SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Civil Division

Estate of ROBERT E. WONE, by KATHERINE E. WONE, as Personal Representative, *Plaintiff,* v. JOSEPH R. PRICE, VICTOR J. ZABORSKY, and DYLAN M. WARD, *Defendants.*	Civil Action No. 008315-08 The Honorable Brook Hedge Next Court Event: September 10, 2010 Status Conference

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR ISSUANCE OF A COMMISSION ASKING THE SUPREME COURT OF NEW YORK, NEW YORK COUNTY, TO ISSUE A SUBPOENA COMPELLING VERIZON COMMUNICATIONS INC. TO PRODUCE DEFENDANTS' TELEPHONE AND EMAIL RECORDS FROM THE RELEVANT TIME PERIOD

On February 19, 2009, Plaintiff Estate of Robert E. Wone, by Katherine E. Wone ("Mrs. Wone"), moved this Court for issuance of a Commission asking the Supreme Court of New York, New York County, to issue a subpoena compelling Verizon Communications Inc. ("Verizon") to produce the telephone and email records of Defendants Joseph R. Price, Victor J. Zaborsky, and Dylan M. Ward during the period July 1, 2006, through August 31, 2006.

On February 26, 2009, in its Order staying this matter pending the outcome of the related criminal case, the Court denied Mrs. Wone's motion without prejudice. On July 7, 2010, this Court lifted the stay in this matter. Accordingly, Mrs. Wone now respectfully renews her motion for issuance of the Commission to subpoena Verizon.

BACKGROUND

On August 2, 2006, Robert E. Wone was murdered in the District of Columbia, in the home of Defendants Price, Zaborsky, and Ward. More than two years later, on October 27, 2008, the Metropolitan Police Department ("MPD") filed in Superior Court an affidavit in support of Mr. Ward's arrest. Compl. ¶¶ 19, 21. Shortly after the affidavit's release, Messrs. Price, Zaborsky, and Ward were indicted for obstruction of justice, tampering with evidence, and conspiracy. *See id.* ¶ 20.

After a six-week bench trial on these counts, on June 29, 2010, the defendants were acquitted. However, in finding that the defendants' guilt could not be established beyond a reasonable doubt -- the highest standard of proof known to the law -- the court expressed its view that "Mr. Price very likely tampered with and altered the murder weapon, and that he lied about his conduct in this regard to police with obstructive purpose." *United States v. Price, et al.*, No. 08-CF1 27068, Slip Op. at 25 (D.C. Sup. Ct. June 29, 2010); *see also id.* at 27 ("I find that it is very likely Mr. Price altered or destroyed evidence at the scene with the specific intent to reduce its value as evidence in the imminent investigation of the death of Robert Wone."). The court further concluded that, "It is very probable that the government's theory is correct, that even if the defendants did not participate in the murder some or all of them knew enough about the circumstances of it to provide helpful information to law enforcement and have chosen to withhold that information for reasons of their own." *Id.* at 35. In addition, the court wholly rejected the defendants' contention that an unknown "intruder" entered their residence and murdered Mr. Wone, finding that "the murder of Robert Wone was not committed by an intruder unknown to the defendants." *Id.* at 20. "Overall, the defendants' story that an intruder committed the offense is incredible beyond a reasonable doubt," the court said. *Id.* at 34.

On November 25, 2008, Mrs. Wone, Robert E. Wone's widow, filed this lawsuit against the Defendants seeking damages for wrongful death, negligence, spoliation of evidence, and conspiracy. Since then, there has been very little activity in this case, due to the Court-imposed stay. After the Court lifted the more than 16-month stay, on July 7, 2010, Mrs. Wone re-initiated her discovery efforts. This motion relates to one aspect of those efforts: discovery of Defendants' telephone and email communications in the days and weeks surrounding her husband's murder.

Defendants Price, Zaborsky, and Ward maintained one or more telephone and email accounts with Verizon between July 1, 2006 and August 31, 2006. For instance, Defendant Ward appears to have sent email communications around the relevant time using a "dylanward@verizon.net" email address. *See, e.g.,* Email exchange between Joseph Price nad Dylan Ward (July 9, 2006) (Gov't Ex. 671-G) (attached hereto as Exhibit A). Verizon's headquarters are located at 140 West Street, New York, N.Y. 10007.

ARGUMENT

I. APPLICABLE LEGAL STANDARDS

Rule 45(b)(2) of the D.C. Rules of Civil Procedure provides that a subpoena may be served within 25 miles of the District of Columbia or, "[w]hen an applicable statute provides therefore, the Court upon proper application and cause shown may authorize the service of a subpoena at any other place." Super. Ct. Civ. R. 45(b)(2); *see also* Super Ct. Civ. R. 28-I(a) ("Any party to a civil action pending in this court may file with the court a motion for appointment of an examiner to take the testimony of a witness who resides outside the District of Columbia. . . . If the motion is granted, the court shall appoint an examiner to take the testimony of such witnesses as are designated . . . and shall issue a commission to the examiner who shall

take the testimony. . . ."). Because Verizon is located more than 25 miles outside the District, and in accordance with New York law, Plaintiff is required to petition this Court for a Commission authorizing a subpoena for the Defendants' telephone and email records.

