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8 Attorneys for Defendant
CALIFORNIA INSTITUTE OF TECHNOLOGY

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES

11 DAVID COPPEDGE, an Individual,
12 Plaintiff,

13 vs.

14 JET PROPULSION LABORATORY,
form unknown; CALIFORNIA
15 INSTITUTE OF TECHNOLOGY, form
unknown; GREGORY CHIN, an
16 Individual; CLARK A. BURGESS, an
Individual; KEVIN KLENK, an Individual;
17 and DOES 1 through 25, inclusive,

18 Defendants.
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

NOV 30 2011

John A. Clerk
By GLORIETTA ROBINSON Deputy

CASE NO. BC 435600

MOTION IN LIMINE # 1

**DEFENDANT CALIFORNIA INSTITUTE
OF TECHNOLOGY'S NOTICE OF
MOTION AND MOTION IN LIMINE #1
("DML 1") FOR AN ORDER EXCLUDING
TESTIMONY, EVIDENCE, ARGUMENT
AND COMMENT REGARDING
VIEWPOINT DISCRIMINATION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF;
DECLARATION OF CAMERON W. FOX
IN SUPPORT THEREOF; [PROPOSED]
ORDER**

FSC Date: December 2, 2011
Time: 9:00 a.m.
Place: Department 54
Judge: Hon. Ernest M. Hiroshige

Trial Date: December 14, 2011

ORIGINAL

LEGAL US W # 68956668.3

DEFENDANT'S MOTION IN LIMINE #1 ("DML 1") FOR AN ORDER EXCLUDING VIEWPOINT
DISCRIMINATION

1 TO PLAINTIFF DAVID COPPEDGE AND TO HIS ATTORNEY OF RECORD, WILLIAM J.
2 BECKER, JR., ESQ., AND THE BECKER LAW FIRM:

3 Defendant California Institute of Technology ("Caltech") will and hereby does move the
4 Court *in limine* for an order precluding Plaintiff David Coppedge ("Coppedge"), his counsel and
5 witnesses from offering, making reference to, commenting upon, introducing testimony or
6 documents regarding, or presenting any argument pertaining to "viewpoint discrimination,"
7 including without limitation any testimony by Coppedge that he experienced viewpoint
8 discrimination.

9 This Motion is made on the grounds that such evidence is inadmissible because it is
10 irrelevant, and because any opinion by Coppedge on this matter is improper lay testimony. It will
11 also confuse the jury and cause undue prejudice to Caltech. *See* Cal. Evid. Code §§ 210, 350,
12 352, 702, 800.

13 On November 23, 2011, counsel for Caltech satisfied the meet and confer requirements of
14 Local Rule 3.57 by speaking with counsel for Coppedge regarding the substance of this Motion.
15 *See* Declaration of Cameron W. Fox ¶ 4. Plaintiff's counsel stated that Coppedge would not
16 agree to limit the evidence at trial in a manner consistent with the limitations requested in this
17 Motion. *Id.*

18 This Motion is based on this Notice of Motion and Motion, the accompanying
19 Memorandum of Points and Authorities, the Declaration of Cameron W. Fox, the complete files
20 and records in this action, and on such oral and documentary evidence as may be presented at or
21 before the hearing of this Motion.

22 DATED: November 30, 2011

PAUL HASTINGS LLP
JAMES A. ZAPP
CAMERON W. FOX
MELINDA A. GORDON

23
24
25 By: 

CAMERON W. FOX

26 Attorneys for Defendant
27 CALIFORNIA INSTITUTE OF TECHNOLOGY
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Defendant California Institute of Technology ("Caltech") anticipates that Plaintiff David
4 Coppedge ("Coppedge") will attempt to introduce evidence and argue to the jury that he
5 experienced "viewpoint discrimination." Viewpoint discrimination refers to government speech
6 restrictions that "target[] not subject matter, but particular views taken by speakers on a
7 subject ..." *Rosenberger v. Rector and Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995).

8 Viewpoint discrimination has no relevance to this lawsuit. Coppedge has not pled a claim
9 for viewpoint discrimination, but even if he had, it is not cognizable, because Caltech is a private
10 employer. It also is irrelevant because the content of Coppedge's speech is not at issue;
11 Coppedge received a written warning (later rescinded) because of the *manner* of his speech.
12 Further, Coppedge should not be permitted to testify that he experienced viewpoint discrimination
13 – a legal conclusion. He has no legal training or experience and should not be permitted to sway
14 the jury with such an irrelevant opinion.

15 Permitting Coppedge to explore this matter at trial will only lead to confusion for the jury
16 and undue prejudice for Caltech. Such evidence should be excluded pursuant to California
17 Evidence Code Sections 210, 350, 352, 710, and 800.

18 II. TESTIMONY, ARGUMENT, EVIDENCE OR COMMENT REGARDING
19 VIEWPOINT DISCRIMINATION SHOULD BE EXCLUDED

20 A. Viewpoint Discrimination Is Irrelevant And Should Be Excluded under
21 California Evidence Code Sections 210 and 350.

22 Coppedge alleges that Caltech's actions stemmed from religious discrimination and
23 retaliation related not only to his religious beliefs as a Christian, but also other viewpoints he
24 holds, including his interest in intelligent design (which he views as a scientific theory, but
25 believes others view as religious). He characterized this argument as "viewpoint discrimination"
26 at his deposition. *See* Deposition of David Coppedge at 357:2-6.¹ However, viewpoint
discrimination is not at issue here, and is therefore irrelevant.

27
28 ¹ *See* Declaration of Cameron W. Fox ("Fox Declaration"), Exhibit A, filed concurrently
herewith. All deposition testimony cited herein is attached to the Fox Declaration.

1 First, pleadings define the ultimate issues to be tried. Coppedge has not pled a claim for
2 viewpoint discrimination, and should not be permitted at this late stage to argue it to the jury. *See*
3 *generally* Coppedge's Second Amended Complaint, filed March 11, 2011. Caltech made
4 Coppedge aware that there was no claim for viewpoint discrimination prior to the filing of his
5 Second Amended Complaint, and Coppedge chose not to include it in his amended pleading.²

6 Second, Coppedge will likely contend that his existing claims encompass viewpoint
7 discrimination. *Id.* They do not, but assuming *arguendo* that they did, Coppedge still cannot
8 pursue this theory: viewpoint discrimination involves *government* restrictions on speech, not
9 those of a private employer like Caltech. *Rosenberger*, 515 U.S. at 829 ("It is axiomatic that the
10 government may not regulate speech based on its substantive content or the message it conveys. .
11 . . The government must abstain from regulating speech when the specific motivating ideology or
12 the opinion or perspective of the speaker is the rationale for the restriction.").³

13 Even if viewpoint discrimination were cognizable (it is not), Coppedge has no evidence to
14 show it took place. To the contrary, Burgess and Klenk told Coppedge that his written warning
15 concerned the *manner* in which he had interacted with his co-workers, not the substance of what
16 he had discussed. Deposition of David Coppedge at 395:12-20.⁴ Klenk told him they had "no
17 issue with people discussing religion and politics in the office so long as it's not unwelcome or
18 disruptive." Deposition of Kevin Klenk at 313:25-314:14; 468:25-469:11; Ex. 44, at 7.⁵

22
23 ² *See* Deposition of Kevin Klenk, taken on February 1, 2011, at 160:5-16 ("Q. You do understand,
24 don't you, that Mr. Coppedge is claiming that he was discriminated against on the basis of a
25 viewpoint he holds? Do you understand that? MR. ZAPP: Objection. Misstates the claims in
26 this case. There's no claim for viewpoint discrimination in this case. MR. BECKER: There
27 certainly is. MR. ZAPP: There's no stated claim in this lawsuit in your first amended complaint
28 for that. But go ahead. MR. BECKER: Disagree.").

26 ³ *See also* *Golden Gateway Ctr. v. Golden Gateway Tenants Ass'n*, 26 Cal. 4th 1013, 1023 (2001)
27 ("California's free speech clause contains a state action limitation."); *Peterson v. Hewlett-*
28 *Packard Co.*, 358 F.3d 599, 605 n.5 (9th Cir. 2004) (First Amendment concerns do not apply to
limitations on workplace expression by private employers).

⁴ *See* Fox Declaration, Exhibit A.

⁵ *See* Fox Declaration, Exhibits B and C.

1 B. Coppedge's Opinion On Viewpoint Discrimination Should Be Excluded
2 Because It Is Improper And Irrelevant Lay Testimony.

3 Coppedge may seek to testify directly that he experienced viewpoint discrimination. This
4 would constitute an improper and irrelevant legal opinion. Legal conclusions are not within the
5 realm of common experience and are inadmissible opinions by lay witnesses. *See Pond v. Ins.*
6 *Co. of N. Am.*, 151 Cal. App. 3d 280, 289 (1984) (holding opinions of claims adjusters as to
7 insurance coverage were inadmissible speculation by nonexperts). Even if such testimony were
8 otherwise admissible, it is not appropriate here: Coppedge has no training or background in the
9 law, so his legal opinions are pure speculation and are irrelevant as a matter of law. *People v.*
10 *Louie*, 158 Cal. App. 3d Supp. 28, 47 (1984) ("Evidence is irrelevant if it has a tendency to prove
11 or disprove a disputed fact of consequence only by reason of drawing speculative or conjectural
12 inferences from such evidence.") (citation and internal quotation omitted).

13 C. The Topic Of Viewpoint Discrimination Should Be Excluded under
14 California Evidence Code Section 352.

15 Argument regarding viewpoint discrimination has no probative value here. At the same
16 time, permitting Coppedge to pursue this topic at trial would be extremely confusing for the jury
17 and unduly prejudicial to Caltech. The jury will already have to keep straight the claims that
18 Coppedge actually *pled*, including religious discrimination and retaliation under FEHA and the
19 California Constitution, and on public policy grounds. Allowing him to argue or testify about
20 viewpoint discrimination will mislead the jury into thinking this is another claim at issue, and that
21 Coppedge can recover on it. There is also a substantial danger that Caltech will suffer undue
22 prejudice from such presentation, as it will permit Coppedge to make yet another baseless
23 argument about Caltech doing something "wrong" – when there is neither law nor evidence to
24 support such a claim.

25 **III. CONCLUSION**

26 For the foregoing reasons, Caltech respectfully requests that the Court grant its Motion
27 and preclude Coppedge, his counsel and witnesses from making reference to, commenting upon,
28 introducing testimony or documents regarding, or presenting any argument pertaining to

1 viewpoint discrimination, including without limitation any testimony by Coppedge that he
2 experienced viewpoint discrimination.

