S181712

IN THE

SUPREME COURT OF CALIFORNIA

DEBRA COITO, individually
and as Successor in Interest
to Decedent Jeremy Wilson,

Plaintiff & Respondent,

vs.

SUPERIOR COURT OF
THE COUNTY OF STANISLAUS,

Respondent,

STATE OF CALIFORNIA,

Real Party in Interest and Petitioner.
_____/

After a Decision By the Court of Appeal,
Fifth Appellate District,
Case No. F057690

ANSWER TO PETITION FOR REVIEW

Joseph W. Carcione, Jr., State Bar No. 056693
Gary W. Dolinski, Esq., State Bar No. 107725
Neal A. Markowitz, Esq., State Bar No. 201692
Law Offices of Carcione, Cattermole, Dolinski,
Okimoto, Stucky, Ukshini, Markowitz & Carcione, LLP
601 Brewster Avenue, Second Floor
P.O. Box 3389
Redwood City, CA 94064
Telephone: (650) 367-6811
Attorneys for Plaintiff & Respondent DEBRA COITO

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P.O. Box 3389
Redwood City, CA 94064
Telephone: (650) 367-6811
Attorneys for Plaintiff & Respondent DEBRA COITO

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Plaintiff / Respondent Debra Coito ("Coito") supports this Court accepting review to reaffirm the Court of Appeal majority's interpretation of the law so that *evidence* is no longer hidden from our courts.

Coito does not agree with the reasons presented by the Petitioner State of California ("State"), or by the *Amici Curiae* Employers Group and California Employment Law Council ("Employers") in its letter of support dated April 13, 2010, or by the *Amicus Curiae* Orswell/Walt & Associates ("Former F.B.I. Investigators") in their letter of support dated April 20, 2010. However, there are other good reasons for review.

First, litigants deal with the issue of witness statements in every case. The potential to use signed or recorded statements against witnesses, either in deposition or at trial, exists in every case. The majority decision in *Coito v. Superior Court* (2010) 182 Cal.App.4th 758, 768-769, recognized that "witness statements are classic evidentiary material. They can be admitted at trial as prior inconsistent statements (Evid. Code, § 1235), prior consistent statements (*id.*, § 1236), or past recollections recorded (*id.*, § 1237). Yet, if the statements are not subject to discovery, the party denied access to them will have had no opportunity to [p. 769 of text] prepare for their use." The concurring and dissenting opinion agreed that signed and recorded statements also have the "characteristics of evidentiary matter (i.e., a witness statement may be admissible to refresh recollection, or to impeach a witness, or if the witness becomes unavailable to testify)." (*Coito v. Superior Court*, *supra*, 182 Cal.App.4th at p. 778.) Discovery of these *evidentiary witness statements* is a daily issue for litigants and the Superior Courts. Judicial Council Form Interrogatory No. 12.3 is regularly propounded between parties, resulting in much law and motion practice. Witnesses ask for copies of their signed or recorded statements before

testifying under oath in deposition or in trial all the time. The important issues presented in this case are of widespread importance.

Second, certain litigants, including the State in this case, use the indefensible proposition from *Nacht & Lewis Architects, Inc. v. Superior Court* (1996) 47 Cal.App.4th 214 ("*Nacht & Lewis*"), that signed and recorded witness statements are "absolute" work product in order to hide evidence completely, or delay its production until they deem it tactically important to disclose them, e.g., during deposition or trial testimony. [1] The potential for prejudicial use of the statements against the witnesses (and other parties) either in deposition or in trial exists in every case where there is non-disclosure during discovery. Hence, until this Court affirms the majority opinion from Fifth Appellate District in this case, those very same litigants and their counsel will continue to cite *Nacht & Lewis* in order to justify concealing or delaying production of evidentiary material.

Third, the State desires a "bright line rule" for the sake of a bright line rule that is otherwise indefensible, to wit a "rule" that *absolutely* bars discovery of witness statements, which is not the law (except in *Nacht & Lewis*). In contrast, Coito desires a "bright line rule" that witness statements are not work product, because that is the correct interpretation of the law as held by the Fifth Appellate District. "Bright line" or not, the majority opinion is right -- verbatim independent witness statements are not the absolute work product of attorneys who decide to record them.

