

SUPERIOR COURT OF NEW JERSEY  
 LAW DIVISION - CIVIL PART  
 CAPE MAY COUNTY  
 DOCKET #CPM-L-265-14  
 A.D.#

JOHN PAFF	)	
PLAINTIFF	)	
	)	TRANSCRIPT
V	)	OF MOTION
	)	FOR RECONSIDERATION
CAPE MAY COUNTY	)	
PROSECUTOR'S OFFICE	)	
DEFENDANT	)	

PLACE: ATLANTIC COUNTY SUPERIOR COURT  
 ATLANTIC CITY, NJ 08401

DATE: OCTOBER 24, 2014

BEFORE:

HONORABLE NELSON C. JOHNSON, J.S.C.

TRANSCRIPT ORDERED BY:

RICHARD M. GUTMAN, ESQUIRE

APPEARANCES:

RICHARD M. GUTMAN, ESQUIRE  
 Attorney for the Plaintiff

JAMES B. ARSENAULT, JR., ESQUIRE  
 Assistant Cape May County Counsel  
 Attorney for Defendant Cape May County  
 Prosecutor's Office

JOSEPH J. RODGERS, ESQUIRE  
 Attorney for Defendant David Mayer

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1 THE COURT: Good morning, everybody.

2 MR. GUTMAN: Good morning, Your Honor.

3 MR. ARSENAULT: Good morning, Your Honor.

4 THE COURT: This is the matter of Paff versus  
5 Cape May County Prosecutor's Office, Docket  
6 #CPM-L-265-14. Good morning.

7 MR. RODGERS: Good morning, Your Honor.  
8 Joseph Rodgers here.

9 THE COURT: Okay. This is the matter of Paff  
10 versus Cape May County Prosecutor's Office, Docket  
11 #CPM-L-265-14. Let's begin with plaintiff's counsel,  
12 Mr. Gutman, want to enter your appearance?

13 MR. GUTMAN: Good morning, Your Honor,  
14 Richard Gutman for the plaintiff John Paff.

15 MR. ARSENAULT: Your Honor, good morning.  
16 James Arsenault, Assistant Cape May County Counsel, on  
17 behalf of the Cape May County Prosecutor's Office.

18 THE COURT: Mr. Rodgers.

19 MR. RODGERS: Thank you, Your Honor. Joseph  
20 Rodgers appearing on behalf of David Mayer, who is a  
21 named person in the lawsuit.

22 THE COURT: Okay. How you been, Mr. Rodgers?  
23 Haven't seen you in ages.

24 MR. RODGERS: I know, 'cause I'm always in  
25 the criminal world and you're always in civil and, of

1 course, the First Amendment world. But I can tell you  
2 that I really appreciate your letting me be on the  
3 phone. I'm with Rabbi David Weiss and family. There's  
4 a wedding this weekend.

5 THE COURT: Ah-ha, okay. Well, everybody --

6 MR. RODGERS: So --

7 THE COURT: -- everybody have a seat. I've  
8 got some questions to ask and -- and Mr. Rodgers --

9 MR. RODGERS: Gladly.

10 THE COURT: -- you can -- you can chime in at  
11 the appropriate time.

12 MR. RODGERS: Thank you.

13 THE COURT: And maybe -- maybe even with this  
14 first one.

15 MR. RODGERS: Okay.

16 THE COURT: Because are -- are Officers  
17 Hawthorne and Mayer private citizens or public persons  
18 for purposes of these proceeding as defined --

19 MR. RODGERS: Well, --

20 THE COURT: -- by -- as defined by New Jersey  
21 Supreme Court?

22 MR. RODGERS: Well, a private citizen at the  
23 moment because he's retired.

24 THE COURT: I understand that. But in  
25 terms --

1 MR. RODGERS: But --

2 THE COURT: -- of his activities, what was  
3 he?

4 MR. RODGERS: He was a police captain in the  
5 Wildwood Crest Police Department.

6 THE COURT: Public person or private person?

7 MR. RODGERS: Public person.

8 THE COURT: Okay. I'm glad -- I'm glad we  
9 got that out of the way.

10 MR. RODGERS: Thank you.

11 THE COURT: Mr. Arsenault, are the  
12 Prosecutor's letters Brady letters or -- or what are  
13 they?

14 MR. ARSENAULT: They're not, Judge. And I  
15 tried to articulate this the first time we were before  
16 the Court.

17 THE COURT: I -- I know they aren't. So --  
18 So we're in agreement on that. That's good.

19 MR. ARSENAULT: They --

20 THE COURT: Okay. All right. Now prior to  
21 the issuance of these letters, Mr. Arsenault, what type  
22 of investigation was done on that?

