

1 **THE ARBITRATOR:** There is another page.

2 **MR. CLIFF:** It cuts off.

3 **THE ARBITRATOR:** Do you have it, Scott?

4 **MR. CLIFF:** I'm not sure that I do. This
5 wasn't obviously one of ours.

6 **THE ARBITRATOR:** Well, that letter has
7 been a concern to me, and I was hopeful that -- I
8 didn't want to have it influence any decision that I
9 might make. But it -- and it won't, but it -- I did
10 need for Mr. Rote at some point during these
11 proceedings to explain it to me. There is at least
12 one more page to that letter.

13 **MS. MARSHALL:** Here's what I propose as a
14 solution. We searched for a Bates stamp document
15 because this would obviously be Mr. Rote's letter.

16 **THE ARBITRATOR:** Yes.

17 **MS. MARSHALL:** And we searched for a Bates
18 stamp document for this series of letters and
19 couldn't find them. We concluded that it might be
20 just because we couldn't find them. If there is
21 one, that would be good.

22 **THE ARBITRATOR:** There is, and I can find
23 it in my file. The second page -- and I'll
24 characterize this -- accuses either Judge Kugler or
25 his staff of some rather serious misconduct, which

1 caused Judge Kugler to promptly call for a hearing
2 with respect to those accusations. And I -- as I
3 say, I -- as I read this letter, I was concerned
4 about it. I don't know that it has anything to do
5 with the merits of this case, but I do know I don't
6 want to be left with the wrong impression of that
7 letter. And I would like to have an explanation
8 from Mr. Rote as to the reasons for the letter so
9 that I can put it behind me.

10 **MR. CLIFF:** Okay. Thank you for sharing
11 that.

12 **MS. MARSHALL:** Okay. When I get to it I
13 had intended to allow him the opportunity, but I
14 guess I would like -- you see, Mr. Cliff and I are
15 both at somewhat of a disadvantage because --

16 **THE ARBITRATOR:** You don't have the second
17 page?

18 **MS. MARSHALL:** Well, I don't have the
19 second page. But we were both missing when a lot of
20 -- you probably have more history than we do.

21 **THE ARBITRATOR:** That could very well be,
22 and I will say that last week I went through the
23 entire file and I wanted to make sure that I
24 understood the character of the dispute, and as I
25 said, this letter caused me some concern. Whether

1 it does or does not have any bearing on the merits
2 of this case, as I say, I want to make sure that it
3 does not influence any decision. I'm confident it
4 will not, but an explanation from Mr. Rote as to the
5 reason it was written would be helpful to me. Fair?

6 **MR. CLIFF:** Certainly. Thank you for
7 requesting that. We'll address that at the
8 appropriate time if it's not handled on direct -- or
9 cross, I mean.

10 **MS. MARSHALL:** Would it be possible -- I
11 mean is there a way you can determine whether --

12 **ATTORNEY 3:** The only thing I can do --

13 **MS. MARSHALL:** -- you have a Bates stamp
14 document?

15 **THE ARBITRATOR:** Well, if you want to take
16 some time, I can probably find --

17 **MS. MARSHALL:** It would be helpful for me.

18 **THE ARBITRATOR:** I can probably find the
19 letter.

20 **MS. MARSHALL:** Because I spent a lot of
21 time looking for it, and I know that Sandy spent a
22 lot of time and she's been around a long time.

23 **THE ARBITRATOR:** Well, it could be that
24 I'm mistaken about there being a second page. There
25 is another letter dated May 31.

1 **MS. MARSHALL:** There were two letters,
2 yeah, but you're talking about the first one, I
3 think.

4 **THE ARBITRATOR:** Yes, I'm talking about
5 the first one, May 22. And I thought there were two
6 pages to it. Let's take a look. Yes, I do have the
7 second page here.

8 **MR. CLIFF:** Second page of this Exhibit
9 63?

10 **THE REPORTER:** Would you like me to go
11 make copies?

12 **THE ARBITRATOR:** Let's go off the record.
13 **(Brief recess.)**

14 **MS. MARSHALL:** I just was asking that you
15 reserve your thinking as to how important that is to
16 the issues of the case, because I hope to convince
17 you that it's important to -- and supported by legal
18 analysis and case law.

19 **THE ARBITRATOR:** Certainly I will give you
20 that opportunity. My initial reaction to it was
21 that it was not relevant to the issues in front of
22 me. But I'll certainly give you the opportunity to
23 try to dissuade me from that. But again, I will
24 repeat that whether it is or is not relevant, it is
25 important to me that I hear Mr. Rote's explanation

1 for the letter because it -- it does accuse a
2 federal judge and his staff of some pretty serious
3 misconduct and it had an impact on me.

4 It does not prejudice me with respect to
5 any ruling that I might have in this case, and you
6 certainly have an opportunity to -- to try to
7 persuade me that it has some relevance to the claims
8 or defenses in case my initial response, reaction,
9 was it didn't. But you each have that opportunity
10 to either dissuade me or persuade me that I was
11 right in the first place.

12 **MR. CLIFF:** Well, and we certainly, when
13 the time came to deal with that, we're going to
14 object on relevancy grounds. But I understand
15 certainly she should be given the chance to argue
16 that and Mr. Rote will attempt to satisfy your
17 concerns, so.

18 **THE ARBITRATOR:** I was sure he would and I
19 wanted to give him that opportunity.

20 Are we ready to go back then, or?

21 **MS. MARSHALL:** Is there a way we can get a
22 copy of that second -- actually a copy both the
23 first and the second page. Because my copy -- my
24 original -- the best original I have is the one
25 that's in that exhibit book and it's not anywhere

1 close.

2 **THE ARBITRATOR:** Certainly I'd like to
3 have copies made. Do you want them now?

4 **MS. MARSHALL:** Just before --

5 **THE ARBITRATOR:** Well, I'll get copies for
6 each of you.

7 **BY MS. MARSHALL:**

8 **Q.** I guess it might be helpful for you to
9 have that as I'm doing this. I think we had just
10 finished with Exhibit 60, and when Mr. Crow asked if
11 I was headed towards 63, and I said I was. And so
12 let me ask you, let me preface this by saying, first
13 of all you weren't much -- you weren't very happy
14 with the judge's order that the case not be moved to
15 Oregon and that it be sent back to state court in
16 New Jersey, correct?

17 **A.** That's correct.

18 **Q.** And in addition you weren't very happy
19 with your attorney's work on those issues and the
20 results that they had achieved either, right?

21 **A.** Yeah. As I recall, they actually had
22 failed to file a notice that it was -- it was
23 because of that notice failure that caused this
24 order to -- caused this to happen. It was actually
25 a document failure.