

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

2007 OCT 29 A 9:12

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND – BALTIMORE DIVISION

CLERK'S OFFICE
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ALBERT SNYDER,

Plaintiff,

vs.

Case No. 06-cv-1389-RDB

FRED W. PHELPS, SR.;
SHIRLEY L. PHELPS-ROPER;
REBEKAH A. PHELPS-DAVIS; and,
WESTBORO BAPTIST CHURCH, INC.,
Defendants.

MOTION FOR MISTRIAL

Defendants move for mistrial on account of judicial bias and prejudicial violation of the gag order by plaintiff's counsel. In support hereof, defendants state:

1. The record reflects prejudicial statements by the Court, disparaging of defendants' religious beliefs. These include, to defendants' best memory (without benefit of the record), at least the following, some of which were in the presence of the jury, and most intensely and recently on Friday, October 26, 2007:
 - Statements that defendants claim to be a church, when they are really just a family;
 - Statement that defendant Phelps-Roper's epic was four or five pages of "rambling;"

- Statements speaking critically of the fact that after 50 or 60 years of preaching, defendant Phelps has only added 10-20 people to the church (which is not an issue on whether a religious belief is sincerely held);
- Statements that defendant Phelps-Roper is eager to get her religious views out;
- Questions put to the witness Timothy Phelps about who narrated one of the sign videos, and then whether that person was related to the defendants;
- Statement that defendant Phelps-Davis had testified that 99% of mankind is hell bound, and that would include people right in this courtroom.

Defendants respectfully submit that these statements go beyond mere expressions of impatience, dissatisfaction, annoyance or anger at some procedural matter, outside the presence of the jury; and instead constitute expressions of and reflect deep seated favoritism or antagonism, at times in the presence of the jury. As such it is a measure of judicial bias that interferes with the ability of the defendants to receive a fair trial in this matter. Please see *Rowsey v. Lee*, 327 F.3d 325, 341-342 (4th Cir. 2003).

Defendants preserve their objection and also move for mistrial on the basis of any other such statements in the record which are not recalled here, but are in fact reflected in the record.

2. Defendants also move for mistrial on the basis that on last Friday a representative of the Barley Snyder law firm made statements to the media – as reflected for

instance in this story from Fox News at Attachment A -- requesting donations of \$100,000 to help in the case, putting a call out to the whole nation. This comment on the case is prejudicial -- particularly if any juror saw it -- and appears to be contrary to the Court's gag order.

Respectfully submitted,

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Rebekah A. Phelps-Davis, Defendant Pro Se

15/

Shirley L. Phelps-Roper, Defendant Pro Se

CERTIFICATE OF SERVICE

We hereby certify that the foregoing motion was served on October 29, 2007, by hand delivery in Court to counsel and filing with the Clerk the same date.

15/

Rebekah A. Phelps-Davis, Defendant Pro Se

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Shirley L. Phelps-Roper, Defendant Pro Se