Fourth, the State's Petition avoids the fact that *all three justices*,

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[1] The majority opinion noted that: "The [trial] court did order production of the statement of the witness whose deposition had been taken, on the basis that the state had waived work-product protection by using the content of the statement to examine the witness at his deposition." (*Coito v. Superior Court* (2010) 182 Cal.App.4th 758, 763.)

both the majority and concurrer/dissenter, were in agreement that witness statements are *not* "absolutely" protected from disclosure. Justice Kane wrote a "Concurring and Dissenting" opinion. (*Coito v. Superior Court* (2010) 182 Cal.App.4th 758, 771-787.) His opinion stated: "I, like the majority, disagree with *Nacht & Lewis* to the extent it holds that *whenever* an attorney records in writing the substance of a witness's statement, all of the written notes or recorded statements are protected by the absolute work product privilege." (*Coito*, *supra*, 182 Cal.App.4th at p. 772, italics in original.) In this sense, *Nacht & Lewis* is the "lone wolf" statement of the law. No authority exists to support the thesis promoted by the State, Employers and Former F.B.I. Investigators, to wit, the assertion that signed or recorded witness statements are "absolute" attorney work product.

Fifth, the State's Petition's two additional, federal court citations do not support an "absolute" work product rule for witness statements. The Petition now cites *Hickman v. Taylor*, 329 U.S. 495 (1947), and *Martin v. Office of Special Counsel, Merit Systems Protection Board*, 819 F.2d 1181 (District of Columbia Court of Appeals, 1987) ("*Martin*"). [2] Neither case was cited by the State to the Court of Appeal in the State's "Opposition To

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[2] Employers' support letter also cites *Hickman v. Taylor*, but not *Martin*.

Employers also cites *Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, but the *Costco* case concerns the attorney-client privilege in the factual context of a letter from outside counsel to corporate counsel. The lead opinion in *Costco* relies (in part) on the different statutory rules applicable to the attorney-client privilege, i.e., Evidence Code § 915(a), which bars production of the document if the privilege applies, and the one for attorney work product in Subdivision (b) of Section 915, which allows for production. (*Costco*, *supra*, 47 Cal.4th at p. 736.) The opinion also was clear that the *Costco* case did not concern the discovery of witness statements: "[W]e are not here concerned with whether the [attorney-client] privilege covers the statements of the warehouse managers to [attorney] Hensley." (*Id.*, at p. 735.)

The Attorneys General do not cite *Costco*, and their Petition does not argue the attorney-client privilege applies in the *Coito* factual scenario.

Petition For Writ of Mandamus."

The *Hickman v. Taylor* citation is unavailing because it concerns older federal discovery rules, a district court order of criminal contempt against a party and its attorney, and a mix of requested information, including but not limited to oral and written statements of witnesses. The United States Supreme Court announced a qualified immunity from discovery for attorney work product in anticipation of litigation or preparation for trial. (*Hickman v. Taylor*, *supra*, 329 U.S. at pp. 509-512.) However, "the protection of work product arising from the case of *Hickman v. Taylor*, 329 U.S. 495, 67 S.Ct. 385, 91 L.Ed. 451 (1947), has been supplanted by Rule 26(b)(3) of the Federal Rules of Civil Procedure ...." (*Seal v. University of Pittsburgh*, 135 F.R.D. 113, 114 (W.D. Pa., 1990). Rule 26(b)(3) was adopted in 1970. The statutory rule also embodies a qualified immunity, subject to a good cause analysis.

FRCP Rule 26(b)(3) now provides (in part):

> (3) *Trial Preparation: Materials.*
> (A) *Documents and Tangible Things*. Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:
> (i) they are otherwise discoverable under Rule 26(b)(1); and
> (ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.
> (B) *Protection Against Disclosure*. If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.

