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PAGES 1 - 23

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JOSEPH C. SPERO, MAGISTRATE JUDGE

KRISTIN M. PERRY, ET AL.,)

PLAINTIFFS,)

VS.)

NO. C 09-2292 VRW (JCS)

ARNOLD SCHWARZENEGGER,)

ET AL.,)

DEFENDANTS.)

SAN FRANCISCO, CALIFORNIA
WEDNESDAY, JANUARY 20, 2010

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFF: GIBSON DUNN & CRUTCHER LLP
1050 CONNECTICUT AVE., NW
WASHINGTON, DC 20036
BY: **MATTHEW DEMPSEY MC GILL**
ATTORNEY AT LAW

FOR DEFENDANT: LAW OFFICES OF
VINCENT P. MC CARTHY
W. CHESTNUT HILL ROAD
LINCHFIELD, CT 06759
BY: **VINCENT P. MC CARTHY**
ATTORNEY AT LAW

REPORTED BY: JAMES YEOMANS, CSR 4039, RPR
OFFICIAL REPORTER

COMPUTERIZED TRANSCRIPTION BY ECLIPSE

1 WEDNESDAY, JANUARY 20, 2010

1:30 P.M.

2 (THE FOLLOWING PROCEEDINGS WERE HEARD IN OPEN COURT:)

3 **THE CLERK:** CALLING CASE C 09-2292, KRISTIN PERRY
4 VERSUS ARNOLD SCHWARZENEGGER.

5 COUNSEL, PLEASE STATE YOUR APPEARANCES.

6 **MR. MC CARTHY:** VINCE MC CARTHY FOR THE MOVEMENT AND
7 NON-PARTY WITNESSES.

8 **THE COURT:** IS MC PHERSON AND GARLOW?

9 **MR. MC CARTHY:** PASTOR MC PHERSON.

10 **THE COURT:** MR. MC CARTHY, THANK YOU.

11 **MR. MC GILL:** MATTHEW MC GILL FOR THE PLAINTIFF, YOUR
12 HONOR.

13 **MS. SCHILLER:** JOSH SCHILLER ASSISTING MR. MC GILL FOR
14 THE PLAINTIFFS.

15 **THE COURT:** THANK YOU VERY MUCH.

16 WE'RE HERE, AS I UNDERSTAND IT, ON THE TWO MOTIONS
17 THAT WERE FILED BY THE PASTORS. AND I'VE BRIEFLY REVIEWED THE
18 PAPERS THAT MR. MC CARTHY FILED AND THE OPPOSITION, I GUESS, TO
19 THAT, THOSE PAPERS.

20 AND, I GUESS, MY FIRST QUESTION IS TO THE PLAINTIFFS.
21 I'M NOT ENTIRELY SURE, BUT IT STRUCK ME I WANTED TO UNDERSTAND
22 THE FEEL OF THE QUESTIONS WE'RE TALKING ABOUT, BECAUSE NO
23 QUESTIONS HAVE BEEN ASKED OF THIS WITNESS, THESE WITNESSES YET.

24 AND, I SUPPOSE, I JUST SEE WHAT THE QUESTIONS COME UP,
25 BUT MY GUESS IS THAT THE REASON WE'RE DOWN BEFORE ME IS SO THAT

1 DOESN'T HAPPEN. WHAT ARE YOU GOING TO ASK THIS WITNESS?

2 IT LOOKED LIKE YOUR JUST ASKING HIM AUTHENTICATION
3 QUESTIONS.

4 **MR. MC GILL:** I THINK, THAT'S RIGHT. AT THIS POINT
5 WHAT AMONG THE 20,000 OR MORE DOCUMENTS THAT HAVE BEEN PRODUCED
6 TO US OVER THE LAST 72 HOURS, A NUMBER OF THE DOCUMENTS WERE --
7 SOME WERE AUTHORED BY PASTOR GARLOW, SOME WERE AUTHORED BY
8 PASTOR MC PHERSON.

9 WE ALSO HAVE DISCOVERED FROM PUBLIC SOURCES SUCH AS
10 PASTOR GARLOW'S WEBSITE, PASTOR MC PHERSON'S WEBSITE MESSAGES
11 ABOUT THE YES, RELATING TO THE YES ON 8 CAMPAIGN.

12 THERE'S NO REAL DISPUTE THAT PASTOR GARLOW AND PASTOR
13 MC PHERSON WERE FORCEFUL AND VERY PUBLIC ADVOCATES IN SUPPORT
14 OF PROPOSITION 8. THERE'S NO REAL DISPUTE ABOUT THAT AND WE'VE
15 COLLECTED DOCUMENTS THAT RELATE TO THEIR MESSAGES IN SUPPORT OF
16 THE YES ON 8 CAMPAIGN.

17 WE ALSO NOW RECEIVED AS PART OF THIS VERY LARGE RECENT
18 PRODUCTION A NUMBER OF DOCUMENTS THAT DEMONSTRATE THEY WERE NOT
19 ACTING INDEPENDENTLY, BUT RATHER VERY MUCH IN COORDINATION WITH
20 PROTECTMARRIAGE.COM.

21 **THE COURT:** IN TERMS OF THE QUESTIONS YOU WILL ASK OF
22 THESE PARTICULAR WITNESSES, THEY ARE ALL -- ARE YOU GOING TO
23 ASK THEM WITH RESPECT TO THESE DOCUMENTS AND/OR VIDEOTAPES, YOU
24 WERE GOING TO ASK THEM WHAT KIND OF QUESTIONS?

25 IS IT ALL QUESTIONS OF THE NATURE, IS THAT YOUR NAME,

1 DID YOU RECEIVE THIS, DID YOU AUTHOR THIS, IS THAT YOU THAT
2 APPEARS TO THIS VIDEOTAPE, DOES THE VIDEO ACCURATELY REFLECT
3 WHAT OCCURRED ON THAT DATE, IS IT ALL AUTHENTICATION KIND OF
4 QUESTIONS?

5 **MR. MC GILL:** I THINK, IT'S PRINCIPALLY AUTHENTICATION
6 TYPE QUESTIONS. I DON'T KNOW WHAT THE DOCUMENTS THAT WE'RE
7 STILL REVIEWING MAY YET REVEAL, BUT AS OF NOW, AND THE REASON
8 WE ISSUED TRIAL SUBPOENAS TO THEM WAS TO AUTHENTICATE, FOR THE
9 PURPOSE OF AUTHENTICATING DOCUMENTS THAT WE HAVE IN OUR
10 POSSESSION AND THAT WE HAVE RECEIVED FROM THE OTHER SIDE.

