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SANTA ANA, CALIFORNIA - THURSDAY, NOVEMBER 14, 2024 AFTERNOON SESSION

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(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT:)

THE COURT: THEN LET'S GO AHEAD AND GO ON THE RECORD.

WE HAVE ALL COUNSEL PRESENT. WE'VE EXCUSED JURORS FOR THE

DAY. THE PARTIES ARE NOT PRESENT EITHER. AND WE ARE HERE TO

DISCUSS JURY INSTRUCTIONS AND VERDICT FORMS AND THE LIKE. .

SO ONE QUICK QUESTION FOR DEFENDANT. I WAS

JUST HANDED ANOTHER SET OF INSTRUCTION I HADN'T RECEIVED YET

THIS IS JUST ONE I HAD ONE THIS MORNING.

MR. VOSS: YES, THE EIGHT PROPOSED SPECIAL

INSTRUCTIONS. YOU RECEIVED THE PAGE THAT SAYS PROPOSAL NUMBER

SIX YOU'RE IN THE RIGHT PLACE.

THE COURT: ALL RIGHT OBVIOUSLY I HAVEN'T HAD

OPPORTUNITY TO REVIEW TOSS YET I REVIEWED EVERYTHING THAT WAS

GIVEN TO ME ALREADY.

MR. VOSS: THIS WHAT I WAS REFERRING TO BEFORE WE

LEFT THIS MORNING WE TRIED TO RUN IT BACK UP TO YOU, BUT YOU

WERE CLOSED.

THE COURT: ALL RIGHT. SO WE WILL START WITH JURY

INSTRUCTIONS. AND I WILL TRY TO GO THROUGH THE SEQUENCE THAT

INTEND TO GIVE THEM. I WILL START WITH NUMBER 5,000 NOT

ENTIRE SERIES JUST STRICTLY NUMBER 5000 IT'S KIND OF IN RE:

INTRODUCTION ONE I DON'T THERE'S ANY DISPUTE ABOUT THAT THAT

WOULD BE THE FIRST ONE GIVEN. 5,000.

THEN WE CAN STARTED TO GO THROUGH THE 200

SERIES: AND MOST OF THESE WE COVERED ALREADY. 200 OBLIGATION

TO PROVE MORE LIKELY TRUE THAN NOT TRUE HAS BEEN REQUESTED BY

BOTH. WE AGREED TO THAT EARLIER. 201 HIGH PROBABILITY FAIR

AND CONVINCING PROOF. THAT IS APPROPRIATE AND REQUESTED BY

BOTH.

202, DIRECT AND IN DIRECT EVIDENCE APPROPRIATE REQUESTED BY BOTH.

WE NOW HAVE 203 IS PARTYING HAVING THE POWER TO

PRODUCE BETTER EVIDENCE I THINK ORIGINALLY PROPOSED BY

DEFENDANT PLAINTIFF NOW RAISED A THAT ONE AS WELL. SO ANYBODY

WISH TO BE ORDER ON THAT ONE OTHERWISE I'LL GIVE IT? ALL

RIGHT SO 203 WILL BE GIVEN.

NEXT UP IS 204, WHICH WAS REQUESTED BY

PLAINTIFF. IN THE INITIAL SET AND WE CURVE PUSHED IT OFF TILL

WE GET TO THE END OF THE EVIDENCE.

RIGHT1: I DON'T THINK I HAVE ANY EVIDENCE TO SUPPORT THAT ONE, JUDGE.

THE COURT: ALL RIGHT. SO WE WILL NOT GIVE 204.

NEXT IS 205 FAIL OUR TO EXPLAIN DENY EVIDENCE IS REQUESTED BY

BOTH THAT SEEMS TO BE APPROPRIATE MENT.

A LIMITED PURPOSE. 207. WAS ORIGINALLY SUGGESTED BY

DEFENDANTS EVIDENT APPLICABLE TO ONE PARTY. WAS THERE ANY

BASIS FOR THAT ONE.

MR. VOSS: I DON'T THING THERE'S ANYTHING THAT CAME
UP AT TRIAL. WAS THAT OUR SUGGESTION?

THE COURT: YES.

MR. VOSS: THEN WE'LL WITHDRAWN 207.

THE COURT: ALL RIGHT THEN 207 WILL NOT BE GIVEN.

NEXT REQUESTED BY BOTH 208 DEPOSITION

SUBSTANTIAL EVIDENCE. SEEMS APPROPRIATE.

209 REQUESTED BY BOTH USE OF INTERROGATORIES.

THAT SEEMS APPROPRIATE.

RIGHT1: AND WE USE INTERROGATORIES.

THE COURT: THERE WAS QUESTIONS ABOUT THE HIS

STATEMENTS ABOUT BEING A PUBLIC IT WASN'T FIGURE BUT PUBLIC

PERSON.

MR. VOSS: ANSWER TO SPECIAL? NUMBER 22.

THE COURT: SO IT WAS NOT SHOWN TO THE JURY BUT IT

WAS PORTIONS OF IT WAS READ AND EVERYTHING SO I THINK IT IS

APPROPRIATE.

RIGHT1: OKAY.

THE COURT: 2010 IS REQUEST FOR ADMISSIONS NOW THOSE

WERE NOT USED IN ANYWAY I DON'T THINK SO I THINK THAT ONE'S A

NO. THAT'S 210.

THE NEXT IS 212 STATEMENT OF PARTY OPEN THAT

SEEMS APPROPRIATE HAS BEEN REQUESTED BY BOTH PARTIES.

AND LAST OF THE 200 SERIES 223 OPINION

TESTIMONY OF LAY WITNESS IS REQUESTED BY BOTH I'M HAPPY GIVE

THAT ONE.

RIGHT1: WHAT WAS THE ONE.

THE COURT: 23 OPINION OF TESTIMONY OF LAY WITNESS

THAT WAS REQUESTED BY BOTH IN THE INITIAL PACKET.

RIGHT1: OKAY.

THE COURT: THEN THE NEXT ONE WOULD BE I GUESS THIS

IS WHERE RUBBER MEETS THE ROAD SO TO SPEAK IN TERMS OF THE

1700 SERIES AND IN PARTICULAR WHICH FORM OF THE DEFAMATION

INSTRUCTION TO BE GIVEN. I THINK WE'VE NOW GOT RID OF PER

KHOA SO THE TWO DIFFERENT TIMES OF PER SE INSTRUCTIONS WHETHER

IT BE LIMITED PUBLIC FIGURE OR A PRIVATE PERSON. SO WE DO

HAVE THE BRIEFS THAT HAVE BEEN PRESENTED. MR. HART SUBMITTED

HIS YESTERDAY. I RECEIVED THE ONE THIS MORNING FROM DEFENSE.

SO I HAVE LOOKED AND CONSIDERED BOTH OF THOSE.

AND I'VE NOT SEEN ANYTHING TO CHANGE ME AND

MOVE ME OFF OF MY INITIAL INCLINATION ABOUT BEING AT LEAST A

LIMITED PUBLIC FIGURE WITH 1700 BEING THE APPROPRIATE

INSTRUCTION IN THIS CASE. I THINK WE'RE TRYING TO SLICE IT

TOO THINLY TO TRY AND GET TO THE PRIVATE PERSON TO GETS OUT

FROM UNDER THE LIMITED PUBLIC FIGURE, BECAUSE THE -- HE HAS

INSERTED HIMSELF INTO THIS CONVERSATION, THE CREDIBILITY IS

PART OF PARTIAL OF ALL THE ISSUES.

SO AFTER SITTING THROUGH THE TRIAL AND THE EVIDENCE, IT DOES CONTINUE TO CONVINCE ME THAT THE 1700 IS THE APPROPRIATE ONE. I'LL ALSO, I GUESS, ADD REFERENCE OF ADDITIONAL MOSESIAN V. MCCLATCHY M O S ESI A N, N C CAP C L.A. T C H Y. NEWSPAPERS, 1991-CASE. THE OFFICIAL REPORT CITATION 233, CAL.APP.3D, 1685, 1991-CASE. AND THAT WAS A MATTER THAT INVOLVED A PROBLEM AT LOCAL ATTORNEY AND BASIS PERSON WHO WAS ATTAINED A HORSE RACING LICENSE FOR NEWLY ESTABLISHED RACING AND SEEK RENEWAL LICENSE YEARLY GIVEN EVERY YEAR. AND THAT WAS HELD TO BE A LIMITED PURPOSE PUBLIC FIGURE WITH RESPECT TO DEFAMATION ACTION BROUGHT AGAINST THE LOCAL NEWSPAPER THAT REVEALED CRIMINAL ELEMENTS IN HIS BACKGROUND BECAUSE THE LICENSING WAS THE SUBJECT OF MUCH PUBLIC CONTROVERSY AND PLAINTIFFS PERSONAL OUALIFICATIONS WERE PERTINENT TO HIS FITNESS FOR HOLDING THE LICENSE. SO AGAIN THIS IS KIND OF THE CREDIBILITY COMES IN ON THIS ONE AS WELL IN HAD CASE.

SO AGAIN TOTALITY OF THE CIRCUMSTANCE CONVINCED

ME 1700 IS APPROPRIATE I WILL OPEN THE FLOOR WITH THAT.

RIGHT1: THANK YOU, YOUR HONOR. THE PROBLEM I HAVE
WITH THE LIMITED PURPOSE PUBLIC FIGURE IN THIS CASE IS THE
CONTROVERSY IS FROM SOMETHING DECADES AGO. AND THE

PARTICIPANTS BEFORE YOU EVEN GET TO THE PUBLIC DISCUSSION IN

ORDER TO FIND PUBLIC DISCUSSION YOU HAVE TO HAVE A SUBSTANTIAL

RAMIFICATIONS FOR THE OUTCOME OF THE DEBATE FOR NON

PARTICIPANTS. BOILED DOWN THIS IS TWO OLD MEN ARGUING OVER

WHO DID OR DIDN'T DO WHAT 25 YEARS AGO. HOWEVER, THAT

DECISION OR DEBATE IS SETTLED, DOESN'T PRESENT ANY

RAMIFICATIONS FOR ANYBODY.

PARTICIPANT OR NON PARTICIPANT.

SO APPLYING WHAT AMOUNTS TO PUBLIC FIGURE

STATUS TO PROFESSOR KHOA BECAUSE THERE WAS A PUBLIC DISCUSSION

IS INAPPROPRIATE. THIS IS MAKING HIM PROVE NEW YORK MALICE

WHEN ALL HE DID WAS PRESENT HIS SIDE OF A DEBATE. THANG

STARTS THE DEBATE. KHOA MADE HIS COMMENT. AT THIS STAGE OF

THE GAME IN 2020, WHO CARES WHO WAS RIGHT? THERE ARE NO

SUBSTANTIAL RAMIFICATIONS FOR NON PARTICIPANTS AND THAT'S WHY

THIS KIND OF A DISCUSSION DOESN'T GET THIS LEVEL OF FIRST

AMENDMENT PROTECTION.

I THINK WHEN YOU READ THE CASE LAW ON MOST OF
THIS IT INVOLVES NEWS MEDIA. THE NUDE MEDIA HAS TO HAVE THE
LATITUDE TO GET IT WRONG FROM TIME TO TIME AND THEY CORRECT
IT. THAT DOESN'T APPLY TO THIS. I MEAN, PROFESSOR KHOA WAS
ALMOST 90 YEARS OLD WHEN HE PUBLISHED HIS STORY. THE SECOND
PROBLEM I HAVE IS. CREDIBILITY IS NOT A SUFFICIENT ARGUMENT
FOR GERMANE DISCUSSION. WHEN YOU ARE ARGUING ABOUT WHO DID OR
DIDN'T DO WHAT ON THE R.O.V.R. PROGRAM, CLAIMING THAT HE

CRIMINALLY DEFRAUDED THE GOVERNMENT IS NOT PART OF THAT

DISCUSSION. IT'S NOT GERMANE. IF CREDIBILITY SATISFIED THE

GERMANE REQUIREMENT IN THIS WAY, DR. THANG COULD HAVE SAID

HE'S A CHILD MOLESTER AND HAVE THE SAME EFFECT. HE HAS NO

EVIDENCE OF IT BUT THE FACT THAT HE SAYS IT AFFECTS HIS

CREDIBILITY AND THAT GIVES HIM THE BENEFIT OF LIMITED PURPOSE

PUBLIC FIGURE STATUS WHEN IT COMES TO PROVING THE CASE.

SO I THINK RESPECTFULLY, I THINK THE COURT IS

MISTAKEN THAT ANYTHING THAT AFFECTS CREDIBILITY OF A PART AT

THIS TIME PANT IS GERMANE TO THE DISCUSSION.

