

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

JANET JENKINS, et al.,

Plaintiffs,

v.

No. 2:12-cv-184-WKS

KENNETH L. MILLER, et al.,

Defendants.

**REPLY IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL DEFENDANTS
LIBERTY COUNSEL, INC. AND RENA LINDEVALDSEN TO PRODUCE AT&T
RECORDS AND REQUEST FOR APPROPRIATELY EXPEDITED CONSIDERATION**

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Attachment	Document
1	Exhibit 1: Karl Lindevaldsen Emails
2	Exhibit 2: Thurman Deposition Exhibit 33
3	Exhibit 3: Deposition Exhibit LC-22
4	Declaration of Diego A. Soto (Dec. 11, 2020)

Defendants Liberty Counsel, Inc. and Rena Lindevaldsen must produce the AT&T records in their entirety because none of the information contained in the records is privileged. As such there is no burden on them at all except to produce the records to Plaintiffs in their existing form. Defendants attempt to avoid application of clear legal rules of privilege by stretching these rules beyond recognition and then manufacturing a burden that does not exist. In the process, they make two critical admissions: *First*, the records “do not disclose the contents of the calls and texts of Attorneys Staver, Lindevaldsen, and Mihet.” Resp. 7, ECF 600. *Second*, not even Defendants can determine their relationship to any phone number appearing within the records without a multi-step search of “at least three separate computer databases” accessible only to Liberty Counsel. *Id.* at 4.

With those two admissions, Defendants’ privilege, First Amendment, and privacy arguments evaporate. Because the records show nothing more than that a Liberty Counsel or Lindevaldsen phone number called, or received a call, from a particular phone number on a given date and time within a two-year period ten years ago, the records cannot possibly “constitute a client list,” *id.* at 7, or a list of “potential clients, donors, supporters, and other constituents.” *id.* at 2. Just look at the narrower portion of Lindevaldsen’s AT&T records that the government introduced in its prosecution of Defendant Philip Zodiates. *See* ECF 582-3. Because AT&T—not Defendants—created these records, they do not tag phone numbers as “Client,” “Potential Client,” “Donor,” “Supporter,” or “Constituent” or disclose that the caller asked for legal advice, made a donation, or expressed support. *Id.* The records themselves reveal none of the details that Defendants, in their response, have decided to share about their relationships with those phone numbers and what was possibly discussed on those phone calls. *See* Resp. 2. Without this information, the records are not and can never be a client list or

membership list for Liberty Counsel. Moreover, their arguments are also conflicting; the records cannot “constitute a client list” if every phone number might also belong to a donor, supporter, or “other constituent.” If there is overlap, the records provide no insight.

Because there is no way for Plaintiffs to distinguish between phone numbers that may belong to “clients [or] potential clients,” “donors, supporters, and other constituents,” and those who are personal and completely unrelated to Liberty Counsel business, the records are not protected by any privilege or privacy interest. The limited information contained in the records, while important and relevant to this case, precludes the application of any privilege.

ARGUMENT

I. The AT&T Records Are Relevant to Plaintiffs’ Claims and Proportional to the Needs of the Case.

The AT&T telephone records of Defendants’ calls and texts, for a year before and after the kidnapping of Plaintiff Isabella Miller-Jenkins, are relevant and proportional to the needs of the case. *See* Mot. 6–9, ECF 582. During discovery, “a flexible treatment of relevance is required,” Fed. R. Civ. P. 26(b)(1) advisory committee’s note to the 1970 amendment, and the Court has “broad discretion” to determine relevance in this case. Op. & Order 5, ECF 554 (citing *Crawford-El v. Britton*, 523 U.S. 574, 598 (1998)). Criminal prosecutions revealed that Defendant Lisa Miller’s co-conspirators communicated about the kidnapping by telephone and through intermediaries. *See* Mot. 7–8. The AT&T records would help Plaintiffs better understand Defendants’ role in the conspiracy by showing with which known and as-yet-unidentified co-conspirators, intermediaries, and unwitting participants they communicated.

Defendants do not specifically dispute the relevance of Mr. Staver’s and Ms. Lindevaldsen’s records. And contrary to Defendants’ assertions, the records of Mr. Mihet and Mr. Lindevaldsen are also relevant. Mr. Mihet was a senior employee of Defendant Liberty

Counsel, Inc. who personally represented Defendant Lisa Miller in the custody dispute. *See* Decl. of Horatio Mihet ¶¶ 3, 12, ECF 600-4; Mot. 2 n.3. Mr. Lindevaldsen actively attended meetings regarding the custody dispute, participated in a homeschool co-op with Lisa and Plaintiff Isabella Miller-Jenkins in the weeks before the kidnapping, communicated with Lisa by email, and provided her his phone number. Decl. of Karl Lindevaldsen ¶ 6, ECF 600-5; *see* Ex. 1: Karl Lindevaldsen Emails.

Furthermore, the AT&T records are proportional to the needs of the case. The two-year period is appropriate. *See* Mot. 8–9. Unlike the document requests Defendants cite, which request all communications on ten critical days, *see* Resp. 17, the subpoena to AT&T requested only nonsubstantive logs of calls. Because they are not protected by any privilege or privacy interest, there is absolutely no burden on Defendants except to produce the records to Plaintiffs in their existing form. The balance of relevance versus burden therefore weighs heavily in favor of production to Plaintiffs.

