

GRAHAM E. BERRY, Bar No.128503
Attorney at Law
3384 McLaughlin Avenue
Los Angeles, California 90066-2005
Telephone: (310) 745-3771
Facsimile: (310) 745-3771
Email: grahamberry@ca.rr.com

Defendant and Cross-Complainant *pro se*

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

FEB 22 2010

John A. Clarke, Executive Officer/Clerk

Paul Sanchez
PAUL SANCHEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CENTRAL DISTRICT

KENDRICK MOXON

Plaintiff,

v.

GRAHAM BERRY,

Defendants.

GRAHAM E. BERRY, an individual;

Cross-Complainant,

v.

KENDRICK L. MOXON, an individual;

Cross-Defendant.

Case No. BC429217

DEFENDANT AND CROSS-
COMPLAINANT'S APPENDIX NO. IV
OF EXHIBITS [K-Z] AND REQUEST FOR
JUDICIAL NOTICE FILED AS PART OF
THE UNVERIFIED ANSWER AND
VERIFIED COMPULSARY CROSS-
COMPLAINT HEREIN.

Action filed: January 5, 2010

[Filed concurrently with Reply in Support of
Request to file Compulsory Cross-
Complaint by Judicial Council of California
Form MC-701 (C.C.P. §391.7) and Exhibits
A-J therewith.]

EXHIBIT T

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
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 35

HON. ALEXANDER H. WILLIAMS III

GRAHAM E. BERRY,

PLAINTIFF,

VS.

NO. BC184355

ROBERT CIPRIANO,

DEFENDANT.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
FRIDAY, AUGUST 20, 1999

APPEARANCES:

FOR THE PLAINTIFF:

GRAHAM BERRY *
ATTORNEY AT LAW
ONE WILSHIRE BOULEVARD
LOS ANGELES, CA 90017
(213) 833-5900

FOR THE DEFENDANT:

MOXON & KOBRIN **
BY: KENDRICK MOXON
3055 WILSHIRE BOULEVARD
LOS ANGELES, CA 90010
(213) 487-4466

PAUL, HASTINGS, JANOFSKY *
BY: MR. SAMUEL ROSEN
23RD FLOOR
555 SOUTH FLOWER STREET
LOS ANGELES, CA 90071
(213) 683-6311

ORRICK, HERRINGTON, SUTCLIFFE
BY: GERALD L. CHALEFF *
777 SOUTH FIGUEROA STREET
LOS ANGELES, CA 90017
(213) 612-2194

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
26
27
28

SIMKE CHODOS
BY: DAVID M. CHODOS
1880 CENTURY PARK EAST
SUITE 1511
LOS ANGELES, CA
(213) 653-0211

BY TELEPHONE

MR. BARRY SOTER
ATTORNEY AT LAW

CHARLES KUHN, CSR #7810
OFFICIAL REPORTER

1 CASE NUMBER: BC184355

2 CASE NAME: GRAHAM E. BERRY VERSUS
3 ROBERT J. CIPRIANO

4 LOS ANGELES, CA FRIDAY, AUGUST 20, 1999

5 DEPARTMENT 35 HON. ALEXANDER WILLIAMS, III, JUDGE

6 REPORTER: CHARLES KUHN, CSR #7810

7 APPEARANCES: (AS NOTED ON TITLE PAGE.)

8 THE COURT: GOOD MORNING AND WELCOME
9 BACK. WE ARE ON THE RECORD IN CASE NUMBER BC184355 AND
10 RELATED CONSOLIDATED MATTERS. THE LEAD NAME IS GRAHAM
11 BERRY VERSUS ROBERT CIPRIANO.

12 COUNSEL, GOOD MORNING. THANK YOU FOR
13 YOUR PATIENCE THIS MORNING. MAY I HAVE YOUR
14 APPEARANCES. AND I REMIND YOU THAT ONE COUNSEL IS
15 APPEARING BY PHONE, THAT APPEARANCE, MR. SOTER?

16 MR. SOTER: BARRY SOTER OF WASSERMAN, SOTER AND
17 COUNSEL, FORMALLY ATTORNEY OF RECORD FOR THE DISMISSED
18 DEFENDANT, ROBERT CIPRIANO.

19 THE COURT: I KNOW YOU ARE OUT OF TOWN, AND I DO
20 WANT TO REPEAT MY REQUEST OF YOU. IF AT ANY TIME YOU
21 DON'T HEAR, SOUND OFF IN SOME WAY AND I WILL ASSURE
22 THAT THESE PROCEEDINGS ARE CONDUCTED IN A WAY THAT
23 EVERYBODY CAN UNDERSTAND, OKAY, SIR?

24 MR. SOTER: I WILL DO THAT.

25 THE COURT: OTHER APPEARANCES OF COUNSEL HERE IN
26 COURT.

27 MR. CHALEFF: GERALD CHALEFF OF ORRICK,
28 HERRINGTON AND SUTCLIFF FOR CHURCH OF SCIENTOLOGY

1 INTERNATIONAL.

2 MR. MOXON: KENDRICK MOXON, YOUR HONOR, ON
3 BEHALF OF ISADOR CHAIT.

4 MR. ROSEN: SAMUEL D. ROSEN ON BEHALF OF PAUL,
5 HASTINGS, JANOFFSKY, AND WALKER.

6 THE COURT: GOOD MORNING.

7 MR. CHODOS: DAVID CHODOS OF SIMKE CHODOS, YOUR
8 HONOR, ON BEHALF OF RUSSELL SHAW.

9 MR. BERRY: GRAHAM BERRY ON BEHALF OF MYSELF,
10 AND MR. CIPRIANO IS HERE WHO IS READY TO COME FORWARD
11 AND SPEAK THE TRUTH, AND HE IS SITTING ON MY RIGHT.

12 THE COURT: THEN LET HIM DO THAT.

13 GOOD MORNING, MR. CIPRIANO. WELCOME TO
14 THIS COURT AND IN WHAT CAPACITY DO YOU APPEAR HERE
15 TODAY?

16 MR. CIPRIANO: I APPEAR PRO PER.

17 THE COURT: IN WHAT CAPACITY THOUGH, ARE YOU A
18 PARTY TO THE LITIGATION?

19 MR. CIPRIANO: I BELIEVE I'M A DEFENDANT.

20 THE COURT: I BELIEVE THE MATTER HAS BEEN
21 DISMISSED, HAS IT NOT?

22 MR. BERRY: AS A FORMER PARTY, YOUR HONOR, HE
23 COMES TO THIS COURT SEEKING RELIEF IN RESPECT OF HIS
24 FILES AND HIS PHYSICAL SAFETY.

25 THE COURT: VERY GOOD. I JUST WANT TO CLARIFY
26 THAT STATUS.

27 THE GUY NEXT TO YOU IS THE SAME GUY
28 THAT SUED YOU, ACCORDING TO THE NAME IN THE LAWSUIT; IS

1 THAT CORRECT, MR. CIPRIANO?

2 MR. CIPRIANO: THAT'S RIGHT.

3 THE REPORTER: CAN I GET THEIR NAMES IF THEY ARE
4 GOING TO SPEAK RANDOMLY?

5 THE COURT: YES.

6 GENTLEMAN, WHEN YOU SPEAK YOU NEED TO
7 ANNOUNCE, BECAUSE THE COURT REPORTER TODAY IS CHUCK
8 KUHN, K-U-H-N. HE IS NOT THE REGULARLY ASSIGNED COURT
9 REPORTER. LET'S DO THIS THING IN AN ORDERLY WAY LIKE
10 WE WERE TRYING TO DO WITH RESPECT THROUGHOUT THESE
11 PROCEEDINGS UNTIL LAST NIGHT.

12 MR. ROSEN: THANK YOU, YOUR HONOR.

13 SAMUEL ROSEN, FIRST OF ALL, I SHOULD
14 THANK YOU FOR MY CONTINUED PRIVILEGE OF AUDIENCE ON MY
15 PRO HAC VICE IN THIS MATTER.

16 THE COURT: YOU KNOW, WE HAVE A SHORTAGE OF
17 LAWYERS HERE IN LOS ANGELES, AND I AM PARTICULARLY
18 HAPPY TO HAVE THOSE OF YOU APPEAR, PARTICULARLY FROM
19 NEW YORK CITY.

20 MR. ROSEN: YOUR HONOR, I'M A LITTLE CONFUSED
21 BECAUSE I DIDN'T UNDERSTAND THAT THERE WAS ANY
22 APPLICATION BY MR. CIPRIANO ON, FOR THE SIMPLE REASON
23 OF WHAT I UNDERSTOOD TO BE ON.

24 MAYBE IT'S MY ERROR, BUT THIS IS A
25 VEXATIOUS LITIGANT MOTION AGAINST MR. BERRY.

26 THE COURT: WOULD YOU ALLOW ME TO CITE WHAT I
27 THINK IS ON TODAY?

28 MR. ROSEN: OF COURSE.

1 THE COURT: I APPRECIATE YOUR LEADERSHIP. AS
2 YOU KNOW, I PARTICULARLY RESPECT THAT WHEN IT COMES
3 FROM SOMEBODY WHO HAS A PARTICULAR HAIR COLOR, BUT LET
4 ME, IF YOU WOULD, RUN THIS CASE.

5 I WANT TO STATE AT THE BEGINNING NOBODY
6 OWNS THIS COURT. I AM NOT A WEALTHY GUY. I'VE BEEN A
7 GOVERNMENT SERVANT ALL MY LIFE. I HAVE SERVED WITH
8 PRIDE, AND I TAKE THE BENCH EVERY DAY KNOWING THAT I'M
9 GOING TO DO THE RIGHT THING BECAUSE I'M NOT AFRAID OF
10 ANYTHING OR ANYBODY. I AM NOT RICH, EXCEPT IN THINGS
11 THAT YOU CAN'T MEASURE BY MONEY.

12 ONE OF THE OBLIGATIONS OF THIS JOB IS TO
13 BE THICK OF SKIN, AND I HAVE LEARNED TO DO THAT AFTER
14 FIFTEEN YEARS IN THIS JOB.

15 I TELL PEOPLE I HOPE I'M KINDER AND
16 GENTLER, BUT DARN SURE I'M OLDER AND SLOWER, SO THINGS
17 DO NOT UPSET ME. I TAKE THINGS IN STRIDE, BUT I WILL
18 SAY THAT I TAKE PRIDE IN HAVING TRIED VERY HARD IN MY
19 MOST RECENT JUDICIAL YEARS, AND PARTICULARLY IN THE
20 HANDLING OF THIS VERY DIFFICULT CASES TO TREAT
21 EVERYBODY, AND I MEAN EVERYBODY, TO COURTESY AND
22 RESPECT. AND I REALLY BELIEVE I HAVE DONE SO.

23 THE INTERESTING THING ABOUT MY JOB IS I
24 HAVE AN OBLIGATION TO YOU ALL TO TREAT EVERYBODY WITH
25 RESPECT AND COURTESY. I GUESS THE OBLIGATION DOESN'T
26 NECESSARILY RUN THE OTHER WAY. THAT IS FINE. I'M A
27 BIG BOY AND I GET PAID BY THE MONTH.

28 NOW HERE IS WHAT IS ON FOR TODAY. LET ME

1 RECITE THE HISTORY. I CAN INVITE YOU ALL TO HAVE A
2 SEAT IF YOU WANT.

3 MR. SOTER, ARE YOU STILL HEARING ME?

4 MR. SOTER: I AM, WITH SOME DIFFICULTY. IT'S
5 DIFFICULT FOR ME TO HEAR, BUT I CAN JUST QUITE PICK YOU
6 UP.

7 THE COURT: LET ME DO THIS, DOES THIS HELP? I'M
8 NOW ON THE MICROPHONE, DOES THAT HELP?

9 MR. SOTER: YES, IT DOES.

10 THE COURT: THIS IS A CASE THAT HAS BEEN PENDING
11 FOR SOMETIME IN THIS COURT, AND WE HAVE SEEN CHANGES OF
12 COUNSEL AND CHANGES OF PARTIES AND CHANGES OF SEATS AND
13 AS OF TODAY, SOME OF THE MOST AMAZING CHANGES I HAVE
14 SEEN IN MY PROFESSIONAL CAREER, BUT WE WILL DEAL WITH
15 IT STEP-BY-STEP, WITH RESPECT.

