

# EXHIBIT A

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IN THE UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CERTIFIED  
TRANSCRIPT**

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DON HENLEY and MICHAEL CAMPBELL, )  
Plaintiffs, )  
vs. ) No. SACV09-0481  
CHARLES S. DEVORE and JUSTIN HART, ) JVS (RNBx)  
Defendants. )  
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Deposition of MARK ROSE, Ph.D., taken  
at 1290 Avenue of the Americas, New  
York, New York, commencing at 9:00 a.m.,  
Thursday, April 1, 2010, before  
Sherri Flagg, RPR, CLR, Notary Public.

1 - M. ROSE -

2 A. They did pay me on that invoice.

3 Q. Are you going to be sending them  
4 an additional invoice after this  
5 deposition?

6 A. I am.

7 Q. Let's do this. Let's go to page  
8 6 of your report and start there. There's  
9 a heading a little more than halfway down,  
10 it says: "Definitions and Preliminary  
11 Observations."

12 A. Yes.

13 Q. In the third sentence of that  
14 paragraph under that heading, you write:

15 "Modern literary scholars employ  
16 the term 'parody' in various ways,  
17 sometimes adopting broader, sometimes  
18 narrower definitions."

19 A. Understandings.

20 Q. Excuse me, narrower  
21 understandings.

22 Sir, give me an example of a  
23 broader definition of parody.

24 A. The word I used was  
25 understandings rather than definition

1                   - M. ROSE -

2     there. And a broader understanding of  
3     parody might be the kind of understanding  
4     that emerges from a book like Linda  
5     Hutcheon's Theory of Parody.

6           Q.     You're drawing a distinction  
7     between an understanding of parody and a  
8     definition of parody. Why?

9           A.     I am, because I understand a  
10    definition to be a fairly precise  
11    separating off of literary form such as  
12    parody from other literary forms and doing  
13    so with, as I say, precision.

14           An understanding can be a more  
15    general and broader matter. That's why I'm  
16    saying understanding rather than parody --  
17    than definition.

18           Q.     Are there multiple definitions of  
19    parody amongst literary scholars?

20           MS. CHARLESWORTH: Objection,  
21    vague.

22           A.     I actually don't understand the  
23    question. If you can rephrase it, I'd  
24    appreciate it.

25           Q.     Yeah. You were telling me the

1                   - M. ROSE -

2    difference between definitions and  
3    understandings when it comes to parody.

4    I'm curious if there are definitions of  
5    parody that are used by literary scholars.

6           A.    There are definitions of parodies  
7    that you'll find in dictionaries. You can  
8    find a discussion of parody that will never  
9    provide a definition.

10          Q.    So if I'm in one of your  
11    undergraduate courses, assuming you teach  
12    undergraduate courses, and I just ask you:  
13    Professor, can you define parody for me, is  
14    there a definition you have in mind?

15          A.    No, I don't have a single  
16    definition in mind myself.

17          Q.    Are there multiple definitions  
18    that you'd have in mind?

19          A.    For the purposes of this matter,  
20    I have adopted a legal definition which  
21    also seems to me a definition that is  
22    compatible consummate with the long  
23    long-term literary definition. And that's  
24    the definition used by the Supreme Court in  
25    Acuff-Rose.

1                   - M. ROSE -

2           Q.     What do you mean by long-term  
3 literary definition?

4           A.     I mean various ways in which  
5 parody has been talked about for many  
6 years, hundreds of years, even thousands of  
7 years.

8           Q.     Are there literary scholars who  
9 have attempted to define parody?

10          A.     I'm sure there are.

11          Q.     Can you think of any?

12          A.     Yes. And I've noted a number in  
13 the things that I've looked at; for  
14 example, Linda Hutcheon and some of the  
15 other people that I've referenced.

16          Q.     What is your understanding as to  
17 Linda Hutcheon's definition of parody?

18          A.     I could not repeat to you  
19 verbatim the language she uses to define  
20 parody, but I can describe for you my  
21 understanding of her ambit, her literary  
22 purpose in looking at parody.

23                   She sees -- do you want me to do  
24 that?

25          Q.     Please.

1                   - M. ROSE -

2           A.     She sees parody as the  
3     characteristic mode of the modern period,  
4     that's to say the Post-Romantic period; and  
5     so she describes parody as a -- I'm being  
6     rough here in my language because I don't  
7     remember her exact words. She describes  
8     parody as a general reference with a  
9     critical distance. And I believe that she  
10    talks about it as a mode rather than  
11    strictly as a genre.

12           Q.     What does that mean?

13           A.     A mode is a more general term.  
14    When you move from a genre, which is a  
15    rather limited kind of literary term, for  
16    example, you might speak of comedy as a  
17    genre in which a story ends in marriage in  
18    original form. When comedy becomes more  
19    generally used and turns into what I would  
20    call a mode and what I believe Linda  
21    Hutcheon would call a mode, then it becomes  
22    a much larger -- anything that is either  
23    funny and does not necessarily even have to  
24    end happily.

25                   So with parody you can see parody

1                   - M. ROSE -

2     think; and I think you're telling me that  
3     that doesn't really exist, in your opinion.  
4     So are there multiple definitions of parody  
5     that literary scholars use?