23 MR. ARSENAULT: My understanding, Judge, that  
24 at the request of the Borough of Wildwood Crest, the  
25 Cape May County Prosecutor's Office assigned a

1 representative from the County detectives to act as a  
2 liaison between the Wildwood Crest Police Department  
3 and the County Prosecutor's Office for purposes of  
4 allowing the Prosecutor to review not only allegations  
5 that involved Captain Mayer and Lieutenant Hawthorne,  
6 but overall the operations of the Wildwood Crest Police  
7 Department. It was, to my understanding, broader in  
8 scope than just as to those superior officers of the  
9 police department. But in the course of that review  
10 allegations or concerns with regard to Captain Mayer  
11 and Lieutenant Hawthorne became apparent to the  
12 Prosecutor to the degree that as a part of his close  
13 out and -- and transition from providing a liaison role  
14 to returning control back to the municipality. The  
15 Prosecutor deemed it important to address a series of  
16 correspondence to the mayor, who is, to my  
17 understanding, also the director of public safety and  
18 their commission form of government.

19 THE COURT: Okay. Now let the -- Before we  
20 go any further I believe Officer Hawthorne's here?

21 MR. HAWTHORNE: Yes, sir.

22 THE COURT: Okay. Just want the record to  
23 reflect he's in the courtroom and -- and he's welcome  
24 to be here. This is a public proceeding.

25 MR. HAWTHORNE: Thank you.

1 THE COURT: I'll take these -- I'm going to  
2 take the officers one by one, Mr. Arsenault.

3 MR. ARSENAULT: Yes, sir.

4 THE COURT: Does any of the conduct of  
5 Officer Hawthorne as described in the Prosecutor's  
6 letter to the mayor of April 15, 2014, does any of that  
7 support a prima facie finding that New Jersey law was  
8 violated?

9 MR. ARSENAULT: And before I speak out of  
10 turn I'm actually going to make sure. No. I don't  
11 believe any of the correspondence broadly reaches the  
12 conclusion that there was a finding of -- of -- of a  
13 breach of any New Jersey statute or regulation  
14 applicable to police officers.

15 THE COURT: Okay.

16 MR. ARSENAULT: I believe the Prosecutor took  
17 the -- the opportunity in those letters to advise the  
18 municipality that in the event --

19 THE COURT: Well, we're going to get to that.

20 MR. ARSENAULT: Okay.

21 THE COURT: Yeah. 'Cause see, I think that  
22 has --

23 MR. ARSENAULT: No. I -- I don't believe --

24 THE COURT: I think that has pretty  
25 significant consequences, too, in terms of whatever

1 decision I have to make. Is there an internal affairs  
2 investigation of Off -- Officer Hawthorne's conduct  
3 currently pending in the police department of Wildwood  
4 Crest?

5 MR. ARSENAULT: That I do not know.

6 THE COURT: Well, is he -- Let's be candid.  
7 I -- You know, I -- I did read Prosecutor Taylor's  
8 certification and he threw it up on the wall, but he  
9 didn't tell me whether one was going on or not.

10 MR. ARSENAULT: Well, because --

11 THE COURT: I mean is -- isn't that --

12 MR. ARSENAULT: I'm -- I'm --

13 THE COURT: I think that's germane to a  
14 decision that I may or may not have to make here.

15 MR. ARSENAULT: Well, the Prosecutor's  
16 Office --

17 THE COURT: Well, let's hear -- Hold on.  
18 Officer Hawthorne is that an IA investigation going on?

19 MR. HAWTHORNE: Not to my knowledge, Your  
20 Honor.

21 THE COURT: Thank you.

22 MR. ARSENAULT: And -- And -- And I -- And I  
23 don't mean to be coy with Your Honor. While a  
24 municipal police --

25 THE COURT: And he would -- he would know.

1           MR. ARSENAULT: He would. But while a  
2 municipal police department may ask the County  
3 Prosecutor to assist with an internal affairs  
4 investigation, --

