

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-22572-Civ-King

EMMA YAIZA DIAZ *et al.*,

Plaintiffs,

v.

SUE M. COBB, Secretary of State of Florida,
et al.,

Defendants.

**PLAINTIFF AFL-CIO'S OPPOSITION TO DEFENDANT'S MOTION TO
COMPEL PRODUCTION OF A DOCUMENT AND/OR TESTIMONY**

Plaintiff AFL-CIO, by and through counsel, respectfully submits this opposition to Defendant Secretary of State's Motion To Compel Production of Document and/or Compel Testimony Regarding Document ("Motion To Compel"). Defendant seeks to compel production of a letter that Deborah Dion, an AFL-CIO employee, recently mailed to the AFL-CIO union members whom Plaintiffs identified in their Third Amended Complaint as potentially injured persons ("the letter"), during the course of Plaintiff's investigation of those members, and testimony from Ms. Dion about the letter and subsequent conversations that she had with several union members.¹

¹ Defendant has sought attorneys' fees associated with preparing its motion. Under Federal Rule Federal Rule of Civil Procedure 37 (a), attorneys' fees should not be awarded where the opposing party's non disclosure was "substantially justified" or when "other circumstances make an award of expenses unjust." A substantial justification never means "justified to a high degree," but rather a substantial justification exists if there is a "genuine dispute" or "reasonable people could differ as to [the appropriateness of the contested action]." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988) (internal citations omitted); *see also Titre v. S.W. Bach & Co.*, No. 05-80077-CIV-MARRA/SELTZER, 2005 U.S. Dist. LEXIS 32972, at * 11 (S.D. Fla. July 20, 2005) (sanctions inappropriate under Rule 37(a) where party had case law, albeit distinguishable or non-binding, that supported its inadequate interrogatory responses and thus substantial justification); *Maris Distrib. Co. v. Anheuser-Busch, Inc.*, No. 5:97-cv-15-Oc-10C, 2001 U.S. Dist. LEXIS 10230, at *

As explained below, the letter and Ms. Dion's testimony about the content of the letter are protected from disclosure by the work product privilege. Counsel for the AFL-CIO directed Ms. Dion to call potentially injured union members, and as a result of counsel's instruction, Ms. Dion mailed the letter as a precursor to, and to facilitate, those phone calls. Ms. Dion had no independent business purpose in sending the letter. Thus, the letter may be properly withheld and Ms. Dion instructed not to answer questions in her deposition about the content of the letter or the questions that she posed to the injured union members on the basis of work product privilege.

Ms. Dion's mailing of the letter to union members did not waive the privilege, since there is no evidence that any of the members in fact received and/or reviewed the letter. Even assuming that any of the union members reviewed the letter, since the union members' interests are not adverse to the AFL-CIO in this case (to the contrary, they are aligned), no waiver occurred. Finally, even if the letter is not privileged or the privilege has been waived, Defendant has failed to demonstrate any relevance of this document to the claims or defenses of this lawsuit. The letter was drafted recently by a party during the course of an investigation, and Defendant has not, and cannot, show any need for it.

BACKGROUND

On September 27, 2007, Defendant deposed Deborah Dion, the AFL-CIO's Rule 30(b)(6) designee. Ms. Dion is the political director of the South Florida AFL-CIO.

27 (M.D. Fla. May 4, 2001) ("Sanctions are not warranted simply because a party's arguments were eventually rejected or certain motions were ultimately denied.")

As explained below, Plaintiff had substantial justification for withholding the letter and instructing Ms. Dion not to answer questions in her deposition about the content of the letter. The letter was prepared to assist with calls to injured union members that counsel expressly directed her to make and to the extent that any union member received the letter, waiver did not occur since the union members do not have interests adverse to the AFL-CIO in this case.

Ms. Dion testified that counsel for the AFL-CIO directed her to call the union members listed in Exhibit E to Plaintiffs' Third Amended Complaint who may have been injured by the voter registration practices at issue in this lawsuit. (Dep. of Deborah Dion (Sept. 27, 2007) ("Dion Dep.") at 25:7-25:17, 68:19-68:24) (attached hereto as Ex. 1). In order to increase the likelihood that the members would respond to her calls, in July 2007, Ms. Dion first sent a letter to the members. *Id.* at 18:17-18:23, 24:12-16. Counsel for the AFL-CIO did not specifically direct her to draft a letter, *id.* at 24:17-24:20, nor did she seek the approval of counsel before she mailed the letter. *Id.* at 24:2-24:3. Nevertheless, Ms. Dion testified that the purpose of the letter was to "build a bridge" to connect with the injured union members by phone, *id.* 24:12-16, a task that she undertook at the express direction of counsel. *Id.* at 25:7-25:17, 68:19-68:24. Ms. Dion explained that "[i]t is easier to call someone if you have first sent them a letter." *Id.* at 25:1-25:6.

There is no evidence that anyone other than Ms. Dion and her counsel have seen the letter. Ms. Dion testified that she did not copy anyone on the letter, nor did she show the letter to anyone except for Plaintiffs' counsel. *Id.* at 71:21-72:5, 72:20-73:16. Not a single union member responded to her letter, *id.* at 19:24-20:3, 23:9-23:11, and six or seven letters were returned by the postal service as undeliverable. *Id.* at 73:17-73:25.

Sometime after the mailing of the letters, Ms. Dion called several injured union members. Plaintiffs' counsel permitted defense counsel to examine Ms. Dion concerning the facts that she derived from the union members but not the questions that she posed to them during her calls with them. *Id.* at 61:5-22.

ARGUMENT

A. The AFL-CIO's Letter, Testimony Concerning the Content of the Letter, and Questions Posted by the AFL-CIO at the Direction of Counsel are Work Product.

The work product doctrine protects otherwise discoverable “documents and tangible things . . . prepared in anticipation of litigation or for trial by or for [a] party or by or for that . . . party’s representative.” Fed. R. Civ. P. 26(b)(3). Thus, the work product doctrine is not limited only to information or documents gathered or prepared by attorneys. The work product doctrine also extends to oral communications between a party or party’s representative and potential witnesses. Courts have held that “work product consists of the tangible and intangible materials which reflects an attorney’s efforts at investigating and preparing a case, including one’s pattern of investigation, assembling of information [and] determination of the relevant facts.” *Lake Shore Radiator, Inc v. Radiator Express Warehouse*, No. 3:05-cv-1232-J-12MCR, 2007 U.S. Dist. LEXIS 19028, at **14-15 (M.D. Fla. Mar. 19, 2007) (quoting *In re Grand Jury Subpoena Dated Nov. 8, 1979*, 622 F.2d 933, 935 (6th Cir. 1980)).

The work product doctrine is designed to allow an attorney to “assemble information, sift what he considers to be the relevant from the irrelevant facts, prepare his legal theories and plan his strategy without undue and needless interference . . . to promote justice and to protect [his] clients’ interests.” *Hickman v. Taylor*, 329 U.S. 495, 510 (1947). In determining whether a document was prepared in anticipation of litigation, the court must determine whether “the primary motivating purpose behind the creation of the document was to aid in possible future litigation.” *U.S. v. Davis*, 636 F.2d 1028, 1040 (11th. Cir. 1981).

The facts surrounding the drafting and dissemination of the letter sought by Defendant make clear that it was prepared solely for the purposes of this litigation and not for any business reason. Ms. Dion testified that counsel for the AFL-CIO instructed her to call the list of injured union members that was attached as an exhibit to the Third Amended Complaint. Dion Dep. at 25:7-25:17, 68:19-68:24. She further testified that in order to carry out these instructions, she first sent a letter to the injured union members to “build a bridge” to connect to the injured union members. *Id.* at 18:17-18:23, 24:12-16. Ms. Dion explained that “[i]t is easier to call someone if you have first sent them a letter.” *Id.* at 25:1-25:6. Thus, the letter was sent to implement and accomplish the very task that the AFL-CIO lawyer had assigned to her—contacting the injured union members—and is protected by the work product privilege.

Defendant suggests that the letter is not work product because Ms. Dion drafted the letter without the review or approval of the AFL-CIO’s counsel and the AFL-CIO’s counsel did not, in instructing her to call the injured members, also tell her to correspond in writing with the members. Mot To Compel at 2-3. Defendant’s analysis is unpersuasive. Ms. Dion’s testimony that she sent the letter out after she received instruction from her counsel to contact the injured union members, and for the purpose of facilitating such phone calls, shows that the driving force behind the creation of the letter was the AFL-CIO’s counsel’s instruction to call the injured union members. The letter, and testimony about the letter, are therefore work product.² *See U.S. v. Davis*, 636 F.2d

² Defendant attempts to bestow legal significance on Plaintiff counsel’s modification, during the deposition, of her position on whether the letter constituted work product. There is none. Plaintiff counsel’s subsequent examination of the transcript of Ms. Dion’s testimony and applicable case law confirmed that her initial view that the letter was work product is correct.

at 1040; *Alexander v. Carnival Corp.*, 238 F.R.D. 318, 318-320 (S.D. Fla. 2006) (report on accident was prepared in anticipation of litigation).

Defendant offers no rationale for his request to depose Ms. Dion concerning the calls that Ms. Dion had with several union members. Ms. Dion called the injured union members at the direction of counsel, Dion Dep. at 25:7-25:17, 68:19-68:24; hence, the questions that she posed to the members are work product. See *Lake Shore Radiator, Inc.*, 2007 U.S. Dist. LEXIS 19028, at **14-15. Defendant has already had a full and fair opportunity to question Ms. Dion about the non-privileged portions of those communications, i.e. the facts derived from the union members during the calls. Dion Dep. at 61:5-22. No further questioning of Ms. Dion concerning her calls to injured union members is warranted.

B. Ms. Dion's Mailing of the Letter to the Injured Union Members Did Not Waive Work Product Privilege.

Work product privilege is not waived as easily as attorney client privilege. Most cases have held that "disclosure of a document to third parties does not waive the work-product immunity unless it has substantially increased the opportunities for potential adversaries to obtain the information." 8 Charles Alan Wright, Arthur Miller & Richard Marcus, *Federal Practice and Procedure* § 2024 (2nd ed. 1994); accord *Castle v. Sangamo Weston, Inc.*, 744 F.2d 1464, 1466, 1467 (11th Cir. 1984) (transfer of work-product materials between private plaintiffs' attorneys and Equal Employment Opportunity Commission did not constitute waiver of work-product privilege, where private plaintiffs' attorneys and counsel for Commission were engaged in the preparation of a joint trial at time transfer was made); *United States v. Gericare Med. Supply, Inc.*, CIVIL ACTION 99-0366-CB-L, 2000 U.S. Dist. LEXIS 19662, at * 13 (S.D. Ala. Dec.