3 DATED: November 30, 2011

PAUL HASTINGS LLP
JAMES A. ZAPP
CAMERON W. FOX
MELINDA A. GORDON

6 By:



CAMERON W. FOX

7 Attorneys for Defendant
8 CALIFORNIA INSTITUTE OF TECHNOLOGY

DECLARATION OF CAMERON W. FOX

I, Cameron W. Fox, declare:

1. I am an attorney at law duly admitted to practice before this Court and all of the courts of the State of California. I am an associate with the law firm of Paul Hastings LLP ("Paul Hastings"), counsel of record for the California Institute of Technology ("Caltech") in this action. I have personal knowledge of the facts contained in this Declaration, or know of such facts by my review of the files maintained by Paul Hastings in the normal course of its business, and if called as a witness, could and would testify as to their accuracy.

2. This Declaration is submitted in support of Defendant's Motion *In Limine* for an Order Excluding Testimony, Evidence, Argument And Comment Regarding Viewpoint Discrimination ("Motion").

3. The specific matter alleged to be inadmissible in Caltech's Motion *In Limine* is any reference, comment, testimony, document, or argument pertaining to viewpoint discrimination, including without limitation any testimony by Coppedge that he experienced viewpoint discrimination.

4. On November 23, 2011, I spoke with counsel for Plaintiff David Coppedge, William J. Becker, regarding the substance of this Motion. Mr. Becker stated that Coppedge would not agree to limit the evidence at trial in a manner consistent with the limitations requested in this motion.

5. Caltech will suffer prejudice if this Motion *In Limine* is not granted because the evidence sought for exclusion is irrelevant and inadmissible under California Evidence Code Section 352. Testimony by Plaintiff that he experienced viewpoint discrimination also is improper lay testimony.

6. Attached hereto as **Exhibit A** are true and correct copies of excerpts from Day Two of the deposition of David Coppedge, taken on October 1, 2010.

7. Attached hereto as **Exhibit B** are true and correct copies of excerpts from Day One of the deposition of Kevin Klenk, taken on February 1, 2011.

8. Attached hereto as **Exhibit C** are true and correct copies of excerpts and exhibit from Day Two of the deposition of Kevin Klenk, taken on April 6, 2011.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 30th day of November, 2011, at Los Angeles, California.

Cameron W. Fox
CAMERON W. FOX

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES
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11 DAVID COPPEDGE, an Individual,

12 Plaintiff,

13 vs.

14 JET PROPULSION LABORATORY,
15 form unknown; CALIFORNIA
16 INSTITUTE OF TECHNOLOGY, form
17 unknown; GREGORY CHIN, an
Individual; CLARK A. BURGESS, an
Individual; KEVIN KLENK, an Individual;
and DOES 1 through 25, inclusive,

18 Defendants.
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CASE NO. BC 435600

MOTION *IN LIMINE* #1

**[PROPOSED] ORDER GRANTING
DEFENDANT'S MOTION *IN LIMINE* #1
("DML 1") FOR AN ORDER
EXCLUDING TESTIMONY, EVIDENCE,
ARGUMENT AND COMMENT
REGARDING VIEWPOINT
DISCRIMINATION**

FSC Date: December 2, 2011
Time: 9:00 a.m.
Place: Department 54
Judge: Hon. Ernest M. Hiroshige

Trial Date: December 14, 2011

1 Defendant California Institute of Technology's Motion *In Limine* for an Order Excluding
2 Testimony, Evidence, Argument And Comment Viewpoint Discrimination came on for hearing
3 before this Court on December __, 2011.

4 The Court, having reviewed and considered the Motion and all papers and pleadings on
5 file herein, and the oral argument of counsel, HEREBY ORDERS, ADJUDGES AND
6 DECREES:

7 That Plaintiff David Coppedge, his counsel and witnesses are precluded from offering,
8 making reference to, commenting upon, introducing testimony or documents regarding, or
9 presenting any argument pertaining to viewpoint discrimination, including without limitation any
10 testimony by Coppedge that he experienced viewpoint discrimination.

11
12 DATED: _____

Ernest M. Hiroshige
Judge of the Superior Court

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16 Presented by:

17 PAUL HASTINGS LLP
18 JAMES A. ZAPP
19 CAMERON W. FOX
MELINDA A. GORDON

20
21 By: 
CAMERON W. FOX

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23 Attorneys for Defendant
24 CALIFORNIA INSTITUTE OF TECHNOLOGY
25
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11/16/01

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DAVID COPPEDGE, an Individual,)	CASE NO. BC 435600
)	
Plaintiff,)	
)	
vs.)	
)	
JET PROPULSION LABORATORY,)	
form unknown; CALIFORNIA)	
INSTITUTE OF TECHNOLOGY, form)	
unknown; GREGORY CHIN, an)	
Individual; CLARK A. BURGESS,)	
an Individual; KEVEIN KLENK,)	
an Individual; and DOES 1)	
through 25, inclusive,)	
)	
Defendants.)	

DEPOSITION OF DAVID COPPEDGE

OCTOBER 1, 2010

VOLUME 2

(Pages 257 through 462)

REPORTED BY:

Deborah R. Meyers
CSR No. 8569

ER A

HOMAN ASSOCIATES
CERTIFIED SHORTHAND REPORTERS
4287 JACKSON AVENUE
CULVER CITY, CALIFORNIA 90232
(310) 838-7734

12:22:35 1 So anyway, it calls for a legal conclusion.

12:22:38 2 Q BY MR. ZAPP: So you're accusing JPL of
12:22:44 3 having -- of supporting viewpoint discrimination?

12:22:50 4 A Yes, because all of the follow-up
12:22:53 5 discipline and actions subsequent to this reinforced
12:22:56 6 Greg's statement to me.

12:22:57 7 Q And even though you were told that the
12:23:03 8 issue related not to the substance as much as it is
12:23:06 9 to the manner or the way in which you were
12:23:09 10 interacting with people, you still believe it was
12:23:12 11 all about the substance; is that right?

12:23:14 12 A Yes.

12:23:15 13 MR. BECKER: I need to hear the question.

12:23:17 14 THE WITNESS: Okay.

12:23:17 15 MR. BECKER: And you need to wait until I
12:23:20 16 get my objections.

12:23:21 17 THE WITNESS: Right.

12:23:22 18 MR. BECKER: So I'm going to move to strike
12:23:23 19 the answer. And let me hear the question again.

12:23:27 20 MR. ZAPP: You don't have a right to strike
12:23:29 21 the answer. But go ahead, and you can make the
12:23:31 22 objection.

12:23:31 23 MR. BECKER: I'm not actually going to do
12:23:33 24 it. I'm just saying that.

12:23:50 25 (The record was read by the reporter as

14:40:44 1 meeting, and you were given permission to do so;
14:40:46 2 correct?
14:40:47 3 A Yes.
14:40:48 4 Q And then you were given copies of the two
14:40:53 5 policies next, the ethics policy and the harassment
14:40:57 6 policy?
14:40:57 7 A Yes.
14:41:00 8 Q And then did Mr. Klenk read through the
14:41:03 9 warning letter?
14:41:04 10 A We read through it together. He handed me
14:41:07 11 a copy and read through it together.
14:41:31 12 Q And is it correct that during the meeting,
14:41:35 13 that Mr. Klenk and Mr. Burgess told you that it
14:41:40 14 wasn't the substance of what you were talking about
14:41:43 15 but rather the way in which you were -- paraphrasing
14:41:50 16 it -- the way in which you were doing things that
14:41:53 17 led to the warning letter, words to that effect?
14:41:56 18 A That was their talking points that they
14:41:58 19 stuck to despite all the evidence I had to the
14:42:02 20 contrary.
14:42:02 21 Q And during the course of the meeting, fair
14:42:04 22 to say that none of you raised your voices; correct?
14:42:07 23 A Correct.
14:42:09 24 Q And Mr. Klenk and Mr. Burgess and you
14:42:14 25 treated each other courteously even though there was

1 REPORTER'S CERTIFICATION

2
3 I, Deborah R. Meyers, a Certified
4 Shorthand Reporter, do hereby certify:

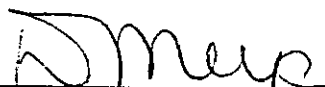
5 That prior to being examined, the witness
6 named in the foregoing proceedings was by me duly
7 sworn to testify to the truth, the whole truth, and
8 nothing but the truth;

9 That said proceedings were taken before me
10 at the time and place therein set forth and were
11 taken down by me in shorthand and thereafter reduced
12 to computerized transcription under my direction and
13 supervision;

14 That the dismantling of the transcript
15 will void the reporter's certificate.

16 I further certify that I am neither
17 counsel for, nor related to, any party to said
18 proceedings, nor in any way interested in the
19 outcome thereof.
20

21 IN WITNESS WHEREOF, I have hereunto
22 subscribed my name this 12th day of October, 2010.

23 
24 DEBORAH R. MEYERS, CSR NO. 8569
25

11/19/01

EXHIBIT B

1
2 SUPERIOR COURT OF THE STATE OF CALIFORNIA
3 FOR THE COUNTY OF LOS ANGELES
4

5 DAVID COPPEDGE, AN INDIVIDUAL,)
6)
7) PLAINTIFF,)
8)

9 VS.

) CASE NO.
) BC. 435600

10 JET PROPULSION LABORATORY, FORM)
11 UNKNOWN; CALIFORNIA INSTITUTE)
12 OF TECHNOLOGY, FORM UNKNOWN;)
13 GREGORY CHIN, AN INDIVIDUAL;)
14 CLARK A. BURGESS, AN INDIVIDUAL;)
15 KEVIN KLENK, AN INDIVIDUAL; AND)
16 DOES 1 THROUGH 25, INCLUSIVE,)
17)
18 DEFENDANTS.)
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ORIGINAL

26 DEPOSITION OF KEVIN STANLEY KLENK,

27 VOLUME I, PAGES 1 - 269

28 TAKEN ON TUESDAY, FEBRUARY 1, 2011
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36 REPORTED BY:
37 HEIDI SULLIVAN
38 CSR NO. 6600
39 FILE NO.: 11-110

40 A. SULLIVAN REPORTERS
41 COURT REPORTERS

42 2420 W. CARSON STREET, SUITE 210
43 TORRANCE, CALIFORNIA 90501
44 PHONE 310 • 787 • 4497
45 FAX 310 • 787 • 1024

EX B

1 MR. ZAPP: OBJECTION. ASKED AND ANSWERED.
2 ARGUMENTATIVE.

3 THE WITNESS: AT THIS MOMENT I DON'T KNOW.
4 BY MR. BECKER:

5 Q. YOU DO UNDERSTAND, DON'T YOU, THAT
6 MR. COPPEDGE IS CLAIMING THAT HE WAS DISCRIMINATED
7 AGAINST ON THE BASIS OF A VIEWPOINT HE HOLDS?