5           THE COURT: Correct.

6           MR. ARSENAULT: -- primarily they would be  
7 conducted by the juris -- by the local jurisdiction.

8           THE COURT: Yeah. Correct. Okay. But --  
9 So -- So I wanted -- Six months ago a significant  
10 letter gets written concerning the conduct of two  
11 police officers. The question I have bec -- And I  
12 asked this question because of the Prosecutor's  
13 certification. In his certification he makes reference  
14 to an internal affairs investigation or administrative  
15 proceedings. Whether or not I can -- I can dig it out  
16 and put my finger on it, I think it's like paragraph 4  
17 or 5. It's -- It's early in -- It's early in the  
18 certification, but long and short of it is if there was  
19 an ongoing internal affairs investigation, that might  
20 say to me, all right, let's -- let's proceed a little  
21 bit more, you know, by the step so to speak, because I  
22 need to know when those -- when are those proceedings  
23 coming to a conclusion so that, you know, I don't have  
24 anybody's rights. And I would -- I would be saying to  
25 Mr. Gutman, you know, talk me down. Tell me why I



1 shouldn't be treading water for awhile until the  
2 internal affairs investigation is over. But there is  
3 no internal affairs investigation, so that's not a  
4 concern for me. All right. So other than the issuance  
5 of the letter, what actions have been taken against --  
6 against Off -- against Officer Hawthorne? Anything  
7 that you know about? Anything?

8 MR. ARSENAULT: From the County's  
9 perspective, none.

10 THE COURT: Okay. All right. Now does --  
11 does anybody -- does anybody in the public besides  
12 Mayor Groon have an interest in knowing about conduct  
13 which the Prosecutor has termed serious, deceitful,  
14 and/or untruthful. Does anybody in the public have an  
15 interest in that besides the mayor?

16 MR. ARSENAULT: Yes.

17 THE COURT: I would hope so.

18 MR. ARSENAULT: There are classes of people  
19 who would have a right.

20 THE COURT: I would hope so.

21 MR. ARSENAULT: If not a right, then at least  
22 a -- a very compelling reason to have access to that  
23 information.

24 THE COURT: All right. Now Officer  
25 Hawthorne's still on the force, correct?

1 MR. HAWTHORNE: Yes, sir.

2 THE COURT: Okay.

3 MR. HAWTHORNE: I -- I am on terminal leave.

4 THE COURT: Pardon me?

5 MR. HAWTHORNE: I am on terminal leave.

6 THE COURT: Why don't you come forward and I  
7 want to --

8 MR. HAWTHORNE: Okay.

9 THE COURT: -- administer the oath to you,  
10 because some of these things you've got -- I don't know  
11 how much further we're going to go with questions. You  
12 can stand right there and raise your right hand.

13 OFFICER M I C H A E L H A W T H O R N E, SWORN

14 THE COURT: Okay. Now you -- you've replied  
15 in monosyllable replies to two earlier questions. Were  
16 both those truthful?

17 MR. HAWTHORNE: They absolutely were.

18 THE COURT: Okay. I -- And I'm -- And I'm  
19 not saying that they weren't. You can have a seat  
20 right there. Okay. Now as I read the Prosecutor's  
21 letter, and -- and I'm -- we're going to get to Officer  
22 Mayer in a moment, Mr. Rodgers.

23 MR. RODGERS: I know.

24 THE COURT: As -- As I read the Prosecutor's  
25 letter concerning Officer Hawthorne, he's made a

1 decision, and his decision is this gentlemen is not  
2 going to be testifying in proceedings that I'm involved  
3 in because I'm going to have to issue a Brady letter.  
4 Is that decision final?

5 MR. ARSENAULT: I am unaware of any  
6 correspondence post the letter of April 15, 2004 (sic)  
7 to Mayor Groom that impacts or modifies the thinking of  
8 the Prosecutor on that issue.

9 THE COURT: So it would -- it would -- it  
10 would -- it would appear, and -- and -- and tell me if  
11 I'm wrong, but it would appear that the Prosecutor's  
12 decision does reduce Officer Hawthorne's ability to be  
13 actively involved in criminal investigations, does it  
14 not?

15 MR. ARSENAULT: It -- Your Honor asked if  
16 there are Brady letters. Broadly, it's notice of an  
17 intent to issue a Brady letter if the circumstances  
18 presented themselves.

19 THE COURT: Right. So -- But he's saying --

20 MR. ARSENAULT: And yes, that does --

21 THE COURT: -- he's saying to --

22 MR. ARSENAULT: -- have consequences.

23 THE COURT: -- the mayor I'm not going to let  
24 this guy testify in criminal proceedings that I'm  
25 involved in.

1 MR. ARSENAULT: Yes.

2 THE COURT: So doesn't that reduce this  
3 individual's effectiveness as a police officer?

4 MR. ARSENAULT: Yes, it -- I -- I believe it  
5 would.

6 THE COURT: Okay. All right. I -- I'm not  
7 just trying to -- trying to get a handle on things.  
8 Now, Mr. Rodgers, your client has -- your client has  
9 retired. When did he retire?

