

EXHIBIT C

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

**CERTIFIED
TRANSCRIPT**

DON HENLEY and MIKE CAMPBELL,)
 Plaintiffs,)
 vs.) No.. SACV09-0481
 CHARLES S. DEVORE and JUSTIN) JVS (RNBx)
 HART,) VOLUME I
 Defendants.)

CONFIDENTIAL - ATTORNEYS' EYES ONLY

Videotaped Deposition of DON HENLEY,
at 555 W. Fifth Street, Los Angeles,
California commencing at 10:04 a.m.,
Monday, November 30, 2009 before
Janice Schutzman, CSR No. 9509.

1 the political process and hearing about -- it says,
2 "cruising down the center of a two-way street."
3 That could be construed to be, you know, somebody
4 who's a centrist, who's not on one side or the
5 other. And somebody comes along and says, you need 10:34AM
6 to get -- you need to line up behind somebody here,
7 you know. You need to get on one side or the other
8 of this street.

9 But this person is out on the border. He's
10 removed from all this. He's away. You know, he's 10:34AM
11 just trying to live his life, basically, is what the
12 song says to me.

13 BY MR. ARLEDGE:

14 Q. So that's certainly not Nixon. He wasn't
15 just trying to live his life and avoid controversy. 10:34AM

16 A. I don't think that even refers to Nixon.

17 Q. Let me read a quote that was attributed to
18 you in an interview with Rolling Stone some years
19 ago.

20 A. Uh-huh. 10:34AM

21 Q. It says, quote, "On the Border was a
22 thinly, perhaps I should say thickly disguised
23 political piece about Nixon" --

24 A. Uh-huh.

25 Q. -- "and all the trouble he was in" -- 10:35AM

1 A. Uh-huh.

2 Q. -- "but we weren't old and mature enough to
3 make any sense out of it then, I think," end quote.

4 Do you remember making a statement like
5 that?

10:35AM

6 A. Yeah. I made that statement.

7 Q. Have you changed your view of the meaning
8 of On the Border in the intervening years?

9 A. Well, what did I just say there? I said
10 "but we weren't old and mature enough to" what?

10:35AM

11 Q. "To make any sense out of it then."

12 A. Right. So there you go.

13 Q. At the time you wrote the song, though, it
14 was intended to be a thinly or possibly thickly
15 disguised political piece about Nixon.

10:35AM

16 A. It was a political -- it was a piece about
17 what was going on in the news, about his troubles
18 with Watergate. And it was really a piece saying
19 that I'm tired of hearing about this, you know.

20 Because that was all that was on the news every day,
21 day and night.

10:35AM

22 It says, "I'm trying to change this water
23 to wine," meaning I'm trying to make my life better.

24 I'm just out here trying to make a living and make
25 my life better.

10:36AM

1 I've since become a little more sympathetic
2 to Nixon, you know, since that time, because he did,
3 after all, open up relations with China, and he did
4 create the Environmental Protection Agency, which is
5 an organization that, as you know, is very near and 10:36AM
6 dear to my heart.

7 Q. You probably have a Nixon bumper sticker on
8 your Cadillac?

9 A. Absolutely. I have lots of Cadillacs.

10 Q. Well, as much as I want to follow up on 10:36AM
11 your new-found love for Richard Nixon, because I am
12 fascinated -- maybe we'll get to it eventually -- I
13 want to stick to this for a second.

14 Give me a new paragraph.

15 At the time you wrote On the Border, the 10:36AM
16 song was about the problems that Nixon was having
17 with Watergate. Yes?

18 A. Not in its entirety. I mean, you know --

19 Q. In part the song was --

20 A. In part. 10:37AM

21 Q. In part the song was a disguised political
22 piece about Nixon and all the trouble he was in.

23 Yes?

24 A. I wouldn't call it a political piece. I
25 would call it a piece of reportage on what was 10:37AM

1 happening in the news and in the country. It was
2 not specifically, regardless of what I said there --
3 I mean, you can read interviews. I say different
4 things about songs every time I talk about them.

5 Q. Then we should take this deposition more 10:37AM
6 than once.

7 A. Okay. Because they're written that way,
8 you know.

9 Q. What do you mean, "they're written that
10 way"? 10:37AM

11 A. They're written to be interpreted.
12 Different parts of different songs mean different
13 things to me. And sometimes I will focus on one
14 portion of a song when I'm talking about it, and
15 sometimes I will focus on a different portion of a 10:38AM
16 song when I'm talking about it.

