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10 *Attorneys for Appellees*



11 **IN THE SUPERIOR COURT**
12 **IN AND FOR THE COUNTY OF PIMA**

13 PATRICK FOX a.k.a. RICHARD RIESS,

Case No.: C2016 1690

14 Appellant

15 v.

**APPELLEE JAMES PENDLETON'S OBJECTION
TO RECORDED COVERAGE OF HEARINGS**

16 JAMES PENDLETON,

(Rule of the Supreme Court 122)

17 Appellee.

Judge Aragón

18 Under Rule of the Supreme Court 122, Appellant may not record court proceedings
19 without first notifying the Court. Appellee James Pendleton has requested a hearing on his
20 Injunction Against Harassment. Although the Court has not yet ruled on the request, Mr.
21 Pendleton asks the Court to prevent Appellant from recording proceedings should a hearing be
22 granted. Without Court permission, Appellant recorded the municipal court hearing on Mr.
23 Pendleton's injunction and posted the recordings online to harass Mr. Pendleton.
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According to Rule of the Supreme Court 122(a), use of recording devices to record court proceedings is subject to limitations and requirements. A “proceeding” is “an event concerning a court case that takes place in a court room.” Rule of the Supreme Court 122(b)(7). A person may use personal audio recorders during proceedings only if the person notifies the judge or the judge’s staff prior to using the device. Rule of the Supreme Court 122(h).

Without advance notice or court approval, Appellant, appearing telephonically, recorded the Sahuarita Municipal Court's hearing regarding Mr. Pendleton's Injunction Against Harassment. Appellant then posted audio excerpts of the hearing in a post titled "James Pendleton's (and His Mommy's) Testimony at the Restraining Order Hearing." (Ex. 1.) In fact, Appellant has posted every court document relating to Mr. Pendleton's Injunction Against Harassment online, as well as a recording of the entire hearing. (Ex. 2.) In the post above,

1 Appellant included excerpts of Mr. Pendleton's and used them to mock Mr. Pendleton's bases for
2 the Injunction Against Harassment.

3
4 Appellant also used the audio clips to intimidate Mr. Pendleton indirectly by harassing Mr.
5 Pendleton's mother, Wendy Pendleton. Ms. Pendleton testified in support of Mr. Pendleton's
6 Injunction Against Harassment and said that she was concerned by the Appellant's frequent visits
7 to her LinkedIn.com profile (so frequent that the Appellant was the most frequent visitor). She
8 testified that Appellant had no reason to visit her LinkedIn profile. Ms. Pendleton also said she
9 was concerned enough by the Appellant's actions that she sought legal advice regarding the
10 Appellant's conduct.
11

12
13 On his website, Appellant made clear that he posted clips of the hearing to intimidate Mr.
14 Pendleton's mother as retaliation against Mr. Pendleton and his fiancée, Desiree Capuano:

15
16 Comment from the Editor: Let me start by saying, I've never met or had any dealings
17 with Miss Pendleton. I have no issue with her. As far as I know she's a fine person
18 and has done nothing wrong. So, you might wonder, *if that's the case then why am*
19 *I publicly mocking her in this post? Well, she chose to get involved in the silly,*
ongoing nonsense that is the drama between Desiree and Patrick [the Appellant].
By doing so, she opens herself up to critique and mockery.

20 (Ex. 1 at 2. Italics added.) On www.DesireeCapuano.com, the Appellant uses recordings of court
21 proceedings to harass and intimidate anyone who speaks in support of Mr. Pendleton and Ms.
22 Capuano.
23

24 The Court should not allow the Appellant to misuse recordings of its proceedings.
25 Allowing Appellant to record future proceedings implicates several of the Rule 122(d) factors.
26 Appellant's likely misuse of the recording would pervert the purpose of the Injunction Against
27 Harassment, which is to prevent Appellant from harassing Mr. Pendleton. As he did with Ms.
28
29

1 Pendleton, Appellant would also likely use the recordings to intimidate any witnesses or other
2 participant in the hearing. Thus, allowing Appellant to record future proceedings would also
3 undermine this Court's administration of justice.
4