6                   MS. CHARLESWORTH:  Objection,  
7     vague.

8                   A.     Literary scholars, in the first  
9     place it's rare that one would be looking  
10    for or need a definition of parody.  If one  
11    were looking for a definition of parody as  
12    a literary scholar, one would most likely  
13    start by going to standard reference works  
14    such as standard dictionaries and standard  
15    compilations like MLA Handbook of literary  
16    terms or the Princeton Encyclopedia of  
17    literary terms.  And I have, of course,  
18    gone to those places for a start.

19                  Q.     For purposes of your work on this  
20    case?

21                  A.     For purposes of my work on this  
22    case.

23                  Q.     Did those sources give you a  
24    single definition of parody or multiple  
25    definitions?



1                   - M. ROSE -

2           A.     Since the sources will sometimes  
3     use somewhat different words and approach  
4     things in slightly different ways, you  
5     might say that they -- they're not  
6     absolutely synonymous. Nonetheless, there  
7     is a mainline of thinking about parody that  
8     emerges from those definitions.

9           Q.     And what is that?

10          A.     It's the same mainline. If I may  
11     look at the material for a second, it's the  
12     same mainline that gets cited, eventually  
13     used in Acuff-Rose when, for example, they  
14     go to the Encyclopedia Britannica and  
15     modern dictionaries such as the American  
16     Heritage Dictionary and the Oxford English  
17     Dictionary, the OED. Those are fairly  
18     authoritative sources.

19                 And they cite those dictionaries,  
20     they cite definitions or descriptions that  
21     parody is--this is now from the American  
22     Heritage:

23                 "Parody is a literary or artistic  
24     work that imitates the characteristic  
25     style of an author or a work for comic

1                   - M. ROSE -

2           effect or ridicule." That's American  
3           Heritage.

4           The OED, Oxford English  
5           Dictionary, has a slightly different  
6           definition but it is compatible with the  
7           American Heritage definition. OED says:

8                   "A composition in prose or verse  
9           in which the characteristic turns of  
10          thought and phrase in an author or  
11          class of authors are imitated in such  
12          a way as to make them appear  
13          ridiculous."

14          Q.    I think you said both in your  
15          report and here today that for purposes of  
16          your report in this case, you used the  
17          Supreme Court's definition of parody from  
18          Acuff-Rose; is that correct?

19          A.    That's correct.

20          Q.    When you say that, what do you  
21          mean? What is the specific definition you  
22          were using?

23          A.    I cited it and it appears -- it  
24          appears on my report on page 8 and it  
25          appears in fuller form in the report of

1                   - M. ROSE -

2     Acuff-Rose in the LexusNexus version of  
3     their page 12.  Would you like me to read  
4     it?

5             Q.     Please.

6             A.     I'm going to read it from the  
7     fuller form:

8                   "The germ of parody lies in the  
9     definition of the Greek parodia quoted  
10    in Judge Nelson's Court of Appeals  
11    dissent as a song sung alongside  
12    another.  Modern dictionaries  
13    accordingly"--meaning consistently  
14    with--"Modern dictionaries accordingly  
15    describe a parody as a literary or  
16    artistic work that imitates the  
17    characteristic style of an author or a  
18    work for comic effect or ridicule or  
19    as"--another quote--"a composition in  
20    prose or verse in which the  
21    characteristic turns of thought and  
22    phrase in an author or class of  
23    authors are imitated in such a way as  
24    to make them appear ridiculous.  For  
25    the purposes of copyright law, the nub

1                   - M. ROSE -

2           of the definitions"--that's to say the  
3           core of the definitions--"and the  
4           heart of any parodist's claim to quote  
5           from existing materials is the use of  
6           some elements of a prior author's  
7           composition to create a new one that,  
8           at least in part, comments on that  
9           author's works.

10                 "If, on the contrary, the  
11           commentary has no critical bearing on  
12           the substance or style of the original  
13           composition which the alleged  
14           infringer merely uses to get attention  
15           or to avoid the drudgery in working up  
16           something fresh, the claim to fairness  
17           in borrowing from another's work  
18           diminishes accordingly if it does not  
19           vanish and other factors like the  
20           extent of its commerciality rule  
21           larger.

22                 There, of course, they're talking  
23           about the fair use analysis. Back to  
24           parody:

25                 "Parody needs to mimic an

1                                   - M. ROSE -

2           A.    Yes.

3           Q.    In a portion of the Acuff-Rose  
4 case that you just read in order to  
5 identify the definition of parody you used  
6 here, there's a Footnote 14. Did you in  
7 any way use Footnote 14 in coming up with  
8 the definition of parody that's appropriate  
9 for this case?

10          A.    I considered Footnote 14.

11          Q.    Tell me how you considered  
12 Footnote 14.

13          A.    I have to tell you my  
14 understanding of Footnote 14 or its general  
15 purposes.

16          Q.    Please.

17          A.    Do you mind if I read Footnote  
18 14.

19          Q.    Go ahead.

20          A.    "A parody that more loosely  
21 targets an original than the parody  
22 represented here may still be  
23 sufficiently aimed at an original  
24 work to come within our analysis of  
25 parody."

1                                 - M. ROSE -

2                                 So it's saying that it could be  
3 looser than the case of the Pretty Woman  
4 pair.

5                                 "If a parody whose wide  
6 dissemination in the market runs the  
7 risk of serving as a substitute for  
8 the original or licensed derivatives"  
9 --discussing factor four, that's  
10 important there--"it's more incumbent  
11 on one claiming fair use to establish  
12 the extent of transformation in the  
13 parody's critical relationship to the  
14 original.

