UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

STEPHANIE CLIFFORD a.k.a. STORMY DANIELS a.k.a. PEGGY PETERSON, an individual,

Plaintiff,

vs.

DONALD J. TRUMP a.k.a. DAVID DENNISON, an individual, ESSENTIAL CONSULTANTS, LLC, a Delaware Limited Liability Company, MICHAEL COHEN, an individual, and DOES 1 through 10, inclusive

Defendants.

CASE NO.: 2:18-cv-02217-SJO-FFM

DECLARATION OF LAWRENCE SOLAN IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT ESSENTIAL CONSULTANTS, LLC'S MOTION TO COMPEL ARBITRATION

Hearing Date: April 30, 2018
Hearing Time: 10:00 a.m.
Location: 350 West 1st Street
Courtroom 10C
Los Angeles, CA 90012
DECLARATION OF LAWRENCE SOLAN

I, LAWRENCE SOLAN, declare as follows:

1. I am over the age of 18 years. I am submitting this declaration in support of Plaintiff’s Opposition to Defendant Essential Consultants, LLC’s Motion to Compel Arbitration. I have been asked by counsel for Plaintiff to provide an opinion in connection with this matter as described below. I have personal knowledge of the information stated herein and if called to testify to the same would and could do so.

QUALIFICATIONS AND EXPERIENCE

2. I am the Don Forchelli Professor of Law at Brooklyn Law School, and am currently the Sidley Austin–Robert D. McLean Visiting Professor of Law at Yale Law School.

3. I hold a Ph.D. in Linguistics from the University of Massachusetts, and a J.D. from Harvard Law School.

4. I have devoted much of my academic career to studying and writing about ways in which linguistic analysis can inform the legal system. In this regard, I am the Director of Brooklyn Law School’s Center for the Study of Law, Language and Cognition. I have taught a course called Law, Language and Cognition at Brooklyn Law School, as a visiting professor at Yale Law School, and as a visiting professor at Princeton University.

5. Throughout my academic career, I have published many articles and book chapters, and several books that address issues concerning the relationship between the academic study of language, and recurrent problems in the law. I also lecture on issues of language and law around the world. A copy of my CV is attached to this Declaration as Exhibit A.

SCOPE OF ASSIGNMENT

7. I have been asked by counsel for Plaintiff Stephanie Clifford to comment on Paragraph 1.1 of the contract entitled, “Confidential Settlement Agreement and Mutual Release; Assignment of Copyright and Non-Disparagement (sic) Agreement.” I have read the Agreement, the side agreement attached to it, and the First Amended Complaint in this action.

8. Paragraph 1.1 states:

This Settlement Agreement and Mutual Release (hereinafter, this “Agreement”) is made and deemed effective as of October, 2016, by and between “EC, LLC” and/or DAVID DENNISON, (DD), on the one part, and PEGGY PETERSON, (PP), on the other part. “EC, LLC,” “DD” and “PP” are pseudonyms whose true identity will be acknowledged in a Side Letter Agreement attached hereto as “EXHIBIT A”). This Agreement is entered into with reference to the facts and circumstances contained in the following recitals.

9. The issue I have been asked to address is the identification of the parties: “EC, LLC, and/or David Dennison (DD), on the one part, and Peggy Peterson, (PP), on the other part.”

ANALYSIS

10. In one section of The Language of Judges, I discuss issues that arise concerning the interpretation of the words “and” and “or.” As a general matter, “and” indicates a conjunction of two elements. “Or” is ambiguous between exclusive and non-exclusive interpretations. In some texts of logic, “or” is understood as one, the other, or both (“and/or”), whereas in everyday speech, it is more frequently understood exclusively as “either/or.” Moreover, in the context of negation, “and” and “or” often reverse meanings. “You may not go to the movies or to your friend’s house tonight” is understood as prohibiting both activities, not allowing one or the other. As I point out in my book, this reversal sometimes causes problems in legal interpretation.
11. "And/or" leads to additional interpretive problems. Because of the use of "and/or" in the Agreement, it is not clear who the parties actually are. As a pure grammatical matter, they may be DD and PP; EC and PP; or EC, DD and PP. But that does not end the analysis.

12. I agree with those judges and scholars who have commented on the confusion that "and/or" brings to interpretation. David Mellinkoff's book, The Language of the Law (1963) contains several sections discussing the confusion the term has caused in legal contexts. As Mellinkoff puts it: "Ultimately the decision must be made, which is it – A or B or both? And this decision is not helped by and/or." (Id. at 309)

13. Because read alone, the Agreement's use of "and/or" in paragraph 1.1 causes too much uncertainty and ambiguity to determine who were actually the intended parties, it is necessary to examine other provisions in the Agreement.