8 DO YOU UNDERSTAND THAT?

9 MR. ZAPP: OBJECTION. MISSTATES THE CLAIMS
10 IN THIS CASE. THERE'S NO CLAIM FOR VIEWPOINT
11 DISCRIMINATION IN THIS CASE.

12 MR. BECKER: THERE CERTAINLY IS.

13 MR. ZAPP: THERE'S NO STATED CLAIM IN THIS
14 LAWSUIT IN YOUR FIRST AMENDED COMPLAINT FOR THAT.

15 BUT GO AHEAD.

16 MR. BECKER: DISAGREE.

17 BUT CAN I HAVE AN ANSWER TO THAT
18 QUESTION FROM THE WITNESS.

19 MR. ZAPP: CAN WE RESTATE THE QUESTION FOR
20 THE WITNESS, PLEASE.

21 BY MR. BECKER:

22 Q. DO YOU UNDERSTAND THAT MR. COPPEDGE HAS
23 CLAIMED THAT HE WAS DISCRIMINATED AGAINST ON THE
24 BASIS OF A VIEWPOINT THAT HE HOLDS REGARDING
25 INTELLIGENT DESIGN?

1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES)
3
4

5 I, HEIDI SULLIVAN, A CERTIFIED SHORTHAND REPORTER
6 LICENSED BY THE STATE OF CALIFORNIA, CERTIFY:
7

8 THAT THE FOREGOING DEPOSITION OF Kevin Stanley Klenk
9 WAS TAKEN BEFORE ME PURSUANT TO NOTICE
10 AT THE TIME AND PLACE THEREIN SET FORTH, AT WHICH TIME
11 THE WITNESS WAS PUT UNDER OATH BY ME;
12

13 THAT THE TESTIMONY OF THE WITNESS AND ALL OBJECTIONS
14 MADE AT THE TIME OF THE EXAMINATION WERE RECORDED
15 STENOGRAPHICALLY BY ME AND WERE THEREAFTER
16 TRANSCRIBED;
17

18 THAT THE FOREGOING IS A TRUE RECORD OF THE TESTIMONY
19 AND OF ALL OBJECTIONS AT THE TIME OF THE EXAMINATION.
20

21 IN WITNESS WHEREOF, I HAVE SUBSCRIBED MY NAME THIS
22 24 DAY OF February, 2011.
23

24 Heidi Sullivan
25

LICENSE NUMBER 6600

12/31/11

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DAVID COPPEDGE, AN INDIVIDUAL,)
)
 PLAINTIFF,)
)
 VS.) CASE NO.
) BC 435600
 JET PROPULSION LABORATORY, FORM)
 UNKNOWN; CALIFORNIA INSTITUTE)
 OF TECHNOLOGY, FORM UNKNOWN;)
 GREGORY CHIN, AN INDIVIDUAL;)
 CLARK A. BURGESS, AN INDIVIDUAL;)
 KEVIN KLENK, AN INDIVIDUAL; AND)
 DOES 1 THROUGH 25, INCLUSIVE,)
 DEFENDANTS.)

ORIGINAL

DEPOSITION OF KEVIN STANLEY KLENK,
VOLUME II, PAGES 270 - 481
TAKEN ON WEDNESDAY, APRIL 6, 2011

24 || A. SULLIVAN REPORTERS
25 || COURT REPORTERS

REPORTED BY:
HEIDI SULLIVAN
CSR NO. 6600
FILE NO.: 11-129

2420 W. CARSON STREET, SUITE 210
TORRANCE, CALIFORNIA 90501
PHONE 310 • 787 • 4497
FAX 310 • 787 • 1024

ERC

1 BEING SAID DURING THAT CONVERSATION?

2 A. I DON'T RECALL THE SPECIFICS.

3 Q. IS THERE A REASON WHY THE MEETING WAS
4 NOT DELAYED?

11:31:10AM

5 A. WHAT I RECALL IS THAT I SAW THIS, AND I
6 DIDN'T SEE ANY REASON NOT TO HAVE THE MEETING TO TELL
7 DAVID WHERE WE WERE AT IN THE PROCESS.

8 Q. WAS THERE A REASON WHY YOU DID NOT
9 PROVIDE DAVID PRIOR TO THE MEETING A WRITTEN COPY OF
10 THE FINDINGS BY HR, INCLUDING ACCUSATIONS MADE
11 AGAINST HIM AND THE EVIDENCE SUPPORTING IT?

11:32:12AM

12 A. WE PRESENTED HIM AT THE MEETING A COPY
13 OF THE FINDINGS AS PART OF THE WRITTEN WARNING.

14 Q. DID YOU NOT FEEL THAT HE SHOULD HAVE
15 THAT INFORMATION PRIOR TO THE MEETING IN ORDER TO
16 BETTER DEFEND HIMSELF DURING THAT MEETING?

11:32:37AM

17 MS. FOX: OBJECTION. VAGUE.

18 THE WITNESS: THE MEETING WAS TO PRESENT THE
19 RESULTS TO DAVID. IT WASN'T TO HAVE A DEBATE WITH
20 DAVID.

11:32:59AM

21 BY MR. BECKER:

22 Q. DID YOU SEE DAVID'S 8:03 A.M. E-MAIL
23 PRIOR TO THE MEETING?

24 A. I DON'T RECALL SEEING IT.

11:33:35AM

25 MR. BECKER: EXHIBIT 44 WILL BE THE 22-PAGE

1 TRANSCRIPT OF THE AUDIO RECORDING MADE BY DAVID ON
2 APRIL 13.

3 (THE ABOVE-MENTIONED DOCUMENT WAS MARKED
4 FOR IDENTIFICATION BY THE CERTIFIED SHORTHAND
5 REPORTER AND ATTACHED HERETO.)

6 BY MR. BECKER:

7 Q. AND, MR. KLENK, WE DID PRESENT YOUR
8 ATTORNEYS WITH A COPY OF THIS DOCUMENT AT ONE OF
9 DAVID'S DEPOSITION SESSIONS.

10 HAVE YOU SEEN IT AT ANY TIME -- THIS
11 SPECIFIC COPY PREPARED BY HIM AT ANY TIME PRIOR TO
12 TODAY?

13 A. I WAS AT DAVID'S DEPOSITION AND SAW YOU
14 HOLDING A COPY OF THE DOCUMENT.

15 Q. HAVE YOU LOOKED THROUGH A COPY OF
16 DOCUMENT AT ANY TIME SINCE THAT TIME?

17 A. NO.

18 Q. HAVE YOU SEEN ANY OTHER TRANSCRIPTIONS
19 OF THE AUDIO RECORDING?

20 A. NO.

21 Q. DID DAVID ASK TO RECORD THE MEETING?

22 A. YES.

23 Q. WAS HE GRANTED YOUR CONSENT?

24 A. YES.

25 Q. WAS HE GRANTED CAB BURGESS'S CONSENT?

1 A. WHAT IS THE QUESTION?
2 Q. BELOW THE "FYI" AND THE LINE THERE, IS
3 THAT AN E-MAIL YOU SENT TO HR?
4 A. YES, I BELIEVE SO.
05:15:55PM 5 Q. AND WHAT WAS THE PURPOSE OF THAT E-MAIL?
6 A. JUST TO SUMMARIZE TO HR WHAT THE WRITTEN
7 WARNING MEETING WENT LIKE.
8 Q. IS THERE ANYTHING IN THERE THAT STATES
9 THAT YOU INFORMED MR. COPPEDGE THAT HE WAS FREE TO
05:16:10PM 10 DISCUSS HIS PERSONAL VIEWS, INCLUDING, BUT NOT
11 LIMITED TO, RELIGION, POLITICS, AND INTELLIGENT
12 DESIGN, SUBJECT TO CERTAIN CONDITIONS?
13 A. NO, I DON'T SEE ANYTHING IN THERE
14 EXPLICITLY.
05:17:43PM 15 (DISCUSSION HELD OFF THE RECORD.)
16 MS. FOX: COUNSEL, MAY I SUGGEST IF IT'S IN
17 THE TRANSCRIPT, WE CAN SHORT-CIRCUIT THIS.
18 MR. BECKER: I'M NOT GOING TO ATTACH THIS.
19 ALL RIGHT. LET'S LOOK AT THE TRANSCRIPT
05:18:03PM 20 REAL QUICK, AND IT WILL MAKE EVERYBODY HAPPY.
21 MS. FOX: MR. KLENK WILL BE ABLE TO HELP YOU.
22 (DISCUSSION HELD OFF THE RECORD.)
23 MR. BECKER: OFF THE RECORD WE WERE SEARCHING
24 THE TRANSCRIPT THAT WAS PREVIOUSLY MARKED AS 44.
05:20:19PM 25 Q. MR. KLENK, YOU REFERRED ME TO THE LINE

1 IN THAT TRANSCRIPT THAT SAYS, "WE HAVE NO ISSUE WITH
2 PEOPLE DISCUSSING RELIGION AND POLITICS IN THE OFFICE
3 SO LONG AS IT'S NOT UNWELCOME OR DISRUPTIVE"; IS THAT
4 RIGHT?

05:20:33PM

5 A. CORRECT.

6 Q. IS IT YOUR TESTIMONY THAT THAT WAS YOUR
7 ATTEMPT TO INFORM MR. COPPEDGE THAT HE WAS FREE TO
8 DISCUSS RELIGION AND POLITICS SO LONG AS IT WAS NOT
9 UNWELCOME OR DISRUPTIVE?

05:20:55PM

10 A. THAT WAS AN EXPLICIT STATEMENT TO THAT
11 EFFECT.

12 Q. NOW, LET ME ASK YOU THIS.

13 THE EVIDENCE IN THIS CASE, I'LL
14 REPRESENT TO YOU, SHOWS THAT DAVID WOULD APPROACH AN
15 INDIVIDUAL ONE TIME, OFFER TO DISCUSS A TOPIC, AND IF
16 TOLD THAT IT WAS NOT SOMETHING THAT PERSON WANTED TO
17 DISCUSS, HE WOULD LEAVE. AND YET THAT WAS THAT
18 CHARACTERIZED BY AT LEAST ONE INDIVIDUAL AS BEING
19 UNWELCOME AND DISRUPTIVE.

