

BEFORE THE LEARNED CHIEF JUDICIAL MAGISTRATE,
PILIBHIT, UTTAR PRADESH

In the matter of:

State

Versus

Mr. Varun Gandhi

Crime No. 238/09, 255/09, 273/09

P.S. : Barkhera

Application on behalf of New Delhi Television Limited

1. The present application is being preferred by New Delhi Television Limited, the Applicant herein, having its registered office at 207, Okhla Industrial Area, Phase II, New Delhi and represented by Dinesh Mansera, duly authorized to prefer the present application vide a board resolution.
2. The Applicant had extensively covered the recent general elections held in the country including the electoral phase at Pilibhit.
3. Brief facts necessitating the filing of the present Application are as follows:-

- (a) On 07.03.2009 and 08.03.2009 Mr. Varun Gandhi, the Accused, while campaigning from the Pilibhit constituency allegedly made public addresses. These speeches were allegedly of a nature likely to incite religious disharmony. CDs of these speeches were provided to numerous media organizations including the Applicant.
- (b) Pursuant to these speeches as well as his conduct, criminal proceedings under Sections 153A, 188, 295A and 505(2) of the Indian Penal Code 1860 along with Section 125 of the representation of the People Act, 1951 were initiated against the Accused.
- (c) The Accused has specifically denied making the speeches recording of which are contained in the CDS that was circulated. The Accused has further claimed that the contents of the circulated CDs were tampered and fabricated, with a view to prevent him from contesting the General Election.
- (d) After having received a copy of the CD, the Applicant decided to send the same for forensic examination to determine whether the contents thereon i.e. the recordings of the speeches allegedly made by the

Accused were in fact tampered and fabricated or genuine.

- (e) Accordingly, the Applicant sent these recordings to two forensic companies in the United States of America, services of which companies, are frequently used for trials of the examination was to determine whether the recordings of the speeches as contained on the CD that had been circulated were tampered with or were in fact original footage Both these experts have opined and certified that the contents of the CD have not been tampered with or fabricated and are in fact genuine and original recordings. A copy of the opinion of the Video Resources is annexed herewith and marked as Annexure -1. A copy of the opinion of Inc. and Digital Evidence Legal Video Services is annexed herewith and marked as Annexure -2.

- (f) Apart from the opinion, the Applicant has also recorded on camera the statement of Mr. Graf of Video Resources, Inc. belonging to one of the forensic companies that undertook the examination of the recordings. In this recording, Mr. Graf is seen explaining the process used by him to reach the conclusion that the recordings are genuine and no tampering has been done. A copy of the

recorded statement of Mr. Eric M. Graf is annexed herewith and marked as Annexure -3.

4. It has been learnt by the Applicant through media sources that the CFSL has given its findings that the contents of the CD (a copy of which was sent by the Applicant to the American experts) are genuine and no tampering has been done thereon.

5. Accordingly, in view of the public interest involved as well as the report of CFSL, the Applicant wishes to air this recorded statement as well as show the opinion/ certificates of the experts.

6. In order to ensure that the proposed airing does not come in the way of the trial in any manner so as to interfere in the administration of justice, the Applicant, by way of the present application, seeks the permission of this Learned Court to permit the Applicant to air the recorded statement of Mr. Graf as well as show the opinion/ certificates of the American experts.

7. It is submitted that such airing is a public interest and will not in any manner hamper the trial in as much as the Accused is being tried not on the basis of the CD but his conduct otherwise.

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In view of the above, it is humbly prayed that this Learned Court may kindly permit the applicant to air the proposed telecast highlighting the fact that contrary to the Accused's claim the contents of the CD are not tampered or fabricated and are genuine.

It is prayed accordingly.