11, 2000) (quoting Wright and Miller; disclosure of a document to third parties does not waive the work-product immunity unless it has substantially increased the opportunities for potential adversaries to obtain the information); *United States v. Massachusetts Inst. of Tech.*, 129 F.3d 681, 687, 687 n.6 (1st Cir. 1997) (waiver of the work-product privilege only occurs when the work product is released to someone with interests adverse to the party who generated the work product; citing cases from the Second, Third, Fourth, Eighth, and D.C. Circuit Courts of Appeals that agree with this principle); *Hohenwater v. Roberts Pharmaceutical Corp.*, 152 F.R.D. 513, 516 (D.S.C. 1994) (same).

Here, waiver could only have arisen from Ms. Dion's mailing of the letter to injured union members. Ms. Dion testified that she did not copy anyone on the letter, nor did she show the letter to anyone except her counsel. Dion Dep. at 71:21-72:5, 72:20-73:16. Even assuming that a union member received and reviewed the letter, of which there is no evidence, *id.* at 19:24-20:3, 23:9-23:11 (not a single union member responded to the letter), sharing the letter with a union member did not waive the work product privilege because the unions and their members are not adversaries in this litigation. *Castle*, 744 F.2d at 1466-1467 (11th Cir. 1984). In fact, the AFL-CIO has asserted standing on behalf of both itself and on behalf of its members who were injured by Defendant, and therefore, their interests are aligned.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendant's Motion To Compel.

Dated: October 8, 2007
Miami, Florida

RESPECTFULLY SUBMITTED,

/s/ Robert Harris

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing to be sent via U.S. mail this 8th day of October, 2007, to counsel for the parties listed in Exhibit A, attached hereto.

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EXHIBIT A
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* Admitted pro hac vice.
** Pro hac vice motion to be filed.

Exhibit 1

Dion transcript.txt

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-22572-CIV-KING/O'SULLIVAN

EMMA YAIZA DIAZ; JOHN LANMAN;
AMERICAN FEDERATION OF LABOR
AND CONGRESS OF INDUSTRIAL
ORGANIZATIONS; AMERICAN FEDERATION OF
STATE, COUNTY AND LOCAL EMPLOYEES,
AFL-CIO; FLORIDA PUBLIC EMPLOYEES COUNCIL
79M AFSCME, AFL-CIO; AND SERVICE EMPLOYEES INTERNATIONAL
UNION, AFL-CIO,

Plaintiffs,

-vs-

KURT S. BROWNING, Secretary of State of Florida;
BRENDA SNIPES, Broward County Supervisor of
Elections; JERRY HOLLAND, Duval County Supervisor
of Elections; LESTER SOLA, Miami-Dade Supervisor
of Elections; BILL COWLES, Orange County
Supervisor of Elections; and ARTHUR ANDERSON,
Palm Beach County Supervisor of Elections,

Defendants.

DEPOSITION OF DEBORAH DION

Thursday, September 27, 2007
7910 NW 25th Street, Suite 201
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10:00 a.m. - 3:50 p.m.

APPEARANCES:

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GARY ROBINSON, P. A.
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Appearance via telephone.

ELIZABETH S. WESTFALL, ESQUIRE
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Dion transcript.txt

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0003

JASON TEAL, ESQUIRE

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0004

P R O C E E D I N G S

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Deposition taken before MELANIE
STINSON-KONSTANTINIDIS, Court Reporter and Notary
Public in and for the State of Florida at Large, in
the above cause.

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9

D I R E C T E X A M I N A T I O N
BY MR. WINSOR:

10
11

Q Can you please state your name for the
record and how to spell it?

12

A Deborah Dion. D-E-B-O-R-A-H, D-I-O-N.

13

Q Can you tell me what your position is?

14

A I am currently the political director for
the South Florida AFL-CIO, which is an affiliate of
the state Florida AFL-CIO as was as the national
AFL-CIO.

15
16
17

Q You're here today as a designee of the --

18

A -- national AFL-CIO.

19

(Telephone interruption.)

20

BY MR. WINSOR:

21

Q Ms. Dion, your employer is the South
Florida Chapter of the AFL-CIO?

22
23

A It's the South Florida AFL-CIO. It's a
central labor council.

24
25

0005

1

Q Tell me how that relates to the national
or international AFL-CIO.

2

A There are nine central labor councils in
the state of Florida that are under the umbrella of
the Florida AFL-CIO.

3
4
5

Q When you say "under the umbrella," tell me
how you mean that.

6

7

A There's the big national AFL-CIO. Then in
every state, there is a state federation.

8

9

Dion transcript.txt

10 So the Florida AFL-CIO is based in
11 Tallahassee. Underneath the Florida AFL-CIO, there
12 are nine central labor councils throughout the state
13 of Florida.

14 So I work for the South Florida
15 AFL-CIO as their political director, and we cover
16 Miami-Dade County, we cover Hendry, Monroe, and Lee
17 counties.

18 Q Are you a full-time employee of that
19 organization?

20 A Yes, I am.

21 Q How many full-time roughly, if you know,
22 how many full-time employee do they have?

23 A I am about it.

24 Q So are there members that are of your --
25 the organization that employs you, does it have

0006

1 labor union members?

2 A Yes. We have approximately 56 affiliate
3 unions under the umbrella of the South Florida
4 AFL-CIO, and we represent 70,000 union members.

5 Q And this 70,000 are represented by your
6 organization of South Florida AFL-CIO?

7 A Yes.

8 Q And is it the case that each one of your
9 70,000 -- well, let me step back.

10 The 70,000 members that you just
11 described --

(Telephone interruption.)

12 BY MR. WINSOR:

13 Q So the 70,000 members that you described
14 are members of organizations -- are members of
15 unions that are affiliated with the South Florida
16 AFL-CIO; is that right?

17 A That's correct.

18 Q Does that make those individual union
19 members, members of the South Florida AFL-CIO?

20 MS. WESTFALL: Objection, calls for legal
21 conclusion.

22 You may answer.

23 THE WITNESS: They are members of the
24 South Florida AFL-CIO.

0007

1 BY MR. WINSOR:

2 Q And are each of those -- does membership
3 in the South Florida AFL-CIO require membership in
4 the Florida AFL-CIO?

5 A Not necessarily.

6 Q Tell me how that would work.

7 A Some local unions are affiliated with the
8 national AFL-CIO and -- I mean with the Florida
9 AFL-CIO, and some are affiliated with the central
10 labor council. It depends on the local union and
11 how they decide to affiliate.

12 Q So it's not the case that all of your
13 members are also members of the AFL-CIO; is that
14 right?

15 A That's correct.

16 Q What about the national AFL-CIO, the party
17 in this case?

18 A I didn't understand the question.

19 Q Are the 70,000 members of your
20 organization also members of the AFL-CIO that is a

Dion transcript.txt

21 plaintiff in this case?

22 A All of the members -- all of the affiliate
23 unions that belong to the South Florida AFL-CIO are
24 not necessarily members of the national AFL-CIO
25 because of the split that happened.

0008

1 Q Tell me about that split.

2 A In 1995 -- I mean, two years ago.

3 Q 2000?

4 A Sorry. Well, there was a split with the
5 national AFL-CIO and the Change to win Union, who
6 are AFL-CIO, the teamsters, the laborers,
7 carpenters.

8 Q So how did that split affect your members?

9 A Well, the national AFL-CIO worked out an
10 arrangement with the Change to win unions where
11 central labor councils could partner with the Change
12 to win unions by signing what's called a solidarity
13 charter. And all the Change to win unions in
14 Miami-Dade County have signed a solidarity charter
15 with the South Florida AFL-CIO.

16 Q Do you have an idea as to how many of the
17 70,000 members of your organization are members of
18 the national AFL-CIO?

19 A No.

20 Q Is it more than half, do you know?

21 A Yes.

22 Q More than three-quarters?

23 MS. WESTFALL: Objection, asked and
24 answered.

25 You may answer.

0009

1 THE WITNESS: I really -- I'd have to
2 look, I mean.

3 BY MR. WINSOR:

4 Q Do you know what percentage of your
5 members are registered to vote in the state of
6 Florida?

7 A About 65 percent are registered in the
8 state of Florida.

9 Q Do you know what percent are eligible to
10 vote in Florida?

11 A I would say 90 percent.

12 Q What are you basing that on, the
13 90 percent?

14 A Just basing it on -- on local union
15 participation and talking to different locals.

16 Q What are you basing the 65 percent on? Do
17 you all have records? Does your organization have
18 records?

19 A Yes. We can figure out what members are
20 registered and what members are not registered.

21 Q How do you do that?

22 A The national AFL-CIO does matches.

23 Q But it would only -- would it only do
24 matches for its members?

25 A Can you repeat the question, please?

0010

1 Q Sure. Would it do matches only for its
2 members, the national organization's members?

3 A Yes. But the individual Change to win
4 unions can do their own matches and they can report
5 to us, the central labor councils, on what their --

Dion transcript.txt

6 many registered members they have and how many
7 unregistered members they have.
8 Q How many unregistered members they have
9 that are also your members?
10 A I didn't understand the question.
11 Q Well, let me back up a little bit. Is it
12 the case that every one of your members is either a
13 member of the national AFL-CIO or the Change to Win?
14 A Who belong to the South Florida AFL-CIO,
15 is that the question?
16 Q Yes, that's the question.
17 A Yes.
18 Q And are you saying that each of those
19 organizations tracks the registration of its own
20 members?
21 A Correct.
22 Q Do they provide reports to your
23 organization?
24 A Yes.
25 Q Are those the reports that you are basing
0011 your 65 percent number on?
1 A Yes.
2 Q And as to the 90 percent that you estimate
3 are eligible, tell me again what you're basing that
4 on because I don't think I understood before.
5 MS. WESTFALL: Objection, asked and
6 answered.
7 You may answer.
8 THE WITNESS: I would say that I'm basing
9 this on just talking to union members
10 throughout the state.
11 BY MR. WINSOR:
12 Q And asking them what?
13 A Leaders throughout the state, and trying
14 to get them registered to vote.
15 Q What kind of leaders are you talking
16 about?
17 A Local union leaders.
18 Q The local unions that are part of your
19 organization?
20 A That belong to different central labor
21 councils.
22 Q Do you have any documents that would show
23 what percentage of your members, the South Florida
24 AFL-CIO members are eligible to vote in Florida?
0012 A Yes.
1 Q What kind of documents would those be?
2 A We can get lists from the national AFL-CIO
3 that indicate how many union members are registered
4 to vote and how many union members are not
5 registered to vote.
6 Q What about eligibility -- strike that.
7 Do you get lists of people who are
8 eligible to vote and people who are not eligible to
9 vote?
10 A Well, we get lists of people who are not
11 registered to vote.
12 Q But with some of those people who are not
13 eligible -- you say not registered to vote or not
14 eligible to vote?
15 A Not registered to vote.

