

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

RASEAN JOHNSON,	)	
	)	CASE NO. 17CV0410-MJL
PLAINTIFF,	)	
	)	
-V-	)	NOVEMBER 5, 2018
	)	10:57 A.M.
THE CITY OF SAN DIEGO; AND DOES	)	
1 THROUGH 100,	)	
	)	
DEFENDANTS.	)	SAN DIEGO, CALIFORNIA
	)	

---

TRANSCRIPT OF FINAL PRETRIAL CONFERENCE  
BEFORE THE HONORABLE M. JAMES LORENZ  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:	JONATHAN Y. VANDERPOOL JONATHAN CADIEUX SMITH STEINER VANDERPOOL, APC 401 WEST A STREET, SUITE 340 SAN DIEGO, CALIFORNIA 92101
FOR THE DEFENDANT:	ALISON PRISKE ADEMA ANGELA TERESA MULLINS LAURA M. DEPOISTER OFFICE OF THE SAN DIEGO CITY ATTORNEY 1200 THIRD AVENUE, SUITE 1100 SAN DIEGO, CALIFORNIA 92101
OFFICIAL REPORTER:	JEANNETTE N. HILL, CSR U.S. COURTHOUSE 333 WEST BROADWAY, RM 420 SAN DIEGO, CALIFORNIA 92101 (619) 702-3905

REPORTED BY STENOTYPE, TRANSCRIPT PRODUCED BY COMPUTER

1 SAN DIEGO, CALIFORNIA; MONDAY, NOVEMBER 5, 2018; 10:57 A.M.

2 **DEPUTY CLERK:** CALLING MATTER 10, 17CV0410, JOHNSON  
3 VERSUS CITY OF SAN DIEGO, ET AL, FOR FINAL PRETRIAL CONFERENCE.

4 **THE COURT:** STATE YOUR NAMES FOR THE RECORD, PLEASE.

5 **MS. MULLINS:** YES, SIR. ANGELA MULLINS ON BEHALF OF  
6 THE CITY OF SAN DIEGO.

7 **MS. ADEMA:** ALISON ADEMA ON BEHALF OF THE CITY.

8 **MS. DEPOISTER:** LAURA DEPOISTER ON BEHALF OF THE  
9 CITY.

10 **THE COURT:** ALL RIGHT.

11 **MR. VANDERPOOL:** YOUR HONOR, JOHN VANDERPOOL AND JOHN  
12 CADIEUX, FOR PLAINTIFF RASEAN JOHNSON.

13 **THE COURT:** ALL RIGHT. VERY GOOD.

14 I HAVE REVIEWED YOUR MATERIAL AND WE HAVE SOME WORK  
15 THAT HAS TO BE DONE ON THIS. I'M NOT PREPARED TO SIGN IT  
16 TODAY, BUT I'M GOING TO TELL YOU WHAT I NEED TO HAVE IT SIGNED.

17 I NEED YOU TO DO A NUMBER OF THINGS. ONE IS THAT YOU  
18 NEED TO MEET AND CONFER TO AMEND AND RESUBMIT YOUR PROPOSED  
19 PRETRIAL ORDERS AS FOLLOWS: WE NEED TO INCLUDE A STATEMENT OF  
20 ALL FACTS TO WHICH THE PARTIES STIPULATE.

21 I WOULD LIKE TO HAVE SOMETHING IN WRITING WHERE YOU  
22 AGREE TO A STATEMENT OF FACTS THAT I CAN READ TO THE JURY IN  
23 THE CASE. AND IT DOESN'T HAVE TO BE REAL LONG. IT DOESN'T  
24 HAVE TO BE REAL SHORT. BUT YOU SHOULD BE ABLE TO GET TOGETHER  
25 SO THAT THE PARTIES AGREE TO THESE FACTS ABOUT THE CASE, AND

NOVEMBER 5, 2018

1 THAT THE PLAINTIFF BELIEVES THAT THERE IS A VIOLATION, AND THE  
2 DEFENSE DENIES THIS, ETC. ANYWAY, I WANT A SEPARATE PAGE THAT  
3 I WILL READ AND PROVIDE TO THE JURY.