Defendants argue that Plaintiffs’ reference to unidentified intermediaries makes this a “fishing expedition.” Resp. 16. Even ignoring how that misses the point of discovery, particularly in a conspiracy case, Defendants themselves have indicated that there may still be additional, as-yet-unidentified co-conspirators or intermediaries. At the deposition of nonparty Deborah Thurman on December 4, 2020, Plaintiffs confronted Thurman with an email she wrote in November 2009 about “confirmation” she received “through Lisa’s LC attorney (Rena) that she [Lisa] and Isabella are both OK,” *see* Ex. 2: Thurman Dep. Ex. 33, and Defendants confronted her with an email she wrote in December 2009 about “some anonymous person [who] did contact Liberty Counsel to let them know they [Lisa and Isabella] were safe,” Ex. 3: Dep. Ex. LC-22, at JENKINS25878. Defendants elicited testimony from Thurman that she does not recall

speaking with Lindevaldsen, Mathew Staver, or anyone else at Liberty Counsel about such an anonymous tip and that she does not recall whether she learned who made the anonymous tip. *See Soto Decl.* ¶ 5. Thus, Defendants themselves have invited discovery into the identity of both the tipster and the person who told Thurman about the tip. The AT&T records sit squarely within the broad definition of relevance in discovery and are proportional to the needs of the case.

II. The Attorney–Client Privilege Does Not Justify Defendants’ Withholding.

AT&T’s nonsubstantive records of Defendants’ phone calls ten years ago are not protected by the attorney–client privilege because, as the Second Circuit has squarely held, they were “created by the telephone company” and do not contain “confidential disclosures.” *Matter of Grand Jury Subpoenas Dated Oct. 22, 1991, & Nov. 1, 1991* (“*Grand Jury Subpoenas*”), 959 F.2d 1158, 1165–66 (2d Cir. 1992); *see also* Mot. 10 (collecting other cases). Defendants’ only response is that *Grand Jury Subpoenas* did “not even purport to answer” “whether telephone records in general are privileged” because that case involved a client’s telephone records that were in the hands of the attorney. *See* Resp. 10. That distinction does not affect the court’s holding, which was premised on the clear rule that “[d]ocuments created by and received from an unrelated third party,” such as “documents created by [a] telephone company,” “are not the client’s confidential communications” and “are not within the privilege.” 959 F.2d at 1165–66 (citing *Fisher v. United States*, 425 U.S. 391, 403–04 (1976); *Hickman v. Taylor*, 329 U.S. 495, 508 (1947)).

Even setting that aside, the Second Circuit has another clear rule: absent special circumstances, client identity (and therefore documents that would or could reveal client identity) is not protected by the attorney–client privilege. *See, e.g., In re Grand Jury Subpoena Served Upon Doe*, 781 F.2d 238, 247 (2d Cir. 1986). This rule “follows from defining the privilege to encompass only those confidential communications necessary to obtain informed

legal advice.” *In re Shargel*, 742 F.2d 61, 62–63 (2d Cir. 1984). Moreover, because the attorney–client privilege renders relevant information undiscoverable, it is construed narrowly and applied only when necessary to achieve its purpose. *See United States v. Mejia*, 655 F.3d 126, 132 (2d Cir. 2011). Because revelation of the mere fact that an attorney–client consultation occurred, without the substance of the communication, does not generally inhibit an attorney’s ability to provide fully informed legal advice, it is not protected by the privilege. *See In re Shargel*, 742 F.2d at 63–64.

This general rule that client identity is not privileged applies here. The Court should reject Defendants’ proposed “special circumstances” exception, never recognized by the Second Circuit, for records that “effectively constitute a client list.” Resp. 6–12. Defendants, voluntarily disclosing that their communications involve “highly sensitive and personal matters,” Resp. 2, argue that such an exception is needed to prevent “a chilling effect” on their clients communicating with Defendants “at all,” *id.* at 10. However, recognition of Defendants’ proposed exception is inappropriate for three reasons.

First, the records do not constitute a client list, even effectively. Even Defendants cannot, just by looking at the records themselves, determine whether they have an attorney–client relationship with the person behind a particular phone number within the records. Defendants explain that “[d]etermining which records of communications within the AT&T Records are subject to the attorney–client, associational, or other privilege or protection from disclosure would require multiple steps for each telephone number” and access to three of Defendants’ private databases. Resp. 4. As Defendants detail, they must (1) search three separate Liberty Counsel databases to see whether the number is linked to the name of any person or organization in their internal records; (2) search each of the databases with that name to determine the person

or organization’s relationship with Liberty Counsel (*i.e.*, “client, potential client, donor, supporter, [or] other constituent”); (3) for numbers that do not appear in Liberty Counsel’s records, use public and commercial reverse lookup services to determine the name of the user; and (4) search that name in each of the Liberty Counsel internal databases to determine what, if any, relationship that person or organization has with Liberty Counsel. *See* Resp. 4–5. This extensive process shows that the AT&T records are not even a client list when in Liberty Counsel’s own hands and that Plaintiffs obviously have no way of replicating this process without access to Defendants’ databases. Additionally, the AT&T records can never “constitute a client list” if every phone number might instead belong to a “donor, supporter, ... other constituent,” or a personal contact unrelated to Liberty Counsel business. *See* Resp. 6; Decl. of Rena Lindevaldsen ¶ 6, ECF 600-3. If there is overlap, the records provide no insight.

