

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Paul C. Stepnes, Pete Girard, Jan Girard,
David B. Holland, Terry Yzaguirre,
Ray Neset, Bennett Ross Taylor, Jr., and
Judith Wallen Taylor,

Case No. 0:08-cv-5296 ADM/JJK

Plaintiffs,

v.

**RESPONSES BY DEFENDANTS
CBS REPORTING INC. AND ESME
MURPHY TO PLAINTIFFS' FIRST
INTERROGATORIES**

Peter Ritschel (individual capacity),
Jane Moore (individual capacity),
City of Minneapolis, CBS Broadcasting,
Inc., foreign corporation, and Esme Murphy
(individual),

Defendants.

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Defendants CBS Broadcasting Inc. ("CBS") and Esme Murphy ("Murphy") (collectively, "Defendants") hereby respond to Plaintiffs' First Set of Interrogatories (the "Interrogatories").

GENERAL OBJECTIONS

Defendants submit this response subject to all of the objections set forth herein and without waiving and expressly preserving (a) any objections as to competency, relevancy, materiality, privilege and admissibility of any of the responses; and (b) the right to object to other discovery requests involving or relating to the subject matter of the requests responded to herein.

1. Defendants object to the Interrogatories to the extent that they seek discovery of work product or information or communications protected from discovery by privilege, including, but not limited to, (a) the attorney work product privilege; (b) the attorney-client privilege; (c) the Minnesota Free Flow of Information Act, Minn. Stat. § 595.021 *et seq.*, (d) a reporter's privilege pursuant to the First and Fourteenth Amendments, common law, or any other applicable state shield statute, and (e) any other applicable privileges.

2. In some instances, Defendants may provide information that is not specifically called for by any of plaintiffs' Interrogatories or that is subject to one or more of the objections stated herein. By providing such information, Defendants do not agree to provide any other information that is not called for by any Interrogatory or that is privileged or is subject to some other objection.

3. Defendants object to the Interrogatories to the extent they are overly broad, unduly burdensome, vague and/or ambiguous, or to the extent that they seek information which is unrelated to matters at issue in this action and is not reasonably calculated to lead to the discovery of admissible evidence.

4. Defendants object to the Interrogatories to the extent that they seek or purport to impose on it obligations other than those prescribed by the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Minnesota, and Defendants respond to the Interrogatories in accordance with those Rules.

5. Defendants reserve the right to amend and/or supplement these responses.

Responses

Interrogatory No. 1: State the identity of persons who have knowledge of facts or incidents alleged in this suit, claims asserted by Plaintiffs in their Complaint, or defenses asserted by defendants, and for each person you identify also state the identified person's: a) address; b) telephone number(s); c) status or relation to defendants; and e) the substance of their knowledge.

CBS RESPONSE: Defendants object to this interrogatory as vague and ambiguous to the extent it seeks identification of individuals with knowledge of "facts or incidents alleged in this suit" and "claims asserted by Plaintiffs in their Complaint."

Subject to their general and specific objections, Defendants state as follows: Apart from the plaintiffs, defendants, and counsel for the parties, the following additional persons are believed at this time by CBS to have knowledge responsive to this interrogatory:

- Carolyn Aberman, who upon information and belief was a spokesperson for Contest #1, regarding the contests. Upon information and belief, Ms. Aberman resides at 409 Cottage Downs, Hopkins, MN 55305.
- Americana Community Bank, regarding the Irving House. According to court records, Americana is represented by Thomas W. Larkin, Melchert Hubert Sjodin, PLLP, 121 West Main Street, Suite 200, Waconia, MN 55387, phone (952) 442-7700.
- Tom Barrett, Executive Director of the Minnesota State Gambling Board, regarding Minnesota gambling law and conversations with plaintiff Paul Stepnes.
- Kris Berg, photojournalist for WCCO, regarding the preparation of the news report at issue. He is represented by undersigned counsel, who will accept service of a proper subpoena on his behalf.
- Edward A. Bock, Jr., Hennepin County Examiner of Titles, regarding newsgathering related to the news report at issue. His office is A-701 Government Center, 300 South 6th Street, Minneapolis, MN 55487-0071, phone (612) 348-3191.

