

1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF ARIZONA

3
4 Manuel de Jesus Ortega Melendres,)
et al.,)
5)
Plaintiffs,) No. CV 07-2513-PHX-GMS
6)
vs.) Phoenix, Arizona
7) August 7, 2015
Joseph M. Arpaio, et al.,) 1:03 p.m.
8)
Defendants.)
9 _____)

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13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14 BEFORE THE HONORABLE G. MURRAY SNOW

15 In-Court Hearing

16 (Volume 1, Pages 1-24)

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18 **SEALED PROCEEDINGS**

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21
22 Court Reporter: Gary Moll
23 401 W. Washington Street, SPC #38
Phoenix, Arizona 85003
24 (602) 322-7263

25 Proceedings taken by stenographic court reporter
Transcript prepared by computer-aided transcription

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A P P E A R A N C E S

Also present:

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Chief Raul Martinez, Deputy Monitor - Telephonically
Chief Deputy Gerard Sheridan
Victoria Lopez, Esq.
Captain Steve Bailey
Jennifer Grisham

P R O C E E D I N G S

THE COURT: Please be seated.

THE CLERK: This is CV 07-2513, Melendres v. Arpaio,
on for status conference.

13:03:06

Counsel, please announce your appearances.

MR. BENDOR: Good afternoon, Your Honor. Josh Bendor
of the ACLU of Arizona representing plaintiff. With me is
Victoria Lopez, who's an attorney with, and the legal director
of, the ACLU of Arizona, but has not entered a notice of
appearance in this case. I also have co-counsel on the phone.

13:03:19

THE COURT: Any objection to Ms. Lopez appearing?

MS. IAFRATE: No, Your Honor.

THE COURT: Or being present? All right.

MS. IAFRATE: Good afternoon, Your Honor. Michele
Iafrate on behalf of Sheriff Arpaio and the non-party alleged
contemnors.

13:03:29

MR. MASTERSON: Good afternoon, Judge. John Masterson
and Joe Popolizio for Sheriff Arpaio.

THE COURT: Good afternoon.

13:03:45

MR. WALKER: Good afternoon, Your Honor. Richard
Walker and Charles Jirauch, also with us is one of our
paralegals, Jennifer Grisham, on behalf of the Maricopa County
as embodied in the Board of Supervisors, the county manager --

THE COURT: Who's Ms. Grisham, so I know for sure?

13:03:58

1 MR. WALKER: This lady sitting here in this blue.

2 THE COURT: Thank you.

3 MR. WALKER: On behalf of the portion of Maricopa
4 County Government embodied in the board of supervisors, the
5 county manager, and the employees working under their direction 13:04:11
6 and supervision.

7 MR. COMO: Good afternoon, Your Honor. Greg Como
8 appearing on behalf of Brian Sands.

9 MR. MITCHELL: Good afternoon, Judge. Barry Mitchell,
10 specially appearing on behalf of Chief Gerard Sheridan. 13:04:23

11 MS. TIVORSAK: Linda Tivorsak, standing in for Mel
12 McDonald, specially appearing for Sheriff Joe Arpaio.

13 MR. EISENBERG: Good afternoon, Your Honor. David
14 Eisenberg, specially appearing on behalf of Lieutenant Joseph
15 Sousa. I would waive his appearance for this hearing. 13:04:33

16 THE COURT: Thank you.

17 MR. WILENCHIK: Your Honor, John Wilenchik, specially
18 appearing for Brian Sands.

19 MS. IAFRATE: Your Honor, I would also note that I
20 have Captain Steve Bailey in the courtroom with me, potentially 13:04:46
21 to answer any questions that you have regarding some of the
22 issues that were noticed for today's hearing.

23 THE COURT: Thank you. I recognize, of course, the
24 federal marshals in the back of the room. Is everybody
25 satisfied that everybody who's in the room is appropriate to be 13:05:06

1 here? Nobody concerned about anybody?

2 Let me take up a few matters and see --

3 MR. WOODS: Your Honor, there are a bunch of us
4 appearing by phone.

5 THE COURT: Ah, thank you. Please, enter your
6 appearances.

13:05:24

7 MS. WANG: Good afternoon, Your Honor. Cecillia Wang
8 of the ACLU for the plaintiffs. My co-counsel, Jorge Castillo
9 of MALDEF, has asked me to announce his appearance as well, as
10 he's calling in from a cell phone in a noisy place.

