V I R G I N I A:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

CHERI SMITH,	)	
Plaintiff,	)	
	)	
v.	)	**Chancery No. 53360**
	)	
WESLEY C. SMITH,	)	
Defendant	)	

#65 – REPLY TO VANDERHYE MOTION TO QUASH

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COMES NOW the Defendant, Wesley C. Smith, and makes this reply to ROGER VANDERHYE'S MOTION TO QUASH WITNESS SUBPOENA. The Defendant states as follows:

1. Mr. Vanderhye can properly be considered a witness in this case. Mr. Vanderhye has personal knowledge about the Plaintiff's efforts to discourage the Defendant from being involved in our son's education and school activities, as well as personal knowledge about our son's behavioral problems at school.

2. Mr. Vanderhye, as documented in #64 - Motion To Strike GAL Report Exhibit B, has been involved in dealing with the behavioral problems of our son at school and Mr. Vanderhye has exchanged e-mail with his staff relating to that topic.

3. The Defendant disputes paragraph 5 as Mr. Vanderhye did not find it "overly burdensome, oppressive, unnecessary, and designed to harass." When the **Plaintiff subpoenaed him** for the trial on Oct 5, 2004. Indeed Mr. Vanderhye show up at the trial without any objection and appeared willing and able to testify.

4. It would appear that Mr. Vanderhye only finds appearing in court "overly burdensome" if his testimony might help rather than hurt the Defendant.

5. Mr. Vanderhye claims (paragraph 6) "Mr. Vanderhye can provide no testimony pertaining to any of the issues in this case." If that was a true statement why did the Plaintiff subpoena him for the Oct 5, 2004 hearing? It would appear the Plaintiff agrees he could provide relevant testimony. Why did he not state then that he could provide no relevant testimony?

6. Has Mr. Vanderhye recently had a brain injury causing him to lose memory of whatever relevant testimony the Plaintiff subpoenaed him for in Oct 2004? If not then clearly any testimony he could have provided then could still be provided now along with testimony about the Plaintiff's efforts to discourage the Defendant's involvement in school events as well as the behavioral problems that have occurred after visitation was suspended.

7. It is also likely that Mr. Vanderhye can shed some light on the false claim of physical child abuse that was filed with CPS.

8. Also the refusal of Mr. Vanderhye to allow the Defendant to attend school events is relevant to the Bests Interests of our son and the court is required by law to consider the impact of such an uncooperative school principal on our son. Common sense, as well as state law, dictates that in general it is in a child's best interests to be able to have both parents attend school events. Mr. Vanderhye has been denying this to our son and the court should demand that he explain his actions.

9. The fact that the court previously abused its discretion by quashing a witness subpoena for relevant information does not justify doing so again. The court was wrong to quash it then, as it would be wrong to quash it now.

10. In fact Thomas J. Cawley, Sona Rewari, are negligent in even putting forth the argument as to what testimony Mr. Vanderhye can provide as the courts have ruled that "*The relevancy of the testimony sought is not an issue which may be raised by a motion to quash*." People v Slochowsky, 116 Misc 2d 1069, 456 NYS2d 1018

11. As the Defendant has shown that Mr. Vanderhye does indeed have knowledge relevant to the best interests of our son that the court must by law consider, the court has no legal choice but to compel Mr. Vanderhye to appear at the trial and testify, any other ruling by the court would be a clear abuse of discretion and a blatant display of gender bias.

WHEREFORE the Defendant moves this court to:

1. Compel Mr. Vanderhye to attend the trial and to testify.
2. If the Court feels it is inconvenient for Mr. Vanderhye to appear towards the end of the school year, that the court may continue the case until after June 20th when school is over for the year.

Respectfully Submitted,
Wesley C. Smith

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Wesley C. Smith, Defendant
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