5 CONCLUSION

6 The excerpts of Appellant's website support Mr. Pendleton's objection to Appellant being
7 allowed to record proceedings. Appellant's history shows that he would likely misuse the
8 recordings to further harass Mr. Pendleton. This Court should order the Appellant not to record
9 future proceedings in this matter.
10

11 Dated April 20, 2016.
12

13 HARALSON, MILLER, PITT,
14 FELDMAN & McANALLY, P.L.C.

15
16 By 
17 Peter Timoleon Limperis
18 Heather L.H. Goodwin

19 Attorneys for Desiree Capuano
20

21 Original filed
22 April 20, 2016.

23 Copy mailed
24 April 20, 2016 to:

25 Patrick Fox
26 3846 Sunset St. #203
27 Burnaby, BC V5G 1T3
28 Canada
29 *Appellant, Pro Se*

EXHIBIT 1

Desiree Capuano

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James Pendleton's (and His Mommy's) Testimony at the Restraining Order Hearing

Jan 25, 2016 | 4:53 pm PDT

873 views | 5 comments

Perspective: Desiree

In the previous post I shared some of the highlights of my testimony at the Order of Protection hearing against Patrick. Today we're going to listen to, and comment on, James' and his mother's testimony.

Those of you who like James and think him to be reasonably intelligent might want to stop here – else your impression of him be tarnished. He seems to have a tendency to go off on rants and tangents that have nothing at all to do with the topic at hand – a common trait of chronic marijuana users.

The First Requirement of Obtaining an Injunction Against Harassment: Showing That There has Actually Been Harassment

Under Arizona law, in order for any given conduct to be considered "harassment", it must be "directed at a specific person". In other words, if the conduct in question is, say, verbal then you must be saying the allegedly harassing thing to the person who is supposedly being harassed (for those that are interested, see **ARS §13-2921(E)**). And in order to obtain an Injunction Against Harassment the petitioner (James, in this case) needs to show that there has been prior harassment.



James A. Pendleton, Jr.

The US Supreme Court has consistently held that public speech (whether verbal or written), directed at the public – not at a specific person – is protected by the First Amendment Free Speech clause – even when the statements being made are about a specific person and are potentially damaging or harmful to that person's reputation. Particularly when the purpose of the speech is for the benefit of the community (for those that are interested, see for example **Organization for a Better Austin v. Keefe**).

By now we all know the primary motivation of this website is to inform "the community" of the kind of dangerous, untrustworthy, harmful person I am. The community, in this case, means my neighbors, co-workers, potential employers, creditors, and anyone else that might ever come into contact with me. Therefore, **ALL** of the content on this site is, in fact, constitutionally protected under the First Amendment.

In the case of a publicly accessible website (such as this one), the supposedly "harassed" person must deliberately go to the site in order to read what is being said. A person simply cannot claim harassment when they are the one always initiating the contact – it just doesn't work that way.

So now that you have all that wonderful legal background, let's give a listen:

0:20

Say what?!?!? I know what you're thinking: If harassment means "conduct that is directed at a specific person...", then how can a person who has **NEVER** had **ANY** contact with the other person claim that other person has harassed them? Ah, the joy of the municipal courts!

Let's continue, shall we? What follows is James' paranoid rant about Patrick "surveilling" him. He goes on about how Patrick surveilled him by going to his LinkedIn profile – a public profile which he, personally, put on the Internet. He tries to explain, in some detail, how Patrick was able to gather information about him – information which, I should point out, Patrick is entitled to since Patrick's child is living in his home.

8:29

It should be pointed out, James states Patrick said he could not possibly be held responsible if anyone broke into James' house and caused harm to anyone in James' household. But what was actually said was:

I have considered whether publishing the address of an openly racist, anti-Latino, who happens to be physically present at the same house which my son is also physically present at and,

Being Afraid for My Safety Are Bullshit

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And So Just What Have I Accomplished by Going to the Media?

2016-02-24 1,903 views | 6 comments

And Yet More Proof I'm Lying to You About My Ex-Husband Hiding Our Child - My Letters

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Highlights from My Order of Protection Hearing

2016-01-17 1,714 views | 5 comments

after careful consideration, have concluded if such an event as angry Mexicans showing up to express their discontent with you and your white supremacist beliefs were to occur, the focus of their attention would be you – not our son. The Latino people are, generally, honorable and would not harm an innocent child if they had issues with the child's misguided mother. So, no, I don't believe [our son] would be put in any danger by publishing your address.