11 AND WE OFFERED IN OUR OPPOSITION TO THE MOTION TO
12 QUASH, WE DID, INDEED, OFFER TO WITHDRAW THE SUBPOENAS IF
13 PASTOR GARLOW AND PASTOR MC PHERSON WOULD AUTHENTICATE AND DEEM
14 ADMISSIBLE THESE DOCUMENTS.

15 **THE COURT:** THEY COULDN'T DO THAT THEMSELVES ANYWAY.

16 **MR. MC GILL:** BUT NOT TO INTERPOSE OBJECTION TO ITS
17 ADMISSIBILITY.

18 **THE COURT:** I DON'T KNOW THEY HAVE ANY STANDING TO
19 OBJECT TO ADMISSIBILITY, BUT . . .

20 **MR. MC GILL:** THEY ARE IN THE PROCEEDING BEFORE JUDGE
21 WALKER.

22 **THE COURT:** I CAN UNDERSTAND THAT. MAYBE WE'LL GET TO
23 THAT. THE MOTION IS NOT WITH RESPECT TO DOCUMENTS, IT'S WITH
24 RESPECT TO TESTIMONY.

25 THERE'S A TRIAL SUBPOENA THAT'S REQUIRING THEM TO

1 APPEAR FOR TESTIMONY, I'M TRYING TO FIGURE OUT WHAT'S AT ISSUE
2 WITH RESPECT TO THE TRIAL SUBPOENAS.

3 SO IT IS YOU DON'T INTEND TO ASK THEM ANYTHING ABOUT
4 THEIR PERSONAL BELIEFS WITH RESPECT TO THE ISSUES THAT ARE
5 INVOLVED IN THE TRIAL?

6 **MR. MC GILL:** NO.

7 **THE COURT:** YOU DON'T INTEND TO ASK THEM ANY QUESTIONS
8 WITH RESPECT TO -- WELL, I WON'T GO THERE, TOO FAR. I DON'T
9 KNOW HOW -- I DON'T HAVE ENOUGH INFORMATION.

10 AND, I TAKE IT, WHETHER IT WAS APPROPRIATE OR NOT,
11 THAT THE PASTORS WERE UNWILLING TO STIPULATE THAT THEY WOULDN'T
12 BE CALLED TO TESTIFY, BUT THEY WOULDN'T INTERPOSE ANY OBJECTION
13 TO THE ADMISSIBILITY OF THE DOCUMENTS THAT WERE PRODUCED TO THE
14 PLAINTIFFS FROM OTHER SOURCES?

15 **MR. MC CARTHY:** YOUR HONOR, WHAT HAS CAUSED US
16 CONCERN, IS THE OFFER THAT WAS MADE HERE TO WITHDRAW THE
17 SUBPOENA IF THE MOVEMENTS AGREED TO THE ADMISSION OF ANY
18 DOCUMENTS THEY AUTHORED, RECEIVED OR ANY VIDEO IN WHICH THEY
19 APPEARED, THAT IS SO ENORMOUSLY BROAD THAT NO ONE IN THEIR
20 RIGHT MIND WOULD CONCEDE TO THE ADMISSIBILITY OF THOSE THINGS.

21 FOR EXAMPLE, IF I WAS SHOWN A VIDEO THAT I APPEARED IN
22 FOR TWO MINUTES, OR ONE MINUTE, OR FIVE MINUTES, OR 10 MINUTES,
23 BUT HAD NEVER SEEN BEFORE, NEVER EVEN KNEW IT WAS BEING
24 VIDEOED, HOW CAN IDENTIFY THAT OR AUTHENTICATE THAT?

25 **THE COURT:** HE'S ASKING MUCH LESS THAN THAT. HE'S

1 ASKING YOU JUST NOT TO OBJECT. HE'S NOT EVEN ASKING YOU TO
2 STIPULATE TO THEIR ADMISSIBILITY, HE'S JUST SAYING DON'T
3 OBJECT.

4 **MR. MC CARTHY:** TWO DIFFERENT CONSIDERATIONS, YOUR
5 HONOR. ONE, IS AS TO AUTHENTICITY, AND WE RECEIVED ON SUNDAY A
6 THREE-RING BINDER OF -- FILLED WITH 30 DISKS THAT WE WERE ASKED
7 TO SEND DOWN TO OUR CLIENT AND HAVE OUR CLIENT AUTHENTICATE.

8 I SAID THERE'S NO WAY I CAN DO THAT IT'S SUNDAY AND
9 TOMORROW MARTIN LUTHER KING DAY, SO THERE'S NO WAY I CAN GET
10 THESE TO MY CLIENT IN SAN DIEGO.

11 SO I RECEIVED A CALL FROM AN ATTORNEY FROM PLAINTIFF'S
12 LAW FIRM YESTERDAY WITH A MUCH SMALLER GROUPING OF DISKS, ONLY
13 EIGHT DISKS, AND TOGETHER WITH THE SAME DOCUMENTS THAT WERE IN
14 THE PACKAGE I RECEIVED ON SATURDAY.

15 I AGREED TO SEND THOSE TO MY CLIENT OVERNIGHT AND HAVE
16 THEM REVIEW THEM FOR AUTHENTICITY AND I SAID I WOULD GET BACK
17 TO THEM AS SOON AS THINK THEY HAD REVIEWED THEM.

18 I TOLD COUNSEL TODAY IN COURT THAT MY CLIENTS, ONE OF
19 MY CLIENTS HAS ALREADY REVIEWED SOME OF THEM AND THE SECOND
20 CLIENT HAS THEM AND IS REVIEWING THEM RIGHT NOW. SO WE ARE
21 PERFECTLY WILLING TO REVIEW ALL OF THE TAPES AND DOCUMENTS FOR
22 AUTHENTICITY.

