

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

MAR 05 2012

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By GLORIETTA ROBINSON Deputy

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9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF LOS ANGELES

12 DAVID COPPEDGE, an Individual,  
13 Plaintiff,

14 vs.

15 JET PROPULSION LABORATORY,  
16 form unknown; CALIFORNIA  
INSTITUTE OF TECHNOLOGY, form  
17 unknown; GREGORY CHIN, an  
Individual; CLARK A. BURGESS, an  
18 Individual; KEVIN KLENK, an Individual;  
and DOES 1 through 25, inclusive,  
19 Defendants.

CASE NO. BC 435600

**MOTION IN LIMINE NO. 9**

**DEFENDANT'S NOTICE OF MOTION  
AND MOTION IN LIMINE # 9 ("DML 9")  
TO EXCLUDE TESTIMONY, EVIDENCE,  
ARGUMENT AND COMMENT  
REGARDING THE CONTENTS OF  
NASA'S GUIDELINES ON RELIGIOUS  
EXERCISE AND EXPRESSION IN THE  
FEDERAL WORKPLACE;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF;  
DECLARATION OF MELINDA A.  
GORDON IN SUPPORT THEREOF**

Trial Date: March 7, 2012  
Time: 9:30 a.m.  
Place: Department 54  
Judge: Hon. Ernest M. Hiroshige

1 TO PLAINTIFF DAVID COPPEDGE AND TO HIS ATTORNEY OF RECORD, WILLIAM J.  
2 BECKER, JR., ESQ., AND THE BECKER LAW FIRM:

3 Defendant California Institute of Technology ("Caltech") will and hereby does move the  
4 Court *in limine* for an order precluding Plaintiff David Coppedge ("Coppedge"), his counsel and  
5 witnesses from offering into evidence NASA's Guidelines on Religious Exercise and Expression  
6 in the Federal Workplace, or making reference to, commenting upon, introducing testimony or  
7 documents regarding, or presenting any argument pertaining to the contents thereof.

8 This Motion is made on the grounds that such evidence is inadmissible because it is  
9 irrelevant, will lead to jury confusion, and is unduly prejudicial to Caltech. *See* Cal. Evid. Code  
10 §§ 210, 350, and 352.

11 Caltech has satisfied the meet and confer requirements of Local Rule 3.57. Caltech  
12 initially conferred with counsel for Plaintiff David Coppedge, William J. Becker, regarding the  
13 substance of this Motion in November 2011. *See* Declaration of Melinda A. Gordon ("Gordon  
14 Decl.") ¶ 4. At the time, Mr. Becker agreed to stipulate to limit the evidence at trial in a manner  
15 consistent with the limitations requested in this Motion, and in fact signed that stipulation.  
16 Gordon Decl. ¶ 4, Ex. A. On February 24, 2012, Mr. Becker indicated that he was withdrawing  
17 his agreement, and counsel for Caltech explained that Caltech therefore would be forced to file  
18 this Motion.

19 This Motion is based on this Notice of Motion and Motion, the accompanying  
20 Memorandum of Points and Authorities, the Declaration of Melinda A. Gordon, the complete  
21 files and records in this action, and on such oral and documentary evidence as may be presented  
22 at or before the hearing of this Motion.

23 DATED: March 5, 2012

PAUL HASTINGS LLP  
JAMES A. ZAPP  
CAMERON W. FOX  
MELINDA A. GORDON

24  
25  
26 By: 

MELINDA A. GORDON

Attorneys for Defendant  
CALIFORNIA INSTITUTE OF TECHNOLOGY

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff David Coppedge ("Coppedge") will try to offer into evidence a document entitled  
4 "NASA's Guidelines on Religious Exercise and Expression in the Federal Workplace" ("Federal  
5 Guidelines"), as well as testimony, argument and comment regarding its *contents*. Coppedge  
6 listed the Federal Guidelines on his trial exhibit list, as well as a 1998 memorandum to  
7 supervisors at the NASA Lewis Research Center in Cleveland, Ohio, regarding the Federal  
8 Guidelines ("Lewis Memorandum"). Gordon Decl. ¶¶ 7-8, Exs. B-C.

9 Caltech objects to the introduction of the Federal Guidelines, the Lewis Memorandum  
10 regarding them, and any other reference to or evidence of their contents, because they are  
11 irrelevant, will lead to jury confusion, and will unduly prejudice Caltech. Cal. Evid. Code §§  
12 210, 350 and 352. Caltech does not seek to exclude relevant evidence concerning transmission or  
13 discussion of the Federal Guidelines that occurred in this case, such as testimony that Coppedge  
14 gave copies of the Federal Guidelines to Caltech employees in meetings, before he learned that  
15 they do not apply to employees of private employers, like Caltech.

16 **II. THE CONTENT OF THE FEDERAL GUIDELINES SHOULD BE EXCLUDED**

17 **A. These Matters Are Irrelevant And Should Be Excluded Under California**  
18 **Evidence Code Sections 210 and 350.**

19 At various points in this litigation, Coppedge has contended that the Federal Guidelines  
20 apply to Caltech. But Coppedge is mistaken. On its face, the Federal Guidelines apply only to  
21 *federal* employees of the United States Government. See Gordon Decl. ¶ 7, Ex. B, p.1, para. 1  
22 ("The following Guidelines ... shall apply to ... officials[] and employees in the Federal  
23 workplace. ... [T]he Guidelines [do not] define the rights and responsibilities of non-  
24 governmental employers ... and their employees."). Coppedge admits that he was employed by  
25 Caltech. Coppedge Tr. 50:12-14, 365:4-7.<sup>1</sup> Furthermore, Coppedge admits that Caltech is a  
26 private non-profit educational institution, which manages the Jet Propulsion Laboratory pursuant  
27 to a contract with NASA. Coppedge Tr. 334:4-7.<sup>2</sup> Therefore, the Federal Guidelines and its

28 <sup>1</sup> Deposition testimony cited herein is attached as Exhibit D to the Gordon Declaration.

<sup>2</sup> JPL is unique in that regard. It is the only NASA center that is not operated by federal

1 contents do not apply to Caltech and are irrelevant. The Lewis Memorandum, which concerns  
2 implementation of the Federal Guidelines at NASA's Lewis Research Center – a federal facility,  
3 whose employees are *federal government* employees – is likewise irrelevant.<sup>3</sup>

4 B. These Matters Will Create Confusion For The Jury And Undue Prejudice To  
5 Caltech, And Should Be Excluded Under California Evidence Code Section  
6 352.

7 The Federal Guidelines and its contents, if allowed, also will lead to juror confusion and  
8 undue prejudice to Caltech.

9 First, the only possible reason to share the Federal Guidelines' contents with the jury is to  
10 confuse the jury: to suggest that Caltech's conclusions regarding (and handling of) Coppedge's  
11 conduct should be measured against the rules for *federal* employers. But these rules are different  
12 from and broader than those applicable in a private workplace like Caltech. For example, under  
13 the Federal Guidelines, "proselytizing" is protected activity for federal government employees.  
14 Gordon Decl. ¶ 7, Ex. B. *See also id.* ("[E]mployees . . . may even attempt to persuade fellow  
15 employees of the correctness of their religious views . . ."). A federal employee need only stop  
16 when his or coworker asks him too. *See id.* ("[E]mployees must refrain from such expression  
17 when a fellow employee asks that it stop or otherwise demonstrates that it is unwelcome.").

18 A private employee, in contrast, has greater restrictions on workplace conduct, because a  
19 private employer has much greater freedom to regulate religious expression in the workplace,  
20 including proselytizing – regardless of whether other employees complain. *See, e.g., Silo v. CHW*  
21 *Med. Found.*, 27 Cal. 4th 1097, 1105 (2002) (the parties did not dispute that an employer may  
22 take adverse action for proselytizing in the workplace if it interfered with the performance of the  
23 employee's duties or was directed at employees who made clear their objections to such  
24 activities); *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599, 607-08 (9th Cir. 2004) (employer  
25 need not accommodate an employee's religious views if doing so would degrade or discriminate  
26 against co-workers, implicate the employer's diversity program, or have the effect of allowing the  
27 government employees.

28 <sup>5</sup> Furthermore, even in the context of federal employment – which is not at issue here – the  
Federal Guidelines simply "govern . . . internal management" and do not "create any new right . .  
. enforceable at law . . ." Gordon Decl., ¶ 7, Ex. B.

1 employee to impose religious beliefs on co-workers); *Chalmers v. Tulon Co. of Richmond*, 101  
2 F.3d 1012, 1021 (4th Cir. 1996) (employee's desire to impose her religious beliefs directly and  
3 personally on co-workers was "not the type [of conduct] that an employer [could] possibly  
4 accommodate").<sup>4</sup>

5 Second, allowing the content of the Federal Guidelines to be presented to the jury (except  
6 to the extent of Coppedge's discussions of them) will unduly prejudice Caltech. If the jury thinks  
7 Caltech is obligated to follow the Federal Guidelines, the jury may believe that Coppedge's  
8 conduct was protected and that Caltech's decision to discipline him for that conduct was an  
9 improper or unlawful violation of those rules – even though they do not even apply here. Caltech  
10 will suffer substantial undue prejudice as a result. And even if the jury does *not* think Caltech is  
11 obligated to follow the Federal Guidelines, providing the jury with a copy of (or unnecessary  
12 detail about the contents of) the Federal Guidelines may invite the jury to apply those guidelines  
13 to Caltech if they (albeit improperly) feel Caltech *should* be bound by them. This would also  
14 result in undue prejudice to Caltech.