10 MR. RODGERS: He retired as a consequence of  
11 an administrative action that is the subject of this  
12 whole discussion. And what happened was --

13 THE COURT: What's the date?

14 MR. RODGERS: -- he was represented --

15 THE COURT: What was the date? What was  
16 the -- You can tell me all that later. What was the  
17 date?

18 MR. RODGERS: Okay. Judge, I don't a file  
19 with me, because I'm in a public place, but it was  
20 before the Brady letter was issued.

21 MR. HAWTHORNE: May 1<sup>st</sup>, Your Honor.

22 MR. RODGERS: Or around the same time.

23 THE COURT: All right. May -- He's -- Mr. --  
24 Officer Hawthorne just stood up and said to me that  
25 Mayer retired on May 1<sup>st</sup>.

1 MR. RODGERS: That sounds just about right.

2 THE COURT: Okay. Good. All right. Now  
3 other than that letter were any actions taken against  
4 Officer Mayer?

5 MR. RODGERS: Well, there were administrative  
6 proceedings, as a result of which the decision was made  
7 for him to retire, and the Prosecutor issued the Brady  
8 letter to make sure that the retirement would preclude  
9 him from coming back and being in law enforcement.

10 THE COURT: Okay. Interesting. Interesting.  
11 Okay. All right. So was there an IA investigation  
12 done on him?

13 MR. RODGERS: Yes, there was.

14 THE COURT: Okay. And -- And who conducted  
15 that?

16 MR. RODGERS: I think --

17 THE COURT: The -- The --

18 MR. RODGERS: -- it was conducted by the  
19 Cape -- Cape May County Prosecutor's Office detective,  
20 and I'm assuming -- And I don't remember, because I  
21 didn't handle it, I assume the Wildwood Crest  
22 Department played a role, as well as the County  
23 Prosecutor.

24 THE COURT: All right. Officer Hawthorne's  
25 eager to tell me something. Go ahead.

1 MR. HAWTHORNE: Well, I just know the facts,  
2 Your Honor, and I apologize.

3 THE COURT: That's okay. Don't -- You --  
4 Don't apologize.

5 MR. HAWTHORNE: The -- Initially the IA was  
6 going to be conducted by a captain in the Sheriff's  
7 Department, then it turned out was not independent.  
8 And the second officer that was hired is a retired  
9 State Police officer by the nam -- by the name of Major  
10 James Fallon. He conducted the IA as a result of the  
11 Wildwood Crest Borough hiring him to do so.

12 THE COURT: Okay.

13 MR. RODGERS: That sounds right to me, Judge.  
14 I know there was a detective from the State Police  
15 involved. And I think the County Prosecutor as well.  
16 So that sounds correct.

17 THE COURT: All right. So some of the  
18 questions that I -- that I asked regarding Officer  
19 Hawthorne really don't apply to your guy because he has  
20 left the stage so to speak, and he's not going to be  
21 returning?

22 MR. RODGERS: Well, he -- with that Brady  
23 letter he can't return to any stage in Cape May County.  
24 That's the concern that I have.

25 THE COURT: Well, --

1 MR. RODGERS: Apparently --

2 THE COURT: -- how old a gentleman --

3 MR. RODGERS: -- he --

4 THE COURT: -- is your guy? How old is he?

5 MR. GUTMAN: He's like late forties.

6 THE COURT: Wow. Late forties.

7 MR. HAWTHORNE: Fifty-three. He's fifty-  
8 three.

9 THE COURT: He's fifty-three.

10 MR. RODGERS: Well, I'm not bad.

11 THE COURT: Okay.

12 MR. RODGERS: Okay. I gave him a couple of  
13 years.

14 THE COURT: Yeah, okay. But I -- I -- I -- I  
15 guess -- And this -- this question is directed to Mr.  
16 Arsenault and I'll let him answer it first, and then to  
17 Mr. Rodgers. I'll even let Mr. Hawthorne chime in in a  
18 moment. Don't the borough residents have a right to  
19 know about these things, Mr. Arsenault?

20 MR. ARSENAULT: The right to the borough,  
21 Judge, or citizens of the borough would be rights that  
22 the Court would balance under common law.