4 IF YOU HAVE ANY QUESTIONS ON THIS, JUST CALL DAVE, MY  
5 CLERK, ON THIS.

6 ALSO, DISCUSS THE STIPULATED ADMISSIBILITY OF  
7 EXPECTED AND RESERVED EXHIBITS. I WOULD LIKE TO SEE WHETHER OR  
8 NOT YOU CAN PARE DOWN SOME OF THESE EXHIBITS BEFORE TRIAL, AND  
9 IDENTIFY ANY THAT YOU CAN STIPULATE TO ADMISSIBILITY. IF THERE  
10 IS ANY THAT YOU CAN SPECIFICALLY STIPULATE TO, I WOULD LIKE TO  
11 HAVE THAT IN WRITING AS TO WHAT YOU DO.

12 NOW, AS CURRENTLY PRESENTED, THE EXHIBIT LIST DOES  
13 SATISFY THE LOCAL RULES; HOWEVER, AS A MATTER OF CONVENIENCE, I  
14 WOULD LIKE TO HAVE YOU SUBMIT A MORE DETAILED EXHIBIT LIST,  
15 INCLUDING AN OFFER OF PROOF FOR EXHIBITS FACING OBJECTIONS.

16 I DON'T KNOW WHAT ONES YOU OBJECT TO OR WHAT ONES YOU  
17 DON'T OBJECT TO, BUT I WOULD LIKE TO HAVE AN OFFER OF PROOF.  
18 IT DOESN'T HAVE TO BE LONG. IT CAN JUST GENERALLY BE ONE WORD,  
19 "IRRELEVANT," IF THAT IS WHAT THE CASE IS. SO I NEED THAT TO  
20 BE INCLUDED.

21 AND AS FAR AS THE WITNESS LIST IS CONCERNED, AS I  
22 SAID, SEE IF YOU CAN PARE THAT DOWN. AND IN THAT REGARD,  
23 OBVIOUSLY, YOU NEED TO BE PREPARED FOR WITNESSES IF YOU NEED TO  
24 INTERCHANGE THEM. IF YOU LIST, SAY, 10 WITNESSES, BUT YOU  
25 REALLY ONLY PLAN TO, HYPOTHETICALLY, CALL FOUR OF THEM, THE

NOVEMBER 5, 2018

1 REST OF THEM, I ASSUME, ARE THOSE THAT, NUMBER ONE, CAN'T MAKE  
2 IT AND YOU CAN FILL IT IN WITH THIS OTHER ONE.

3 I WOULD LIKE YOU TO SEE IF YOU CAN PARE THAT DOWN, AS  
4 BEST AS POSSIBLE, AS TO HOW MANY WITNESSES YOU ACTUALLY ARE  
5 PLANNING ON CALLING. AND THEN SET FORTH THE OTHER WITNESSES AS  
6 A WITNESS THAT YOU MIGHT NEED TO COVER AN ISSUE THAT YOU DIDN'T  
7 EXPECT, OR TO FILL IN FOR ONE WHO MIGHT NOT BE ABLE TO MAKE IT.

8 NOW, ALSO, I WOULD LIKE FOR YOU TO GIVE AN OFFER OF  
9 PROOF AS TO WHAT THEY ARE GOING TO TESTIFY TO. IT DOESN'T HAVE  
10 TO BE LONG. JUST MAYBE ONE SENTENCE OR MAYBE TWO SENTENCES  
11 THAT WOULD INDICATE WHAT THAT WITNESS IS GOING TO TESTIFY TO.  
12 IT GIVES ME A BETTER UNDERSTANDING, IF YOU DO THAT.

13 NOW, AS FAR AS TIME ESTIMATES ARE CONCERNED, YOU  
14 ESTIMATE THREE-TO-FIVE DAYS. AS YOU KNOW -- WELL, MAYBE YOU  
15 DON'T KNOW. UNLESS YOU WANT IT DIFFERENT THAN THIS, IT'S  
16 REALLY UP TO YOU, BECAUSE CIVIL IS PRETTY FLEXIBLE. I HAVE TO  
17 HAVE SIX JURORS. THAT'S THE MINIMUM. AND I ALWAYS LIKE TO  
18 HAVE MORE THAN THAT, JUST IN CASE I LOSE SOMEBODY.

19 AND I GENERALLY GO WITH EIGHT JURORS IF IT'S ONLY  
20 ABOUT A WEEK TRIAL, BUT IT STILL HAS TO BE UNANIMOUS IN FEDERAL  
21 COURT, AS YOU KNOW.