15 For these reasons, the Federal Guidelines and its contents should be excluded pursuant to  
16 California Evidence Code Sections 210, 350 and 352, including but not limited to the Federal  
17 Guidelines themselves and the Lewis Memorandum, currently designated as trial exhibits 347 and  
18 346, respectively.

19 DATED: March 5, 2012

20 PAUL HASTINGS LLP  
21 JAMES A. ZAPP  
22 CAMERON W. FOX  
23 MELINDA A. GORDON

24 By: 

MELINDA A. GORDON

Attorneys for Defendant  
CALIFORNIA INSTITUTE OF TECHNOLOGY

25 <sup>4</sup> See also, e.g., *Wilson v. U.S. West Comm's*, 58 F.3d 1337, 1341-42 (8th Cir. 1995) (employee  
26 could not wear, uncovered, a graphic anti-abortion button even if the button reflected the  
27 employee's religious beliefs; it was offensive to other employees; "Title VII does not require an  
28 employer to allow an employee to impose his religious views on others."); *Anderson v. U.S.F.  
Logistics (IMC), Inc.*, 274 F.3d 470, 476-77 (7th Cir. 2001) (employee's use of the phrase  
"Blessed Day" imposed her religious beliefs on employer's customers or vendors; a religious  
practice that imposes beliefs on others can be restricted).

DECLARATION OF MELINDA A. GORDON

I, Melinda A. Gordon, declare:

1. I am an attorney at law duly admitted to practice before this Court and all of the courts of the State of California. I am an associate with the law firm of Paul Hastings LLP ("Paul Hastings"), counsel of record for the California Institute of Technology ("Caltech") in this action. I have personal knowledge of the facts contained in this Declaration, or know of such facts by my review of the files maintained by Paul Hastings in the normal course of its business, and if called as a witness, could and would testify as to their accuracy.

2. This Declaration is submitted in support of Defendant's Motion *In Limine* # 9 ("DML 9") to Exclude Testimony, Evidence, Argument and Comment Regarding the Contents of NASA's Guidelines on Religious Exercise and Expression in the Federal Workplace ("Motion").

3. The Motion seeks a ruling on the inadmissibility of NASA's Guidelines on Religious Exercise and Expression in the Federal Workplace ("Federal Guidelines"), as well as any reference to, commenting upon, introducing testimony or documents regarding, or presenting any argument pertaining to the contents thereof. Specifically, the Motion seeks to exclude, at minimum, the Federal Guidelines themselves and a 1998 memorandum to supervisors at the NASA Lewis Research Center in Cleveland, Ohio ("Lewis Memorandum"), currently designated as trial exhibits 347 and 346, respectively.

4. We initially conferred with counsel for Plaintiff David Coppedge, William J. Becker, regarding the substance of this Motion in November 2011. At the time, Mr. Becker agreed to stipulate to limit the evidence at trial in a manner consistent with the limitations requested in this Motion, and in fact signed a stipulation. A true and correct copy of the parties' Joint Stipulation To Exclude Evidence And Argument At Trial, signed by the parties on November 30, 2011, is attached as **Exhibit A** hereto.

5. On February 24, 2012, Mr. Becker indicated he was withdrawing his agreement, and counsel for Caltech explained that Caltech would be forced to file this Motion.

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6. Caltech will suffer prejudice if this Motion *In Limine* is not granted because the evidence sought for exclusion is irrelevant, as well as inadmissible under California Evidence Code section 352.

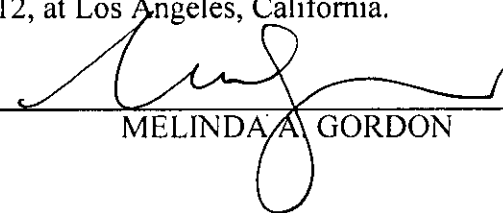
7. A true and correct copy of NASA's Guidelines on Religious Exercise and Expression in the Federal Workplace, which Coppedge produced to my office in this litigation and which Coppedge designated as Trial Exhibit No. 347, is attached as **Exhibit B** hereto.

8. A true and correct copy of the Lewis Memorandum, which Coppedge produced to my office in this litigation and which Coppedge designated as Trial Exhibit No. 346, is attached as **Exhibit C** hereto.

9. Attached hereto as **Exhibit D** are true and correct copies of excerpts from Days One and Two of the deposition of David Coppedge, taken on September 1, 2010 and October 22, 2010.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 5th day of March, 2012, at Los Angeles, California.

  
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MELINDA A. GORDON

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Attorneys for Defendant  
CALIFORNIA INSTITUTE OF TECHNOLOGY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

REC'D  
FEB 15 2012  
FILING WINDOW

DAVID COPPEDGE, an Individual,  
Plaintiff,

vs.

JET PROPULSION LABORATORY,  
form unknown; CALIFORNIA  
INSTITUTE OF TECHNOLOGY; form  
unknown; GREGORY CHIN, an  
Individual; CLARK A. BURGESS, an  
Individual; KEVIN KLENK, an Individual;  
and DOES 1 through 25, inclusive,  
Defendants.

CASE NO. BC 435600

**JOINT STIPULATION TO EXCLUDE  
EVIDENCE AND ARGUMENT AT TRIAL;  
[PROPOSED] ORDER THEREON**

Trial Date: December 14, 2011  
Place: Department 54  
Judge: Hon. Ernest M. Hiroshige

LEGAL\_US\_W # 69731424.4

JOINT STIPULATION TO EXCLUDE EVIDENCE AND ARGUMENT AT TRIAL;  
[PROPOSED] ORDER THEREON

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Plaintiff David Coppedge ("Coppedge") and Defendant California Institute of Technology ("Caltech"), through their respective counsel of record, stipulate and agree that the parties, their counsel, and all witnesses, shall be prohibited at the trial of the above-captioned matter from offering, making reference to, commenting upon, introducing testimony or documents regarding, or presenting any argument pertaining to:

1. Any media articles or internet coverage regarding this litigation and/or the events preceding it;
2. Any alleged discrimination, retaliation, or hostility to personal views purportedly exhibited toward any employee of Caltech other than Coppedge;
3. Any discipline or investigation of any employee of Caltech other than Coppedge, provided that this will not exclude questions and testimony regarding the general types and number of investigations in which Caltech's Human Resources professionals have been involved over the course of their careers;
4. Any witness or document not disclosed during the course of depositions or written discovery or other information that either party improperly failed to produce in response to the other party's discovery requests;
5. Witnesses' political affiliation, voting record on Proposition 8, or sexual orientation; and
6. Caltech's financial condition or the amount of punitive damages unless and until the trier of fact (a) returns a verdict in favor of Coppedge awarding actual damages, and (b) finds that Caltech is guilty of malice, oppression or fraud in accordance with California Civil Code Sections 3294 and 3295. The parties agree that the issue of punitive damages should be bifurcated to a second phase of the trial, if necessary.

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1 Coppedge and Caltech further stipulate and agree, through their respective counsel of  
2 record, that the parties, their counsel and all witnesses shall be prohibited at the trial of the above-  
3 captioned matter from offering into evidence any document containing NASA's Guidelines on  
4 Religious Exercise and Expression in the Federal Workplace, or any excerpt thereof; provided  
5 however, the parties agree that this does not exclude reference to the content of the NASA  
6 Guidelines to the extent there were communications between Coppedge and others about it, if and  
7 only if the parties agree upon a limiting instruction regarding the NASA Guidelines not applying  
8 to Caltech employees.

9 DATED: Nov. 30, 2011

PAUL HASTINGS LLP  
JAMES A. ZAPP  
CAMERON W. FOX  
MELINDA A. GORDON

12 By: Cwfox  
CAMERON W. FOX

14 Attorneys for Defendant  
CALIFORNIA INSTITUTE OF TECHNOLOGY

15 DATED: \_\_\_\_\_, 2011

THE BECKER LAW FIRM  
WILLIAM J. BECKER

17 William J  
18 Becker Jr, Esq  
19 By: \_\_\_\_\_  
WILLIAM J. BECKER

Digitally signed by William J Becker  
Jr, Esq  
DN: cn=William J Becker Jr, Esq,  
o=THE BECKER LAW FIRM, ou,  
email=bbeckerlaw@gmail.com, c=US  
Date: 2011.11.30 16:35:57 -08'00'

21 Attorney for Plaintiff  
DAVID COPPEDGE

23 IT IS SO ORDERED.

24 Dated: \_\_\_\_\_  
25 \_\_\_\_\_  
26 Hon. Ernest M. Hiroshige  
27 Judge of the Superior Court

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**PROOF OF SERVICE**

STATE OF CALIFORNIA )  
CITY OF LOS ANGELES AND COUNTY OF LOS ANGELES ) ss:  
ANGELES )

I am employed in the City of Los Angeles and County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action. My business address is 515 South Flower Street, Twenty-Fifth Floor, Los Angeles, CA 90071.

