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SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE BRENT ADAMS, DISTRICT JUDGE

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WHITTEMORE PETERSON INSTITUTE
FOR NEURO-IMMUNE,

Case No. CV11-03232

Dept. No. 6

Plaintiff,

vs.

TRANSCRIPT OF PROCEEDINGS

JUDY A. MIKOVITS,

Defendant.

_____/

IN-CHAMBER CONFERENCE
MARCH 14, 2012, RENO, NEVADA

APPEARANCES:

For the Plaintiff: BOWEN HALL,
 Attorneys at Law
 By: Ann O. Hall, Esq.
 555 S. Center Street
 Reno, Nevada 89501

For the Defendant: DENNIS NEIL JONES, ESQ.
 3500 Lakeside Court
 Reno, Nevada 89509

Reported by: JULIE ANN KERNAN, CCR #427, CP, RPR
 Computer-Aided Transcription

1 RENO, NEVADA; WEDNESDAY, MARCH 14, 2012; 11:34 A.M.

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3
4
5 THE COURT: What are we here for?

6 MS. HALL: So your Honor, I understand your
7 concerns about this morning and I believe I can address
8 all of them or things that I thought about that I'm
9 prepared for, but I also -- you're the boss, it's your
10 call. We were looking for additional dates. I just --
11 I would like my objection, my strong objection to be on
12 the record and I don't want to go through all my outrage
13 that I did this morning, but.

14 THE COURT: You can do it twice if you want
15 to.

16 MS. HALL: It's okay. I'm sure Mr. Jones is
17 one of those dog ate my home work type of people all the
18 time so I just - no. Anyway --

19 THE COURT: Now see, there you are.

20 MS. HALL: So anyway, but I would like to
21 flush out the recusal issue.

22 THE COURT: I want to look at the
23 disqualification issue first. Dennis, did you have an
24 opportunity to talk to your client about it?

1 MR. JONES: I did. I was hoping to not have
2 to take a position today on that.

3 THE COURT: Well, let me just tell you both my
4 observations about it. We'll just start with that, and
5 we're on the record, you're welcome to share that with
6 your client, and as I told you earlier, we have the
7 facility to get her on the telephone if you'd like, and
8 I can go through the process with her.

9 But let me just follow it through with both of
10 you. I think you both now have the sheets from the
11 campaign disclosures that show the contributions. And I
12 also want to tell you that those contributions were made
13 at the first campaign event which was for young lawyers,
14 but two older lawyers showed up, Harvey Whittemore and
15 Ross de Lipkau. And Harvey had, I know, one of his sons
16 there, I'm not sure if he had another son, and either a
17 daughter or a daughter-in-law, but in any event, he made
18 a contribution of \$5,000, which was on his behalf,
19 \$5,000 on behalf of the Redfield company, and then each
20 of the others made a much more modest contribution, I
21 don't have the sheet in front of me.

22 MS. HALL: \$200.

23 THE COURT: It was \$250?

24 MS. HALL: 200.

1 THE COURT: \$200, okay. And then and now, I
2 can tell you the following facts. Number one, neither
3 Mr. Whittemore, his wife or any member of his family
4 have ever contacted me directly or indirectly about any
5 case, ever, in my 23 years in this position. I've never
6 been at their homes, they've never been to my home.
7 I've known Harvey for many years, I clerked for Mr.
8 Lionell in the summer of 19 -- I think it was 1972 and
9 1973, and I don't remember if I was at the firm then or
10 not, but he was -- he came into the law firm in that
11 area somewhere. And I clerked exclusively with Mr.
12 Lionell, but I did develop a close relationship with
13 that man in the picture, Grant Sawyer, and I know that
14 at some point later, Harvey was very close to Governor
15 Sawyer, and developed his practice, his lobbying
16 practice with Governor Sawyer.

17 Now, there are two matters -- oh, and I don't
18 know if I mentioned this, but I should mention it. I
19 know nothing about the structure or ownership of this
20 Redfield -- Redhawk, I'm sorry, company, or the
21 institute, the plaintiff in this proceeding, absolutely
22 zero. I did assume at the time of the contribution that
23 Harvey was the executive officer of this Redhawk
24 company. He was the only name I'd ever heard associated

1 with.