16 THE CASE HAD BEEN DISMISSED. ALL CLAIMS
17 AND ALL COMPLAINTS HAD BEEN DISMISSED AND THE CASE WAS
18 EFFECTIVELY GONE WITH THE EXCEPTION THAT SOMETIME AGO
19 MR. CHALEFF NOTICED ON BEHALF OF THE CHURCH OF
20 SCIENTOLOGY INTERNATIONAL, AND I BELIEVE OTHER
21 DEFENDANTS, SPECIFICALLY DEFENDANT CHAIT REPRESENTED BY
22 MR. MOXON, IF I RECALL CORRECTLY, JOINED IN A MOTION TO
23 DECLARE GRAHAM BERRY A VEXATIOUS LITIGANT.

24 THAT MOTION FOR VARIOUS REASONS WAS
25 CONTINUED TO TODAY. THAT WAS ALL THAT I EXPECTED TO
26 SEE OF THIS CASE TODAY ON THE APPLICATION ONLY, ON THAT
27 PETITION ONLY.

28 ON MONDAY, ALL OF THE DEFENDANTS'

1 COUNSEL, SPECIFICALLY, IF I RECALL, MR. MOXON,
2 MR. CHALEFF, I'M NOT SURE WHO WAS HERE ON BEHALF OF
3 MR. CHODOS, MR. SOTER, AND I DON'T RECALL WHO ELSE WAS
4 HERE, BUT IT APPEARED TO BE ALL OF THE COUNSEL FOR THE
5 SEVERAL DEFENDANTS.

6 THEY WERE HERE AT 8:30 AND ADVISED ME AND
7 MY COURT FOR THE FIRST TIME, BECAUSE NONE OF US HAD ANY
8 NOTICE OF IT, WHICH WE ALWAYS ASK FOR IN EX PARTE
9 MATTERS, BUT WE HAVE GOTTEN NONE, THEY HAD BEEN NOTICED
10 INTO THIS COURT BY MR. BERRY FOR AN EXPARTE
11 APPLICATION, AND NOTABLY ABSENCE WAS MR. BERRY.

12 I DID NOT SEE FIT TO HOLD COUNSEL
13 SHACKLED TO THIS COURTROOM ON AN EXPARTE APPLICATION
14 THAT HAD BEEN UNEXPLAINED, UNNOTICED, AND UNACCOUNTED.
15 WE HEARD NOTHING, I REPEAT, NOTHING, LET ME SAY AGAIN,
16 NOTHING, FROM MR. BERRY ABOUT WHAT WAS GOING ON OR WHY.

17 MY VIEW IS THAT ONE OF THE FIRST RULES OF
18 MY JOB IS DON'T LET PEOPLE JERK PEOPLE AROUND. THE
19 FIRST RULE OF RUNNING A FAIR COURTROOM IS TO REWARD
20 CLASSY LAWYERING AND NOT GO WITH THAT LAWYERING THAT IS
21 NOT CLASSY; THEREFORE, I ADVISED COUNSEL THAT THEY WERE
22 RELIEVED OF ANY OBLIGATION OF ATTENDANCE TO THIS COURT
23 ON THAT MORNING SINCE WE HAD NOT HEARD FROM OR SEEN
24 MR. BERRY AND THE COURT HOURS HAD COMMENCED.

25 I ALSO ADVISED COUNSEL THAT I WAS
26 SUFFICIENTLY CONCERNED THAT THEY, AS PROFESSIONAL
27 PEOPLE, HAD BEEN REQUIRED TO ATTEND HERE AT THE EXPENSE
28 OF THEMSELVES OR THEIR CLIENTS, AND THAT THE PERSON WHO

1 HAD REQUIRED THEM TO ATTEND, MAKE THEM BE HERE, HAD NOT
2 TOLD US ABOUT IT AND HAD NOT APPEARED AND HAD NOT
3 ACCOUNTED FOR HIS LATENESS.

4 THEREFORE, I SAID THAT, SHOULD THEY
5 CHOOSE TO BRING A MOTION FOR TODAY'S CALENDAR FOR
6 COMPENSATION FOR THE EXPENSES THAT THEY WERE UNFAIRLY
7 PUT TO, I WOULD HEAR THAT MOTION. AND I EVEN SET A
8 BRIEFING SCHEDULE. I BELIEVE THAT SUCH APPLICATION HAD
9 TO BE SUBMITTED BY WEDNESDAY, OPPOSITIONS BY THURSDAY,
10 AND REPLIES HERE IN COURT THIS MORNING.

11 THE COURT STAFF INFORMED ME THAT
12 MR. BERRY LATER SHOWED UP, AND VARIOUS THINGS
13 TRANSPIRED. MR. BERRY HAD TENDERED SOME EXPARTE
14 MATTERS THAT I SIMPLY CONTINUED TO THIS DAY.

15 I ALSO ADVISED THAT I REALLY DIDN'T WANT
16 TO ENGAGE IN EXPARTE PRACTICE. THIS IS A CASE WHERE
17 EXPARTE PRACTICE BY MR. BERRY IN THE PAST HAS BEEN A
18 HALLMARK OF THE WAY THAT HE DOES BUSINESS, AND I URGED
19 AND ASKED HIM TO REFRAIN FROM THAT AND HE HAS LARGELY
20 DONE SO.

21 IT'S FUNDAMENTAL TO THE PROCESS OF
22 JUSTICE THAT PROCEEDINGS BE ORDERLY, FAIR, AND ON A
23 NOTICED BASIS. WE DON'T PRACTICE OR COUNTENANCE AMBUSH
24 LITIGATION; THEREFORE, YESTERDAY, THE CLERK INFORMED ME
25 AT THE MIDDLE OF THE DAY THAT WE HAD RECEIVED SOMETHING
26 CALLED A QUOTE JOINT VERIFIED STATEMENT
27 DISQUALIFICATION OF GRAHAM E. BERRY AND ROBERT J.
28 CIPRIANO FOR THE DISQUALIFICATION OF THE HONORABLE

1 ALEXANDER H. WILLIAMS THE III.

2 I REVIEWED THE DOCUMENT AND I PREPARED
3 LAST NIGHT AND CAUSED TO BE FILED THIS MORNING AND
4 DISTRIBUTED TO COUNSEL TWO DOCUMENTS.

5 THE FIRST IS AN ORDER STRIKING THE
6 STATEMENT OF DISQUALIFICATION. I WAS INFORMED BY THE
7 CLERK THAT MR. BERRY HAD BLATANTLY INFORMED THE CLERK
8 AS HE DEPARTED THESE PREMISES YESTERDAY THAT HE WOULD
9 NOT BE SEEING US TODAY, WRONG.

10 AS A MATTER OF LAW, THE STATEMENT OF
11 DISQUALIFICATION IN THIS COURT'S JUDGMENT DISCLOSES NO,
12 I REPEAT, NO, I MEAN ABSOLUTELY NONE, GROUNDS FOR
13 DISQUALIFICATION OF THIS COURT. I THEREFORE ORDER IT
14 STRICKEN PURSUANT TO CODE OF CIVIL PROCEDURE SECTION
15 174.4(B).

16 AS A PRECAUTION, AS IT SHOULD BE
17 DETERMINED BY SOME APPROPRIATE COURT AT SOME TIME THAT
18 THIS COURT SHOULD NOT HAVE TAKEN THAT STEP, I DO NOT
19 BELIEVE THAT THAT WILL HAPPEN, BUT SHOULD IT, I HAVE
20 PREPARED AND SUBMITTED AND ALSO FILED TODAY MY OWN
21 VERIFIED ANSWER TO THE JOINT VERIFIED STATEMENT OF
22 DISQUALIFICATION.

23 THE BOTTOM LINE IS THAT THIS CASE
24 THEREFORE REMAINS BEFORE THIS COURT, AND I PROPOSE TO
25 PROCEED WITH THE SCHEDULED MATTER WHICH IS THE PETITION
26 TO FIND GRAHAM BERRY TO BE A VEXATIOUS LITIGANT.

27 I KNOW THAT MR. BERRY HAS OTHER MATTERS
28 THAT HE AND MR. CIPRIANO WANT TO BRING BEFORE THIS

1 COURT, AND I WILL HEAR FROM HIM ON THAT. BUT THE
2 NOTICED MATTER IS THE FIRST MATTER WE WILL DEAL WITH.

3 REMEMBER, THAT THE COURT SETS THE AGENDA
4 AND COUNSEL DO NOT. WITH ALL DUE RESPECT, THAT IS WHY
5 THE STATE OF CALIFORNIA REQUIRES ME TO WEAR THIS
6 POLYESTER DRESS ALL DAY. IT'S ABOUT ORDER. IT'S ABOUT
7 NOTICE. IT'S ABOUT FAIRNESS.

8 MR. SOTER, ARE YOU THERE?

9 MR. SOTER: YES, I AM.

10 THE COURT: ALL RIGHT.

11 MR. CHALEFF, IT IS YOUR APPLICATION.
12 PLEASE TELL ME WHAT YOU ARE ASKING THIS COURT TO DO,
13 AND WHY. OF COURSE I HAVE READ ALL THE PAPERS,
14 INCLUDING THOSE IN OPPOSITION INCLUDING THOSE TENDERED
15 JUST THIS MORNING.

16 MR. CHALEFF: THANK YOU, YOUR HONOR.

17 WE ARE REQUESTING THE COURT TO DECLARE
18 MR. BERRY --

19 THE COURT: ONE MOMENT, PLEASE. I AM CONFIDENT
20 THAT MR. SOTER CANNOT HEAR YOU. I WILL REQUEST THAT WE
21 GIVE YOU, SPEAKING COUNSEL, THE MICROPHONE. WE HAVE
22 DONE THIS BEFORE IN THIS CASE. STAND BY.

23 ALL RIGHT, MR. CHALEFF.

24 MR. CHALEFF: YES, YOUR HONOR.

25 THE COURT: AND MR. SOTER, PLEASE ADVISE US IF
26 YOU CANNOT HEAR HIM, OKAY?

27 MR. SOTER: I WILL, THANK YOU.

28 MR. CHALEFF: IT IS OUR REQUEST THAT MR. BERRY

1 BE DECLARED A VEXATIOUS LITIGANT AND THAT HE BE
2 REQUIRED TO FULFILL THE REQUIREMENTS OF THE CODE OF
3 CIVIL PROCEDURE UPON THAT DECLARATION.

4 I HAVE NOT BEEN INVOLVED IN THIS CASE OR
5 IN ANY OF THE CASES WHICH ARE THE BASIS OF THIS MOTION.

6 THE COURT: GO TO TEMPLE AND THANK GOD.

7 MR. CHALEFF: YES. I HAVE REPRESENTED THE
8 CHURCH OF SCIENTOLOGY INTERNATIONAL IN ANOTHER MATTER.

9 LET ME START OFF BY SAYING THIS IS NOT
10 EASY FOR ME TO BRING, BEING SOMEBODY WHO IS ALWAYS
11 DEFENDING PEOPLE'S RIGHTS TO REDRESS AND PEOPLE'S
12 RIGHTS WHEN THEY ARE ACCUSED OF CRIMINAL ACTIVITIES OR
13 OTHER KINDS OF CONDUCT.

14 THE COURT: AND LET ME ADD THAT I ABSOLUTELY
15 AGREE. I AM A STRONG BELIEVER IN THE GUARANTEES THAT
16 WE ALL ENJOY UNDER OUR CONSTITUTION. THOSE GUARANTEES
17 INCLUDE FREEDOM OF SPEECH AND THEY INCLUDE FREEDOM OF
18 ACCESS TO THE COURTS TO SEEK REDRESS.

19 I DO NOT LIGHTLY EMBARK UPON THAT WHICH
20 YOU ASKED ME TO DO.

21 MR. CHALEFF: AND I DO NOT LIGHTLY EMBARK OR
22 BRING THIS MOTION.

23 I MIGHT SAY THAT I HAVE BEEN KNOWN TO
24 DEFEND EVEN THOSE PEOPLE ATTACKING ME, THEIR RIGHT TO
25 ATTACK ME, BECAUSE I BELIEVE PEOPLE HAVE THE RIGHT TO
26 SAY WHAT THEY WANT AND TO SEEK LEGITIMATE REDRESS IN
27 THE COURT SYSTEM.