23 THE COURT: We're going -- We're going to get  
24 to that. Yeah.

25 MR. ARSENAULT: Under the common law testing.

1 And I would argue that under the case law that exists  
2 to date any interest that they have -- And I can't say  
3 in -- in candor to the Court that they wouldn't have an  
4 interest, but any interest that they have I would  
5 submit is subordinate --

6 THE COURT: But you'll -- Fine. You'll  
7 concede they --

8 MR. ARSENAULT: -- to the other interests --

9 THE COURT: -- they do have an interest?

10 MR. ARSENAULT: Yes, sir.

11 THE COURT: And -- And -- And it's my job to  
12 balance it?

13 MR. ARSENAULT: Correct.

14 THE COURT: Okay. All right. Good. Good.  
15 We're all on the same page. And again, I -- I have --  
16 You're going to find out in a moment that I haven't --  
17 I haven't made a decision on anything, you know, in  
18 terms of where we have to go. This may get more  
19 interesting. Mr. -- Mr. -- Mr. Rodgers, what's your  
20 thoughts?

21 MR. RODGERS: Yes. Well, my thought is this.  
22 At the -- At kind of the apex of the investigation Mr.  
23 Subin communicated with the County and was told that  
24 unless he was retired, that they were going to go  
25 forward with an administrative proceeding. And, of



1 course, if they did it could compromise his pension, so  
2 he retired. After he retired, then the issue -- Around  
3 the same time is when that letter comes out, which  
4 could preclude him from being a witness if that were to  
5 be brought forth, you know, at some trial. I mean I --  
6 that's what he's exposed to. Although he is retired at  
7 the moment and collecting his pension.

8 THE COURT: Okay. So he -- discretion is the  
9 better part of valor. He chose not to fight that fight  
10 and chose to retire.

11 MR. RODGERS: Yeah.

12 THE COURT: Mr. -- Mr. Hawthorne, what do you  
13 think about the borough's residents right to know about  
14 these things?

15 MR. HAWTHORNE: Well, quite frankly, Your  
16 Honor, I am a borough resident and I believe they have  
17 the right to know. And I'd welcome overwhelmingly  
18 involvement in the release of these letters.

19 THE COURT: Okay. Well, --

20 MR. HAWTHORNE: And the borough residents.

21 THE COURT: -- we're going -- Now let me ask  
22 you this though. Are you waiving any -- any defense  
23 that you might be able to assert? And -- And I'm not  
24 even -- You may want to consult (sic) -- con -- consult  
25 with legal counsel, 'cause -- 'cause -- Let me -- Let

1 me -- Let me go right to the nub of what I think's  
2 involved here. I mean, Mr. Arsenault, the Prosecutor's  
3 certification of September 18<sup>th</sup> (sic) -- September 8<sup>th</sup>,  
4 2014 I think raises legal arguments that should have  
5 been raised in the initial responsive of pleadings, and  
6 they weren't. I mean I -- I probably should just  
7 ignore them, but I'm not going to, because I respect  
8 the Prosecutor's Office, I respect the police officers,  
9 and I respect the -- the right of the citizens to  
10 understand what -- what's happening here, and I  
11 certainly respect Mr. Paff's rights to disclose  
12 whatever he thinks is in the interest of the public and  
13 himself to learn about, so I -- you know, every --  
14 everybody's going to be in equal footing here, but  
15 given the seriousness of these public records, because  
16 that's what we're talking about, these two letters,  
17 namely the discussion of serious, deceitful, and/or  
18 untruthful conduct by people sworn to uphold the law,  
19 aren't they, meaning Mayer -- And we're going -- And  
20 Mr. -- Mr. -- Mr. Hawthorne's going to get a chance to  
21 speak after Mr. Rodgers, but aren't they, meaning Mayer  
22 and Rodgers (sic), obligated to appear before me and  
23 explain why their purported rights of confidentiality  
24 should weigh heavier than the rights of the taxpayers  
25 to know that they have effectively lost the services of

1 two police officers. Now we have -- Mayer's retired.  
2 And -- And he retired in this context. Officer  
3 Hawthorne, you're not retired. You're -- You said  
4 you're on leave?

5 MR. HAWTHORNE: I have an exit agreement with  
6 the borough.

7 THE COURT: You have an exit --

8 MR. HAWTHORNE: Yes, sir.

9 THE COURT: -- agreement with the borough?  
10 So you're retiring, too?

11 MR. HAWTHORNE: I have to.

12 THE COURT: Okay.

13 MR. HAWTHORNE: I have no choice.

14 THE COURT: So that's -- Okay. All right.  
15 See I thought that was the upshot of those letters.  
16 So -- So you're both confirming my instincts. All  
17 right. But, Mr. Rodgers, --

18 MR. RODGERS: Yeah.

19 THE COURT: -- shouldn't you -- And -- And  
20 if -- if -- if your client wants me to withhold these  
21 letters from Mr. Paff, shouldn't he come before me and  
22 explain to me why his confidentiality rights are so  
23 important?