Pursuant to Section 3102 of New York's Civil Practice Law and Rules ("C.P.L.R."), a witness may be compelled to produce documents for use in a proceeding pending in a foreign jurisdiction upon the issuance of a commission issued by the foreign court. N.Y. C.P.L.R. § 3102(e). Subject to Section 3102(e), the witness may be compelled to "appear and testify in the same manner and by the same process as may be employed for the purpose of taking testimony in actions pending in [New York]." *Id.*[1]

By this motion, Mrs. Wone seeks to have this Court issue a Commission asking the Supreme Court of New York, New York County, to issue a subpoena compelling the Defendants' telephone and email service provider to produce records from a discrete time period surrounding her husband's murder.

II. DEFENDANTS' TELEPHONE AND EMAIL RECORDS FROM THE RELEVANT TIME ARE PLAINLY DISCOVERABLE

Defendants' telephone and email records will necessarily reveal information regarding the communications among the Defendants and third parties in and around the time of Mr. Wone's murder. They are accordingly highly relevant to Mrs. Wone's claims. These records may provide evidence of the Defendants' activities and state of mind shortly before and after Mr. Wone's murder. In particular, such communications may identify others with

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[1] Pursuant to Section 3120 of the C.P.L.R., a witness may be compelled by subpoena to produce documents without also appearing to testify. Copies of Sections 3102 and 3120 are attached hereto as Exhibits B and C, respectively.

knowledge of the conduct leading up to Mr. Wone's death, and/or of the Defendants' alleged conspiracy to destroy evidence, stage the crime scene, and lie to police about the circumstances of Mr. Wone's death.

In murder and wrongful death cases, courts have repeatedly recognized the relevance of the type of records that Mrs. Wone is seeking here. *See, e.g., Fratta v. Quarterman*, 536 F.3d 485, 495-96, 508 (5th Cir. 2008) (cellular phone records highly relevant to murder investigation); *United States v. Stewart*, 485 F.3d 666, 671 (2d Cir. 2007) (cellular phone records for weeks leading up to murder provided "ample circumstantial evidence" of defendant's involvement in murder); *Blinzler v. Marriott Int'l, Inc.*, 81 F.3d 1148, 1160 (1st Cir. 1996) (phone logs highly relevant to timing of call for emergency assistance in wrongful death case). Given the high degree of relevance of the records sought by Mrs. Wone, they are plainly discoverable under the D.C. Rules of Civil Procedure. *See* Super. Ct. Civ. R. 26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party.") (emphasis added); *Weakley v. Burnham Corp.*, 871 A.2d 1167, 1179 (D.C. 2005) ("ambit of discovery afforded by [Rule 26(b)(1)] is broad"); *see also, e.g., In re Providian Fin. Corp. Sec. Litig.*, 222 F.R.D. 22, 24 (D.D.C. 2007) ("[D]iscovery is broad, as 'parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party.'").

Messrs. Price and Zaborsky contend that the narrow timeframe of documents sought here -- July 1-August 31, 2006 -- is "overly broad" and that any communications before July 26, 2006 or more than "one or two weeks" after the murder "cannot possibly be relevant, nor lead to the discovery of relevant or admissible evidence." *See* Email from Frank Daily to Daniel Suleiman (July 14, 2010) and Email from Craig Roswell to Daniel Suleiman (July 14,

2010) (both attached hereto as Exhibit D). This cannot be correct. The evidence in the criminal case revealed that on or about June 20, 2006 Mr. Price was feeling "scared and upset" because Mr. Ward was "losing sexual interest" in Mr. Price. *See* Email from Joseph Price to Dylan Ward (June 20, 2006) (Gov't Ex. 671-E) (attached hereto as Exhibit E). Furthermore, the evidence showed that, in the immediate wake of Mr. Price's June 20 plea to Mr. Ward, on or about July 9, 2006, Mr. Price contacted Mr. Ward and proposed to invite a third person into their sexual relationship.

Mr. Price maintained an advertisement on Alt.com, an adult personals website that markets itself to the "BDSM, Leather & Fetish Community,"[2] in which he described himself as a "BDSM enthusiast . . . looking for a dominant or submissive partner to join me and my dom," and in which he listed among his "activities enjoyed" various forms of "torture," including "electrotorture," "pain," and "sadism." *See* "Profile for Culuket," at http://alt.com/p/member.cgi (attached hereto as Exhibit F) (last visited Jan. 22, 2009). In a July 9, 2006 email titled, "no idea if this would interest you, but . . . ," Mr. Price sent Mr. Ward the profile of "a guy that has emailed me from Alt.com a few times" and suggested that they get together with him. *See* Email Chain between Joseph Price and Dylan Ward (July 9, 2006) (Gov't Ex. 671-G) (attached hereto as Exhibit A). Moreover, Mr. Price proposed to "give it a try" on a night when Mr. Zaborsky would be out of town. *See id.* This is highly significant given that Mr. Zaborsky was scheduled to be out of town on business on the evening of August 2, 2006 -- when Robert Wone was murdered in Defendants' house. In light of these facts, there can be no doubt that

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[2] Upon information and belief, "BDSM" refers to "bondage," "discipline," "sadism," and "masochism." *See* http://en.wikipedia.org/wiki/BDSM (last visited Aug. 3, 2010).

communications between and among the defendants going back at the very least to July 1, 2006 are relevant to Mrs. Wone's claims and are therefore discoverable.