13:05:42

11 THE COURT: All right.

12 CHIEF WARSHAW: And good afternoon, Your Honor. This
13 is Chief Warshaw, and with me is Chief Martinez.

14 THE COURT: Good afternoon.

15 MR. WOODS: Terry Woods on behalf of nonparties Stutz
16 and Liddy.

13:05:55

17 MR. SEGURA: Andre Segura of the ACLU for the
18 plaintiff.

19 MS. PEDLEY: Lauren Pedley of Covington & Burling on
20 behalf of the plaintiff.

13:06:08

21 MS. MORIN: Your Honor, this is Michelle Morin of
22 Covington & Burling, also on the plaintiffs' team. My
23 pro hac vice appearance is on its way to the Court, or
24 application is on its way to the Court.

25 THE COURT: Any objection to her appearance on the

13:06:25

1 telephone?

2 MS. IAFRATE: I'm sorry, Your Honor, I missed where
3 she was from.

4 THE COURT: Covington & Burling.

5 MS. IAFRATE: No objection.

13:06:31

6 MR. WALKER: No objection on behalf of the County,
7 Your Honor.

8 MR. COMO: No objection, Your Honor.

9 THE COURT: Ms. Iaftrate, in the order I asked you to
10 have the representative from the Attorney General's Office
11 here. Is he here?

13:06:46

12 MS. IAFRATE: Your Honor, I do not see him here. He
13 was contacted this morning, and I was told that he would either
14 appear telephonically or in person.

15 THE COURT: Can you identify him or her for me,
16 please.

13:06:59

17 MS. IAFRATE: Paul Ahler, A-h-l-e-r.

18 THE COURT: All right. And did he tell you he would
19 be here?

20 MS. IAFRATE: I had a representative discuss the
21 order, bring a physical order over to him and discuss it, and I
22 was told that he would either be here or be available
23 telephonically.

13:07:08

24 THE COURT: I would like to discuss something with
25 Mr. Ahler. Do you want to check and see if he's outside or --

13:07:24

1 MS. IAFRATE: Sure.

2 THE COURT: -- one of his representatives is outside?

3 MS. IAFRATE: Sure.

4 (Pause in proceedings.)

5 MS. IAFRATE: Your Honor, he is not out there. May I 13:08:09
6 make a phone call?

7 THE COURT: I'm not sure that we need to go to that
8 trouble; we may at the end of the hearing.

9 Maybe you can answer my question. Do you know when
10 Mr. Ahler became involved in the investigation that's the topic 13:08:23
11 of the sealed proceedings?

12 MS. IAFRATE: I do not. May I have a moment?

13 THE COURT: Sure.

14 (Pause in proceedings.)

15 MS. IAFRATE: Your Honor, it's my understanding that 13:08:50
16 Mr. Ahler was initially contacted via telephone about six weeks
17 ago just for a small briefing, and then it was a formal
18 briefing about three weeks ago.

19 THE COURT: I guess I'm not sure whether or not we
20 need to have him here, but I think I can address this with you 13:09:09
21 directly and we may not need to have him here.

22 One of the things I noticed was whether or not we need
23 to continue to hold these matters under seal, and the reason I
24 ask that is I've been provided with a newspaper article in
25 which representatives of the Maricopa County Sheriff's Office 13:09:27

1 made it public that who I understand to be the subject of the
2 investigation we're talking about is subject -- being subjected
3 to a criminal investigation.

4 And since the MCSO has made that information public,
5 and since that was the basis on which you wished to have these 13:09:43
6 hearings held under seal, since I believe that the monitor, in
7 preparing for this hearing, indicated to me that he thinks that
8 that subject has been placed on administrative leave by the
9 MCSO sometime this week, I'm not sure if there's really any
10 reason to continue having these proceedings under seal, so I 13:10:05
11 raise that initially.

