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1 recording?

2 A. Yes.

3 Q. Okay. And it is your testimony today that it  
4 is an accurate recording; is that correct?

5 A. Yes.

6 MS. SWITZER: At this time we would offer  
7 State's Exhibit 2 into evidence and tender to defense counsel  
8 for any objections.

9 MR. RAY: We object to it on the grounds that  
10 it is a statement by the witness as to what he's heard. We  
11 don't know that it's relevant to anything that we're  
12 listening to, we don't know what it says. We just have his  
13 testimony that he recorded something and that this is it.

14 THE COURT: Well, it doesn't mean anything to  
15 me until I've heard it. Do we have a means of hearing it?

16 MS. SWITZER: Yes, Your Honor. We have a tape  
17 player don't we, Wayne, please?

18 THE BAILIFF: There's one sitting right here.

19 THE COURT: Can we use your device?

20 COURT REPORTER: If we can go off the record.

21 THE COURT: Beg your pardon?

22 COURT REPORTER: Yeah, if we're going off --  
23 are we going off the record?

24 THE COURT: We'll have to go off the record to  
25 hear this and then we -- don't let me rule or do anything

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1 until we get your tape back in and go back on the record.

2 COURT REPORTER: Okay.

3 THE COURT: But if I can hear it, then I can  
4 rule on it. All right.

5 (State's Exhibit 2, tape,  
6 played to Judge.)

7 THE COURT: You have an objection?

8 MR. RAY: Yes, we do. Number one, it is not  
9 derogatory, it is a response to a complaint that Mr. Rushing  
10 had turned in about a public file and it is in accordance  
11 with a communication policy to advise the public that it is  
12 available to them if they did.

13 THE COURT: I'm going to receive it in  
14 evidence, because it is relevant to and I think should be  
15 considered in connection with the statement that he -- that  
16 has been made in the website concerning -- his statement in  
17 his website or a statement in the website that this series of  
18 complaints were fraudulent. In our -- in our exhibit that's  
19 in the record, those complaints were called fraudulent. So  
20 I'm going to admit this to be used in conjunction with the  
21 evidence that's already in the record. All right. We'll  
22 proceed.

23 Q. (By Ms. Switzer) Mr. Rushing, do you recognize  
24 the voice on that tape?

25 A. No, I don't.

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1 Q. You don't recognize that voice as being that  
2 of Mr. Hammond?

3 A. No.

4 Q. Okay. You don't recognize whose voice it is?

5 A. No, I don't have no idea whose voice that is.

6 Q. Now, let me ask you this, was Mr. Hammond  
7 still running the radio station at that time?

8 A. At that particular time, yes.

9 Q. And do you know what his duties were?

10 A. Owner/operator of the station.

11 Q. Okay. And as owner or operator of the  
12 station, do you also control what is placed on there?

13 A. As far as I know.

14 Q. On your radio?

15 A. As far as I know.

16 Q. Okay. All right.

17 MS. SWITZER: Pass the witness.

18 CROSS EXAMINATION

19 BY MR. RAY:

20 Q. Mr. Rushing.

21 A. Yes.

22 Q. You are as the tape said, you are the head of  
23 the Chamber of Commerce for the City of Shamrock?

24 A. Yes.

25 Q. As well as the director of the Shamrock

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1 Economic Development Corporation?

2 A. Correct.

3 Q. And your sole duties are one of those two  
4 capacities, you don't have any business or anything else  
5 besides those two occupations to take up your time?

6 A. No, sir.

7 Q. Okay. It is true, is it not, that when you  
8 and some of your fellow Shamrock Economic Development Company  
9 Corporation members ousted Mr. Hammond from --

10 MS. SWITZER: Your Honor, I'm going to object  
11 to the terminology "ousted."

12 THE COURT: Overruled.

13 Q. (By Mr. Ray) -- them from the downtown radio  
14 building that it is in up to that time, that Mr. Hammond had  
15 a public file on the radio station there and it was KRMN; is  
16 that right?

17 A. Yes, there was a public file for KRMN.

18 Q. And -- and you kept that and you still have  
19 control of that file, don't you?

20 A. Yes.

21 Q. And so, Mr. Hammond as the owner, they changed  
22 the call letters to KBKH, had to create another public file  
23 for that station.

24 MS. SWITZER: Objection, Your Honor, relevance  
25 as to the public file. That's not the purpose for which this

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1 testimony was offered. It was for the purposes of showing  
2 that the Defendant has in fact violated the terms and  
3 conditions of his probation. It is not whether or not we're  
4 going to litigate a public record file. It's not relevant.

5 THE COURT: Overruled.

6 Q. (By Mr. Ray) And -- and you knew that you had  
7 that file when you made a complaint with the FCC that  
8 Mr. Hammond refused to let the public see that public file,  
9 didn't you?