2 As we all know, our community has just been
3 flooded with media attention in this, and I've read many
4 of those stories. They have discussed a grand jury
5 proceeding that's still occurring. I do believe in the
6 presumptions of innocence that applies to every citizen.
7 I know nothing about those investigations. I know that
8 the Whittemores are engaged in a very public legal
9 battle with the Senos, who I think is the father and
10 son.

11 I had a settlement conference years ago in a
12 dispute between the Atlantis Hotel & Casino and the
13 Peppermill Hotel & Casino. And in that mediation, the
14 Peppermill was represented, Peppermill personnel were
15 represented by Mr. Caraselli, Mr. Paganetti, and one or
16 both of the Mr. Senos, I don't remember any more who it
17 was. And that's the only time I've had any dealings of
18 any kind with the Senos. And that settlement conference
19 resulted in the settlement agreement which resolved that
20 case.

21 Several years ago, there was a lawsuit in this
22 department concerning the development of a project in
23 Sparks, and I don't remember the name of it, but maybe
24 you do, it was the Lazy 5 or the Lazy --

1 MS. HALL: Eight.

2 THE COURT: The Lazy 8. What was it?

3 MS. HALL: It was either five or eight.

4 THE COURT: Whatever it is, it was the Lazy
5 something in Sparks. And that was a dispute with the
6 city. My only contact with that lawsuit was one day
7 during another proceeding there was a recess, and the
8 lawyers in that case appeared and they had a stipulated
9 agreement to end the lawsuit. I don't believe I ever
10 entered an order that there was any proceeding, nothing.
11 And you're welcome to check the file, but I just don't
12 remember anything. And when that occurred, I did ask
13 the city attorney of Sparks who was Chet Adams, to tell
14 me he was completely confident that the members of the
15 city council, or at least a majority of them, approved
16 that agreement, because as we all know, unlike some
17 other parties, public institutions have boards or
18 commissions or council, councils that must make
19 decisions, and the resolution of actions is always
20 subject to the approval of the governing agency. And he
21 said yes, they had agreed, and I signed the judgment or
22 whatever it was. I think it was a judgment, but
23 whatever it was, I signed it. And then later there was
24 some sort of a dispute about whether the city attorney

1 had the authority to do that. And it had something to
2 do with one of the members of the council, whether or
3 not there'd been a publicly noticed meeting to take that
4 action or some action, and I don't know anything else
5 about that dispute. It never arrived in the department,
6 I don't know if it was resolved or when or where, under
7 what terms. And now we have this action. And this
8 action is brought by an entity which, I think, is a
9 non-profit organization, right?

10 MS. HALL: Yes.

11 THE COURT: And, obviously, it's called the
12 Whittemore Peterson -- off the record.

13 (Discussion held off the record.)

14 THE COURT: Back on the record. Institute,
15 and I assume that the Whittemore family has some
16 interest in this institute.

17 MS. HALL: I don't want to interrupt you, but
18 there is no interest. Harvey is not a party.

19 THE COURT: There isn't a witness.

20 MS. HALL: He's not a witness, he's not the
21 lawyer, it's a non-profit, he doesn't have any ownership
22 interest.

23 THE COURT: What about Mrs. Whittemore, is she
24 involved?

1 MS. HALL: She is the president of the company
2 and she will be a witness, but --

3 THE COURT: All right. I didn't receive any
4 contribution from her, I don't know --

5 MS. HALL: And she's also not under grand jury
6 investigation for campaign contributions of any type.
7 She's never even been subpoenaed. But with respect to
8 Harvey Whittemore, he is not involved, as I said before,
9 no witness, no party.

10 THE COURT: Do you know anything about that,
11 Dennis, one way or the other?

12 MR. JONES: Well, I -- it's my understanding
13 that the Whittemores contributed five million dollars to
14 start up the Whittemore Peterson Institute, so I'm not
15 aware of Mr. Whittemore being an officer in the
16 corporation. I was aware that Mrs. Whittemore is a --
17 is the president, and I don't even recall from the bar
18 whether this is a community property state.

