

FILE COPY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 101

HON. J. STEPHEN CZULEGER, JUDGE

IN RE

JOSEPH HUNT

ON HABEAS CORPUS.

COURT A 090435
COURT OF APPEAL - SECOND DIST.
FILED
DEC 9 - 1997
Z. HERALDEZ
Deputy Clerk

REPORTERS' DAILY TRANSCRIPT

VOLUME 10

THURSDAY, MAY 9, 1996

PAGE 1509 THROUGH 1758, INCL.

APPEARANCES:

FOR THE PETITIONER
JOSEPH HUNT:

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3201 WILSHIRE BOULEVARD
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AND
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FOR THE RESPONDENT
THE PEOPLE OF THE
STATE OF CALIFORNIA:

GIL GARCETTI
DISTRICT ATTORNEY
BY: ANDREW MC MULLEN, DEPUTY
AND
IMOGENE KATAYANA, DEPUTY
18000 CRIMINAL COURTS BUILDING
210 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012

COPY

M. HELEN THEISS, CSR, #2264
PAUL RUNYON, CSR, #8797
OFFICIAL COURT REPORTER

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HEARING:

PETITIONER'S WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	DIRE	VOL
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HUNT, JOSEPH (BY MR. CRAIN)	1510	1558				10
(RESUMED)		1582	1620	1639		10
(FURTHER)			1641			10

RESPONDENT'S WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	DIRE	VOL
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O'DONNELL, DECLAN JOSEPH	1646	1676 (C)	1703			10
(CONTINUED)		1707 (C)	1709			10
KILPATRICK, WILLIAM A.	1711	1739 (C)				10

LEGEND: (C) - MR. CRAIN
 (K) - MR. KLEIN

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ALPHABETICAL INDEX OF WITNESSES

PETITIONER'S VOIR
WITNESSES DIRECT CROSS REDIRECT RECROSS DIRE VOL

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(RESUMED) 1582 1620 1639 10
(FURTHER) 1641 10

RESPONDENT'S VOIR
WITNESSES DIRECT CROSS REDIRECT RECROSS DIRE VOL

KILPATRICK,
WILLIAM A. 1711 1739 (C) 10
O'DONNELL, DECLAN
JOSEPH 1646 1676 (C) 1703 10
(CONTINUED) 1707 (C) 1709 10

LEGEND: (C) - MR. CRAIN
(K) - MR. KLEIN

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287 - DOCUMENT	10	1624				
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RESPONDENT'S EXHIBITS	FOR IDENTIFICATION		IN EVIDENCE		WITHDRAWN OR REJECTED	
	VOL.	PG.	VOL.	PG.	VOL.	PG.
X - DECLARATION OF DECLAN O'DONNELL	10	1646				
W - DECLARATION OF WILLIAM KILPATRICK	10	1711				
SS - AMENDED DECLARATION OF WILLIAM KILPATRICK	10	1711				

1 LOS ANGELES, CALIFORNIA, THURSDAY, MAY 2, 1995

2 9:00 A. M.

3 DEPARTMENT NO. 101

HON. J. STEPHEN CZULEGER, JUDGE

4
5 APPEARANCES:

6 THE PETITIONER, JOSEPH HUNT, WITH HIS COUNSEL,
7 ROWAN KLEIN, BAR PANEL APPOINTMENT; AND MICHAEL
8 CRAIN, BAR PANEL APPOINTMENT; ANDREW MC MULLEN,
9 DEPUTY DISTRICT ATTORNEY OF LOS ANGELES COUNTY;
10 IMOGENE KATAYAMA, DEPUTY DISTRICT ATTORNEY OF LOS
11 ANGELES COUNTY, REPRESENTING THE PEOPLE OF THE
12 STATE OF CALIFORNIA.

13
14 (M. HELEN THEISS, CSR #2264, OFFICIAL REPORTER.)

15
16 (PAUL RUNYON, CSR #8797, OFFICIAL REPORTER.)

17
18 THE COURT: IN THE CASE OF JOSEPH HUNT, THE RECORD
19 WILL REFLECT ALL COUNSEL ARE PRESENT, PETITIONER IS
20 PRESENT, AND THE PETITIONER IS PRESENT ON THE STAND.

21 YOU ARE REMINDED THAT YOU ARE STILL UNDER
22 OATH.

23 YOU MAY CONCLUDE YOUR DIRECT EXAMINATION.

24
25 JOSEPH HUNT, +
26 THE PETITIONER HEREIN, CALLED AS A WITNESS IN HIS OWN
27 BEHALF, HAVING BEEN PREVIOUSLY SWORN, RESUMED THE STAND
28 AND TESTIFIED FURTHER AS FOLLOWS:

1 DIRECT EXAMINATION RESUMED+

2

3 BY MR. CRAIN:

4 Q I WANTED TO ASK YOU A FEW MORE FOLLOW-UP
5 QUESTIONS ABOUT THE CONVERSATION THAT YOU HAD WITH
6 MR. BARENS REGARDING HIS PROPOSAL THAT THE SEVEN-PAGE LIST
7 BE CHARACTERIZED AS A SCRIPT.

8 DID YOU EVER TELL BARENS YOU LIKED THIS IDEA
9 AND WANTED TO USE IT?

10 A NO, I NEVER DID.

11 Q WHAT DID YOU TELL HIM IN THAT REGARD?

12 A I TOLD HIM -- DOES SOMEONE HAVE THE
13 SEVEN-PAGE LIST AROUND?

14 THE COURT: MR. HUNT ANSWER THE QUESTIONS ASKED
15 YOU.

16 THE WITNESS: I TOOK THE SEVEN-PAGE LIST OUT, AND I
17 SAID, "LOOK AT THIS, MR. BARENS. THIS IS A PREPOSTEROUS
18 IDEA. THE SEVEN-PAGE LIST COULD NEVER BE CHARACTERIZED BY
19 ANY STRETCH OF THE IMAGINATION AS A SCRIPT. THERE ARE
20 SPECIFIC THINGS STATED IN THE LIST LIKE, 'LEAVE NOTES IN
21 WASTEBASKET,' FOR EXAMPLE, 'PACK SUITCASE,' MENTION OF
22 DEODORANT. THERE IS A LEVEL OF DETAIL AND THERE ARE
23 THINGS THAT ARE REFERRED TO THAT IN NO WAY, SHAPE OR FORM
24 COULD EVER BEEN CHARACTERIZED AS BEING SOMEBODY'S EFFORTS
25 TO CREATE A TREATMENT FOR HOLLYWOOD."

26 AND I WENT DOWN THE LIST, I TOOK THE LIST
27 OUT, AND THERE IS ONE, THE PACK SUITCASE PAGE WAS ONE THAT
28 STICKS IN MY MIND, SEE, AND I SAID TO HIM, I SAID,

1 "MR. BARENS, YOU ARE ONLY LOOKING AT THE FRONT PAGE OF THE
2 TO-DO LIST. YOU HAVE TO LOOK AT ALL SEVEN PAGES OF THIS
3 AS A WHOLE," YOU KNOW. BECAUSE HIS COMMENTS TO ME WERE
4 THAT THIS FRONT PAGE COULD SOMEHOW BE CHARACTERIZED, AND I
5 SAID, "YOU ARE DEALING WITH SEVEN PAGES, MR. BARENS. LOOK
6 AT THESE OTHER PAGES," AND I SHOWED HIM THE PACKED
7 SUITCASE PAGE, FOR EXAMPLE. THAT COULD IN NO WAY BE
8 CHARACTERIZED AS A SERIES OF PROMPTS OR EFFORTS TO TRY TO
9 SEE WHAT THE CAMERAS EYE VIEW OF SCENES IN A MOVIE WOULD
10 BE.

11 BY MR. CRAIN:

12 Q DID THE SUBJECT OF USING IT AS A SCRIPT EVER
13 COME UP AGAIN IN CONVERSATIONS WITH BARENS?

14 A YES, IT DID.

15 Q IN WHAT WAY?

16 A HE WOULD RETURN TO IT AND I WOULD SAY, "ART,
17 YOU KNOW, YOU GOT TO GET, YOU GOT TO MAKE AN EFFORT TO GET
18 PASSED THE SURFACE OF THIS CASE. YOU ARE SKIMMING ALONG
19 THE SURFACE."

20 THIS IS WHAT IT IS. IT IS SOMETHING THAT WAS
21 WRITTEN ON JUNE 4TH BY A GROUP OF US AS AN EXTORTION PLAN,
22 IT DID NOT END UP GOING DOWN AS AN EXTORTION, ON RON LEVIN
23 FORCING HIM TO SIGN OVER HIS HOUSE OPTION, HIS CASHIER'S
24 CHECKS, ALL THE THINGS THAT ARE LISTED IN THE SEVEN PAGES.
25 IT ENDED UP GETTING USED AS A PROP IN A PLAN TO INTIMIDATE
26 RON LEVIN. IT GOT DROPPED ON HIS DESK ON JUNE 5TH, THAT'S
27 WHY IT WAS OVER AT RON LEVIN'S HOME.

28 AND THOSE THINGS, THOSE STATEMENTS, THAT

1 POSITION, THAT DEFENSE EXPLANATION IS WHAT'S CORROBORATED
2 IN MY MASTER CONTROL FILE, WHICH HAD BEEN GIVEN TO HIM
3 EVEN BEFORE OPENING STATEMENT.

4 Q DID HE EVER GIVE YOU ANY, FOR WANT OF A
5 BETTER WORD, HOMEWORK OR THINGS THAT HE FELT MIGHT ASSIST
6 YOU IN THE PRESENTATION OF THIS IDEA OF HIS TO USE IT AS A
7 MOVIE SCRIPT?

8 A HE WAS UNBENDING THROUGHOUT HIS
9 REPRESENTATION OF ME THAT THERE WAS NO WAY I COULD EVER
10 SELL WHAT I INSISTED WAS THE TRUTH. HE ACTED LIKE, YOU
11 KNOW, HE ACTED LIKE HE DIDN'T BELIEVE ME THROUGHOUT HIS
12 REPRESENTATION ABOUT MY EXPLANATION, THAT HE BELIEVED
13 THESE OTHER PEOPLE.

14 I WAS UNBENDING IN THE FACT THAT WAS THE ONLY
15 THING THAT I COULD EVER TESTIFY TO BECAUSE THIS DOCUMENT
16 FIT IN THAT WAY WITH REALITY. AND I FELT THAT IF I TOLD
17 HIM THAT, YOU KNOW, IF HE COULD JUST RISE TO THE OCCASION
18 AND CROSS-EXAMINE THESE PEOPLE, LIKE JEFF, ABOUT THINGS ON
19 THE LIST, WHY THESE THINGS WERE PART OF IT, AND WORK WOULD
20 ME ON THE STAND TO BRING THESE FACTS OUT, THAT THE JURY
21 WOULD ULTIMATELY UNDERSTAND THAT THIS WAS NOT A PLAN TO
22 FORCE LEVIN TO SIGN A MICROGENESIS OPTION, WHICH IN NO WAY
23 IS MENTIONED ON THERE, AND HAD TO DO WITH AN EXTORTION
24 PLAN THAT WAS INVOLVING A GROUP OF US, AT LEAST INCLUDING
25 STEVEN, JEFF, WHO I REFERRED TO IN THE LIST. THOUGH,
26 STEVE'S NAME IS A LITTLE BIT CROSSED OUT IT IS STILL
27 LEGIBLE AND --

28 MR. MC MULLEN: OBJECTION, YOUR HONOR.

1 THE WITNESSES: WE WENT BACK AND FORTH LIKE THAT,
2 COUNSEL.

3 THE COURT: WE ARE GETTING FAR AFIELD.

4 PUT A QUESTION.

5 BY MR. CRAIN:

6 Q AGAIN, YOU AND BARENS HAD AN ONGOING
7 DISAGREEMENT OVER YOUR NOT WANTING TO USE HIS PLAN THAT
8 THE SEVEN-PAGE LIST WAS A MOVIE SCRIPT; IS THAT RIGHT?

9 A YES. AND YOU ASKED ME ABOUT THE HOMEWORK,
10 AND I FORGOT TO ANSWER THAT QUESTION.

11 Q WAS THERE SOMETHING THAT HE PROVIDED TO YOU
12 TO SORT OF BOLSTER THIS MOVIE SCRIPT IDEA IF YOU WERE TO
13 SOMEHOW USE IT DURING THE TRIAL?

14 A NO. BUT HE DID TELL ME SOMETHING.

15 Q WHAT WAS THAT?

16 A HE ON MORE THAN ONE OCCASION, JUDGE, TOLD ME
17 THAT I SHOULD TAKE OUT A REAL HARD LOOK ABOUT WHETHER I
18 WANTED TO GET UP AND CONTRADICT FIVE OF THESE KIDS WHO
19 WERE NOT BEING CHARGED WITH HOMICIDE, AND THAT I SHOULD
20 DREAM UP A BETTER EXPLANATION. HE EXPECTED THAT I WAS
21 INTELLIGENT ENOUGH TO DO SO AND, YOU KNOW, THAT WAS MY
22 HOMEWORK. HE GAVE ME THAT HOMEWORK ASSIGNMENT ON A NUMBER
23 OF OCCASIONS.

24 Q NOW, WERE YOU PRESENT AT THE TIME THAT THE
25 OPENING STATEMENT WAS MADE IN THE CASE?

26 A YES.

27 Q YOU HEARD MR. BARENS SAY THAT YOU WOULD
28 EXPLAIN EVERYTHING INCLUDING THE LIST --

1 A YES.

2 Q -- TO THE JURY?

3 A YES.

4 Q BASED ON YOUR CONVERSATIONS WITH MR. BARENS,
5 DID YOUR, YOUR CONVERSATION WITH MR. BARENS PRIOR TO HIS
6 MAKING THAT PART OF THE OPENING STATEMENT, DID HE TELL YOU
7 WHAT HE EXPECTED YOU TO TESTIFY ABOUT REGARDING THE LIST?

8 A YES.

9 Q WHAT WAS THAT?

10 THE COURT: I AM SORRY. I LOST THE QUESTION.

11 MR. KLEIN, I CONTINUE TO HEAR YOU IN THE
12 BACKGROUND.

13 READ BACK THE LAST QUESTION.

14

15 (THE QUESTION WAS READ.)

16

17 THE COURT: AND I ASSUME YOUR NEXT FOLLOW UP IS,
18 "WHAT DID HE TELL YOU."

19 GO AHEAD.

20 THE WITNESS: RIGHT BEFORE OPENING STATEMENT HE AND
21 I HAD ONE MORE TAT-A-TAT ABOUT THIS. AND HE SAID, "ALL
22 RIGHT, MR. HUNT, IT IS YOUR CALL. IT IS YOUR LIFE. IF
23 THAT'S WHAT YOU WANT TO TESTIFY TO, THEN FINE."

24 AND HE REPRESENTED TO ME AT THAT TIME THAT HE
25 WOULD TELL THE JURY THAT I WAS GOING TO BE TESTIFYING.
26 WAS I OKAY WITH THAT? HE WANTED TO MAKE SURE THAT I
27 WANTED TO. AND HE ALSO TOLD ME THAT HE WOULD TELL THE
28 JURY THAT I WOULD EXPLAIN EVERYTHING, ALL THE EVIDENCE.

1 AND HE ASKED WAS I OKAY WITH THAT, AND I SAID I WAS.

2 BY MR. CRAIN:

3 Q WERE THERE ANY DOCUMENTS THAT REFLECT THIS --
4 I AM SORRY.

5 THE COURT: DON'T CUT -- DID YOU FINISH YOUR
6 ANSWER?

7 THE WITNESS: YES. GO AHEAD.

8 BY MR. CRAIN:

9 Q I AM SORRY.

10 WAS THIS IN ANY DOCUMENTS THAT REFLECT THIS
11 THAT ARE IN YOUR POSSESSION?

12 A THE MASTER CONTROL FILE REPRESENTS THAT
13 DEFENSE THEME, AND IN SEVERAL ASPECTS WHICH SPEAKS FOR
14 ITSELF.

15 Q THE DOCUMENTS, THE NUMBER OF WHICH, I AM
16 SORRY TO APOLOGIZE ONCE AGAIN TO THE COURT, ESCAPES ME AT
17 THIS MOMENT, THAT'S THE DOCUMENTS YOU IDENTIFIED FOR THE
18 COURT YESTERDAY, THE MASTER CONTROL LIST?

19 A YES. WHICH WAS IDENTIFIED IN THE JANUARY
20 HEARING, WHICH I WAS ON THE STAND BACK AND FORTH BETWEEN
21 MR. BARENS AND I THAT HE SAID THAT HE HAD RECEIVED.

22 Q AND BESIDES -- SO BASED ON YOUR
23 PRESENTATION -- WAS IT YOUR TESTIMONY YESTERDAY THAT YOU
24 GAVE HIM AND RELATED TO HIM THE ITEMS ON THE MASTER
25 CONTROL LIST, MASTER CONTROL FILE; CORRECT?

26 A RIGHT. THAT WAS THE SAME POSITION,
27 EXPLANATION, HOWEVER YOU WANT TO CHARACTERIZE IT, I HAD
28 GIVEN HIM ALL ALONG AND IT WAS ALWAYS INCORPORATED IN ALL

1 THE WORK I EVER GAVE HIM. THERE WAS NEVER ANY OTHER
2 POSITION TAKEN IN ANY OF THE DOCUMENTS GIVEN TO HIM OR ANY
3 OTHER VERBAL CONVERSATIONS. AND --

4 Q OKAY.

5 NOW, YESTERDAY AT THE END OF THE DAY YOU
6 TESTIFIED TO, I JUST WANTED TO TOUCH ON THE SUBJECT THAT
7 CAME UP, CONVERSATION THAT YOU HAD WITH MR. BARENS FROM
8 SAN MATEO, TELEPHONE CONVERSATION.

9 A YES.

10 Q THINKING ABOUT IT, DO YOU HAVE ANY ADDITIONAL
11 RECOLLECTION ABOUT WHEN THAT DID TAKE PLACE?

12 A YES.

13 Q WHEN WAS THAT?

14 A AFTER THINKING ABOUT IT LAST NIGHT I RECALL
15 THAT IT, IT WOULD HAVE TO HAVE OCCURRED AFTER THE JURY
16 CAME BACK WITH THE EIGHT TO FOUR VOTE FOR ACQUITTAL.

17 Q IN SAN MATEO?

18 A YES. BECAUSE OF CERTAIN THINGS THAT WERE
19 SAID AT THAT TIME.

20 THE COURT: GIVE ME A TIME FRAME, I DON'T RECALL.

21 THE WITNESS: THAT WOULD BE OCTOBER OF 1992.

22 YESTERDAY I SAID IT WASN'T SURE IF IT WAS 1991 OR 1992,
23 AND I PAUSED FOR QUITE A PERIOD OF TIME. I FIGURED WHEN
24 IT WAS.

25 BY MR. CRAIN:

26 Q WHEN DID THAT EIGHT TO FOUR VOTE FOR
27 ACQUITTAL END IN A HUNG JURY, WHAT MONTH WAS THAT IN '92?

28 A OCTOBER OF 1992.

1 Q AND WHAT WAS THE CONTEXT OF THE CONVERSATION
2 REGARDING THESE REFERENCES THAT YOU THOUGHT WERE
3 EMBARRASSING, THINGS BARENS DID, IN A CAPSULATED FORM
4 AGAIN?

5 A THE CONTEXT WAS THAT I WAS EXPRESSING MY
6 OUTRAGE THAT MR. BARENS WOULD LIE AND PUT ME IN THE
7 POSTURE OF A PERSON THAT HAD BEEN, MANIFESTS ALTERNATIVE
8 EXPLANATION FOR THE SEVEN PAGES WHEN THAT WHOLE EFFORT
9 WAS, AND ALL THE STATEMENTS ABOUT THAT AND ALL THE
10 POSITIONING ABOUT THAT WAS BEING REPRESENTED BY MR. BARENS
11 AND I CONSISTENTLY RESISTED IT AND --

12 Q WHEN YOU SAY LIED IN WHAT, IN HIS MEMOS TO
13 DOBRIN OR SOME OTHERS?

14 A I GOT THESE MEMOS FROM DAN DOBRIN REFLECTING,
15 IN LATE 1992 OR SOMEWHERE AROUND THERE, REFLECTING DAN
16 DOBRIN'S CONVERSATIONS WITH MR. BARENS.

17 THE COURT: ARE YOU SAYING THAT MR. BARENS WAS
18 ASKING YOU TO TELL HIM A DIFFERENT STORY, OR ASKING YOU TO
19 TAKE THE STAND AND PERJURE YOURSELF?

20 THE WITNESS: HE WAS ENCOURAGING ME TO COME UP WITH
21 A DIFFERENT STORY CONTEXT OF -- DEFINITELY SO THAT I WOULD
22 HAVE A DIFFERENT EXPLANATION WHEN I TOOK THE STAND THAN
23 THE ONE THAT CONTRADICTED ALL THESE PEOPLE.

24 THE COURT: THERE IS A DIFFERENCE. YOU COULD TELL
25 HIM CERTAIN INFORMATION THAT CAUSES HIM TO ACT IN A
26 CERTAIN WAY. THAT'S ONE THING. IT IS ANOTHER THING IF
27 YOU ARE -- IF HE IS ASKING YOU TO TAKE THE STAND AND
28 TESTIFY AND TELL THAT STORY. WHICH WAS IT OR WAS IT BOTH?

1 THE WITNESS: IT WAS DEFINITELY BOTH, YOUR HONOR.
2 BECAUSE WE ALWAYS KNEW THAT THERE WAS ONLY ONE WAY, AT
3 LEAST DISCUSSIONS UP TO THE VERY LAST MINUTE IT WAS OUR
4 BELIEF THAT THERE WAS ONLY WAY TO WIN THAT CASE OTHER THAN
5 HAVE MR. LEVIN FOUND OR SOME EXPECTED EVENTS, AND THAT WAS
6 IF I TESTIFIED AND EXPLAINED THE SEVEN PAGES.

7 BY MR. CRAIN:

8 Q ALL RIGHT.

9 SO THE CONTEXT THEN -- HAVE YOU FINISHED YOUR
10 EXPLANATION ABOUT THAT? YOU TOLD US THAT YOU RECEIVED A
11 MEMO FROM MR. DOBRIN, I GUESS IS THE CORRECT
12 PRONUNCIATION, YOU DISCUSSED THIS WITH MR. BARENS ABOUT
13 YOUR DISSATISFACTION WITH BARENS' REPRESENTATION TO YOUR
14 APPELLATE ATTORNEY?

15 A COULD YOU REPEAT THAT QUESTION.

16 Q YOU ARE TELLING ME US ABOUT THE CONTEXT IN A
17 NUTSHELL OF THE CONVERSATION WITH BARENS. YOU WERE SAYING
18 THAT YOU HAD OBTAINED THESE MEMOS THAT BARENS HAD GIVEN TO
19 YOUR APPELLATE ATTORNEY; CORRECT?

20 A CORRECT?

21 Q YOU WERE DISCUSSING THINGS IN THERE THAT YOU
22 FELT BARENS HAD MISREPRESENTED. IS THAT ESSENTIALLY IT,
23 SO WE CAN ALSO --

24 A YES, IT WAS.

25 Q -- PROCEED IN THIS AREA?

26 A YES, IT WAS.

27 Q SO WHAT ELSE DID YOU RELATE TO BARRENS NOW IN
28 THIS CONVERSATION?

1 A I SAID THAT THE WAY I SAW THIS WAS HE WAS
2 TAKING CONTRARY POSITIONS SO THAT HE, SO EMBARRASSMENT OF
3 WHAT HAPPENED WOULD FALL UPON ME, AND THAT I HAD BEEN
4 HONORING THIS AGREEMENT TO REMAIN SILENT ABOUT MATTERS
5 WHICH I THOUGHT IN A LEGAL CONTEXT AT LEAST WOULD BE
6 CONSIDERED PERIPHERAL TO THE ISSUE OF WHETHER I GOT A FAIR
7 TRIAL WHILE HE WAS TESTIFYING FALSELY AND BRINGING OUT,
8 YOU KNOW, THIS TYPE OF INFORMATION IN ORDER TO COME UP
9 WITH SOME JUSTIFICATION FOR THINGS THAT WERE INEFFECTIVE,
10 AND THAT HE HAD MISHANDLED, THAT I HADN'T REALLY GONE INTO
11 WITH DAN DOBRIN, AT LEAST NOT TO THAT LEVEL OF DETAIL.

12 Q WERE THESE THINGS THAT YOU DIDN'T -- DID YOU
13 SAY YOU DIDN'T GET INTO WITH DOBRIN OR WITHHELD THEM FROM
14 DOBRIN?

15 A I READ A LOT OF CASES ON THESE MATTERS, AND
16 SO MY THINKING IN NOT WITHHOLDING THIS TO MR. DOBRIN WAS
17 THAT --

18 Q FIRST OF ALL, LET ME JUST ASK YOU, DID YOU
19 WITHHOLD THEM OR IN SOME WAY --

20 A I DID NOT TELL MR. DOBRIN ABOUT MR. BARENS
21 MARITAL INFIDELITIES OR ASSOCIATIONS WITH PROSTITUTES OR
22 THESE THINGS BECAUSE I FELT THAT THEY DID NOT MUSTER, I
23 DID NOT HAVE INFORMATION AT THAT TIME SUCH THAT INDICATED
24 TO ME THAT THEY WOULD EVER RISE TO A COLORABLE CLAIM UNDER
25 APPROPRIATE LEGAL STANDARDS AGAINST MR. BARENS.

26 Q WERE THERE OTHER MATTERS THAT YOU DIDN'T
27 RELATE TO MR. DOBRIN AND DISCUSS WITH MR. BARENS IN THIS
28 TELEPHONE CONVERSATION?

1 MR. MC MULLEN: OBJECTION. RELEVANCE.

2 THE COURT: REREAD THE LAST QUESTION.

3

4 (THE RECORD WAS READ BACK.)

5

6 THE COURT: YOU CAN ANSWER THE QUESTION AS TO WHAT
7 OTHER THINGS THAT YOU DID DISCUSS WITH MR. BARENS.

8 THE WITNESS: MR. BARENS.

9

10 IN THIS CONVERSATION WITH MR. BARENS I
11 REFERRED TO THE FACT THAT HE HAD TRICKED JUDGE RITTENBAND
12 BY NOT TELLING JUDGE RITTENBAND THAT HE HAD A PROMISSORY
13 NOTE FOR THE ENTIRE BALANCE OF HIS FEE THAT WAS GOOD AND
14 OUTSTANDING, WHICH HAD EXECUTED BY BOBBY ROBERTS.

14 BY MR. CRAIN:

15 Q WAS THAT AT THE TIME HE MADE THE APPLICATION
16 TO THE COURT TO BE PAID AT THE TAXPAYERS EXPENSE TO
17 REPRESENT YOU FROM THEN ON?

18 A YES. HE REPRESENTED HE HAD NO WAY OF GETTING
19 PAID, AND IF THE JUDGE WOULD HAVE KNOWN THAT HE HAD A
20 SIGNED PROMISSORY NOTE FOR \$30,000, IT WAS -- I MEAN, I
21 LET IT GO DOWN WITHOUT LIKE PIPING UP AND INFORMING THE
22 JUDGE BUT --

23 Q YOU DISCUSSED THIS WITH BARENS DURING THIS
24 PHONE CONVERSATION?

25 A YEAH, I DID. I REFERRED TO IT.

26 Q DID YOU REFER TO OTHER MATTERS?

27 A YES, I DID.

28 Q WHAT?

1 A I REFERRED TO THE FACT THAT HE HAD DOUBLE
2 BILLED THE COUNTY FOR THE \$3000 IN EXPENSES THAT I PAID
3 HIM FOR, THAT I HAD RECORDS TO THAT EFFECT, AND THAT I
4 HADN'T MENTIONED THAT TO MR. DOBRIN FOR A COUPLE OF
5 REASONS.

6 Q ANYTHING ELSE?

7 A THERE PROBABLY WERE I JUST CAN'T -- THERE IS
8 A LIST LIKE EIGHT THINGS THAT I RATTLED OFF IN A REAL
9 RAPID-FIRE WAY LIKE I SOMETIMES GET GOING AND SAID, YOU
10 KNOW, "WHY DO YOU EVEN BRING UP? I MEAN, I DIDN'T MENTION
11 THE FACT THAT YOU HAD BEEN TRYING TO FOIST ALTERNATIVE
12 EXPLANATIONS ON ME ON THE SEVEN PAGES BECAUSE I ALWAYS
13 THOUGHT THAT IN SOME WAY IT JUST REFLECTS YOUR ZEALOUSNESS
14 FOR MY CAUSE OR WHATEVER, BUT WHY WOULD YOU PUT THIS ON
15 ME?"

