

3. The deposition started at 10:00 a.m., and soon thereafter Mr. Jacobsen said that he had to leave at 3:00 p.m. (Jacobsen Depo. at 3, 14.) At 12:15 p.m., plaintiff's attorney, Kendrick L. Moxon, Esquire, announced that there would be an hour lunch break. (Id. at 104.) Immediately thereafter and off the record, Mr. Jacobsen repeated his need to leave at 3:00 p.m. and stated his willingness to continue without a lunch break, but Mr. Moxon rejected this offer. In the afternoon, Mr. Jacobson again repeated his need to leave at 3:00 p.m. (Id. at 173.) At 3:00 p.m., the deposition stopped, and Mr. Moxon stated that he was not finished with his questions. (Id. at 181.)

4. During the course of the deposition Mr. Jacobsen was asked questions that were relevant to the issues in this action. They included questions regarding Mr. Lerma's source of the Fishman Declaration, Mr. Jacobsen's communications with Mr. Lerma and others regarding Mr. Lerma's postings of the Fishman Declaration to "alt.religion.scientology" on the Internet and Mr. Lerma's source of the Fishman Declaration. (Id. at 28, 45-48, 58-59, 62, 74-76, 86-95, 106, 138, 167-68.)

5. There were other questions which were not relevant to the issues in this action, but which arguably were likely to lead to the discovery of admissible evidence in this action. In this category were questions addressing Mr. Jacobsen's obtaining certain purported OT III materials in 1985. (Id. at 68-69.) According to Plaintiff's counsel at the deposition, however, the general story of OT-III (the "75 million years ago incident and all that") had been part of a screenplay and had been a matter of

public record for many years and was not a trade secret of plaintiff or the Church of Scientology. (Id. at 71-74.) Other topics of questions which arguably might lead to the discovery of admissible evidence included the following: (a) Mr. Jacobsen's obtaining purported OT VIII materials in 1990-91 (id. at 69); (b) whether he had any knowledge regarding the Church of Scientology's processes for OT materials (id. at 70-72); (c) Mr. Jacobsen's involvement with F.A.C.T.Net (id. at 24-26, 30-31, 36-37, 49-59, 80-85, 152-53, 156-57); (d) whether or not Mr. Jacobsen had any dealings with The Washington Post (id. at 54); and (e) Mr. Jacobsen's knowledge regarding participants in "alt.religion.scientology" on the Internet (id. at 116, 118, 164, 174-75).

6. A good portion of the deposition of Mr. Jacobsen, was consumed by questions that appeared to me to be irrelevant and unlikely to lead to the discovery of admissible evidence. These questions included ones regarding (a) Mr. Jacobsen's attendance at certain scientology events open to the public from 1983 through 1992 (id. at 59-60, 62, 83, 91, 92, 95-103, 158-61); (b) Mr. Jacobsen's sister's involvement with scientology (id. at 95); (c) the attitude of Mr. Jacobsen and others towards the Church of Scientology (id. at 33-36); (d) Mr. Jacobsen's knowledge of, and attitudes towards, cults (id. at 15-17, 149); (e) Mr. Jacobsen's volunteer work for the Cult Awareness Network or "CAN" (id. at 17-20, 65-66, 100, 103-04, 139-41); and (f) dealings between Mr. Jacobsen and a Mr. Rick Ross, who

apparently is a Phoenix-area gentleman who worked in deprogramming of cult members (id. at 66-67, 139, 173, 177-78).

7. Many of the questions that, in my judgment, were not relevant or likely to lead to the discovery of admissible evidence were argumentative and abusive of a witness who was not represented by counsel. I made 53 objections on the ground that they were argumentative. (Id. at 15, 32, 33, 34, 51, 63, 70, 80, 82, 88, 93, 94, 96, 99, 100, 101, 102, 103, 108, 110, 114, 115, 116, 117, 122, 123, 128, 129, 130, 134, 137, 141, 146, 148, 150, 157, 159, 160, 163, 177.) These argumentative questions included ones about Mr. Jacobsen's lay person's understanding of the law. (Id. at 111, 120, 128-29.) Other examples of this type of question are as follows:

- You used the term "cults." I am giving my view now in that it's essentially a derogatory word comparable to calling a black a "nigger." Do you use the word "cult" in that fashion to refer to religious groups that you intend to be highly derogatory? (Id. at 15.)
- You are just one of those persons that wants to travel around trying to put down a religion? (Id. at 63.)
- Are you involved in the publication of pornography? (Id. at 64.)
- Do you know if Wollersheim is a drug addict? (Id. at 94.)
- Wollersheim tends to manipulate people, doesn't he? (Id. at 93.)
- Do you know if he [Wollersheim] is a mental case? (Id. at 94.)
- Have you infiltrated any scientology events? (Id. at 97.)