19 THE COURT: It is a community property state.

20 MR. JONES: I thought so, I mean that would
21 presumably apply to the extent contributions are being
22 considered the fact that it's a community property
23 state.

24 THE COURT: Well, the -- I just don't know. I

1 mean, if you have -- let's say you have one of the
2 spouses that invests community property money in a
3 company or endeavor, that might be a community
4 obligation, and likewise, if one of the spouses
5 contributes to the campaign candidate, the source, or
6 that money itself might be deemed community property.
7 But in neither of those instances does it necessarily
8 mean that for the purposes of the campaign law or the
9 purpose of the laws that govern the company or
10 foundation that there are other consequences. I'm not
11 sure I've made that clear. Do you see what I'm saying?
12 In other words, if you do something -- if you and I are
13 married and you do something with community funds, that
14 may have consequences in regard -- because of the fact
15 that it is community funds. The fact that it's
16 community funds may or may not have consequences in
17 connection with third parties.

18 As a quick example, let's suppose a driver of
19 an automobile is married, the driver is found to be
20 legally responsible for damages incurred to a third
21 party, there is something called the family purpose
22 doctrine that may apply and may result in liability to
23 the other spouse, even though the other spouse had
24 nothing to do with driving the automobile.

1 Now, I haven't had any time to even think
2 about the application of those principles to this case,
3 but I want to mention a few other things and then
4 suggest how we approach it. I have reviewed the
5 judicial conduct, I have reviewed several cases, and
6 I've conferred this morning with David Sarnowski, who is
7 the Counsel and Executive Director for the Nevada
8 Commission on Judicial Conduct on which I sat for
9 approximately eight years. And I just make these
10 observations. Let me just run through them briefly with
11 you. Okay?

12 Let me add this. Many of these provisions are
13 adopted verbatim from the Model of Judicial Code. About
14 20 years ago Justice Stefan chaired a commission to
15 decide whether to recommend to the Nevada Supreme Court
16 adoption of the model code or some of its provisions. I
17 was the only judge in the state of Nevada to testify
18 that receipt of significant campaign contributions from
19 a lawyer or a party in a case should be a ground for
20 disqualification. And I've argued that publicly for
21 decades since. I've written on the subject, I've been
22 interviewed by the media on the subject, I've debated it
23 as recently as two years ago with James Bach who was
24 counsel in the Citizens United case and the Republican

1 Party of Minnesota case. And I very strongly believe
2 that that's the standard that should be applied.

3 In the Nevada Revised Code of Judicial
4 Conduct, the preamble states, "An independent fair and
5 impartial judiciary is indispensable to our system of
6 justice. The United States legal system is based upon
7 the principle that an independent, impartial and
8 competent judiciary will interpret and apply the law
9 that governs our society. Thus, the judiciary plays a
10 central role in preserving the principles of justice and
11 the rule of law. Inherent in all the rules contained in
12 this code are the precept that judges, individually and
13 collectively must respect and honor the judicial office
14 as a public trust and strive to maintain and enhance
15 confidence in the legal system".

16 Paragraph 3 of the Preamble states, "The Code
17 of Judicial Conduct establishes standards for the
18 ethical conduct of judges and judicial candidates. In
19 Rule 1.2, of Canon 1 of the code, judges are admonished
20 to act at all times in a manner that promotes public
21 confidence in the independence and integrity and
22 impartiality of the judiciary and shall avoid
23 impropriety and the appearance of impropriety".

24 Comment 3 to that provision states, "Conduct

1 that compromises or appears to compromise the
2 independent integrity and impartiality of a judge
3 undermines public confidence in the judiciary. Because
4 it is not practicable to list all such conduct, the rule
5 is necessarily cast in general terms".

6 Comment 5 states, "The test for appearance of
7 impropriety is whether the conduct would create in the
8 reasonable mind a perception that the judge violated
9 this code or engaged in other conduct that reflects
10 adversely on the judge's honesty, impartiality,
11 temperament or fitness to serve as a judge".

12 The Nevada Supreme Court held in the case of
13 City of Las Vegas versus Downtown Redevelopment Agency
14 at 116 Nevada 645 Pacific 3rd 105, 9, that as a matter
15 of law, receipt by a judge of campaign contributions
16 from a party or counsel in a pending case does not
17 constitute a conflict of interest.