16 Q ANYTHING ABOUT SOBRIETY OR THINGS RELATED TO
17 THAT?

18 A YES. I SAID THAT, YOU KNOW, I HAD NOT TALKED
19 TO MR. DOBRIN ABOUT THE CONTEXT OF A LOT OF OUR MEETINGS
20 AND HOW OTHER SITUATIONS IN HIS LIFE SUCH AS HIS, YOU
21 KNOW, LONG-STANDING PROBLEMS WITH COCAINE AND HIS
22 AFFILIATION WITH COCAINE ANONYMOUS AND ALL THAT OTHER SORT
23 OF STUFF THAT HAD PLAYED A ROLE IN AVAILABILITY TO DO WORK
24 ON MY CASE AND CUTTING OFF MEETINGS THAT WE HAD AND THINGS
25 LIKE THAT, I HADN'T GONE INTO ANY OF THAT. I TRIED TO --
26 I STAYED SILENT ABOUT A LOT OF MATTERS.

27 Q NOW, YOU SAID THAT YESTERDAY, PERHAPS I
28 MISUNDERSTOOD, WAS THERE SOMETHING THAT YOU RELATED TO

1 MR. BARENS THAT THIS WAS SOME -- YOUR NOT RELATING THESE
2 THINGS TO MR. DOBRIN WAS IN SOME WAY RECIPROCATED BY HIS
3 NOT DOING SOMETHING ON HIS PART.

4 THE COURT: I AM SORRY. I DON'T UNDERSTAND THE
5 QUESTION.

6 MR. CRAIN: I THINK HE MAY HAVE USED QUID PRO QUO
7 OR SOMETHING LIKE THAT. MY MIND WAS HAZY LATE IN THE DAY
8 YESTERDAY, I HAVE TO CONFESS, BUT I THINK --

9 THE COURT: WELL, HE DESCRIBED IT AS AN
10 UNDERSTANDING. HE DESCRIBED IT AS A CONTRACT. HE HAS
11 DESCRIBED IT AS BOTH SIDES SORT OF HELD BACK THEIR
12 POSITION, SO HE HAS DESCRIBED IT PRETTY THOROUGHLY
13 ALREADY.

14 MR. CRAIN: I JUST WANTED TO ASK HIM, YOUR HONOR,
15 WITH THE COURT'S PERMISSION.

16 BY MR. CRAIN:

17 Q JUST WAS THERE SOMETHING ABOUT MR. BARENS'
18 PART THAT YOU WERE REFERRING TO YESTERDAY IN THAT CONTEXT
19 THAT HE HAD SAID HE WOULD DO OR NOT DO?

20 A DURING THE PENALTY PHASE OR MY TRIAL THERE
21 WAS AN UNDERSTANDING REACHED BETWEEN MR. BARENS AND I,
22 RICHARD CHIER DIDN'T WANT TO HEAR ABOUT IT, HE LEFT THE
23 ROOM. IT WAS IN THE LOCKUP DOWNSTAIRS IN SANTA MONICA.
24 BARENS WAS EXTREMELY CONCERNED THAT IN THE WAY THE CASE
25 HAD DETERIORATED, CIRCUMSTANCES WERE DEVELOPING THAT I
26 WOULD BE INTERVIEWED AND THAT I WOULD BE TALKING ABOUT HIS
27 LIFE AND THE THINGS I HAD LEARNED OVER THE COURSE OF MAYBE
28 100 OR SO VISITS OVER TO HIS OFFICE, THE USE OF HIS

1 CONFERENCE ROOM, DRIVING IN THE CAR WITH HIM, JUST
2 GENERALLY BEING AROUND HIM. AND I SAID --

3 MR. MC MULLEN: OBJECTION. NARRATIVE.

4 THE COURT: ALL RIGHT.

5 BY MR. CRAIN:

6 Q JUST TELL US WHAT THE --

7 THE COURT: GO TO THE CHASE SCENE.

8 BY MR. CRAIN:

9 Q THE JUDGE WANTS TO HEAR WHAT HE TOLD YOU
10 ABOUT.

11 A I SAID THAT I WOULD BE SILENT ABOUT THOSE
12 THINGS, THAT I WOULDN'T ACTIVELY OR PRO-ACTIVELY PRESENT
13 THESE THINGS TO THE MEDIA OR TO ANY OTHER PARTY, AND AS
14 LONG AS MR. BARENS WAS HONEST AND STRAIGHTFORWARD ABOUT
15 THE THINGS HE DIDN'T DO, THE THINGS HE KNEW AND THE THINGS
16 THAT HE SHOULD HAVE DONE, BECAUSE I WAS ABOUT TO MAKE A
17 MARSDEN MOTION, AND I DID MAKE A MARSDEN MOTION, I TALKED
18 ABOUT THE FACT THAT THEY HADN'T LOOKED AT A LOT OF
19 WITNESSES AND --

20 THE COURT: YOU ARE GETTING FAR AFIELD. TELL US
21 WHAT YOU TOLD MR. BARENS ABOUT THIS QUID PRO QUO AS
22 MR. CRAIN DESCRIBED IT.

23 BY MR. CRAIN:

24 Q WAS THAT ESSENTIALLY THE UNDERSTANDING THAT
25 YOU HAD WITH MR. BARENS?

26 A YEAH. I SAID THAT I WOULD NOT GO INTO ALL OF
27 THOSE THINGS AS LONG AS THE MAIN SUBSTANCE OF THE
28 RELATIONSHIP AND HIS WORK, WHAT HE DID AND DIDN'T DO AND

1 WHY CAME IN TRUTHFULLY INTO THE COURTROOM. IF SOMEBODY
2 DIDN'T -- UNLESS -- I WOULDN'T BRING IT UP. IF NOBODY
3 ASKED ME A DIRECT QUESTION ABOUT THEM THE MATTERS WOULD
4 NEVER COME OUT.

5 Q NOW, YOU SAID YESTERDAY THAT THERE WAS A
6 LATER CONVERSATION FROM LOS ANGELES, AND THAT IT ENDED UP,
7 I BELIEVE, YOU CHARACTERIZED IT, IN A TENSE WAY, SOMETHING
8 LIKE THAT, AND I WAS ABOUT TO ASK YOU WHEN WE CONCLUDED
9 YESTERDAY IF IN VIEW OF WHAT YOU TOLD US ABOUT YOU FELT
10 BARENS HAD SAID THESE THINGS TO DOBRIN WEREN'T, WEREN'T
11 TRUE, WHY DID YOU ALLOW IT TO END IN THAT MANNER FROM YOUR
12 PERSPECTIVE?

13 THE COURT: YOU LOST ME. I AM NOT SURE WHAT YOU
14 ARE TALKING ABOUT.

15 THE WITNESS: I THINK THE FIRST CONVERSATION WE ARE
16 TALKING ABOUT WHY OTHER POSITIVE --
17 BY MR. CRAIN:

18 Q LET ME BACK UP. THE FIRST CONVERSATION I
19 THINK YOU JUST SAID IT JUST SORT OF ENDED.

20 A IT ENDED POSITIVELY. I TESTIFIED
21 YESTERDAY --

22 Q POSITIVELY IN VIEW OF THE FACT THAT YOU ARE
23 TELLING THE COURT THAT DOBRIN RECEIVED A MEMO OR MEMOS
24 FROM BARENS THAT MISREPRESENTED THINGS. I WAS GOING TO
25 ASK YOU YESTERDAY, AND I DIDN'T HAVE A CHANCE TO ASK, WHY
26 THIS CONVERSATION ENDED ON THE NOTE THAT IT DID FROM YOUR
27 PERSPECTIVE?

28 A HE APOLOGIZED AND SAID THAT HE WOULD CORRECT

1 THE MISINFORMATION WITH MR. DOBRIN, THAT HE HADN'T
2 EXECUTED ANY DECLARATION IN THAT REGARD YET, SO THAT HE
3 WOULD SAY HE HAD A REFRESHED RECOLLECTION TO MR. DOBRIN OR
4 IN WHATEVER FASHION, BUT IT WOULDN'T END UP IN THE RECORD
5 THAT WAY.

6 THE COURT: THIS IS AFTER THE SAN MATEO
7 CONVERSATION?

8 THE WITNESS: THIS IS AT THE END OF SAN MATEO
9 CONVERSATION.

10 THE COURT: NOT THE ONE THAT YOU HAD AFTER YOU CAME
11 HERE TO L.A. COUNTY.

12 THE WITNESS: CORRECT?

13 THE COURT: GO AHEAD.

14 THE WITNESS: AND HE SAID, HE SAID THAT, YOU KNOW,
15 "JOE, I REALLY WANTED TO WIN THAT CASE DOWN," THAT'S THE
16 L.A. CASE, AND HE EVEN ASKED ME WHETHER HE COULD WORK WITH
17 ME, BE A CO-COUNSEL WITH ME IF I COULD GET HIM APPOINTED
18 UP IN SAN MATEO, WE THOUGHT THERE WOULD BE A RETRIAL ON
19 SAN MATEO CHARGES FILED, THE EIGHT TO FOUR ACQUITTAL. I
20 REMEMBERED THAT, WHICH ALLOWED ME TO COME UP WITH A DATE
21 OF THE CONVERSATION, THE DATE MORE ACCURATELY.

22 BY MR. CRAIN:

23 Q AND THE SECOND CONVERSATION, AND YOU
24 DESCRIBED YESTERDAY THAT IT ENDED ON THIS TENSE NOTE, AND
25 YOU NEVER HAD ANY FURTHER CONTACTS WITH BARENS EXCEPT TO
26 SEE HIM HERE AS A WITNESS?

27 A YES. AFTER THAT I HAVE WRITTEN HIM A COUPLE
28 OF LETTERS, A COUNSEL LETTER.

1 Q I MIGHT WANT TO ASK YOU ABOUT THE LETTER IN A
2 MOMENT.

3 NOW, HE SAID, HE EXPLAINED WHEN HE WAS ON THE
4 WITNESS STAND TO THE COURT, I THINK HE GOT INTO THE AREA
5 OF WHY YOU DIDN'T TESTIFY. I JUST WANT TO ASK YOU A
6 COUPLE OF TWO TO THREE BRIEF QUESTIONS ABOUT THAT.

7 DID YOU DISCUSS YOUR REASONS FOR NOT
8 TESTIFYING WITH MR. BARENS AFTER THE GUILT PHASE ON ANY
9 OCCASION?

10 A YES. IT WAS IN THAT CONVERSATION ON THE
11 LOCKUP BEFORE I WENT UPSTAIRS AND MADE A MARSDEN MOTION
12 THAT MR. BARENS -- SO I DID DISCUSS IT WITH HIM.

13 Q WAS A MARSDEN MOTION MADE AT THE COMPLETION
14 OF THE PENALTY PHASE?

15 A IT IS LIKE 13,300, SOMEWHERE AROUND THERE IN
16 THE REPORTER'S TRANSCRIPT, AND I TOLD THE JUDGE WHAT MY
17 REASONS WERE. AND MR. BARENS SAID, "YES, MR. HUNT
18 REPRESENTED A SINCERE BELIEF AS TO THOSE REASONS FOR NOT
19 TESTIFYING." IT IS RIGHT, RIGHT THERE IN THE RECORD.

20 Q SO BARENS WAS PRESENT AT THE TIME THAT YOU
21 MADE THE HEARING, I PRESUME?

22 A AND SAID WHAT MY REASONS WERE.

23 Q OR HAD MADE THE MOTION, I SHOULD SAY.

24 AND LET ME ASK YOU BRIEFLY BECAUSE THE
25 SUBJECT CAME UP WITH MR. BARENS ABOUT HIS MAINTENANCE OR
26 LACK OF MAINTENANCE OF FILES CONCERNING YOUR CASE.

27 YOU TOLD US YOU VISITED HIS OFFICE A NUMBER
28 OF TIMES?

1 A YES.

2 Q RIGHT?

3 A YES.

4 Q AND THAT IS WHILE YOU WERE OUT ON BAIL;
5 CORRECT?

6 A YES.

7 Q BEFORE THE END OF THE -- YOU WENT INTO
8 CUSTODY AT THE END OF THE FIRST PHASE; CORRECT?

9 A SAY THAT AGAIN?

10 Q YOU WERE TAKEN INTO CUSTODY AT THE CONCLUSION
11 OF THE FIRST PHASE OF THE TRIAL, YOU TOLD US YESTERDAY?

12 A YES.

13 MR. MC MULLEN: OBJECTION. RELEVANCY. THIS IS --
14 THE COURT: I WILL ALLOW THE ANSWER TO STAND.

15 BY MR. CRAIN:

16 Q DURING THE TIME THAT YOU DID VISIT
17 MR. BARENS' OFFICE, BETWEEN THE TIME YOU WERE RELEASED ON
18 BAIL AND THE TIME YOU WERE TAKEN INTO CUSTODY, DID YOU SEE
19 WHERE HIS FILES WERE KEPT IN HIS OFFICE?

20 A YES.

21 MR. MC MULLEN: OBJECTION. RELEVANCY.

22 THE COURT: OVERRULED.

23 BY MR. CRAIN:

24 Q AND YOU HEARD MR. BARENS DESCRIBE HIS FILES
25 HERE, WITHOUT RECAPITULATING WHAT HE SAID BECAUSE THE
26 COURT KNOWS QUITE WELL WHAT IT WAS, DID YOU HEAR THAT
27 TESTIMONY YOURSELF?

28 A YES.

1 Q WAS THAT DESCRIPTION ACCURATE?

2 A NO, IT WASN'T.

3 Q IN WHAT RESPECT?

4 A WHEN I GOT OUT ON BAIL I WENT OVER TO
5 MR. BARENS' OFFICE AND INITIALLY SPENT A LOT OF TIME IN
6 HIS CONFERENCE ROOM WORKING, NOT WITH HIS ASSISTANCE,
7 MR. BARENS, BUT JUST BEING THERE MYSELF. I, OF COURSE,
8 WAS SHOWN AND ASKED TO SEE WHERE THE FILES WERE, AND THE
9 FILE WAS A CARDBOARD BOX, THE LOWER RIGHT-HAND BOOKCASE AT
10 THE FAR SIDE OF THE CONFERENCE ROOM TO THE LEFT OF THE
11 ENTRANCEWAY TO MR. BARENS' LAW LIBRARY. IT WAS ONE BOX.
12 IT WAS -- THERE WAS -- I MEAN, IT WAS ACTUALLY DUSTY, AND
13 THERE WERE JUST A COUPLE OF TRANSCRIPTS PILED IN IT, MY
14 LETTERS FROM JAIL AND THE TYPED COPY, AND THAT WAS IT.

15 Q ALL RIGHT.

16 NOW, YOU SAY -- YOU SAID YOU SEEN POLICE
17 REPORTS IN THE CASE?

18 A RIGHT.

19 Q AND WHAT DID YOU SEE THOSE --

20 MR. MC MULLEN: OBJECTION. RELEVANCY AT THIS
21 POINT.

22 THE COURT: WHERE ARE WE GOING?

23 MR. CRAIN: I AM JUST TRYING TO ESTABLISH -- I AM
24 TRYING TO GET THE IMPEACHMENT OF MR. BARENS WITH REGARDS
25 TO THE FILES. HE DID TESTIFY HE SAW POLICE REPORTS. I
26 ASSUME THE COURT MIGHT BE INTERESTED IN KNOWING WHETHER
27 THAT WAS PART OF THIS BOX THAT BARENS KEPT OR --

28 THE COURT: I DON'T THINK IT IS RELEVANT WHERE

1 MR. HUNT SAW A PARTICULAR PIECE OF MATERIAL IN A
2 PARTICULAR LOCATION IN THE OFFICE.

3 MR. CRAIN: WELL --

4 THE COURT: WE ARE KIND OF FAR AFIELD.

5 BY MR. CRAIN:

6 Q OKAY.

7 DID BARENS HAVE WITNESS FILES THAT YOU EVER
8 SAW?

9 MR. MC MULLEN: OBJECTION. RELEVANCE.

10 THE WITNESS: WE WOULD HAVE MEETINGS. WE WOULD
11 DISCUSS DURING THE TRIAL, LIKE THESE LAST MINUTES --

12 MR. MC MULLEN: OBJECTION. NONRESPONSIVE.

13 THE WITNESS: -- DISCUSSING THE CONTEXT --

14 THE COURT: JUST ANSWER THE QUESTION, DID HE HAVE
15 WITNESS FILES?

16 THE WITNESS: AFTER A FASHION YOU COULD SAY, YES.

17 BY MR. CRAIN:

18 Q WHAT YOU DO YOU MEAN "AFTER A FASHION"?

19 A HE WOULD TAKE OUT A MANILA FOLDER DURING OUR
20 MEETING ABOUT THE WITNESS THAT WOULD TESTIFY TOMORROW,
21 PLACE A PIECE OF LEGAL PAPER IN IT AND BEGIN TO TAKE NOTES
22 AS CHIER AND I TRIED TO FILL HIM IN ON WHAT THIS PERSON
23 WAS ABOUT.

24 IN THAT FILE, THIS WITNESS FILE, WOULD BE THE
25 PERSON'S TRANSCRIPT AND THE NOTES THAT HE WOULD PUT
26 TOGETHER IN THE DAY OR TWO BEFORE THE PERSON TOOK THE
27 STAND. THERE WAS NOT -- HE NEVER WALKED INTO ANY OF THESE
28 MEETINGS WITH A PRE-EXISTING FILE OF ASSEMBLED MATERIAL ON

1 THESE WITNESSES THAT HE CULLED OR CROSS-INDEXED OR MADE
2 NOTES ABOUT THAT -- I NEVER SAW ANYTHING LIKE THAT, NO.

3 Q DID THERE APPEAR TO BE TOPIC FILES,
4 FINANCIAL DOCUMENTATION RELATING TO LEVIN OR THE B.B.C.?

5 A I KNOW FOR A FACT THAT HE DID NOT.

6 Q HOW DO YOU KNOW THAT?

7 A WHEN IT CAME DOWN TO IT IN THE COURTROOM HE
8 ALWAYS HAD TO ASK MR. WAPNER FOR AN EXTRA COPY. THE
9 RECORD IS REplete WITH REFERENCES TO THAT. DURING MY
10 MEETINGS WITH HIM HE NEVER KNEW WHERE THESE DOCUMENTS
11 WERE, AND A LOT OF TIME WE COULDN'T EVEN FIND THEM. I
12 DIDN'T EVEN KNOW WHAT HE WAS DOING WITH THEM, THROWING
13 THEM IN A DUMPSTER OR WHAT. I COULDN'T FIND RECORDS THAT
14 RELATED TO WITNESSES THAT MR. WAPNER TOLD US WOULD BE
15 TESTIFYING THAT WEEK.

16 Q AS A RESULT OF THESE PROBLEMS THAT YOU
17 DESCRIBED, DID YOU HAVE ANY DISCUSSIONS WITH MR. BARENS
18 ABOUT IT?

19 MR. MC MULLEN: OBJECTION. RELEVANCY.

20 THE COURT: SUSTAINED.

21 OUTSIDE THE SCOPE OF THE O.S.C. HEARING.

22 BY MR. CRAIN:

23 Q DID YOU TAKE ANY ACTION WITH HIM WITH REGARD
24 TO HIS LACK OF PREPARATION, FOR EXAMPLE, NOT HAVING ANY
25 FINANCIAL RECORDS THAT PERTAINED TO LEVIN OR THE B.B.C.?

26 MR. MC MULLEN: OBJECTION. RELEVANCY.

27 THE COURT: SUSTAINED.

28

1 BY MR. CRAIN:

2 Q WERE --

3 MR. CRAIN: EXCUSE ME, YOUR HONOR.

4 BY MR. CRAIN:

5 Q DID YOU BRING TO MR. BARENS' ATTENTION ANY
6 DIFFICULTIES THAT YOU SAW IN THE PRESENTATION OF THE FIVE
7 ISSUES THAT THE COURT HAS TAKEN EVIDENCE ON AND HIS
8 APPARENT LACK OF HAVING FILES ON THESE SUBJECTS?

9 MR. MC MULLEN: OBJECTION. COMPOUND AND IRRELEVANT
10 "IN SOME RESPECT."

11 THE COURT: COMPOUND. SUSTAINED.

12 BY MR. CRAIN:

13 Q DID YOU BRING TO MR. BARENS' ATTENTION
14 ANYTHING RELATING TO HIS APPEARING NOT TO HAVE FILES
15 RELATING TO THE PROGRESSIVE ISSUE THAT'S BEFORE THE COURT?

16 MR. MC MULLEN: I -- WE WOULD OBJECT. THAT'S BEEN
17 ASKED AND ANSWERED. THAT HAS BEEN COVERED.

18 MR. CRAIN: YOU DON'T WANT TO HEAR ABOUT THE LACK
19 OF MR. BARENS' FILES?

20 THE COURT: I THINK WE ARE FAR AFIELD HERE. LET'S
21 MOVE ON.

22 MR. CRAIN: I JUST WANTED TO TELL THE COURT, IF I
23 COULD MAKE ONE STATEMENT, THAT BARENS GAVE THIS IMPRESSION
24 TO THE COURT THAT HE HAD FILES AND THEY WERE CAREFULLY
25 ORGANIZED AND --

26 THE COURT: I THINK HE SAID REVIEWED ALL THE THINGS
27 HE NEEDED, THOUGHT HE NEEDED TO REVIEW.

28 MR. CRAIN: FOR WHATEVER THAT MEANS. I WOULD BE

1 OFFERING MR. HUNT'S TESTIMONY THAT THAT IS ENTIRELY
2 MISLEADING.

3 THE COURT: I WILL SUSTAIN THE OBJECTION.

4 MR. CRAIN: HOPEFULLY, THE COURT NOTED REplete IN
5 THE TRANSCRIPT THE NUMBER OF TIMES THAT MR. WAPNER HAD TO
6 COME TO MR. BARENS ASSISTANCE, GIVE HIM SOMETHING OR
7 ADDRESS THE FACT THAT HE SHOULD HAVE HAD A REPORT AND
8 COULDN'T UNDERSTAND WHY HE DIDN'T HAVE IT TWO YEARS
9 EARLIER AND THINGS OF THAT NATURE.

10 THE COURT: THE TRANSCRIPT SPEAKS FOR ITSELF.

11 MR. CRAIN: ALL RIGHT.

12 BY MR. CRAIN:

13 Q LET ME TURN TO ANOTHER SUBJECT, MR. HUNT. I
14 WANT TO ASK YOU JUST A COUPLE OF QUESTIONS HERE TO TIE UP
15 SOME THINGS FROM YESTERDAY ABOUT MR. KILPATRICK.

16 DID YOU COMMUNICATE TO MR. BARENS BY
17 REFERENCE TO ANY DOCUMENTS OTHER THAN THOSE THAT YOU
18 DESCRIBED YESTERDAY THAT THERE WAS EVIDENCE IN EXISTENCE
19 THAT MICROGENESIS HAD SUBSTANTIAL BUSINESS PROSPECTS?

20 A REFERRING TO?

21 Q IF SO, IS THE ANSWER, "YES" OR "NO"?

22 A YES, IT IS.

23 Q IN WHAT WAY AND HOW?

24 A IT WAS REFERRED TO THROUGH THE B.B.C.
25 CHRONOLOGY, ALL SORT OF DOCUMENTS.

26 MR. MC MULLEN: OBJECTION. NONRESPONSIVE.

27 THE COURT: SUSTAINED.

28 THE WITNESS: I COMMUNICATED --

1 BY MR. CRAIN:

2 Q OKAY.

3 DID YOU REFER TO A DOCUMENT, ANYWAY, JUST NOW
4 IN THE ANSWER THAT WAS STRICKEN?

5 MR. MC MULLEN: OBJECTION. VAGUE.

6 THE COURT: YOUR QUESTION BEFORE WAS: WAS THERE
7 ANYTHING OTHER THAN WRITTEN DOCUMENTS THAT CAUSED YOU TO
8 HAVE SOME DISCUSSIONS WITH MR. BARENS ABOUT THESE. AND HE
9 IS REFERRING BACK TO THE WRITTEN DOCUMENTS, THAT'S
10 NONRESPONSIVE TO YOUR QUESTION. WE HAVE GONE THROUGH THE
11 WRITTEN DOCUMENTS. IT IS ABOUT THESE --

12 BY MR. CRAIN:

13 Q ARE THERE ANY OTHER, ANY WRITTEN DOCUMENTS
14 BESIDES THE ONE THAT YOU DESCRIBED YESTERDAY, WAS WHAT I
15 THOUGHT I WAS ASKING.

16 A THERE IS A SERIES OF DOCUMENTS THAT I
17 DISCUSSED WITH MR. BARENS THAT REFLECTED SATURN ENERGY,
18 RISING STAR IN VANCOUVER, HOW THEY WERE -- THE MERGER WAS
19 IMMINENT BETWEEN THEM AND U.F.O.I., THEIR FINANCIAL
20 STATEMENTS, WHICH WERE AVAILABLE TO ME, THE VARIOUS NEWS
21 RELEASES THAT SATURN HAD GIVEN CONCERNING ITS PROSPECTS
22 AND DEALS THAT CLOSED, MULTI MILLION DOLLAR DEALS, AND
23 ALSO THE DOCUMENTS THAT SHOWED THAT THE RE-ORGANIZATION
24 COURT INVOLVING THE RE-ORGANIZATION OF MR. KILPATRICK'S
25 TAX SHELTER PROGRAM HAD OCCURRED IN LIKE MARCH OF 1984.

26 THERE WAS A WHOLE SERIES OF DOCUMENTS THAT I
27 REFERRED TO ALSO IN THE B.B.C. CHRONOLOGY. WE DISCUSSED
28 HOW THOSE THINGS WERE COMING, AND I DISCUSSED THAT WITH

1 MR. BARENS --

2 MR. MC MULLEN: OBJECTION. NONRESPONSIVE.

3 THE COURT: I ALLOW THE ANSWER TO STAND.

4 BUT WE ARE REALLY GOING BACK OVER EXACTLY
5 WHAT WE DID YESTERDAY.

6 MR. CRAIN: THERE IS SOME ADDITIONAL DOCUMENTS I
7 KNOW THE COURT DOESN'T WANT TO --

8 THE WITNESS: I GUESS HE HAS AN UNDERSTANDING. WE
9 WILL JUST MOVE ON.

10 MR. CRAIN: I DON'T WANT TO TAKE UP YOUR TIME WITH
11 THIS, YOUR HONOR. THERE ARE NUMEROUS OTHER DOCUMENTS.

12 THE COURT: IT IS CLEAR FROM WHAT YOU WENT THROUGH
13 YESTERDAY, ONE OF THE QUESTIONS I WILL HAVE LATER I WILL
14 ASK FOR A GENERAL SUMMARY HOW MANY WRITTEN COMMUNICATIONS
15 HE HAD WITH MR. BARENS, HOW MANY POINTS AND THINGS LIKE
16 THAT, BUT IT IS CLEAR THAT WE ARE TALKING ABOUT VOLUMES OF
17 MATERIAL THAT WERE PROVIDED TO MR. BARENS.

18 MR. CRAIN: YES, YOUR HONOR. I WILL MOVE ON.

19 BY MR. CRAIN:

20 Q MR. HUNT, MR. BARENS TESTIFIED, TO PARAPHRASE
21 HIM, THAT HE HAD A HIGH LEVEL OF PROFESSIONAL COMMITMENT
22 TO THE CASE, TO YOU, AND SO FORTH. DID HE EVER HAVE ANY
23 CONVERSATION WITH YOU ABOUT THAT PARTICULAR SUBJECT?

