



1 by the reporter. Those differences  
2 will include the following, among  
3 others:

4 A. Words may change;

5 B. Page and line numbers may  
6 change;

7 C. Punctuation may change;

8 D. Quotes may change.

9  
10 3. Providing a Livenote/Realtime  
11 ASCII and/or email or saving  
12 Livenote/Realtime onto a computer  
13 hard drive will only be provided when  
14 a certified copy is purchased and  
15 there will be a charge for the  
16 Livenote/Realtime rough transcript in  
17 addition to the charge for the  
18 certified copy.

19  
20  
21  
22 (NOTE: THIS IS NOT A CERTIFIED TRANSCRIPT  
23 AND IS NOT TO BE USED IN  
24 MOTIONS, EXHIBITS, OR OVERHEAD DISPLAYS.)  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

P R O C E E D I N G S

THURSDAY, NOVEMBER 5, 2020

P.M. SESSION

--o0o--

THE CLERK: Calling the matter of Kiel versus the Regents of the University of California, case number H 20072843.

And plaintiff's counsel would you please state your appearances.

MR. JAFFE: Richard Jaffe for the plaintiffs.

THE CLERK: Thank you.

And defendant's counsel.

MS. CHUN: Marissa Chun and Kristin Madigan for Crowell and Moring for the Regents of the University of California and Michael Drake.

And your Honor, if I may, I would like to introduce my cocounsel Katharine Essick of the University of California.

And I believe we also have joining us Rachel Nosowsky and Margaret Wu of the University of California General Counsel's Office.

THE COURT: Good afternoon to all of you.

THE CLERK: Thank you.

And I see a Suzanne Rose.

1 MS. CHUN: Yes. My colleagues and Rody (ph)  
2 may be joining us by phone as well as an observer.

3 THE CLERK: And what's Michael's last name?

4 MS. CHUN: I believe it was Margaret Wu, W U.

5 THE CLERK: Okay. No. I have Margaret, but I  
6 thought you said someone after Kristin. I thought you  
7 said Michael.

8 MR. JAFFE: Michael Drake?

9 MS. CHUN: Oh, Michael Drake is a defendant.

10 THE CLERK: Got it.

11 MS. ESSICK: Okay. This is Katharine Essick  
12 that deputy general counsel Margaret Wu is not here.

13 THE CLERK: Okay. Thank you.

14 THE COURT: Good afternoon to all of you.

15 First let me start with my apologies that  
16 because of largely the pandemic as everybody knows this  
17 hearing date has been moved a couple of times both  
18 forward and back frankly it was also -- there are, as  
19 everybody knows, a lot of papers. I wanted to make sure  
20 that I was fully conversant and familiar with the papers  
21 that have been filed.

22 Let me also start out, I have not issued a  
23 tentative ruling but instead have asked that parties  
24 appear. But I wanted to give you my preliminary  
25 thoughts orally in part because I think that helps focus

1 the hearing.

2 Obviously a large point of the hearing is for  
3 me to hear arguments of counsel. On the other hand I  
4 don't want to just have random arguments of counsel. I  
5 would like arguments that focus on the issues that I  
6 think are important. And the only way to do that is for  
7 me to take a little bit of time to identify the issues  
8 that I think are important.

9 We're obviously here on a motion for  
10 preliminary injunction brought at least the first names,  
11 plaintiffs, is Cindy Kiel who is executive associate  
12 vice chancellor at UC Davis, and I guess she is a lawyer  
13 by education. She provides leadership and research  
14 regarding compliance at UC Davis there are two students,  
15 one at UCSB, one at UCLA, and an employee of the Fresno  
16 satellite UCSF as well as UCLA law proper.

17 The remedy plaintiffs seek based on the  
18 plaintiff's proposed order that was submitted is to  
19 enjoin the UC registration and its current president,  
20 Michael Drake, from enforcing the executive order first  
21 issued by a former president Janet Napolitano but was  
22 issued on her last day of office in office on July 31st,  
23 2020 and later modified by now President Drake.

24 The executive order mandated that, quote, all  
25 students, faculty, and staff I think synonymous with

1 employees who are quote living, learning, or working at  
2 any UC location must receive a flu vaccine.

3 The papers indicate that there are  
4 approximately 510,000 members of the UC community that  
5 will be effected by the executive order. The original  
6 executive order was to have a flu vaccine requirement  
7 effective as of November 1st. That date wound up in  
8 effect being changed by this proceeding that they got  
9 moved around. UC committed that they wouldn't enforce  
10 the order until an order was issued in this case.

11 There are now both medical and religious  
12 exemptions for the requirement for all three groups  
13 faculties, students, and employees.

14 The plaintiffs argue that the executive order  
15 is ultra vires. Beyond former President Napolitano's  
16 authority, and perhaps more importantly violate various  
17 constitutional requirements including the due process  
18 clause, the equal protection clause, and as well as  
19 constitutional right to privacy.

20 Plaintiffs have argued that the flu vaccine has  
21 not been proven to be sufficiently safe and effective to  
22 support such a mandate, and the decision to get a flu  
23 shot should be left to individuals.

24 The plaintiffs rely, it seems, to be primarily  
25 on the Jacobson versus Massachusetts case, a US Supreme

1 Court case, to argue that the vaccine mandate or any  
2 government mandate that infringes personal liberty and  
3 bodily integrity must have a real and substantial  
4 connection to public health. I think that's pretty much  
5 a direct quote from the complaint, the amended  
6 complaint.

7 Both parties have submitted substantial  
8 declarations by medical and public health experts  
9 regarding their opinions of the executive order.

10 Probably obvious on a preliminary injunction  
11 the Court's required to focus on two primary issues:

12 First, whether the plaintiffs have met the  
13 burden of showing the probability of success on the  
14 merits;

15 And secondarily, the Court's required to do an  
16 analysis, the balance of the harms, of either issuing  
17 the injunction or not issuing the injunction with that  
18 preliminary background.

19 Let me describe my preliminary views.

20 That is that plaintiffs have not met their  
21 burden of showing a likelihood of success on the merits  
22 and have not shown that the balance of harms leads  
23 towards issuing a preliminary injunction.

24 As a result I'm inclined to deny the motion.

25 Here's why:

1           First, I'm not persuaded that President  
2 Napolitano's executive order was beyond her authority.  
3 Bylaw 30 says only that the president is, quote,  
4 expected to consult with the academic senate, close  
5 quote and on issues significant to the general welfare  
6 and conduct of the faculty.

7           It says expected to consult, not required to  
8 consult. And whether it's legislation or orders like  
9 this, it seems to me it's not difficult to use a  
10 mandatory term if mandatory is what's required.

11           Second, former President Napolitano's  
12 declaration says she was familiar with her attorney, and  
13 of course she's held many positions of government  
14 authority, including being president of the university;  
15 and that, in fact, based on her familiarity with the  
16 rules of the university, that it was she who was the  
17 decision-maker.

18           And she was not required to formerly consult  
19 with the academic senate. Although she knows in her  
20 declaration that in fact before issuing the executive  
21 order she did consult with many members of the faculty,  
22 particularly those who were in the medical or public  
23 health areas.

24           I don't know -- I find, Mr. Jaffe, you  
25 undoubtedly may want this, the suggestion that you try



1 to do an end run around the academic senate is to some  
2 extent also negated by the fact that she corrected the  
3 provost and executive vice president to immediately  
4 consult with the academic senate regarding the  
5 implementation of the order.

6           And I realize that that's not before the order  
7 was issued, but it seems to me that if somebody is  
8 acting beyond the scope of their authority and trying to  
9 do an end run around the academic senate. It's a little  
10 strange to have actually in the executive order that one  
11 of the first things to be done, and of course she  
12 wasn't -- I assume that the reason that she designated  
13 the provost and executive vice president to immediately  
14 consult with the academic senate is because she issued  
15 it on her last day in her position as president of the  
16 university.

17           She wasn't going to be there afterwards, so I  
18 mean, maybe she just thought it more appropriate to  
19 delegate it.

20           But that also seems to me to help support what  
21 at least I infer sometimes when people act in my  
22 experience ultra vires they're trying to acquire or  
23 misappropriate power to themselves.

24           This was President Napolitano's last day in  
25 office. It's very clear she wasn't trying to kind of

1 build up her own power base. She was out of office the  
2 very next day.

3 Third, the standing order 100.4 A supports her  
4 authority because it provides that the president, quote,  
5 shall have full authority and responsibility over the  
6 separation of all affairs and operations of the  
7 university subject to exclusions, although the  
8 exclusions aren't relevant here.

9 And fourth and last, and in some ways most  
10 compelling, the UC Regents are parties to this case, and  
11 indeed the UC Regents are taking the position that  
12 President Napolitano, in fact, was acting within the  
13 scope of authority that had been delegated to her by the  
14 Regents.

15 And of course, the Regents, the university is  
16 an arm of the state. I think there's no question the  
17 Regents had the authority to delegate, and frankly, I  
18 think if the Regents felt that President Napolitano was  
19 acting outside the scope of her authority, the Regents  
20 likely would be taking the position different than  
21 what's being taken in the case, which is in fact  
22 President Napolitano was acting within the scope of her  
23 authority.

24 As to the merits and the application of the  
25 Supreme Court's Jacobson case having reviewed all of the

1 papers it does seem to me that under Jacobson there is a  
2 real and substantial connection between the executive  
3 order and public health.

4 It's clear that UC leadership gave substantial  
5 thought and consideration for some months informed by  
6 the highly trained and credentialed medical and public  
7 health experts both within the UC system and outside the  
8 UC system.