18 I disagree with that result in the case. I
19 always have. Don Campbell and I as members of the
20 Nevada Commission on Judicial Discipline filed a
21 minority decision in a case involving a Las Vegas family
22 court judge who, in the context of a divorce action
23 involving substantial financial assets, received \$48,000
24 from counsel for one of the parties. He had received

1 nothing prior to that time from anyone, did not disclose
2 to anybody the contribution, and refused to disqualify
3 himself. To me, that is outrageous. I would have
4 removed the judge from office and I just think that is a
5 horrible situation. I also think that, objectively, a
6 party to that lawsuit adverse to the party whose lawyer
7 made the contribution would have grave reservations
8 about the capacity of that judge to be fair and
9 impartial. All of us may have feelings or reservations
10 about a judge because of some fact concerning the judge
11 and another party or a lawyer. That doesn't necessarily
12 constitute the undermining of the judge's impartiality.
13 But on the other hand, our society's interest and the
14 impartiality of judges, and that they be seen to be
15 impartial is extremely strong in supporting respect for
16 the law and for the institutions of government.

17 In that City of Las Vegas Development,
18 Downtown Redevelopment agency case, the District Judge
19 was Judge Mark Danton, who I've known since he was born.
20 I was married in his parents' home. And he felt, as I
21 did, that under those circumstances, he should be
22 disqualified, and he disqualified himself. And one the
23 parties, I believe it was the city, appealed that
24 decision to the Nevada Supreme Court and judge Danton

1 was ordered to sit on the case.

2 The Code of judicial conduct also contains in
3 Canon 2, Rule 2.7, the following language.

4 "A judge shall here and decide matters
5 assigned to the judge, except where -- except when
6 disqualification is required by Rule 2.11 or other law."
7 This is the judicial concept known as the duty to sit.
8 It's an ancient concept. It has existed in our country
9 for generations. The vast majority of courts in the
10 United States have decided to replace this concept of
11 duty to sit by giving greater value to the public
12 appearance of impartiality, and I agree with those
13 decisions. I think the duty to sit should yield to the
14 important value of a legal system that is conducted with
15 integrity and is seen to be so.

16 Nevertheless, I tell you again that's the
17 provision of the Revised Judicial Code in the State of
18 Nevada.

19 There is now, according to Mr. Sarnowski, a
20 case pending before the Nevada Supreme Court concerning
21 the role of campaign contributions to judges and
22 judicial candidates. And one of the lawyers in that
23 case is David Chernoff. And according to Mr. Sarnowski,
24 substantial briefs have been submitted. And the

1 approach suggested in that case is that the Nevada
2 Supreme Court, instead of the categorical rule that I've
3 just given you, apply a more flexible approach that
4 looks at the context of the entire case, the amount of
5 the contribution, how much the contribution bears to the
6 total contributions received by the candidate, and other
7 considerations.

8 I did do a rough calculation, and so did Mr.
9 Sarnowski, and the contributions received from members
10 of the Whittemore family to my campaign three years ago,
11 and the Redhawk company are approximately three percent
12 of the total contributions received by the campaign that
13 year.

14 There's another case of interest, which is
15 Towbin, T-o-w-b-i-n, Dodge versus District Court, 121
16 Nevada, 251, 112 Pacific 3rd, 1063. I haven't had
17 occasion yet to read that case, I haven't had the
18 opportunity, but Mr. Sarnowski says that case does
19 discuss the duty to sit doctrine and also the process by
20 which these questions are raised to the court.

21 Then finally, I wanted to discuss that process
22 for just a moment. I believe that in any case where a
23 judicial officer believes that there is an issue of
24 conflict of interest or an issue of impropriety or an

1 issue of the appearance of impropriety, the first step
2 is for the judge to disclose the facts of the situation,
3 and I've done that with you both this morning on the
4 telephone and now on the record.

5 The second step in the process for you each to
6 confer with each other and with your clients.

7 The third step, as I understand it, under the
8 Towbin decision, is if the lawyers and the parties,
9 themselves, agree that notwithstanding an issue of
10 conflict, that issue would be waived, then the judge
11 proceeds.