05:21:27PM

20 WERE YOU AWARE THAT ONE INDIVIDUAL HAD
21 ENCOUNTERED DAVID ON ONLY ONE OCCASION AND THAT THAT
22 PERSON HAD COMPLAINED THAT DAVID'S APPROACHING HER
23 WAS UNWELCOME AND DISRUPTIVE?

24 MS. FOX: OBJECTION TO THE PREAMBLE AS
25 MISCHARACTERIZES THE RECORD. THE SECOND PART ALSO

05:21:47PM

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I CERTIFY UNDER PENALTY OF PERJURY
THE FOREGOING IS TRUE AND CORRECT.

EXECUTED AT PASADENA, CALIFORNIA,
ON JUNE 7, 2011.



KEVIN KLENK

1 STATE OF CALIFORNIA)

2 COUNTY OF LOS ANGELES)

3

4

5 I, HEIDI SULLIVAN, A CERTIFIED SHORTHAND REPORTER

6 LICENSED BY THE STATE OF CALIFORNIA, CERTIFY:

7

8 THAT THE FOREGOING DEPOSITION OF KEVIN KLENK

9 WAS TAKEN BEFORE ME PURSUANT TO NOTICE

10 AT THE TIME AND PLACE THEREIN SET FORTH, AT WHICH

11 TIME THE WITNESS WAS PUT UNDER OATH BY ME;

12

13 THAT THE TESTIMONY OF THE WITNESS AND ALL OBJECTIONS

14 MADE AT THE TIME OF THE EXAMINATION WERE RECORDED

15 STENOGRAPHICALLY BY ME AND WERE THEREAFTER

16 TRANSCRIBED;

17

18 THAT THE FOREGOING IS A TRUE RECORD OF THE TESTIMONY

19 AND OF ALL OBJECTIONS AT THE TIME OF THE EXAMINATION.

20

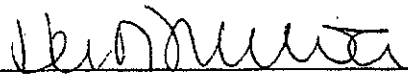
21 IN WITNESS WHEREOF, I HAVE SUBSCRIBED MY NAME THIS

22 9TH DAY OF MAY, 2011.

23

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25



LICENSE NUMBER 6600

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Brussels
Chicago
Frankfurt
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London
Los Angeles
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(213) 683-6294
jameszapp@paulhastings.com

June 7, 2011

13365.00018

VIA E-MAIL AND US MAIL

William J. Becker, Jr., Esq.
The Becker Law Firm
11500 Olympic Blvd., Suite 400
Los Angeles, CA 90064

Re: *Coppedge v. Jet Propulsion Laboratory, et al.*
Los Angeles Superior Court Case No. BC435600

Dear Bill:

Please be advised that Kevin Klenk reviewed and signed the original of Volume II of his deposition transcript on June 7, 2011. Mr. Klenk made the following corrections/changes:

<u>Page:Line</u>	<u>Reads</u>	<u>Should Read</u>
293:12	"Yes."	"Yes, we discussed changing his role as to who he needed to talk to."
393:10	"I knew what I was reported to by"	"I knew what was reported to me by"
353:25	"the specific."	"the specific topic."
367:1	"I was told by Ms. Huntley that David was"	"I understood that David was"
384:21	"No, I did not."	"No, I did not question HR's ability to investigate the facts."
411:23	"The threatened or harassed by"	"The not feeling threatened or harassed by"

Paul Hastings

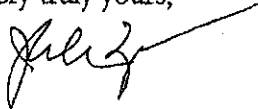
William J. Becker, Jr., Esq.

June 7, 2011

Page 2

A copy of Mr. Klenk's signature page is enclosed. If you have any questions, please do not hesitate to contact me directly.

Very truly yours,



James A. Zapp

of PAUL, HASTINGS, JANOFSKY & WALKER LLP

JAZ:cw

Enclosure

LEGAL_US_W # 68235723.1

Transcript of recorded conversation concerning David Coppedge and allegations that he violated JPL's Ethics Policy and Policy on Unlawful Harassment by handing out DVDs to coworkers on intelligent design.

Date: April 13, 2009

Location: Office of Kevin Klenk, Bldg 601, JPL Woodbury facility

Present:

- David Coppedge, Cassini System Administrator Team Lead
- Kevin Klenk, Section 173 Manager under Office of Chief Information Officer
- Clark A. (Cab) Burgess, Sec 173 Group Supervisor, responsible for allocating system administration resources to flight projects at JPL.

Other people referred to in the discussion:

- Jhertaune Huntley: HR investigator
- Greg Chin: Cassini Mission Support and Services Office Manager (MSSO), responsible for Cassini-related task assignments for David Coppedge.

[Meeting opens. David asks if it can be recorded; Kevin says yes. David is handed the Written Warning accusing him of violating JPL Ethics and JPL Policy on Unlawful Harassment by handing out DVDs on intelligent design.]

Burgess: Jhertaune wanted to make sure you got copies of those... [inaudible]

Coppedge: Am I supposed to read this? Now, or ...

Burgess: Let's go over it together.

Klenk: [inaudible conversation with someone who stopped in with a question.]

Burgess: So as Jhertaune interviewed a number of people, on considered your customers with the flight-- with the Cassini project specifically, and this is kind of the result of what she found, and I think it looks to me like two different areas here she's trying to address at least. [pause, Dave reading]

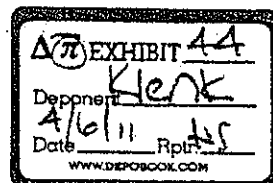
That first bullet she talks about that you approached coworkers during work hours. And she's found that a lot of people had been overly nice to you when they-- just to move on, and to, when you presented the ideas of whatever it was, politics, [mumbled] and they were just in agreement without being rude or anything else, but she's found a lot of people who were concerned about the discussions you were trying to get into with them.

And then there's this other instance where you met someone in his office and he asked you to leave. That was considered inappropriate. So she's found that as she understands it, you've violated several business rules and ethics here at JPL.

It's not the nature of, it's not the subject matter so much as it is interruption of quote-unquote 'JPL work' that she's trying to focus on. Whether pro or con on any particular issue it really doesn't matter. To her was, whatever the discussions that were going on that you were attempting were not JPL work. And that was a big concern on her part.

Klenk: And the other people were finding it unwelcome and disruptive; that's the major portion of it. They were feeling uncomfortable with the situation.

Coppedge: Nobody has communicated this to me, and did you get a copy of the,



Burgess: They were trying to be nice to you. [Pause, paper shuffling.]

[Coppedge hands Klenk some of the documents he had given Jhertaune, explaining the nature of the material being shared and the way it was being shared.] Did Jhertaune show you this?

Klenk: No, I didn't receive that, [unclear], the summary.

Coppedge: Alright, for the record let me give you what I gave her. [pause, 2-3 words inaudible as papers are being handed over.]

Burgess: So she and Nancy Aguilar, who's our IX rep, Human Relations, both offered to be here, but I thought we could discuss this without HR being in attendance, but if you'd care to discuss it more with them later, you can. These are the two main points that they had concern over.

Klenk: They do this regularly. ER, they go out, we actually heard that you said someone was creating a hostile work environment. So we immediately called ER, that you were being, you felt you were in a hostile work environment, so we had them immediately go over and say please check into it. It was an impartial point of view.

Coppedge: No.

Klenk: The response to us was, well, there was a hostile work environment and we feel that David is the one creating it.

Coppedge: Did you receive the transcript of the meeting that Greg Chin had with me on March 2?

Klenk: Transcript? No.

Burgess: Did you send that to, that was HR? [brief talking over]

Coppedge: I gave Jhertaune a copy; immediately after Greg had a conversation with me. I said this is kind of a sensitive subject, and it might be good for both of us to document what was said.

Klenk: Uh-hm.

Coppedge: So I gave him my recollections of his conversation with me, and I had that here with me; here it is, if you'd like to look at it. [Hands copy of email to Klenk; he reads it.]

Klenk: Partly on this, I see that the last line where Greg decided to report it, that you said he [Greg] was creating a hostile work environment.

Coppedge: I didn't initiate anything...

Klenk: So his, that was the first time that he had been accused of that, so he reported it to us, I believe it was; in which case we said, OK, we'll bring it to ER and investigate the situation. The...

Coppedge: OK, but I did not instigate a thing. Basically, I was trying to work it out with Greg, and I documented it in an email to him and him alone, OK. He took the step of starting an investigation.

Klenk: no we did.

Coppedge: Well, he had to hear...

Klenk: We did.

Coppedge: You had to hear it from him, because I didn't contact...

Klenk: That's correct; he let us know that he was being accused of it, and since we are, actually are your line managers, not Greg, he, Greg shouldn't have been involved in this sort of discussion necessarily, so as your line managers, we immediately called Employee Relations, which is the procedure we're supposed to go through. OK; we go through that, 'please investigate the situation, let us know what the situation is, and provide us with a set of your recommendations for this sort of situation.'

Coppedge: Uh-hm, but...

Klenk: That's what the memo here is a result of. This is the feedback we received from them. After talking with the people in your area, and these things are, if you look into the Ethics Policy, and the Harassment Policy, and things, they are considered anonymous and confidential. We don't want people to have retaliation against them for having reported it. But the people did say they felt it was an uncomfortable work environment.

Burgess: even though they didn't tell you about it.

Klenk: They were, Jhertaune came back and it was, she absolutely said, it was very uncomfortable for the people there.

Coppedge: OK, [Klenk talks over him]

Klenk: So, as your management, we have to follow through. This is a written warning of the situation, so we have it documented and put in your file.

Coppedge: OK, you said at this meeting that I'd be supplied with all the information that I was requesting.

Klenk: And this is the summary we have; that's part of it; you received the thing on the JPL Policy,

Burgess: Actually there's two copies.

Klenk: There were two copies of it, that's the Ethics Policy, and the...

Coppedge: Right, but those are policy documents. I was asking for a procedure for investigating employees.

Klenk: That would be ER. They regularly do this and our procedure is to call them and have them go through their routine investigation.

Coppedge: OK, so there must be a routine investigation documented.

Klenk: That is something that we aren't a part of.

Burgess: Jhertaune called me this morning and said there is nothing written down as far as procedure for them to follow other than investigating the [circumstances?]

