

EXHIBIT 1

Volume 4

Pages 670 - 990

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE VAUGHN R. WALKER

KRISTIN M. PERRY,)
SANDRA B. STIER, PAUL T. KATAMI,)
and JEFFREY J. ZARRILLO,)

Plaintiffs,)

VS.) NO. C 09-2292-VRW

ARNOLD SCHWARZENEGGER, in his)
official capacity as Governor of)
California; EDMUND G. BROWN, JR.,)
in his official capacity as)
Attorney General of California;)
MARK B. HORTON, in his official)
capacity as Director of the)
California Department of Public)
Health and State Registrar of)
Vital Statistics; LINETTE SCOTT,)
in her official capacity as Deputy)
Director of Health Information &)
Strategic Planning for the)
California Department of Public)
Health; PATRICK O'CONNELL, in his)
official capacity as)
Clerk-Recorder for the County of)
Alameda; and DEAN C. LOGAN, in his)
official capacity as)
Registrar-Recorder/County Clerk)
for the County of Los Angeles,)

Defendants.) San Francisco, California
) Thursday
) January 14, 2010

TRANSCRIPT OF PROCEEDINGS

Reported By: *Katherine Powell Sullivan, CRR, CSR 5812*
Debra L. Pas, CRR, CSR 11916
Official Reporters - U.S. District Court

P R O C E E D I N G S

JANUARY 14, 2010

8:42 A.M.

THE COURT: Very well. Good morning, Counsel.

(Counsel greet the Court.)

THE COURT: Let's see. First order of business, I have communicated to judge -- Chief Judge Kozinski, in light of the Supreme Court's decision yesterday, that I'm requesting that this case be withdrawn from the Ninth Circuit pilot project. And he indicated that he would approve that request. And so that should take care of the broadcasting matter.

And we have motions that have been filed on behalf of Mr. Garlow and Mr. McPherson. And the clerk informs me counsel for those parties are here present.

MR. MCCARTHY: Correct, Your Honor.

THE COURT: All right. Fine.

MR. MCCARTHY: Vincent McCarthy, Your Honor. I was admitted pro hac vice into this court very recently.

THE COURT: Yes. I believe I signed that yesterday, or the day before.

MR. MCCARTHY: I understand.

THE COURT: Well, welcome.

MR. MCCARTHY: Thank you.

THE COURT: You've got quite a lineup of lawyers here.

1 Q. Okay.

2 MR. PATTERSON: Your Honor, I would like to request a
3 brief break, if I may?

4 THE COURT: How much longer do you have with this
5 witness?

6 MR. PATTERSON: I would say I'm about halfway
7 through, your Honor.

8 THE COURT: Okay. Maybe a break, like your colleague
9 Mr. Thompson, will reduce the length somewhat.

10 MR. PATTERSON: Okay.

11 THE COURT: That I'm sure will be helpful to
12 everybody.

13 All right. Shall we take until 15 minutes of the
14 hour, or 10:45.

15 MR. COOPER: Your Honor, just before we break, may I
16 ask one minor housekeeping matter?

17 THE COURT: Yes.

18 MR. COOPER: Point of clarification, actually, and
19 it's further to your announcement as we opened the court day,
20 that the Court was asking for withdrawal of this case from the
21 pilot program.

22 I just ask the Court for clarification, if I may then
23 understand that the recording of these proceedings has been
24 halted, the tape recording itself?

25 THE COURT: No, that has not been altered.

1 **MR. COOPER:** As the Court knows, I'm sure, we have
2 put in a letter to the Court asking that the recording of the
3 proceedings be halted.

4 I do believe that in the light of the stay, that the
5 court's local rule would prohibit continued tape recording of
6 the proceedings.

7 **THE COURT:** I don't believe so. I read your letter.
8 It does not quote the local rule.

9 The local rule permits remote -- perhaps if we get
10 the local rule --

11 **MR. BOUTROUS:** Your Honor, I have a copy.

12 **THE COURT:** Oh, there we go.

13 (Whereupon, document was tendered
14 to the Court.)

15 **THE COURT:** The local rule permits the recording for
16 purposes the -- of taking the recording for purposes of use in
17 chambers and that is customarily done when we have these remote
18 courtrooms or the overflow courtrooms. And I think it would be
19 quite helpful to me in preparing the findings of fact to have
20 that recording.

21 So that's the purpose for which the recording is
22 going to be made going forward. But it's not going to be for
23 purposes of public broadcasting or televising.

24 And you will notice the local rules states that:

25 "The taking of photographs, public

1 broadcasting or televising, or recording for
2 those purposes."

3 So the recording is not being made for those
4 purposes, but simply for use in chambers.

5 **MR. COOPER:** Very well, your Honor, and I appreciate
6 that clarification.

7 **THE COURT:** All right.

8 (Whereupon there was a recess in the proceedings
9 from 10:32 a.m. until 10:59 a.m.)

10 **THE COURT:** Very well, Mr. Patterson. Please
11 continue.

12 **MR. PATTERSON:** Very well, your Honor.

13 **BY MR. PATTERSON:**

14 **Q.** Dr. Egan, we were speaking about the revenues you
15 project San Francisco weddings, the out-of-state -- or
16 out-of-San Francisco same-sex couples would generate.

17 And, again, one source of those revenues come from
18 hotel taxes, is that correct?

19 **A.** Yes, it is.

20 **Q.** And you have basically -- you have assumed how long the
21 non-San Francisco resident same-sex couples would stay in
22 San Francisco when they got married, is that correct?

23 **A.** That's correct.

24 **Q.** And, once again, you have not done any study of how long
25 non-San Francisco resident same-sex couples actually stay in

EXHIBIT 2

**REPORT OF THE PROCEEDINGS
OF THE JUDICIAL CONFERENCE
OF THE UNITED STATES**

September 17, 1996

The Judicial Conference of the United States convened in Washington, D.C., on September 17, 1996, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Juan R. Torruella
Chief Judge Joseph L. Tauro,
District of Massachusetts

Second Circuit:

Chief Judge Jon O. Newman
Chief Judge Peter C. Dorsey,
District of Connecticut

Third Circuit:

Chief Judge Dolores K. Sloviter
Chief Judge Edward N. Cahn,
Eastern District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson, III
Judge W. Earl Britt,
Eastern District of North Carolina

Fifth Circuit:

Chief Judge Henry A. Politz
Chief Judge William H. Barbour,
Southern District of Mississippi

Judicial Conference of the United States

models discussed in the report, and, where appropriate, adopt more efficient structures for the provision of administrative services.

CAMERAS IN THE COURTROOM

The Judicial Conference approved a Court Administration and Case Management Committee recommendation that it adopt conforming revisions to the "Cameras in the Courtroom" policy and commentary to be printed in Volume I, Chapter III, Part E of the *Guide to Judiciary Policies and Procedures*. These revisions reflect Judicial Conference actions taken in September 1994 (JCUS-SEP 94, pp. 46-47) and March 1996 (JCUS-MAR 96, p. 17).

MISCELLANEOUS FEE SCHEDULES

After undertaking a review of the miscellaneous fees set by the Judicial Conference pursuant to 28 U.S.C. §§ 1913, 1914, 1926, and 1930, the Court Administration and Case Management Committee recommended that the Judicial Conference raise certain miscellaneous fees to account for inflation and rising court costs. The Judicial Conference approved the recommendation to raise miscellaneous fees as set forth below, provided that legislation is enacted to permit the judiciary to retain the resulting increase in fees:

<u>Fee</u>	<u>Current Amount</u>	<u>Raised Amount</u>
Power of Attorney	\$ 20	\$ 30
Filing and Indexing Misc. Papers	\$ 20	\$ 30
Misdemeanor Appeal	\$ 25	\$ 35
Registration of Foreign Judgment	\$ 20	\$ 30
Tape Duplication	\$ 15/tape	\$ 20/tape
Microfilm/Microfiche	\$ 3/sheet	\$ 4/sheet
Mailing Labels	\$ 5/page	\$ 7/page
Record Search	\$ 15	\$ 20
Certification	\$ 5	\$ 7
Returned Checks	\$ 25/check	\$ 35/check
Reproduction of Record	\$ 25	\$ 55
Ct. of Fed. Claims Filing Fee	\$120	\$150
Ct. of Fed. Claims List of Orders/Ops	\$ 10	\$ 15

EXHIBIT 3



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

JAMES C. DUFF
Secretary

July 23, 2009

Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Senator Sessions:

The Judicial Conference of the United States strongly opposes the “Sunshine in the Courtroom Act of 2009,” S. 657 (111th Cong.), because it provides for the use of cameras in federal trial court proceedings. Cameras can affect behavior in court proceedings. Cameras can even affect whether a case goes to trial. Cameras can also affect courtroom security of judges, witnesses, employees, and U.S. marshals. This is of particular concern in light of recent increased threats to federal judges. The Judicial Conference believes that these and other negative affects of cameras in trial court proceedings far outweigh any potential benefit. The Judicial Conference also opposes the legislation because it would empower any appellate court panel to permit cameras in their courtroom rather than retain that power within the management of each circuit.

The Judicial Conference bases its policy and opposition to the use of cameras in the federal trial court proceedings on decades of experience and study. The Conference considered the issue in a number of different situations and contexts – including a pilot project – and concluded that the presence of cameras in federal trial court proceedings is not in the best interest of justice. Federal judges must preserve each citizen’s right to a fair and impartial trial. Of course, federal trials have long been open to the media and public. But it is the studied judgment of the Judicial Conference that cameras can

Honorable Patrick J. Leahy
Honorable Jeff Sessions
Page 2

interfere with a fair and impartial trial. Thus, the use of cameras in trial courts would differ substantially from the impact of their use in legislative, administrative, or ceremonial proceedings.

Cameras can interfere with a fair trial in numerous ways. First, broadcasting proceedings can affect the way trial participants behave. Television cameras can intimidate litigants, witnesses, and jurors, many of whom have no direct connection to the proceeding and are involved in it through no action of their own. Witnesses might refuse to testify or alter their stories when they do testify if they fear retribution by someone who may be watching the broadcast.

Second, and similarly, camera coverage can create privacy concerns for many individuals involved in the trial, such as witnesses and victims, some of whom are only tangentially related to the case but about whom very personal and identifying information might be revealed. For example, efforts to discredit a witness frequently involve the revelation of embarrassing personal information. Disclosing embarrassing facts or accusations in a courtroom already creates challenges in court proceedings. Those challenges would be multiplied enormously if that information were aired on television with the additional possibility of taping and replication. This concern can have a material effect on a witness's testimony or on his or her willingness to testify at all.

Third, and as a consequence of the aforementioned points, camera coverage could also become a potent negotiating tactic in pretrial settlement discussions. Parties may choose not to exercise their right to trial because of concerns regarding possible camera coverage. Thus, allowing cameras could cause a "chilling effect" on civil rights litigation; plaintiffs who have suffered sex or age discrimination may simply decide not to file suit if they learn that they may have to relive the incident and have that description broadcast to the public at large. Or, parties litigating over medical issues may not wish to reveal their personal medical history and conditions to a broad audience.

Fourth, the presence of cameras in a trial court will encourage some participants to become more dramatic, to pontificate about their personal views, to promote commercial interests to a national audience, or to lengthen their appearance on camera. Such grandstanding is disruptive to the proceedings and can delay the trial.

The Federal Judiciary is therefore very concerned that the effect of cameras in the courtroom on participants would be to impact negatively the trial process and thereby interfere with a fair trial.

Honorable Patrick J. Leahy
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In addition to affecting the fairness of a trial, the presence of cameras in a trial courtroom also increases security and safety issues. Broadcasting the images of judges and court employees, such as court reporters, courtroom deputies, and law clerks, makes them more easily identified as targets by those who would attempt to influence the outcome of the matter or exact retribution for an unpopular court ruling. Threats against judges, lawyers, and other participants could increase even beyond the current disturbing level. Cameras create similar security concerns for law enforcement personnel present in the courtroom, including U.S. marshals and U.S. attorneys and their staffs.