12 Do you have a response to that?

13 MS. IAFRATE: I do, Your Honor. I would ask the Court
14 to keep these proceedings under seal. I, too, read the
15 newspaper article and was surprised at some of the things that 13:10:19
16 were revealed in that newspaper article.

17 I do not think that the subject fully understands the
18 extent of the investigation or, quite frankly, what the
19 investigation is fully about, and I would ask the Court to keep
20 these under seal because we do not want to compromise the 13:10:39
21 criminal investigation that is continuing.

22 THE COURT: Well, I guess I want to assist you in
23 that, Ms. Iafate, but I don't know how the subject's going to
24 find out any more than what was in the newspaper, because, as I
25 indicated last week, the information turned over to the monitor 13:10:56

1 and the parties must remain with the monitor and the parties.

2 And so the only thing that he will know by these
3 hearings is that there is a criminal investigation, and he
4 already knows that. So help me understand what's going to be
5 served by proceeding under seal when the public does have a
6 right to know. 13:11:15

7 MS. IAFRATE: Well, Your Honor, I would ask that it
8 not be permanently under seal; just until the investigation is
9 completed. What we're trying to do is not compromise an
10 ongoing criminal investigation that is being handled by MCSO 13:11:33
11 and the AG's office. What the target knows and doesn't know, I
12 have no information regarding that.

13 THE COURT: I understand that. But I don't have any
14 information regarding it, either, but the subject isn't going
15 to find it out by these proceedings unless you reveal it in 13:11:49
16 court, and it hasn't been revealed yet.

17 So I'm certainly not going to keep this under seal
18 until the investigation is complete, and I guess I'm asking you
19 to tell me why I should keep it under seal even this afternoon,
20 given the public in- -- 13:12:06

21 Well, let me ask you, the newspaper article quotes
22 Ms. Allen, who is the public -- I don't know. I don't know
23 exactly what her title is, but she handles the public relations
24 for the MCSO -- as confirming that Mr. Mackiewicz is under
25 criminal investigation. 13:12:24

1 Is that accurate? Did Ms. Allen give that information
2 to the press?

3 MS. IAFRATE: I do not know that, Your Honor.

4 THE COURT: Do you know whether Detective Mackiewicz
5 has been placed on administrative leave by the MCSO?

13:12:34

6 MS. IAFRATE: Yes, Your Honor.

7 THE COURT: He has been?

8 MS. IAFRATE: He has.

9 THE COURT: And has he been informed, as a part of
10 that process, that he is under criminal investigation?

13:12:48

11 MS. IAFRATE: May I have a moment?

12 THE COURT: Sure.

13 (Pause in proceedings.)

14 MS. IAFRATE: Your Honor, my understanding is that the
15 target was placed on administrative leave for administrative
16 IAs, not being briefed regarding the criminal IA.

13:13:15

17 THE COURT: Now, I understand that administrative IAs
18 can be criminal IAs as well, but he wasn't given that
19 specification?

20 MS. IAFRATE: He was not given the information that's
21 the subject of the criminal investigation; it was specifically
22 regarding separate instances regarding administrative IAs.

13:13:30

23 THE COURT: Who's speaking on behalf of plaintiff?

24 Is it you, Mr. Bendor?

25 MR. BENDOR: I believe it's going to be Ms. Wang on

13:13:50

1 these issues, Your Honor.

2 THE COURT: Ms. Wang, do you wish to --

3 MS. WANG: Yes, Your Honor.

4 THE COURT: Do you wish to be heard on this?

5 MS. WANG: Sure. I don't believe that the defendants
6 have met the standard for continuing to seal the proceedings.
7 I think it's become very clear that, based on information that
8 we've received -- for example, in the course of the monitor's
9 interviews -- that Mr. Mackiewicz is aware of the issues.

13:13:59

10 And, you know, plaintiffs are very much aware of our
11 obligations to keep material confidential that has been ordered
12 to be kept confidential, and we certainly don't have any
13 interest in compromising an ongoing criminal investigation or
14 proceeding. But I don't think that the defendants have borne
15 their burden to show why this proceeding should be sealed, and
16 I think that should be taken on a proceeding-by-proceeding
17 basis.