- How about the Ku Klux Klan, do you know what the relationship is between F.A.C.T.Net and the Ku Klux Klan? (Id. at 115.)
- Do you know if Lerma or Wollersheim or other F.A.C.T.Net staff, whether they are volunteers, such as yourself or others, have committed any other acts of religious persecution? (Id. at 115.)
- Do you know if Lerma, Wollersheim or other F.A.C.T.Net staff have committed hate crimes? (Id. at 116.)
- Have you attacked other religions locally other than scientology? (Id. at 146.)
- Did you coordinate that [your antireligious activities] with Wollersheim? (Id. at 150.)

8. The questioning of Mr. Jacobsen was also highly repetitive. I made 14 objections to questions on the ground of repetitiveness. (Id. at 14, 32, 33, 34, 88, 90, 91, 109, 110, 122, 145, 156, 175, 177.)

9. The notice of the deposition of Mr. Jacobsen was dated October 7, 1995, and the subpoena duces tecum for same was dated October 6, 1995. Copies of same are attached hereto as Exhibits B and C. (Exhibit C was among the documents produced by Mr. Jacobsen at the deposition; the numbers JJ0038 through JJ0042 were affixed to the document by an assistant in my office after the deposition.)

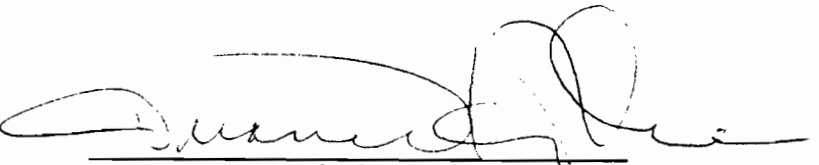
10. Upon information and belief, Mr. Jacobsen was not served with the subpoena until Sunday, October 15, 1995, and four days later, on Thursday, October 19, 1995, he wrote a letter to the plaintiff's attorney who signed the subpoena, Helena Kobrin, objecting to production of documents under the subpoena.

Nevertheless, Mr. Jacobsen did produce some documents at the

deposition. A copy of Mr. Jacobsen's letter was among the documents produced at the deposition and is attached hereto as Exhibit D.

11. One of the documents produced by Mr. Jacobsen was a computer floppy disk which, he testified, contained his downloading of certain postings to "alt.religion.scientology" on the Internet. (Id. at 57-58.) Plaintiff was to printout the contents of the disk and return the disk to Mr. Jacobsen. (Id. at 68, 181-82.) Later, however, upon information and belief, plaintiff's counsel refused to do this.

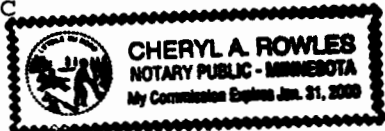
12. The basis for my information and belief about plaintiff's counsel's refusal to return the disk to Mr. Jacobsen is a letter, dated October 25, 1995, from Mr. Jacobsen to Judge Brinkema, a copy of which was sent to me and apparently Mr. Moxon and a copy of which is attached hereto as Exhibit E. With the letter, Mr. Jacobsen apparently enclosed certain CD-ROM disks which were discussed at the deposition. (Id. at 37-44, 57, 76, 79-80, 104-06, 132, 141-44.) The subsequent production of these CD-ROM disks also was discussed at the deposition. (Id. at 178-81.)


Duane W. Krohnke

Subscribed and sworn to before me
this 30th day of October, 1995.


Notary Public

MLL2C89C.WP5



1 Q. Are you going to be producing that? The
2 original that you say you received in the mail, that's
3 what you are calling your original?

4 A. Yes. Uh-huh.

5 Q. Are you going to be producing that back to
6 the church?

7 A. This is an exact copy. I spent an hour at
8 the copy machine copying everything, and this is it.

9 Q. Well, here is the problem, is that you
10 recognize that this is asserted to be trade secret
11 material and it's copyrighted material, correct?