THE COURT: THAT'S NOT WHAT THE COURT SAID BUT CONTINUE.

MISUNDERSTOOD. THE POINT BEING LIMITED PURPOSE PUBLIC FIGURE
STATUS HAS IT'S APPROPRIATE PLACE TO PROTECT ONGOING PUBLIC
DISCUSSIONS IN WHICH THE PUBLIC HAS A SUFFICIENT INTEREST THAT
THE OUTCOME WILL AFFECT SOME PORTION OF THEM. THERE ARE LOTS
OF CASES THAT SHOW THIS EXAMPLE, LIKE GILBERT SIX THE PLASTIC
SURGERY CASE V. WHERE THE PATIENT WHO HAD BEEN MALPRACTICE SET
UP A WEBSITE TALKING ABOUT PLASTIC SURGERY AND THEN THE DOCTOR
THEN BEGAN TO PUBLICLY OPPOSE THE COMMENTS THAT WERE MADE
THERE. PLASTIC SURGERY AND SKILL EMPLOYED IN PLASTIC SURGERY
AND OUTCOME OBVIOUSLY HAS RAMIFICATION FOR PUBLIC IN AND HE
INJECTED HIMSELF INTO THAT DISCUSSION AND HER COMMENTS WERE
RELEVANT TO THAT DISCUSSION BETWEEN THE TWO OF THEM. GILBERT
V. SIX-CASE AUTHORITY DOESN'T APPLY HERE.

AND THE REASON IS THERE IS NO EFFECT ON THE

PUBLIC BY THE OUTCOME OF THIS DEBATE. THERE'S NOTHING TO

SPECIALLY PROTECTED IN THIS DEBATE THAT WOULD JUSTIFY

IMPOSITION OF LIMITED PURPOSE PUBLIC FIGURE STATUS. THIS IS

JUST TWO OLD SOLDIERS ARGUING OVER WHAT THEY DID OR DIDN'T DO

WHEN THEY WERE BACK ON ACTIVE DUTY. AND ONE OF THEM SPICED UP

HIS SIDE OF THE STORY BY FALSELY CLAIMING CRIMINAL CONDUCT OF

THE OTHER.

SO THAT'S OUR UPON FROM THE JAWS OF VICTORY.

THE COURT: SAY SUCH AS YOU LIKE TO PRESENT THE
RECORD GET EVERYTHING YOU THINK IS APPROPRIATE.

MR. VOSS: I THINK WE'VE ALREADY ADDRESSED THE

CONCERNS RAISED IN OUR BRIEF. I'M NOT GOING TO REPEAT THEM.

I WOULD DISAGREE WITH SOME THINGS COUNSEL SAID, FOR EXAMPLE,

THAT OUR CLIENT STARTED THE DEBATE. BY WHAT? PRODUCING A

VIDEO WHERE SOMEBODY SAID NICE THINGS ABOUT HIM AND WE DIDN'T

SAY ANYTHING ABOUT THE PLAINTIFF AT ALL? THAT'S WHAT STARTS

IT IS, YOU KNOW, BUT CANDIDLY EVEN THAT IS FRANKLY IRRELEVANT

TO THE DETERMINATION AS TO WHETHER OR NOT IT WAS A LIMITED

PUBLIC FIGURE SITUATION HERE.

I GUESS YOUR HONOR I WOULD SAY IF ADDITION TO
WHAT'S ALREADY IN THE BRIEFING AND THE CONCERN THE VIETNAMESE

COMMUNITY TODAY THAT IS PAYING ATTENTION A VERY TIGHT ANY TIME

COMMUNITY IS THAT -- AND WE ALSO PREVIOUSLY DISCUSSED THIS AT

THE TIME OF MOTION SUMMARY JUDGMENT BUT I WOULD ALSO NOTE THAT

WE HAD TRIAL BRIEF FROM PLAINTIFF IN OUR HANDS WHEN THE

QUESTIONING THIS MORNING TOOK PLACE OF DR. THANG ON THE STAND.

AND IN LIGHT OF LISTENING TO HIS TESTIMONY HOLDING IT UP

AGAINST PLAINTIFF'S BRIEF, I THINK HE ADEQUATELY ANSWERED ALL

OF THE QUESTIONS IN TERMS OF ESTABLISHING LIMITED PUBLIC

FIGURE WITH RESPECT TO THE CONNECTION OF THIS STATEMENT TO

CURRENT DAY, TO THE DEBATE, TO THE STATEMENT DEPARTMENT

DRAWING OBJECTIONS DEALING WITH R.O.V.R., WHY IT'S ALL

INTERCONNECTED AND PULLED TOGETHER.

SO I JUST RESPECTFULLY DISAGREE WITH THE PLAINTIFF'S POSITION AND SUBMIT.

MR. HART: YOUR HONOR, MAY I REOPEN BRIEFLY.

COUNSEL'S GIVEN ME AN IDEA THAT I SHOULD HAVE MENTIONED AND I

DIDN'T.

THE COURT: GO AHEAD.

MR. HART: IF, IN FACT, KHOA WAS THE FIRST PUBLISHER,

THEN HE HAS NOT INJECTED HIMSELF INTO ANYTHING. IT WAS THANG

WHO INJECTED HIMSELF INTO AND CREATED THE PUBLIC DISCUSSION

WITH THE MAY 25TH ARTICLE.

COUNSEL'S CORRECT THAT THE DECEMBER 2019

POSTING DIDN'T MENTION KHOA. SO IF KHOA'S ARTICLE IS THE

FIRST PUBLICATION IN THIS SERIES, THEN HE'S NOT THE ONE WHO

INJECTED HIMSELF INTO ANYTHING, IT'S THANG WHO INJECTED

HIMSELF INTO THE DISCUSSION IN RESPONSE TO KHOA.

AND SO THAT MORE OR LESS TURNS THE LIMITED

PURPOSE PUBLIC FIGURE KIND OF UPSIDEDOWN. I HADN'T THOUGHT OF

IT THAT WAY REALLY, EVEN THOUGHT I THINK MR. VIN HERE'S BEEN

TRYING TO TELL ME SOMETHING LIKE THAT. BUT COUNSEL HAS CONJURED UP THAT THOUGHT.

MR. NGUYEN: YOUR HONOR, CAN I CLARIFY?

MR. HART: I DON'T THINK YOU WANT TO.

THE COURT: WELL, MR. HART'S YOUR SUPERVISOR. I

DISAGREE. THEY BOTH PUT THEMSELVES INTO THIS WITH VOLLIES OF

INFORMATION. THIS IS AN ONGOING CONCERN TO THE PUBLIC. WE

TALKED ABOUT FUNDRAISING CREDIBILITY OF DEFENDANTS. SO I

THINK, AS I SAID BEFORE, I THINK WE'RE SLICING IT MUCH TOO

THINLY AND TAKING TOO NARROW OF A VIEW.

I AGREE THE WORD CREDIBILITY ISN'T A MAGIC SWORD THAT ANY TIME YOU SAY CREDIBILITY. BUT WHEN WE LOOK AT THE INSTANCE OF THIS DEBATE AND EVERYTHING IT DOES COME INTO PLAY AND IT'S NOT JUST THAT. IT IS THAT MATTER OF IMPORTANCE TO THIS VIETNAMESE COMMUNITY ABOUT WE HEARD TESTIMONY THAT OF FRIENDS OR FAMILY THAT YOU GOT TO CLARIFY THIS FOR EVERYBODY YOU GOT TO CORRECT THE RECORD YOU GOT TO SET THIS STRAIGHT THIS IS IMPORTANT THINGS FOR THIS COMMUNITY SO IS IT IMPORTANT ACROSS THE COUNTRY? NO BUT THAT'S NOT THE REOUIREMENT FOR THIS. THIS IS A SIGNIFICANT SIZE COMMUNITY AND THESE DISCUSSION ARE IMPORTANT TO THEM. AND HAD ONGOING CONCERNS -- I MEAN THIS -- THIS MIGHT BE POOR CHOICE OF WORDS THIS ISN'T A DEAD ISSUES FOR THE VIETNAMESE COMMUNITY THIS WHOLE CONCERN ABOUT THE BOAT PEOPLE AND TRYING TO GET THEM INTEGRATED GETTING SURE THEY HAVE ADVOCACY AND THEIR INTEREST. I MEAN IT'S NOT A DONE ISSUE GRANTED, YOU KNOW, THINGS HAVE

CONTINUE TO EVOLVE AND CHANGE BUT THIS TOPIC AND THE

IMPORTANCE OF IT IS I THINK WE'RE POTENTIALLY MINIMIZING IT BY

SAYING THIS ISN'T AN ISSUE.

AND I THINK AGAIN BOTH GENTLEMEN HAVE PLAYED

SIGNIFICANT ROLES IN THE PAST AND HAVE INSERTED THEMSELVES AND

BEEN A PART OF THIS CURRENT DEBATE I GUESS I'LL SAY IT. SO I

THINK THAT'S PROBABLY SUFFICIENT. SO I DO THINK THE 1700 IS

THE APPROPRIATE INSTRUCTION. IT DOES LEAD TO RELATED AND

READING THROUGH EVERYTHING AND COMPARING WITH THE VERDICT

FORM, THEN WE NEED TO HAVE SOME CONSISTENCY BETWEEN WHICHEVER

VERDICT FORM WE END UP AND THE INSTRUCTIONS. I NOTE THAT

PLAINTIFF HAVE A MUCH SHORTER VERSION OF THE STATEMENT THAN

THE DEFENDANT. SO I THINK THAT'S AN ISSUE THAT WE NEED

TO -- I THINK I HAVE TO BRING UP AND FOCUS IN ON.

MR. VOSS: GOOD NEWS. OVER LUNCH WE DISCUSSED THAT

VERY THING AND BELIEVE THAT WHERE WE INCLUDED SOME KIND OF

PREPARATORY LANGUAGE THAT COMES BEFORE THE STATEMENT ON THE

BOARD THAT IT WOULD BE APPROPRIATE TO USE THE STATEMENT ON THE

BOARD WITH THE PREPARATORY LANGUAGE. SO I THINK THAT SHOULD

SOLVE THAT.

THE COURT: THAT WAS MY CONCERN SO THAT WE'RE

CONSISTENT. I MEAN WE CAN TALK ABOUT CONTEXT IN ARGUMENT AND,

YOU KNOW, BUT IN TERMS OF IDENTIFYING IT IS PLAINTIFFS CLAIM

TO IDENTIFY WHAT THEY CLAIM TO BE THE DEFAMATORY STATEMENT.

MR. VOSS: WE AGREE.

THE COURT: I THINK THE COURT OF APPEAL KIND OF DID

THAT VERSION OF IT AS WELL. SO WE WILL NEED TO MODIFY I AM

GOING WITH 1700 BUT WE NEED TO MODIFY 1700 TO REFLECT THAT IN

THAT OPENING PARAGRAPH.

MR. HART: I THINK THAT'S WHAT MINE SAYS, MY 1700
VERSION.

THE COURT: I DON'T KNOW THAT I GOT IT, YOUR VERDICT

FORM. I'M TALKING RIGHT NOW ABOUT THE JURY INSTRUCTIONS.

WE'LL GET BACK TO THAT IN A MOMENT.

MR. VOSS: WOULD YOU AGREE WITH ME CORRECT THAT.

THE COURT: THEN I ALSO NOTICED DOWN ON ACTUAL

DAMAGES WE HAVE TWO A'S THAT'S MORE OF TYPO THING THAN

ANYTHING ELSE. IF YOU LOOK DOWN IN AT THE BOTTOM OF THE FIRST

PAGE OF DEFENDANT'S 1700 UNDER HEADING ACTUAL DAMAGES, IT HAS

A HARM TO KHOA'S REPUTATION OR A SHAME MORE HURT FEELINGS I

GUESS THAT'S A TYPO SITUATION THAT WOULD NEED TO BE CORRECTED.

ALL RIGHT. THEN WE WILL CONTINUE ON. WE SHOULD HAVE MORE OF THE 1700 SERIES TO DISCUSS.

THE NEXT ONE THEN WE COME TO IS 1706 DEFINITION

OF STATEMENT AND REQUESTED BY BOTH. AND THAT SEEMS

APPROPRIATE.

NEXT WE HAVE 1707, WHICH WAS PROPOSED INITIALLY

BY DEFENSE AT THE BEGINNING FACT VERSE OPINION AND I INITIALLY

INDICATED THAT I'M NOT SURE WE NEED THIS ONE OR IT'S

APPROPRIATE. I DON'T KNOW THAT I'VE HEARD ANYTHING TO MOVE ME

OFF THAT I'M NOT SURE THIS IS AN OPINION.