24 A I HAD ONE EXCEEDINGLY --

25 MR. MC MULLEN: OBJECTION. RELEVANCY.

26 THE COURT: PRIOR INCONSISTENT STATEMENT.

27 OVERRULED.

28 BUT I AM NOT SURE -- I DON'T REMEMBER THOSE

1 WORDS BEING USED.

2 MR. CRAIN: WELL, DO YOU REMEMBER SOMETHING LIKE
3 THAT.

4 THE COURT: I DON'T.

5 MR. CRAIN: YOU DON'T?

6 THE WITNESS: THAT'S ALL THAT MATTERS.

7 THE COURT: REFRAME THE QUESTION.

8 BY MR. CRAIN:

9 Q DID YOU HAVE ANY DISCUSSION WITH MR. BARENS
10 CONCERNING HIS COMMITMENT TO YOUR DEFENSE?

11 A YES.

12 Q AND WHAT DID HE SAY IN THAT REGARD?

13 MR. MC MULLEN: OBJECTION. RELEVANCY.

14 THE COURT: OVERRULED.

15 THE WITNESS: THE CONVERSATION THAT I AM THINKING
16 ABOUT RIGHT NOW IS ONE THAT OCCURRED RIGHT BEFORE TRIAL
17 BEGAN, IT WAS AN EXCEEDINGLY ACRIMONIOUS CONVERSATION
18 WHERE I WAS DECRYING HIS LACK OF FOLLOW-THROUGH IN SOME
19 AREAS, WE NEVER SEEMED TO END UP GETTING TO THE BOTTOM OF
20 THINGS, AND I DIDN'T FEEL LIKE EVERYTHING WAS TOGETHER IN
21 SUCH A WAY AS WOULD BE PRESENTED.

22 BY MR. CRAIN:

23 Q WHAT DID HE SAY ON THAT SUBJECT THAT I JUST
24 ASKED YOU?

25 A WELL, TOWARDS THE END OF THE CONVERSATION,
26 YOU KNOW, HIS SHOULDERS SLUMPED AND HE APOLOGIZED TO ME,
27 AND HE SAID, HOWEVER, THAT WE WOULD GET IT TOGETHER AND
28 THERE WAS PLENTY OF TIME, AND THAT IT WOULD BE OKAY AND

1 THAT I SHOULD JUST TRUST HIM. I WAS FEELING LIKE I MAYBE
2 SHOULD GET A DIFFERENT LAWYER.

3 THE COURT: SUSTAINED.

4 BY MR. CRAIN:

5 Q NOW, DID YOU ON OR ABOUT FEBRUARY 22, 1995,
6 WRITE A LETTER TO BARENS?

7 THE COURT: I MISSED THE DATE. WHAT WAS THE DATE?

8 MR. CRAIN: AROUND FEBRUARY 22, 1995.

9 MR. MC MULLEN: OBJECTION. RELEVANCY.

10 THE COURT: OVERRULED.

11 THE WITNESS: YES.

12 BY MR. CRAIN:

13 Q DO YOU HAVE A COPY OF THAT WITH YOU?

14 A THERE IS A COPY IN THOSE FOLDERS UP ON TOP OF
15 THAT BOX ON THE DESK.

16 Q RIGHT UP HERE?

17 A YEAH. IF YOU WOULD JUST BRING ME THE LOOSE
18 STUFF ON TOP OF THE PLASTIC BAG I WILL BE ABLE TO PICK IT
19 OUT.

20 Q I THINK YOU HAD IT A LITTLE WHILE AGO. I
21 THINK I SEE IT RIGHT HERE.

22 A OKAY.

23 MR. CRAIN: YOUR HONOR, CAN THIS BE MARKED NEXT IN
24 ORDER AN LETTER ADDRESSED TO ARTHUR BARENS, ATTORNEY,
25 DATED 2-22-95, IN MR. HUNT'S HANDWRITING, SIGNED,
26 "SINCERELY, JOE HUNT." IT IS FIVE PAGES.

27 THE COURT: IT WILL BE MARKED AS 286.

28

1 (MARKED FOR ID = PETITIONER'S 286,
2 DOCUMENT.)

3

4 MR. CRAIN: YES, YOUR HONOR.

5 THE COURT: I AM SORRY. YOU SAID FIVE PAGES?

6 MR. CRAIN: FIVE PAGES, YES, YOUR HONOR.

7 THE COURT: ALL RIGHT.

8 BY MR. CRAIN:

9 Q MR. HUNT, DID YOU WRITE THIS LETTER THAT HAS
10 NOW BEEN MARKED AN EXHIBIT 286?

11 A YES, I DID.

12 Q DID YOU ADDRESS IT TO MR. BARENS?

13 A YES, I DID. YES.

14 Q DID YOU WRITE IT ON THE DATE SHOWN ON THE
15 LETTER 2-22-95?

16 A YES.

17 Q WAS THAT AFTER THE CONVERSATION THAT YOU
18 DESCRIBED YOU HAD WITH MR. BARENS FROM THE COUNTY JAIL OR
19 BEFORE?

20 A YES.

21 Q AFTER OR BEFORE, THAT'S DOUBLE --

22 A IT WAS AFTER -- EXCUSE ME.

23 Q OKAY.

24 AND WAS THERE SOME PURPOSE THAT YOU HAD --
25 STRIKE THAT.

26 YOU SENT THIS TO BARENS THROUGH THE MAIL?

27 A YES, I DID.

28 Q YOU KEPT A COPY OF IT FOR YOURSELF?

1 A YES.

2 Q DID YOU HAVE A PURPOSE IN SENDING THIS LETTER
3 TO BARENS?

4 A YES, I DID.

5 Q AND IN THE LETTER DID YOU DISCUSS A NUMBER OF
6 TOPICS WITH HIM?

7 A YES, I DID.

8 Q DID YOU DISCUSS HIS, YOUR EVALUATION OF THE
9 PENALTY PHASE ARGUMENT?

10 MR. MC MULLEN: OBJECTION. BEST EVIDENCE.

11 THE COURT: SUSTAINED.

12 HAS SOMEBODY GOT A COPY OF IT FOR ME TO LOOK
13 AT?

14 MR. CRAIN: I THOUGHT WE HAD ONE.

15 THE WITNESS: HERE, I WILL GIVE IT TO THE JUDGE.

16 MR. MC MULLEN: THERE IS ONE APPENDED TO THE RETURN
17 AS AN EXHIBIT.

18 MR. CRAIN: I DON'T HAVE THOSE DOCUMENTS OUT.

19 I WILL GIVE THIS TO YOU.

20 BY MR. CRAIN:

21 Q LET'S BACKUP.

22 WHY DID YOU SEND THIS LETTER TO MR. BARENS?

23 MR. MC MULLEN: OBJECTION. RELEVANCY.

24 THE COURT: SUSTAINED.

25 I ASSUME YOU ARE OFFERING IT FOR SOME TYPE OF
26 BIAS OR PREJUDICE TO ATTACK MR. BARENS' TESTIMONY, SO IT
27 DOESN'T MATTER WHY MR. BARENS -- HUNT SENT IT. IT IS THE
28 AFFECT THAT IT HAS ON THE RECEIVER, MR. BARENS, AND

1 CONSEQUENTLY HIS TESTIMONY. IS THAT ABOUT RIGHT?

2 MR. CRAIN: COULD I HAVE JUST A MOMENT WITH
3 MR. HUNT?

4 THE COURT: YES.

5 LET ME READ THE LETTER.

6

7 (THE COURT REVIEWING DOCUMENT.)

8

9 MR. CRAIN: YOUR HONOR, I BELIEVE THE PEOPLE
10 ATTACHED THIS TO THE RETURN AS ONE OF THEIR EXHIBITS. I
11 ANTICIPATED THEY INTENDED TO INQUIRE OF MR. HUNT ABOUT IT,
12 AND I WANT TO GIVE HIM A CHANCE TO EXPLAIN TO THE COURT
13 WHAT IT IS ALL ABOUT. IT CONCERNS A NUMBER OF SUBJECTS
14 THAT WE DISCUSSED WITH MR. BARENS IN THE LETTER.

15 THE COURT: WHAT'S THE ANSWER TO MY QUESTION? ARE
16 YOU USING THIS TO ATTACK MR. BARENS' CREDIBILITY.

17 MR. CRAIN: I AM USING IT TO ATTACK MR. BARENS'
18 CREDIBILITY, AND TO FURTHER EXPLAIN THE RELATIONSHIP THAT
19 EXISTED AFTER THE TRIAL BETWEEN MR. HUNT AND MR. BARENS,
20 WHICH THE COURT HAS HEARD TESTIMONY ABOUT.

21 THE COURT: LET ME READ THE LETTER.

22

23 (THE COURT REVIEWING DOCUMENT.)

24

25 MR. CRAIN: CAN I PROCEED, YOUR HONOR?

26 THE COURT: NO. LET ME FINISH READING THE LETTER.

27

28 (THE COURT REVIEWING DOCUMENT.)

1 THE COURT: ALL RIGHT.

2 I READ IT. YOU CAN RE-ASK THE QUESTION.
3 TO.

4 MR. CRAIN: I WILL WITHDRAW THE LAST QUESTION. I
5 HAVE FORGOTTEN WHAT IT WAS.

6 THE COURT: I THINK THE LAST QUESTION WAS: WHAT
7 WERE YOU THINKING ABOUT WHEN YOU SENT THE LETTER. THERE
8 WOULD BE A --

9 MR. CRAIN: LET ME WITHDRAW -- LET ME ASK ANOTHER
10 QUESTION.

11 BY MR. CRAIN:

12 Q DOES THIS LETTER IN SOME WAY RELATE TO THE
13 UNDERSTANDING THAT YOU DESCRIBED BETWEEN YOU AND
14 MR. BARENS THAT EXISTED AT ONE TIME?

15 MR. MC MULLEN: OBJECTION. RELEVANCY.

16 THE COURT: I WILL ALLOW THE QUESTION.

17 THE WITNESS: YES, IT DOES.

18 BY MR. CRAIN:

19 Q IN WHAT WAY?

20 A WELL, AT PAGE THREE --

21 THE COURT: THE DOCUMENT SPEAKS FOR ITSELF. I HAVE
22 READ IT.

23 THE WITNESS: YES, IT DOES.

24 THE COURT: OKAY.

25 GO.

26 MR. CRAIN: I WAS GOING ASK MR. HUNT TO JUST
27 BRIEFLY EXPLAIN. IT SPEAKS ON REALLY A MATTER FOR
28 CROSS-EXAMINATION.

1 THE COURT: I ASSUME YOU ARE TRYING TO HOLD -- ARE
2 YOU GOING TO CROSS ON THIS ISSUE?

3 MR. MC MULLEN: NO, NOT ON THAT LETTER.

4 THE COURT: ALL RIGHT.

5 MR. CRAIN: CAN I ASK HIM, YOUR HONOR, WHAT THE
6 PURPOSE WAS IN SENDING THE LETTER TO BARENS?

7 THE COURT: SURE.

8 BY MR. CRAIN:

9 Q WHAT WAS THAT?

10 A THE PURPOSE FOR THIS WAS TO LET MR. BARENS
11 KNOW THAT AS FAR AS I WAS CONCERNED I WAS STILL WILLING TO
12 LIVE WITH THE TERMS OF THE UNDERSTANDING I HAD REACHED
13 WITH HIM ON THE LOCKUP DOWNSTAIRS DURING THE PENALTY PHASE
14 AT THE TRIAL, AND THAT I WASN'T PLANNING ON BRINGING OUT
15 ALL THIS OTHER SORT OF STUFF, THAT I KNEW HE WAS THE TYPE
16 OF PERSON THAT WOULD CONSIDER DOING A PREEMPTIVE ATTACK ON
17 MY CREDIBILITY.

18 THE COURT: YOU DID CONSIDER THAT OR DIDN'T
19 CONSIDER THAT?

20 THE WITNESS: THAT I WAS NOT CONSIDERING USING THAT
21 TYPE OF INFORMATION. I KNEW HE WAS THE TYPE OF PERSON
22 BECAUSE OF THE MANY THINGS THAT I OBSERVED ABOUT
23 MR. BARENS AND HIS SELFISHNESS, THAT WHEN PUSH CAME TO
24 SHOVE HE WOULD BE VERY LIKELY TO LIE TO COVER HIMSELF AND
25 PREVENT SOME SORT OF SUSPICION OR DISCIPLINARY PROCEEDING,
26 AND I FELT THAT THE REALITY OF COURTROOMS AND EVERYTHING
27 ELSE IS THAT IF MR. BARENS WAS NOT HONEST ABOUT --

28 MR. MC MULLEN: OBJECTION. NONRESPONSIVE.

1 IRRELEVANT.

2 THE COURT: I WILL ALLOW HIM TO FINISH HIS THOUGHT.

3 THE WITNESS: IF MR. BARENS HAS AN ATTORNEY AND A
4 MEMBER IN GOOD STANDING FROM ALL APPEARANCES AND SOMEONE
5 GOT UP AND DECIDED TO COME UP WITH A LOT OF FACILE
6 TACTICAL EXPLANATIONS, THAT I WOULD HAVE A SNOWBALLS'S
7 CHANCE IN HELL OF PROCEEDING ON MY WRIT BECAUSE OF THE
8 PRESUMPTION THAT EXISTS IN THE LEGAL SYSTEM.

9 SO I WAS TRYING TO ENCOURAGE HIM BY MY
10 REFERENCE TO WINSTON CHURCHILL, HE HAS FRAMED PHOTOGRAPHS
11 OF WINSTON CHURCHILL ON THE WALL, TRYING TO EVOKE SOME
12 SORT OF MORALE RESPONSIBILITY IN THIS MAN FOR WHAT HE HAD
13 DONE. IF HE WOULD JUST COME IN AND TELL THE TRUTH ABOUT
14 THIS NARROW THING THAT I REPEATEDLY SAID IN THIS LETTER,
15 YOU KNOW, IT WAS -- HE DIDN'T PRESENT THE EVIDENCE, THERE
16 WAS A COMPLETE BREAKDOWN IN THE INVESTIGATION OF THE CASE
17 HE HAD A LOT OF EXPLANATIONS.

18 THE COURT: WE ARE GOING BACK HERE?

19 BY MR. CRAIN:

20 Q ANYTHING ELSE THAT'S IN THE LETTER?

21 A NO, THERE IS ARE NOT. THOSE THINGS I LEARNED
22 LATER THAT I BELIEVED ABOUT MR. BARENS.

23 THE COURT: YOU HAVE ANSWERED THE QUESTION.

24 BY MR. CRAIN:

25 Q ARE THERE ANY THINGS IN THIS LETTER THAT YOU
26 ABSOLUTELY LEARNED THAT WERE FALSE?

27 A I LEARNED THAT CASEY COHEN AND RICHARD CHIER,
28 HAD WRITTEN THE PENALTY PHASE ARGUMENT, AND I LEARNED THAT

1 A LOT OF OTHER THINGS ABOUT HIS ORIENTATION AFTER.

2 MR. MC MULLEN: OBJECTION. IRRELEVANT.

3 THE COURT: SUSTAINED.

4 THE WITNESS: OKAY.

5 BY MR. CRAIN:

6 Q AT THE TIME THAT YOU WROTE THE LETTER DID YOU
7 SPEAK TO MR. IVAN WERNER?

8 A NO.

9 Q DID YOU KNOW THAT BARENS, AT THE TIME THAT
10 YOU WROTE THE LETTER, DID YOU KNOW THAT BARENS HAD BEEN
11 CONTACTED BY LOUISE WALLER, WHO TESTIFIED DURING THE
12 PENALTY TRIAL PRIOR TO YOUR HAVING BEEN CONVICTED AT THE
13 GUILT PHASE?

14 MR. MC MULLEN: OBJECTION. RELEVANCY.

15 THE COURT: SUSTAINED.

16 WE ARE REALLY WAY BEYOND THE SCOPE.

17 BY MR. CRAIN:

18 Q I WANT TO ASK YOU A FEW QUESTIONS HERE ON
19 EXHIBIT G, THE DECLARATION OF ARTHUR BARENS. IT IS ONE OF
20 THE DISTRICT ATTORNEY'S EXHIBITS.

21 MR. CRAIN: I BELIEVE MR. BARENS TESTIFIED, YOUR
22 HONOR, THAT --

23 BY MR. CRAIN:

24 Q DID YOU HEAR BARENS SAY THAT EVERYTHING IN
25 EXHIBIT G, HIS DECLARATION, WAS TRUE?

26 A YES.

27 Q AND LET ME ASK YOU ABOUT A FEW THINGS. DID
28 YOU TELL BARENS THAT THE ATTRITION MILLS WAS ACTUALLY

1 FUNCTIONAL AND WORKED?

2 A YES.

3 MR. MC MULLEN: OBJECTION. ASKED AND ANSWERED.

4 THE COURT: DIDN'T WE GO THERE?

5 THE WITNESS: I DON'T THINK I EVER ASKED THAT
6 SPECIFIC QUESTION. I WAS CONCERNED LAST NIGHT THERE WAS
7 SOME PRECISE THINGS THAT AT THE CONCLUSION OF THE
8 PROCEEDINGS THAT THE PROSECUTOR MIGHT CULL THE DAILIES AND
9 FIND SOME OVERSIGHT ON MY PART.

10 THE COURT: I DON'T THINK IT IS GOING TO MAKE MUCH
11 DIFFERENCE.

12 MR. CRAIN: I JUST WANT TO MAKE SURE THAT THE
13 RECORD SHOWS THAT BEFORE THE TRIAL HE --

14 THE COURT: BUT QUICKLY.

15 GO.

16 BY MR. CRAIN:

17 Q DID YOU TELL BARENS BEFORE THE TRIAL THAT THE
18 ATTRITION MILL WORKED, WAS FUNCTIONAL?

19 A YES, I DID.

20 Q AND IN WHAT MANNER, JUST BRIEFLY?

21 THE COURT: JUST WHAT HE TOLD HIM.

22 BY MR. CRAIN:

23 Q DID YOU TELL HIM ABOUT THE LAB TESTS THAT HAD
24 BEEN CONDUCTED ON IT?

25 MR. MC MULLEN: SAME OBJECTION. RELEVANCY.

26 THE COURT: YOU COMPLETELY COVERED THAT YESTERDAY.

27 THE WITNESS: OKAY.

28 MR. CRAIN: I WAS REFERRING TO SOMETHING OTHER THAN

1 DR. CHEUNG. IF THE COURT WANTS ME TO MOVE ON, I WILL
2 CERTAINLY GO ALONG.

3 THE COURT: MOVE ON.

4 BY MR. CRAIN:

5 Q WITH REGARD TO OLIVER WENDELL HOLMES, I
6 BELIEVE MR. BARENS STATED IN HIS DECLARATION, EXHIBIT G,
7 THAT HE WASN'T AWARE THAT OLIVER WENDELL HOLMES HAD MADE
8 STATEMENTS PRIOR TO THE TRIAL THAT HE WAS AWARE OF
9 MR. LEVIN'S PROPOSED DEPARTURE.

10 DO YOU RECALL MR. BARENS' STATEMENTS TO THAT
11 EFFECT, BOTH IN THE DECLARATION AND HIS TESTIMONY?

12 MR. MC MULLEN: OBJECTION. RELEVANCY AND BEST
13 EVIDENCE AS TO THE DECLARATION.

14 THE COURT: SUSTAINED.

15 BY MR. CRAIN:

16 Q I BELIEVE YOU TOLD US YESTERDAY --

17 MR. CRAIN: I GUESS THE COURT RECALLS THE TESTIMONY
18 THAT.

19 THE COURT: I AM LOOKING AT IT NOW, THAT THE
20 ZOELLER POLICE REPORTS WERE SHOWN TO MR. BARENS BY
21 MR. HUNT.

22 MR. CRAIN: SO PERHAPS I SHOULD MOVE ON.

23 THE COURT: I DO. I THINK YOU SAID WE HAVE FIVE
24 MINUTES LEFT.

25 MR. CRAIN: YEAH, BUT THEN --

26 THE COURT: I SHOULDN'T HAVE GIVEN YOU THE RECESS
27 OVERNIGHT. LET'S WRAP UP. WE ARE REALLY COVERING THINGS
28 THAT WE HAVE ALREADY COVERED.

1 BY MR. CRAIN:

2 Q WITH REGARDS TO MS. KAREN MARMOR, MR. BARENS
3 HAS REPRESENTED THAT HER TESTIMONY WOULD HAVE BEEN IN
4 DIRECT CONFLICT WITH HIS CLIENT IF YOU HAD TAKEN THE
5 WITNESS STAND AND TESTIFIED. IS THAT IN FACT TRUE OR NOT
6 TRUE?

7 MR. MC MULLEN: OBJECTION. IRRELEVANT.

8 THE COURT: I DON'T UNDERSTAND THE QUESTION.

9 MR. CRAIN: IN EXHIBIT G, YOUR HONOR, I BELIEVE
10 MR. BARENS TESTIFIED ABOUT THIS.

11 THE COURT: MR. BARENS SAID THEY COULDN'T DEAL WITH
12 MARMOR BECAUSE OF THE VARYING STORIES THAT HE WAS TOLD BY
13 LEVIN.

14 MR. KLEIN: THAT HE WASN'T SURE.

15 THE COURT: MR. KLEIN, ONE AT A TIME. NO MORE
16 DOUBLE TEAMING HERE, MR. CRAIN HAS GOT IT.

17 MR. CRAIN: I THINK HE DID SOMETHING TO THAT EFFECT
18 IN THE --

19 THE COURT: I GOT IT IN MY NOTES.

20 MR. CRAIN: THERE WOULD HAVE BEEN SOME CONFLICT
21 WITH WHAT MR. HUNT HAD DISCUSSED WITH HIM AND, THEREFORE,
22 HE DIDN'T USE MARMOR, HE DIDN'T CALL MR. HUNT AS A
23 WITNESS, AND I WAS ASKING MR. HUNT, WITH THE COURT'S
24 PERMISSION.

25 BY MR. CRAIN:

26 Q IS THAT TRUE, MR. HUNT, WHAT MR. BARENS SAID
27 ABOUT THAT?

28 MR. MC MULLEN: OBJECTION. CALLS FOR OPINION AND

1 SPECULATION.

2 THE COURT: SUSTAINED.

3 THE WITNESS: EXCUSE ME.

4 MICHAEL?

5 MR. CRAIN: COULD I HAVE JUST A MOMENT WITH
6 MR. HUNT?

7 THE COURT: VERY QUICKLY.

8 MR. CRAIN: I WILL GIVE THE COURT THE ASSURANCE
9 THAT WE ARE GETTING CLOSE TO THE END OF THE DIRECT
10 EXAMINATION.

11 THE COURT: BECAUSE WE ARE REALLY KIND OF PETERING
12 OUT HERE.

13 MR. CRAIN: ITS A GOOD THING THERE IS NOBODY FROM
14 THE PRESS -- THERE IS SOMEBODY FROM THE PRESS. I WILL
15 MOVE TO STRIKE THE LAST COMMENT.

16 THE COURT: IT IS AN OLD LEGAL TERM, PETERING.
17 BY MR. CRAIN:

18 Q OKAY.

19 ARE THERE ANY REPRESENTATIONS THAT MR. BARENS
20 HAS MADE RELATIVE TO HIS NOT PRESENTING THE EVIDENCE
21 THAT'S OF ISSUE IN THE O.S.C. THAT WE DID NOT DISCUSS
22 YESTERDAY THAT ARE FALSE?

23 MR. MC MULLEN: OBJECTION. COMPOUND.

24 THE COURT: CALLS FOR SPECULATION.

25 SUSTAINED.

26 THE WITNESS: MICHAEL, YOU HAVE TO GIVE ME THIS
27 QUESTION AGAIN.

28 THE COURT: WHAT IS THE QUESTION THAT YOU WANT HIM

1 TO ASK?

2 THE WITNESS: THE QUESTION I WANTED TO ASK: ARE
3 THERE ANY OTHER -- MR. BARENS TESTIFIED THAT THAT DOCUMENT
4 WAS TRUE -- ARE THERE ANY OTHER REPRESENTATIONS IN THAT
5 DOCUMENT MADE BY MR. BARENS WHICH YOU HAVE PERSONAL
6 KNOWLEDGE AS TO THE FALSITY OF THAT MR. BARENS KNEW THAT
7 THOSE STATEMENTS WERE FALSE?

8 THAT'S WHAT I WOULD LIKE TO ASK.

9 THE COURT: AND WHAT WOULD BE THE ANSWER TO THAT
10 QUESTION?

11 THE WITNESS: THERE ARE THREE THINGS THAT HE SAID
12 IN THERE WHICH CAN BE DEMONSTRABLY SHOWN TO BE FALSE BASED
13 ON COMMUNICATIONS THAT I GAVE HIM. HE WAS AWARE OF THE
14 FACT THAT MARTIN LEVIN HAD MADE A DEAL TO GET THE HOUSE
15 OPTION, RON LEVIN'S HOUSE OPTION TRANSFERRED TO -- IT
16 REFERRED TO MR. BARENS FALSELY SAYING HE WAS UNAWARE OF
17 THE LAB TEST THAT WERE DONE ON THE CARPETING.

18 MR. MC MULLEN: WITH ALL DUE RESPECT, YOUR HONOR,
19 THESE ARE ISSUES THAT ARE NO LONGER --

20 THE COURT: THESE ARE NOT BEFORE THIS COURT.

21 THE WITNESS: I WAS SAYING AS TO CREDIBILITY. HE
22 SAID THOSE THINGS WERE TRUE. AND I CAN SHOW YOU DOCUMENTS
23 THAT WOULD SHOW THAT HE WAS TOO AWARE OF ALL THESE THINGS
24 AND --

25 THE COURT: I WILL SUSTAIN MY OWN OBJECTION. IT IS
26 IRRELEVANT.

27 MR. CRAIN: I WAS ALSO GOING TO ATTEMPT TO MORE
28 ARTFULLY INQUIRY AS TO WHETHER OR NOT HIS REPRESENTATIONS

1 IN THIS DECLARATION, WHICH MR. BARENS SWORE WAS COMPLETELY
2 TRUE, I WAS ABOUT TO ATTEMPT TO DEMONSTRATE THAT HIS
3 REPRESENTATIONS IN THERE CONCERNING PRIOR CONTACTS BETWEEN
4 MR. LEVIN AND JIM PITTMAN WERE UNTRUE. I TAKE IT THE
5 COURT DOESN'T WANT TO HEAR ABOUT THAT --

6 THE COURT: YEAH. IT IS BEYOND THE SCOPE.

7 MR. CRAIN: -- TESTIMONY ON THAT REGARD, BUT THAT
8 WOULD BE OUR OFFER OF PROOF.

9 BY MR. CRAIN:

10 Q MR. HUNT, HAVE YOU READ MR. BARENS'
11 DEPOSITION TAKEN IN CONNECTION WITH THIS CASE?

12 A YES.

13 MR. MC MULLEN: OBJECTION. IRRELEVANT.

14 THE COURT: LET'S SEE WHERE IT IS GOING.

15 BY MR. CRAIN:

16 Q DID YOU SEE ANY MATTERS IN THE DEPOSITION
17 THAT REFLECT THAT MR. BARENS' ABILITY TO ACCURATELY RECALL
18 EVENTS CONCERNING YOUR CASE WERE LIMITED?

19 MR. MC MULLEN: OBJECTION. RELEVANCY.

20 THE COURT: CALLS FOR SPECULATION.

21 BY MR. CRAIN:

22 Q WERE THERE INSTANCES THAT YOU COULD QUICKLY
23 LIST FOR THE COURT OF MATERIAL INACCURACIES IN HIS
24 DEPOSITION.

25 THE COURT: QUICKLY OR NOT, IT IS STILL
26 SPECULATION.

27 MR. CRAIN: ONLY BY WAY OF HIS PERSONAL KNOWLEDGE.

28 THE COURT: YOU ARE ASKING HIM TO REVIEW A WITNESS'

1 OUT OF COURT STATEMENT TO DETERMINE WHETHER OR NOT IT IS
2 ACCURATE OR NOT. YOU CAN POINT OUT THINGS THAT YOU
3 BELIEVE ARE INACCURATE BASED ON WHAT MR. HUNT SAYS HERE IN
4 COURT VERSUS WHAT MR. BARENS SAID IN COURT.

5 MR. CRAIN: OKAY.

6 THE WITNESS: YOUR HONOR, I WANT TO ASK HIM VOLUME
7 NUMBERS, RECORDS, WITNESSES UNDER THAT HEARSAY EXCEPTION
8 AS AN EXPERT THAT I READ THE TRIAL TRANSCRIPT. I THINK I
9 CAN BY QUICKLY SUMMARIZE IT TO THE COURT.