23 MY CLIENTS ARE GOING TO TRY TO GET THEM BACK BY FEDEX,
24 SO I CAN GET THEM TOMORROW MORNING, IF THEY CAN, BUT THEY'RE
25 DOING EVERYTHING THEY CAN TO COMPLY WITH WHAT THE PLAINTIFFS

1 WANTED THEM TO DO.

2 THE SECOND QUESTION, HOWEVER, YOUR HONOR, IS
3 ADMISSIBILITY. AND AS TO THAT WE HAD AGREED, AND COUNSEL FOR
4 THE PLAINTIFFS HAD ALSO AGREED, THAT WE COULD RETAIN ANY
5 OBJECTIONS WE HAD AS TO ADMISSIBILITY.

6 AND WE DO HAVE QUESTIONS AS TO ADMISSIBILITY, NUMBER
7 ONE, BECAUSE WE DON'T KNOW WHAT THE DOCUMENTS ARE. SO, YOU
8 KNOW, WE DON'T KNOW WHAT WE WOULD DO UNLESS WE SEE THE DOCUMENT
9 IN QUESTION.

10 SECOND, IF THE QUESTIONS THAT ARE ASKED OF MY CLIENT
11 DOES GO TO MY CLIENT'S BELIEFS --

12 **THE COURT:** CAN I INTERRUPT YOU? I DON'T WANT TO GET
13 TO THAT QUITE YET. BECAUSE WE MAY NOT EVEN NEED TO GET TO THAT
14 QUESTION.

15 ALL HE'S SAYING TODAY, IS YOUR CLIENTS DON'T EVEN HAVE
16 TO STIPULATE TO AUTHENTICITY, AS I UNDERSTAND IT, WHAT THEY --
17 WHAT HE'S ASKING YOU TO DO IS JUST TO AGREE THEY WON'T OBJECT.

18 **MR. MC CARTHY:** WE'RE WILLING TO REVIEW THOSE
19 DOCUMENTS.

20 **THE COURT:** WHY DO YOU NEED TO REVIEW THEM? ON WHAT
21 CONCEIVABLE BASIS?

22 **MR. MC CARTHY:** YOU MEAN, AS TO AUTHENTICITY?

23 **THE COURT:** AS TO ANYTHING.

24 **MR. MC CARTHY:** SURE.

25 **THE COURT:** CLIENTS ARE NOT PARTIES TO THIS CASE, THEY

1 HAVE NO STANDING IN GENERAL TO OBJECT TO THE ADMISSIBILITY OF
2 ANYTHING THAT GOES INTO EVIDENCE IN THE CASE, AS A GENERAL
3 PROPOSITION THAT'S THE CASE.

4 ON RARE OCCASIONS, ON RARE OCCASIONS THERE ARE SECRET
5 THINGS THAT HAVE ALREADY NOT YET BEEN MADE PUBLIC THAT SOMEONE
6 MIGHT, BUT SINCE THE DOCUMENTS AND THE VIDEOS THEY GOT WERE IN
7 SOMEONE ELSE'S POSSESSION, SEEMS UNLIKELY THAT THEY WOULD EVER
8 HAVE AN OBJECTION THAT THEY COULD HAVE STANDING TO MAKE IN A
9 TRIAL.

10 **MR. MC CARTHY:** BUT THEY HAVE ASKED US TO AUTHENTICATE
11 TAPES AND WE'RE WILLING TO DO THAT.

12 **THE COURT:** I UNDERSTAND, MAYBE YOU DON'T EVEN HAVE TO
13 DO THAT.

14 **MR. MC CARTHY:** WE MIGHT NOT, WE ARE WILLING --

15 **THE COURT:** I APPRECIATE THAT.

16 **MR. MC CARTHY:** -- TO REVIEW THEM.

17 **THE COURT:** I'M TRYING TO SOLVE A PROBLEM AND I MAYBE
18 ABLE TO SHORTCUT THIS AND MAKE YOUR LIFE EASIER.

19 AND SO, IF I UNDERSTAND YOU CORRECTLY, MR. MC GILL, I
20 MAY NOT BE, WHAT YOU SAID WAS, THAT IF THESE TWO PASTORS WILL
21 AGREE NOT TO OBJECT, NOT STIPULATE TO ANYTHING, NOT AGREE
22 THEY'RE AUTHENTIC, NOT AGREE THAT THEY'RE, YOU KNOW, AND GET
23 THEM IN THROUGH SOMETHING ELSE, I ASSUME, IS THAT WHAT YOU'RE
24 TALKING ABOUT?

25 **MR. MC GILL:** OUR CONCERN WE'RE TALKING ABOUT, WELL,

1 JUST TAKE ONE PART DYNAMIC EXAMPLE OF WHAT WE'RE TALKING ABOUT.
2 THE SO-CALLED VIDEO TRANSMISSIONS TO THOUSANDS OF PASTORS IN
3 WHICH PASTOR GARLOW AND PASTOR MC PHERSON APPEARED, OKAY, OUR
4 CONCERN WAS, AND THE REASON WE ISSUED THE SUBPOENAS, WHAT IF
5 THE DEFENDANT INTERVENORS OBJECT TO THE AUTHENTICITY OF THESE
6 DOCUMENTS, OF THESE VIDEOS.

7 **THE COURT:** THAT'S WHY I SAID THESE INDIVIDUALS ARE
8 NOT THE PEOPLE WHO CAN PROVIDE YOU THE STIPULATION YOU NEED.

9 **MR. MC GILL:** NO, I UNDERSTAND THAT.

10 **THE COURT:** SO STIPULATION IS NOT GOOD ENOUGH.

11 **MR. MC CARTHY:** I AGREE WITH COUNSEL.

12 **THE COURT:** WAIT. I UNDERSTAND THE PROBLEM. I JUST
13 DON'T UNDERSTAND HOW YOUR PROPOSAL, WHICH WAS THAT SOMEBODY
14 STIPULATE THAT THESE ARE AUTHENTIC.

15 **MR. MC GILL:** THE PROPOSAL MADE, I'M SORRY IF I WAS
16 NOT CLEAR OR IF I MISSPOKE, THAT THE PROPOSAL MADE WHICH ON
17 PAGE THREE OF OUR OPPOSITION, IS THAT IF THE PROPONENTS AGREE
18 TO THE ADMISSION --

19 **THE COURT:** BUT THEY WON'T, RIGHT?

20 **MR. MC GILL:** SO FAR SO GOOD UPSTAIRS, THEY HAVE NOT
21 YET OBJECTED TO THE AUTHENTICITY OF OR OTHERWISE THE ADMISSION
22 OF THE DOCUMENTS THAT ARE GOING INTO EVIDENCE, BUT MR. --

23 **THE COURT:** YOU ARE CONCERNED ONCE SOMETHING CAME UP
24 IN TRIAL, I APPRECIATE THAT.