MR. VOSS: I THINK WE REQUESTED THAT ONE.

THE COURT: YES.

MR. VOSS: WE WITHDRAW.

THE COURT: 1707 THEN WILL BE A NO.

MR. VOSS: IS IT COULD HAVE HAPPENED WITH CEASE BUT

IT DIDN'T.

THE COURT: NOT A PROBLEM.

THE WITNESS: 1720 AFFIRMATIVE DEFENSE TRUTH THAT

HEALTH & SAFETY BEEN REQUESTED BY BOTH AND IT SEEMED TO BE

APPROPRIATE.

NEXT AFTER THAT IS 1723, COMMON INTEREST

PRIVILEGE MALICE THAT WAS INCLUDED IN THE ORIGINAL SET BY THE

DEFENDANT.

MR. HART: EXCUSE ME, YOUR HONOR. SORRY TO

INTERRUPT. I THINK THE 1720, TRUE WHERE IT DEFINES

SUBSTANTIALLY TRUE, I THINK THIS DOESN'T GO ALONG WITH 1700.

I THINK THIS IS TO GO WITH 1704. AND I JUST WANTED TO BRING

THAT TO THE COURT'S ATTENTION BECAUSE WITH A 1700 INSTRUCTION,

THE QUESTION IS NOT WHETHER IT'S SUBSTANTIALLY TRUE. THE

QUESTION IS WHETHER IT'S FALSE. AND SO I'M LOOKING AT THE.

THE COURT: I'LL TAKE A LOOK AT 1720.

MR. HART: IT SAYS IN THE USE INSTRUCTIONS THAT IN

PUBLIC FIGURE CASES, THE BURDEN OF PROOFING OF FALSITY IS ON

THE PLAINTIFF.

MR. VOSS: WE AGREE WITH PLAINTIFF, YOUR HONOR. IF
HE'S GOING TO PROVE THAT IT WAS FALSE, THEN WE'RE NOT PROVE

TALKING WAS TRUE.

THE COURT:

MR. HART: WELL I'M NOT SAYING THAT THE BURDEN

DOESN'T SHIFT IN THE MIDST OF THE PROOF ISSUE, BUT IT WILL

DOESN'T MATCH THE REST OF THE INSTRUCTION.

THE COURT: DIRECTION FOR USE FOR 17,200 DOES STATE

JUST SO WE HAVE A CLEAR RECORD. 1720 THIS INSTRUCTION IS TO

BE USED ONLY IN CASES INVOLVING PRIVATE PLAINTIFFS ON MATTERS

OF PRIVATE CONCERN IN CASE INVOLVING PUBLIC FIGURES OR MATTERS

OF PUBLIC CONCERN THE BURDEN OF PROOFING FALSITY IS ON THE

PLAINTIFF. SO IN EITHER WAY 1720 IS NOT AN INSTRUCTION TO BE

GIVEN IN THIS CASE AND I APPRECIATE YOU BRINGING THAT TO OUR

ATTENTION MR. HART.

MR. VOSS: WE AGREE WITH HIS LOGIC THEN. WITHDRAWN.

THE COURT:

MR. HART: CUTTING DOWN THE ISSUES TO GO ON APPEAL.

THE COURT: THEN BACK TO 1723 WITH THE COMMON IN

PRIVILEGE THAT HAS BEEN REQUESTED BY THE DEFENSE. AT THE

BEGINNING I INDICATED MY DOUBT FULLNESS OF THIS ONE APPLYING.

AND I CONTINUE WITH DOUBTING ON LEGALLY I WILL SAY I DON'T SEE

IT APPLIES I'M NOT SURE WHAT THE COMMON INTEREST IS AND

PRACTICALLY I'M NOT SURE THAT IT GETS DEFENDANT ANYWHERE

FURTHER THAN HAVING -- DEFINING THAT WE HAVE A LIMITED PUBLIC

FIGURE. AND THAT ACTUAL MALICE COMES IN THROUGH THAT.

MR. VOSS: WE WITHDRAW. IT BECAME IRRELEVANT.

THE COURT: SO 1723 WILL NOT BE GIVEN. THEN THAT

CONCLUDES THE 1700 SERIES. THAT MOVES US TO THE 3900 SERIES IS THE NEXT BATCH.

SO WE HAVE 3900, WHICH IS REQUESTED BY BOTH, IS INTRODUCTION TO TORT DAMAGES LIABILITY CONTESTED. THAT ONE IS APPROPRIATE.

NEXT ONE THAT WAS INCLUDED WAS BY PLAINTIFF AT

THE BEGINNING WAS 3901 DEDUCTION TO TORT DAMAGES LIKE ABILITY

ESTABLISHED THERE WAS A THEORY PRESENTED AT THE BEGINNING OF

TRIAL AS TO HOW THIS ONE MAY APPLY AND I'M NOT SURE THAT CAME

THROUGH FRUITION.

MR. HART: WELL, WITH THE 1700 VERDICT FORM IT'S A
LITTLE BIT MORE DIFFICULT. SO YEAH WE'LL WITHDRAWN 3901.

THE COURT: SO 3901 WILL NOT BE GIVEN.

THEN NEXT IS 3902, ECONOMIC/NONECONOMIC DAMAGE

REQUESTED BY BOTH. IT SEEMS APPROPRIATE.

NEXT 3905 ITEMS OF NONECONOMIC DAMAGES

REQUESTED BY BOTH SEEMS APPROPRIATE.

AFTER THAT, THE NEXT ONE THAT IS REQUESTED IS

BY DEFENDANT THIS IS 3924, NO PUNITIVE DAMAGES. WHERE DO WE

STAND ON THIS ONE?

MR. HART: I WOULD ASK THAT THIS BE MODIFIED SLIGHTLY

TO SAY AT THE END OF THE FIRST SENTENCE YOU MUST NOT INCLUDE

IN YOUR AWARD ANY DAMAGES AT THIS STAGE TO PUNISH OR MAKE AN

EXAMPLE.

MR. VOSS: YOUR HONOR, THIS IS STANDARD FORM

INSTRUCTION WE DEFER TO LISTEN TO JUDICIAL COUNSEL ON THEIR

PHRASEOLOGY. THEY KNEW THIS WAS GOING TO BE A TWO PHASE.

THE COURT: WHAT I WILL SAY IS THAT, I THINK GIVEN IN
THIS VERSION IF WE COME BACK AROUND TO A SECOND PHASE THAT I
WILL ENTERTAIN SOMETHING TO DISABUSE THEM OF THAT WHEN WE GET
TO THAT PORTION OF IT. SO IF YOU THINK OF SOMETHING OR IF YOU
CAN FIND A FORM TO BE USED IF WE GOING TO A SECOND PHASE TO
ENSURE THAT THEY'RE NOW BEING ASKED TO CONSIDER PUNITIVE
DAMAGES TO BE AWARDED.

MR. HART: OKAY JUDGE.

MR. VOSS: WELL THAT WOULD BE THE WHOLE POINT OF SECOND PHASE.

THE COURT: MR. HART'S POINTS ON THIS IS FAIR WE

DON'T WANT THIS INSTRUCTION TO LATER ON IF THEY DO FIND THERE

IS A BASIS FOR PUNITIVE TO SOMEHOW LIMIT THEMSELVES.

THAT'S 3924 WE WILL GIVE IT AS PROPOSED.

NEXT IS 3925, REQUESTED BY BOTH ARGUMENTS OF

COUNSEL, NOT EVIDENCE OF DAMAGES. THAT'S APPROPRIATE.

THEN WE NEXT GET TO 3948 AND 3949, WHICH ARE

PUNITIVE DAMAGES, INDIVIDUAL AND CORPORATE DEFENDANT

BIFURCATED TRIAL. THE FIRST PHASE, SO 3948 WOULD BE GIVEN AT

THIS POINT IN TIME. AND THIS IS THE INSTRUCTION WHERE THEY

WOULD LOOK ABOUT OPPRESSION MALICE APPEARS A BASIS FOR

PUNITIVES. SO 3948 WOULD BE APPROPRIATE AT THIS STAGE.

AND IN 3949 WOULD POTENTIALLY I'LL PUT POST UT
ON THIS THAT WOULD BE GIVEN DURING PHASE TWO.

MR. VOSS: THAT'S THE ANSWER TO YOUR PRIOR QUESTION.

THE COURT: THEN THE NEXT ONE WE HAVE WE HAVE /TKW-D

BY BOTH 3964 JUROR NOT TO CONSIDER ATTORNEY'S FEES AND COST

COMPANIES SEALS PROPOSAL I'M HAPPY TO GIVE THAT ONE.

WE THEN GET TO THE 5,000 SERIES. 5,000 IS

GOING TO BE AT THE VERY BEGINNING OF STACK. SO THAT ONE IS

APPROPRIATE.

NEXT WE HAVE 5001, INSURANCE, WHICH IS

APPROPRIATE, REQUESTED BY BOTH SIDES.

5002 EVIDENCE REQUESTED BY BOTH SIDES AND IS
APPROPRIATE.

5003, WITNESSES, REQUESTED BY BOTH SIDES AND IS
APPROPRIATE.

NEXT WE HAVE 5005, WHICH HAS BEEN REQUESTED BY

THE DEFENDANTS. IT'S THE MULTIPLE PARTIES INSTRUCTION. WE DO

HAVE MULTIPLE DEFENDANTS IN THIS CASE WE HAVE A SINGLE

PLAINTIFF. SO IT HAS BEEN REQUESTED BY DEFENDANTS CONTINUE TO

REQUEST THIS ONE?

MR. VOSS: YES.

THE COURT: ALL RIGHT MR. HART?

MR. HART: I THINK THE B.P.S.O.S. LIABILITY IS BOTH

VICARIOUS AND ORIGINAL. THEY PUBLISHED BUT THEY PUBLISHED

WHAT WAS RING BY THANG. SO I'M NOT SURE THAT THERE'S -- I

DON'T THINK IT MATTER. WE CAN HAVE THIS ONE. IT DOESN'T

CAUSE ME ENOUGH HEARTBEAT TO WORRY ABOUT.

THE COURT: ALL RIGHT. SO 5005 WILL BE INCLUDED.

NEXT WE HAVE 5006, NONPERSON PARTY REQUESTED BY

DEFENDANT WOULD SEEM APPROPRIATE JUST, YOU KNOW, ENTITY

TREATED THE SAME AS AN INDIVIDUAL UNDER THE LAW. SO THAT ONE

SEEMS APPROPRIATE.

I DON'T THINK IT'S THERE IS. IT'S THE REMOVAL OF CLAIMS OR

PARTIES AND REMAINING CLAIMS OR PARTIES SINCE ANYTHING THAT

WAS REMOVED WAS REMOVED BEFORE THE CASE WAS EVER AT TRIAL

NOTHING HAS BEEN REMOVED FROM THE JURY'S CONSIDERATION. SO I

THINK --

MR. VOSS: WE WITHDRAW.

THE COURT: OKAY NEXT WE HAVE FIVE-YEAR YEAR EIGHT

REQUESTED BY BOTH DUTY TO ABIDE BY TRANSLATION PROVIDED IN

COURT. APPROPRIATE.

5009, REQUESTED BY BOTH, PRE DELIBERATION
INSTRUCTIONS. THAT IS APPROPRIATE.

5010, TAKING NOTES DURING THE TRIAL REQUESTED
BY BOTH AND IS APPROPRIATE.

5011, READING BACK OF TRIAL TESTIMONY IN JURY
ROOM REQUESTED BY BOTH AND IS APPROPRIATE.

5012, INTRODUCTION TO SPECIAL VERDICT FORM. IT
IS APPROPRIATE AND REQUESTED BY BOTH.

THEN WE HAVE 5013 DEADLOCK, WHICH I REQUESTED WON'T BE GIVEN INITIALLY, BUT I WILL KIND OF KEEP IT IN THE BACK POCKET. SAME THING WITH 5014, SUBSTITUTION OF ALTERNATE JUROR. IT WILL BE KEPT IN BACK POCKET, BUT I APPRECIATE IT BEING PREPARED.

WE HAVE 5015, WHICH IS THE INSTRUCTIONS TO THE ALTERNATE JUROR ON SUBMISSION OF CASE TO JURY. THAT ONE WILL BE GIVEN, NOT WITH ALL THESE BUT ONCE THE 12 GO INTO THE JURY ROOM, THEN I WILL GIVE THIS ONE TO JUST THE TWO ALTERNATES.

SO IT WILL BE NEEDED BUT NOT RIGHT OUT OF THE GATE.