For those that are interested, you can view the actual, original email [at this link](#). Isn't it funny how stupid people only hear what they want to hear?

James mentions Patrick had reposted his resume "in an effort to discredit him". Is he suggesting that by being publicly associated with me he is being "discredited"? I would agree, that seems a logical inference.

He also seems to have completely misunderstood Patrick's domain registrar's response to his whining about this site. They're email to Patrick, which as James points out Patrick immediately posted on this site, was simply saying Patrick hasn't done anything wrong and it's not their problem so deal with it yourself.

Pay particular attention to James' mocking tone at 7:56, when he says "...in complete violation of his right to free speech...". Bit of smugness there in his misunderstanding of constitutional law, if I do say. You might notice; even though James seems to think this website is illegal and is violating his rights in some way, he has been completely unable to get anyone to do anything about it. Yet he, like myself, will keep telling himself, and everyone else, that Patrick is breaking the law and the courts just aren't fair to them.

As for all of James' remarks about Patrick's intention to continue his "harassment" of him via this website: Patrick openly admits it! Patrick has no intention of taking down this website. He's not breaking any laws and he's not violating anyone's rights...some might say Patrick's even providing a valuable public service to mine and James' neighbors – Wouldn't you want to know if drug addicts were living next door to you, decreasing your property values?

I find it particularly interesting that James closes by saying he could go on but he won't waste the court's time. Wasn't this entire proceeding wasting the court's time? What exactly has he accomplished by obtaining an Injunction Against Harassment against Patrick? By his own admission, they've never had contact before and Patrick has no interest in having contact with him in the future; James' primary goal is to get this website taken down – which he has failed, miserably, at doing, and which no court would ever try to enforce; Patrick can't go to his place of residence, but Patrick lives 1,700 miles away (and according to me and James, Patrick has been deported and cannot return to the US, anyway). So, in the end, how has his petition for an Injunction Against Harassment; the subsequent contested hearing; and now the appeal which is in the Superior Court, not been a ridiculous waste of the court's time?

Wendy Pendleton's (James' Mother) Testimony

[Comment from the Editor: Let me start by saying, I've never met or had any dealings with Miss Pendleton. I have no issue with her. As far as I know she's a fine person and has done nothing wrong. So, you might wonder, if that's the case then why am I publicly mocking her in this post? Well, she chose to get involved in the silly, ongoing nonsense that is the drama between Desiree and Patrick. By doing so, she opens herself up to critique and mockery.]

Let's hear what she had to say:

3:48

First, we get a further glimpse of James' complete lack of understanding of constitutional law. I refer to the right to face one's accusers – the "confrontation clause" of the Sixth Amendment.

The crux of Wendy Pendleton's testimony was that Patrick had viewed her LinkedIn profile, back in July 2015. That's it! Nothing more! According to her it was suspicious that Patrick would view her public profile because, apparently, Patrick would have "no reason to". Does she not understand what "public" means? Does she consider it unreasonable for a parent to research and investigate the people who will be "caring for" their child? Particularly, in a case like me, who has a history of being with tweakers like Kristopher Lauchner and wife beaters like Michael Capuano?

And, based on James' questioning, it would seem that he also considers it "unreasonable" for a person to view a stranger's public LinkedIn profile. You know what I'm doing *right now*? This very moment? I'm on LinkedIn, randomly viewing the profiles of people I've never heard of! You know why? Because they're **public profiles**! Public, you fucking morons! If you don't want strangers looking at your profile then don't make your profile public! I swear, the world is full of fucking idiots!

James' Questioning of Patrick

So, you've read this far, now let's get to the real heart of the matter: James' examination of Patrick.

4:29

Notice, James jumps right into questions about possible copyright infringement? What the hell does copyright infringement have to do with his allegation of harassment? And where did he get the ridiculous idea that you can copyright a resume? Most of his questions were clearly objectionable, for lack of relevance, but at that point Patrick already knew the case was in the bag based on the clear failure to show that any harassment had actually been committed, so Patrick let him go down that road. If for no other reason than to get a good laugh afterward and to share his foolishness with the world.

