

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

Lawrence Sinclair,

Plaintiff,

vs.

TubeSockTedD, mzmolly and
OWNINGLIARS,

Defendants.

Case No.: 1:08-cv-00434-HHK

**PLAINTIFF'S MOTION PURSUANT TO 18
USC §3771(D)(3)**

Plaintiff, Lawrence Sinclair, by and through his undersigned counsel, files this motion pursuant to 18 USC §3771(d)(3)¹, and states:

1. On June 10, 2008, a death threat was made against Plaintiff, his mother and his undersigned counsel on YouTube.com by "oswaldo123432". A copy of that threat is attached hereto as Exhibit "A".

2. Plaintiff's counsel on June 13, 2008, reported the threat to the District of Columbia of Police who in turn referred the matter for investigation to the Federal Bureau of Investigation where it was assigned to Special Agent Brenda Borne, FBI Washington Field Office Squad CR-12,

¹ "Motion for relief and writ of mandamus. The rights described in subsection (a) shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred. **The district court shall take up and decide any motion asserting a victim's right forthwith.** If the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus. The court of appeals may issue the writ on the order of a single judge pursuant to circuit rule or the Federal Rules of Appellate Procedure. The court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed. In no event shall proceedings be stayed or subject to a continuance of more than five days for purposes of enforcing this chapter. If the court of appeals denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion.

which handles Public Corruption and Civil Rights matters.

3. SA Brenda Borne reported several days later that she had identified “oswaldo123432” as a young man living with his parents in the District of Columbia and, after meeting with the man, determined that the threat was baseless.

4. SA Brenda Bourne was asked by undersigned counsel to identify “oswaldo123432” so that a restraining order could be obtained against him. SA Brenda Bourne indicated that on advice of an unnamed Assistant United State Attorney, no charges would be filed against “oswaldo123432” and that his identity would not be revealed. Finally, SA Brenda Bourne refused to identify the unnamed AUSA so that Plaintiff and his counsel could speak directly to that AUSA.

5. On July 14, 2008, Plaintiff received an email which in sum and substance repeated the death threats, mocked the FBI for their incompetence and again sought to intimidate Plaintiff and his counsel. That email was from “Oswaldo5555555” and his attached hereto as Exhibit “B”.

6. Plaintiff and his counsel again reported this matter to the FBI which responded that they would not further investigate the matter.

7. Plaintiff, pursuant to 18 U.S.C. § 3771 “Crime Victims' Rights” has, as a crime victim², the the following rights:

(1) *The right to be reasonably protected from the accused* – Here, there has been no protection of Plaintiff or his counsel from the accused. In fact, the accused has been protected from his victims by decision of the United States Attorney’s Office.

² 18 U.S.C. § 3771(e) states: “For the purposes of this chapter, the term "crime victim" means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia.” Sending such death threats by email is a federal crime. See: “Prison time for email threats” attached hereto as Exhibit “C”.

(2) *The reasonable right to confer with the attorney for the Government in the case* – Here, not only has this right been refused, the AUSA is hiding from the victims.

(3) *The right to full and timely restitution as provided in law* – Plaintiff has incurred legal fees to assert his rights under § 3771 and is due restitution from the accused.

8. Under § 3771 (c)(1): “Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a).” Here, both FBI agent Bourne and the unnamed AUSA have failed to discharge their Congressionally-obligated duties to Plaintiff and his counsel. As such, this Court is not obligated to “**forthwith**” take up and decide this motion.

WHEREFORE, Plaintiff respectfully requests that this Court take up and decide this motion and order the Department of Justice to accord to Plaintiff and his counsel their rights under § 3771, including without limitation, identifying the sender of the death threat emails and a meeting with Plaintiff and his counsel by the unnamed AUSA and his supervisor.

CERTIFICATE OF SERVICE

I hereby certify that: a true and accurate copy of the foregoing was served by this Court's CM/ECF system upon Paul Alan Levy, Public Citizen Litigation Group, 1600 20th Street, NW, Washington, DC 20009, Ray Beckerman, Vandenberg & Feliu LLP, 110 East 42 St., New York, NY 10017 and James R. Klimaski, Klimaski & Associates, P.C., 1625 Massachusetts Avenue NW, Suite 500, Washington, DC 20036-2245, this July 31, 2008.