NEXT ONE IS ONE THAT I REQUESTED WAS 5017,

POLLING THE JURY. SO I DO NOW HAVE THAT ONE. I THINK THAT IS

APPROPRIATE IF THAT WERE TO ARISE NOTABLY PREPARED FOR IT.

NEXT AFTER THAT IS 5019, QUESTIONS FROM THE

JURY. THAT IS ONE I SAID IN THE BEGINNING THAT'S NOT MY HABIT

TO SOLICIT ANY WE HAVEN'T HAD ANY, SO I DON'T THINK 5019 IS

APPROPRIATE. I'M NOT INTENDING TO GIVE THAT ONE.

NEXT THE PARTIES HAVE REQUESTED 5030, IMPLICIT
OR UNCONSCIOUS BIAS. THAT IS THE NEW ONE DISCRETIONARY IF THE
PARTIES WANT IT I'M HAPPY TO GIVE IT. SO WE WILL INCLUDE
5030.

AND THEN WE HAVE 5090, THE FINAL INSTRUCTION ON DISCHARGE OF JURY THAT ONE'S ANOTHER ONE THAT WE'LL HOLD BUT WE DO NEED IT READY TO GO SO I'LL KEEP THAT IN THE BACK POCKET AS WELL.

THEN, I NEED TO THEN LOOK AT THESE SPECIALS

THAT I JUST RECEIVED. AND WE'LL SEE ABOUT ANY OF THESE WENT

THROUGH THE FIRST TIME AROUND I INDICATED MY DOUBT AS TO THE

NEEDS FOR ANY OF THEM AND WE'LL SEE IF THERE'S ANYTHING IN

HERE THAT CHANGES MY PERSPECTIVE ON THAT. DID YOU HAVE A COPY

HAVE THESE MR. HART?

MR. HART: I LOOKED THEM OVER BRIEFLY. I'M NOT SURE WHERE MY.

THE COURT: I'LL GIVE YOU A MOMENT TO FIND THEM.

I'LL HAVE TO READ THEM AS WE GO THROUGH THEM INDIVIDUALLY --

MR. VOSS: THEY'RE SLIGHTLY DIFFERENT. TRY TO GET

BACK UP HERE AND GET THEM IN.

MR. HART: OKAY, JUDGE. I FOUND THEM.

THE COURT: ALL RIGHT. SO WE WILL GO THROUGH THESE.

NUMBER ONE, CRIMINAL OFFENSE. IF YOU FIND THAT THERE WAS A

MISREPRESENTATION MADE AS TO AN ACADEMIC CREDENTIAL AND GRANT

APPLICATION, THAT WOULD BE A CRIMINAL OFFENSE.

I DON'T SEE THAT THIS IS NECESSARY. THERE'S

BEEN NOTHING SAYING IT WASN'T A CRIMINAL OFFENSE I DON'T THINK

THAT WAS STATED IN ANY WAY SHAPE OR FORM OR DEPEND THROUGHOUT

THE TRIAL. CORRECT ME IF I'M WRONG, BUT I DON'T REMEMBER

THAT.

MR. HART: THERE'S NO QUESTION OF VERDICT FORM EVEN
THE 1700 THAT ASKS FOR ANYTHING THAT THIS WOULD STRUCK ON.

THE COURT: ANYTHING FROM DEFENSE?

MR. VOSS: I GUESS SO HERE IS MY CONCERN: AT THE

OUTSET OF THE TRIAL, WHEN WE MET OUR JURY AND WE WERE

DISCUSSING THE CASE, YOUR HONOR INDICATED ON MY VERY FIRST

PAGE OF NOTES AND I WROTE IT DOWN THAT THE DEFENSE DOES NOT

HAVE TO HAVE FIND THAT A CRIME -- AND THE PLAINTIFF DOESN'T

HAVE TO FIND THAT A CRIME OCCURRED.

AND THERE'S BEEN A BIT OF A CONFUSION BETWEEN

BASICALLY USING THIS WORD GUILTY AS VERSUS WHETHER IT WOULD BE
A CRIMINAL OFFENSE. AND SO WE FELT THAT THIS WOULD MAKE MORE
CLEAR THAT THERE DOESN'T HAVE TO HAVE BEEN A PROSECUTION AND A
FINDING OF GUILT; THAT IF THERE WAS A MISREPRESENTATION, THAT
QUALIFIES IN TERMS OF BEING A CRIMINAL OFFENSE.

MR. HART: THE PROBLEM I WOULD HAVE WITH THAT -
THE COURT: LET ME GET CLARIFICATION. I DON'T THINK

I SAID THAT -- I MAY HAVE SAID THAT DURING OUR ARGUMENTS I

DON'T THINK I SAID THAT 234 FRONT OF JURY.

MR. VOSS: YOU HAVE NOT. I SAID BEFORE WE PICKED THE JURY.

THE COURT: I THOUGHT YOU WERE SAYING WHEN WE WERE

HAVING THE JURY VOIR DIRE PROCESS GOING ON. SO NO, I DON'T

BELIEVE I SAID THAT IN FRONT OF THE JURY.

MR. VOSS: YOU ABSOLUTELY DID NOT TILL WE PICKED THE JURY.

MR. HART: THERE'S NO "IF" IN THE DEFAMATORY

STATEMENT. IF HE HAD PUT THOSE TWO LETTERS IN, THERE WOULDN'T

BE A LAWSUIT. IF WHAT THANG WROTE WAS "IF KHOA FALSELY

CLAIMED THAT HE HAD A DOCTORAL DEGREE IN A GRANT APPLICATION,

THAT WOULD HAVE BEEN A CRIMINAL OFFENSE. HE DIDN'T SAY "IF".

SO IT'S NOT RELEVANT TO ANY ISSUE THAT THE JURY NEEDS TO

DECIDE, BECAUSE WHAT HAPPENED HERE IS WHETHER HE WAS CONVICTED

OR NOT, THE FACT THAT IT'S DEFAMATION, YOU KNOW HE WASN'T

CONVICTED.

HE WAS -- THE DEFAMATORY STATEMENT CHARGED HIM

WITH HAVING COMMITTED A CRIME. AND THE APPELLATE COURT FOUND
THE VERY SAME THING. SO IT JUST DOESN'T HELP THE JURY ANSWER
ANYTHING ON THE VERDICT FORM, SO IT'S 352, CONFUSION.

MR. VOSS: I'LL ONLY ADDRESS THE ISSUE WITH THE

APPELLATE COURT. STANDARDS ARE DIFFERENT. ANTI-SLAPP ON

APPEAL IS NOT -- WE'VE BEEN AROUND THAT ALREADY.

MR. HART: THAT'S NOT REALLY TRUE.

THE COURT: WE BEAT THAT HORSE.

MR. VOSS: WE SAID WHAT WE HAVE TO SAY I APPRECIATE
THE COURT'S TIMING.

THE COURT: WE'LL SEE IF WE GET A QUESTION FROM THE

JURY. THEN MAYBE WE CAN REVISIT THIS IF WE GET SOMETHING, BUT

I DON'T THINK THERE'S BEEN ANYTHING THAT'S BEEN PRESENTED TO

THEM THROUGH THE TRIAL, AND I DON'T THINK THERE'S ANYTHING IN

THE EXISTING INSTRUCTIONS THAT CREATES AN ISSUE THAT THIS

ADDRESSES.

SO, AGAIN, IF THEY PRESENT A QUESTION, THEN WE
COULD PICK UP THIS CONVERSATION, BUT I DON'T SEE THIS AS BEING
NECESSARY.

MR. VOSS: THANK YOU, YOUR HONOR.

MR. HART: VERY GOOD, JUDGE.

THE COURT: NEXT UP WE'RE ON TO THE SECOND ONE IN

THIS PACKET IS SUBJECTIVE STATE OF MIND. AND IT READS AS

FOLLOWS: ACTUAL MALICE IS TO BE DETERMINED BASED ON

DEFENDANT'S SUBJECTIVE STATE OF MIND AT THE TIME OF

PUBLICATION.

SO I CONTINUE TO HAVE ISSUE THAT WE HAVE THE

TERM ACTUAL MALICE WE'RE INSERTING A TERM OF ART THAT'S NOT

ANYWHERE IN ANY OF THE INSTRUCTIONS AND FURTHER CONFUSES THE

ISSUE RATHER THAN CLARIFIES THE ISSUE, BECAUSE THE 1700 DOES

NOT -- INTENTIONALLY DOESN'T USE ACTUAL MALICE, IT USES -- I

FORGET -- AND FOR THE SAME REASON I'M NOT INCLINED THAT I

DON'T KNOW THAT THIS IS NECESSARY AT THIS JUNCTURE EITHER. IN

THAT 1700 STATES WHEN IT GETS TO WHAT WE WILL IN LEGALLY SAY

IS THE ACTUAL MALICE ISSUE.

IN ADDITION, LE XUAN KHOA MUST PROVE BY CLEAR

AND CONVINCING EVIDENCE THAT NGUYEN DINH THANG AND BOAT PEOPLE

S.O.S. KNEW THIS STATEMENT WAS FALSE OR HAD SERIOUS DOUBTS

ABOUT IT.

SO QUITE FRANKLY THAT IS -- THAT LANGUAGE IS

SUBJECTIVE. THAT THEY KNEW, IT DOESN'T THAT A REASONABLE

PERSON WOULD KNOW. IT SAYS THOSE TWO PARTIES KNEW OR HAD

SERIOUS DOUBTS. IT'S NOT -- NOWHERE DOES THAT IMPLY OBJECTIVE

STANDARD.

MR. VOSS: WE WILL WITHDRAW THE REQUEST FOR NUMBER

TWO AS IT APPLIES TO THE INITIAL INSTRUCTIONS TO THE JURY.

AND WOULD NEXT JUST QUERY TO THE COURT WHETHER THIS BECOMES AN

APPROPRIATE SPECIAL INSTRUCTION IN A POTENTIAL PHASE TWO?

THE COURT: WE'LL HAVE TO CROSS THAT BRIDGE WHEN WE

GET THERE. THAT IS NOT BEFORE ME RIGHT NOW. I'LL HAVE TO SEE

THAT FACT.

MR. VOSS: I THINK WHEN WE WENT FROM 1704 TO 1700

SOME OF THESE CHANGED.

THE COURT: AND I CAN'T SPECULATED IF THE JURY COMES

BACK WITH A QUESTION, THEN WHO KNOWS, YOU KNOW, WE COULD BE

DISCUSSING SOME OF THESE CONCEPTS AT LEAST.

MR. VOSS: SPECIAL INSTRUCTION NUMBER TWO IS WITHDRAWN.

MR. HART: YOUR HONOR MAY INQUIRE JUST A SECOND?

WHICH ONE OF THE 1700S DID WE CHOOSE THAT HAS THE DEFINITION

OF MALICE AND OPPRESSION IN IT?

THE COURT: IT DOESN'T HAVE THE DEFINITION. THE 1700

THAT THEY SUBMITTED AND AS INCLUDED IN CACI IT TALKS ABOUT

UNDER HEADING LIABILITY AND HAS FOUR NUMBERED PARAGRAPHS

THERE.

MR. HART: RIGHT.

THE COURT: AND THEN THE PARAGRAPH AFTER THAT, NUMBER

FOUR STATES THAT IN ADDITION -- AND THAT'S WHERE -- AND I WANT

TO BE CLEAR THAT'S THE ACTUAL MALICE CONCEPT, IT DOES NOT USE

THAT PHRASE.

MR. HART: RIGHT. I WAS ACTUALLY ASKING A DIFFERENT

QUESTION AND THAT IS: I KNOW WE JUST WENT THROUGH ONE OF

THESE THAT HAD THE DEFINITIONS OF MALICE AND OPPRESSION AND

FRAUD AND I'M TRYING TO --

THE COURT: PUNITIVE DAMAGES 3940 SOMETHING, 48 OR

WHATEVER. I THINK THAT'S INSTRUCTION FOR PHASE ONE PUNITIVE

DAMAGES ISSUE INCLUDES THE STATUTORY DEFINITION OF DESPICABLE

FRAUD OPPRESSION MALICE, ALL THOSE.

MR. VOSS: HENCE MY COMMENTARY THAT WE MAY RECONSIDER
THIS AT THAT TIME, IF NECESSARY.

THE COURT: SO NUMBER TWO IS A NO.

THEN NEXT, REQUESTED SPECIAL THREE.

MR. VOSS: SAME APPLICATION OF THE SPECIAL NUMBER

THREE SO IT IS THEREFORE WITHDRAWN AT THIS TIME. I THINK THE

MALICE REMAINS THE SAME ON BOTH.

THE COURT: WE WILL WAIT AND SEE WHAT UNFOLDS LATER
IN TERMS OF QUESTIONS OR, YOU KNOW, LATER PHASES.