13:14:21

13:14:42

18 THE COURT: You know, Ms. Iafrate, even if Ms. Allen
19 didn't give the quote to the newspaper, it certainly was
20 published. And certainly Mr. Mackiewicz has been informed,
21 even whether or not it's accurate, that he's being criminally
22 investigated by the MCSO. So I don't see how keeping this
23 under seal promotes any purpose whatsoever.

13:14:59

24 Can you tell me how it does?

25 MS. IAFRATE: Your Honor, some of your assumptions I'm

13:15:21

1 not certain are accurate. I do not believe that the target was
2 told that he was under criminal investigation.

3 THE COURT: No, I think maybe you've misunderstood my
4 question. If it has been publicly disseminated, as it has
5 been, that Mr. Mackiewicz is being criminally investigated by 13:15:37
6 the MCSO, what difference does it make, what benefit does the
7 MCSO have, by keeping these proceedings under seal?

8 MS. IAFRATE: Well, Your Honor, the dissemination that
9 you're talking about is the New Times article?

10 THE COURT: That's the only one I know of. 13:15:58

11 MS. IAFRATE: That's the only one I know of, too. So
12 we're relying on the dissemination of a New Times article
13 regarding a quote that I don't know is accurate or not accurate
14 as a basis for is this --

15 THE COURT: As well as Detective Mackiewicz being told 13:16:12
16 that he's on administrative leave.

17 MS. IAFRATE: Correct, which is different than
18 criminal investigation.

19 THE COURT: Well, I guess --

20 MS. IAFRATE: He was well aware of the administrative 13:16:20
21 investigations for quite some time. This criminal
22 investigation was a new event that he has not been told about.

23 THE COURT: Well, he was aware of administrative
24 investigations for how long?

25 MS. IAFRATE: May I have a minute? 13:16:33

1 THE COURT: Yes.

2 (Pause in proceedings.)

3 MS. WANG: Your Honor, Cecillia Wang speaking, if I
4 may interject. I haven't heard from the defendants how keeping
5 this proceeding not under seal would compromise the ongoing
6 criminal proceeding, and I guess plaintiffs would be interested
7 in hearing that.

13:17:09

8 THE COURT: I will certainly ask it, Ms. Wang.

9 MS. WANG: Thank you, Your Honor.

10 (Pause in proceedings.)

13:16:45

11 MS. IAFRATE: Your Honor, I'm sorry, but I didn't hear
12 what Ms. Wang said, so I guess we can get to that after I
13 answer your question?

14 THE COURT: Fair enough.

15 MS. IAFRATE: My understanding is that there have been
16 multiple investigations, and Detective Mackiewicz became aware
17 of the administrative investigations through IA approximately a
18 month ago, but we have information that indicates that he was
19 probably made well aware of them by other sources before IA
20 officially notified him.

13:17:52

13:18:12

21 THE COURT: All right. What Ms. Wang wanted to know
22 is what in this hearing is going to tip him off, or what in
23 this hearing is going to justify keeping this matter under
24 seal?

25 MS. IAFRATE: Well, Your Honor, I assume that after

13:18:29

1 this conversation, we're going to get into the documents that
2 were the subject of your order. What I don't want is for there
3 to be any sort of tie-in between now we have said his name, and
4 previously we had not mentioned his name in the previous sealed
5 hearing. The documents that have been released involve the 13:18:51
6 criminal investigation, and you ordered that they go to the
7 monitor. I would not want the link of the ongoing criminal
8 investigation to be available to the public until the
9 investigation is not compromised by that release.

10 THE COURT: Well, I've indicated that no party is to 13:19:11
11 release the information to anybody without further order of
12 this Court.

13 Here's what I propose we do. I have received your
14 notice indicating that you have complied with all the
15 document -- with all my orders. But frankly, the monitor, and 13:19:27
16 he indicated to me prior to the hearing, just as we were
17 getting ready to go, and I want to tell you what was indicated
18 to me so that you can address it, he indicated to me that in
19 the middle of Chief Sheridan's interview this week
20 Chief Sheridan refused to answer questions because it was the 13:19:45
21 subject of an ongoing criminal investigation. That
22 Mr. Popolizio and Mr. Stein, the one he raised that the order
23 last Friday required him to discuss this information,
24 Mr. Popolizio and Mr. Stein were unaware of any order; that
25 they requested the monitor to provide such an order; that after 13:20:06

1 several minutes of confusion, Mr. Popolizio pulled the order up
2 on the computer and then confirmed that there was an order,
3 after which Chief Sheridan responded to the questions.