Dion transcript.txt

17 Q would some of those people be not eligible
18 to vote?

19 A we have no idea until we contact the folks
20 to find out if they're -- why they're not registered
21 to vote.

22 Q well, that's my question. Do you have
23 documents to show what percentage of members of the
24 AFL-CIO are eligible to vote, whether they are
25 registered or not?

0013

1 A No.

2 Q What is it that the AFL-CIO hopes to gain
3 out of this litigation?

4 MS. WESTFALL: Objection, calls for a
5 legal conclusion.

6 You may answer.

7 THE WITNESS: what we hope to gain from
8 this?

9 BY MR. WINSOR:

10 Q Yes. what do you hope to achieve or gain,
11 yes.

12 A we hope -- our ultimate goal is to get
13 every single union member registered and voting in
14 elections.

15 Q what specifically do you hope to achieve
16 through this litigation?

17 MS. WESTFALL: Objection, asked and
18 answered. You may answer -- and that objection
19 calls for a legal conclusion.

20 You may answer.

21 THE WITNESS: we would -- what we really
22 want to get out of this is that this -- to give
23 union members the opportunity to correct their
24 applications after the deadline, before an
25 election, so that they can vote in an election

0014

1 if they have made a mistake on their
2 application.

3 BY MR. WINSOR:

4 Q Do you have any idea how many union
5 members that change would affect? And when I say
6 "union members," I mean AFL-CIO members.

7 A I know that there have been hundreds of
8 injured members.

9 Q How do you know that?

10 A Because we produce lists.

11 Q Produced lists to who?

12 A Our lawyers have produced lists of members
13 and our -- the national AFL-CIO's information
14 technology, Dennis Graham, has matched the list of
15 unregistered members in the state of Florida in
16 various counties with the injured list that was
17 produced by the service employees union folks in
18 two-oh-four and two-oh-six.

19 Q You said that your union lawyers produced
20 list of hundreds of injured members. Do you know
21 exactly how many or roughly how many?

22 MS. WESTFALL: Objection, asked and
23 answered.

24 You may answer.

25 THE WITNESS: I don't have the specific

0015

1 number.

Dion transcript.txt

2 BY MR. WINSOR:

3 Q Do you know who would?

4 MS. WESTFALL: Go ahead and answer. You
5 may answer.

6 THE WITNESS: No.

7 BY MR. WINSOR:

8 Q When you say "injured members," tell me
9 what you mean by injured member.

10 A Injured member, people that -- union
11 members that filled out an application and never
12 got -- filled out an application, apparently they
13 filled it out wrong and they never were able to --
14 were not contacted by the supervisors of elections
15 and were not able to vote, as well as members
16 that -- applications that were backlogged.

17 Q Do you have any specific individuals you
18 could tell me that have been harmed by this?

19 A I've actually talked to a few union
20 members.

21 Q Who are they?

22 A From a list in two-oh-four. I'd have to
23 have the list.

24 Q I'm sorry. The phone rang, someone is
25 there, and I didn't hear what you said.

0016

1 A I have talked to a few union members from
2 a list that I received from the national AFL-CIO in
3 2004, from 2004.

4 Q When did you talk to those people?

5 A I talked to those people in August.

6 Q Of this year?

7 A Yes.

8 Q Who were those people?

9 A I don't have the list in front of me.

10 Q Where is the list?

11 A I have got -- I have the list somewhere.
12 I don't have anything in front of me right now.

13 Q Can you get the list on a break and we can
14 talk about that?

15 MS. WESTFALL: Well, I have a suggestion,
16 Mr. Winsor, that you put before her some of the
17 lists that we have produced in this litigation.

18 MR. WINSOR: I'm sorry. Can you repeat
19 that?

20 MS. WESTFALL: The list that we have
21 produced in this litigation, do you want to put
22 those lists before the witness.

23 MR. WINSOR: You have the list, the 2006
24 list, right?

25 MS. WESTFALL: Yes. But we have produced

0017

1 lists with regard to 2004 attached to our
2 previous pleadings.

3 MR. WINSOR: Attached to the third
4 complaint?

5 MS. WESTFALL: Yes.

6 MR. WINSOR: Bear with me a second.

7 MS. WESTFALL: And if you want to, I have
8 the third complaint and I can direct witness to
9 those lists if it would help speed things
10 along.

11 BY MR. WINSOR:

12 Q Well, Ms. Dion, tell me more about the
Page 7

Dion transcript.txt

13 list that you were referring to a moment ago. Is
14 that the same list that's been produced already?
15 A I didn't hear you.
16 Q The list that you just referred to a
17 minute ago, is that the same list that's already
18 been produced or is that a different list?
19 A It's already been produced.
20 Q And it was a list of people from 2004?
21 A Yes.
22 MR. WINSOR: Yes. Ms. Westfall, if you
23 would show her Exhibit E to the third
24 complaint, and I'll ask her if this is the list
25 she was describing earlier.

0018

1 MS. WESTFALL: One moment.
2 What exhibit number, Allen?
3 MR. WINSOR: E.
4 MS. WESTFALL: Sure.
5 I've handed the witness the third amended
6 complaint, Exhibit E, thereto, entitled, "AFL
7 Union Members Including AFSCME Members."
8 BY MR. WINSOR:
9 Q Ms. Dion, do you recognize this list?
10 A Yes.
11 Q Is this the list you were describing a
12 moment ago?
13 A Yes.
14 Q Is this the list from which you contacted
15 union members in 2004?
16 A Yes.
17 Q Could you look at the list and tell me
18 which members you contacted?
19 A I contacted all the members by -- I sent
20 them a letter. And then I followed up with phone
21 calls and talked to just a few of these members.
22 Q Did you send a letter in August?
23 A In July.
24 Q July of this year. Do you have a copy of
25 that letter that you sent?

0019

1 A Yes.
2 Q Do you have that with you?
3 A I don't have it with me.
4 Q Is it in your office today?
5 A Yes.
6 Q Is that something you could get on a
7 break?
8 MS. WESTFALL: Mr. Winsor, we are not
9 producing that on work product -- it is
10 work-product privilege and we are not going to
11 produce it. We will list it in a privilege
12 log.
13 BY MR. WINSOR:
14 Q Ms. Dion, is that something that you --
15 did you say that you sent it to everyone on this
16 list?
17 A Yes.
18 MR. WINSOR: And, Ms. Westfall, it would
19 be your position that that's not waiving any
20 privilege?
21 MS. WESTFALL: There is no evidence that
22 it has been waived, Mr. Winsor.
23 BY MR. WINSOR:

Dion transcript.txt

24 Q Did any of these people respond to your
25 letter, Ms. Dion?

0020

1 A No.

2 Q Not a single one?

3 A No.

4 Q Which ones did you speak to -- did you
5 speak to someone on the phone?

6 A I spoke to a few on the phone, and they
7 were short, brief conversations.

8 Q Can you tell me which ones?

9 A Yes. Glen Sadler.

10 Q Okay.

11 A It was a really brief conversation. He
12 didn't really know who the South Florida AFL-CIO
13 was. He lives in Broward. They -- the Broward has
14 their open central labor council, which is called
15 the Broward AFL-CIO so he was a little confused to
16 begin with. But he was a convicted felon. And,
17 basically, that's what he told me and got off the
18 phone.

19 Q When did you talk to him?

20 A I talked to him in August. I followed up
21 the letter with the calls in August.

22 Q Who else did you speak to on the phone?

23 A I spoke with John Anglin. And he
24 basically was not a union member any more, and so we
25 just ended the conversation.

0021

1 Q Okay.

2 A Duran Barnes, number six, was not
3 interested and hung up pretty abruptly.

4 Q Okay. When you say "not interested," tell
5 me what he was not ready in or what you understood
6 him to not be interested in?

7 A Well, it could have been like the dinner
8 time call.

9 Q Did you make any effort to try him again.

10 A No.

11 Q Who else?

12 A On the next page, John Pulman. I spoke
13 with him. He was a convicted felon as well. He
14 told me that he had a DWI ten years ago, and that he
15 was kind of disgusted with the whole voter
16 registration system. So I ended that conversation
17 right there.

18 Q Did you talk to anyone else from this
19 list?

20 A Michael Vega on page 3, number 41.

21 Q Is that Javier Michael Vega?

22 A Yes. He again was a convicted felon.

23 Q Okay.

24 A And basically that conversation also went
25 nowhere.

0022

1 Q Did you talk to anyone else on this list?

2 A The only other person I spoke with was on
3 page 461.

4 Q Okay.

5 A William Prickett.

6 Q Tell me what you talked to him about.

7 A He was also a convicted felon, but was
8 interested in getting his rights restored.

Dion transcript.txt

9 Q What else did he say or what else did you
10 say?

11 A Well, I said I would look into it and
12 figure out how to do that and get back to him.

13 Q Have you done that?

14 A I haven't done that yet. We have a couple
15 of elections going on and I haven't done that.

16 Q Other than those that we just went
17 through, have you had any contact whether on the
18 phone or in person or by e-mail or anything else
19 with anyone on this list?

20 A No.

21 Q Has anyone else in your organization or
22 anyone else in the AFL-CIO had any contact with
23 them, to your knowledge?