The majority opinion in *Coito* addressed *Hickman v. Taylor* by noting that this Court in *Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 400, discussed *Hickman v. Taylor*, and noted that even "under *Hickman*, 'it is not correct to say that the work product rule would bar' discovery of the written statements of witnesses taken by an attorney or the attorney's representative." (*Coito, supra*, 182 Cal.App.4th 758 at p. 766, fn. 12, quoting from *Greyhound, supra*, 56 Cal.2d at p. 401.) One holding in *Greyhound* was that "the statements made by independent witnesses were not privileged in and of themselves ...." (*Greyhound, supra*, 56 Cal.2d at p. 400.) The *Greyhound* opinion equated that holding with the views of the United States Supreme Court in *Hickman v. Taylor*. (*Id.*)

Hence, even the federal civil discovery rules provide no support to the State's continuing defense of the *Nacht & Lewis* view that California state law provides witness statements are "absolute" attorney work product.

The Petition's citation to the other federal case of *Martin* is inapt because it concerns disclosures under the statutory scheme of the federal Freedom Of Information Act (FOIA). The District of Columbia Circuit Court of Appeals held that the FOIA exemption for agency memorandums and the Privacy Act exemption for documents prepared in anticipation of civil action or proceeding applied to witness affidavits and witness interview notes. Statutory construction of another, irrelevant federal statute has nothing to do with the interpretation of California discovery law.

The *Martin* citation is also misleading because there is apparently a split in the federal circuits about the construction of the FOIA, and specifically Exemption 5 which protects from disclosure those "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the

agency." 5 U.S.C. § 552(b)(5) (1977). As noted in *Fine v. U.S. Dept. of Energy, Office of Inspector General*, 830 F.Supp. 570, 574 (D.N.M., 1993): "The Supreme Court has not specifically addressed whether factual material included in attorney work-product must be disclosed. The circuit courts are split on the issue." Differing with the District of Columbia Circuit in *Martin*, the Fourth and Fifth Circuits at that time had held that factual material in attorney work product could not be withheld under the FOIA. (*Id.*) Thus, the *Fine* District Court Judge ruled: "The Court finds the reasoning of the Fourth and Fifth Circuits persuasive and concludes that Exemption 5 permits the segregation and release of purely factual material from attorney work-product." (*Id.*, at p. 575.)

In sum, the two non-California cases cited by the Petition do not support the proposition that witness statements are "absolute" work product.

Returning to the instant Court of Appeal decision, even Justice Kane's *dissent* includes his view that witness statements "can" be *qualified* attorney work product, but are not "absolute" work product. (*Coito*, *supra*, 182 Cal.Appl.4th at p. 772, italics in original.)

In sum, the *qualified* work product doctrine is as far as any court or individual appellate justice (other than *Nacht & Lewis*) has gone in describing the discovery of witness statements. Contrary to Petitioner's (and Employers' and Former F.B.I. Investigators') assertions, there is *no* support for the "absolute" work product doctrine being applicable.

However, because some attorneys are still arguing, and will continue to argue that the"absolute" work product rule applies to the recorded words of witnesses, this Court apparently needs to overrule *Nacht & Lewis*. [3]

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[3] The other alternative is for this Court to deny review, allowing *Coito* to stand, and allow the other District Courts of Appeal to make their own decisions recognizing that *Nacht &*

Sixth, although the State does not advocate for the dissenting opinion's view that witness statements are "qualified" attorney work product, Coito's view is that leaving the dissent in this case available for litigants to argue will result in future inconsistencies in discovery of witness statements. If *in camera* inspections by law and motion judges are an option, then the result will be "coin flip" discovery rules -- some judges will order it, and others will not. There will be no predictability for attorneys as to whether their witness statements will be ordered produced. There will be no justice in those cases where the attorneys successfully avoid the discovery. And, there will be unequal justice between the cases where different judges rule differently. To the extent that "judicial efficiency" is a basis upon which doctrinal decisions are made about the attorney work product rule (it probably is not a valid basis), the most resource-effective solution is to hold that signed or recorded statements are *evidence*, and therefore they must be disclosed in discovery. That effectively ends the debate, and attorneys will adapt as to whether they are going to have witnesses sign statements, or have their statements recorded.

Seventh, getting full and complete answers to Judicial Council-approved Form Interrogatory No. 12.3 is also a daily concern to litigants.

