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Defendant's Brief in Opposition to Plaintiff's Motion to Exclude Testimony of Dr. Marsters

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CLERK OF COURT
CUYAHOGA COUNTY
OHIO

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ALAN DAVIS, ET. AL.,
Plaintiff

V

STATE OF OHIO,
Defendant

: CASE NO. 312322

:
: JUDGE: SUSTER

:
: DEFENDANT'S BRIEF IN OPPOSITION
: TO PLAINTIFF'S MOTION TO
: EXCLUDE TESTIMONY OF DR.
: MARSTERS

Defendant, State of Ohio, by and through counsel, William D. Mason, Cuyahoga County Prosecutor, and Assistant Prosecutor, Marilyn B. Cassidy, submits herewith a brief in opposition to Plaintiff's Motion to Exclude Testimony of Dr. Marsters. This brief is based upon the fact that Plaintiff was notified on a timely basis that Dr. Marsters' report is the transcript of his testimony in the 1966 trial, *State of Ohio v. Samuel H. Sheppard*, CR06457 .

Plaintiff's assertion that Dr. Roger Marsters has submitted no report is unfair. Since the time that defendant placed Dr. Marsters on the State's witness list, defendant advised plaintiff that Dr. Marsters 1966 testimony would be his report. Plaintiff has had the transcript of

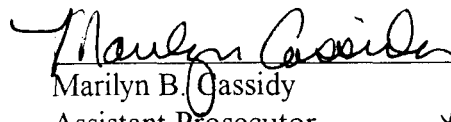
proceedings available since the time it was located by defendant in early fall, 1999. The transcript provides Marsters' knowledge and opinions from which Dr. Marsters may be expected to testify. Additionally, Defendant supplied plaintiffs counsel with a three page affidavit which sets forth Marsters' views. Defendant has consistently advised plaintiff that the 1966 transcript is the report, and thus, the basis of his current testimony. These communications were made by counsel, in the presence of the Court, at pretrial hearings on more than one occasion. As the Court will recall, experts and their reports were the source of numerous discussions among counsel and the court. Moreover, defendant offered plaintiff the opportunity to depose Marsters but plaintiff declined.

Local rule 21.1 does not specify the format of an expert report. Certainly a verbatim transcript reflecting the witness' opinion under oath is superior to the more traditional expert report format.

Thus, plaintiff's motion to exclude testimony of Dr. Marsters should be denied.

Respectfully submitted,

WILLIAM D. MASON, PROSECUTING
ATTORNEY, CUYAHOGA COUNTY

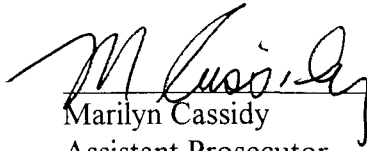


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CERTIFICATE OF SERVICE

A copy of the foregoing Brief in Opposition to Plaintiff's Motion to Exclude Testimony of Dr. Marsters was served this 3 day of February, 2000 on Terry Gilbert, 1370 Ontario Street, Suite 1700, Cleveland, Ohio 44113 by ordinary U.S. Mail and via facsimile.

Respectfully submitted,


Marilyn Cassidy
Assistant Prosecutor