MONTGOMERY BLAIR SIBLEY

Counsel for Plaintiff

1629 K Street, Suite 300

Washington, D.C. 20006

202-508-3699

202-478-0371 Fax

By: /s/ Montgomery Blair Sibley

Montgomery Blair Sibley

D.C. Bar #464488

[My Account](#) / **Inbox**

[larrysinclair0926](#) | (189) | [Account](#) | [QuickList](#) (0) | [Help](#) | [Log Out](#) | [Site](#)

[Home](#) [Videos](#) [Channels](#) [Community](#)

Videos [advanced](#) [Upload](#)

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Inbox

1 - 20 [Next](#)

- Inbox** (368)
- Personal Messages** (189)
- Shared with You** (163)
- Comments** (9)
- Friend Invites** (7)
- Video Responses
- Sent
- My Contacts**

[Delete](#)

<input type="checkbox"/>	From	Subject	Date
<input type="checkbox"/>	weebit22	Cocaine	Jun 13, 2008
<input type="checkbox"/>	obambicom	obambicom sent you a video!	Jun 13, 2008
<input type="checkbox"/>	glorybee14	WTF	Jun 12, 2008
<input type="checkbox"/>	SkaRocksYea	obama	Jun 12, 2008
<input type="checkbox"/>	obambicom	obambicom sent you a video!	Jun 12, 2008
<input type="checkbox"/>	oswaldo123432	you got me?	Jun 12, 2008
<input type="checkbox"/>	obambicom	obambicom sent you a video!	Jun 11, 2008
<input type="checkbox"/>	juston1245	Friend invitation from juston1245	Jun 10, 2008



oswaldo123432

see you at the NPC Jun 10, 2008

Now you listen to me, faggot. I'm going to kill you, your lawyer and your whore mother.

I live in the DC area and you better believe I'm going to gain access to this event. I'm not going to tell you how you will die. It could be an assassin's bullet, vehicle explosion, food poisoning. All you need to know is that your faggot ass is going to die. And I'm going to get away with it too.

The only way you can save yourself is by calling off this meeting and ending your smear attacks on Senator Barack Obama.

 [DC Madam Suicide or Murder?](#)
Includes footage of Debra Jean Palfrey's arrest, appearances on the Alex Jones show and so-called suicide

[Reply](#) [Delete](#) [Block User](#) [Mark as Spam](#)

<input type="checkbox"/>	obambicom	obambicom sent you a video!	Jun 10, 2008
<input type="checkbox"/>	quietssheep	Re: Re: Re: why not permit comments on your video and wall?	Jun 09, 2008
<input type="checkbox"/>	obambicom	obambicom sent you a video!	Jun 09, 2008
<input type="checkbox"/>	obambicom	obambicom sent you a video!	Jun 09, 2008
<input type="checkbox"/>	obambicom	obambicom sent you a video!	Jun 09, 2008
<input type="checkbox"/>	obambicom	obambicom sent you a video!	Jun 08, 2008
<input type="checkbox"/>	Obamaman2008	Re: Re: Response to your blog entry	Jun 08, 2008
<input type="checkbox"/>	utubewatcher1988	Email	Jun 08, 2008
<input type="checkbox"/>	kosimpson	kind letter	Jun 07, 2008
<input type="checkbox"/>	kosimpson	Friend invitation from kosimpson	Jun 07, 2008
<input type="checkbox"/>	obambicom	obambicom sent you a video!	Jun 07, 2008

1 - 20 [Next](#)

Exhibit "A"

Montgomery Sibley

From: Larry Sinclair [larysinclair0926@hotmail.com]
Sent: Monday, July 21, 2008 1:41 PM
To: mbsibley@earthlink.net
Subject: FW: Message from Oswaldo5555555: The threats were a joke
Attachments: DY_DEATH_CERTIFICATE[1].pdf; LARRY_BLAND.JPG

Thank You,

Larry Sinclair

<http://LarrySinclair0926.com>

<http://Larrysinclair.org>

Subject: Message from Oswaldo5555555: The threats were a joke
From: service@youtube.com
To: larysinclair0926@hotmail.com
Date: Mon, 14 Jul 2008 08:10:17 -0700



[help center](#) | [e-mail options](#) | [report spam](#)

[Oswaldo5555555](#) has sent you a message on YouTube.

The threats were a joke

I've been listening to your radio interviews and reading your blog comments, Sinclair. It appears as though my threatening Youtube messages have really upset you. You reported me to the FBI but you don't appear to be satisfied with the results of their investigation. You've even suggested a conspiracy between U.S. Attorney Jeffrey Taylor and the FBI office to conceal my identity from you, as if you were entitled to it. You've gone as far as to say that you would sue them if they did not provide you with this information. Let me make this clear, I have no intention of killing you or anyone else. The threats were a joke. My motivation was to give you a taste of your own medicine. You are constantly complaining about death threats but are guilty of threatening others, even threatening their families. You know exactly what I am talking about and the FBI is aware of the existence of these threats.

The truth is that the FBI did perform a thorough investigation of this case. They traced the email address that was used in the registration of my Youtube account to a specific IP address and internet connection. They went to the residence where this internet connection was installed. I will not confirm or deny whether or not I was identified by the FBI. What I can say, with absolute certainty, is that Special Agent Brenda Born and her partner went to this residence and spoke to an individual who lived there. This individual confessed to writing my threats to you but insisted that they had no intentions of acting on them. This individual was

Exhibit "B"

7/21/2008

interrogated and because they were cooperative, they were not arrested. The residence was not searched, most likely, because I did not say how I planned to kill you in the messages. The information from this interrogation was provided to U.S. Attorney Taylor. A background check on the individual who confessed was done. They were not found to have a criminal record of any kind. The threat was not deemed to be credible, therefore no arrest was made and no prosecution is planned.