AND I THINK WE'RE GOING TO BE IN A SIMILAR -- BECAUSE THE CACI
PEOPLE, WHO I WILL SAY ARE FAR MORE INTELLIGENT THAN I, HAVE
COLLECTIVELY WORKED VERY HARD ON THESE INSTRUCTIONS AND
REVIEWED COUNT LESS VOLUMES AND REAMS OF CASE LAW IN
DEVELOPING THESE TO TRY DID PUT THE CACI INSTRUCTIONS IN I
GUESS SAY LAY TERMS THE MOST EASILY UNDERSTANDABLE LANGUAGE
THAT THEY CAN FOR THE JURY.

AND, AGAIN, BACK TO THAT EXACT SAME PAIR IN

1700, THEATRE AWAY FROM SAY RECKLESS DISREGARD AND AGAIN THEIR

PARAGRAPH ON ACTUAL MALICE SAYS: IN ADDITION, LE XUAN KHOA

MUST PROVE BY CLEAR AND CONVINCING EVIDENCE THAT NGUYEN DINH

THANG AND BOAT PEOPLE S.O.S. KNEW THE STATEMENT WAS FALSE OR

HAD SERIOUS DOUBTS ABOUT THE TRUTH OF THE STATEMENT.

SO THAT I BELIEVE INCORPORATES THE RECKLESS

DISREGARD CONCEPT. SO I'M NOT SURE IT ELIMINATES THE NEEDS

FOR THIS AND THAT'S THE LANGUAGE IN THE CACI.

MR. HART: DON'T WE HAVE -- AND MAYBE IT'S IN THIS

3948 COMMENT ABOUT RECKLESS DISREGARD.

THE COURT: THAT'S IN A DIFFERENT CONTEXT.

MR. VOSS: THAT'S IN PHASE TWO.

THE COURT: HE'S TALKING ABOUT IN THE ONE THAT RELATE

TO PHASE ONE, BUT NONETHELESS THAT'S STILL -- IT'S NOT -- IT'S

AN IDENTIFY DIFFERENT ISSUE IT RELATES TO A DIFFERENT MATTER

SO IT WOULD BE 3948.

MR. HART: THAT WOULD BE APPLICABLE TO THE LAST

QUESTION IN 1700, AND THAT IS CAN RECOVER DAMAGES PROVE BY

CLEAR AND CONVINCE EVIDENCE THE ACT WAS MALICE OPPRESSION AND

FRAUD AND PART OF MALICE DEFINITION IS RECKLESS DISREGARD.

THE COURT: BUT I'M STILL -- I DON'T STILL VIEW THIS

AS BEING NECESSARY AS A SPECIAL INSTRUCTION.

MR. HART: RIGHT, IT'S COVERED IN THE CACI.

THE COURT: ALL RIGHT. NUMBER FOUR.

MR. VOSS: WE ALREADY DID NUMBER FOUR.

THE COURT: NUMBER FIVE IS KIND OF THE SAME THING.

SO NO, ON THAT ONE FOR ALL THE REASONS WE JUST DISCUSSED.

WHEN YOU EVALUATE THE STATEMENT AT ISSUE, YOU

MUST EXAMINE THE TOTALITY OF THE CIRCUMSTANCES INCLUDING THE

CONTEXT IN WHICH THE STATEMENT WAS MADE, WHEN YOU EXAMINE THE

NUMBER SIX, REVIEW OF PUBLICATION AS A WHOLE.

DIVIDED INTO SEGMENTS AND EACH PORTION TREATED AS A SEPARATE

STATEMENT AT ISSUE, THE PUBLICATION IN QUESTION MAY NOT BE

UNIT. IT MUST --

MR. VOSS: YOUR HONOR, WITHDRAWN.

THE COURT: OKAY. NUMBER SEVEN, SUBSTANTIAL TRUTH

SUFFICES. AND IT READS AS FOLLOWS: IF THE STATEMENT AT ISSUE

APPEARS SUBSTANTIALLY TRUE FROM THE EVIDENCE PRESENTED, YOU

MUST FIND IT BE TRUE REGARDLESS OF SLIGHT INACCURACIES IN THE

DETAILS.

MR. HART: I THINK IT'S INAPPROPRIATE. IF WE'RE

GOING TO GO WITH 1700, THEN IT'S NOT A SUBSTANTIALLY TRUE

STANDARD, IT'S TRUE OR FALSE.

MR. VOSS: WELL, LET ME ILLUSTRATE WHY. WHEN THERE
WAS TESTIMONY ABOUT IT, BUT THE STATEMENT MAKES A REFERENCE TO
LETTER FROM CONGRESSMAN SMITH WHEN IT WAS REALLY DORNAN. I
DON'T WANT TO HEAR WELL YOU GOT THE CONGRESSMAN'S NAME WRONG
THERE WAS INCONSEQUENTIAL TO THE ENTIRE THING. AND IT WAS
EXPLAINED, BUT HAVE THAT, WELL, IT'S EITHER TRUE OR FALSE,
IT'S EITHER ALL HUNDRED PERCENT TRUE OR FALSE. YOU GOT THE
CONGRESSMAN'S NAME WRONG, SO DEFAMATION FOR YOU. HENCE, THIS
ONE DOES MAKE SENSE TO ME FOR THAT VERY REASON.

MR. HART: I THINK THE ISSUE OF GETTING THE NAME
WRONG IS RELEVANT TO SOMETHING ELSE, NOT THAT THAT SMALL PART
MAKES THIS A FALSE STATEMENT.

THE COURT: WHAT ELSE IS THE RELEVANCY.

MR. HART: IT'S RELEVANT AS TO WHETHER HE WAS

ACTUALLY LOOKING AT THESE LETTERS WHEN HE WROTE THE ARTICLE.

I THINK IT'S A FAIR ARGUMENT ON MY PART THAT HE WASN'T LOOKING

AT THE LETTERS OR HE WOULD HAVE GOING THE NAME RIGHT, BECAUSE

ALL THAT STUFF IN FRONT OF HIM, THEN HE WOULDN'T HAVE GOT THE

NAME WRONG. THE FACT THAT HE GOT THE NAME WRONG, I THINK,

MAKES IT A FAIR ARGUMENT ON MY PART THAT HE'S NOT TELLING THE

TRUTH ABOUT THAT.

MR. VOSS: WELL, THAT WOULD BE OKAY. THAT WOULD GO
TO COUNSEL'S ARGUMENT WOULD GO TO WHAT'S THE CREDIBILITY OF
WITNESS AS TO SUPPORTING STORY. BUT IT'S NOT A, YOU KNOW,
LIFE OR DEATH IF YOU WERE WRONG ON SMITH V. DORNAN, IT MAKES
YOU LIABLE. IT'S AN INCONSEQUENTIAL DETAIL YOU CAN USE THAT
TO ILLUSTRATE WHETHER YOU BELIEVE HE HAD THEM IN FRONT OF HIM
AT THE TIME OR WHAT HAVE YOU. BUT IT DOESN'T MAKE HIM -- THAT
IT'S NOT JUST A HUNDRED PERCENT BRIGHT LINE EVERY SINGLE WORD
WAS EXACTLY CORRECT, THAT'S THE STANDARD THAT SHOULD BE
APPLIED.

MR. HART: THAT'S PRETTY THIN IF THAT WERE MY CASE,
WHICH IT'S NOT.

MR. VOSS: WELL, COUNSEL TENDS TO MAKE HAY ABOUT IT

BUT YOU CAN'T MAKE HAY ABOUT THAT TO LEAD THE JURY TO BELIEVE

THAT IF YOU GET THE NAME WRONG, THAT'S ENOUGH FOR A FINDING OF

DEFAMATION.

MR. HART: WELL IF I DO THAT, THEN I WOULD WELCOME
THIS SPECIAL.

THE COURT: THAT'S KIND OF WHERE I WAS GOING. I'M

NOT INCLINED TO GIVE THIS ONE. IF I HEAR SOMETHING THAT

ADDRESSES THAT MISNAMING, I GUESS I'LL CALL IT.

MR. VOSS: IT'S A NUANCE.

THE COURT: I'M SAYING THEN I WILL CONSIDER A

CORRECTIVE INSTRUCTION AT THAT POINT IN TIME.

MR. VOSS: IT'S A NUANCE KIND OF USING GUILTY V.

CRIMINAL OFFENSE IT'S A NUANCE IT'S AN IMPORTANT ONE.

THE COURT: AND AS I JUST STATED, I'M NOT GOING TO

GIVE NUMBER SEVEN AS PART OF THE BULK SET. IF I HEAR

SOMETHING DURING CLOSING WE CAN -- YOU CAN REVISIT IT. IF I

NEED TO GIVE SOME SORT OF CLARIFICATION OR SOMETHING.

MR. VOSS: THANK YOU, YOUR HONOR.

THE COURT: BUT AT THIS POINT, YEAH.

MR. VOSS: NO FURTHER ARGUMENT THANK YOU, YOUR HONOR.

THE COURT: LAST ONE IS GOING TO BE NO. EIGHT: NO

DAMAGE FOR EMOTIONAL DISTRESS SUSTAINED AS RESULT OF PURSUING

LITIGATION. IN CONSIDERING NONECONOMIC DAMAGES, YOU MUST NOT

AWARD DAMAGES FOR EMOTIONAL DISTRESS THAT LE XUAN KHOA MAY

HAVE SUSTAINED AS A RESULT OF PURSUING HIS LITIGATION BECAUSE

HE IS NOT ENTITLED TO RECOVER FOR THE MEANT AM STRESS ARISING

FROM LITIGATING THIS CASE.

MR. HART: I DON'T THINK WE HAVE ANY EVIDENCE OF HIS

MENTAL SUFFERING FROM THE LITIGATION SINCE WE WERE NOT ALLOWED

TO PUT UP THE POST-PUBLICATION ARTICLES.

THE COURT: I'M TRYING TO THINK THROUGH THE EVIDENCE
WHAT I RECALL FROM ANY OF THAT.

MR. VOSS: WELL, YOUR HONOR, IT ALSO, AS I HAD

INDICATED PREVIOUSLY WITH YOUR HONOR DURING ONE OF OUR BREAKS

WHEN WE HAD SUBSTANTIAL DISCUSSIONS SO I DON'T WANT TO REPEAT

IT ALL, BUT I HAD SUBSTANTIAL CONCERN OF CONFLATION OF WHAT

HARM HE FELT AS A RESULT OF THE ENTIRE ARTICLE OF THE

PUBLICATION VERSUS JUST THAT STATEMENT. AND THEN WHEN I ASKED

MR. KHOA THAT AFTERNOON ABOUT THAT VERY THING, HE VERY CLEARLY

INDICATED THAT ALL OF HIS ANSWERS RELATING TO THE HARMS WERE

FROM THE ENTIRE PUBLICATION THAT WERE NOT LIMITED TO THAT

STATEMENT EXACTLY MY FEAR WAS TRUE.

SO WHEN I -- THERE WAS SOME DISCUSSION WITH HIM

ABOUT THE FAMILY WAS OPPOSED TO -- CECILE, THE FAMILY

PRACTICES OPPOSED TO THE BRINGING OF THE LITIGATION AND SOME

OTHER THINGS THAT SHE BROUGHT UP. AND THOSE ARE NOT DAMAGES

THAT SHOULD BE CONSIDERED HERE.

THE COURT: WELL I THINK THAT'S APPLES AND ORANGES.

YOU'RE SAYING THAT -- THIS INSTRUCTION FIRST OF ALL GOES TO

EAST EMOTIONAL DISTRESS RELATED TO THE LITIGATION. THE

ARGUMENT YOU JUST MADE WAS DISTRESS OR CONCERN FROM THE

ARTICLE AS A WHOLE AS OPPOSED TO -- SO THIS DOESN'T ADDRESS

THAT.

MR. VOSS: A SUBSET OF WHICH IN THAT DISCUSSION WAS

SPECIFICALLY FROM THE LITIGATION. NOW IS HE TOO TIRED BECAUSE

HE'S DEALING WITH AND HE CAN'T WRITE HIS BOOK AND, YOU KNOW,

ARE THOSE LOOKED UPON AS BEING MENTAL DISTRESS DAMAGES?

EMOTIONAL DISTRESS DAMAGES? ONE COULD ARGUE THEY WERE.

BUT THEY WERE CERTAINLY NOT RELATED TO

SPECIFICALLY TO THAT DURING THE COURSE OF THE TESTIMONY. SO I

DON'T SEE ANY -- MY VIEW OF THE TESTIMONY AND I'VE BEEN
REREADING AND UNDERLYING IN THE ROUGH DRAFTS OF TRANSCRIPT
THAT THERE IS NO BASIS FOR AN AWARD OF DAMAGE FOR EMOTIONAL
DISTRESS FOR PURSUING LITIGATION. SO THEREFORE THERE SHOULD
BE NO DOWN SIDE TO GIVING THAT INSTRUCTION.

