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APPEARANCES

IN BEHALF OF THE PLAINTIFF:

UNITED STATES ATTORNEY'S OFFICE  
BY: BRENT A WHITTLESEY  
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IN BEHALF OF THE DEFENDANT:

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1 MONDAY, JANUARY 8, 2007; 1609; LOS ANGELES, CALIFORNIA

2 THE COURT: Good afternoon. Welcome. Please be  
3 seated.

4 THE CLERK: Calling Item No. 13, CR 01-1081, USA  
5 versus Jonathan Gordon.

6 Counsel, state your appearances, please.

7 MR. WHITTLESEY: Good afternoon, your Honor.

8 Brent Whittlesey for the United States.

9 MR. RICHARDS: Good afternoon, your Honor.

10 Ronald Richards appearing for witness Lisa Gordon,  
11 and also present is Jonathan Gordon here on supervised  
12 release.

13 THE COURT: Okay. Please be seated.

14 Mr. Whittlesey, I don't understand what you are  
15 doing here. And for the life of me I don't understand why,  
16 according to your deposition -- I mean your declaration and  
17 your memorandum of points and authorities that was filed on  
18 December 19th, you got a communication from presumably  
19 Mr. Richards saying that they -- the Gordons wouldn't appear  
20 for their depositions because the US had no right to conduct  
21 the depositions in the civil action, so you turned around and  
22 you filed a -- you served a subpoena in this criminal action.  
23 And you cite 18 U.S.C. 3613(A) which says nothing about  
24 serving subpoenas to enforce a judgment relating to the civil  
25 remedy in this criminal case.

1 I don't know what authority you had been given on  
2 the phone call in early December, why you caved into that  
3 authority, why you think that this is an available cure; so  
4 why don't you explain it.

5 MR. WHITTLESEY: Yes, your Honor. We are  
6 attempting to enforce a criminal judgment entered by this  
7 Court for the payment of restitution.

8 THE COURT: In a civil -- in an ongoing civil case;  
9 right?

10 MR. WHITTLESEY: There is a civil case pending.

11 THE COURT: Before Judge Morrow; right?

12 MR. WHITTLESEY: There is a civil case pending  
13 before Judge Morrow. We have remedies available for  
14 discovery in that civil case. We also have remedies  
15 available for discovery in the criminal case. The remedies  
16 in the criminal case are pursuant to Rule 69 of the Federal  
17 Rules of Civil Procedure and Title 18, Section 3613(A).

18 THE COURT: I don't see anything in the 3613(A)  
19 provision that you cited in your memo that gives you that  
20 authority.

21 MR. WHITTLESEY: Well, your Honor, it says in the  
22 criminal code that we are entitled to enforce a judgment as  
23 though it were a civil judgment, and in Rule 69 it instructs  
24 us that enforcement of a civil judgment in federal court is  
25 in accordance with the Federal Rules of Civil Procedure and

1 the practice of the state at which the district is located.

2 THE COURT: Yes, the Federal Rules of Civil  
3 Procedure. So this is a criminal case. Why are you relying  
4 on the Federal Rules of Civil Procedure to issue a subpoena  
5 for a summons in pursuit of a civil remedy that you are  
6 pursuing in a case before another judge in a civil case with  
7 a different case number when you are turning to this criminal  
8 case which has been effectively closed?

9 MR. WHITTLESEY: No, it hasn't been closed,  
10 your Honor, because the judgment hasn't been collected. The  
11 judgment --

12 THE COURT: But --

13 MR. WHITTLESEY: The judgment will be satisfied  
14 when it's paid, and then we will file a satisfaction of  
15 judgment.

16 THE COURT: Okay. Whether it's technically closed  
17 or not, there is no -- I don't see where there is any  
18 authority that you have to issue a summons in this criminal  
19 case. You are relying on Rule 69. It doesn't say anything  
20 about having an available remedy in the underlying criminal  
21 case, and 3613(A) doesn't do that either, even though it's in  
22 the criminal code.

23 MR. WHITTLESEY: Okay. Then I will go home.

24 THE COURT: I really think you need to --

25 MR. WHITTLESEY: Okay.



1 THE COURT: -- work this out in the case before  
2 Judge Morrow. I have no view one way or the other as to the  
3 merits of the motion to dismiss. I haven't looked at that.  
4 It's not my concern.

5 MR. WHITTLESEY: What would be the Court's view  
6 with respect to the matter, you know, if there were not a  
7 declaratory judgment case pending before Judge Morrow? All  
8 we are doing is trying to get discovery in connection with  
9 the enforcement of a restitution judgment.

10 THE COURT: My view -- although I don't like to  
11 answer hypothetical questions, Mr. Whittlesey, my view would  
12 be I will do what I am authorized to do. You cite me  
13 authority that gives me the right to uphold a summons, and I  
14 will do it, but you haven't done that.