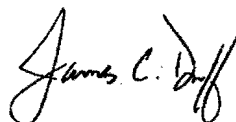
Finally, regarding the courts of appeals, in 1996 the Judicial Conference adopted the position that each circuit may decide for itself whether to permit photographic, radio, and television coverage of appellate arguments, subject to any restrictions in statutes, national and local rules, and such guidelines as the Conference may adopt. This policy ensures consistency within each circuit. The Sunshine in the Courtroom Act of 2009 would allow panels within the circuits to determine whether cameras will be allowed at their proceedings, rather than leaving the initial decision to the circuit's management. This will result in differing treatment of litigants within each circuit. Currently, the circuit-wide policies avoid piecemeal and ad hoc resolutions of the issue among the various panels convened within a court of appeals, and that approach is therefore better than the proposed legislative change.

* * *

For the foregoing reasons, the Judicial Conference of the United States strongly opposes legislation that allows the use of cameras in federal trial court proceedings and permits individual panels to use of cameras in all courts of appeals instead of deferring to each circuit's rules on such use.

Thank you for the opportunity to provide the position of the Judicial Conference on this legislation. The legislation raises issues of vital importance to the Judiciary. If we may be of additional assistance to you, please do not hesitate to contact our Office of Legislative Affairs at 202-502-1700.

Sincerely,

A handwritten signature in dark ink, appearing to read "James C. Duff", with a stylized flourish at the end.

James C. Duff
Secretary

cc: Members, Senate Judiciary Committee

**REPORT OF THE PROCEEDINGS
OF THE JUDICIAL CONFERENCE
OF THE UNITED STATES**

March 12, 1996

The Judicial Conference of the United States convened in Washington, D.C., on March 12, 1996, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Juan R. Torruella
Chief Judge Joseph L. Tauro,
District of Massachusetts

Second Circuit:

Chief Judge Jon O. Newman
Chief Judge Peter C. Dorsey,
District of Connecticut

Third Circuit:

Chief Judge Dolores K. Sloviter
Chief Judge Edward N. Cahn,
Eastern District of Pennsylvania

Fourth Circuit:

Chief Judge J. Harvie Wilkinson, III
Judge W. Earl Britt,
Eastern District of North Carolina

Fifth Circuit:

Chief Judge Henry A. Politz
Chief Judge William H. Barbour,
Southern District of Mississippi

March 12, 1996

CAMERAS IN THE COURTROOM

The Judicial Conference agreed to authorize each court of appeals to decide for itself whether to permit the taking of photographs and radio and television coverage of appellate arguments, subject to any restrictions in statutes, national and local rules, and such guidelines as the Judicial Conference may adopt. The Conference further agreed to—

- a. Strongly urge each circuit judicial council to adopt an order reflecting the Judicial Conference's decision to authorize the taking of photographs and radio and television coverage of court proceedings in the United States courts of appeals; and
- b. Strongly urge each circuit judicial council to adopt an order pursuant to 28 U.S.C. § 332 (d)(1), reflecting the September 1994 decision of the Judicial Conference (JCUS-SEP 94, pp. 46-47) not to permit the taking of photographs and radio and television coverage of court proceedings in the United States district courts. In addition, the Judicial Conference agreed to strongly urge the judicial councils to abrogate any local rules of court that conflict with this decision, pursuant to 28 U.S.C. § 2071(c)(1).

COMMITTEE ON CRIMINAL LAW

UNIVERSAL PRETRIAL DRUG TESTING

In December 1995, President Clinton directed the Attorney General to develop a "...universal policy providing for drug testing of all federal arrestees before decisions are made on whether to release them into the community pending trial." In February 1996, the Attorney General submitted a pretrial drug testing proposal to the Executive Committee, which referred the matter to the Committee on Criminal Law for recommendation to the March Judicial Conference. Reporting on the proposal to the Conference, the Criminal Law Committee recommended that the issue be referred back to that Committee. The Judicial Conference voted to refer the Attorney General's proposal regarding universal pretrial drug testing to the Criminal Law Committee for expeditious consideration and report to the Executive Committee, which is authorized to act on the matter on behalf of the Conference.

EXHIBIT 4

**REPORT OF THE PROCEEDINGS
OF THE JUDICIAL CONFERENCE
OF THE UNITED STATES**

September 20, 1994

The Judicial Conference of the United States convened in Washington, D.C., on September 20, 1994, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Juan R. Torruella
Judge Francis J. Boyle,
District of Rhode Island

Second Circuit:

Chief Judge Jon O. Newman
Judge Charles L. Brieant,
Southern District of New York

Third Circuit:

Chief Judge Dolores K. Sloviter
Chief Judge John F. Gerry,
District of New Jersey

Fourth Circuit:

Chief Judge Sam J. Ervin, III
Judge W. Earl Britt,
Eastern District of North Carolina

Fifth Circuit:

Chief Judge Henry A. Politz
Chief Judge Morey L. Sear,
Eastern District of Louisiana

Judicial Conference of the United States

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference, it received 47 new written inquiries (including one request for reconsideration) and issued 40 written advisory responses. The average response time was 21 days. The Chairman received and responded to 48 telephonic inquiries. In addition, individual Committee members responded to 72 inquiries from their colleagues.

ETHICS REFORM ACT REGULATIONS

The Judicial Conference approved the recommendations of the Committee to revise the Ethics Reform Act gift regulations. The principal substantive changes include the following: (1) definition of the term "gift" in a new section 3; (2) incorporation in a new section 4 of the existing statutory prohibition on solicitation of gifts; (3) clarification of the reach of sections 4(b) and 5(b) (formerly 3(c) and 3(a)(2)); (4) authorization in a new section 5(h) of the acceptance of *de minimis* gifts by persons other than judges and their personal staffs; (5) revision of section 6 (formerly 3(b)) prohibiting the acceptance of gifts in violation of other statutes and regulations, or where reasonable persons would believe that the public office is being used for private gain; and (6) description in a new section 9 of procedures for the return or disposal of gifts that may not properly be accepted.

Upon recommendation of the Committee, the Judicial Conference approved revisions to the Ethics Reform Act outside employment regulations, to incorporate useful provisions from the Executive Branch regulations and to make technical amendments designed to clarify the application of the regulations.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

CAMERAS IN THE COURTROOM

The Judicial Conference considered a report and recommendation of the Court Administration and Case Management Committee to authorize the

September 20, 1994

photographing, recording, and broadcasting of civil proceedings in federal trial and appellate courts. The Committee's report included an evaluation conducted by the Federal Judicial Center of a three-year pilot project in six district and two appellate courts, as well as an analysis of studies conducted in state courts. Based upon the data presented, a majority of the Conference concluded that the intimidating effect of cameras on some witnesses and jurors was cause for concern, and the Conference declined to approve the Committee's recommendation to expand camera coverage in civil proceedings. In light of this action, additional Committee recommendations relating to cameras in the courtroom in civil cases were determined to be moot. No action was taken with regard to the ongoing pilot program, which is scheduled to sunset on December 31, 1994 (see JCUS-MAR 94, p. 15). See also "Criminal Rules," *infra* p. 67.

MISCELLANEOUS FEE SCHEDULES

In September 1993, the Judicial Conference approved an amendment to the miscellaneous fee schedule promulgated under 28 U.S.C. § 1913 to provide a fee for electronic access to court data for the appellate courts, but reserved for future consideration the issue of whether to extend the fee to electronic access to slip opinions (JCUS-SEP 93, pp. 44-45). The Court Administration and Case Management Committee recommended that the Judicial Conference authorize collection of a fee for electronic access to slip opinions by amending the fee schedule to delete the sentence, "No such fee shall be charged for usage of ACES/EDOS." The Judicial Conference approved the amendment, which makes no change in the provision allowing courts to exempt, for good cause, persons or classes of persons from the fees.

In March 1993, the Judicial Conference eliminated the traditional federal agencies' exemption from court fees for electronic access to court data and, in limited circumstances, for reproducing court records and conducting searches of court records (JCUS-MAR 93, p. 11). Federal agencies funded from judiciary appropriations continue to be exempted from fees. On recommendation of the Committee on Court Administration and Case Management, the Conference agreed to a technical amendment of the miscellaneous fee schedules promulgated under 28 U.S.C. §§ 1913, 1914, 1926, and 1930, to clarify that government programs funded from the federal judiciary's appropriations, as well as government agencies so funded, were exempt from fees. The amendment reads as follows (new language is in *italics*):

EXHIBIT 5



**United States Court of Appeals
For The Ninth Circuit**
50 W LIBERTY STREET, SUITE 800
RENO, NEVADA 89501

PROCTER HUG, JR.
Chief Judge
United States Court of Appeals

June 21, 1996

To: All Article III Judges
From: Chief Judge Hug
**Re: Judicial Council Policy Regarding the Use of Cameras
in the Courtroom**

On May 24, 1996, the Judicial Council of the Ninth Circuit voted to adopt the policy of the Judicial Conference of the United States regarding the use of cameras in the courts. Pursuant to 28 U.S.C. § 2071(c)(1), this policy is now binding on all courts within the Ninth Circuit. The policy states:

1. Each court of appeals may decide locally whether or not to permit cameras in the appellate courtrooms, subject to any restrictions in statutes, national and local rules, and such guidelines as the Judicial Conference may adopt.
2. The taking of photographs and radio and television coverage of court proceedings in the United States district courts is prohibited.

JAN 13 2010

EXHIBIT 6

Civil Local Rules

(f) Orders taxing costs pursuant to Civil L.R. 54-4.

Cross Reference

See ADR L.R. 4-11(d) “*Nonbinding Arbitration; Entry of Judgment on Award.*”

77-3. Photography and Public Broadcasting.

Unless allowed by a Judge or a Magistrate Judge with respect to his or her own chambers or assigned courtroom for ceremonial purposes, the taking of photographs, public broadcasting or televising, or recording for those purposes in the courtroom or its environs, in connection with any judicial proceeding, is prohibited. Electronic transmittal of courtroom proceedings and presentation of evidence within the confines of the courthouse is permitted, if authorized by the Judge or Magistrate Judge. The term “environs,” as used in this rule, means all floors on which chambers, courtrooms or on which Offices of the Clerk are located, with the exception of any space specifically designated as a Press Room. Nothing in this rule is intended to restrict the use of electronic means to receive or present evidence during Court proceedings.

77-4. Official Notices.

The following media are designated by this Court as its official means of giving public notice of calendars, General Orders, employment opportunities, policies, proposed modifications of these local rules or any matter requiring public notice. The Court may designate any one or a combination of these media for purposes of giving notice as it deems appropriate:

(a) Bulletin Board. A bulletin board for posting of official notices shall be located at the Office of the Clerk at each courthouse of this district.

(b) Internet Site. The Internet site, located at <http://www.cand.uscourts.gov>, is designated as the district's official Internet site and may be used for the posting of official notices.

(c) **Newspapers.** The following newspapers are designated as official newspapers of the Court for the posting of official notices:

(1) The Recorder; or

(2) The San Francisco Daily Journal; or

(3) The San Jose Post-Record, for matters pending in the San Jose Division, in addition to the newspapers listed in subparagraphs (1) and (2); or

EXHIBIT 7

1 The briefs that you filed in the Court of Appeals and
2 in the Supreme Court deal with those issues. And that's true
3 of both sides.

4 Certainly, the concerns that the proponents have
5 raised here are concerns that should be considered, need to be
6 considered, and in due course should be given thorough
7 consideration.

8 But I think, in this day and age, with the technology
9 that's available and the importance of the public's right to
10 access judicial proceedings, it's very important that we in the
11 federal judiciary work to achieve that access consistent with
12 the means that are presently available to do that.

