

Exhibit X

Page 1

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: CACE 15-000072

BRADLEY J. EDWARDS, and
PAUL G. CASSELL,

Plaintiffs,
vs.
ALAN DERSHOWITZ,
Defendant.

TRANSCRIPT OF NON-PARTY VIRGINIA ROBERTS'
EMERGENCY MOTION TO SEAL

DATE TAKEN: December 18, 2015
TIME: 9:26 a.m. - 9:45 a.m.
PLACE: Broward County Courthouse
201 Southeast 6th Street
Fort Lauderdale, Florida 33301
BEFORE: Thomas M. Lynch, IV, Circuit Court Judge

This cause came on to be heard at the time and place aforesaid, when and where the following proceedings were reported by:

Michele Cameron
Magna Legal Services
866-624-6221

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1 APPEARANCES:

2 On behalf of Non-Party, Virginia Roberts:

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4 BOIES, SCHILLER & FLEXNER, LLP
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5 Fort Lauderdale, Florida 33301
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6

7 On behalf of the Defendant:

8 STEVEN R. SAFRA, ESQUIRE
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N O E X H I B I T S M A R K E D

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1 (The following proceedings were had:)

2 THE COURT: Good morning, everyone.

3 MS. MCCAWLEY: Good morning, Your Honor.

4 MR. SAFRA: Good morning.

5 THE COURT: Sorry for the delay.

6 Do we have anything other than what I
7 reviewed, the Emergency Motion to Seal?

8 MS. MCCAWLEY: There's the Emergency
9 Motion to Seal that we filed.

10 We also filed, on Wednesday, a Motion to
11 Strike that affidavit, which is not set for
12 today.

13 THE COURT: Okay.

14 MS. MCCAWLEY: And counsel would like an
15 opportunity to respond to that; so I will
16 just briefly address that, but not in
17 substance.

18 THE COURT: I just wanted to make sure.

19 MS. MCCAWLEY: Sure.

20 MR. SAFRA: And our opposition to the
21 emergency motion.

22 THE COURT: Yes.

23 MR. SAFRA: Okay.

24 THE COURT: I also read about everything
25 in the Sunday Times.

1 MS. MCCAWLEY: Your Honor, may I
2 proceed?

3 THE COURT: Sure.

4 MS. MCCAWLEY: Great, thank you.

5 We're here before you today on
6 non-party, Virginia Roberts', Emergency
7 Motion to Seal the affidavit of Alan
8 Dershowtiz. The issue before the Court is
9 discrete. It's a single issue, and that is
10 whether or not Mr. Dershowitz violated the
11 settlement privilege by filing his affidavit
12 in the public file with this Court.

13 To give you some background, how this
14 transpired, Mr. Dershowitz was set for
15 deposition in this case. As you know, he is
16 a party in this case. I attended that
17 deposition on behalf of non-party, Virginia
18 Roberts. During the course of that
19 deposition, there were a number of issues
20 that transpired. Mr. Dershowitz was
21 difficult to control. He would make speaking
22 answers that were not pertinent to the
23 question that had been asked. In the course
24 of that, he started to try to disclose what I
25 allege are confidential settlement

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1 discussions that occurred amongst my client,
2 her lawyers, and Mr. Dershowitz, along with
3 some other individuals. I objected to those.
4 I tried to talk over -- he continued to talk
5 over me. I tried to stop that from
6 happening. Eventually, his counsel assisted
7 in that and got him to hold off, over my
8 objections, so that we could have the Court
9 hear that issue.

10 It would have been appropriate for them
11 to present their Motion in Limine asking the
12 Court to rule on those objections. That
13 piece of their motion is something that the
14 Court would commonly see.

15 What is different about their Motion in
16 Limine is Mr. Dershowitz intentionally
17 attached, and his lawyers allowed him to
18 attach to that Motion in Limine, an
19 affidavit -- I think it's five or six pages
20 long -- where he puts in the public court
21 file everything that he proclaims occurred
22 during those confidential settlement
23 discussions.

24 So my objection was on file. Rather
25 than allowing the Court to rule on that

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1 objection, he proceeded to put in the public
2 court file his litany, we which contend is a
3 misrepresentation of what occurred during
4 those confidential settlement discussions.