10 MS. SWITZER: Again, Your Honor, I'm going to  
11 object as to relevance.

12 THE COURT: Overruled. Proceed.

13 A. The KRMN file was still in the building, as  
14 KBKH as a new call letters, a new station, he set up his own  
15 public file whenever he moved out of that building. And what  
16 happened was, was our attorney's secretary went out to  
17 inspect the file and was turned away.

18 MR. RAY: Again, we're getting into hearsay  
19 about the -- about his secretary.

20 MS. SWITZER: Your Honor, he's merely  
21 answering --

22 MR. RAY: We haven't asked him a question  
23 about it.

24 MS. SWITZER: He's answering the questions  
25 that you asked him.

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1 MR. RAY: No, he isn't, he's going into --

2 THE COURT: I -- I don't want y'all talking to  
3 each other anymore. Make your addresses to the Court and  
4 I'll rule on your objection if I feel it's necessary. Now  
5 let's proceed.

6 Q. (By Mr. Ray) Now, shortly after the Court  
7 granted Mr. Hammond probation, you set out to see if you  
8 could find some way to get it revoked, isn't that true?

9 A. No, sir.

10 MS. SWITZER: Objection, Your Honor,  
11 relevance.

12 THE COURT: Sustained.

13 Q. (By Mr. Ray) Haven't you made statements to  
14 people that you would get his probation revoked within ten  
15 days to two weeks?

16 MS. SWITZER: Objection, Your Honor,  
17 relevance. It's not up to this witness as to what happens to  
18 the Defendant's probation.

19 MR. RAY: It is if he --

20 THE COURT: I'll sustain the objection. The  
21 State of Texas has filed the Motion to Revoke.

22 MR. RAY: But they're using this witness to do  
23 it.

24 THE COURT: I understand that that's true.  
25 I'll let you cross examine him. Proceed.

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1 MR. RAY: All right.

2 Q. (By Mr. Ray) Isn't it also true that you know  
3 enough about internet sending messages and receiving them,  
4 that you yourself could have sent a message on this message  
5 board?

6 A. I had no access to his message board as far as  
7 input.

8 Q. You have sufficient ability to get information  
9 off of it and that's the extent of your visit with the  
10 website? Is that your testimony?

11 A. Yes. I only pull things off of his website.

12 Q. How do you get into a website like the one  
13 we're talking about here, the message board?

14 A. On the message board, just log onto his  
15 website and click on where it says message boards.

16 Q. And you don't have to have any password or  
17 anybody can say what they want to?

18 A. You have to have a password to go into the  
19 private message boards.

20 Q. Okay. And are you telling the Court that the  
21 message board that we're talking about here is a private one?

22 A. Some of it is, some of it's not.

23 Q. Okay. Explain to the Court how a message  
24 board can be partly private and partly not -- not private?

25 A. You have to have a password to get into it.

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1 Q. All right. In other words, if you have a  
2 password, then you can get into it, if you don't have, you  
3 can't?

4 A. That's correct.

5 Q. All right. Is it true that only an  
6 administrator can send a message that would get on the  
7 message board?

8 A. As far as I know.

9 Q. Do you know the password on this message  
10 board?

11 A. To send a message? I don't have a password to  
12 send a message.

13 Q. Okay. Do you have a password to get a  
14 message?

15 A. Yes.

16 Q. Okay. And do you know anyone who does have a  
17 password that you could get to let you use it?

18 MS. SWITZER: Objection, Your Honor, relevance  
19 and hearsay.

20 THE COURT: Overruled. I'm interested in how  
21 we have this exhibit.

22 A. Okay. I have a password because Mr. Hammond  
23 gave a family member of mine a password.

24 Q. (By Mr. Ray) All right. And so with that  
25 password you could either get a message or send a message,

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1       couldn't you?

2               A.       I do not know how to send a message on it, no.

3               Q.       Okay. You can send e-mails, you have sent  
4 lots of e-mails, haven't you?

5               A.       This has nothing to do with e-mail.

6               Q.       Okay.

7               MR. RAY: Excuse me just a minute, Judge.

8                               (Discussion between Mr.  
9                               ray and Defendant.)

10              Q.       (By Mr. Ray) You know, do you not, that on May  
11 the 29th, 2004, that Mr. Hammond withdrew his  
12 administratorship on the website that we're talking about?

13              A.       I did not know that.

14              Q.       Okay. And you also knew that he had some  
15 other websites besides just this one?

16              A.       I know he has several different websites.

17              Q.       All right. Now, is it your testimony that you  
18 have not monitored or visited with any of the other websites,  
19 just this message board?

20              A.       I've looked at several different message  
21 boards.

22              Q.       Okay. But only -- strike that. Is it true  
23 that the so-called message board that we're talking about, is  
24 sort of analogous to the letter to the editor type thing in  
25 the newspaper?

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