on the 10th I said if I receive any more of
10 these I will turn them over to the police, because I have
11 been saving them. I started saving them because of the --
12 the -- the nasty, vile nature of them. I thought they were
13 ---

14 THE COURT: Ask -- ask another question.

15 Q And this -- and this is all contained in your e-mails,
16 correct?

17 A Yes.

18 Q Okay. Now, after you had indicated that to Mr. Drahota in
19 your e-mails, did you -- you once again started receiving e-
20 mails with this type of banter under a different address. Is
21 that correct?

22 A That's correct.

23 Q And what was that address?

24 A Avery loves Al-Qaida .

25 Q Alright. And when did those e-mails begin?

1 A Shortly -- let's see. Shortly after the 10th of
2 February, after I had warned him that I would turn them
3 over to the police.

4 Q Okay. Did you receive e-mails of this nature from this
5 address, this "A" -- averylovesalqueda@yahoo.com in June of
6 2006?

7 A Yes.

8 Q Now, I'm going to show you what's -- I need to refer to the
9 page number, so let me count. Exhibit No. 1, there's one, two,
10 three -- okay, page 11 of Exhibit No. 1. Down at the very
11 bottom. It says to "W" Avery one at U-N-L-Notes.

12 A Mm-hmm.

13 Q That's your e-mail address, correct?

14 A Correct.

15 Q Now right below that it says from Bill Avery at -- what
16 does that mean?

17 A Well, it suggests to me that someone, at the time I
18 didn't know who it was, created a new account in my name
19 with the title Avery loves Al-Qaida at Yahoo.com.

20 Q Okay. So this -- this address after the word from here,
21 that's not your ---

22 A That is not ---

23 Q --- address?

24 A --- mine, no.

25 Q The -- your address remained "W" Avery one at U-N-L ---

1 A That's correct.

2 Q --- Notes dot U-N-L dot E-D-U, right?

3 A Right.

4 Q Okay. So, at that point, when you received this e-mail did
5 you know who -- who was sending this to you?

6 A I did not know for sure, but I had a pretty good idea.
7 So I turned it over to the police.

8 Q Okay.

9 A And asked them to investigate.

10 Q So you're not -- this might indicate that you're e-mailing
11 yourself. 'Cause that -- is that what is occurring here?

12 A It looks that way.

13 Q Is that what is occurring? You're not e-mailing yourself?

14 A No, I am not.

15 Q Okay. And second there's a -- another e-mail dated June
16 16th, 2006 again to Wavery -- "W" Avery one from Bill Avery at
17 -- or, excuse me, Bill Avery -- Avery loved Al-Qaida at
18 Yahoo.com. Again, you're not e-mailing yourself ---

19 A No.

20 Q --- correct? And you don't know who this -- at that time,
21 you did not know who ---

22 A No, and I did not respond to either one of those.

23 MR. MILLER: And -- okay, that's all the questions I
24 have, Judge.

25 THE COURT: Mr. Keefe?

1 MR. KEEFE: Nothing further, Your Honor.

2 THE COURT: You may step down. You can be excused.

3 MR. MILLER: Steve, do you know if Mr. Sexton's ---

4 THE BAILIFF: I'll go ahead and see if he's out there.

5 MR. MILLER: State would call Ed Sexton. I -- I don't
6 know if he's out here yet, Judge. I know he's on his way.

7 (indiscernible)

8 MR. KEEFE: Are you going to testify? Sure you don't
9 -- you (indiscernible).

10 MR. MILLER: Judge, could this witness be allowed to
11 leave?

12 THE COURT: Mr. Keefe, can he go, can he stay? I
13 thought we were going to excuse ---

14 MR. KEEFE: He may go, Your Honor.

15 THE COURT: Pardon?

16 MR. KEEFE: He may go.

17 THE COURT: Alright. You're excused.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Call me when this fella' gets here, okay?

20 (10:58 a.m., recess accordingly.)

21 ** ** ** ** ** ** ** ** ** ** ** ** ** ** ** ** ** ** **

22 (At 11:05 a.m. on January 30, 2007, in the County
23 Court of Lancaster County, in Lincoln, Nebraska, before the
24 HONORABLE GALE POKORNY, one of the judges of said court, with
25 Mr. Eric Miller appearing as counsel for the plaintiff, Mr.

