

1 SUPREME COURT: NEW YORK COUNTY.
2 TRIAL TERM : PART 71

3 -----X
4 THE PEOPLE OF THE STATE OF NEW YORK

IND.#:
02721/2009

5 -against-

CHARGE:
190.79-03

6 RAPHAEL GOLB
7 Defendant.

SENTENCE

8 100 Centre Street
9 New York, New York 10013

10 November 18, 2010

11 B E F O R E: HONORABLE CAROL BERKMAN
12 Justice of the Supreme Court

13 A P P E A R A N C E S:

14 FOR THE PEOPLE:

15 CYRUS R. VANCE, JR. ESQ.
16 New York County District Attorney
17 One Hogan Place
18 New York, New York 10013
19 BY: DAVID BANDLER, ESQ.
20 Assistant District Attorney

21 FOR THE DEFENDANT:

22 DAVID BREITBART, ESQ.
23 RONALD KUBY, ESQ.
24 Attorneys for Defendant

25 Theresa Magniccari
Senior Court Reporter

Theresa Magniccari
Senior Court Reporter

1 THE CLERK: Calendar Number 3, Raphael Golb.

2 MR. BANDLER: David Bandler, B-A-N-D-L-E-R, for
3 the People.

4 Good morning.

5 MR. BREITBART: For the defendant, Raphael Golb,
6 David Breitbart, 152 West 57th Street.

7 MR. KUBY: And Ronald Kuby, K-U-B-Y, 1119 West
8 23rd Street.

9 THE COURT: Okay.

10 I don't have all of the letters in front of me.
11 My recollection is that Mr. Kuby pointed out that I have
12 reserved on Count 1 and something else.

13 MR. KUBY: That you had reserved on Count 1 in
14 the motion for a trial order of dismissal that we made at
15 the close of the People's case and that you, in fact, did
16 not rule on the renewed motion as to all counts that we
17 made at the conclusion of all the evidence, that's
18 correct.

19 THE COURT: And did you wish to be heard
20 further?

21 MR. KUBY: No, Judge, we'll rest on our papers and
22 the record.

23 THE COURT: And you, Mr. Bandler?

24 MR. BANDLER: Similarly, your Honor.

25 THE COURT: Okay.

1 In that case, I will deny those motions.

2 I have another legal question, you protested, Mr.
3 Kuby, in your last correspondence, to, I guess the third
4 condition that the People suggested, and so I assume it's D
5 that you have your objection to?

6 MR. KUBY: That's correct.

7 I first have a question about it.

8 I object to it no matter what it means, but
9 grammatically it would seem to suggest that Mr. Golb is
10 prohibited from soliciting, requesting, aiding, and those
11 other words in the first clause, anyone else to communicate
12 about any of the victims. Grammatically that is what it
13 suggests.

14 Logically, though, I find it hard to imagine that
15 the prosecutor wants to prevent Mr. Golb from asking other
16 people to talk about the so-called victims while at the
17 same time allowing him to do so.

18 So not for the first time in this Court in this
19 case logically grammar seems at war with each other.

20 You remember the last fight we had about the
21 comma, Judge?

22 THE COURT: Mr. Kuby, we had so many fights.

23 MR. KUBY: It was about the comma.

24 THE COURT: The comma, yes, I do remember that.

25 MR. KUBY: You see, I don't know what it means,

1 but I object to it under either meaning.

2 THE COURT: Well, Mr. Bandler.

3 MR. BANDLER: First, I will say I have not seen
4 any correspondence about Paragraph 3.

5 THE COURT: I don't think it will help you. It
6 didn't help me, which I didn't like.

7 MR. KUBY: This is a longer legal argument,
8 including a constitutional amendment, I throw in as well.
9 I am sorry I faxed it to you yesterday.

10 MR. BANDLER: Paragraph 3; really, the Orders of
11 Protection, I assume, are going to prohibit the defendant
12 from doing a number of things including this third party
13 harassment against the victims. Paragraph 3 and the Orders
14 of Protection will also say "no third party contact," "no
15 contact whatsoever."

16 We're all aware of the rules of accessorial
17 liability for conduct of others. Paragraph 3 just says the
18 defendant cannot solicit or request other people to do what
19 the defendant can't.

20 So the defendant is not allowed to e-mail victims
21 or e-mail about victims or blog about victims. Defendant
22 is not allowed to ask other people to do that.