Second, the proposed exception is materially different from the two exceptions recognized by the Second Circuit. The confidential communication exception “limit[s] the protection of a client’s identity to those circumstances where its disclosure would in substance be a disclosure of the confidential communication between the attorney and client.” *Vingelli v. U.S., Drug Enf’t Agency*, 992 F.2d 449, 452–53 (2d Cir. 1993) (citing *In re Osterhoudt*, 722 F.2d 591, 593–94 (9th Cir. 1983)). The substantial disclosure exception prohibits the disclosure of the client’s identity “where the substance of a confidential communication has already been revealed, but not its source.” *See Vingelli*, 992 F.2d at 452–53 (citing *Colton v. United States*, 306 F.2d 633, 637 (2d Cir. 1962)).¹ Both are aimed at preventing the linkage of a client to a confidential communication. Clearly, neither exception applies here because, as Defendants

¹ The Second Circuit has also explicitly rejected an exception where revealing the client’s identity would likely incriminate the client in criminal activity. *See Lefcourt v. United States*, 125 F.3d 79, 86 (2d Cir. 1997).

admit, the AT&T records “do not disclose the contents of the calls and texts of Attorneys Staver, Lindevaldsen, and Mihet.” Resp. 7.

Third, the Second Circuit has implicitly rejected Defendants’ argument that their clients would be chilled from communicating with them if they disclosed the AT&T records. The court has recognized that “[d]isclosing the client’s name would not necessarily reveal his or her purpose in consulting [the] attorney,” *Vingelli*, 992 F.2d at 453, and although “the lack of a privilege against disclosure of the fact of an attorney-client relationship may discourage some persons from seeking legal advice at all,” client identity information is nonetheless not privileged, *In re Shargel*, 742 F.2d at 63.

Defendants rely solely on a single, inapposite, out-of-circuit case to argue there is a “special circumstances” exception for records that “effectively constitute a client list.” In *In re Search Warrant Issued June 13, 2019* (“*Search Warrant*”), 942 F.3d 159, 166–67 (4th Cir. 2019), the government seized the entirety of an attorney’s email correspondence. Unsurprisingly, the court held that review of the seized files for privilege by a filter team of government agents rather than the attorney’s law firm was inappropriate because the emails contained vast amounts of confidential communications with clients and other lawyers in the firm, and other substantive work product of the attorney and law firm generally. *See id.* at 172, 179. Defendants minimize the difference between the emails seized in *Search Warrant* and the AT&T records here as “not exactly the same ... simply because the content of the Liberty Counsel calls are not at issue.” Resp. 10. Defendants grossly understate the fundamental and material difference between emails and the AT&T phone records. Unlike the emails in *Search Warrant*, the AT&T records here contain absolutely no substantive content, no confidential communications, no substantive

attorney work product, and no indication of the relationship between Defendants and the numbers' users.

Although the court in *Search Warrant* recognized that asking the attorney's firm to provide a client list "demonstrated a lack of respect for the attorney-client privilege," 942 F.3d at 180, those circumstances still are not analogous to the AT&T records at issue here and does not justify the creation of a categorical "client list" exception to the general rule that client identity is not privileged. In *Search Warrant*, the government asked the attorney's firm to provide a client list so that the government could contact the clients to obtain privilege waivers for the substantive emails, thus tying clients to their confidential communications, the same issue underlying the substantial disclosure exception. *Id.* Here, Plaintiffs are asking for AT&T's telephone records, not Defendants' client list. Moreover, Plaintiffs do not make that request to reveal a client, donor, or constituent relationship with Defendants or to reveal the content of any communication. As Defendants themselves admit, the "content of the Liberty Counsel calls are not at issue." Resp. 10.

Second Circuit precedent and the limited information contained in the AT&T records make clear that the AT&T records are not protected, in any way, by the attorney-client privilege.

III. The Work-Product Doctrine Does Not Justify Defendants' Withholding.

The AT&T records are not protected from disclosure by the work-product doctrine because AT&T created them in the ordinary course of business, irrespective of Defendants' litigation. *See United States v. Adlman*, 134 F.3d 1194, 1202 (2d Cir. 1998) ("It is well established that work-product privilege does not apply to ... documents that are prepared in the ordinary course of business or that would have been created in essentially similar form irrespective of the litigation."). The Second Circuit recognizes a "narrow exception" to that rule where there is a showing "of a real, rather than speculative, concern that the thought processes of

the client's counsel in relation to pending or anticipated litigation would be exposed." *Grand Jury Subpoenas*, 959 F.2d at 1167 (quoting *Gould Inc. v. Mitsui Mining & Smelting Co.*, 825 F.2d 676, 680 (2d Cir. 1987)).