9 It's also clear, as plaintiffs contend, that  
10 the executive order was prompted by the Covid 19  
11 pandemic.

12 But contrary to what plaintiffs argue, it seems  
13 clear to me even including the face of the executive  
14 order that it was not just about the possibility of the  
15 shortage of hospital beds.

16 I know plaintiffs have tried to link the sole  
17 justification for the executive order to the shortage of  
18 hospital beds, but I don't think that's a fair reading  
19 of the executive order or the facts that are set forth  
20 in declarations in support of the opposition, probably  
21 most particularly I think it's Dr. Bottington (ph), and  
22 it indeed it seems to me in review of the declaration  
23 it's abundantly clear that the executive order among  
24 other things keep the individuals who would be required  
25 to get a flu vaccine safe and to keep the overall UC

1 community safe.

2           Seems to be it wasn't an arbitrary and/or  
3 capricious decision. Rather it was well thought out and  
4 supported by ample if not overwhelming medical opinions.

5           And as a result, in my view, and again this is  
6 the kind of my oral tentative, but I think I'm pretty  
7 firm in this because I've read all the papers,  
8 plaintiffs have not proven that they're likely to  
9 prevail. And based on the medical opinions presented on  
10 balance, I'm persuaded that the UC community is  
11 collectively safer with a flu mandate than if there were  
12 no flu mandate.

13           Here are some additional facts that weigh  
14 heavily in my mind.

15           First, the UC expert opinions in my view are  
16 more persuasive and provided by experts with more  
17 thorough training and expertise than the plaintiff's  
18 experts. Moreover, their opinions are in line with all  
19 of the national and state public health experts.

20           I mean, notably the CDC is very clear that they  
21 recommend -- and this is a quote -- annual flu  
22 vaccination is recommended for everyone six months of  
23 age or older with rare exceptions because it is an  
24 effective way to decrease flu illnesses,  
25 hospitalizations and deaths.

1           And from the papers -- I didn't previously know  
2 this. I did know that the CDC advocates a flu vaccines  
3 and frankly encouraged people to get flu vaccines  
4 generally this year because of the pandemic in  
5 particular, but apparently the CDC has been more  
6 vigorously advocating the use of flu vaccines for at  
7 least the last ten years.

8           And specifically the CDC states that it's  
9 particularly important to get an annual flu shot this  
10 year during the Covid 19 pandemic because it's better  
11 for the individual, it's better for the community, and  
12 it helps to preserve hospital and health care capacity,  
13 includes burdens on, it seems to me, doctors, health  
14 care workers, hospitals, ICU beds, and perhaps  
15 ventilators.

16           A bit of an aside, plaintiffs expert Professor  
17 Normer from UC Irvine quotes Doctor Fauci in a way that  
18 I found frankly a little bit misleading. I mean, it  
19 caught my attention when he quoted Doctor Fauci who, of  
20 course, is in the news quite a bit now, and the quote is  
21 something like that, Doctor Fauci said that he wouldn't  
22 feel comfortable unless and until a vaccine was proven  
23 to be safe and effective. The only problem, and  
24 Professor Normer quote, doesn't say this, Doctor Fauci  
25 was talking about a vaccine that has not yet been

1 developed. He was talking about the Covid 19 vaccine,  
2 which of course has been the subject of a lot of both  
3 medical and political discourse as to whether, you know,  
4 the Covid 19 vaccine was being rushed so that it  
5 wouldn't be sufficiently tested to be sure that it was  
6 safe and effective.

7 Doctor Fauci was not talking about the flu  
8 vaccine which has been used for decades. I realize that  
9 plaintiffs have made the argument that the flu vaccine  
10 hasn't been tested in controlled studies. I understand  
11 that. But it seems to me, one, it can't, and two, it's  
12 not necessary.

13 I mean, at this point, the flu vaccine has  
14 developed, and I realize the strains differ, the  
15 effectiveness differs, I know from the papers that I  
16 guess 20 years ago -- I think it was in 1989 -- there  
17 was a problem where, at least the plaintiff's papers  
18 suggest, that there was -- I think the term they used  
19 was negative efficacy, that somehow the flu vaccine that  
20 year may have been worse.

21 I don't think UC's experts addressed that, but  
22 in my mind, I'm not sure that makes any difference. It  
23 seems to me on both the national and state level and  
24 indeed not only does the CDC recommend annual flu  
25 vaccines, the California Department of Health and -- in

1 fact, within the papers you may know that the current  
2 California Department of Health officer is the former  
3 Alameda County health officer, and she strongly  
4 recommends the flu vaccine particularly because the  
5 Covid 19 pandemic.

6 And then getting into some of the other areas,  
7 it's also clear that some vaccines, and I think the  
8 example that comes first to mind is small pox, which was  
9 a vaccine that was issued in Jacobson, had been  
10 routinely required for elementary and high school aged  
11 children for many, many years.

12 And indeed in doing research on this, and I  
13 would like counsel to address this, there's an opinion  
14 *Love versus State Department of Education*, which was  
15 issued in November 2018. So only two years ago. It was  
16 out of the third district, Mr. Jaffe, where your offices  
17 are.

18 And the Court of Appeal in that case found that  
19 the immunization requirements for public and private  
20 school children and childcare facilities passed  
21 constitutional muster notwithstanding the fact that  
22 there was no personal belief exemption.

23 And in that case, the Third District Court of  
24 Appeal addressed, I believe, all of the constitutional  
25 elements that are raised in this case, and under Auto

1 Equity Sales, frankly, I would -- I would -- I believe I  
2 would make this determination anyway, but because of  
3 Auto Equity Sales and the requirement that I follow  
4 Court of Appeal decisions, frankly, it's not clear to me  
5 that I even have discretion to do anything other than  
6 what I'm already inclined to do.

7           And again, I believe that that case addresses  
8 all of the constitutional arguments that are raised in  
9 this case.

10           Yet another concern, at least to my knowledge  
11 and this I think is largely supported by the  
12 declarations, all vaccines have somewhat limited  
13 effectiveness. It's not -- they're not effective for  
14 everybody, and in turn I think most if not all vaccines  
15 sometimes have adverse consequences.

16           And a difficulty that I have -- I'm obviously  
17 sitting here as a judge, I'm not a medical expert -- and  
18 while it's very clear from the case law that there can  
19 be situations where I could issue a preliminary  
20 injunction, for example, if it didn't meet the Jacobson  
21 standard and an order issued by the president of the  
22 university or health officers or even the governor  
23 violated a constitutional requirement and that there was  
24 no real and substantial connection to public health, I  
25 would be required to strike it down. But I don't



1 believe that that's the case here.

2 Another point that I think is significant is  
3 it's clear the executive order is a mandate but it's  
4 also clear it's qualified.

5 First, while there's much discussion about  
6 510,000 people would be effected in the UC community, we  
7 all know that virtually all of us, including me, I'm  
8 sitting in my dining room which has been kind of  
9 converted to a courtroom, are working from home and  
10 virtually everybody is working remotely.

11 And I believe that's also true for virtually  
12 all UC faculty, students, and employees. I realize that  
13 within that group there are some who probably must be on  
14 campus. But of the 510,000, and I have not seen  
15 numbers, in the papers, but intuitively it seems to me  
16 that likely a very, very small percentage of the 510,000  
17 who are described as being in the UC community in fact  
18 in the words of the executive order live, work, or study  
19 on campus and the mandate is only for those who are on  
20 campus.

21 And frankly, the other thing is it's not clear  
22 to me, and I realize the university is obviously a  
23 public institution and operates on public property, but  
24 almost totally independent of the -- my view of the  
25 Jacobson case and the Love versus State Department of

1 Education, it's not clear to me that the owner of the  
2 property can't condition entry on to property  
3 particularly when there are health considerations as UC  
4 has done.

5           The limits of the mandate really are triggered.  
6 Not everybody within the community needs to get the flu  
7 vaccine, only those people who are on a UC campus or UC  
8 property need to get the flu vaccine. And of course  
9 it's qualified because there are medical and religious  
10 exemptions.

11           I think that's the extent of my preliminary  
12 comments. So once again, I'm inclined strongly to deny  
13 the preliminary injunction for those reasons. It seems  
14 to me it passes constitutional muster and President  
15 Napolitano's executive order in my view does not -- is  
16 not an ultra vires act.

17           So Mr. Jaffe, it seems to me likely you should  
18 start. Make whatever points. And to the extent you  
19 think I've got it wrong, I'm all ears and want to hear  
20 if you think I've missed anything important.

21           And actually, I did miss something that I  
22 thought was important. And at some point in the  
23 plaintiff's papers, there was reference to something  
24 like that, if I were to uphold, which really means deny  
25 the preliminary injunction, this would be the first time

1 in American jurisprudence that a vaccine that was  
2 disconnected with the actual health emergency would be  
3 upheld. I don't know whether that's true. Frankly, put  
4 in that way, in my view, I'm not even sure that's  
5 terribly relevant.

6 What I do find highly relevant is attached to  
7 Ms. Chun's declaration is that by my count at the time  
8 the declaration was prepared and there may be more now,  
9 but there were at least 20 universities, public and  
10 private, throughout the nation who had flu vaccine  
11 requirements that certainly seemed to me based on the  
12 materials that were submitted are virtually identical to  
13 what UC has done.

14 Now, the UC executive order is much more  
15 detailed and much more supported and substantiated than  
16 the material attached in the declaration.

17 I don't know what other schools did before  
18 issuing the requirements that they issued, but many of  
19 them are very prestigious institutions, Johns Hopkins,  
20 Columbia, University of North Carolina. And again, I  
21 think there are like 20 universities that have done  
22 that, and, of course, those would be the universities  
23 that have done it at the time that Ms. Chun prepared her  
24 declaration. There may be more.