23 THE COURT: That's not accurate. He is allowed to
24 do it in his own name or anonymously because the crime of
25 which he is found guilty on this case is using specific

1 other names for that purpose, a few other elements, but I
2 won't bother.

3 MR. BANDLER: So we'll modify Sub D to say that he
4 can't solicit other people to do those things anonymously
5 except under those conditions.

6 MR. KUBY: Get rid of Sub D is what we'll do and
7 it achieves what Mr. Bandler wants to achieve, trampling
8 all over the First Amendment. It only sort of scuffs the
9 First Amendment.

10 THE COURT: Please don't take my silence as
11 agreement.

12 MR. KUBY: Me, I never would do that, your
13 Honor.

14 THE COURT: Well, I don't offhand see any problem
15 with getting rid of Sub D because it seems to me there is
16 an umbrella here that says the defendant may not solicit,
17 request, aid or cause another person to act in violation of
18 this Order of Protection, which is an umbrella clause which
19 covers it. I don't know what B means exactly to any of the
20 additional conditions set forth by the Court.

21 MR. BANDLER: For example, Paragraphs 1 and 2 --

22 THE COURT: Okay. That's why I didn't know what
23 it meant. I meant for paragraphs 1 and 2 to be part of the
24 Order of Protection. So I was little confused about that.
25 I am not easily confused.

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MR. BANDLER: Okay. The way they have that form set up --

THE COURT: It doesn't fit in there.

MR. BANDLER: Okay. I understand.

THE COURT: It would have to be as an addendum.

MR. BANDLER: That's what I meant also.

THE COURT: Okay.

So defendant is before this Court for sentence on his convictions; the two counts of identity theft in the second degree; aggravated harassment in the second degree as to Schiffman; criminal impersonation in the second degree; criminal impersonation in the second degree; forgery in the third degree; criminal impersonation in the second degree; forgery in the third degree; criminal impersonation in the second degree; forgery in the third degree; criminal impersonation in the second degree; forgery in the third degree; criminal impersonation in the second degree; another count of criminal impersonation in the second degree; forgery in the third degree; criminal impersonation in the second degree; forgery in the third degree; criminal impersonation in the second degree; forgery in the third degree; criminal impersonation in the second degree; forgery in the third degree; criminal impersonation in the second degree; forgery in the third degree; aggravated harassment in the second degree;

1 criminal impersonation in the second degree; criminal
2 impersonation in the second degree; another count of
3 criminal impersonation in the second degree; forgery in the
4 third degree; aggravated harassment in the second degree;
5 criminal impersonation in the second degree -- excuse me --
6 strike that last part -- criminal impersonation, that was
7 an acquittal, and unauthorized use of a computer.

8 Do the People wish to be heard?

9 MR. BANDLER: Yes, your Honor.

10 Your Honor, the defendant should get exactly what
11 he deserves, not a tiny bit less. He should get no
12 leniency. His conduct, as he stands convicted of it,
13 consisted of hundreds of individual acts. A course of
14 conduct over a period of many months, even years, hundreds
15 or thousands of hours of malicious harassment and
16 impersonation.

17 He has had hundreds of opportunities to abandon
18 his scheme, or to mitigate the harm, or apologize, or show
19 remorse. He never did. There was a full trial before your
20 Honor. The Court heard all the evidence and heard from all
21 the victims. The defendant was found guilty on 30 counts,
22 two felonies and 28 misdemeanors; two counts of identity
23 theft in the second degree, three counts of aggravated
24 harassment in the second degree as to three separate
25 victims, 14 counts of criminal impersonation in the second

1 degree as to four different victims, forgery in the third
2 degree as to the four victims, and unauthorized use of a
3 computer regarding the NYU computer systems, and he used
4 therein that protocol address to commit crimes in their
5 computers.

6 The defendant was convicted of conduct directed
7 against five people. The most egregious was his actions
8 against Dr. Schiffman; impersonation plus a malicious smear
9 campaign designed to destroy Dr. Schiffman's career. And
10 it wasn't a one time act, it was a course of conduct. He
11 didn't log onto that impersonating account one time, but
12 dozens of times. He didn't send impersonating e-mails to
13 one person, but to dozens of people, and it was coupled
14 with blogs, e-mails under other anonymous aliases to
15 hundreds of people.

16 And while the defendant testified he is a whistle
17 blower about plagiarism, the evidence before this Court
18 demonstrated an e-mail from this defendant saying he didn't
19 care about the plagiarism thing.