Defendants argue that the AT&T records are protected work product because Plaintiffs could compare the records with "publicly known litigation events" to develop a "roadmap to the attorney's mental processes." Resp. 13. This concern is purely speculative and highly tenuous. Like Defendants' "client list" argument, the work-product argument grossly overstates the amount of information revealed by the records. Again, the ten-year-old AT&T records do not reveal the substance of any phone calls or text messages, identify phone numbers as belonging to "witnesses, experts, [or] consultants," Resp. 13, or tag calls as being related to specific litigation. The AT&T records are not protected by the work-product doctrine.

IV. The First Amendment Does Not Justify Defendants' Withholding.

Disclosure of the AT&T records would not abridge anyone's First Amendment right to freedom of association because these third-party records do not identify any person's relationship with Defendants, such as client, donor, supporter, "constituent," or even opponent. The Court already instructed Defendants that they "must at least articulate some resulting encroachment on their liberties" to justify withholding discovery based on the First Amendment, Op. & Order 16, ECF 395 (quoting *N.Y. State Nat'l Org. for Women*, 886 F.2d at 1355), and held that "vehement ideological opposition in a matter of high public emotion does not necessarily mean that th[e] discovery request[s] would pose a threat to Defendants' freedoms to speak and associate freely," *id.* at 17. Defendants have failed to make a *prima facie* showing that their or their members' First Amendment rights would be infringed by production of the AT&T records, especially if the Court orders the records may be used only for this case.

First, the AT&T records do not identify any of Defendants’ “donors, supporters, [or] other constituents.” As already shown, the telephone records in no way indicate the relationship between Defendants and the callers or texters and establishing that relationship would require the same extensive process regarding clients detailed above, which Plaintiffs have no way of replicating. *See supra* at 1, 5–6.

Second, Defendants’ speculative allegations of “political hostility, harassment, or threats directed at persons associated with Liberty Counsel” and a “chilling effect on all persons who expect and rely on confidentiality in contacting Liberty Counsel,” Resp. 14–15, are insufficient to meet their burden. Once again, Defendants rely solely on their ideological opposition to the Southern Poverty Law Center (“SPLC”) to assert that their “clients[’], potential clients[’], donors[’], supporters[’], and other constituents[’]” freedoms will be infringed. Once again, the only “evidence” Defendants present is a single statement from 2007 by a single, former, non-attorney employee of SPLC regarding SPLC-designated hate groups generally, not Liberty Counsel specifically. Unlike the NAACP in *Bates v. City of Little Rock*, 361 U.S. 516, 523–24 (1960) and *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958), Defendants have presented no “substantial uncontroverted evidence that public identification of persons in the community as members of the organization[] [would be] followed by harassment and threats of bodily harm,” or “economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility.” Nor do they even suggest any evidence of a threat of such harassment directed at Liberty Counsel or any individual associated with Liberty Counsel.² This

² This case against Defendant Lisa Miller, a client of Liberty Counsel, Defendant Rena Lindevaldsen, and Defendant Liberty Counsel, Inc. “targets” Defendants only to the extent that they participated in a conspiracy to kidnap a child. *Cf.* Op. & Order 106, ECF 277 (“Plaintiffs’ state law claim for intentional interference with Jenkins’ custody does not arise from protected

bare allegation of a chilling effect on associating with an organization whose positions, and SPLC's opposition to them, are publicly well-known, and nothing more than a speculative assertion of potential harassment, threat, or reprisal is insufficient to meet their burden. The First Amendment supplies no protection for the AT&T records, especially if the Court orders the records may be used only for this case.

V. Privacy Concerns Do Not Justify Defendants' Withholding.

Defendants and Mr. Lindevaldsen have no significant privacy interest in AT&T's nonsubstantive records of their phone calls. *See Glob. HTM Promotional Grp., Inc. v. Angel Music Grp. LLC*, 2007 WL 221423, at *2 (S.D. Fla. Jan. 26, 2007) (citing *Smith v. Maryland*, 442 U.S. 735, 742–43 (1979)). Despite the lack of any applicable privilege or privacy interest, the Court may incorporate the AT&T records into this case's operative protective order, which limits the disclosure and use of confidential information to this case and the individuals involved in it, *see* Protective Order ¶¶ 8, 10, ECF 410, and is more than sufficient to protect privacy interests, if any. *See* Mot. 10 (collecting cases holding protective orders adequately guard privacy interests).

Defendants complain that, even with all the protections of the Court's order, "Jenkins and SPLC cannot unsee or unlearn the client identities." Resp. 15. Yet again, Defendants overstate the amount of information in the AT&T records. The AT&T records are not a client list or even effectively a client list, but rather a list of telephone numbers dialed a decade ago.

speech. Rather, it arises from Lisa Miller's furtive departure from the United States immediately before she would have been obligated to surrender Isabella to Jenkins pursuant to a court order, first temporarily and later, on a full-time basis. The claims which Plaintiffs assert against the remaining defendants center on the support that they allegedly provided to Lisa Miller to carry out this wrongful conduct.").

Defendants' purely speculative concern that SPLC will violate the order because of its ideological opposition is unfounded, without merit, and offensive. *See id.* The undersigned attorneys take seriously their ethical and professional responsibilities and duties. SPLC has and will abide by the Court's orders, full stop.