25 But this is certainly not the first time that a

1 university like the University of California has made  
2 the public health decision that a flu vaccine was  
3 required for the protection of the individuals, the  
4 protection of the university community, and to avoid  
5 taxing the health care system.

6 And I'm sorry. Please proceed, Mr. Jaffe. And  
7 again, if you think I have anything wrong or you think  
8 I've missed something or if you think I'm thinking about  
9 this in the wrong way, please let me know.

10 I would like both counsel to address whether  
11 they feel Love versus State Department of Education, the  
12 2018 opinion out of the Third District somehow is not  
13 controlling here.

14 MR. JAFFE: Okay. Judge, first thing I want to  
15 say, thank you so much. We on behalf of plaintiffs and  
16 the people that are opposed to the flu vaccine, I want  
17 to express my appreciation for how you've handled the  
18 case.

19 You moved it back into October because of  
20 circumstances. You know, we continued. You issued a  
21 tentative decision which in effect tried to create a  
22 standstill agreement based in part on  
23 Ms. Chun's gracious attempt to delay this. Thank you.  
24 Thank you. Thank you for the attention that you have  
25 shown to this case. I think it was greatly appreciated

1 by the members of the community, by those who were  
2 opposed to that. And I think that's -- you know, that's  
3 something and I think -- and I wanted to point that out.

4 The second thing I would like to say, and I  
5 appreciate how much paper there was in the case, and  
6 there was a lot of paper, and certainly the attention  
7 that you gave it is praiseworthy.

8 Just a quick point on the other universities.  
9 I think there were 21 universities mentioned and maybe  
10 there are a few more now, and I would like to point out  
11 that there are 5300 colleges and universities in the  
12 United States, and we now have evidence that .4 percent  
13 have issued the flu order and we have no evidence that  
14 99.6 percent of all the universities in the entire  
15 country have issued the flu order. So you know, you can  
16 make statistics talk about anything you want to prove.  
17 And I have no idea what the 99.6 number represents, but  
18 all I wanted to give is some context of what this 21  
19 reflects, notwithstanding as Ms. Chun pointed out to me  
20 it includes my alma mater, Columbia.

21 So that being said, I'm not sure what we can  
22 derive from the fact that 99.6 percent haven't. There's  
23 no evidence that they have a new mandate.

24 THE COURT: So let me respond.

25 One, thank you for the thank you. Frankly I

1 think it's an interesting case. It's interesting  
2 issues. One of the reasons why I'm in this position,  
3 it's an opportunity to learn from very highly  
4 experienced experts.

5 Let me also say, I don't doubt the good faith  
6 concerns that your clients have. It's just, you know,  
7 when I balance it, it seems to me that under the case  
8 law, the community interests outweigh their individual  
9 interests.

10 I also take your point that in some ways, yes,  
11 maybe there are only 20 or 21 universities. On the  
12 other hand, as I commented and I'll be candid, because  
13 we're in the middle of the pandemic, I routinely, in  
14 fact I have a link in my iPad to Johns Hopkins because  
15 they have the most sophisticated analysis of the data.  
16 And you're right, but this isn't an election. It's not  
17 whether 99 percent -- and you know, I don't know the  
18 extent to which Ms. Chun or people who were working with  
19 her were able to get all universities, but it isn't by  
20 numbers.

21 I was effected by the fact that many very  
22 prestigious universities made decisions exactly in line  
23 with what the University of California has done.

24 MR. JAFFE: Thank you, Judge.

25 The other point I would like to make on that

1 is, because of this case, I've been getting a lot of  
2 emails from people that want me to do the same thing at  
3 other universities, including my alma mater. And I have  
4 to tell you, my view is that this argument mostly works  
5 or almost exclusively works with public universities  
6 because of the Constitution.

7 I mean, I don't think there is a -- if this  
8 were a private university, I'm not sure you and I would  
9 be having this conversation. Because the Fifth  
10 Amendment, you know -- unless they're getting, you know,  
11 state funding or something, I'm not sure that applies.

12 So from -- like I say, I chose this case  
13 because it was -- because they have something called the  
14 Constitution, and it applies to the state action.

15 So again, there are different considerations in  
16 a private university versus public. And again, I mean,  
17 I think that's one of the reasons -- well, that's the  
18 reason, while I haven't filed against my alma mater  
19 because I don't think the constitutional claim applies,  
20 otherwise I would be very happy to go back to law school  
21 and serve them. But that's not going to happen.

22 So that being said, I understand the point.  
23 And certainly there are universities that have taken  
24 that position.

25 The most important thing I have to say about

1 that is the fact that the three of us, Ms. Chun, you,  
2 and I are dealing with the first time this issue has  
3 come up in court during the pandemic, right?

4 And I could tell you another thing. I've been  
5 asked to file in Massachusetts too because --  
6 Ms. Chun talked about Massachusetts -- the state of  
7 Massachusetts has issued an order for six month old kids  
8 to 30 year old students, but --

9 THE COURT: I saw that.

10 MR. JAFFE: You saw that.

11 THE COURT: I think that's the difference  
12 between my 20 and your 21.

13 MR. JAFFE: Right. I think that's right.

14 THE COURT: That is the next --

15 MR. JAFFE: And the thing about that,  
16 Massachusetts is -- it doesn't apply to employees and  
17 faculty, and in my mind, that is really the critical  
18 difference between this case, and, oh, it's not only  
19 Love. Love, I believe, is one of the three or four  
20 lawsuits that were brought after California changed the  
21 vaccine exemption law, and it removed -- you might be  
22 familiar with this.

23 In 2015, they removed the personal belief  
24 exemption from California law. Before, there was no  
25 religious exemption. Before you could just declare that



1 you have a personal belief against vaccines in 2015.

2 They changed the law because of this --  
3 supposedly because of this Disneyland flu thing, measles  
4 thing came up. They changed the law and eliminated the  
5 personal belief exemption, and there were three or four  
6 challenges to that.

7 One case was cited by Ms. Chun. That would be  
8 the *Brown* case. I cited one case which was in Federal  
9 Court, Whitlow, and Love I believe was the third case  
10 and there was actually one more.

11 In those cases --

12 THE COURT: That may have the Love case which  
13 cites --

14 MR. JAFFE: I think that was it.

15 So all these cases occurred, and there were  
16 four of them, and they all held the same thing. They  
17 all held that the removal of the personal belief  
18 exemption was not unconstitutional citing Jacobson,  
19 right, because of the balancing of it. Absolutely  
20 positively correct on that.

21 The reason I don't think that's controlling or  
22 any of these cases are controlling is really the  
23 critical difference in this case, which is that the last  
24 time any high level court has decided that adults --  
25 that there could be a mandate for adults I think was

1 Jacobson.

2           What happened in vaccine law is as a result of  
3 Jacobson, which -- and the interesting thing of  
4 Jacobson, Jacobson is always cited for the proposition  
5 you can mandate vaccine law.

6           But the law in Cambridge said that all adults  
7 have to be vaccinated during the course of a small pox  
8 epidemic or you had to pay a five dollar fine which is  
9 about 140 bucks in our time.

10           So the Supreme Court upheld that law based on  
11 the Jacobson analysis of the real and substantial test,  
12 the real and substantial connection between the mandate  
13 and the harm, they're trying to stop and that was the  
14 last time that I can think of.

15           And I sort of do this partially for a living  
16 so. This is my field. I have five other cases for  
17 doctors involving these kinds of things. I don't think  
18 there's ever been a case since that for adults.

19           What has happened is since the 19 -- teens and  
20 20's we've moved the vaccination decision to children.  
21 And in -- and that occurred in the early 20's with this  
22 Zuncht case, Z U N C H T, which said that -- it's black  
23 letter law, Jacobson, right. Jacobson says you can  
24 mandate vaccines.

25           So from Zuncht in the 20's onward, every single

1 case of mandatory vaccination for children, for school  
2 children, in my view has been upheld, which is why my  
3 name isn't on any of these cases in California after the  
4 removal of the personal belief exemption because -- you  
5 know, I'm a lawyer. I mean, I look at the law. I give  
6 an opinion to people. A lot of times they don't even  
7 like my opinion.

8 But the fact of the matter is, mandatory  
9 vaccination for children has been held to be  
10 constitutional in essentially all courts.

11 The question that hasn't been asked since  
12 Jacobson, and your Honor has the distinct honor to be  
13 the first judge in this country to give an opinion on  
14 this issue, is whether you can do that for adults across  
15 the state, right, whether you can affect, apply  
16 mandatory vaccination to adults. And like I say, I  
17 don't think -- you could look to Jacobson, I suppose,  
18 right. But they had this five dollar alternative where  
19 you pay the fine.

20 THE COURT: Although, I'll note Jacobson was a  
21 criminal prosecution. I mean, it may have been a five  
22 dollar fine, but it was a criminal prosecution where the  
23 defendant was found guilty. And it was the guilty -- I  
24 don't know -- verdict. I assume it was a verdict. It  
25 was a guilty verdict and was upheld by the US Supreme

1 Court.

2 MR. JAFFE: Absolutely.

3 THE COURT: Yes. It was only five dollars, but  
4 it was in a criminal context.

5 MR. JAFFE: Right.

6 But the point is -- well, it is coercive. But  
7 since that time, the law, the jurisprudence, has evolved  
8 to basically shunting it all off on children.