On December 2, 2011, I served the foregoing document(s) described as:

**JOINT STIPULATION TO EXCLUDE EVIDENCE AND ARGUMENT AT TRIAL;  
[PROPOSED] ORDER THEREON**

on the interested parties by placing a true and correct copy thereof in a sealed envelope(s) to the following:

William J. Becker, Jr., Esq. Attorney for Plaintiff  
THE BECKER LAW FIRM DAVID COPPEDGE  
c/o Los Angeles Superior Court  
111 North Hill Street, Dept. 54  
Los Angeles, CA 90012

**VIA PERSONAL DELIVERY:**

I personally delivered such sealed envelope(s) by hand to the addressee pursuant to CCP § 1011.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on December 2, 2011, at Los Angeles, California.

Cameron W. Fox  
Print Name

Cameron W. Fox  
Signature

21/05/08



- + ABOUT NASA
- + NEWS & EVENTS
- + MULTIMEDIA
- + MISSIONS
- + POPULAR TOPICS
- + MYNASA

- + NASA Home
- + Glenn Home
- + OHCM Home
- + Aerospace Frontiers
- + Web IntraNet at Glenn



Glenn Research Center  
World Class Workforce

Office of Human Capital Management

THE WHITE HOUSE  
Office of the Press Secretary

For Immediate Release

August 14, 1997

GUIDELINES ON RELIGIOUS EXERCISE AND RELIGIOUS EXPRESSION IN THE FEDERAL WORKPLACE

- SELECT TOPICS
- RELIGIOUS MATTERS
- PROFESSORIAL MATTERS
- STUDENT MATTERS
- ACADEMIC FREEDOM
- ACADEMIC FREEDOM
- ACADEMIC FREEDOM
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- ACADEMIC FREEDOM

The following Guidelines, addressing religious exercise and religious expression, shall apply to all civilian executive branch agencies, officials, and employees in the Federal workplace.

These Guidelines principally address employees' religious exercise and religious expression when the employees are acting in their personal capacity within the Federal workplace and the public does not have regular exposure to the workplace. The Guidelines do not comprehensively address whether and when the government and its employees may engage in religious speech directed at the public. They also do not address religious exercise and religious expression by uniformed military personnel, or the conduct of business by chaplains employed by the Federal Government. Nor do the Guidelines define the rights and responsibilities of non-governmental employers -- including religious employers -- and their employees. Although these Guidelines, including the examples cited in them, should answer the most frequently encountered questions in the Federal workplace, actual cases sometimes will be complicated by additional facts and circumstances that may require a different result from the one the Guidelines indicate.

SEARCH GLENN

+ GO

NASA Policy Statement on:

- +Diversity
- +Non-Harassment
- +Equal Employment Opportunity

NASA Glenn Research Center  
21000 Brookpark Road  
Cleveland, OH 44135  
Phone: (216) 433-4000

Emergency Closure Information  
(216) 433-WEAT (9328)

Visitor Center Phone: (216) 433-2001  
Phone: (216) 433-2000

Feedback

Section 1. Guidelines for Religious Exercise and Religious Expression in the Federal Workplace. Executive departments and agencies ("agencies") shall permit personal religious expression by Federal employees to the greatest extent possible, consistent with requirements of law and interests in workplace efficiency as described in this set of Guidelines. Agencies shall not discriminate against employees on the basis of religion, require religious participation or non-participation as a condition of employment, or permit religious harassment. And agencies shall accommodate employees' exercise of their religion in the circumstances specified in these Guidelines. These requirements are but applications of the general principle that agencies shall treat all employees with the same respect and consideration, regardless of their religion (lack thereof).

A. Religious Expression. As a matter of law, agencies shall not restrict personal religious expression by employees in the Federal workplace except where the employee's interest in the expression is outweighed by the government's interest in the efficient provision of public services or where the expression intrudes upon the legitimate rights of other employees or creates the appearance, to a reasonable observer, of an official endorsement of religion. The examples cited in these Guidelines as permissible forms of religious expression will rarely, if ever, fall within these exceptions.

As a general rule, agencies may not regulate employees' personal religious expression on the basis of its content or viewpoint. In other words, agencies generally may not suppress employees' private religious speech in the workplace while leaving unregulated other private employee speech that has a comparable effect on the efficiency of the workplace -- including ideological speech on politics and other topics -- because to do so would be to engage in presumptively unlawful content or viewpoint discrimination. Agencies, however, may, in their discretion, reasonably regulate the time, place and manner of all employee speech, provided such regulations do not discriminate on the basis of content or viewpoint.

The Federal Government generally has the authority to regulate an employee's private speech, including religious speech, where the employee's interest in that speech is outweighed by the government's interest in promoting the efficiency of the public services it performs. Agencies should exercise this authority evenhandedly and with restraint, and with regard for the fact that Americans are used to expressions of disagreement on controversial subjects, including religious ones. Agencies are not required, however, to permit employees to use work time to pursue religious or ideological agendas. Federal employees are p

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EXB

to perform official work, not to engage in personal religious or ideological campaigns during work hours

(1) **Expression in Private Work Areas.** Employees should be permitted to engage in private religious expression in personal work areas not regularly open to the public to the same extent that they may engage in nonreligious private expression, subject to reasonable content- and viewpoint-neutral standards and restrictions: such religious expression must be permitted so long as it does not interfere with the agency carrying out of its official responsibilities.

**Examples**

(a) An employee may keep a Bible or Koran on her private desk and read it during breaks.

(b) An agency may restrict all posters, or posters of a certain size, in private work areas, or require that such posters be displayed facing the employee, and not on common walls; but the employer typically cannot single out religious or anti-religious posters for harsher or preferential treatment.

(2) **Expression Among Fellow Employees.** Employees should be permitted to engage in religious expression with fellow employees, to the same extent that they may engage in comparable nonreligious private expression, subject to reasonable and content-neutral standards and restrictions: such expression should not be restricted so long as it does not interfere with workplace efficiency. Though agencies are entitled to regulate such employee speech based on reasonable predictions of disruption, they should not restrict speech based on merely hypothetical concerns, having little basis in fact, that the speech will have a deleterious effect on workplace efficiency.

**Examples**

(a) In informal settings, such as cafeterias and hallways, employees are entitled to discuss their religious views with one another, subject only to the same rules of order as apply to other employee expression. If an agency permits unrestricted nonreligious expression of a controversial nature, it must likewise permit equally controversial religious expression.

(b) Employees are entitled to display religious messages on items of clothing to the same extent that they are permitted to display other comparable messages. So long as they do not convey any governmental endorsement of religion, religious messages may not typically be singled out for suppression.

(c) Employees generally may wear religious medallions over their clothes or so that they are otherwise visible. Typically, this alone will not affect workplace efficiency, and therefore is protected.

(3) **Expression Directed at Fellow Employees.** Employees are permitted to engage in religious expression directed at fellow employees, and may even attempt to persuade fellow employees of the correctness of their religious views, to the same extent as those employees may engage in comparable speech not involving religion. Some religions encourage adherents to spread the faith at every opportunity, a duty that can encompass the adherent's workplace. As a general matter, proselytizing is as entitled to constitutional protection as any other form of speech — as long as a reasonable observer would not interpret the expression as government endorsement of religion. Employees may urge a colleague to participate or not participate in religious activities to the same extent that, consistent with concerns of workplace efficiency, they may urge their colleagues to engage in or refrain from other personal endeavors. But employees may refrain from such expression when a fellow employee asks that it stop or otherwise demonstrates that it is unwelcome. (Such expression by supervisors is subject to special consideration as discussed in Section B(2) of these guidelines.)

**Examples**

(a) During a coffee break, one employee engages another in a polite discussion of why his faith should be embraced. The other employee disagrees with the first employee's religious exhortations, but does not end the conversation. Under these circumstances, agencies should not restrict or interfere with such speech.

(b) One employee invites another employee to attend worship services at her church, though she knows that the invitee is a devout adherent of another faith. The invitee is shocked, and asks that the invitation not be repeated. The original invitation is protected, but the employee should honor the request that no further invitations be issued.

(c) In a parking lot, a non-supervisory employee hands another employee a religious tract urging that she convert to another religion lest she be condemned to eternal damnation. The proselytizing employee says nothing further and does not inquire of his colleague whether she followed the pamphlet's urging. This speech typically should not be restricted.

Though personal religious expression such as that described in these examples, standing alone, is protected in the same way, and to the same extent, as other constitutionally valued speech in the Federal workplace, such expression should not be permitted if it is part of a larger pattern of verbal attacks on fe

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employees (or a specific employee) not sharing the faith of the speaker. Such speech, by virtue of its excessive or harassing nature, may constitute religious harassment or create a hostile work environment as described in Part B(3) of these Guidelines, and an agency should not tolerate it.

(4) **Expression in Areas Accessible to the Public.** Where the public has access to the Federal workplace, all Federal employers must be sensitive to the Establishment Clause's requirement that expression not create the reasonable impression that the government is sponsoring, endorsing, or inhibiting religion generally, or favoring or disfavoring a particular religion. This is particularly important in agencies with adjudicatory functions.