12 Now, that, of course, occurs with the full
13 knowledge and understanding and the consent of the
14 parties and the lawyers. The judge may not participate
15 in any way, shape or form in that process, so that any
16 decision made by the parties or their lawyers is
17 uninfluenced by the judge.

18 And then if the parties can not agree, several
19 alternatives occur. Number one, the judge can just
20 recuse as the presiding judge and the matter's submitted
21 to the clerk for random reassignment. And that, of
22 course, ends the matter in this department.

23 The second alternative is for any party who
24 believes that the judge should be disqualified, to file

1 a motion to that effect with points and authorities and
2 any appropriate affidavits. The other party would
3 oppose that, and that matter would be submitted to
4 another judge selected randomly to decide.

5 Now, finally let me just give you my
6 observations about this. First, as I mentioned, I'm
7 completely confident that I could preside in this case
8 and that the campaign contributions I have mentioned
9 would have no influence of any kind directly or
10 indirectly by any manner or means in my service as the
11 presiding judge. As a quick example, in that same
12 campaign, three years ago --

13 MS. HALL: I wanted you to tell this story.

14 THE COURT: Pardon me?

15 MS. HALL: This is the Morabito story?

16 THE COURT: This is the Morabitos. Three
17 years ago in the campaign, and of course all these
18 contributions we're talking about are well within the
19 legal limit of contributions, but in that campaign three
20 years ago, I received a contribution of \$5,000 each from
21 people I had no knowledge of at all. In fact, some of
22 them or all of them lived in other states, and they were
23 brought to me by a lawyer. And I said who are these
24 people? And he said, "Well, you don't know them, but

1 here are their contributions", so they made the
2 contribution; a total of \$20,000. And later, it turns
3 out that these four people is a party in a very
4 significant action involving the sale and purchase of 20
5 convenience markets and development sites for
6 convenience markets in Reno. The party on the other
7 side of the case was Mr. Jerry Herbst and his children
8 and company, Mr. Herbst owns the second largest gas and
9 oil distributorship in the State of Nevada. And so we
10 went through exactly the process we're doing now. I
11 disclosed those contributions. I disclosed the facts
12 I've just stated to you. The parties and lawyers
13 conferred, and they decided that they would waive any
14 conflict or potential conflict of interest, and then I
15 could further preside in the lawsuit. The lawsuit was
16 very complex. We had a nonjury trial for many weeks.
17 We had what I've been told is the largest number of
18 exhibits in a lawsuit in the courthouse, I think in the
19 neighborhood of 5,000 exhibits. They stretched from the
20 bench to the wall of the courtroom. And the evidence
21 consisted principally of the testimony of fraud
22 examiners, forensic accountants and other professional
23 experts. At the conclusion of the case, and for one of
24 the few times in my 23-year tenure in this job, I found

1 that the sellers of these properties had committed
2 fraud, and entered judgment in approximately the sum of
3 a hundred and 40 million dollars, and approximately ten
4 million dollars in attorney's fees, and several million
5 dollars in costs and fees. And that judgment was
6 entered against the contributors of the \$20,000.

7 In this particular case today, here's what I'm
8 concerned about. Here are the values that concern me.
9 Number one and most importantly is the integrity of our
10 legal system.

11 Number 2 is the issue of the appearance of
12 impropriety. I've taught judges all over the world, in
13 Moscow, in Siberia, in Kazakhstan, in Tajikistan, in
14 Columbia, in Quam, I've taught judicial ethics at the
15 National Judicial College at least once a year for the
16 past 24 years, a year before I became a member of the
17 judiciary. And the number one value that the college
18 and the United States agencies for national development,
19 the state department and other institutions I've been
20 asked to teach for is transparency.

21 In the country of Columbia, as an example,
22 there are no live witnesses in a legal case. All the
23 testimony is submitted on pieces of paper to a judge who
24 decides the case.

1 President Bush, Senior, allocated the
2 financing for the first public courthouse in the country
3 of Columbia. President Clinton, his successor, planned
4 to open the courthouse in a public setting. The court
5 never opened. It still hasn't opened.