15                                 "By contrast, when there is  
16 little or no risk of market  
17 substitution whether because of the  
18 large extent of transformation of the  
19 earlier work, the new work's minimal  
20 distribution in the market, the small  
21 extent to which it borrows from an  
22 original or other factors taking  
23 parodic aim at an original is a less  
24 critical factor in the analysis and  
25 looser forms of parody may be found to

1                   - M. ROSE -

2           be fair use as may satire with lesser  
3           justification for the borrowing than  
4           would otherwise be required."

5           Well, yes, I did take account of  
6           that. My understanding is that this is a  
7           -- a footnote that refers to the fair use  
8           analysis that would follow upon an initial  
9           analysis as to whether works in question  
10          -- whether the second work in question  
11          were a parody of the first.

12           And so this footnote -- I'm not a  
13          lawyer and I am not qualified to provide  
14          you a fair use analysis because that's a  
15          technical matter, as you know better than  
16          I do. But this footnote relates to, as I  
17          understand it, the fair use analysis that  
18          would follow. It does not relate to the  
19          immediate definition of -- the immediate  
20          determination of whether a work is a  
21          parody or not.

22          Q.     In Footnote 14 the Supreme Court  
23          talks about looser forms of parody.

24          A.     Yes.

25          Q.     For purposes of your work, did

1                   - M. ROSE -

2     you try to determine what the Court meant  
3     by looser forms of parody?

4                   MS. CHARLESWORTH: Objection,  
5                   calls for a legal conclusion. He's  
6                   not a lawyer, as he just testified.

7     A.     I can't testify to that, I'm not  
8     a lawyer.

9                   Q.     Sir, you're telling me that you  
10     cannot tell me what a looser form of parody  
11     means as the Court uses it in paragraph 14?

12                  A.     As the Court uses it in paragraph  
13     14, I can't because that's part of the --  
14     that's part of the fair use analysis. I  
15     can tell you more generally how I would  
16     understand tighter and looser examples of  
17     parody.

18                  Q.     Let's start there.

19                  A.     A work such as -- I've given you  
20     some examples in my own report, I've used  
21     classic examples in my report. A poem such  
22     as Lewis Carroll's Father William directly  
23     parodies the Robert Southey poem or follows  
24     it and is a very close parody of the Father  
25     William poem.



1                   - M. ROSE -

2                   On the other hand, the 2 Live  
3 Crew Pretty Woman starts as a very close  
4 parody of the Orbison original and then  
5 becomes looser as it moves along.

6           Q.     Looser in what way?

7           A.     Where the Roy Orbison original  
8 has a single woman, the Pretty Woman has  
9 multiple women, the parody Pretty Woman has  
10 multiple women in it. That's looser.

11          Q.     Why is it looser?

12          A.     Because instead of sticking with  
13 a single -- I think it's self-evident.  
14 Instead of sticking with a single figure  
15 and at that point tracking very closely, it  
16 expands.

17          Q.     In this Footnote 14, is it your  
18 understanding that the Supreme Court is  
19 trying to allow the boundaries to be drawn  
20 a little bit differently where a work is  
21 not a market substitute for the original?

22                   MS. CHARLESWORTH: Objection,  
23 vague and calls for a legal  
24 conclusion.

25          A.     This is not an issue I have gone

1                   - M. ROSE -

2   into in relation to this case, and it is an  
3   issue directly related to the matter of the  
4   four factor use analysis. And it's not one  
5   in which I'm qualified to comment.

6           Q.    Do you know whether DeVore's  
7   works were market substitutes for the  
8   originals here?

9           A.    I have no idea one way or the  
10   other.

11          Q.    How is it that we would go about  
12   trying to determine whether or not a work  
13   in question is a looser form of parody than  
14   the 2 Live Crew work but still would fall  
15   within the definition of parody that the  
16   court articulates in Acuff-Rose?

17          A.    You would do a literary analysis  
18   of the two works.

19          Q.    Explain that.

20          A.    I'm sorry?

21          Q.    Explain that.

22          A.    You would analyze -- you would  
23   analyze the works closely to see how to  
24   what degree -- to what degree the secondary  
25   work departs from, if I can use a musical

1 - M. ROSE -

2 A. Because I was asked to.

3 Q. Did you use the images in the  
4 videos to help give meaning to Mr. DeVore's  
5 lyrics?

6 MS. CHARLESWORTH: Objection,  
7 vague.

8 A. Can you restate that.

9 Q. Yeah. One of the things that you  
10 had to do here is you had to interpret  
11 Mr. DeVore's lyrics in order to figure out  
12 what it is they were saying?

13 A. Yes.

14 Q. Did you use the images in  
15 Mr. DeVore's videos in order to help  
16 interpret what the lyrics were about?

17 A. I read the lyrics, I analyzed the  
18 lyrics, I analyzed the originals, I  
19 compared the originals to the DeVore lyrics  
20 and vice versa. At some point, then, I  
21 also watched the videos. And I cannot tell  
22 you in what order, in what way I did this.

23 Nothing that I saw in the videos  
24 altered in any way my conclusions about the  
25 specific literary analysis text to text.

1 - M. ROSE -

2 Q. Did you watch the videos that  
3 were produced for the original Don Henley  
4 songs?

5 A. No.

6 Q. Why not?

7 A. I wasn't asked to.

8 Q. Why didn't you ask whether or not  
9 it would be appropriate for you to watch  
10 those videos also in addition to  
11 Mr. DeVore's?