Communications between and among the Defendants during the month immediately following Mr. Wone's murder are also highly relevant. If, as Mrs. Wone contends, the Defendants conspired to protect themselves from criminal or civil liability following Mr. Wone's murder, they may well have had relevant and incriminating communications with each other in the days and weeks following the crime.[3]

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[3] Mr. Price and Mr. Zaborsky have also expressed the concern that the requested subpoena "will or may elicit" privileged communications. *See* Email from Frank Daily to Daniel Suleiman (July 14, 2010) and Email from Craig Roswell to Daniel Suleiman (July 14, 2010) (both attached hereto as Exhibit D). Mrs. Wone does not seek to discover communications protected by any valid privilege and, without waiving any arguments about the validity of any claimed privilege, is amenable to allowing counsel for the Defendants to review documents responsive to the subpoena for privilege in advance of their production to Mrs. Wone.

CONCLUSION

For the foregoing reasons, the Court should grant Plaintiff's motion and issue the requested Commission.

Respectfully submitted,

/s/ Daniel Suleiman
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Counsel for Plaintiff

Dated: August 5, 2010

Exhibit A

From: Price, Joseph
Sent: Sunday, July 09, 2006 2:09 PM
To: 'Dylan Ward'
Subject: RE: no idea if this would interest you, but . . .

okay, we will have to see what works scheduling wise--with your parents coming it may be a little tough. What did you have in mind in terms of spending time with your folks?

Joe

Joseph R. Price
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Washington, DC 20036-5339
202.775.5769 DIRECT | 202.857.6395 FAX
price.joseph@arentfox.com | www.arentfox.com

From: Dylan Ward [mailto:dylanward@verizon.net]
Sent: Sunday, July 09, 2006 2:05 PM
To: Price, Joseph
Subject: RE: no idea if this would interest you, but . . .

Yes. Intimidating. But we can try. Can't know what it's like without trying. ☺ Let's chat more. My parents get here Thursday, but I'm not sure of time...

Sorry can't go to kids. I'm just finishing my email and then have to start studying.

D

From: Price, Joseph [mailto:Price.Joseph@ARENTFOX.COM]
Sent: Sunday, July 09, 2006 2:02 PM
To: Dylan Ward
Subject: RE: no idea if this would interest you, but . . .

"Scary"? Hey love-of-my-life, I'm happy to give a third a try but only if you would like to try it. If you'd rather not, no worries at all. :)

If "scary" means you are interested but that it is a little intimidating (I think it is), then we can give it a try, and I would think while Vic is gone, maybe next Thursday evening? We could just meet him for drinks at our place or at a bar and see what we think. [redacted]

Let's chat more, whatever happens (or doesn't) is fine by me. :)

Work sucks and we have no AC here. Ugh.

Not sure when we are leaving for the kids. Any interest in going?

Love,

Joe

Joseph R. Price
Arent Fox PLLC | 1050 Connecticut Avenue, N.W.
Washington, DC 20036-5339

GOVERNMENT EXHIBIT 676

202.775.5769 DIRECT | 202.857.6395 FAX
price.joseph@arentfox.com | www.arentfox.com

From: Dylan Ward [mailto:dylanward@verizon.net]
Sent: Sunday, July 09, 2006 1:57 PM
To: Price, Joseph
Subject: RE: no idea if this would interest you, but . . .

Hmmm... Scary idea, but I guess we could try... When/where were you thinking?☺

Just finished with Bess. Time to study.

Kiss.

D

From: Price, Joseph [mailto:Price.Joseph@ARENTFOX.COM]
Sent: Sunday, July 09, 2006 11:37 AM
To: dylanward@verizon.net
Subject: no idea if this would interest you, but . . .

here is a guy that has emailed me from Alt.com a few times. I could suggest a date/time to meet (just for drinks so we could see what we think). If you'd rather not, no worries, I'm happy to have you all to myself too. :)

Here is what his profile says:

[redacted]

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Exhibit B

McKinney's CPLR § 3102

Effective: January 01, 2011

Mckinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 31. Disclosure (Refs & Annos)

➡§ 3102. Method of obtaining disclosure

(a) Disclosure devices. Information is obtainable by one or more of the following disclosure devices: depositions upon oral questions or without the state upon written questions, interrogatories, demands for addresses, discovery and inspection of documents or property, physical and mental examinations of persons, and requests for admission.

(b) Stipulation or notice normal method. Unless otherwise provided by the civil practice law and rules or by the court, disclosure shall be obtained by stipulation or on notice without leave of the court.

(c) Before action commenced. Before an action is commenced, disclosure to aid in bringing an action, to preserve information or to aid in arbitration, may be obtained, but only by court order. The court may appoint a referee to take testimony.

(d) After trial commenced. Except as provided in section 5223, during and after trial, disclosure may be obtained only by order of the trial court on notice.

(e) [Eff. until Jan. 1, 2011. See, also, subd. (e) below.] Action pending in another jurisdiction. When under any mandate, writ or commission issued out of any court of record in any other state, territory, district or foreign jurisdiction, or whenever upon notice or agreement, it is required to take the testimony of a witness in the state, he may be compelled to **appear** and **testify** in the **same manner** and by the same process as may be employed for the purpose of taking testimony in actions pending in the state. The supreme court or a county court shall make any appropriate order in aid of taking such a deposition.