13 And I would commend you for the efforts that you've
14 made in bringing these issues forward, and I'm hopeful that
15 this experience will have brought these issues to the fore.
16 And maybe, finally, after some 20 years we will get some
17 sensible movement forward.

18 Now, Mr. Boutrous.

19 **MR. BOUTROUS:** Thank you, Your Honor.

20 Could I address one issue? Since the stay is
21 temporary and the Supreme Court is going to be considering
22 these issues, and given the importance of the issues in this
23 case, we would request that the Court permit recording and
24 preservation of the proceedings today and through Wednesday.

25 I've heard -- having heard Mr. Cooper argue on many

1 occasions, I can't imagine why he wouldn't want his opening
2 statement preserved for the record.

3 (Laughter)

4 So the public can hear what he has to say. And same
5 goes for Mr. Olson.

6 And given the fact that this is a temporary stay, and
7 the stay order does not mention anything about restricting the
8 ability of the court to capture the images on the cameras and
9 preserve them in the event the stay is lifted and Judge
10 Kozinski issues his order, we think that would be a good
11 solution so then the materials could be posted when those --
12 those things happen.

13 **THE COURT:** Well, that's very much of a possibility
14 as presently matters stand.

15 The only transmission of these proceedings is to the
16 overflow courtroom in this courthouse. Any transmission beyond
17 that is not permitted, pending some further order of the
18 Supreme Court or the Court of Appeals, and, indeed, Chief Judge
19 Kozinski, who would be directing the pilot project.

20 I think your request is a fair one. But in the event
21 that there is no recording permitted after the issue is finally
22 settled, if a recording is made, some disposition of that
23 recording would have to be dealt with. And perhaps this is a
24 matter that we can deal with after we learn what the rule is
25 going to be in this case.

1 I would prefer to defer it until then.

2 **MR. BOUTROUS:** That's what I would propose, Your
3 Honor. That way, simply recording it now, and then the Court
4 can grapple with that issue when we find out what happens on
5 Wednesday.

6 **THE COURT:** Very well.

7 **MR. BOUTROUS:** Thank you, Your Honor.

8 **THE COURT:** Mr. Cooper.

9 **MR. COOPER:** Your Honor, I very much appreciate
10 Mr. Boutrous's desire to ensure that my words are memorialized.

11 (Laughter)

12 But I do object to his proposal. I don't believe
13 that it's in keeping with -- although, at least as I read the
14 Court's order, and I only had a moment to do so, I don't
15 believe it specifically addresses this issue. But I don't
16 think it's consistent with the spirit of that order.

17 So I just want to make clear our objection to that
18 proposal. Thank you.

19 **THE COURT:** Very well. Your objection is noted.

20 Well, we have opening statements to make. And are
21 there any preliminary matters that we should address before we
22 turn to the opening statements? For the plaintiffs, for the
23 defendants, for the intervenors.

24 **MR. OLSON:** We have none. We are ready to proceed
25 when Your Honor is ready.

EXHIBIT 8

1 A. No.

2 Q. Lastly, Ms. Moss asked you some questions about
3 Massachusetts and the need for some more data.

4 Do you feel that you need more data from
5 Massachusetts to form an opinion as to whether allowing
6 same-sex couples to marry would either lead heterosexual
7 couples not to marry or to exit their marriage?

8 A. I don't, because my opinion is based on so much more than
9 simply the Massachusetts data.

10 Q. Thank you very much. I have no further questions, Dr.
11 Peplau.

12 THE COURT: Very well. Ms. Peplau, you may step
13 down. Thank you for your testimony.

14 A. Thank you, your Honor.

15 (Witness excused.)

16 THE COURT: And we are, I think, ready to adjourn for
17 today. We will recommence at 8:30 in the morning.

18 As you may know, the Supreme Court has given us some
19 guidance with respect to part of the issue. It seems to be a
20 rather limited guidance at the moment.

21 So we may have issues beyond remote access to these
22 proceedings by other courthouses that we'll have to take up at
23 some point.

24 My inclination, without hearing from counsel and
25 getting their advice, is that we put that issue to the side for

1 the time being and proceed with the trial. We seem to be
2 moving along well and I don't want to do anything to alter the
3 progress that we are making in these proceedings, but we may,
4 indeed, have to address those issues at some later time.

5 So we will not have remote access to these
6 proceedings from other courthouses in the Ninth Circuit and
7 elsewhere in the Federal Judiciary, but we'll have to deal with
8 the other issues in due time.

9 Now, Mr. Cooper, I understand from the clerk that you
10 asked about the responses to the proposed -- or the change in
11 the local rule and the responses with reference to broadcasting
12 or webcasting these proceedings.

13 And the ones that we have received are all in the
14 jury room. I believe you or your colleagues have had an
15 opportunity to review them, is that correct?

16 **MR. COOPER:** I do understand that they are in the
17 jury room available for inspection, and I believe that some of
18 my colleagues have -- have taken advantage of that fact. I
19 don't have a report for you in terms of whether -- whether that
20 review is complete.

21 **THE COURT:** Well, there are quite a number. There
22 are quite a number. So I can well imagine that maybe you
23 haven't or your colleagues have not had a chance to review them
24 all.

25 My understanding from the clerk was that you or

EXHIBIT 9

Cooper & Kirk

Lawyers

A Professional Limited Liability Company

Charles J. Cooper
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January 14, 2010

The Honorable Vaughn R. Walker
Chief Judge
United States District Court for the
Northern District of California
450 Golden Gate Avenue
San Francisco, CA 94102

Re: Perry v. Schwarzenegger, No. C-09-2292 VRW (N.D. Cal.)

Dear Chief Judge Walker:

I write on behalf of Defendant-Intervenors ("Proponents") to respectfully request that the Court halt any further recording of the proceedings in this case, and delete any recordings of the proceedings to date that have previously been made.

As the Court will recall, on Monday morning, just before trial commenced, the Court noted that its orders concerning public dissemination had been temporarily stayed by the Supreme Court. In response, Plaintiffs nonetheless asked the Court to record the proceedings for the purpose of later public dissemination if the stay was subsequently lifted:

Since the stay is temporary and the Supreme Court is going to be considering these issues, and given the importance of the issues in this case, we would request that the Court permit recording and preservation of the proceedings today and through Wednesday [G]iven the fact that this is a temporary stay, and the stay order does not mention anything about restricting the ability of the court to capture the images on the cameras and preserve them in the event the stay is lifted and Judge Kozinski issues his order, we think that would be a good solution so then the materials could be posted when those -- those things happen.

Tr. of Proceedings at 14-15 (Jan. 11, 2010) (Attachment A). In response, Proponents objected to the recording of the proceedings as inconsistent with the Supreme Court's temporary stay, *see id.* at 16, but the Court accepted Plaintiffs' proposal.

The Honorable Vaughn R. Walker
January 14, 2010
Page 2 of 2

The Supreme Court yesterday extended the stay indefinitely. *Hollingsworth v. Perry*, 558 U.S. ___, No. 09A648, slip op. (Jan. 13, 2010) (*per curiam*). The Supreme Court's ruling removes all question that recording of the proceedings is prohibited. As the Supreme Court explained, prior to this Court's amendment to Local Rule 77-3 (which amendment, the Court concluded, was not properly adopted), Local Rule 77-3 "banned the *recording* or broadcast of court proceedings." *Hollingsworth*, slip op. at 4 (emphasis added). Unamended Local Rule 77-3 thus governs these proceedings, and, as the Supreme Court held, it has "the force of law." *Id.* at 8 (quotation marks omitted).

In short, it is now clear that the Supreme Court's stay will remain in place indefinitely, and the prohibition against the recording of these proceedings remains binding. For these reasons, Proponents renew their objection to any further recording of the proceedings in this case, and request that the Court order that any recordings previously made be deleted.

Sincerely,

/s/ Charles J. Cooper

Charles J. Cooper
Counsel for Defendant-Intervenors

Cc: Counsel of Record

EXHIBIT 10

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KRISTIN M PERRY, SANDRA B STIER,
PAUL T KATAMI and JEFFREY J
ZARRILLO,

Plaintiffs,

CITY AND COUNTY OF SAN FRANCISCO,

Plaintiff-Intervenor,

v

ARNOLD SCHWARZENEGGER, in his
official capacity as governor of
California; EDMUND G BROWN JR, in
his official capacity as attorney
general of California; MARK B
HORTON, in his official capacity
as director of the California
Department of Public Health and
state registrar of vital
statistics; LINETTE SCOTT, in her
official capacity as deputy
director of health information &
strategic planning for the
California Department of Public
Health; PATRICK O'CONNELL, in his
official capacity as clerk-
recorder of the County of
Alameda; and DEAN C LOGAN, in his
official capacity as registrar-
recorder/county clerk for the
County of Los Angeles,

Defendants,

DENNIS HOLLINGSWORTH, GAIL J
KNIGHT, MARTIN F GUTIERREZ,
HAKSHING WILLIAM TAM, MARK A
JANSSON and PROTECTMARRIAGE.COM -
YES ON 8, A PROJECT OF
CALIOFORNIA RENEWAL, as official
proponents of Proposition 8,

Defendant-Intervenors.

No C 09-2292 VRW

NOTICE TO PARTIES

1 In compliance with the Supreme Court's order in
2 Hollingsworth v Perry, 558 US --, No 09A648 (January 13, 2010), as
3 noted on the record at trial this date, the undersigned has
4 formally requested Chief Judge Kozinski to withdraw this case from
5 the pilot project on transmitting trial court proceedings to remote
6 federal courthouse locations or for broadcast or webcast approved
7 by the Ninth Circuit Judicial Council on December 17, 2009.
8 Transmission of the proceedings to other locations solely within
9 the San Francisco courthouse will continue along with recording for
10 use in chambers, as permitted in Civ LR 77-3.

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VAUGHN R WALKER
United States District Chief Judge

EXHIBIT 11

FILED

JAN 15 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

IN THE MATTER OF PILOT DISTRICT
COURT PUBLIC ACCESS PROGRAM
APPROVED DECEMBER 16, 2009

No. 2010–3

ORDER

KOZINSKI, Chief Judge:

I have received a request from the Chief Judge of the Northern District of California to remove Perry v. Schwarzenegger, No. 3:09-cv-02292-VRW, from this pilot program. The request is granted.

Order No. 2010–2 is rescinded.

EXHIBIT 12

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA



LOCAL RULES

Civil Local Rules

(f) Orders taxing costs pursuant to Civil L.R. 54-4.

Cross Reference

See ADR L.R. 4-11(d) “*Nonbinding Arbitration; Entry of Judgment on Award.*”

77-3. Photography and Public Broadcasting.

Unless allowed by a Judge or a Magistrate Judge with respect to his or her own chambers or assigned courtroom for ceremonial purposes, the taking of photographs, public broadcasting or televising, or recording for those purposes in the courtroom or its environs, in connection with any judicial proceeding, is prohibited. Electronic transmittal of courtroom proceedings and presentation of evidence within the confines of the courthouse is permitted, if authorized by the Judge or Magistrate Judge. The term “environs,” as used in this rule, means all floors on which chambers, courtrooms or on which Offices of the Clerk are located, with the exception of any space specifically designated as a Press Room. Nothing in this rule is intended to restrict the use of electronic means to receive or present evidence during Court proceedings.

77-4. Official Notices.

The following media are designated by this Court as its official means of giving public notice of calendars, General Orders, employment opportunities, policies, proposed modifications of these local rules or any matter requiring public notice. The Court may designate any one or a combination of these media for purposes of giving notice as it deems appropriate:

(a) **Bulletin Board.** A bulletin board for posting of official notices shall be located at the Office of the Clerk at each courthouse of this district.

(b) **Internet Site.** The Internet site, located at <http://www.cand.uscourts.gov>, is designated as the district’s official Internet site and may be used for the posting of official notices.