However, even in workplaces open to the public, not all private employee religious expression is forbidden. For example, Federal employees may wear personal religious jewelry absent special circumstances (such as safety concerns) that might require a ban on all similar nonreligious jewelry. Employees may also display religious art and literature in their personal work areas to the same extent that they may display other art and literature, so long as the viewing public would reasonably understand the religious expression to be that of the employee acting in her personal capacity, and not that of the government itself. Similarly, their private time employees may discuss religion with willing coworkers in public spaces to the same extent as they may discuss other subjects, so long as the public would reasonably understand the religious expression to be that of the employees acting in their personal capacities.

**B. Religious Discrimination.** Federal agencies may not discriminate against employees on the basis of their religion, religious beliefs, or views concerning religion.

(1) **Discrimination in Terms and Conditions.** No agency within the executive branch may promote, refuse to promote, hire, refuse to hire, or otherwise favor or disfavor, an employee or potential employee because of his or her religion, religious beliefs, or views concerning religion.

**Examples**

(a) A Federal agency may not refuse to hire Buddhists, or impose more onerous requirements on applicants for employment who are Buddhists.

(b) An agency may not impose, explicitly or implicitly, stricter promotion requirements for Christians, or impose stricter discipline on Jews than on other employees, based on their religion. Nor may Federal agencies give advantages to Christians in promotions, or impose lesser discipline on Jews than on other employees, based on their religion.

(c) A supervisor may not impose more onerous work requirements on an employee who is an atheist because that employee does not share the supervisor's religious beliefs.

(2) **Coercion of Employee's Participation or Nonparticipation in Religious Activities.** A person holding supervisory authority over an employee may not, explicitly or implicitly, insist that the employee participate in religious activities as a condition of continued employment, promotion, salary increases, preferred job assignments, or any other incidents of employment. Nor may a supervisor insist that an employee refrain from participating in religious activities outside the workplace except pursuant to otherwise legal, neutral restrictions that apply to employees' off-duty conduct and expression in general (e.g., restrictions on political activities prohibited by the Hatch Act).

This prohibition leaves supervisors free to engage in some kinds of speech about religion. Where a supervisor's religious expression is not coercive and is understood as his or her personal view, that expression is protected in the Federal workplace in the same way and to the same extent as other constitutionally valued speech. For example, if surrounding circumstances indicate that the expression is merely the personal view of the supervisor and that employees are free to reject or ignore the supervisor's point of view or invitation without any harm to their careers or professional lives, such expression is so protected.

Because supervisors have the power to hire, fire, or promote, employees may reasonably perceive their supervisors' religious expression as coercive, even if it was not intended as such. Therefore, supervisors should be careful to ensure that their statements and actions are such that employees do not perceive a coercion of religious or non-religious behavior (or respond as if such coercion is occurring), and should where necessary, take appropriate steps to dispel such misperceptions.

**Examples**

(a) A supervisor may invite coworkers to a son's confirmation in a church, a daughter's bat mitzvah in a synagogue, or to his own wedding at a temple. But a supervisor should not say to an employee: "I didn't see you in church this week. I expect to see you there this Sunday."

(b) On a bulletin board on which personal notices unrelated to work regularly are permitted, a supervisor may post a flyer announcing an Easter musical service at her church, with a handwritten notice inviting co-workers to attend. But a supervisor should not circulate a memo announcing that he will be leading a

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lunch-hour Talmud class that employees should attend in order to participate in a discussion of career advancement that will convene at the conclusion of the class.

(c) During a wide-ranging discussion in the cafeteria about various non-work related matters, a supervisor states to an employee her belief that religion is important in one's life. Without more, this is not coercive and the statement is protected in the Federal workplace in the same way, and to the same extent, as other constitutionally valued speech.

(d) A supervisor who is an atheist has made it known that he thinks that anyone who attends church regularly should not be trusted with the public weal. Over a period of years, the supervisor regularly awards merit increases to employees who do not attend church routinely, but not to employees of equal merit who do attend church. This course of conduct would reasonably be perceived as coercive and should be prohibited.

(e) At a lunch-table discussion about abortion, during which a wide range of views are vigorously expressed, a supervisor shares with those he supervises his belief that God demands full respect for unlife, and that he believes it is appropriate for all persons to pray for the unborn. Another supervisor expresses the view that abortion should be kept legal because God teaches that women must have control over their own bodies. Without more, neither of these comments coerces employees' religious conformity or conduct. Therefore, unless the supervisors take further steps to coerce agreement with their view or in ways that could reasonably be perceived as coercive, their expressions are protected in the Federal workplace in the same way and to the same extent as other constitutionally valued speech.

(3) Hostile Work Environment and Harassment. The law against workplace discrimination protects Federal employees from being subjected to a hostile environment, or religious harassment, in the form of religious discriminatory intimidation, or pervasive or severe religious ridicule or insult, whether by supervisors or fellow workers. Whether particular conduct gives rise to a hostile environment, or constitutes impermissible religious harassment, will usually depend upon its frequency or repetitiveness, as well as its severity. The use of derogatory language in an assultive manner can constitute statutory religious harassment if it is severe or invoked repeatedly. A single incident, if sufficiently abusive, might also constitute statutory harassment. However, although employees should always be guided by general principles of civility and workplace efficiency, a hostile environment is not created by the bare expression of speech with which some employees might disagree. In a country where freedom of speech and religion are guaranteed, citizens should expect to be exposed to ideas with which they disagree.

The examples below are intended to provide guidance on when conduct or words constitute religious harassment that should not be tolerated in the Federal workplace. In a particular case, the question of employer liability would require consideration of additional factors, including the extent to which the agency was aware of the harassment and the actions the agency took to address it.

#### Examples

(a) An employee repeatedly makes derogatory remarks to other employees with whom she is assigned work about their faith or lack of faith. This typically will constitute religious harassment. An agency should not tolerate such conduct.

(b) A group of employees subjects a fellow employee to a barrage of comments about his sex life, knowing that the targeted employee would be discomforted and offended by such comments because of his religious beliefs. This typically will constitute harassment, and an agency should not tolerate it.

(c) A group of employees that share a common faith decides that they want to work exclusively with people who share their views. They engage in a pattern of verbal attacks on other employees who do not share their views, calling them heathens, sinners, and the like. This conduct should not be tolerated.

(d) Two employees have an angry exchange of words. In the heat of the moment, one makes a derogatory comment about the other's religion. When tempers cool, no more is said. Unless the words are sufficiently severe or pervasive to alter the conditions of the insulted employee's employment or create an abusive working environment, this is not statutory religious harassment.

(e) Employees wear religious jewelry and medallions over their clothes or so that they are otherwise visible. Others wear buttons with a generalized religious or anti-religious message. Typically, these expressions are personal and do not alone constitute religious harassment.

(f) In her private work area, a Federal worker keeps a Bible or Koran on her private desk and reads it during breaks. Another employee displays a picture of Jesus and the text of the Lord's Prayer in her private work area. This conduct, without more, is not religious harassment, and does not create an impermissible hostile environment with respect to employees who do not share those religious views, even if they are upset or offended by the conduct.

(g) During lunch, certain employees gather on their own time for prayer and Bible study in an empty conference room that employees are generally free to use on a first-come, first-served basis. Such a

gathering does not constitute religious harassment even if other employees with different views on how it may be perceived might feel excluded or ask that the group be disbanded.

C. Accommodation of Religious Exercise. Federal law requires an agency to accommodate employees' exercise of their religion unless such accommodation would impose an undue hardship on the conduct of the agency's operations. Though an agency need not make an accommodation that will result in more than a de minimis cost to the agency, that cost or hardship nevertheless must be real rather than speculative or hypothetical; the accommodation should be made unless it would cause an actual cost to the agency or other employees or an actual disruption of work, or unless it is otherwise barred by law.

In addition, religious accommodation cannot be disfavored vis-a-vis other, nonreligious accommodations. Therefore, a religious accommodation cannot be denied if the agency regularly permits similar accommodations for nonreligious purposes.

#### Examples

(a) An agency must adjust work schedules to accommodate an employee's religious observance -- for example, Sabbath or religious holiday observance -- if an adequate substitute is available, or if the employee's absence would not otherwise impose an undue burden on the agency.

(b) An employee must be permitted to wear religious garb, such as a crucifix, a yarmulke, or a headscarf or hijab, if wearing such attire during the work day is part of the employee's religious practice or expression, so long as the wearing of such garb does not unduly interfere with the functioning of the workplace.

(c) An employee should be excused from a particular assignment if performance of that assignment would contravene the employee's religious beliefs and the agency would not suffer undue hardship in reassigning the employee to another detail.

(d) During lunch, certain employees gather on their own time for prayer and Bible study in an empty conference room that employees are generally free to use on a first-come, first-served basis. Such a gathering may not be subject to discriminatory restrictions because of its religious content.

In those cases where an agency's work rule imposes a substantial burden on a particular employee's exercise of religion, the agency must go further: an agency should grant the employee an exemption from that rule, unless the agency has a compelling interest in denying the exemption and there is no less restrictive means of furthering that interest.

#### Examples

(a) A corrections officer whose religion compels him or her to wear long hair should be granted an exemption from an otherwise generally applicable hair-length policy unless denial of an exemption is the least restrictive means of preserving safety, security, discipline or other compelling interests.