22 SO IF I GO WITH EIGHT JURORS, THAT ALLOWS ME AND YOU  
23 TO PICK A JURY, GENERALLY, IN ABOUT AN HOUR AND A HALF TO TWO  
24 HOURS, AT THE MOST. AND THAT ALSO WOULD THEN INCLUDE THE  
25 POSSIBILITY OF HAVING WITNESSES THE VERY FIRST DAY. BUT EIGHT

1 JURORS IS WHAT I WAS PLANNING ON DOING.

2 BUT IF YOU WANT TO CHANGE IT AND MAKE IT LESS THAN  
3 UNANIMOUS, YOU CAN DO THAT, TOO. BUT IT'S SOMETHING THAT YOU  
4 MIGHT THINK ABOUT. UNLESS YOU BOTH COME FORWARD AND TELL ME  
5 YOU WANT IT DIFFERENTLY, IT WILL BE EIGHT JURORS. I DON'T KNOW  
6 IF YOU THOUGHT ABOUT THAT AT ALL.

7 NOW, IF YOU HAVE JOINT WITNESSES. IT'S POSSIBLE THAT  
8 YOU HAVE THE SAME WITNESS, WHERE BOTH OF YOU WANT TO GET  
9 SOMETHING FOR YOUR SIDE OF THE CASE OUT OF THEM. IF YOU HAVE  
10 THAT, WHERE YOU ONLY NEED ONE WITNESS, AND IT'S A JOINT  
11 WITNESS, JUST LET ME KNOW. AND THEN WHAT I GENERALLY WILL  
12 ALLOW IS FOR THE EXAMINATION, TECHNICALLY OUT OF ORDER, WHERE  
13 YOU CAN BOTH SOLICIT THE EVIDENCE THAT YOU WANT OUT OF THAT  
14 PARTICULAR WITNESS, IF YOU HAVE ANY THAT ARE LIKE THAT.

15 AND IF THAT'S THE CASE, LET US KNOW. AND UNDER THAT  
16 SCENARIO, I GENERALLY ALLOW LEADING-TYPE QUESTIONS BECAUSE I  
17 DON'T WANT TO GET INTO A SPOT WHERE YOU AGREE TO DO THAT AND  
18 THE FIRST PERSON TAKES THEM ON DIRECT AND THE OTHER PERSON  
19 TAKES THEM ON CROSS. IT'S A LITTLE UNFAIR. SO I GENERALLY  
20 ALLOW LEADING QUESTIONS IF THEY ARE JOINT WITNESSES.

21 I ALREADY COVERED THIS. THE DEFENSE HAS 10 WITNESSES  
22 THAT THEY ARE CONTEMPLATING CALLING. IS THAT IN CEMENT AT THE  
23 MOMENT, THAT YOU HAVE 10 DEFINITE WITNESSES, OR ARE SOME OF  
24 THOSE POSSIBLY FILL-INS IN CASE OTHER SUBJECT MATTER IS BEING  
25 RAISED?

NOVEMBER 5, 2018

1           **MS. MULLINS:** NO, YOUR HONOR. SOME OF THOSE MAY BE  
2 POSSIBLY FILL-INS, AS WELL. AND WE COULD PROBABLY RACHET DOWN  
3 THAT NUMBER. AND WE CAN MEET AND CONFER WITH OPPOSING COUNSEL  
4 AS TO JOINT, AS WELL.

5           **THE COURT:** I WOULD LIKE TO SEE IF YOU CAN  
6 SPECIFICALLY LIST THE NUMBER OF WITNESSES YOU PLAN TO CALL, AND  
7 HAVE THOSE OTHER PEOPLE SUBPOENAED JUST IN CASE YOU NEED THEM.

8           **MS. MULLINS:** YES, SIR.

9           **THE COURT:** ALL RIGHT. I HONESTLY THINK THAT IN THIS  
10 CASE, THAT THIS WILL BE SOONER THAN A WEEK. YOU HAVE  
11 THREE-TO-FIVE DAYS. I GUESS THAT IS NOT UNFAIR. THE FIRST  
12 WITNESSES, I CAN TELL YOU IN OTHER CASES, ASSUMING THEY ARE  
13 FACT WITNESSES AND NOT ANYTHING TOO COMPLEX, I HAVE BEEN ABLE  
14 TO GET FOUR WITNESSES IN ON THE DAY THAT I SELECT THE JURY.  
15 NOW, THAT IS NOT ALWAYS TRUE THAT YOU CAN DO THAT, BUT I MOVE  
16 FAIRLY FAST.