Klenk: But, that's what it is. But in the past they've behaved with professionalism and I don't expect them to do anything less than that.

Coppedge: Well, undoubtedly. But I find it hard to believe that an institution as large as JPL does not have written procedures for investigating employees. And that's what I've been requesting for a month now, and no one will give it to me.

Burgess: Well Jhertaune reminded me that she told you that they don't have anything.

Coppedge: She said that on Thursday. [April 9]

Burgess: She reminded me today that they had nothing written on that as far as what they go through as an organization.

Coppedge: OK, a couple of points here. I've never been accused of this in my entire professional career. Let the record state that.

Klenk: We understand that. We, Cab and I, we're not aware of the situation,

Coppedge: And let the record state as I put in my document that this has been infrequent, on the average once a month I might approach people. These are people who are not total strangers but coworkers and friends that I know and they know me. And the approach is "This is interesting, would you be interested in viewing it?" It's usually at the end of a Friday when people are going home anyway--never when they're actively busy with things. And so those 12 points I documented, I have records to show that's the way it's been. I don't recall anybody telling me that asking them this was unwelcome, and if they did, I backed off, and that was the end of it.

Now the fact that this came all of the sudden on March 2 the first time after working with Greg Chin for some 10 years -- out of the blue this accusation comes. And I tried to work directly with Greg, [after?] our conversation, "What are you talking about?" "What have I done?" and he says, "You're handing out DVDs to coworkers and some people have complained that you're harassing them." Harassing is a strong word, as you know.

Klenk: Uh-hm.

Coppedge, So I said, OK, here's what you're saying. Is this your recollection? This is a sensitive conversation here. and he refused to respond to my e-mail. Instead, from what I knew, he kicked off an investigation of me.

Now I supplied Jhertaune with ample documentation and records of what I actually had done, as you can see and I also requested, and never received whether JPL agrees with the Federal Guidelines on Religious Expression in the workplace. Are you familiar with that document?

Klenk: No. I...

Coppedge: OK, let me show it to you, just so you know. This is posted on the [NASA] Glenn website and I would like an answer from somebody whether these

federal guidelines which basically interpret existing law about what is permissible in terms of religious expression in the workplace, whether these guidelines are enforced here at JPL. So I'm still waiting.

Burgess: Jhertaune takes the attitude that no matter what the discussions were -- religious, political, whatever -- that is impertinent to what is going on. What's pertinent is the interruption of the JPL workforce.

Klenk: And do people, are they feeling any intimidation or harassment or hostile intent or anything along those lines. And at the minimum people felt it was unwelcome. If you look into our Diversity Training that we have, it all, they go over to a painful extent that it's really about, if it's not specifically work-related, if people think it's unwelcome, then it's not permitted.

Coppedge: I understand that.

Klenk: That, that's basically the bottom line.

Coppedge: Right, [trying to get back to the Federal Guidelines document]

Klenk: And so in this situation, the people on the 3rd floor felt it was unwelcome. That's the real bottom line there. It's not the topic that's the problem.

Coppedge: OK, let me just read some samples of this. "Employees are permitted to engage in religious expression directed at fellow employees and may even attempt to persuade fellow employees of the correctness of their religious views to the same extent as those employees may engage in comparable speech not involving religion. Some religions encourage adherents to spread the faith at every opportunity, a duty that can encompass the adherent's workplace. As a general matter, proselytizing is as entitled to constitutional protection as any other form of speech as long as a reasonable observer would not interpret the expression as government endorsement of religion." OK, they give an example. "During a coffee break one employee engages another in a polite discussion of why his faith should be embraced. The other employee disagrees with the first employee's religious exhortations but does not ask the conversation to stop. Under these circumstances, agencies should not restrict or interfere with such speech." Now I don't recall anybody asking me to stop. Somebody may claim that, but that's hearsay.

Klenk: Now in your case, what the feedback we received was that multiple people indicated that the behavior was unwelcome. That was what Jhertaune got from her investigation. You know there was, this we documented one, I think there might have been two people who said you were asked to leave their offices over this. This is over an extended period of time, but they said, it was unwelcome, and,

Coppedge: I cannot recall any, look--let me tell you the one, the only one we can think of. We got into a discussion about a particular proposition that was on the ballot. And it was, he disagreed with me, and I was trying to defend my view; he was defending his. It went on for some time. I don't recall him asking me to leave. It was clear he was uncomfortable with my view, and I think we got a little defensive. But I came back to him the next day and said, so-and-so, I think I was a little bit, perhaps aggressive and not showing the kind of friendliness I should have toward you, will you forgive me? And he reached up and shook my hand and thanked me. OK? That is my pattern. If somebody

appears to be hostile to me, I don't want to have that kind of relationship with anybody.

Burgess: But it sounds like what Jhertaune talked to this individual he gave further slant on this, that he was uncomfortable with the whole situation, even though he made appeasement.

Coppedge: Did he initiated a complaint against me.

Klenk: No, this is all based on a very short note that Greg sent saying that there was allegations of a hostile work environment and Greg said, someone said this to me, I think it should be investigated. I don't know if he said investigated, but he said, basically here's the situation, you should follow up with this. And so, based on that, that was just a very short note. We tried to be completely above board in the section.

Coppedge: I try to be, too.

Klenk: We get the note, and say OK, we call up our ER representative, they go out, they do their investigation, and they report back. It took about 2 weeks, 2-3 weeks, something like that?

Burgess: It drug on for a while.

Klenk: It drug on for awhile, and they came back and she said, here is my findings. And I believe she met with Cab and she met with me. And it's laid out, and it was completely focused on basically the coworker's feeling was 'unwelcome and disruptive in the workplace'. One right after another, that was where the findings were focused.

Coppedge: OK, I have documents to show that this, number one, was very occasional, on the average once a month I would approach somebody. I also have documentation that the vast majority were pleasant and cordial and even once* thanked me and said, "That was great. How can I get that?" That has been the typical response. OK.

*[comment: the point being that most responses were positive.]

How do you feel also about the fact that Greg brought me in on March 2 and accused me to my face of pushing religion in the workplace? And as you can see from my transcript of that conversation, when I tried to say, "What do you mean by that?", he was argumentative -- even angry.

Klenk: Well, what we have done is we have talked to Greg and the idea is that he should be working with us for those same kind of things. He should have been working with us, and that would have should have been the more appropriate way that been you handled.

Coppedge: I mean, he was nearly shouting at me. And I said, "You know, Greg, this gets into issues of freedom of speech," and he blew me off. And I said, "Greg, this could be construed as creating a hostile work environment." He stood up and said, "Go ahead and file a complaint!" and stormed out the door. That is what happened. I ask you: whose rights are being violated here? I mean, who is creating [a hostile work environment]; who is harassing?

Klenk: We are trying our best to remain impartial. We got a very thorough feedback from Jhertaune about the situation, and we've written up, the milder document than we could have written up over the whole thing. We don't do it

often. But we felt it's important write it down, document, here is what the findings were.

Coppedge: OK, in my opinion, there is no way that this can be construed as harassment that I have committed. And that's why I think this document [i.e., the Federal Guidelines on religious expression] needs to be studied. And I would like a statement somewhere from JPL whether this applies to this lab. Because what I have done fits in with this. The only time a boss can tell an employee not to discuss this is with an individual who either tells the person doing it to stop, or tells the boss, 'I don't want to hear about that anymore.' Then the boss can go to the employee and say don't talk to so-and-so. But Greg told me you are not to discuss religion or politics with anyone in this office. That's what he told me. How do you feel about that?

Klenk: We have no issue with people discussing religion and politics in the office so long as it's not unwelcome or disruptive.

Coppedge: I understand. My claim is that it wasn't. Now I went to the Chief Ethics Officer right after Greg talked to me and I said, "Can a boss do this? Can a boss give a blanket order that you're not to discuss this?" And he said, "Well, no, that's overboard," and he gave me some suggestions on how to handle these things. But in other words I was immediately seeking, have I done something wrong here, or is that proper?

Klenk: I think partly you should think through that, both of you seeking out external sources on this, you must have felt that at some point that there was some things done that caused tension in the workplace, on both sides. One suggestion I would have is perhaps you weren't reading the body language of these people well enough. You were looking for a 'Dave, I understand you refused, I don't believe in this; please don't talk to me again about it' whereas they were trying to be more polite, being that they felt uncomfortable, and were trying to say, 'Please don't talk about it, I'd rather do talk about something else,' and you weren't reading the more subtle [clues?].

Coppedge: Are these not mature adults that can say the words that I'd rather not talk about that? Am I supposed to interpret 'I'm harassing somebody' by their body language, is that what you're telling me?

Klenk: I think in some cases yes.

Coppedge: OK, is JPL offering a course in reading body language or something? Because that's extremely subjective. And it seems to me that

Klenk: Most of the harassment things are subjective.

Burgess: Jhertaune said that when she interviewed these people, it was the majority of the people had the same kind of understanding that they were trying to be nice to you, to get by, so to speak, without causing any further

Klenk: disruption in the workplace.

Burgess: They just wanted it to go away. They either didn't tell you specifically so it was clear. But a lot of people, she said, had this common position.

Coppedge: Again, nobody will give me any specifics or, or names, or-- I mean, I understand the reason why you don't--why you want to protect the

confidentiality. But my recollection is, is totally different than that. And, you know, -- let me continue reading another paragraph here:

Burgess: Uh-hm.

Coppedge: "Federal law requires an agency to accommodate employee's exercise of their religion unless such an accommodation would impose an undue hardship on the conduct of the agency's operation. That cost or hardship, nevertheless, must be real, rather than speculative or hypothetical. The accommodation should be made unless it would cause an actual cost to the agency or to the other employees, or an actual disrupting of work, or unless it is otherwise required by law." So,

Burgess: Again, she's saying that you're trying to focus on religion and politics, and that's not HR's discovery. Their discovery is that you've done something that has interrupted the JPL workforce, from doing JPL work, no matter what the subject discussed was.

Coppedge: Again, no one has accused me of this until Greg had his outburst against me on March 2nd. I have been working Cassini for 12 years.

Burgess: You must understand that he got challenged by several people that day that were very upset over whatever happened between you and them prior to Greg getting involved.