24 A No.

25 Q Where did you get the addresses you mailed
0023 your letters to?

1 A From the national AFL-CIO.

2 Q Did you have any letters returned?

3 A I think there were a few.

4 Q When I say "returned," I mean, to be more
5 clear, returned by the postal service as not
6 delivered.

7 A Returned by the postal service.

8 Q Did you have any correspondence come back
9 from anyone that you sent a letter to?

10 A No.

11 Q Did you include a voter registration
12 application in your letter?

13 A No.

14 Q What did the letter say?

15 MS. WESTFALL: Objection. This is work
16 product, Allen.

17 MR. WINSOR: Are you instructing the
18 witness not to answer?

19 MS. WESTFALL: Yes.

20 BY MR. WINSOR:

21 Q Can you tell me who drafted the letter?

22 MS. WESTFALL: You may answer.

23 THE WITNESS: I did.

24

0024

1 BY MR. WINSOR:

2 Q Did anyone review it before it went out?

3 A No.

4 Q What was the purpose in sending it?

5 MS. WESTFALL: Objection. I would counsel
6 you not to discuss any communications you may
7 have had with counsel about this topic.

8 You may answer to the extent you can.

9 THE WITNESS: Can you repeat the question?

10 Sorry.

11 BY MR. WINSOR:

12 Q Sure. What was your purpose in sending
13 out the letters?

14 A The purpose was to contact these people
15 and, you know, to be able to have a bridge to talk
16 to them by phone.

17 Q And I'm not asking for any details, this
18 is going to be yes or no, were you instructed by
19 counsel to send the letters?

Dion transcript.txt

20 A No.
21 Q Did you -- and, again, I'm just asking for
22 a yes or no, not any details of conversations. Did
23 you discuss the letter before -- with counsel before
24 sending it?

25 A No.

0025

1 Q When you say you were trying to build a
2 bridge with these people, can you tell me what you
3 mean by that?

4 A Well, it's easier to call someone when
5 you've sent them something. You know, to respond
6 to, did you get the letter? So it's a bridge.

7 Q Well, why were you going to call them?

8 MS. WESTFALL: Again, I'm going to counsel
9 you, Ms. Dion, not to discuss any discussions
10 you've had with counsel. You may answer.

11 THE WITNESS: I was asked to call.

12 BY MR. WINSOR:

13 Q By counsel?

14 A By the national AFL-CIO.

15 Q Who with the national AFL-CIO asked you to
16 call?

17 A Our legal counsel.

18 Q Did they ask you to send a letter?

19 MS. WESTFALL: Mr. Winsor, she's getting
20 into testifying about her communications with
21 the AFL in-house counsel, and I would caution
22 you not to tread into the substance of those
23 communications.

24 MR. WINSOR: I am not trying to get into
25 the substance of it, I'm trying to get to the

0026

1 basis of your work product objection. I think
2 I'm entitled to do that.

3 MS. WESTFALL: I think you have asked the
4 questions concerning that issue and she has
5 answered the questions.

6 (Thereupon, the court reporter
7 was asked to read back the
8 aforementioned question.)

9 BY MR. WINSOR:

10 Q Can you answer that, please?

11 MS. WESTFALL: You may answer yes or no.

12 THE WITNESS: No.

13 BY MR. WINSOR:

14 Q Okay.

15 MR. WINSOR: Ms. Westfall, do you have the
16 amended Exhibit A that was part of the
17 plaintiff's supplemental responses to the
18 secretary's interrogatory responses?

19 MS. WESTFALL: By the amended, do you mean
20 by union affiliation?

21 MR. WINSOR: Yes.

22 MS. WESTFALL: That I do not think I have.
23 I have Schedule A without the union
24 affiliation.

25 MR. WINSOR: Let me see if I can pull

0027

1 that -- well, if you'd put that in front of the
2 witness, I'd appreciate it. And I will try --
3 I've got the other ones, I'll try and find the
4 older one here. If you'll bear with me for

Dion transcript.txt

5 just a moment.
6 MS. WESTFALL: Mr. Winsor, I'm putting
7 before the witness plaintiff AFL's supplemental
8 responses and objections to defendant Secretary
9 of State's first set of interrogatories,
10 Schedule A.

11 BY MR. WINSOR:

12 Q Ms. Dion, do you see Schedule A in front
13 of you.

14 A Yes, I do.

15 Q Is this a document that you have seen
16 before?

17 A No.

18 Q Earlier you testified, I believe, that the
19 plaintiff had provided a list of people injured in
20 '06; is that correct?

21 A Can you repeat that question?

22 Q Sure. I just asked, I believe that
23 earlier this morning you testified that the
24 plaintiffs had provided to us a list of injured
25 union members from 2006. And I'm not trying to put

0028 words in your mouth, but is that a fair statement?

2 A No. I was provided, me personally --

3 Q Okay.

4 A -- a list of 2004. what I -- and let me
5 clarify.

6 Q Sure.

7 A SCIU provided the national AFL-CIO with
8 lists from 2004 and 2006.

9 Q The SCIU provided the AFL-CIO with lists
10 for '06 and '04?

11 A That's my understanding.

12 Q Is the list that was provided for '04 the
13 same list we were just discussing a moment ago or is
14 there another list from '04?

15 A The union members that I just spoke about
16 was from a list -- one list that I received from
17 2004.

18 Q well, let's talk about what other lists
19 you have received. And by "you," I mean you
20 personally or AFL-CIO South Florida, or the AFL-CIO
21 for that matter.

22 what other lists of injured members
23 exists?

24 A I guess this list that I'm looking at,
25 schedule A.

0029 1 Q Okay. Are there any other lists?

2 A No.

3 Q So your understanding -- and, again, I'm
4 not trying to put words in your mouth -- was that
5 the SCIU provided a list of injured members from
6 2006?

7 A That's my understanding.

8 Q Have you ever seen that list?

9 A No.

10 Q Have you ever seen any list of injured
11 members relating to this litigation other than the
12 list that we discussed a moment ago?

13 A Can you repeat that?

14 Q Sure. Have you seen any list of injured
15 members relating to this litigation other than the

Dion transcript.txt

16 list that we discussed a member ago and went
17 through?
18 A No, no.
19 Q You have not seen this list that is under
20 schedule A here?
21 A That's right.
22 Q I have another list that you don't have
23 that I am going to bring up, and it's got this same
24 individual on it, but they are organized
25 differently. And if you'll bear with me I'll bring

0030
1 that up, which will make it easier for us to address
2 this list.

3 And I will be asking you about some
4 names on this list. So if you want, while I'm doing
5 this, if you'd like to familiarize yourself with the
6 list in front of you, that would be great.

7 MR. WINSOR: And, Elizabeth, if it's all
8 right with you, if you've got a copy there, I'd
9 like to attach this Schedule A as an exhibit
10 for today's deposition, or a copy of it.

11 MS. WESTFALL: Just the Schedule A or the
12 whole pleading?

13 MR. WINSOR: Just the schedule A.

14 MS. WESTFALL: Okay. Should I hand it to
15 the court reporter to have it marked as
16 Exhibit 1?

17 MR. WINSOR: Please. Thank you.
18 (Exhibit 1 was marked for
19 identification.)

20 MS. WESTFALL: The witness now has the
21 document, the Exhibit 1, in front of her,
22 Mr. Winsor.

23 MR. WINSOR: Okay.

24 BY MR. WINSOR:

25 Q First, have you had a chance to look

0031
1 through these names, Ms. Dion?

2 A Yes.

3 Q Do you recognize any of the names?

4 A I do not.

5 Q Well, that may make this easy then. And
6 you've looked at each page carefully? Ma'am?

7 A Yes.

8 Q I didn't mean to hurry you. I just wanted
9 to make sure you weren't waiting on me.

10 A I don't recognize any of these names.

11 Q We are done with that exhibit then, if you
12 don't recognize any of the names. And you testified
13 you've not seen this document before?

14 A That's correct.

15 Q With respect to 2006, the 2006 November
16 election, are you aware of any union member who
17 submitted an incomplete application before the book
18 closing deadline, and attempted to correct that
19 application after the book closing deadline?

20 MS. WESTFALL: Objection, asked and
21 answered.

22 You may answer.

23 THE WITNESS: I do not.

24 BY MR. WINSOR:

25 Q Do you know any individual who is not a

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Dion transcript.txt

1 union member that was fit into that description?

2 A I do not.

3 Q Have you heard from any union member any
4 problems relating to that particular union member's
5 efforts to register in 2006?

6 A I do not.

7 Q What about any nonunion member?

8 A No.

9 Q Tell me about the AFL-CIO voter
10 registration goals and efforts.

11 MS. WESTFALL: Objection, vague.

12 You may answer.

13 THE WITNESS: Basically, our goal is to
14 register every union member and every household
15 member to --

16 BY MR. WINSOR:

17 Q Go ahead.

18 A To participate in elections, in local,
19 state and federal elections.

20 Q What types of things does the AFL-CIO do
21 to try to reach that goal?

22 A Each local union, we can order their lists
23 of unregistered and registered, and then we do a
24 voter registration drive. Either -- we do it a
25 couple ways.

0033

1 Some locals will do local union mail
2 and follow up with local union mail. Others will do
3 voter registration at the work sites.

4 Q Okay.

5 A And member-to-member contact.

6 Q Let's go through each of those separately.
7 Let's start with the -- when you say "voter
8 registration drive," and I assume that's different
9 than workplace registration, which could be a form
10 of a voter registration drive, but I understand the
11 union looks at those differently. Tell me if I am
12 missing something there.

13 MS. WESTFALL: Objection.

14 You may answer.

15 THE WITNESS: Can you repeat that
16 question?

17 BY MR. WINSOR:

18 Q Sure. Actually, I'll withdraw it.

19 Tell me, when you say "voter
20 registration drives," walk me through how that would
21 work?

22 A Well, there is various ways and different
23 unions approach voter registration in different
24 ways.

25 Q Okay.

0034

1 A So one way would be for the local union
2 president to send a letter with a voter registration
3 to the unregistered members that he has, and then
4 follow up with a phone bank or a personal contact
5 with a shop steward.