- Carly Danek, photojournalist for WCCO, regarding the preparation of the news report at issue. She is represented by undersigned counsel, who will accept service of a proper subpoena on her behalf.
- Angela Davis, anchor for WCCO, regarding the reading of a related news report on July 16, 2009. She is represented by undersigned counsel, who will accept service of a subpoena on her behalf.
- Scott Dibble, Minnesota State Senator, regarding Minnesota gambling law and conversations with plaintiff Paul Stepnes.
- Reed Erickson, former WCCO intern and now a student at the University of Missouri, regarding the preparation of the news report at issue. He is represented by undersigned counsel, who will accept service of a proper subpoena on his behalf.
- Sergeant Jesse Garcia, Public Information Officer for the Minneapolis Police Department, regarding newsgathering related to the news report at issue.
- Scott Howard, senior producer for WCCO, regarding the preparation of the news report at issue. He is represented by undersigned counsel, who will accept service of a proper subpoena on his behalf.
- Scott Libin, news director for WCCO, regarding the preparation of the news report at issue. He is represented by undersigned counsel, who will accept service of a proper subpoena on his behalf.
- Bill Kruskop, chief photojournalist for WCCO, regarding practices at the station with respect to tapes and video materials. He is represented by undersigned counsel, who will accept service of a proper subpoena on his behalf.
- Nicholas Poser, in-house counsel for CBS, regarding the legal pre-publication review of the news report at issue and subsequent contacts by counsel for plaintiff Paul Stepnes.
- Jennifer Ryan, a neighbor of plaintiff Paul Stepnes, regarding newsgathering related to the news report at issue.
- Amelia Santaniello, anchor for WCCO, regarding the reading of the anchor lead-in to the news report at issue. She is represented by undersigned counsel, who will accept service of a proper subpoena on her behalf.

- Sean Skinner, photojournalist for WCCO, regarding the preparation of the news report at issue. He is represented by undersigned counsel, who will accept service of a proper subpoena on his behalf.
- Greg Strzelicki, regarding newsgathering related to the news report at issue, the contests and promotion thereof, and contacts with plaintiff's counsel. His phone number is (612) 388-2145.
- Jeanette Trompeter, former anchor for WCCO, regarding the contests. She is represented by undersigned counsel, who will accept service of a proper subpoena on her behalf.
- Frank Vascellaro, anchor for WCCO, regarding the reading of the anchor lead-in to the news report at issue. He is represented by undersigned counsel, who will accept service of a proper subpoena on his behalf.
- The "accountant" identified in paragraph 24 of the complaint, regarding the contests, whose identity is presently unknown to Defendants.
- The "Benefactor" identified in paragraph 15 of the Complaint, regarding the contests, whose identity is presently unknown to Defendants.
- Any employees, officers, or consultants to the "Chester House Foundation," or any similar foundation relating to the Irving House or Contests #1 or #2, regarding the contests, whose identities are presently unknown to Defendants.
- Other contestants in Contest #1 and Contest #2, regarding the contests, whose identities are presently unknown to Defendants.
- The "PR people" referenced in paragraphs 63, 68, and 73 of the Complaint, regarding the contests and promotion thereof, whose identities are presently unknown to Defendants.
- CBS incorporates herein by reference all persons not specifically identified above who are identified in (i) the following responses to interrogatories, or (ii) the documents being produced by CBS to plaintiffs in response to plaintiffs' written discovery requests to them.

MURPHY RESPONSE: Based on information and belief, Murphy incorporates the response of CBS.

Interrogatory No. 2: Identify each and every person that you expect to call as an expert witness at trial, and provide all information plaintiffs may obtain under Rule 26.

RESPONSE: Defendants object to this request as premature and contrary to the scheduling order in this case. Defendants will identify testifying experts as provided under the scheduling order.

Interrogatory No. 3: Identify persons who prepared or assisted in the preparation of defendants' answers to any of these interrogatories.

CBS RESPONSE: Scott Libin, Bill Kruskop, and Esme Murphy assisted in the preparation of the answers, through counsel.

MURPHY RESPONSE: Based on information and belief, Murphy incorporates the response of CBS.

Interrogatory No. 4: Describe in detail the factual support for each of the defenses (including affirmative defenses) plead in defendants' answer to the complaint in this action.

RESPONSE: Defendants hereby incorporate their response to Interrogatory 5, as if set forth herein. In addition, pursuant to Fed. R. Civ. Proc. 33(d), Defendants respectfully refer plaintiffs to the documents being produced by Defendants in response to plaintiff's First Requests.