12 A. First let me say I wasn't aware  
13 of original videos for the Don Henley  
14 songs. I stayed with the materials that  
15 were presented to me. And my first  
16 procedure is to look at texts that are put  
17 in front of me and to analyze those texts.

18 Q. In your opinion, would it be a  
19 valid interpretive tool to look at the  
20 video images that were used in Mr. Henley's  
21 videos in order to determine the underlying  
22 meaning of the songs' lyrics?

23 MS. CHARLESWORTH: Objection,  
24 vague. The witness has just testified  
25 he hasn't seen the videos.

1                                   - M. ROSE -

2           A.    I don't need to look at the  
3 videos in order to understand the meaning  
4 of the song text that I have in front of  
5 me.

6           Q.    How did you determine the meaning  
7 of the original compositions?

8           A.    I read them and I analyzed them.

9           Q.    Your analysis, then, is based on  
10 your interpretation of the lyrics' meaning  
11 and not someone else's?

12          A.    That's correct.

13          Q.    Did you look at the deposition  
14 transcripts to see how the authors of those  
15 songs had interpreted them?

16          A.    I did read the deposition  
17 transcripts but later, after I'd already  
18 formulated my analysis of these materials.

19          Q.    Why was your analysis done before  
20 you actually looked at the original  
21 authors' analyses?

22          A.    I'm a literary professional. My  
23 work is reading and understanding and  
24 analyzing texts. As a professional  
25 literary scholar, I know that authors'

1                   - M. ROSE -

2    comments about literary works change over  
3    time, that authors can be cute and  
4    purposely evasive about their own texts.  
5    And that's not a very good place to go for  
6    your first understanding, for your  
7    understanding.

8           Q.    Was it your impression that the  
9    authors of the original works here were  
10   intentionally evasive when they talked  
11   about the meanings of their works?

12          A.    In deposition?

13          Q.    Sure.

14          A.    I couldn't say to that one way or  
15   the other. I don't know. I do know that  
16   authors characteristically -- I know this  
17   as an author myself, that things that one  
18   has written change their meaning in your  
19   mind over the years, you see them in  
20   different lights.

21                   And therefore at one time--I'm  
22   talking about fiction--at one time you may,  
23   if asked to describe your purposes in the  
24   work, describe it one way and at another  
25   time emphasizing something different, you

1                   - M. ROSE -

2 describe it a different way.

3           Q.    Is there a single objective  
4 meaning of a literary work?

5           MS. CHARLESWORTH:  Objection,  
6           vague.

7           A.    I'm not sure -- I agree, vague.  
8 And that's because I'm not at all sure how  
9 you're using the word "meaning."

10          Q.    As part of your work here, you  
11 tried to determine the meanings of the  
12 original songs and of Mr. DeVore's lyrics  
13 as well; is that right?

14          A.    I tried to determine -- let me  
15 say why I'm objecting -- why I find the  
16 word "meaning" problematic.  "Meaning"  
17 could be construed to be reduced to a  
18 message:  The meaning of this work is love  
19 your wife, that's the message.

20                   Literary works, poetic and  
21 fictional works, rarely have meanings in  
22 that sense, discursive language meaning in  
23 that sense.  What, for example, is the  
24 meaning of Shakespeare Othello?  It's an  
25 experience, it's a story, it doesn't have a

1                   - M. ROSE -

2           A.     The "we" is the formula that the  
3     song is using as a collective formula.

4           Q.     Are we able to look at the  
5     collective formula, as you put it, and say,  
6     oh, I know who these people are in the real  
7     world; they are X? I mean, are we able to  
8     do that?

9                   MS. CHARLESWORTH: Objection,  
10     vague.

11          A.     It's interesting, it's an  
12     interesting point that you make. Some --  
13     it's an interesting point that you make. I  
14     myself understand that to be a collective  
15     speaker located in the poem, in the song,  
16     and that collective speaker is defined as  
17     finding Obama overreaching and the  
18     situation with the dollar declining in  
19     value and being unfortunate.

20          Q.     You started that answer by saying  
21     "I myself." I think what you were  
22     conveying is that that was your  
23     interpretation. Does that mean that there  
24     are other viable interpretations of who the  
25     "we" are?



1 - M. ROSE -

2 A. There might be many interesting  
3 interpretations. I can only tell you how I  
4 read this poem.

5 Q. That's a fair point. When you  
6 tell me how you read the poem, you are not  
7 giving us a single definitive, objective  
8 reading of the poem. Would you agree with  
9 that?

10 MS. CHARLESWORTH: Objection;  
11 vague, compound and misstates the  
12 testimony.

13 A. Would you break that up into more  
14 answerable questions.

15 Q. I'd be happy to.

16 What made my question not very  
17 answerable and then I can fix it?

18 A. You listed a string of things and  
19 I couldn't repeat to you what that string  
20 of things were.

21 Q. All right. When you've been  
22 interpreting the poem "The Hope of  
23 November," I think you've been saying  
24 you've given us your interpretation alone,  
25 yes?

1                   - M. ROSE -

2                   MS. CHARLESWORTH: Objection,  
3                   misstates testimony.

4                   A.    I'm giving you a professional  
5                   literary person's understanding of how this  
6                   poem works. That's not just -- therefore  
7                   that's not just my interpretation as  
8                   opposed to Joe's interpretation over here  
9                   or Mary's interpretation over here. This  
10                  is a professional interpretation.