14. The evidence from the Agreement itself, summarized below, shows the Agreement was drafted to express the intent that all three parties listed in Paragraph 1.1 were the intended, actual parties to the Agreement. Especially relevant are the following facts about the Agreement:

   A. In Paragraph 6.1, DD releases PP from all claims up to the date of the Agreement.

   B. In Paragraph 6.4, "the parties" waive statutory rights to limitations in the releases. Since the releases are from DD and PP in favor of each other, this provision makes sense only if DD is a party to the agreement.

   C. The choice of law provision in Paragraph 8.2 is left to DD's discretion.

   D. In Paragraph 4.3, DD makes "agreements, warranties and representations" as "material inducements to PP to enter into this Agreement" and the parties state their reliance thereon.

   E. In Paragraph 5.2, the parties agree to "binding confidential arbitration" of "any and all claims or controversies arising between DD on the one
hand, and PP on the other hand.” This agreement is made “in recognition of the mutual benefits to DD and PP of a voluntary system of alternative dispute resolution.”

F. Each page of the Agreement has lines for both PP and DD to initial, but not EC.

G. There is a line for DD’s signature.

**SUMMARY**

15. In summary, DD releases PP from pre-contractual claims; waives rights to statutory limitations; has the right to choose the state whose law will govern; waives the right to resolve disputes in court, agreeing instead to arbitration; is given a place on each page to initial that page; and has a signature line. Taken together, these facts strongly imply that DD was intended to be understood to be a party to the Agreement.

I declare, under penalty of perjury and under the laws of the United States of America, that the foregoing is true and correct. Executed this 9th day of April, 2018.

[Signature]

Lawrence Solan

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DECLARATION OF LAWRENCE SOLAN IN SUPPORT OF PLAINTIFF’S OPPOSITION TO DEFENDANT ESSENTIAL CONSULTANTS, LLC’S MOTION TO COMPEL ARBITRATION
LAWRENCE M. SOLAN

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163 Ralston Avenue
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EDUCATION:


Ph.D. University of Massachusetts, Amherst, Department of Linguistics, September, 1978.

B.A. Brandeis University, June, 1974. Summa Cum Laude, Phi Beta Kappa, Honors in English, Honors in Linguistics.

TEACHING EXPERIENCE:


Visits and Honors

2018 Yale Law School, Sidley Austin-Robert D. McLean Visiting Professor of Law (spring semester).

2017 University of Bonn, Käte Hamburger Institute for Advanced Study in the Humanities “Law as Culture,” Visiting Fellow (fall semester).

2016 Yale Law School, Sidley Austin-Robert D. McLean Visiting Professor of Law (spring semester).

2015 Faculty. Linguistic Society of America Summer Institute, University of Chicago (course on Language and Law).

2014 University of Greifswald (Germany). Visiting Professor, Faculty of Law. Intensive course on comparative statutory interpretation (June).
2013  Princeton University, Visiting Professor in the Council of the Humanities (fall semester).

2012  University of Lucerne Faculty of Law, Visiting Professor. Intensive course on Statutory Interpretation: Comparative Perspectives.

2010  Princeton University, Visiting Professor and Fellow in the Department of Psychology, Visiting Professor in the Council of the Humanities (fall semester).

2010  Universitat Pompeu Fabra, Barcelona, Spain, member of faculty for masters program in forensic linguistics.

2009  Wuhan Institute of Technology, China, Honorary Professor.

2008  University of Southern California, Gould School of Law, Distinguished Visitor (October 2008).

2006  Yale University, Visiting Professor of Law (spring semester). Legislation and Statutory Interpretation, and seminar on language and law.

2003  Princeton University, Visiting Fellow in the Department of Psychology (spring semester).

2002  Princeton University, Visiting Professor in the Linguistics Program (spring semester). Undergraduate seminar on language and law.

1999-2000  Princeton University, Visiting Associate Professor in the Linguistics Program (fall semester). Undergraduate seminar on language and law; series of faculty seminars on language and law sponsored by the Council of the Humanities.

Other Teaching Experience


1981  Brandeis University, Lecturer in Legal Studies.

1974-1978  University of Massachusetts, Graduate Instructor. Taught course on language acquisition.

LEGAL EXPERIENCE:

1983-1989, associate from 1983-1989. The firm has nine lawyers and specializes in
complex commercial litigation, white collar criminal defense work, and the representation of individuals being investigated by government agencies.