20 Other victims the defendant was convicted of
21 targeting included Dr. Robert Cargill, Dr. Frank Cross, Dr.
22 Stephen Goranson and Dr. Jonathan Seidel.

23 Defendant was acquitted of impersonating Dr.
24 Jeffrey Gibson.

25 The People are still requesting an Order of

1 Protection as to Dr. Gibson. There was evidence that the
2 defendant did open an e-mail account in the name Jeffrey
3 Gibson. The defendant admitted that. So we are asking for
4 an Order of Protection as to Dr. Gibson as well.

5 There was evidence that the defendant targeted
6 others in the world of the Dead Sea Scrolls. He should get
7 no leniency, just what he deserves.

8 Now, he put the People to their full burden and
9 he is entitled to do that, but in so doing he has done
10 nothing to earn any form of leniency. He refused to
11 stipulate to anything, not even to business records, not
12 even to the fact that Dr. Frank Cross, who is in a nursing
13 home, didn't give the defendant permission to open an
14 e-mail account in his name. And that stipulation would not
15 have prejudiced their defense at all. It's a fact they did
16 not dispute.

17 All of these refusals to stipulate turned this
18 into a three week trial. The People called 22 witnesses,
19 including nine from out of state, at a tremendous expense
20 to the People. Witnesses were flown in from Oregon and
21 California and lodged, and it was a burden to the
22 witnesses, many of whom have extremely busy schedules.

23 Dr. Seidel came from Oregon. He came one day and
24 left the next. He had to rearrange his schedule. Dr.
25 Cross' daughter, she had to come from Rochester and go

1 back in one day. Many corporations had to send
2 representatives who were taken out from their normal duties
3 for one or more days. All for facts the defendant
4 ultimately conceded.

5 The Court heard the impact this had on the
6 victims.

7 Now, he is entitled to put the People to their
8 full burden, but now that he has been found guilty of 30
9 counts, he should bear the full consequences of his actions
10 and get exactly what he deserves.

11 The defendant testified, and he lied on the stand.
12 As evidenced by the jury's verdict, they did not believe
13 him at all. And he has told so many different stories from
14 during the commission of the crime, after arrest, and on
15 the stand, you can't credit anything he says.

16 But worse is that he lied under oath in Court.
17 He's an attorney, so theoretically he should know better.

18 I want to point out a couple of things he was
19 untruthful about. He lied about his arrest and the
20 statement he gave to law enforcement. He made up facts
21 about what the investigators and myself, the Assistant
22 District Attorney, told him.

23 And part of his lies was that the investigators
24 coerced him into giving a statement, and the credible
25 testimony of the investigators as well as the video

1 statement itself shows that what the defendant said on the
2 stand was not true. And I would submit the attorneys knew
3 that also because they could have asked for a voluntariness
4 charge from the Court, and they did not.

5 And I submit they did not in order to make that
6 issue immaterial to the trial, in order to shield the
7 defendant from a potential perjury charge.

8 Defendant tailored his testimony to what he had
9 hearing during the trial.

10 For example, Miss Delfavero from NYU, in charge of
11 computer security, Mr. Kuby was trying to get her to admit
12 Mr. Kuby's theory was true. Mr. Kuby's theory was that
13 everybody forges G-mail, e-mail accounts. That everybody
14 knows that they're fictitious and forged and that a real
15 verifiable e-mail address would have an NYU EDU domain.
16 That was Mr. Kuby's point, which the defendant, I am
17 sure, believed and Miss Delfavero corrected him. She
18 said, no, you can't forge an NYU EDU. Then she explained
19 how.

20 Then when he, the defendant testified, oh, no, I
21 wasn't intending to trick anyone into believing it was Dr.
22 Schiffman. If I had, I would have used an NYU dot EDU
23 domain. He manufactured that, fabricated that based upon
24 the trial testimony, not based on the truth.

25 Now, another example is Dean Stimpson. Dean

1 Stimpson testified one reason she knew that that
2 forged e-mail was forged, one reason was that there was a
3 small "p" in professor where it was signed Professor
4 Schiffman.

5 Then when the defendant testified, he said, oh, it
6 was a parody, I was intending to let people know it was a
7 parody because I put a small "p" there.

8 Again, manufactured and tailored testimony.

9 Once defendant heard that the evidence at trial
10 was conclusive as to his identity, he decided he had to
11 testify, and that's why he made up why he did it. He made
12 up what his intent was. He was trying to fool the jury,
13 but they saw through it.