17           OKAY. NOW, THIS IS ONE THAT IS KIND OF MY PET PEEVE,  
18 THAT I WOULD LIKE YOU TO DO: DAUBERT MOTIONS. IF THERE IS A  
19 DAUBERT MOTION YOU PLAN ON BRINGING WHERE THERE IS A COUPLE  
20 DUAL WITNESSES, WHERE SOMEONE IS GOING TO BE CALLED TO TESTIFY  
21 AS A FACT WITNESS AND ALSO AS AN EXPERT, I WOULD LIKE TO HAVE  
22 THAT EARLY ON. I DON'T WANT TO WAIT UNTIL MOTIONS IN LIMINE  
23 FOR THAT. SOMETIMES THAT MAKES A DIFFERENCE. IF YOU'RE A  
24 PERCIPIENT WITNESS, YOU CAN ALWAYS TESTIFY. BUT IF YOU'RE AN  
25 EXPERT, YOU MIGHT HAVE SOME OTHER ASPECTS FROM EXPERT

1 TESTIMONY. I'M NOT SURE WHAT THAT IS.

2 IS THERE ANYTHING THAT YOU CAN TELL ME NOW, JUST TO  
3 GIVE ME A FEEL FOR WHAT KIND OF EXPERTISE YOU ARE LOOKING AT, A  
4 SEPARATE AND DISTINCT FACT?

5 **MR. VANDERPOOL:** YES, YOUR HONOR. PLAINTIFF TOOK THE  
6 EXTRA PRECAUTION TO LIST HIS EXPERT WITNESSES: THE PLAINTIFF,  
7 HIMSELF, AS TO HIS EARNINGS, BOTH PAST AND FUTURE. AN  
8 EMPLOYEE, AS PLAINTIFF INTERPRETS IT, IS REALLY THE ONLY EXPERT  
9 OF HIS OWN WAGES.

10 AND, LIKEWISE, WE IDENTIFIED MS. CRUZ, WHO IS A UNION  
11 REPRESENTATIVE THAT FACILITATED FILING THE GRIEVANCE. AS YOU  
12 MAY -- SINCE THERE IS SOME DETAILS ABOUT SALARY SCHEDULED  
13 PLACEMENT, AND ABILITY TO POST AND BID AND MOVE AND TRANSFER  
14 WITHIN THE CITY, AND HOW THAT IS ACCOMPLISHED.

15 WE DON'T REALLY VIEW THOSE AS EXPERT ISSUES, BUT WE  
16 WANTED TO BE SURE THAT WE DESIGNATED THOSE FOLKS FOR THOSE  
17 SUBJECTS IN CASE THERE WAS SOME OBJECTION THAT THAT CALLS FOR  
18 EXPERT OPINION.

19 **THE COURT:** WELL, I THINK THAT IS A GOOD IDEA THAT  
20 YOU SAID THAT BECAUSE I WOULDN'T HAVE WANTED THAT TO COME UP  
21 RIGHT AT TRIAL, AND I DON'T WANT IT TO COME UP AT MOTIONS IN  
22 LIMINE. I WANT TO GET RID OF IT.

23 SO I'M GOING TO SET A FILING DEADLINE FOR DAUBERT  
24 MOTIONS FOR DECEMBER 31ST. IF YOU WOULD FILE THAT ON  
25 DECEMBER 31ST. AND THEN THE DEFENSE NEEDS TO CALL TO RESERVE A

1 HEARING DATE ON THE DAY THEY PLAN TO FILE.

2 SO I WILL GIVE YOU MAYBE A WEEK -- WELL, THIS IS OVER  
3 THE HOLIDAYS. IT'S A BAD TIME. A COUPLE WEEKS, MAYBE, TO  
4 RESPOND TO THAT. IT DOESN'T SOUND LIKE IT'S GOING TO BE THAT  
5 COMPLEX. AND THEN WE CAN RESERVE A HEARING DATE TO HEAR IT  
6 BEFORE TRIAL. I MAY END UP RULING ON THE PAPERS. THAT IS  
7 ALWAYS A POSSIBILITY, TOO.

8 NOW, AS FAR AS TRIAL DATES ARE CONCERNED, THE  
9 FOLLOWING POSSIBILITIES ARE AS FOLLOWS: MAY 7TH, 2019, WITH  
10 MOTIONS IN LIMINE HEARING ON THURSDAY, MAY 2ND. YOU MAY WANT  
11 MOTIONS EARLIER THAN THAT, SO LET ME KNOW.