Sd/- Illegible

Applicant

Dinesh Kumar Mansera

Through

Counsel

Pilibhit

Dated : 6.7.2009

FORENSIC AUDIO AND VIDEO EVIDENCE ANALYSIS

AUDIO AND VIDEO EVIDENCE FILE SPECIFICATIONS

- I. Throughout our examination of the evidence in question we utilized the following forensic tools and software to conduct our analysis:

Avid Media Composer 3.1, HP Work Station XW 8000, Windows XP Service Pack II, Adobe Audition III Spectral Frequency Graph and Wave Form Processing Software, Pro Coder -3, Photoshop CS 4, Mac G-5 Computer System, Final Cut Pro HD Software, JVC BR- DV6000, and JVC BR- DV3000.

- II. During our examination we discovered the following specifications contained on the audio and video file entitled "varun notice" submitted to us for analysis and contained on the TDK Compact Disc:

<u>Created</u> : Saturday, March 14, 2009, 11:05:00 AM	<u>Image:</u> Width: 640 Pixels
Type of File : Windows Media Audio/ Video File.	Height : 480 Pixels
Size : 37.0 MB (38,855,254 bytes)	<u>Audio</u>
Size on Disk : 37.0 MB (38,856,704)	Duration : 0:05:09
<u>Origin:</u>	Bit Rae : 1012 KBPS

Protected : No	Audio Sample Size :
<u>Video :</u>	16 -Bit
Date Rate : 904 kbps	Channels : 2(Stereo)
Video Sample Size : 24 Bit	Audio Sample Rate :
Stream Name : Video 2	44 KHZ

III. During our examination, we discovered the following specifications contained on the audio and video file entitled "varun notice 02" contained on the TDK Compact Disc:

<u>Created</u> : Saturday, March 14, 2009, 10:19:00 AM	<u>Image:</u> Width: 640 Pixels
Type of File : Windows Media Audio/ Video File.	Height : 480 Pixels
Size : 29.2 MB (30,678,853 bytes)	<u>Audio</u> Duration : 0:04:03
Size on Disk : 37.0 MB (30,679,040)	Bit Rae : 1012 kbps
<u>Origin:</u> Protected : No	Audio Sample Size :
<u>Video :</u>	16 -Bit
Date Rate : 904 kbps	Channels : 2(Stereo)
Video Sample Size : 24 Bit	Audio Sample Rate :
Stream Name : Video 2	44 KHZ

Forensic Audio and Video Evidence Analysis

- I. Relative to the audio and video file entitled "varun notice" (frontal camera angle), we duplicated the audio and video contained on the file, forwarded the distorted audio to the proper level, and placed a visible Time Code Stripe on the video sequences for demonstrative purposes to assist the Client and other parties with comprehending our analysis of the audio and video evidence in question.

We utilized Adobe Audition III Spectral Frequency Graph and Wave Form Processing Software to examine the audio issues associated with the file entitled "varun notice". Unless stated otherwise, all observations and conclusions in Section A shall reference the file entitled "varun notice" exclusively. (See Video Exhibit No. 4, Audio EQ & TC on the DVD generated by Digital Evidence Legal Video Services.)

- II. We analyzed all of the audio and video associated with evidence in question. However, due to the same or similar characteristics of the recording start and stop issues exhibited throughout the majority of the audio and video file entitled varun notice, I have elected to reference the approximate Time Codes of the audio and video sequences in group fashion, and cite the potential cause(s) of the issues exhibited at the end of that particular groups category.

The same approach shall apply to the audio and video sequences exhibiting digital audio and video pause issues that we discovered during our analysis of the evidence in question.

Directly following the potential cause(s) of the issues in question, I will convey the conclusions from our analysis relative to the respective Time Codes of the audio and video sequences cited. All Time Codes cited are approximate.

My objective is to demonstrate in a coherent fashion the outcomes of our examination relative to the evidence in question. The aforementioned process is the most efficient and comprehensive approach relative to conveying the results of our forensic analysis.

Again, the audio and video source for all Time Code references listed below in Section A is from the audio and video file entitled varun notice. Please refer to Video Exhibit No. 4, Audio EQ & TC on the DVD generated by Digital Evidence Legal Video Services to view the video.