4 Now, I don't know whether you were there or not, but
5 my --

13:20:24

6 MS. IAFRATE: I was not.

7 THE COURT: -- my confusion is this. If in fact
8 that's accurate, Chief Sheridan was here last week,
9 Mr. Popolizio was here last week, and Mr. Stein was here last
10 week. What about my order was unclear?

13:20:33

11 Mr. Popolizio, do you want to answer that?

12 MR. POPOLIZIO: Yes, Your Honor. I did not pull it up
13 on the computer, but it was pulled up on the computer and that
14 portion of your order was looked at.

15 I don't remember what hour it was during the chief
16 deputy's interview that that subject actually came up, because
17 the interview lasted approximately eight hours.

13:20:50

18 THE COURT: Um-hum.

19 MR. POPOLIZIO: Somewhere well into that interview.

20 I believe that the monitor, Chief Anders, referenced
21 an order, "Are you familiar with an order?" and we asked, "Can
22 we see the order?" that he's referring to? It wasn't, you
23 know, Do you realize, or that there's an order saying that you
24 can speak about this or not? We asked to see it, I believe, if
25 my recollection is correct, that he would not. That's why

13:21:08

13:21:30

1 Mr. Stein tried to bring it up on his phone and other people
2 did that. We took a recess, we came in, and then we discussed
3 that it could be spoken about.

4 THE COURT: Well, you were here, right?

5 MR. POPOLIZIO: Yes.

13:21:47

6 THE COURT: Was there anything about my order last
7 week that wasn't clear?

8 MR. POPOLIZIO: No, Your Honor. I would say -- I
9 would not say that at all. But going through hours and hours
10 of interviews and having it posed that way, it's, "Well, which
11 order are you talking about?" and then we went from there. By
12 no means after that was anything kept from Chief Anders, and
13 the delay was so slight, it was minutes.

13:21:57

14 THE COURT: I think that that's -- that is as
15 Chief Anders had indicated it to me. And I wasn't trying to
16 suggest that you withheld anything; I'm just trying to make
17 sure my order is clear enough that everybody understands it,
18 and that you did understand it.

13:22:20

19 And so, Ms. Iafrate, as long as we're under seal, why
20 don't you tell me what you have provided in response to my
21 order.

13:22:34

22 MS. IAFRATE: Your Honor, in response to your order we
23 have provided the entire criminal investigation of Detective
24 Mackiewicz, absent one interview that just occurred out of
25 state.

13:22:51

1 THE COURT: Okay. And so you'll keep the monitor
2 posted on those --

3 MS. IAFRATE: Yes.

4 THE COURT: -- interviews as they go?

5 MS. IAFRATE: Yes.

13:22:59

6 THE COURT: And then there was also a matter of
7 attorney -- possible notes in which you were going to claim
8 attorney-client privilege?

9 MS. IAFRATE: Those have been released as well.

10 THE COURT: Has a privilege log been provided as well?

13:23:07

11 MS. IAFRATE: Yes.

12 THE COURT: Were they redacted, or --

13 MS. IAFRATE: They were redacted.

14 THE COURT: Okay. Anything else provided?

15 MS. IAFRATE: Oh, yes, Your Honor, hundreds of
16 thousands of documents this week. But as we --

13:23:15

17 THE COURT: I'm talking about in response to my order.

18 MS. IAFRATE: No. No, Your Honor.

19 THE COURT: What hundreds of thousands of documents
20 were provided this week?

13:23:27

21 MS. IAFRATE: There are over 80 ITRs that we continue
22 to respond to. Those are the requests from the monitors.
23 There's CAD raw data that's been disclosed. There's over a
24 hundred CDs regarding press coverage.

25 THE COURT: So they're responses to the monitor's

13:23:46

1 earlier ITRs.

2 MS. IAFRATE: They're responses to the monitors. You
3 also have an order in which you set forth, I think, eight items
4 that we agreed to regarding the plaintiffs' counsel. Some of
5 those have been responded; some, the due dates are not yet
6 here.