25 **MR. MC CARTHY:** AS TO AUTHENTICITY AS WELL. I

1 RESPECTFULLY DISAGREE THERE MAYBE, FOR EXAMPLE, A DOCUMENT THAT
2 PURPORTS TO BE ONE IN WHICH MY CLIENT IS DOING SOMETHING, FOR
3 EXAMPLE, AND IT COMBINES ANOTHER PIECE OF TAPE FROM ANOTHER
4 DOCUMENT TO MAKE IT LOOK LIKE MY CLIENT IS DOING SOMETHING THAT
5 MY CLIENT ISN'T, MY CLIENT MAY SAY TO ME, MR. MC CARTHY, THAT
6 IS NOT AN AUTHENTIC TAPE, THAT'S NOT AN AUTHENTIC REPRODUCTION
7 OF WHAT HAPPENED ON THAT DATE IN QUESTION.

8 IF THAT HAPPENED, IF THE TAPE WAS TAMPERED WITH, THOSE
9 WOULD BE GROUNDS FOR OBJECTION AS TO AUTHENTICITY.

10 **THE COURT:** BUT NOT BY YOU.

11 **MR. MC CARTHY:** I THINK THEY WOULD BE.

12 **THE COURT:** NON-PARTY DOESN'T HAVE STANDING TO OBJECT
13 ON THE BASIS OF AUTHENTICITY.

14 **MR. MC CARTHY:** ALL RIGHT.

15 **THE COURT:** THAT'S A PARTY PROBLEM BECAUSE HERE'S THE
16 REASON. NONE OF THESE DOCUMENTS ARE YOURS, NONE OF THESE TAPES
17 ARE YOURS, YOU -- HE GOT THEM FROM SOMEONE ELSE, AND SO THEY'VE
18 ALREADY BEEN PRODUCED TO THESE FOLKS.

19 AND IN TERMS OF ADMISSION AT TRIAL, THE ONLY PERSON
20 WHO, IN MY JUDGMENT, HAS STANDING TO OBJECT ON AUTHENTICITY
21 GROUNDS TO SOMETHING TO BE ADMITTED AT TRIAL IS A PARTY. AND
22 IF THE PARTY DOESN'T OBJECT, THE WITNESS DOESN'T HAVE ANY
23 STANDING.

24 **MR. MC CARTHY:** SO THEN WE KNOW IT'S NOT AN AUTHENTIC
25 DOCUMENT.

1 **THE COURT:** IF THE PROPONENTS WANT IT IN, IT GOES IN.
2 MAYBE GOOD JUDGMENT REASON FOR DOING IT. THEY MAY NOT WANT TO
3 FIGHT THAT BATTLE RIGHT NOW BECAUSE IT WILL INTERFERE WITH
4 OTHER PLANS THEY HAVE FOR THE CASE, BECAUSE THEY HAVE MORE
5 IMPORTANT THINGS TO TAKE UP WITH THE JUDGE, THEIR STRATEGY MORE
6 LIKELY TO OBTAIN VICTORY, ET CETERA, BUT IT'S A PARTY QUESTION.

7 IT IS SOMETIMES, I CAN'T REMEMBER THE LAST TIME I HAD
8 SOMEONE, A NON-PARTY OBJECTING TO A DOCUMENT. I SUPPOSE, I
9 COULD ENVISION SOMETHING ATTORNEY-CLIENT PRIVILEGE DOCUMENT
10 THAT SOMEHOW --

11 **MR. MC CARTHY:** YES, I HAVE SEEN THAT BEFORE.

12 **THE COURT:** OTHER THAN THAT I CAN'T THINK OF ONE. SO
13 I JUST, YOU KNOW, AS FAR AS IT GOES, IT SOUNDS LIKE -- LET ME
14 TAKE IT A STEP AT A TIME.

15 THE QUESTIONS THAT YOU ANTICIPATE ASKING NOW, THAT THE
16 PLAINTIFFS ANTICIPATE ASKING NOW RELATE TO THE AUTHENTICITY OF
17 DOCUMENTS AND VIDEOTAPES IN WHICH THESE TWO WITNESSES, THE
18 PASTORS, PURPORTEDLY APPEAR, EITHER AS AUTHORS, OR RECIPIENT,
19 OR ON THE VIDEOTAPE?

20 **MR. MC CARTHY:** APPEARED OR RECEIVED. THEIR NAME ON
21 THE DOCUMENTS AS RECIPIENT, OR AUTHOR, OR THEY ARE IN
22 SOMEWHAT -- OR THEY MAY, OR THEY ACTUALLY APPEAR ON A
23 VIDEOTAPE.

24 **THE COURT:** THE QUESTIONS YOU ANTICIPATE OF THESE
25 WITNESSES RELATE TO AUTHENTICATION OF THOSE MATERIALS; IS THAT

1 RIGHT?

2 **MR. MC GILL:** THAT'S CORRECT.

3 **THE COURT:** SO, AND YOU DON'T HAVE ANY OBJECTION TO
4 YOUR CLIENTS AUTHENTICATING THESE MATERIALS, FROM THE
5 WITNESSES, FROM THE PASTORS' POINT OF VIEW. YOU DON'T HAVE ANY
6 OBJECTION TO YOUR CLIENTS EITHER SAYING THEY'RE AUTHENTIC OR
7 SAYING THEY'RE NOT. SAYING, YES THAT'S MY NAME, YES I WAS
8 THERE, NO I WASN'T THERE, THE AUTHENTICATION KIND OF QUESTIONS.

9 THE PASTORS DON'T HAVE ANY OBJECTION TO THOSE KIND OF
10 QUESTIONS, ACTUALLY, LOOK INTO THAT; IS THAT RIGHT?

11 **MR. MC CARTHY:** I CONCEDE TO WHAT YOUR HONOR HAS SAID.

12 **THE COURT:** SO FAR THERE'S NO DISAGREEMENT. SO FAR
13 DOESN'T SEEM LIKE THERE'S ANY DISAGREEMENT, AS FAR AS WHAT IS
14 GOING ON, AS FAR AS THE TESTIMONY OF THE PASTORS IS CONCERNED.