14 According to the defendant, this is about free
15 speech, but in reality only as long as defendant is
16 speaking, only as long as it's no one else speaking out
17 against his theories or his father's theories. And
18 according to him, his free speech rights allow him to
19 harass and impersonate others, and the jury found
20 differently. It was their factual determination what was
21 in the defendant's mind, and they found that the defendant
22 was deliberately and with criminal intent harassing,
23 impersonating and forging and assuming identities.

24 The evidence overwhelmingly proved his guilt. He
25 is guilty of 30 counts, including two Class E felonies. He

1 has not accepted responsibility at any stage. His entire
2 course of conduct was based on deception and lies and he
3 has used every opportunity to continue to smear and attack
4 the victims, either directly or indirectly, through his
5 attorneys. In motion practices he attacked the victims,
6 and continued to attack them. And the motions have been
7 promptly posted online. Statements to the press before,
8 during and after trial have attacked the victims. The
9 trial testimony, including the opening, cross examination,
10 the defendant's testimony and summation, all continue to
11 attack the victims.

12 He showed no remorse at any time and continues to
13 blame others, including the victims, the District
14 Attorney's office and the Court for his own conduct.

15 But what the defendant has done by continuing to
16 attack the victims is take advantage of litigation
17 privileges. Because he is in this litigation, he uses
18 those protections to continue to attack the victims, doing
19 stuff he was afraid to do under his own name.

20 Defendants frequently earn leniency at sentencing
21 all the time. They plead guilty and spare the victims,
22 the People and the Court the expense and time of a trial.
23 They accept responsibility. They accept their guilt. They
24 earn leniency for stipulating. They earn leniency for not
25 lying under oath. If their choice is either to lie under

1 oath or to admit their guilt, they could choose to exercise
2 their right to remain silent.

3 But here he has earned no leniency whatsoever.
4 His conduct shows he'll go to any lengths to engage in
5 deception to try to excuse himself. So he should get
6 exactly what he deserves, not a day less and not a dollar
7 less. If he thinks his conduct is okay, he is likely to
8 commit the same crimes again. So only a significant
9 punishment, followed by significant supervision, backed by
10 an appropriate deterrent with that supervision could both
11 punish and stop him and deter him from doing it again.

12 For those reasons, your Honor, the People
13 recommend a net sentence of one-and-one-third to four years
14 state prison, a \$20,000 fine, and full and final Orders of
15 Protection for Dr. Schiffman, Dr. Cargill, Dr. Cross, Dr.
16 Goranson, Dr. Seidel and Dr. Gibson, whose account there
17 was an acquittal on, including the conditions on the Orders
18 of Protection as set forth by the Court.

19 And with that sentence, he'll be eligible for
20 parole very soon, and that maximum term of four years
21 ensures that he will be under parole supervision.

22 And if the Court felt he deserved any leniency, I
23 would submit the way to grant him leniency would be to
24 reduce the minimum term to one year, make it one to four.

25 The People submit he does not deserve any

1 leniency. Such a sentence of one-and-one-third to four
2 gives him the incentive to accept responsibility and change
3 his conduct. It gives the government the tools to properly
4 supervise him and punish him if he offends again.

5 The fine, I submit, is nothing given the amount he
6 has been able to spend on criminal representation. He
7 could pay a fine.

8 In sum, he should get exactly the punishment he
9 deserves, not a day less, not a dollar less.

10 It's one-and-one-third to four years state prison,
11 \$20,000 fine, and it's full and final Orders of
12 Protection.

13 Thank you.

14 MR. BREITBART: Judge, I have been trying cases
15 for a long time, over 40 years. For Mr. Bandler to suggest
16 a punishment in this case should be predicated upon trial
17 theory attributes fault to Raphael Golb, but it's not his
18 fault. If there were determinations that were made with
19 regard to stipulations or no stipulations, for the 40 some
20 years that I have been trying cases I've never stipulated
21 to anything and I continue to carry that as a theory to use
22 during the trial of the case.

23 But Raphael Golb had nothing to do with making a
24 decision with regard to stipulations in this case. That
25 was a determination that was made by counsel for the

1 defense. To punish him for that would be totally wrong.
2 Raphael Golb is not a trial lawyer. He does real estate
3 closings and he was constantly guided by counsel.

4 My reading of Mr. Golb's testimony is not that he
5 perjured himself, he scrupulously and carefully told the
6 truth. What I read, what I heard was that Rapahel Golb did
7 not believe he committed a crime, not that he was lying
8 about the crimes. And I find myself stuck on responding to
9 what Mr. Bandler said because what he said is an outrageous
10 attempt to get this Court to incarcerate Mr. Golb. That's
11 not the purpose of the sentence, as I understand it.