(b) An applicant for employment in a governmental agency who is a Jehovah's Witness should not be compelled, contrary to her religious beliefs, to take a loyalty oath whose form is religiously objectionable.

D. Establishment of Religion. Supervisors and employees must not engage in activities or expression that a reasonable observer would interpret as Government endorsement or denigration of religion or a particular religion. Activities of employees need not be officially sanctioned in order to violate this principle; if, in the circumstances, the activities would leave a reasonable observer with the impression that Government was endorsing, sponsoring, or inhibiting religion generally or favoring or disfavoring a particular religion they are not permissible. Diverse factors, such as the context of the expression or whether official channels of communication are used, are relevant to what a reasonable observer would conclude.

#### Examples

(a) At the conclusion of each weekly staff meeting and before anyone leaves the room, an employee led a prayer in which nearly all employees participate. All employees are required to attend the weekly meeting. The supervisor neither explicitly recognizes the prayer as an official function nor explicitly states that no one need participate in the prayer. This course of conduct is not permitted unless under all the circumstances a reasonable observer would conclude that the prayer was not officially endorsed.

(b) At Christmas time, a supervisor places a wreath over the entrance to the office's main reception area. This course of conduct is permitted.

Section 2. Guiding Legal Principles. In applying the guidance set forth in section 1 of this order, executive branch departments and agencies should consider the following legal principles.

A. Religious Expression. It is well-established that the Free Speech Clause of the First Amendment protects Government employees in the workplace. This right encompasses a right to speak about religious subjects. The Free Speech Clause also prohibits the Government from singling out religious expression for disfavored

treatment: "[P]rivate religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression," *Capitol Sq. Review Bd. v. Pinette*, 115 S.Ct. 24 (1995). Accordingly, in the Government workplace, employee religious expression cannot be regulated because of its religious character, and such religious speech typically cannot be singled out for harsher treatment than other comparable expression.

Many religions strongly encourage their adherents to spread the faith by persuasion and example at every opportunity, a duty that can extend to the adherents' workplace. As a general matter, proselytizing is entitled to the same constitutional protection as any other form of speech. Therefore, in the governmental workplace, proselytizing should not be singled out because of its content for harsher treatment than nonreligious expression.

However, it is also well-established that the Government in its role as employer has broader discretion to regulate its employees' speech in the workplace than it does to regulate speech among the public at large. Employees' expression on matters of public concern can be regulated if the employees' interest in the speech is outweighed by the interest of the Government, as an employer, in promoting the efficiency of public services it performs through its employees. Governmental employers also possess substantial discretion to impose content-neutral and viewpoint-neutral time, place, and manner rules regulating private employee expression in the workplace (though they may not structure or administer such rules to discriminate against particular viewpoints). Furthermore, employee speech can be regulated or discouraged if it impairs discipline by superiors, has a detrimental impact on close working relationships which personal loyalty and confidence are necessary, impedes the performance of the speaker's duties, interferes with the regular operation of the enterprise, or demonstrates that the employee holds views that could lead his employer or the public reasonably to question whether he can perform his duties adequately.

Consistent with its fully protected character, employee religious speech should be treated, within the Federal workplace, like other expression on issues of public concern: in a particular case, an employer may discipline an employee for engaging in speech if the value of the speech is outweighed by the employer's interest in promoting the efficiency of the public services it performs through its employee. Typically, however, the religious speech cited as permissible in the various examples included in these Guidelines does not unduly impede these interests and should not be regulated. And rules regulating employee speech, like other rules regulating speech, must be carefully drawn to avoid any unnecessary limiting or chilling of protected speech.

**B. Discrimination in Terms and Conditions.** Title VII of the Civil Rights Act of 1964 makes it unlawful for employers, both private and public, to "fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's . . . religion." 42 U.S.C. 2000e-2(a)(1). The Federal Government also is bound by the equal protection component of the Due Process Clause of the Fifth Amendment, which bars intentional discrimination on the basis of religion. Moreover, the prohibition on religious discrimination in employment applies with particular force to the Federal Government, for Article VI, clause 3 of the Constitution bars the Government from enforcing any religious test as a requirement for qualification to Office. In addition, if a Government law, regulation or practice facially discriminates against employees' private exercise of religion or is intended to infringe upon or restrict private religious exercise, then that regulation, or practice implicates the Free Exercise Clause of the First Amendment. Last, under the Religious Freedom Restoration Act, 42 U.S.C. 2000bb-1, Federal governmental action that substantially burdens a private party's exercise of religion can be enforced only if it is justified by a compelling interest and is narrowly tailored to advance that interest.

**C. Coercion of Employees' Participation or Nonparticipation in Religious Activities.** The ban on religious discrimination is broader than simply guaranteeing nondiscriminatory treatment in formal employment decisions such as hiring and promotion. It applies to all terms and conditions of employment. It follows that the Federal Government may not require or coerce its employees to engage in religious activities or to refrain from engaging in religious activity. For example, a supervisor may not demand attendance at (or refusal to attend) religious services as a condition of continued employment or promotion, or as a criterion affecting assignment of job duties. *Quid pro quo* discrimination of this sort is illegal. Indeed, wholly apart from the legal prohibitions against coercion, supervisors may not insist upon employees' conformity to religious behavior in their private lives any more than they can insist on conformity to any other private conduct unrelated to employees' ability to carry out their duties.

**D. Hostile Work Environment and Harassment.** Employers violate Title VII's ban on discrimination by creating or tolerating a "hostile environment" in which an employee is subject to discriminatory intimidation, ridicule, or insult sufficiently severe or pervasive to alter the conditions of the victim's employment. This statutory standard can be triggered (at the very least) when an employee, because of her or his religion, is exposed to intimidation, ridicule, and insult. The hostile conduct — which may take the form of speech — need not come from supervisors or from the employer. Fellow employees can create a hostile environment through their own words and actions.

The existence of some offensive workplace conduct does not necessarily constitute harassment under Title VII. Occasional and isolated utterances of an epithet that engenders offensive feelings in an employee

typically would not affect conditions of employment, and therefore would not in and of itself constitute harassment. A hostile environment, for Title VII purposes, is not created by the bare expression of speech with which one disagrees. For religious harassment to be illegal under Title VII, it must be sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment. Whether conduct can be the predicate for a finding of religious harassment under Title VII depends on totality of the circumstances, such as the nature of the verbal or physical conduct at issue and the context in which the alleged incidents occurred. As the Supreme Court has said in an analogous context:

[W]hether an environment is "hostile" or "abusive" can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. The effect on the employee's psychological well-being is, of course, relevant to determining whether the plaintiff actually found the environment abusive. *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 23 (1993).

The use of derogatory language directed at an employee can rise to the level of religious harassment if severe or invoked repeatedly. In particular, repeated religious slurs and negative religious stereotypes, continued disparagement of an employee's religion or ritual practices, or lack thereof, can constitute harassment. It is not necessary that the harassment be explicitly religious in character or that the slurs reference religion: it is sufficient that the harassment is directed at an employee because of the employee's religion or lack thereof. That is to say, Title VII can be violated by employer tolerance of repeated slurs, insults and/or abuse not explicitly religious in nature if that conduct would not have occurred but for the employee's religious belief or lack of religious belief. Finally, although proselytization directed at fellow employees is generally permissible (subject to the special considerations relating to supervisor expression discussed elsewhere in these Guidelines), such activity must stop if the listener asks that it or otherwise demonstrates that it is unwelcome.

**E. Accommodation of Religious Exercise.** Title VII requires employers "to reasonably accommodate . . . employee's or prospective employee's religious observance or practice" unless such accommodation would impose an "undue hardship on the conduct of the employer's business." 42 U.S.C. 2000e(j). For example, by statute, if an employee's religious beliefs require her to be absent from work, the Federal Government must grant that employee compensation time for overtime work, to be applied against the time lost, unless doing so would harm the ability of the agency to carry out its mission efficiently. 5 U.S.C. 5550a.

Though an employer need not incur more than de minimis costs in providing an accommodation, the employer hardship nevertheless must be real rather than speculative or hypothetical. Religious accommodation cannot be disfavored relative to other, nonreligious, accommodations. If an employer regularly permits accommodation for nonreligious purposes, it cannot deny comparable religious accommodation: "Such an arrangement would display a discrimination against religious practices that is antithesis of reasonableness." *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 71 (1986).

In the Federal Government workplace, if neutral workplace rules — that is, rules that do not single out religious or religiously motivated conduct for disparate treatment — impose a substantial burden on a particular employee's exercise of religion, the Religious Freedom Restoration Act requires the employer grant the employee an exemption from that neutral rule, unless the employer has a compelling interest in denying an exemption and there is no less restrictive means of furthering that interest. 42 U.S.C. 2000bb

**F. Establishment of Religion.** The Establishment Clause of the First Amendment prohibits the Government including its employees — from acting in a manner that would lead a reasonable observer to conclude that the Government is sponsoring, endorsing or inhibiting religion generally or favoring or disfavoring a particular religion. For example, where the public has access to the Federal workplace, employee religious expression should be prohibited where the public reasonably would perceive that the employee is acting an official, rather than a private, capacity, or under circumstances that would lead a reasonable observer to conclude that the Government is endorsing or disparaging religion. The Establishment Clause also forbids Federal employees from using Government funds or resources (other than those facilities generally available to government employees) for private religious uses.