5 Then he proceeded to leak that affidavit
6 to the New York Times, because he knew they
7 were doing a story, and he wanted that
8 information to go to the Times. This
9 transpired very quickly; that is why I filed
10 an emergency motion. I don't take that
11 lightly.

12 THE COURT: Can I ask a question?

13 MS. MCCAWLEY: Sure.

14 THE COURT: Is there a dispute as to
15 that quote, unquote, leak?

16 MR. SAFRA: Yes.

17 THE COURT: Okay.

18 MS. MCCAWLEY: Oh, is there a dispute?

19 Okay. I wasn't aware that there was a
20 dispute. I thought that was --

21 THE COURT: I wasn't, either; so that's
22 why --

23 MS. MCCAWLEY: No, that's good to know.

24 With respect to what transpired, he knew
25 the objections were sitting.

1 Now, the basis of the Motion in Limine,
2 his argument, through his lawyers, is that
3 these were not settlement discussions. In
4 other words, there's no protection here; he's
5 entitled to say whatever he wants about those
6 conversations because they were not
7 settlement discussions.

8 We have been very careful -- my partner,
9 David Boies, who is the Chairman of my
10 firm -- was very careful not to reveal any of
11 those conversations because we contend they
12 are settlement discussions. But if the Court
13 would allow me, I'd like to submit in camera,
14 for your review, nothing that reveals the
15 settlement discussions, but an e-mail from
16 Mr. Dershowitz's team that characterizes this
17 exact issue as being, quote, This is being
18 sent to you as part of a process of
19 negotiation, hopefully leading to a
20 resolution of the matter involving
21 in Dershowitz and Ms. Roberts.

22 Then the documents attached to that,
23 which I will not submit to the Court because
24 we contend that's part of the confidential
25 settlement process, were labeled

1 "Confidential negotiation purposes only".

2 It is shameless that they came before
3 this Court and told the Court that these were
4 not confidential settlement negotiations
5 when, in their own words, in this negotiation
6 process, they labeled them as such.

7 Your Honor, that's sanctionable conduct.

8 We clearly contend that this was a
9 confidential process. The whole purpose of
10 Statute 90.408 that deals with settlement
11 discussions amongst parties is to allow
12 parties to freely discuss those issues to
13 resolve a matter without worrying about a
14 repercussion that something said during those
15 confidential negotiations could be used
16 against their client. That is the whole
17 purpose. That's why we have this protection.

18 There's also the mediation privilege
19 protection, which is set forth in 44.403.
20 And while there was not a mediator, per se,
21 attending these, that statute, the Florida
22 legislature also protected conversations
23 leading up to that mediation. And as you
24 know, in this case, the parties have engaged
25 in a mediation with Judge Streitfeld. All of

1 these conversations were efforts by the
2 parties to try to find resolution of the
3 matters between the issues at stake in this
4 case; so for them to file a motion saying
5 that these were not confidential settlement
6 discussions, I think, is sanctionable
7 conduct. I contend that it is.

8 The Court has the power -- there's a
9 number of cases, Parzino, which is cited in
10 our Motion to Strike -- and I know counsel
11 will have an opportunity to respond to this
12 one -- the Court considers that, but that
13 case is directly on point because it dealt
14 with this exact issue, where a party wanted
15 to reveal settlement discussions to the press
16 and to the public, file them publically,
17 revealed them to the press, and the Court
18 struck the pleadings in that case because --
19 and the District Court approved that because
20 it was an appropriate sanction for revealing
21 something that was confidential information,
22 particularly when it was done intentionally.

23 You don't have to go any further than
24 the face of the Motion in Limine that says,
25 "I have objected that those are confidential

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1 settlement discussions." They disagree with
2 that objection. Instead of allowing the
3 Court to rule on that objection, they then
4 submit an affidavit that spews falsehoods of
5 what transpired in those meetings, but then
6 says that they are true; so we contend that
7 the affidavit should be sealed and stricken
8 from the record, but at a minimum, sealed for
9 the moment until the Court can make that
10 ruling. Because if it's not sealed, the
11 media can continue to use that and they can
12 continue to work that angle without any
13 protection on our end.