17 Q. Is there a portion of the song On the
18 Border that is a political piece about Nixon and his
19 troubles?

20 A. And sometimes when I'm writing songs, I 10:38AM
21 don't even know what I mean. It just sounds good.
22 I mean, you have to fill in the gaps sometimes.

23 I'm sorry. Your question was?

24 Q. Is there a portion of On the Border that is
25 a political piece about Nixon and all the trouble he 10:38AM

1 was in?

2 A. I would be hard-pressed to find a
3 particular portion of this song that I could say was
4 about -- I see it as being more about government in
5 general.

10:38AM

6 I can't find a specific part of this song
7 that I think refers -- unless it would be the line,
8 "Don't tell me about your law and order." That
9 might be a reference to the massacre at Kent State.

10 Q. What portion of this song is about
11 Watergate?

10:39AM

12 A. I don't see anything here that refers to
13 Watergate.

14 Again, there are no -- there's no
15 specificity here in this song. It was just, those
16 things existed maybe in my mind, but in the public
17 mind, I don't think anybody would really make that
18 connection.

10:39AM

19 Q. Chuck Devore maybe.

20 A. Yeah. Chuck does have an active
21 imagination when it comes to that sort of thing.

10:40AM

22 Q. Well, maybe so, although at one point you
23 seemed to believe that On the Border was at least
24 partly about Nixon; right?

25 A. In my own mind, yes.

10:40AM

1 Q. How did you reach that conclusion in your
2 own mind? Was it from the lyrics or from something
3 else?

4 A. It was from the general atmosphere -- first
5 of all, I wrote that song in England. So I was 10:40AM
6 reading press reports over there in European
7 newspapers about what was going on at home. And
8 it's interesting to get a foreign perspective on
9 events in America sometimes.

10 But I was very aware that I didn't want to 10:41AM
11 make it a political treatise. You know, I wanted it
12 to be a song that people could enjoy for the hook.
13 I mean, the hook in a song is the chorus. The hook
14 in this song is called On the Border. And so I
15 wrote it from that perspective, from a general 10:41AM
16 perspective.

17 You know, again, this was 1973 or '4, so I
18 don't remember my precise thoughts when I was
19 writing this thing. I know I had a deadline, and I
20 remember I stayed up all night writing it because we 10:41AM
21 had to record it the next day.

22 So in some cases, I just wrote down
23 whatever came into my head. Some of the lines in my
24 songs don't mean anything. They're just to fill in
25 the blanks between verses. Sometimes I write things 10:42AM

1 the '80s and established her own business. It's
2 called Lisa Thomas Music, or something like that.

3 MR. ARLEDGE: Let me -- you know what?
4 Let's go ahead -- we might as well start marking
5 some of these.

11:54AM

6 Let's mark that No. 1, please.

7 (Discussion off the record.)

8 (Deposition Exhibit 1 was marked for
9 identification.)

10 MR. ARLEDGE: All right. We've marked as
11 Exhibit 1 a two-page document stamped DHMC 001208
12 and -1209. And it is a string of emails from early
13 June 2008.

11:55AM

14 BY MR. ARLEDGE:

15 Q. Sir, have you ever seen these emails
16 before?

11:55AM

17 A. Yes, I've seen this.

18 Q. When did you first see these emails?

19 A. I don't recall when I first saw this, but
20 I've seen it.

11:55AM

21 Q. Recently?

22 A. Yes.

23 Q. After the lawsuit was filed?

24 A. Yes.

25 Q. I want to look at the bottom of the first

11:56AM

1 page. There's a paragraph that starts with "Don
2 very rarely."

3 Do you see that?

4 A. Yep.

5 Q. This is an email sent from Lisa Thomas, 11:56AM
6 June 2, 2008, at least it purports to be. She
7 writes, quote:

8 "Don very rarely licenses or
9 authorized the use of his songs for any
10 ancillary uses, mostly for the reason 11:56AM
11 that the use in another medium alters
12 the original integrity of the song."

13 A. Right.

14 Q. End quote.

15 Do you agree with that statement? 11:56AM

16 A. I do.

17 Q. Explain what that means. First of all,
18 let's start with "ancillary uses."

19 A. Uh-huh.

20 Q. What are "ancillary uses"? 11:56AM

21 A. Well, I'm not sure of the exact definition
22 of the word, but I think it means uses outside of
23 the marketing of the original recording, uses, for
24 example, for a television show or for a movie or for
25 karaoke. Uses other than the original intended use. 11:57AM

1 Q. Lisa writes, and I think you said you
2 agree, that mostly the reason for this is that "use
3 in another medium alters the original integrity of
4 the song."