**Section 3. General.** These Guidelines shall govern the internal management of the civilian executive branch. They are not intended to create any new right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. Questions regarding interpretations of these Guidelines should be brought to the Office of the General Counsel or Legal Counsel in each department and agency.



- + Freedom of Information Act
- + Budgets, Strategic Plans and Accountability Reports
- + The President's Management Agenda



Responsible NASA Organization  
Office of Human Capital Management  
Curator: Nazzetta W. Robinson  
Last Updated: September 26, 2008

COP0000315

80/88/12

NASA Lewis Research Center  
Cleveland, Ohio

February 3, 1998

TO: Lewis Supervisors

FROM: 0400/Chief, Office of Human Resources

SUBJECT: Guidelines on Religious Freedom in the Federal Workplace

Please disseminate to all civil service employees within your organization.

President Clinton has issued guidelines which clarify the right of religious expression in the Federal workplace. The guide entitled "Guidelines on Religious Exercise and Religious Expression in the Federal Workplace" applies to all civilian executive branch agencies, officials, and employees of the Federal Government. The guidelines principally address employee's religious exercise and religious expression when the employees are acting in their personal capacity within the Federal workplace and the public does not have regular exposure to the work area.

The guidelines accomplish three things. First, they specify that Federal employees may engage in personal religious expression to the greatest extent possible, consistent with law and interests in workplace efficiency. Second, they state that Federal employers may not discriminate in employment on the basis of religion, require religious participation or nonparticipation as a condition of employment, or permit religious harassment. Third, they clarify that agencies must reasonably accommodate employees' religious practices.

Some key provisions include:

1. Agencies may not regulate employees' personal religious expression on the basis of its content or viewpoint. Agencies may, however, reasonably regulate the time, place, and manner of all employee speech.
2. Agencies are not required to permit employees to use work time to pursue religious or ideological agendas.
3. Employees may engage in religious expression in work areas not regularly open to the public, as long as it does not interfere with the agency's carrying out its official responsibilities.
4. Employees may engage in religious expression with fellow employees in the same manner they engage in comparable nonreligious private expression, as long as it does not interfere with workplace efficiency.
5. Employees are permitted to attempt to persuade fellow employees of their religious views unless a fellow employee asks that it stop or otherwise demonstrates it is unwelcome.

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EXC

6. Federal agencies may not discriminate against employees on the basis of their religion, religious beliefs, or views concerning religion.

7. Supervisors may not, explicitly or implicitly, insist that subordinates either participate or not participate in religious activities. However, this prohibition in no way restricts supervisors from engaging in speech about religion as long as it is not coercive and it is understood it is his/her personal view. Supervisors should be careful to ensure that statements made and actions taken are not perceived as coercion of religious or nonreligious behavior.

8. Federal employees are protected from a hostile environment or religious harassment in the form of religiously discriminatory intimidation, or pervasive or severe religious ridicule or insult.

9. Agencies must accommodate employees' exercise of their religion unless such conduct would impose an undue hardship on the conduct of the agency's operations.

10. Supervisors and employees are prohibited from acting in a manner that would create the reasonable impression that the Government is sponsoring, endorsing, or inhibiting religion generally, or favoring or disfavoring a particular religion. Employees may also not use Government funds or resources (other than those facilities generally available to Government employees) for private religious uses.

The general principle in these guidelines is that agencies treat all employees with the same respect and consideration, regardless of their religion (or lack thereof). This same principle has been emphasized at the Center for a number of years. It is also specifically stated in the Nondiscrimination-Nonharassment Policy Statement issued by the NASA Administrator; Daniel S. Goldin. In May 1997, our Center Director, Donald J. Campbell, forwarded this policy to all Center employees and emphasized the need to treat all NASA employees with respect and dignity. As was indicated in that policy and is stressed in the newly published guidelines on religious freedom, failing to treat others with respect based on their religious beliefs, will not be tolerated.

A copy of the "Guidelines on Religious Exercise and Religious Expression in the Federal Workplace" is available on the Office of Human Resources Home Page at <http://www.lerc.nasa.gov/WWW/OHR>. If you have questions regarding these guidelines, you may contact Ms. Lori Pietravoia, Employee Relations Officer, at PABX 3-2506.

/s/

Maury L. Blanton

Copy Distribution:  
Supervisors (Secretaries cc'd) (B-1)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

DAVID COPPEDGE, an Individual,	)	CASE NO. BC 435600
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
JET PROPULSION LABORATORY,	)	
form unknown; CALIFORNIA	)	
INSTITUTE OF TECHNOLOGY, form	)	
unknown; GREGORY CHIN, an	)	
Individual; CLARK A. BURGESS,	)	
an Individual; KEVEIN KLENK,	)	
an Individual; and DOES 1	)	
through 25, inclusive,	)	
	)	
Defendants.	)	

DEPOSITION OF DAVID COPPEDGE  
 SEPTEMBER 30, 2010  
 VOLUME 1  
 (Pages 1 through 256)

REPORTED BY:  
 Deborah R. Meyers  
 CSR No. 8569

HOMAN ASSOCIATES  
 CERTIFIED SHORTHAND REPORTERS  
 4287 JACKSON AVENUE  
 CULVER CITY, CALIFORNIA 90232  
 (310) 838-7734

10:46:38 1 Q Is everything that you wrote on  
10:46:40 2 Exhibit 1001 true and correct?  
10:47:01 3 A Yes.  
10:47:01 4 Q Just as a point of clarification, if you  
10:47:03 5 look at page 68, where it says "Date hired or  
10:47:06 6 applied for job" and it says September 1996, you  
10:47:11 7 were using the date when you first worked on the  
10:47:14 8 premises at JPL as a contractor; correct?  
10:47:17 9 A Yes.  
10:47:18 10 Q Your actual date of hire with JPL -- strike  
10:47:21 11 that.  
10:47:22 12 Your actual date of hire with Caltech at  
10:47:25 13 Jet Propulsion Laboratory was what date?  
10:47:27 14 A March 2003.  
10:47:30 15 Q Do you remember what day in March of 2003  
10:47:32 16 it was?  
10:47:33 17 A No.  
10:47:38 18 Q So is it correct that from September 1996  
10:47:41 19 until March of 2003 then, you worked for  
10:47:46 20 organizations that contracted with JPL to provide  
10:47:50 21 services?  
10:47:51 22 A Yes.  
10:47:54 23 Q What was the name of the contractor for  
10:47:56 24 whom you worked -- strike that.  
10:47:58 25 Which contractor was your employer when you

1 REPORTER'S CERTIFICATION

2  
3 I, Deborah R. Meyers, a Certified  
4 Shorthand Reporter, do hereby certify:

5 That prior to being examined, the witness  
6 named in the foregoing proceedings was by me duly  
7 sworn to testify to the truth, the whole truth, and  
8 nothing but the truth;

9 That said proceedings were taken before me  
10 at the time and place therein set forth and were  
11 taken down by me in shorthand and thereafter reduced  
12 to computerized transcription under my direction and  
13 supervision;

14 That the dismantling of the transcript  
15 will void the reporter's certificate.

16 I further certify that I am neither  
17 counsel for, nor related to, any party to said  
18 proceedings, nor in any way interested in the  
19 outcome thereof.

20  
21 IN WITNESS WHEREOF, I have hereunto  
22 subscribed my name this 12th day of October, 2010.

23  
24   
25 DEBORAH R. MEYERS, CSR NO. 8569

PAGE/LINE	ORIGINAL	CHANGE TO:
23:20	Yeah.	Yes.
29:18	center	synod
51:5	Infotech	Infotec
67:7-8	I think it's the belief that there is a creator rather than things happening on their own.	Creation simply means that the universe was created by a Creator, usually assumed to be God.
67:22-25	I think that there -- that creationism, as you would call it, is a subset. It's one answer to the question of the designing intelligence, whereas intelligent design itself is	No. Intelligent design does not depend on a belief in a creator to arrive at its scientific conclusions.
68:13-15	It means that there is a designing intelligence, a creator, as opposed to things happening without a designing intelligence.	Creation per se just means a Creator created the universe.
68:17-19	Intelligent design does not answer that question, but Biblical creationism would identify the designing intelligence as God.	Yes, creationism usually posits God as the Creator. In most uses of the term these days, creationism refers to the belief that the God of the Bible created the world according to the account in the book of Genesis. Intelligent design is restricted to inferring design, not the designer, using the methods of science. Creationism is concerned with proving that the designer is God.
69:23-24	There are certainly non-Christians and nonreligious people who consider it a valid, scientific question.	I misunderstood the question, which upon re-reading, makes no sense. Creation implies a Creator. I am unaware of anyone teaching that creation occurred without a creator; that would be illogical.
70:5-7	It's not focused on the identity of the intelligence but just the effects of design, whether they are discernible or not.	Upon re-reading, this question makes no sense, either. An intelligent source is a creator by definition. If you are asking whether ID teaches the intelligent source is God, then the answer is no; intelligent design doesn't teach any such thing; because that's outside its domain. That question is left to philosophers and theologians.