14 If the Court is not inclined to do that,
15 if the Court decides no, that I don't
16 believe these were settlement conversations
17 of some kind and Mr. Dershowitz is allowed to
18 go to the media and any other public source
19 and say these things, then we want a clear
20 statement on the record that we are entitled
21 to do so, as well. What's good for the goose
22 is good for the gander: all of these
23 documents that we were given, all the
24 information that he gave us in the course of
25 that process, which we have protected as

1 confidential settlement discussions --

2 THE COURT: Well, I'm sure there would
3 be no problem with that, correct?

4 MR. SAFRA: With regard to the
5 disclosure of the documentation that was
6 given to them at meetings at issue?

7 THE COURT: Right.

8 MR. SAFRA: No problem.

9 MS. MCCAWLEY: And everything said
10 during those meetings. Everything said
11 during those meetings.

12 THE COURT: You have no problem with
13 that, right?

14 MR. SAFRA: Yes.

15 THE COURT: Okay.

16 MR. SAFRA: Yes, like in agreement as to
17 the documents.

18 MS. MCCAWLEY: So Your Honor, at bottom,
19 we contend that these were confidential
20 settlement negotiations. We believe that
21 Mr. Dershowitz intentionally did this
22 knowingly and that he should be sanctioned
23 for this conduct. Because if not, he will
24 continue to do this. This is his way of
25 litigating. It's the wrong way. It's in bad

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1 faith, and we contend that those discussions
2 should be protected.

3 THE COURT: Thank you.

4 MS. MCCAWLEY: Thank you, Your Honor.

5 MR. SAFRA: Good morning, Your Honor.

6 THE COURT: Good morning.

7 MR. SAFRA: I'm going to put my argument
8 aside for a second and address probably the
9 three main points that, based upon even your
10 comments, I think it would probably behoove
11 everybody to understand first.

12 What's at issue here is just whether
13 there's a basis, an emergency basis, for
14 sealing. Not the Motion to Strike, not their
15 pending request for sanctions, and not our
16 Motion in Limine.

17 THE COURT: Correct.

18 MR. SAFRA: Okay. I think the primary
19 argument or the majority of what she has
20 conveyed, Ms. McCawley, deals with what is
21 not at issue; and we got one of those major
22 filings on Wednesday afternoon and are
23 entitled to an opportunity to respond, and
24 that's not in dispute.

25 As to the practices of my client that

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1 are alleged and this alleged leaking, I
2 actually think it's the total opposite.
3 Other than one op-ed piece by the Wall Street
4 Journal, okay, my client -- which was a legal
5 analysis piece -- has never been the
6 initiator to any of the press, okay.

7 What is going on here is that the
8 Plaintiffs, and now also Ms. Roberts, are
9 making their filings in the public record,
10 okay, and then tipping off the press to them
11 either through the filing or themselves and
12 saying, "No comment," or, "I'm not
13 commenting," but here's my comment where I
14 call them a liar or, you know, try to hide
15 under the litigation privilege. And then
16 they're trying to prevent my client from
17 responding either publically when the Times,
18 for example, contacts them after they've
19 received the filing, or even through public
20 record, if he does make a response --

21 THE COURT: How did the Times receive
22 the filing?

23 MR. SAFRA: Either from Plaintiffs or
24 getting notice that it was filed, but not
25 from us.

1 There was a phone call to my client that
2 then said we've interviewed --

3 THE COURT: Well, certainly Mr. Boies'
4 client wouldn't have any motivation.

5 MR. SAFRA: They spoke to Mr. Boies
6 before they spoke to my client and told them
7 that they had already spoken to them.

8 THE COURT: I'm talking about to
9 disclose the filing in question.

10 MR. SAFRA: The filing in question, no,
11 but the affidavits of Ms. Roberts that after
12 Your Honor --

13 THE COURT: No, I'm not talking about
14 that.

15 MR. SAFRA: But that's what --

16 THE COURT: I'm talking about what we
17 are talking about today.

18 MR. SAFRA: They called and they had
19 disclosed how they got -- the Times article
20 got the affidavit, they were then checking
21 the court record.