1 Thomas Keefe appearing as counsel for the defendant, and the
2 defendant being present in person, the following proceedings
3 were had:)

4 THE COURT: Come on up here.

5 EDWARD E. SEXTON

6 Called as a witness on behalf of the
7 plaintiff, having been first duly sworn, did
8 testify as follows:

9 THE COURT: Yes?

10 THE WITNESS: Yes.

11 THE COURT: Over to your right. Please lay your
12 police report face down. Put your police reports upside down,
13 if you would please. Start out by stating your full name,
14 spelling your last name for us.

15 THE WITNESS: Edward E. Sexton, S-E-X-T-O-N.

16 THE COURT: Give us your occupation and business
17 address.

18 THE WITNESS: Work for Lincoln Police Department, 575
19 South 10th Street.

20 THE COURT: Mr. Miller.

21 MR. MILLER: Thank you, Judge.

22 DIRECT EXAMINATION

23 BY MR. MILLER:

24 Q Mr. Sexton, you are employed with the Lincoln Police
25 Department, is that correct?

A Yes.

1 Q How long have you worked for the Lincoln Police Department?

2 A A little over 31 years.

3 Q And what -- in what capacity do you serve the Lincoln
4 Police Department?

5 A I -- investigator, currently assigned to the Technical
6 Investigations Unit with responsibility of computer crimes
7 and forensics.

8 Q Did you have occasion to investigate in 2006 a disturbing
9 the pe -- peace complaint, launched by Bill Avery?

10 A Yes, I did.

11 Q Do you recall as to when you were first contacted by Mr.
12 Avery?

13 A Sometime in June. I don't remember the specific date.

14 Q Okay. Did he provide you with hard copies of e-mails that
15 he had received?

16 A Yes. I went to his office at the University in
17 Oldfather Hall and looked at the e-mails on the computer
18 there and then made some printed copies.

19 Q And did he tell you who were -- was responsible for sending
20 those e-mails?

21 A Well, the e-mail itself didn't lend to identity. I
22 mean, it didn't give a name or anything like that on it.
23 However, he did indicate that he'd had -- or he had
24 exchanged some e-mails with a former student prior to that,
25 and he kinda' suspected that it may be that student.

1 Q Now, the -- there are several different e-mails with --
2 that are directed, or mailed to Mr. Avery at his e-mail address.
3 And there's two different addresses, is that correct?

4 A Yes. There were several e-mails send to Professor
5 Avery.

6 Q One of them was "D" Drahota address. Is that correct?

7 A You mean as coming from?

8 Q Coming from, yes.

9 A Yes. I think those were sent like in February.
10 January or February.

11 Q Okay. And -- so he told you about the e-mails that went
12 back and forth between himself and this "D" Drahota person, is
13 that correct?

14 A He mentioned 'em. At -- at that point in time, I did
15 not look at those e-mails or receive those e-mails at that
16 time.

17 Q The -- well, when did you actually look at these e-mails
18 then?

19 A Okay. The e-mails that we received the complaints
20 about, there was two e-mails that had been sent to
21 Professor Avery at his University e-mail address. Those
22 were the ones that I looked at in June. I investigated
23 those e-mails, because he was filing a disturbance
24 complaint about them. After we started getting into the
25 investigation and we had identified where those e-mails

1 originated, that's when I got copies of the other e-mails
2 from Professor Avery.

3 Q When you say the other e-mails, are you referring to the e-
4 mails that he was receiving from a different address?

5 A Yes. Those are the e-mails that were sent to him, I
6 think it's the end of January or first part of February, by
7 Darren Drahota.

8 Q And do you recall what that address was?

9 A Not off the top of my head, no.

10 Q Do you have your reports with you today?

11 A Yes, I do.

12 Q Would that refresh your recollection as to what that
13 address was?

14 MR. KEEFE: Your -- Your Honor, there's no objection
15 to stipulating that it's Darren Drahota at "D" Drahota at
16 Hotmail.com. It's clearly in Exhibit 1 and all the ---

17 THE COURT: Okay.

18 MR. MILLER: I -- but I'm referring to the -- the
19 second set of e-mails that were sent to -- from Bill Avery,
20 Avery loves Al-Qaida. That's the address I'm referring to.