MR. HART: I HAVE A PROBLEM WITH THAT ANALYSIS.

THERE IS A DOWNSIDE TO GIVING THIS INSTRUCTION BECAUSE THE

HARM THAT'S LAID OUT IN THE DAMAGE PART OF 1700 SAYS SHAME

MORTIFICATION OR HURT FEELINGS. AND HERE YOU ARE TELLING THE

JURY YOU CAN'T GIVE HIM DAMAGES FOR HURT FEELINGS FOR THE

LAWSUIT. IT'S CONFUSING AND I THINK IT'S WRONG AND

UNNECESSARY.

MR. VOSS: AND I WILL READ THE WITNESS' TESTIMONY

IT'S A ROUGH SO IT'S NOT ADMISSIBLE PER SE BUT.

WHEN YOU TESTIFIED HOW YOU FELT AFTER SEEING
THE PUBLICATION, WERE YOUR ANSWERS RELATED TO JUST THIS
STATEMENT ON THE WHITEBOARD OR WERE YOU REFERRING TO THE
PUBLICATION AS A WHOLE?

ANSWER: THIS IS A PART OF THE PUBLICATION -
I'M TALKING ABOUT THE PUBLICATION AS A WHOLE.

ALL OF HIS ANSWERS THAT HE GAVE ABOUT HOW HE

FELT, THAT WAS THE QUESTION, WERE NOT LIMITED TO THE RESULT OF

THIS STATEMENT. THEY WERE ALL KIND OF THINGS. I MEAN, HE

HATES WHAT CONGRESSMAN SMITH SAID ABOUT HIM. HE HATES WHAT

CONGRESSMAN DORNAN SAID ABOUT HIM, AND THESE ALL THINGS ALL

IMPACTED HOW HE FELT BUT THEY ARE NOT DAMAGES NOT DAMAGES

RELATED TO THIS STATEMENT. AND THAT WAS MY CONCERNED I HAD

PREVIOUSLY EXPRESSED. THAT'S HIS ANSWER TO THE QUESTION AND I

THINK RULES THOSE DAMAGES OUT.

THE COURT: ALL RIGHT. SO ON THIS ONE, I'M NOT GOING
TO GIVE IT OUT OF THE BOX, BECAUSE I THINK THERE -- WE'RE
FOCUSING ON THE ARTICLE NOT -- IF THERE'S SOME ARGUMENT MADE
OR SOME SUGGESTION, I WILL RECONSIDER THAT THERE -- THAT WHAT
SHOULD BE AWARDED IS THINGS CONNECTED TO THE LAWSUIT, THEN I
WILL RECONSIDER THIS OR SOMETHING SIMILAR TO THIS.

I UNDERSTAND, THOUGH, WHAT YOU'RE SAYING IS THE

ARTICLE NOT THE LAWSUIT. AND I KNOW YOU'RE TRYING CONNECT

THEM UP. I'M NOT MAKING THE SAME CONNECTION THERE.

MR. VOSS: THANK YOU, YOUR HONOR. APPRECIATE YOUR RULING.

THE COURT: MAKE MY NOTES HERE.

MR. VOSS: NO FURTHER ARGUMENT AT THIS TIME. I'VE GIVEN IT MY BEST TRY.

THE COURT: SO THAT SHOULD GET US TO THE END OF THE INSTRUCTIONS COMPONENT HERE.

SO LET'S SEE. I THINK THE ONLY THING WE NEEDED

A LITTLE CLEAN UP ON WAS 1700 WE WERE SHORTENING UP THE

STATEMENT IS IT THERE WAS A TYPO "A" AND ANOTHER "A".

MR. VOSS: WE CAUGHT THE DOUBLE A'S.

THE COURT: I DON'T KNOW IF THERE'S ANY OTHER CLEAN

UP ON THE INSTRUCTIONS. WE WENT THROUGH AND IDENTIFIED WHICH

INSTRUCTIONS. SO OTHER THAN THAT, I'LL NEED TO HEAR IF

THERE'S ANYTHING ELSE, BUT I THINK THAT'S WHERE WE STAND WHAT

HAS BEEN IDENTIFIED HERE OFFER THE LAST HOUR ARE THE ONES THAT

THE COURT INTENDS TO GIVE.

MR. VOSS: WHAT IS THE PREFERRED METHOD THE COURT
WOULD LIKE TO RECEIVE THE CORRECTED PAGE?

MR. HART: HAS THE COURT LOOKED AT MY PROPOSED 1700

IT WAS STRAIGHT OUT OF CACI.

THE COURT: I HAVEN'T GOTTEN TO THE VERDICT FORM YET
WE'RE JUST STARTED TALKING ABOUT INSTRUCTION.

MR. VOSS: LOGISTIC LY HOW WOULD I LIKE TO RECEIVE THAT.

THE COURT: I GUESS WE COULD GET I HARD COPY DROPPED

OFF. I CAN ORGANIZE WE COULD HAVE SOMEBODY DROP THAT OFF

SOMETIME TOMORROW AND THEN ON MONDAY I CAN ORGANIZE IT AND

THEN WE CAN MAKE A CROP SO THE PARTIES TO FOLLOW ALONG SO YOU

HAVE A COPY OF WHAT THE COURT'S LOOKING OFF ON I'LL SAY IT

AGAIN BUT JUST TO REMIND YOU WHEN I'M INSTRUCTING ON TUESDAY,

I WILL ASK PLEASE FOLLOW ALONG.

AND, AGAIN, YOU'LL GET A COPY OF WHAT THE

COURT'S READING TO JUMP IN AND CORRECT WITH ANY MISSTATEMENTS

SKIPPING OVER ANYTHING WHATEVER THE CASE MAY BE WE DO HAVE THE

STIPULATION THAT THE COURT REPORTER DOES NOT NEED TO TAKE DOWN

THE READING OF INSTRUCTIONS. REGARDLESS PLEASE FOLLOW ALONG

SO THAT ANY CORRECT CAN BE TIMELY MADE IF I G O. O F IN

READING WAYS BEEN SO FAR.

NOW WE'RE GOING TO GET TO THE ISSUES ON THE

VERDICT FORM. WE HAVE OUR COMPETING VERSIONS, DEFENDANTS AND PLAINTIFF'S AND THE STARTING POINT IS VERDICT FORM 1700 OUT OF THE CASE LAW BASED ON THE COURT'S RULING RELATING TO 1700-CASE LAW JURY INSTRUCTIONS.

MR. HART: YOUR HONOR, AN ODD THOUGHT JUST OCCURRED

TO ME AND THAT IS IF WE'RE GOING TO INSTRUCT ON CLEAR AND

CONVINCING EVIDENCE, WOULD THE COURT CONSIDER AN INSTRUCTION

THAT DIFFERENTIATED CLEAR AND CONVINCING EVIDENCE FROM BEYOND

A REASONABLE DOUBT? WE SOMETIMES TALK ABOUT THAT IN THE

CONTEXT OF PREPONDERANCE OF THE EVIDENCE.

THE COURT: WELL, THEY'RE CONSECUTIVE. THEY'LL BE READ BACK TO BACK THE 200 AND 201 INSTRUCTION.

MR. HART: RIGHT. SO WE SAY WHAT PREPONDERANCE OF

THE EVIDENCE IS THEN WE SAY WHAT CLEAR AND CONVINCING IS, BUT

THERE'S NOTHING IN THERE THAT DIFFERENTIATES CLEAR AND

CONVINCING FROM BEYOND A REASONABLE DOUBT.

THE COURT: YEAH, BECAUSE THAT'S NOWHERE IN THERE.

SO I DON'T THINK THAT'S NECESSARY. I THINK WE GOT --

MR. HART: OKAY. I APPRECIATE THAT, YOUR HONOR IT

DEFINES HERE THIS MEANS A PARTY MUST PERSUADE YOU IT IS HIGHLY

PROBABLE THAT THE FACT IS TRUE.

THE COURT: I DON'T REMEMBER --

MR. HART: IT'S USUAL IN VOIR DIRE, YES.

THE COURT: ALL RIGHT. SO WE HAVE THE TWO VERDICT FORMS HERE.

MR. HART: JUST FOR COMPLETES DISCLOSURE, I MAY ARGUE

THAT THAT WAY, UNLESS THERE'S AN OBJECTION TO IT.

MR. VOSS: ARGUE?

MR. HART: THAT HERE IS CLEAR AND CONVINCING EVIDENCE
BUT THIS IS NOT BEYOND A REASONABLE DOUBT.

MR. VOSS: WELL, IT'S NOT A CRIMINAL CASE -- I THINK

THAT'S MISLEADING TO THE JURY. WE CAN GIVE THEM AN

INSTRUCTION, THESE ARE THE STANDARDS.

MR. HART: BUT IT'S TRUE --

MR. VOSS: ANYTHING ELSE IS TO TRY TO MINIMIZE THE REQUIREMENT. THERE'S NO REASON TO BE HAVING THAT DISCUSSION.

THE COURT: IN TERMS OF ARGUMENT -- I'M NOT INSTRUCTING.

MR. VOSS: I'LL BE OBJECTING.

THE COURT: THAT'S THE THING.

MR. VOSS: BUT I WOULD SUGGEST BECAUSE I'M -- AGAIN,

AS I SAID PREVIOUSLY, I LOATH TO OBJECT DURING.

THE COURT: I DON'T THINK YOU'RE LOATH TO OBJECT.

MR. VOSS: NO TRUTH HURTS. ALL GOOD YOUR HONOR. I'M SAYING DURING OPENING OR CLOSING.

MR. HART: MY POINT IS JUST TO DISCUSS IT BEFORE THE

ISSUE COMES UP, NOT HAVE IT HAPPEN UNEXPECTED.

MR. VOSS: SO PERHAPS THE COURT COULD ENTERTAIN

THOUGHTS ON THAT AND DISCUSS IT WITH US BEFORE WE GIVE OUR

ARGUMENT ON TUESDAY. I RATHER KNOW AHEAD OF TIME.

THE COURT: I APPRECIATE THAT. SO I WILL THINK ABOUT
THAT, AND WE'LL GO FROM THERE.

MR. HART: THANK YOU, JUDGE.

THE COURT: ALL RIGHT. SO YES, WE HAVE THE TWO

VERDICT FORMS HERE. LOOKING AT THE I THINK SINCE WE DO HAVE

THE TWO DEFENDANTS I THINK WE NEED A QUESTION FOR EACH OF

THEM. IN PLAINTIFF'S VERSION OF QUESTION ONE, IT'S JUST

SIMPLY DEFENDANTS AS OPPOSED TO --

MR. HART: SO HOW ABOUT AN ANSWER LINE FOR EACH?

THE COURT: EITHER WAY THAT'S MORE FORMAL SUBSTANCE

TO MY MIND. I DON'T CARE EITHER WAY. THE WAY THEY'VE DONE

ONE A ONE B EXACT SAME QUESTION TWO TIMES; ONE FOR MR. THANG

AND ONE FOR B.P.S.O.S., BUT GROUPING THEM TOGETHER BEGS FOR

ERRORS AND AT LEAST POTENTIALLY INCONSISTENCIES, AMBIGUITIES.

MR. HART: WHAT ARE WE GOING TO DO WHEN WE GET DOWN

QUESTION FIVE WHERE WE'RE ASKING, DID WE PROVE BY CLEAR AND

CONVINCING EVIDENCE THAT -- ARE WE GOING TO ASK WHETHER BPSOS

KNEW THE STATEMENT WAS FALSE OR HAD SERIOUS DOUBTS?

THE COURT: I WOULD ASSUME SO. JUST LIKE IF WE WERE
SUING THE LOS ANGELES TIMES IF THAT WAS -- I MEAN, GRANT IT

SAME THING IF THE LOS ANGELES TIMES WAS BEING SUED FOR AN

ARTICLE, THE QUESTION WOULD BE: DID THE TIMES KNOW THAT IT

WAS --

MR. HART: IF THAT'S THE CASE, THEN I NEED THE

INSTRUCTION THAT SAYS CORPORATIONS ONLY FUNCTION THROUGH

THEIR --

THE COURT: I'M HAPPY TO CONSIDER ANOTHER
INSTRUCTION.