(e) [Eff. Jan. 1, 2011. See, also, subd. (e) above.] Action pending in another jurisdiction. Except as provided in section three thousand one hundred nineteen of this article, when under any mandate, writ or commission issued out of any court of record in any other state, territory, district or foreign jurisdiction, or whenever upon notice or agreement, it is required to take the testimony of a witness in the state, he or she may be compelled to **appear** and **testify** in the **same manner** and by the same process as may be employed for the purpose of taking testimony in actions pending in the state. The supreme court or a county court shall make any appropriate order in aid of taking such a deposition.

(f) Action to which state is party. In an action in which the state is properly a party, whether as plaintiff, defendant or otherwise, disclosure by the state shall be available as if the state were a private person.

CREDIT(S)

(L.1962, c. 308. Amended L.1963, c. 422, § 1; L.1964, c. 388, § 15; L.1967, c. 638, § 1; L.1984, c. 294, § 3; L.1993, c. 98, §§ 3, 4; L.2010, c. 29, § 3, eff. Jan. 1, 2011.)

McKinney's CPLR § 3102

HISTORICAL AND STATUTORY NOTES

2010 Electronic Update

L.2010, c. 29 legislation

Subd. (e). L.2010, c. 29, § 3, substituted "Except as provided in section three thousand one hundred nineteen of this article, when" for "When"; inserted "or she".

2004 Main Volume

L.1993, c. 98 legislation

Subd. (c). L.1993, c. 98, § 3, eff. Jan. 1, 1994, deleted reference to real property actions from subd. catchline and omitted sentence requiring recording of deposition or document in county clerk's office in real property title actions.

Subd. (f). L.1993, c. 98, § 4, eff. Jan. 1, 1994, omitted exception to disclosure by the state for interrogatories and requests for admissions.

Derivation

C.P.A.1920, § 290 amended L.1923, c. 205; L.1955, c. 497; §§ 293, 295, 298; § 302 amended L.1949, c. 448; §§ 308, 310, 311, 312, 313, 315, 316, 317, 318 amended L.1925, c. 492; § 319 amended L.1924, c. 216; §§ 320, 321, 982; § 1459 added L.1937, c. 341.

R.C.P. 122, 123, 136, 138.

C.C.P.1876, § 870 amended L.1877, c. 416; L.1878, c. 299; L.1904, c. 696; L.1909, c. 65; § 871 amended L.1877, c. 416; L.1909, c. 65; § 872 amended L.1879, c. 542; L.1880, c. 536; L.1893, c. 721; L.1895, c. 946; L.1911, c. 781; L.1913, c. 278; § 879 amended L.1882, c. 397; § 880 amended L.1879, c. 542; § 888 amended L.1894, c. 308; L.1895, c. 946; § 891; § 893 amended L.1877, c. 416; L.1895, c. 946; §§ 894, 900; §§ 914, 915, 919, amended L.1899, c. 502; § 1682; §§ 1688-a, 1688-c, 1688-d, 1688-e, added L.1901, c. 303; §§ 1688-f, 1688-g, added L.1901, c. 303, amended L.1913, c. 140; § 1688- h added L.1901, c. 303; § 1688-i added L.1901, c. 303; amended L.1913, c. 140.

Gen.Rule 17.

C.P. (Field Code) 1848, §§ 390 to 392, 397.

McKinney's CPLR § 3102, NY CPLR § 3102

Current through L.2010, chapters 1 to 55, 61 to 134 and 136.

END OF DOCUMENT

McKinney's CPLR § 3102

Exhibit C

McKinney's CPLR Rule 3120

Effective: September 01, 2003

Mckinney's Consolidated Laws of New York Annotated Currentness
Civil Practice Law and Rules (Refs & Annos)
Chapter Eight. Of the Consolidated Laws
Article 31. Disclosure (Refs & Annos)

Rule 3120. Discovery and production of documents and things for inspection, testing, copying or photographing

1. After commencement of an action, any party may serve on any other party a notice or on any other person a subpoena duces tecum:

(i) to produce and permit the party seeking discovery, or someone acting on his or her behalf, to inspect, copy, test or photograph any designated documents or any things which are in the possession, custody or control of the party or person served; or

(ii) to permit entry upon designated land or other property in the possession, custody or control of the party or person served for the purpose of inspecting, measuring, surveying, sampling, testing, photographing or recording by motion pictures or otherwise the property or any specifically designated object or operation thereon.

2. The notice or subpoena duces tecum shall specify the time, which shall be not less than twenty days after service of the notice or subpoena, and the place and manner of making the inspection, copy, test or photograph, or of the entry upon the land or other property and, in the case of an inspection, copying, testing or photographing, shall set forth the items to be inspected, copied, tested or photographed by individual item or by category, and shall describe each item and category with reasonable particularity.

3. The party issuing a subpoena duces tecum as provided hereinabove shall at the same time serve a copy of the subpoena upon all other parties and, within five days of compliance therewith, in whole or in part, give to each party notice that the items produced in response thereto are available for inspection and copying, specifying the time and place thereof.

4. Nothing contained in this section shall be construed to change the requirement of section 2307 that a subpoena duces tecum to be served upon a library or a department or bureau of a municipal corporation, or of the state, or an officer thereof, requires a motion made on notice to the library, department, bureau or officer, and the adverse party, to a justice of the supreme court or a judge of the court in which the action is triable.

CREDIT(S)

(Formerly § 3120, L.1962, c. 308. Renumbered rule 3120 L.1962, c. 315, § 1. Amended Jud.Conf.1966 Proposal No. 2; L.1984, c. 294, § 7; L.1993, c. 98, § 8; L.2002, c. 575, § 2, eff. Sept. 1, 2003.)