Coppedge: Let me tell you, maybe the most recent case before Greg's conversation is instructive. There is a lady in the office, a coworker, a friend, somebody I've worked with for years, who I approached on a Friday, on the end of the day, "Would you like to watch this on the weekend?" She probably disagrees with the content of it. But she took it, and sounded interested. On the Monday morning I found it on my desk and never brought it up again. Never mentioned it. We passed in the hallway, we would say, 'Hi; how are you.' Never was brought up again. It's interesting that it was that very day, that it was that afternoon that Greg ...

Klenk: I would warn you against trying to speculate who it was or anything. JPL does have a policy against any sort of retaliation, or anything like that. So it wouldn't be good, if the person was one of the people who was saying, 'I find this uncomfortable,' to then confront the individual about, 'I hear you're uncomfortable with this; let me talk to you.' It would be better just to try to work towards the inclusive, welcoming work environment.

Coppedge: This particular DVD [Unlocking the Mystery of Life] was about science, it was not about religion. You are welcome to watch it if you would like. I'd be glad to give you a copy and you can see exactly what it was about. There's no way it can be construed as pushing religion. And in fact it's a subject that is of great interest to everyone. Alright? In fact one of the most popular films I like to give out [The Privileged Planet] has 4 JPL scientists in it who were interviewed on lab with the full NASA cooperation with the producer. This is the kind of material we're talking about. And there was not a hint of body language or speech or anything by this person that what I was doing was unwelcome. She thanked me. She said that looks very interesting. She took it, and left it on my desk, and there was no follow-up at all. That was the day where in the afternoon Greg accused me of this. So what I ask you Kevin is, what protections are you giving me to hear that my side of the story is the correct one, rather than the testimony of these people that Jhertane is saying. Now if you go up to somebody and say, 'We're investigating Dave for

possibl[y] harassing people; has he ever...' I don't know how she posed the question. But you can ask leading questions that may draw out a response you're looking for.

Klenk: We can speculate on all sorts of things. But in my experience ER has always handled these sorts of things with discretion. They've done it, being above board, trying to be professional about it. At some point I trust that they've done the right thing. They try to give the employee leeway. They try to understand how the other people are feeling, and they try to write up a report that's accurate, that's appropriate, and give us recommendations on what to do. So after listening to their recommendation, I don't think Cab and I had any disagreement what the next step was.

Coppedge: OK, so are there protections that an employee has against an office manager who angrily accuses him of things and gives him a blanket order that goes well beyond what any perceived accusation was? Do I have any protection?

Klenk: If you feel that there's a hostile work environment we can investigate that as well. If it doesn't rise to that immediately, we can talk with Greg, Dave, and say, 'here's how we'd like you to handle this.'

Coppedge: Is it, let's say that I had DVDs on sports that I wanted to share. And somebody was not interested in sports, and yet I said, 'oh, this is really good; you would enjoy that.' Am I harassing them?

Klenk: It certainly could become unwelcome or disruptive in the workplace. Absolutely.

Coppedge: OK, so you're not singling out content here, right?

Klenk: No.

Burgess: HR certainly isn't. They said, 'Forget all that. It's interruption of the JPL workforce from doing JPL work.'

Coppedge: I would still like you to read the 12 points in the documentation that I'm leaving you and I'm still requesting a procedure that has been followed in this and a statement whether JPL abides by these Federal Guidelines. I have asked for that for a month now and nobody will give it to me.

Klenk: Well, we will pass it along to ER requesting that, and if we do not get a response we can certainly have you forward it up the chain.

Coppedge: Well, these Federal Guidelines allow for vigorous discussion on matters of disagreement and it says that is not harassment. Now I cannot be expected to read the body language of somebody who we're having a vigorous discussion with that is supposed to be telling me nonverbally, 'get out of here,' see. And if they can go to the office manager and say 'I don't want Dave talking to me about that anymore,' then the office manager certainly has the responsibility and the right to tell me, 'Don't talk to that person.'

Burgess: Actually they should come talk to me.

Klenk: They should talk to Cab.

Burgess: They shouldn't be doing that at all.

Coppedge: OK.

Burgess: That's supposed to be me.

Coppedge: OK.

Klenk: Greg should come and talk to Cab if people report it to him.

Coppedge: Has anybody come to you, complaining of that to you?

Burgess: Everybody including HR trying to set the record straight that whenever these kind of problems happen from this point forward they're going to be with me rather than Greg.

Coppedge: Right. Well, I'm asking...

Burgess: The intent of that letter, its interpretation, if another problem arises, is my decision to go further with it or not, not Greg's.

Coppedge: OK. But I'm asking, has anybody ever come to you complaining.

Burgess: They have not.

Coppedge: They have not. Can you also state for the record how my reviews have been?

Burgess: Oh they've been great. Technically you're qualified. But now we're hearing through this interview process that there's a lot of latent hostility out there with a large number of people including the Project Manager.

Coppedge: There is a lot of hostility in our culture against intelligent design. Perhaps you're aware of that.

Klenk: Not particularly, but...

Coppedge: Believe me; there is. What I espouse is certainly a minority view among the scientific community. I'm also aware that some of the scientific community are aware of my beliefs, because on my own time I write things that some of them have come across. And some of them at one point got upset about that. How do I know that there is not some kind of pressure being brought on the Program Manager, that this employee is undesirable and are there ways we can find... I mean, how do I know that's not going on? And that this is not some kind of retaliatory action by these individuals? I went to the Project Scientist when this came to my knowledge a couple years ago, and he was aware of it, but he said, 'Look, if anybody gives you any trouble over this, just talk to me and I'll take care of it.' I had written permission from the Chief Ethics Officer prior to my writing anything that was published that it was OK, what I was doing, to say 'Dave Coppedge works at Jet Propulsion Laboratory.' And I let this group of scientists who were complaining know about that. But they're aware of that, and it's a very unpopular view among the consensus. Now I'm letting you know some of these--some of this background information that may be brought to bear on why I am being singled out as the harasser here when Cab has not had any personal knowledge of this heretofore, and the only one, the first one and only one who had ever accused me of that was Greg Chin.

Klenk: Well, also look at who Cab has generally interviewed traditionally for your ECAP [i.e., annual performance review]; It was coworkers, coworkers meaning

people within 173 on the SA team, the customers you're working for, Greg Chin, and the like. But he would not have interviewed people nearby you on the 3rd floor. Now, so if you're working with the chief scientists or any of the other science people or mission people they wouldn't have been part of the interview process. They wouldn't be considered necessarily a coworker. It would be more of a person who was on the floor nearby you, working the same,

Coppedge: I understand. But I'm just saying that as another consideration that it is certainly a possibility when you mention the Program Manager, you know. I have had nothing but cordial and businesslike and pleasant relationships with the Program Manager, but he may hear things from this group, about me that make me persona non grata, and how do I know that pressure is not being brought to bear on Greg?

Klenk: I'm not sure how but we have not heard of that pressure.

Coppedge: Well I wouldn't expect you

Klenk: Cab says we're trying to clarify that the people who are going to look at this is Cab, is your line manager and he's going to look at this situation, not the people on Cassini, if that clarifies things.

Burgess: Well I've found that the ECAP process, for example, people respond to requests for information tend not to be negative. They either give you something that's positive or they don't say much at all.

Klenk: They don't say much at all, primarily focused on the work that you do. So even if they are extraordinarily uncomfortable with you, it won't necessarily come out; and that is true.

Burgess: It's fine because you have that option when you respond, to either share it with the individual or not, and even that doesn't bring out much negative on anybody.

Coppedge: So Cab has no personal evidence of anybody complaining about. I mean if this were a pattern of behavior that characterized me, don't you think over a matter of 11 years or so, that this would have come forward? Why did it come out all of the sudden on March 2nd?

Klenk: I'd say in this case it's because we investigated it and we looked you up. I'm not sure about, why Greg said, had the conversation with you on March 2nd versus another day, but when we had ER look into it, they came back and said, 'Yes, this is a extended period of time this has been going on and this is unwelcome in the environment.'

Coppedge: How do you feel about what Greg said to me on March 2nd? Is that justified?

Klenk: I think you should work through Cab on this sort of thing.

Coppedge: I think I have been.

Burgess: As far as that blowup, one on one it shouldn't have happened at all. It should have with me in my office. But Greg has been, they've told him that, essentially he, Greg, in his position does not deal with HR unless it's an issue with himself. Any manager on a project that is not line management has to take

that view as far as dealing with HR. It's up to the line people to deal with them, not the customer project.

Coppedge: Alright; well, that's not what happened. What happened was an angry outburst with me on March 2nd out of the blue. I have told Greg on a couple of occasions over the years, "Greg, if I am ever doing anything that offends somebody or is wrong, please come to me, give me a chance to fix it." He did not do that. Without any warning he came at me for this matter of what he accused me of on that day: pushing my religion in the workplace. He is the only one who has ever made that accusation in my entire professional career. I want you to understand that.

Klenk: I understand that completely, Dave.

Coppedge: What rights do I have to defend myself against those kinds of charges when the evidence and the documentation I have shows otherwise? And that I am standing on Federal Guidelines that say approaching people on matters of controversial subjects is protected speech even in the workplace.

Klenk: I think the key is it being to recognize when people feel it's unwelcome and disruptive in the workplace. I know you're saying it's a hard thing to do, but

Coppedge: Kevin, I think I do that. I think I do that.

Klenk: And what the investigation found is that you have not been doing that adequately, obviously. People have felt it's unwelcome and disruptive.

Coppedge: OK, so...

Klenk: That's the bottom line on that, that the people they talked to came back, one right after another, saying the same sorts of things. I know that's hard to hear.

Coppedge: Alright; well, it may be unwelcome, but it's only harassment if it's persistent, isn't it? I mean you may not know if someone disagrees with something unless you first have an opportunity to talk with them. They could go and say 'that was unwelcome'...

Klenk: And if the people start trying to avoid you or to change their work habits because of it,

Coppedge: Has anybody done that? I have no way, I've never noticed people changing their work habits because of me or trying to avoid me. Where is the evidence for these things that are being charged, other than subjective opinions?

Klenk: This is a subjective topic. When they talk about the whole idea of a workplace being hostile, or the inclusion and all that, it's all subjective.

Coppedge: The record shows that loaning these DVDs was very infrequent. On average one per month. Offering someone a DVDs took a minute or less. This means that 99.99 percent of the workday the lender was on the job, not engaging in this activity. OK? Do you agree with Greg's statement that I am not to talk about religion or politics with anybody in the office from now on? Do you agree with that?

Klenk: I agree that you have created an unwelcome disruptive situation in the workplace. There is no policy against you talking about religion and politics in the office so long as it's not unwelcome or disruptive.