5 A. Uh-huh.

11:57AM

6 Q. End quote.

7 What does that mean?

8 A. Well, I think it's self-evident. I
9 consider -- well, let me just start at the
10 beginning.

11:57AM

11 I work very hard on these songs. This is
12 my calling, my artistic endeavor, my livelihood, and
13 I work very hard on them. It takes me months,
14 sometimes years to complete one song. And they're
15 my own personal creations, and I would like to think
16 that they have integrity. You know, all artists
17 like to think that their work has integrity, and all
18 artists want to see their work presented just as
19 they created it, whether it's a painter or a
20 novelist or a movie maker.

11:58AM

21 You're always reading about squabbles
22 between directors and studios because the studios
23 want a different cut. They want a particular edit
24 of a particular movie, and the director disagrees.

25 So in terms of my songs, I want them to be

11:58AM

1 pure in the public mind. I want the public to
2 perceive them and to hear them just the way I wrote
3 them and recorded them. I don't want them to be
4 altered in any way.

5 Several years ago in the '70s, there was an 11:58AM
6 executive at Asylum Records that we were signed to
7 at that time, and we were on tour, the Eagles. And
8 he took one of our songs, and he went in the studio,
9 and he made an edit. And it wasn't even a good
10 edit. It was a terrible edit. You could hear it. 11:59AM
11 And there was a great deal of commotion made over
12 the fact that he did that.

13 And we had a plaque made for him with a
14 hacksaw in it and called it the Golden Hacksaw
15 Award, and we went into the -- we got the guards to 11:59AM
16 open up the record company offices at night, and we
17 went in and affixed it to the wall in his office.

18 So, yes, I -- again, I fiercely guard the
19 integrity of my songs, and I want the public to hear
20 them and remember them the way I presented them 11:59AM
21 originally.

22 Q. Would you say you pass on most requests for
23 licenses for your songs?

24 A. I would say that, yes.

25 Q. Do you leave money on the table doing that? 11:59AM

1 A. Millions. We have been offered millions of
2 dollars by soft drink companies, beer companies,
3 liquor companies, car companies, a whole host of
4 corporations who wanted to use our music to
5 advertise their products, and we've turned it down 12:00PM
6 for that very reason.

7 Q. From time to time, you will license one of
8 your songs for use on a television program or movie;
9 is that right?

10 A. Very rarely, but occasionally. 12:00PM

11 Q. On those occasions when you said yes to the
12 request for license, why did you say yes?

13 A. Sometimes it's personal. Sometimes there's
14 a friend of mine who's an actor in the movie or the
15 director is a friend of mine or it's a movie that 12:00PM
16 Mr. Azoff has produced or, actually, I just like the
17 work. You know, I think the work has integrity, and
18 I think it fits with the artistic meaning of the
19 song. I think it's a good fit, a good match. But
20 again, that happens very rarely. 12:01PM

21 Q. Let's start with movies.

22 How many times can you think of that you've
23 licensed the use of one of your songs or one of your
24 songs you wrote for -- with the Eagles for use in a
25 movie? 12:01PM

1 A. I can count them on one hand.

2 Q. Is that true about television programs
3 also?

4 A. More so, yeah.

5 Q. So even fewer television programs than 12:01PM
6 movies?

7 A. I believe so. The numbers for both are
8 very small.

9
10 12:01PM

11
12

13
14

15 12:02PM
16

17
18

19
20

21
22

23
24

25 Q. Go back to Ms. Thomas's email. The second
sentence of that same paragraph, she says, quote: 12:02PM

1 "He writes them the way he sees
2 things, which is a very individual
3 thing," end sentence.

4 Do you know what she's talking about there?

5 A. I don't know if she's talking about the 12:03PM
6 songs or if she means I accept or decline -- I don't
7 know if she's saying he calls them the way -- I
8 don't know if he's talking about -- she's talking
9 about the request for the usage or if she's talking
10 about the songs themselves. I'm a little confused 12:03PM
11 about what she means there.

12 Q. We'll skip over that one.

13 The next sentence, quote:

14 "There are many artists that don't
15 really care about how their songs are 12:03PM
16 used, but he doesn't fall into this
17 category, and regularly has us
18 reviewing postings on YouTube in order
19 to have them taken down," end quote.

20 Well, is that true, that you regularly have 12:03PM
21 Lisa Thomas or others reviewing postings on YouTube
22 in order to take material down?