(c) **Newspapers.** The following newspapers are designated as official newspapers of the Court for the posting of official notices:

(1) The Recorder; or

(2) The San Francisco Daily Journal; or

(3) The San Jose Post-Record, for matters pending in the San Jose Division, in addition to the newspapers listed in subparagraphs (1) and (2); or

EXHIBIT 13



Public Notice

Subject:
**Renewed Notice Concerning
Revision of Civil Local Rule
77-3.**

Contact:

Date Posted:
02/04/2010

RENEWED NOTICE CONCERNING REVISION OF CIVIL LOCAL RULE 77-3

The United States District Court for the Northern District of California Court has approved a revision of Civil Local Rule 77-3, subject to public comment. The revision would add the underlined language below.

77-3. Photography and Public Broadcasting.

Unless allowed by a Judge or a Magistrate Judge with respect to his or her own chambers or assigned courtroom for ceremonial purposes or for participation in a pilot or other project authorized by the Judicial Council of the Ninth Circuit, the taking of photographs, public broadcasting or televising, or recording for those purposes in the courtroom or its environs, in connection with any judicial proceeding, is prohibited. Electronic transmittal of courtroom proceedings and presentation of evidence within the confines of the courthouse is permitted, if authorized by the Judge or Magistrate Judge. The term “environs,” as used in this rule, means all floors on which chambers, courtrooms or on which Offices of the Clerk are located, with the exception of any space specifically designated as a Press Room. Nothing in this rule is intended to restrict the use of electronic means to receive or present evidence during Court proceedings.

The comment period will run from February 4, 2010 to March 4, 2010. If you submitted a comment during the previous comment period, you need not resubmit it. The court is interested in comments that pertain to the revised rule and NOT to its application to a particular case. All comments and suggestions regarding the content of the revised rule should be sent in writing, no later than March 4, 2010 to:

Hon. Phyllis Hamilton
Chair of the Rules Committee
United States Courthouse
1301 Clay Street
Oakland, CA 94612

File for Download:

File Type: WordPerfect



new 77-3 notice.pdf

File Size: 28 KBytes

EXHIBIT 14

Civil Local Rules

(f) Orders taxing costs pursuant to Civil L.R. 54-4.

Cross Reference

See ADR L.R. 4-11(d) “*Nonbinding Arbitration; Entry of Judgment on Award.*”

77-3. Photography and Public Broadcasting.

Unless allowed by a Judge or a Magistrate Judge with respect to his or her own chambers or assigned courtroom for ceremonial purposes or for participation in a pilot or other project authorized by the Judicial Council of the Ninth Circuit, the taking of photographs, public broadcasting or televising, or recording for those purposes in the courtroom or its environs, in connection with any judicial proceeding, is prohibited. Electronic transmittal of courtroom proceedings and presentation of evidence within the confines of the courthouse is permitted, if authorized by the Judge or Magistrate Judge. The term “environs,” as used in this rule, means all floors on which chambers, courtrooms or on which Offices of the Clerk are located, with the exception of any space specifically designated as a Press Room. Nothing in this rule is intended to restrict the use of electronic means to receive or present evidence during Court proceedings.

77-4. Official Notices.

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(a) **Bulletin Board.** A bulletin board for posting of official notices shall be located at the Office of the Clerk at each courthouse of this district.

(b) **Internet Site.** The Internet site, located at <http://www.cand.uscourts.gov>, is designated as the district’s official Internet site and may be used for the posting of official notices.

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(1) The Recorder; or

(2) The San Francisco Daily Journal; or

(3) The San Jose Post-Record, for matters pending in the San Jose Division, in addition to the newspapers listed in subparagraphs (1) and (2); or

EXHIBIT 15

[Home](#) [Previous](#)

Northern District of California

Civil Local Rules

Rule Name:**Civil Local Rules****Last Modified:****05/2010****Published April, 2010**

NOTICE CONCERNING REVISIONS OF CIVIL LOCAL RULES 7-1, 72-2 and 72-3

The United States District Court for the Northern District of California Court has approved revisions of Civil Local Rules 7-1, 72-2 and 72-3, effective April 20, 2010.

In most circumstances, a request for judicial action is called a “motion” and certain administrative and electronic processes intended to bring such matters to the attention of the assigned judge are designed to capture “motions” that have been filed rather than “objections.” In order to assist the judges in ruling on requests for judicial action with respect to orders and findings of magistrate judges as expeditiously as possible, such requests will now be called “motions” rather than “objections.”

File for Download:

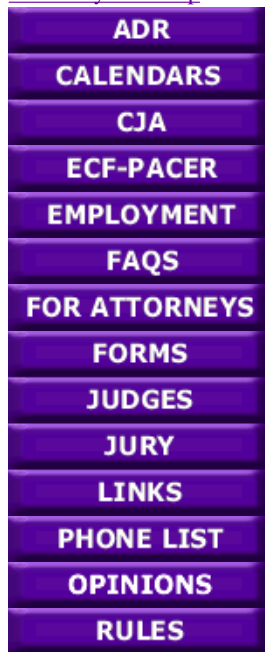
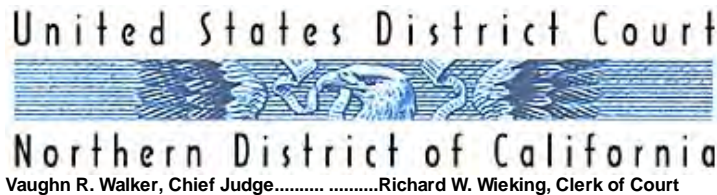
File Type: Adobe Acrobat PDF



PDF File: Civ4-10.pdf

File Size: 542 KBytes

EXHIBIT 16

[Text Only Site Map](#)[Local Rules](#)[General Orders](#)[Media Info](#)**PUBLIC ANNOUNCEMENTS****A NEW COURT WEBSITE IS UNDER DEVELOPMENT.**

Please take our brief survey. Your opinion is important to us.

CASES

Perry v. Schwarzenegger - C09-2292 VRW (Challenge to Proposition 8)

FTC v. Pricewert LLC dba 3fn.net, et al. C09-2407 RMW

USA v. Bonds 3:07-cr-00732

Plata/Coleman v. Schwarzenegger (Prison Overcrowding)

Bextra and Celebrex

RULES & ORDERS

Notice Concerning Adoption of General Order No. 62 - Electronic

Filing of Documents Under Seal

Notice Concerning Proposed Revisions of Civil Local Rule 7-3

Notice Concerning Revisions of Civil Local Rules 7-1, 72-2 and 72-3

Local Rules Changes - Effective 12/01/09

Revised General Order 56

Notice Concerning Revisions of Civil Local Rule, 3-2 and 5-1

Standing Order for All Judges of the Northern District of California Effective 3/1/07

CLERK'S NOTICES

Magistrate Judge Position Available in San Jose

Revised Civil Cover Sheet 1/2010

Revised Forms 12/09: Bill of Costs, Summons in a Civil Action and Summons on Third-Party Complaint

Notice re: Judge Hamilton's Relocation to Oakland

Clerk's Office Now Accepting Payments By Credit Card

New Federal Magistrate Judge Appointments

Judicial Misconduct and Disability

GENERAL NOTICES

RFQ for Off-Site Copying Services San Jose Court Location (Due June 1, 2010)

A NEW COURT WEBSITE IS UNDER DEVELOPMENT.

Please take our brief survey. Your opinion is important to us.

Announcing the selection of Professor Donna M. Ryu for a full-time Oakland Magistrate Judge position

Submitting Matters to the ADR Magistrate Judge

Pro Bono Project Guidelines

COURT**xxxINFORMATIONxxx**

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[Accessibility](#)

[ADR Magistrate Judge](#)

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[Magistrate Judge Profiles](#)

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[Local Rules](#)

[Naturalization](#)

[Practice Program](#)

[Pro Se Handbook](#)

[T-bill Rate for Judgment](#)

[Legal Help Center Open to Assist *Pro Se* Litigants](#)
[Pro Se Handbook - Now in Spanish & Chinese Translations](#)
[Courtroom Technology Upgrades](#)
[Teleconferencing Guidelines](#)

Please drop us
an email at:
Web-CAND@cand.uscourts.gov



Email
Announcements

EXHIBIT 17



Thomas R. Burke
Suite 800
505 Montgomery Street
San Francisco, CA 94111-6533

Tel 415.276.6552
Fax 415.276.6599

Email: thomasburke@dwt.com

May 18, 2010

The Honorable Vaughn R. Walker
Chief Judge of the U.S. District Court
Northern District of California
Courtroom 6, 17th Floor
450 Golden Gate Ave.
San Francisco, CA 94102

Re: **Case No. 09-CV-02292-VRW *Perry, et al v. Schwarzenegger, et al***
Media Coalition's Request for Camera Access to Record Closing Arguments

Dear Judge Walker:

On behalf Cable News Network, In Session (formerly known as "Court TV"), Fox News, NBC News, CBS News, the Hearst Corporation, Dow Jones & Company, Inc., the Associated Press, the Los Angeles Times, the McClatchy Company, KQED Public Radio (and on behalf of National Public Radio) and the Northern California Chapter of the Radio & Television News Directors Association (the "Media Coalition"), we write to inform the Court of the Media Coalition's interest in recording, broadcasting and webcasting the closing arguments (tentatively scheduled for June 16, 2010) in this case. We also request that the Court approve this access request and formally ask Chief Judge Kozinski to again include this case in the pilot project approved by the Ninth Circuit Judicial Council on December 17, 2009, for the sole purpose of recording, broadcasting and webcasting the parties' respective closing arguments.

The Media Coalition respectfully make this request with appreciation of the U.S. Supreme Court's opinion in *Hollingsworth v. Perry*, 558 U.S. ___, No. 09A648 (Jan. 13, 2010), which two days later, led this Court to formally request that Chief Judge Kozinski withdraw this case from the Ninth Circuit's pilot project. Since then, the United States District Court for the Northern District of California re-opened the public comment period (which ran from February 4 through March 4, 2010) and effective April 20, 2010, local rule 77-3 was amended to authorize "the taking of photographs, public broadcasting or televising, or recording" as a part of "a pilot or other project authorized by the Judicial Council of the Ninth Circuit." The Court's change to local rule 77-3 was consistent with federal law and the Supreme Court's January 13th opinion. Moreover, because the June 16th court proceedings will solely consist of the arguments of counsel – and not witness testimony or evidence – the concerns earlier reviewed by the Supreme Court should not preclude this opportunity to enhance the public's ability to witness the parties' respective closing arguments in this historic case.

DWT 14708154v1 0091603-000001

Anchorage	New York	Seattle
Bellevue	Portland	Shanghai
Los Angeles	San Francisco	Washington, D.C.

www.dwt.com

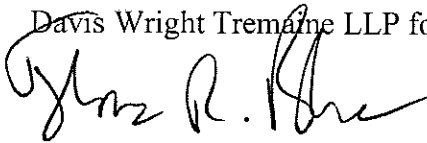
The Honorable Vaughn R. Walker
Chief Judge of the U.S. District Court
Northern District of California
May 18, 2010
Page 2

If the requested electronic access is granted by this Court and Chief Judge Kozinski, the Media Coalition will be prepared to assist the Court's staff to address any technical or logistical issues to facilitate the recording, broadcasting and webcasting of this anticipated one-day proceeding.

On behalf of the Media Coalition, we appreciate the Court's consideration of this request.

Respectfully submitted,

Davis Wright Tremaine LLP for the Media Coalition

A handwritten signature in black ink, appearing to read "Thomas R. Burke", written over the typed name.