15 **MR. MC GILL:** I THINK, THAT IS RIGHT, YOUR HONOR. IF
16 THERE IS NO OBJECTION TO THE AUTHENTICITY OF THE DOCUMENTS THAT
17 WE INTEND TO INTRODUCE INTO EVIDENCE, IF THERE IS NO OBJECTION
18 BY THE PROPONENTS.

19 **THE COURT:** THEN YOU'LL NEVER GET TO THEM, I THINK,
20 ANYWAYS.

21 **MR. MC GILL:** THERE WOULD BE NO REASON I CAN ENVISION
22 RIGHT NOW WE WOULD CALL THEM.

23 **THE COURT:** ALL RIGHT. SO, JUST SO WE'RE CLEAR ON
24 THAT, WITH RESPECT TO THE MOTION TO QUASH THE TRIAL SUBPOENAS,
25 GIVEN THAT REPRESENTATION ABOUT THE SCOPE OF THE QUESTIONING, I

1 WOULD DENY THE MOTIONS TO QUASH.

2 NOW, THINGS HAPPEN AND YOU MAY CHANGE YOUR MIND AND
3 YOU MAY HAVE A DIFFERENT ARGUMENT. AT SOME POINT IF THEY
4 DECIDE, WELL, I DO WANT TO REALLY GET INTO THE PERSONAL BELIEFS
5 OF THE PASTORS, I WANT TO TALK ABOUT WHAT HE SAID TO THE OTHER
6 CHURCH ELDERS, HOW THEY WOULD FORMULATE A MESSAGE THING THAT
7 MIGHT IMPLICATE A FIRST AMENDMENT QUESTION?

8 **MR. MC CARTHY:** IF THAT HAPPENS I WOULD RESERVE.

9 **THE COURT:** THEN YOU'LL RENEW YOUR MOTION TO QUASH IT,
10 IS THE QUESTION BEFORE THE COURT, IS ON THE QUESTIONS THAT, I
11 MEAN, WITH RESPECT TO THE QUESTIONS THAT ARE ANTICIPATED. AS
12 TO THE QUESTIONS THAT ARE ANTICIPATED THE MOTION IS DENIED.

13 NOW, SAME THING I DENIED IT WE WENT FORWARD AND SEE
14 WHAT HAPPENS AND YOU SEE THE QUESTIONS, IF THEY'RE
15 OBJECTIONABLE YOU RAISE THEM, SO IF THEY GET BEYOND THE SCOPE
16 THEN WE'LL TAKE THAT UP.

17 NOW, I'M A LITTLE CONCERNED ABOUT WHAT HAPPENS THIS
18 MORNING IN TRIAL THAT BROUGHT US HERE, AS I UNDERSTAND IT, AND
19 BECAUSE I DON'T KNOW WHETHER I'M SUPPOSED TO ADDRESS IT OR NOT.

20 **MR. MC GILL:** WE WOULD CERTAINLY APPRECIATE IT IF YOU
21 WOULD.

22 **THE COURT:** I DON'T KNOW WHETHER THAT'S MY TASK AND I
23 DON'T KNOW THAT'S ANYONE'S TASK. LET ME JUST START TALKING
24 ABOUT IT A LITTLE BIT.

25 AS I UNDERSTAND IT, WITH RESPECT TO ONE OF YOUR EXPERT

1 WITNESSES, I GUESS --

2 **MR. MC GILL:** THAT'S CORRECT.

3 **THE COURT:** -- YOU WERE GOING TO SHOW A, I GUESS, A
4 VIDEOTAPE.

5 **MR. MC GILL:** I THINK, THE OBJECTION WAS, SURFACED
6 FIRST IN RELATIONSHIP TO A DOCUMENT.

7 **THE COURT:** A DOCUMENT ON WHICH ONE OF THE PASTORS'
8 NAMES APPEAR, PRESUMABLY, AS AUTHOR OR RECIPIENT?

9 **MR. MC GILL:** THAT'S CORRECT.

10 **THE COURT:** YOU WERE GOING TO HAVE THE EXPERT WITNESS
11 TESTIFY ABOUT THAT DOCUMENT?

12 **MR. MC GILL:** ABOUT THE DOCUMENT, YES.

13 **THE COURT:** AND, I GUESS, I'M WONDERING WHETHER OR NOT
14 NOW THAT WE'VE HAD THIS DISCUSSION, YOU AGREE WITH ME THAT WITH
15 RESPECT TO DOCUMENTS, VIDEOS, ET CETERA, THEY GOTTEN SOME FROM
16 SOMEWHERE ELSE, SOMEONE ELSE, AS TO THAT YOU DON'T HAVE THE
17 ABILITY TO OBJECT, YOU DON'T HAVE A PROPER OBJECTION.

18 **MR. MC CARTHY:** I WASN'T OBJECTING TO AUTHENTICITY,
19 YOUR HONOR.

20 **THE COURT:** NO, I UNDERSTAND IT, BUT IN TERMS OF
21 ADMISSIBILITY, WHY DO YOU HAVE AN OBJECTION?

22 **MR. MC CARTHY:** BECAUSE THERE ARE SERIOUS, I BELIEVE,
23 FIRST AMENDMENT CONCERNS WITH PUTTING PASTORS' TESTIMONY,
24 STATEMENTS, AND I DIDN'T KNOW WHAT WAS ON THAT DOCUMENT BECAUSE
25 I'VE NEVER SEEN IT BEFORE.

1 FOR ALL I KNEW IT COULD BE A SERMON, COPY OF A SERMON
2 TO HIS CHURCH AND SOMETHING LIKE THAT BEING ADMISSIBLE AT A
3 TRIAL, I FELT WAS -- WOULD BE NOT ONLY INADMISSIBLE, BUT SEND A
4 CHILLING EFFECT THROUGH ALL PASTORS THROUGHOUT THE UNITED
5 STATES, SO THEY COULD BE CALLED TO TESTIFY, TO BE SUBPOENAED.

6 **THE COURT:** THIS IS NOT THEM, THIS IS NOT THEM.

7 **MR. MC CARTHY:** I DIDN'T KNOW, YOUR HONOR, WHETHER IT
8 CONTAINED TESTIMONY, INFORMATION.

9 **THE COURT:** I SEE. YOUR -- I SEE, OKAY, SO LET ME PUT
10 THE ARGUMENT BACK TO YOU, SO I MAKE SURE I UNDERSTAND WHAT
11 YOU'RE SAYING.