23 A. What's the date on this? 2008?

24 Q. 2008.

25 A. There was a period of time when YouTube 12:03PM

1 all the other infringements that are on YouTube?

2 A. Well, to be clear, I'd like for all of them
3 to be taken down because they're all copyright
4 infringements. Every time I do a concert, there's
5 somebody in the audience with a camera, and they
6 film the concert, which kind of spoils any surprises
7 for the next audience that we're going to play for.
8 You know, it gives away what we're doing in the
9 show.

12:05PM

12:05PM

10 These videos of Mr. Devore's and Mr. Hart's
11 videos were -- again, rose to another level because
12 they were -- they amounted to a campaign ad. And
13 they used two of my most popular songs to promote
14 Mr. Devore's political campaign, and they were
15 disseminated not only on YouTube but other online
16 sites. And so we asked that they be taken down, and
17 then of course your client objected and had them put
18 back up. They were even up after the lawsuit was
19 filed.

12:06PM

20 Q. One of them was?

12:06PM

21 A. One of them was, yeah.

22 MR. ARLEDGE: Take a break in a couple
23 minutes, or should we wait until lunch is actually
24 delivered? Do we know what's going to happen with
25 that?

12:06PM

1 MR. WHITNEY: I think lunch is going to be
2 delivered next door, so they can handle it.

3 MS. CHARLESWORTH: Do you want me to go
4 check?

5 MR. ARLEDGE: I don't want this to be an 12:06PM
6 endurance contest.

7 I'm going to show you another email from
8 Ms. Thomas. Well mark this as No. 2.

9 (Deposition Exhibit 2 was marked for
10 identification.) 12:07PM

11 MS. CHARLESWORTH: Thank you.

12 MR. ARLEDGE: Sure.

13 This is a one-page document stamped
14 DHMC 002147. It purports to be an email from Lisa
15 Thomas, dated March 31st, 2009. 12:07PM

16 THE WITNESS: Uh-huh.

17 BY MR. ARLEDGE:

18 Q. Sir, have you ever seen this document
19 before?

20 A. I believe I was copied on it when she sent 12:07PM
21 it.

22 Q. A BCC?

23 A. I don't recall if it was a blind copy or a
24 regular copy.

25 Q. The third sentence of her email says: 12:08PM

1 "Regrettably Don Henley does not
2 permit the use of his work for any
3 political or religious causes," end
4 quote.

5 Is that true?

12:08PM

6 A. Yes. Or karaoke or corporate
7 advertisements or games, video games, or television
8 shows, competition shows on television like American
9 Idol.

10 Q. Although I guess somebody decided to use
11 one of the songs in this lawsuit on American Idol;
12 right?

12:08PM

13 A. Yeah, without my blessing, which is his
14 right.

15 Q. That was Mr. Kortchmar that approved that?

12:08PM

16 A. As I understand it. I wasn't involved in
17 that. I would not have approved it. Well, are we
18 talking about All She Wants to Do is Dance or --

19 Q. Yes.

20 A. Yeah.

21 Q. All She Wants to Do is Dance, which the guy
22 who won this past season, I think --

23 A. Really?

24 Q. -- I think used it.

25 A. I don't watch the show but --

12:09PM

1 STATE OF CALIFORNIA) ss:
2 COUNTY OF LOS ANGELES)

3

4 I, JANICE SCHUTZMAN, C.S.R. No. 9509, do hereby
5 certify:

6 That the foregoing deposition testimony was taken
7 before me at the time and place therein set forth and at
8 which time the witness was administered the oath;

9 That the testimony of the witness and all objections
10 made by counsel at the time of the examination were
11 recorded stenographically by me, and were thereafter
12 transcribed under my direction and supervision, and that
13 the foregoing pages contain a full, true and accurate
14 record of all proceedings and testimony to the best of
15 my skill and ability.

16 I further certify that I am neither counsel for any
17 party to said action, nor am I related to any party to
18 said action, nor am I in any way interested in the
19 outcome thereof.

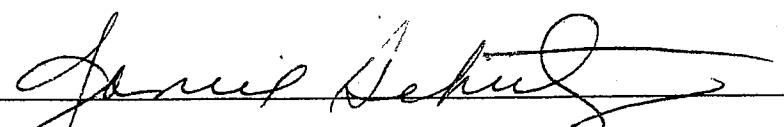
20 IN WITNESS WHEREOF, I have subscribed my name this
21 15th day of December, 2009.

22

23

24

25



JANICE SCHUTZMAN, CSR No. 9509