10 THE COURT: IT IS NOT GOING TO HAPPEN.

11 THE WITNESS: OKAY.

12 THE COURT: GO.

13 MR. CRAIN: A FEW FINAL LOSE ENDS HERE.

14 BY MR. CRAIN:

15 Q DID YOU IN YOUR REVIEW OF MR. BARENS' FILES,
16 DID YOU EVER SEE ANYTHING RELATING TO MR. LEVIN BEING
17 INVOLVED AS A NEWS MAN INVESTIGATING A STORY OF SOMEONE
18 WHO HAD COMMITTED A CRIME IN LAS VEGAS AND FLED THE
19 COUNTRY WITH A LOT OF MONEY?

20 A NO.

21 MR. MC MULLEN: OBJECTION. IRRELEVANT. CALLS FOR
22 HEARSAY.

23 THE COURT: I WILL ALLOW THE ANSWER "NO" TO STAND.

24 BY MR. CRAIN:

25 Q DID BARENS EVER TELL YOU ABOUT EXISTENCE OF
26 NADIA GHALEB AND MR. WERNER.

27 MR. MC MULLEN: OBJECTION. ASKED AND ANSWERED.
28 COMPOUND. IRRELEVANT.

1 THE COURT: OVERRULED.

2 IT IS COMPOUND. BREAK IT DOWN.

3 BY MR. CRAIN:

4 Q DID HE EVER TELL YOU ABOUT LOUISE --

5 A NO.

6 Q -- WALLER?

7 A NO.

8 Q WITH REGARDS TO ROBINSON, DID HE TELL YOU
9 THAT HE WOULD TAKE ANY ACTION WITH REGARD TO INVESTIGATING
10 MR. ROBINSON AND USING HIM POSSIBLY AS A WITNESS IN THIS
11 CASE?

12 MR. MC MULLEN: OBJECTION. IRRELEVANT.

13 THE COURT: OVERRULED.

14 THE WITNESS: WHEN I HEARD ABOUT MR. ROBINSON I
15 WASN'T IN COURT AT THE TIME. HE TOLD ME THAT HE WAS GOING
16 TO INTERVIEW THE MAN AND DO A COMPLETE BACKGROUND ON HIM.

17 BY MR. CRAIN:

18 Q TO YOUR KNOWLEDGE DID HE EVER DO THAT?

19 A NOT TO MY KNOWLEDGE.

20 MR. MC MULLEN: OBJECTION. CALLS FOR SPECULATION.

21 THE COURT: SUSTAINED.

22 BY MR. CRAIN:

23 Q DID HE EVER TELL YOU THAT HE DID?

24 MR. MC MULLEN: OBJECTION. IRRELEVANT.

25 THE COURT: OVERRULED.

26 THE WITNESS: HE SAID THAT HE COMPLETELY LOOKED
27 INTO MR. ROBINSON.

28

1 BY MR. CRAIN:

2 Q DID HE TELL YOU HOW?

3 A NO.

4 Q DID HE TELL YOU THAT HE EVER TALKED TO
5 MR. ROBINSON PERSONALLY SO THAT HE COULD EVALUATE HIM FOR
6 HIMSELF?

7 MR. MC MULLEN: OBJECTION. IRRELEVANT.

8 THE WITNESS: NO. HE SAID THAT HE WAS GOING TO DO
9 THAT.

10 THE COURT: OVERRULED.

11 BY MR. CRAIN:

12 Q WITH REGARD TO THE -- DID YOU FOLLOW THIS
13 CASE IN THE "LOS ANGELES TIMES" FROM THE TIME YOU WERE
14 FIRST ARRESTED UNTIL THE CONCLUSION OF YOUR TRIAL?

15 A YES.

16 Q AND WAS THERE, LET'S SAY, FROM EARLY 19- --
17 THE BEGINNING OF 1985 UNTIL THE FALL OF 1986 WAS THERE
18 COVERAGE OF THE CASE IN THE "LOS ANGELES TIMES"?

19 A NO.

20 MR. MC MULLEN: OBJECTION. CALLS -- NO FOUNDATION.

21 MR. CRAIN: THE REASON I BRING THIS UP --

22 THE COURT: SUSTAINED.

23 MR. MC MULLEN: MOVE TO STRIKE THE ANSWER.

24 MR. CRAIN: ALTHOUGH IT IS OUTSIDE THE RECORD, THE
25 COURT, I THINK, EXPRESSED SOME, MADE A STATEMENT THAT, AND
26 THE PEOPLE HAVE ATTEMPTED TO, I THINK, SHOW BY WAY OF
27 ASKING THE COURT TO SUPPOSE THINGS THAT AREN'T IN EVIDENCE
28 THAT THERE WAS CERTAIN COVERAGE OF THE CASE THAT REALLY

1 WAS NOT NONEXISTENCE.

2 THE OFFER OF PROOF WOULD BE THAT EXCEPT FOR
3 ONE SMALL BLUSH IN THE "LOS ANGELES TIMES" THAT UNTIL THE
4 LATE FALL, AROUND NOVEMBER OF 1986 THERE WAS BASICALLY A
5 BLACKOUT ON THIS CASE, AND I THINK THE REASON FOR THAT IS
6 THAT MR. DOSTI, BEN DOSTI, WHO WAS ONE OF THE DEFENDANTS
7 IN THE ESLAMINIA PROCEEDINGS IN SAN MATEO, WAS THE SON OF
8 THE FOOD EDITOR. I THINK THIS IS A MATTER OF COMMON
9 KNOWLEDGE, SINCE WE ARE SPEAKING OUTSIDE THE RECORD. THE
10 FOOD EDITOR OF LOS ANGELES WAS ROZ DOSTI.

11 SO I AM ASKING MR. HUNT THIS BECAUSE HE HAS
12 PERSONAL KNOWLEDGE OF FOLLOWING THE CASE IN THE "LOS
13 ANGELES TIMES," AND I WANT TO MAKE SURE THAT THE COURT IS
14 NOT UNDER THE MISAPPREHENSION THAT THIS WAS SOME WIDELY
15 COVERED CASE LOCALLY PRIOR TO VERY LATE IN 1986. THAT'S
16 WHAT I AM ATTEMPTING TO PROVE HERE.

17 THE COURT: I WILL SUSTAIN THE OBJECTION. MOST
18 PEOPLE DON'T GET THEIR INFORMATION FROM READING THE
19 NEWSPAPER ANYWAY.

20 MR. CRAIN: CERTAINLY NOT THE ONES THAT APPEAR AS
21 OUR JURORS FOR THE MOST PART.

22 THE COURT: IT IS UNFORTUNATE BUT TRUE.

23 BY MR. CRAIN:

24 Q MR. HUNT, I WANTED TO JUST ASK YOU TO TELL
25 US, SO WE CAN GET IT IN THE RECORD HERE, WHAT WAS
26 MR. LEVIN'S HEIGHT AND WEIGHT, APPROXIMATELY?

27 MR. MC MULLEN: OBJECTION. FOUNDATION.

28 THE COURT: WHY?

1 MR. MC MULLEN: RELEVANCY.

2 MR. CRAIN: BECAUSE THE WITNESSES HAVE GIVEN -- I
3 DO THINK IT IS A MATTER OF DISPUTE BUT --

4 THE COURT: I DON'T THINK IT IS RELEVANT. IT IS
5 NOT IMPORTANT. EVERYONE GAVE ROUGHLY THE SAME
6 DESCRIPTION.

7 MR. CRAIN: I JUST WANTED THE COURT KNOW THAT
8 MR. LEVIN WAS ABOUT 6'1," 6'1" AND A HALF AND WAS --

9 THE COURT: YOU GUYS CAN STIPULATE.

10 MR. CRAIN: MEDIUM BUILD.

11 MR. MC MULLEN: I OBJECT TO COUNSEL TESTIFYING
12 HERE.

13 THE COURT: LOOK IT, IT REALLY DOESN'T MATTER WHAT
14 THE REALITY IS IF THERE IS CONSISTENCY AMONG THESE
15 WITNESSES. I THINK THAT'S THE IMPORTANT THING. THERE WAS
16 CONSISTENCY.

17 MR. CRAIN: I GUESS I ASSUME THE PEOPLE IF HE WERE
18 FIVE FEET AND WEIGHED 300 POUNDS WOULD POINT IT OUT.

19 THE COURT: I WOULD ASSUME THEY WOULD BE COMING IN
20 HERE WITH PHOTOGRAPHS OF HIM WITH THAT SIZE AND WEIGHT.

21 MR. CRAIN: YES, YOUR HONOR, A COUPLE MORE THINGS
22 HERE.

23 BY MR. CRAIN:

24 Q DID THE --

25 THE COURT: THIS IS ABOUT THE THIRD OR FOURTH TIME
26 YOU SAID YOU HAD A COUPLE MORE THINGS.

27 MR. CRAIN: I KNOW, YOUR HONOR.

28 OKAY. THANK YOU.

1 BY MR. CRAIN:

2 Q CALLING YOUR ATTENTION TO EXHIBITS 239 AND
3 241. I JUST WANTED TO MAKE SURE THAT THE RECORD
4 REFLECTS -- ARE THESE DOCUMENTS THAT YOU HAVE SEEN BEFORE?

5 THE COURT: 239, AND WHAT WAS THE OTHER ONE?

6 MR. CRAIN: 241, I BELIEVE.

7 THE WITNESS: YES.

8 BY MR. CRAIN:

9 Q ARE THESE DOCUMENTS THAT YOU PREPARED?

10 A YES.

11 Q AND ARE THEY -- DO THEY CONTAIN MATTERS THAT
12 YOU DISCUSSED WITH MR. BARENS?

13 MR. MC MULLEN: OBJECTION. RELEVANCY. WE HAVE
14 GONE OVER THIS.

15 THE COURT: SUSTAINED. WE HAVE.

16 MR. KLEIN: YOUR HONOR, MR. BARENS DENIED ANY
17 KNOWLEDGE OF THE DOCUMENT.

18 THE COURT: ARE YOU CONTESTING WHETHER OR NOT THESE
19 ARE MR. HUNT'S NOTES?

20 MR. KLEIN: MR. HUNT HASN'T EVEN IDENTIFIED THEM
21 YESTERDAY, THAT'S WHY. BUT HE DID BEFORE THIS NOW --

22 MR. CRAIN: HE HAS NOW IDENTIFIED THEM.

23 I WANT TO ASK HIM IF THEY SIMILARLY RELATE TO
24 COMMUNICATIONS HE HAD WITH BARENS, SUCH AS ONES THAT WERE
25 DESCRIBED IN MORE DETAIL YESTERDAY.

26 BY MR. CRAIN:

27 Q ARE SOME OF THOSE THAT YOU GAVE TO
28 MR. BARENS?

1 THE COURT: THAT CAN BE ANSWERED "YES" OR "NO".

2 THE WITNESS: I DON'T WANT TO HAVE THE IMPRESSION
3 GIVEN WHEN HE GETS ME ON CROSS -- SOME OF THEM WOULD NOT
4 BE, ARE NOT NOTES THAT I GAVE MR. BARENS, SOME OF THEM --

5 THE COURT: NOT ALL OF THEM ARE IN YOUR
6 HANDWRITING?

7 THE WITNESS: ALL IN MY HANDWRITING. I AM NOT SURE
8 THAT ALL OF THEM WERE GIVEN TO MR. BARENS, SOME OF THEM
9 MOST DEFINITELY WERE.

10 THE COURT: OKAY.

11 BY MR. CRAIN:

12 Q THINGS THAT WERE GIVEN TO HIM WERE DISCUSSED
13 AS YOU TESTIFIED YESTERDAY IN ACCORDANCE WITH YOUR
14 TESTIMONY?

15 MR. MC MULLEN: OBJECTION. THAT'S A MISSTATEMENT
16 OF THE EVIDENCE.

17 THE WITNESS: 90 PERCENT OF THIS I AM SURE WAS
18 DISCUSSED WITH MR. BARENS.

19 THE COURT: ALL RIGHT.

20 BY MR. CRAIN:

21 Q OKAY.

22 NOW, IN THE NEWSPAPER ACCOUNTS WAS IT RELATED
23 THAT BROOKE ROBERTS WAS YOUR GIRLFRIEND OR EX-GIRLFRIEND?

24 A YES, IT WAS.

25 Q AND REGARDING -- I THINK I HAVE TWO MORE
26 QUESTIONS, YOUR HONOR, REALLY.

27 WITH REGARD TO MR. GERRARD, JERRY GERRARD, HE
28 TESTIFIED THAT HE WAS A WITNESS IN SAN MATEO; IS THAT

1 CORRECT?

2 A YES.

3 MR. MC MULLEN: OBJECTION. RELEVANCY.

4 THE COURT: THE ANSWER IS: YES, THERE IS A WITNESS
5 IN SAN MATEO. WHAT'S THE QUESTION?

6 MR. CRAIN: THIS IS PART B OF THAT SAME QUESTION.

7 BY MR. CRAIN:

8 Q DID HE -- DID YOU SHOW HIM AT ANY TIME EITHER
9 BEFORE OR DURING HIS TESTIMONY ANY PHOTOGRAPHS OF
10 MR. LEVIN?

11 MR. MC MULLEN: OBJECTION. RELEVANCY.

12 THE COURT: OVERRULED.

13 THE WITNESS: I DIDN'T SHOW HIM ANY PHOTOGRAPHS OF
14 MR. LEVIN.

15 BY MR. CRAIN:

16 Q AND, FINALLY, WHEN DID YOU LEARN ABOUT THE
17 EXISTENCE OF LOUISE WALLER AS SOMEONE WHO HAD SEEN
18 MR. LEVIN?

19 MR. MC MULLEN: OBJECTION. RELEVANCE.

20 THE COURT: MS. WALLER --

21 MR. MC MULLEN: SHE TESTIFIED --

22 THE COURT: -- TESTIFIED IN THE GUILT PHASE, IN THE
23 PENALTY PHASE; RIGHT?

24 MR. CRAIN: SHE WAS KNOWN PRIOR TO THE CONCLUSION
25 OF THE GUILT PHASE BUT NOT --

26 THE COURT: ASK THE QUESTION.

27 BY MR. CRAIN:

28 Q WHEN DID YOU FIND OUT ABOUT THE EXISTENCE OF

1 LOUISE WALLER?

2 MR. MC MULLEN: AGAIN, RELEVANCY. IT IS NOT PART
3 OF THE ISSUE THAT WE ARE LITIGATING.

4 MR. KLEIN: THEY ARE THE ONES THAT BROUGHT IT UP.

5 THE COURT: I WILL ALLOW THE QUESTION.

6 GO.

7 THE WITNESS: THE NIGHT BEFORE I WAS CONVICTED.

8 BY MR. CRAIN:

9 Q HOW DID YOU FIND THAT OUT, FROM WHOM?

10 A CHIER TOLD ME THAT BARENS HAD BEEN SITTING ON
11 THIS, AND THAT HE HAD JUST HEARD ABOUT IT. HE WAS GOING
12 TO GET RIGHT ON IT AND HOPEFULLY THEY WOULD HAVE SOME
13 INFORMATION BEFORE THE VERDICTS CAME IN.

14 MR. CRAIN: NOTHING FURTHER.

15 THE COURT: CROSS-EXAMINATION.

16 MR. MC MULLEN: THANK YOU

17

18 CROSS-EXAMINATION @

19

20 BY MR. MC MULLEN:

21 Q IN MANY WAYS MR. BARENS HELPED YOU IN HIS
22 REPRESENTATION OF YOU; ISN'T THAT CORRECT?

23 MR. KLEIN: AMBIGUOUS.

24 THE COURT: OVERRULED.

25 THE WITNESS: I WOULD SAY THAT HE DID A NUMBER OF
26 THINGS THAT WERE FOR MY BENEFIT AND TO MY BENEFIT.

27 BY MR. MC MULLEN:

28 Q I MEAN, HE BROUGHT A BAIL MOTION IN YOUR

1 CAPITAL CASE IN LOS ANGELES AND MANAGED TO GET YOU BAIL ON
2 THAT; DIDN'T HE?

3 A YES.

4 Q AND HE ALSO BROUGHT A BAIL MOTION ON A MURDER
5 CASE IN NORTHERN CALIFORNIA AND GOT YOU BAIL ON THAT;
6 DIDN'T HE?

7 A YES, HE DID.

8 Q YOU NEVER FIRED OR DISMISSED MR. BARENS
9 DURING HIS REPRESENTATION OF YOU?

10 A NO.

11 MR. KLEIN: THAT DOES MISSTATE THE RECORD.

12 THE COURT: COUNSEL --

13 THE WITNESS: THROUGH THE GUILT PHASE.

14 THE COURT: COUNSEL, YOU ARE NOT TESTIFYING; ALL
15 RIGHT?

16 I HAVEN'T PUT A PRECLUSION ON HAVING BOTH
17 COUNSEL TALKING, BUT GENERALLY THE RULE IS WHOEVER
18 PROFFERS THE WITNESS MAKES OBJECTIONS. I AM REALLY
19 GETTING TIRED OF THIS DOUBLE TEAMING. I AM TIRED OF THE
20 COMMENTARY DURING TESTIMONY.

21 PUT A QUESTION.

22 MR. MC MULLEN: THANK YOU

23 BY MR. MC MULLEN:

24 Q YOU NEVER BROUGHT --

25 THE COURT: IT REALLY STRIKES ME AS PROMPTING THE
26 WITNESS. THAT'S HOW IT COMES ACROSS.

27 MR. MC MULLEN: THANK YOU

28

1 BY MR. MC MULLEN:

2 Q YOU NEVER BROUGHT A MARSDEN MOTION DURING
3 TRIAL, DID YOU?

4 A DURING THE GUILTY PHASE, THAT'S MY
5 UNDERSTANDING OF THE QUESTION, I WOULD SAY, YES.

6 Q YOU BROUGHT A MARSDEN AFTER THE VERDICTS CAME
7 IN?

8 A IN THE PENALTY PHASE.

9 Q THIS LETTER THAT YOU TESTIFIED TO, THAT'S
10 EXHIBIT 286, THAT'S BASICALLY A THREAT, ISN'T IT, TO
11 MR. BARENS?

12 A NO. IT IS A REFERRAL TO AN AGREEMENT THAT HE
13 AND I HAD. I NEVER THREATENED MR. BARENS WITH BRINGING
14 THIS INFORMATION OUT. HE CAME TO ME DURING THE MEETING WE
15 HAD IN LOCKUP, YOUR HONOR, ASKING ME TO WITHHOLD.

16 THE COURT: WHICH MEETING, IN THE LOCKUP?

17 THE WITNESS: IN THE PENALTY PHASE OF THE 1987
18 TRIAL HE WAS EARNESTLY CONCERNED AND ASKING ME TO WITHHOLD
19 WHAT HE FELT WERE VERY DAMAGING THINGS THAT I HAD LEARNED
20 ABOUT HIM PERSONALLY AND PROFESSIONALLY.

21 AND I SAID I DIDN'T SEE ANY REASON AT THAT
22 TIME TO BE BRINGING ANY OF THOSE THINGS OUT SO LONG AS THE
23 TRUTH ABOUT THE CORE ISSUE OF WHY ALL THESE WITNESSES WERE
24 NOT LOCATED AND INVESTIGATED CAME OUT.

25 BY MR. MC MULLEN:

26 Q YOU HAVE TESTIFIED ALL DAY YESTERDAY AND
27 PERHAPS PARTIALLY TODAY ABOUT A NUMBER OF DOCUMENTS THAT
28 YOU PROVIDED TO MR. BARENS AND SOME OF THE NOTES THAT YOU

1 WROTE, THAT WOULD BE YOUR AGENDA AS TO TOPICS YOU WANTED
2 TO COVER WITH MR. BARENS; IS THAT CORRECT?

3 A YES.

4 Q WITH RESPECT TO -- SO AS I UNDERSTAND THIS,
5 WITH RESPECT TO THOSE NOTES THAT WERE AGENDA OR TOPICS YOU
6 WISHED TO COVER WITH MR. BARENS, YOU TESTIFIED THAT YOU
7 WERE NOT ALWAYS ABLE TO GO THROUGH ALL THOSE TOPICS OF
8 INFORMATION WITH HIM; IS THAT CORRECT?

9 A AT ANY ONE SITTING.

10 Q AND AS YOU SIT HERE TODAY, YOU DON'T HAVE A
11 SPECIFIC RECOLLECTION AS TO WHAT YOU COVERED WITH HIM AND
12 WHAT YOU DIDN'T COVER WITH HIM ON ANY GIVEN PARTICULAR
13 MOMENT IN TIME DURING THE COURSE OF YOUR TRIAL AS IT
14 PROCEEDED?

15 A I DO HAVE A SPECIFIC RECOLLECTION OF COVERING
16 WITH HIM CERTAIN SUBJECTS AT CERTAIN TIMES AS MY TRIAL
17 PROCEEDED. I HAVE BEEN TALKING ABOUT A NUMBER OF THOSE IN
18 MY TESTIMONY YESTERDAY. SO I COULDN'T ANSWER THAT
19 QUESTION IN A CATEGORICAL FASHION.

20 Q ALL OF THESE DOCUMENTS THAT YOU TESTIFIED TO
21 ABOUT YESTERDAY THAT YOU PROVIDED TO MR. BARENS THOSE
22 WEREN'T ALL THE DOCUMENTS THAT YOU ACTUALLY PROVIDED TO
23 HIM; IS THAT CORRECT?

24 A CORRECT?

25 Q AND I THINK YESTERDAY YOU SAID YOU BASICALLY
26 DELUGED HIM WITH ALL THIS INFORMATION?

27 A AS A RESULT OF THE FACT THAT, WHAT I WOULD DO
28 IS MULTIPLE MEMOS ON THE SAME TOPIC IT WAS AS A RESULT OF

1 THE FACT THAT I WAS NOT GETTING RESPONSES FROM MR. BARENS,
2 AND I HAD TWO AND A HALF YEARS WITH HIM IN MY
3 RELATIONSHIP, SO I WOULD PROMPT HIM PERHAPS EVERY OTHER
4 MONTH ON MOST OF THESE ISSUES.

5 Q HOW LONG APPROXIMATELY, HOW MANY DOCUMENTS
6 DID YOU PROVIDE TO HIM?

7 THE COURT: REFRAME IT. I DON'T KNOW WHAT YOU MEAN
8 BY "DOCUMENTS."

9 BY MR. MC MULLEN:

10 Q WELL, THESE --

11 MR. MC MULLEN: THANK YOU

12 BY MR. MC MULLEN:

13 Q WELL, THIS MATERIAL THAT YOU WOULD GIVE
14 MR. BARENS, WHICH WOULD INCLUDE LIKE THE CHRONOLOGY AND
15 MICROGENESIS DOCUMENTS, THINGS THAT YOU WOULD ACTUALLY
16 HAND, GIVE TO HIM, HOW MANY OF THOSE WERE THERE, HOW MANY
17 PAGES APPROXIMATELY?

18 A BY QUANTITY I WOULD HAVE TO SAY OVER HUNDREDS
19 OF DIFFERENT DOCUMENTS. I GAVE HIM THE B.B.C. CHRONOLOGY
20 BEING A DOCUMENT, THE MASTER CONTROL FILE BEING A
21 DOCUMENT. DURING THE TRIAL IN ADDITION TO THOSE DOCUMENTS
22 I PROVIDED HIM WITH CROSS-EXAMINATION LISTS FOR VARIOUS
23 WITNESSES. I GAVE HIM A LOT OF B.B.C. DOCUMENTS WHEN I
24 WOULD WANT TO BRING HIS ATTENTION TO THEM IF I HAD THEM
25 AVAILABLE TO ME.

26 Q HOW MUCH SPACE WOULD THEY OCCUPY LIKE IN
27 THESE FILE STORAGE BOXES ALL THE STUFF YOU GAVE HIM, ALL
28 THE DOCUMENTS, LISTS AND NOTES?

1 A IT IS REALLY DIFFICULT TO ANSWER A QUESTION
2 LIKE THIS BECAUSE MY MEMORY IS NOT ORGANIZED IN THAT WAY
3 BUT --

4 THE COURT: ARE YOU ABLE TO ESTIMATE JUST SIMPLY
5 THE NUMBER OF PAGES YOU THINK YOU MAY HAVE PROVIDED HIM?

6 THE WITNESS: INCLUDING REPETITIVE COPIES OF THE
7 SAME DOCUMENT AND VARIOUS ITERATIONS OF THE MASTER CONTROL
8 FILE, I WOULD SAY I PROBABLY GAVE HIM SOMETHING --
9 PHYSICALLY TRANSFERRED TO HIM, YOU KNOW, SOMETHING ON THE
10 ORDER OF 10,000 PAGES, BUT THAT WOULD INCLUDE ME BRINGING
11 HIM TRANSCRIPTS.

12 THE COURT: PUT ASIDE TRANSCRIPT. I THINK YOU ARE
13 JUST TALKING ABOUT NOTES, THINGS THAT YOU PREPARED.

14 THE WITNESS: I PERSONALLY PREPARED, EXCLUDING
15 DISCOVERY, I WOULD SAY 2,000 PAGES OVER THAT TWO AND A
16 HALF YEARS, SOMETHING LIKE THAT.

17 BY MR. MC MULLEN:

18 Q ARE THERE ANY -- DO YOU HAVE ANY WRITTEN
19 RECORDS THAT INDICATE WHAT YOU GAVE BARENS AND WHAT
20 INFORMATION YOU DISCUSSED WITH HIM?

21 A A LOT OF IT ARE IN EVIDENCE.

22 Q BUT IS THERE ANY, IS THERE ANY INDICATION ON
23 ANY DOCUMENTS -- LET'S STARTS OFF WITH THE FIRST PART OF
24 THE QUESTION, ARE THERE ANY CASES IN DOCUMENTS AS TO WHAT
25 YOU ACTUALLY GAVE TO HIM?

26 A THERE ARE SO MANY OCCASIONS. SOMETHING THAT
27 WAS JUST SHOWN ME WHICH WOULD INCLUDE SOME NOTES THAT
28 STARTED "DEAR ARTHUR," IF YOU COUNT THOSE AND INDICATIONS

1 THAT I AM GIVING HIM THESE DOCUMENTS AND THEY ARE RECORDED
2 CASES THAT AT LEAST TO ME INDICATES THESE DOCUMENTS WERE
3 GIVEN TO HIM AND MEANT FOR HIM.

4 Q BUT NO SEPARATE INDEX OR ANYTHING WHERE YOU
5 WOULD DOCUMENT A PARTICULAR PIECE OF PAPER YOU WOULD GIVE
6 TO HIM AND SAY CHECK IT OFF, GAVE IT TO ARTHUR ON SUCH AND
7 SUCH A DATE? YOU DON'T HAVE ANYTHING LIKE THAT?

8 A NO. NO, I DON'T, SIR.

9 Q YOU WERE A DEFENDANT IN A CIVIL LAWSUIT
10 INVOLVING CANTOR-FITZGERALD, WERE YOU?

11 A YES.

12 Q AT THE TIME THAT THAT LAWSUIT WAS PENDING YOU
13 WERE CONCERNED ABOUT YOUR EXPOSURE IN THAT CASE, WERE YOU
14 NOT?

15 A NO.

16 Q AND WHAT WAS YOUR POTENTIAL EXPOSURE IN THAT
17 CASE MONETARILY?

18 A WHEN YOU ARE TALKING ABOUT EXPOSURE YOU ARE
19 TALKING ABOUT ME PERSONALLY, B.B.C. COMPANIES AS A RESULT
20 OF ME BEING FINANCIALLY ALIGNED WITH PEOPLE THAT WERE ALSO
21 NAMED AS DEFENDANTS? THE QUESTION IS SIMPLE. BUT THE
22 CIRCUMSTANCES WERE COMPLICATED. I JUST WANT TO KNOW WHAT
23 YOU MEAN.

24 Q I WANT TO KNOW IN YOUR MIND WHAT DID YOU
25 THINK IF YOU WERE TO LOSE THAT CASE PERSONALLY WHAT KIND
26 OF A LOSS COULD YOU SUSTAIN POTENTIALLY?