VI. Defendants' Proposals Are Inadequate and Unreasonable.

Both of Defendants' proposals are inadequate, unreasonable alternatives to the complete, unredacted production of the nonprivileged AT&T records. Because nothing in the records is privileged, there is no burden on Defendants except to produce the records in their existing form; there is no balancing to be done. Plaintiffs are entitled to the complete records. Both of Defendants' proposals would prevent Plaintiffs from fully inspecting relevant, discoverable information and unnecessarily and inappropriately involve Defendants in Plaintiffs' investigation and analysis of the evidence.

Under the first proposal, whereby Plaintiffs would provide Defendants with a list of telephone numbers to search for, Plaintiffs would likely have to repeatedly give Defendants lists of phone numbers to be searched, Defendants would then go through their time-consuming multi-step process to make their privilege and privacy assertions, and then Plaintiffs would have to argue with Defendants over each number's relevance to the case and any privilege and privacy assertions Defendants might make over particular entries. Under the second proposal, whereby Defendants would redact the first six digits of every telephone number, Plaintiffs would have to ask Defendants repeatedly for the additional digits of the partially redacted phone numbers and repeatedly argue about the relevance, privacy, and privilege of particular entries. This proposal also prevents Plaintiffs from analyzing the records and identifying additional co-conspirators and intermediaries based on geographic information provided by area codes and international calling codes.

Both proposals would unnecessarily require Plaintiffs' attorneys to repeatedly reveal to Defendants their thought processes and theories about the case every time they need to ask about additional numbers or when justifying any number's relevance. Furthermore, under both proposals, any specific privilege discussion would then reveal exactly the information Defendants are trying to protect, the relationship between Defendants and the number's user. These proposals would therefore end up revealing more "client, potential client, donor, supporter, and other constituent" identities than just turning over the complete, unredacted records would.

The complete, unredacted AT&T records are relevant and not protected by any privilege, so Defendants' proposed half measures are inappropriate.

CONCLUSION

Plaintiffs' motion to compel should be granted and Defendants should be ordered to produce the AT&T records, unredacted, forthwith.

Respectfully submitted.

December 11, 2020

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, the foregoing document was served on the following counsel of record through the Court's CM/ECF system:

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December 11, 2020

/s/ Diego A. Soto

Diego A. Soto

Counsel for Plaintiffs

Janet Jenkins and Isabella Miller-Jenkins

Sent: Fri, 3 Oct 2008 18:33:37 -0700 (PDT)
From: Karl Lindevaldsen <krjlindev@yahoo.com>
Subject: Re: meeting
To: zeusdesfor@aol.com

Hi

I think another meeting would be good. I think early would be okay.

Karl

--- On Fri, 10/3/08, zeusdesfor@aol.com <zeusdesfor@aol.com> wrote:

> From: zeusdesfor@aol.com <zeusdesfor@aol.com>
> Subject: meeting
> To: behrhorn@aol.com, jandavis25@verizon.net, wall4america@netzero.net, lvbrown@liberty.edu, krjlindev@yahoo.com
> Date: Friday, October 3, 2008, 7:19 PM
> Beth and I were talking :)? We are wondering if we are
> having another meeting on Monday. If not then we think we
> should.?? Is there any way though we can have it ealier than
> 7:00 p.m.??
>
> Thanks!???? Lisa

EXHIBIT

1

Subject: RE: Palin's PBS Poll
Sent: Tue, 21 Oct 2008 08:12:15 -0400
From: "DAVIS Janet F (AFS)" <Janet.Davis@areva.com>
To: <labrown2522@aol.com>
Cc: <zeusdesfor@aol.com>, <wall4america@netzero.com>, <behrhorn@aol.com>, <krjlindev@yahoo.com>

Actions from last night:

email addresses for "family-friendlies" to be put on FaceBook. As participants to contact them about this case, and ask what are they going to do about it. Are they going to sit idly by and allow this to become the next Roe v. Wade?

Beth checking with her in-laws to see if we can use their PO box for donations.

Adopt Rena's idea of asking for \$1 donations from all FaceBook members.

The deposition for today is still set for Northern Va - Lisa will not be going. We do not know the repercussions of that decision.

Power of Attorney drawn up from Lisa to Linda, and Lisa will prepare a permission slip for Isabella to be in Linda's care while she is in Vermont.

Linda, Beth and Karl, Did I capture everything?

Janet

From: labrown2522@aol.com [mailto:labrown2522@aol.com]
Sent: Tuesday, October 21, 2008 3:37 AM
To: stuart.haugen@republicansabroad.fr; DAVIS Janet F (AFS); rbjill@msn.com; JDabney732@aol.com
Subject: Fwd: Palin's PBS Poll

See information below. I deleted all the forwarding addresses.

-----Original Message-----

Sent: Tue, 21 Oct 2008 8:00 am
Subject: Fwd: FW: Palin's PBS Poll

Scroll down and if you'd like to mess with PBS, click on the link! The blogosphere extremists on the other side deserve some of their own medicine.