28 I WAS ASKED BY MY CLIENT TO REVIEW WHAT

1 HAS HAPPENED IN ALL OF THESE CASES AND DETERMINE
2 WHETHER OR NOT THAT I, AS AN OBJECTIVE PARTY AND
3 SOMEONE WHO HAS ALSO DEVELOPED A LOT HAVE GREY HAIR,
4 FELT THIS WAS AN APPROPRIATE MOTION IN THIS TYPE OF
5 CASE, AND I DID. I MIGHT NOTE THAT IF I HAD ANY
6 DOUBTS, WHAT HAS HAPPENED IN THE LAST WEEK HAS
7 ELIMINATED ALL OF THOSE DOUBTS.

8 WE FILED THIS MOTION AND IT WAS TO BE
9 HEARD ON JUNE 15TH AND FOR VARIOUS REASONS, WHICH WILL
10 BE DISCUSSED, INCLUDING MR. BERRY FILING BANKRUPTCY AND
11 OTHERS, THE MOTION WAS CONTINUED UNTIL TODAY.

12 BEFORE ME, AND I HAVE PROBABLY THROWN MY
13 BACK OUT, THIS IS THE PAPERWORK THAT I HAVE RECEIVED IN
14 THE LAST EIGHT DAYS. IT'S BEEN A CONSTANT FLOW OF
15 DOCUMENTS, MOST OF WHICH ARE DUPLICATIVE AND MOST OF
16 WHICH BEAR NO RELATION TO WHATEVER THE MOTION WAS OTHER
17 THAN TO RE-ENFORCE THE VIEW THAT MR. BERRY IS USING THE
18 COURT SYSTEM FOR SOME PURPOSE OTHER THAN A LEGITIMATE
19 PURPOSE.

20 I MIGHT SAY THAT THERE IS NO MORE TELLING
21 DOCUMENT TO SHOW THAT THAN THE LAST PAGE OF EXHIBIT A
22 OF WHAT MR. BERRY FILED TODAY. I'M NOT SURE WHICH
23 MOTION HE FILED IT IN, BUT IT'S EXHIBIT A AND IT IS A
24 PRESS RELEASE THAT CAME OUT OVER THE INTERNET.

25 I HAVE A COPY FOR THE COURT, IF THE COURT
26 WISHES.

27 THE COURT: HE TENDERED THE PLEADINGS TO ME,
28 ALSO.

1 MR. CHALEFF: IN WHICH HE TALKS ABOUT HOW HE IS
2 FACING GOING TO JAIL, WHICH IS CERTAINLY NOT TRUE, BUT
3 THIS IS ON THE INTERNET, AND THAT HOW HE RECENTLY
4 RELEASED A SHATTERING AFFIDAVIT BY MR. CIPRIANO AND ON
5 AND ON. AND IF YOU WANT MORE INFORMATION, CALL HIM AT
6 HIS PHONE NUMBER, AND THE SEPARATION DECLARATION IS ON
7 THE WEB.

8 THIS IS AN EXHIBIT WHICH SHOWS THAT WHEN
9 YOU REVIEW WHAT THE PURPOSE OF THIS MOTION OR WHAT THE
10 GROUNDS FOR THE MOTION ARE, AMONG THEM ARE FILED
11 UNMERITORIOUS MOTIONS, PLEADINGS, OR OTHER PAPERS OR
12 ENGAGING IN OTHER TACTICS THAT ARE FRIVOLOUS OR SOLELY
13 INTENDED TO CAUSE INCREASING DELAY.

14 IT'S CLEAR IN THIS CASE THAT MANY OF
15 THESE DOCUMENTS ARE FILED ONLY FOR THE PURPOSE OF BEING
16 ABLE TO RELEASE THEM ON THE INTERNET OR FOR SOMETHING,
17 AND THEN TO HAVE AN IMPROVIDER IN THE COURT SAYING,
18 "LOOK, I FILED THIS IN THE COURT." THEN WHATEVER
19 HAPPENS IN COURT, MR. BERRY MISINTERPRETS IT AND OUT IT
20 GOES ON THE INTERNET. WELL, IT'S CLEAR FROM THE
21 HISTORY --

22 THE COURT: UNDER THE PROTECTION OF THE
23 LITIGATION PRIVILEGE.

24 MR. CHALEFF: WELL, IT MAY NOT ALL BE
25 PROTECTED, BUT HE BELIEVES IT IS PROTECTED.

26 THE COURT: YOU ARE CITING IT AS EVIDENCE OF
27 THE ABUSE OF THE PROCESS OF THIS COURT TO UTILIZE THE
28 LITIGATION PRIVILEGE AS A SHELTER FOR THE IRRELEVANT

1 MATERIAL FOR THIS LITIGATION AND NOT BE ACCOUNTABLE FOR
2 IT.

3 MR. CHALEFF: I DON'T KNOW WHO WWW. MERVIN.COM
4 IS, BUT I BELIEVE IT'S ANOTHER CLIENT OR ASSOCIATE OF
5 MR. BERRY. I BELIEVE MR. BERRY FITS UNDER THE
6 REQUIREMENTS OF THIS SECTION.

7 THERE WERE FIVE LITIGATIONS, MOST OF
8 WHICH WERE DISMISSED BY MR. BERRY BECAUSE HE FILED
9 THESE THINGS. UP GOES ALL THESE DECLARATIONS AND I
10 MAKE NOTE -- WELL, LET ME SAY THAT IN A SECOND.

11 THEY'RE UNMERITORIOUS. HE HAS NOT WON
12 ANY OF THEM. THEY ARE FILED FOR ALL KINDS OF REASONS,
13 NONE OF WHICH ARE LEGITIMATE PURPOSES OF REDRESS.

14 HE HAS PREVIOUSLY BE DECLARED A VEXATIOUS
15 LITIGANT BY JUDGE CHRISTINA SCHNEIDER UNDER THE FEDERAL
16 SECTION RULES AND EVIDENCE. AND I THINK WE FILED IT
17 THIS WEEK, BUT HE WAS FINED SOMEWHERE IN THE VICINITY
18 OF \$28,000. \$28,484 HE WAS FINED IN THAT CASE IN WHICH
19 THERE WAS A LAWYER CALLED PATTINSON.

20 THE COURT: THE NAME OF THE CASE FOR THE COURT
21 REPORTER.

22 MR. CHALEFF: PATTINSON, P-A-T-T-I-N-S-O-N.

23 THE COURT: THANK YOU.

24 MR. CHALEFF: AND AS THE COURT WELL KNOWS,
25 MR. BERRY HAS BEEN FINED NUMEROUS TIMES OR SANCTIONED,
26 NOT ONLY BY THIS COURT, BUT RECOMMENDED BY JUDGE,
27 RETIRED JUSTICE EAGLESON AND BY OTHER JUDGES IN THIS
28 COURTHOUSE. THE REQUIREMENTS HAVE BEEN MET.

1 IN ADDITION TO THAT, THE WHOLE CONDUCT OF
2 MR. BERRY IN THIS LAWSUIT CRIES OUT FOR THIS BECAUSE
3 THERE SEEMS TO BE NO OTHER WAY TO CONTROL HIM. I
4 ASSUME I'LL BE SUED NEXT BECAUSE EVERY LAWYER, WHOEVER
5 GETS INVOLVED GETS SUED. EVERY JUDGE IS ACCUSED OF
6 BEING DISHONEST OR ASKED TO BE RECUSED. EVERY LAWYER
7 IS ACCUSED OF DISHONEST ACTION. EVERYBODY WHO SEEMS TO
8 OPPOSE HIM IS ACCUSED OF CRIMINAL CONDUCT.

9 I FOUND THAT, I DON'T KNOW IF IT WAS
10 AMUSING OR NOT, BUT AS SOON AS HE FIGURED OUT MY
11 RELATIONSHIP TO CHALEFF, WHO IS PRESENT IN THE POLICE
12 COMMISSION, THERE WAS AN ARGUMENT THAT I SHOULD BE
13 RECUSED BECAUSE WE SHOULD BE INVESTIGATING MY CLIENT
14 AND ALL THE LAWYERS RELATED TO THE CASE RATHER THAN
15 REPRESENTING THEM.

16 I FIND THAT STRANGE COMING FROM SOMEBODY
17 WHO SUED MR. CIPRIANO AND NOW, IN SOME WAY, EITHER
18 WANTS TO BE HIS LAWYER OR HIS ADVISOR OR BE THE
19 RECIPIENT OF HIS FILES. SO IT SEEMED TO ME THAT UNDER
20 ALL THE REQUIREMENTS, AND JUST UNDER COMMON SENSE,
21 MR. BERRY QUALIFIES AS A VEXATIOUS LITIGANT.

22 SOME OF THE PARTS THAT STRIKE ME, AND I
23 HAVE READ THROUGH ALL OF THIS BECAUSE I BELIEVE THAT IS
24 MY DUTY TO READ ALL OF THIS. IT'S REPETITIVE. EVERY
25 CASE HAS THE SAME CLAIMS. THERE ARE LIKE THIRTY-FIVE
26 PARAGRAPHS THAT SHOW UP IN ALMOST EVERYONE OF THESE
27 FILINGS.

28 THE EXHIBITS ARE DUPLICATIVE, ALWAYS

1 CLAIMING MISCONDUCT. MOST OF WHICH BEARING
2 RELATIONSHIP, WHATEVER, TO WHATEVER THE MOTION IS. IN
3 THIS CASE, THE VEXATIOUS LITIGATION MOTION, I DIDN'T
4 FIND, I SAW MAYBE TWO OF ALL THE EXHIBITS THAT MIGHT IN
5 ANY WAY HAVE RELATED TO IT. THE REST OF IT IS THE
6 USUAL DIATRIBE AGAINST THE CLIENTS AND THE LAWYERS AND
7 THE JUDGE AND WHOEVER ELSE HAPPENS TO BE ON THE OTHER
8 SIDE WHICH, TO ME, SUPPORTS THE VIEW THAT THESE ARE NOT
9 BEING BROUGHT FOR THE LEGITIMATE PURPOSES OF SEEKING
10 LEGAL REDRESS OF ANY TYPE.

11 ALSO, MR. BERRY'S WILLINGNESS TO DISMISS
12 ALL OF THESE IN THE WAY HE HAS AGAIN SHOWS THAT HE IS
13 USING THE COURT SYSTEM FOR PURPOSES OTHER THAN
14 LEGITIMATE REDRESS.

15 AGAIN I SAY, I WOULD BE THE LAST PERSON
16 TO COME BEFORE A COURT AND ARGUE THAT SOMEBODY SHOULD
17 NOT BE ALLOWED TO PRESENT AN ISSUE THAT LEGITIMATELY
18 SHOULD BE REDRESSED BY THE COURT WHETHER THE PERSON IS
19 RIGHT OR WRONG.

20 IN FACT, THERE IS A LAWYER WHO IS
21 CONSTANTLY SUING THE POLICE DEPARTMENT WHO IN FEDERAL
22 COURT TRIED TO SANCTION HIM AND NOT ALLOW HIM TO
23 PRACTICE, AND I FILED AN AMICUS BRIEF ON HIS BEHALF
24 EVEN THOUGH I WAS ONE OF THE PEOPLE HE WAS ATTACKING.

25 THE OTHER PART THAT ADDS TO IT IS
26 SANCTIONS THAT WE ARE ASKING TO SLOW MR. BERRY DOWN.
27 EITHER HE DOESN'T PAY THEM OR HE DECLARES BANKRUPTCY.
28 AND THAT ALSO MEANS THAT COSTS ARE NOT GOING TO SLOW

1 HIM DOWN ,BECAUSE HE HAS THROWN ALL OF THAT INTO THE
2 MIX.

3 SO THE ONLY WAY TO PROTECT THE CLIENTS,
4 AND ALL THE OTHERS INVOLVED IN THIS CASE, IS TO REQUIRE
5 THAT SOMEBODY GET BETWEEN MR. BERRY AND ALL OF US, AND
6 THAT IS WHAT THE VEXATIOUS LITIGATION STATUTE WOULD
7 SAY. THAT BEFORE MR. BERRY CAN FILE ANYTHING, BEFORE
8 MR. BERRY CAN SEEK THE SANCTITY OF THE LITIGATION
9 PRIVILEGE HE HAS TO GO TO THE PRESIDING JUDGE OR
10 WHEREVER HE WANTS TO FILE IT, AND SHOW THAT THERE IS A
11 LEGITIMATE CLAIM, A LEGITIMATE ISSUE. THAT IS NOT WHAT
12 MR. BERRY SEEMS TO BE DOING.