12 WHAT YOU'RE SAYING, IS THAT ANYTIME A PASTOR SPEAKS ON
13 SUBJECTS REGARDING HIS FAITH, THAT IS COVERED BY A PRIVILEGE OF
14 FIRST AMENDMENT, NO MATTER WHO HAS A COPY OF THAT, NO MATTER
15 WHERE THAT COPY IS, THAT PERSON MAY NOT INTRODUCE IN EVIDENCE
16 AT TRIAL?

17 **MR. MC CARTHY:** I THINK, IT WOULD HAVE TO BE -- TAKE
18 EXTRAORDINARY REASONS IN ORDER TO INTRODUCE THAT. AND UNDER
19 THE BALANCING TEST SET OUT BY THE NINTH CIRCUIT, THE NEED FOR
20 THE INFORMATION WOULD HAVE TO BE EXTRAORDINARY VERSUS THE
21 POTENTIAL HARM TO THE PASTOR AND ALL OTHER PASTORS WHO ARE
22 GOING TO, OBVIOUSLY, BE CONCERNED ABOUT WHAT THEY SAY IN THE
23 FUTURE.

24 **THE COURT:** SO WE'RE TALKING ABOUT, JUST SO WE'RE
25 CLEAR, WE'RE NOT TALKING ABOUT THE SORT OF INTERNAL CAMPAIGN

1 COMMUNICATIONS, WE'RE TALKING ABOUT COMMUNICATION EITHER IN THE
2 FORM OF VIDEOTAPE OR DOCUMENTS, THAT HAVE BEEN PROVIDED TO
3 SOMEONE ELSE BECAUSE THAT'S WHERE THE PLAINTIFFS GOT THEM.

4 SO SOME THIRD-PARTY NOT INVOLVED IN ANY CORE GROUP
5 WITH THE PASTORS HAS THESE DOCUMENTS AND THEY COME INTO COURT
6 WITH THESE DOCUMENTS AND THE PASTORS OBJECT, YOU CAN'T EXPOSE
7 MY VIEWS ON THIS MATTER OF FAITH BECAUSE THAT WOULD CHILL MY
8 SPEECH.

9 **MR. MC CARTHY:** CORRECT.

10 **THE COURT:** LET ME --

11 **MR. MC CARTHY:** JUST TO CLARIFY SOMETHING. I MAY EVEN
12 HAVE HAD THAT DOCUMENT, BUT I WOULDN'T KNOW BECAUSE I DIDN'T
13 SEE THE DOCUMENT THAT WAS BEING PROFFERED.

14 I MEAN, I DIDN'T WANT TO SAY SOMETHING THAT ISN'T
15 TRUE, I MAY -- I WAS FURNISHED WITH THE DOCUMENTS FROM THE
16 OTHER SIDE, I DON'T KNOW IF THIS IS ONE OF THOSE 12.

17 **THE COURT:** IS IT ONE OF THOSE 12?

18 **MR. MC GILL:** YES, TO MY UNDERSTANDING.

19 **THE COURT:** I ASSUME, THEY PROVIDE YOU WITH ALL THE
20 DOCUMENTS THEY WANTED.

21 **MR. MC GILL:** THIS IS A CASE NO GOOD DEED GOES
22 UNPUNISHED.

23 **THE COURT:** LET ME FINISH THIS. PERRY -- HERE'S MY
24 PROBLEM WITH YOUR ARGUMENT. PERRY WAS FACED WITH THE -- THE
25 SAME QUESTION IN A DIFFERENT CONTEXT, BUT A SIMILAR QUESTION,

1 AND WHAT THEY HELD WAS, AS I UNDERSTAND IT, IS THAT
2 COMMUNICATIONS ON MATTER OF FIRST AMENDMENT INTEREST TO THE
3 WORLD ARE NOT PRIVILEGED FROM DISCLOSURE.

4 THE ONLY THING THAT'S PRIVILEGED FROM DISCLOSURE IS
5 PRIVATE INTERNAL CAMPAIGN COMMUNICATIONS, AND THAT TO THE
6 CONTRARY IF THOSE COMMUNICATIONS WENT OUT TO SOMEONE OTHER THAN
7 THESE LITTLE STRATEGY PEOPLE WHO ARE FORMULATING CAMPAIGN
8 MESSAGE AND STRATEGIES, IF IT WENT OUTSIDE THAT GROUP IT'S NOT
9 PRIVILEGED FROM DISCLOSURE.

10 SO MY QUESTION TO YOU IS, IF THAT'S NOT PRIVILEGED
11 FROM DISCLOSURE, HOW CAN IT BE THAT A PASTOR'S SERMON THAT GOES
12 PRESUMABLY TO HIS FLOCK, OR WRITINGS, OR THE PASTOR'S VIEWS IN
13 A 3,000 MEMBER VIDEO CONFERENCE, HOW CAN THOSE POSSIBLY BE
14 PRIVILEGED FROM DISCLOSURE?

15 UNDER THE FIRST AMENDMENT IF -- UNDER PERRY WHERE THEY
16 SAID ANYTHING OUT -- COMMUNICATIONS WITH THAT LITTLE CORE GROUP
17 OF STRATEGY AND FORMULATION OF MESSAGES WAS NOT PRIVILEGED, HOW
18 CAN I POSSIBLY MAKE THAT LEAP?

19 **MR. MC CARTHY:** TWO REASONS, YOUR HONOR. NUMBER ONE,
20 BECAUSE THE NINTH CIRCUIT WAS TALKING ABOUT THE CONFIDENTIALITY
21 OF THE SPAN OF THE FIRST AMENDMENT, WHAT I'M TALKING ABOUT HERE
22 IS SOMETHING VERY DIFFERENT AND THAT IS THE FIRST AMENDMENT
23 RIGHTS OF SPEECH AND ASSOCIATION, BUT MAINLY SPEECH.