21 MR. KEEFE: Okay.

22 THE COURT: But you said February, those -- those
23 dates are June on -- on Exhibit 1.

24 MR. MILLER: Well, I ---

25 THE COURT: Re-ask ---

1 MR. MILLER: --- okay, maybe I'll ---

2 THE COURT: --- re-ask your question.

3 MR. MILLER: --- re-ask.

4 THE COURT: Re-ask your question.

5 MR. MILLER: Alright.

6 Q You had -- have you received -- you -- you reviewed all of
7 the e-mails that Mr. Avery provided to you?

8 A Yes, I have.

9 Q And it -- are there two different addresses that he was
10 receiving these e-mails from?

11 A Yes.

12 Q The first one was from a "D" Drahota address, is that
13 correct?

14 A I believe you're right, yes.

15 Q And then the second one was from a Bill Avery, Avery loves
16 Al-Qaida dot com, or something of that nature?

17 A I believe it was Avery loves Al-Qaida at Yahoo.com.

18 Q That -- that's -- okay. Now, were you able to determine
19 where -- who was responsible for sending those e-mails?

20 A Yes.

21 Q And how did you find that out?

22 A When an e-mail is sent, it goes through a series of
23 servers. And each one of those servers will put a date and
24 time stamp on it. And also, usually, it will put an
25 internet protocol address. We can go back to the

1 originating, or the first internet protocol address and
2 determine, in most instances, where the e-mail originated
3 at. And that's what I did.

4 Q And do you recall when were those e-mails from this Avery
5 loves Al-Qaida address sent?

6 A I believe the first one was sent on June 14th and the
7 second one was sent on June 16th of 2006.

8 Q Alright. So you -- you were able to determine where these
9 originated. Is that correct?

10 A Yes.

11 Q And what was the address?

12 A The internet protocol address?

13 Q Yes.

14 A I don't remember the exact ---

15 Q Well, I mean what -- the -- were you able to determine a
16 physical address where this came from?

17 A Yes. Using the internet protocol address, I
18 determined that that belonged, or was registered to
19 Roadrunner. Roadrunner is provided here in Lincoln by Time
20 Warner Cable. I obtained a District Court order for
21 subscriber information from Time Warner Cable. And that
22 came back to an individual on West "C" Street. I believe
23 it was Jennifer Schultz (phonetic).

24 Q And did you make contact with Ms. Schultz?

25 A I did by phone, yes.

1 Q Did she live with anybody?

2 A Yes, she told me that she lived at that address with
3 Darren Drahota.

4 Q Did you make contact with Mr. Drahota?

5 A Yes, I did by phone.

6 Q And when did you make contact with him? Do you recall?

7 A I don't remember the exact date. It was probably in
8 September.

9 Q Of '06?

10 A Yes.

11 Q Did you tell him why you were contacting him?

12 A Yes.

13 Q What did you tell him?

14 A Basically, that I was investigating a complaint about
15 some e-mails that had been sent to Professor Avery and that
16 -- I explained to him, you know, that we had traced this
17 coming back to Jennifer Schultz's Roadrunner account. And
18 that I believed he was the one that did it.

19 Q Did you specify the e-mails on June 14th and June 16th?

20 A I believe so. I don't recall exactly.

21 Q Did he acknowledge to -- did he make -- well, did he make
22 any statements to you with regard to -- to sending these e-
23 mails?

24 A Initially, he denied sending the e-mails. And he
25 raised several issues about how it could've been someone

1 else doing it and this type of thing. Ultimately, I
2 explained to him that if this was his stand, that I was
3 going to go get a search warrant and go out and search and
4 seize the computer at his residence. And that I would
5 examine the computer. And, at that point in time, he
6 indicated to me that he was the one that sent the e-mails.