27 A A FEW HUNDRED THOUSAND DOLLARS, I WOULD
28 SUPPOSE. I DON'T RECALL WHAT THE PRAYER WAS IN THE

1 COMPLAINT, BUT IT WAS, YOU KNOW, CONCEIVABLE THAT I WOULD
2 HAVE HAD TO JUDGMENT AGAINST ME FOR THE PRAYER.

3 Q HOW IS IT THAT YOU KNOW THAT DEAN KARNY LIED
4 IN THE CANTOR-FITZGERALD DEPOSITION?

5 A BECAUSE DEAN AND I DID HAVE A DISCUSSION
6 ABOUT THE DEPOSITION AND THE POSITIONS THAT WE WOULD BE
7 TAKING IN IT.

8 Q THAT WAS A DISCUSSION THAT YOU HAD BEFORE
9 DEAN HAD HIS DEPOSITION?

10 A YES.

11 Q AND IT WAS A DISCUSSION THAT OCCURRED AFTER
12 YOUR DEPOSITION WAS TAKEN?

13 A I AM NOT SURE ABOUT THAT. I AM JUST SURE
14 THAT WE TALKED ABOUT THE DEPOSITIONS.

15 Q YOUR DEPOSITION IN THE CANTOR-FITZGERALD
16 LAWSUIT WAS TAKEN ON DECEMBER 5, 1983, WAS IT NOT?

17 A THAT SOUNDS ACCURATE, BUT I CAN'T CONFIRM IT
18 OUT OF MY OWN PERSONAL RECOLLECTION ON THE EXACT DATE.

19 Q AND YOU GAVE DEAN KARNY A COPY OF YOUR
20 DEPOSITION TO STUDY BEFORE HE WAS TO BE DISPOSED?

21 A IF I HAD IT, THAT WOULD BE SOMETHING THAT I
22 WOULD DO.

23 Q AND YOU TOLD DEAN KARNY TO LIE IN THAT
24 DEPOSITION; DIDN'T YOU?

25 A NO. WE WERE DISCUSSING AS A MUTUAL PROJECT
26 HOW WE WERE GOING TO HANDLE CANTOR-FITZGERALD CLAIMS THAT
27 HE HAD LIED ON HIS FINANCIAL APPLICATION.

28 AS TO THE SUBSTANCE OF MY RESPONSE TO

1 CANTOR-FITZGERALD CHARGES, I TESTIFIED TRUTHFULLY ABOUT
2 THE FACT THAT REALLY IT WAS A NUMBER OF THINGS THAT THEY
3 HAD DONE WRONG.

4 I TESTIFIED FALSELY ABOUT A LOT OF THINGS
5 CONCERNING MY OWN BACKGROUND IN THOSE DEPOS, AND I
6 DISCUSSED WITH MR. KARNY THE WAYS THAT HE COULD AVOID
7 RESPONSIBILITY ABOUT HIS FALSE STATEMENTS IN HIS
8 APPLICATION AND OUR FALSE STATEMENTS IN HIS APPLICATION TO
9 CANTOR-FITZGERALD FOR OPENING UP AN ACCOUNT.

10 Q YOU BASICALLY LIED UNDER OATH DURING YOUR
11 DEPOSITION WITH RESPECT TO CANTOR-FITZGERALD, DID YOU NOT?

12 A YES, I DID.

13 Q AND IN FACT, IN THE FIRST 30 PAGES YOU
14 WERE --

15 MR. CRAIN: I MOVE TO STRIKE BECAUSE THE QUESTION
16 FOR THE COURT ON THE O.S.C. IS: WHY DIDN'T BARENS USE
17 KARNY'S FALSE TESTIMONY. THE FACT THAT KARNY LIED AT THE
18 DEPOSITION, WHETHER OR NOT BARENS HAS SAID, "WELL, IT
19 MIGHT HAVE REFLECTED POORLY ON MR. HUNT," BUT WHETHER
20 MR. HUNT DID OR DIDN'T DO SOMETHING DURING HIS OWN
21 DEPOSITION HAS NO RELEVANCE TO THIS PROCEEDING.

22 THE COURT: OVERRULED.

23 IT IS HIGHLY RELEVANT.

24 THE WITNESS: MR. CRAIN? I NEED TO CONSULT WITH
25 HIM ON A LEGAL OBJECTION.

26 MR. CRAIN: CAN I ASK A QUESTION, YOUR HONOR?

27 MR. MC MULLEN: I WANT TO ASK A QUESTION. I AM
28 GETTING A NONRESPONSIVE --

1 MR. CRAIN: THERE MAY BE SOME --

2 THE WITNESS: IT IS NOT A LEGAL ISSUE.

3 THE COURT: NO. WE ARE GOING TO GO FORWARD WITH
4 CROSS-EXAMINATION.

5 MR. MC MULLEN: THANK YOU

6 BY MR. MC MULLEN:

7 Q IN FACT, IN THE FIRST 30 PAGES OF YOUR
8 DEPOSITION YOU FERRETED OUT 19 LIES; DIDN'T YOU?

9 A WHEN I TOOK A LOOK THROUGH THE DEPOSITION AND
10 I LIED ABOUT A LOT OF THINGS IN MY PERSONAL BACKGROUND FOR
11 ESSENTIALLY FRIVOLOUS REASONS, AND I DID SO UNDER OATH
12 DURING THAT DEPOSITION.

13 Q AND YOU KNEW THAT YOU WERE LYING WHEN YOU DID
14 IT DURING THE DEPOSITION; DIDN'T YOU?

15 A YES.

16 Q AND YOU LIED BECAUSE IT WAS IN YOUR BEST
17 INTEREST TO LIE; WASN'T IT?

18 A NO. MOST OF THE LIES THAT WERE INVOLVED IN
19 THE CANTOR-FITZGERALD DEPOSITION -- EXCUSE ME --
20 DEPOSITION WERE REALLY A MATTER OF PERSONAL MAKE-UP AT THE
21 TIME AND VANITY. IT WAS ABOUT THINGS RELATING TO MY
22 FATHER, MY HISTORY IN CHICAGO AND EMBARRASSING DETAILS
23 ABOUT MY LIFE. IN THE FIRST PART OF THE DEPO THEY WERE
24 JUST ASKING ABOUT MY LIFE BACKGROUND.

25 MR. MC MULLEN: MAY I JUST HAVE A MOMENT, YOUR
26 HONOR?

27 THE COURT: YES.

28

1 (PAUSE.)

2
3 MR. MC MULLEN: DRAWING THE COURT'S AND COUNSEL'S
4 ATTENTION TO THE TRANSCRIPT OF THE SAN MATEO PROCEEDINGS
5 VOLUME 81 PAGE 1379 LOCATED AT LINE 2.

6 BY MR. MC MULLEN:

7 Q (READING):

8 "DID YOU ALSO CONSIDER IT TO BE TO
9 YOUR ADVANTAGE TO LIE TO THE
10 INVESTIGATORS IN JUNE OF '84 WHEN
11 YOU REPORTED TO THEM A PROFIT?

12 A AT NO POINT IN MY BELIEF HAVE
13 I LIED BECAUSE IT WAS SOMEBODY WAS
14 POINTING A GUN AT MY HEAD. I ALWAYS
15 DID IT WILLINGLY, OTHERWISE THE
16 WORDS WOULDN'T HAVE COME OUT OF MY
17 MOUTH. OTHER THAN CIRCUMSTANCES I
18 HAVEN'T BEEN FORCED IN MY LIFE TO DO
19 ANYTHING. WHEN I DO THINGS, I
20 SUPPOSE LIKE ANYBODY ELSE, IT IS
21 WHATEVER THE BALANCE OF FORCES ARE
22 AT THE TIME IN FAVOR OF DOING THAT
23 PARTICULAR THING."

24 DO YOU REMEMBER TESTIFYING TO THAT, SIR?

25 A YES.

26 Q YOU SAID YOU JUST LIED ABOUT PERSONAL THINGS
27 DURING THE DEPOSITION; IS THAT CORRECT?

28 A I SAID MOSTLY.

1 Q SO YOU DID LIE ABOUT SOME SUBSTANTIVE THINGS
2 REGARDING INVESTORS; IS THAT CORRECT?

3 A I DON'T HAVE A CLEAR RECOLLECTION. I WOULD
4 NEED TO SEE THE CANTOR-FITZGERALD DEPOSITION TO GIVE A
5 REAL ACCURATE CHARACTERIZATION OF ALL THE THINGS THAT I
6 LIED ABOUT IN THAT, BUT SUBSTANTIVELY I WOULD SAY THAT ITS
7 ACCURATE THAT FOR THE MOST PART I WAS TRUTHFUL.

8 IN ANSWER TO THOSE QUESTIONS CONCERNING MY
9 RECOLLECTION OF THE INTERACTIONS I HAD BETWEEN
10 CANTOR-FITZGERALD AND MYSELF IN RELATIONSHIP TO THE
11 PARTICULAR TRADES, THE BULK OF THE LIES THAT I RECALL
12 SEEING WHEN I REVIEWED MY DEPOSITION BEFORE I TOOK THE
13 STAND IN SAN MATEO RELATED TO, AS I SAID, SOMEWHAT
14 FRIVOLOUS ISSUES AND MATTERS OF PERSONAL VANITY IN MY OWN
15 BACKGROUND.

16 MR. MC MULLEN: MAY I HAVE A MOMENT?

17 THE COURT: YES.

18 MR. MC MULLEN: CITING COUNSEL TO -- NO, NOT AT
19 ALL -- TO THE TRANSCRIPT OF THE SAN MATEO PROCEEDINGS.
20 THIS IS VOLUME 71 STARTING AT PAGE 11989 AT LINE 11.
21 BY MR. MC MULLEN:

22 Q (READING):

23 "Q YOU WERE UNTRUTHFUL WHEN YOU
24 ANSWERED THE QUESTION AT THE
25 DEPOSITION; IS THAT CORRECT?

26 A THAT'S RIGHT. I WAS LYING AT
27 THAT POINT.

28 Q SO WHEN YOU WERE ASKED AT THE

1 DEPOSITION WHETHER YOU WERE TRADING
2 FOR MRS. KARNY, YOU AT THE
3 DEPOSITION LIED AND SAID THAT YOU
4 WERE TRADING FOR MRS. KARNY; IS THAT
5 CORRECT?

6 A WHAT I SAID IS PRINTED THERE,
7 WHICH SAYS THAT WHEN ASKED WHETHER
8 OR NOT I WAS TRADING FOR MRS. KARNY,
9 I SAID, "NO, SHE HAD LOANED ME MONEY
10 AND I WAS FREE TO DO WHAT I WANTED
11 WITH IT." THAT WAS ONLY A
12 REPETITION OF WHAT MRS. KARNY HAD
13 ASKED ME TO PUT OUT ABOUT THAT
14 PARTICULAR DEAL FOR SOME TAX REASONS
15 OF HER OWN."

16 A YES.

17 THE COURT: IS THAT WHAT YOU SAID IN THE SAN MATEO
18 TRIAL?

19 THE WITNESS: I DON'T HAVE ANY PERSONAL
20 RECOLLECTION OF IT, BUT -- ON THAT PARTICULAR QUESTION AND
21 ANSWER THAT WAS FOUR YEARS AGO, BUT I AM NOT IN ANY WAY
22 DISPUTING THAT THAT WAS MY TESTIMONY, SIR.

23 THE COURT: YOU DON'T REMEMBER TESTIFYING TO THAT?

24 THE WITNESS: THAT PARTICULAR Q AND A THAT'S SUCH A
25 SMALL DETAIL IN THE WHOLE THING, BUT THAT SOUNDS ABOUT
26 RIGHT.

27 MR. MC MULLEN: CITING COUNSEL TO VOLUME 71 OF THE
28 TRANSCRIPT OF THE PROCEEDINGS IN SAN MATEO AT PAGE 11993

1 STARTING AT LINE 16.

2 BY MR. MC MULLEN:

3 Q (READING):

4 "Q SO WHEN THE, AT THE
5 DEPOSITION WHEN YOU WERE ASKED IF
6 MRS. STITZLEIN, S-T-I-T-Z-L-E-I-N
7 GOT YOUR MONEY BACK, YOU ANSWERED
8 THAT INDEED THAT, YES, SHE DID THAT,
9 SHE GOT HER MONEY BACK PLUS \$20,000.

10 A I WISH IT WAS TRUE, BUT IT IS
11 NOT.

12 Q AT THE TIME OF THE DEPOSITION
13 YOU LIED; IS THAT CORRECT?

14 A YES."

15
16 DO YOU RECALL THAT?

17 A YES. THESE ARE ALL THESE PERSONAL MATTERS
18 THAT MRS. STITZLEIN WAS NOT PART OF THE CANTOR-FITZGERALD
19 TRADING, NEITHER WAS MRS. KARNY. I THINK WHAT YOU ARE
20 DOING IS LEADING THE COURT TO BELIEVE THEY WERE.

21 THE COURT: MR. HUNT, DON'T EDITORIALIZE, JUST
22 ANSWER THE QUESTION.

23 THE WITNESS: THOSE BACKGROUND MATTERS I MAY HAVE
24 MISLEAD THE LAWYER THAT WAS GIVING THE DEPOSITION ABOUT.

25 BY MR. MC MULLEN:

26 Q SO YOU BASICALLY TESTIFIED A LITTLE BIT
27 EARLIER THAT YOU WERE BY AND LARGE MOST OF YOUR TESTIMONY
28 DURING THE DEPOSITION WAS TRUTHFUL; IS THAT WHAT YOU SAID

1 A FEW MINUTES AGO?

2 A ONCE AGAIN, WHAT I SAID WAS THAT I LIED ABOUT
3 FACTS RELATING TO MY PERSONAL BACKGROUND, BY PRE-TRADING
4 HISTORY AND THE CHICAGO MERCANTILE, TO THE EXTENT THAT
5 MRS. STITZLEIN AND MRS. KARNY, MY TRADING FOR THEM WAS A
6 MATTER THAT PRECEDED, IN RESPECT THAT I AM TALKING ABOUT
7 AT THE DEPOSITION, MY TRADING AT CANTOR-FITZGERALD.

8 IT WAS EXACTLY THOSE TYPES OF THINGS THAT I
9 SAID, I MEANT TO INCLUDE EARLIER, AND I FEEL I ACCURATELY
10 DESCRIBED EARLIER IN MY TESTIMONY TODAY AS BEING
11 BACKGROUND MATTERS. I DIDN'T WANT TO ADMIT THAT I HAD
12 LOST MONEY FOR SOMEBODY ELSE, AND THAT'S THE TYPE OF
13 PERSONAL ISSUE THAT I WAS SAYING FOR VANITY SAKE, FOR EGO
14 SAKE, WHATEVER, I DIDN'T WANT TO ADMIT TO THESE PEOPLE IN
15 THIS GROUP.

16 Q YESTERDAY YOU TESTIFIED ABOUT A CONTRACT YOU
17 HAD WITH MR. KILPATRICK DATED, I THINK, NOVEMBER OF '83.
18 WOULD YOU PLEASE -- WELL, WAS THAT A WRITTEN CONTRACT?

19 A YES.

20 Q HOW MANY PAGES?

21 A I THINK THERE WERE TWO AGREEMENTS, ONE WAS AN
22 EXCLUSIVE MARKETING AGREEMENT, ONE WAS, I THINK, A
23 LICENSING AGREEMENT, AND THE TOTAL I THINK IT IS FOUR
24 PAGES BETWEEN FOUR DOCUMENTS, IT COULD BE FIVE.

25 Q WHO DRAFTED THOSE DOCUMENTS?

26 A MR. KILPATRICK HAD PREPARED THEM, AND THEY
27 WERE AT HIS OFFICE WHEN WE WENT AND SAW HIM IN DENVER, AND
28 WE EXECUTED THEM THERE.

1 Q NOW, YOU SAY THERE WERE TWO AGREEMENTS. WHAT
2 WERE THE AGREEMENTS AGAIN?

3 A EXCLUSIVE MARKETING AGREEMENT AND A LICENSING
4 AGREEMENT.

5 Q AND A LICENSING AGREEMENT.
6 AN EXCLUSIVE MARKETING AGREEMENT. WHAT TERMS
7 WERE REQUIRED TO BE ACCOMPLISHED BY MR. KILPATRICK IN THAT
8 AGREEMENT? WHAT DID HE HAVE TO DO IN THAT CONTRACT?

9 A IN THE EXCLUSIVE MARKETING AGREEMENT?

10 Q YES.

11 A MY RECOLLECTION HAS BLURRED THE DISTINCTIONS
12 BETWEEN THE TWO AGREEMENTS BECAUSE THEY DO REFER TO EACH
13 OTHER, SO I CAN ONLY ANSWER THE QUESTION WITH RESPECT TO
14 BOTH AGREEMENTS AS A UNIT WHAT I UNDERSTOOD HIS
15 RESPONSIBILITIES WERE.

16 Q ALL RIGHT.

17 WHAT WERE HIS RESPONSIBILITIES UNDER BOTH OF
18 THE AGREEMENTS?

19 A IN THE MANUFACTURING ASPECTS WAS THAT HE
20 AGREED TO MARKET USING HIS BEST EFFORTS, THE B.B.C. --
21 WELL, THE MICROGENESIS TECHNOLOGY, IT WAS DESCRIBED IN ONE
22 OF THE AGREEMENTS, WHICH WAS THE ATTRITION MILLS. AND HE
23 WAS AGREEING TO MARKET THE B.B.C. TECHNOLOGY, THE
24 ATTRITION MILLS, USING HIS BEST EFFORTS.

25 WE WOULD SPLIT PROCEEDS ABOVE THE COSTS OF
26 FILLING ANY SALES ORDERS THAT MR. KILPATRICK WAS ABLE TO
27 DEVELOP.

28 AND THEN THE LICENSING SIDE OF IT THERE WAS

1 AN AGREEMENT IN THESE CONTRACTS THAT PROVIDED \$250,000, I
2 WANT TO SAY, HE -- I MEAN UNITED FINANCIAL OPERATIONS, THE
3 CORPORATE ENTITY, IT WAS NOT A PERSONAL AGREEMENT WITH
4 MR. --

5 THE COURT: THAT WAS HIS COMPANY?

6 THE WITNESS: YES.

7 AND SATURN ENERGY IS ALSO PART OF THESE
8 AGREEMENTS, THAT THESE ENTITIES WOULD SUPPLY TO
9 MICROGENESIS A RESEARCH CONTRACT OF \$250,000, THAT 44
10 ORDERS FOR ATTRITION MILLS COMPLETIONS WOULD BE
11 FORTHCOMING AT A PRICE OF FIVE MILLION DOLLARS EACH.

12 AND THAT I WOULD SPLIT, MICROGENESIS WOULD
13 HAVE TO SPLIT THE PROFIT ON THE MANUFACTURING AND
14 FABRICATION OF THOSE ATTRITION MILLS COMPLETIONS WITH
15 UNITED FINANCIAL OPERATIONS.

16 THAT A MILLION SHARES OF SATURN STOCK WOULD
17 BE PROVIDED TO THE B.B.C. AT PAYING PRICE OF A DOLLAR TEN
18 A SHARE, EVEN THOUGH IT WAS LATER TRADING HIGHER.

19 AND THAT THE B.B.C. WOULD LICENSE EXCLUSIVELY
20 THE TECHNOLOGY OF THE ATTRITION MILLS TO SATURN ENERGY
21 AND U.F.O.I., WHICH WERE MERGING.

22 AND THAT THE THINGS PAYABLE TO THE B.B.C.,
23 MICROGENESIS WOULD BE DUE AND PAYABLE AT SUCH TIME THAT
24 THE MERGER ACTUALLY OCCURRED, AND IT MAY HAVE EVEN
25 MENTIONED THE TAX SHELTER PROGRAM OF MR. KILPATRICK HAD TO
26 EXIT THE BANKRUPTCY COURT, WHICH HE DIDN'T DO UNTIL LIKE
27 MARCH OF 1984.

28

1 BY MR. MC MULLEN:

2 Q SO THE PARTIES TO THE AGREEMENT WERE UNITED
3 FINANCIAL OPERATIONS AND SATURN ENERGY AND MICROGENESIS?

4 A MICROGENESIS, AND THERE WAS ANOTHER COMPANY
5 I.F.D.A., INTERNATIONAL FUEL DEVELOPMENT, BUT THAT'S
6 SOMETHING THE JUDGE DOESN'T WANT TO HEAR.

7 Q WHAT IS I.F.D.A.?

8 A IT IS A COMPANY THAT WAS ORGANIZED, I
9 BELIEVE, IN THE CAYMAN ISLANDS BY A GUY BY THE NAME OF
10 WILLIAM MORRIS, AND IT WAS IN SOME WAY INTERLOCKED WITH
11 MR. KILPATRICK'S COMPLEX OF COMPANIES. IT WAS NOT
12 SOMETHING THAT WAS RELATED TO THE B.B.C..

13 Q WHAT WAS -- WHAT WERE MICROGENESIS
14 OBLIGATIONS UNDER THE CONTRACTS?

15 A MICROGENESIS OBLIGATIONS WERE TO FILL THE
16 ORDERS FOR THE 44 POWER PLANTS THAT RELATED TO THE
17 STRUCTURE OF MR. KILPATRICK'S TAX SHELTER PROGRAM WHERE HE
18 HAD POOLS OF FIVE MILLION DOLLARS EACH, HE HAD OVER 44 OF
19 THESE POOLS, AND PART OF HIS RESPONSIBILITY UNDER U.F.O.I.
20 WAS TO FILL THESE, SOME CONTRACTUAL COMMITMENT TO THE TAX
21 SHELTERS THAT HE NEEDED TO PROVIDE A POWER PLANT OR UNIT
22 TO THEM.

23 HE WAS GOING TO USE THE ATTRITION MILLS,
24 WHICH HE WAS LICENSING FROM US, SO WE WERE TO GET HIM THE
25 EXCLUSIVE LICENSE ON OUR TECHNOLOGY, WHICH IS SET FORTH IN
26 THE AGREEMENT, AND WE WERE NOT TO VIOLATE THAT EXCLUSIVITY
27 IN, ESPECIALLY IN THE ENERGY COAL MICRONIZATION AREA WE
28 WERE SUPPOSED TO FILL THESE SALES ORDERS THAT HE DEVELOPED

1 FOR US. THOSE WERE THE PRINCIPAL OBLIGATIONS, AS I RECALL
2 THEM.

3 Q SO TO BUILD THE MACHINES?

4 A BUILD THE MACHINES, AND WE HAD TO BE SURE NOT
5 TO VIOLATE THE EXCLUSIVITY OUR ARRANGEMENT AND OUR
6 MANUFACTURING ARRANGEMENT WITH HIM.

7 Q I TAKE IT AT THE TIME UNITED FINANCIAL
8 OPERATIONS HAD NOT MERGED WITH SATURN?

9 A AT THE TIME THESE DOCUMENTS WERE EXECUTED IT
10 HAD NOT.

11 Q SO THE DOCUMENTS WERE EXECUTED IN
12 COMPLEMENTATION THAT EVENTS WOULD OCCUR?

13 A RIGHT. TO ALLOW HIM TO FINISH, HE
14 REPRESENTED IT WAS IMPORTANT TO FINISH HIS BANKRUPTCY
15 REORGANIZATION, THAT HE BE ABLE TO GIVE A DEFINITIVE PLAN
16 TO THE BANKRUPTCY COURT, AND THAT IT WAS IMPORTANT FOR HIM
17 TO BE ABLE TO PRESENT TO THE BANKRUPTCY COURT OWNERSHIP OF
18 ATTRITION MILLING TECHNOLOGY, AND ALSO IN ORDER FOR HIM TO
19 EFFECTUATE THE MERGER WITH SATURN HE HAD TO PROVIDE THEM
20 WITH LICENSING RIGHTS THAT WE WERE PROVIDING HIM TO THE
21 ATTRITION MILLS.

22 THE COURT: I AM SORRY. I DON'T UNDERSTAND. SO
23 YOU ARE SAYING THIS CONTRACT WITH MICROGENESIS WAS PART OF
24 MR. KILPATRICK EXIT FROM BANKRUPTCY?

25 THE WITNESS: IT WAS FILED IN THE BANKRUPTCY COURT
26 AS PART OF THEIR PLANNED REORGANIZATION.

27 BY MR. MC MULLEN:

28 Q AND THE AGREEMENT DIDN'T REQUIRE

1 MR. KILPATRICK OR -- EXCUSE ME -- THE AGREEMENTS DID NOT
2 REQUIRE UNITED FINANCIAL OPERATIONS TO MERGE WITH SATURN;
3 IS THAT CORRECT?

4 A NO. IT DID. I JUST TALKING ABOUT A
5 CONTEMPLATED MERGER -- EXCUSE ME -- OF THOSE TWO
6 COMPANIES.

7 Q IF THEY DIDN'T MERGE, NOTHING WOULD HAPPEN;
8 CORRECT?

9 A CORRECT. THAT WAS THE TRIGGER. ON HIS
10 RESPONSIBILITIES.

11 Q AND SO IN EFFECT MR. KILPATRICK REALLY HAD
12 THE POWER TO ACTIVATE THAT CONTRACT; IS THAT CORRECT?

13 A BASED UPON HIS MERGER. IF THE MERGER FELL
14 OUT, IF THE BANKRUPTCY REORGANIZATION PLAN WAS NOT
15 APPROVED, THERE COULD HAVE BEEN A NUMBER OF THINGS WHICH
16 WOULD HAVE CAUSED THAT DEAL TO BREAK DOWN. HE WOULD -- HE
17 REALLY STILL WOULD HAVE HAD RESPONSIBILITIES UNDER THE
18 EXCLUSIVE MARKETING AGREEMENT.

19 Q SO THEN, FROM THAT POINT, NOVEMBER OF '83, ON
20 THROUGH INTO '84 AND SUMMER MONTHS OF '84 THERE WERE
21 NEGOTIATIONS BETWEEN YOU AND MR. KILPATRICK; IS THAT
22 CORRECT, WITH RESPECT TO THIS AGREEMENT YOU HAVE TALKED,
23 TESTIFIED TO ABOUT DATED AROUND NOVEMBER OF '83?

24 A THAT AGREEMENT WAS FINISHED AND SIGNED
25 KILPATRICK PUT INTO IT, AND WE HAVE A COPY OF IT AROUND.
26 WE DIDN'T START NEGOTIATING AGAIN WITH MR. KILPATRICK
27 UNTIL HIS TAX SHELTER PLANTS EXITED THE BANKRUPTCY COURT
28 IN ABOUT MARCH OF 1984, AS DOCUMENTS I HAVE RECENTLY

1 REVIEWED REFLECT, THEN WE BEGAN TO TALK ABOUT FINISHING
2 THINGS UP.

3 BECAUSE THESE FOUR PAGE DOCUMENTS, FOUR-PAGE
4 DOCUMENTS, LETTER OF INTENT, THEY MAY HAVE BEEN BINDING, I
5 LEAVE THAT TO LAWYERS TO DECIDE, BUT IF YOU ARE TALKING
6 ABOUT DELIVERY OF \$220 MILLION DOLLARS WORTH OF EQUIPMENT
7 YOU NEED TO START TALKING ABOUT DELIVERY DATES AND YOU
8 NEED TO TALK ABOUT THE FINANCIAL ASPECTS THAT WOULD ALLOW
9 MICROGENESIS IN ORDER TO PERFORM, AND THESE WERE SOME OF
10 THE POINTS I WAS MAKING TO MR. KILPATRICK, AND HE AGREED
11 AND WE STARTED TO TALK ABOUT FORMALIZING THOSE THINGS.

12 SINCE NOT ONLY HAD HE EXITED BANKRUPTCY
13 COURT, BUT THE MERGER WAS IN THE OFFING, AND THEY TAKEN
14 STEPS WITH A REGULATION AGENCY IN VANCOUVER. THEY HAD
15 SENT ME PAPERWORK RELATING TO THOSE STEPS, AND IT WAS --
16 WE THOUGHT THE MERGER WOULD DEFINITELY OCCUR IN 1984 AND
17 PROBABLY BEFORE THE LAST QUARTER OF 1984.

18 THE COURT: DID YOU GIVE MR. BARENS THESE DETAILS
19 THAT YOU HAVE JUST GIVEN TO US?

20 THE WITNESS: IT IS CROSS-REFERENCED TO THE B.B.C.
21 CHRONOLOGY.

22 BY MR. MC MULLEN:

23 Q WHAT'S THE ACTUAL FLOW OF MONEY WITH RESPECT
24 TO THIS NOVEMBER '83 AGREEMENT, WHEN WOULD YOU EXPECT
25 MONEY TO START TO FLOW?