12 He also talked about defendant testifying falsely,
13 the NYU EDU account was proof that he did not intend to
14 impersonate.

15 If your Honor's recalls, in the motions, in the
16 Franks motion almost a year before DelFavero testified, Mr.
17 Kuby argued that the fact that defendant used the G-mail
18 rather than an NYU EDU account was proof that he did not
19 intend to impersonate. It's again giving credit to Mr.
20 Golb for something that Mr. Kuby wrote in the motion a year
21 ago, something that I decided was part of the theory of
22 defense.

23 I didn't come here with the intent of attacking
24 the People's case from an evidentiary point of view, but
25 the only witness that perjured themselves was Dr.

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1 Schiffman. He perjured himself and it became apparent
2 when the Golb book was put into evidence and when he
3 denied ever having been accused of writing something that
4 was the work of someone else, but I don't think that's the
5 point.

6 I think the point is what would be a fair and just
7 sentence at this stage based upon the uniqueness, and I
8 most respectfully suggest Raphael Golb is a unique
9 defendant in the Supreme Court of New York County in the
10 Criminal Court. His background up to a couple of years ago
11 was exemplary, your Honor. Fifty years old, he's never
12 been in trouble. He's never done anything to offend the
13 statutes or the Courts or anyone else. Brilliant scholar.
14 Graduated with an undergraduate degree from Oberlin and a
15 PhD from Harvard. He has a law degree from NYU. An
16 incredible background. I wish I could stockpile some of
17 that for my next case or the one after that or the one
18 after that. He's got an exemplary background. He's never
19 been in trouble before. He's never had a problem.

20 I think what's obvious and dispositive is that
21 your Honor gave him instructions when he was arraigned that
22 he was not to in any way violate the rules with regard to
23 e-mailing or blogging with regard to any of the
24 individuals. The Orders of Protection, they have been
25 scrupulously followed. He has not done anything to violate

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1 those orders. He has been in court religiously whenever it
2 was mandated that he be here. He has shown the Court the
3 greatest respect with regard to that.

4 We're sorry that the government had to spend money
5 making this case, but that's what the system is about.
6 That's what the system is about, putting the People to
7 their proof.

8 Now, in all the years that I have been trying
9 cases I recall that there were three basic principles with
10 regard to the concept of sentencing. Sentencing is
11 supposed to send a message to the community at large that
12 this conduct should not be engaged in. Sentencing is
13 supposed to rehabilitate a defendant and give him an
14 opportunity to think about what he has done before. And
15 sentencing also is a punishment for the actions that were
16 done by the individual.

17 I most respectfully suggest that there has been a
18 loud and clear message sent with regard to the use of the
19 internet as a result of the way this case has been tried.
20 The message is very, very clear, don't send an e-mail when
21 you impersonate someone else, where you use someone else's
22 name. The fact that the message has gotten out is clear.
23 It's been in all of the newspapers the gentle persons are
24 here to perpetuate.

25 THE COURT: Gentle persons?

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1 MR. BREITBART: Gentle persons. Some are much
2 more gentle than others and some much more attractive than
3 others.

4 THE COURT: Mr. Breitbart, we grow too soon old
5 and too late smart. So gentle persons is to include the
6 staff members of the person and gentle persons is an
7 expression. So we don't need to talk about people's
8 looks and we don't need to talk about things like that
9 because it's inappropriate. That has nothing to do with
10 Mr. Golb. So let's just make that clear. Don't do that,
11 please.

12 MR. BREITBART: He is very bright, Judge. If he
13 is told not to do something, he understands and he follows
14 that instruction. The idea of rehabilitating this scholar
15 by putting him in Rikers Island for a year just doesn't
16 make sense to this observer. That's not what we're
17 supposed to do. If the purpose is merely to punish him,
18 if the purpose is merely to while him into obedience, that
19 is, of course, an alternative that is available to the
20 Court, but it's one that none of the professionals saw fit
21 to use as an example that is necessary.

22 This morning we were given a copy of the probation
23 report, and I would like to point out that not only does
24 the Probation Department recommend probation in this case,
25 but none of the alleged victims suggest that incarceration

1 is appropriate.