1982- Law Clerk to Justice Stewart Pollock, Supreme Court of 1983  New Jersey, Court House, Morristown, New Jersey 07960.

Admitted to practice law in New York and New Jersey.

PUBLICATIONS:

Books:


*The Language of Statutes: Laws and Their Interpretation*, University of Chicago Press (2010).


Articles


“We are all Translators Now: Constitutional Analysis as Translation.” *28 Comparative Legilinguistics* 7 (2016), available at file:///L:/Articles/We%20Are%20All%20Translators%20Now.pdf.


“Four Reasons to Teach Psychology to Legal Writing Students,” 22 Journal of Law & Policy 7 (2013).


“Justifying Board Diversity” (with James Fanto and John Darley), 89 North Carolina L. Rev. 901 (2011).


"When All is Lost: Why it is Difficult for Judges to Write About Concepts," 1 *Graven Images* (1994).


**Book Chapters**


“Ética y Método en Lingüística Forense,” in *Lingüística Forense: la Lingüística en el ámbito
Legal y Policial (Elena Garayzábal Heinze, Miriam Jiménez Bernal, Mercedes Reigosa Riveiros, eds.)(2014).


“Talking Like a Person, Thinking Like a Lawyer (and Vice Versa),” in Verbal/Visual narrative Texts in Higher Education (Martin Solly, Michelangelo Conoscenti & Sandra Campagna, eds.)(2008).


Reviews and Editorial


RECENT LECTURES AND PRESENTATIONS

“Using Corpus Linguistics in Legal Interpretation” (with Tammy Gales).
University of Wisconsin Law School, September 2017.
Copenhagen University Faculty of Law, November 2017.
University of Würzburg, Department of Linguistics, November 2017.
University of Bonn, Department of English Applied Linguistics, December 2017.
Heinrich Heine University, Düsseldorf, December 2017.
Aston University, Birmingham, England, December 2017.
Ulster University, Belfast, Northern Ireland, December, 2017.


“From Textualism to Pragmatism in the U.S. Supreme Court?” University of Oslo Conference on Pragmatic Inference in Legal Interpretation, October 2016.

“Finding Ordinary Meaning: The Judge, The Dictionary or the Corpus?” Sixth International Conference on Law, Language and Discourse, Haifa University, August 2016.

“Linguistic Issues in Legal Interpretation.” Faculty of Law, Adama Mickiewicz University, Poznan, Poland, June 2016.

“We Are All Translators Now: Constitutional Analysis as Translation.” Plenary address, 11th Conference on Legal Translation, Court Interpreting and Comparative Legalinguistics, Adama Mickiewicz University, Poznan, Poland, June 2016.

“Remarks on Legislative Intent,” Symposium: Legislative Intent: Can We, Do We, Should We Seek It? Sponsored by CUNY Graduate Center Department of Philosophy, and University of London Institute of Advanced Legal Studies and Institute of Philosophy, New York, April 2016.


“Legal Indeterminacy in the Spoken Word” (with Silvia Dahmen and Kevin Tang), Department of Linguistics, Yale University, March 2016.
“Patterns in the Fabric of Law and Language,” (keynote address), Conference on The Fabric of Law and Language: Discovering Patterns through Legal Corpus Linguistics, University of Heidelberg, March 2016.


“Communicating with Experts” (with Lorna Fadden), Keynote Address, Conference on Expertise in Language and Law, Cardiff University, November 2015.


“Legal Indeterminacy in the Spoken Word” (with Silvia Dahmen), Phonetics Institute, University of Cologne, June 2015.


“Legal Indeterminacy in the Spoken Word” (with Silvia Dahmen), symposium on linguistic philosophy and legal interpretation, McGeorge School of Law, Sacramento CA, May 2015.

“Beyond Babel: The Interpretation of Multilingual Statutes in the EU,” University of Lyon 3, March 2015.

“Precedent in Statutory Interpretation,” Pace University School of Law, September 2014.


“Europe, Babel and Beyond: Statutory Interpretation in Multilingual Legal Regimes,” University of Greifswald (Germany), Faculty of Law, June 2014.

“Interpreting Laws in a Multilingual World,” China University of Political Science and Law (Beijing), June 2014.


“Legal Standards in Forensic Linguistics,” Hofstra University Program in Forensic Linguistics, April 2014.


“Linguistic Issues in Legal Interpretation,” Hong Kong University Law Faculty, October 2013.

“The Interpretation of Multilingual Statutes in the EU,” Universidad Pontificia Comillas, Madrid, September 2013.