22 But I'm saying that my client was called
23 about the Times and asked for statements in
24 response, but he didn't do any leaking of any
25 sort. He didn't do any initiating; so I'm

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1 just advising the Court that our position is
2 all he did was respond to some questions when
3 he was contacted, saying that they had
4 already interviewed Boies, they're doing an
5 article on this story and so on. And I
6 believe they were asked, "Well, how did you
7 get notice?" And I can't confirm whether --
8 but their practice has been -- and that's why
9 we tried to prevent the affidavit from being
10 put back in the record, and as the Court
11 remembers you ruled, that it should not be
12 sealed; the presumption of openness trumps
13 any desire to seal.

14 THE COURT: I understand that.

15 MR. SAFRA: Okay. So --

16 THE COURT: But if the argument for that
17 was different than the argument as it relates
18 to this.

19 MR. SAFRA: Okay. And as to this, I'll
20 address that. The first thing is, is that
21 first of all, it's not at issue today whether
22 these are settlement conversations, but I
23 tell this Court, they are not.

24 The e-mail that Ms. McCawley is
25 referencing is from after mediation. Every

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1 single meeting and subject matter of Mr.
2 Dershowitz's affidavit deals with meetings
3 with Mr. Boise before mediation or any
4 settlement conversation ever occurred.

5 There was a meeting between a
6 non-party's counsel and my client to try to
7 get to the facts, because Mr. Dershowitz
8 believes that if he could have an opportunity
9 to disprove the facts, then maybe, if
10 Mr. Boies agreed and then Ms. Roberts then
11 agreed or they talked to him, then maybe,
12 from a factual standpoint, there could be
13 some resolution and who knows what effect.

14 But Mr. Boise made it very, very clear:
15 he does not represent the Plaintiffs, he has
16 no authority for anything, he is not there
17 for any capacity on their behalf --

18 THE COURT: I understand. But I had a
19 question --

20 MR. SAFRA: -- and that was after -- and
21 I can't get into the specifics of the
22 mediation and the conversations to the extent
23 in which Ms. McCawley and Mr. Boies were
24 involved, which were over the last month or
25 two, and is nothing of the subject matter of

8 THE COURT: Well, I've got a question.

9 MR. SAFRA: They ignore the timeline.

10 THE COURT: During the deposition of
11 your client, your client certainly was aware
12 that it was their position that these
13 discussions were confidential, right?

14 MR. SAFRA: They raised an objection,
15 and actually, I disagree with the
16 characterization of Mr. Dershowitz's
17 testimony, because at one point, he even --

18 THE COURT: That's not my question.

19 MR. SAFRA: I was going to answer that.

20 THE COURT: Okay.

21 MR. SAFRA: Okay. So he was aware of
22 the objection. He even stated on the record,
23 "I can't answer that because it implicates
24 that conversation."

25 But we waited over a month for them to

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1 bring it, and they're trying to complete
2 these depositions. And so we filed our
3 Motion in Limine not addressing the
4 settlement part, but just addressing the
5 non-settlement-related communications that
6 occurred before settlement was even an issue.

7 THE COURT: That sounds like a, "Yes" --

8 MR. SAFRA: Yes.

9 THE COURT: -- to my question.

10 MR. SAFRA: We were aware of their
11 objection, and we did not implicate that
12 aspect in our affidavit.

13 THE COURT: So your client was aware of
14 those discussions, that it was their
15 position, were confidential?

16 MR. SAFRA: They ever never specified
17 which -- the mediation-related ones, yes.

18 THE COURT: Notwithstanding that fact,
19 there was that filing. Why would that
20 happen?

21 MR. SAFRA: That filing has nothing to
22 do with the settlement-related conversations.
23 Those have not been made public --

24 THE COURT: Well, I know that's your
25 position.

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1 MR. SAFRA: -- and Mr. Boise was even
2 contacted and said, "We are going to be" --

3 THE COURT: It just doesn't seem like
4 it's the right thing to do, if your client is
5 aware that it's their position that those
6 discussions are confidential, and then, after
7 that, the filing occurs.