A. Observations and conclusions ("varun notice")

Time Coded Sequences with Audio and Video Recording Start and Stop Issues:

- | | |
|------------------------------|------------------------------|
| 1. 00:00:00;00 - 00:00:12;04 | 2. 00:00:12;04 - 00:00:14;02 |
| 3. 00:00:16;11 - 00:00:25;14 | 4. 00:00:25;14 - 00:00:35;18 |

- | | |
|-------------------------------|-------------------------------|
| 5. 00:00:35;18 - 00:00:36;04 | 6. 00:00:36;04 - 00:00:50:08 |
| 7. 00:00:50:08 - 00:00:51;29 | 8. 00:01:19:08 - 00:01:30;06 |
| 9. 00:01:30:06 - 00:01:32;04 | 10. 00:02:07:03 - 00:02:11;23 |
| 11. 00:02:11;23 - 00:02:21;08 | 12. 00:02:22;28 - 00:04:07;03 |
| 13. 00:04:07:03 - 00:04:26:25 | 14. 00:04:26:25 - 00:04:56:01 |
| 15. 00:04:56:24 - 00:05:09:04 | |

The Time Coded sequences listed above showcase the beginning and ending points of each particular audio and video sequence.

Please review page 8 for our observations and conclusions relative to the potential cause(s) for the audio and video interruption in the aforementioned sequences.

Forensic Audio and Video Evidence Analysis (Continued)

A. Observations and Conclusions ("varun notice" Continued)

Our forensic analysis of the approximate Time Coded sequences cited at the bottom of page 7 revealed the following potential causes for the audio and video interruption issues contained on the recording:

1. Consistent with the majority of the recording on the file entitled "varun notice", it appears the camera operator recording the event paused the camera (for whatever reason), and then resumed recording portions of the event at various intervals.
2. Relative to the various luminance issues, the varying aperture is of no consequence because the iris in the camera is fluctuating due to the position of the sun, the motion of the people in the foreground, and the fact that Mr. Gandhi is speaking in an area shaded from direct sunlight. There are times when the camera appears to be in the auto iris mode.
3. Regarding audio discrepancies, one plausible explanation for the audio discrepancies could be due to the party dubbing the original audio and video from the PAI format (625 -line/50 HZ system) to NTSC format

(525-line/60 HZ system), thereby, causing frame rate variation.

4. It appears that the author party duplicating the original audio and video recording utilized an unsynchronized video source and video recorder to duplicate the video in question, thereby, giving the appearance of tampering with the audio and video in question. However, it is not uncommon for a reason to select certain portions of a recording for duplication (for whatever reason).
5. We found no evidence of malicious manipulation of the recorded audio and video in any of the sequences listed at the bottom of page 7. The audio frequencies in each sequence whether long or short appear consistent and unmolested on the Special Frequency Display. We utilized Adobe Audition III Spectral Frequency Graph and Wave Form Processing Software to examine the audio issues associated with the Time Coded sequences listed at the bottom of page 7. We did not discover any evidence of tampering evidence in question.
6. For an example relative to where the audio frequency changes do occur (due to dubbing scene changes only); See forensic photographic Exhibits 19, 20, 25 and 26 on the Compact Disc, or the printed forensic photographic

exhibits 19, 20, 25 & 26 contained in Appendix I of this report.

A. Observations and Conclusions ("varun notice"
Continued)

Time Coded Sequences with Digital Audio and Video
Issues:

- | | |
|------------------------------|------------------------------|
| 1. 00:00:14;02 - 00:00:14;13 | 2. 00:00:51;29 - 00:00:52;08 |
| 3. 00:01:03;03 - 00:01:03;08 | 4. 00:02:21;12 - 00:02:22;28 |
| 5. 00:04:07;03 - 00:04:07;14 | 6. 00:04:26;25 - 00:04:27;00 |
| 7. 00:04:42;09 - 00:04:42;18 | 8. 00:04:56;01 - 00:04:56;24 |

The Time Coded sequences listed above showcase the beginning and ending points of each particular audio and video sequence.