12 A. I understand the Church claims it's trade
13 secret and it's copyrighted.

14 Q. And there is litigation ongoing now with
15 Lerma?

16 A. Yes.

17 Q. And with Dennis Urlich, too, right?

18 A. Yes.

19 Q. Are you going to be producing this? I
20 mean, are you going to want to keep copies of what you
21 recognize now as a copyright infringement?

22 A. It's for my own use.

23 MR. KROHNKE: Objection to the question of
24 asking this lay witness unrepresented by counsel to make
25 some legal conclusion about a copyright infringement.

1 He is not qualified to answer that question.

2 A. BY THE WITNESS: The copies I have are for
3 my own use.

4 Q. BY MR. MOXON: You know that you are
5 down-loading copyrighted materials?

6 A. The material, yes. I guess so.

7 Q. Are you going to produce this back to the
8 church now or are you going to get involved in
9 litigation yourself?

10 A. These are copies that I have made for my
11 own use. I do not distribute them, I do not give them
12 to anyone else.

13 Q. That doesn't matter.

14 That doesn't matter. My question is are
15 you going to give them back or not?

16 A. I have given you copies of everything I
17 have.

18 Q. We need the originals, too.

19 A. I am not the one on trial.

20 Q. I know you are not on trial now.

21 A. Okay.

22 Q. I'm trying to avoid that.

23 A. Do you have a question?

24 MR. KROHNKE: There is no question pending.

25 Q. BY MR. MOXON: In other words, you are

1 refusing to give all copies of these materials back?

2 A. The copies I have are for my own use. I
3 don't distribute them.

4 Q. And you are refusing to return them?

5 A. I have answered that question.

6 Q. The answer is "yes," you either are or you
7 aren't?

8 A. The copies I have are for my own use and I
9 do not distribute them.

10 Q. I understand that. There is no dispute
11 about that. I understand what you are saying. The
12 question is are you going to return them or not?

13 A. You mean you want me to physically give
14 them to you and then leave?

15 Q. Yes.

16 A. No.

17 Q. In your communications with Arnie Lerma,
18 have you had communications with respect to the
19 relationship between FACTNET and Willis Carto?

20 A. Carto, no.

21 Q. Liberty Lobby?

22 A. No.

23 Q. Are you aware of a relationship between
24 Lerma and Liberty Lobby?

25 A. No.

6

1 right?

2 A. Told?

3 Q. Yes.

4 A. By who?

5 I haven't been told by anyone that they
6 are the real thing.

7 Q. You have been informed that these are OT
8 materials, correct?

9 A. By the discussion on the Net, that's all.

10 Q. They have a copyrighted notice on them,
11 don't they?

12 A. I don't remember.

13 Q. Well, what is printed out has an actual
14 copyright notice on it. Did you know that?

15 A. Could have. I don't know.

16 Q. You just ignored that?

17 A. Again, you are getting -- you are asking
18 questions about me, putting me on trial here. I want to
19 answer your questions about the Lerma case, and I am
20 here for that. I am not here to go under
21 cross-examination by you in something that I have done
22 personally for my own benefit or loss.

23 Q. Just to explain to you, we can amend the
24 Complaint, we can amend the Complaint to add you to it,
25 and certainly you and Lerma are both working for the

1 same outfit, for FACTNET. So your acts are potentially
2 the acts of FACTNET and the acts of Lerma as
3 co-conspirators, and we are entitled to that
4 information.

5 A. Uh-huh.

6 Q. If you want any further edification on
7 co-conspiracy theories of law, I would be happy to
8 provide it for you, or you can consult your own counsel,
9 you don't have to take it from me. At any rate, I am
10 entitled to this testimony.

11 A. I don't believe you are entitled to ask
12 any question under the sun to me.

13 Q. I am not asking you any question under the
14 sun, Mr. Jacobsen. I'm asking you questions that are
15 directly relevant to this case. You took very specific
16 copyright and trade secret violations that have been
17 committed by Lerma, by FACTNET, and by you. That's what
18 I am asking about.

19 MR. KROHNKE: Object to the question as
20 argumentative.

21 MR. MOXON: It's not a question. It's an
22 explanation to the witness, who asked me for an
23 explanation about these questions.