8 MR. SAFRA: The right thing to do was
9 wait a time period for them to raise the
10 objections, which we did; contact Mr. Boies,
11 which my client did, and say we are going to
12 be making a filing, okay. Gave them extra
13 time. No response. Nothing. And then we
14 have no choice but try to proceed. So that
15 way, when the next deposition comes, we can
16 actually resolve the issues. We purposely
17 did not address the at-issue settlement time
18 period after the mediation when that issue --
19 when that was involved. These meetings all
20 occurred months before then and related to an
21 opportunity for Mr. Dershowitz to meet with
22 Mr. Boise to show him, these are my
23 calendars, information, and disprove the
24 facts. He is a non-party. There's no
25 resolution, and it did not involve the

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1 Plaintiffs. It was not a settlement. There
2 was no mediator.

3 If it was supposed to be confidential,
4 wouldn't we have seen, for that time period,
5 an e-mail from Mr. Boise, or someone, saying
6 it's confidential? Something in writing
7 saying it's a confidential settlement? There
8 is nothing for that time period, and that's
9 the time period that's at issue in his
10 affidavits.

11 THE COURT: Ma'am, from your standpoint,
12 does it matter that it was published in the
13 Times?

14 I mean, that's where I first learned
15 about it, because I don't monitor filings on
16 the computer, obviously.

17 MS. MCCAWLEY: Right. Your Honor, it
18 matters, two things.

19 First, yes, it does matter. It matters
20 that it was filed in the public record, over
21 my objection. That, in and of itself, is
22 sanctionable. But it also matters that it
23 was leaked to the press.

24 THE COURT: No, no. I'm not talking
25 about sanctions.

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1 MS. MCCAWLEY: Right. Okay. Yes, but
2 it does matter to us, because those are
3 confidential settlement negotiations. You
4 know, with all due respect, I --

5 THE COURT: And it's probably all over
6 the internet, and certainly were mentioned in
7 the New York Times.

8 MS. MCCAWLEY: I understand. And the
9 reason why it matters to strike those is
10 because once they're stricken --

11 THE COURT: No, I'm not talking about
12 the striking.

13 MS. MCCAWLEY: No, I understand. But
14 the --

15 THE COURT: I'm talking about the
16 sealing.

17 MS. MCCAWLEY: The sealing, yes. Right.

18 THE COURT: That's the only thing we're
19 here for.

20 MS. MCCAWLEY: I understand what you're
21 saying. Is the cat already out of the bag?
22 How does it help to seal it?

23 THE COURT: I was going to use that, but
24 cats in bags are troubling to me.

25 MS. MCCAWLEY: I understand. It's so

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1 odd, right?

2 MR. SAFRA: I still need an explanation
3 on that one.

4 THE COURT: It's, like, skinning cats,
5 cats in bags.

6 MS. MCCAWLEY: Right. I know. My
7 apologies. But --

8 THE COURT: Beating dead horses.

9 MS. MCCAWLEY: Right.

10 THE COURT: All of that stuff.

11 MS. MCCAWLEY: But the point is -- and
12 that phrase has been used in case law. And
13 the point is, that if it is sealed, the media
14 is less likely to repeat those things. So if
15 there's an action by the Court that says it
16 was not appropriate for those things to be
17 leaked, they're confidential settlement
18 negotiations, that empowers us to have
19 actionability against the media.

20 But I want to be very clear here,
21 because I attended those settlement
22 conversations; I was involved in that. This
23 e-mail that I have is dated July 9th, 2015,
24 where Dershowitz, out of his own words,
25 labels these as confidential settlement

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1 negotiations between the parties. It is
2 without question that these were settlement
3 conversations.

4 I appreciate what he is trying to refer
5 to, this later mediation with Judge
6 Streitfeld. There is a mediation that has
7 gone on in the last couple of weeks with
8 Judge Streitfeld. These were confidential
9 settlement negotiations that started in May
10 and went up to the present; so to say that --

11 THE COURT: I agree with you. I think
12 they're confidential settlement discussions.
13 I'm going to grant the Motion to Seal.

14 MS. MCCAWLEY: Thank you, Your Honor.

15 MR. SAFRA: Well, Your Honor --

16 THE COURT: Over the strong objection of
17 the Defendant.

18 MR. SAFRA: Can I, for the record --

19 MS. MCCAWLEY: Thank you.

20 MR. SAFRA: -- at least also reserve
21 that for the relief that needs to be shown
22 irreparable harm, death, or manifest injury,
23 and it's our position that that hasn't been
24 shown in the requested relief.