2 And I most respectfully suggest that I don't often
3 want to follow the mandates of the Probation Department,
4 but I believe in this particular case the Court should
5 follow that suggestion from the Probation Department.
6 They had an opportunity to speak to him. They say that he
7 was cooperative. He gave them whatever materials they
8 asked for. They have researched obviously in their
9 professional way thousands of cases, and this case where
10 my client has a PhD, a law degree and a Bachelor's degree,
11 where he is a scholar, where his activities in addition to
12 blogging and e-mailing include dance and drumming, I most
13 respectfully suggest that incarceration would be the wrong
14 thing to do. I think it would be dangerous.

15 Raphael Golb weighs 120 pounds, that speaks very,
16 very loudly to me. I have spent a lot of time at Rikers
17 Island. I wouldn't want to go there as a 50 year old who
18 weighs 120 pounds. But I am sure that your Honor has
19 listened very carefully when Mr. Golb was on the stand and
20 you heard a great deal about him. You got an opportunity
21 to see who and what he is. He was fighting a cause. And
22 the District Attorney of New York County has determined
23 that that was an illegal way of going about sending a
24 message that he felt that he had to send.

25 I would ask the Court not to follow the mandate or

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1 the suggestion that Raphael Golb be incarcerated.

2 If in spite of my plea, in spite of my arguments
3 in rebutting the arguments made by Mr. Bandler, I most
4 respectfully suggest that if your Honor decides that
5 incarceration is an appropriate sentence in this case, that
6 your Honor not set the surrender date until the 29th of
7 November, which would be after Thanksgiving, so that he
8 could have Thanksgiving dinner with his folks.

9 Thank you for listening so carefully, Judge.

10 THE COURT: You know, since this trial there was
11 something in the press about a letter written by Lawrence
12 Trib and some revival of some blogs with regard to alleged
13 plagiarism by a number of Harvard law professors, which I
14 probably would have skipped it but for the fact that I just
15 tried this case, and I was very bemused by the contrast or
16 the page after page of text quoted in those blogs as
17 opposed to the sentence or two that Mr. Golb is so
18 concerned with.

19 I don't think I have the equipment to determine
20 whether or not what Mr. Golb says is plagiarism or not. I
21 have my views on the subject, but I think it requires at
22 the end more knowledge of what is done in the academic
23 community and more knowledge of this area of scholarship
24 than I have for my light reading on the subject, so I do
25 not go there.

1 You know, as I said, I have a point of view that's
2 private and not judicial on the subject.

3 Now, as much as the defense insisted that the
4 trial here was about speech, the defendant was, in fact,
5 convicted for conduct, and it was conduct which constituted
6 a deliberate invasion of the substantial privacy interest
7 of these victims, as the jury found, whom he intentionally
8 imitated to their detriment and to his benefit in an
9 essentially intolerable manner. So this is not about the
10 victims being tainted, although they apparently are, and
11 it's not about what Mr. Golb said, the contents of his
12 speech, but what he did, so it's not his words but his
13 conduct and the rules with regard to that are set forth in
14 People against Slash, 86 NY 2d, and People against Mangano
15 at 100 NY 2d.

16 So I gather also that there is a pending case in
17 the Supreme Court in the United States about offense of
18 speech, but that case has nothing to do with this one.

19 In New York, as Mr. Kuby says, it maybe mundane,
20 but we get insulted before breakfast, but it is still a
21 crime to imitate people in the manner that the defendant
22 did.

23 I think People against Johnson at 208 Appellate
24 Division 2d 1051 is interesting on that subject.

25 The fact that he did it with words, that the

1 words showed his intent, the Supreme Court of the United
2 States has also said does not make it a First Amendment
3 case.

4 Now, I think you're right, Mr. Breitbart, it is
5 inappropriate for a Court to sentence somebody based upon
6 his insistence on his constitutional rights, the trial
7 strategy. I never seen a case that quite put it that way.
8 I see a gray area here in a way because the defendant's
9 trial strategy was there before the lawyers entered the
10 case. Defendant's trial strategy was set forth in the
11 defendant's statement to Mr. Bandler in great part, but he
12 is entitled to go to trial and he is entitled to have a
13 strategy.

14 Of course, the Court may premise its sentence on
15 perjury because that's clear, that's not a gray area at
16 all. It's the refusal to stipulate, the decision to go to
17 trial, the theory that the defendant set forth in his
18 statement to Mr. Bandler, it's at least in the area, if
19 not on the other side of the line, and I did not rely on
20 it.