24 MR. RODGERS: Absolutely. And I'd like the  
25 opportunity to do that and have the Court rule.

1 THE COURT: Thank you. Mr. Hawthorne?

2 MR. HAWTHORNE: Yes, sir.

3 THE COURT: -- are -- are you -- do you wish  
4 the letter concerning you to be released or not?

5 MR. HAWTHORNE: Well, Your Honor, I think  
6 sunlight is the best disinfectant, and this should have  
7 never come to be, and I think the real precedence that  
8 may come out of this case is that honest police  
9 officers will be afraid to come forward when they have  
10 information, and that's what I'm fearful of. My career  
11 is over. And -- But I'm -- I'm fearful for the men  
12 behind me that knowing what happened to Mike Hawthorne  
13 they're just going to keep their mouth shut and allow  
14 injustices to go on. That's what my fear is.

15 THE COURT: Well, I have to -- I have to be  
16 precise.

17 MR. HAWTHORNE: Yes, sir.

18 THE COURT: You have -- I have a letter of  
19 April 15, 2014 and you know -- and you know the letter  
20 I'm referring to.

21 MR. HAWTHORNE: Yes, sir.

22 THE COURT: It's from the Prosecutor to Mayor  
23 Groon. You're under oath and I'm looking right at you  
24 and I can tell you're mature and responsible and  
25 intelligent. Do you want that letter released or not?

1           MR. HAWTHORNE: Your Honor, I don't want it  
2 released by itself, but if all four are released at the  
3 same time I think that is the best avenue to repair my  
4 reputation, because I think the differences in the two  
5 letters are stark and dramatic. I don't know how far  
6 I'm allowed to go into the nuts and bolts of the case  
7 without --

8           THE COURT: Well, today you're not going  
9 to --

10          MR. HAWTHORNE: Okay.

11          THE COURT: -- get into the nuts and bolts of  
12 the case.

13          MR. HAWTHORNE: Well, Your Honor, I saw --

14          THE COURT: But what you -- what you -- what  
15 you have said to me, and I listened to you carefully,  
16 and I'm going to respect it, is that you want your  
17 letter released with the other letters?

18          MR. HAWTHORNE: Only. Yes, sir.

19          THE COURT: Only. And you --

20          MR. HAWTHORNE: Yes.

21          THE COURT: And you -- And you want -- And  
22 you want it released within the context of your ability  
23 to explain it?

24          MR. HAWTHORNE: Yes.

25          THE COURT: Well, you're going to be given

1 that chance. The motion for reconsideration is granted  
2 in light of the Prosecutor's certification and in light  
3 of some of the things that I've learned today from both  
4 counsel for Mr. Mayer and the representations of Mr.  
5 Hawthorne. And there will be a date, which I'll look  
6 at my calendar and establish it, where we're going to  
7 have a plenary hearing, and I would want Mr. -- Mr.  
8 Mayer, retired Mayer, and Mr. Hawthorne here, and you  
9 certainly have the right to have legal counsel at that  
10 time --

11 MR. HAWTHORNE: I do have an attorney, Your  
12 Honor. I just didn't tell him I was coming today.

13 THE COURT: Well, he -- he might -- he might  
14 have told you that wasn't such a good thing.

15 MR. HAWTHORNE: Well, Your Honor, sometimes  
16 you've got to do what your gut tells you to do.

17 THE COURT: Okay. I understand that, too.  
18 Will -- Will you have legal counsel at the time of the  
19 plenary hearing?

20 MR. HAWTHORNE: I -- I -- I will.

21 THE COURT: Okay. Who is that?

22 MR. HAWTHORNE: David Meyer.

23 THE COURT: Okay.

24 MR. HAWTHORNE: If --

25 THE COURT: Didn't --

1 MR. HAWTHORNE: If he's not --

2 THE COURT: Didn't --

3 MR. HAWTHORNE: -- perturbed at me.

4 THE COURT: Okay. Yeah. Dave -- Dave --  
5 David -- David -- David Meyer used to be in the  
6 Prosecutor's Office didn't he?