15 MR. WHITTLESEY: Okay. If I haven't done it, then  
16 you should grant the motion.

17 THE COURT: That's what I am about to do. I hereby  
18 grant the motion.

19 It's not -- that's without prejudice to your right  
20 to pursue other available means civilly or otherwise.

21 MR. WHITTLESEY: Thank you, your Honor.

22 THE COURT: All right. That's my ruling.

23 MR. RICHARDS: Thank you, your Honor.

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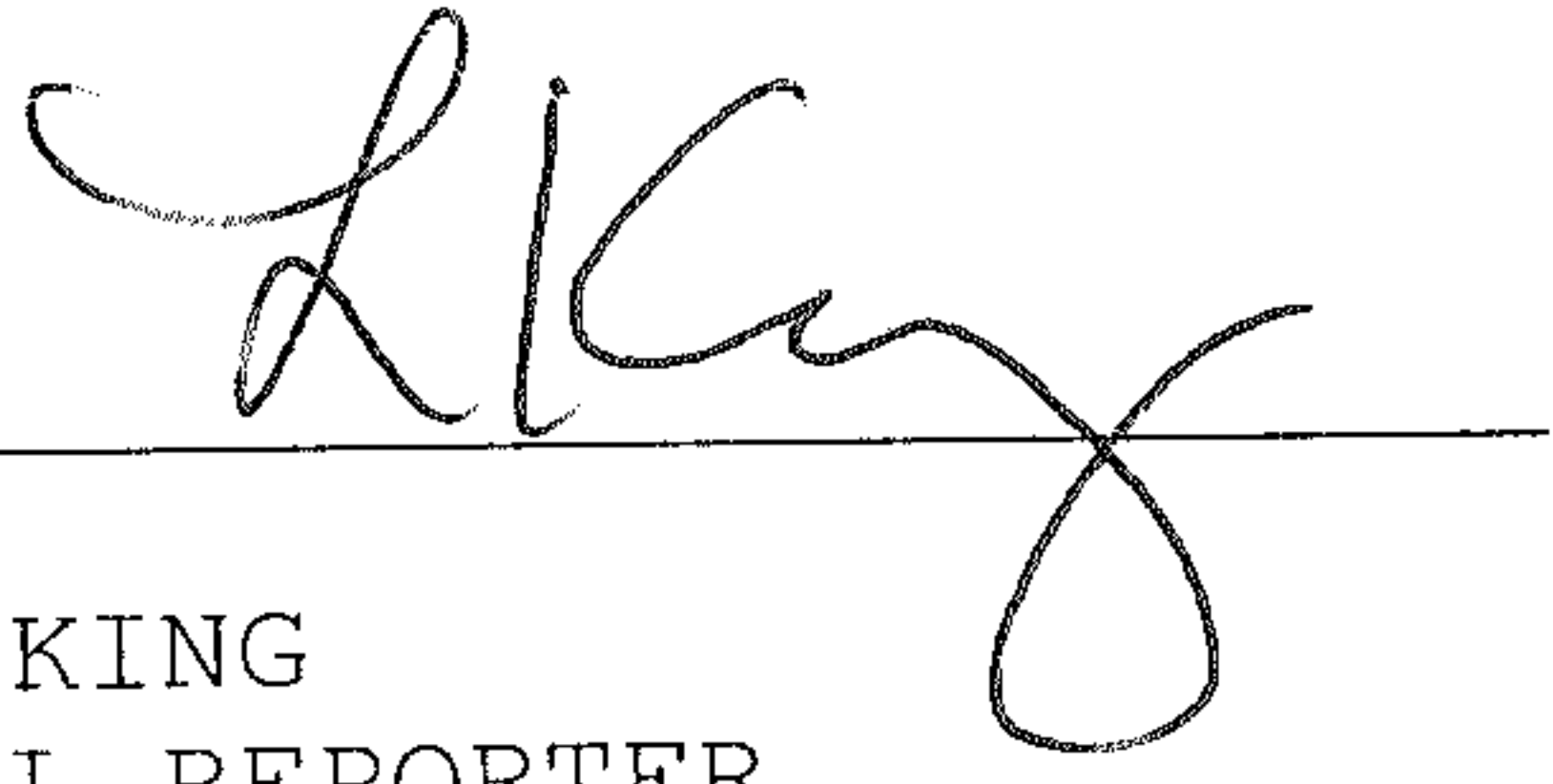
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(END OF PROCEEDINGS)

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CERTIFICATE

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT  
TRANSCRIPT OF THE STENOGRAPHICALLY RECORDED PROCEEDINGS IN  
THE ABOVE MATTER.  
FEES CHARGED FOR THIS TRANSCRIPT, LESS ANY CIRCUIT FEE  
REDUCTION AND/OR DEPOSIT, ARE IN CONFORMANCE WITH THE  
REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.



01/09/2007

LESLIE KING  
OFFICIAL REPORTER

DATE