MR. HART: -- EMPLOYEES, YEAH. IT SEEMS UNNECESSARY
BUT --

THE COURT: BUT I AM VERY CAREFUL AND CONCERNED ABOUT

GETTING AN AMBIGUITY OR A POTENTIAL INCONSISTENCY WHEN WE LUMP

PARTIES TOGETHER WITHOUT A STIPULATION, AND I DON'T THINK WE

HAVE A STIPULATION. SO I'M HAPPY TO CONSIDER AND I'M NOT

SAYING THAT IT WOULD LIKELY BE APPROPRIATE TO HAVE SOME.

MR. VOSS: WE COULD ARGUE OF COURSE YOU CAN DO
WHATEVER YOU WANT TO DO IN ARGUMENT THAT WAY BUT IT SHOULDN'T
BE AN INSTRUCTION.

THE COURT: WELL, I NEED TO SEE THE INSTRUCTION BUT

I'M HAPPY TO CONSIDER.

MR. VOSS: WE DON'T KNOW HAVE ONE.

THE COURT: I UNDERSTAND THAT. I'M HAVING THE

CONVERSATION RIGHT NOW THAT WE HAVE TWO DEFENDANTS, SO I

BELIEVE WE NEED QUESTIONS THAT ARE POTENTIALLY -- WE NEED

TO -- THE JURY WILL HAVE TO FIND AGAINST BOTH. WE CAN'T JUST

LUMP THEM TOGETHER.

MR. VOSS: THE OTHER WAY I'VE SEEN IT DONE IS ALL AS

TO THE FIRST GUY AND THEN ALL AS TO THE SECOND GUY AND I LIKE

THIS METHOD BETTER.

THE COURT: I MEAN, SIMILAR TO WHAT -- YOU CAN HAVE

THE QUESTION IS DID THE DEFENDANTS IDENTIFIED BELOW MAKE THIS

STATEMENT AND HAVE "A" YES OR NO AS TO THANG "B" YES OR NO TO

DID YOU HAVE THE QUESTION ONCE AND THEN TWO SEPARATE ANSWER

LINES UNDERNEATH THE QUESTION, ONE FOR EACH OF THE DEFENDANTS.

MR. VOSS: I FIND THAT FORM TENDS TO CAUSE THE JURY
TO WANT TO CONFLATE THEM TOGETHER. I PREFER THIS FORM.

THE COURT: I THINK WE DO NEED A SEPARATED ONE AND

I'M HAPPY TO CONSIDER THE INSTRUCTION TO -- WHAT I'M HEARING

FROM YOU, THE CONCEPT RELATES TO AN ENTITY BEING LIABLE BASED

ON THE CONDUCT OF A REPRESENTATIVE.

MR. HART: WELL, IF WE HAD A DERIVATIVE LIABILITY

KIND OF INSTRUCTION, THEN WE WOULDN'T NEED TO DO THEM

SEPARATELY. BUT BY SEPARATING, NOW HOW DO I TALK TO THE JURY

ABOUT WHETHER B.P.S.O.S. HAD THE SAME MENTAL STATE AS

DR. THANG? IT'S KIND OF AN ABSURD QUESTION, BECAUSE HE'S THE

PRESIDENT, AND WHATEVER HE DOES, YOU KNOW, INURES TO THE

LIABILITY OF THE ENTITY.

MR. VOSS: CANDIDLY, DURING THE COURSE OF THE

LITIGATION, THIS OCCURRED TO US, BUT NO DISCOVERY WAS

CONDUCTED OF B.P.S.O.S. OR ITS BOARD OF DIRECTORS OR ANYTHING

ELSE AS TO WHAT THE REST OF EVERYBODY OVER THERE WAS THINKING.

NOT MY RESPONSIBILITY TO SUGGEST IT, BUT IT OCCURRED TO US

THAT IT WASN'T BEING ASKED.

THE COURT: WELL, WHERE WE'RE AT IS I DO THINK WE

NEED TO HAVE TWO QUESTIONS. I'M HAPPY TO CONSIDER AN

INSTRUCTION RELATING TO AN ENTITY AND THE CONNECTION OR

RESPONSIBILITY OF AN ENTITY FOR ACTIONS OF REPRESENTATIVES.

AND WHEN I HAVE THAT LANGUAGE, THEN I CAN MAKE A MORE CONCRETE

RULING IN THAT REGARD.

SO WHAT I WILL THEN DO AND ORDER IS THAT BY THE

CLOSE OF BUSINESS TOMORROW, WHICH IS FRIDAY, IF MR. HART, IF
YOUR OFFICE COULD SEND WHATEVER INSTRUCTION YOU ARE REQUESTING
TO DEFENDANTS. SO THEN YOU WOULD HAVE MONDAY TO CONTEMPLATE
WHATEVER YOUR PERSPECTIVE ON THAT INSTRUCTION IS.

MR. VOSS: THANK YOU, YOUR HONOR.

THE COURT: AND THEN WE'LL TALK ABOUT COMING IN A

LITTLE BIT EARLY ANYWAY ON TUESDAY TO GET EVERYTHING

FINALIZED. AND THEN AN INSTRUCTION OR TWO WE CAN DO PRETTY

QUICKLY, PULL OUT OR INSERT WHATEVER THE CASE MAY BE, BUT THAT

WAY GIVES YOU TIME MR. HART TO FOCUS ON THE LANGUAGE, FIND AN

INSTRUCTION, AND ALSO GIVES COUNSEL, TIME TO DEFENDANTS TO

ADDRESS IT.

MR. HART: OKAY JUDGE, THANK YOU.

THE COURT: ALL RIGHT. SO WHAT I WILL THEN SAY --

MR. VOSS: ARE YOU AT THIS POINT --

THE COURT: I'M KIND OF BOUNCING BACK AND FORTH

BETWEEN BOTH, BUT WHAT I'M -- BECAUSE SAYING THAT WE DO NEED

TWO QUESTIONS, THAT DOES BEG THE QUESTION OF THE FOLLOW-ON

INSTRUCTIONS. AND AS PRESENTLY CONSTRUCTED, I THINK THEY LEAD

THE JURY ASTRAY.

FOR EXAMPLE, 1 A SAYS: IF YOUR ANSWER TO

QUESTION 1 A IS YES, THEN ANSWER QUESTION TWO. IF YOU

ANSWERED NO TO 1 A, STOP HERE. ANSWER NO FURTHER QUESTIONS.

SO WE NEVER EVEN GET TO -- SO THAT PRESUMES --

MR. HART: I CAN FIX THAT. I'VE HAD THAT --

MR. VOSS: WE'LL TRY AND CLEAR THAT UP.

LEFT2:

MR. VOSS: THERE'S A TYPO THERE FOR KHOA AND WE NEED TO DELETE THAT LANGUAGE.

THE COURT: BECAUSE WE'RE GOING TO HAVE TWO QUESTIONS

THEY'RE GOING TO HAVE TO ANSWER BOTH, AND THEY WOULD STOP ONLY

IF THE ANSWER IS NO AS TO BOTH DEFENDANTS.

MR. VOSS: CAN WE SUGGEST THAT WE FIX THAT AND LIKE.

THE COURT: EXACTLY.

MR. VOSS: BRING TO HIM BY THE CLOSE OF BUSINESS

TOMORROW?

THE COURT: WE'LL GO THROUGH ALL THAT.

MR. VOSS: THERE WAS LANGUAGE --

THE COURT: I WAS GOING TO SAY LIKEWISE, AT THE END

OF 1 B, WHAT WE HAVE IN DEFENDANTS, LOOKING AT DEFENDANTS

FORM, SO WE JUST HAVE TYPO IS AND 1 B IN THE INSTRUCTION SO IT

READS. IF YOU ANSWER NO TO 1 B AND 1 B, IS IT INTENDED TO SAY

IF YOU ANSWER NO TO 1A AND 1B?

MR. VOSS: YES.

THE COURT: SO WE NEED SOME CLARITY THERE. AND IT

WOULDN'T BE STOPPED -- IF WE ANSWER NO TO BOTH OF THOSE, IT

WOULD BE STOPPED PERIOD. IT WOULDN'T BE AND ANSWER NOTHING

FURTHER AS TO B.P.S.O.S., BECAUSE THAT SUGGESTS -- SO WE NEED

THOSE INSTRUCTIONS NEED TO BE THOUGHT THROUGH CAREFULLY TO

MAKE SURE THEY FOLLOW THROUGH THE FORM APPROPRIATELY GIVEN

THAT --

MR. VOSS: FULLY UNDERSTAND. WE'LL PROVIDE REVISIONS

TO MR. HART BEFORE CLOSE OF BUSINESS TOMORROW.

THE COURT: THEN I THINK THE TWO FORMS IN TRACK HERE

FOR A WHILE, BECAUSE WE HAVE SEVERAL QUESTIONS THAT DON'T

MENTION THE DEFENDANTS, IT'S MORE ABOUT THE FALSITY OF THINGS.

MR. HART: THREE IS DIFFERENT.

THE COURT: THREE, LET ME SEE. AND I THINK -- YES, I

NOTICED THAT -- LET ME GET TO THE RIGHT PLACE -- AND COMMITTED

A CRIME IS AN EXAMPLE OF LANGUAGE IN CACI AS OPPOSED TO A

CRIMINAL. I THINK THAT'S WHAT YOU'RE GETTING TO, MR. HART?

MR. HART: YES JUDGE.

THE COURT: AND I THINK "A CRIMINAL" INTRODUCES A

DIFFERENT CONCEPT THAN "COMMITTED A CRIME". SO I THINK IN

QUESTION THREE, AS CURRENTLY PROPOSED BY DEFENDANTS READS AS

FOLLOWS: DID THESE PEOPLE REASONABLY UNDERSTAND THE STATEMENT

TO MEAN THAT LE XUAN KHOA WAS A CRIMINAL?

I THINK MR. HART'S PROPOSAL, WHICH AGAIN AS I

INDICATED IS ONE OF EXAMPLES IN CACI IS AS FOLLOWS: DID THESE

PEOPLE REASONABLY UNDERSTAND THE STATEMENTS TO MEAN THAT LE

XUAN KHOA HAD COMMITTED A CRIME?

I THINK THAT'S MORE APPROPRIATE LANGUAGE AND
THAT SHOULD BE INCORPORATED. SO MAKING THOSE REVISIONS.

AND THEN WHEN WE GET TO FIVE, THAT GETS BROKEN

OUT INTO TWO QUESTIONS. WE RAISED THAT ALREADY MR. HART THAT

AGAIN WE NEED A QUESTION AS TO MR. THANG AND WE NEED A

QUESTION AS TO BOAT PEOPLE S.O.S. AND THEN WE ALSO NEED TO

CAREFULLY LOOK AT THE INSTRUCTIONS, JUST LIKE WHEN WE WERE ON

QUESTION 1 A AND 1 B, WE NEED TO MAKE SURE THAT WE DON'T -- WE DON'T STOP UNLESS WE GET A NEGATIVE AS TO BOTH DEFENDANTS.

SO WE NEED TO BE VERY, VERY CAREFUL TO GO

THROUGH THESE INSTRUCTIONS SO THAT WE DON'T PREMATURELY STOP.

THE INSTRUCTIONS ARE THE EASIEST WAY TO GET LOST IN A JURY

FORM, INTRODUCE SOME ERROR, WHEN YOU'RE INSTRUCTING THE JURY

TO SKIP OVER A QUESTION THAT THEY SHOULDN'T OTHERWISE SKIP

OVER, ANSWER A QUESTION THEY SHOULDN'T BE ANSWERING.

SO I ENCOURAGE VERY CAREFUL READ THROUGH'S ON THOSE INSTRUCTIONS BECAUSE THEY'RE THWART WITH PERIL.

MR. VOSS: UNDERSTOOD.

THE COURT: THEN WHEN WE GET TO SIX, AGAIN, WE HAVE

TO BROKEN OUT TO EACH DEFENDANT, AND WE NEED TO BE VERY

CAREFUL WITH THE INSTRUCTIONS. BECAUSE, FOR EXAMPLE, IN 6A,

IF YOUR ANSWER TO 6A IS YES, THEN ANSWER QUESTION SEVEN. THAT

SHOULD PROBABLY BE 6B I'M GUESSING? AGAIN, WE NEED TO MAKE

SURE, IF WE'RE GOING TO HAVE THOSE ANSWERS, WE NEED TO BE VERY

CAREFUL WITH THAT.

AND WHAT IS OMITTED FROM DEFENDANTS' IS THE PUNITIVE DAMAGES QUESTION.

MR. ERIGERO: RIGHT, WE HAVE TO ADD THAT.

THE COURT: SO WE DO -- NOT THE AMOUNT, BUT WHETHER

OR NOT --

MR. ERIGERO: SAME QUESTION THAT PLAINTIFFS HAVE.