70:7 cont.		Intelligent design is a scientific theory, focused not on the identity of the designer but on the evidence for design, whether it is detectable or not using well-tested methods of science and mathematics and logical inference. Those same methods are routinely used in other scientific fields, like archaeology, information theory, and genetics. Even lawyers rely on it! They use the same methods to decide if a body died of natural causes or was murdered. See? Some designers can be evil, but intelligent design theory doesn't get into the nature of the intelligent source, interesting as that question might be, because it's focused on the evidence, not the person. In the same way, investigators gather clues from a crime scene, and the coroner makes a determination between chance, natural law, or murder. It's up to others to figure out the motives and purposes of the murderer—an evil designer in this case. This shows it's possible to use intelligent design theory without getting into questions about God.
71:15	Production	Productions
71:21	honorary	honoraria
73:23	I don't want to speculate.	For 2009, gross revenue reported was \$2302.
82:15	the. This	this
92:6	Ken	Cab
97:23	I	I've
98:18	There's	There are
98:24	persons. And	persons, and
117:8	what I was being accused of.	that I had been accused of anything.
118:8	Yeah	Yes
119:10	Yeah	Yes
132:21	Yeah.	Yes.
133:9	Yeah	Yes
134:18-25	I didn't believe it was -- that what I was saying was religious. But apparently they did. And if they did, then they had a right to accommodate and protect that. But they were -- you know, they were saying I was pushing religion. Well, if that's what their argument is, then I should be able to, you know, defend my right to be able to discuss that.	Yes. I did not believe what I was doing in handing out DVDs on intelligent design constituted religious activity, but apparently Greg Chin did. But rather than respecting my free speech and accommodating what he deemed to be religion, he gave me a blanket order to shut up or be fired.
138:23	of that	from that

139:3	Yeah	Yes
142:19	think the only thing that makes sense is about my	think the only thing that explains that tension is my
142:24-143:1	No, but you certainly get the impression when many suggestions you give are kind of given the "yeah, but" response.	No, but ever since I had shared a DVD with him early on in our acquaintance, I felt he was less friendly with me than with others, and tended to find fault with my ideas and suggestions.
144:4	But I--and I	But I
150:15	how they both, you know, contrary to their -- to the	how, contrary to the
150:16	contrary to their -- our	contrary to our
150:22	You know, I	I
151:1	back to a good -- on	back on
151:20	sick to these -- what	stick to what
152:13-14	And I would ask, well, who are we -- you know, are we	I asked them: are we
154:1	would be, you know, unlikely	would be unlikely
154:6-7	Subsequent to that, you know, Cab almost, I think, forgot about it.	Subsequent to that, Cab almost forgot about it.
154:9-10	passed over or was a	had blown over
157:9	(Nods head up and down.)	Yes. After reading all the deposition transcripts, I feel that the May 4, 2010 meeting with Cab Burgess and Nick Patel and the negative comments in my 2010 performance review also constitute retaliatory acts by Cab Burgess.
161:6	suspect would	
162:2	yeah	yes
162:10	Yeah	Yes
166:11	Uh-huh	Yes
168:7-8	what to do when, you know, for reasons not related to my own performance, I had been removed.	what to do from a position I had lost for reasons unrelated to my performance.
169:6	and a wide variety	and knowledge about a wide variety
169:7	so they	so he
173:16	is important.	are both important.
176:24	was	were
177:19	admin	admins
179:8-11	They may have said that about me. I don't know. But I don't recall telling people I had... I had difficulty -- not myself prioritizing but	No. I had no difficulty prioritizing my own work. My difficulty was working
180:1	I mean, there -- I could	I could
180:4-5	to, you know, understand both points of view and try to -- and	to understand the problems of squeaky wheel mode we were in, and provide leadership in prioritization, so that my priorities were not in conflict with theirs.
181:14	Late '90s or early 2000s, yeah.	Either late 1999 or early in 2000.

(Does not match w/ transcript pg.)

184:1	yeah	yes
186:8	Yeah.	Yes.
188:15	Yeah.	[delete line; irrelevant]
188:23	3 and -- I don't think she had direct	I don't believe she had
190:3-4	when I heard that, you know -- I think her name came up in one of the meetings with Greg.	when her name came up in one of the meetings with Greg...
190:11-12	In terms of when I was probing for like who is unhappy,	I would ask him who specifically was complaining, and
191:18	saying, you know, how can we do better? How	asking, how
191:21	up, gave	up to our offices and
(3:5-6 ?	And I believe -- it	And it
194:25	doubt any--expect any problem	expect any problem
196:20	And you know, these	These
197:24	There was not, you know, the	There were no
200:3	I had -- could	I could
200:8	no	"no"
200:13	by all--everybody	by everybody
200:18-19	And it -- and some people read into that that I'm just, you know, saying	Some people read into that that I was saying
200:23	I'm not doing -- I'm	I'm
203:3	customer, do	customer, to do
204:17	For seven--	For several-- [Seven does not make sense here; strike?]
205:16	far after	long after
206:16	Uh-huh	Yes
211:5-6	Can't say until I find out what the acronym is.	This was a New Tribes Mission film about a remarkable true story of a missionary bringing hope and joy to a New Guinea tribe. I shared it one time with a fellow Christian.
211:11-12	just a little tiny thing.	a reduced-size package of the same film.
212:24	Yeah.	Yes.
214:6	Uh-hun.	Yes.
217:22	Sometimes. Not always.	Sometimes, but not often.
219:19	blasting	blatantly promoting
220:21	this, that	this -- that
220:23	an artificial	something artificial
221:4	You know, that was kind of an acronym	"LGM" was actually an acronym
221:5	life and they	life. Later, they
222:11	and saying	and saying,
222:20	the whole process a whole list	the others a short list
223:17	film, he talks	film, talks
224:17	No, I think -- I'm	No, I'm
224:19	theistic Darwinists	theistic evolutionists
229:2	would	could
230:19	Yeah, for like	Yes, for

236:7	in my discuss -- no,	in sharing it that year. No,
236:12-13	accused, yeah, of Christian	accused of pushing
237:5	Yeah,	Yes,
246:22-23	And it's kind of like in	It's in
248:4	Yeah -- well, not	Yes. Not
251:25	program. Now	program -- now
252:1	Planet Quest	Planet Quest --



SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

DAVID COPPEDGE, an Individual,	)	CASE NO. BC 435600
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
JET PROPULSION LABORATORY,	)	
form unknown; CALIFORNIA	)	
INSTITUTE OF TECHNOLOGY, form	)	
unknown; GREGORY CHIN, an	)	
Individual; CLARK A. BURGESS,	)	
an Individual; KEVEIN KLENK,	)	
an Individual; and DOES 1	)	
through 25, inclusive,	)	
	)	
Defendants.	)	

DEPOSITION OF DAVID COPPEDGE

OCTOBER 1, 2010

VOLUME 2

(Pages 257 through 462)

REPORTED BY:

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21/08/08

11:54:23 1 one to answer this, but my impression is that it's  
11:54:25 2 like outsourcing the payroll and those activities to  
11:54:30 3 a third party.

11:54:32 4 Q Did you understand that Caltech manages the  
11:54:36 5 Jet Propulsion Laboratory for NASA pursuant to a  
11:54:38 6 contract?

11:54:38 7 A Yes.

11:54:52 8 Q All right. So after you speak to  
11:54:53 9 Mr. Sanders and then after you send the email to  
11:54:58 10 Mr. Chin, what's the next thing in sequence that  
11:55:00 11 occurs?

11:55:02 12 A I got a call that day -- I think it was  
11:55:04 13 March 3 -- from Jhertaune Huntley requesting me to  
11:55:10 14 come and have a meeting with her.

11:55:13 15 Q And was she cordial in that telephone call?

11:55:18 16 A Yes.

11:55:20 17 Q And can you tell me as best as you recall  
11:55:22 18 the -- strike that.

11:55:23 19 Was anyone else a participant in the call?

11:55:26 20 A No.

11:55:27 21 Q Tell me as best as you can recall the  
11:55:29 22 substance of what was discussed.

11:55:33 23 A Since it was a phone call, I don't know if  
11:55:36 24 my documents have my --

11:55:38 25 Q I don't think so, but I'm not sure. But

13:52:19 1 after the Y2K period, but I'm not sure.

13:52:23 2 Q Sometime in the early 2000s?

13:52:24 3 A *Yes. Notes consulted after the deposition show it was April 1999,*

13:52:25 4 Q Mr. Chin was the office manager or the

13:52:30 5 project manager for you throughout the time you were

13:52:33 6 actually a Caltech employee; correct?

13:52:36 7 A Yes.

13:52:42 8 Can I add a clarification though, that I

13:52:44 9 had the exact same job duties and job description

13:52:47 10 when I was a contractor and when I was a JPL

13:52:50 11 employee.

13:52:51 12 Q Okay. Did you discuss at all with

13:52:55 13 Ms. Huntley Exhibit 1017?

13:52:58 14 A I showed it to her. I don't think I read

13:53:01 15 through it but just explained what it was.