Thomas R. Burke

EXHIBIT 18

Cooper & Kirk

Lawyers

A Professional Limited Liability Company

Charles J. Cooper
ccooper@cooperkirk.com

1523 New Hampshire Avenue NW
Washington, D.C. 20036

(202) 220-9600
Fax (202) 220-9601

May 24, 2010

The Honorable Vaughn R. Walker
Chief Judge
United States District Court for the
Northern District of California
450 Golden Gate Ave.
San Francisco, CA 94102

Re: Perry v. Schwarzenegger, No. C-09-2292 VRW (N.D. Cal.)

Dear Chief Judge Walker:

I write on behalf of Defendant-Intervenors Hollingsworth, Knight, Gutierrez, Jansson, and ProtectMarriage.com (“Proponents”) in response to the Media Coalition’s letter of May 18, 2010, Doc # 670, and to reiterate our objection to public broadcast of the trial proceedings in this case. Despite the Supreme Court’s determination that “[t]his case is ... not a good one for a [public broadcast] pilot program,” *Hollingsworth v. Perry*, 130 S. Ct. 705, 714 (2010), the Media Coalition again asks this Court to publicly broadcast a portion of the trial proceedings. Proponents respectfully submit that an order permitting public broadcast would violate (i) the letter and spirit of the Supreme Court’s stay order, (ii) the only valid Northern District of California and Ninth Circuit policies bearing upon this issue, and (iii) Proponents’ due process rights to a fair trial. Accordingly, the Media Coalition’s request should be promptly rejected.

First, an order allowing trial proceedings to be broadcast publicly would violate the Supreme Court’s stay of this Court’s order authorizing “the broadcast of [this] federal trial.” *Hollingsworth*, 130 S. Ct. at 706; *see also id.* at 709 (“We therefore stay the court’s January 7, 2010, order to the extent that it permits the live streaming of court proceedings....”). As the Court explained, even “[i]f Local Rule 77-3 had been validly revised, questions would still remain about the District Court’s decision to allow broadcasting of this particular trial.” *Id.* at 714. These questions led the Court to conclude, as noted above, that this case is ill-suited for inclusion in an experimental pilot program.

Second, under controlling Ninth Circuit policy, this Court has no authority to enter an order permitting public broadcast in this case, and to the extent revised L.R. 77-3 purports to allow for such authority, it is invalid. Pursuant to federal statute, the Ninth Circuit Judicial Council is authorized to make or amend “[a]ny general order relating to practice and procedure

The Honorable Vaughn R. Walker
 May 24, 2010
 Page 2 of 3

... *only after* giving appropriate public notice and an opportunity for comment.” 28 U.S.C. § 332(d)(1) (emphasis added). In 1996, the Ninth Circuit Judicial Council “adopt[ed] the policy of the Judicial Conference of the United States” banning the public broadcast of proceedings in federal district courts. *See* Doc # 324-1 at 4 (hereinafter the “1996 Policy”). Since that time, the Judicial Council has not given “appropriate notice and an opportunity for comment” of a proposed amendment to the governing 1996 Policy. The Judicial Council did issue a press release on December 17, 2009, stating that it “has approved, on an experimental basis, the limited use of cameras in federal district courts within the circuit”—an “action” which purports to “amend[] [the] 1996 Ninth Circuit policy.”¹ The December 17 press release, however, did not comport with the statutory requirements for notice and comment and is therefore invalid. *See* 130 S. Ct. at 711 (concluding that the amended version of L.R. 77-3 “appears to be invalid” because the Court failed to give the statutorily required public notice and an opportunity for comment); *see also id.* at 712 (citing 28 U.S.C. § 332(d)(1) and noting that the Ninth Circuit’s policy amendment “was not adopted after notice and comment procedures”). Thus, because the 1996 Policy remains the only valid Circuit rule in effect, this Court has no authority to permit public broadcast of trial proceedings. *See* 28 U.S.C. § 332(d)(2) (“All judicial officers and employees of the circuit shall promptly carry into effect all orders of the judicial council.”).

Third, neither the amendment to L.R. 77-3 nor the Ninth Circuit Judicial Council’s press release sets forth any standards or guidelines to regulate the selection of cases and the use of cameras during trial proceedings. The Supreme Court explicitly emphasized that this was a serious defect that supported its “decision to grant extraordinary relief.” *Hollingsworth*, 130 S. Ct. at 713; *see also id.* (“The District Court here attempted to revise its rules in haste ... to allow broadcasting of this high-profile trial without any considered standards or guidelines in place.”); *id.* (explaining that “the lack of a regular rule with proper standards to determine the guidelines for broadcasting could compromise the orderly, decorous, rational traditions that courts rely upon to ensure the integrity of their own judgments”); *id.* (stating that “Congress has illustrated the need for careful guidelines and standards” in any program authorizing public broadcast of federal trial proceedings). Indeed, the Judicial Council’s press release authorizes the “chief judge of the district court in consultation with the chief circuit judge” to select cases for public broadcast of district court trial proceedings. It appears, in fact, that the chief judges of the District Court and the Ninth Circuit have absolute discretion to select these cases. Yet neither the press release nor revised L.R. 77-3 provides any procedure by which litigants and other interested parties may present concerns and objections to the chief judges. This raises serious due process concerns.

Fourth, there is little merit to the Media Coalition’s argument that “the concerns earlier reviewed by the Supreme Court should not preclude” the public broadcast of closing arguments because they “will solely consist of the arguments of counsel—and not witness testimony or evidence.” As an initial matter, the parties may play excerpts from the video-recorded

¹ *See* http://www.ce9.uscourts.gov/cm/articlefiles/137-Dec17_Cameras_Press%20Relase.pdf.

The Honorable Vaughn R. Walker
May 24, 2010
Page 3 of 3

depositions during the course of closing arguments. In any case, in *Hollingsworth*, the Supreme Court specifically cited the findings and policies of the Judicial Conference of the United States, noting that while those policies “may not be binding on the lower courts, they are at the very least entitled to respectful consideration.” 130 S. Ct. at 712 (quotation marks omitted). While it is true that the deleterious effect of public broadcast on witnesses is one of the concerns undergirding the Judicial Conference’s policy, it is by no means the only concern. As we have explained previously, the Judicial Conference’s policy also rests on findings that public broadcast has negative effects on some judges and attorneys, including distraction, grandstanding, and avoidance of unpopular decisions or positions. Moreover, the Judicial Conference has repeatedly stressed that “the presence of cameras in a trial courtroom ... increases security and safety issues” and that “[t]hreats against judges, lawyers, and other participants could increase even beyond the current disturbing level.” Doc # 324-2 at 4. And all of these findings were with respect to run-of-the-mine cases, not “high-profile, divisive cases” like this one. *Hollingsworth*, 130 S. Ct. at 714 (citing “warning by Judge Edward R. Becker that in ‘truly high-profile cases,’ one can ‘[j]ust imagine what the findings would be’”).

For all of these reasons, and in light of the Supreme Court’s stay opinion, Proponents respectfully submit that the Court should deny the Media Coalition’s renewed request to publicly broadcast this federal trial.

Respectfully submitted,

/s/ Charles J. Cooper

Charles J. Cooper
Counsel for Proponents

EXHIBIT 19

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KRISTIN M PERRY, SANDRA B STIER,
PAUL T KATAMI and JEFFREY J
ZARRILLO,

Plaintiffs,

CITY AND COUNTY OF SAN FRANCISCO,

Plaintiff-Intervenor,

v

ARNOLD SCHWARZENEGGER, in his
official capacity as governor of
California; EDMUND G BROWN JR, in
his official capacity as attorney
general of California; MARK B
HORTON, in his official capacity
as director of the California
Department of Public Health and
state registrar of vital
statistics; LINETTE SCOTT, in her
official capacity as deputy
director of health information &
strategic planning for the
California Department of Public
Health; PATRICK O'CONNELL, in his
official capacity as clerk-
recorder of the County of
Alameda; and DEAN C LOGAN, in his
official capacity as registrar-
recorder/county clerk for the
County of Los Angeles,

Defendants,

DENNIS HOLLINGSWORTH, GAIL J
KNIGHT, MARTIN F GUTIERREZ,
HAKSHING WILLIAM TAM, MARK A
JANSSON and PROTECTMARRIAGE.COM -
YES ON 8, A PROJECT OF
CALIOFORNIA RENEWAL, as official
proponents of Proposition 8,

Defendant-Intervenors.

No C 09-2292 VRW
ORDER

1 In the event any party wishes to use portions of the
2 trial recording during closing arguments, a copy of the video can
3 be made available to the party. Parties will of course be
4 obligated to maintain as strictly confidential any copy of the
5 video pursuant to paragraph 7.3 of the protective order, Doc #425.
6 Any party wishing to make use of the video during closing arguments
7 is DIRECTED to inform the court clerk not later than June 2, 2010
8 at 5 PM PDT.

9
10 IT IS SO ORDERED.

11 
12 _____

13 VAUGHN R WALKER
14 United States District Chief Judge
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EXHIBIT 20

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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

6 KRISTIN M. PERRY, SANDRA B. STIER,
7 PAUL T. KATAMI, and JEFFREY J.
8 ZARRILLO,

9 Plaintiffs,

10 v.

11 ARNOLD SCHWARZENEGGER, in his official
12 capacity as Governor of California; EDMUND
13 G. BROWN, JR., in his official capacity as
14 Attorney General of California; MARK B.
15 HORTON, in his official capacity as Director of
16 the California Department of Public Health and
17 State Registrar of Vital Statistics; LINETTE
18 SCOTT, in her official capacity as Deputy
19 Director of Health Information & Strategic
20 Planning for the California Department of Public
21 Health; PATRICK O'CONNELL, in his official
22 capacity as Clerk-Recorder for the County of
23 Alameda; and DEAN C. LOGAN, in his official
24 capacity as Registrar-Recorder/County Clerk for
25 the County of Los Angeles,

26 Defendants.
27
28

CASE NO. 09-CV-2292 VRW (JCS)

AMENDED PROTECTIVE ORDER

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Protective Order.

(g) the author of the document or the original source of the information.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

(a) the Receiving Party’s Outside Counsel of record in this action, (or in the case of a government entity or government official sued in his or her official capacity, such entity’s or official’s counsel of record in this action), as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Agreement to Be Bound by Protective Order” that is attached hereto as Exhibit A, provided that it shall not be provided to any Counsel or employee who held an “official position” in any primarily formed ballot committee related to Proposition 8 (*see* <http://cal-access.ss.ca.gov/campaign/measures/detail.aspx?id=1302602&session=2007>) or now holds an official position in a similar committee that is now circulating petitions for a 2010 ballot initiative to repeal Proposition 8. For purposes of sections 7.3 and 7.5 an “official position” is defined as one which authorizes the holder of said position to contractually bind (either solely or in conjunction with others) the primarily formed ballot committee (or similar committee circulating petitions to place an initiative on the 2010 ballot) with respect to matters relating to communications disseminated by the committee or otherwise to spend funds exceeding \$1,000 on behalf of the committee, provided, however, that notice of all such attorneys and employees to whom HIGHLY CONFIDENTIAL – ATTORNEYS’

1 EYES ONLY information will be disclosed shall be given not less than 24 hours in advance of
 2 disclosure to give the other parties the opportunity to object to the disclosure and seek relief from the
 3 court on grounds specific to the designated attorney or employee;

4 (b) Experts (as defined in this Order) (1) to whom disclosure is reasonably
 5 necessary for this litigation, (2) who have signed the “Agreement to Be Bound by Protective Order”
 6 (Exhibit A), provided that it shall not be provided to any expert who held an “official position” in any
 7 primarily formed ballot committee related to Proposition 8 (see [http://cal-access.ss.ca.gov/campaign/](http://cal-access.ss.ca.gov/campaign/measures/detail.aspx?id=1302602&session=2007)
 8 [measures/detail.aspx?id=1302602&session=2007](http://cal-access.ss.ca.gov/campaign/measures/detail.aspx?id=1302602&session=2007)) or now holds an official position in a similar
 9 committee that is now circulating petitions for a 2010 ballot initiative to repeal Proposition 8, provided,
 10 however, that notice of all such experts to whom HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 11 ONLY information will be disclosed shall be given not less than 24 hours in advance of disclosure to
 12 give the other parties the opportunity to object to the disclosure and seek relief from the court on
 13 grounds specific to the designated expert;

14 (c) the Court and its personnel;

15 (d) court reporters, their staffs, and professional vendors to whom disclosure is
 16 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective
 17 Order” (Exhibit A); and

18 (e) the author of the document or the original source of the information.

