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Jack Has Wiggle Room

As self-proclaimed pedophile Jack McClellan inches closer to getting his day in court - either willingly or not - some California lawyers are questioning the constitutionality of the restraining order against him.

McClellan, 45, was arrested twice Monday on the University of California, Los Angeles campus, once for allegedly violating the statewide order to keep away from children and again, later in the day, for allegedly violating a university order to stay off campus.

Some lawyers, including a professor of law at UCLA, says McClellan will likely win in court if he challenges the validity of the injunction filed against him.

"If somebody prosecutes him for violating his restraining order he can raise the invalidity of the injunction in court," said UCLA law professor Eugene Volokh, who teaches free speech law and criminal law.

"He will likely get a court-appointed lawyer and that lawyer, being a smart lawyer, will seek to have the injunction thrown out and I think he will win," he said.

Santa Clarita lawyers Anthony D. Zinnanti and Richard Patterson drafted an injunction to keep McClellan out of Santa Clarita and away from children the day after reading an article in The Signal in which McClellan promised to return to this valley.

By the end of that week, lawyers had obtained a statewide ban prohibiting McClellan from being within 30 feet of any child in California.

What they also received, according to Patterson, was at least one letter from a professor of law at UCLA questioning the constitutionality of their injunction, as well as hate mail and people calling him a Nazi.

"Mr. Zinnanti is an excellent student of constitutional law," he said. "The petition (for an injunction) was crafted in a way so as to avoid issues of the first amendment," Patterson said.

McClellan, who has repeatedly identified himself as a pedophile in the media, has argued that freedom of speech gives him the right to express his views about being attracted to young girls.

"He is a repulsive fellow," Volokh said of McClellan. "And he's certainly scaring the BGs out of a lot of people. This is a bad guy but he is a bad guy with no proof that he has done anything illegal. There's not even probable cause for the injunction.

"The court issued the injunction which is tantamount to house arrest, because you can't go anywhere and be sure you're not within 30 feet of a minor, someone under 18," he added. "It is tantamount to house arrest or banishment.

"If there was probable cause you would think the police would arrest him and, believe me, I'm all for locking him up," Volokh said.

Jeff Stein, chair of the legal committee for California Attorneys for Criminal Justice, says he too has concerns about the constitutionality of the injunction brought against McClellan.

"There was no criminal basis for the restraining order to have been issued," he said. "There are important constitutional issues here.

"From a civil liberties point of view, the legal issue here is about where and when a restraining order should be imposed."

McClellan was arrested Monday about 1:40 p.m. for allegedly violating a restraining order to stay away from children when he was spotted, reportedly, outside a campus daycare center at Franz Hall.

Someone on campus recognized him from media reports publishing his picture and called campus police, said university spokeswoman Nancy Greenstein.

McClellan, who was ordered not to be within 10 yards of children, is also prohibited from photographing children. He reportedly was seen with a camera near the daycare facility, Greenstein said.

"They recognized him and, within minutes, he was arrested," she said. "He wasn't surprised by all the attention."

About 8:30 p.m. Monday, campus police released McClellan after checking with Los Angeles Superior Court, issuing him an order to stay off campus for seven days.

But, less than two hours later, at 10:20 p.m., McClellan was spotted back on campus giving a TV interview in the parking lot at Veteran Avenue and Whilshire Boulevard.

He was booked for "willfully and knowingly" re-entering the university campus despite the order to stay away, then taken to the West Hollywood Station of the Sheriff's Department and booked, Greenstein said.

McClellan, who was last reported living out of his car, is now looking at multiple court dates in various courtrooms in and around Los Angeles.

He was expected to appear in Los Angeles Superior Court Tuesday afternoon on La Cienega Boulevard for arraignment on the stay-away charge. He is also scheduled to appear in court Sept. 14, for allegedly violating the restraining order.

He is still scheduled to appear Aug. 17 in Chatsworth for a deposition hearing in connection with the injunction.