12 ANOTHER DATE IS MAY 21ST, 2019, WITH MOTIONS IN  
13 LIMINE MAY 16TH. SO THOSE ARE THE DATES THAT WOULD BE POSSIBLE  
14 TRIAL STARTS.

15 DO THOSE LOOK LIKE SOMETHING THAT YOU CAN WORK WITH?

16 **MS. MULLINS:** THAT WORKS FOR THE DEFENSE, YOUR HONOR.  
17 YOU DID MENTION IF WE WANTED MILS EARLIER, THAT WE COULD MAKE  
18 THAT REQUEST. I WOULD REQUEST MILS TO BE A LITTLE EARLIER,  
19 EVEN UP TO A MONTH EARLIER.

20 ONE OF THE MOTIONS IN LIMINE IS QUITE SUBSTANTIVE AS  
21 TO THE ISSUES THAT WILL BE PRESENTED AT TRIAL, AND IT MAY MAKE  
22 SOME DECISIONS ON BOTH SIDES. SO THE MOTIONS IN LIMINE WOULD  
23 ABSOLUTELY AID US IN PREPARATION OF TRIAL IF WE KNEW WHAT WAS  
24 COMING IN.

25 **THE COURT:** IN CIVIL CASES THAT MAKES SENSE.

NOVEMBER 5, 2018

1 WELL, LET ME ASK YOU ABOUT THESE TRIAL DATES, IF THEY  
2 WORK.

3 **MR. VANDERPOOL:** FIRST OF ALL, COUNSEL AND I HAVE --  
4 COUNSEL IN OUR OFFICES CONFERRED AT LENGTH ABOUT ALL THESE  
5 ISSUES YOUR HONOR HAS DISCUSSED, INCLUDING THE TRIAL DATE. AND  
6 PLAINTIFF IS AMENABLE TO MAGISTRATE STORMES PRESIDING OVER THE  
7 TRIAL IN THE CASE.

8 **THE COURT:** THAT'S FINE. THAT WAS THE NEXT THING I  
9 WAS GOING TO FOLLOW. DO YOU WANT A MAGISTRATE JUDGE TO HANDLE  
10 THIS? YOU COULD GET IT MORE EXPEDITIOUSLY.

11 **MR. VANDERPOOL:** WE DON'T KNOW IF THE CITY CHANGED  
12 THEIR MIND.

13 **MS. MULLINS:** ACTUALLY, THE CITY CANNOT AGREE TO A  
14 MAGISTRATE JUDGE. I DON'T HAVE PERMISSION AT THIS TIME FOR  
15 THAT. SO WE'D PREFER TO MOVE FORWARD WITH JUDGE LORENZ.

16 **THE COURT:** OKAY. IF THAT CHANGES, LET ME KNOW.

17 **MS. MULLINS:** YES, SIR.

18 **MR. VANDERPOOL:** AND THEN ON THE TRIAL DATE, MY SON  
19 IS GRADUATING COLLEGE ON MAY 15TH. WE WILL BE IN COLORADO, I'M  
20 HOPING, STILL. WE CAN DO MAY 21ST, IF THAT IS THE FIRST DATE  
21 ON THE COURT'S CALENDAR, BUT I DISAPPOINT MANY MEMBERS OF MY  
22 FAMILY.

23 **THE COURT:** NO, YOU HAVE TO GO TO THAT. YOU WILL  
24 NEVER HEAR THE END OF IT, IF YOU DON'T.

25 DOES THAT WORK FOR THE CITY?

1           **MS. MULLINS:** YES, YOUR HONOR.

2           **THE COURT:** MAY 21ST. AND YOU MIGHT GO BACK, AND IF  
3 YOU CAN GET THEM TO AGREE TO JUDGE STORMES, AND PLAINTIFFS  
4 DON'T MIND, I HAVE NO PROBLEM WITH THAT.

5           **MS. MULLINS:** YES, SIR.

6           **THE COURT:** OKAY. ALL RIGHT. I THINK I'VE PRETTY  
7 WELL COVERED IT. THE TRIAL MANAGEMENT ORDER WHICH ESTABLISHES  
8 THE PRETRIAL DEADLINES, INCLUDING DATES FOR MOTIONS IN LIMINE  
9 AND JURY INSTRUCTION SUBMISSIONS, WILL BE ISSUED THIS WEEK.  
10 AND IF THE TRIAL IS ON MAY 21ST, THEN THE MOTIONS IN LIMINE WE  
11 COULD BRING SOMETIME, MAYBE, IN APRIL OR MARCH.