11                 Q.    Would all professionals interpret  
12                  it the same way?

13                 A.    I have no idea.

14                 Q.    What makes the professional's  
15                  interpretation more valid than the  
16                  layperson's interpretation of this poem?

17                 MS. CHARLESWORTH: Objection,  
18                  vague.

19                 A.    Training, experience, familiarity,  
20                  with the issues.

21                 Q.    The intended --

22                 A.    The literary issues.

23                 Q.    The intended audience for this  
24                  poem isn't professors at major universities  
25                  who interpret lyrics professionally; would

1                   - M. ROSE -

2    you agree with that?

3                   MS. CHARLESWORTH:  Objection;

4                   vague, calls for speculation.

5                   A.    Would you characterize the  
6    intended audience for me?

7                   Q.    I can tell you who I think it's  
8    intended for:  voters, donors who are  
9    interested in some way in the California  
10   Republicans primary.

11                  A.    That's interesting.

12                  Q.    Would you disagree with that?

13                  A.    No, I don't disagree with it, but  
14   I don't endorse it either.  That's your --  
15   that's your understanding of it.

16                  Q.    Well, in interpreting the meaning  
17   -- I'm going to stop myself right there.  I  
18   know where that gets us.  Give me a new  
19   paragraph.

20                  In interpreting a work, does it  
21   matter who the intended audience is?

22                  A.    Sometimes and sometimes it  
23   matters less.  The question that you have  
24   to ask is why am I giving you--and remember  
25   I prefer the word "analysis" to

1 - M. ROSE -

2 "interpretation"--why am I giving you an  
3 analysis of these works. I'm giving an  
4 analysis of these works in order to compare  
5 them, in order to determine whether the  
6 DeVore poems are under the definition and  
7 understanding the Supreme Court has  
8 specified whether they are targeting the  
9 originals and therefore could be considered  
10 parodies of the originals, as the Supreme  
11 Court has defined that.

12 Q. As a professional analyst of  
13 poems, you have some expertise and  
14 experience that the average person does not  
15 possess. Would you agree with that?

16 A. Yes.

17 Q. Otherwise people wouldn't be  
18 paying you \$400 an hour to do this work,  
19 right?

20 A. Yes.

21 Q. But if the intended audience is a  
22 group of people who, on the whole, don't  
23 have your expertise or your experience in  
24 analyzing poems, then why is your  
25 professional analysis the one that's

1                   - M. ROSE -

2           A.     The only thing I really know  
3 about Don Henley is what I've read in the  
4 depositions in this case and these songs.

5           Q.     You know that Don Henley is, at  
6 least in the LA area, well known to be a  
7 democrat, yes?

8           MS. CHARLESWORTH:  Objection.  It  
9 misstates --

10          A.     I know.

11          MS. CHARLESWORTH:  I'm sorry, I'm  
12 just going to object that that's a  
13 misstatement of any evidence in this  
14 case.

15          MR. ARLEDGE:  Really?  That's not  
16 what Don Henley said in his  
17 deposition?

18          MS. CHARLESWORTH:  I'm not going  
19 to debate it on the record with you,  
20 Mr. Arledge.  But if you want him to  
21 assume that for purposes of answering  
22 your question, that's one thing.  But  
23 I just want to object that I don't  
24 believe that fairly characterizes the  
25 facts in this case.

1 - M. ROSE -

2 MR. ARLEDGE: That's a fine  
3 objection.

4 BY MR. ARLEDGE (continuing):

5 Q. Let me ask you a question: Did  
6 you read Don Henley's deposition  
7 transcript?

8 A. I did.

9 Q. Did Mr. Henley say he's a  
10 well-known democrat in that deposition  
11 testimony?

12 A. I don't recall.

13 Q. Did he talk about the fact that  
14 in Orange County, in what is Chuck DeVore's  
15 base of operations as a politician, that  
16 Mr. Henley had been booed at a concert for  
17 making political statements? Do you  
18 remember seeing that?

19 MS. CHARLESWORTH: Objection,  
20 mischaracterizes the testimony.

21 A. I remember vaguely something of  
22 the kind, but I would need to see it in the  
23 -- in the deposition transcript in order to  
24 remember something more than vaguely.

25 Q. You understand that Mr. DeVore is

1 - M. ROSE -

2 a conservative Republican politician?

3 A. In a general way I understand  
4 that. I don't understand much -- I don't  
5 know much about him or his positions.

6 Q. Do you understand that in the  
7 minds of many conservative Republicans in  
8 California, that the Hollywood  
9 establishment, the entertainment  
10 establishment, is a raid against them? Do  
11 you understand that?

12 MS. CHARLESWORTH: Objection,  
13 vague.

14 A. Is that something that I  
15 understand personally? No.

16 Q. Have you heard this before,  
17 complaints from conservatives that the  
18 Hollywood entertainment elite are liberals  
19 who are supporting liberal causes and  
20 liberal politicians?

21 A. I believe that I have detected  
22 fragments of that running through some of  
23 the depositions in this case. And that is  
24 all that I know.

25 Q. If that something that you -- if

1                   - M. ROSE -

2   that's something that you believed to be  
3   the case, that you believed that the  
4   entertainment establishment is very liberal  
5   and is supportive of liberal causes and  
6   candidates and does what it can to stop the  
7   progress of conservatives and their goals,  
8   would that have impacted the way you would  
9   analyze "The Hope of November"?

10               MS. CHARLESWORTH:  Objection;

11               vague, compound, incomplete  
12               hypothetical.