6 The criminal conviction rate in the United
7 States is over 95 percent. In the country of Columbia?
8 It's two percent. Because in Columbia, if the judge
9 decides a decision that's adverse to the members of the
10 Medellin cartel who control the cocaine distribution,
11 then there are consequences to the judge.

12 I taught a group of Columbian judges, under
13 very tight security conditions, and my colleague, who
14 also taught them, was an appellate judge from Columbia.
15 She rendered a decision against a criminal narcotics
16 conspiracy. Her son was kidnaped and she was shot in
17 the neck.

18 I taught judges from Tajikistan, in Omari
19 Kazakhstan, and my colleague in that experience was an
20 appellate judge from Tajikistan, he rendered a decision
21 adverse to radical Islam forces in that country, and
22 both of his sons were murdered.

23 And I can tell you firsthand that judges all
24 over the world who must operate in a system of tyranny

1 or in a context in which there is a corrupt legal system
2 love our country. They desperately want their country
3 to have a system like ours.

4 In Olm, Siberia I met with judges who were
5 trained in the previous Soviet system. And they told me
6 firsthand, if a case was pending, they would get a
7 telephone call from the kamazar, he would tell them how
8 to decide the case, and that was the legal process.

9 If people with a legal dispute can not have a
10 considered and decided with integrity in the United
11 States, then they can't get justice anywhere in the
12 world. It is that simple. So my number one concern is
13 the integrity of our process.

14 My number two concern is the appearance of
15 impropriety, and if there is a reasonable basis under
16 the circumstances to conclude that I or any other judge
17 presiding in the case would present the appearance of
18 impropriety, then that judge should be removed.

19 And then the third consideration that troubles
20 me is this. And it's the subject of the easy versus the
21 hard thing to do. I can't live in this community
22 without being aware that in recent weeks there is what
23 I've called this flood of publicity about the Whittemore
24 family. As far as I can tell, any politician who ever

1 received any -- any money from a person named Whittemore
2 or whoever brushed by them in the supermarket at Raley's
3 or whoever wrote a word that began with W is desperately
4 anxious to disavow any sort of contact.

5 I read one statement by one public officer on
6 this subject which seemed coherent. And it was from the
7 late Senator Raggio. And all he said was two things.
8 One, he reported his personal dealings with Mr.
9 Whittemore at the legislature, and he said as far as he
10 knew, he was a good person, he was a fine lobbyist, I'm
11 not aware of anything he did wrong. And number two, he
12 said, "I believe in the legal system of our country and
13 unless and until it's proven otherwise, I don't have any
14 criticism of him". It was actually a coherent,
15 appropriate legal thing to say which reported his
16 experience and honored the legal process by which we
17 decide disputes.

18 And the easiest thing in the world for me to
19 do would say you're happy to go elsewhere on a few
20 occasions during my tenure when someone has filed a
21 motion to disqualification, I've simply directed the
22 clerk to reassign the case. Because the very process of
23 deciding issues of disqualification can disrupt the
24 process of the case itself.

1 For instance, in one case, there was a motion
2 for a disqualification, which, frankly, I felt was
3 meritless, but involved governments of a corporation
4 which the following week in New York was to have a
5 meeting and a vote on a six million dollar issue. And
6 it was my observation in that case that whatever the
7 merits of disqualification, the legal system would be
8 paralyzed if the case wasn't heard very promptly under
9 an expedited process, and so without considering the
10 merits of the disqualification issue, I felt it was
11 important and more important to simply disqualify
12 myself, have the case reassigned.

13 There was one case in which under NRS 1.235, I
14 did file an affidavit opposing a motion to disqualify.
15 I felt then and I feel now that there wasn't a basis for
16 disqualification. The matter was assigned to another
17 judge who, by the way, received substantial campaign
18 contributions from one of the lawyers in the case. It
19 was taken under advisement for over a year and the
20 decision was I should be disqualified, and it wasn't
21 randomly assigned to another judge, it was kept by the
22 judge who decides the disqualification issue.

23 So I guess my final observation is kind of a
24 personal observation and that is, I don't have any

1 reservation about presiding in the case. I have a very
2 strong commitment to the integrity of the system, and a
3 very strong commitment to the principle that those who
4 participate in it must believe that it is transparent,
5 that it is fair, and that it is impartial.