24 Can you read back the pending question?

25 (Question read as follows:)

1 Q. Well, what is printed out has an
2 actual copyright notice on it. Did you
3 know that?

4 Q. BY MR. MOXON: Let me give you the
5 question again. So when you down-loaded this material
6 from the OT materials from ARS and saw the copyright
7 notice, why did you just ignore it?

8 A. Since I am without benefit of counsel, I
9 have to do the legal thinking myself, and it seems to me
10 you are putting me on trial here, so I don't want to
11 answer questions that seem to me to be putting me on
12 trial.

13 Q. Are you claiming a privilege?

14 A. I am claiming that I don't believe that's
15 related to the Lerma case. I believe that's related to
16 something you think I did illegally. Not related to
17 Arnie Lerma's case.

18 Q. Did you have any conversations or
19 communications with Lerma about down-loading OT
20 materials from the Internet?

21 A. No.

22 Q. You said you did have an E-mail with Lerma
23 concerning Lerma's intention to disseminate this
24 material?

25 A. Yes.

9 1 the meeting briefed on how to go out and get or solicit
2 2 money for FACTNET?

3 MR. KROHNKE: Not relevant; objection.

4 A. BY THE WITNESS: I was just about to
5 5 object. I don't understand why you are so interested in
6 6 that minutia of that meeting. Say the question again.

7 Q. BY MR. MOXON: I am interested in the
8 8 conspiracy to disseminate, violate and copyright the
9 9 trade secrets, that's why. Because people are all
10 10 co-conspirators at the meeting, you, Wollersheim, Berry,
11 11 Youngs, they are all co-conspirators under civil law,
12 12 and criminal law conspirators' acts are acts of each
13 13 other. That's why I am interested in it.

14 MR. KROHNKE: Move to strike counsel's
15 15 comments.

16 MR. MOXON: He asked me the question. He is
17 17 entitled to know.

18 You are not going to help him out. You
19 19 know it's the law. They are all conspirators. I am
20 20 entitled to prove that. That's why all of these
21 21 questions are particularly relevant. Lerma is in that
22 22 group, incidentally.

23 THE WITNESS: Is there a question I am
24 24 supposed to answer?

25 MR. KROHNKE: There is no question pending

14 1 A. Yes. Local.

2 MR. MOXON: Okay.

3 Well, the deposition is suspended for the
4 moment to be reconvened at another time. If you want to
5 set up a time now, we can do it.

6 THE WITNESS: I would like -- I would like to
7 get representation first.

8 MR. MOXON: All right. I will contact you,
9 and if you could have your attorney call me, whoever
10 that is. Do you have my number?

11 THE WITNESS: No.

12 MR. MOXON: Here is my card, and I will hear
13 from you then.

14 THE WITNESS: Or you give me a call Sunday,
15 make sure I have them.

16 MR. MOXON: Okay, see you on Sunday at 3:00
17 o'clock.

18 The transcript will be created here, and
19 you can come to the court reporter's office to review
20 the transcript unless you want to waive the signature,
21 but you have a right to review it to determine its
22 accuracy and sign it at that time, and you can make
23 corrections in the transcript.

24 THE WITNESS: Okay.

25 MR. KROHNKE: For the record, I think you

14 1 produced a computer disk. Has that been returned to
2 you?

3 MR. MOXON: They were printing it out. That
4 was an extra copy anyway, right? We will bring it back
5 to you on Sunday if you want.

6 THE WITNESS: Okay. Bring it Sunday.

7 MR. MOXON: Do you have a copy of that?

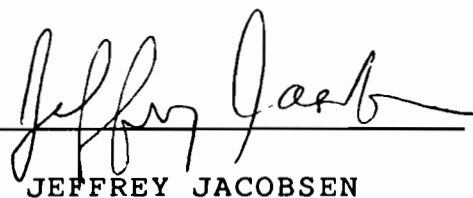
8 THE WITNESS: Not of that disk, no, I don't
9 have. I don't even remember what all was on it.

10 MR. MOXON: Do you have a copy of the material
11 that was on the disk?

12 THE WITNESS: Yes, that's a copy from my hard
13 drive.

14 MR. MOXON: Okay.

15 (Deposition adjourned at 3:00 p.m.)
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19
20 
21 JEFFREY JACOBSEN