26 A WHEN THE MERGER FINISHED.

27 Q WHEN -- WHEN WOULD YOU BE EXPECTING
28 SUBSTANTIAL SUMS OF MONEY THAT YOU TESTIFIED, YOU

1 TESTIFIED ABOUT SUBSTANTIAL SUMS OF MONEY, WHEN DID YOU --
2 WHAT WERE THE EXPECTATIONS THERE?

3 A UNDER THE NOVEMBER, 1983, AGREEMENT EXCLUDING
4 THE NEGOTIATIONS CONCERNING THE NOVATION, THE SUBSTANCE
5 MONEY WAS, THE MONEY THAT WOULD BE PROVIDED TO THE B.B.C.
6 IN RELATIONSHIP TO THE 44 POWER PLANTS THAT WE HAD TO
7 BUILD COMPONENTS OF AT A STATED PRICE OF FIVE MILLION
8 DOLLARS IN THE CONTRACT, AND ALSO THE MILLION SHARES OF
9 SATURN STOCK, WHICH WE WERE -- I MEAN THEY WERE STEADILY
10 RISING THROUGHOUT THIS WHOLE PERIOD OF TIME, LIKE BY JUNE
11 OF 1984 AT \$2 AND SOMETIMES TRADED ABOVE IT AND --

12 THE COURT: WHO WAS HOLDER OF THE STOCK?

13 THE WITNESS: IT WAS GOING TO BE -- THE HOLDER OF
14 THE STOCK WAS SATURN, AND THE STOCK WAS DISTRIBUTED AT THE
15 POINT THAT THE MERGER OCCURRED, AND IN SOME PHASES. IT
16 WAS GOING TO BE RELEASED IN PHASES, YOU KNOW, PUBLIC AND
17 LETTER STOCK. THEY HAVE TO DOLE IT OUT, AND THERE ARE
18 CERTAIN PROVISIONS RELATED TO THAT.

19 BY MR. MC MULLEN:

20 Q WHAT DID YOU HAVE TO DO TO GET THE MONEY?

21 A WELL, THE FIRST MONEY FORTUNATELY JUST WOULD
22 COME AS A RESULT OF THE MERGER WITHOUT MICROGENESIS OR
23 B.B.C. HAVING TO PERFORM IN ANY OTHER WAY. WE WOULD HAVE
24 THE STOCK, WHICH WE COULD DISPOSE OF. IT WAS A PUBLIC
25 STOCK, SO WE COULD TURN THAT TO CASH.

26 THE \$250,000 IS THE FIRST ANNUAL INSTALLMENT
27 OF THE RESEARCH CONTRACT BASED ON MY CONVERSATION WITH
28 KILPATRICK AFTER MARCH OF 1984 WHEN HE EXITED BANKRUPTCY

1 COURT ON HIS TAX SHELTER PLANS, THERE WAS GOING TO BE
2 ADDITIONAL MONEY THAT WOULD BE PAID UP FRONT TO THE B.B.C.
3 INCLUDING THIS \$333,000 EVERY MONTH AFTER THE MERGER
4 OCCURRED, WHICH WOULD BE THE EFFECTIVE DATE OF OUR
5 LICENSING AGREEMENT.

6 BY MR. MC MULLEN:

7 Q \$333,000 A MONTH. WHAT SERVICES OR WHAT WERE
8 YOU PROVIDING TO -- IN ANTICIPATION OF THIS AGREEMENT
9 BEING ACTIVATED, WHAT WERE YOU REQUIRED TO DO FOR THAT
10 \$333,000 A MONTH?

11 A IT WOULD HELP ME TO SEE THE DOCUMENT, BUT I
12 HAVE, I BELIEVE THE GIST OF IT IN MY MIND. IF YOU WANT A
13 REAL RIGOROUS --

14 THE COURT: WHAT'S THE GIST?

15 MR. MC MULLEN: THANK YOU

16 THE WITNESS: WE HAD TO PROVIDE -- AS I REMEMBER IT
17 \$333,000 A MONTH WAS A NONREFUNDABLE PAYMENT FOR THE
18 OPTION TO PURCHASE THREE CLUSTERS OF ATTRITION MILLS. THE
19 MILLS THEMSELVES WOULD COST UP TO ABOUT \$50,000 TO MAKE,
20 WHEN WE MAKE THEM IN A CRUDE WAY, NOT IN ANY SORT OF
21 ASSEMBLY-LINE FASHION, SO I EXPECTED OUR COST TO DROP. I
22 WAS THINKING THAT THE CLUSTERS PROBABLY WOULD COST US NO
23 MORE THAN --

24 MR. MC MULLEN: AT THIS POINT I WOULD OBJECT AS
25 NONRESPONSIVE.

26 THE COURT: YOU ASKED FOR THE GIST. THIS IS THE
27 GIST, I GUESS.

28 THE WITNESS: I THOUGHT THE CLUSTERS WOULD COST US

1 NO MORE THAN LIKE 5-, \$600,000 TO MAKE. WE WERE GETTING
2 SIX MILLIONS BUCKS. I THOUGHT THAT EVEN IF WE HAD TO PAY
3 FOR THE CLUSTERS OUT OF THE UP FRONT MONEY, I THINK THE
4 CONTRACTS CALL FOR AN ADDITIONAL COST TO BE PAID TO US AS
5 WE WENT AND ADVANCED TO US, EVEN AT THE POINT WHERE WE
6 SUBMITTED THE BUDGET WE WERE GOING TO BE CLEARING
7 MILLIONS, LIKE AT LEAST FOUR MILLIONS DOLLARS OUT OF THAT
8 FIRST SIX MILLION DOLLARS.

9 THE COURT: WOULD THIS BE A GOOD TIME TO TAKE OUR
10 MORNING RECESS?

11 MR. MC MULLEN: YES, YOUR HONOR.

12 LADIES AND GENTLEMEN, LET'S TAKE A 15 MINUTE
13 RECESS.

14

15 (RECESS.)

16

17 THE COURT: IN THE MATTER OF JOSEPH HUNT, THE
18 RECORD WILL REFLECT ALL COUNSEL ARE PRESENT. PETITIONER
19 IS PRESENT AND ON THE STAND.

20 YOU MAY CONTINUE YOUR CROSS EXAMINATION,
21 MR. MC MULLEN.

22 MR. MC MULLEN: THANK YOU, YOUR HONOR.

23

24

25 JOSEPH HUNT, +
26 THE PETITIONER HEREIN, CALLED AS A WITNESS IN HIS OWN
27 BEHALF, HAVING BEEN PREVIOUSLY SWORN, RESUMED THE STAND
28 AND TESTIFIED FURTHER AS FOLLOWS:

1 CROSS-EXAMINATION RESUMED @

2
3 BY MR. MC MULLEN:

4 Q I THINK WE LEFT OFF WITH A DISCUSSION ABOUT
5 AN OPTION. IN THIS NOVEMBER, '83 AGREEMENT WAS THIS
6 OPTION CONTEMPLATED? WAS IT WRITTEN IN THE AGREEMENT THAT
7 YOU HAVE TESTIFIED TO BEFORE THE BREAK?

8 A THE SIX MILLION NONREFUNDABLE PAYMENT OPTION,
9 THAT IS NOT DESCRIBED IN THE NOVEMBER, 1983 AGREEMENT.

10 Q YOU ALSO MENTIONED THE TERM CLUSTERS OF
11 CYCLOTRONS. THAT'S MEANS THREE CYCLOTRONS, DOESN'T IT?

12 A IT'S MY RECOLLECTION THAT THE -- THE NEW
13 UNDERSTANDING THAT WAS BEING REACHED WITH MR. KILPATRICK
14 IN MAY AND JUNE OF 1984 INVOLVED THREE CLUSTERS OF
15 ATTRITION MILLS, AND THE OTHER -- ON THE LICENSING
16 AGREEMENT, ALSO, ONCE AGAIN, IT WAS GOING TO BE CLUSTERS
17 OF ATTRITION MILLS. A NUMBER OF ATTRITION MILLS AT THEIR
18 RATED CAPACITY THAT WOULD PRODUCE ENOUGH TO POWER A POWER
19 PLANT.

20 Q IS A CLUSTER COMPRISED OF THREE ATTRITION
21 MILLS?

22 A YES, FOR THE PURPOSE OF THOSE AGREEMENTS, THE
23 OPTION AGREEMENTS SPECIFICALLY.

24 Q IN NOVEMBER -- IN THE NOVEMBER, '83 AGREEMENT
25 WAS THE TERM "CLUSTER" USED, "CLUSTERS OF ATTRITION" --

26 A NO.

27 Q PRIOR TO KILPATRICK REALLY ACTIVATING THIS
28 CONTRACT DID HE NEED SOME TYPE OF A PROTOTYPE, A WORKING

1 ATTRITION MILL THAT WAS MADE TO THE SPECIFICATIONS THAT
2 WERE REQUIRED FOR HIS APPLICATION BEFORE HE WOULD GET
3 INVOLVED, THROW ALL THIS MONEY INTO THE PROJECT?

4 A THE CONTRACTS DO NOT REQUIRE AT ANY OTHER
5 POINT FOR TO US PRODUCE SOME SORT OF PROTOTYPE FOR HIS
6 INSPECTION. WE DID HAVE A WORKING PROTOTYPE IN MAY OF
7 1984, BUT AS YOU CAN SEE FROM THE CONTRACTS THERE
8 YOURSELF, IF YOU WILL REVIEW THEM, MR. MC MULLEN, THERE
9 WAS NOTHING IN THERE ABOUT HAVING TO PRODUCE A WORKING
10 PROTOTYPE FOR HIS EVALUATION.

11 Q OUTSIDE OF THE CONTRACT WOULDN'T
12 MR. KILPATRICK WANT TO SEE A WORKING MACHINE AND SEE WHAT
13 THE EXACT PROTOTYPE WAS OF WHAT HE WAS GOING TO BE GETTING
14 BEFORE HE SIGNED THE CONTRACT?

15 MR. KLEIN: OBJECTION.

16 MR. CRAIN: OBJECTION. IT WOULD CALL FOR
17 SPECULATION.

18 THE COURT: SUSTAINED.

19 BY MR. MC MULLEN:

20 Q DID HE EVER SAY THAT TO YOU, THAT HE WANTED
21 TO SEE A WORKING PROTOTYPE BUILT TO HIS SPECIFICATIONS
22 BEFORE HE WOULD PUT -- ENTER INTO THE AGREEMENTS?

23 A MR. KILPATRICK SENT PEOPLE TO LOOK AT THE
24 ATTRITION MILL BUT NEVER WENT HIMSELF. EVEN THOUGH HE WAS
25 CLOSE BY AND WE HAD ONE UP AND RUNNING THAT COULD HAVE
26 BEEN DEMONSTRATED TO HIM, HE NEVER MADE THE TRIP OVER TO
27 THE WAREHOUSES. I DON'T RECALL HIM SAYING -- HE WAS
28 INVOLVED WITH THE PAPERWORK MORE THAN THE SUBSTANCE OF THE

1 THING.

2 Q YOU TESTIFIED YESTERDAY THAT WITH RESPECT TO
3 SOME KIND OF AN AGREEMENT YOU HAD WITH BROWNING THAT
4 \$250,000 OF CAPITAL NEEDED TO BE RAISED. WHERE WAS THAT
5 MONEY TO COME FROM?

6 A WE DIDN'T HAVE A CLUE IN JANUARY OF 1983 WHEN
7 WE SIGNED THAT AGREEMENT WITH MR. BROWNING. THE DEAL -- I
8 HAVE A COPY OF IT AROUND. THE B.B.C. WOULD GIVE HIM
9 \$2500.00 A MONTH --

10 THE COURT: MR. BROWNING?

11 THE WITNESS: MR. BROWNING, DR. BROWNING, TO STAND
12 STILL, NOT GET INTO ANY TECHNOLOGY, A TRANSFER AGREEMENT
13 OR LICENSING AGREEMENT WHERE HE WOULD HYPOTHECATE OR
14 ENCUMBER HIS CLAIMS TO THE TECHNOLOGY, HE WOULD STAY IN
15 THAT POSTURE FOR AT LEAST A YEAR AS LONG AS WE GAVE HIM
16 \$2500.00 A MONTH.

17 DURING THAT TIME THE B.B.C. WOULD SET ABOUT
18 RAISING \$250,000 OR SECURING FUNDING OF UP TO THAT SUM SO
19 THAT THESE ATTRITION MILLS COULD BE BUILT AND THE BUSINESS
20 DEVELOPED.

21 BY MR. MC MULLEN:

22 Q SO THE \$250,000 WAS FOR ACTUALLY BUILDING
23 ATTRITION MILLS?

24 A IT WAS FOR -- FOR BUSINESS PURPOSES RELATING
25 TO THE ATTRITION MILLS.

26 Q SO IT WASN'T FOR ACTUALLY MANUFACTURING A
27 MILL PER SE?

28 A WE'RE TALKING ABOUT THAT AGREEMENT, AND I

1 DON'T THINK THAT AGREEMENT WAS THAT SPECIFIC. IT WAS A
2 SHORT AGREEMENT. I THINK IT WAS LIKE ONE OR TWO PAGES,
3 ONE AND A HALF PAGES. IT DID NOT GET INTO ANY DETAIL
4 ABOUT WHAT THE \$250,000 WOULD BE USED FOR.

5 Q AND YOU DIDN'T HAVE A CLUE WHERE THAT
6 \$250,000 WAS GOING TO COME FROM?

7 A WE WERE GOING TO RAISE IT IN MUCH THE SAME
8 WAY I RAISED MONEY FOR THE -- FOR TRADING IN THE COMMODITY
9 MARKET, BY TALKING TO PEOPLE ABOUT IT AND JUST ATTEMPTING
10 TO RAISE SOME MONEY.

11 Q UNDER THIS BROWNING AGREEMENT THERE WAS NO
12 REQUIREMENT THAT YOU TRY TO BUILD AN ATTRITION MILL?

13 MR. CRAIN: ARE WE TALKING ABOUT THE 1983
14 AGREEMENT?

15 MR. MC MULLEN: THAT'S --

16 MR. CRAIN: I ASSUME --

17 THE COURT: THE LICENSING STANDSTILL AS YOU HAVE
18 DESCRIBED IT?

19 THE WITNESS: RIGHT.

20 BY MR. MC MULLEN:

21 Q JUST SO IT'S CLEAR, THE STANDSTILL OR
22 BROWNING AGREEMENT, WAS THAT A LICENSING AGREEMENT?

23 MR. MC MULLEN: I KNOW YOUR HONOR REFERRED TO IT
24 THAT WAY. I'M NOT SURE IF THAT IS A LICENSE AGREEMENT.

25 THE WITNESS: I WOULD CHARACTERIZE IT AS A
26 DEVELOPMENT AGREEMENT.

27 BY MR. MC MULLEN:

28 Q THAT'S BETWEEN BROWNING AND MICROGENESIS?

1 A THAT'S BETWEEN -- MYSELF PERSONALLY. I
2 SIGNED IT WITH HIM. I DON'T BELIEVE WE HAD -- WE HAD
3 CORPORATIONS FORMED AT THAT INSTANT, SO I THINK IT WAS
4 BETWEEN ME AND HIM.

5 THE COURT: BROWNING AND YOU?

6 THE WITNESS: YEAH, AS INDIVIDUALS, AND AS FAR
7 AS -- I HAVE LOST YOUR QUESTION, THOUGH, MR. MC MULLEN.

8 DID IT CALL FOR BUILDING AN ATTRITION MILL?
9 IS THAT THE QUESTION?

10 BY MR. MC MULLEN:

11 Q YES.

12 A I DON'T BELIEVE IT DID, BUT IT WOULD HELP ME
13 TO SEE THE CONTRACT ITSELF. IT WOULD BE \$250,000 THAT
14 WOULD BE RAISED FOR GENERAL CORPORATE PURPOSES OR
15 OTHERWISE FOR A JOINT VENTURE OR BUSINESS ENTITIES
16 INVOLVING DR. BROWNING AND THE ATTRITION MILL TECHNOLOGY.

17 Q IN JUNE OF 9- -- EXCUSE ME. IN JUNE OF '84
18 YOU OWED OVER A MILLION DOLLARS TO INVESTORS; ISN'T THAT
19 TRUE?

20 A ONCE AGAIN, THESE MATTERS -- IT'S IMPRECISE
21 TO SAY THAT. FINANCIAL FUTURES TRADING CORPORATION WAS
22 THE ENTITY WHICH HAD A CONTRACTUAL RELATIONSHIP WITH MY
23 INVESTORS AT THAT PERIOD OF TIME, AND I FELT PERSONALLY,
24 THOUGH, THAT I PERSONALLY OWED THAT TO THEM OR HAD
25 RESPONSIBILITY TO SEE THAT THEY RECEIVE IT. SO IN ONE
26 SENSE, LEGALLY, AND THE OTHER SENSE PERSONALLY THOSE ARE
27 MY ANSWERS.

28 Q JUST SO I'M CLEAR, YOUR ANSWER IS, YES, YOU

1 OWED INVESTORS OVER A MILLION DOLLARS IN JUNE OF '84?

2 A MY -- THE COMPANY OWED THEM -- WELL, YOU
3 KNOW, THEIR MONEY HAD BEEN GIVEN TO THE COMPANY AND IT WAS
4 RESPONSIBLE TO PERFORM UNDER THE CONTRACTS AND IF IT HAD
5 DEFAULTED ON THE CONTRACTS IN ANY WAY, WHICH IT HAD, THEN
6 IT WOULD BE A LEGAL OBLIGATION. THE PUNCH LINE WOULD BE
7 THE COMPANY OWED THEM THE MONEY. BECAUSE I COMMITTED
8 FRAUDULENT ACTS WITH RESPECT TO THE THING, I, OF COURSE,
9 KNEW I HAD PERSONAL RESPONSIBILITY, TOO. I THINK THAT
10 FAIRLY CHARACTERIZES THE SITUATION.

11 MR. MC MULLEN: REFERRING COUNSEL TO TRANSCRIPTS OF
12 THE PROCEEDINGS IN SAN MATEO COUNTY, VOLUME 74 STARTING AT
13 PAGE 12565, STARTING WITH LINE -- I'LL START WITH LINE 18.

14 BY MR. MC MULLEN:

15 Q (READING):

16 "QUESTION: AND WHEN YOU SAY --"

17 MR. MC MULLEN: THERE'S QUITE A BIT OF TEXT HERE
18 THAT PUTS THINGS IN CONTEXT, WITH THE COURT'S PERMISSION.

19 THE COURT: ALL RIGHT.

20 BY MR. MC MULLEN:

21 Q STARTING AT LINE 18,

22 (READING):

23 "QUESTION: AND WHEN YOU SAID YOU

24 HAD A TIMETABLE, WHAT WAS THE

25 TIMETABLE YOU HAD REGARDING

26 MR. KILPATRICK?

27 MY TIMETABLE WAS ABOUT SETTTLING THE

28 MATTERS WITH THE INVESTORS IN AN

1 EXPEDITIOUS FASHION AND USING THE
2 LEVERAGE I HAD BEFORE THE MERGER
3 CLOSED, AT WHICH POINT I DIDN'T FEEL
4 I WOULD HAVE MUCH LEVERAGE."

5 Q YOU SAY YOUR TIMETABLE
6 INVOLVED THE INVESTORS?

7 ANSWER: THOSE TWO THINGS. I HAD A
8 TIMETABLE WITH MY INVESTORS, AND
9 THAT WAS THE TIMETABLE INVOLVING THE
10 MERGER OF SATURN.

11 HE HAD GOTTEN HIS TAX
12 SHELTERS OUT OF THE CONTROL OF THE
13 JUDGE, FEDERAL JUDGE. HE WAS NOW IN
14 POSSESSION OF THOSE ASSETS AGAIN
15 CONDITIONED ON, YOU KNOW, THE
16 CLOSING OF THAT MERGER.

17 SO THERE WAS A TIMETABLE WITH
18 THE MERGER AND THERE WAS A TIMETABLE
19 WITH MY INVESTORS. I WANTED TO TRY
20 AND SETTLE THE BUSINESS WITH THE
21 INVESTORS AS SOON AS POSSIBLE. I
22 FELT I SHOULD GET SOME FIXED TIMES,
23 WHICH HE WOULD OWE MONEY, AND HAVE
24 TO PAY MONEY AND HAVE TO ACCEPT
25 DELIVERY AND WE WOULD HAVE TO
26 DELIVER, AND ALL THOSE SORTS OF
27 THINGS, WHILE I STILL HAD SOME --
28 SOME LEVERAGE ON THE MAN.

1 QUESTION: WHAT WAS THE CONCERN AT
2 THIS POINT IN TIME WITH THE
3 INVESTORS?

4 ANSWER: MY CONCERN FROM THE VERY
5 MOMENT THAT THE -- THAT THE
6 DIVERSION OCCURRED WAS TO TRY AND
7 REVERSE THE DIVERSION. PAY OFF THE
8 INVESTORS, GIVE THEM THE PROFITS
9 THAT HAD BEEN DECLARED TO THEM SO
10 THAT THAT WOULD JUST BE A SETTLED --
11 SO THAT WOULD JUST BE A SETTLED AND
12 CLOSED EPISODE.

13 QUESTION: BY JUNE, THOUGH, YOU
14 THOUGHT THAT -- WHAT, SOME OF THE
15 MONEY THAT YOU WERE TO REALIZE FROM
16 THE KILPATRICK DEAL WOULD BE USED TO
17 SETTLE YOUR PROBLEMS WITH YOUR
18 INVESTORS?

19 ANSWER: RIGHT, AND I STRUCTURED THE
20 AGREEMENT, ONE OF THE AGREEMENTS
21 THAT'S IN THE FILE, WHERE IT
22 REQUIRED A \$6,000,000 NONREFUNDABLE
23 PAYMENT THAT WAS NOT EARMARKED FOR
24 ANY BUILDING OR ANYTHING ELSE LIKE
25 THAT. I MEAN -- I MEAN, I WASN'T --
26 I MEAN, IT WASN'T THAT WE'D GET THE
27 \$6,000,000. WE WOULD HAVE TO TURN
28 AROUND AND START BUILDING ATTRITION

1 MILLS WITH IT.

2 IT WAS JUST LIKE THE DOW
3 AGREEMENT, A NONREFUNDABLE OPTION
4 PAYMENT. AND THAT'S THE SORT OF
5 MONEY THAT, NOT BEING EARMARKED TO
6 ANYTHING, I COULD USE FOR WHATEVER I
7 WANTED, AND I WOULD HAVE REPAID THE
8 LOANS THAT WOULD HAVE BEEN MADE TO
9 MICROGENESIS, TO FINANCIAL FUTURES
10 TRADING CORPORATION AND TRANSFERRED
11 A LOT OF THAT MONEY OUT, PAID THESE
12 INVESTORS OFF AND THEN THAT WOULD
13 HAVE BEEN THAT.

14 QUESTION: AND WHAT DO YOU SEE THE
15 AMOUNT OF YOUR LIABILITY TO THE
16 INVESTORS TO HAVE BEEN AT THIS
17 PERIOD OF TIME WE ARE TALKING ABOUT?

18 ANSWER: ABOUT -- OVER A MILLION
19 DOLLARS. I DON'T RECALL THE EXACT
20 FIGURE. I HAD IT -- I HAD IT IN
21 THAT LEDGER."

22 DO YOU REMEMBER TESTIFYING TO THAT?

23 A YES.

24 Q AND SO YOU WERE -- YOU HAVE TESTIFIED THAT
25 YOU WERE EXPECTING THIS INSTALLMENT OF \$333,000 A MONTH
26 FOR 18 MONTHS TOTALING SIX MILLION. YOU WERE PLANNING TO
27 USE SOME OF THOSE FUNDS TO PAYOFF INVESTORS?

28 A YES. YOU KNOW, THERE WAS NOT A TIMETABLE ON

1 MY PAYMENTS TO THE INVESTORS. SO -- THEY WEREN'T
2 EXPECTING A LUMP SUM OF A MILLION IN SEPTEMBER. AT THAT
3 TIME I HAD AN ONGOING RELATIONSHIP WITH THEM.

4 Q AND OF COURSE -- CONTINGENT UPON ALL THIS
5 MONEY, GETTING MONEY FROM KILPATRICK'S ORGANIZATION OR
6 FUTURE ORGANIZATION IN THE EMBODIMENT OF A MERGER WITH
7 SATURN WAS THAT MERGER; IS THAT CORRECT?

8 A COULD YOU REPEAT THAT QUESTION?

9 Q CONTINGENT UPON YOU RECEIVING MONEY FROM
10 SATURN WAS KILPATRICK'S UNITED FINANCIAL OPERATIONS MERGER
11 WITH SATURN?

12 A THAT REMAINED THE CONDITION PRECEDENT FOR THE
13 FLOW OF MONEY BOTH IN THE NOVATION, THE NEW AGREEMENTS, AS
14 WELL AS FOR THE MOST PART IN THE OLD AGREEMENT. THAT WAS
15 THE TRIGGER OF EVERYTHING.

16 Q WAS NOT THE REASON WHY KILPATRICK NEEDED TO
17 MERGE WITH SATURN IS THAT SATURN WAS PUBLICLY TRADED -- A
18 CORPORATION THAT -- WHOSE STOCK WAS PUBLICLY TRADED; IS
19 THAT CORRECT?

20 A MR. KILPATRICK HAD AN EXTREMELY COMPLICATED
21 SITUATION THAT TIED UP THE FEDERAL COURTS FOR A LONG
22 PERIOD OF TIME, AND I'M NOT SURE OF ALL OF HIS REASONS FOR
23 WHY HE WANTED TO MERGE WITH SATURN. I JUST KNOW THAT HE
24 WAS DOING IT, AND I WAS AT A MEETING WITH HIM IN VANCOUVER
25 WITH THE STOCKHOLDERS OF SATURN ENERGY WHERE THE TIMETABLE
26 FOR THE MERGER WAS DISCUSSED, AND WHERE CERTAIN THINGS
27 RELATING TO THE MERGER WERE RATIFIED BY UNANIMOUS VOICE
28 VOTE OF ALL THE SHAREHOLDERS AT SATURN. I KNOW HE WANTED

1 TO DO IT. I CAN'T TELL YOU ALL THE REASONS THAT DEALT
2 WITH HIS TAX PROGRAM OR THE REORGANIZATION STRUCTURE OR
3 WHAT THE WHOLE SCHEME WAS.

4 Q YOU CLEARLY KNEW THAT YOUR FATE IN TERMS OF
5 RECEIVING MONEY FROM HIM UNDER THE CONTRACT OF NOVEMBER,
6 '83 WAS REALLY CONTINGENT UPON HIS MERGING WITH SATURN,
7 HIS UNITED FINANCIAL OPERATION?

8 A ABSOLUTELY.

9 Q YOU WERE ALSO AWARE DURING THE NEGOTIATIONS
10 IN THE MONTHS PRECEDING JUNE, 1984 THAT KILPATRICK WAS
11 LABORING UNDER A FEDERAL INDICTMENT THAT HAD BEEN BROUGHT
12 DOWN AGAINST HIM; IS THAT CORRECT?

13 A AT WHAT POINT IN TIME, SIR?

14 Q IN THE MONTHS PRECEDING JUNE OF 1984?

15 A YOU KNOW, AT SOME POINT HE MANAGED TO GET OUT
16 FROM UNDERNEATH THE CLOUD OF THAT INDICTMENT. I
17 BELIEVE -- THERE WAS BIG ARTICLE IN A DENVER MAGAZINE
18 WHICH HE GAVE ME A REPRINT OF. I THINK IT WAS BEFORE JUNE
19 OF 1984 THAT HE GOT OUT FROM THAT, UNDER THAT INDICTMENT
20 WHICH I THINK THEY WERE ALLEGING WAS THE BIGGEST TAX SCAM
21 OF ALL TIME.

22 Q YOU KNEW HE WENT TO FEDERAL PRISON FOR THAT?

23 A IS THAT WHAT HE'S DOING TIME FOR NOW?

24 THE COURT: THE QUESTION IS, WERE YOU AWARE OF
25 THAT?

26 THE WITNESS: NO, I DIDN'T FOLLOW THAT LINE OF
27 HIS -- THAT SET OF CIRCUMSTANCES IN HIS LIFE WITH ANY
28 CARE. I FOLLOWED THE FINANCIAL ASPECT AS WELL AS I COULD.

1 BY MR. MC MULLEN:

2 Q WELL, YOU KNEW DURING THE MONTHS PRECEDING
3 JUNE OF '84 THAT AN IMPEDIMENT TO KILPATRICK'S MERGING
4 WITH SATURN WAS HIS INDICTMENT AND HIS FEDERAL BANKRUPTCY?