13               A.    And my answer is not as a  
14   literary scholar looking at these texts.

15               Q.    How about as a listener that sees  
16   the video on YouTube?  Do you think it  
17   would change how they would change "The  
18   Hope of November"?

19               A.    You're asking me to testify as to  
20   somebody else's opinion and reaction.  I  
21   can give you my understanding and my  
22   analytical opinion.  I can't give you  
23   somebody else's.

24               Q.    You can't tell us what the  
25   supporters of a conservative politician in



1                   - M. ROSE -

2     Orange County would have understood when  
3     they saw or heard these lyrics, yes?

4                   MS. CHARLESWORTH:  Objection,  
5     vague.

6     A.     I cannot tell you what -- how  
7     they would have responded or understood,  
8     no, I cannot.

9                   MS. CHARLESWORTH:  Chris, I'm  
10    sorry.  It seemed like you were  
11    thinking of starting down a new path.  
12    I was wondering if we might take  
13    another break.

14                  MR. ARLEDGE:  Absolutely.  Let's  
15    do that now.

16                  (Recess taken 12:13-12:44 p.m.)

17    BY MR. ARLEDGE (continuing):

18         Q.     Sir, I wanted to ask you a  
19    question on the lyrics of "The Boys of  
20    Summer" that's back on page 1 of Appendix  
21    B, if you have that available.

22         A.     Yes.

23         Q.     Down on the third stanza, it  
24    starts out "Out on the road today."  Do you  
25    see that?

1                                   - M. ROSE -

2           A.    I do.

3           Q.    The lyrics are:

4                "Out on the road today

5                I saw a DEADHEAD sticker on a

6                Cadillac

7                A little voice inside my head said

8                'Don't look back. You can never look

9                back.'

10              I thought I knew what love was

11              What did I know?

12              Those days are gone forever

13              I should just let them go but--"

14              That's the end of the third

15              stanza. What was your analysis of the

16              third stanza of "The Boys of Summer"?

17              A.    I think I give my analysis on

18              page 10, as I'm tracking through the --

19              tracking through the song. And I say

20              there, oh, about six lines from the bottom,

21              seven lines from the bottom:

22              "At this point an instrumental

23              break punctuates the unfolding of the

24              drama and suggests the passage of

25              time. When the narrative resumes with

1                   - M. ROSE -

2           the third stanza ('Out on the road  
3           today'), it does so with a significant  
4           echo of the first ('Nobody on the  
5           road') and an incongruous detail, a  
6           Grateful Dead sticker on a brand of  
7           car, a Cadillac, that would not  
8           normally be associated with youth."

9           Now the speaker reminds himself  
10          that those days are gone and that it's  
11          futile to look back but then the refrain  
12          returns with its evocative image of a  
13          girlfriend in a convertible and so on.

14          Q.    It seems to me, as an amateur  
15          analyzer of lyrics, that the song shifts,  
16          at least momentarily, from a song that  
17          seems to be primarily about a long lost  
18          romantic relationship to something  
19          different, political or social or something  
20          to that effect, when it mentions the  
21          Deadhead sticker on the Cadillac.

22                Is that your impression as well?

23          A.    That's interesting but that's not  
24          my reasoning. I see a shift at that point  
25          in the song and I think, as I say in the

1                   - M. ROSE -

2                   MS. CHARLESWORTH: Objection;  
3                   vague, incomplete hypothetical.

4                   A.     I think that's interesting.

5                   That's not what I read in the poem here.

6                   What I read is the incongruity which to me,

7                   as I read it, along with other signals in

8                   the poem, indicates a passage of time. And

9                   as I've said, there's a certain strategic

10                  vagueness--that's the term I've used--that

11                  this song has. And I see nothing in the

12                  song itself that suggests more than -- that

13                  incongruity and the incongruity suggesting

14                  a passage of time.

15                  Q.     There's an interview that I read

16                  that Mr. Henley gave I think in the late

17                  '80s, maybe the early '90s, where he said

18                  in the interview--I'm paraphrasing--that

19                  this line had to do with the essential

20                  failure of '60s politics, the idea that we

21                  were going to march and chant and change

22                  the world, and then 20 years later we were

23                  simply incorporated into the culture of

24                  greed that he associated with the 1980s,

25                  and that all of those slogans and chanting

1                   - M. ROSE -

2     and efforts seemed to have accomplished  
3     next to nothing. That's a rough  
4     paraphrase.

5                   Now, let me ask you a couple  
6     questions about that: First of all, even  
7     if that is, in fact, what Mr. Henley had  
8     intended with those lines, that wouldn't  
9     necessarily make your reading wrong or my  
10    reading right of the song simply because  
11    the artist's subject of intent isn't  
12    necessarily the key to analyzing a poem.  
13    Would you agree with that?

14                  MS. CHARLESWORTH: Objection;  
15                  mischaracterizes the record in the  
16                  case, vague.

17                  A. Since that was a very long and  
18                  complicated question, let me say, as I've  
19                  said before I think today, that I agree  
20                  that the artist's intent or statement of  
21                  the artist's intent which can sometimes, in  
22                  fact often, change over time isn't what I'm  
23                  analyzing when I'm analyzing the words on  
24                  the page. And that's what I've done in  
25                  this case.

1                   - M. ROSE -

2           Q.     Would it be an invalid or  
3 incorrect analysis of that third stanza to  
4 conclude that the third stanza is telling  
5 us something about the essential failure of  
6 1960s politics?