Coppedge: But again, what you're saying [is that] I'm just supposed to feel vibes or see body language, even on a first time. And my practice has been, if the person is not interested, I back off. What may cause a conversation is if they start arguing with me and put me on the defensive and I offer a point, counterpoint. There's been a couple of occasions of that. But they're not telling me this is unwelcome. They're saying let's talk about this topic. I may have a point of view and we're both [involved]. That's protected speech. Now, if they later on tell an HR person, 'That was an unwelcome conversation' because they disagreed with me, I was not harassing them if they were vigorously stating a different point of view but not telling me to stop. There have been a few occasions of that but they have been rare and they have been the exception.

Klenk: Well, at least some of them have been remembered by the participants in a negative way.

Coppedge: I'm sure they have.

Klenk: So that's what we're trying to preserve is the workplace that's welcoming, that has no hostility. That's what we're trying to do.

Coppedge: I certainly understand the right of an employer to not give a false impression of what the company is about, to not go to total strangers--like that. But again these are people that I know and know me. We are friends. We are coworkers. We have been on this program for over 10 years in many cases. For me to approach them on a subject that I think is interesting and worthwhile is protected speech. And if they want to engage me with a vigorous discussion on that, that is also protected speech. It only becomes what Greg called harassment if it is persistent, if it is unwelcome, if they are telling me, 'Stop, stop' or if they go to the manager saying, 'I don't want to hear about that any more from Dave Coppedge.' But they don't do that.

Klenk: I think in many cases in a hostile work environment people do not do that. They sit there, and they are uncomfortable and they do not verbalize it.

Coppedge: Even though these are adults, who certainly

Klenk: Even though they are adults.

Coppedge: OK, then how...

Klenk: For example, the more classic one is sexual harassment. People don't say anything typically even when they are being harassed.

Coppedge: I understand. But I think what I'm doing is certainly not in the category of sexual harassment--not even close!

Klenk: [talking over Dave] It's not, but: the example is people haven't said that this is verbalized to you. I was trying to give you an example. People don't always verbalize the [sentiment?]. You say that's not the adult thing to do.

Coppedge: And yet I'm supposed to know somehow just through vibes, even though nobody tells me that they're uncomfortable, and even though Greg Chin or Cab Burgess doesn't tell me that. I'm just supposed to know.

Klenk: Now that we've heard we will try to hear and try to listen to people [??], but the fact is that you have to focus on that. If you want to carry on these kinds of conversations, at the same time you have to make sure it's welcome and not disruptive.

Coppedge: I believe that to be the case. I think I have, on that occasion of that one guy that got into kind of an argument, and then I went and apologized to him the next day. I think we were both getting a little bit heated because we both had strong feelings.

Klenk: But separately to, before it got to the point of a significant argument, to have recognized it.

Coppedge: OK, well does, does this cut both ways? In other words, if people come at me with unwelcome topics. I mean, for instance, in meetings there are points of views expressed about the way we ought to do things and stuff that get quite heated.

Klenk: Is it work related?

Coppedge: Well,

Klenk: If it's work related--how are we going to maintain the system--JPL is well known for having spirited discussions on that.

Coppedge: Sure.

Klenk: If it's not work related,

Coppedge: It's not always.

Klenk: If it's not work related, then certainly you can bring it up to your management chain or to their management chain.

Coppedge: Right; but there have been times when people have posed points of view quite stridently about what they believe, politically, culturally, whatever. I don't feel that I have some kind of constitutional right against being offended by that, you know? I'm a man, I can take it. I've got my point of view, I'm willing to defend it and have a discussion. Not always--but these were instigated by others sometimes. Now I suppose if I had a gripe against such a person because I disagreed with their political point of view or something, and if an HR person said 'Did this person offend you?' or something, I suppose I could put in a jab against them by saying 'Yeah, I think that was an unwelcome comment.' Would that be fair for me to do that? And yet that's certainly a conceivable type of...

Klenk: If it's unwelcome and disruptive you're certainly allowed to do that.

Coppedge: OK; but again, where is there any...? My records show that these were not unwelcome. First of all, they're very infrequent. Most of the time they're on the weekend. People are getting up to go home, they're not, it's not disrupting their work. I never go up to somebody who is busy on the job and approach them like with an interesting thing to watch. And I don't have any

records of anybody telling me that this was unwelcome and 'No, I'm not interested.' And if they didn't look interested, I usually read that body language pretty quick. [I] say 'OK, this person's not interested.' But the vast majority of the time they say 'Yeah, that looks interesting, OK sure.' And then they come back and say 'Wow, that was real interesting, I've never thought about that before.' Or 'Yeah I didn't agree with that, but here it is, I watched it.' Or they'll just leave it on my desk and that's the end of it. That's my pattern, I'm telling you. So; and that's protected speech in the workplace. I would like you to affirm that. I would like you read this document and say 'Yes, JPL affirms these rights of employees in the workplace.' And I would certainly agree with you that anything that constitutes harassment is wrong, and can be forbidden. But harassment is a strong word.

Burgess: Did you ask the same questions of the HR people?

Coppedge: Yes.

Burgess: And what did they say?

Coppedge: They didn't give me... She said she'd get back to me and she never did. I asked her twice. And I have asked her on the day of the interview and I asked her again last week, and she told me she doesn't want to put things in writing very often, she'll just call me and leave a voice mail, and 'What was that 3rd question again?', and that was the basic thing.

And--to me, I feel like I'm getting the runaround here. I'm asking for specific information

Klenk: Uh-huh.

Coppedge: ... and I'm getting these vague 'You[ve] got to watch people's body language and it's your fault if you don't interpret their body language.' I have documentation to show what I've done. I'm being up front with you about exactly what I've done, I'm giving you examples, and I'm telling you that on March 2nd, Greg launched into me in an accusation that nobody has ever made against me before. And of course, once that accusation is made, you can maybe find supporting evidence to back it up because you've created this suspicion.

Klenk: I don't think that Jhertaune was reaching to support by the sounds of what she reported to us.

Coppedge: Can we get a second opinion? This goes into my record as something quite serious--a charge of harassing people. I've never had something like that in my record before.

How do you feel about this other document? I listed together a couple of pages of sample stories that are reported on JPL News. We have had people like Michael Shermer here. We have had others who are ardent skeptics and atheists and proud of it stand up in the Von Karman Auditorium and present their point of view. Now, do I have the right to say I'm being harassed because I'm hearing something that offends me? No. I would never do that. I would say, 'Hey, I'll take you on; let's have a discussion about that.' Why don't we have a fairness of points of view? So that if one side gets the pulpit to be able to say this is supported by science, somebody else can counter that? Now I have an example of a page and a half of... these are published news stories with religious or philosophical overtones, and you're welcome to look through these things. These make claims that go way beyond the scientific evidence that talk about ultimate

meanings, ultimate destiny, ultimate origins, I mean... these are what could be construed as religious content. I showed this to Jhertaune and at the end I read 3 observations about this: "Discussion of ultimate questions is acceptable at JPL," number 1. That's proved by these. Number 2, "The philosophical or theological implications of scientific findings are fair game for discussion." OK? And number 3, "Exposing employees to philosophical and theological positions, some of which may differ markedly from their own strong, strongly held beliefs, does not constitute harassment." Otherwise, they're harassing me almost every day.

Klenk: Again, what the memo, the written warning here is about is your on one-on-one working relationships with your coworkers.

Coppedge: Am I allowed to get some character witnesses that would counter that impression? Because I think I could find quite a few that would say, 'No, I don't think what Dave's doing is unwelcome or harassing, or'

Klenk: What does matter that there are some people who said the behavior was unwelcome and disruptive.

Coppedge: What should have happened then was that they should have told Cab and he should have told me, 'Don't talk to that person.'

Klenk: We should have done it; we should have done it earlier.

Coppedge: Because that has never happened. Up until, and even when I invited Greg Chin, 'Look, if I'm ever doing anything offensive or wrong, please tell me and give me a chance to fix it,' he never did. And then all the sudden I'm investigated here as being this harassing person. I don't think that's fair.

Klenk: Well, it was a situation where it was both ways they investigated. Is Greg creating a hostile work environment? And they looked into the whole situation. And this is the result of the investigation. It wasn't, was Dave being investigated, it was the situation as we were reported to them. Will you agree with that, Cab?

Burgess: Yeah,

Coppedge: Yeah, but again, I was not filing a grievance or making a claim.

Klenk: Once we were made aware of it, we're required to pursue ER and have them check into it.

Coppedge: Cab's I think very familiar with my manner about loaning these things out. Have you ever had a problem with me?

Burgess: Me personally? No, never ever.

Coppedge: No. OK, so I'd say where's the evidence other than maybe a few people that Jhertaune was able to dig up.

Burgess: Don't say a few; HR said there's a lot out there, though.

Coppedge: OK, can I get a count? How many are we talking about?

Klenk: They said they don't want to do that in order to not have retaliation or anything that would compromise the anonymity of the people who talked to them.

Coppedge: A number of people? I mean a digit number? I don't think that compromises anybody's anonymity. I mean, a lot--is that 3, is that 12, is that 20?

Klenk: We could pursue having HR talk to you more about the situation.

Coppedge: Alright. Anyway, Kevin, I've laid out for you what I think is the documentation. I'm up front and open about what I have been doing and what I have done. I don't feel I have harassed anybody, and I'm sorry that some are giving that impression. I think I go overboard to be accommodating to people and to hear them and recognize [their responses]. But you know, having a spirited discussion on something, like, let's say, on a Friday at 5:00, you know... People don't have a constitutional right to have everybody agree with them on everything, obviously. And if anybody says, 'This is unwelcome,' they can certainly let me know that.

Klenk: We would hope they would. But in this case it sounds like they are not able to articulate that to you or unwilling to do that even though they are uncomfortable.

Coppedge: OK, Kevin will you do me a favor of at least reading my material,

Klenk: I will read your material,

Coppedge: And hearing me out? You are hearing me out as far as, I mean, you are obviously today, but...

Klenk: I'm hearing you out now. And I will read through the documents that you've left here.

Coppedge: Because, to the point that my constitutional rights are protected, I think I always have strived to be very accommodating to what management or the boss wants.

Klenk: We have; this is not an infringement on your constitutional rights.

Coppedge: A blanket statement saying never to do this is.

Klenk: I don't believe there's anything in this that says that.

Coppedge: That's what Greg told me verbally. And I gave him this,\

Klenk: And that's where we said, you are to work with Cab, we've written up our understanding of the findings and in no place does it say that.