From very early in the hearing, the judge had completely misconstrued the definition of "harassment", to include public statements and statements made to third parties. Also, the moment the judge admitted that she had no authority to issue the order of protection but would go ahead with the hearing anyway, Patrick knew the entire hearing was going to be a farce. At that moment, she basically guaranteed the case would be overturned on appeal.

The damn fool (James) actually refers to his resume as "intellectual property"! Come on, nobody can be that stupid! Look up the definition of "intellectual property" before you try to argue it in court, for Christ's sake.

And God damn "selfies"? Jesus Christ, you're kidding me! He's trying to claim that the selfies he took of himself and posted to his Facebook and LinkedIn pages are his "intellectual property"! Ah, my God, is there any bottom to this clown's idiocy? Dude! For real, if you think Patrick infringed on your copyrights then file a claim with the copyright office or file a civil action – this is a fucking Injunction Against Harassment hearing – try to stay focused, ya fuckin' pothead!

But the absolute best part, the part we all got a good chuckle about, is from 1:40 through 2:26. James asks, Patrick, if he would not feel harassed by a website like this then why did he (Patrick) redact his name from the copies of the Order of Protection and the Injunction Against Harassment which he posted on this website? And why does he expressly not put his, or his son's names on this website? I love it! Patrick tells him in all frankness and candidness, it's because he is embarrassed and ashamed that he would have been involved with someone like Desiree. Ah, motherfuckin' snap! What followed was a dead silence that seems to last an hour. I could just imagine his face, being told on the record, in a court hearing, that his current girlfriend's ex-husband is ashamed and embarrassed that he ever slummed it slow low as to fuck something that nasty and trashy! The same skanky, nasty bitch he's been sticking his johnson in the past couple of years. Ouch, I say! Ouch, indeed.

Well, there was no more cockiness after that! Just stuttering and stammering. Uh-uh-uh...what's the matter James? Hurt your feelings? Shattered that perception you had that you were banging a "hot chick"? Come on, dude! I'm in my mid thirties and I've fucked more strangers than both you and Patrick combined. Patrick was with me when I was 19 to 21, before I had 2 kids and started sagging. Face the reality, James, I've been ridden hard and often and what you got is very sloppy seconds...very, very sloppy.

Take a moment, and go back to 2:07 and listen to the next few seconds again. Notice when Patrick says "Because I feel embarrassed and ashamed...", James says, in the background "You should!". If only he knew what was coming out of Patrick's mouth in the next fraction of a second! Oh, he shut the fuck up quick when he heard where Patrick was going! Oh that poor, dumb fucker.

Everything after that is James' failed attempts to try to save even the smallest sliver of his self esteem. I hate to say it, because I really have nothing against the guy, but he was fuckin' BITCH smacked! And, as if all of that isn't bad enough, now Patrick's gone and posted it on the Internet for James' co-workers, family, friends, and every future potential girlfriend or hook-up to hear. Oh, that poor, pathetic bastard.

And with that, dear readers, I shall take my leave. Until next time...

Previous Post:
Highlights from My Order of Protection Hearing

Next Post:
More Proof of Desiree's and James' Stupidity

5 Responses to James Pendleton's (and His Mommy's) Testimony at the Restraining Order Hearing

1.  **Realist** says:

2016-02-19 at 9:27 pm

Since when does smoking some pot make you a drug addict? If that's the case, you live in a province full of them, lol. That post was totally nasty. Leave the poor guy and your ex alone and stop being so jealous. I've read enough of this nonsense. I stopped dating a year ago because a lot of the men I met were broken, bitter, resentful, suspicious, cling on looners who were just too much trouble to deal with. Not as extreme as you are, but after a while, you get tired of listening to them rail on about their exes and then freak out when you don't want to see them anymore...GET HELP

Reply



Patrick Fox says:

2016-02-19 at 9:33 pm

Pot is a drug. It alters your mood and behavior and impairs your motor skills and judgement. If a person requires the consumption of pot in order to function in day to day life, then they are a drug addict. How is that not clear?

Also, our good friend Desiree has been known to do a little meth when she thinks no one is watching.