7           A.     That's an interesting suggestion.  
8 I don't see that in the passage. I can  
9 testify as to how I understand this passage  
10 working -- in this poem working, and I do  
11 not see that there.

12          Q.     How do we know when someone's  
13 analysis of a poem is wrong? If I told you  
14 that that was my analysis, would you be  
15 able to conclude that I'm wrong with my  
16 analysis of the poem?

17          A.     I would say, as I will say to  
18 you, that the poem, as we have it in front  
19 of us, doesn't necessarily at all go to a  
20 reading like the one that you suggested.  
21 I'm trying to analyze simply the reading  
22 that comes from the words on the page of  
23 the poem here.

24                   It is -- the whole poem is in  
25 many ways, as I've said, strategically

1                   - M. ROSE -

2       vague, it's purposeful in the poem, and it  
3       therefore has a certain openness about it.

4                   I find your reading of it  
5       interesting, but it's not what the words on  
6       the page say, it's not what the song says.

7           Q.     There's some sort of objective or  
8       empirical method for determining whether or  
9       not my reading of "The Boys of Summer" is  
10      right or not right?

11          A.     There -- I mean, there are ways  
12      of determining. For example, I am saying  
13      here--and I'm working just from the  
14      materials of the song--that I believe that  
15      this third stanza marks a shift in time,  
16      that it's later. And one of the reasons  
17      that I believe that it marks a shift in  
18      time is because of the incongruity of the  
19      youthful enthusiasm of a Deadhead sticker  
20      and the expensive car, the Cadillac.

21                 But that's not the only reason  
22      that I understand this is marking a shift  
23      in time. That understanding is confirmed  
24      by the musical break that precedes the  
25      third stanza which takes more time than

1                   - M. ROSE -

2    other musical breaks and suggests, no,  
3    we're in some kind of a shift and that  
4    also, the shift, is confirmed by the fact  
5    that "out on the road today" goes back and  
6    echos the very beginning of the song:  
7    "Nobody on the road" and now "Out on the  
8    road today."

9                   So I'm just not pulling this out  
10   of the air on the basis of one element.  
11   I'm saying there are confirming -- multiple  
12   confirming elements in this song that  
13   suggest that.

14                Q.    Is there a single fixed meaning  
15   of a text or can the -- I've got to stop  
16   using that word. I'm going to erase it  
17   from my vocabulary for the next hour.

18                   Is there a single analysis of a  
19   text or would the analysis change if the  
20   text is used in different cultural  
21   circumstances?

22                   MS. CHARLESWORTH:  Objection,  
23                   vague and incomplete hypothetical.

24                   A.    And I have to say I don't  
25   understand the question.



1                   - M. ROSE -

2     other musical breaks and suggests, no,  
3     we're in some kind of a shift and that  
4     also, the shift, is confirmed by the fact  
5     that "out on the road today" goes back and  
6     echos the very beginning of the song:  
7     "Nobody on the road" and now "Out on the  
8     road today."

9                   So I'm just not pulling this out  
10    of the air on the basis of one element.  
11    I'm saying there are confirming -- multiple  
12    confirming elements in this song that  
13    suggest that.

14                  Q.    Is there a single fixed meaning  
15    of a text or can the -- I've got to stop  
16    using that word.  I'm going to erase it  
17    from my vocabulary for the next hour.

18                   Is there a single analysis of a  
19    text or would the analysis change if the  
20    text is used in different cultural  
21    circumstances?

22                   MS. CHARLESWORTH:  Objection,  
23    vague and incomplete hypothetical.

24                  A.    And I have to say I don't  
25    understand the question.

1                   - M. ROSE -

2           Q.    All right.  You seem to be  
3   telling me that your focus for analyzing  
4   the text is simply to take the test and go  
5   through its lyrics but that it does not  
6   involve any effort to analyze the cultural  
7   context in which that text had been  
8   created.  Is that right or am I  
9   misconstruing what you're up to?

10          A.    In order to understand this text,  
11   you do have to understand a number of  
12   things:  You do have to understand English.  
13   In order to understand this passage, the  
14   Deadhead sticker on the Cadillac, you have  
15   to understand what the word "Deadhead"  
16   refers to.

17                So you do have to understand  
18   certain things.  I've answered that far.  
19   It was a compound question and I don't  
20   remember the other elements.

21          Q.    It's actually quite simple.  If I  
22   want to analyze one of Shakespeare's  
23   sonnets, does it help my analysis to  
24   understand something about Shakespeare's  
25   time and Shakespeare's culture?

1                   - M. ROSE -

2           A.     Depending -- it depends.

3     Depending on the kind of analysis that  
4     you're doing and depending on the sonnet,  
5     there may be some things, some sonnets,  
6     that you would need to understand some  
7     things about Shakespeare's time and culture  
8     to understand just as you would need -- a  
9     hundred years from now or maybe 200 years  
10    from now, you would need a footnote to  
11    "Deadhead" to understand this poem.

12          Q.     Let's make it more contemporary,  
13    then, but not quite as contemporary as  
14    Chuck DeVore's works. I want to analyze  
15    some Beatles songs and I'm going to start  
16    with "All You Need It Love." Are you  
17    familiar with "All You Need is Love"?

18          A.     I am.

19          Q.     In order to analyze "All You Need  
20    is Love" properly, do I need only the  
21    lyrics, or do I also need some  
22    understanding as to 1967 and the summer of  
23    love and the culture in which that text had  
24    been created?