The Petitioner and *Amici* do no mention No. 12.3. Yet, that is an important part of the holdings of the Fifth Appellate District. In consistent fashion with the Justices' view of the nature of witness statements, the

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to get these issues before the various Appellate District Courts, and it will be faster for this Court to put the issue to rest well before that process could be completed. The other problem with denying review in order to allow *Nacht & Lewis* to "die a slow death" is that many litigants do not have the resources to make appeals. That is the case here, where Ms. Coito has no money to fight the likes of the State of California and Employers and Former F.B.I. Investigators. Moreover, defendants (through insurance companies) generally have an investigative advantage over injured parties, as the latter are either attending funerals or receiving medical treatment.

majority holding ordered a further response to Form Interrogatory No. 12.3: "Because such statements are not work product, neither is a list of witnesses from whom statements have been obtained (the list requested by form interrogatory No. 12.3)." (*Coito v. Superior Court*, *supra*, 182 Cal.App.4th at p. 769.)

Justice Kane agreed, holding that "where a party objects to form interrogatory No. 12.3 based on the qualified work product privilege, the objection should be overruled where, as here, the objecting party failed to make a foundational showing that a response would actually disclose matters protected by the work product privilege (e.g., significant tactical information about the case). .... The trial court also upheld, without any foundational support, the work product objection to form interrogatory No. 12.3. In these respects, the trial court abused its discretion." (*Coito v. Superior Court*, *supra*, 182 Cal.App.4th at pp. 771-772.)

It is clear that absent affirmance by this Court of both the majority and concurring/dissenting opinions in *Coito* on the topic of Form Interrogatory No. 12.3, at least the Petitioner and *Amici* (but doubtless other litigants and their attorneys) will continue with their past practice of objecting and providing *no* substantive information in their interrogatory answers, still citing *Nacht & Lewis* as their supporting authority.

Eighth, this Court needs to reaffirm the principle in *Beesley v. Superior Court* (1962) 58 Cal.2d 205, that when *the signing or recorded witness asks*, a copy of the recording needs to be produced to the witness, or anyone else he/she directs. The danger to witnesses by the self-serving litigation tactic of obtaining a signed (even sworn) or recorded statement but then refusing to produce a copy to the witness all the while insisting on taking the sworn deposition testimony of the witness, is self-evident. Since

this is *evidence*, perjury is a potential. In this case, the accident witnesses were four minors who were interviewed by two California DOJ (BIA) Special Agents without parents present. [4] The State's attorneys sent the Special Agents to record the statements despite a then pending Plaintiff "Motion For Protective Order Barring Defendant City of Modesto From Proceeding With The Depositions Of Juvenile Witnesses Until They Have Legal Counsel Appointed." (See Coito Index of Exhibits for Petition For Writ of Mandate (05/22/09), pp. 141-142.) [5]

In these writ proceedings, the State (and now Employers and Former F.B.I. Investigators [6]) have shown no concern for the rights and interests of

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[4] The majority noted that "counsel for the state sent two investigators, both special agents from the California Department of Justice, Bureau of Investigation, to interview and take recorded statements from four of the juveniles.FN1 (FN1. Petitioner's counsel points out that, at the time of the interviews, the juveniles' parents were not present, the agents were armed and wore badges, and the agents did not explain to the juveniles that the statements were being taken for a civil action, not a criminal matter.)" (*Coito*, *supra*, 182 Cal.App.4th at p. 762.)

[5] Since the State cites to federal discovery rules, it is noteworthy that the equivalent of the *Beesley* rule is codified in F.R.C.P. Rule 26(b)(3)(C):

> (C) Previous Statement. Any party or other person may, on request and without the required showing, obtain the person's own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and Rule 37(a)(5) applies to the award of expenses. A previous statement is either:
> (i) a written statement that the person has signed or otherwise adopted or approved; or
> (ii) a contemporaneous stenographic, mechanical, electrical, or other recording--or a transcription of it--that recites substantially verbatim the person's oral statement.