HISTORICAL AND STATUTORY NOTES

2004 Main Volume

L.2002, c. 575 legislation

L.2002, c. 575, § 2, rewrote the rule, which prior thereto read:

"(a) As against party:

"1. After commencement of an action, any party may serve on any other party notice:

"(i) to produce and permit the party seeking discovery, or someone acting on his or her behalf, to inspect, copy, test or photograph any designated documents or any things which are in the possession, custody or control of the party served; or

"(ii) to permit entry upon designated land or other property in the possession, custody or control of the party served for the purpose of inspecting, measuring, surveying, sampling, testing, photographing or recording by motion pictures or otherwise the property or any specifically designated object or operation thereon.

"2. The notice shall specify the time, which shall be not less than twenty days after service of the notice, and the place and manner of making the inspection, copy, test or photograph, or of the entry upon the land or other property and, in the case of an inspection, copying, testing or photographing, shall set forth the items to be inspected, copied, tested or photographed by individual item or by category, and shall describe each item and category with reasonable particularity.

"(b) As against non-party. A person not a party may be directed by order to do whatever a party may be directed to do under subdivision (a). The motion for such order shall be on notice to all adverse parties; the non-party shall be served with the notice of motion in the same manner as a summons. The order shall contain, in addition to such specifications as the notice is required to contain under paragraph two of subdivision (a), provision for the defraying of the expenses of the non-party."

Derivation

C.P.A.1920, § 324 amended L.1945, c. 727; §§ 327, 982, 983, 984.

R.C.P. 140, 141, 142.

C.C.P.1876, § 803 amended L.1909, c. 173; L.1913, c. 86; §§ 804, 805, 1682, 1683, 1684.

Gen.Rules 14, 15.

C.P. (Field Code) 1848, § 388.

McKinney's CPLR Rule 3120, NY CPLR Rule 3120

Current through L.2010, chapters 1 to 55, 61 to 134 and 136.

END OF DOCUMENT

McKinney's CPLR Rule 3120

Exhibit D

From: Craig D. Roswell [cdroswell@nilesbarton.com]
Sent: Wednesday, July 14, 2010 5:40 PM
To: Suleiman, Daniel; Frank Daily
Cc: Heather B. Nelson; Sean Edwards; 'dschertler@schertlerlaw.com'; 'rspagnoletti@schertlerlaw.com'
Subject: RE: Wone v. Price, et al. -- Verizon Subpoena

Dan,

We share Frank's position on the matter and must decline to consent. Of course, as stated, no grounds for opposing your motion are waived by concurring in those grounds set forth below.

Craig

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Admitted to practice in Maryland, Virginia, and the District of Columbia.

From: Frank Daily [mailto:info@frankdailylaw.com]
Sent: Wednesday, July 14, 2010 3:45 PM
To: 'Suleiman, Daniel'
Cc: Craig D. Roswell; Heather B. Nelson; Sean Edwards; 'dschertler@schertlerlaw.com'; 'rspagnoletti@schertlerlaw.com'
Subject: RE: Wone v. Price, et al. -- Verizon Subpoena

Dan,

Thank you for your e-mail yesterday in this regard.

Please be advised that on behalf of Victor Zaborsky, we cannot consent to your renewed motion for issuance of a Commission to subpoena Mr. Zaborsky's phone and e-mail records from Verizon. While we do not believe we are required to spell out the basis for our refusal, we will provide you with the primary reasons for our objection, with the understanding that these may not be the only reasons that we state in our opposition to the Commission.

First and foremost, the requested subpoena will or may elicit information and documents that are protected by the attorney-client privilege between Mr. Zaborsky and his lawyers. The requested subpoena also will or may elicit information and documents that are similarly protected from disclosure by the spousal privilege that exists between Mr. Zaborsky and Mr. Price.

Finally, the subpoena is overly broad in its temporal scope. It is our understanding that Robert Wone initiated communications with Mr. Price about spending the night at1509 Swann Street on or about July 26, 2006. Any communications contained in e-mails, or telephone calls made before there was even knowledge that Robert Wone would be present at the residence on August 2, 2006 cannot possibly be relevant, nor lead to the discovery of relevant or admissible information. Similarly, it is Plaintiff's allegation that any alleged conspiracy was formed on August 2, 2006. While there may be an argument that relevant information might be obtained through discovery of non-privileged documents during a narrow window after this date, it is our belief that this window does not extend to August 31, 2006, and likely would not encompass more than one or two weeks after August 2, 2006.

Again, by noting these specific objections, Mr. Zaborsky is in no way waiving his right to object to the motion for issuance of a Commission on additional grounds that may be applicable.

Thank you for your consideration of these issues, and please contact me if you wish to discuss this matter in more detail.

Best regards,

Frank

From: Suleiman, Daniel [mailto:dsuleiman@cov.com]
Sent: Tuesday, July 13, 2010 4:28 PM
To: 'cdroswell@nilesbarton.com'; 'hbnelson@nilesbarton.com'; Frank Daily; Sean Edwards; 'dschertler@schertlerlaw.com'; 'rspagnoletti@schertlerlaw.com'
Cc: Razi, Benjamin
Subject: Wone v. Price, et al. -- Verizon Subpoena

Dear Counsel,

As you will recall, in February 2009, on behalf of Mrs. Wone, we filed a motion with the Court for issuance of a Commission to subpoena your clients' phone and email records from Verizon for the period July 1, 2006 through August 31, 2006. When the Court stayed this action, it denied our motion without prejudice. Now that the stay has been lifted, however, we intend to renew our request for permission to subpoena these records. Please let us know by COB tomorrow (July 14) whether or not you consent to our renewed motion and, if you do not, the basis for your refusal.