12           **MS. MULLINS:** YES, YOUR HONOR. MARCH WOULD BE  
13 PREFERABLE, IF POSSIBLE.

14           **THE COURT:** THAT'S FINE WITH ME.

15           DOES IT WORK FOR THE PLAINTIFF?

16           **MR. VANDERPOOL:** YES, YOUR HONOR. WE WILL MAKE THAT  
17 WORK.

18           **MS. MULLINS:** THANK YOU, YOUR HONOR.

19           **THE COURT:** ALL RIGHT. WE ARE IN GOOD SHAPE, THEN.  
20 ALL RIGHT. THAT IS ALL I HAVE. DO YOU HAVE ANY QUESTIONS?

21           I MIGHT ADD THAT I DON'T KNOW THE LAST TIME YOU BOTH  
22 HAVE TRIED YOUR TRIALS IN FEDERAL COURT, BUT MOST OF THE COURTS  
23 HAVE ALL BEEN UPDATED. WE HAVE MONITORS, ONE FOR EVERY TWO  
24 JURORS. AND WE HAVE MONITORS THERE, OF COURSE, ON YOUR DESK,  
25 AND HERE.

1           AND YOU NEED TO TALK TO LINDSEY. SHE WILL EXPLAIN TO  
2 YOU HOW YOU CAN ALMOST BE PAPERLESS. IF YOU HAVE AN EXHIBIT,  
3 AS AN EXAMPLE, THAT YOU WANT TO GET IN EVIDENCE, THAT IS JUST  
4 SHOWN TO THE WITNESS, OURSELVES, AND YOURSELVES AT COUNSEL  
5 TABLE. YOU CAN THEN ARGUE OVER THE ADMISSIBILITY OF IT. AND  
6 IF IT'S ENTERED AND YOU WANT TO HAVE IT SHOWN TO THE JURY, SHE  
7 FLIPS THE SWITCH AND IT ALL GOES TO THE JURY'S MONITORS. SO  
8 IT'S PRETTY SOPHISTICATED. WE CAN ALSO PUT SOMETHING UP ON THE  
9 WALL THERE, THAT DOES THE SAME THING.

10           SO YOU MIGHT CHECK WITH HER ON THAT. AND IN THAT  
11 REGARD, THAT MEANS YOU REALLY NEED TO COME TEST IT OUT AND MAKE  
12 SURE YOUR SYSTEM WORKS. I DON'T KNOW IF YOU USE COMPUTERS. IF  
13 YOU DON'T, THERE IS ALSO -- WHAT IS IT CALLED? AN ELMO.

14           **MR. VANDERPOOL:** ELMO.

15           **THE COURT:** WE HAVE AN ELMO. THE ELMO IS THERE AND  
16 YOU CAN DO THE SAME THING WITH THE ELMO, WHICH MAKES IT,  
17 SOMETIMES, EASIER.

18           ALL RIGHT. DO YOU HAVE ANY QUESTIONS?

19           **MR. VANDERPOOL:** PLAINTIFF DOES, YOUR HONOR, JUST TO  
20 BE ABSOLUTELY CLEAR ABOUT YOUR HONOR'S INSTRUCTIONS. IS YOUR  
21 HONOR ASKING THAT THERE BE SEPARATELY SUBMITTED WRITTEN  
22 STIPULATIONS, EXHIBIT AND WITNESS LISTS, AND THAT WE RESUBMIT  
23 THIS ORDER?

24           **THE COURT:** YOU CAN MAKE THEM JOINT. THE ONLY PLACE  
25 YOU WOULD MAKE IT SEPARATE IS IF YOU DON'T AGREE, IF YOU CAN'T

1 AGREE. LET'S SAY YOU HAVE A STATEMENT OF FACTS OF THE CASE  
2 AND -- YOU SHOULD BE ABLE TO AGREE ON THAT, BUT IT'S A  
3 HYPOTHETICAL -- YOU HAVE A FEW WORDS THAT YOU WANT DIFFERENTLY  
4 THAN THE OTHER SIDE. THEN YOU CAN PROVIDE THE TWO SEPARATELY  
5 AND I WILL JUST DECIDE WHICH ONE I WANT OR MAKE MY OWN.