[6] *Amicus Curiae* Orswell/Walt & Associates are private investigators, Jack Orswell and Michael Walt, located at a Post Office Box in Santa Clarita, California. Their website states that their "firm has a proven successful track record in locating difficult to find witnesses and securing valuable information from less than cooperative potential witnesses in litigation support assignments." See http://orswellwalt.com/Our Services.htm.

the independent witnesses. Should this Court accept review in this case, it will also be an opportunity to admonish counsel who would manipulate witnesses by recording their statements, and then refusing to give the witnesses copies before they have to answer questions under oath.

Ninth, there is no principled reason to use the theoretical "undue advantage" element of attorney work product to support either an absolute or qualified work product-based denial of discovery. The State argues that its attorney's questions to the witnesses should not be disclosed. However, these witnesses are *strangers*, and the attorney's investigators revealed them to the *strangers* (the witnesses). There is no reasonable expectation of confidentiality in those communications because there is no confidential relationship between a litigant's attorneys and *strangers*. (*BP Alaska Exploration, Inc., v. Superior Court* (1988) 199 Cal.App.3d 1240, 1261 (waiver occurs "by the attorney's voluntary disclosure or consent to disclosure of the writing to a person other than the client who has no interest in maintaining the confidentiality of the contents of the writing."); see also *Shadow Traffic Network v. Superior Court* (1994) 24 Cal.App.4th 106, 1080.)

The moment the attorney (or the investigator) asked the question and the witness heard the question, the "thought process" of the attorney was waived. If opposing counsel (or their investigator) met the witness 5 minutes later (or in a later deposition), it would be perfectly permissible to ask the witness what the previous attorney's questions were to the witness. No "privilege", including the attorney work product doctrine, bars the disclosure of those questions, and the witness' answers thereto.

Nothing requires an attorney to record or have a witness sign their statement. The only reason that is done is to create *evidence* to use either

against the witness or the adversary in deposition or at trial. Contrary to Employers' attempt to cast this case as involving a different set of facts, *Coito* does not contradict *Nacht & Lewis* on Judicial Council Form Interrogatory No. 12.2. All litigants' attorneys can interview whomever they want without having to disclose the fact the interviews took place; the attorneys just cannot *create evidence* (in the form of *signed* or *recorded* statements) and then hide the evidence. The "undue advantage" policy does not extend to *evidence*. All parties should have all the evidence.

Tenth, unlike the State and Employers, the letter brief of Former F.B.I. Investigators asserts that *Coito v. Superior Court* conflicts with the decision of this Court in *Rico v. Mitsubishi Motors Corp.* (2007) 42 Cal.4th 807 ("*Rico*"). The "conflict" argument is wrong, and *Rico* was addressed by all Justices in the *Coito v. Superior Court* opinions.

Rico did not involve formal discovery proceedings, through interrogatory and document demand, for an *evidentiary* witness statement. Entirely different, *Rico* affirmed disqualification of a plaintiff's attorney who inadvertently obtained defense counsel's personal, "annotated" notes from an experts' meeting, but then proceeded to use the notes in the experts' depositions despite the plaintiff's attorney recognizing the work product nature of the document within a few minutes of reading it. Unlike *Coito*, the "compiled and annotated" notes would not have been evidence under any circumstances.

This Court's opinion indicated that the *Rico* trial court found that defense counsel (Yukevich) had a "paralegal" (Rowley) type notes during the strategy meeting on Yukevich's computer.

> Subsequently, Mitsubishi representatives met with their lawyers, James Yukevich and Alexander Calfo, and two designated defense experts to discuss their litigation strategy and vulnerabilities. Mitsubishi's case

> manager, Jerome Rowley, also attended the meeting. Rowley and Yukevich had worked together over a few years. Yukevich asked Rowley to take notes at the meeting and indicated specific areas to be summarized. The trial court later found that Rowley, who had typed the notes on Yukevich's computer, had acted as Yukevich's paralegal. At the end of the six-hour session, Rowley returned the computer and never saw a printed version of the notes. Yukevich printed only one copy of the notes, which he later edited and annotated. Yukevich never intentionally showed the notes to anyone, and the court determined that the [p. 1095 of text] sole purpose of the document was to help Yukevich defend the case. [*Rico*, *supra*, 42 Cal.4th at p. 811.]

The trial court, the Court of Appeal, and the Supreme Court viewed the disputed document, which was otherwise sealed. (*Rico*, *supra*, 42 Cal.4th at p. 811, fn. 2.) Unlike *Coito*, this Court could see the document.