25 THE COURT: You don't think confidential

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1 settlement agreements should be sealed? I
2 know you don't think they are confidential
3 settlement agreements --

4 MR. SAFRA: Well --

5 THE COURT: -- but if they are, which
6 I've made that finding, you don't think they
7 should be sealed?

8 MR. SAFRA: Well, you're making the
9 finding that they were confidential
10 settlement --

11 THE COURT: I am.

12 MR. SAFRA: -- but that wasn't at issue
13 here, and they haven't even filed the
14 opposition, and we have our Motion in Limine;
15 so you're ruling upon that when --

16 THE COURT: No. I'm just sealing these
17 because I think they should be sealed.

18 MR. SAFRA: Okay.

19 THE COURT: Although, you know --

20 MR. SAFRA: Take your words for the
21 future.

22 THE COURT: -- everyone is aware of --

23 MR. SAFRA: Understood.

24 THE COURT: Well, everyone. Whoever
25 read the New York Times is aware of the

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1 situation; so I will grant the motion.

2 MR. SAFRA: For clarity, the Motion in
3 Limine, when that gets scheduled, is your
4 finding that it's a settlement
5 communication --

6 THE COURT: I'll listen to any argument
7 anyone has on any issue. We're not doing
8 that today.

9 MR. SAFRA: Just the seal.

10 THE COURT: I'm available for hearings
11 anytime after the 3rd of January.

12 MR. SAFRA: And can I state, so you
13 don't get a disagreement where we end up back
14 before the Court -- just because I'm aware
15 and I want to raise --

16 MS. MCCAWLEY: Right.

17 MR. SAFRA: -- it and so that you have
18 an opportunity, it is our position or my
19 client's position that these meetings
20 occurred in New York and that the sealing
21 would apply to the public filings and in
22 Florida.

23 MS. MCCAWLEY: Your Honor, if the intent
24 here is to continue to spew the confidential
25 settlement negotiations and have

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1 Mr. Dershowitz go to New York or other
2 locations to say these things again, I would
3 object to that. I think this Court needs to
4 be very stern in its response that these are
5 not appropriate to be disclosed.

6 THE COURT: Well, I think he is aware of
7 that.

8 MR. SAFRA: I'm aware, and I will convey
9 to my client. I think the Court's
10 jurisdiction is what is it, but I just wanted
11 to raise the issue and we will act in good
12 faith and, you know, do just like we did last
13 time, contact Mr. Boies to give opportunities
14 before anything happens.

15 MS. MCCAWLEY: Your Honor, I disagree
16 with that. I have no indication that
17 Mr. Boies was contacted about this in
18 advance.

19 THE COURT: Thanks. Nice to see you.

20 MS. MCCAWLEY: Thank you, Your Honor.

21 MR. SAFRA: Thank you, Your Honor. Have
22 a good weekend.

23 THE COURT: You, too.

24 MS. MCCAWLEY: I have a Proposed Order
25 with me. Do you want me to --

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1 THE COURT: Yes, it's probably best to
2 do that.

3 MS. MCCAWLEY: Thank you.

4 THE COURT: My suggestion would be to
5 follow up with the clerk, as well.

6 MS. MCCAWLEY: Yes. Of course, yes.

7 (Whereupon, the proceedings concluded at
8 9:45 o'clock a.m.)

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CERTIFICATE

5 STATE OF FLORIDA)

6 COUNTY OF BROWARD)

7 I, MICHELE CAMERON, Notary Public in and for
8 the State of Florida at Large, do hereby certify that
9 the case of BRADLEY J. EDWARDS, and PAUL G. CASSELL
10 are the Plaintiffs, and ALAN DERSHOWTIZ is the
11 Defendant, was heard before the Honorable Thomas M.
12 Lynch, IV, as Judge, and that the foregoing pages,
13 numbered 1 to 28, inclusive, constitute a true and
14 correct transcription of the proceedings taken on
15 December 18, 2015.

16 WITNESS my hand and official seal in the City
17 of Fort Lauderdale, County of Broward, State of
18 Florida, this 18th day of December, 2015.

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21

Michele Cameron



MICHELE CAMERON

22

Notary Public, State of
Florida at Large

23

My Commission Expires: 12-27-15

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