24 AND THE SECOND --

25 **THE COURT:** WHY IS THAT DIFFERENT FROM PERRY? THIS

1 WAS THE SPEECH ASSOCIATIONAL RIGHTS OF THE INDIVIDUALS INVOLVED
2 IN THE CAMPAIGN?

3 **MR. MC CARTHY:** THEY WERE HELD TO BE CONFIDENTIAL IN A
4 DISCOVERY CONTEXT AS WELL. MY CONTEXT IS ACTUALLY AT A TRIAL
5 WHERE THE PERSON -- MY CLIENT IS BEING ASKED TO --

6 **THE COURT:** NO, YOUR CLIENT ISN'T BEING ASKED TO DO
7 ANYTHING, JUST ABOUT DOCUMENTS AND MATERIALS THAT ARE NOT IN
8 YOUR CLIENT'S POSSESSION. SOME THIRD-PARTY PRODUCED TO
9 PLAINTIFFS THEY WANT TO JUST INTRODUCE, COMPLETELY UNRELATED
10 WHETHER YOUR CLIENT TESTIFIED.

11 **MR. MC CARTHY:** BECAUSE IT MAY CONTAIN INFORMATION
12 THAT IS PART OF A SERMON OR SOME BIBLICAL EXPOSITION BY THE
13 PASTOR TO MEMBERS OF HIS CHURCH THAT WOULD BE, I BELIEVE,
14 PROTECTED BY THE FIRST AMENDMENT.

15 **THE COURT:** PROTECTED THE DISCLOSURE FROM THE FIRST
16 AMENDMENT, IN OTHER WORDS, WHERE IS THE CASE THAT SAYS
17 PUBLISHED SERMONS TO THE FLOCK OR WRITINGS THAT HAVE BEEN
18 COMMUNICATED TO OTHERS AND PUT IN DOCUMENTS AND GIVEN TO
19 THIRD-PARTIES ARE STILL PROTECTED FIRST AMENDMENT FROM
20 DISCLOSURE AT TRIAL?

21 **MR. MC CARTHY:** YOUR HONOR, I DON'T KNOW, THIS WAS A
22 PUBLISHED STATEMENT, I DON'T KNOW IT WAS GIVEN TO A
23 THIRD-PARTY, THERE'S BEEN NO TESTIMONY OR EVIDENCE.

24 **THE COURT:** THE DOCUMENTS ARE NOT IN YOUR CLIENT'S
25 HANDS, RIGHT? THEY'RE IN SOMEONE ELSE'S HANDS.

1 **MR. MC CARTHY:** I DON'T KNOW HOW THEY GOT THERE.

2 **THE COURT:** I DON'T KNOW EITHER. SOMEHOW THEY GOT TO
3 SOMEONE ELSE'S HAND AND SOMEONE ELSE DISCLOSED TO THE
4 PLAINTIFF.

5 **MR. MC CARTHY:** CORRECT.

6 **THE COURT:** YOU'RE THE OBJECTOR, DOESN'T MATTER
7 WHETHER YOU KNOW OR DON'T KNOW, YOU HAVE THE BURDEN OF PROVING
8 YOUR OBJECTION. YOU HAVE TO SHOW ME HOW IT COULD BE THAT
9 THERE'S A FIRST AMENDMENT PRIVILEGE FROM DISCLOSURE. BECAUSE
10 AS FAR AS THE RECORD SHOWS, THE RECORD SHOWS THAT THE DOCUMENTS
11 THAT ARE AT ISSUE ARE NOT IN YOUR CLIENT'S HANDS.

12 **MR. MC CARTHY:** I SUPPOSE, SOMEONE IN THE CHURCH COULD
13 HAVE JUST TAKEN IT DOWN, OR RECORDED IT, OR SOMETHING LIKE
14 THAT. I DON'T THINK THAT TAKES AWAY FROM THE OBJECTION.

15 **THE COURT:** LET'S USE THAT AS AN EXAMPLE. SOMEONE
16 RECORDS A SERMON GIVEN TO ALL 300 MEMBERS OF THE CHURCH OR 500
17 MEMBERS, I DON'T KNOW HOW MANY PEOPLE, MAYBE 10,000, I DON'T
18 KNOW. AND WRITES IT DOWN, TYPES IT UP AND SENDS IT AROUND TO
19 SOME OF THEIR PEOPLE WHO THINK THIS IS USEFUL INFORMATION FOR
20 THEM TO KNOW FOR THEIR OWN FAITH, OR FOR THE CAMPAIGN, OR
21 WHATEVER THEY THINK, YOU THINK THEY THEN CAN'T PUT IT INTO
22 EVIDENCE AT TRIAL?

23 YOU HAVE A PRIVILEGE, NOT JUST FROM DISCLOSING IT, BUT
24 YOU CAN WALK IN AND TRY TO CENSOR THE PLAINTIFF FROM PUTTING IN
25 AT TRIAL?

1 **MR. MC CARTHY:** YOU'RE NOT CENSORING IT, YOUR HONOR,
2 YOUR JUST -- YOU'RE MOVING TO PROHIBIT THAT DOCUMENT FROM BEING
3 INTRODUCED INTO EVIDENCE.

4 IF, IN PERRY, THE DOCUMENTS WERE NOT DISCOVERABLE FOR
5 THE INSIDE GROUP, I WOULD THINK A FORTIORI A MEMBER THAT'S
6 OUTSIDE THE INSIDE GROUP NOT A DEFENDANT IN THIS CASE WOULD
7 HAVE MORE PROTECTION.

8 **THE COURT:** WORKS THE OTHER WAY AROUND, ACTUALLY.
9 PERRY MAKES IT VERY CLEAR THERE'S LESS PROTECTION OUTSIDE THE
10 COURTROOM.

11 **MR. MC CARTHY:** MAY I ASK YOUR HONOR ONE QUESTION
12 ABOUT YOUR HONOR'S RULING?

13 **THE COURT:** YES.

14 **MR. MC CARTHY:** IF THE MOTION TO QUASH IS BEING
15 DENIED, THAT'S UNDER THE UNDERSTANDING, I TAKE IT, CORRECT ME
16 IF I'M WRONG, YOUR HONOR, THAT THE CLIENTS -- THAT THE -- WELL,
17 WHY WOULD THE -- WHY WOULD GARLOW AND MC PHERSON NEED TO BE
18 CALLED AT ALL? I'M SURE YOUR HONOR IS CORRECT.

19 **THE COURT:** THEY MAY NOT NEED TO BE CALLED.