19 7.4 Disclosure Limited to Receiving Party. A Receiving Party shall not disclosure any
 20 materials designated “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” to any other party
 21 to the litigation unless the party has agreed to be bound by this Protective Order.

22 7.5 Use of Protected Material at Depositions. Before any deposition in which the noticing
 23 Party reasonably anticipates using any Protected Materials received in this matter, the noticing Party
 24 must inform all other parties. Thereafter, any party who wishes to participate in said deposition must
 25 staff the deposition with persons who neither have held an “official position” in any primarily formed
 26 ballot committee related to Proposition 8 (see [http://cal-access.ss.ca.gov/campaign/measures/](http://cal-access.ss.ca.gov/campaign/measures/detail.aspx?id=1302602&session=2007)
 27 [detail.aspx?id=1302602&session=2007](http://cal-access.ss.ca.gov/campaign/measures/detail.aspx?id=1302602&session=2007)) nor hold an official position in a similar committee that is now
 28 circulating petitions for a 2010 ballot initiative to repeal Proposition 8.

EXHIBIT 21

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Attorneys for Plaintiffs
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PAUL T. KATAMI, and JEFFREY J. ZARRILLO

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

KRISTIN M. PERRY, *et al.*,
Plaintiffs,
and
CITY AND COUNTY OF SAN FRANCISCO,
Plaintiff-Intervenor,
v.
ARNOLD SCHWARZENEGGER, *et al.*,
Defendants,
and
PROPOSITION 8 OFFICIAL PROPONENTS
DENNIS HOLLINGSWORTH, *et al.*,
Defendant-Intervenors.

CASE NO. 09-CV-2292 VRW

**NOTICE TO COURT CLERK
RE PLAINTIFFS' REQUEST FOR A
COPY OF THE TRIAL RECORDING**

Trial: January 11-27, 2010

Judge: Chief Judge Vaughn R. Walker
Magistrate Judge Joseph C. Spero

Location: Courtroom 6, 17th Floor

Pursuant to this Court's May 31, 2010 order, Doc #672, Plaintiffs respectfully request a copy of the trial recording for possible use during closing arguments.

Respectfully submitted,

DATED: June 2, 2010

GIBSON, DUNN & CRUTCHER LLP

Theodore B. Olson

Theodore J. Boutrous, Jr.

Christopher D. Dusseault

Ethan D. Dettmer

Matthew D. McGill

Amir C. Tayrani

Sarah E. Piepmeier

Theane Evangelis Kapur

Enrique A. Monagas

By: _____/s/

Theodore B. Olson

and

BOIES, SCHILLER & FLEXNER LLP

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PAUL T. KATAMI, and JEFFREY J. ZARRILLO

EXHIBIT 22

1 With the Court's permission today, during closings
2 Mr. Olson will be playing some of the video clips from the
3 trial proceedings. We propose, if this works for the Court,
4 that at the end of the day we would offer the transcript pages
5 for the record, whenever it's convenient for the Court, rather
6 than doing it for the closings. Then we'll have that for the
7 record.

8 **THE COURT:** That would seem to make sense. Does it
9 not, Mr. Cooper?

10 **MR. COOPER:** I'm sorry, Your Honor. I'm not sure I
11 followed the proposal.

12 **THE COURT:** Maybe you can clarify.

13 **MR. BOUTROUS:** I can clarify.

14 We will be playing video clips from the trial
15 proceedings during the closing arguments. At the end of the
16 day, or whenever it is convenient for the Court, we would offer
17 into the record the transcript pages of the clips that we have
18 played in court, marked as exhibits for the record.

19 **MR. COOPER:** I understand. And I see no objection to
20 that, Your Honor.

21 **THE COURT:** Fine. That will be fine.

22 **MR. BOUTROUS:** Thank you.

23 **THE COURT:** Any other housekeeping? Good.
24 Mr. Olson.
25

EXHIBIT 23

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DANNY CHOU, State Bar #180240
Chief of Complex and Special Litigation
RONALD P. FLYNN, State Bar #1841867
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KRISTIN M. PERRY, et al,

Plaintiffs,

CITY AND COUNTY OF SAN
FRANCISCO,

Plaintiff-Intervenor

vs.

ARNOLD SCHWARZENEGGER, in his
official capacity as Governor of California, et
al

Defendants,

DENNIS HOLINGSWORTH, as official
proponents of Proposition 8, et al,

Defendant-Intervenors,

Case No. 09-CV-2292 VRW

**NOTICE TO COURT CLERK
FROM PLAINTIFF-INTERVENOR
CITY AND COUNTY OF SAN FRANCISCO
RE USE OF VIDEO**

Trial: Jan. 11-27, 2010

Judge: Chief Judge Vaughn R. Walker

Location: Courtroom 6, 17th Floor

NOTICE

Please take NOTICE that pursuant to the Court's Order [Doc #672], Plaintiff-Intervenor wishes to obtain a copy of the following portions of the trial video to review for possible use at closing argument:

Trial Date	Witness
January 14, 2010	Egan
January 15, 2010	Zia
January 19, 2010	Sanders / Badgett
January 20, 2010	Kendall

Plaintiff-Intervenor will maintain the video as strictly confidential pursuant to paragraph 7.3 of the protective order in this case [Doc #425].

Dated: June 2, 2010

DENNIS J. HERRERA
City Attorney
THERESE M. STEWART
Chief Deputy City Attorney
DANNY CHOU
Chief of Complex & Special Litigation
RONALD P. FLYNN
VINCE CHHABRIA
ERIN BERNSTEIN
CHRISTINE VAN AKEN
MOLLIE M. LEE
Deputy City Attorneys

By: _____/s/_____
THERESE M. STEWART

Attorneys for Plaintiff-Intervenor
CITY AND COUNTY OF SAN FRANCISCO

EXHIBIT 24

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KRISTIN M PERRY, SANDRA B STIER,
PAUL T KATAMI and JEFFREY J
ZARRILLO,

Plaintiffs,

CITY AND COUNTY OF SAN FRANCISCO,

Plaintiff-Intervenor,

v

ARNOLD SCHWARZENEGGER, in his
official capacity as governor of
California; EDMUND G BROWN JR, in
his official capacity as attorney
general of California; MARK B
HORTON, in his official capacity
as director of the California
Department of Public Health and
state registrar of vital
statistics; LINETTE SCOTT, in her
official capacity as deputy
director of health information &
strategic planning for the
California Department of Public
Health; PATRICK O'CONNELL, in his
official capacity as clerk-
recorder of the County of
Alameda; and DEAN C LOGAN, in his
official capacity as registrar-
recorder/county clerk for the
County of Los Angeles,

Defendants,

DENNIS HOLLINGSWORTH, GAIL J
KNIGHT, MARTIN F GUTIERREZ,
HAKSHING WILLIAM TAM, MARK A
JANSSON and PROTECTMARRIAGE.COM -
YES ON 8, A PROJECT OF
CALIOFORNIA RENEWAL, as official
proponents of Proposition 8,

Defendant-Intervenors.

No C 09-2292 VRW
ORDER

1 The court is in receipt of the letter dated May 18, 2010
2 from a coalition of media organizations informing the court of the
3 media coalition's interest in recording, broadcasting and
4 webcasting closing arguments in the above-captioned case. Doc
5 #670.

6 The court removed the case from the Ninth Circuit pilot
7 project on audio-video recording and transmission on January 15,
8 2010. Doc #463. No further request to include the case in the
9 pilot program is contemplated. The media coalition's request is
10 therefore DENIED.

11
12
13 IT IS SO ORDERED.

14
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16 

17 VAUGHN R WALKER
18 United States District Chief Judge
19
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21
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24
25
26
27
28

EXHIBIT 25

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and PROTECTMARRIAGE.COM – YES ON 8, A
PROJECT OF CALIFORNIA RENEWAL

* Admitted *pro hac vice*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

KRISTIN M. PERRY, SANDRA B. STIER, PAUL
T. KATAMI, and JEFFREY J. ZARRILLO,

Plaintiffs,

CITY AND COUNTY OF SAN FRANCISCO,

Plaintiff-Intervenor,

v.

ARNOLD SCHWARZENEGGER, in his official
capacity as Governor of California; EDMUND G.
BROWN, JR., in his official capacity as Attorney

CASE NO. 09-CV-2292 VRW

**DECLARATION OF PETER A.
PATTERSON IN SUPPORT OF
DEFENDANT-INTERVENORS
DENNIS HOLLINGSWORTH, GAIL
J. KNIGHT, MARTIN F. GUTIERREZ,
MARK A. JANSSON,
AND PROTECTMARRIAGE.COM'S
MOTION FOR ADMINISTRATIVE
RELIEF**

1 General of California; MARK B. HORTON, in his
2 official capacity as Director of the California
3 Department of Public Health and State Registrar of
4 Vital Statistics; LINETTE SCOTT, in her official
5 capacity as Deputy Director of Health Information
6 & Strategic Planning for the California Department
7 of Public Health; PATRICK O'CONNELL, in his
8 official capacity as Clerk-Recorder for the County
9 of Alameda; and DEAN C. LOGAN, in his official
10 capacity as Registrar-Recorder/County Clerk for
11 the County of Los Angeles,

12 Defendants,

13 and

14 PROPOSITION 8 OFFICIAL PROPONENTS
15 DENNIS HOLLINGSWORTH, GAIL J.
16 KNIGHT, MARTIN F. GUTIERREZ, HAK-
17 SHING WILLIAM TAM, and MARK A.
18 JANSSON; and PROTECTMARRIAGE.COM –
19 YES ON 8, A PROJECT OF CALIFORNIA
20 RENEWAL,

21 Defendant-Intervenors.

22 Additional Counsel for Defendant-Intervenors

23 ALLIANCE DEFENSE FUND

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* Admitted *pro hac vice*

1 I, Peter A. Patterson, declare as follows:

2 1. I am an attorney licensed to practice law in the State of Ohio and am admitted *pro hac vice*
3 in this case. I am an associate at the law firm of Cooper & Kirk, PLLC, counsel of record for
4 Defendant-Intervenors Dennis Hollingsworth, Gail Knight, Martin Gutierrez, Mark Jansson, and
5 ProtectMarriage.com ("Proponents"). I make this declaration in support of Proponents' Motion for
6 Administrative Relief.

7 2. After closing arguments were held on June 16, 2010, Proponents requested Plaintiffs and
8 Plaintiff-Intervenor promptly to return all copies of the trial video in their possession to the Court,
9 but they denied the request.

10 3. A stipulation could not be reached in this matter because Plaintiffs and Plaintiff-Intervenor
11 declined Proponents' request to return to the Court all copies of the trial video in their possession.

1 I declare, under penalty of perjury under the laws of the United States, that these facts are true and
2 correct and that this Declaration is executed this 29th day of June, 2010, at Cincinnati, Ohio.

3
4 Dated: June 29, 2010


Peter A. Patterson

EXHIBIT 26

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 PROJECT OF CALIFORNIA RENEWAL

* Admitted *pro hac vice*

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

KRISTIN M. PERRY, SANDRA B. STIER, PAUL
 T. KATAMI, and JEFFREY J. ZARRILLO,

Plaintiffs,

CITY AND COUNTY OF SAN FRANCISCO,

Plaintiff-Intervenor,

v.