Same talk, Universitat Pompeu Fabra ForensicLab, Barcelona, September 2013.

“Forensic Linguistics: Linguistic Evidence in Court and How to Provide It,” Law as Text in Context Seminar, University of Copenhagen Faculty of Law, August 2013.
“Forensic Linguistics: The Need for Methodology,” University of Copenhagen Faculty of Law, Lecture to Ph.D. students, August 2013.


“Transparent and Opaque Consent in Contract Formation,” University of the Pacific, McGeorge School of Law, February, 2013.


Earlier Presentations

Judges and Judicial Officers


Organizations

Universities

American

Chicago-Kent School of Law, Columbia Law School, DePaul Law School, Duke University, Georgetown University Law Center, Georgetown University Department of Linguistics, Harvard University, John Jay College of Criminal Justice, John Marshall Law School, MIT, Swarthmore College, Seton Hall University School of Law, Princeton University, Rutgers Law School, Rutgers University (Political Science Department), Loyola School of Law (Chicago), University of Tennessee, Michigan State University School of Law, Loyola (LA) Law School, New England School of Law, Cleveland-Marshall School of Law, University of Minnesota School of Law, University of Texas Law School, University of Pennsylvania Law School, University of Alabama Law School, University of Massachusetts (including endowed Freeman Lecture), University of North Carolina Law School, University of Pittsburgh, University of Rochester, University of Southern California (Gould School of Law), University of Wisconsin Law School, Virginia State University, Widener University School of Law, Yale Law School, Northwestern University Law School

International

Aston University (Birmingham, England), Cardiff University, Australia National University, Essex University (Colchester, England), Freiburg University, University of Amsterdam, University of Lapland (Finland), Lodz University (Poland), University of York (England), University of Birmingham (England), University of Bonn, Heinrich Heine University (Düsseldorf, Germany), Universitat Pompeu Fabra (Barcelona, Spain), China Central Normal University (Wuhan), China University of Political Science and Law (Beijing), Northwestern University of Political Science and Law (Xi’an), University of Sheffield (England), Universidad Autónoma, Madrid.

PROFESSIONAL AFFILIATIONS

Association of American Law Schools (AALS), Chair, Insurance Law Section (2009); Chair, Legislation Section (2010); Executive Committee, Law & Interpretation Section (2014-); Executive Committee, Section on Graduate Programs for Non-US Lawyers (2015-).
Federal Bar Council

American Bar Association

International Academy of Law and Mental Health (Member, Board of Directors, 1998-2014)

Linguistic Society of America (Chair, Committee on Social and Political Concerns (2000-01)

Law and Society Association

International Association of Forensic Linguists (President, 1999-2003)

OTHER ACTIVITIES

Within Brooklyn Law School

I have extensive administrative experience, both as Associate Dean for Academic Affairs, and through committee work during my tenure at Brooklyn Law School. Duties of the deanship included planning of academic program and schedule, development of new degree programs, coordination of interdepartmental administrative projects, support for faculty scholarship, contact with various alumni and other groups, hiring and supervision of adjunct faculty. I am currently responsible for building our LL.M. programs.

Director, Brooklyn Law School Center for the Study of Law, Language and Cognition. I have organized symposia on various issues involving law, language and psychology. See http://www.brooklaw.edu/intellectuallife/centerforlawlanguageandcognition/overview.aspx

Grants

I have received grants from the National Science Foundation, the National Institute of Justice and the Alfred P. Sloan Foundation to fund interdisciplinary conferences involving law, language and psychology. I am currently co-investigator on a grant awarded by the International Association of Forensic Phonetics and Acoustics for a project on the phonetics of trademark law (with Silvia Dahmen and Kevin Tang).

Additional Activities

Editorial and Advisory Boards

International Journal of Speech, Language and the Law

International Journal of Semiotics and Law

Language and Communication
Language and Law/ Linguagem e Direito

International Journal of Language and Law

Oxford University Press series on Language and Law (co-editor of series beginning 2016)

Peter Lang series, Studies in Language and Communication

Other

National Institute of Standards and Technology (NIST). Member of subcommittee on Speaker Recognition, 2016-

Federal Judicial Center: Have lectured to federal judges on issues in language and law, and have consulted on language issues in class action notices

Consultant to U.S. Department of Justice on linguistic issues in perjury prosecution

Consultant to private litigants on linguistic issues in various lawsuits, and to others on issues of language and law

Have reviewed grant proposals for National Science Foundation and for universities

Have served on doctoral committees at Yale University, Universitat Pompeu Fabra, University of California at Davis, University of Amsterdam, and City University of New York