13 HE IS USING THE COURT SYSTEM FOR HIS OWN
14 PURPOSES, AND THERE IS NO OTHER WAY HE SHOULD HAVE DONE
15 IT. I AM NOT AS ARTICULATE AS JUDGE SCHNEIDER. I'M
16 SURE THE COURT HAS READ JUDGE SCHNEIDER'S ORDER AND YOU
17 CAN SEE WHAT HAPPENS. I KNOW IN REVIEWING SOME OF THE
18 TRANSCRIPTS IN THIS CASE, MR. BERRY'S RESPONSES TO
19 DISCOVERY MOTIONS AND MR. BERRY'S RESPONSES TO
20 INTERROGATORIES, MR. BERRY'S ACTIVITIES AT DEPOSITIONS
21 WOULD BE ENOUGH TO TRY ANYONE'S PATIENCE, BUT CERTAINLY
22 YOU CAN'T PUT SOMEBODY IN THAT CATEGORY. MR. ROSEN CAN
23 RELATE TO HIS OWN EXPERIENCE WITH MR. BERRY, HOW
24 MR. BERRY ATTEMPTED TO USE THE COURT SYSTEM IN AN
25 ATTEMPT TO PREVENT HIM FROM BEING DEPOSED BY MR. ROSEN.

26 IF THERE IS ANYTHING THAT SHOWS THE
27 PURPOSES OF WHAT IS GOING ON, THERE IS NOTHING MORE
28 BAZAAR THAN WHAT HAS HAPPENED IN THE LAST WEEK ABOUT

1 MR. CIPRIANO AND MR. BERRY'S RELATIONSHIP. IN FACT, IT
2 TOOK ME ABOUT FOUR DAYS TO FIGURE OUT WHAT WAS GOING ON
3 FROM READING ALL OF THIS. BECAUSE I MAY BE SIMPLE AT
4 TIMES, I COULD NOT UNDERSTAND HOW YOU COULD SUE
5 SOMEBODY AND THEN BECOME HIS LAWYER AND GET A
6 \$120,000,000 JUDGMENT AGAINST THAT PERSON WHO YOU SUED,
7 BUT NOW YOU WANT TO BE HIS LAWYER, BUT NOW YOU WANT TO
8 GET \$120,000,000, BUT YOU NOT GOING TO COLLECT IT
9 AGAINST HIM. YOU ARE GOING TO COLLECT IT AGAINST SOME
10 OTHER PEOPLE.

11 I THINK I GOT LOST IN THE MIDDLE OF ALL
12 THAT AND FIGURED OUT IT WAS JUST A PLOY ON MR. BERRY'S
13 PART TO HAVE SOMETHING TO THROW UP ON THE INTERNET
14 SAYING I GOT A \$120,000,000 JUDGMENT AGAINST ALL OF
15 THESE PEOPLE BECAUSE OF THE CAPTION AND THE NAME OF THE
16 CASE.

17 THE COURT: I SHOULD HAVE ACTUALLY SPOKEN
18 BRIEFLY TO THAT POINT. I THINK THAT FOR PURPOSES OF
19 OUR HEARING TODAY ON ISSUES WE ARE NOW HEARING, THE
20 BIZARRE EVOLUTION OF THE RELATIONSHIP BETWEEN MR. BERRY
21 AND MR. CIPRIANO, IS IRRELEVANT. WHEN WE START DEALING
22 WITH ISSUES INVOLVING MR. CIPRIANO AS A PARTY, AND WHO
23 SPEAKS FOR HIM, THAT IS A SEPARATE MATTER OF INTEREST
24 TO HIM, MR. BERRY AND MR. SOTER.

25 I'M NOT SURE I NEED TO BURDEN EVERYBODY
26 TO BE HERE, BUT WITH REGARD TO THE QUESTION OF
27 DISQUALIFICATION AND WITH REGARD TO THE QUESTION OF THE
28 PETITION TO SEEK TO HAVE MR. BERRY DECLARED A VEXATIOUS

1 LITIGANT, I DON'T THINK EITHER OF THOSE REQUIRE A
2 UNTYING OF THE BIZARRE GORDIAN KNOT PRESENTED BY
3 MR. BERRY AND MR. CIPRIANO HERE THIS MORNING.

4 SO I SHOULD HAVE CLARIFIED THAT BEFORE WE
5 PROCEEDED.

6 GO AHEAD.

7 MR. CHALEFF: WHAT I WAS LEADING UP TO, AND
8 I AGREE WITH THE COURT, I'M NOT SURE THAT WE COULD
9 UNTIE THAT KNOT. HIS RECORD SHOWS THAT MR. BERRY
10 ATTEMPTS TO, FEELS THAT HE CAN PLAY BY HIS OWN RULES.
11 THE RULES THAT APPLY TO US, ALL OF THE REST OF THE
12 LITIGATION AND ATTORNEYS DO NOT.

13 MR. BERRY BELIEVES THEY DO NOT APPLY TO
14 HIM, AND THAT IS SHOWN BY THE BIZARRE KIND OF CONDUCT
15 IN RELATION TO MR. CIPRIANO AND THE DISQUALIFICATION
16 MOTION AGAINST THE COURT AND ALL OF THE OTHER DOCUMENTS
17 THAT I HAVE HAD IN MY FAX MACHINE AND OTHERS HAVE
18 CONFRONTED ME IN THE LAST WEEK. INCLUDING, NOT ONLY
19 THE LACK OF APPEARANCES, BUT THE APPEARANCES COMING
20 LATE, BUT THE MANNER IN WHICH THINGS ARE SERVED.

21 IN FACT, I GOT SOMETHING THAT I COULDN'T
22 QUITE UNDERSTAND YESTERDAY THAT SAID THERE IS AN EX
23 PARTE THE DAY BEFORE. I ASSUME THAT WHEN HE LEFT THE
24 COURTROOM HERE, HE CERTAINLY NOTICED WHERE THE COURT
25 SAID YOU HAVE TO COME BACK FRIDAY, BUT HE SORT OF
26 SERVED IT ON US ANYWAY.

27 THE COURT: I HAD NO DIALOGUE WITH MR. BERRY,
28 BUT IT WAS REPORTED TO ME THAT THE CLERK HAD SO ADVISED

1 HIM.

2 MR. CHALEFF: IF YOU GO THROUGH THE LITIGATION
3 AND THE COURT LOOKS AT HOW IT WAS CONDUCTED, YOU CAN
4 SEE THAT AGAIN MR. BERRY MAY BE THE POSTER CHILD FOR
5 WHAT A VEXATIOUS LITIGANT IS.

6 HE FILES BERRY VERSUS CIPRIANO IN JANUARY
7 HAVE 1998. HE FILES BERRY VERSUS BARTON IN FEBRUARY OF
8 1998. HE AMENDS BERRY VERSUS BARTON IN MARCH OF 1998.
9 HE AMENDS BERRY VERSUS CIPRIANO IN MAY OF 1998. HE
10 ATTEMPTS TO GET A TRO AGAINST MR. ROSEN IN MAY OF 1998.
11 HE DISMISSES THE MATTER AGAINST MR. ROSEN IN JUNE OF
12 1998. HE FILES A CASE CALLED BERRY VERSUS MISS CABAGE
13 IN JULY OF 1998. HE DISMISSES IT IN AUGUST OF 1998 AND
14 TURNS AROUND THE SAME DAY AND REFILES IT AND THEN IN
15 SEPTEMBER HE AMENDS IT.

16 THEN THERE IS SORT OF A LULL, I GUESS,
17 BECAUSE OF THE HOLIDAYS, AND HE COMES BACK IN FEBRUARY
18 OF 1999 AND DISMISSES BERRY VERSUS CIPRIANO, DISMISSES
19 BERRY VERSUS MISS CABAGE.

20 IN BERRY VERSUS BARTON IN MARCH THIS
21 COURT DISMISSES MR. CHAIT BECAUSE MR. BERRY HAS NOT
22 RESPONDED TO ANY OF THE CALIFORNIA JUDICIAL COUNSEL
23 FORM INTERROGATORIES WHICH I FIND AMAZING THAT HE
24 SHOULD COMPLAIN ABOUT THOSE, AND IN APRIL --

25 THE COURT: BY THE WAY, THAT WAS THE FIRST TIME
26 I HAVE EVER, IN MY PRACTICE AS A JUDGE, DISMISSED A
27 CASE ON DISCOVERY VIOLATIONS. I DON'T GO THERE
28 LIGHTLY.

1 MR. CHALEFF: I READ THE TRANSCRIPTS. I AGAIN
2 DIDN'T QUITE UNDERSTAND WHAT WAS GOING ON IN RELATION
3 TO WHAT MR. BERRY WAS SAYING OTHER THAN THE USUAL
4 LITANY OF COMPLAINTS.

5 THEN IN APRIL OF 1999, IN BERRY VERSUS
6 BARTON, ALL THE OTHER DEFENDANTS ARE DISMISSED AND THEN
7 JUDGE SCHNEIDER ADVANCED RULE ELEVEN, 28 USC 1927
8 MOTION, AND FINDS THAT MR. BERRY ASSERTED HIS CLAIMS
9 AGAINST MR. MOXON AND OTHERS IN BAD FAITH AND WE HAVE
10 THIS COURT ORDER.

11 I BRING THAT UP TO SHOW THIS HAS BEEN A
12 STEADY DRUMBEAT. AND WHAT HAPPENS AFTER THAT? I
13 REVIEWED ALL OF THIS. WE FILED OUR MOTION IN JUNE AND
14 IT'S NOT LIKE IT MADE IT BETTER, IT MADE IT WORSE
15 BECAUSE NOW WE HAVE THIS FLOOD OF MATERIAL THAT STARTS
16 COMING IN AGAIN.

17 MOST OF THE EXHIBITS ATTACK INDIVIDUALS
18 OR INSTITUTIONS PERSONALLY AND DO NOT DEAL WITH THE
19 MOTION. AND WHEN THAT DOESN'T SEEM TO WORK, HE THEN
20 ATTACKS THE COURT. AND IN THE MIDDLE OF ALL THAT, HE
21 ATTACKS ALL THE LAWYERS AND AT SOME POINT THREATENS TO
22 SLOW THE PROCEEDINGS DOWN BY ATTEMPTING TO DISQUALIFY
23 ME. AND AS SOON AS WE FILED OUR MOTION IN JUNE OR
24 SHORTLY THEREAFTER, HE DECLARES BANKRUPTCY IN AN
25 ATTEMPT TO SLOW EVERYTHING DOWN.

26 SO IT SEEMS TO ME THAT THE ONLY REMEDY WE
27 HAVE IS FOR THE COURT TO GRANT THE MOTION. THAT IS THE
28 ONLY WAY TO SLOW MR. BERRY DOWN. COSTS DIDN'T SLOW HIM

1 DOWN. SANCTIONS DID NOT SLOW HIM DOWN. DISPLEASURE OF
2 THE COURT DOES NOT SLOW HIM DOWN. IT SEEMS LIKE
3 NOTHING SLOWS HIM DOWN, AND THAT IS WHY THIS MOTION WAS
4 BROUGHT AND THAT IS THE REASON I BELIEVE THIS MOTION
5 SHOULD BE GRANTED.

6 THE COURT: I WANT TO HEAR FROM THOSE IN
7 SUPPORT AND THEN GIVE MR. BERRY A FULL AND FAIR
8 OPPORTUNITY TO RESPOND.

9 MR. SOTER, ARE YOU STILL WITH US?

10 MR. SOTER: YES, I AM.

11 MR. ROSEN: I HAVE BEEN TOLD BY OTHER JUDGES
12 THAT I DON'T NEED A MICROPHONE, BUT IF MR. SOTER SAYS
13 HE CANNOT HEAR ME, I WILL USE IT.

14 MR. SOTER: I HEAR YOU FINE.

15 MR. ROSEN: YOUR HONOR, I JUST WANT TO MAKE
16 A FEW POINTS IN ADDITION TO THOSE THAT MR. CHALEFF
17 MADE.

18 AS THE MOVING PAPERS SET FORTH, MR. BERRY
19 HAD BEEN SANCTIONED SEVEN TIMES BY FIVE DIFFERENT
20 JUDGES IN CONTEXT OF MONETARY SANCTIONS. THAT DOES NOT
21 EVEN BEGIN TO SCRATCH THE SURFACE.