Regards,
Dan

Daniel Suleiman
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1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 662-5350 (phone)
(202) 778-5350 (fax)

Exhibit E

From: Price, Joseph
Sent: Tuesday, June 20, 2006 1:47 PM
To: dylanward@verizon.net
Subject: thanks for the card

Dylan,

Thanks for the card. I appreciate the thought--and the communication.

I'm not sure what to say in response. I'm not perturbed--just scared and upset. It has taken a couple of weeks, but it finally sank in that your disinterest and pushing away was not a momentary thing. Coming back to the same situation, having been gone from you for the weekend, is--I suppose--when it really hit me.

As you know, I have some experience with losing sexual interest in my partners and that was never pleasant, but, in no small part because of that experience, being on the other side is decidely worse. My personal experience has always been that the light doesn't come on again once it goes off. I know that you are not me, but it is nevertheless nerve racking and I've spent the past couple of days obsessing about why this happened and how, hunting for some clue or understanding, but finding none.

I'm sorry the job change is so stressful. That would be nice if that were all that was causing your loss of attraction, but that is hard to imagine for me. I feared that the change would be tough and thought my affections and attentions would be helpful, not annoying. That makes being pushed away that much harder as I'm really not sure what else to do to be supportive of you during this challenging time. I know withdrawing and isolating are patterns for you during times of stress, but that is not easy to deal with as someone who loves and cares for you and wants to "be there" for you when you under duress.

Not sure what is next. I don't want and would be put off by having you feign attraction. I also don't want and won't put you in a situation where you literally have to evade my physical attention, so I will continue to give you some space. Frankly that is easier for me too, as being pushed away is not something I was enduring very well.

Guess we wait and see what happens and hope for the best.

Joe

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Washington, DC 20036-5339
202.775.5769 DIRECT | 202.857.6395 FAX
price.joseph@arentfox.com | www.arentfox.com

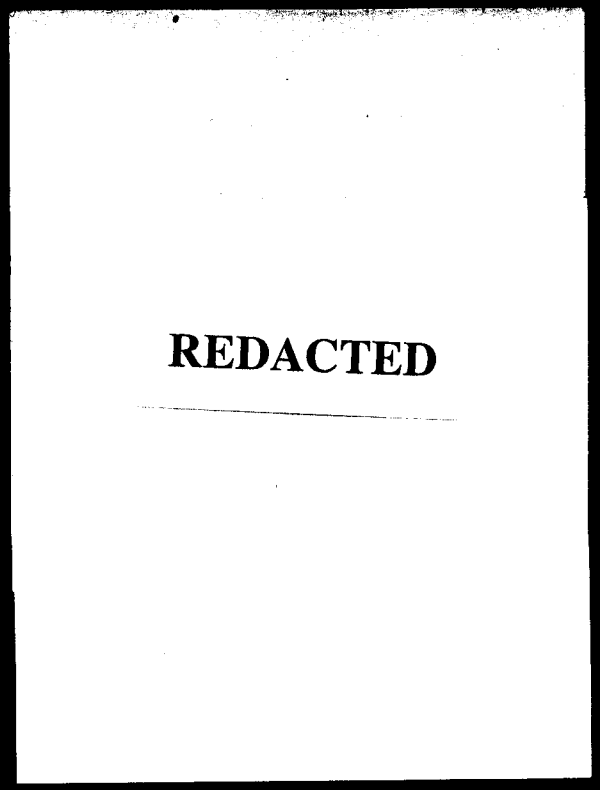
Exhibit F

Culuket's Profile - Man Looking For Men or Couples (2 men) for active participation - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Back Search Favorites

Address http://alt.com/p/member.cgi



Report member for abuse
Report photo for abuse

Interact with Culuket

- Send to Friend
- Block Emails/IMs
- Add to Hotlist
- Private Chat Room
- Send Kiss
- Refer to a Friend
- Send Voice Message
- Invite to our network