Please review page 9 for our opinion relative to the potential causes for the audio and video interruption in the aforementioned sequences.

Forensic Audio and Video Evidence Analysis (Continued)

A. Observations and Conclusions ("varun notice" Continued)

Our forensic analysis of the approximate Time Coded sequences cited at the bottom of page 8 revealed the following potential causes for the audio and video interruption issues contained on the recording:

1. The digital audio and video pauses that occur at the approximate Time Codes cited at the bottom of page 8 could have been caused by some sort of electrical mechanical defect(s) in the recording device(s) during the re-recording (dubbing) process.
2. The artifacts present on the audio and video sequences are most likely due to inadvertent actions by the operator of the recording equipment. Again, it is not uncommon for a person to select certain portions of a recording for duplication (for whatever reason). However, technical and operational issues with recording and duplication devices can cause the artifacts that we detected, and deliver less than desirable results. Which is what we believe happened during the recording and duplication process of this event.
3. The author or another party duplicating the original audio and video may have utilized an unsynchronized video source and

video recorder to duplicate the video in question, thereby, giving the appearance of tampering with the audio and video in question. However, when the audio and video attained synchronization, the frequencies detected by the Spectral Frequency Graph appeared to be continuous in each segment. We did not discover any evidence of tampering with the audio on the Spectral Frequency Display Monitor.

4. For an example relative to where the audio frequency changes do occur (due to dubbing scene changes only); See forensic photographic Exhibits 17, 18, 23 and 24, or the printed forensic photographic exhibits 17, 18, 23 and 24 contained in Appendix I of this report.

5. We found no evidence of malicious manipulation of the recorded audio in any of the sequences listed at the bottom of page 8. The audio frequency in each sequence whether long or short appears consistent and unmolested on the Spectral Frequency Graph. We utilized Abode Audition III Spectral Frequency Graph and Wave Form Processing Software to examine the audio issues associated with the Time Coded sequences listed on page 8. We did not discover any evidence of tampering with the evidence in question.

The concludes the observations and conclusions relative to the forensic audio and video evidence analysis conducted on the audio and video file entitled "varun notice".

The observations and conclusions relative to the forensic audio and video evidence analysis conducted on the audio and video file entitled "varun notice 02" begin on page 10.

Forensic Audio and Video Evidence Analysis (Continued)

- I. Relative to the audio and video file entitled "varun notice 02" (second camera angle, near the speaker's platform), we duplicated the audio and video contained on the file, lowered the distorted audio to the proper level, and placed a visible Time Code Stripe on the video sequences for demonstrative purposes to assist the Client and other parties with comprehending our analysis of the audio and video evidence in question.

We utilized Adobe Audition III Spectral Frequency Graph and Wave Form Processing Software to examine the audio issues associated with the file entitled "varun notice 02". Unless stated otherwise, all observations and conclusions in Section B shall reference the file entitled "varun notice 02" exclusively. Please refer to Video Exhibit No. 5, Audio EQ & TC on the DVD generated by Digital Evidence Legal Video Services.

- II. We analyzed all of the audio and video associated with evidence in question. However, due to the same or similar characteristics of the recording issues exhibited throughout the majority of the audio and video file entitled varun notice 02, I have elected to reference the approximate Time Codes of the audio and video sequences in group fashion, and cite the

potential causes(s) of the issues exhibited at the end of that particular groups category.

Directly following the potential cause(s) of the sequences in question, I will convey the conclusions from our analysis relative to the respective Time Codes of the audio and video sequences cited. All Time Codes cited are approximate.

My objective is to demonstrate in a coherent fashion the outcomes of our examination relative to the evidence in question. The aforementioned process is the most efficient and comprehensive approach relative to conveying the results of our forensic analysis.