7 Q Did he -- did that admission include sending the e-mails
8 from the address of Avery loves Al-Qaida?

9 A That was my impression, yes.

10 Q Did you subsequently make -- you said you contacted him by
11 phone initially. Is that right?

12 A That was the phone -- during the phone conversation.

13 Q Did you subsequently make face to face contact with him?

14 A Yes. He agreed to come down to the Police Department
15 and receive his citation for the disturbing the peace.

16 Q Did he make any more statements to you when -- did you
17 actually issue him a citation?

18 A Yes, I did.

19 Q Did he make any more statements when that was occurring?

20 A I think he asked whether or not there was any way that
21 he and Professor Avery could work this out without a
22 citation.

23 Q At any time, did you go through the e-mails with him?

24 A I don't believe I set and went through each one
25 individually, no.

1 Q Well, did you have hard copies with you at the time that
2 you had face to face contact with him?

3 A No.

4 Q So you issued him a citation for disturbing the peace, is
5 that correct?

6 A That's correct.

7 Q And do you see the person you spoke to in the courtroom
8 today?

9 A Yes.

10 Q Would you point to him, identify where he's seated and what
11 he's wearing?

12 A He's seated at defense table with the striped shirt
13 on.

14 MR. MILLER: Judge, I'd ask the record reflect that
15 the officer has identified the defendant.

16 THE COURT: The record will so reflect.

17 MR. MILLER: That's all the questions I have, Judge.

18 THE COURT: Mr. Keefe, cross examination of Officer
19 Sexton.

20 MR. KEEFE: Thank you, Judge.

21 CROSS EXAMINATION

22 BY MR. KEEFE:

23 Q Officer, you -- Mr. Drahota admitted to you, after you
24 threatened him that you would take his e -- his computer, seize
25 it, keep it for a couple of months till you got around to

1 looking at it and then he admitted to you that he sent the e-
2 mails. Is that it?

3 A I guess you could say that, if you want to call it a
4 threat, yeah.

5 Q You -- you suggested to him that, you know, he might as
6 well admit he sent them because Avery's a jerk. Did you suggest
7 that to him?

8 A I don't recall using those words, no.

9 Q Okay. In -- in your investigation at some time you
10 determine that it was not going to be a charge of any sort of
11 threatening e-mail, is that correct? None of the e-mails were
12 threatening. Is that correct?

13 A I ---

14 Q I mean you decided how -- you could have charged him with
15 something else. Could've charged him with terroristic threats?

16 A I don't think I ever told him that I wouldn't -- I
17 didn't feel like they met the criteria for the terroristic
18 threats.

19 MR. KEEFE: That's all I needed to know. Thank you.
20 No further questions, Your Honor.

21 THE COURT: Back to you, Mr. Miller.

22 MR. MILLER: Nothing else, Judge.

23 THE COURT: You may step down.

24 MR. MILLER: State has no further evidence, Your
25 Honor. The State would rest.

1 THE COURT: Mr. Keefe?

2 MR. KEEFE: Your Honor, I would make a motion to
3 dismiss the case for the fact that there is no crime committed.
4 Now, we make the argument that if you look at the facts of the
5 case, Your Honor, that you presided over years ago. Broadstone
6 case, State versus Broadstone where there was a matter of a
7 person who was yelling obscenities and shaking a stick outside
8 of a school. It was determined by the Supreme Court that that
9 type of behavior is disturbing their peace. And a quote they
10 have, in fact, if I could find it here, that their language
11 intends to incite assault or other immediate breach of the
12 peace. I see no evidence of that in any of the e-mails here,
13 Your Honor, and I'm not sure even if an e-mail could -- could
14 rise to that occasion. We don't have a personal contact.
15 There's no threatening language. The officer and -- determined
16 not to file. There's no threatening language in there. The two
17 e-mails we're talking about, I don't see any profane language,
18 obscene language or profane language. And although Professor
19 Avery said that the words were fighting words and -- and he
20 refers to some e-mails, I think, that were before the June e-
21 mails. The ones that were sent in June 14th and 16th, it's not
22 for him to decide whether they're fighting words or not, but for
23 you to decide that. I would argue that they -- there is no such
24 thing in these and that you should dismiss it because there's no
25 crime committed.

1 THE COURT: Motion to dismiss is overruled. Any
2 evidence?

3 MR. KEEFE: Testify? It's up to you.

4 THE COURT: You want -- you want some time to talk it
5 over?

6 MR. KEEFE: Yes.

7 THE COURT: Take a 3 minute recess while I go out and
8 see

9 (11:18 a.m. - recess accordingly.)