22 MR. BERRY HAS BEEN SANCTIONED NON
23 MONETARY SANCTIONS IN CASES IN WHICH I WAS REPRESENTING
24 A PARTY INCLUDING PROHIBITED FILING ANY DISCOVERY
25 WITHOUT LEAVE OF COURT FIRST. I MEAN, THERE IS JUST AN
26 ENDLESS ARRAY OF CONDUCT.

27 THE OTHER THING, THE NEXT POINT I WANT TO
28 MAKE IS THIS, PERHAPS I'M A BIT OF A DINOSAUR, I'VE

1 BEEN PRACTICING OVER THIRTY YEARS NOW.

2 THE COURT: CAREFUL.

3 MR. ROSEN: WELL, AS A GOVERNMENT PROSECUTOR AND
4 THEN IN PRIVATE PRACTICE. AND I WAS BROUGHT UP WITH
5 THE NOTION THAT PROFESSIONALLY, WHETHER YOU THINK THE
6 JUDGE IS RIGHT, WRONG, OR OVER THE TOP, THE JUDGE IS
7 THE JUDGE AND THERE IS A CERTAIN AMOUNT OF RESPECT THAT
8 IS COMMANDED BY THAT POSITION.

9 THE COURT: IF THAT IS THE VIEW IN NEW YORK, I
10 ENCOURAGE YOU TO BRING IT TO CALIFORNIA.

11 MR. ROSEN: YOUR HONOR, I'LL TELL YOU THAT I
12 WAS RECENTLY IN THE FOURTH CIRCUIT COURT OF APPEALS,
13 AND YOU KNOW THAT COURT OF APPEALS --

14 THE COURT: IT SITS IN MY HOMETOWN.

15 MR. ROSEN: IT WAS ACTUALLY SITTING IN
16 BALTIMORE HEARING A CASE, AND AFTER EACH ORAL ARGUMENT
17 THEY INVITE COUNSEL UP TO THE BENCH AND EACH OF THE
18 JUDGES ON THE PANEL GREET THE COUNSEL. IT'S A COURT OF
19 INFINITE HOSPITALITY AND GENTEEL CONDUCT.

20 THE COURT: LET ME SAY ABOUT THAT WE HAVE A
21 CRISIS IN CALIFORNIA OF CIVILITY. I KNOW THAT
22 EVERYTHING IN NEW YORK IS HISTORICALLY SWEET.

23 MR. ROSEN: NO, MR. BERRY IS A MEMBER OF THE
24 NEW YORK BAR, TOO, YOUR HONOR.

25 THE COURT: ALL RIGHT, BUT THE POINT THAT I
26 WANT TO MAKE IS ACTUALLY GERMANE TO THIS WHOLE CASE.

27 THERE IS A CRISES OF CIVILITY AMONGST
28 LAWYERS AND THEY COME BY IT ACTUALLY, HONESTLY. THE

1 LAW COMPELS COUNSEL TO BE ZEALOUS ADVOCATES FOR THEIR
2 CLIENTS, AND SOMETIMES IT'S VERY HARD TO DRAW THE
3 BOUNDARIES.

4 ONE OF THE THINGS I LEARNED IN MY FIFTEEN
5 YEARS IN THIS JOB IS THAT IT'S PART OF MY JOB TO HELP
6 COUNSEL BRIDGE THE CIVILITY GAP BY SETTING BOUNDARIES
7 AND BY SETTING AN EXAMPLE.

8 THERE WAS A TIME IN MY LIFE WHEN I
9 REACTED TO HOSTILITY AMONG COUNSEL WITH GREATER
10 HOSTILITY ON THE THEORY THEY DON'T KNOW BAD UNTIL THEY
11 KNOW HOW BAD I CAN BE, BUT THAT IS NOT THE WAY TO BE A
12 JUDGE.

13 IN THIS PARTICULAR CASE, I HAVE REALLY
14 BENT OVER BACKWARDS TO TRY AND SET A CIVILIZED, CALM,
15 CHECK-YOUR-GUNS-AT-THE-DOOR KIND OF TONE. I KNOW THAT
16 LITIGATION INVOLVING THE CHURCH OF SCIENTOLOGY IS
17 HISTORICALLY EXTREMELY BITTER. THOSE WHO ARE
18 AFFILIATED AND THOSE WHO ARE FORMALLY AFFILIATED HAVE
19 VERY STRONG FEELINGS. I RESPECT THOSE FEELINGS, AND I
20 HAVE NO POSITION ABOUT THEM OTHER THAN MY OBLIGATION TO
21 AFFORD A CIVILIZED, COURTEOUS, RESPONSIBLE, LAWFUL
22 ARENA FOR THE RESOLUTION OF THOSE ISSUES.

23 I BELIEVE THAT JUDGES PLAY A MAJOR ROLE
24 IN THE SO-CALLED CIVILITY CRISES THAT WE SUFFER
25 GENERALLY IN THIS COUNTRY AND SPECIFICALLY HERE IN LOS
26 ANGELES.

27 SO THAT UPON WHICH YOU TOUCH ABOUT THAT
28 GOES ON IN THE FOURTH CIRCUIT, IT REMINDS ME IN SOME

1 WAYS THAT I HAVE GONE BACK TO MY ROOTS AND THE COURTESY
2 AND THE GOOD MANNERS THAT I LEARNED AT THE DINNER
3 TABLE, AND I'M TRYING TO IMPART THAT TO THIS COURT.

4 WHAT MOST DISAPPOINTS ME ABOUT WHAT I
5 HAVE RECEIVED YESTERDAY FROM MR. BERRY IS A COMPLETE
6 FAILURE TO ACKNOWLEDGE THE EFFORT OF THIS COURT TO
7 AFFORD FOR HIM, FOR THOSE THAT CARE ABOUT HIS CAUSE,
8 FOR EVERY PARTY AND EVERY LITIGANT, THE EXACT KIND OF
9 CIVILIZED, COURTEOUS, AND FRIENDLY ARENA THAT YOU HAVE
10 EXTOLLED IN THE FOURTH CIRCUIT AND WE TRY TO ACHIEVE
11 HERE.

12 GO AHEAD, SIR, THANK YOU.

13 MR. ROSEN: THE REASON I BRING IT UP IS BECAUSE
14 I DON'T WANT YOU TO LEAVE THE BENCH THINKING THAT YOU
15 HAVE DONE SOMETHING TO PERCIPITATE THIS CONDUCT BY
16 MR. BERRY.

17 THE COURT: I DON'T.

18 MR. ROSEN: OKAY. I WILL TELL YOU A YEAR AGO I
19 WAS IN TRIAL AGAINST MR. BERRY, A JURY TRIAL IN SAN
20 JOSE BEFORE JUDGE WHYTE. NOW I DON'T KNOW IF YOU KNOW
21 JUDGE WHYTE --

22 THE COURT: I DO.

23 MR. ROSEN: HE IS THE MOST MILD-MANNERED
24 LAID-BACK JUDGE. YOU CAN'T HEAR HIM WHEN HE USES THE
25 MICROPHONE, AND YOU HAVE TO GO A LONG WAY TO GET JUDGE
26 WHYTE'S IRE UP.

27 MR. BERRY MADE AN APPEARANCE IN A CASE
28 THAT WAS BEING TRIED TO A JURY IN A COPYRIGHT CASE, AND

1 HE SAID THINGS TO THE JUDGE IN OPEN COURT AND TREATED
2 THE JUDGE IN A WAY THAT EVERY COUNSEL SAT THERE TRYING
3 TO CRAWL UNDER THE TABLE AND SAY I REALLY DON'T WANT TO
4 BE HERE.

5 THE VERY NEXT DAY HE MADE A POSTING TO
6 THE INTERNET WHICH, AFTER BEING CRITICISED BY PEOPLE
7 FOR HOW CAN YOU ACT THIS WAY AS AN ATTORNEY BEFORE A
8 FEDERAL JUDGE, QUOTE, TAKING ON JUDGE WHYTE YESTERDAY
9 WAS ALSO DELIBERATELY DEFIANT. DEFIANT ON MY PART FOR
10 A NUMBER OF REASONS. HE IS PROUD OF IT.

11 THIS IS NOT YOU, YOUR HONOR. HE HAS
12 TREATED OTHER JUDGES WITH THE SAME DISDAIN THAT HE HAS
13 EXPRESSED TO THIS COURT.

14 THE COURT: PLEASE, I AM WORRIED THAT YOUR
15 ARGUMENT SUGGESTS THAT THERE IS A REASON TO FEAR THAT I
16 PERCEIVE THIS IS ABOUT ME, AND I DO NOT.

17 THIS IS ABOUT ISSUES IN THIS CASE. I AM
18 DISAPPOINTED IN SOME THINGS THAT HAVE HAPPENED IN THIS
19 CASE, BUT I APPROACH MY DUTY WITH A COMPLETE, CAREFUL,
20 BALANCE, FAIRNESS, TO ALL PARTIES. I EXTEND THAT TODAY
21 AND I AM ABSOLUTELY CLEAR ON MY DUTY AND MY ABILITY TO
22 AFFORD IT TO BE FAIR TO ALL SIDES HERE. THERE IS
23 NOTHING HERE THAT I TAKE PERSONALLY.

24 MR. ROSEN: AND JUDGE WHYTE DIDN'T TAKE IT
25 PERSONALLY EITHER, YOUR HONOR, BUT I THINK THIS IS AN
26 INDICATION OF THE CONDUCT THAT MR. BERRY ENGAGES IN
27 INTENTIONALLY.

28 OF THE FIVE CASES THAT ARE BEFORE YOU AS

1 THE PREDICATE FOR THE VEXATIOUS LITIGANT MOTION, I
2 WOULD LIKE TO ADDRESS ONE OF THEM IN WHICH I HAD THE
3 DISPLEASURE OF BEING THE DEFENDANT. I WOULD LIKE TO
4 TELL YOU A STORY ABOUT WHAT HAPPENED IN THAT CASE
5 BECAUSE I THINK IT REALLY SUMS UP THE ENTIRETY OF THIS.

6 I WAS SCHEDULED TO TAKE MR. BERRY'S
7 DEPOSITION IN BERRY V. BARTON'S OFFICE STARTING, I
8 BELIEVE, ON THURSDAY THE 28TH OF MAY. ON TUESDAY
9 MORNING, THE 26TH OF MAY, MR. BERRY WENT INTO JUDGE
10 LAGER WITH AN EXPARTE THAT MORNING SAYING HE WANTED HIS
11 DEPOSITION POSTPONED.

12 THE REASON WAS BECAUSE HE HAD NOT YET
13 SERVED, AS THE PLAINTIFF, SEVERAL DEFENDANTS. THE CASE
14 WAS FILED THREE MONTHS EARLIER, AND HE HAD NOT GOTTEN
15 AROUND TO SERVING THEM AND IT WAS UNFAIR FOR HIM TO BE
16 DEPOSED BEFORE HE HAD GOTTEN AROUND TO SERVING THEM.

17 WELL, JUDGE LAGER MADE SHORT SHRIFT OF
18 THAT, BUT MR. BERRY KNEW THAT WAS GOING TO HAPPEN, THAT
19 THAT MOTION WAS GOING TO BE DENIED BECAUSE IN HIS
20 BRIEFCASE HE HAD ANOTHER SET OF PAPERS AND WALKED OUT
21 OF JUDGE LAGER'S COURTROOM AND DOWN THE HALL TO, AND
22 I'M NOT SURE WHAT IT'S CALLED HERE, BUT TO THE FAMILY
23 DIVISION, AND FILED AN EXPARTE, A TRUE EXPARTE, NO
24 NOTICE TO US.

25 WE ARE IN THE COURTROOM WITH HIM BEFORE
26 JUDGE LAGER AND DOESN'T TELL US, AND WALKS DOWN THE
27 HALL TO JUSTICE BEVERLY AND PRESENTS AN EXPARTE ORDER
28 TO SHOW CAUSE WITH A TRO TO RESTRAIN ME FROM COMING

1 WITHIN ONE HUNDRED FEET OF MR. BERRY AND DOESN'T TELL
2 JUDGE BEVERLY IN HIS PAPERS THAT IF FOR SOME REASON THE
3 JUDGE WOULD HAVE GRANTED THIS, I WOULD BE EFFECTIVELY
4 PRECLUDED FROM TAKING HIS DEPOSITION TWO DAYS LATER.