25                   MS. CHARLESWORTH: Objection.

1 - M. ROSE -

2 A. Your question is --

3 MS. CHARLESWORTH: I'm sorry, I  
4 was just going to say compound. I was  
5 a little slow on the draw there, I  
6 apologize.

7 A. Your question is compound and I  
8 was going to say your question is vague  
9 because you've said, in order to understand  
10 "All You Need is Love" properly. In order  
11 to give a formal analysis of "All You Need  
12 is Love," I don't think that you do need  
13 that context.

14 In order to give an analysis of a  
15 different kind, if you were writing a  
16 history of the 1960s, you might approach it  
17 differently. But a formal literary  
18 analysis, you use the words -- you can use  
19 the words on the text.

20 That said, that's a very simple  
21 song, "All You Need is Love," and so far as  
22 I can recall, it does not have any obscure  
23 references in it. This is actually a  
24 significantly more complicated song, "The  
25 Boys of Summer," and it does have

1 - M. ROSE -

2 references that, while they're not obscure  
3 today, I can well imagine becoming obscure  
4 in a hundred years.

5 Q. Someone familiar with the  
6 counterculture of the '60s is in no better  
7 position to interpret "All You Need is  
8 Love" than a Puritan living on the East  
9 Coast 300 years ago. If they both had the  
10 text in front of them, they're equally able  
11 to analyze that work?

12 MS. CHARLESWORTH: Objection;  
13 vague, incomplete hypothetical.

14 A. That's not what I said.

15 Q. Why is that wrong?

16 A. Because you are assuming not a  
17 formal analysis of "All You Need is Love,"  
18 a formal literary analysis of "All You Need  
19 is Love"; but you're assuming a kind of  
20 cultural studies analysis of "All You Need  
21 is Love." That's how I understand it.

22 Q. There's a difference between  
23 those two things?

24 A. There certainly is.

25 Q. What's the difference?

1                   - M. ROSE -

2           A.     There certainly is. In the  
3 formal analysis, I am concerned with the  
4 work, the text, as in the classic phrase of  
5 Claenrh Brooks, and the title is a Well  
6 Wrought Urn. And that's a metaphor that he  
7 uses, it comes from Keats' book and it's a  
8 metaphor that he uses to talk about a poem  
9 when analyzed for its formal properties as  
10 a kind of aesthetic object.

11                   And to do that, I don't need a  
12 large cultural context. I do need to  
13 understand -- there may be references in  
14 the text that I won't understand, a Puritan  
15 reading this will need some explanation  
16 about Deadheads and Cadillacs and things  
17 like that and maybe other things as well.  
18 But that's to give a formal analysis.

19                   You're trying to blend a formal  
20 analysis like I'm describing with a  
21 cultural analysis which is another matter  
22 entirely. And that's not what I'm doing,  
23 and that's not what this case calls for.

24           Q.     Why does this case not call for a  
25 cultural analysis?

1                   - M. ROSE -

2           A.     Because the question is a formal  
3 one, whether the DeVore songs target the  
4 originals or not. That's a formal question  
5 and involves the comparison of works.

6           Q.     You're familiar with the Beatles'  
7 work "Lucy in the Sky with Diamonds"?

8           A.     I am.

9           Q.     Does "Lucy in the Sky with  
10 Diamonds" comment on the '60s drug culture?

11          A.     I believe it does, but this is  
12 one of those cases where at some point,  
13 maybe even today, you will need a footnote  
14 to explain the very title, "Lucy in the Sky  
15 with Diamonds."

16          Q.     In order to determine whether or  
17 not "Lucy in the Sky with Diamonds"  
18 comments on '60s drug culture, you would  
19 need, to some extent, a cultural study, not  
20 a purely formalistic analysis. Would you  
21 agree with that?

22                   MS. CHARLESWORTH: Objection,  
23 vague.

24          A.     Yeah, we're going into two  
25 diffuse -- if you can give me more precise

1                   - M. ROSE -

2       questions, clear questions, and also I  
3       can't -- I can't recite the lyrics of "Lucy  
4       in the Sky with Diamonds." I remember -- I  
5       know the song, I hear fragments of the tune  
6       in the song in my head when you mention it,  
7       but I certainly don't know the lyrics.

8           Q.     Would a cultural analysis of  
9       "Lucy in the Sky with Diamonds" differ from  
10      a formal analysis of "Lucy in the Sky with  
11      Diamonds"?

12          A.     Oh, yes, it might very well.

13          Q.     Would a formal analysis of "Lucy  
14      in the Sky with Diamonds" lead you to the  
15      conclusion that the author had something to  
16      say about illegal drugs?

17          A.     I have no idea.

18          Q.     Would a cultural analysis lead  
19      you to that result?

20          A.     I have no idea. The reason that  
21      I'm resisting saying that is I recall  
22      nothing very much at this point except the  
23      title itself and a few fragments of melody.

24          Q.     "Picture yourself on a train by a  
25      station with tangerine trees and marmalade




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C E R T I F I C A T I O N

I, Sherri Flagg, a Registered Professional Reporter, Certified LiveNote Reporter, and a Notary Public, do hereby certify that the foregoing witness, MARK ROSE, Ph.D., was duly sworn on the date indicated and that the foregoing is a true and accurate transcription of my stenographic notes.

I further certify that I am not employed by nor related to any party to this action.

  
\_\_\_\_\_  
Sherri Flagg, RPR, CLR