THE COURT: YES, THE QUESTION THAT WOULD THEN LEAD US

TO NUMBER TWO, WHICH THEN -- WELL, IS THERE ANY OTHER

QUESTIONS ABOUT THE VERDICT FORM BEFORE I RAISE THE NEXT OUESTION I HAVE?

MR. VOSS: NO. I'LL RAISE IT JUST SO WE'RE CLEAR,

BUT IN NUMBER ONE IT SOUNDED TO ME YOU WERE TRACKING WITH THE

CHANGES TO THE PROPOSAL FROM THE DEFENDANTS?

THE COURT: YES.

MR. VOSS: OKAY. THEN I DON'T NEED --

THE COURT: OKAY.

MR. VOSS: -- IN PLAINTIFF'S FORM IS THEREFORE NOT NECESSARY.

THE COURT: AND TO BE CLEAR, AS MR. VOSS ALREADY

INDICATED, SO I WOULD EXPECT THAT THE REVISED SPECIAL VERDICT

BE SENT TO MR. HART BY THE CLOSE OF BUSINESS TOMORROW SO THAT

THEN HE WILL HAVE THE SAME TIME THAT YOU HAVE ON THE

INSTRUCTION TO REVIEW IT AND MAKE ANY COMMENTS.

MR. HART: DID YOU WANT US TO FILE IT SO YOU CAN PULL IT OFF THE COMPUTER?

THE COURT: YES. SO IF YOU COULD FILE IT, YOU KNOW,
BY MAYBE MIDDLE OF THE DAY MONDAY OR EARLY AFTERNOON MONDAY SO

THAT I CAN TAKE AT LEAST A GANDER AT IT. I MEAN, BECAUSE
MR. HART IS GOING TO NEED TO HAVE AN OPPORTUNITY TO LOOK AND
SEE BEFORE IT GETS FILE. SO I'D YOU TO HAVE A LITTLE BIT MEET

AND CONFER ON BOTH YOUR INSTRUCTIONS AND THESE REVISIONS TO
THE VERDICT FORM SO THAT EVERYBODY SEES IT BEFORE IT GETS

DUMPED INTO THE COURT FILE. HAVE A GOOD FAITH DISCUSSION
ABOUT IT.

THEN WHAT THAT LED ME TO NEXT IS THE

HYPOTHETICAL QUESTION OF IF THERE IS A FINDING OF FRAUD

OPPRESSION OR MALICE, LEADING AND NEEDING A SECOND PHASE, WHAT

IS OUR CONTEMPLATION ON THAT SECOND PHASE IN TERMS OF

COMMENCING, DURATION?

SO THEY WILL BE PRESUMABLY STARTING -- LET'S

JUST SAY THEY START AT 1:30 ON TUESDAY WITH THEIR

DELIBERATIONS. WHO KNOWS. I GAVE UP LONG AGO TRYING TO

PREDICT THAT. BUT LET'S SAY THEY COME BACK SOMETIME WEDNESDAY

MORNING OR EARLY WEDNESDAY AFTERNOON WITH A VERDICT THAT SAYS

YES, FRAUD, OPPRESSION OR MALICE. WE NEED TO GO -- WHICH

LEADS US TO PHASE TWO. THEY START THROWING THINGS AT US

BECAUSE THEY'RE GOING TO DECIDE MORE EVIDENCE BUT THAT'S THE

NATURE OF THE BEST.

WHAT'S OUR CONTEMPLATION IN TERMS OF WHEN TO
START THAT AND HOW MUCH TIME WE NEED TO PRESENT THAT SECOND
PHASE?

MR. HART: WE HAVE REQUESTED ALL THE FINANCIAL
RECORDS IN ADVANCE. THEY'RE NOT RELEVANT UNTIL THIS FINDING,
BUT MR. ERIGERO'S AWARE OF THAT. I'M ASSUMING THEY HAVE
MATERIALS THAT ARE RESPONSIVE TO THE FINANCIAL CONDITION OF
THE DEFENDANTS. THOSE ARE GOING TO BE AVAILABLE PRETTY
QUICKLY. SO I WOULD SAY WE COULD TURN AROUND WITHIN A DAY OR
TWO.

THE COURT: I THINK WE NEED TO DO IT PROMPTLY.

MR. VOSS: IF THERE'S A FINDING YES.

THE COURT: CORRECT. AS I SAID I'M GIVING YOU HYPOTHETICAL.

MR. VOSS: SPECIAL ORDER OF CAUGHT THAT'S BEEN SOUGHT

THAT YOU CAN'T DO OTHERWISE ONLY IF THERE'S A FINDING THEN WE

HAVE TO BE READY TO TURN THEM OVER.

THE COURT: CORRECT. AND THAT'S WHY I WANT TO HAVE
THAT CONVERSATION NOW SO THAT THERE'S NO SURPRISE AND WE DON'T
WANT TO START LOSING JURORS BECAUSE WE CAN KICK IT OUT A
COUPLE DAYS REALLY. SO I HAVE NO PROBLEM -- PLAYING THE
HYPOTHETICAL GAME, IF THEY GO OUT ON TUESDAY AFTERNOON LET'S
SAY, THEY COME BACK SOMETIME ON WEDNESDAY. WE WOULD HAVE TO
GET STARTED ON THURSDAY, FIRST THING THURSDAY MORNING TO AVOID
LOSING JURORS, BECAUSE WE WERE TOLD -- AND NEXT WEEK WE'RE
DARK. THE NEXT WEEK IS THANKSGIVING WEEK. AND THIS IS A
VERY -- I ASSUME PLEASE DISABUSE ME OF MY MISCONCEPTION IF I'M
WRONG, THE EVIDENTIARY PRESENTATION WOULD BE NOT VERY LONG ON
THAT SECOND PHASE.

MR. HART: AN HOUR OR TWO.

THE COURT: SO I WOULD THINK WE SHOULD BE ABLE TO -MR. VOSS: WE WILL INQUIRE, IS ALL I CAN TELL YOU,
BECAUSE WE DON'T HAVE IT YET. SO WE WILL TRY TO PRE-PREPARE.

THE COURT: SO HERE IS WHAT MY EXPECTATION WOULD BE:

THAT IF WE HAVE THAT, THEN WE'RE READY TO TURN THINGS OVER

ONCE WE'VE TAKEN THAT AND GOT IT BUTTONED UP.

MR. VOSS: 24 HOURS OR SOMETHING I DON'T KNOW HOW.

THE COURT: WE WOULD HAVE TO HAVE IT READY TO GO

THEN. SO WE'RE GOING TO NEED IT PREPARED, NOT TURNED OVER,

BUT PREPARED SO THAT IF THEY SAY, YES, AND WE'RE GOING TO NEED

DO A PHASE TWO, THEN WE'RE GOING TO NEED TO TURN IT OVER AT

THAT POINT IN TIME RIGHT THEN AND THERE. SO PLAINTIFF WILL

HAVE WHATEVER'S LEFT OF THAT DAY AND THAT EVENING TO REVIEW

AND DO WHATEVER'S NECESSARY SO THAT THE NEXT MORNING.

MR. VOSS: THURSDAY.

THE COURT: YEAH, BECAUSE THAT'S THE REALITY OF OUR

SCHEDULE. OTHERWISE WE'RE GOING TO LOSE THE JURY WHICH WOULD

THEN CAUSE A PROBLEMS --

MR. VOSS: MISTRIAL.

THE COURT: EXACTLY. THEY COULD REALLY HAMSTRING US

IF THEY DON'T COME TO A DECISION UNTIL THURSDAY, THEN THAT

CAUSES ALL KINDS OF PROBLEMS.

MR. VOSS: I DON'T THINK WE CAN DO ANYTHING ELSE. WE WILL ENDEAVOR TO OBTAIN THE INFORMATION AND PRE-PREPARATION.

THE COURT: THAT'S WHY I WANTED TO HAVE THIS

CONVERSATION NOW SO THAT I WOULD GET THAT --

MR. VOSS: I PROBABLY WOULD NOT HAVE, SO I APPRECIATE
THE CONVERSATION.

THE COURT: SO THEN IT'S THERE TO BE PROMPTLY TURNED

OVER ONLY ONCE, BUT AT THAT TIME IT TURNS OVER SO PLAINTIFF

WILL HAVE THE REST OF THAT DAY TO, AGAIN, PREPARE AND WHATEVER

WITNESSES OR WHATEVER I SAW, YOU KNOW, ASSUME IT'S GOING TO BE

DR. THANG WOULD BE ANY WITNESS FOR THAT STAGE OF THE

PROCEEDINGS.

MR. VOSS: HE'S THE PRESIDENT OF THE COMPANY. SO HE
SHOULD BE ABLE TO TESTIFY TO THE COMPANY'S FIGURES OUT ANY
FINANCIAL OFFICER OR WHATEVER.

THE COURT: ANY OTHER MATTERS THAT WE NEED TO THINK
ABOUT?

MR. VOSS: I HAVE ONE.

THE COURT: YES.

PAY.

MR. VOSS: MR. CLERK DIDN'T GIVE ME THE SCAN CODE TO

THE CLERK: I GAVE IT TO YOU THIS MORNING.

THE COURT: HAVE WE DONE EXHIBITS?

THE CLERK: THEY'RE READY TO GO I JUST NEED TO TALK
TO COUNSEL.

THE COURT: WE'RE GOING TO GO OFF THE RECORD IN A

MINUTE WHAT WE WILL HAVE LET'S GO OVER MULTIPLE THINGS. THE

CLERK HAS PULLED TOGETHER THE EXHIBITS THAT WERE ADMITTED INTO

EVIDENCE AND SO EVERYBODY'S GOING TO NEED TO REVIEW AND SIGN

OFF THAT OKAY YES THOSE ARE THE ONES THAT WERE ADMITTED TO

EVERYBODY'S ON THE SAME PAGE ABOUT WHAT'S GOING INTO THE JURY

ROOM.

THEN BEFORE WE SEND IN COPIES OF THE

INSTRUCTIONS AND THE VERDICT FORM, LIKEWISE WE'RE ALL GOING TO

NEED TO SIGN OFF THAT THESE ARE THE ONES CONSISTENT WITH THE

COURT'S RULING. I UNDERSTAND YOU MAY DISAGREE WITH SOME OF

THEM BUT THEY'RE CONSISTENT WITH THE COURT'S RULINGS. SO WE

WILL HAVE A STIPULATION AND ALL THAT THAT, HERE, THESE ARE THE

ONES THAT WERE ADMITTED, THESE ARE THE ONES CONSISTENT WITH THE COURT'S RULING AND THIS IS WHAT CAN GO IN.

AGAIN, I WILL SEND IN THREE OR FOUR COPIES OF
THE INSTRUCTIONS. WE'LL SEND IN 13 COPIES OF THE VERDICT FORM
SO THAT EVERYTHING CAN TRACK THEIR OWN AND THEN WE'LL HAVE THE
BODY OF THE VERDICT FORM.

SO BEFORE WE LEAVE TODAY, IF YOU COULD TAKE A
LOOK AT THOSE EXHIBITS SO WE HAVE AT LEAST THAT OUT OF WAY AND
WE CAN BE THAT MUCH CLOSER TO GETTING THINGS INTO THE JURY.

ANY OTHER QUESTIONS?

MR. HART: NO JUDGE.

(DISCUSSION WITH CLERK.)

THE COURT: THAT'S ANOTHER STIPULATION, AND WE CAN

TAKE CARE OF IT OFF THE RECORD, BUT SOMEBODY WILL NEED TO BE

THE CUSTODIAN OF THE EXHIBITS.

MR. HART: I THINK MS. GAGNON IS THE PERFECT CHOICE FOR THAT.

THE COURT: SO THERE WILL BE A STIPULATION THAT WE'LL

NEED FOR THAT SO RETAIN CUSTODY OF THE EXHIBITS SO THAT AT

LEAST FOR THE /P ON PEALS IF THERE'S AN APPEAL FOR THEM TO BE

SUBMITTED FOR THE APPELLATE PURPOSES.

MR. VOSS: WE ALL TRUST MS. GAL.

LEFT2: FOR THE RECORD ROPE MAN ROPE MAN WILL
MAINTAIN CUSTODY JUST IN CASE.

THE COURT: WE APPRECIATED THAT.

MR. VOSS: NOW YOU KNOW WHO ACTUALLY DOES THE HARD

WORK OUT OF ALL OF US.

MR. HART: I THINK WE KNEW BEFORE.

THE COURT: ANYTHING ELSE? ALL RIGHT THEN WE WILL GO

OFF THE RECORD. THANK YOU VERY MUCH EVERYONE.

ALL COUNSEL: THANK YOU, YOUR HONOR. EVENING ADJOURNMENT.