13:24:02

7 We have provided the remaining IAs that were
8 responsive to the monitor's request. We responded to the
9 weekly requests and the monthly requests. We responded to the
10 joint site visit requests.

13:24:21

11 THE COURT: That's all good, but that's in response to
12 previous requests; that's not in response to my order from last
13 week.

14 MS. IAFRATE: Correct.

15 THE COURT: Okay. I would propose, then, that we now
16 take the hearing out from under seal, because I want to discuss
17 the Tuesday hearing date, and I want to discuss what we're
18 going to do at the Tuesday hearing date unless you need to have
19 it reschedule, because you indicated to me when we discussed
20 this that you might need to have it rescheduled, so I just
21 wanted to make sure what the status was with that, and just a
22 few other matters, but I don't think any of them -- I might
23 represent what I think you've already done in a public filing
24 that you have complied completely with my order of last week.

13:24:30

13:24:49

25 You've done that in a public filing, haven't you?

13:25:17

1 MS. IAFRATE: Yes, but I was very careful in the way
2 that I worded it, Your Honor.

3 THE COURT: I'll be very careful, too, but before we
4 take this matter out from under seal, I guess I'm going to say,
5 out of an excess of caution, and I haven't heard any reason 13:25:29
6 that justifies not opening this first half of this hearing
7 under seal and last week's hearing that's under seal, that
8 would in any way affect your criminal investigation, in light
9 of the fact that I'm ordering the monitor and the parties to
10 keep it confidential absent further order of the Court. 13:25:50

11 But I will give you until Tuesday to verify with
12 Ms. Allen whether or not she gave that interview to the press,
13 and/or provide any reason why you think you need to have this
14 matter under seal in terms of the ongoing criminal
15 investigation. 13:26:11

16 Do you understand what I'm looking for on Tuesday?

17 MS. IAFRATE: I do understand.

18 THE COURT: All right. With that, I will leave this
19 part of this hearing under seal. Anybody who is here or on the
20 line who is either a party to the contempt proceeding, or a 13:26:24
21 specially appearing non-party, can have a copy of the
22 transcript either of this part of the hearing this week before
23 we go out from under seal, or last week, without further order
24 of the Court. But any such party, or specially appearing
25 non-party, is under the obligation to keep everything in that 13:26:43

1 hearing confidential and -- absent further order of the Court.

2 Is everybody clear on that?

3 MS. IAFRATE: Yes, Your Honor.

4 MR. MASTERSON: Yes, Your Honor.

5 MR. COMO: Yes, Your Honor.

13:26:57

6 MR. WALKER: Yes, Your Honor.

7 THE COURT: All right. Then I don't know if there's
8 anybody out there who wants to come in, but --

9 MS. IAFRATE: There are.

10 THE COURT: -- we're going to now open up the hearing.

13:27:06

11 MR. POPOLIZIO: Your Honor, before we do that, before
12 people start piling in, there's a 1:30 interview scheduled for
13 Detective Mackiewicz by the monitors.

14 THE COURT: Do you need to go?

15 MR. POPOLIZIO: If, well, we could delay it a little
16 bit, because we've talked about it. We were in Chief Deputy
17 Sheridan's interview when the order came out, I believe, I'm
18 not sure, then we saw it, and --

13:27:19

19 THE COURT: Well --

20 MR. POPOLIZIO: -- so they are waiting, but there's a
21 lot of us --

13:27:31

22 THE COURT: Well, why don't you go ahead. I will tell
23 you it's just going to be a few minutes. Mr. Masterson can
24 represent your interests here.

25 MR. POPOLIZIO: Well, it's not only that, it's

13:27:39

1 other -- other attorneys will be attending that also. So I
2 just wanted you to know that --

3 THE COURT: That's fine. We won't be long.

4 MR. POPOLIZIO: Okay.

5 (Sealed proceedings concluded at 1:28 p.m.)

6 (Volume 2 of this transcript is filed under separate
7 cover.)

C E R T I F I C A T E

I, GARY MOLL, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 10th day of August, 2015.

s/Gary Moll