Interrogatory No. 5: Describe in detail the factual support for the denial of any paragraph of Plaintiffs' Complaint in defendants' answer.

RESPONSE: Defendants object to this interrogatory as unduly burdensome in light of the plaintiffs' 134-paragraph complaint, much of which is comprised of

argument, characterization, descriptions of information plainly outside the knowledge of Defendants, and irrelevant assertions. Subject to their general and specific objections, Defendants state as follows: The news report at issue in this case arises from a pre-existing public controversy over the legality and viability of a self-described “contest” to win the Irving House, into which plaintiff Stepnes had thrust himself. Indeed, the report arose from the attempts by Stepnes to garner publicity and media coverage for the referenced contest. During the course of her reporting on the story, Murphy reviewed the promotional and advertising materials relating to the contest; researched legal papers and public filings associated with the Irving House; reviewed certain prior press accounts relating to the contests and arrest of Stepnes; checked with the Secretary of State’s Office, the Charity Review Council, and the Minnesota Attorney General regarding the registration of the Chester House Foundation; interviewed Tom Barrett, Executive Director of the Minnesota State Gambling Board; interviewed Edward A. Bock, Jr., Hennepin County Examiner of Titles; interviewed Minneapolis Police Sgt. Peter Ritschel; interviewed Greg Strzelicki, a contestant; spoke with public affairs officers for the Minneapolis Police Department and Minneapolis City District Attorney’s Office; and discussed the contests with individuals who had toured the property or purchased a ticket to a contest, including Greg Strzelicki, Jeanette Trompeter, and Jennifer Ryan. Murphy also arranged an interview with Stepnes, which was delayed to accommodate the insistence by his attorney to be part of the interview. In short, Defendants exercised proper care in putting together the news report. Indeed, Defendants believed it to be

entirely accurate, and still do. Defendants were informed by government officials that the contest did not comply with applicable law. Despite a website advertisement that Greg Strzelicki had won a microwave, this contestant told Murphy he had never been contacted about the prize. Court records stated, and Stepnes confirmed, that the Irving House was in foreclosure, subject to a redemption date *prior to* the end of Contest #2. Defendants further state that at no time prior to the report at issue were CBS or Murphy aware of the Taylors or the identities of any of the party contestants. Nor did Defendants intend to interfere with any contract, even if any legally enforceable contract existed. Pursuant to Fed. R. Civ. Proc. 33(d), Defendants further respectfully refer plaintiffs to the documents being produced by Defendants in response to plaintiffs' First Requests.

Interrogatory No. 6: Describe in detail the general process of creating, processing and retaining videofiles of out-of-studio interviews, including (but not limited to) whether tapes/memory chips/cards are numbered (or otherwise marked for identification) when returned to the station, logged into a log, digitally copied at any time into a computer system, and how long each such document (including the actual videotape and/or digital media) is retained, how long the log(s) are retained, and how long any digital copy is retained. If you claim that there was more than one videotape or card/chip, then respond to this interrogatory for each such subject.

RESPONSE: Raw footage for general-assignment stories, such as the news report at issue in this case, were all shot on videotape in July 2008, specifically DVC Pro tapes (about the same size as "Hi 8" tapes). WCCO has thousands of such tapes in service at any given time. As a matter of general practice, each batch of new tapes is dated when initially put into circulation after purchase by the station, so that their age can later be determined and the tapes can be retired as appropriate. However, no other

identification number or other log is created, nor are raw tapes for general assignment stories routinely converted to digital format. Each day, when photojournalists go on assignment, they take either (1) new tapes, or, more commonly, (2) recycled tapes, from a recycle bin in the station editing room. After the footage for a particular story is shot, the raw tapes are typically labeled in some fashion by the photojournalist or reporter. Labeling practices vary by reporter and photojournalist. No log or other formal record is created. Then, after the footage is used to create a finished news report in the editing room, the raw tapes are placed on a shelf reserved for “Today’s Tape.” (Unlike the tapes used by photojournalists, the finished news reports are logged, preserved, and some are converted to digital form for inclusion on the WCCO website.) The following day, these tapes are as a matter of practice moved to one of seven bins, marked “Sunday,” “Monday,” “Tuesday,” etc. for each day of the week, to be available for potential follow-up reports in the following days. Typically, after seven days the tapes are placed in a recycle bin in the editing room for re-use by photojournalists. In such a way, the station has a universe of tapes in circulation at any given time, as opposed to purchasing new tapes for every story – which would be impractical as it would involve the purchase of tens of thousands of new tapes each year, raising significant cost and storage issues. Occasionally, when photojournalists run short of tapes, they take tapes directly from one of the daily bins for re-use. In addition, on occasions when a reporter or photojournalist expects to use particular footage again, either for a follow-up report or as stock or file footage, the individual places the tapes on a “save” shelf or otherwise retains them for future use.