6 Q What would be included with that mailing
7 other than a registration application?

8 A Well, it would be a letter from the local
9 union president saying, you know, our records
10 indicate that you're not registered, here's why it's
11 important to register.

Dion transcript.txt

12 You know, we don't tell people how to
13 vote, voting is a personal decision, but we talk
14 about the issues.

15 Q And with a mailing like that, would there
16 typically be instructions on how to complete the
17 voters registration application?

18 A Yes.

19 Q would those include anything specific
20 about Florida's voter registration application?

21 A Well, we would send the Florida voter
22 registration with the letter.

23 Q would it always be the Florida voter
24 registration application or do they sometimes send a
25 federal one?

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1 A I've never seen a federal voter
2 registration. When I go to the supervisors of
3 elections, they give me the Florida voter
4 registrations.

5 Q Are you aware of a federal one?

6 A No.

7 Q Tell me what would be in the letter in
8 terms of instructions with that application.

9 A It would basically say how to fill out the
10 form.

11 Q would it include instructions on how to
12 fill out the form?

13 A Yes.

14 Q would it include instructions about book
15 closing date?

16 A I think that would be contingent upon when
17 the letter went out, if it went out months before an
18 election or a month before an election.

19 Q Is it safe to say sometimes it would and
20 sometimes it would not?

21 A Yes.

22 Q Okay. well, that sounds like we talked
23 about one type of voter registration drive. what
24 other types of voter registration drives did AFL-CIO
25 involve itself in?

0036

1 A we do voter registration at various work
2 sites. And that depends on the local union, where
3 they will, you know, set up tables and get people to
4 sign the forms and collect them.

5 Q who did you get to work at those tables?

6 A Most of the time, it's the shop stewards
7 who are familiar with the membership.

8 Q Is that somebody who receives instructions
9 or training on how to conduct?

10 A Yes.

11 Q Tell me what those instructions and
12 directions would be.

13 A we do workshops for the shop stewards on
14 how to fill out the forms, how to collect them, how
15 to talk to members. That type of thing.

16 Q Does that include instruction on how to
17 fill out the forms, the voter registration forms?

18 A Yes.

19 Q Do those instructions include whether that
20 shop steward should or other persons should fill out
21 the form, him or herself, or have the applicant fill
22 out the form?

Dion transcript.txt

23 A The applications have to fill out the
24 form.

25 Q Is that part of your training?

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1 A That the applicant has to fill out the
2 form?

3 Q Yes. The applicant as opposed to the
4 person running the --

5 A Yes.

6 Q What other types of registration drives
7 are there?

8 A Those are the predominant registration
9 drives. I mean, the work site is probably the key
10 voter registration drive that we have.

11 Q And when you say "we," you mean?

12 A The AFL-CIO.

13 Q Tell me what the Ten Point Plan is.

14 A The Ten Point Plan is our political
15 program that the national AFL-CIO pretty much began
16 in the year 2000, and we have built upon that plan
17 over the past several cycles. But it's the basis of
18 what we do in elections and, you know, getting a
19 local union coordinator, having local union mail,
20 phone banks, GOTV, voter registration, trying to
21 increase voter registration by 10 percent.

22 The Ten Point Plan is something that
23 we are trying to get every single local union across
24 this nation to do the program.

25 Q Does that include voter registration

0038

1 component?

2 A Yeah. Increase voter registration by
3 10 percent.

4 Q Does it include speak ways that should
5 happen or is that just a goal, or are there details
6 in the plan about how to make that work?

7 MS. WESTFALL: Objection to the form.

8 You may answer.

9 THE WITNESS: Yeah. I mean there are
10 workshops and all kinds of -- all kinds of
11 paper on how to -- you know, how to increase
12 your local's registration.

13 BY MR. WINSOR:

14 Q Does the AFL-CIO have a plan for voter
15 registration in Florida in 2008 -- no, I say 2008.
16 The 2008 cycle which could be from now until the
17 election in 2008?

18 A Yes.

19 Q Is that plan any different than it was in
20 2006 or 2004, if there was a plan at that time?

21 A Well, I can tell you what we are trying to
22 do here in Miami-Dade County, which may not be
23 happening across the state, but we are trying to
24 centralize all of our -- our entire voter
25 registration drive for all of our locals and

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1 centralize it through this central labor council at
2 the South Florida AFL-CIO.

3 Q Tell me how that would work and how broad
4 is that?

5 A So what we're trying to do with our 50 --
6 approximately 56 locals is to send out a letter
7 from -- I'll give you an example, CWA 3122.

Dion transcript.txt

8 So we sent out a letter from the
9 local union president to the registered members and
10 to the nonregistered members. To the nonregistered
11 members, what we tried, we sent a letter from the
12 local union president. We sent a voter registration
13 and an absentee ballot request form.

14 To the registered members, we sent a
15 letter and we sent an absentee ballot request form.
16 And we told the members in this letter to get the
17 voter registrations and the absentee ballot request
18 forms back to your shop steward.

19 So we built in accountability and --
20 with this type of operation. And then we trained
21 the shop stewards on voter registration, how to fill
22 out the forms, so that when the members bring the
23 forms back to the shop stewards, the shop stewards
24 can check and see if they filled it out right.

25 Q What are they to do if they have not done
0040 it right?

1 A They fill out another one.

2 Q Meaning the shop steward or the applicant?

3 A The applicant.

4 Q Do you know how that, the whole plan that
5 you've just described differs or whether it differs
6 from the plans of the AFL-CIO in Florida?

7 A This is the only place that I know that we
8 are centralizing this voter registration plan, in
9 South Florida. In Miami-Dade County.

10 Q Are there unrelated efforts by the AFL-CIO
11 to do voter registration in Florida in 2008?

12 A Of course.

13 Q Tell me about those.

14 A We are going to be doing similar voter
15 registration drives just like I told you. We have a
16 primary coming up in January. So people are getting
17 their members registered as we speak.

18 Q Well, from those types of drives that you
19 are describing is there any appreciable difference
20 from the way that they conduct it in the past and
21 say 2006 and 2004?

22 A I didn't -- can you repeat the question?

23 Q Sure. What I am asking is how voter
24 registration by the AFL-CIO in Florida has changed,

0041 if it has changed, from say 2004 to 2006 to 2008?

1 MS. WESTFALL: Objection as to form.

2 You may answer.

3 THE WITNESS: I mean, I think that the
4 locals are trying to register more of their
5 members as we go through these election cycles.

6 BY MS. WESTFALL:

7 Q What I am asking is if the way that you
8 are trying to accomplish that has changed or is
9 changing from the way it's been done in the past to
10 now?

11 MS. WESTFALL: Objection to the form.

12 You may answer.

13 THE WITNESS: I mean, here, we are trying
14 to centralize the voter registration operation
15 here in Miami-Dade county. I know that we are
16 going to put some resources into 527s who will
17 be conducting voter registration all over the

Dion transcript.txt

19 state of Florida and may reach some of our
20 members, but, you know, their role is to do the
21 general public as well.

22 BY MR. WINSOR:

23 Q Do you have sort of a plan as to how to
24 allocate resources for the 2008 election in terms of
25 voter registration?

0042

1 A No.

2 Q Does the AFL-CIO have such a plan?

3 MS. WESTFALL: Objection to form.

4 You may answer.

5 THE WITNESS: Can you repeat the question
6 again?

7 BY MR. WINSOR:

8 Q Sure. Does the AFL-CIO have a plan as to
9 how to allocate resources for voter registration in
10 Florida for the 2008 election cycle?

11 A I think they have a plan which includes,
12 you know, allocating resources to 527s and, you
13 know, helping the central labor councils and the
14 state federation with their voter registration
15 drives.

16 Q If this challenged statute in this case
17 were enjoined or did not exit would the allocation
18 of resources be different?

19 MS. WESTFALL: Objection, calls for a
20 legal conclusion.

21 You may answer.

22 THE WITNESS: Can you repeat that?

23 BY MR. WINSOR:

24 Q Sure. If the law that is challenged in
25 this case went away would the AFL-CIO allocation of

0043

1 resources with respect to voter registration in
2 Florida for the 2008 cycle change?

3 A No, because I think we want to register as
4 many union members as we can.

5 Q What would change with respect to the
6 AFL-CIO if this law went away? The law that is
7 challenged in this case?

8 MS. WESTFALL: Objection to form. Calls
9 for legal conclusion.

10 You may answer.

11 THE WITNESS: Can you repeat that again?

12 BY MR. WINSOR:

13 Q Sure. If the -- the AFL-CIO has
14 challenged the statute. And my question is: If
15 that statute did not exist or went away tomorrow,
16 how would that change things for the AFL-CIO?

17 MS. WESTFALL: Objection, calls for a
18 legal conclusion.

19 You may answer.

20 THE WITNESS: Well, we wouldn't have to be
21 scrambling and putting a lot of resources
22 into -- you know, if people -- if people didn't
23 fill out the form right and were notified,
24 then, you know, they would have an opportunity
25 to vote -- fill out another form. And we

0044

1 would, you know, follow up with that and they
2 would have an opportunity to vote.

3 BY MR. WINSOR:

Dion transcript.txt

4 Q Okay. what resources are you putting into
5 any effort now that you would not have to put into
6 if the challenged law went away?

7 A We are still putting resources into voter
8 registration because we have a lot of union members
9 that are not registered to vote throughout the
10 state, as well as union retirees.

11 Q But my question is what would change if
12 the law that you challenged went away?

13 MS. WESTFALL: Objection, asked and
14 answered. Calls for a legal conclusion.

15 You may answer.

16 THE WITNESS: I'm still -- I still don't
17 understand what -- what you're getting at here.

18 Can you ask the question again?

19 BY MR. WINSOR:

20 Q Sure. Let me try it a little bit
21 different way.

22 How would the AFL-CIO's operations
23 change if the law that is challenged in this case
24 were enjoined?

25 MS. WESTFALL: Objection, calls for a

0045

1 legal conclusion.

2 You may answer.

3 THE WITNESS: I still don't understand
4 what you're asking.

5 BY MR. WINSOR:

6 Q Okay. The AFL-CIO would like to
7 invalidate a law that's challenged in this
8 litigation; is that right?

9 A Yes.

10 Q My question is: What would change for the
11 AFL-CIO if that happened?

12 MS. WESTFALL: I just have a standing
13 objection, calls for a legal conclusion.

14 You may answer.

15 MR. WINSOR: That's fine.

16 THE WITNESS: We will be able to get --
17 still continue to get our union members
18 registered if this law went away, and they
19 would be able to fill out new voter
20 registration forms and be able to participate
21 in elections.