FORENSIC AUDIO AND VIDEO EVIDENCE ANALYSIS

(CONTINUED)

- I. Relative to the audio and video file entitled "varun notice 02" (second camera angle, near the speaker's platform), we duplicated the audio and video continued on the file, lowered the distorted audio to the proper level, and placed a visible Time Code Stripe on the video sequences for demonstrative purposes to assist the Client and other parties with comprehending our analysis of the audio and video evidence in question.

We utilized Adobe Audition III Special Frequency Graph and Wave Form Processing Software to examine the audio issues associated with the file entitled "varun notice 02." Unless stated otherwise, all observations and conclusions in Section B shall reference the file entitled "varun notice 02" exclusively. Please refer to Video Exhibit No.5, Audio EQ & TC on the DVD generated by Digital Evidence Legal Video Services.

- II. We analyzed all of the audio and video associated with evidence in question. However, due to the same or similar characteristics of the recording issues throughout the majority of the audio and video file entitled varun notice 02, I have elected to reference the approximate Time Codes of the audio and video sequences in group fashion, and cite the potential

cause(s) of the issues exhibited at the end of that particular groups category.

Directly following the potential cause(s) of the sequences in question, I will convey the conclusions from our analysis relative to the respective Time Codes of the audio and video sequences cited. All Time Codes cited are approximate.

My objective is to demonstrate in a coherent fashion the outcome of our examination relative to the evidence in question. The aforementioned process is the most efficient and comprehensive approach relative to conveying the results of our forensic analysis.

Again, the audio and video source for all Time Code reference listed below in Section B is from the audio and video file entitled "varun notice 02." Please refer to Video Exhibit No.5, Audio EQ & TC on the DVD generated by Digital Evidence Legal Video Services to view the video.

B. Observations and Conclusions ("varun notice 02")

Time Coded Sequences with Audio and Video Recording Start and stop Issues:

- | | |
|----------------------------|----------------------------|
| 1. 00:00:00;00-00:00:11;06 | 2. 00:00:11;06-00:00:20:04 |
| 3. 00:00:20;24-00:00:29;24 | 4. 00:00:29;24-00:00:39;19 |
| 5. 00:00:39;19-00:00:41;29 | 6. 00:00:41;29-00:00:53;17 |

7. 00:00:53;17-00:01:02;04	8. 00:01:02;04-00:01:10;14
9. 00:01:10;14-00:01:12;14	10. 00:01:12;14-00:01:19;09
11. 00:01:19;09-00:01:25;15	

The Time Coded sequences listed above showcase the beginning and ending points of each particular audio and video sequence.

Please review page 11 for our observations and conclusions relative to the potential causes for the audio and video interruption in the aforementioned sequences.

B. Observations and Conclusions ("varun notice 02" Continued)

Our forensic analysis of the approximate Time Coded sequences cited at the bottom of page 10 revealed the following potential causes for the audio and video interruption issues contained on the recording.

1. The author or another party duplicating the original audio and video may have utilized an unsynchronized video source and video recorder to duplicate the video in question, thereby, giving the appearance of tampering with the audio and video in question.
2. During our analysis of the series of short sequences recorded on the audio and video file entitled "varun notice 02", we did not detect any evidence of manipulation. Even when the camera cuts away to record scenes of the attendees at the event

and pans back to Mr. Gandhi delivering his address the integrity of the audio is intact on the Spectral Frequency Graph. We did not discover any evidence of tampering with the evidence in question.

3. The artifacts on the audio and video could have been caused by inadvertent actions by the operator of the recording equipment. The audio frequencies contained on the short audio and video sequences through the respective Time Codes cited on page 10 are consistent and unmolested on the Spectral Frequency Graph Display.
4. For an example relative to where the audio frequency changes occur (due to dubbing scene changes only); See forensic photographic Exhibits 21, 22, 27 and 28 on the Compact Disc, or the printed still photographic exhibits 21, 22, 27 & 28 contained in Appendix I of this report.