Coppedge: Alright. I want to just affirm [to] you that I agree with the JPL policies and the ethics and I strive to be an upright employee in every way that I can. That is my commitment and my affirmation; it always has been. It's a great shock to me to be accused of this. And I think the evidence is lacking, and I think there could be elements of retaliation against people, certain people that disagree with a point of view by claiming it's harassment, when they could have simply...

Klenk: I don't believe the harassment word was in the paper; I think they said they that people feel uncomfortable.

Coppedge: Greg said it was.

Klenk: Look, I'm not debating what Greg said. I'm just talking about what our ER rep Jhertaune told us.

Coppedge: Did she use the harassment word?

Klenk: No, she did not.

Coppedge: OK; well, is that in the statement then?

Klenk: She said, that's her summary of it. You violated the un[garbled], Unlawful Harassment Policy.

Coppedge: OK, so she is claiming it's harassment.

Klenk: Um hm. Based on her understanding of what people reported. What I was hearing when you said harassment, I didn't have anyone say, 'I am being harassed by Dave Coppedge.'

Coppedge: That's right.

Klenk: That word. But she found that the elements of people's responses on top that did fall into that category.

Coppedge: This is highly subjective and I deny it. I deny I've harassed anybody. I certainly will take great pains to read people's body language, but people need to step up and say, 'This is unwelcome; I don't want to hear about it.' Or I need to be told specific[s], or they need to tell Cab and he needs tell me and it can be against that one person. But something is going into my record against my perception of what has really happened. And I want your affirmation that you are protecting an employee's rights against unfair accusations.

Klenk: We are doing our best to have this done impartially by ER, to the best of our understanding. OK, all points of view, this was the findings. These findings are accurate.

Coppedge: [Pause; reading the Written Warning] I disagree with that statement: 'You failed to stop these activities when you were told they were unwelcome and disruptive.' I think that's false. 'When you were told.' Nobody ever told me this was unwelcome or disruptive. That is false. If they gave me some kind of body language I'm supposed to read, oh well, I'm going to try to take better pains to read body language. But this says that I was told they were unwelcome or disruptive. That's not true.

As far as that point 2, I know who the individual was, and that's the one that I went to and apologized and he shook my hand. And I think I consider him a friend and I we never discussed that since, now that I know what is feelings are. And I've interacted with this person multiple times over the life of the mission. I consider him a friend. He's a scientist. I love talking about his work on his instrument. This was a very rare thing on a very controversial ballot initiative in the last election. And I was just offering him some information to read. He chose to get angry about it and start arguing about it. I would have just left it right there except that he wanted to talk about it and kind of put me on the defensive. He didn't say this is unwelcome and disruptive. Yes, it got a little bit animated to the point where I thought, I

want to affirm to him that he's a friend even if he doesn't agree with me, and I went to him the next day and told him that. He spontaneously stood up and shook my hand. OK? That's the facts. And yet this says I created a disruption by... This colors it totally different. Now, I don't know what he said to the ER person but that was not what he expressed to me.

So what's next?

Klenk: This is a signature from both you and Cab. This is Cab presenting it to you.

Coppedge: Well I'm not going to sign anything without legal counsel. Because I think this is...

Klenk: By the way, what this is, your signature is just to warrant that this has been discussed with you and you received a copy. That's what you're signing.

Coppedge: I'm afraid it will give assent to the fact that this is truthful when I think it's not. I'd like, before signing anything, I'm going to have to consult legal counsel.

Klenk: OK, we will be putting this in your file signed with in lieu of signature that we did have the discussion with you and you have been informed of the policy.

Coppedge: I know the policy and I don't think I violated it.

Klenk: But we will be putting it in the file with the note in lieu of.

Coppedge: I would like there to be some kind of a statement in the record that the employee disagrees with the facts that were

Klenk: You are welcome to provide that to us and we will include that.

Coppedge: OK. So I'm going to be expecting from you some kind of a written procedure on what was conducted.

Klenk: No, I said I would talk to ER about that. I wouldn't expect it from me to do an investigation of the procedures and policies of ER.

Coppedge: Well, this should be a JPL-wide policy.

Klenk: I will pass the note along about that.

Coppedge: If I get no response can I come back to you and say that I have got no response?

Klenk: And I will certainly note that.

Coppedge: OK, can I also expect a statement whether JPL abides by the Federal Guidelines on Religious Expression in the Workplace, as I've stated?

Klenk: You are welcome to pursue that.

Coppedge: No, I want you to...

Klenk: I don't know if you are going to receive that policy. I am not authorized, nor is Cab.

Coppedge: These should be open statements on JPL Rules. It's a matter of not just a policy that JPL can choose, these are federal guidelines for all government employees, that are, the guidelines are an interpretation of current law.

Klenk: It's my interpretation we don't discriminate on the basis of religion. We certainly don't allow harassment based on it.

Coppedge: Certainly. But, whether this is even called religion is I think a debatable question because the films I was loaning out are about scientific subjects--no less scientific than the things I listed that JPL News routinely publishes. OK? Alright, thank you for this discussion.

Klenk: Thank you.

Burgess: We have some more to deal with now.

Coppedge: OK.

Burgess: I wanted to know myself what I could do to lessen the strife in your area, so I'm going to remove you from the lead of the system admin team. I'm going to give the lead to someone else. And you will remain on the team, and there's no need to be discussing this or the letter with anybody in public. This is all private information. I had a discussion with Greg on how to deal with that rearrangement and he and even HR suggested that when it comes to any announcement that you are taking on some other role other than that I should divorce myself from that so it's not obvious to the people who are hearing this that it's part of anything else. So I've asked Greg to bring this up at his next team meeting, and as of next Monday, someone else will be leading the team and he's going to address your role as specifically focused on getting the servers that you're trying to bring up as your focal point from now on and not running the team with minutes and task assignments and all that. That's going to pass to someone else. And the idea there is that you won't have that interface to these people out there on the project that are complaining that they're uncomfortable with your actions.

Coppedge: You're certainly within your rights to do that Cab, but again I deny that anybody has, that I have harassed anybody. And nobody has told me that anything I have done has been unwelcome or disruptive.

Burgess: Now I'm going on what HR says, they say this has gone on too long, they can't believe this is prevalent, this point of view out there, as much as it is. We're talking about a lot of your customers.

Coppedge: I have no way of knowing what the questions were to these individuals. I think that could have a profound impact on the kind of answer they gave.

Burgess: Well that's why we're relying on HR. They're supposed to be the trained individuals that know how to deal with these kind of problems.

Coppedge: OK, you're claiming this is no kind of retaliation action that this is suddenly happening after Greg Chin's outburst, then, against me.

Burgess: It's not that specifically; no, it's not.

Coppedge: You were going to do this anyway?

Burgess: No, this is directly a result of all the interviews that HR conducted. To them, you see, it looks to them like you've got a customer base out there that's very uncomfortable, and removing you from that to be focused on something else is going to lessen the strife in the workplace.

Coppedge: Greg has, on occasion, accused me of being difficult to get along with certain individuals. And yet he has never offered specifics. It's always been vague allegations, OK? And I have pleaded with him and begged with him, 'Greg, if he can show me something that I have done that is wrong, I will crawl on my knees to that person and apologize to them. That is my commitment to you.' He never does that. This is the latest outburst and he found a new lightning rod to use. What guarantee do I have that he doesn't have some kind of personal vendetta that is using tools to get back at me here?

Burgess: I don't think he has a personal vendetta. He has discussed with me in the past about whether there is other work for you on the lab, on other projects.

Coppedge: Well that would certainly be convenient for him, but I...

Burgess: And, we just don't have any big projects going. In the old days when we had a lot of different customers, you could move the SA's around, and eliminate those kinds of problems.

Coppedge: Kevin, you can look at my previous 2 office managers: Dave Childs, Pamela Ray. Never had a problem with them. I was working on Cassini before Greg Chin came in. I was there first. He came in as the office manager. Immediately I tried to establish a good relationship with him, and I think that for the most part we have one. It's cordial, it's professional, but from time to time, he has initiated conversations with me, saying, 'Dave, you are the problem.' That type of thing. Vague allegations, never anything specific. And then one time the person who was apparently having trouble with me gave the same trouble to him, and he became the target. And then I think he began to empathize with what I was feeling.

Klenk: Well, I think we need to work closely with Cab on coaching on how to handle situations better, improve the workplace, those sorts of things.

Coppedge: OK, I mean, you certainly have my commitment as far as being a gracious, personable person, OK? But we also have freedom of speech in this country, and we have freedom of speech in the workplace, and to the extent that my rights of freedom of speech and religious expression are protected, I will do (and I think I have been doing) all I can to maintain a professional, cordial relationship, with all of my coworkers. This has been my commitment and it remains so now. I cannot control what other people think and what they say, when I have documents that show otherwise. Please read my materials.

Klenk: I said I will.

Coppedge: And give me the benefit of the doubt, because I think there may be more going on here than just what one particular HR person found, and what... I have no idea what kind of questions she asked and how this was conducted. On

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ANGELES

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) ss:
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)

I am employed in the City of Los Angeles and County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action. My business address is as follows: 515 So. Flower Street, 25th Floor, Los Angeles, CA 90071.

On November 30, 2011, I served the foregoing document(s) described as:

**DEFENDANT CALIFORNIA INSTITUTE OF TECHNOLOGY'S NOTICE OF
MOTION AND MOTION *IN LIMINE* #1 ("DML 1") FOR AN ORDER EXCLUDING
TESTIMONY, EVIDENCE, ARGUMENT AND COMMENT REGARDING
VIEWPOINT DISCRIMINATION; MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF CAMERON W. FOX
IN SUPPORT THEREOF; [PROPOSED] ORDER**

on the interested parties as follows:

William J. Becker, Jr., Esq.
THE BECKER LAW FIRM
11500 Olympic Blvd, Suite 400
Los Angeles, CA 90064

Attorney for Plaintiff
DAVID COPPEDGE

Email: bbeckerlaw@gmail.com



VIA ELECTRONIC MAIL:

By personally emailing the aforementioned document in PDF format to the email address designated for the above listed counsel.



VIA U.S. MAIL:

By placing a true and correct copy thereof in a sealed envelope(s) as addressed above. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice such sealed envelope(s) would be deposited with the U.S. postal service on November 30, 2011, with postage thereon fully prepaid, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on November 30, 2011, at Los Angeles, California.

Irma Gamino

Type or Print Name



Signature