22 BY MR. WINSOR:

23 Q Do you know of any union member or anyone
24 else who has submitted an incomplete voter
25 registration application after the 2006 election?

0046

1 Any time between then and now?

2 A No.

3 Q Have you ever had a member tell you that
4 the Florida voter registration application was
5 confusing to that member?

6 A Several times.

7 Q Tell me about those times.

8 A I think that many members think that it's
9 confusing and too many -- too many lines to fill
10 out. And just, you know, a lot of our members, and
11 I'm going to be honest here, are not, you know,
12 professional teachers and are not -- tend not to be
13 very highly educated, some of them, and find it
14 difficult to understand the questions.

Dion transcript.txt

15 Q Have you had a member tell you that the
16 application was confusing to that member?

17 A Yes.

18 Q Who has told you that?

19 A Well, I've had some AFSCME members, you
20 know, ask me how to fill the form out and what does
21 this mean and what does that mean? And I can't
22 remember the day that it happened, but, yes, people
23 think it's a little confusing.

24 Q Do you remember the names of any of those
25 members?

0047

1 A Not offhand.

2 Q Do you have a list of them anywhere?

3 A No.

4 Q Have you received any written
5 correspondence from a member saying he or she was
6 confused?

7 A No.

8 MR. WINSOR: Ms. Westfall, do you have the
9 document production from last night handy?

10 MS. WESTFALL: I do not. I have it on my
11 computer.

12 MR. WINSOR: All right. That's fine.
13 Document 1291 is the one I'd like to get in
14 front of the witness, if we can.

15 MS. WESTFALL: The production is from the
16 fourth amended -- the fourth supplemental
17 production?

18 MR. WINSOR: Let me see. No, I don't
19 believe this is from the fourth. I believe
20 this is from the one that was sent Tuesday
21 night.

22 MS. WESTFALL: Hand on a minute.

23 MR. WINSOR: Sure. Ms. Westfall, it was
24 actually part of the third.

25 MS. WESTFALL: I do have the hard copies,

0048

1 Mr. Winsor, and could you provide the Bates
2 number again?

3 MR. WINSOR: Sure. It is -- 1291 is the
4 specific page, but it's the document that
5 begins on four or five pages before that.

6 And for the court reporter, this is
7 AFL document 1291 that was produced this
8 Tuesday.

9 MS. WESTFALL: I don't seem to have Bates
10 numbers that go up that high. Are you sure it
11 was in that production?

12 MR. WINSOR: It's in an e-mail from
13 Michael on 9:00 p.m. on Tuesday, and there were
14 two e-mail attachments to that. This one is
15 entitled, "AFL TROD Part 2 dot TDS."

16 MS. WESTFALL: The Bates number again?
17 I'm sorry. Let me write it down.

18 MR. WINSOR: No problem. It is 1291.

19 MS. WESTFALL: How many pages is it? Do
20 you want to fax it because I think I may only
21 have section one in front of me.

22 MR. WINSOR: It's not that many pages and
23 I'll be glad to fax it.

24 MS. WESTFALL: The fax number is
25 (305) 593-7806.

Dion transcript.txt

0049

1 MR. WINSOR: From this side, I don't have
2 much more beyond this. Maybe we will take a
3 five-minute break and we will just stay hooked
4 up to the thing here and come back in five
5 minutes. Is that acceptable to everyone?

6 MS. WESTFALL: That's super. We will look
7 for the fax.

8 MR. WINSOR: Can I send it without a
9 cover?

10 MS. WESTFALL: Yes. Go ahead.

11 (Brief recess.)

12 (Exhibit 2 was marked for
13 identification.)

14 BY MR. WINSOR:

15 Q Ms. Dion, do you have Exhibit 2 in front
16 of you? what we have marked as Exhibit 2?

17 A Yes.

18 Q And I'll represent that that is a
19 document, the first page of which is numbered
20 AFL1283, and sequentially numbered ending with
21 AFL1292, and it's titled on the first page, "AFL-CIO
22 Voter Registration Manual."

23 A Yes.

24 Q Have you seen this document before?

25 A A long time ago.

0050

1 Q Have you seen other documents that purport
2 to be AFL-CIO voter registration manuals?

3 A Yes.

4 Q Are you familiar with this document?

5 A I'm looking through it.

6 Q And take your time.

7 A I'm familiar with it.

8 Q What is it?

9 A Can you ask that question again?

10 Q What is it? what is the document?

11 A It's a voter registration manual that the
12 national AFL-CIO put out in 1999 after the -- an
13 executive council meeting.

14 Q Do you know how widely it was distributed?

15 A I'm sure pretty widely.

16 Q And are these types of concepts that are
17 in it what are used to help educate those doing
18 voter registration on behalf of AFL-CIO?

19 A Yes.

20 Q If you'll look at page 6 of seven, it's
21 document number AFL291.

22 A Page 6?

23 Q Yes.

24 A Okay.

25 Q It's got some dos and don'ts there. Do

0051

1 you see that?

2 A Uh-huh (affirmative).

3 Q It's got little smiley faces for the dos.
4 If you look at the last smiley face, this is heading
5 titled, "Face-to-Face Voter Registration, Dos and
6 Don'ts," it says as a do, fill out the cards for
7 people asking them for information if possible, but
8 make sure they sign their name.

9 Then in parenthetical it says, that
10 way you can be sure the card is filled out

Dion transcript.txt

11 completely and neatly. Keep the card with you, not
12 the registrant, and you will turn it over to the
13 election board.

14 Do you see that?

15 A I see it.

16 Q Are you familiar with that instruction to
17 AFL-CIO members that they fill out the card?

18 A That has never been part of a training
19 I've done, to ask to have AFL-CIO staff people fill
20 out cards.

21 Q Well, tell me how it would work, the ones
22 that you have done.

23 A On the ones that I have done?

24 Q On the ones that you have been involved
25 with.

0052

1 MS. WESTFALL: Objection, asked and
2 answered.

3 You may answer.

4 THE WITNESS: Face-to-face, if I'm talking
5 to a union member that's an unregistered
6 member, I will ask them if he would like to
7 fill out a voter registration card because this
8 election is critical because of issue A or
9 issue B or issue C, and let them fill out their
10 voter registration card by themselves.

11 BY MR. WINSOR:

12 Q Do you ensure that the card is filled out
13 completely and neatly in that instance?

14 A Would I check the voter registration to
15 see if they filled it out correctly?

16 Q Yes.

17 A In most cases, yes.

18 Q Why would you not do that in all cases?

19 A Yes, I would check to see. I personally
20 would check to see if they filled it out. That's
21 part of our training.

22 Q Part of the AFL-CIO training?

23 A Part of the South Florida AFL-CIO training
24 that we are doing here in Miami-Dade to train our
25 shop stewards to make sure that these forms are

0053

1 filled out right.

2 Q Okay.

3 A That's what we are currently doing.

4 Q Got you. I want to ask a couple more
5 quick questions about the letter that we talked
6 about earlier that you sent to the people on the
7 exhibit to the complaint.

8 A Uh-huh (affirmative).

9 Q Did you send that letter to everyone that
10 was on that exhibit?

11 A The two-oh-four list?

12 Q Oh, yes.

13 A Yes.

14 Q I believe it's Exhibit E that we discussed
15 earlier to the amended complaint.

16 A Yes.

17 Q We are talking about the same list, I
18 assume, right?

19 well, let me just verify that's
20 correct.

21 Yes. Exhibit E, this is the list we

Dion transcript.txt

22 went through and you identified some individuals
23 that you have spoken to on the phone. And my
24 question is: Did you send that letter to everyone
25 on that list?

0054

1 MS. WESTFALL: Mr. Winsor, I'm handing her
2 the list --
3 MR. WINSOR: Okay.
4 MS. WESTFALL: -- from Exhibit E for the
5 third amended complaint.
6 THE WITNESS: Yes. I did send a letter to
7 every one of these union members on the list.
8 BY MR. WINSOR:
9 Q It looks like there is 64 people on the
10 list?
11 A Yes.
12 Q Did you send a letter to anyone who was
13 not on the list?
14 A No.
15 Q So I take it you sent 64 letters out?
16 A Yes.
17 Q I believe you said, and correct me if I'm
18 wrong, you said you did that in August?
19 A In July. July 26th.
20 Q July 26th it went out in the mail?
21 A Uh-huh (affirmative).
22 Q I may have asked this before and forgive
23 me if I have, have you sent any other letters to
24 anyone on this list?
25 A No.

0055

1 Q Have you sent any other letters to anyone
2 on any other lists relating to this litigation?
3 A No.
4 Q Have you sent any letters related to this
5 litigation?
6 MS. WESTFALL: Objection.
7 THE WITNESS: Can you repeat that?
8 BY MR. WINSOR:
9 Q Have you sent any letters related to this
10 litigation to anyone on this list or not on this
11 list?
12 MS. WESTFALL: Objection, asked and
13 answered.
14 You may answer.
15 THE WITNESS: I sent a letter to the
16 64 people that are on this list.
17 BY MR. WINSOR:
18 Q Other than that have you sent any letters
19 related to this litigation?
20 A No.
21 Q Any e-mails?
22 A No.
23 Q Was your expectation that these people
24 would read the letter that you sent them?
25 MS. WESTFALL: Objection.

0056

1 You may answer.
2 THE WITNESS: Yes.
3 BY MR. WINSOR:
4 Q I believe in the Ten Point program, some
5 documents on the Ten Point program and I don't have
6 that precise one in front of me, but there was an

Dion transcript.txt

7 instruction to, quote, be careful of incentives, end
8 quote. Are you familiar with that instruction?
9 Does that mean anything to you?

10 A No.

11 Q Do you have any documents in front of you,
12 Ms. Dion, other than those that we have talked about
13 today?

14 A No.

15 MR. WINSOR: I don't have anything
16 further. Thank you very much more, Ms. Dion.
17 Some other attorneys on the phone may have
18 questions for you as may Ms. Westfall.