>
> If the link below doesn't work, you can copy and paste. :)
>
>
> This will only take 2 seconds of your time.....
> >
> > It's time to mess with the pollsters!!!!!!
> >
> >
> > Subject: PBS poll: Sarah Palin
> > Please read:
> > PBS wants to "show the world" that Sarah Palin is not qualified. They
> > are taking an "unscientific" poll and will then use it to make their
> > point. To achieve their goal, they have turned to their viewers who
> > are about 80% liberal.
> > Let's provide them with a result they did not expect. Send this email
> > to every non-liberal you know. Let's get some balance into this
> > survey group. This is the easiest vote you will ever make. It takes
> > literally two seconds.
> > Let's turn this around!!!
> > Here's the link:
>
> > <http://www.pbs.org/now/polls/poll-435.html>
>
> >
> > AFTER YOU PARTICIPATE, FORWARD THIS MESSAGE TO YOUR LIST OF PEOPLE,
> > ASK THEM TO VOTE AND THEN ASK THEM TO FORWARD IT ON TO THEIR E-MAIL CONTACTS.
>
>

Subject: FW: Kevin Jennings and Obama
Sent: Tue, 21 Oct 2008 08:59:14 -0400
From: "DAVIS Janet F (AFS)" <Janet.Davis@areva.com>
To: <wall4america@netzero.com>, <behrhorn@aol.com>, <zeusdesfor@aol.com>, "Brown, Larry V. (Mgr, A/P)" <lvbrown@liberty.edu>, <krjlindev@yahoo.com>

FYI

Are we in agreement to seek donations on FACEBOOK?

Can someone come up with a name for us rebel rousers?

Who knows how to get hooked up with PayPal?

How about "The Truth Squad?"

Janet

From: Lindevaldsen, Rena M. [mailto:rlindevaldsen@liberty.edu]
Sent: Tuesday, October 21, 2008 8:54 AM
To: DAVIS Janet F (AFS); Brown, Larry V. (Mgr, A/P)
Subject: RE: Kevin Jennings and Obama

I've never done anything like this and before someone (other than me) posts something about it, could I just make sure that all of you Monday night meeting folk (need to come up with a better name for you all ☺) are in agreement as to how to do this. Thanks.

Rena Lindevaldsen

From: DAVIS Janet F (AFS) [mailto:Janet.Davis@areva.com]
Sent: Tuesday, October 21, 2008 8:52 AM
To: Brown, Larry V. (Mgr, A/P)
Cc: Lindevaldsen, Rena M.
Subject: RE: Kevin Jennings and Obama

How do we do this?

That would be great!

Rena, I would like to put a post on FaceBook requesting donations and pledges of \$1 or more a month - monthly donations.

Janet F. Davis
Administrative Assistant Senior
AREVA Federal Services LLC
Phone: 434-832-2886
FAX: 434-382-2886
3315 Old Forest Road
Lynchburg, VA 24501

From: Brown, Larry V. (Mgr, A/P) [mailto:lvbrown@liberty.edu]
Sent: Monday, October 20, 2008 8:22 PM
To: DAVIS Janet F (AFS); wall4america@netzero.net
Cc: Lindevaldsen, Rena M.; krjlindev@yahoo.com; zeusdesfor@aol.com; behrhorn@aol.com
Subject: RE: Kevin Jennings and Obama

This has also been done on FaceBook with PayPal...

From: DAVIS Janet F (AFS) [Janet.Davis@areva.com]

Sent: Thu, 6 Aug 2009 06:13:02 -0700 (PDT)
From: Karl Lindevaldsen <krjlindev@yahoo.com>
Subject: Re: love it!
To: zeusdesfor@aol.com

Hi Lisa

Glad you liked it. Yes, I can lend you the books when they are returned. I should be getting them back before Sep. Yes, put Isabella in 3rd grade for coop. Ingrid will be so excited to have her in class. Also plan to have Isabella in the Friday writing class with Rena. I am very excited that you are homeschooling. Call me if you have any questions. 434-384-5094 Home
540 850 3183 cell
Karl

--- On Wed, 8/5/09, zeusdesfor@aol.com <zeusdesfor@aol.com> wrote:

> From: zeusdesfor@aol.com <zeusdesfor@aol.com>
> Subject: love it!
> To: krjlindev@yahoo.com
> Date: Wednesday, August 5, 2009, 9:26 PM
> I absolutely love the Noah
> Curriculum! I had looked at it before and was
> very disappointed that I couldn't use it (b/c of the
> price). Are there other books that you have as
> well? Beth said that you lent them out? Is it a
> possibility for me to borrow them from you as well.
>
>
>
> Also, what about co-op? Is there a possibility
> Isabella can be in 3rd grade classes so she can be with you
> and Ms. Beth? She tested at a high 3rd/low 4th grade
> reading level at the end of the year (she was only
> pre-primer in Sept. so she was a fast learner obviously-
> even the reading specialist who tested her using PALS said
> she had to check the score again b/c it was unheard of to go
> up that many levels). I really think she can do 3rd grade
> work at co-op. What do you
> think? You have more experience than I do with
> that age group. My experience is with middle and high
> school (or pre-school/kindergarten).
>
>
>
> Thanks for your input.
>
>
>
> Lisa
>
>
>>
>

CB - 12/04/2020

Exhibit 33

exhibitster.com

Subject: Good news!