Reply

2.  **Noyfb** says:

2016-02-19 at 10:44 pm

Canada & the USA are both on their way to deregulate Marijuana & legalize it. So you can stop using that as a reason she a drug addict. Just because you say someone uses Meth doesn't make it the truth, however even if it were it's still pathetically disgusting to post it on a website to discredit an ex. It's been 5

years it's seriously time to seek help, therapy, cut the cord & move on. At this point no sane judge in his right mind will give you custody of your son. You're just digging your hole deeper & deeper. Stop embarrassing Canadians..

Reply



Patrick Fox says:

2016-02-19 at 10:52 pm

On the issue of addiction it is not relevant whether the substance is legal or not. A person who is addicted to alcohol is not breaking any laws by drinking vodka for breakfast, but that certainly means he should not be raising children. An oxycodone junkie is no less a junkie just because a doctor is prescribing the pills for him.

What's more, marijuana may be on the way to being legal but as of this point it's still illegal. And what that shows the children is that it's okay to break the law.

Reply



3. **Noyfb** says:

2016-02-19 at 11:12 pm

Semantics on Marijuana. You're clearly addicted to revenge & slander & this website. It's pretty obvious the high you are getting from the thrill of hurting your ex. So far you make it seem like it is legal. But is it really? Getting away with it once doesn't mean you will again. Does this mean you as an addict to revenge & hate should be allowed to bring up an innocent child? It is obviously altering your mind because a sane mature human would not behave this way. The point is honey we all have skeletons & crosses we have had & are bearing. Who decided you are a God & has the right to destroy someone else's life? Even if she did say you were a border jumper who re-entered after leaving do two wrongs make a right? You were there illegally by your own admission. Man up & take responsibility. If she created a website to destroy your life you'd be damn sure I'd be saying the same words to her. Smoking a bit of marijuana will not harm anyone. And I hate the smell & stuff but seriously your reaching now. What you are doing is no better even if it is the truth. You both need to be quiet & take it private & do what's best for the child. You're clearly not listening to what is between the lines & what your son is really saying & feeling when he says he doesn't care or doesn't give a shit. Thankfully he has interests like drama & piano to escape in.

Reply

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Please enter the missing number to confirm you're real. *

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This site was created and is maintained by the immediate family and/or close personal friends of Desiree Capuano, with significant input and contributions from the community.

All information published on this website is true and accurate to the best of the knowledge and ability of the site maintainers. Any error of fact should be reported to the maintainer, and corrective action will be immediately applied.

Any comments or narratives published on this website, which are written in the first person, from the perspective of Desiree Capuano are not, in fact, written by Desiree Capuano. Nevertheless, all statements made as such are known to be true and correct - regardless of what Desiree may tell you.

If you notice any inaccuracies on this website, or just want to share your thoughts, feel free to inform me at patrick@desireecapuano.com and I will address them as soon as possible.

EXHIBIT 2

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- The Irrefutable Proof That My Claims of Being Afraid for My Safety Are Bullshit**

This page contains all the bullshit relating to mine and James Pendleton's restraining orders against Patrick.