The only resemblance to a *signed or recorded statement* was that the notes were in "dialogue style". However, this Court found plaintiffs' claim in *Rico* that the document included "statements of declared experts" was "incorrect." (*Rico*, *supra*, 42 Cal.4th at p. 815.) "The document is not a transcript of the August 28, 2002 strategy session, nor is it a verbatim record of the experts' own statements. It contains [paralegal] Rowley's summaries of points from the strategy session, made at [attorney] Yukevich's direction. Yukevich also edited the document in order to add his own thoughts and comments, further inextricably intertwining his personal impressions with the summary. " (*Id.*) Moreover, this Court found that "the document does not qualify as an expert's report, writing, declaration, or testimony. The notes reflect the paralegal's summary along with counsel's thoughts and impressions about the case. The document was absolutely protected work product because it contained the ideas of Yukevich and his legal team about the case." (*Id.*) Unlike *Coito*, the document was not a signed or recorded statement *of any expert*.

> Plaintiffs attempt to justify Johnson's use of the document by accusing the defense experts of giving false testimony during their depositions. Plaintiffs allege that the statements attributed to the experts in the document contradicted their deposition statements and that the experts lied about the technical evidence involved in the case. As an initial matter, we are not persuaded that any of the defense experts ever actually adopted as their own the statements attributed to them. The document is not a verbatim transcript of the strategy session, but Rowley's summary of points that Yukevich directed him to note. Yukevich then edited the document, adding his own thoughts and comments. As the trial court observed, the document was an interpretation and summary of what others thought the experts were saying. FN10
>
> FN10. While Johnson was testifying on direct examination at the hearing on the motion to disqualify, the court interjected: "The difficulty with that concept [that Germane's direct statement is contained in the document at issue] is that you're assuming it's a direct quote." Soon after the court further stated, "No, listen to me very carefully. You're assuming all along that this is a direct quotation from the so-called experts, the four that you recognize. Whereas, in truth, it may be that it is an interpretation of what someone said through somebody else's mind." (*Rico*, *supra*, 42 Cal.4th at p. 820.)

Because the document was available for review by the courts, unlike *Coito*, this Court was able to see that "there are no 'unprivileged portions' of the document." (*Rico*, *supra*, 42 Cal.4th at p. 816.)

There is no "conflict" between the holdings in *Rico* and *Coito*.

Eleventh, Employers' request for "depublication" would be an injustice. What purpose would it serve? It would not cure the "confusion" problem for which both the State and Employers indicate concern. Instead, depublication would allow litigation attorneys to cite *Nacht & Lewis* as controlling law, in order to induce Superior Court judges to rule that 12.3 does not have to be answered, and signed and recorded witness statements are *absolutely* protected from disclosure (unless the procuring attorney

wants to use it to his litigation advantage later in the case as a surprise tactic). That unjust, unprincipled assault on fairness and justice in this State has lasted since 1996.[7] The situation is finally corrected, but an "amicus" supporting letter brief just wants "depublication". Depublication would be wrong. The only solution is for this Court to put an end to the withholding of foundational information about, and the contents of verbatim, *evidentiary* witness statements.

DATE: APRIL 28, 2010

CARCIONE, CATTERMOLE, DOLINSKI, OKIMOTO, STUCKY, UKSHINI, MARKOWITZ & CARCIONE, LLP.

By: _____
Attorney for Respondent

[7] Employers concedes the practice of blocking witness statement discovery has been widespread: "For nearly 15 years, practitioners have relied on *Nacht* for the proposition that lists of interviewees constitute qualified work product and that statements recorded from those interviews receive absolute protection." (Employers' support letter (04/13/10), p. 5.) However, that length of time is not a reason that *Nacht & Lewis* was right; it just shows how litigants have labored under the wrong rule for far too long. *Coito* has corrected the situation, and if it takes a Supreme Court opinion to make sure it is corrected, then Coito supports review.