5 WELL, FORTUNATELY, JUDGE BEVERLY SIGNED
6 THE ORDER TO SHOW CAUSE AND MADE IT RETURNABLE TWO
7 WEEKS LATER AND CROSSED OUT THE TRO AND PUT HIS
8 INITIALS IN THE MARGIN. THOSE PAPERS WERE IN
9 MR. BARRY'S BRIEFCASE. HE WENT FROM JUDGE LAGER TO
10 JUDGE BEVERLY THAT DAY.

11 THE NEXT DAY HE CAME UP WITH A THIRD TRY
12 TO TRY TO AVOID THIS DEPOSITION. HE OPPOSED MY PRO HAC
13 VICE MOTION. I WANT TO READ TO YOU WHAT HE TOLD JUDGE
14 LAGER,

15 "PLAINTIFF APPLIES FOR AND RECEIVED
16 A TEMPORARY RESTRAINING ORDER
17 RESTRAINING APPLICANT, ME, FROM
18 COMING WITHIN ONE HUNDRED YARDS OF
19 PLAINTIFF. FROM TELEPHONING AND
20 FROM HARASSING OR INTIMIDATING HIM."

21 WELL, YOUR HONOR, AS I SAY, I MAY BE A
22 LITTLE BIT OF A DINOSAUR, BUT I AM NOT USED TO SEEING
23 AN ATTORNEY PUT IN AN AFFIDAVIT THAT SAYS HE GOT A TRO
24 WHEN HE DIDN'T. IN ANY EVENT, JUDGE LAGER MADE SHORT
25 SHRIFT OF THAT ONE AS WELL.

26 THAT PROCEEDING WAS THEN WITHDRAWN WITH
27 PREJUDICE WHEN MY COUNSEL REPRESENTING ME, MISS REEVES
28 AND MR. TURRILL FROM MY FIRM APPEARED BEFORE JUDGE

1 BEVERLY ON AN APPLICATION FOR BOTH ATTORNEY'S FEES AND
2 SANCTIONS.

3 IN ADDITION TO ATTORNEY FEES, JUDGE
4 BEVERLY ISSUED AN ORDER GRANTING US OUR FULL ATTORNEYS
5 FEES, ONE HUNDRED PERCENT OF THEM, AND SAID IF I HAD
6 THE AUTHORITY TO DO IT UNDER THE STATUTE, I WOULD
7 IMPOSE SANCTIONS AS WELL.

8 NOW IN THE HISTORY AND VIEW OF ALL THIS,
9 ONE IS COMPELLED WITH A NOTION OF EXAMINING WHETHER OR
10 NOT THERE HAS BEEN ANY ACT OF CONTRITION, ANY ACT OF
11 ATONEMENT, ANYTHING TO INDICATE THAT SOMEHOW MR. BERRY
12 HAS CHOSEN TO STEER A BETTER COURSE, PERHAPS, AND THAT
13 IS SOMETHING THAT I THINK IS VERY RELEVANT TO THE ISSUE
14 BEFORE YOU OF VEXATIOUS LITIGANT.

15 HAS MR. BERRY LEARNED BY THE ERROR OF HIS
16 WAYS?

17 THE ANSWER IS NO. I WASN'T HERE ON
18 MONDAY, BUT YOUR HONOR'S RECITATION OF WHAT OCCURRED ON
19 MONDAY IS PERFECTLY, ONE HUNDRED PERCENT CONSISTENT
20 WITH WHAT MR. TURRILL TOLD ME.

21 MR. TURRILL OF MY FIRM WAS HERE ON
22 MONDAY. I THEN GET A SET OF PAPERS THAT ACCUSE MYSELF
23 AND MIKE TURRILL OF COMMITTING ALL KINDS OF HEINOUS
24 CRIMES, HIGHWAY MOBERY, SUBORNATION OF PERJURY, ET
25 CETERA, ET CETERA.

26 WELL, I DON'T HAVE TO READ THEM,
27 MR. BERRY'S PAPERS, BECAUSE I KNOW THAT TEN SECONDS
28 AFTER THE FILING IN THE CLERK'S OFFICE I CAN READ THEM

1 ON THE INTERNET, THAT IS THE GAME.

2 I THEN FIND SOMETHING VERY INTERESTING
3 AND MR. CHALEFF REFERRED TO THIS EARLIER. YESTERDAY
4 AFTERNOON AT 1:00 O'CLOCK, I GOT DELIVERED TO MY OFFICE
5 THE TOP HALF OF THIS STACK IN SUPPORT OF A MOTION TO
6 DISQUALIFY YOUR HONOR. THE MOTION WAS NOTICED FOR
7 YESTERDAY MORNING AT 8:30 IN DEPARTMENT ONE.

8 WELL, I DON'T PROFESS TO BE AN EXPERT ON
9 CALIFORNIA PRACTICE, IF COUNSEL NOTICED A MOTION TO BE
10 RETURNED AT 8:30 ON THE 19TH OF AUGUST, DOES COUNSEL
11 MAKE SERVICE OF THOSE MOTION PAPERS AT 1:00 O'CLOCK IN
12 THE AFTERNOON ON THAT DAY?

13 IT DOESN'T SEEM TO MAKE A LOT OF SENSE TO
14 ME. WHAT IS THE POINT IN MAKING SERVICE OF PAPERS IF
15 YOU DON'T HAVE AN OPPORTUNITY TO APPEAR OR RESPOND
16 BECAUSE THE POINT FOR APPEARING IS ALREADY PAST?

17 THAT, TO ME, SPEAKS VOLUMES OF THE FACT
18 THAT MR. BERRY AND HIS PRACTICE IS NOT, HE IS NOT A
19 REPENTANT INDIVIDUAL, AND HE HAS NOT CONFORMED HIS
20 CONDUCT TO THAT WHICH IS EXPECTED OF ALL ATTORNEYS WHO
21 ARE PRIVILEGED TO APPEAR BEFORE THIS COURT.

22 IT'S NOT A RIGHT, IT'S A PRIVILEGE,
23 INCLUDING ME AS A PRO HAC VICE, INCLUDING SOMEBODY WHO
24 IS ADMITTED IN THIS COURT IN THE STATE OF CALIFORNIA.

25 THE SECOND ASPECT OF THAT IS THE MOTION
26 THAT YOU ARE NOT GOING TO HEAR, THE MOTION WITH RESPECT
27 TO MR. CIPRIANO. I'M NOT GOING TO ADDRESS IT EXCEPT TO
28 SAY THE VERY IDEA OF FILING A MOTION IN A CLOSED CASE,

1 THERE IS NO MOTION TO REOPEN ANY CASE.

2 I MEAN, I WANT TO FILE A MOTION. THIS IS
3 LIKE A TOTAL DISREGARD OF ANYTHING WHICH RESEMBLES
4 PROPER ORDER AND THE JUDICIAL SYSTEM PROCESS AND
5 PROCEEDINGS WHICH ARE DESIGNED TO PROTECT ALL
6 LITIGANTS.

7 THE NEXT POINT I WANT TO MAKE IS THIS, I
8 HAVE READ SOME OF THE PAPERS IN WHICH MR. BERRY
9 PROVIDES AN EXPLANATION FOR HIS TARDINESS ON MONDAY. I
10 GUESS IT'S IN HIS EXPLANATION FOR WHY HE SHOULD NOT BE
11 SANCTIONED FOR SHOWING UP IN YOUR HONOR'S COURT LATE ON
12 MONDAY.

13 GIVING THE BENEFIT OF THE DOUBT TO ANY
14 ATTORNEY THAT SAYS I GOT STUCK ON THE 10 AND 101, I
15 THINK, IS A NATURAL INCLINATION OF ANY JUDGE IN THIS
16 BUILDING. LET ME TELL YOU THIS, IN MY EXPERIENCE WITH
17 MR. BERRY, MR. BERRY IS NEVER ON TIME. NEVER FILES
18 ANYTHING ON TIME.

19 I CAN HAND UP DEPOSITION TRANSCRIPTS OF
20 ONE MONTH AGO WHEN I DEPOSED MR. BERRY'S CLIENT
21 MR. PATTINSON. EVERY SINGLE DAY MR. BERRY WOULD SHOW
22 UP FIFTEEN MINUTES LATE, TWENTY MINUTES LATE, IN FACT,
23 WE HAD -- AND ALL OF THIS IS ON THE RECORD -- WE HAD AN
24 EXCHANGE ON THE RECORD. I SAID TO MR. BERRY, "YOU ARE
25 A HALF-AN-HOUR LATE." "NO, I'M NOT A HALF AN HOUR,
26 IT'S ONLY TWENTY-TWO MINUTES LATE."

27 JUDGE WHYTE, IN THE CASE I REFERRED TO
28 THAT WAS TRIED LAST YEAR IN SAN JOSE IN WHICH MR. BERRY

1 WAS DEFENSE COUNSEL, REACHED THE END OF HIS ROPE WITH
2 MR. BERRY. MR. BERRY DID NOT FILE SOMETHING. I DON'T
3 REMEMBER WHAT IT WAS, AND JUDGE WHYTE CAME OUT AND THIS
4 IS IN THE OFFICIAL TRANSCRIPT OF APRIL 30, 1998, AND
5 MR. BERRY TRIED TO FILE SOMETHING LATE AND JUDGE WHYTE
6 SAID, "I'M NOT GOING TO LET YOU FILE IT."

7 THE REVIEW OF THE HISTORY OF THIS CASE
8 WILL SHOW THAT THE DEFENSE HAD MORE THAN AMPLE
9 OPPORTUNITY TO LIST EXHIBITS BUT DID NOT DO SO.

10 NOVEMBER 14 1998, THE ORIGINAL PRETRIAL
11 CONFERENCE STATEMENT WAS FILED, NO EXHIBIT LIST.
12 FEBRUARY 5, 1997, PRETRIAL CONFERENCE, NO EXHIBIT LIST.
13 APRIL 22, 1998, PRETRIAL CONFERENCE, NO EXHIBITS. ON
14 AND ON.

15 JUDGE WHYTE WENT BACK THROUGH HIS FILES
16 AND LISTED EVERY SINGLE TIME DEADLINE THAT APPLIED IN
17 THIS CASE AND EVERY SINGLE ONE OF THEM MR. BERRY
18 IGNORED.

19 THIS IS HIS MODUS OPERANDI, TO IGNORE
20 THEM. HE HAS DISPLAYED THAT EARLIER THIS WEEK UPSTAIRS
21 IN DEPARTMENT 46 BEFORE JUSTICE MINNING. THERE WAS A
22 MOTION ON A CASE IN WHICH MR. BERRY REPRESENTS
23 MR. PATTINSON. ON THE LAST DAY FOR FILING OPPOSITION
24 PAPERS, MR. BERRY FILES AND SERVES A DOCUMENT ENTITLED
25 PRELIMINARY OPPOSITION. A DRAFT WITH HOLES IN IT.
26 WITH BLANKS, UNSIGNED, SUPPORTED BY AN UNSIGNED
27 AFFIDAVIT OF MR. BERRY AND NOT SERVED ON COUNSEL UNTIL
28 THE NEXT DAY. ONE DAY LATE. SERVES IT, FILES IT ONE

000126

1 DAY AND SERVES IT THE NEXT DAY.

2 NOW WHY AM I SAYING THIS? IT'S NOT
3 BECAUSE I'M ASKING YOU TO TAKE ANY ACTION. I'M SAYING
4 IT TO MAKE THE POINT THAT THE EXTENT THAT YOUR HONOR
5 BELIEVES THERE IS ANY HOPE OF REHABILITATION OF
6 MR. BERRY, THAT PUNISHMENT SHOULD BE MEASURED BY AN
7 INTENTION OF REHABILITATION OR A HOPE OF
8 REHABILITATION, I'M TELLING YOU THAT SINCE THIS MOTION
9 WAS FILED, MR. BERRY'S CONDUCT HAS NOT COMPORTED WITH
10 THE RULES OF PRACTICE. AND IF ANYTHING, IT HAS JUST
11 GOTTEN WORSE AND WORSE.