7 MR. HAWTHORNE: That is absolutely correct.

8 THE COURT: Okay. Yeah. He's a very  
9 capable lawyer.

10 MR. HAWTHORNE: Yeah, he is.

11 THE COURT: I -- I know who he is, okay.

12 Well, we -- I have all good lawyers in front of me  
13 and -- and it's a treat.

14 UNIDENTIFIED SPEAKER: So tell Mr. Rodgers --

15 MR. RODGERS: Thank you, Your Honor.

16 THE COURT: I'm -- I'm not kidding you.  
17 It's -- It's a treat to have good -- It's a treat to  
18 have good lawyers in front of me, especially if I'm  
19 going to have four at once, because very often, you  
20 know, I don't have four at once. I have one good one  
21 and one (indiscernible word) -- I'm in good shape, so  
22 that -- that -- that's a good thing here. I need to  
23 look at my calendar. I'm going to -- Here's what I'm  
24 going to say to you. And -- And -- And if we have to  
25 coordinate dates and change things we can do that.

1 It's probably, folks, going to have to be in December.  
2 And the reason I say that is because November is just  
3 about the worst month in the judiciary for getting  
4 anything done. You have election day. You have  
5 Veteran's day. You have Thanksgiving. You have  
6 judicial college. And it's one of the least productive  
7 months of the year for the judiciary, because we got  
8 things that, you know, take us out of the courthouse.  
9 So we're going to pick a date in December. Right now  
10 I'm thinking -- And -- And I'm going to have to check  
11 this with -- with my -- with my secretary. I'm  
12 thinking Friday, December 12<sup>th</sup> is probably going to be a  
13 very good day. Does that work for everybody?

14 MR. HAWTHORNE: Absolutely.

15 MR. GUTMAN: For me it does, Your Honor.

16 THE COURT: Mr. Gutman, thank you. Mr.  
17 Arsenault, does that work for you?

18 MR. ARSENAULT: We'll make it work, Judge.

19 THE COURT: Mr. -- Mr. Hawthorne, you just  
20 said -- You're going to speak -- let Mr. Meyer know  
21 right away.

22 MR. HAWTHORNE: Yeah. Absolutely.

23 THE COURT: Okay. Mr. Rodgers, how about  
24 you?

25 MR. RODGERS: Judge, I'm looking at my



1 calendar right now. Just hang on one sec. December  
2 12<sup>th</sup> looks fine, Your Honor.

3 THE COURT: Okay. Now what I'll -- what I'll  
4 do is issue a letter that will go out today. It'll be  
5 an order that'll go out today. But basically what I'm  
6 going to -- what I'm going to require is that counsel  
7 for Mr. -- Mr. Mayer and Mr. Hawthorne provide the  
8 Court with their positions on why they're entitled to  
9 continued confidentiality documents by a certain date,  
10 and we'll give Mr. Gutman the opportunity to reply to  
11 that. And -- And it'll be a generous schedule,  
12 because, you know, this is only October. So sometime  
13 in -- sometime in November. Everybody will file their  
14 pleadings. We'll get here on December 12<sup>th</sup> and those of  
15 you who work with me know that I do not procrastinate.  
16 You know, I -- I try to be decisive, so my goal will be  
17 to make a decision on that day. And if it isn't that  
18 day, it'll be shortly after that day. I don't -- I  
19 don't procrastinate on anything. So I will enter an  
20 order establishing a schedule, and tentatively, unless  
21 my secretary tells me that I have goofed up, December  
22 12<sup>th</sup> we will get together again and we'll be 10:30 that  
23 morning.

24 MR. RODGERS: Thank you, Your Honor.

25 THE COURT: And we'll stay 'til we get it

1 done. Okay. So where are you physically, Mr. Rodgers?

2 MR. RODGERS: Oh, do you really want me to  
3 answer that?

4 THE COURT: No. But --

5 MR. RODGERS: I'm with Rabbi -- I'm with  
6 Rabbi David Weiss and some close friends and the groom,  
7 and they wanted me to come with them to the Linwood  
8 Country Club to play golf. Now --

9 THE COURT: Well, you don't have to --

10 MR. RODGERS: -- I hate to say that, but I --

11 THE COURT: I -- Well, I --

12 MR. RODGERS: It's true.

13 THE COURT: Okay.

14 MR. RODGERS: The wedding's this weekend and  
15 they're good friends of ours.

16 THE COURT: Okay. I -- Well, I appreciate  
17 your making yourself available by phone, because if you  
18 weren't then I would have much difficulty scheduling  
19 things.

20 MR. RODGERS: Well, -- And I really  
21 appreciate your letting me do this, Your Honor. It's  
22 allowed me to be with the wedding party and I knew it  
23 was important to be available for the Court.

24 THE COURT: I understand. Okay. Mr.  
25 Hawthorne, any -- any concerns on your part?

1 MR. HAWTHORNE: No, Your Honor, just one  
2 question if I may?

3 THE COURT: Sure.

4 MR. HAWTHORNE: On your hearing on December  
5 12<sup>th</sup>, the result of that hearing may just be the release  
6 of the letters?