10 ** ** ** **

11 (At 11:19 a.m. on January 30, 2007, in the County
12 Court of Lancaster County, in Lincoln, Nebraska, before the
13 HONORABLE GALE POKORNY, one of the judges of said court, with
14 Mr. Eric Miller appearing as counsel for the plaintiff, Mr.
15 Thomas Keefe appearing as counsel for the defendant, and the
16 defendant being present in person, the following proceedings
17 were had:)

18 THE COURT: Well, here we are. Mr. Keefe, what's
19 gonna' happen?

20 MR. KEEFE: Defense rests, Your Honor.

21 THE COURT: Argument, Mr. Miller.

22 MR. MILLER: Well, Judge, the evidence in this case
23 shows that there is some e-mails going back and forth between a
24 -- a professor and a former student. The e-mails are parson
25 (phonetic) in nature. The parson (phonetic) banter that is --

1 is fine, as long as there's -- people consent to doing that.
2 This case, though, turns out that he -- Mr. Avery doesn't want
3 to engage in this banter, anymore. Tells the defendant, and
4 you can see that in Exhibit No. 1 on three separate occasions.
5 He says don't e-mail me anymore. I don't want to engage in this
6 banter anymore. So, after being told not to e-mail him anymore,
7 the defendant goes out and sets up a different account which is
8 pretty offensive to Mr. Avery, when it comes back Avery loves
9 Al-Qaida at Yahoo.com. So he sends him a couple e-mails with
10 some language that is offensive to him. And it -- what this
11 case is really so much about the content, Judge, it's about Mr.
12 Avery saying don't call me anymore, don't e-mail me anymore and
13 the defendant continues to do that. I would submit the evidence
14 shows that the defendant disturbed Mr. Avery's peace by doing
15 this, Judge. I would ask that you find him guilty.

16 THE COURT: Mr. Keefe.

17 MR. KEEFE: Yes, Your Honor. Thank you. After I --
18 Professor, political science professor, may dispute that the e-
19 mail also a politician running for office at the time these e-
20 mails were received, receives e-mail, he admits himself, that
21 are spam e-mails. That are unwanted e-mails. Which, I believe,
22 we all probably do, Your Honor. I'm not sure how something that
23 was received by e-mail, you know, that we don't want to reside
24 -- could rise to the level of disturbing the peace. Is every
25 person who sent us a spam e-mail guilty of disturbing the peace?

1 It's not a criminal offense, Your Honor. This is a free speech
2 case. It is a case of, yes, Professor Avery is disturbed about
3 it. But he's using the criminal justice process in his own way,
4 to get back at a student that he just doesn't like -- doesn't
5 like and doesn't agree with his viewpoint. I'd say there's no
6 crime and you should find him not guilty, Your Honor.

7 THE COURT: Well, free speech. Yeah, oh gosh. When I
8 look at a specific person and say I don't want to talk to you
9 anymore. You're bothering me. I mean, free speech is something
10 that you talk about on the street in a public arena, I don't
11 know. When you don't necessarily have a -- an identifiable
12 recipient of that speech. You know, Mr. Drahota, you come down
13 to the University of Nebraska. Presumably, you're a University
14 student when you show up here with Mr. Keefe. And there are all
15 kinds of ideas in that place and one of the things that I would
16 hope that University students go away from is tolerance of
17 somebody else's viewpoint, even though you don't agree. And you
18 engaged in this banter back and forth and there was times when
19 he wasn't -- he was insulting you to some extent, as much as you
20 were insulting him. But he said stop. I don't want to go any
21 farther with this. And the thing that strikes me as notable
22 here is then you go out there and you create a fake websi -- I
23 don't know what you call these things. You create a fake
24 address. "Oh, I forgot they're not Al-Qaida members so you and
25 the A-C-L-U will not rush to their defense. I'd like to puke

1 all over you. People like you should be forced out of this
2 country." Let's be a little bit more tolerant, Mr. Drahota, of
3 people who you don't agree with. You're found guilty and you're
4 fined \$250. Exhibit 2, even though it wasn't offered, is of
5 course, a part of the file.

6 (END OF PROCEEDINGS)
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