12 THERE IS ONE LAST POINT THAT I WOULD LIKE
13 TO MAKE AND THAT IS THAT VEXATIOUS LITIGANT MOTIONS ARE
14 RARE IN ANY JURISDICTION. AND YOU REALLY HAVE TO DO
15 SOME, TO GO TO THE BOOKS AND FIND CASES IN WHICH THE
16 COURT'S HAVE IMPOSED A RESTRAINT, SUCH AS THE RESTRAINT
17 THAT IS BEING ASKED FOR HERE UNDER THE CALIFORNIA
18 STATUTE AGAINST MR. BERRY.

19 THE ONLY ONE I AM AWARE OF IN THIRTY
20 YEARS OF PRACTICE IN THE STATE OF NEW YORK, AND IT'S IN
21 THE FEDERAL SYSTEM, INVOLVES A LITIGANT WHO ENGAGED IN
22 CONDUCT LIKE MR. BERRY. AND THE SECOND CIRCUIT PUT IN
23 AN ADDITIONAL PROVISION TO THE ORDER HOLDING THAT
24 PERSON TO BE A VEXATIOUS LITIGANT, AND THAT PROVISION
25 IS ONE I'M GOING TO ASK YOU TO PUT IN YOUR ORDER TODAY.

26 AND THAT IS THAT WHENEVER MR. BERRY
27 APPEARS IN ANY CASE IN ANY COURT, WHETHER IN THE FIRST
28 APPEARANCE IN THE NOTICE OF APPEARANCE OR A PLEADING,

1 HE ATTACHES A COPY OF THIS COURT'S ORDER HOLDING HIM TO
2 BE A VEXATIOUS LITIGANT TO THAT PLEADING.

3 AND IN THE MARTIN TUGADI CASE, THE SECOND
4 CIRCUIT EXPLAINED THAT BECAUSE DECISIONS ARE NOT
5 ORDINARILY PUBLISHED OF THE LOWER COURTS BECAUSE
6 ANOTHER LITIGENT WHO WILL RUN INTO MR. BERRY WHO DOES
7 NOT KNOW THE HISTORY, WILL NOT BE AWARE OF HIS PRIOR
8 CONDUCT, EVERY JUDGE AND EVERY LITIGANT AGAINST
9 MR. BERRY, WHETHER IT'S IN THE STATE OF CALIFORNIA OR
10 THE STATE OF OHIO HAS A RIGHT TO KNOW THAT THIS PERSON
11 HAS BEEN ADJUDICATED TO BE A VEXATIOUS LITIGANT.

12 SO I WILL ASK YOUR HONOR TO CONSIDER
13 ADDING THAT ADDITIONAL PROVISION TO THE ORDER WE
14 REQUEST YOU TO ISSUE.

15 AND THANK YOU, YOUR HONOR, FOR YOUR
16 PATIENCE.

17 THE COURT: THANK YOU. ONE MOMENT.

18 CHUCK, HOW ARE YOU DOING? WHAT I PROPOSE
19 TO DO IS THE FOLLOWING AND I NEED TO GIVE THE COURT
20 REPORTER A BREAK. I WANT TO HEAR PATIENTLY FROM THOSE
21 WHO WISH TO BE HEARD IN SUPPORT OF THIS APPLICATION. I
22 WANT TO TAKE A BREAK AND GIVE MR. BERRY A CHANCE TO
23 ORGANIZE HIS RESPONSE AND THEN I WANT TO HEAR FROM
24 MR. BERRY.

25 HOW MUCH TIME DO YOU WISH, AND I'M NOT
26 SETTING A LIMIT, I'M TRYING TO MAKE PLANS, MR. MOXON?

27 MR. MOXON: I WILL ATTEMPT TO BE VERY BRIEF.

28 THE COURT: THAT MEANS?

1 MR. CHALEFF: LESS THAN FIVE MINUTES.

2 THE COURT: AND MR. CHODOS, DO YOU WISH TO BE
3 HEARD?

4 MR. CHODOS: YES, IT WOULD BE LESS THAN FIVE
5 MINUTES.

6 THE COURT: IF IT WORKS FOR YOU, I WOULD LIKE TO
7 HEAR FROM THEM AND THEN GO AHEAD AND TAKE A BREAK.

8 THE REPORTER: THAT IS FINE.

9 THE COURT: GO AHEAD.

10 MR. MOXON: MY NAME IS KENDRICK MOXON.

11 YOUR HONOR, I APPRECIATE YOUR COMMENTS
12 REGARDING THE RESTRAINTS.

13 THE COURT: MR. SOTER, ARE YOU THERE?

14 MR. SOTER: YES, I AM.

15 THE COURT: YOU MAY WANT TO HOLD THAT
16 MICROPHONE CLOSER.

17 MR. MOXON: I APPRECIATE THE COMMENTS YOU HAVE
18 GIVEN US CONCERNING RESTRAINTS.

19 AS YOU KNOW IN THE BEGINNING OF THIS
20 CASE, IT WAS A LITTLE WILDER THAN IT WAS AT SOME LATER
21 POINTS, AND AS THE TARGET OF MOST OF THE COMMENTS BY
22 THE PLAINTIFF IN THE CASE, I TENDED TO WANT TO TAKE
23 THEM PERSONALLY. AND YOUR COMMENTS AND YOUR ACTIVITIES
24 AND YOUR EXAMPLE OF RESTRAINT WAS ACTUALLY AN EXAMPLE
25 TO US AND IT CAUSED A GREAT DEAL OF DIFFERENCE IN THE
26 WAY THAT WE ATTEMPTED TO APPROACH THINGS HERE.

27 THE COURT: THANK YOU.

28 MR. MOXON: AND I SAY THAT BECAUSE YOU MAY HAVE

1 SEEN SOME OF THE WRITTEN COMMENTS HERE BY MR. BERRY
2 WHERE HE INDICATED THAT, FOR EXAMPLE, A BLACK GUY FROM
3 HOBSON IS A GOOD DEAL, AS FAR AS I'M CONCERNED. AND I
4 OBJECTED BECAUSE HE SAID IN ANOTHER CASE IN WHICH HE
5 WAS COUNSEL WAS TO BITE SCIENTOLOGY IN THE BUTT. THAT
6 IS MY AGENDA, TO CAUSE IT AS MUCH GRIEF AS POSSIBLE.

7 I DON'T THINK THAT A BAR CARD SHOULD BE A
8 LICENSE TO CREATE CHAOS AND THAT IS WHAT HAS BEEN DONE
9 HERE.

10 EVERY TIME MR. BERRY HAS BEEN REPEATEDLY
11 SANCTIONED HE SAID THE COURT IS TO BLAME. WHEN COSTS
12 HAVE BEEN LEVIED AGAINST HIM HE SAID, "I DON'T CARE
13 BECAUSE I'M FILING BANKRUPTCY." WHEN A VERY PATIENT
14 FEDERAL JUDGE, CHRISTINE SCHNEIDER, ISSUED AN
15 EXTRAORDINARY RULE ELEVEN SANCTION, \$28,000 AGAINST HIM
16 ON MY BEHALF FOR FILING A BAD FAITH, WHAT SHE CALLED A
17 BAD FAITH CASE, UNDER THE FEDERAL VEXATIOUS LITIGANT
18 STATUTE, HE SAID HE WAS A VICTIM OF A CONSPIRACY.

19 HE HAS BEEN REPEATEDLY SANCTIONED,
20 CONSTANTLY, AND HE JUST -- I DON'T HAVE YOUR THICK
21 SKIN, YOUR HONOR. I HAVE SAT HERE MANY HOURS TO SEE
22 WHAT IS GOING ON AND YOU TOLD ME TO CALM DOWN BEFORE I
23 GOT UP AND SPOKE AND I TRULY APPRECIATED THAT.

24 THE COURT: I COMMEND YOU FOR YOUR SUCCESS IN
25 DOING SO.

26 MR. MOXON: AT ANY RATE, THE LEGISLATURE IN
27 CALIFORNIA CONTEMPLATED THIS KIND OF LITIGANT FAR LESS
28 THAN THE KIND OF LITIGANT THAT WE HAD HAVE SEEN

1 HERE. AND THEY HAVE SET FORTH THREE OBJECTIVE
2 STANDARDS AND ONE SUBJECTIVE STANDARD FOR HOW TO DEAL
3 WITH IT.

4 THOSE STANDARD ARE MET IN THIS CASE.
5 SECTION 391 HAS FOUR STANDARDS. THE FIRST OF THEM, ANY
6 ONE OF THEM, BY THE WAY, WARRANTS AND REQUIRES A
7 FINDING OF VEXATIOUS LITIGANT.

8 THE FIRST ONE IS ENTIRELY OBJECTIVE,
9 ENTIRETY. AND THAT IS THAT FIVE CASES BE DISMISSED
10 WITHIN A PERIOD OF SEVEN YEARS. HERE WE HAVE FIVE
11 CASES DISMISSED AS A PER SE LITIGANT IN ONE YEAR. IT'S
12 AN OBJECTIVE STANDARD.

13 THE SECOND ONE IS A SUBJECTIVE STANDARD.
14 IT DEALS WITH THE FILING OF UNMERITORIOUS OR FRIVOLOUS
15 PAPERS IN AN ACTION. THE COURT CAN TAKE JUDICIAL
16 NOTICE OF WHAT HAS BEEN DONE HERE. I DON'T THINK I
17 NEED TO REPEAT IT. IT WAS DONE HERE VERY WELL BY
18 MR. ROSEN AND MR. CHALEFF AND THIS COURT KNOWS BETTER
19 THAN I DO OF THAT.

20 THE THIRD STANDARD IS ALSO OBJECTIVE AND
21 THAT IS THAT THERE BE A FINDING IN ANOTHER COURT THAT
22 HE WAS A VEXATIOUS LITIGANT. WE HAVE THAT BY JUDGE
23 SCHNEIDER. HE HAD AN OPPORTUNITY TO APPEAL THAT AND HE
24 DIDN'T DO IT. IT WAS A \$28,000 RULE ELEVEN SANCTION
25 UNDER 28 USC 1927 FEDERAL VEXATIOUS LITIGANT STATUTE.

26 SO ASIDE FROM ANYTHING ELSE, ASIDE FROM
27 ALL THE OTHER COMMENTARY, THOSE OBJECTIVE STANDARDS
28 REQUIRE THAT MR. BERRY, AS A MATTER OF LAW, BE FOUND TO

000131

1 BE A VEXATIOUS LITIGANT. HE MEETS ALL THREE OF THEM.

2 IT SEEMS TO ME THAT MR. BERRY HAS BEEN
3 GIVEN VIRTUALLY UNLIMITED LEEWAY, AND THAT HE HAS
4 EXHAUSTED IT. HE HAS BEEN GIVEN VIRTUALLY UNLIMITED
5 PATIENCE AND HE HAS EXHAUSTED THAT, TOO.

6 ALL WE ASK HERE IS THAT A VERY LIMITED
7 RESTRAINT BE IMPOSED UPON HIM. VERY LIMITED PROCEDURAL
8 RESTRAINT THAT IS FOUND TO BE CONSTITUTIONAL IN THE
9 COURT SYSTEM BEING IMPOSED UPON MR. BERRY SO THAT WE
10 CAN GET ON WITH OUR BUSINESS.

11 THANK YOU.

12 THE COURT: MR. CHODOS.

13 MR. CHODOS: I DIDN'T THINK THAT I WOULD BE
14 PART OF THIS PROCEEDING UNTIL MR. BERRY --

15 THE COURT: HOLD ON. PLEASE USE THE
16 MICROPHONE.

17 ARE YOU STILL THERE, MR. SOTER?

18 MR. SOTER: YES, I AM.

19 THE COURT: VERY GOOD.

20 MR. CHODOS: I DIDN'T THINK, YOUR HONOR, I WOULD
21 BE PART OF THIS PROCEDURE BEFORE MR. BERRY MADE ME A
22 PARTY BY SERVING ON ME THE FIRST OF MANY DOCUMENTS LAST
23 FRIDAY AND THEN ANOTHER SIX INCHES THIS WEEK, BUT NOW I
24 AM.

25 MR. BERRY DOES THINGS THAT I DIDN'T THINK
26 LAWYERS DO. I WAS RELIEVED IN THE VOLUMES OF PLEADINGS
27 THAT HE FILED IN THE LAST WEEK TO SEE THAT MY NAME
28 APPEARED ONLY IN THE AFFIDAVIT OF SERVICE, ALTHOUGH I

1 WAS INCLUDED APPARENTLY AMONG THE LAWYERS, AND MY
2 CLIENTS AMONG THE CLIENTS THAT SHOULD BE HELD IN
3 CONTEMPT, BE DISQUALIFIED, ET CETERA.