5 A YOU KNOW, I DO RECALL THAT PRIOR TO JUNE OF
6 1984 THAT -- THAT ALL BUT EITHER ONE OR TWO COUNTS OF THE
7 INDICTMENT HAD BEEN DISMISSED AND THAT THE REMAINING
8 COUNTS HAD SOMETHING TO DO WITH HIM PERSONALLY, AND THAT
9 IT WAS BY NO MEANS CONVEYED TO ME THAT SOME REMAINING
10 COUNT TIED UP THE PROCEEDS FROM THE TAX SHELTER PLANS.

11 INDEED, THE DOCUMENTS I REVIEWED SAID THAT
12 THE BANKRUPTCY REORGANIZATION HAD BEEN APPROVED BY THE
13 JUDGE IN MARCH OF 1984, AND I THINK WE COULD PROVIDE YOU A
14 COPY OF ONE OF THOSE DOCUMENTS, IF YOU WOULD LIKE TO SEE
15 IT.

16 Q YOU KNEW IN THE MONTHS PRECEDING JUNE OF 1984
17 THAT KILPATRICK HAD A CONTRACT WITH BROWNING FOR THE
18 OWNERSHIP RIGHTS OF THE ATTRITION MILL THAT PRECEDED YOUR
19 NOVEMBER, '83 CONTRACT?

20 MR. CRAIN: I OBJECT TO THAT AS ASSUMING FACTS NOT
21 IN EVIDENCE.

22 THE COURT: I THINK THE QUESTION IS: WERE YOU
23 AWARE OF SUCH A THING. DOESN'T MATTER IF IT'S TRUE OR
24 NOT.

25 THE WITNESS: WAS I AWARE BEFORE JUNE, 1984
26 KILPATRICK HAD A DEAL WITH BROWNING FOR THESE RIGHTS?

27 BY MR. MC MULLEN:

28 Q RIGHT.

1 A I WAS NOT AWARE BEFORE JUNE OF '84. I
2 ULTIMATELY HAVE LEARNED THAT THERE WAS SOME
3 MEMORIALIZATION OF AN AGREEMENT BETWEEN BROWNING AND
4 ANOTHER PERSON THAT KILPATRICK MAY OR MAY NOT HAVE BEEN
5 HEIR TO. BUT, NO, MR. KILPATRICK DID NOT TELL ME THAT AT
6 ANY POINT PRECEDING JUNE OF 1984, NEITHER DID DR.
7 BROWNING, NOR DID THEY TELL ANYBODY ELSE IN THE B.B.C.

8 Q NOW, YOU MET WITH MR. KILPATRICK AND
9 MR. DECLAN O'DONNELL, HIS LAWYER, IN JUNE OF '84, DIDN'T
10 YOU, IN LOS ANGELES AT THE B.B.C. OFFICES?

11 A YES.

12 Q AND KILPATRICK BASICALLY TOLD YOU THERE AND
13 THEN THAT THERE WAS NO MONEY FORTHCOMING AT THAT MOMENT,
14 THAT IT WAS WAY OFF, THAT THE TIMETABLE FOR THE MONEY ON
15 THIS -- ON THIS DEAL YOU WERE WORKING ON WAS WAY OFF?

16 A NO, HE DEFINITELY DID NOT SAY THAT, AND THE
17 DOCUMENTS, ALL THESE DRAFTS, INCLUDING THE -- THE
18 DOCUMENTS REFLECT THAT THAT WASN'T THE CASE, THAT THE
19 MONEY WOULD BE PAID ON THE OCCURRENCE OF THE MERGER AND
20 THAT THE MERGER WAS IMMINENT.

21 Q OTHER THAN THIS NOVEMBER, '83, FOUR PAGE
22 DOCUMENT, NONE OF THESE OTHER DRAFTS WERE SIGNED BY ALL
23 PARTIES, WERE THEY?

24 A CORRECT, NONE OF THEM WERE SIGNED.

25 Q KILPATRICK AT SOME POINT IN TIME, IN FACT
26 JULY 27TH, '84, YOU TESTIFIED PREVIOUSLY TOLD YOU THAT HE
27 OWNED THE TECHNOLOGY, THE BROWNING ATTRITION MILL
28 TECHNOLOGY?

1 A ON JULY 27TH, '85?

2 Q '84.

3 A ON JULY 27TH, 1984 MR. KILPATRICK AND I HAD A
4 CONVERSATION WHERE HE INDICATED TO ME FOR THE FIRST TIME
5 THAT HE FELT HE WAS IN CONTROL OF OR COULD ACQUIRE CONTROL
6 OF THE TECHNOLOGY THROUGH ANOTHER SOURCE. THAT'S JUST AN
7 ENCAPSULATION, THAT'S NOT AN ATTEMPT TO BE DEFINITE.

8 Q WITH RESPECT TO THE PROGRESSIVE SAVINGS &
9 LOAN F.B.I. INVESTIGATION, YOU -- MY IMPRESSION FROM YOUR
10 TESTIMONY ON THAT ISSUE IS THAT YOU WERE AWARE OF THE --
11 THAT PARTICULAR F.B.I. INVESTIGATION BASED UPON A
12 COMPLAINT BY PROGRESSIVE SAVINGS & LOAN; IS THAT CORRECT?

13 A THAT WAS ONE SOURCE OF MY -- MY INFORMATION
14 CONCERNING THE FACT THAT F.B.I. WERE INVOLVED IN THE
15 PROGRESSIVE SAVINGS INVESTIGATION.

16 Q AND YOU ALSO KNEW AT -- DURING THE TIME OF
17 THE INVESTIGATION THAT YOU WERE ONE OF THE SUBJECTS OF THE
18 INVESTIGATION; ISN'T THAT CORRECT?

19 A SUBJECT IN WHAT SENSE? I MEAN, I WAS --

20 Q THE F.B.I. WAS INVESTIGATING?

21 A RIGHT. AND THEY WANTED TO SEE MY RECORDS. I
22 HAD WRITTEN A CHECK IN RELATIONSHIP TO THE PROGRESSIVE
23 SAVINGS & LOAN THAT WAS USED AS PART OF THE MACHINERY, IF
24 YOU USE THAT AS ANALOGY, BY WHICH LEVIN DEFRAUDED THIS
25 COMPANY.

26 Q IT WAS A CHECK KITING --

27 MR. CRAIN: CAN HE FINISH THE ANSWER, YOUR HONOR?

28 THE COURT: FINISH YOUR ANSWER.

1 THE WITNESS: I KNEW THEY WANTED TO TALK TO ME, AND
2 THEY WOULD ULTIMATELY INTERVIEW ME AS TO WHAT INFORMATION
3 I COULD PROVIDE IN RELATIONSHIP TO THAT CASE.

4 BY MR. MC MULLEN:

5 Q BASICALLY IT WAS A CHECK KITING SCHEME WHERE
6 LEVIN DEPOSITED CHECKS, ONE OF WHICH FROM YOU, AND THEN HE
7 DREW ON THAT ACCOUNT WHERE HE DEPOSITED THOSE CHECKS PRIOR
8 TO THE CHECK ACTUALLY CLEARING; ISN'T THAT WHAT ACTUALLY
9 HAPPENED SIMPLY STATED?

10 MR. CRAIN: IN A SENSE THAT CALLS FOR A CONCLUSION.
11 I MEAN, IT'S -- I MEAN --

12 MR. MC MULLEN: I'M ASKING FOR HIS PERSONAL
13 KNOWLEDGE.

14 THE COURT: HE CAN STATE HIS UNDERSTANDING BECAUSE
15 THESE WERE MATTERS THAT WERE DISCUSSED WITH MR. BARENS
16 FROM MY UNDERSTANDING.

17 MR. CRAIN: ALL RIGHT.

18 THE WITNESS: MY UNDERSTANDING OF HOW THAT ACTUALLY
19 WENT DOWN CAME FROM MR. LEVIN. MR. LEVIN TOLD ME HE HAD
20 SOME RELATIONSHIP INSIDE PROGRESSIVE, THAT THEY WERE NOT
21 AWARE OF, BY MEANS OF WHICH HE HAD PREVENTED THE COMPANY
22 FROM RECOGNIZING THAT THESE CHECKS WERE N.S.F.. HE IS
23 TELLING ME THIS AFTER THE FACT, OR THAT THEY HAD BEEN
24 STOPPED.

25 I THINK THESE -- THAT THESE CHECKS HAD BEEN
26 STOPPED, SO PROGRESSIVE ACTUALLY PROVIDED HIM THE MONEY
27 AGAINST THESE CHECKS LIKE TEN DAYS AFTER THEY DEPOSITED
28 THEM UNDER THE THEORY THAT IF THERE HAD BEEN SOMETHING

1 WRONG WITH THEM THEY WOULD HAVE RECEIVED NOTICE THAT THEY
2 HADN'T CLEARED, BUT LITTLE DID THEY KNOW THAT MR. LEVIN'S
3 CONTACT IN THE BANK HAD SOMEHOW INTERFERED WITH THE NORMAL
4 RECORDATION OF A STOP PAYMENT ON THOSE CHECKS, AND SO, HE
5 HAD GOTTEN THESE FUNDS THROUGH THIS DEVICE. HE TOLD ME
6 THAT LATER ON.

7 BY MR. MC MULLEN:

8 Q DURING THE -- DURING THE TIME THAT THIS WAS
9 HAPPENING, THE INVESTIGATION THAT IS, YOU ACTUALLY
10 CONSULTED WITH A CRIMINAL DEFENSE LAWYER REGARDING THE
11 PROGRESSIVE SAVINGS & LOAN INVESTIGATION AS IT RELATED TO
12 YOU, DID YOU NOT?

13 MR. CRAIN: YOUR HONOR, COULD I INTERPOSE AN
14 OBJECTION. IT'S IRRELEVANT, AND IT'S IRRELEVANT FOR THE
15 FOLLOWING REASON, I BELIEVE: THE ISSUE OF THE PROGRESSIVE
16 INVESTIGATION OF MR. LEVIN AND MR. BARENS' FAILURE TO USE
17 THAT WENT TO THE FACT THAT LEVIN BELIEVED THAT HE WAS
18 UNDER INVESTIGATION BY THE F.B.I. FOR CRIMINAL ACTIVITY,
19 WHICH WAS POWERFUL MOTIVE EVIDENCE THAT HE HAD A MOTIVE TO
20 FLEE TOWN PARTICULARLY IN VIEW OF HIS PAST CRIMINAL
21 HISTORY AND OTHER AVAILABLE EVIDENCE THAT HE TOLD OTHERS,
22 INCLUDING, I BELIEVE YOU HEARD TESTIMONY FROM KAREN
23 MARMOR, AND THERE WOULD HAVE BEEN OTHERS, THAT HE FEARED
24 GOING BACK TO PRISON, HE HAD BEEN SEXUALLY VICTIMIZED
25 THERE AND SO FORTH.

26 MR. MC CULLEN'S LINE OF QUESTIONS HERE ABOUT
27 WHATEVER CONNECTION MR. HUNT MADE TO THAT I REALLY THINK
28 ARE -- ARE IRRELEVANT.

1 THE COURT: WOULDN'T THAT COUNTERBALANCE, THOUGH,
2 WHY MR. BARENS CHOSE NOT TO GET INTO THIS IS THAT HE WAS
3 CONCERNED THAT MR. HUNT WAS INVOLVED IN THIS AND IT WOULD
4 ONLY DIRTY UP MR. HUNT?

5 I'LL OVERRULE THE OBJECTION.

6 MR. CRAIN: VERY WELL.

7 THE WITNESS: NO. I EXPLAINED TO MR. BARENS THAT
8 THE EVIDENCE WOULD SHOW IF WE GOT INTO IT THAT --

9 MR. MC MULLEN: OBJECTION. NONRESPONSIVE.

10 THE COURT: OKAY.

11 MR. CRAIN: AS MR. KLEIN POINTS OUT, I THINK BARENS
12 SAID HE DIDN'T KNOW ANYTHING ABOUT THAT, SO THAT'S WHY HE
13 DIDN'T USE IT. NOT THAT HE CHOSE NOT TO USE IT, BUT THAT
14 HE DIDN'T KNOW IT.

15 THE COURT: I'LL ALLOW IT.

16 I BELIEVE THE QUESTION WAS: DID YOU CONSULT
17 A CRIMINAL ATTORNEY ABOUT THIS?

18 THE WITNESS: HAD I TALKED TO A CRIMINAL ATTORNEY?
19 I DON'T SPECIFICALLY RECALL, AT THE TIME -- I'M TRYING TO
20 REMEMBER HIS NAME. IT WAS IN RELATIONSHIP TO THINGS THAT
21 HAD HAPPENED WITH AND AROUND RON LEVIN, INCLUDING THE
22 CANTOR-FITZGERALD MATTER.

23 I DON'T KNOW IF IT WAS A CRIMINAL ATTORNEY,
24 BUT ABOUT A CIVIL RELATIONSHIP INVOLVING CANTOR. THAT IS
25 LIKE 13 YEARS AGO, AND I HAVE HAD NO OCCASION TO DRAW ON
26 THAT PARTICULAR MEMORY FOR ALL THIS TIME, SO IT'S NOT BEEN
27 REFRESHED.

28 I CAN'T BE SURE IN ANSWER TO YOUR QUESTION

1 WHETHER I DID OR DIDN'T. I THINK I WOULD HAVE HAD A STATE
2 OF MIND OF SOME CONCERN --

3 THE COURT: THE QUESTION WAS: DID YOU CONSULT WITH
4 A CRIMINAL LAWYER ABOUT THIS?

5 THE WITNESS: I'M NOT SURE AT THIS POINT.

6 THE COURT: PUT A QUESTION.

7 MR. MC MULLEN: THANK YOU.

8 BY MR. MC MULLEN:

9 Q DIDN'T YOU GO TO MR. STEIER'S OFFICE, WHO IS
10 A CRIMINAL DEFENSE LAWYER, AND ASK FOR ADVICE REGARDING
11 THE PROGRESSIVE SAVINGS & LOAN F.B.I. INVESTIGATION, AND
12 HE REFERRED YOU TO ANOTHER CRIMINAL LAWYER BECAUSE HE WAS
13 REPRESENTING RON LEVIN WITH RESPECT TO THAT F.B.I.
14 INVESTIGATION?

15 A THAT SOUNDS LIKE -- I REMEMBER LEVIN REFERRED
16 ME TO SEVERAL LAWYERS. IT WAS MR. MELCZER. THEN THERE
17 WAS A GUY THAT WORKED AT REGIS PAISANO'S OFFICE. HIS
18 FIRST NAME BEGAN WITH A "B", AND I DID TALK TO PEOPLE
19 ABOUT IT. I WAS CONFIDENT THAT I DID NOT DO ANYTHING
20 WRONG. I HADN'T RECEIVED ANY OF THE MONEY. I TOLD MR.
21 BARENS THAT.

22 Q SHORTLY AFTER YOU RETAINED MR. BARENS AS YOUR
23 LAWYER IN THIS MURDER TRIAL, I TAKE IT, FROM HEARING YOUR
24 TESTIMONY AND IT IS ALSO MR. BARENS' TESTIMONY, THAT OF
25 GREAT CONCERN TO YOUR DEFENSE WAS THE SEVEN-PAGE TO-DO
26 LIST; IS THAT CORRECT?

27 A YES.

28 Q SO IS IT A CORRECT STATEMENT TO SAY THAT

1 THROUGHOUT HIS REPRESENTATION, BEFORE THE TRIAL AND DURING
2 THE TRIAL, THAT THERE WERE NUMEROUS DISCUSSIONS ABOUT THE
3 SEVEN-PAGE TO-DO LIST THAT WAS FOUND AT RON LEVIN'S
4 APARTMENT?

5 A IT CAME UP ON A NUMBER OF OCCASIONS.

6 Q AND IT CAME UP FIRST WHERE YOU WERE IN
7 CUSTODY DURING A DISCUSSION YOU HAD WITH MR. BARENS IN THE
8 HALL OF JUSTICE JAIL; IS THAT CORRECT?

9 A I'M SURE IT MIGHT HAVE BEEN REFERENCED IN
10 CONVERSATIONS THAT I HAD WITH HIM AT THE HALL OF JUSTICE
11 JAIL, BUT MY FIRST CONVERSATION THAT I HAVE A CLEAR
12 RECOLLECTION OF IN RELATIONSHIP TO MY EXPLANATION FOR THE
13 SEVEN-PAGE LIST OCCURRED WHEN I WAS OUT OF CUSTODY.

14 Q AND WOULD IT BE A FAIR STATEMENT THAT HOW TO
15 DEAL WITH THAT SEVEN-PAGE TO-DO LIST FROM A CRIMINAL
16 DEFENSE STANDPOINT WAS A VERY CHALLENGING PIECE OF
17 EVIDENCE TO DEAL WITH? WOULDN'T YOU SAY THAT'S A FAIR
18 STATEMENT?

19 A FROM MY OWN PERSONAL STANDPOINT, SETTING
20 ASIDE WHAT MAY OR MAY NOT BE IN THE CRIMINAL DEFENSE
21 ARENA, I REALIZED THAT -- I FELT FOR A VERY LONG TIME,
22 ESPECIALLY BEFORE WE HAD ANY OTHER SIGHTINGS EVIDENCE AND
23 STUFF LIKE THAT, THAT I WOULD HAVE TO TAKE THE STAND AND
24 EXPLAIN THAT PIECE OF EVIDENCE, AND THAT IF I DIDN'T AND
25 IF I DIDN'T EXPLAIN MY STATEMENTS ON JUNE 24TH AND THE
26 SUBSEQUENT EFFORTS TO CONVINCING B.B.C. MEMBERS THAT I
27 ACTUALLY HAD DONE WHAT I SAID I HAD DONE ON JUNE 24TH,
28 THAT IF I DIDN'T EXPLAIN ALL THESE THINGS THAT I WOULD BE

1 CONVICTED.

2 Q IN RECOGNIZING THE SEVEN-PAGE TO-DO LIST AS A
3 REAL PROBLEM IN DEFENDING THE CHARGES AGAINST YOU, IT
4 WOULD BE NATURAL FOR THE HUNT TRIAL DEFENSE TEAM TO
5 DISCUSS HOW TO DEAL WITH THAT PIECE OF EVIDENCE; ISN'T
6 THAT TRUE?

7 A IT WOULD BE NATURAL FOR ANY DEFENSE TEAM TO
8 BE TALKING ABOUT THAT TYPE OF EVIDENCE, YES, I WOULD
9 SAY --

10 Q IN FACT, THAT'S WHAT HAPPENED IN THIS CASE?

11 A THERE WERE A NUMBER OF DISCUSSIONS ABOUT HOW
12 TO DEAL WITH THAT PIECE OF EVIDENCE. THERE WAS A NUMBER
13 OF DISCUSSIONS ABOUT WHAT I WOULD TESTIFY TO WHEN THAT
14 EVIDENCE WAS BROUGHT UP ON DIRECT OR CROSS-EXAMINATION.

15 MR. MC MULLEN: MAY I HAVE A MOMENT, YOUR HONOR?

16 THE COURT: YES.

17

18 (RESPONDENT'S COUNSEL CONFER.)

19

20 MR. MC MULLEN: NOTHING FURTHER.

21 THE COURT: WAS DR. BROWNING EVER GIVEN ANY MONEY
22 DURING YOUR AGREEMENT WITH HIM CONCERNING THE ATTRITION
23 MILL?

24 THE WITNESS: YES, HE WAS, SIR. HE WAS GIVEN
25 ALMOST \$100,000 AT THE TIME.

26 THE COURT: DID ANYBODY EVER SUCCESSFULLY
27 MANUFACTURE OR MARKET THIS ATTRITION MILL?

28 THE WITNESS: WE MANUFACTURED ONE AND WE --

1 THE COURT: THAT IS THE ONE THAT WAS OUT IN THE
2 DESERT?

3 THE WITNESS: ACTUALLY, I THINK THERE IS A
4 DIFFERENT DESERT USAGE OF THIS THING THAT I SHOULD TELL
5 THE COURT ABOUT, TO ANSWER YOUR QUESTION.

6 THE COURT: YOU ARE TALKING ABOUT THE REFERENCES
7 DURING THE TRIAL THAT IT WAS OUT ON THE BACK OF A TRUCK,
8 DRIVEN OUT THERE AND PROBABLY LEFT?

9 THE WITNESS: THERE WAS ANOTHER INSTANCE ACTUALLY
10 IN JUNE OF 1984. WE DELIVERED A WORKING ATTRITION MILL TO
11 A SITE IN ARIZONA. THE DESERT SCENE THAT YOU ARE TALKING
12 ABOUT WAS IN -- INSIDE CALIFORNIA'S BORDER. THAT WAS IN
13 AUGUST OF 1984. IN JUNE OF 1984 THE WORKING MODEL OF THE
14 ATTRITION MILL WAS LOADED UP ON A FLAT BED AND TAKEN TO
15 ARIZONA AND SET UP SO THAT IT COULD BE USED AT A GOLD MINE
16 NEAR SUPERSTITION MOUNTAIN.

17 THE COURT: DID IT EVER WORK?

18 THE WITNESS: AND IT WAS NEVER USED IN THE
19 BUSINESS. THAT WAS A CONTRACT WITH A GUY NAMED WILLIAM
20 MORTON AND HE PAID US MONEY FOR THAT.

21 THE COURT: HOW MUCH?

22 THE WITNESS: HE PAID US ACTUALLY \$50,000 CASH.
23 THE CONTRACT CALLED FOR UP TO TWO MILLION TO BE PAID OVER
24 TIME PLUS US TO RECEIVE 15 PERCENT OF HIS PROFITS FROM HIS
25 GOLD MINING OPERATION.

26 THE COURT: DID YOU RECEIVE ANY?

27 THE WITNESS: NO. BECAUSE THESE PAYMENTS WOULD
28 HAVE -- WE RECEIVED THE PAYMENTS UP UNTIL LIKE JULY OF

1 1984 AT WHICH POINT THERE WAS A CONTRACT DISPUTE. THAT
2 WAS AFTER LEVIN DISAPPEARED. THERE WAS A CONTRACT DISPUTE
3 EARLIER. IN ALL WE REPOSSESSED THE ATTRITION MILL FROM
4 THE MINE SITE. AFTER IT WAS REPOSSESSED THAT'S HOW IT GOT
5 TAKEN OUT TO ANOTHER SITE AT THE SHADOW VALLEY MINE SITE
6 WITHIN THE CONFINES OF CALIFORNIA.

7 THE COURT: DID ANYBODY SUCCESSFULLY MARKET THE
8 ATTRITION MILL AT ANY TIME?

9 THE WITNESS: IF YOU MEAN SUCCESSFULLY IN TERMS OF
10 GETTING MONEY, I GOT \$150,000 FROM A GROUP CALLED GOLDSON,
11 LIMITED.

12 THE COURT: WHEN?

13 THE WITNESS: TWO PAYMENTS IN 1983. SEPTEMBER AND
14 LATER IN DECEMBER OF 1983.

15 THE COURT: ANYTIME IN 1984 THAT THIS WAS EVER
16 SUCCESSFULLY MARKETED?

17 THE WITNESS: WE HAD \$50,000 FROM MORTON. WE EVEN
18 DELIVERED RIGHT AT THE BEGINNING OF JUNE ON A FIRM
19 CONTRACT THAT WE HAD, AROUND THE TIME OF THE RON LEVIN
20 DISAPPEARANCE. WE WERE PLACING THIS MACHINE OUT AT THE
21 MINE SITE AND EXPECTING TO GET ANOTHER 12 MACHINES
22 ORDERED. WE ACTUALLY LICENSED THE MACHINE. HE WAS GIVING
23 US \$200,000 A COPY, AND HE EXPRESSED AN INTENTION, WHICH
24 WAS MEMORIALIZED IN THE CONTRACT, TO BUY A TOTAL 12, SO
25 2.4 MILLION.

26 THE COURT: OTHER THAN THE ONE MACHINE ANYMORE EVER
27 MANUFACTURED?

28 THE WITNESS: TWO MORE BEING ASSEMBLED BECAUSE WE

1 HAD THE RAM BUCK HERE AT THE TIME THAT WE DELIVERED THE --
2 THAT MACHINE TO MR. MORTON IN ARIZONA AND THEY -- ONE WAS
3 LIKE 50 PERCENT COMPLETE AND ONE WAS ABOUT 75 PERCENT
4 COMPLETE.

5 THE COURT: YOU SAID THAT YOU SENT APPROXIMATELY
6 2,000 PAGES OF THESE MEMOS OF YOUR OWN CREATION TO
7 MR. BARENS. ARE YOU ABLE TO ESTIMATE HOW MANY POINTS ARE
8 CONTAINED WITHIN THOSE 2,000? I SEE SOME OF THESE GO ON
9 FOR PAGE AFTER PAGE AFTER PAGE WITH ONE LINE.

10 THE WITNESS: OH, YEAH THERE WAS LOT OF OVERLAP,
11 YOUR HONOR, THOUGH. IT WAS NOT THAT I HAD 2,000 POINTS TO
12 MAKE. IT WAS THAT I WAS TRYING TO -- BY REPETITION TO --
13 IF YOU WANTED TO REDUCE THOSE 2,000 PAGES TO THE SUBSTANCE
14 AND NOT HAVE ANY REPETITION IN IT, YOU WOULD PROBABLY END
15 UP WITH 500 PAGES.

16 THE COURT: AND IN ADDITION TO THOSE 2,000 PAGES
17 THERE WAS ADDITIONAL MATERIAL THAT YOU BROUGHT TO HIS
18 ATTENTION ORALLY THAT WAS NOT CONTAINED IN THE MEMOS?

19 THE WITNESS: YES, BECAUSE WRITING IS SO TEDIOUS
20 AND TALKING SO EASY, THAT I WOULD TRY TO HIT THE MAIN
21 POINTS. I WOULDN'T EVEN SAY MAIN POINTS. YOU KNOW, I
22 WOULD DISCUSS CERTAIN ASPECTS OF VARIOUS SITUATIONS AND
23 EVIDENCE THAT WOULD BE PRESENTED OR THAT I THOUGHT MIGHT
24 BE PRESENTED, AND I WOULD FOLLOW THOSE UP WITH ORAL
25 EXPLANATIONS.

26 THE COURT: YESTERDAY IN TALKING ABOUT MICROGENESIS
27 YOU SAID THAT -- THAT IT WAS NOT TIED UP, SOMETHING TO THE
28 EFFECT OF IT WAS NOT TIED UP WITH ANY FRAUDULENT DEALINGS

1 WITH B.B.C. AND MICROGENESIS' HOUSE WAS CLEAN. WHAT DID
2 YOU MEAN BY THAT?

3 THE WITNESS: MICROGENESIS DIRECTLY HAD NOT
4 SOLICITED ANY MONEY FROM ANY INVESTORS UNDER FALSE
5 PRETENSES. WE WERE PAYING OUR BILLS. WE HAD PAID
6 DR. BROWNING THE MONIES THAT WERE AGREED TO BE PAID TO
7 HIM. WE ISSUED HIM THE 32 PERCENT OF THE MICROGENESIS
8 COMPANY.

9 WE WERE ALSO -- ALSO MADE AN ATTEMPT TO KEEP
10 THE BOOKS AND RECORDS OF MICROGENESIS STRAIGHT AND MINUTES
11 OF MEETINGS AND STUFF LIKE THAT. IT WAS SUBSTANTIALLY, AT
12 LEAST, I'M NOT SAYING PERFECTLY, BUT IT WAS SUBSTANTIALLY
13 BEING RUN BY US TO BE CLEAN.

14 IN FACT, EARLY IN MAY I STARTED TO BRING IN
15 OUTSIDE PEOPLE, OLDER PEOPLE TO BE DIRECTORS OF
16 MICROGENESIS WITH US LIKE 50- AND 60-YEAR-OLD ESTABLISHED
17 BUSINESS MEN THAT COULD ADVISE US.