19 MS. WESTFALL: Does anyone else have
20 questions? If not, I'll ask a few.

21 C R O S S E X A M I N A T I O N

22 BY MS. WESTFALL:

23 Q Ms. Dion, you testified earlier that you
24 did have conversations with several people from
25 Exhibit E to the third appended complaint, did you

0057

1 not?

2 A Yes.

3 Q And did you call those people or did they
4 call you?

5 A They called me -- I called them. I'm
6 sorry.

7 Q Is that true for all of the individuals to
8 which you testified earlier?

9 MR. WINSOR: Objection to the form. I
10 think you're talking about those she testified
11 about conversations with?

12 MS. WESTFALL: Yes.

13 THE WITNESS: Yes. Yes.

14 BY MS. WESTFALL:

15 Q So as to the specific members, did
16 Mr. Sadler call you or did you call him?

17 A I called him.

18 Q Do you know when Mr. Sadler was convicted
19 of a felony, what year?

20 A I do not.

21 Q Do you know if he has had his rights
22 restored?

23 A No, I do not.

24 Q As to Mr. Vega, do you know when he had a
25 felony conviction, what year?

0058

1 A I do not know.

2 Q Do you know whether he's had his rights
3 restored?

4 A No.

5 Q As to Mr. Prickett, do you know when his
6 felony conviction was entered?

7 A No.

8 Q Do you know anything about the voter
9 registration eligibility of any of the other members
10 on Exhibit E?

11 A No.

12 Q Could you describe the mission of the
13 AFL-CIO as it relates to voter registration?

14 A The mission is to basically register every
15 single unregistered member and have them participate
16 in municipal, state, and federal elections.

17 Q Can you testify about the effect, if any,
Page 24

Dion transcript.txt

18 of the rule that is being challenged in this
19 litigation on your mission?
20 A well, it precludes that union members who
21 may make a mistake in signing their voter
22 registrations don't have an opportunity to vote in
23 an election and don't have the opportunity to
24 correct that voter registration because they have
25 never been notified that they filled something

0059
1 out -- filled out the voter registration wrong.

2 Q And were there other organizations
3 involved in registering your members in 2004?

4 A Yes.

5 Q what were those organizations?

6 A They were 527s. Voices for Working
7 Families was one that did a lot of voter
8 registration in the state of Florida as well as
9 other states.

10 And they basically reached out to
11 groups that are basically under represented,
12 African-American, Hispanic communities in Miami-Dade
13 and across the state, and registered our members as
14 well.

15 Q Was there a relationship between the
16 AFL-CIO and Voices for Working Families in 2004?

17 A We put resources into Voices for Working
18 Families for sure.

19 Q And by "resources," what do you mean?

20 A We made contributions to the 527. We made
21 in-kind contributions to the 527 and worked with
22 them.

23 Q Do you expect that Voices for Working
24 Families will be registering your members in Florida
25 in 2008?

0060
1 A Yes. As well as other 527s.

2 Q Thank you.

3 MS. WESTFALL: I have no further
4 questions.

5 MR. WINSOR: I have just a couple
6 follow-ups. This is Allen Winsor again.

7 R E D I R E C T E X A M I N A T I O N

8 BY MR. WINSOR:

9 Q Ms. Westfall was asking you about your
10 knowledge with respect to these individual's felony
11 convictions on the list of -- on Exhibit E that we
12 discussed?

13 A Uh-huh (affirmative).

14 Q Did you ask any of the members who said
15 that they had been convicted of felonies whether
16 they had had their rights restored?

17 MS. WESTFALL: I'm going to object to --
18 and instruct her not to answer as to the
19 specific questions she directed to these
20 members. Could you rephrase your question?

21 BY MR. WINSOR:

22 Q If -- yes. I will -- well, I don't know.
23 I'll try it again.

24 You mentioned several folks that you
25 talk to who said they had been convicted of

0061
1 felonies; is that correct?

2 A That's correct.

Dion transcript.txt

3 Q Did you ask any of those individuals
4 whether they had their rights restored?

5 MS. WESTFALL: I'm going to instruct her
6 not to answer on work product grounds as to --
7 because it is work product prepared in
8 anticipation of trial.

9 You may seek facts related to what the
10 particular members told Ms. Dion during that
11 conversation, if you want to explore that in
12 more detail.

13 MR. WINSOR: And your objection is that
14 this is material that is prepared in
15 anticipation of litigation?

16 MS. WESTFALL: It reveals the mental
17 impression of attorneys and, therefore, is work
18 product.

19 MR. WINSOR: Her questions to these
20 individuals reveal the mental impressions of
21 attorneys?

22 MS. WESTFALL: Yes.

23 MR. WINSOR: Is that objection based on
24 attorney-client privilege or work-product
25 privilege?

0062

1 MS. WESTFALL: Work product.

2 MR. WINSOR: Not attorney-client
3 privilege?

4 Are you asserting an attorney-client
5 privilege?

6 MS. WESTFALL: I'm thinking about it.

7 MR. WINSOR: Okay. I'm sorry.

8 MS. WESTFALL: I'm thinking about it.
9 well, certainly there is -- well, I believe it
10 is work product because it reveals the mental
11 impression of attorneys. But you may explore
12 every single bit of the facts that she gathered
13 from these witnesses.

14 MR. WINSOR: well, I don't know how I can
15 adequately explore what she gathered without
16 knowing what she asked, so...

17 MS. WESTFALL: Do you want to try to
18 rephrase your question?

19 MR. WINSOR: well, I think we are at an
20 impasse here. And maybe we should take a -- I
21 don't know what Judge King's policies are on
22 contacting the court, but maybe I should look
23 into that, if we can take a ten-minute recess.

24 MS. WESTFALL: well, Mr. Winsor, in order
25 to speed this up, I will allow you to ask one

0063

1 question. But I want to make clear I'm not
2 waiving any of my privileges with regard to the
3 written communication, the letter that she sent
4 out earlier.

5 MR. WINSOR: well, and that might be
6 something we ought to resolve as well, if we
7 can, while the deposition is still going on.

8 My concern is that, you know, you asked
9 whether she had -- whether she knew whether
10 these people had had their rights restored.
11 And I don't know that I can get a complete
12 answer to everything that's related to that
13 without knowing what she asked them.

Dion transcript.txt

14 And I don't see how whether or not she
15 asked them questions such as, have you had your
16 rights restored, would be revealing an attorney
17 thing or otherwise would be exempt from
18 discovery.

19 MS. WESTFALL: Well, how about this. How
20 about if I let you ask those questions and --
21 with the understanding that it doesn't waive
22 our assertion of privilege with regard to the
23 written communications?

24 MR. WINSOR: I'm fine with that. I
25 might -- you know, I'm not willing to waive any

0064

1 argument away because I think even before you
2 raised this objection, she had testified about
3 those conversations and testified why she had
4 done the letter and, of course, had testified
5 that she sent the letter to 64 people.

6 But in my -- frankly, you've peaked my
7 interest about this letter by making what I
8 consider a pretty aggressive and improper call
9 on it.

10 So, you know, if we are going to end up
11 seeing it, there may be some questions that I
12 have to this witness about it. And so I hate
13 to conclude this deposition without having seen
14 that and invite the possibility of having to
15 squabble over whether we get this letter and,
16 if so, whether we have an opportunity to read
17 it and depose this witness and all that stuff,
18 so...

19 MS. WESTFALL: Well, you know, in the
20 interest of speeding that issue along,
21 certainly I don't think it's worthwhile to keep
22 the deposition open, if it is a conversation I
23 can have with my cocounsel and we can go off
24 the record. But let's finish this line of
25 questioning, and then you want to take a break?

0065

1 MR. WINSOR: Yeah. Why don't we -- if you
2 want to just take a break now, and if you don't
3 mind, calling those people, your cocounsel.
4 And I will see if I can find out what the --
5 you know, I know some judges don't like to get
6 calls during depositions, others actually do
7 because they think it's more efficient.

8 MS. WESTFALL: Yes.

9 MR. WINSOR: And so let me look into that
10 while you look into your stuff.

11 MS. WESTFALL: Sure.

12 MR. WINSOR: And if you want to
13 reconvene -- I'll just leave this on mute here
14 and we'll both, say, ten minutes, check back
15 in?

16 MS. WESTFALL: Sure.

17 MR. WINSOR: Does that work?

18 MS. WESTFALL: Yes. Sounds good.

19 (Brief recess.)

20 MS. WESTFALL: Ms. Dion has testified that
21 she sent out this letter without the approval
22 of an attorney on this case and, therefore, we
23 are going to produce it to you right now --

24 MR. WINSOR: Okay. That will be --

Dion transcript.txt

25 MS. WESTFALL: -- by fax. And I will let
0066

1 you question her about her conversations with
2 these individuals, if you would like to do
3 that.

4 otherwise, we will produce one such letter
5 which will -- you know, which you can ask her
6 about. Obviously, not all the copies.

7 MR. WINSOR: But it will be the form?

8 MS. WESTFALL: Yes.

9 MR. WINSOR: Okay. I will put you on mute
10 and I will wait for that fax. We'll be in
11 recess again.

12 (Brief recess.)

13 MS. WESTFALL: Mr. Winsor, upon further
14 consultation with my cocounsel, although
15 Ms. Dion testified that she did not have this
16 letter reviewed by counsel, she did testify
17 that she was contacting these member at the
18 request of counsel -- in-house counsel for the
19 AFL-CIO.

20 It is our position that these
21 communications are work product, and we are not
22 going to produce the letter to which she
23 testified earlier.

24 And we can take it to the judge right now,
25 if that's possible, or you can keep this

0067
1 deposition open, if that's what we need to do.

2 MR. WINSOR: Well, let's try to take it to
3 the judge if we can just because I'd like to
4 get it done.

5 MS. WESTFALL: Okay.

6 MR. WINSOR: Yeah. You want to do that?

7 MS. WESTFALL: Sure.

8 MR. WINSOR: Okay. Do you have a means
9 down there to conference them in?

10 MS. WESTFALL: Well, if you wanted to put
11 him into this call, that would probably -- call
12 him on a different -- I mean, I would -- as
13 long as you don't discuss the substance with
14 him, if he can enter this call.