9 And now what's happening here and with all  
10 these 21 or other institutions, we're now entering a new  
11 phase. And I think it's important, and I think --  
12 respectfully, I think you need to address that in your  
13 opinion. I think that -- and if I'm wrong about this,  
14 someone will point this out to me. But I don't think  
15 there's been a case since Jacobson that says adults  
16 throughout a state have to be vaccinated for a disease  
17 that's not related to a pandemic. And Ms. Chun will  
18 point out if I'm wrong. And I think that -- that is the  
19 essence of the case that what you are doing here --  
20 look, I'll tell you another --

21 THE COURT: Hold on. If I can, and I'm sure  
22 Ms. Chun will point out if that's wrong, let's assume  
23 for the moment that you are right.

24 The obvious next question is: What difference  
25 does it make? Some of it I can anticipate, particularly

1 in Ms. Kiel's declaration, she makes what I view as kind  
2 of a, I don't know, bioethics point about informed  
3 consent.

4 And obviously adults are in a better position  
5 to evaluate the risks and the benefits and make an  
6 informed decision as to whether they want the benefit of  
7 the flu vaccine but with it the risk of adverse  
8 consequences. And I get that. And you may be making  
9 another point. That's one obvious distinction.

10 On the other hand, it seems to me that it may  
11 not really make a difference because, in fact, parents  
12 routinely in -- and my assignment prior to this was  
13 family law, so even besides being a parent, I have some  
14 family law background.

15 And it seems to me that indeed parents often,  
16 particularly at younger ages, always make decisions for  
17 children. And as a result, it's not clear to me that  
18 the distinction you made actually makes a difference  
19 when analyzing it, particularly in light of the  
20 constitutional challenges that you have raised.

21 MR. JAFFE: Interesting.

22 So you think that -- so the distinction between  
23 an adult and child, you're questioning whether that has  
24 any constitutional basis to make that kind of  
25 distinction.

1           THE COURT: That's right. Because -- and I  
2 think your point, which makes good sense to me, again,  
3 an adult is in the position to make an informed decision  
4 about the risks and benefits of getting a vaccine, but  
5 in particular here the flu vaccine.

6           And as we've already discussed in the papers  
7 make abundantly obvious vaccines are not ever, I don't  
8 think, 100 percent effective, and they almost always  
9 present some risk of adverse consequences.

10           And again, particularly when I read Ms. Kiel's  
11 declaration, she makes some arguments that,  
12 notwithstanding my tentative oral ruling, have some  
13 appeal that everybody should have the right to make  
14 decisions about what happens to their body.

15           Now, I believe that that is -- there are some  
16 bounds to that. One of the UC's experts analogized it,  
17 and frankly this has always seemed to me to be right,  
18 it's a little bit like drunk driving, that an individual  
19 may want to drive a car while intoxicated, and while  
20 it's good for the individual driver not to be driving  
21 while intoxicated, frankly I think far and away the real  
22 support for drunk driving laws is the risk of injury to  
23 others.

24           And it's the risk of injury to others that it  
25 seems to me weigh heavily in drunk driving. It weighs

1 heavily in vaccine.

2           And going back to this adult/child distinction,  
3 I understand why an adult is better able to make an  
4 informed decision about the risks and benefits of  
5 getting a vaccine. But it also seems to me that the  
6 same adult, if that adult has a child, is in exactly the  
7 same position and would make exactly the same decisions  
8 for the child as they would for the adult. And as a  
9 result, although it's a distinction, it's not at all  
10 clear to me that it makes a difference.

11           It just makes -- it moves the decision-maker as  
12 to whether or not you are in favor or opposed to a  
13 vaccine, and let me -- we'll have plenty of time to  
14 flush out all of the issues.

15           Let me ask another question though, and  
16 frankly, I'm not familiar with what you described as the  
17 Disneyland, I guess, event that happened in 2015 which  
18 led to the elimination of the person belief exemption  
19 which I guess otherwise I guess had been required by  
20 California law.

21           While I think I'm pretty firm about my  
22 tentative decision not to issue a preliminary  
23 injunction, it does seem to me that a personal belief  
24 exemption would provide a little bit of an escape valve  
25 for people who -- and I think I said this earlier -- I

1 don't doubt the good faith belief of your clients. And  
2 frankly I've also read the papers and I realized there  
3 may be -- I don't remember exactly how it was described  
4 -- but vaccine hesitancy, if you force too many people,  
5 you may wind up getting push-back. While as a matter of  
6 law it's my belief a personal belief exemption is not  
7 required. It has occurred to me that a personal belief  
8 exemption, as long as it can be addressed in a way  
9 that's tight enough, might sort of act as sort of a  
10 meliorative effect so that the university or if it's  
11 another government agency doesn't come across as too  
12 heavy-handed. Again, that's a total aside.

13 I don't think -- in my mind, that's not a legal  
14 issue. I think legally that when I look at the  
15 probability of success on the merits and the balance of  
16 harm, it seems clear to me that this executive order is  
17 constitutional.

18 As a matter -- it's not really politics but  
19 with human interaction, I do sort of wonder whether it  
20 might not kind of go down more easily if there was a  
21 personal belief exemption to the executive order. But  
22 that's a totally fortuitous comment.

23 MR. JAFFE: Right.

24 THE COURT: Sorry. I interrupted you.

25 MR. JAFFE: You know, as you were listening --



1 as I was listening to your order, you know, I think  
2 what -- you know, the real issue, the fundamental issue  
3 here is that -- we think as a matter of fact what  
4 happened was when the contact tracing and tracking  
5 committee met they kicked us around and they decided  
6 that we were not going to make it a mandate. It was  
7 going to be a recommendation. And I think the real  
8 heart of the case is a recommendation, a strong  
9 recommendation versus a mandate and the way that you're  
10 looking at it is mandate with personal belief exemption  
11 which is sort of the same thing operatively, you know  
12 whether you can opt out or whether you start by  
13 recommendation. So it's interesting that we're  
14 approaching the same problem with the same remedy from a  
15 little different angle.

16           And the problem is under the law you have a --  
17 under the mandate you have the medical exemption which  
18 is not very effective. I mean, it's basically  
19 anaphylactic shock for the treatment.

20           The way the medical exemption works, you really  
21 have to prove -- basically dropping dead from the flu  
22 vaccine before anything else. Autoimmune doesn't really  
23 count.

24           And then you have this -- it's not really  
25 religious. It's not really -- just to correct the

1 record, your Honor. It's not a religious exception.  
2 It's an accommodation. And the difference is a medical  
3 exception presumably doesn't require anything. But a  
4 religious accommodation is really a -- basically  
5 requires a mask.

6 And by the way, under California law, even  
7 if -- state hospitals, what you have to do during flu  
8 season, there is a requirement for a flu vaccine but you  
9 can avoid that by wearing a mask. The irony is the UC  
10 is requiring students, professors, employees that have  
11 no contact with the health care system, they have more  
12 stringent requirements than California law imposes on  
13 health care workers.

14 So literally in hospitals you could just wear a  
15 mask, right. And that's good enough to be around sick  
16 people and that's by statute, right.

17 But if you're in a university setting and you  
18 step foot on the campus you got to get the shot. And  
19 I'm wondering why, why the University of California  
20 feels that they need to protect the entire community  
21 more than the patients in hospitals, that they need to  
22 protect the sick patients in hospitals.

23 So you know, the answer is an additional layer  
24 of protection, right. But that layer of protection --  
25 you know, let's -- I don't know -- we were dealing with

1 this case -- the good and the bad news about this case  
2 is that we're dealing with this in real time.

3 THE COURT: Sure.

4 MR. JAFFE: Right? And for better and worse we  
5 filed these papers a hundred years ago back in August.  
6 And we filed an injunction papers mid-September. I  
7 don't know just if we -- certain facts just permeate.

8 Like, for example -- I don't know if you saw on  
9 Yahoo. They're having a problem with the flu vaccine in  
10 South Korea. A dozen people dropped dead. Two dozen  
11 people dropped dead. Now it's up to 60 people dropped  
12 dead after taking the flu shot.

13 Now, South Korea is still mandating the flu  
14 shot because they're saying it's unrelated. Singapore  
15 next door has stopped.

16 Now that probably would never happen here  
17 because our health care system is much better than South  
18 Korea's, except for what's happening in Covid.

19 But it underscores the fact that what you are  
20 talking about is a medical intervention, and you are  
21 talking about compulsory medical intervention, which has  
22 consequences.

23 And ultimately the thing that I -- I think I  
24 understand how a judge in a way has to be persuaded by  
25 the CDC and all the august experts who work for Bill

1 Gates and who are in charge of the vaccine policy. I  
2 totally get that why any case like this has to be an  
3 uphill battle.

4 But the one fact that I think predominates over  
5 everything is we are experiencing one in a hundred year  
6 event, right?

7 So the notion that august though they may be, a  
8 bunch of infectious disease experts can give their  
9 personal opinion based on their personal observations of  
10 authority and try to assuage, you know, what should be  
11 your concerns that the circumstances, the current  
12 circumstances are going to be such that the vaccine  
13 won't cause more harm than good, I find that troubling.

14 I think as lawyers, you know, maybe we got to  
15 look at this in terms of burden of proof. And that's  
16 what we talked about in the papers.

17 I would suggest to you that because of a one in  
18 a hundred year event, right -- I wish I could prove to  
19 you that the vaccine, the flu vaccine will cause more  
20 harm than good because of Covid 19. I can't do that,  
21 right. We don't have the data yet.

22 But the reality is they can't prove it's safe  
23 now. All they can do is extrapolate from a non-pandemic  
24 situation to a pandemic situation and say: Trust me.  
25 We're authorities. We're telling you it's safe.

1           Now, here's what we know, right, we know there  
2 is a phenomenon, an absolute proven phenomenon, you  
3 could call it virus interference, you could call it  
4 pathogenic priming, you could call it negative efficacy  
5 what is a scientific fact is that some vaccines cause  
6 more harm than good because of -- molecularly it's  
7 pathogenic priming, from a micro level, it's virus  
8 interference. We know that. That's established.

9           What happened in January 2029 some obscure  
10 scientist at DOD wrote this paper, and they compared  
11 people that got the flu vaccine to people who didn't get  
12 the flu vaccine and by and large he said that he found  
13 mixed results. This is this Wolf study.

14           Now, it's only an observational study but what  
15 he found is to the good. He found that the flu vaccine  
16 protected people from related conditions, related  
17 infections. And that's to the good.

18           Related to the bad he found that the flu  
19 vaccine was associated, strongly associated with an  
20 increase risk, 36 percent of contracting what was then  
21 common Corona virus vaccine. That's a finding.

22           What does that mean in terms of proof?  
23 Honestly, it doesn't mean much. It is suggestive of the  
24 fact that the viral interference pathogenic priming or  
25 however other you want to call it might cause more harm

1 than good. Nobody knows the answer to that.

2 THE COURT: So I hear you. I also -- going to  
3 an earlier point, there's no doubt in my mind the burden  
4 of proof rests on you under burden of proof or  
5 preliminary injunction. The plaintiff needs to prove  
6 the likelihood of success on the merits. So I don't  
7 think there is an issue about burden of proof.

8 We also know that Wolf wrote a letter saying  
9 this study should not be interpreted as one discouraging  
10 the taking of the flu vaccine, and he wrote that  
11 obviously in the context of the Covid 19 pandemic so.

12 And the viral interference that he was talking  
13 about was Corona virus but not the novel Corona virus.  
14 We're now dealing with, Covid 19.

15 MR. JAFFE: Correct.

16 And indeed to my credit, I will say, I pointed  
17 out right in the complaint about the letter. We're not  
18 hiding the ball here.

19 And look, I mean, the reality is that was  
20 done -- the article, peer reviewed though it was, was  
21 done before the pandemic, and there are politics here,  
22 which we can't really get into, but that is absolutely  
23 true, right? It is suggested, right. And that's the  
24 problem.

25 Let me just -- I think -- let me clear up what

1 I think is a confusion. I misspoke when I said burden  
2 of proof. The burden of proof -- obviously we have the  
3 burden of proof like success of the merits. I'm talking  
4 about a different burden of proof in effect by analogy,  
5 right. I'm talking about the medical issue, right. In  
6 other words when we talk about a flu vaccine in the  
7 context -- we're not having this conversation -- we  
8 would be having a different case last year, right.  
9 Suppose we -- what we're talking about whether they can  
10 mandate, the flu vaccine, apart from the pandemic.

11 THE COURT: I've pondered that too. I think  
12 that they probably could. I mean, there's no question  
13 that former President Napolitano's executive order  
14 was -- I don't know if triggered is the right word, but  
15 what motivated it was the Covid 19 pandemic.

16 But frankly, I tend to think that UC or other  
17 government agencies could do it even without that. And  
18 of course, the other part about -- there was some talk  
19 in the papers about quindemics, and we do know that  
20 medically people who are in -- I think the term -- I may  
21 be misusing -- this co morbidity --

22 MR. JAFFE: Co-morbidity, right.

23 THE COURT: -- or other health issues are more  
24 susceptible to Covid 19.

25 I think it's probably fair to infer that if you

1 have the flu you may be more susceptible to Covid 19. I  
2 gather we don't have a medical answer to that.

3 But I have pondered and tend to think that UC  
4 could have done this last year before the pandemic  
5 started, and that's somewhat consistent with what -- at  
6 least I take from the papers that since at least 2010  
7 there has been increasing encouragement by the CDC to  
8 have the flu vaccine widely taken by the public.

9 MR. JAFFE: You know, Judge, the thing I was  
10 going to tell you, I think as I look at it as a  
11 litigator, I think a new mandate without the -- I think  
12 I agree with you in the sense that if there was no  
13 pandemic, I think it would be more palatable because  
14 then you could just -- I think that that would better  
15 support -- it would better support their experts  
16 about -- and their expertise and their experience.

17 The problem I have is that the pandemic throws  
18 a monkey wrench into things. The wolf study, qualified  
19 as it may be, is certainly suggestive that there could  
20 be a virus interference? There are other studies that  
21 show to different subsets like pregnant women and  
22 children that it's going to have a negative effect, and  
23 I really think the heart of our argument is that -- and  
24 the heart of the medical argument is and why I don't  
25 think you should rely so much on their experts is that



1 none of them have any experience with the 1918 Spanish  
2 flu because they weren't around there.

3           And we're dealing with a completely new issue.  
4 And we may know, I suspect in two or three or four  
5 years, we are going to know whether the flu shot has  
6 helped or killed more people. We just don't know that  
7 now.

8           And I think in essence -- in essence our  
9 argument is that given the pandemic and given the lack  
10 of data, right, you could strongly recommend the flu  
11 shot but you can't force people to take it given what we  
12 don't know in the context of the pandemic. And that is  
13 consistent with your inclination that but for the  
14 pandemic they might be able to do it.

15           Because what we're really saying is you can't  
16 make people -- turn people involuntarily into human \*  
17 guinea pigs.

18           We know that there's this issue of vaccine  
19 interference, and nobody can tell you that it's not  
20 going to cause more harm than good. They could think --  
21 they could say anything they want, talk about argument  
22 by authority, but they can't prove it and in science  
23 they typically want to have proof.

24           Now, where is the proof that this flu shot  
25 won't kill 5,000 people in the UC communities? How can

1 they prove that? How do you know? South Korea, 60  
2 people got killed. How do you know? And if you don't  
3 know and you can't prove it, then what these experts are  
4 talking about is not science. It's their religious  
5 beliefs or their faith in vaccines, and that's really  
6 it.

7           How can you force people in this kind of  
8 circumstance to accept authority and hope for the best,  
9 which is essentially what they're doing, and just  
10 because the CDC says so and 21.4 percent of the  
11 universities do it.

12           That's what I got. You know, if it doesn't  
13 convince you, it doesn't convince you.

14           THE COURT: You know, I view my role -- I mean  
15 I'm not making the decision that this is the right  
16 medical decision, UC's medical -- well, their leadership  
17 team assisted by their medical experts have made that  
18 decision.

19           In my view my role is to provide guardrails to  
20 make sure that the decision that they've made fits  
21 within the guardrails set up by the Constitution.

22           I mean, you know as a lawyer by training and  
23 I'm a lawyer by training, we read a lot of expert  
24 declarations. Sometimes have expert testimony. You  
25 know evaluate it. But I'm not sitting as a trier of

1 fact in my view in this instance. Now, it happens I  
2 do -- and maybe to some extent I am.

3 As I indicated earlier, I do find the UC  
4 experts to be better credentialed, more experienced, and  
5 maybe even more to the point a little bit on both sides.  
6 Some of the statements in the declarations were a little  
7 conclusory. But the UC declarations were better  
8 supported in my view by evidence.

9 It's not perfect. Life isn't perfect. Science  
10 isn't perfect. As you say, we're going to learn more  
11 about this later, and you may be right.

12 But again, at least in my view, my role is just  
13 to make sure that the UC hasn't gone outside the  
14 guardrails in the Constitution.

15 And based on my review of the expert  
16 declarations and what the UC experts have said, the  
17 weight of the authority in my mind is that the decision  
18 was certainly rational. It certainly wasn't arbitrary  
19 and under the -- it meets the Jacobson standard.

20 And it seems to me that's the limit of my role.  
21 I'm not really making the decision as to whether from a  
22 medical standpoint this is better or not. I'm making  
23 the decision as to whether this violates the  
24 Constitution, and I believe that under all the cases  
25 together with the evidence that's been provided, it

1 doesn't violate the Constitution.

2           Separately, as I raised earlier, I do tend to  
3 think that a personal belief exemption, if one could be  
4 formulated, may make this go down more easily. I mean  
5 UC may still get, I don't know, but -- you know, 70, 80  
6 percent of what's described as the UC community may get  
7 the vaccine. If that's true, the public health goal is  
8 probably largely accomplished.

9           But from a legal standpoint, from a  
10 constitutional standpoint, I believe that what they've  
11 done is within the bounds of the Constitution,  
12 buttressed by the fact -- and I hear your point. But I  
13 think you, like me, believe that probably UC could have  
14 done this last year even without the pandemic.

15           And you're right, nobody knows what the  
16 interaction between the flu vaccine and the pandemic may  
17 be. We do know for sure that people who are vulnerable  
18 from a health perspective are more likely to get Covid  
19 19.

20           And intuitively it seems to me that if someone  
21 has the flu it seems likely that you are more vulnerable  
22 to getting Covid 19.

23           And it also another interrelationship between  
24 the two. The symptoms are very similar. And it does  
25 seem to me that if somebody has a cough or the other

1 symptoms of either the flu or the Covid 19, if you  
2 haven't had the flu shot, you're going to wind up  
3 needing to take the test and be in isolation until you  
4 get the test results. And I know the time to get test  
5 results has been shortened, but it's -- still it can be  
6 fairly lengthy.

7 MR. JAFFE: Right.

8 I would point out, Judge, that Cindy Kiel  
9 pointed out -- she's in the administration. She pointed  
10 out that there's now a mandatory testing, Covid testing,  
11 once or twice a week, so they're going to know. I mean,  
12 if people are sick and they get the test and if it's not  
13 Covid, then it's the flu, so UC, to its credit, has put  
14 in rather stringent testing requirements for Covid.

15 So I don't think -- I think her point was that  
16 there really is no additional utilization required  
17 because of the testing. And it's a binary choice.

18 So I think -- I understand what you are saying.  
19 I think that really the issue is -- let me ask  
20 something. You don't think that -- you know, they have  
21 tried the hospital bed thing in Alabama; you know, these  
22 two in the Robinson case. You don't think that those  
23 cases suggest they would have to come with evidence that  
24 there's going to be a shortage of hospital beds? That  
25 didn't impress you, those two cases, the Alabama case?

1 It was abortion content.

2 THE COURT: I don't. And while I'm not  
3 supposed to do kind of ex parte research, I mean for  
4 some period of time before, I even got kind of involved  
5 in this case. I was tracking where and the extent to  
6 which Covid 19 cases were evolving. And the last time I  
7 looked, the predictions of some of the national medical  
8 experts that we are likely to hit a second wave clearly  
9 seems to be true.

10 Whether you look at the New York Times or Johns  
11 Hopkins or the CDC or the World Health, all of them show  
12 that for cases the curve today is above -- in the United  
13 States is above where it was in July.

14 MR. JAFFE: Oh, absolutely.

15 THE COURT: So the idea that we could run out  
16 of hospital beds seems plausible to me. I mean, I know  
17 that hasn't happened, and it seems that we didn't run  
18 out of ventilators mostly, but the idea that this health  
19 system would be overtaxed, that seems very credible to  
20 me.

21 I know from experience, I mean, other medical  
22 procedures quite often whether mandated, and I know at  
23 least somebody has mandated, that you can't have other  
24 medical procedures.

25 MR. JAFFE: Right.

1           THE COURT: But quite often hospitals just  
2 aren't in a position to do it. They want to keep those  
3 beds available. I don't know whether that's necessarily  
4 within California or near the UC campuses.

5           But the idea that we may be approaching a  
6 second wave and there may well be a shortage of hospital  
7 beds or other undue burdens on the health care  
8 facilities and staff, doctors, nurses, other health care  
9 professionals, that seems entirely plausible to me.

10          MR. JAFFE: Right. I certainly understand  
11 that.

12          Let me ask you this. You know, circling back,  
13 one thing you said about all the increases, you know, it  
14 seems to me that because of the second or maybe the  
15 third wave may be -- because of the third wave, what's  
16 happening is, you know, Governor Newsom just issued  
17 his order that you can't even gather, you know, you have  
18 to be a three family limit. I don't know if you are  
19 familiar with that, Judge, you know, with this all going  
20 on in California.

21          THE COURT: -- county Superior Court.

22          MR. JAFFE: Well, that too.

23          But, you know, the irony is, and I think this  
24 is pointed out by Doctor Ornstein (ph), one of the  
25 defense experts, one of the reasons why Australia had a

1 light flu season was because people aren't going out and  
2 travel as much because of this Covid thing.

3 So while it's certainly true that there's this  
4 substantial --

5 THE COURT: Again, we probably need to stay in  
6 the record. But only last Saturday I had a Zoom call  
7 seated in this position with a couple I know well who  
8 are down in Melbourne, and they're going out to eat as  
9 much they want.

10 MR. JAFFE: Right.

11 THE COURT: Just Australia has had better  
12 restrictions. They had to go through a two week  
13 quarantine. I don't know that that really bears on this  
14 issue.

15 Again to me, my role is, as I said, kind of the  
16 outer guardrails to provide some check that in fact  
17 there isn't some violation of privacy or liberty that  
18 runs afoul of the constitutional protections which would  
19 only occur if there isn't a real relationship with a  
20 public health concern.

21 And again, it seems to me that there is --  
22 seems to me that UC took great care -- I mean, they knew  
23 that among some people that this wouldn't be very  
24 popular, or I assumed they knew that.

25 MR. JAFFE: Sure.



1           THE COURT: I think they assumed it was going  
2 to be a small fraction. I don't know. We may find out.

3           Again, totally apart from the legal issue, I  
4 think there might be some merit to having a personal  
5 belief exemption if it can somehow be tailored narrow  
6 enough so that people don't just say, hey, you know, I  
7 don't want to get the flu vaccine because that's not --  
8 frankly, I wouldn't feel comfortable in a UC classroom  
9 sitting next to people who just said, you know, I don't  
10 want the flu vaccine.

11           And frankly, I was also effected -- Ms. Kiel's  
12 declaration, she said that at one point -- I'm trying to  
13 think exactly how she put it, but she wore -- working  
14 sick was almost a badge of honor. I get that. And  
15 there have been times when I was busy enough in law  
16 practice that I didn't have a choice.

17           But I was very mindful of people around me as  
18 she's changed it. She says she doesn't do that anymore.  
19 I've had people come to work sick. And generally I try  
20 to avoid it, and generally I worry about the extent to  
21 which people who do that or who don't get a flu vaccine  
22 are concerned about others.

23           MR. JAFFE: Right. Let me run two other things  
24 by you. And I don't know what Ms. Chun has to say.

25           THE COURT: She has to make some points.

1 MR. JAFFE: Well, she's -- you're making her  
2 points, so you know...

3 THE COURT: Well, the reason for that is I  
4 felt -- and look, both sides have well prepared papers,  
5 but she had papers that persuaded me. That's why I'm  
6 making her points. I have read both of your papers.

7 MR. JAFFE: I understand.

8 THE COURT: I just found her papers,  
9 particularly the expert declarations, more persuasive.

10 And by the way, we still haven't addressed why  
11 the *Love versus State Board of Education* case isn't  
12 controlling. Again, we've been kind of assuming that I  
13 have discretion. Frankly, on reading that case, it's  
14 not clear to me that I do.

15 MR. JAFFE: Right. I'll certainly look at that  
16 case. I'm not familiar -- I thought it was one of those  
17 four cases on the SB 277 thing.

18 THE COURT: It may well be. It cites the case  
19 that you refer to --

20 MR. JAFFE: Whitlow or Brown.

21 THE COURT: That's right.

22 MR. JAFFE: Yes. That was one of the four on  
23 SB 277 for children. And I understand your point. You  
24 don't see an operative difference between that.

25 Does it bother you -- let me just ask you a

1 question. Suppose Doctor Bottington (ph) went to talk  
2 to the Supreme -- the chief justice of the Supreme Court  
3 and says: You know what, this thing is working so well  
4 with the UC I would like all the court personnel in the  
5 state to get the shot. And the -- and the chief justice  
6 says: You know, I think that's a fine idea. Gives them  
7 all the declarations.

8 And all the sudden there's an order that  
9 everyone who comes into court, all the judges, right,  
10 they got to get the shot.

11 Now, maybe you already have the shot, you know.  
12 We don't need to know that. But I'm sure -- you've been  
13 around, you know, for a couple years on the bench, and  
14 I'm sure you know about your contrairs and all. And I  
15 would imagine given the fact that according to the CDC  
16 57 percent of adults in California do not take the flu  
17 vaccine, or at least last year. Something like 63  
18 percent the year before didn't take it.

19 So my view, with all due respect to myself,  
20 it's the majority position that most people in  
21 California do not take the flu shot for whatever reason,  
22 personal belief or what not.

23 I would imagine that some of your contrair,  
24 right, maybe the more colorful among them, would read  
25 this chief justice's order saying they got to get the

1 shot. And I can imagine that a more colorful one might  
2 even express some advice as to where the chief justice  
3 could go or some activity he could engage in.

4 In other words, they might be offended by the  
5 fact that his boss is going to make a condition of work  
6 or continuing in work, right, that they take the flu  
7 shot.

8 And I would suggest to you, you know, harkening  
9 back to something that you and I certainly remember,  
10 maybe -- Ms. Chun maybe if she's old enough, you know,  
11 Potter Stewart about, you know, obscenity, I know it  
12 when I see it. If you take a gut feeling of -- maybe  
13 not you, but some of your colleagues that you have lunch  
14 with, and that is -- that gut feeling, you know, I think  
15 expresses really the outrage that a substantial minority  
16 of this community feels, you know, about a personal  
17 violation for a compulsory medical procedure.

18 And we -- mindful of the fact that all of these  
19 cases, including I believe the case you cited, we do  
20 that to kids. Constitutionally, maybe there's a  
21 difference, maybe there isn't, but we just don't do  
22 that.

23 And you're going to be the first judge in the  
24 country that is going to allow that. And you know what  
25 that makes me? That makes me Fred Korematsu's lawyer

1 from the Korematsu case, right?

2           And I'm trying to explain -- I'm his criminal  
3 lawyer and I'm trying to tell the judge: This is a  
4 really bad idea because now it's the flu. Next it's  
5 going to be the meningitis vaccine or any vaccine they  
6 want for adults who haven't consented to it that are  
7 working and told they can't work anymore and unless they  
8 take the shot.

9           That's what this case is really about.

10           THE COURT: I hear you, and it's -- but once  
11 again, I'm not making the decision, in my view, as to  
12 whether on balance medically this is the better  
13 approach. The decision I'm making is whether the UC's  
14 decision is within constitutional bounds.

15           MR. JAFFE: I understand.

16           THE COURT: And I believe it is.

17           MR. JAFFE: Okay. And Judge, I've taken up too  
18 much of your time. I would like now Ms. Chun to explain  
19 to you why you are a hundred percent right.

20           THE COURT: That's fine.

21           Ms. Chun, feel free to differ with me. I may  
22 have missed something, some of the important points that  
23 were in your papers. I tried to capture them all.

24           MR. JAFFE: You did an excellent job, Judge,  
25 and just -- it's a credit to Ms. Chun's persuasiveness,

1 and I compliment and congratulate her.

2 MS. CHUN: Well, thank you. That's very  
3 gracious of you.

4 But I do think, your Honor, that -- you know,  
5 we are really grateful to you for taking the time to  
6 read all of the papers and to be so thoughtful with  
7 regards to your reasoning. And I believe, you know, we  
8 would be -- we would be happy to submit to the Court's  
9 tentative decision.

10 I do want to address some of the questions that  
11 you had raised as well as to address other points that  
12 Mr. Jaffe raised.

13 And you know, your Honor, we're very  
14 appreciative of the fact that you understand the fact  
15 that this case really is first and foremost about  
16 protecting the public health and safety of the UC  
17 community.

18 And I think especially given this inflection in  
19 time, this case is also really about leadership. When  
20 you pointed out that there were 21 -- you know, 20  
21 leading universities that have also implemented a flu  
22 vaccine mandate for faculty and students and employees,  
23 my read of that, your Honor, is that these are the  
24 universities that took the care to look ahead to  
25 diligently prepare for the Covid 19 pandemic and for the

1 anticipated confluence of this flu season with this  
2 unprecedented and deadly pandemic.

3           And I can tell you that at the University of  
4 California we should be grateful with regards to the  
5 time and effort and care that they've put into since  
6 January with regards to how do we protect our employees,  
7 how do we protect students.

8           And your Honor got it right on the money. This  
9 is about protecting the entire community, especially the  
10 vulnerable on campus. It's not just about one  
11 individual or two individuals who don't take the  
12 vaccine.

13           And so your Honor, I believe that when you  
14 think about the points that your Honor made with regards  
15 to the law and what this Court can do, I totally agree  
16 with the Court that *Love* is very much controlling when  
17 asked us to address that.

18           And I think your Honor that the *Love* case and  
19 *Brown* and other similar cases about Senate Bill 277 and  
20 the fact that the California courts have unanimously  
21 found that the elimination of the personal exemption  
22 provision that used to exist with regards to the  
23 vaccination of students is constitutional. It is very  
24 much controlling here.

25           And your Honor, the reason why it's controlling

1 is not only with regards to the constitutional analysis  
2 here. But I would, A, disagree with Mr. Jaffe. This  
3 Court is not going to be the first court to determine  
4 that adults should in fact for the interest of public  
5 health be required to take vaccinations.

6 We cited, for instance, CF versus City of New  
7 York, and I believe that is 2019 West Law 1744, 748.  
8 That was another case --

9 THE COURT: Ms. Chun, could you give me the  
10 page.

11 MS. CHUN: The citation, yes, sir. It's 2019  
12 West Law 1744, 248 (sic) decided in April 2019.

13 That case, like this case, brought by the  
14 Children's Health Defense, which represents a number of  
15 antivaccine causes challenged the city of New York's  
16 decision and order to require mandatory MMR vaccinations  
17 among adults and children in certain zip codes. And the  
18 court in New York upheld that decision as  
19 constitutional.

20 Similarly, your Honor, we have a case closer to  
21 home, which Mr. Jaffe's reply secondarily cited, which  
22 we did not get an opportunity to respond to. The  
23 plaintiff's reply cited Scoff versus Regents (ph) with  
24 regards to the university and the Regents'  
25 constitutional authorities. That case cited a case



1 called *Wallace V. Regents*, First Appellate District  
2 decision. That citation is 75 Cal.App. 274, pin cite  
3 278, decided in 1925.

4 In that case, your Honor, a gentleman by the  
5 name of Mr. Wallace, an adult who was admitted to the  
6 University of California was denied matriculation  
7 because he refused to comply with the vaccination  
8 requirements that the university had for small pox.

9 And your Honor, he filed for a writ petition, a  
10 writ of mandate, and the First Appellate District denied  
11 that writ decision. And it's a very short decision,  
12 three pages, but it's worth reviewing because I think,  
13 your Honor, that it will give you additional bolstered  
14 comfort like *Love*, like *Brown*, like these other cases  
15 that have been cited in our papers that hold that these  
16 sorts of vaccination requirements are indeed  
17 constitutional and are rationally related to the public  
18 health purpose.

19 In *Wallace*, the court there said that the  
20 University of California was in fact a unique  
21 constitutional entity that is very well within its  
22 rights to deny matriculation to Mr. Wallace for his  
23 refusal to take this small pox vaccine.

24 And your Honor, I think you made a very good  
25 point which neither party really made in our papers,

1 which is that the case for upholding the  
2 constitutionality of universities flu vaccine mandate is  
3 stronger because it is as to adults, as to adult  
4 employees and students.

5 And your Honor, you know, I think not only the  
6 fact that you pointed out, you know, children aren't  
7 really in a position to give informed consent, but here,  
8 your Honor, with regards to these adults, this is not a  
9 condition of employment, it is not a condition of  
10 enrollment.

11 It is, the Court correctly pointed out, only  
12 applicable to those people who are working or studying  
13 directly on campus because they are essential persons or  
14 because they have some sort of required lab.

15 This is the minority, your Honor, and so the  
16 actual numbers are persons who are on the ten UC  
17 campuses and the five medical facilities hover around  
18 100,000 right now. It's probably less than 20 percent  
19 of what the normal University of California population  
20 would be.

21 And your Honor, so we think that on the case  
22 law, the Court has it right on the money with regards to  
23 the constitutionality.

24 And with regards to this suggestion that a  
25 personal exemption might be a good policy, which I

1 think, you know, the Court and Mr. Jaffe suggested *Love*  
2 and these other cases, I think they're witness to the  
3 fact that our legislators through Senate Bill 277 made  
4 the policy decision that personal exemption was  
5 dangerous and really deadly to California's population.

6 We had a personal exemption to the vaccination  
7 required that was required for school children, and that  
8 led to outbreaks of particular diseases that was really  
9 intolerable. And that's why the personal exemption  
10 exception was eliminated, and that decision by the  
11 legislature was consistently upheld.

12 And your Honor, I think that if we had a  
13 personal belief exemption here, given the unique  
14 circumstances of the university is facing with regards  
15 to the flu season and Covid 19, that would really put  
16 too many people to not avail themselves of the flu  
17 vaccine and it would lead to not only potentially flu  
18 disease but more serious flu related complications. It  
19 would increase the flu hospitalization incidents and  
20 could potentially leave to deaths.

21 And so, your Honor, I think that the  
22 university's decision to follow the California  
23 legislature's decision to eliminate the personal  
24 exemption exception in this case was something that was  
25 found that was really the responsible thing to do.

1           So I just want to address that because the  
2 Court was pondering a little bit about that.

3           Your Honor, with regards to South Korea, I  
4 don't know how much credence the Court gave to that,  
5 that is not in the record, but clearly --

6           THE COURT: When we moved outside of the  
7 record, both Mr. Jaffe and I, in a somewhat freewheeling  
8 discussion at times, we did get outside the record. I'm  
9 not going to put any weight on that.

10          MS. CHUN: Okay. Thank you, your Honor.

11          I would take the University of California's  
12 health and medical services over South Korea's any day.  
13 And so I just wanted to make sure that wasn't of  
14 anything to the Court.

15          Your Honor, with regards to the burden of  
16 proof, I think you again were correct with regards to  
17 the fact that it's the plaintiff who has the burden  
18 here. And in this particular instance, because this is  
19 a public health regulation by the university, that is  
20 actually the Court gave even greater deference and some  
21 of the cases that we cited in our papers discuss that.

22          I think that one case we cited, it's called  
23 Mallogy (ph) versus Regents has particularly helpful  
24 language about how university's public health  
25 regulations have the force of a statute. And when the

1 public health is at stake, that deference is even  
2 greater than normal burden of proof that the plaintiffs  
3 bear in a case like this when they are seeking the  
4 extraordinary remedy of a preliminary injunction.

5 Your Honor, Mr. Jaffe made the comment that  
6 this was basically a program that was turning people  
7 into guinea pigs, and that is definitely not the case.

8 As your Honor pointed out, one thing that has  
9 been a little perplexing about this case is that as far  
10 as we can tell none of these plaintiffs have alleged  
11 that they are even subject to the exempt order. In  
12 fact, some of them, such as Professor Olson explicitly  
13 allege in their declarations that they are teaching  
14 remotely, that she has only been in her home since the  
15 spring. This is the Francis Olson declaration in  
16 support of these opposition at paragraphs three and six.

17 And as to the other students, the UC Santa  
18 Barbara students and the UCLA students, those campuses  
19 are engaged in remote learning right now. And so in the  
20 first instance, it's never even been clear to us that  
21 these particular plaintiffs have standing.

22 Ms. Kiel, whose concerns we take very  
23 seriously, she too is somebody who is not required to be  
24 on campus. Yolo County is currently under a government  
25 order where nonessential workers have to be working from

1 home due to the Covid 19 pandemic.

2 And so to the extent that anybody has a  
3 concern, there are not only medical exemptions,  
4 religious accommodations available, but the Court didn't  
5 mention at the outset that the university is also  
6 offering disability accommodations, which is broader  
7 than medical exemption.

8 And we have thus far received about 1100, 1200  
9 such requests, and they are being processed. Any time  
10 Mr. Jaffe brought somebody to my attention who was  
11 having difficulty getting the paperwork processed, the  
12 university was very responsive in terms of making sure  
13 that that person got the paperwork that they needed and  
14 that the request was approved.

15 In fact, with Ms. Kiel, and this goes to the  
16 exhaustion point, your Honor, we had offered to, you  
17 know, provide her the paperwork so that she could put it  
18 in. And I understood from Mr. Jaffe that she didn't  
19 want to do it.

20 You know, the point being is there's no  
21 intention here and there's in fact no outcome of anybody  
22 being a guinea pig at all. And in fact, I think  
23 university's flu vaccine mandate was narrowly tailored,  
24 it was very thoughtfully created, and it reflects in  
25 fact something that the university was well within its

1 rights to do.

2 THE COURT: Thank you.

3 I don't know if, Mr. Jaffe, do you have any --  
4 I think we've thoroughly aired the issues. I am going  
5 to deny the motion for preliminary injunction. I'll  
6 have 0we'll have an order out as soon as possible. I  
7 don't think it will be too long.

8 But frankly, having gotten through the papers,  
9 and again, let me say, I mean the papers for both sides  
10 were very well prepared to me. It's a very interesting  
11 issue.

12 On the other hand, I'm sensitive of the fact  
13 that the executive order was to go into effect on  
14 November 1st and we're now November 5th.

15 So the injunction motion for preliminary  
16 injunction is denied now and again an order will follow  
17 shortly.

18 MR. JAFFE: Can I just --

19 MS. CHUN: Thank you, your Honor.

20 MR. JAFFE: Can I just point out a couple  
21 things just for the record, Judge?

22 THE COURT: Sure.

23 MR. JAFFE: First, the New Yor case I'm  
24 familiar with, and there was a measles outbreak in New  
25 York, and the court ordered communities in zip codes to

1 take the measles' shot.

2 But you know what they didn't do? They didn't  
3 order these people to take the flu shot because of a  
4 measles outbreak. That's what they didn't do.

5 And as I understand it now, there are only  
6 100,000 people that are forced to work at the UC campus  
7 that have to take the flue shot out of 500,000, 100,00  
8 that have to be on campus.

9 THE COURT: That's what I understood.

10 MR. JAFFE: Right.

11 MS. CHUN: It's not just workers, your Honor.  
12 It's students who were either living on campus --

13 MR. JAFFE: Right.

14 MS. CHUN: -- studying on campus, or employees.

15 THE COURT: But the total number of people in  
16 the UC communities that are effected by the executive  
17 order is in the range of 100,000.

18 MS. CHUN: Yes. That's our best judgment.

19 MR. JAFFE: Plus anybody who has to come into  
20 the UC campus. Basically you can't come into the campus  
21 unless you get the shot.

22 THE COURT: You know, I've pondered that.

23 It seems to me that under the literal wording  
24 of the executive order and it seemed to me former  
25 President Napolitano likely with the help of certain



1 medical and health care professionals and likely  
2 lawyers, I think she actually used words like living,  
3 working, or studying.

4           And as a result, somebody casually walking  
5 across the campus -- I mean, I certainly don't envision  
6 and I would expect Ms. Chun doesn't envision that  
7 there's going to be some sort of barricade, you know,  
8 around the campuses.

9           It's the people who are regularly there. You  
10 can't go to a classroom and study. You can't live in a  
11 dormitory. You can't -- if you are faculty, you can't  
12 go to your office without a flu shot.

13           You know, if the Federal Express guy is  
14 delivering a package to somebody, I don't think that's  
15 within the scope of the executive order.

16           Again, that's not really before me now.

17           MR. JAFFE: No, it's not.

18           THE COURT: But as I read the executive order,  
19 she tailored it to not just kind of a trespass concept,  
20 if you put your foot on UC property, it was more, if you  
21 did these activities which were more continuous on UC  
22 property, you needed to get this flu vaccine.

23           MR. JAFFE: Well, cutting off people's cards  
24 and -- they cutting off people's access cards and nurses  
25 are no longer being put on schedule without the flu

1 shot.

2 THE COURT: Well, but you assume that's because  
3 they're working, which is within --

4 MR. JAFFE: Right. If they're working on  
5 campus.

6 THE COURT: Right.

7 MR. JAFFE: Right. But you can't go on campus  
8 without the flu shot. Your access card is not going  
9 to be -- is not going to be granted.

10 MS. CHUN: And the Court's understanding is  
11 correct. I mean, UC policy is actually narrower than,  
12 for instance, Johns Hopkins or other universities who  
13 have policies that extend to contractors. UC did not do  
14 that. So your Honor is correct.

15 MR. JAFFE: Actually, one of the guys who  
16 wanted to be a plaintiff was a contractor, so UC has  
17 sent out a policy to contractors at least at UC Davis  
18 Hospital saying all contractors have to be compliant  
19 with the order.

20 But I think that's a small point. It doesn't  
21 really matter. If they can do it for employees, then  
22 presumably they can do it for anybody who sits in the  
23 office. So I don't think that's a significant legal  
24 difference.

25 Judge, I understand your order. I greatly

1 appreciate your taking the time and the interest in the  
2 case.

3 THE COURT: Well, again, I greatly appreciate  
4 the briefs and the oral argument. Again, it's a very  
5 interesting case to me.

6 Ms. Chun, did you have something you wanted to  
7 add?

8 MS. CHUN: Yes, your Honor.

9 Just two quick little data points for the  
10 record and two housekeeping questions, your Honor.

11 So with regard to the hospital bed issue and  
12 the speculative second wave of Covid 19, unfortunately  
13 we are living in that second wave of Covid 19 now. We  
14 have recorded now more than 100,000 new Covid 19 cases  
15 per day in the United States unfortunately as we speak.

16 So one of the three things that  
17 Mr. Jaffe's papers says is speculative has in fact come  
18 home to roost.

19 With regard to hospital beds, as you can  
20 imagine with UC's hospitals, we are monitoring that  
21 condition day by day. We are anticipating not having  
22 hospital beds potentially in the Los Angeles area by  
23 January or February.

24 So this is not something which is simply mere  
25 speculation. These are actual facts which have been

1 informed the universities planning and way of thinking  
2 about how to prevent and mitigate against flu here on  
3 campus.

4 With regard to the housekeeping, first, the  
5 plaintiffs had moved ex parte for an order to show cause  
6 to hold the university in contempt.

7 We believe that that was baseless because there  
8 was no violation of this Court's order, let alone a  
9 willful violation. I just wanted to make sure that the  
10 Court was going to deny that application just for the  
11 record.

12 THE COURT: Yes.

13 MS. CHUN: And then secondly, your Honor, the  
14 plaintiffs -- I'm sorry -- the defendants had filed  
15 objections to a number of the plaintiff's evidence  
16 including declarations that didn't have foundation, you  
17 know, were hearsay. There was one declaration that was  
18 filed without a signature and a subsequent one which was  
19 materially different was filed untimely.

20 Will the Court be issuing a ruling on the  
21 objections when you issue the written decision?

22 THE COURT: We will certainly comply with the  
23 Reid vs. Google requirements.

24 MS. CHUN: Okay. Thank you, your Honor.

25 THE COURT: So we'll do whatever is required,

1 yes, which I would expect that the answer is yes.

2 MS. CHUN: Okay. Thank you.

3 MR. JAFFE: Judge, one other thing,  
4 Ms. Chun talked about two more recent standards. She  
5 seemed to suggest that the test was a rational  
6 relationship. If we use it in more modern terminology,  
7 obviously you're familiar with the tripartite test and  
8 all.

9 I mean, if we're talking modern, there's no  
10 way. This is a fundamental right. Judge, you're  
11 allowing the University of California to inject people.  
12 This is a fundamental right of bodily integrity.  
13 There's no way any court is going to uphold this under  
14 rational relationship tests.

15 It's probably strict scrutiny, but if not, it's  
16 certainly intermediate scrutiny. So maybe you ought to  
17 clarify in light of Ms. Chun's argument. And I would --  
18 look, I'm an officer of the court too, and Judge, I have  
19 to tell you, I mean, I don't see -- we can talk about  
20 the *Jacobson* standard. But if we're talking about more  
21 modern parlance of the Constitution, I would strongly  
22 discourage you from making a ruling that the rational  
23 relationship test applies in this case. I think that is  
24 just an invitation to error.

25 I mean, you know, you argue strict scrutiny --

1 THE COURT: Pardon me, Mr. Jaffe. I think you  
2 cited the *Jacobson* case in your complaint so.

3 MR. JAFFE: Correct.

4 THE COURT: Frankly, I largely decide cases  
5 based on the positions that the parties take. I'll  
6 consider your point and deal with it as I will.

7 And again, we'll get an order out shortly.  
8 I -- hopefully we can get covered all of the additional  
9 points and housekeeping issues again.

10 MR. JAFFE: We have, your Honor.

11 THE COURT: Thank you. It's an interesting  
12 case. But the motion will be denied. Thank you very  
13 much.

14 MR. JAFFE: Thank you very judge.

15 MS. CHUN: Thank you, your Honor.

16 THE COURT: Bye bye.

17 MS. CHUN: Bye, bye. Thank you.

18

19 (Recess was taken at 4:22.)

20

21 --o0o--

22

23

24

25



1 and the certified transcript prepared  
2 by the reporter. Those differences  
3 will include the following, among  
4 others:

5 A. Words may change;

6 B. Page and line numbers may  
7 change;

8 C. Punctuation may change;

9 D. Quotes may change.

10  
11 3. Providing a Livenote/Realtime  
12 ASCII and/or email or saving  
13 Livenote/Realtime onto a computer  
14 hard drive will only be provided when  
15 a certified copy is purchased and  
16 there will be a charge for the  
17 Livenote/Realtime rough transcript in  
18 addition to the charge for the  
19 certified copy.  
20

21  
22  
23 (NOTE: THIS IS NOT A CERTIFIED TRANSCRIPT  
24 AND IS NOT TO BE USED IN  
25 MOTIONS, EXHIBITS, OR OVERHEAD DISPLAYS.)