7 THE COURT: Correct.

8 MR. HAWTHORNE: That's it?

9 THE COURT: Correct.

10 MR. HAWTHORNE: Release of the letters.  
11 Thank you. I appreciate that, sir.

12 THE COURT: Okay. I don't -- I -- That's the  
13 only issue before the Court, right, Mr. Gutman?

14 MR. GUTMAN: The only issue I remember, Your  
15 Honor. Yes, Your Honor.

16 MR. RODGERS: Well, Judge, I -- I can  
17 indicate something that might answer that question.

18 THE COURT: Go ahead. Go ahead.

19 MR. RODGERS: The letter -- The letter is  
20 going to raise questions --

21 THE COURT: Sure it could.

22 MR. RODGERS: -- that could lead Mr. Gutman,  
23 or Mr. Hawthorne, or anybody to have a concern about  
24 what's behind the letter. So I think there's two  
25 issues, what -- the letter itself and what is behind

1 the letter. So I'll try to address both, but I -- and  
2 my position is, but I think it cuts both ways, because  
3 that could lead to a second request. I -- I saw (sic)  
4 some hesitation on Mr. -- or heard some hesitation on  
5 Mr. Gutman's part, 'cause it's very logical that he  
6 could say, well, once I see the letters, what's behind  
7 the letters.

8 THE COURT: I -- The answer to that is I  
9 agree. When I say I agree, I agree that when you read  
10 the letters you might say is there something more, and  
11 then we'll have to address that at that time.

12 MR. RODGERS: Okay.

13 THE COURT: And -- And -- And -- And -- And,  
14 Mr. Arsenault, you're -- you're being given the heads  
15 up right now that there is going to be a concern. You  
16 may want to confer with the Prosecutor's Office. There  
17 is going to be a concern that if I release those letter  
18 that may be, you know, opening the door for more stuff.

19 MR. ARSENAULT: Understood, Judge.

20 THE COURT: And if I don't release the  
21 letters then that's the end of the conversation.

22 MR. RODGERS: Okay.

23 THE COURT: But the mot -- the motion for  
24 reconsideration is granted in light of what I consider  
25 to be important public interest and interest of

1 confidentiality, but in order to -- you know, to pursue  
2 the proper thing here in terms of balancing the  
3 interests, I need to have the testimony of both of the  
4 affected individuals under oath in my courtroom with  
5 representation of counsel. That's going to occur on  
6 December 12<sup>th</sup>, unless I have screwed up, and then I'll  
7 give you a new date. In fact, why don't you hold on.  
8 Hold on. Ask Cheryl. Okay. You can -- I'd like --  
9 I'd rather you leave here with certainty and then --  
10 and then all I'll do is look at the calendar and --  
11 and -- and -- and backtrack and plug in a couple of  
12 dates for Mr. -- for the Prosecutor's Office, for Mr.  
13 Hawthorne's counsel, and Mr. Mayer's counsel to make  
14 their submissions, Mr. Gutman replies, and then we'll  
15 have the hearing. I want everybody to have the ability  
16 to articulate their position, but I think December --  
17 December 12<sup>th</sup>'s a safe date. My law clerk is checking  
18 that right now with my assistant.

19 MR. HAWTHORNE: Obviously, Your Honor, I  
20 can't speak for Mr. Meyer though. I will call him  
21 right away.

22 THE COURT: Yeah.

23 UNIDENTIFIED SPEAKER: Your (indiscernible  
24 few words) trial should be done by then?

25 THE COURT: Oh, yeah. Yeah. Please.

1 UNIDENTIFIED SPEAKER: You don't have  
2 anything that Friday.

3 THE COURT: Okay. All right. So Friday,  
4 December 12<sup>th</sup> at 10:30 a.m. The date's firm. And we'll  
5 see everybody then and I'll receive submissions before  
6 then.

7 MR. RODGERS: Thank you very much, Your  
8 Honor. Thank you, gentlemen.

9 THE COURT: Thank you. Everybody have a good  
10 day.

11 MR. GUTMAN: Thank you, Your Honor.

12 MR. RODGERS: Okay.

13 MR. ARSENAULT: Thank you, Judge.

14 MR. HAWTHORNE: Thank you, sir.

15 THE COURT: Okay. Everybody have a good  
16 weekend.

17 MR. HAWTHORNE: Thank you, sir.

18 MR. GUTMAN: You, too.

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

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Agency Name

*November 5, 2014*

Date