All of this information could easily be deduced from your own blog comments, including the identity of one of the FBI agents assigned to the case. To prove that my understanding of the case comes from personal knowledge I will provide the contact information for Special Agent Brenda Born, since you already have it. This information is not available anywhere on the internet so you know that it could only be obtained from some form of contact with this FBI agent:

Federal Bureau of Investigation

Brenda K. Born

Special Agent

Washington Field Office

7799 Leesburg Pike

South Tower Suite 200

Falls Church , VA 22043

Telephone: (202) 278-2000

Fax: (703) 762-3475

Fair enough? I should also inform you that the information you received from a DC police officer that you believe describes me is false. I am not,

"A 22 year old male living with his parents"

7/21/2008

Like I said, I will not confirm or deny that the FBI has identified me. What we both know is that I remain anonymous to you. You do not know my age, gender or living situation. The only information I have given you, about myself, is that I live in the Washington D.C. Metropolitan Area. You do not know my name, address, phone number, email address or any other personal information. You do not know my occupation or who I am associated with. For all you know I work for the FBI or the Obama campaign. For all you know I am not even a single entity. I could be multiple people who conspired to threaten and intimidate you. You know me only by my alias, Oswald.

At this point you probably don't know what to believe. You have been told things about me from multiple sources but nothing has been verified, similar to your claims about Senator Barack Obama. The facts are that the FBI investigated your case, I have no intention of harming you and you are alive. My advice to you is to not pursue a lawsuit against the FBI and U.S. Attorney of D.C. You already have enough legal trouble as it is.

Your lawsuit will be dismissed just like your lawsuit against Obama, Axelrod and the DNC was. My reason for writing this message is to clarify that I had no intention of acting on the previous threats. I am not going to message you again. What you decide to believe and do at this point is up to you. You can report this message to Agent Born and try to sue the FBI and U.S. Attorney if they do not have me identified, arrested and prosecuted if you want. You can post this message on your blog, like the others, to embolden your supporters. That's your decision. I've said all that I have to say to you.

Have a nice life.

Oswaldo

You can reply to this message by visiting your [inbox](#).

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Use video conversation to talk face-to-face with Windows Live Messenger. [Get started.](#)



Prison time for email threats

By Courtney Macavinta

http://news.cnet.com/Prison-time-for-email-threats/2100-1023_3-210845.html

Story last modified Wed Jan 02 16:43:56 PST 2002

The first Net user found guilty of an online hate crime--where death threats were sent by email to 59 Asian university students--was sentenced to one year in prison today, time that already has been served.

A jury [convicted](#) former [University of California at Irvine](#) student Richard Machado, 21, on two counts of federal civil rights violations in February.

In 1996, Machado was accused of sending an email to a group of fellow students, most of whom were Asian, threatening to "...make it my life career to find and kill every one of you personally." The email, sent from a campus computer, allegedly was signed "Asian Hater."

The verdict validated the prosecution's argument that sending threats via the Net is the same as doing it over a phone or through the regular mail.

Initially, Machado was charged with ten counts of civil rights law violations, but his first trial ended in mistrial after the jury deadlocked. After the second jury found him guilty, Machado faced a year in federal prison and a \$100,000 fine.

Today, U.S. District Judge Alicemarie Stotler sentenced Machado, who has been detained since February 1997, to time served.

The judge did not order Machado pay the steep fine nor did she grant the prosecution's request that Machado be cut off from the Net, his public defender, Sylvia Torres-Guillen, said today.

"The court didn't impose the outrageous condition the government had asked for, which was that Richard Machado not be allowed to use a computer, modem, online service, cell phone, or TV with Internet or Web [access], and that he not send any unsolicited email to any recipient," Torres-Guillen added.

Machado's defense team had argued that the email was a "stupid prank" and that so-called flames, or abusive messages, are commonplace within Internet culture and discussions.

But during the six-day trial in Santa Monica, California, the prosecution maintained that the culture of the Net did not make it a safe haven from federal laws. Furthermore, the government charged that Machado posed a serious threat to those he emailed because he allegedly resented their academic status. He had been reportedly been dismissed from U.C. Irvine for poor grades just prior to sending the threat from a campus computer.

"Making racially motivated death threats--whether over the phone, via the mail, or on the Internet--is a federal offense that can bring stiff penalties," Nora Manella, U.S. Attorney for the Central District of California, said in a statement.

Manella added her office currently is investigating allegations of a similar offense at California State University at Los Angeles.

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Exhibit "C"