Date: Sunday, November 15, 2009 2:23 PM

From: Debbie Thurman <debbie@debbiethurman.com>

To: Daryl Pitts <daryl@trbc.org>

Conversation: Good news!

Hey, Daryl -

Since you and I had just talked about it this morning, I wanted to let you know that we've now had confirmation through Lisa's LC attorney (Rena) that she and Isabella are both OK. Nobody knows where they are (our speculation is most likely correct) but they are safe, and that's what matters. Praise God! No reason to believe the authorities will investigate at this time, but that's in God's hands, too.

Best,

Debbie

EXHIBIT

2

CB - 12/04/2020

Exhibit LC-22

exhibiticker.com

Subject: Re: Miller

Date: Thursday, December 31, 2009 12:11 PM

From: Debbie Thurman <debbie@debbiethurman.com>

To: "Throckmorton, Warren" <EWThrockmorton@gcc.edu>

Conversation: Miller

> Miller sowed some seeds in her life via her marriage to Jenkins and her
> decision to bring a child into the world via artificial means. There are
> natural and logical consequences to these choices and actions. I think she
> needs to see her situation in that light rather than in an epic light of
> patriots and saviors.

This is where I agree totally with you, and it has been the biggest gray area to deal with. FWIW, I actually advised her earlier in the year to think hard about allowing the visits and letting the real story be outed. I think Jenkins would have incriminated herself. She chose a radically different course. Yes, I don't suppose we can make a one-to-one comparison with the holy family's flight.

Best,

Debbie

EXHIBIT

3

Subject: RE: Miller

Date: Thursday, December 31, 2009 11:13 AM

From: Throckmorton, Warren <EWThrockmorton@gcc.edu>

To: Debbie Thurman <debbie@debbiethurman.com>

Conversation: Miller

I think it is lack of clarity that I am picking up on.

God will be the judge for sure.

Your analogy to Christ, Joseph and Mary supports my problem with her actions. The birth of Christ was a one-time miracle and part of a supernatural plan not to be equated or analogous to the natural order of things. It cannot provide guidance as it was not a prescriptive teaching or event. Miller sowed some seeds in her life via her marriage to Jenkins and her decision to bring a child into the world via artificial means. There are natural and logical consequences to these choices and actions. I think she needs to see her situation in that light rather than in an epic light of patriots and saviors.

I don't know what she knows either, what she shared with LifesiteNews was not sufficient to warrant this action and if there was more, she should have shared it or at least disclosed it to the judge when she was in violation of visitation.

Lest you think I am crying big tears for Jenkins, I am not. I think she is selfish in her push to gain custody. As with Solomon's situations with the two mothers, the one who was the real mother was willing to give up her child to spare it.

If Lisa is found, she will most likely lose her child. If she went to a country where we do not have an extradition treaty, I question her sanity (well, perhaps except for Vanautu).

If she went to Uganda (no treaty there either), well, what a perfect storm of a story that would be.

No more needed on this; I would die fighting for my kids but I also see the wisdom in living to fight another day.

Warren

From: Debbie Thurman [mailto:debbie@debbiethurman.com]
Sent: Thu 12/31/2009 10:40 AM
To: Throckmorton, Warren
Subject: Re: Miller

Warren, you may not be picking up on the nuances. I am sorry, but I am not going to do any more clarifying. It will have to lie where it is. I cannot say with clarity that she is doing the wrong thing. I am willing to let God be the judge. Some things are beyond our human comprehension. If she went to a non-extradition country, she is not likely to be brought back. Remember, God didn't choose to protect the Christ child from Herod's killing force by letting him remain under their noses, but had Joseph and Mary flee to Egypt instead. Who are we to say how He is speaking to Lisa? We don't know everything she knows. I will tell you I don't trust Janet Jenkins any farther than I can throw her.

> Debbie: The problem I continue to have is that you did not say directly that I
> read that you do not condone her flight. You say you understand it and you
> laud her but you did not say something like, ...despite my admiration for her,
> I don't believe she is doing the right thing by fleeing with her daughter.

>
> Perhaps she is courageous but one could argue that her faith is in her ability
> to hide her daughter and not in God's ability to protect her daughter even
> when spending time with Jenkins. The effect of her action is that she makes it
> more likely that when she is found she will not have free contact with her
> daughter for a long time to come.
>
> I don't buy this garbage of Kinkaid about selfishness but I do now question
> her judgment and belief that God is in control. If she is reading you
> somewhere, she probably would take what you wrote, even the second time, as
> being support for her action.
>
> If I missed your clear advice to Lisa to come home or lack of support it, I
> missed it. That is not rhetorical; I read it quickly and am between meetings
> and thus writing this quickly.
>
> Warren
>
> _____
>
> From: Debbie Thurman [mailto:debbie@debbiethurman.com]
> Sent: Thu 12/31/2009 8:42 AM
> To: Throckmorton, Warren
> Subject: Re: Miller
>
>
>
> It's done:
>
> <http://theformers.wordpress.com/2009/12/31/some-needed-clarification/>

Subject: Re: Miller

Date: Thursday, December 31, 2009 8:08 AM

From: Debbie Thurman <debbie@debbiethurman.com>

To: "Throckmorton, Warren" <EWThrockmorton@gcc.edu>

Conversation: Miller

Thank you, as I can certainly use all the prayers I can get. Yes, wisdom is my prayer, as well. I'll do something to correct the impression of my blog post. Thanks.