20 **MR. MC CARTHY:** IF THESE DOCUMENTS CAN BE ADMITTED
21 WITHOUT GARLOW AND MC PHERSON, WHAT REASON WOULD THERE BE TO
22 CALL THEM OTHER THAN TO ASK THEM QUESTIONS ABOUT --

23 **THE COURT:** WHAT COUNSEL SAID I WILL, AND I'LL REPEAT
24 IT, AND I MAY GET IT RIGHT, IS THAT IF THEY DON'T HAVE ANY
25 PROBLEMS FROM THE PROPONENTS GETTING THESE AUTHENTICATED AND

1 INTO EVIDENCE, THEN AT THE PRESENT TIME THEY WOULDN'T SEE ANY
2 REASON TO ENFORCE THEIR TRIAL SUBPOENAS. I GUESS, THAT'S
3 RIGHT.

4 **MR. MC GILL:** I THINK, THAT'S RIGHT. IF IT WOULD BE
5 HELPFUL, WE COULD TAKE THE DISCUSSION OUT OF ABSTRACTION AND
6 USE ONE OF OUR ACTUAL EXHIBITS.

7 **THE COURT:** I DON'T KNOW, THERE MAYBE OTHERS. I WANT
8 TO SEE WHETHER WE CAN DEAL WITH IT ON A GLOBAL BASIS. I
9 JUST -- I DON'T HAVE -- I DON'T UNDERSTAND HOW -- AND YOU
10 HAVEN'T CITED TO ME ANY CASES WHICH WOULD SUGGEST THAT A
11 PASTOR'S COMMUNICATIONS JUST BECAUSE THEY ARE ABOUT FAITH ARE
12 PRIVILEGED COMMUNICATIONS?

13 **MR. MC CARTHY:** NO, WE HAVE CITED MANY CASES INCLUDING
14 THE TRUNK CASE TALKING ABOUT THE FIRST AMENDMENT RIGHTS OF
15 INDIVIDUALS IN CASES AND HOW IMPORTANT IT IS TO PROTECT THAT
16 RIGHT, SO.

17 **THE COURT:** I COMPLETELY AGREE WITH THAT, BUT THERE
18 ARE, AS THE PERRY CASE MAKES CLEAR, THERE ARE FIRST AMENDMENT
19 RIGHTS AND THEN THERE ARE FIRST AMENDMENT RIGHTS.

20 AND IT IS A -- THE COURT GOES THROUGH THIS ANALYSIS IN
21 ORDER TO DRAW A LINE AND SAY COMMUNICATIONS WHICH YOU'RE
22 CLEARLY ENTITLED TO HAVE AS A MATTER OF FREE SPEECH, WHICH ARE
23 OUTSIDE A PROTECTED AREA, CAN BE DISCLOSED.

24 AND SO MY QUESTION -- AND SO THERE'S THE PERRY CASE
25 DRAWS A LINE IN A PARTICULAR CASE. MY QUESTION WAS WHETHER OR

1 NOT THERE ARE ANY CASES WHICH HAVE EVER HELD THAT A PASTOR'S
2 COMMUNICATIONS ARE PRIVILEGED FROM DISCLOSURE?

3 NOT JUST PRIVILEGED FROM DISCLOSURE, PRIVILEGED FROM
4 BEING ADMITTED AT TRIAL, EVEN THOUGH THEY'RE IN THE HANDS OF A
5 THIRD-PARTY, NOT THE PASTOR?

6 **MR. MC CARTHY:** I UNDERSTAND.

7 **THE COURT:** ANY CASE THAT SAYS THAT?

8 **MR. MC CARTHY:** I'M GOING TO ANSWER AND TELL YOUR
9 HONOR THE TRUTH. IS THAT, OUR RESEARCH PEOPLE, AND WE HAVE AN
10 EXCELLENT RESEARCH STAFF AT TAOLJ, LOOKED FOR CASES AND COULD
11 FIND NOT A SINGLE CASE WHERE A PASTOR WAS EVER ORDERED TO
12 TESTIFY AS TO A SERMON HE HAD GIVEN IN THE UNITED STATES.

13 **THE COURT:** THAT'S NOT THIS, YOU'RE MISSING MY POINT.
14 WE'VE ALREADY DEALT WITH YOUR CLIENT'S TESTIMONY. YOUR
15 CLIENT'S TESTIMONY, IF IT COMES RIGHT NOW, IS LIMITED TO
16 QUESTIONS OF AUTHENTICATING THE DOCUMENTS, THEN THE VIDEOTAPES.
17 AND IF IT GOES BEYOND THAT, WE'LL ADDRESS IT.

18 **MR. MC CARTHY:** OKAY. SO BUT WITH RESPECT -- SO THE
19 PROBLEM -- WHAT I'M TRYING TO ALSO ADDRESS, IS TO FORESTALL
20 FURTHER PROBLEMS IN THE TRIAL WITH RESPECT TO THE DOCUMENTS.

21 YOU WON'T, YOUR HONOR, I UNDERSTAND WHAT YOUR HONOR
22 HAS SAID.

23 **THE COURT:** YOU DON'T ANTICIPATE OBJECTING ANYMORE IN
24 THE TRIAL TO ANY OF THE DOCUMENTS THAT THEY'RE TRYING TO
25 INTRODUCE?

1 **MR. MC CARTHY:** NOT BASED UPON YOUR HONOR'S RULING.

2 **THE COURT:** OKAY. WITH THAT UNDERSTANDING, I THINK,

3 WE SHOULD PROCEED AND, YOU KNOW, IF AN ISSUE COMES UP, JUST

4 COME ON BACK DOWN.

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(PROCEEDINGS ADJOURNED.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED UNDER MY DIRECTION INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS.

I FURTHER CERTIFY THAT I AM NOT OF COUNSEL OR ATTORNEY FOR EITHER OR ANY OF THE PARTIES IN THE FOREGOING PROCEEDINGS AND CAPTION NAMED, OR IN ANY WAY INTERESTED IN THE OUTCOME OF THE CAUSE NAMED IN SAID CAPTION.

THE FEE CHARGED AND THE PAGE FORMAT FOR THE TRANSCRIPT CONFORM TO THE REGULATIONS OF THE JUDICIAL CONFERENCE.

FURTHERMORE, I CERTIFY THE INVOICE DOES NOT CONTAIN CHARGES FOR THE SALARIED COURT REPORTER'S CERTIFICATION PAGE.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS 9TH DAY OF FEBRUARY, 2010.

/S/ JAMES YEOMANS

JAMES YEOMANS, CSR, RPR