Looking For: Men or Couples (2 men) for active participation

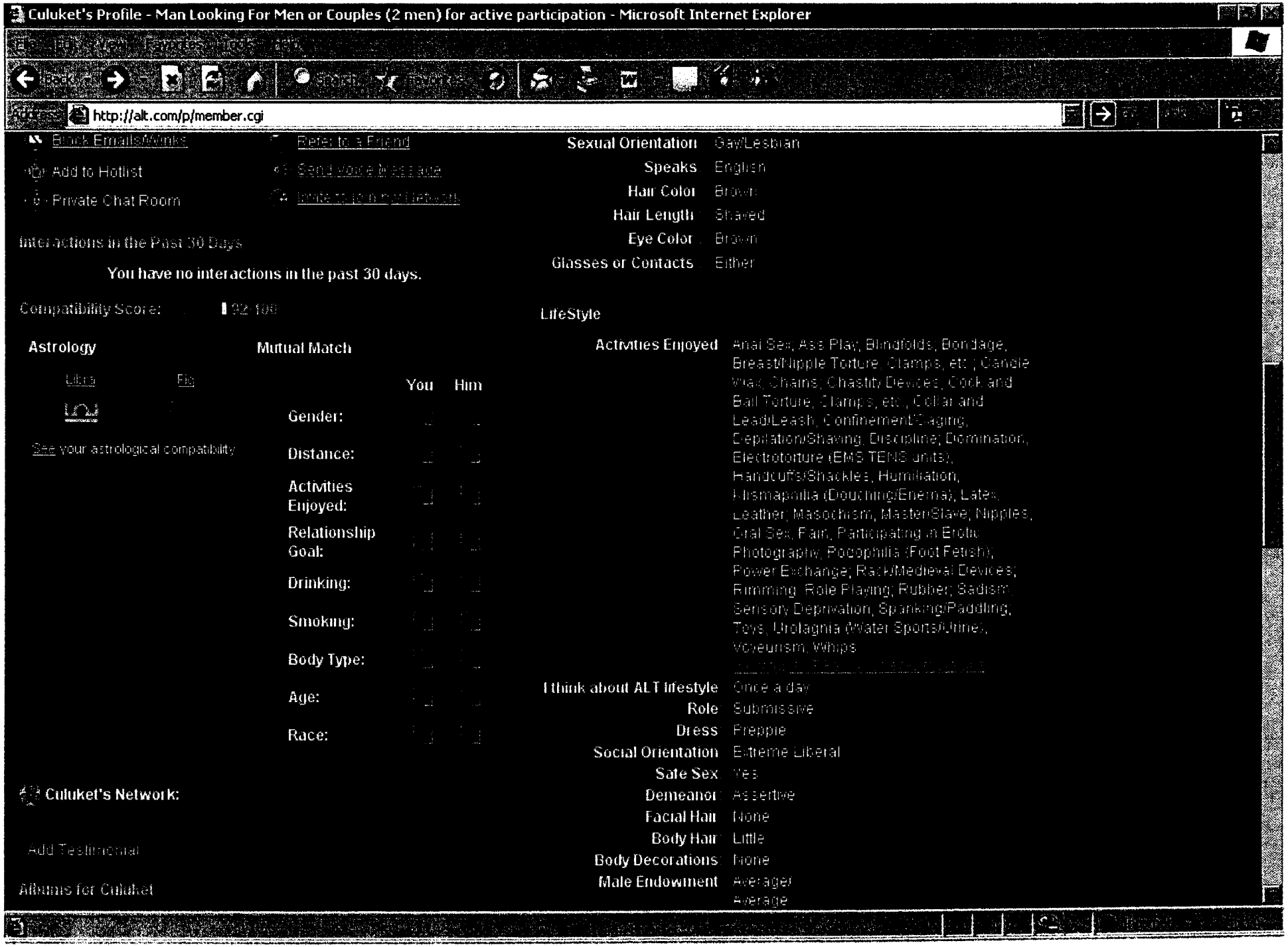
Profile for Culuket

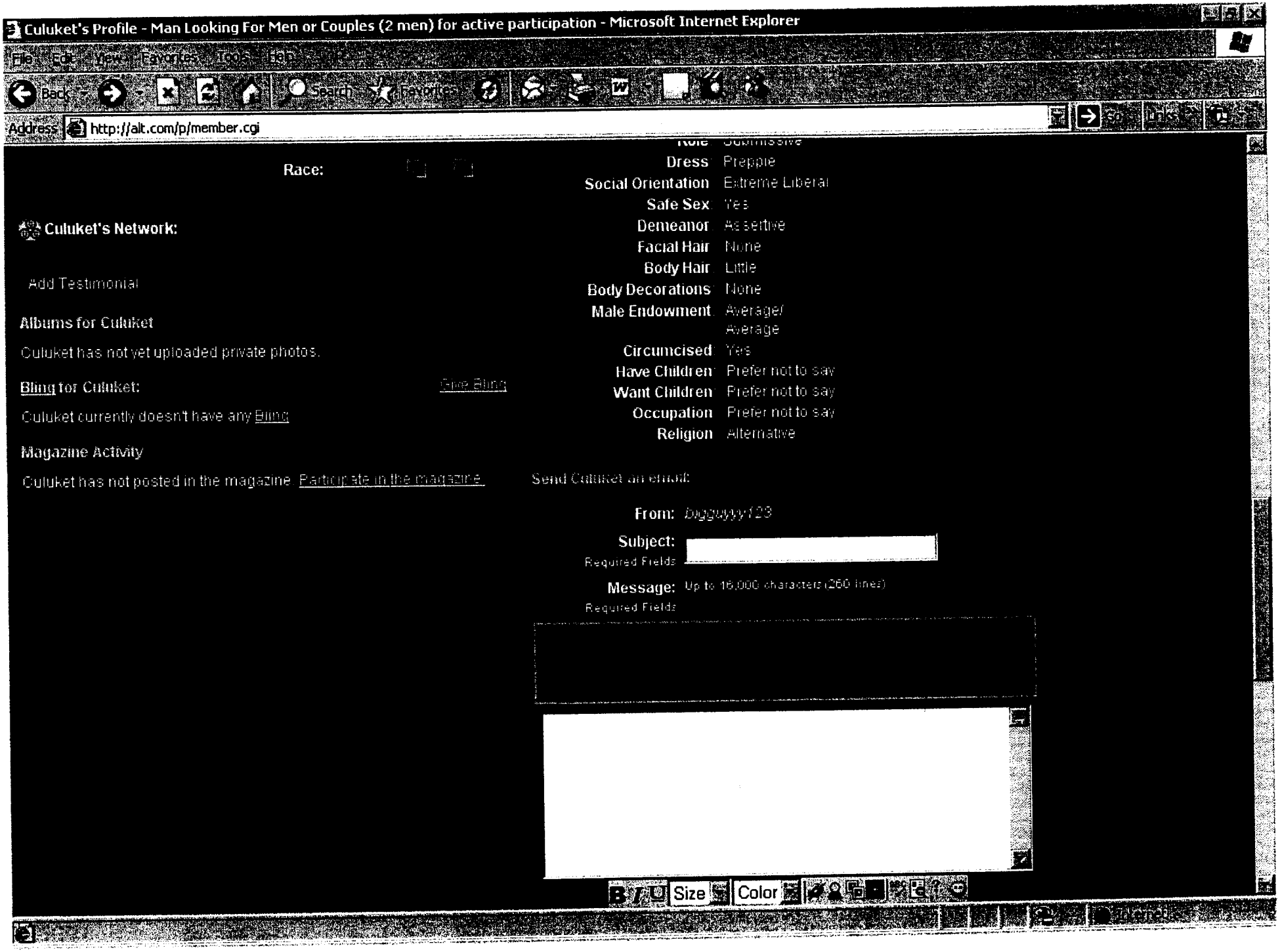
I'm a 34 year old BDSM enthusiast in the Washington D.C. area looking for a dominant or submissive partner to join me and my dom. (35, slim, swimmer's build). We are into and have experience with CBT, TT, feet, ass-play, discipline, light bondage, dog training nd fetish wear. We'd like to expand our limits/experience by including a third (experience level not important) seeking the same in a mutually satisfying experience