6 IT'S THE SAME KIND OF THING WITH ANYTHING ELSE THAT  
7 COMES UP. OTHERWISE, LET'S HAVE IT JOINT.

8 **MR. VANDERPOOL:** OKAY. SO IN OTHER WORDS, YOUR HONOR  
9 IS DIRECTING THAT THE PARTIES RESUBMIT THEIR PROPOSED?

10 **THE COURT:** YES, RESUBMIT.

11 **MR. VANDERPOOL:** THERE IS A COUPLE HEADS-UP, YOUR  
12 HONOR. NOT WANTING TO GET INTO WEEDS, SO TO SPEAK, ON THESE  
13 MOTIONS, BUT IT DOES BEAR UPON THE COURT'S CONCERN ABOUT  
14 WITNESSES AND EXHIBITS. PLAINTIFF, FROM OUR STANDPOINT, SEES  
15 THIS CASE AS VERY STRAIGHTFORWARD. WE HAVE FOUR WITNESSES TO  
16 CALL. WE THINK WE CAN BE DONE IN TWO DAYS OR LESS, WITH OUR  
17 CASE. WE PROBABLY HAVE 12 KEY EXHIBITS.

18 AS YOUR HONOR WELL KNOWS, THERE WAS A MOTION FOR  
19 SUMMARY JUDGMENT ADJUDICATION. IT WAS RULED UPON AND STRIKING  
20 A LOT OF OLDER EVENTS THAT WERE UNTIMELY. SO WE UNDERSTAND THE  
21 CITY HAS DESIGNATED A HOST OF RECORDS THAT ARE UNTIMELY --  
22 WELL, WERE EXCLUDED BY THE COURT'S RULING, JUST IN CASE.

23 IN OTHER WORDS, THAT WE OPEN THE DOOR, SO TO SPEAK,  
24 AND GO BACK IN TIME. SO I THINK THAT IS WHAT COUNSEL IS  
25 SPEAKING OF, ABOUT A SUBSTANTIVE MOTION THAT DEALS WITH A LOT

1 OF THESE EXHIBITS. I THINK THE WAY PLAINTIFF UNDERSTANDS THE  
2 CITY'S POSITION IS THE COURT'S RULING ABOUT CUTTING OUT POINTS  
3 IN TIME SHOULD ALSO ADDRESS EXHIBITS THAT ARE OLDER. AND  
4 PLAINTIFF SEES THAT DIFFERENTLY. BUT WE WILL MAKE IT, AS BEST  
5 WE CAN, CLEAR IN OUR AMENDED.

6 **THE COURT:** THAT'S FINE. THAT'S FINE. IF YOU CAN  
7 MAKE IT CLEAR, AS YOU SAID, THEN THE CITY SHOULD BE ABLE TO --  
8 AND MY RULING IS SUCH THAT I WON'T ALLOW ANY OF THIS TO GO  
9 BACK. BUT IF THERE IS ANY ISSUES THAT THE CITY THINKS WOULD  
10 OPEN THE DOOR, THEN WE CAN DEAL WITH THOSE.

11 YOU CAN FILE ANY SEPARATE MOTION THAT WOULD EXCLUDE  
12 A,B,C. IF YOU SAY "THIS IS IT, BUT THIS IS OUT, THIS COULD  
13 OPEN THE DOOR" -- IF THERE IS SOMETHING LIKE THAT -- THEN I  
14 WILL DEAL WITH THEM AHEAD OF TIME. I CAN DEAL WITH THEM AT THE  
15 TIME OF THE DAUBERT MOTIONS, IF NECESSARY.

16 **MR. VANDERPOOL:** THE LAST ISSUE. THE JOINT STATEMENT  
17 OF THE CASE AND WHAT WE SUBMITTED, YOUR HONOR, WAS A PRODUCT OF  
18 SOME SIX ITERATIONS OF OUR EFFORTS TO MEET AND CONFER AND AGREE  
19 TO WHAT WE COULD AGREE UPON. SO IF I HEAR YOUR HONOR SAYING  
20 THIS JOINT STATEMENT STILL SHOWS THAT WE HAVEN'T, OR NEEDS TO  
21 BE DONE, WE'LL GO BACK. BUT I JUST WANTED TO SAY WE'VE TRIED  
22 MIGHTILY TO GET TO WHAT WE CAN AGREE UPON, AND IT IS OFTENTIMES  
23 A CHALLENGE.