ARNOLD SCHWARZENEGGER, in his official
 capacity as Governor of California; EDMUND G.
 BROWN, JR., in his official capacity as Attorney
 General of California; MARK B. HORTON, in his

CASE NO. 09-CV-2292 VRW

**DEFENDANT-INTERVENORS
 DENNIS HOLLINGSWORTH, GAIL
 J. KNIGHT, MARTIN F. GUTIERREZ,
 MARK A. JANSSON,
 AND PROTECTMARRIAGE.COM'S
 MOTION FOR ADMINISTRATIVE
 RELIEF**

official capacity as Director of the California Department of Public Health and State Registrar of Vital Statistics; LINETTE SCOTT, in her official capacity as Deputy Director of Health Information & Strategic Planning for the California Department of Public Health; PATRICK O'CONNELL, in his official capacity as Clerk-Recorder for the County of Alameda; and DEAN C. LOGAN, in his official capacity as Registrar-Recorder/County Clerk for the County of Los Angeles,

Defendants,

and

PROPOSITION 8 OFFICIAL PROPONENTS
DENNIS HOLLINGSWORTH, GAIL J.
KNIGHT, MARTIN F. GUTIERREZ, HAK-
SHING WILLIAM TAM, and MARK A.
JANSSON; and PROTECTMARRIAGE.COM –
YES ON 8, A PROJECT OF CALIFORNIA
RENEWAL,

Defendant-Intervenors.

Additional Counsel for Defendant-Intervenors

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* Admitted *pro hac vice*

TO THE PARTIES AND THEIR ATTORNEYS OF RECORD: PLEASE TAKE

NOTICE that pursuant to Civ. L.R. 7-11, Defendant-Intervenors Hollingsworth, Knight, Gutierrez, Jansson, and ProtectMarriage.com (“Proponents”) hereby move the Court for an order requiring Plaintiffs and Plaintiff-Intervenor to return to the Court immediately all copies of the trial video in their possession.

BACKGROUND

On January 13, 2010, the Supreme Court stayed this Court’s order that the trial proceedings in this case be recorded and broadcast beyond the San Francisco federal courthouse. *Hollingsworth v. Perry*, 130 S. Ct. 705, 714-15 (2010). The stay remains in effect. *Id.*

In court the next day, Proponents asked “for clarification ... that the recording of these proceedings has been halted, the tape recording itself.” Trial Tr. 753. When the Court responded that the recording had “*not* been altered,” Proponents reiterated that, “in light of the stay, ... the court’s local rule ... prohibit[s] continued tape recording of the proceedings.” *Id.* at 753-54 (emphasis added). Rejecting Proponents’ objection, the Court stated that the “local rule permits ... recording for purposes of *use in chambers* and that is customarily done when we have these remote courtrooms or the overflow courtrooms.” *Id.* (emphasis added). The Court concluded, “that’s the purpose for which the recording is going to be made going forward.” *Id.*

On May 31, the Court *sua sponte* announced: “In the event any party wishes to use portions of the trial recording during closing arguments, a copy of the video can be made available to the party.” Doc #672 at 2. Plaintiffs and Plaintiff-Intervenor each requested and obtained copies of the trial video—the former requesting the entire video, the latter the testimony of certain witnesses. *See* Doc ##674, 675.

Closing arguments were held on June 16. Proponents thereafter requested Plaintiffs and Plaintiff-Intervenor promptly to return all copies of the trial video in their possession to the Court, but they denied the request. *See* Decl. or Peter A. Patterson in Support of Proponents’ Motion for Administrative Relief.

ARGUMENT

Now that closing arguments are complete, the sole purpose identified by this Court for

1 disseminating copies of the trial video to Plaintiffs and Plaintiff-Intervenor—potential use at
2 closing argument—has been satisfied. There is simply no legitimate justification for permitting
3 Plaintiffs and Plaintiff-Intervenor to maintain possession of copies of the trial video.

4 What is more, in issuing its stay order, the Supreme Court held that “irreparable harm”
5 would “likely result” from public broadcast of the trial. *Hollingsworth*, 130 S. Ct. at 712. The risk
6 of such harm, of course, does not depend on the means by which a trial recording is made public.
7 And even with this Court’s requirement that all copies of the trial video be “maintain[ed] as strictly
8 confidential,” Doc #672 at 2, it cannot be denied that dissemination beyond the confines of the
9 Court has increased the possibility of accidental public disclosure. In light of this possibility, we
10 respectfully submit that there is no justification for this Court to permit Plaintiffs and Plaintiff-
11 Intervenor to maintain copies of the trial recording.

12 CONCLUSION

13 For these reasons, Proponents request an order directing Plaintiffs and Plaintiff-Intervenor
14 to return to the Court immediately all copies of the trial video in their possession.

15
16 Dated: June 29, 2010

17 COOPER AND KIRK, PLLC
18 ATTORNEYS FOR DEFENDANT-INTERVENORS
19 DENNIS HOLLINGSWORTH, GAIL J. KNIGHT,
20 MARTIN F. GUTIERREZ, MARK A. JANSSON, AND
21 PROTECTMARRIAGE.COM – YES ON 8, A PROJECT
22 OF CALIFORNIA RENEWAL

23
24 By: /s/Charles J. Cooper
25 Charles J. Cooper
26
27
28

EXHIBIT 27

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Attorneys for Plaintiff-Intervenor
CITY AND COUNTY OF SAN FRANCISCO

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

KRISTIN M. PERRY, *et al.*,
Plaintiffs,
and
CITY AND COUNTY OF SAN FRANCISCO,
Plaintiff-Intervenor,
v.
ARNOLD SCHWARZENEGGER, *et al.*,
Defendants,
and
PROPOSITION 8 OFFICIAL PROPONENTS
DENNIS HOLLINGSWORTH, *et al.*,
Defendant-Intervenors.

CASE NO. 09-CV-2292 VRW

**PLAINTIFFS' AND PLAINTIFF-
INTERVENOR'S OPPOSITION TO
DEFENDANT-INTERVENORS' MOTION
FOR ADMINISTRATIVE RELIEF**

Trial: January 11-27, 2010
Closing: June 16, 2010

Judge: Chief Judge Vaughn R. Walker
Magistrate Judge Joseph C. Spero

Location: Courtroom 6, 17th Floor

Plaintiffs and Plaintiff-Intervenor respectfully request that the Court deny Defendant-Intervenors' motion for administrative relief. Doc #696. On May 31, 2010, the Court informed the parties that the trial video would be made available "[i]n the event any party wishes to use portions of the trial recording during closing arguments." Doc #672. The Court stated that "[p]arties will of course be obligated to maintain as strictly confidential any copy of the video pursuant to paragraph 7.3 of the protective order, Doc #425." *Id.* Plaintiffs and Plaintiff-Intervenor both requested copies of the trial video, Docs #674, 675, and Plaintiffs used portions of the video during closing argument.

Because this Court has yet to issue its decision and may request additional arguments or briefing before doing so, Defendant-Intervenors' request for the immediate return of the trial video should be denied as premature. Plaintiffs and Plaintiff-Intervenor respectfully propose that once judgment is entered, the parties and the Court evaluate whether, and to what degree, the trial recording would be useful to the parties or to the Court in connection with any additional proceedings and/or appeal. In the meantime, the protective order remains in place and ensures that the trial recording will not be publicly disclosed.

Respectfully submitted,

DATED: June 29, 2010

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By: _____ /s/
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and

///

///

///

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By: _____/s/_____
Therese M. Stewart

Attorneys for Plaintiff-Intervenor
CITY AND COUNTY OF SAN FRANCISCO

ATTESTATION PURSUANT TO GENERAL ORDER NO. 45

Pursuant to General Order No. 45 of the Northern District of California, I attest that concurrence in the filing of the document has been obtained from each of the other signatories to this document.

By: _____/s/
Theodore B. Olson

EXHIBIT 28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KRISTIN M PERRY, SANDRA B STIER,
PAUL T KATAMI and JEFFREY J
ZARRILLO,

Plaintiffs,

CITY AND COUNTY OF SAN FRANCISCO,

Plaintiff-Intervenor,

v

ARNOLD SCHWARZENEGGER, in his
official capacity as Governor of
California; EDMUND G BROWN JR, in
his official capacity as Attorney
General of California; MARK B
HORTON, in his official capacity
as Director of the California
Department of Public Health and
State Registrar of Vital
Statistics; LINETTE SCOTT, in her
official capacity as Deputy
Director of Health Information &
Strategic Planning for the
California Department of Public
Health; PATRICK O'CONNELL, in his
official capacity as Clerk-
Recorder of the County of
Alameda; and DEAN C LOGAN, in his
official capacity as Registrar-
Recorder/County Clerk for the
County of Los Angeles,

Defendants,

DENNIS HOLLINGSWORTH, GAIL J
KNIGHT, MARTIN F GUTIERREZ, HAK-
SHING WILLIAM TAM, MARK A
JANSSON and PROTECTMARRIAGE.COM -
YES ON 8, A PROJECT OF CALIFORNIA
RENEWAL, as official proponents
of Proposition 8,

Defendant-Intervenors.

No C 09-2292 VRW

PRETRIAL PROCEEDINGS AND
TRIAL EVIDENCE

♦

CREDIBILITY DETERMINATIONS

♦

FINDINGS OF FACT

♦

CONCLUSIONS OF LAW

♦

ORDER

1 Defendant-intervenors, the official proponents of
2 Proposition 8 under California election law ("proponents"), were
3 granted leave in July 2009 to intervene to defend the
4 constitutionality of Proposition 8. Doc #76. On January 8, 2010,
5 Hak-Shing William Tam, an official proponent and defendant-
6 intervenor, moved to withdraw as a defendant, Doc #369; Tam's
7 motion is denied for the reasons stated in a separate order filed
8 herewith. Plaintiff-intervenor City and County of San Francisco
9 ("CCSF" or "San Francisco") was granted leave to intervene in
10 August 2009. Doc #160 (minute entry).

11 The court denied plaintiffs' motion for a preliminary
12 injunction on July 2, 2009, Doc #77 (minute entry), and denied
13 proponents' motion for summary judgment on October 14, 2009, Doc
14 #226 (minute entry). Proponents moved to realign the Attorney
15 General as a plaintiff; the motion was denied on December 23, 2009,
16 Doc #319. Imperial County, a political subdivision of California,
17 sought to intervene as a party defendant on December 15, 2009, Doc
18 #311; the motion is denied for the reasons addressed in a separate
19 order filed herewith.

20 The parties disputed the factual premises underlying
21 plaintiffs' claims and the court set the matter for trial. The
22 action was tried to the court January 11-27, 2010. The trial
23 proceedings were recorded and used by the court in preparing the
24 findings of fact and conclusions of law; the clerk is now DIRECTED
25 to file the trial recording under seal as part of the record. The
26 parties may retain their copies of the trial recording pursuant to
27 the terms of the protective order herein, see Doc #672.

28 \\\

Proponents' motion to order the copies' return, Doc #698, is accordingly DENIED.

PLAINTIFFS' CASE AGAINST PROPOSITION 8

The Due Process Clause provides that no "State [shall] deprive any person of life, liberty, or property, without due process of law." US Const Amend XIV, § 1. Plaintiffs contend that the freedom to marry the person of one's choice is a fundamental right protected by the Due Process Clause and that Proposition 8 violates this fundamental right because:

1. It prevents each plaintiff from marrying the person of his or her choice;
2. The choice of a marriage partner is sheltered by the Fourteenth Amendment from the state's unwarranted usurpation of that choice; and
3. California's provision of a domestic partnership — a status giving same-sex couples the rights and responsibilities of marriage without providing marriage — does not afford plaintiffs an adequate substitute for marriage and, by disabling plaintiffs from marrying the person of their choice, invidiously discriminates, without justification, against plaintiffs and others who seek to marry a person of the same sex.