My Order of Protection

Date	Party	Description	Comments
2015-07-23	Desiree	Petition for Order of Protection	Desiree's petition, falsely alleging Patrick had threatened to shoot her.
2015-07-23	Court	Order of Protection	Even though Desiree didn't provide any evidence of her allegations, the court still issued the order.
2015-12-03	Patrick	Request for Hearing	
2015-12-16		Audio Recording of Hearing	This is a recording of the entire hearing. Note: This is the same audio as the one for James' case.
2015-12-16		Transcript of Hearing	Note: This is the same transcript as the one for James' case because they were heard together.
2015-12-16	Court	Order	The court's order keeping the previous order in place and adding a Notice of Positive Brady Indicator (firearm prohibition). The order only prohibits Patrick from contacting Desiree, and from possessing firearms within the US. It does not prohibit Patrick from continuing to publish information about Desiree on this website, and it doesn't affect Patrick's firearm possession outside the US.
2015-12-21	Patrick	Notice of Appeal	
2016-02-10	Patrick	Appeal Memorandum	Based on the Municipal Court not having jurisdiction to issue the order of protection; the court incorrectly applying the statutory definition of "harassment" because there was already a pending family matter before the Superior Court; and the court using public, constitutionally protected speech as a basis for a finding of prior harassment.
2016-03-23	Desiree	Notice of Appearance	Desiree retained a hack attorney to delay the appeal process.
2016-03-24	Desiree	Amended Notice of Appearance	From the first day, Desiree's new attorney is already making mistakes and having to re-file documents.
2016-03-24	Desiree	Motion to Correct or Modify the Record on Appeal	Motion to add "evidence" to the appeal record. This is an entirely frivolous motion, likely just to delay the appeal process. Desiree is now claiming she had the "evidence" with her at the hearing but just didn't submit it.
2016-03-29	Desiree	Appellee's Responsive Memorandum	Desiree's responsive appeal brief. She argues that the content of the website constitutes harassment, even though the contents and statements were <i>not</i> made to her. Her attorney actually <i>changes</i> the wording of relevant statutes in order to make them fit his arguments, e.g. substituting the term "action" with "matter" in the A.R.S. § 13-3602(P). A desperate ploy by a hack attorney - typical for Arizona attorneys, though.
2016-04-05	Patrick	Response to Motion to Modify the Record on Appeal	Opposing to the motion to add evidence to the appeal record, based essentially on the "evidence" not really being relevant to Desiree's case, and an appeal not being the appropriate venue to seek to have evidence considered.

James' Injunction Against Harassment

Date	Filed By	Description	Comments
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4/20/2016

Restrain

Orders Against Patrick - Desiree Capuano (née Tomlin): S...er, Druggie, Sociopath

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And So Just What Have I Accomplished by Going to the Media?

2016-02-24 1,903 views | 6 comments

And Yet More Proof I'm Lying to You About My Ex-Husband Hiding Our Child - My Letters

2016-02-22 1,852 views | 8 comments

Highlights from My Order of Protection Hearing

2016-01-17 1,714 views | 5 comments

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2015-07-23	James	Petition for Injunction Against Harassment	James' petition, alleging Patrick had been "harassing" him by publicly speaking about him - though, not actually to him.
2015-07-23	Court	Injunction Against Harassment	Even though James didn't allege Patrick had ever had any contact with him, the court actually issued the injunction.
2015-12-03	Patrick	Request for Hearing	
2015-12-16		Audio Recording of Hearing	This is a recording of the entire hearing. Note: This is the same audio as the one for Desiree's case.
2015-12-16		Transcript of Hearing	Note: This is the same transcript as the one for Desiree's case because they were heard together.
2015-12-16	Court	Order	The court's order keeping the previous order in place. The order only prohibits Patrick from contacting James or going "near" James' residence. It does not prohibit Patrick from continuing to publish information about James on this website.
2015-12-21	Patrick	Notice of Appeal	
2016-02-10	Patrick	Appeal Memorandum	Based, primarily, on the James admission that he and Patrick have never actually had any contact (which is a necessary requirement of "harassment"); the court incorrectly applying the statutory definition to include public statements made <i>about</i> James, but not to him.
2016-03-23	James	Notice of Appearance	James retained an apparently incompetent attorney to delay the appeal process.
2016-03-24	James	Amended Notice of Appearance	From the first day, James' new attorney is already making mistakes and having to re-file documents.
2016-03-24	James	Motion to Correct or Modify the Record on Appeal	Motion to add "evidence" to the appeal record. This is an entirely frivolous motion, likely just to delay the appeal process. All of the supposed "evidence" that is being requested to be added to the record pertains only to Desiree's case, not James', so this entire motion is irrelevant to James' case.
2016-03-29	James	Appellee's Responsive Memorandum	James' responsive appeal brief. He's trying to argue that the passive <i>content</i> of the website constitutes harassment - even though there has <i>never been any</i> contact between him and Patrick.
2016-04-05	Patrick	Response to Motion to Modify the Record on Appeal	Opposition to the motion to add evidence to the appeal record, essentially based on the lack of relevance any of the supposed "evidence" has to James' case.

This site was created and is maintained by the immediate family and/or close personal friends of Desiree Capuano, with significant input and contributions from the community.

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If you notice any inaccuracies on this website, or just want to share your thoughts, feel free to inform me at patrick@desireecapuano.com and I will address them as soon as possible.