21 I do think that by the jury's verdict there was a
22 clear finding that Mr. Golb's testimony was untruthful in a
23 number of important respects, because he didn't simply say
24 "I don't believe I committed a crime." He said, "I did not
25 intend certain actions," and the jury plainly rejected that

1 portion of the testimony. And I do not want to discuss the
2 rest of the details that Mr. Bandler referred to. I have
3 nothing further to say about the claim that Dr. Schiffman
4 perjured himself.

5 I find this a troubling case to sentence because,
6 of course, it is a crime that does not involve actual
7 physical violence, but the kind of violence this invasion
8 of privacy, and obviously in the probation report, still
9 echoes it. The victims felt invaded and hurt by this.
10 Nevertheless, Mr. Kuby had rushed in, just because their
11 feelings are hurt, too bad for them. Again, this is
12 conduct. I simply mention this because it has to do with
13 what kind of crime this is.

14 I despair for various reasons, which I think are
15 clear in the face of the entire record, and I won't recount
16 here, of Mr. Golb's ceasing this behavior, but I will put a
17 period on that and strike the but.

18 I think accordingly there needs to be a clear
19 message as to the consequences of his continuing in such
20 behavior.

21 On each felony, he is sentenced to a term of six
22 months concurrent with five years probation.

23 On each misdemeanor, he is sentenced to a term of
24 three months concurrent with three years of probation.

25 All terms to run concurrently.

1 Special terms of probation and attendant to the
2 Order of Protection are as we have discussed:

3 One: The defendant may not attend a lecture,
4 seminar or other program at which Professor Lawrence
5 Schiffman, Professor Robert Cargill or Stephen Goranson is
6 a featured participant, presenter or participant unless
7 said lecture, seminar, or other program is held in a venue
8 designed for an audience of at least one hundred (100)
9 people.

10 Two: The defendant may not have indirect contact
11 with Professor Lawrence Schiffman, Professor Robert Cargill
12 or Stephen Goranson. Indirect contact includes
13 participation in any discussion group, blogs, chat rooms or
14 the like, or communications by e-mail, on the internet,
15 relating to the Dead Sea Scrolls or Qumran, except under
16 the use of his own name, Raphael Golb, or anonymously, as
17 denominated by the appellation, "anonymous." The use of
18 any other names for this purpose, whether fictitious,
19 invented, historical or the like, constitutes indirect
20 contact with the protected parties, as that term is used
21 herein.

22 Three: The defendant may not solicit, request,
23 command, aid, or attempt to cause another person (a) to act
24 in violation of this Order of Protection, or (b) to contact
25 Professor Lawrence Schiffman, Professor Robert Cargill or

1 Stephen Goranson.

2 I have no problem with an Order of Protection
3 against the gentleman whose name he did not use as in
4 contacting other people, but I decline to put him in the
5 special conditions. I don't think that would be
6 appropriate. That's Dr. Gibson.

7 The fees and assessments are imposed and I am sure
8 you will advise your client of his rights.

9 I decline to stay sentence.

10 MR. KUBY: Excuse me, Judge. I am sorry, it's a
11 small matter, but we did not make an application for a stay
12 of sentence.

13 Prior to your imposition of sentence Mr.
14 Breitbart requested a voluntary surrender date, which I
15 take it, you have declined to provide. We did not request
16 a stay.

17 It's a small matter, but we requested a stay, but
18 not from this Court.

19 THE COURT: I gather from somebody who knows less
20 about it.

21 MR. KUBY: Thank you, Judge.

22 THE COURT: I am sorry. I stand corrected. I did
23 not hear from Mr. Golb.

24 MR. KUBY: We would have indicated that he did not
25 want to address the Court.

1 THE DEFENDANT: If I could make a statement.

2 THE COURT: He still has the right and I was so
3 distracted I made an error, and I should before we finally
4 sign off on anything give him a chance.

5 Anything you would like to say, Mr. Golb.

6 THE DEFENDANT: This is just a statement that I
7 prepared to read.

8 THE COURT: Whenever you would like, Mr. Golb.

9 THE DEFENDANT: Your Honor, obviously, I'm sorry
10 for all the wounding of feelings that my e-mail antics have
11 caused. I have a brief statement.

12 I read through the transcripts, and I wondered if
13 my testimony may have led to a misapprehension that I
14 somehow intended these e-mails to be in the nature of
15 light-hearted comedy. I'm troubled by the notion of humor,
16 because especially in the world of e-mails, one man's joke
17 is another's mortal insult. The definitions that I had in
18 mind when I said that I had used the techniques of irony,
19 satire and parody, are the following -- I quote from
20 Merriam Webster's online page of these terms.