Best,

Debbie

> This really helps me understand both where you are coming from and where she
> might be coming from.

>
> In light of this, I do think it might be good for you to consider clarifying
> or amending your blog post a bit. It does leave the impression that you favor
> Miller's actions.

>
> In general, I think ex-gay groups might be faced with a dilemma on this one.
> Being silent might appear to condone what she has done. If the national media
> gets involved, that pressure might accelerate. Praying for your wisdom in
> this...

> Best, Warren

>
>
>
>
>
>

> From: Debbie Thurman [mailto:debbie@debbiethurman.com]
> Sent: Thu 12/31/2009 5:43 AM
> To: Throckmorton, Warren
> Subject: Re: Miller

>
>
>

> Yes, Lisa and Izzy are gone. Exactly when they left and where they are is
> anybody's guess. I have no contact with her. No one I know does, and I think
> that's the way she planned it so we could all honestly say when questioned
> we know nothing.

>
> You and I both would like to have seen this go differently. I've often
> wondered if Lisa and Janet could have come to some kind of agreement early
> on over visitation. But then it may have been more like my own first
> marriage was. My ex-husband and I flew secretly back here to counsel with
> the pastor who married us in our second year of a rocky marriage. After
> meeting with us separately and together several times, he said it was was of
> the rare times in his ministry he was counseling a married couple to
> divorce. He would never tell me what my ex shared with him; he just said it
> was scary and he was very concerned for me.

>
> I have been in contact with Lisa's former counselor, who was working with
> her even before she met Janet Jenkins. She knows the scary stuff, things
> that have not been made public. Knowing Lisa as I do, I am convinced this
> was an absolute last resort for her. I believe her only concern is for her
> daughter, and the consequences for herself be damned. Of course, I am being
> accused now on the gay blogs of defending kidnapping. Not so. I am just
> defending her mindset because I am a mother, and one who is a "former" at
> that.

>
> Because Lisa knew her friends, to say nothing of her attorneys, would be
> beside ourselves with worry not knowing anything, some anonymous person did
> contact Liberty Counsel to let them know they were safe. That's it. Don't
> know when we will learn anything else. Her counselor told me that she had

> shared long ago if this should ever happen, she would cut off all contact
> with her friends and maybe even family. So, that's that as far as I can see.
>
> Thanks for your concern. Right now it's prayer that is needed.
>
> Best,
>
> Debbie
>
>> Debbie - I am not going to insert myself in the issue with Lisa Miller in a
>> public way but I am curious if this report is inaccurate:
>> <http://abcnews.go.com/US/lisa-miller-supposed-handover-daughter-isabella-lesb>>> i
>> an-partner/story?id=9449823
>>
>> I have been an expert witness in three such cases involving gay parents and
>> then many others involving straight parents with different religious beliefs.
>> It generally works out ok to allow joint custody, as well as one could expect
>> anyway.
>>
>> I know you said you don't know where she is but if you have any contact with
>> her, I hope you would encourage her to show up on NYD. Otherwise it will not
>> go well for her and her influence on the child in the future.
>>
>> From an outsiders perspective, this looks like a train wreck that does not
>> need to happen.
>>
>> Warren
>
>
>
>

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

JANET JENKINS, et al.,

Plaintiffs,

v.

No. 2:12-cv-184-WKS

KENNETH L. MILLER, et al.,

Defendants.

**DECLARATION OF DIEGO A. SOTO IN SUPPORT OF
REPLY IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL DEFENDANTS
LIBERTY COUNSEL, INC. AND RENA LINDEVALDSEN TO PRODUCE AT&T
RECORDS AND REQUEST FOR APPROPRIATELY EXPEDITED CONSIDERATION**

I, Diego A. Soto, declare under penalty of perjury that the following is true and correct:

1. I am a Staff Attorney at the Southern Poverty Law Center and represent Plaintiffs Janet Jenkins and Isabella Miller-Jenkins in this case.

2. Exhibit 1 is a true and correct copy of emails involving Karl Lindevaldsen (krjlindev@yahoo.com) produced to Plaintiffs by Defendant Kenneth Miller.

3. Exhibit 2 is a true and correct copy of an email Plaintiffs introduced at the deposition of nonparty Deborah Thurman as Exhibit 33.

4. Exhibit 3 is a true and correct copy of emails Defendants introduced at the deposition of nonparty Deborah Thurman as Exhibit LC-22.

5. At the deposition of nonparty Deborah Thurman on December 4, 2020, Defendants elicited testimony from Thurman that she does not recall speaking with Rena Lindevaldsen, Mathew Staver, or anyone else at Liberty Counsel about the anonymous tip referenced in Exhibit LC-22 and that she does not recall whether she learned who made the anonymous tip.

Executed on December 11, 2020

/s/ Diego A. Soto

Diego A. Soto

Counsel for Plaintiffs

Janet Jenkins and Isabella Miller-Jenkins