Where tapes return to circulation, practices vary among photojournalists: Some use a bulk eraser to clean the recycled tape prior to use, while others simply “tape over” the prior recording.

Interrogatory No. 7: Describe in detail the specific process used for video footage of the Irving House on July 15, 2008, including: a) whether the videotape and/or memory card/chip was numbered or (otherwise marked for identification) before it was taken to the Irving House, b) whether it was numbered (or otherwise marked for identification) when it was brought back to the studio, c) whether it was logged into a log (whether paper or digital) and if so how was it identified in the log, d) whether it (or any portion of it) was saved in a digital format on a computer (in a form other than a card/chip) and identify where on the/a computer the data was saved (identify how someone could search for and locate that footage), and e) how long any digital data of the video footage is/was kept. If you claim that there was more than one videotape or card/chip, then respond to this interrogatory for each such object.

RESPONSE: Defendants hereby incorporate their response to Interrogatory 6, as if set forth herein. In addition, Defendants state that, based upon information and belief, two videotapes of footage were recorded on July 15, 2008 at the Irving House. The first tape includes footage shot during a tour of the house, while the second tape includes a sit-down interview with plaintiff Paul Stepnes and his counsel. Pursuant to WCCO practice regarding routine use and re-use of such tapes, neither of the tapes was numbered, logged, or converted to digital format (except to the extent that elements of the tapes are included in the final news report). The tapes were labeled by hand.

Interrogatory No. 8: Identify the camera operator who shot the video footage of Paul Stepnes and his attorney at the Irving House on July 15, 2008, and include: a) his full name, b) his title within the company as of July 15, 2008, c) whether he is a current or former employee, and d) his last known home address and telephone number (including home number and cell phone number).

RESPONSE: Kris Berg, photojournalist for WCCO. He is represented by undersigned counsel, who will accept service of a proper subpoena on his behalf.

Interrogatory No. 9: Identify the intern (or similar) who observed any portion of the video interview of Paul Stepnes and his attorney at the Irving House on July 15, 2008, and include: a) his full name, b) his title within the company as of July 15, 2008, c) whether he is a current or former employee, and d) his last known home address and telephone number (including home number and cell phone number).

RESPONSE: Reed Erickson, a former WCCO intern who is now a student at the University of Missouri. He is represented by undersigned counsel, who will accept service of a proper subpoena on his behalf.

Interrogatory No. 10: State whether there is any digital video footage or any portion of the Esme Murphy's interview of Paul Stepnes and his attorney on July 15, 2008 at the Irving House exists on any of defendants' computers.

RESPONSE: Except to the extent that portions of the interview were included in the news report, for which a digital copy is being produced, Defendants do not have digital video footage of Esme Murphy's interview of Paul Stepnes and his attorney on July 15, 2008.

Interrogatory No. 11: State who drafted the script used for the story about Paul Stepnes that aired on July 15, 2008.

RESPONSE: Defendants object to this interrogatory as vague because "drafted" is undefined. Subject to their general and specific objections, Defendants state

as follows: Esme Murphy wrote the script for the report at issue in this lawsuit, while Scott Howard revised the anchor lead-in to the report.

Interrogatory No. 12: Identify the person(s) who destroyed the video footage of Esme Murphy's interview of Paul Stepnes and his attorney on July 15, 2008.

CBS RESPONSE: CBS objects to this interrogatory to the extent that it assumes that video footage in question has been destroyed. As outlined in response to Interrogatory Nos. 6-7 and 14, which are incorporated herein by reference, reporters and photojournalists at WCCO do not as a matter of practice routinely preserve the raw footage used to create news reports, but once tapes are used they are typically placed in a bin for recycling (re-use in another story) within the week. In this case, eight videotapes containing footage relating to the news report were preserved immediately once a potential legal claim was informally asserted on July 18, 2008. However, it was later discovered that a ninth tape, containing footage of the interview on July 15, 2008, was not part of those materials. As outlined in response to Interrogatory No. 14, despite its diligent investigation CBS has thus far been unable to locate this one interview tape. However, CBS continues to investigate this matter and will timely supplement its response if it discovers additional information.