CERTIFICATE OF WORD COUNT
(California Rules of Court, Rule 8.204(b), (c))

The text of this brief consists of 4,391 words as counted by the Corel WordPerfect version 10 word-processing program used to generate the brief. The text, excluding headings, quotations and footnotes, is at least a space and a half. The type size throughout is 13 point. The type style throughout is Times New Roman.

Dated: April 28, 2010

By: 
Gary W. Dolinski

Coito v. State of California, et al.
[California Supreme Court No. S181712]
[Court of Appeal, Fifth Appellate District No. F057690]
[Stanislaus County Superior Court No. 624500]

PROOF OF SERVICE

I, the undersigned, declare:

I am employed in the County of San Mateo, State of California. I am over the age of eighteen and not a party to this action. My business address is 601 Brewster Avenue, Redwood City, California 94063.

On April 28, 2010, I served the attached document(s):

ANSWER TO PETITION FOR REVIEW

_X_ **By FEDERAL EXPRESS**, for delivery the following business day by placing same for collection in a Federal Express Deposit Box to the business addresses set forth below.

Supreme Court of California (13 Copies)
Office of the Clerk, First Floor
350 McAllister Street
San Francisco, CA 94102
Telephone: (415) 865-7000

_X_ **By MAIL**, being familiar with the practice of this office for the collection and the processing of correspondence for mailing with the United States Postal Service, and deposited in the United States Mail copies of same to the business addresses set forth below, in a sealed envelope fully prepaid.

Court of Appeal (1 Copy)
Fifth Appellate District
2424 Ventura Street
Fresno, California, 93721
Telephone: (559) 445-5491

Honorable Judge William A. Mayhew (1 Copy)
Stanislaus County Superior Court
801 10th Street
Modesto, CA 95354
Telephone: (209)530-3100

Attorneys for Defendant: Tuolumne River Regional Park Joint Powers Authority

Richard J. Schneider, Esq. (1 Copy)
Don H. Nguyen, Esq.
DALEY & HEFT, LLP
462 Stevens Avenue, Suite #201
Solana Beach, CA 92075-2099
Telephone: (858) 755-5666 Facsimile: (858) 755-7870

Attorneys for Defendant: State of California

Edmund G. Brown, Jr., Esq. (1 Copy)
Attorney General of California
David S. Chaney, Esq.,
Chief Assistant Attorney General
Gordon Burns, Esq.,
Deputy Solicitor General
James M. Schiavenza, Esq.
Senior Assistant Attorney General
Steven M. Gevercer, Esq.,
Deputy Attorney General
1300 I Street, Suite 125
Sacramento, CA 95814
Telephone: (916) 322-7487 Facsimile: (916) 322-8288

Attorneys for Defendant: County of Stanislaus

Dan Farrar, Esq. (1 Copy)
2881 Geer Road, Suite A
Turlock, CA 95382
Telephone: (209) 634-5500 Facsimile: (209) 634-5556

Attorneys for Defendant: City of Ceres

Paul R. Scheele, Esq. (1 Copy)
CURTIS & ARATA
A Professional Law Corporation
1300 K Street, Second Floor
Modesto, CA 95354
Telephone: (209) 521-1800 Facsimile: (209) 572-3501

Attorneys for Defendant: City of Modesto

Richard S. Linkert, Esq. (1 Copy)
Katherine E. Underwood, Esq.
MATHENY, SEARS, LINKERT & JAIME, LLP
3638 American River Drive
Sacramento, CA 95864
Telephone: (916) 978-3434 Facsimile: (916) 978-3430

Amici Curiae Employers Group & California Employment Law Council

Katherine C. Huibonhoa, Esq. (1 Copy)
PAUL, HASTINGS, JANOFSKY & WALKER, L.L.P
55 Second Street, 24th Floor
San Francisco, CA 94105
Telephone: (415) 856-7000 Facsimile: (415) 856-7100

Amicus Curiae Orswell/Walt & Associates

Matthew E. Lily, Esq. (1 Copy)
FINALYSON, WILLIAMS, TOFFER,
ROOSEVELT & LILY, L.L.P.
15615 Alton Parkway, Suite 250
Irvine, CA 92618
Telephone: (949) 759-3810 Facsimile: (949) 759-3812

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

Executed on the above date at Redwood City, California.