21 1. A literary work holding up human vices and
22 follies to ridicule or scorn.

23 2. Trenchant wit, irony, or sarcasm used to
24 expose and discredit vice or folly.

25 See also the Random House Dictionary.

1 1. The use of irony, sarcasm, ridicule, or the
2 like, in exposing, denouncing or deriding vice, folly, et
3 cetera.

4 2. A literary composition, in verse or prose, in
5 which human folly and vice are held up to scorn, derision,
6 or ridicule.

7 And in a publication of the University of
8 Victoria, I read: "Satire arouses laughter or scorn as a
9 means of ridicule and derision, with the avowed intention
10 of correcting human faults. Common targets of satire
11 include individuals ('personal satire'), types of people,
12 social groups, institutions, and human nature."

13 And so I want to also address the question of the
14 definition of parody and sarcasm that was used in which a
15 element of humor seemed to be prominent, and I have trouble
16 with that.

17 I also want to apologize for being less specific
18 than I should have been during my testimony about my
19 understanding of the word "impersonate." I have since
20 looked the verb up and I find two definitions. One is the
21 equivalent of criminal impersonation, as in impersonating a
22 policeman, and the other refers to the type of
23 impersonation that is commonly engaged in by entertainers
24 or by people like the Yes Men or the Canadian radio show
25 duo who impersonated Nicolas Sarkozy on the telephone with

1 Sarah Palin, and she actually believed she was talking with
2 the French president.

3 So my point in my testimony was that, in my view,
4 I had not impersonated Lawrence Schiffman in the criminal
5 sense, but that I had engaged in the same kind of ironical
6 speech act that many others have engaged in the past. For
7 example, in the famous Danny Hellman case, the Court
8 referred to the e-mail parodies involved there as an "act
9 of literary impersonation." Allow me to point out that
10 e-mails are letters, and that letters are literary
11 artifacts. The words "letter" and "literature" both come
12 from the same Latin term.

13 Before this case, I did not know that satirical
14 hoaxes of the sort were treated as crimes in the United
15 States of America, but as this Court said, ignorance of the
16 law is not an excuse. At any rate, what I meant to explain
17 was that in my mind, the question involved in this case was
18 whether the state has a compelling interest in
19 criminalizing undeclared parodies in which the author of
20 the verbal act uses the name of the individual he's
21 lampooning to achieve his purpose. Or does this really
22 come down to the same things as harm to reputation. As
23 when we say, "my good name is at stake." I don't know the
24 answer to that question, but this Court has ruled, I
25 respect that ruling, and I can only say that if I have

1 indeed violated the law, then I'm terribly sorry and
2 obviously have no choice but to accept whatever the
3 consequences are for me. But I do believe that this is no
4 ordinary case, and that it defines a fundamental set of
5 choices that face all of us in the years ahead. So I'm
6 glad I've litigated it, and I hope the fact that I choose
7 to do so won't be taken against me.

8 THE COURT: Okay.

9 Well, it's a very interesting problem. Mr. Golb,
10 you know, of course, I looked up satire and parody in the
11 course of preparing my instructions to the jury, but then I
12 never used it, though they had asked me to use it, and I
13 asked myself not to, it assumes the conclusion. There are
14 certain elements to the crime.

15 So you recall that I instructed about imitators
16 such as Tina Fay and what their intent might or might not
17 be.

18 As to the Canadian fellow who imitated so-called
19 Sarah Palin, I have no comment on whether he is
20 prosecutable. But, you know, you assume the conclusion and
21 you just go ahead and what the jury found and what the
22 evidence supports is the criminal intent which brought you
23 a parody over the line, and that is, I guess, the reason I
24 despair over supervision because you seem to believe that
25 you were carrying a banner for the First Amendment and what

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you were doing is a form of yelling fire in that crowded theatre.

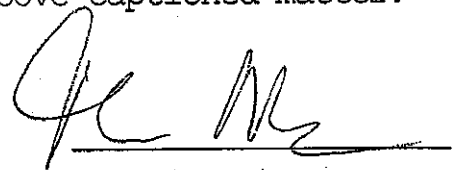
I am adhering to the previously imposed sentence.

I take it, you have advised your client of his appellate rights?

MR. KUBY: That's correct, Judge.

THE COURT: Bail exonerated.

Certified to be a true and accurate transcription of the minutes taken in the above-captioned matter.



THERESA MAGNICCARI

Senior Court Reporter