Regarding the audio and video sequence memorializing Mr. Gandhi's public address that appears to be conveyed during the night, evening, or in a dimly lit facility, we did not discover any evidence of tampering on the Spectral Frequency Graph. The aforementioned audio and video sequence is contained on the audio and video file entitled "varun notice 02". (See Video Exhibit 6 Night, Audio EQ & TC on the DVD generated by Digital Evidence Legal Video Services.)

In addition to Video Exhibits 4, 5, and 6 referenced in the body of the body of this report, we provided three (3) short video exhibits entitled Video Exhibit 1 Varun Notice 02, on the DVD (generated by Digital Evidence Legal Video Services) to coincide with the Compact Disc containing the forensic still photographic exhibits that we produced for your review.

This concludes the observations and conclusions relative to the forensic audio and video evidence analysis conducted on the audio and video file entitled "varun notice 02."

In summary, the artifacts that we detected on the video files (utilizing the Spectral Frequency Graph and Wave Form Processing Software) appear to be the result of inadvertent technical and operational issues associated with the duplication process. We did not discover any evidence of a calculated attempt to manipulate the audio and video contained on the files submitted for our analysis.

This concludes the forensic audio and video evidence analysis relative to the audio and video files entitled "varun notice" and "varun notice 02".

CERTIFICATION OF FORENSIC AUDIO AND VIDEO
EVIDENCE ANALYSIS REPORT

I, Michael L. Jones do hereby certify that I authored the report contained herein.

Furthermore, I, Michael L. Jones, do hereby certify that Mr. Wayne M. Cole and I are not related to any of the parties involved in this matter by blood or marriage, and we are in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of May 2009.

Certified Court Video Specialist, No. 03121

DIGITAL EVIDENCE

APPENDIX

- I. Forensic Photographic Exhibits 1 through 28
(Printed and Contained on Compact Disc inside DVD Case)

- II. Forensic Audio and Video Exhibits 1 through 6
(Contained on DVD)

Digital Evidence Legal Video Services

INVOICE

A Full Service Legal Video & Litigation Support Firm

Michael L. Jones,

Certified Court Video Specialist, No. 03121

Service Dates: May6, 2009- May 18, 2009

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COMMENTS Forensic Audio & Video

To Attention: Mr. Sidharth Pandey

Evidence Analysis

Ndtv, Archana Complex

Paid in Full

Exhibits & Report

Greater Kailash, Part 1

Re: Varun Gandhi A/V

New Delhi, India 110048

Job No. 50609

Handwritten note: 25th May 2009
25th May 2009
25th May 2009

DATE	DESCRIPTION	QTY	AMOUNT
	Forensic Audio & Video Evidence Analysis Re: Varun Gandhi's Public Addresses		
5.1.09	Retainer for Services (New Client Discount)	Discount	\$3,500.00

5.4.09	Photograph Evidence- Chain of Custody	2.0-Hours	Included
5.6.09	Duplicate CD for Analysis & Enhancement	2.0-Hours	Included
5.6.09	Forensic Audio & Video Evidence Analysis	12.0-Hours	Included
5.7.09	Forensic Audio & Video Evidence Analysis	5.0-Hours	Included
5.8.09	Create Forensic Photographic Exhibits	6.5-Hours	Included
5.8.09	Create Forensic Audio & Video Exhibits	4.0-Hours	Included
5.9.09	Organize Notes & Exhibits	2.5-Hours	Included
5.10.09	Prepare & Write Analysis Report (5.10.09- 5.14.09)	25.0-Hours	N/C
5.18.09	Shipped All Work-Product to Client (DHL Client's Account)	N/A	Client Acct.

Comments	1-30 Days Past Due	31-60 Days Past Due	61-90 Days Past Due	Total Service Hours	Amount Paid
New Client Discount				59-Hours	\$3,500.00

All invoices are due within 30 days of the

Thank you for