24 **THE COURT:** LET ME SEE. THE REASON FOR THAT IS --  
25 WELL, I DON'T RECALL NOW. I HAVE TOO MANY CASES. IS IT ALL ON

1 JUST ONE PIECE OF PAPER?

2 **MR. VANDERPOOL:** IT'S NOT. I'M SORRY, COUNSEL.

3 **MS. MULLINS:** NO, GO AHEAD.

4 **MR. VANDERPOOL:** I WAS JUST SAYING IT WAS PART OF OUR  
5 JOINT -- PRETRIAL ORDER, YOUR HONOR. IT WASN'T ON A SEPARATE  
6 PAPER.

7 **THE COURT:** JUST FILE IT AS A SEPARATE PAGE.

8 **MR. VANDERPOOL:** GOT IT. THANK YOU. THAT HELPS.

9 **MS. MULLINS:** YES, SIR. AND, YOUR HONOR, YOU SAID  
10 YOU WOULD LIKE US TO RESUBMIT THE PRETRIAL ORDER. IS THERE A  
11 DATE YOU WOULD LIKE THAT BY?

12 **THE COURT:** WELL, THE TRIAL IS OFF. IT SHOULDN'T  
13 TAKE THAT LONG.

14 **MS. MULLINS:** NO, SIR.

15 **THE COURT:** DAVE, DID YOU HAVE A TIME FRAME?

16 **THE LAW CLERK:** I WOULD SAY BY THE 26TH OF NOVEMBER.

17 **MS. MULLINS:** I CAN DO THAT.

18 **MR. VANDERPOOL:** YES, THAT'S FINE. THANK YOU.

19 **MS. MULLINS:** AND THEN, YOUR HONOR, ONE LAST THING  
20 FROM THE CITY. THE PARTIES HAVE MET AND CONFERRED REGARDING  
21 JURY INSTRUCTIONS. IS THERE ANY STEPS YOU WOULD LIKE THE  
22 PARTIES TO TAKE IN ADVANCE, OR IS THAT PART OF THE ORDER THAT  
23 IS FORTHCOMING?

24 **THE COURT:** IF YOU COULD JUST GET THEM TO ME, I WOULD  
25 LIKE TO HAVE THEM ABOUT A WEEK IN ADVANCE. IF YOU CAN GET THEM

NOVEMBER 5, 2018

1 TO ME.

2 **MS. MULLINS:** YES, SIR.

3 **THE COURT:** I DON'T KNOW IF YOU'RE TAKING THE  
4 STANDARD. I DON'T KNOW ENOUGH ABOUT THE CASE TO KNOW WHETHER  
5 YOU NEED TO GRAB CASE LAW AND MAKE YOUR OWN, OR WHETHER IT IS  
6 THE STANDARD. BUT I WOULD LIKE TO HAVE THEM EARLY ENOUGH SO I  
7 CAN LOOK AT ANYTHING THAT MIGHT BE UNIQUE.

8 **MS. MULLINS:** YES, SIR. AND I BELIEVE IT'S A MIX OF  
9 BOTH: SOME STANDARD AND SOME WILL BE CASE LAW.

10 **MR. VANDERPOOL:** IT'S PLAINTIFF'S SUGGESTION THAT THE  
11 PARTIES CAN SUBMIT THEIR JURY INSTRUCTIONS THEY CAN AGREE UPON,  
12 OR HAVE AGREED UPON, AND DON'T, WITH OUR MOTION IN LIMINE  
13 FILINGS BECAUSE THE LAW IS GOING TO GREATLY IMPACT SOME OF  
14 THOSE MOTION IN LIMINE RULINGS, SUCH AS IT IS. YOU WOULD LIKE  
15 TO THINK ATTORNEYS CAN AT LEAST AGREE ON THE LAW, BUT SOMETIMES  
16 IT'S NOT ALWAYS SO.

17 **THE COURT:** WHAT YOU AGREE UPON, WHY DON'T YOU SUBMIT  
18 THEM AT THE TIME? AND THOSE THAT YOU DON'T, JUST FILE  
19 SEPARATELY.

20 **MS. MULLINS:** YES, SIR. THANK YOU, YOUR HONOR.

21 **MR. VANDERPOOL:** THANK YOU.

22 **THE COURT:** AND AS I SAID, WE'LL PROVIDE YOU WITH  
23 DATES IN WRITING IN A COUPLE DAYS.

24 **MR. VANDERPOOL:** ALL RIGHT.

25 **THE COURT:** ANYTHING ELSE?