The Equal Protection Clause provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." US Const Amend XIV, § 1. According to plaintiffs, Proposition 8 violates the Equal Protection Clause because it:

1. Discriminates against gay men and lesbians by denying them a right to marry the person of their choice whereas heterosexual men and women may do so freely; and
2. Disadvantages a suspect class in preventing only gay men and lesbians, not heterosexuals, from marrying.

Plaintiffs argue that Proposition 8 should be subjected to heightened scrutiny under the Equal Protection Clause because gays

EXHIBIT 29

No. _____

**In The
Supreme Court of the United States**

DENNIS HOLLINGSWORTH, et al.,

Petitioners,

v.

KRISTIN M. PERRY, et al.,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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April 8, 2010

order denying the mandamus petition, and remand to the Ninth Circuit with instructions to dismiss the mandamus petition. *See United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950).

I. Petitioners' Mandamus Petition Is Moot

An “actual controversy must be extant at all stages of review.” *Alvarez v. Smith*, 130 S. Ct. 576, 580 (2009) (quotation marks omitted). Where there had been but “no longer [is] any actual controversy between the parties,” the case is moot. *See id.* at 580-81. The district court's actions subsequent to the Court's issuance of the stay appear to have eliminated the controversy underlying Petitioners' mandamus petition and thus to have rendered that petition moot.

The district court has withdrawn its January 7 order allowing audio-video recording and public broadcast of the trial proceedings and, concomitantly, Chief Judge Kozinski has rescinded his order approving the district court's broadcast order. The district court has also withdrawn the amendment to Local Rule 77-3 that purportedly authorized its broadcast order. Most importantly, the district court repeatedly and unequivocally assured Petitioners that its continued recording of the trial proceedings was not for the purpose of public dissemination, but rather solely for that court's use in chambers. And the district court has stated that it has not requested

authorization to publicly broadcast the closing argument.

As a result of these post-stay actions by the district court, Petitioners have, in effect, obtained the relief they sought through their mandamus petition; namely, preventing the district court from enforcing its order to allow the trial proceedings to be broadcast publicly or to be recorded for later public dissemination. Indeed, Plaintiffs themselves have acknowledged the “fact that these proceedings would not be broadcast to the public in any form” after the district court “withdrew its request to broadcast the proceedings to other federal courthouses and made clear that no such broadcast would take place.” App. 26-27.

Petitioners’ mandamus petition, therefore, appears to be moot. See *Williams v. Simons*, 355 U.S. 49, 57 (1957) (“By vacating the temporary restraining order and dismissing the complaint, the District Court has brought to pass one alternative of the order petitioners would have this Court issue, thus rendering the petition for all practical purposes moot.”); *Cotlow v. Emison*, 502 U.S. 1068 (1992) (“The order of January 10, 1992, having vacated the order from which the appeal is taken, the appeal is dismissed as moot.”).

II. The Court Should Vacate the Ninth Circuit’s Order Denying the Mandamus Petition and Remand for Dismissal

“The established practice of the Court in dealing with a civil case from a court in the federal system

which has become moot while on its way here or pending [the Court's] decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss." *Munsingwear*, 340 U.S. at 39; *see also Alvarez*, 130 S. Ct. at 581; 28 U.S.C. § 2106. Because Petitioners did not "cause[]" the mootness by voluntary action," the Court "should follow [its] ordinary practice" in this case: vacate the Ninth Circuit's order denying the mandamus petition and remand to the Ninth Circuit with instructions to dismiss the mandamus petition as moot. *Alvarez*, 130 S. Ct. at 582-83 (quotation marks omitted); *see also, e.g., Joint Sch. Dist. No. 241 v. Harris*, 515 U.S. 1154, 1155 (1995) ("The petitions for writs of certiorari are granted. The judgment is vacated and the cases are remanded to the United States Court of Appeals for the Ninth Circuit with directions to dismiss as moot.") (citing *Munsingwear*).



EXHIBIT 30

Supreme Court of the United States

No. 09-1238

DENNIS HOLLINGSWORTH, ET AL.,

Petitioners

v.

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA, ET AL.**

ON PETITION FOR WRIT OF CERTIORARI to the United States

Court of Appeals for the Ninth Circuit.

THIS CAUSE having been submitted on the petition for writ of certiorari and the response thereto.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the petition for writ of certiorari is granted. The judgment of the above court is vacated with costs, and the case is remanded to the United States Court of Appeals for the Ninth Circuit with instructions to dismiss the case as moot. See *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950).

IT IS FURTHER ORDERED that the petitioners Dennis Hollingsworth, et al. recover from United States District Court for the Northern District of California, et al. Three Hundred Dollars (\$300.00) for costs herein expended.

October 4, 2010

Clerk's costs: \$300.00



EXHIBIT 31

FILED

UNITED STATES COURT OF APPEALS

OCT 15 2010

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DENNIS HOLLINGSWORTH, et al.,

Petitioners,

v.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
CALIFORNIA,

Respondent,

KRISTIN M. PERRY; et al.,

Real Parties in Interest.

No. 10-70063

D.C. No. 3:09-cv-02292-VRW
Northern District of California,
San Francisco

ORDER

Before: SILVERMAN, PAEZ and BEA, Circuit Judges.

On October 4, 2010, the United States Supreme Court granted the petition for writ of certiorari and vacated the judgment and remanded with instructions to dismiss this petition as moot. Accordingly, this court's January 8, 2010 order is vacated and the petition for writ of mandamus is denied as moot.

KS/MOATT

EXHIBIT 32

OFFICE OF THE CIRCUIT EXECUTIVE
NINTH CIRCUIT CURRENT AND FUTURE VACANCY TABLE

Court	Vacancy in Authorized Judgeship	Date Vacancy Created	By Reason of	Nominee (If Any)	Date Nominated	Status of Nomination Last Action (such as referred to Senate Jud. Com.)
Court of Appeals	Stephen S. Trott Pub. L 110-177	12-31-04 1-21-09	Senior Status New Position	No nominee Goodwin Liu	2-24-10, 9-13-10, 1-5-11	Senate Jud. Com. hearing held on 3-2-11
	Andrew J. Kleinfeld Mary M. Schroeder	6-12-10 1-1-12	Senior Status Senior Status	No nominee No nominee		
Alaska	John W. Sedwick	3-13-11	Senior Status	No nominee		
Arizona	Frank R. Zapata	8-3-10	Senior Status	No nominee		
	Mary Helen Murguia John M. Roll	12-22-10 1-8-11	Elevated Deceased	No nominee No nominee		
Cent. Cal.	Florence-Marie Cooper	1-15-10	Deceased	John A. Kronstadt	11-17-10, 1-5-11	Senate Jud. Com. approval on 3-10-11
	Stephen G. Larson A. Howard Matz	11-2-09 7-11-11	Resigned Senior Status	No nominee No nominee		
No. Cal.	Martin J. Jenkins	4-3-08	Resigned	Edward M. Chen	8-6-09, 1-20-10, 9-13-10 1-5-11	Senate Jud. Com. approval on 3-17-11
	Vaughn R. Walker	2-28-11	Retirement	No nominee		

Last updated 3-17-11

Court	Vacancy in Authorized Judgeship	Date Vacancy Created	By Reason of	Nominee (If Any)	Date Nominated	Status of Nomination Last Action (such as referred to Senate Jud. Com.)
So. Cal	Jeffrey T. Miller Thomas J. Whelan	6-6-10 8-15-10	Senior Status Senior Status	No nominee No nominee		
Montana	Donald W. Molloy	8-16-01	Senior Status	No nominee		
Nevada	Roger L. Hunt	5-26-11	Senior Status	No nominee		
NMI	Alex R. Munson	2-28-10	Retirement	Ramona Villagomez Manglona	1-26-11	Senate Jud. Com. hearing held on 3-16-11
Oregon	Ancer L. Haggerty	8-26-09	Senior Status	Michael H. Simon	7-14-10, 1-5-11	Senate Jud. Com. approval on 2-17-11
East. Wa.	Robert H. Whaley	7-12-09	Senior Status	No nominee		

Last updated 3-17-11

EXHIBIT 33

**REPORT OF THE PROCEEDINGS
OF THE JUDICIAL CONFERENCE
OF THE UNITED STATES**

September 14, 2010

The Judicial Conference of the United States convened in Washington, D.C., on September 14, 2010, pursuant to the call of the Chief Justice of the United States issued under 28 U.S.C. § 331. The Chief Justice presided, and the following members of the Conference were present:

First Circuit:

Chief Judge Sandra L. Lynch
Chief Judge Mark L. Wolf,
District of Massachusetts

Second Circuit:

Chief Judge Dennis Jacobs
Chief Judge William K. Sessions III,
District of Vermont

Third Circuit:

Chief Judge Theodore A. McKee
Chief Judge Harvey Bartle III,
Eastern District of Pennsylvania

Fourth Circuit:

Chief Judge William B. Traxler, Jr.
Judge James P. Jones,
Western District of Virginia

Fifth Circuit:

Chief Judge Edith Hollan Jones
Judge Sim Lake III,
Southern District of Texas

Judicial Conference of the United States

September 14, 2010

cost-containment initiatives to date and noted that the long-term financial health of the judiciary will be aided by future cost-containment efforts that provide tangible cost savings or avoidances.

COMMITTEE ON CODES OF CONDUCT

COMMITTEE ACTIVITIES

The Committee on Codes of Conduct reported that since its last report to the Judicial Conference in March 2010, the Committee received 17 new written inquiries and issued 17 written advisory responses. During this period, the average response time for requests was 22 days. In addition, the Committee chair responded to 159 informal inquiries, individual Committee members responded to 133 informal inquiries, and Committee counsel responded to 358 informal inquiries.

COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT

CAMERAS IN THE COURTROOM PILOT PROJECT

On recommendation of the Committee on Court Administration and Case Management, the Judicial Conference authorized a pilot project to evaluate the effect of cameras in district court courtrooms, of video recordings of proceedings therein, and of publication of such video recordings. The pilot project will proceed in accordance with the tenets outlined below, and is subject to definition and review by the Committee. In addition, the Committee will request that a study of the pilot be conducted by the Federal Judicial Center.

- a. The pilot will be national in scope and consist of up to 150 individual judges from districts chosen to participate by the Federal Judicial Center, in consultation with the Court Administration and Case Management Committee. The pilot project should include a national survey of all district judges, whether or not they participate in the pilot, to determine their views on cameras in the courtroom.

Judicial Conference of the United States

September 14, 2010

- b. The pilot will last up to three years, with interim reports prepared by the Federal Judicial Center after the first and second years.
- c. The pilot will be limited to civil cases only.
- d. Courts participating in the pilot will record proceedings, and recordings by other entities or persons will not be allowed.
- e. Parties in a trial must consent to participating in the pilot.
- f. Recording of members of a jury will not be permitted at any time.
- g. Courts participating in the pilot should – if necessary – amend their local rules (providing adequate public notice and opportunity to comment) to provide an exception for judges participating in the Judicial Conference-authorized pilot project.
- h. The Court Administration and Case Management Committee is authorized to issue and amend guidelines to assist the pilot participants.
- I. The Administrative Office is authorized to provide funding to the courts with participating judges – if needed – for equipment and training necessary to participate in the pilot.

PACER ACCESS TO CERTAIN BANKRUPTCY FILINGS

Under the Judicial Conference policy on privacy and public access to electronic case files, bankruptcy filings should include only the last four digits of filers' social security numbers on their petitions and other public documents (JCUS-SEP/OCT 01, pp. 48-50). However, documents filed prior to implementation of the policy in 2003 are still available on the Public Access to Court Electronic Records (PACER) system and contain the debtors' full social security numbers, creating privacy concerns. To address those concerns, on recommendation of the Committee, the Judicial Conference agreed to amend its privacy policy to restrict public access through PACER to documents in bankruptcy cases that were filed before December 1, 2003 and have been closed for more than one year, with the following conditions: