

25 Cents

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Paul McCloskey
... wants the tapes.



Tom Adams
... calls them innocuous

Judge bans secret recording Attorney calls tape 'crucial' in East Palo Alto trial

By Dave Farrell
Times Tribune staff

Adams urged Cruikshank not to allow the taped conversation to be admitted as evidence because it represents a "disgusting violation of Constitutional rights" of the resident who was unknowingly recorded.

The telephone conversation was recorded by a U.S. Postal Service inspector with approval from the U.S. Department of Justice. The postal inspector is investigating allegations of mail fraud involving absentee ballots cast in the incorporation election.

Cruikshank made it clear he didn't approve of the phone conversation being recorded.

"We're not going to have any tapes in here," Cruikshank said after McCloskey asked that the tape be played in open court. "We're not going to have people's rights violated in my courtroom."

"But I think this tape is crucial to this case, your honor," McCloskey said.

"I don't know about that. It might be all that. But I sure don't think we should turn back the clock to 1930 Germany," Cruikshank replied.

After he ruled not to allow the tape into evidence, Cruikshank expressed his frustration about the case. "This case has the aroma of a fish market," he said.

Cruikshank said he is concerned that some residents have been manipulated and pressured into testifying a certain way during the trial.

On Wednesday, Cruikshank said he believes people on both sides of the suit have "dirty hands."

Several times during the trial, Cruikshank has expressed fears that the lawsuit may convince some residents that voting is just too much trouble.

The trial is scheduled to resume Wednesday, when attorneys for both sides are expected to present their closing arguments.

The controversy over the taped conversation occurred on the 13th day of the trial, which was initiated by the Citizens Coalition Against Incorporation Now. CCAIN members allege that the June 7 election was filled with voter fraud.

In the election, voters approved incorporation for East Palo Alto, San Mateo County's poorest and most crime-ridden community, by 15 votes.

McCloskey originally had filed challenges to more than 300 votes cast in the election, claiming they were cast improperly or illegally. Since the trial began, he has dropped challenges to the majority of those votes. Thursday, he said his final list of challenged votes will include 65-70 ballots.

One vote McCloskey continues to challenge allegedly was cast by one of his clients, Roy Lee Ashford.

Ashford, a maintenance worker at Stanford University, has testified that he never saw a ballot and that he never voted in the election. Yet the San Mateo County clerk's office has records with Ashford's signature on them indicating he voted by absentee ballot.

Before the trial began, Ashford gave sworn statements saying he did not vote in the election. Shortly after he gave his statements, he claims to have been offered a bribe to change his story.

The U.S. Postal Service, which is investigating allegations of mail fraud in connection with absentee ballots mailed in the election, recorded a telephone conversation Ashford had with another resident, incorporation supporter Theotis Nelson.

The story of how and why the telephone conversation was recorded has come out piecemeal during the trial through confusing and sometimes conflicting testimony given by Ashford, Nelson and David Smith, the postal inspector who tapped the phone.

According to Ashford, the incident began a few days before the trial began in early August, shortly after he gave his sworn statement saying he didn't vote in the election. Ashford said he was contacted by Reuben Haynes, the owner of a cleaning company. During their conversation, Ashford said, Haynes offered him a job paying \$20 per hour.

Ashford said the job offer came unsolicited, and there was a suggestion it was being made with the expectation that he would change his testimony.

At the end of their conversation, Ashford said Haynes instructed him to call Nelson to discuss the job offer further.

REDWOOD CITY — The judge in the East Palo Alto incorporation trial refused Thursday to allow a secret recording of a telephone conversation between two residents to be introduced as evidence because it was recorded without the knowledge of one of the residents.

Paul N. McCloskey Jr., the lawyer representing a group of residents challenging East Palo Alto's June 7 incorporation election, said the 17-minute tape contained evidence that one of his clients had been offered a bribe to change his testimony in the case. McCloskey told visiting San Mateo County Superior Court Judge John Cruikshank the tape is "crucial" evidence in his case.

Tom Adams, the lawyer representing the city of East Palo Alto, called the tape "innocuous."

"I listened to it, and I kept saying, 'Where does the