MURPHY RESPONSE: Based on information and belief, Murphy incorporates the response of CBS.

Interrogatory No. 13: Identify the Anchor(s) who read the script or otherwise commented on the story about Paul Stepnes/the contest, on July 15, 2008, and include: a) their full names, b) their titles within the company as of July 15, 2008, c) whether s/he is a

current or former employee, and d) their last known home addresses and telephone numbers (including home number and cell phone numbers).

RESPONSE: Amelia Santaniello and Frank Vascellaro, both currently anchors at WCCO. They are represented by undersigned counsel, who will accept service of a proper subpoena on their behalf.

Interrogatory No. 14: Describe in detail the actions that defendant(s) took to preserve video footage of Paul Stepnes and/or his attorney of July 15, 2008.

CBS RESPONSE: The afternoon of July 18, 2008, CBS learned of a potential legal challenge to the news report at issue and called WCCO Anchor/Reporter Esme Murphy at home to notify her. That same day, the chief photojournalist at WCCO, Bill Kruskop, collected what he believed to be all of the videotapes relating to the news report. He checked the "Today's Tape" shelf, as described in Interrogatory Response No. 6, which is incorporated here by reference. He also checked the daily bins for Tuesday through Friday, finding eight tapes, labeled "7/13 Dream House Interview – Carly/Esme," "Dream House Web Photo/Video," "House Animation F/X," "House Anim," "Dream House Cop – Esme/Skinner," "Website Tour," "Dream House? Esme – Exterior Raw," and "Stepnes Air Checks" (the news report). Kruskop immediately placed all of the tapes in his office for safekeeping, but did not review the contents of these tapes at that time. Several weeks later, after CBS counsel requested to review the tape containing footage of the July 15, 2008 interview, it was determined that the interview with Stepnes and his attorney was not included on the tapes that had been collected and preserved. Kruskop then reviewed the content of the videotapes that had been saved by WCCO, checked

videotapes in the editing rooms, and searched behind desks and machines in case the videotape had fallen. WCCO is in the process of reviewing all videotapes originally put into circulation prior to July 15, 2008, to see whether some portion of the approximately fifteen-minute interview may remain on the tape, even if partially recycled. This is a time-consuming process, given the substantial number of tapes in circulation.

MURPHY RESPONSE: Based on information and belief, Murphy incorporates the response of CBS.

Interrogatory No. 15: Describe in detail the investigation that defendant(s) to attempt to learn what had happened to the video footage of Paul Stepnes and/or his attorney of July 15, 2008.

CBS RESPONSE: CBS hereby incorporates its response to Interrogatory 14, as if set forth herein.

MURPHY RESPONSE: Based on information and belief, Murphy incorporates the response of CBS.

Interrogatory No. 16: Identify all individuals who in any touched, handled, edited, processed (including saving into a computer) or viewed any video footage shot at the Irving House on July 15, 2008, and for each such person state: a) their full name(s), b) their titles within the company as of July 15, 2008 (including whether they are management), c) whether s/he is a current or former employee, and d) their last known home addresses and telephone numbers (including home numbers and cell phone numbers).

RESPONSE: Defendants have thus far identified Kris Berg, photojournalist at WCCO; Bill Kruskop, chief photojournalist at WCCO, and Esme Murphy,

anchor/reporter at WCCO. They are each represented by undersigned counsel, who will accept service of a proper subpoena on their behalf.

I HEREBY AFFIRM, UNDER THE PENALTY OF PERJURY, THAT THE CONTENTS OF THE FOREGOING ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.


Dated: April __, 2009 _____

Dated: April __, 2009 _____

Dated: April 13, 2009

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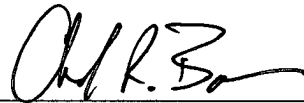
**ATTORNEYS FOR DEFENDANTS
CBS REPORTING INC. AND ESME
MURPHY**

Certificate of Service

I hereby certify that on this the 13th day of April, 2009, I directed that a true and correct copy of the foregoing **Response By Defendants CBS Reporting Inc. and Esme Murphy to Plaintiff's First Interrogatories** be served upon counsel of record by First-Class mail, postage prepaid, as follows:

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