13:53:04 16 Q So then the next thing that happens is --

13:53:09 17 is what? After you've had the discussion, that's

13:53:12 18 when you send -- did you send an email to

13:53:15 19 Ms. Huntley requesting materials?

13:53:21 20 A Yes. You may have it.

13:53:50 21 Q Let me just show you a document, and we'll

13:53:53 22 get copies of it made afterwards. I want to show it

13:53:55 23 to your counsel as well. It's document Bates

13:53:59 24 stamped No. 284.

13:54:03 25 And let me just show this to you,

1 REPORTER'S CERTIFICATION

2  
3 I, Deborah R. Meyers, a Certified  
4 Shorthand Reporter, do hereby certify:

5 That prior to being examined, the witness  
6 named in the foregoing proceedings was by me duly  
7 sworn to testify to the truth, the whole truth, and  
8 nothing but the truth;

9 That said proceedings were taken before me  
10 at the time and place therein set forth and were  
11 taken down by me in shorthand and thereafter reduced  
12 to computerized transcription under my direction and  
13 supervision;

14 That the dismantling of the transcript  
15 will void the reporter's certificate.

16 I further certify that I am neither  
17 counsel for, nor related to, any party to said  
18 proceedings, nor in any way interested in the  
19 outcome thereof.  
20

21 IN WITNESS WHEREOF, I have hereunto  
22 subscribed my name this 12th day of October, 2010.

23  
24   
25 DEBORAH R. MEYERS, CSR NO. 8569

DAVID COPPEDGE DEPOSITION : DAY 2, 10/01/2010 : CHANGES

PAGE/LINE	ORIGINAL	CHANGE TO:
268:13	before I -- before	before
269:8	Cassini -- the lead Cassini ace	lead Cassini ACE
270:4	funny suits	bunny suits
271:3	ten work -- years	ten years
271:23	meeting that -- where we	meeting where we
272:16	right -- written on the white board behind her.	written on the white board right behind her.
272:25	would -- or nothing Greg said -- Greg was	or Greg could say helped. Greg was
273:8	he or I	she or I
273:14-16	So I just after, you know, saying my -- stating the facts as I was seeing them, left it in Greg's hands to resolve.	So after stating the facts as I understood them, I left it in Greg's hands to resolve.
275:13-17	I don't -- I think that Greg may have dismissed some of the parties in that team lead meeting and had me and Caroll and -- but at those times, that was work-related issues.	I believe Greg dismissed some of the team leads while a few of us continued the discussion with Caroll for a few more minutes.
282:25	No, he said strictly -- he -- I asked him,	I don't recall him saying that. I asked him,
287:12	agree	is
288:15-16	basically said evolution is science basically by consensus.	argued that evolution is science because the consensus accepts it as science.
288:21	but they -- SETI	but SETI
288:23	that the intelligent design thinking assumes also.	that ID supporters use.
290:11	I recalled he remembered	remembered [recalled is redundant]
290:23-24	I understand him -- understood him to mean that I -- he	I thought he
291:4-5	And making an unreasonable demand that any manager can make on any employee.	And making an unreasonable demand for any manager to impose on any employee.
316:25	Yeah.	Yes.
318:20	the March 2 -- it was March 2.	the March 2 confrontation with Greg.
320:16-18	And I can see especially in his position as the chief ethics officer, especially, that he has to be especially careful.	I can see in his position as the chief ethics officer that he has to be especially careful.
320:22	in obeyance--obedience	in obedience
321:18	There's only individual cases.	There are only individual situations.
323:11-13	The liberals who, you know, believe on certain issues tend to believe other issues similarly.	People who take a liberal position on one issue are likely to have liberal opinions on other issues.
324:11-13	I think there was clearly Discovery Institute people who were interviewed in the film.	Various supporters of intelligent design were interviewed in the film; some of them were with the Discovery Institute.
326:1	I knew, I was	I knew,
329:13	defend what he	defend myself about what he

03/08/12

330:21	say,	correct any misperceptions I might have had by saying,
339:2	I just showed here what it was about.	I just showed her what they were about.
341:10	yeah	yes
342:21	discussing	to discuss
343:1-3	She asked -- well, she asked, "Well, what kind of conversations did you engage in with people?"	She asked what kind of political subjects I had discussed with coworkers.
343:4-5	And I told her about, you know, before the election there was Prop 8 material. I told her that	I described the Prop 8 material I had shared. And I also told her that
343:10	them. A list of people	them -- candidates
343:13-15	So I would go and do some research online and just, you know, indicate this is what this person believes, this is what -- so that coworkers could have some basis.	So I would research the candidates online, and indicate what they believed, so that voters could have some basis for voting knowledgeably.
343:15-19	And I -- on maybe two or three occasions, three at the most, I had handed out the results of my research to -- and they were usually very appreciative because they knew nothing about these candidates.	On maybe two or three occasions, three at most, I had handed out the results of my research to close coworkers. They were appreciative because they knew nothing about the candidates.
344: 12-17	Those were -- but I may have mentioned just in general that there were a few coworkers that at the end of the day before the election, I thought, you know, let's at least understand. I had -- I had handed it out to pretty much close coworkers and --	I told her that at the end of a work day before the election I handed out some information sheets describing Prop 8 and its purpose to a few coworkers.
345:3-4	I just -- again, I was being as frank and open about everything, and that	I was being as frank and open as possible with Ms Huntley about that situation. It
345:6-7	And I did -- I had	I had
345:23	I -- it	It
345:25	So I just cut it off.	So I ended the conversation as discreetly and respectfully as I could.
346:1	I just want	I want
347:21	defeated, yeah.	defeated, yes.
348:11	But some -- there was	But there was
349:20	and didn't -- and nothing	and nothing
350:1	questions that -- something like	questions, something like,
350:5	then when she made it sure -- I mean, this was all	then when she made it sure, I stopped. This was all within
350:10	Yeah.	Yes.
350:20	from the -- yes, on a	from the Yes on 8
355:25	talk about -- with	talk with
360:24	just a -- an	just an
364:21	From 1990 -- March 1997	From March 1997
365:3	Yes.	Notes consulted after the deposition show it was April 1999.
371:24	impression, yeah.	impression, yes.
373:3	that I was supposed to be --	that

373:7	And this was not just a --	And
373:10	the employee -- ER represent -- or	the
375:20-21	No, I don't think I -- he -- I don't remember -- if you can show me the -- I --	No, I don't think so. If I could see the document, it might refresh my memory.
379:9	And I was -- it was	And it was
380:14	making it -- putting me	putting me
381:8	something that was --	something
381:11	through -- without	without
382:1-2	reviews that -- one of my -- my	reviews. My
382:4	her -- one of the	the
382:14	I -- you know, I	I
382:17	And there were -- my employer reviews all	My employee reviews all
382:19	employer	employee
383:1-3	better. People -- he has done" -- not -- he didn't say bent over backwards but words to that effect, that "Dave has gone beyond the call of duty to solve these problems."	better. Dave has gone beyond the call of duty to solve these problems."
384:1-3	No. I mean, I never heard any names of -- but I know that Pam had the ability to gossip and spread -- poison the well	No. I never heard of anyone else saying that. I know that Pam had the ability to gossip and spread rumors, to poison the well
384:10	said -- and affirmed	affirmed
384:20	contend that it -- that she was the one that was	contend that she was the one who was
396:20	upfront	up front
396:24-25	that I was completely caught off guard by.	that caught me completely off guard.
406:11	That's a -- right.	That's right.
409:23	45 percent, rough estimate.	45 percent, rough estimate. [A recent Gallup poll shows the number has varied between 78 and 87 percent since 1982.]
410:25	Yeah, all right.	All right.
410:7	That's my understanding.	That's my understanding. [A recent Gallup poll shows that number as varied between 78 and 87 percent since 1982.]
411:10	Yes.	Yes. [A recent Gallup poll shows that number to be 16 percent.]
413:2	there's	there are
413:24	within that	overlapping it
414:2	within the belief	that overlap with
420:8-9	I was not -- his response	His response
422:17	I -- my pattern	My pattern
423:25	Yeah	Yes
424:1	sent mail	Sendmail
424:14-17	I don't know if anything -- any conversations occurred on the 14th or whatever. We were talking in the car on the way back because he drove me to that meeting. And -- but I know	I don't recall all our conversations except those I took notes on. We talked in the car on the way back because he drove me to that meeting. I know
428:2	Yeah.	[delete]

438:9	he was going -- it	it
443:1-2	project, which that's done to me right -- [Incomprehensible. Error?]	project,
444:2	That's a -- leaves	That leaves
445:20	and not, you know --	and
445:23	sorts	sort
446:25	for now.	for now. In retrospect, the letter also failed to mention any new assignment I was being given -- something that had been promised. This gave the impression I had no more important work to do.
446:25		The letter also stated I was "stepping down" from team lead, not stepping up or over to something else worthwhile for the program. The effect was to focus on my loss of prestige.
453:3	yeah	yes
454:10	Yeah	Yes
454:22	open to -- she	open to new ideas. She
455:13	to a -- to	to
455:24	Yes, he was -- that was	Yes; that was
456:14	It might have been from like criminal cases	He might work on criminal cases
457:6	funding is -- comes from NASA,	funding comes from NASA,