15 MR. WINSOR: Okay. Let me see if I can.

16 MS. WESTFALL: Just call his secretary.

17 MR. WINSOR: Okay.

18 MS. WESTFALL: Or we can get off this
19 call. You know what, Allen? What we should do
20 is you should not contact the judge without me.

21 What we should do is get off this call.

22 And then if you can conference me in, we will
23 call together.

24 MR. WINSOR: Okay. Would you give me --
25 well, first of all, is there anyone else that's

0068
1 on the line? No, I guess not.

2 well, I will hang up. And then if you'll
3 give me a telephone number, Elizabeth, I'll
4 call you directly.

5 MS. WESTFALL: Sure. (305) 593-8886.

6 (Deposition in recess from

7 12:01 p.m. to 3:40 p.m.)

8 MR. WINSOR: This is Allen Winsor again.
9 And we have had a substantial delay here while

Dion transcript.txt

10 we tried to have an issue of the privilege
11 related to the July letter from Ms. Dion to the
12 64 individuals on Exhibit E.

13 And it appears that the Court will not
14 resolve that issue today and so we are going to
15 have to address that some other time.

16 I do have a couple of quick follow-up
17 questions. Let me grab my book here.

18 BY MR. WINSOR:

19 Q You testified earlier, Ms. Dion, that
20 legal counsel asked you to call -- asked you to
21 contact these members, as I recall. And I think you
22 said that they asked you to call them; is that
23 correct?

24 A That's correct.

25 MS. WESTFALL: And again, Ms. Dion, I'm

0069

1 going to counsel you not to get into the
2 substance of discussions that you have had with
3 counsel.

4 BY MR. WINSOR:

5 Q Was the idea to send a letter your own
6 idea?

7 A Yes.

8 Q How long was the letter?

9 A Just a page.

10 Q Did you sign it?

11 A Yes.

12 Q Did it ask the recipient to keep it
13 confidential or anything like that?

14 MS. WESTFALL: You may answer.

15 THE WITNESS: Yes.

16 BY MR. WINSOR:

17 Q And how did it do that?

18 MS. WESTFALL: I counsel you not to get
19 into the specifics. I'm allowing you to
20 examine her, Mr. Winsor, on issues that are
21 obviously related to our dispute over this
22 document. But I'm going to instruct her not to
23 answer about specific language in the letter.

24 BY MR. WINSOR:

25 Q Let me ask it this way then. Can you tell

0070

1 me what about the letter asks the person to -- the
2 recipient to keep it confidential?

3 MS. WESTFALL: Objection to the form.

4 You may answer.

5 THE WITNESS: Can you repeat the question?

6 I didn't hear the first part.

7 BY MR. WINSOR:

8 Q I'm sorry. What about the letter asked
9 the recipient to keep it confidential?

10 MS. WESTFALL: My objection to privilege
11 stands.

12 THE WITNESS: I don't really understand
13 what you're asking me.

14 BY MR. WINSOR:

15 Q How did the letter ask the person to keep
16 it confidential, the recipient?

17 MS. WESTFALL: Objection. And I'm going
18 to instruct her not to answer on the specific
19 contents of the letter. If there is another
20 way to ask the question, please do so.

Dion transcript.txt

21 Otherwise, let's move on.

22 BY MR. WINSOR:

23 Q Did the letter say why the person should
24 keep it confidential?

25 MS. WESTFALL: Objection. I instruct her
0071

1 not to answer questions about the contents of
2 the letter.

3 MR. WINSOR: Based on?

4 MS. WESTFALL: Based on the work-product
5 privilege, and for the reasons that we have set
6 forth in the correspondence to the Court today.

7 BY MR. WINSOR:

8 Q Do you regularly send letters in your job
9 as the political director?

10 A Yes.

11 Q Was this letter on your letterhead?

12 A Yes.

13 Q Was the letter a -- did it have each
14 recipient's address on it or was it one of these
15 where it says "Dear Friend" or something like that?

16 A It just -- it said their name. And I
17 didn't have -- I didn't put the addresses on.

18 Q There were 65 different letters and each
19 one had a different name on it?

20 A Yes.

21 Q Was there a line for a carbon copy or a
22 courtesy copy people call them nowadays?

23 MS. WESTFALL: I'm going to object and
24 instruct her not to answer questions about the
25 content of the letter.

0072

1 MR. WINSOR: You're instructing her not to
2 answer whether there's a CC on it?

3 MS. WESTFALL: You can answer that
4 question.

5 THE WITNESS: No.

6 BY MR. WINSOR:

7 Q And I believe -- I don't mean to repeat,
8 but there's been a delay and I want to make sure I
9 have what you said. At the time you sent it to
10 these 64 people -- well, strike that.

11 Did you send it to these 64 people at
12 the same time?

13 A Yes.

14 Q They all went out the same day in the
15 mail?

16 A Yes.

17 Q And did it go out in that day's mail to
18 anyone else?

19 A No.

20 Q And since then have you given it to anyone
21 else?

22 A Given it to who?

23 Q To anyone else.

24 A Yes.

25 Q Who else?

0073

1 A Let me...

2 MS. WESTFALL: Go ahead and answer to the
3 best of your memory as you sit here today.

4 THE WITNESS: I gave a copy to Paul Weiss.

5 MS. WESTFALL: Are you testifying that you
Page 30

Dion transcript.txt

6 gave it to Paul Weiss?
7 THE WITNESS: Yes. I gave it to
8 Paul Weiss.
9 BY MR. WINSOR:
10 Q And did you give it to anyone else?
11 A No.
12 Q So is it safe to say as far as you know
13 the only people you gave it to are these 64 people
14 and Paul Weiss, and then you retained a copy for
15 yourself; is that true?
16 A Yes.
17 Q I'm sorry. That was not a very good
18 question, but thank you for...
19 And I believe you testified before
20 that a handful of them were returned and not
21 delivered. Do you recall how many?
22 A I'd have to count.
23 Q Fewer than five.
24 A Probably more like six or seven,
25 approximately.
0074
1 Q what type entity is your organization? Is
2 it incorporated?
3 MS. WESTFALL: Objection, calls for a
4 legal conclusion.
5 You may answer.
6 THE WITNESS: We are incorporated.
7 BY MR. WINSOR:
8 Q You are?
9 A Well, wait a minute. I'd have to find out
10 because I don't want to -- I'm not sure if we're a
11 501(c)(3). I don't think we are. I don't know.
12 Q Okay.
13 A Sorry.
14 Q Now, looking at this Exhibit E here, and
15 it's got the union.
16 MR. WINSOR: If you'll put that in front
17 of the witness?
18 MS. WESTFALL: This is the exhibit --
19 MR. WINSOR: E.
20 MS. WESTFALL: -- from the third amended
21 complaint?
22 MR. WINSOR: Yes.
23 BY MR. WINSOR:
24 Q You have it?
25 A Yes.
0075
1 Q It looks like the middle column here, the
2 title is "Union." And it's got different unions
3 here for each one of these 64 individuals' names.
4 Do you recognize the names of all these unions?
5 A Yes.
6 Q Are these all part of your organization?
7 A Yes.
8 Q And by "your organization," I guess I
9 should be more specific. Are these all part of the
10 South Florida AFL-CIO?
11 A No.
12 Q How did you interpret my question before?
13 Are they all part of the AFL-CIO?
14 MS. WESTFALL: Objection.
15 You may answer.
16 THE WITNESS: Yes.

Dion transcript.txt

17 BY MR. WINSOR:

18 Q They are all part of the AFL-CIO?

19 A Yes.

20 Q Are some part of the South Florida

21 AFL-CIO?

22 A Some.

23 Q But not all?

24 A Not all.

25 Q Are you an attorney?

0076

1 A No.

2 Q During our delay, did you have a chance to
3 look at any of the documents that we talked about
4 today?

5 MS. WESTFALL: You may go ahead and
6 answer.

7 THE WITNESS: No.

8 BY MR. WINSOR:

9 Q what have you been doing during our delay?

10 A I've been doing my own work.

11 Q Okay. Have you reviewed any documents
12 related to this litigation?

13 A No.

14 Q Did you discuss anything about this
15 discussion -- about this deposition with anyone
16 other than Ms. westfall?

17 A No.

18 MR. WINSOR: I think that's all. And
19 we'll deal with this other issue at the
20 appropriate time.

21 MS. WESTFALL: Very good. I have no
22 questions.

23 The deposition was ordered.
24 (Thereupon, the deposition was
25 concluded at 3:50 p.m.)

0077

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STIPULATION

11 It is hereby stipulated by and between counsel
12 for the respective parties and the witness that the
13 reading and signing of the foregoing deposition are
14 hereby waived.

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AND FURTHER DEPONENT SAITH NOT.

--- --

0078

1

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2 THE STATE OF FLORIDA
3 COUNTY OF MIAMI-DADE.

4
5 I, the undersigned authority, certify that
6 DEBORAH DION personally appeared before me and was
7 duly sworn.

8
9 WITNESS my hand and official
10 seal this 30th day of September,
11 2007.

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C E R T I F I C A T E

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2
3 THE STATE OF FLORIDA
4 COUNTY OF MIAMI-DADE.

5
6 I, MELANIE STINSON-KONSTANTINIDIS, Court
7 Reporter, State of Florida at Large, do hereby
8 certify that the aforementioned witness was by me
9 first duly sworn to testify the whole truth; that I
10 was authorized to and did report said deposition in
11 stenotype; and that the foregoing pages, numbered
12 from 1 to 76, inclusive, are a true and correct
13 transcription of my shorthand notes of said
14 deposition.

15
16 I further certify that said deposition was
17 taken at the time and place hereinabove set forth
18 and that the taking of said deposition was commenced
19 and completed as hereinabove set out.

20
21 I further certify that I am not attorney or
22 counsel of any of the parties, nor am I a relative
23 or employee of any attorney or counsel of party
24 connected with the action, nor am I financially
25 interested in the action.

26
27 The foregoing certification of this transcript
28 does not apply to any reproduction of the same by
29 any means unless under the direct control and/or
30 direction of the certifying reporter.

31
32 IN WITNESS WHEREOF, I have hereunto set my hand
33 this 30th day of September, 2007.

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24 Notary Public - State of Florida
25 My Commission Expires: 5/22/09
 My Commission No.: DD 431519