My Ideal Person:
I'm interested in meeting a confident, fit man (sub or dom) who would be interested in participating in a threesome with me and my dom

Information:

Gender	Man
Birthdate	September 30, 1971 (37 years old)
Lives in	Washington, D.C., District of Columbia (1 miles from you)
Height	5 ft 11 in / 180-182 cm
Body Type	Slim/Petite
Smoking	I'm a non-smoker
Drinking	I'm a light/social drinker
Drugs	Prefer not to say
Education	PhD/MD/Post doctorate
Race	Caucasian
Sexual Orientation	Gay/Lesbian
Speaks	English
Hair Color	Brown
Hair Length	Shaved
Eye Color	Brown


Culuket's Profile - Man Looking For Men or Couples (2 men) for active participation - Microsoft Internet Explorer
http://alt.com/p/member.cgi
Block Emails/IMs
Refer to a Friend
Add to Hotlist
Send Voice Message
Private Chat Room
Invite to join my network
Interactions in the Past 30 Days
You have no interactions in the past 30 days.
Compatibility Score:
92 100
Astrology
Libra
Pig
See your astrological compatibility
Mutual Match
You
Him
Gender:
Distance:
Activities Enjoyed:
Relationship Goal:
Drinking:
Smoking:
Body Type:
Age:
Race:
Culuket's Network:
Add Testimonial
Albums for Culuket
Sexual Orientation Gay/Lesbian
Speaks English
Hair Color Brown
Hair Length Shaved
Eye Color Brown
Glasses or Contacts Either
LifeStyle
Activities Enjoyed Anal Sex, Ass Play, Blindfolds, Bondage, Breast/Nipple Torture, Clamps, etc., Candle Wax, Chains, Chastity Devices, Cock and Ball Torture, Clamps, etc., Collar and Lead/Leash, Confinement/Caging, Depilation/Shaving, Discipline, Domination, Electrotorture (EMS TENS units), Handcuffs/Shackles, Humiliation, Klismaphilia (Douching/Enema), Latex, Leather, Masochism, Master/Slave, Nipples, Oral Sex, Pain, Participating in Erotic Photography, Pocophilia (Foot Fetish), Power Exchange, Rack/Medieval Devices, Rimming, Role Playing, Rubber, Sadism, Sensory Deprivation, Spanking/Paddling, Toys, Urolagnia (Water Sports/Urine), Voyeurism, Whips
I think about ALT lifestyle Once a day
Role Submissive
Dress Preppie
Social Orientation Extreme Liberal
Safe Sex Yes
Demeanor Assertive
Facial Hair None
Body Hair Little
Body Decorations None
Male Endowment Average
Average


Culuket's Profile - Man Looking For Men or Couples (2 men) for active participation - Microsoft Internet Explorer
File Edit View Favorites Tools Help
Back Search Favorites
Address http://alt.com/p/member.cgi
Role Submissive
Race:
Dress Preppie
Social Orientation Extreme Liberal
Safe Sex Yes
Culuket's Network:
Demeanor Assertive
Facial Hair None
Body Hair Little
Add Testimonial
Body Decorations None
Male Endowment Average/ Average
Albums for Culuket
Circumcised Yes
Culuket has not yet uploaded private photos.
Have Children Prefer not to say
Bling for Culuket: Give Bling
Want Children Prefer not to say
Occupation Prefer not to say
Culuket currently doesn't have any Bling
Religion Alternative
Magazine Activity
Culuket has not posted in the magazine Participate in the magazine
Send Culuket an email:
From: bigguyyy123
Subject:
Required Fields
Message: Up to 16,000 characters (260 lines)
Required Fields
Size
Color