6 On the other hand, if every judge, every court
7 assumes ipso facto that if a party says the judicial
8 officer can't be impartial, the case could be
9 reassigned, then that, of course, can be used as a tool
10 to disrupt the legal process, to delay proceedings, and
11 to otherwise manipulate the system. And I guess that's
12 about all I can tell you on this subject.

13 Ordinarily, I would say let's not spend any of
14 our time, effort and money, our client's time, effort
15 and money on who the presiding judge is, if someone has
16 a reservation, go to a different department. But I am
17 concerned in this case that -- that somehow or other, if
18 I do that, it might not be because I have a reservation
19 about presiding in the case, but that I would just be
20 vending to the huge public controversy about the
21 Whittemores, and I think that's wrong, too. Because I
22 don't want to give a minute's consideration to what the
23 public thinks. Just yesterday, I instructed a jury, as
24 I always do in any case, that their decision should be

1 made without regard, and this is verbatim, should be
2 made without regard to sympathy, prejudice, passion, or
3 public opinion.

4 If whatever decision I would make about
5 disqualification in this case should be based on the
6 principles, the provisions of the Nevada Code of the
7 Judicial Conduct and the cases I just discussed, and
8 should have absolutely nothing to do with the
9 regrettable political process we have in our state with
10 the contribution anybody has or has not made, or the
11 public controversy concerning people who may or may not
12 be associated with the case, and frankly, I've been
13 alarmed at the fact that there have been all these
14 newspaper stories about the war between the Whittemores
15 and the Senos, and person after person who holds
16 political office sends the contributions back, whatever
17 that means, I don't know how they send them to the same
18 people that gave them to them.

19 MS. HALL: Send them to charity, they have to

20 --

21 THE COURT: Or send them to charity. And the
22 only sense I can make of it is that the office holder
23 thinks that because there is potential of some civil or
24 criminal liability that might be embarrassing to the

1 office holder, or put the office holder in a bad public
2 light or diminish the office holder's chance of being
3 reelected, that the office holder says I don't want any
4 of this person's money, I didn't know him, I never had
5 anything to do with him, which I think has the potential
6 of being corrupt as corruptive to our government as does
7 conduct which undermines the impartiality of judges. We
8 don't want corrupt judges, we don't want corrupt members
9 of Congress, or the legislature or the executive branch,
10 and the principles I talked about apply to all of those
11 people, all of those people. So that's the best I can
12 tell you.

13 I'm going to ask the reporter to produce a
14 transcript of this proceeding as soon as possible, I
15 want to give you each the opportunity to discuss the
16 matter with your clients, advise the administrative
17 assistant of the department as to how you wish to
18 proceed, and we'll take it from there. Since it's now
19 12:20, the hearing at 1:30 will be vacated and we'll
20 wait upon events.

21 Court is in recess. Thank you.

22 MR. JONES: Thank you.

23 (Proceedings concluded.)

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1 STATE OF NEVADA)

2 COUNTY OF WASHOE)

3 I, JULIE ANN KERNAN, official reporter of
4 the Second Judicial District Court of the State of
5 Nevada, in and for the County of Washoe, do hereby
6 certify:

7 That as such reporter I was present in
8 Department No. 6 of the above court on Wednesday,
9 March 14, 2012, at the hour of 11:34 a.m. of said day,
10 and I then and there took verbatim stenotype notes of
11 the proceedings had and testimony given therein upon the
12 In-Chambers conference of the case of WHITTEMORE
13 PETERSON INSTITUTE FOR NEURO-IMMUNE DISEASE, Plaintiff,
14 vs. JUDY MIKOVITS, Defendant, Case No. CV11-03232.

15 That the foregoing transcript, consisting of
16 pages numbered 1 through 26, both inclusive, is a full,
17 true and correct transcript of my said stenotype notes,
18 so taken as aforesaid, and is a full, true and correct
19 statement of the proceedings of the above-entitled
20 action to the best of my knowledge, skill and ability.

21

22 DATED: At Reno, Nevada, this 14th day of March, 2012.

23

/s/ Julie Ann Kernan

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