4 MR. BERRY WAS NOT ALWAYS SO KIND. IN THE
5 PATTINSON CASE, YOUR HONOR, WHEN HE FIRST FILED IT, I
6 BARELY KNEW MR. BERRY. WE OPPOSED EACH OTHER IN, I
7 THINK, ONE PROCEEDING.

8 I THOUGHT OUR RELATIONSHIP WITH EACH
9 OTHER WAS GENTLEMANLY AND COURTEOUS. THE ONLY
10 DESCRIPTION HE HAS EVER GIVEN OF MY CONDUCT TO DATE IN
11 ANY COURT WAS THAT IT WAS PROFESSIONAL AND COURTEOUS TO
12 HIM.

13 IN THE PATTINSON CASE I WAS INCLUDED IN
14 PARAGRAPH 106 AS ONE OF THE LAWYERS WHO IMPLEMENTED
15 SCIENTOLOGY'S POLICY OF USING LITIGATION AND
16 INVESTIGATION TO HARASS, DEFAME, INTIMIDATE, AND
17 DESTROY, WHICH HAS BEEN USED UPON THE PLAINTIFF.

18 ACTUALLY, I WASN'T TREATED AS BADLY IN
19 THAT COMPLAINT WHICH, BY THE WAY, I WAS ABLE TO AVOID
20 PUTTING INTO MY FILES BECAUSE I WAS ABLE TO PICK IT UP
21 OFF THE INTERNET, AS WAS OTHER LAWYERS INCLUDING JACK
22 QUINN, MR. ROSEN HERE, AND BARBARA REEVES WHO WERE
23 ACCUSED IN PARAGRAPH 114 OF DESTROYING DOCUMENTS. AND
24 IN PARAGRAPH 15, ACCUSED IN SUCH THINGS AS ENGAGING IN
25 SUCH BLATANT AND BRUTAL LEGAL FUDDERY, USING
26 MR. BERRY'S WORDS, AND INTENTIONAL, ABUSIVE, UNETHICAL
27 AND CRIMINAL CONDUCT -- THIS IS HIS DESCRIPTION OF
28 OTHER LAWYERS. MISS REEVES, I THINK, HE BARELY KNEW AT

1 THE TIME AND WHEN HE MADE THESE REMARKS ABOUT ME, I
2 THINK HE BARELY KNEW ME.

3 YOUR HONOR, I HAVE BEEN A LAWYER FOR
4 THIRTY-TWO YEARS. BEING A LAWYER WAS ALL I EVER WANTED
5 TO BE.

6 THE COURT: YOU SEE, MR. ROSEN, I TOLD YOU TO
7 BE CAREFUL.

8 MR. ROSEN: HE LOOKS YOUNGER.

9 MR. MOXON: I KNOW WHEN I DECIDED I WANTED TO BE
10 A LAWYER, WHICH WAS BEFORE MOST OF THE PEOPLE SITTING
11 IN THIS COURTROOM WERE BORN, THAT LAWYERS DIDN'T DO
12 THINGS LIKE THIS. I UNDERSTAND HOW, IN THE HEAT OF
13 COMBAT, CIVILITY IS SOMETIMES THE FIRST VICTIM, BUT
14 THERE ARE BOUNDARIES, THERE ARE LIMITS. I STILL DON'T
15 THINK LAWYERS DO THINGS LIKE THIS.

16 THE COURT: MR. SOTER, IT IS DIFFICULT TO
17 TRANSCRIBE REMARKS OVER THE TELEPHONE, BUT IF YOU WISH
18 TO SPEAK AND DO SO SLOWLY AND CLEARLY, I'LL BE HAPPY TO
19 HEAR FROM YOU.

20 MR. SOTER: YOUR HONOR, MY COMMENTS WILL BE
21 BRIEF.

22 WE ARE NOT A PARTY. I'M NOT A PARTY. MY
23 LAW FIRM IS NOT A PARTY TO THIS VEXATIOUS LITIGANT
24 MOTION. AND IN VIEW OF THE RECENT EVENTS, I THINK IT'S
25 INAPPROPRIATE FOR US TO TAKE A POSITION ON THAT MOTION,
26 ONE WAY OR THE OTHER.

27 I WILL SAY THAT THERE ARE CERTAIN
28 REPRESENTATIONS IN THE MOST RECENTLY FILED DECLARATION

1 OF MR. CIPRIANO, PARTICULARLY IN PARAGRAPH FOUR THAT
2 ARE WRONG AND THAT SHOULD BE STRICKEN, AND THAT I
3 REPRESENTED MR. CIPRIANO PROPERLY, FOLLOWING ALL THE
4 RULES OF PROFESSIONAL CONDUCT, AND THAT I DISCHARGED MY
5 OBLIGATION TO REPRESENT MR. CIPRIANO AS HE INSTRUCTED,
6 AND THAT I TREATED MR. BERRY CIVILLY AT ALL TIMES AND
7 THAT I DON'T UNDERSTAND ANY BASIS FOR ANY OF THE
8 REQUESTS FOR EXPARTE RELIEF THAT MR. BERRY IS SEEKING.

9 I WOULD BE READY TO ADDRESS THAT WHEN THE
10 COURT IS READY FOR THAT ARGUMENT.

11 THE COURT: VERY GOOD, SIR, THANK YOU.

12 I WANT TO GIVE THE COURT REPORTER A
13 BREAK. MR. BERRY, I ALSO WISH TO GIVE YOU A REASONABLE
14 OPPORTUNITY, SHOULD YOU WISH IT, TO COMPOSE YOUR
15 THOUGHTS AND RESPONSE.

16 THERE ARE NO SECRETS HERE. THIS IS ALL A
17 PRODUCT OF PAPERWORK THAT HAS BEEN ON FILE A LONG TIME,
18 SUPPLEMENTED RECENTLY BY A FEW MATTERS. BUT IF YOU
19 NEED A REASONABLE PERIOD OF MINUTES THIS MORNING, AND
20 IF YOU WISH TO USE THIS COURT'S JURY ROOM AS A PRIVATE
21 PLACE TO GATHER YOUR THOUGHTS AND CONFER WITH WHOEVER
22 YOU WISH, YOU CERTAINLY MAY.

23 MR. BERRY: THERE ARE SEVERAL THINGS, HAS THE
24 COURT READ MY OPPOSITION?

25 THE COURT: THE COURT HAS READ EVERYTHING
26 PERTINENT TO THIS MOTION.

27 MR. BERRY: HAS IT READ THE DOCUMENTS FILED
28 SINCE THE MOTION SUCH AS THE CIPRIANO DECLARATION?

1 THE COURT: I HAVE REVIEWED, TO THE EXTENT
2 NECESSARY TO COMMAND THE SUBSTANCE OF EVERY DOCUMENT
3 THAT HAS BEEN SUBMITTED.

4 MR. BERRY: I WOULD ASK THAT THE CIPRIANO
5 DECLARATION, DATED AUGUST 9, AND ALL SUBSEQUENT FILINGS
6 TO THIS VEXATICUS LITIGANT MOTION BE PART OF THIS
7 RECORD.

8 MR. CHALEFF: WE WOULD OBJECT, YOUR HONOR.

9 THE COURT: AND YOUR POSITION ON THAT?

10 MR. CHALEFF: IT IS IRRELEVANT. THE ONLY
11 PURPOSE FOR THIS IS TO MAKE IT A COURT FILING THAT CAN
12 THEN BE USED IN A HEARING.

13 THE COURT: THAT RAISES A RELATED POINT, A
14 NUMBER OF ACCUSATORY DOCUMENTS HAVE FLOWED INTO THIS
15 COURTROOM THIS WEEK. AT THE REQUEST OF COUNSEL ON
16 MONDAY, THIS COURT DID, AGAIN, A VERY UNUSUAL ACT FOR
17 THE COURT, AND THAT IS TO CAUSE DOCUMENTS TO BE FILED
18 UNDER SEAL PENDING TODAY'S HEARING.

19 IT IS NOT MY INTENT TO LEAVE MATTERS
20 UNDER SEAL. MY VIEW IS THAT IF SOMEBODY CHOOSES TO USE
21 THE LEGAL SYSTEM TO BASH AND TRASH, THAT BECOMES
22 EVIDENCE IN THE VERY MATTER BEFORE THIS COURT.

23 THE QUESTION OF SEALING OR NOT IS
24 SOMETHING THAT WE SHOULD DEAL WITH AFTER THE CONCLUSION
25 OF THIS HEARING, BUT I DO WANT TO GIVE EVERYBODY A
26 HEADS UP THAT THE RULES OF THE CALIFORNIA SUPERIOR
27 COURT, AND THE RULES OF THE LOS ANGELES SUPERIOR COURT
28 PROHIBIT PLEADINGS UNDER SEAL EXCEPT, IN A REALLY

1 COMPELLING AND UNUSUAL CIRCUMSTANCE.

2 I ALSO HAPPEN TO BELIEVE VERY STRONGLY IN
3 THE FIRST AMENDMENT. I WAS RAISED IN THE JEFFERSONIAN
4 TRADITION, AND I THOUGHT OF THAT LAST NIGHT IN
5 REVIEWING MR. BERRY'S PAPERS THAT I MAY DISAGREE WITH
6 WHAT YOU SAY, BUT I WILL DEFEND TO THE DEATH YOUR RIGHT
7 TO SAY SO.

8 I THEREFORE INTEND AND AM INCLINED TO
9 ALLOW THAT WHICH HAS BEEN TENDERED TO THE COURT TO BE
10 PART OF THE RECORD. WE ARE TALKING ABOUT A VERY
11 DRASTIC POTENTIAL STEP THAT IS BEING SOUGHT BY THE
12 PARTIES. I DON'T CONCEDE FOR A MINUTE THAT THEY ARE
13 RELEVANT, BUT THEY HAVE BEEN TENDERED, AND QUITE
14 FRANKLY, I BELIEVE THEY HAVE EVIDENTIARY MATTER AS TO
15 THE VERY MATTER BEFORE THIS COURT.

16 I'LL HEAR FROM PEOPLE INDIVIDUALLY, BUT I
17 WILL TELL YOU THAT THAT IS MY TENTATIVE ON THAT.

18 MR. BERRY?

19 MR. BERRY: THANK YOU, YOUR HONOR.

20 I WOULD ASK THEN THAT THE RECORD INCLUDE
21 EVERY FILING SINCE THE FILING OF THE VEXATIOUS LITIGANT
22 MOTION.

23 THE COURT: THAT IS MY TENTATIVE.

24 MR. BERRY: THANK YOU. AND I ALSO WANT THE
25 FILES UNSEALED, YOUR HONOR, THAT WOULD BE MY POSITION,
26 TOO.

27 THE COURT: VERY GOOD.

28 MR. BERRY: AND THE CIPRIANO DECLARATION IS ON

1 OTHER FILES IN RELATION TO OTHER MATTERS SO ANY FILED
2 SEALING OF THAT WOULD BE MOOT.

3 THE COURT: WE UNDERSTAND. WE WILL DEAL WITH
4 THAT QUESTION SEPARATELY. I'VE GIVEN MY TENTATIVE ON
5 THAT. I DO WANT TO GIVE COUNSEL THE OPPORTUNITY TO BE
6 HEARD ON THAT BUT THAT IS A DOWNSTREAM MATTER THIS
7 MORNING.

8 MR. BERRY: AND FINALLY, AS TO MR. SOTER'S
9 REMARKS BEFORE, I SIT DOWN, I'M TOLD BY MR. CIPRIANO
10 THAT HE MET HIM ONCE AND HAS NEVER HEARD FROM HIM
11 SINCE.

12 THE COURT: VERY WELL.

13 HOW MUCH TIME WOULD YOU LIKE? MY NORMAL
14 BREAK IS FIFTEEN MINUTES.

15 MR. BERRY: THAT WILL BE SUFFICIENT, YOUR HONOR.

16 THE COURT: WE WILL BE IN RECESS FOR FIFTEEN
17 MINUTES.

18 (MORNING RECESS.)
19
20
21
22
23
24
25
26
27
28