18 THE COURT: AS OPPOSED TO WHAT, THOUGH?

19 THE WITNESS: WELL FINANCIAL FUTURES TRADING
20 COMPANY WAS JUST HONEYCOMBED WITH FRAUD. THAT WAS THE
21 MAJOR SOURCE OF OUR MONEY AFTER A CERTAIN POINT IN TIME AT
22 THE B.B.C. OTHER THAN THIS \$200,000 THAT WE HAD RECEIVED
23 FROM MICROGENESIS DEALINGS, THE 150 FROM GOLDSON AND THE
24 50,000 FROM WILLIAM MORTON. THE OTHER SOURCES OF MONEY
25 THAT WE HAD WERE FINANCIAL FUTURES TRADING CORPORATION AND
26 THROUGH THE EFFORTS OF AN INDIVIDUAL NAMED STEVE LOPEZ WE
27 ALSO MADE SOME, MADE SOME MONEY IN A GOOD ARBITRAGE
28 BUSINESS.

1 THE COURT: WHEN YOU MENTIONED EARLIER TODAY THAT
2 YOU FELT THAT YOU OWED A MILLION DOLLARS TO THE INVESTORS,
3 THAT WOULD BE THE INVESTORS IN FINANCIAL FUTURES?

4 THE WITNESS: I FELT THAT I HAD LEGAL LIABILITY
5 ULTIMATELY WHEN ALL WAS SAID AND DONE FOR ABOUT THAT SUM
6 OF MONEY.

7 THE COURT: HOW DID YOU KNOW LEN MARMOR AND KAREN
8 SUE MARMOR.

9 THE WITNESS: AS TO LEN MARMOR, WHILE I WAS AT
10 LEVIN'S HE WOULD POP IN AND OUT ON A NUMBER OF OCCASIONS.
11 I WOULD BE PRESENT WHEN LENNY AND RON WERE DISCUSSING
12 BUSINESS. SOME -- ON OCCASION I WOULD BE THERE ON
13 SOMETHING. SOMETIMES MR. LEVIN WOULD HAVE PEOPLE STACKED
14 UP WAITING TO SPEAK TO HIM. SO I WOULD HEAR PART OF THEIR
15 CONVERSATION AND LENNY WOULD HEAR PART OF MY CONVERSATION.

16 AS FAR AS KAREN GOES, I DON'T HAVE ANY
17 RECOLLECTION OF EVER SEEING HER FROM THOSE DAYS WHILE I
18 WAS THERE, BUT SHE WAS REFERRED TO BY RON LEVIN, AND HE
19 WENT INTO SOME DETAIL WHAT HIS RELATIONSHIP WITH KAREN
20 WAS, HOW HE HAD MET HER AND WHAT HE FELT SHE THOUGHT OF
21 HIM. HE PRESENTED LENNY AS HIS CLOSEST FRIEND IN LIFE.

22 THE COURT: YOU GAVE A CHECK TO MR. LEVIN THAT WAS
23 A PART OF HIS FRAUDULENT ACTIVITIES WITH REFERENCE TO
24 PROGRESSIVE SAVINGS & LOAN?

25 THE WITNESS: YES.

26 THE COURT: HOW MUCH WAS THAT CHECK FOR?

27 THE WITNESS: THE ONLY CHECK THAT I CAN RECALL IS
28 THE ONE THAT TOM MAY SIGNED FOR A \$100,000. SEE, I HAD

1 FILLED IT OUT LIKE THE PAYEE AND PUT THE DATE ON IT AND
2 TOM HAD SIGNED IT.

3 IF THERE WAS ONE THAT I ALSO SIGNED IT WOULD
4 BE DRAWN ON MITSUBISHI MANUFACTURER'S BANK. I THINK I
5 MIGHT HAVE SIGNED IT FOR A HUNDRED THOUSAND, TOO, BUT MINE
6 WAS BEFORE TOM'S AND IT HAD ALREADY BEEN STOPPED BY THE
7 TIME THAT PROGRESSIVE RELEASED MONEY TO HIM, SO THE REAL
8 THING IN ISSUE WAS WHETHER I HAD PARTICIPATED IN -- IN
9 THIS THING IN SOME WAY THROUGH MY INVOLVEMENT WITH TOM'S
10 CHECK.

11 THE COURT: WHAT WERE THE CHECKS FOR?

12 THE WITNESS: \$100,000.

13 THE COURT: WHAT WERE THEY FOR, THOUGH?

14 THE WITNESS: RON LEVIN HAD THIS OPTION AGREEMENT
15 ON HIS HOUSE, AND HE HAD SET UP A DEAL WITH TOM MAY AND
16 DAVID MAY CALLED LAND BROTHERS, LAND CORPORATION. HE
17 INVITED ME, AND ALSO LEN MARMOR AT THE SAME TIME TO
18 PARTICIPATE IN THE FINANCIAL WINDFALL THAT HE EXPECTED
19 FROM HIS EXERCISE OF THAT OPTION ON THE DUPLEX AT 144 AND
20 43 SOUTH PECK BY GIVING HIM A SUM OF MONEY, AND THEN WE
21 WOULD BE ENTITLED TO A SPLIT OF PROCEEDS FROM THE SALE OF
22 THE BUILDING AFTER THE COMPLETION OF THINGS.

23 THE COURT: YOU GAVE HIM ONE OF THESE CHECKS FOR A
24 HUNDRED THOUSAND?

25 THE WITNESS: RIGHT.

26 THE COURT: DID YOU KNOW IT WOULD BOUNCE?

27 THE WITNESS: YES, I DID, BUT THERE IS SOMETHING
28 ABOUT THAT THAT THE COURT MIGHT WANT TO KNOW.

1 THE COURT: ALL RIGHT.

2 THE WITNESS: I MEAN, ACTUAL --

3 THE COURT: HOLD ON --

4 THE WITNESS: MY ANSWER WAS NOT COMPLETELY
5 ACCURATE.

6 THE COURT: JUST HOLD ON ONE SECOND.

7 SO YOU HAD MORE THAN ONE DISCUSSION WITH
8 MR. LEVIN ABOUT OBTAINING THESE CHECKS THAT HE WOULD
9 DEPOSIT IN PROGRESSIVE SAVINGS & LOAN.

10 THE WITNESS: ABOUT OBTAINING THESE CHECKS, WE HAD
11 SEVERAL DISCUSSIONS ABOUT THE CHECKS --

12 THE COURT: I ASSUME HE DIDN'T COME TO YOU AND YOU
13 IMMEDIATELY WROTE HIM A CHECK FOR \$100,000. IS THAT ABOUT
14 RIGHT? DID YOU TALK ABOUT IT AHEAD OF TIME?

15 THE WITNESS: HE SAID THAT HE WOULD PROVIDE THE
16 MONEY TO MAKES IT GOOD. I KNEW IT WASN'T GOOD. THERE WAS
17 ONLY LIKE 50- OR 60,000 IN THAT CHECKING ACCOUNT. HE SAID
18 BEFORE HE DEPOSITED IT HE WOULD GIVE ME THE MONEY.

19 THE COURT: DID HE?

20 THE WITNESS: NO. THAT'S WHY I STOPPED IT.

21 THE COURT: YOU STOPPED THE CHECK?

22 THE WITNESS: I STOPPED IT WHEN HE DIDN'T COME UP
23 WITH THE MONEY. I WAS REALLY CONCERNED ABOUT THAT CHECK
24 BEING OUT THERE, AND I STOPPED IT OVER AT MITSUBISHI.

25 THE COURT: THE OTHER CHECK YOU SAID WAS ALSO
26 WRITTEN ON A B.B.C. ACCOUNT?

27 THE WITNESS: THAT'S WHEN HE CAME BACK TO ME, SAID,
28 "YOU HAVE MESSED UP ALL THIS WHOLE FINANCIAL TRANSACTION I

1 WAS DOING, MR. HUNT. WHY DID YOU DO THAT? WHY DID YOU
2 STOP IT?" HE SCREAMED AT ME ABOUT THAT AND EVERYTHING
3 ELSE. HE SAID -- THAT'S WHEN HE NEEDED THE NEW CHECK, AND
4 THAT'S WHEN TOM ALSO GOT INVOLVED. TOM PROVIDED HIM
5 ANOTHER CHECK.

6 THE COURT: WITH YOUR PERMISSION?

7 THE WITNESS: YES, YES.

8 THE COURT: YOU SAID YESTERDAY THAT MAY AND
9 TAGLLANETTI AND OTHERS WERE INVOLVED IN THE PREPARATION OF
10 THE SEVEN-PAGE LIST.

11 THE WITNESS: YES.

12 THE COURT: TELL ME ABOUT THAT.

13 THE WITNESS: ON JUNE 4TH AFTER I HAD LEFT RON
14 LEVIN'S HOUSE AND WE HAD THE DISAGREEMENT ABOUT THIS
15 OPTION DEAL, WHICH IS SIGNED JUNE 6TH AND JUNE 5TH
16 VARIOUSLY BY LEVIN, WHICH CAME INTO EVIDENCE IN THE CASE,
17 WE HAD A BIG DISPUTE ABOUT THAT, AND HE SAID HE WAS -- HE
18 WASN'T GOING TO GO THROUGH WITH HIS DEAL WITH ME TO
19 COMPLETE THIS CONTRACT AND PROVIDE THE MONEY BECAUSE OF
20 THE PROVISION --

21 THE COURT: CUT TO THE CHASE SCENE.

22 THE WITNESS: I LEFT MY HOUSE, I WENT TO MY OFFICE
23 AND TOLD EVERYBODY WHAT HAD HAPPENED WHICH MIGHT AFFECT
24 OUR ABILITY TO -- TO HONOR OUR COMMITMENTS TO KILPATRICK
25 AND THE MERGER. AND WE HAD A BIG POWWOW ABOUT WHAT TO DO,
26 AND THAT'S WHEN THESE LISTS BEGAN -- WERE DRAWN UP,
27 SPECIFICALLY THE TO-DO LIST, THE MAIN ONE.

28 THAT LIST WAS DRAWN UP IN A CONFERENCE

1 INVOLVING STEVE TAGLLANTTI, DEAN KARNY, TOM MAY, EVAN
2 DICKER --

3 THE COURT: THOSE ARE ALL THE WITNESSES THAT
4 TESTIFIED AGAINST YOU IN THE TRIAL; RIGHT?

5 THE WITNESS: AND ALSO EISENBERG, WHO WASN'T AT
6 THIS MEETING. SOME PEOPLE TESTIFIED AGAINST ME THAT
7 WEREN'T PRESENT AT THAT MEETING.

8 THE COURT: ARE YOU SAYING THAT MR. BARENS
9 SUGGESTED YOU PERJURE YOURSELF, THAT WAS THE SUGGESTION HE
10 GAVE TO YOU DURING YOUR PREPARATION?

11 THE WITNESS: HE DIDN'T USE THAT WORD. HE PUT --
12 IT WAS, "YOU BETTER DO SOME MORE THINKING ABOUT THIS AND
13 THIS WOULD WORK, BUT WHAT YOU ARE TALKING ABOUT WOULDN'T
14 WORK."

15 THE COURT: WHEN WAS THIS --

16 THE WITNESS: IT WAS ALL IN THE CONTEXT OF WHAT I
17 WOULD TESTIFY TO, SO CONSTRUCTIVELY I KNEW HE WAS TELLING
18 ME TO PERJURE MYSELF.

19 THE COURT: WAS THIS BEFORE OR AFTER YOU WERE
20 RELEASED ON BAIL?

21 THE WITNESS: THE CONVERSATIONS THAT I RECALL
22 VIVIDLY ABOUT THIS WERE ONLY AFTER I WAS RELEASED ON BAIL.

23 THE COURT: IT'S YOUR TESTIMONY THAT YOU NEVER TOLD
24 MR. BARENS THAT YOU WERE INVOLVED IN THE MURDER OF LEVIN?

25 THE WITNESS: YES.

26 THE COURT: YOU NEVER TOLD MR. BARENS THAT YOU WENT
27 TO MR. LEVIN'S HOUSE WITH MR. PITTMAN AND WERE INVOLVED IN
28 A CONSPIRACY TO MURDER MR. LEVIN?

1 THE WITNESS: CORRECT. I NEVER TOLD HIM THAT.

2 THE COURT: YOU WENT THROUGH A LITANY OF -- YOU
3 DESCRIBED THEM AS SOME OF THE PROBLEMS MR. BARENS HAD THAT
4 YOU DESCRIBED AS PERSONAL PROBLEMS CONCERNING INFIDELITIES
5 OR WHATEVER. HOW DID YOU BECOME AWARE OF THOSE THINGS?

6 THE WITNESS: WELL, A FEW DIFFERENT WAYS. ONCE I
7 WAS IN -- IN A SMALL PARK THAT IS RIGHT BELOW SUNSET
8 BOULEVARD, AND THEY HAVE A LITTLE MINIATURE GOLF RANGE AND
9 IT WAS RIGHT ABOVE HIS OFFICES. I WAS JUST WALKING AROUND
10 THE PARK, YOU KNOW, WHILE OUT ON BAIL. I SAW MR. BARENS
11 SITTING ON A PARK BENCH WITH CYNTHIA ALLISON, WHO IS A
12 REPORTER. I WENT OVER THERE. HE BECKONED ME, AND I SAT
13 ON THE BENCH WITH THEM. MR. BARENS HAD HIS ARM AROUND
14 THIS LADY, AND THEY WERE IN A ROMANTIC SORT OF MOOD. THAT
15 WAS THE ATMOSPHERE.

16 THE COURT: HE HAD YOU COME OVER AND WATCH THIS?

17 THE WITNESS: WELL, I SAW HIM, HE SAW ME ABOUT THE
18 SAME TIME AND HE BECKONED, SO I CAME OVER THERE. THEN
19 AFTERWARDS HE TALKED TO ME ABOUT -- HE GAVE ME A GRAND
20 SPEECH ABOUT THAT PARTICULAR LIAISON THAT HE HAD IN HIS
21 LIFE AND HOW -- THAT A GENTLEMAN DID NOT LET -- YOU KNOW,
22 RIGHT UNDER THE PICTURE OF WINSTON CHURCHILL, HIS FAMILY
23 KNOW ABOUT THESE THINGS, WHAT A GENTLEMAN DID, THAT HE
24 WOULD RATHER DIE RATHER THAN HAVE THEM FIND OUT.

25 ON ANOTHER OCCASION I WAS IN HIS OFFICE AND
26 WE WERE JUST ABOUT TO TALK ABOUT SUBSTANTIVE MATTERS ON
27 THE CASE, AND HE SAID, "EXCUSE ME," WHEN A LADY CAME IN,
28 WHO WAS INTRODUCED TO ME AS VICKI. HE TALKED TO HER FOR A

1 SECOND, AND SHE WENT OUT. THEN HE SHOWED ME AN EMERALD
2 NECKLACE HE WAS IN POSSESSION OF AND THEN HE EXPLAINED IN
3 SOME GRAPHIC TERMS AN INTERLUDE THAT HE HAD WITH THIS LADY
4 ON AN EARLIER OCCASION IN THE OFFICE ON HIS DESK. I WENT
5 OUTSIDE, AND SHE WAS STILL SITTING. HE SAID, "I REALLY
6 HAVE SOME BUSINESS HERE."

7 HE HAD HIS OFFICE SET UP WITH A LITTLE
8 JACUZZI AND BATHROOM AND EVERYTHING ELSE LIKE THAT. HE
9 SAID THAT I SHOULD UNDERSTAND AND WE CAN DO THIS SOME
10 OTHER TIME AND THINGS LIKE THIS.

11 THE COURT: BEYOND THE THINGS THAT YOU SAW DID HE
12 ACTUALLY TELL YOU OF SOME OF THESE PERSONAL THINGS?

13 THE WITNESS: HE TOLD ME THAT HE HAD MADE LOVE TO
14 THIS WOMAN ON HIS DESK THERE AND ONE OF THE REASONS THAT
15 HE LIKED HER SHE WAS, SHE WAS SO TALL. SHE WAS MUCH
16 TALLER THAN HIM.

17 HE TOLD ME WHAT THE PROTOCOL WAS FOR
18 GENTLEMAN IN THESE AFFAIRS. HE WAS LECTURING ME ABOUT HOW
19 ONE DID THESE THINGS.

20 THE COURT: MR. BARENS REPRESENTED YOU FOR A PERIOD
21 OF TIME IN THE SAN MATEO CASE?

22 THE WITNESS: YES.

23 THE COURT: DURING WHAT PERIOD OF TIME?

24 THE WITNESS: FOR THE BAIL MOTIONS THAT WERE UP
25 THERE AND --

26 THE COURT: GIVE MY TIME FRAMES.

27 THE WITNESS: EXCUSE ME. IT WAS BETWEEN JULY OF
28 1985 AND THE END OF THE PRELIMINARY HEARING, WHICH WAS IN

1 JANUARY OF 1986.

2 THE COURT: YOU SAID THAT DURING THE END OF YOUR
3 SANTA MONICA TRIAL MR. BARENS CAME TO YOU IN LOCKUP AND
4 TOLD YOU NOT TO TALK ABOUT THESE PERSONAL PROBLEMS THAT
5 YOU HAD OBSERVED.

6 THE WITNESS: NOT IN SAN MATEO --

7 THE COURT: I MISSPOKE IF I SAID SAN MATEO. SANTA
8 MONICA.

9 YOU SAID AT SOME POINT DURING THE DEATH
10 PENALTY PORTION THAT HE CAME TO YOU AND TALKED TO YOU
11 ABOUT THIS.

12 THE WITNESS: YES.

13 THE COURT: WHY -- WHAT BROUGHT THIS ON THAT HE
14 SUDDENLY WAS ASKING YOU AT THIS POINT NOT TO TALK ABOUT
15 THESE PERSONAL PROBLEMS?

16 THE WITNESS: I WAS ABOUT TO MAKE A MARSDEN MOTION.
17 YOU KNOW HOW THINGS COME OUT IN MARSDEN MOTIONS.

18 THE COURT: DID YOU TELL HIM THAT -- THAT THESE
19 THINGS WERE GOING TO COME OUT IN THE MARSDEN MOTION?

20 THE WITNESS: I TOLD HIM THAT I WAS GOING TO FOCUS
21 ON WHAT THE SUBSTANTIVE PROBLEM WAS AND NOT GO INTO THE
22 GORY DETAILS AS TO OTHER THINGS THAT CONFLICTED WITH THE
23 ISSUES IN THE CASE. THE MAIN ISSUE IS WHETHER OR NOT HE
24 GOT WITNESSES, NOT WHETHER OR NOT HE CHEATED ON HIS WIFE
25 OR SOMETHING LIKE THAT I FELT.

26 I SAID, "LISTEN, I'M GOING TO TALK ABOUT THE
27 FACTS, ABOUT WHY YOU DIDN'T GET WITNESSES AND WHY I DIDN'T
28 TAKE THE STAND AND THINGS LIKE THAT."

1 HE SAID, "YOU ARE NOT GOING TO TALK ABOUT
2 THESE OTHER THINGS? YOU ARE NOT GOING TO TELL THE PRESS
3 ABOUT IT?"

4 I SAID, "NO, WHEN THE TIME COMES TO TELL THE
5 TRUTH ABOUT WHY YOU DIDN'T DO THINGS --"

6 THE COURT: YOU WERE IN THE MIDDLE OF THE PENALTY
7 FAZE AT THIS POINT?

8 THE WITNESS: WE WERE GOING TO HAVE THIS MARSDEN
9 MOTION, AND I THOUGHT HE WOULD RESPOND TO WHATEVER. IT
10 DIDN'T HAPPEN THAT WAY. THE JUDGE ASKED ME, BUT DIDN'T
11 ASK ME ATTORNEY SPECIFIC QUESTIONS.

12 THE COURT: WERE YOU THREATENING HIM AT THAT POINT
13 TO SAY THAT YOU WERE GOING TO REVEAL THESE PERSONAL THINGS
14 THAT YOU OBSERVED?

15 THE WITNESS: HE CAME TO ME. IT WAS NEVER IN MY
16 MIND TO BRING THOSE THINGS UP IN THESE MARSDEN MOTIONS. I
17 WAS GOING TO TELL THEM ABOUT THESE WITNESSES, AND IT WAS
18 ABOUT THE WITNESSES. IT NEVER EVEN CROSSED MY MIND TO
19 BRING UP THOSE THINGS, THE THINGS THAT I HAD SEEN IN HIS
20 LIFE AND THOSE PARTICULARS. HE INJECTED IT INTO THE
21 CONSIDERATION AND I SAID NO.

22 THEN SUBSEQUENT TO THAT I URGED HIM AND TOLD
23 HIM THAT I DID, HOWEVER, EXPECT HIM TO TELL THE TRUTH
24 ABOUT THESE OTHER MATTERS, BUT IT WAS NOT --

25 THE COURT: TELL THE TRUTH WHEN? THAT'S WHAT I AM
26 TRYING TO UNDERSTAND.

27 THE WITNESS: I WAS GOING TO EXPECT THAT WE WOULD
28 HAVE A BIG LONG MARSDEN MOTION, BUT THE JUDGE PUT SOME

1 REAL SCOPE LIMITATIONS ON THE MARSDEN MOTION AND STOPPED
2 IT.

3 THE COURT: YOU ADMITTED PERJURING YOURSELF DURING
4 THE CANTOR-FITZGERALD DEPOSITIONS. DID YOU RELATE THAT TO
5 MR. BARENS THAT YOU HAD PERJURED YOURSELF DURING THE
6 CANTOR-FITZGERALD DEPOSITIONS?

7 THE WITNESS: YES.

8 THE COURT: AND YOU TOLD HIM THAT YOU HAD IN FACT
9 MET WITH MR. KARNY PRIOR TO MR. KARNY'S DEPOSITION AND
10 AFTER YOUR DEPOSITION WAS TAKEN?

11 THE WITNESS: I MET WITH HIM, AND I AM SURE IT WAS
12 BEFORE HIS DEPOSITION. AS TO WHETHER -- WHERE IN SEQUENCE
13 IT WAS -- I'M SURE IT WAS BOTH, YOU KNOW. I'M SURE I --
14 ACTUALLY, THAT I TALKED TO HIM PROBABLY RIGHT AFTER MY
15 DEPOSITION AND RIGHT BEFORE HIS DEPOSITION.

16 THE COURT: DIDN'T YOU TALK TO MR. KARNY ABOUT WHAT
17 HAD HAPPENED DURING YOUR DEPOSITION?

18 THE WITNESS: YES, I DID.

19 THE COURT: DID YOU TELL MR. KARNY THAT YOU LIED
20 DURING YOUR DEPOSITION?

21 THE WITNESS: YES, I DID.

22 THE COURT: DID YOU SAY THAT YOU HAD PERSONALLY
23 ADDRESSED THE SHAREHOLDERS IN THE SATURN COMPANY IN
24 CANADA?

25 THE WITNESS: NO, THAT WAS KILPATRICK. I WAS AT
26 THE SHAREHOLDERS MEETING IN VANCOUVER.

27 THE COURT: WHY WERE YOU THERE?

28 THE WITNESS: WELL, I WAS A BIG PART OF WHAT WAS

1 HAPPENING. HE WAS TRANSFERRING, AS HE BOLDLY PROCLAIMED
2 TO THE SHAREHOLDERS ASSEMBLED, 279 MILLION DOLLARS WORTH
3 OF ASSETS PURSUANT TO HIS MERGER AGREEMENT WITH SATURN IN
4 RETURN FOR 89 PERCENT OF THAT STOCK. HE MADE A BIG PITCH
5 AND THEY HAD A VOICE VOTE AS TO WHETHER THAT WOULD BE
6 RATIFIED BY THE SHARE HOLDERS.

7 THE COURT: HOW MUCH OF THE 270 MILLION WAS MADE UP
8 OF THE CONTRACTS WITH MICROGENESIS?

9 THE WITNESS: OVER 150 MILLION OF HIS CLAIMED VALUE
10 WAS RELATED TO THINGS THAT HE WAS -- FOR A LICENSING
11 AGREEMENT. THIS WAS THIS NOVEMBER OF 1983 LICENSE
12 AGREEMENT WHICH WAS --

13 THE COURT: HOLD ON.

14 IT WAS IMPORTANT FOR YOU TO BE THERE IN
15 CANADA TO SUPPORT THE FACT THAT THERE WAS A 150 MILLION
16 COMING FROM THIS AND THAT YOU HAD A CONTRACT?

17 THE WITNESS: RIGHT. AND I DID SAY SOMETHING
18 BRIEFLY TO THEM, THE SHAREHOLDERS. BEN DICKER WAS UP
19 THERE WITH ME, AND MAYBE EVEN ONE OTHER B.B.C. MEMBER.

20 THE COURT: GIVE ME ONE OTHER SECOND.

21

22 (PAUSE.)

23

24 THE COURT: MR. BARENS TESTIFIED THAT IN THIS --
25 WHAT WAS CALLED THE FIRST TIME WHILE YOU WERE IN THE HALL
26 OF JUSTICE THAT THE TO-DO LIST WAS A GUIDE FOR YOU TO
27 GUIDE YOU IN YOUR ACTIVITIES IN THE MURDER OF MR. LEVIN.
28 DID YOU EVER HAVE ANY CONVERSATION WITH MR. BARENS ALONG

1 THOSE LINES THAT THE TO-DO LIST WAS A GUIDE TO YOU TO
2 ASSIST YOU IN THE MURDER OF MR. LEVIN?

3 THE WITNESS: NO, I DIDN'T.

4 MR. CRAIN: YOUR HONOR, COULD --

5 THE COURT: YES.

6 MR. CRAIN: I THOUGHT -- WITH ALL DUE RESPECT TO
7 THE COURT, I THOUGHT THAT WHAT MR. BARENS WAS SAYING WAS
8 THAT THIS --

9 THE COURT: THAT IS THE QUESTION.

10 MR. CRAIN: I CAN TAKE IT UP WITH THE COURT OUTSIDE
11 OF THE PRESENCE OF THE WITNESS IF THE COURT CHOOSES. I'M
12 NOT TRY- --

13 THE COURT: I'M JUST LOOKING AT MY NOTES.

14 MR. CRAIN: I THOUGHT THAT WHILE MR. BARENS DID
15 MAKE THIS CLAIM ABOUT THE STATEMENT IN THE JAIL, I THOUGHT
16 WITH REGARD TO THE LIST --

17 THE COURT: WHAT IS THE OBJECTION?

18 MR. CRAIN: WITH ALL DUE RESPECT, IT MISSTATES THE
19 TESTIMONY OF MR. BARENS.

20 THE COURT: OBJECTION IS OVERRULED.

21 MR. CRAIN: I THOUGHT -- IT WAS THE PROSECUTION'S
22 THEORY, AND THAT'S HOW THAT CAME UP, IN THAT CONTEXT.

23 THE COURT: I UNDERSTAND.

24 MR. CRAIN: ALL RIGHT.

25
26 (PAUSE.)

27
28 THE COURT: YOU NEVER -- STRIKE THAT.

1 DID YOU EVER TELL MR. BARENS THAT THE
2 SEVEN-PAGE LIST WAS A THEATRICAL PRODUCTION?

3 THE WITNESS: NO, I DIDN'T. I ARGUED AGAINST, YOU
4 KNOW, HIS CONCEPT AS SUCH THAT SOMETHING LIKE THAT WOULD
5 BE VIABLE.

6 THE COURT: IT WAS YOUR TESTIMONY THAT -- THIS WAS
7 HIS IDEA.

8 THE WITNESS: YES.

9 THE COURT: DID YOU EVER DISCUSS WITH KAREN SUE
10 MARMOR THAT THIS WAS A THEATRICAL PRODUCTION, THIS
11 SEVEN-PAGE TO-DO LIST?

12 THE WITNESS: ABSOLUTELY NOT.

13 THE COURT: DID MR. -- STRIKE THAT.

14 ALL RIGHT.

15 ANY REDIRECT?

16 MR. CRAIN: YES, YOUR HONOR.

17 YOUR HONOR, JUST A COUPLE OF BRIEF POINTS
18 BEFORE I BEGIN THAT.

19 I THINK THE PROSECUTION WAS ALLOWED TO BRING
20 OUT -- THEY HAD CHARACTER EVIDENCE WITH REGARD TO WHETHER
21 OR NOT MR. HUNT GAVE FALSE TESTIMONY IN HIS
22 CANTOR-FITZGERALD DEPOSITION.

23 I THINK IT'S FAIR TURNABOUT, I'D JUST LIKE TO
24 MAKE THIS OFFER OF PROOF, IF I COULD, VERY QUICKLY IN THE
25 NEXT 20 SECONDS, I THINK THE DEFENSE OUGHT TO BE ALLOWED
26 TO BRING OUT ADDITIONAL EVIDENCE PERTAINING TO MR. BARENS,
27 THE REPUTATION EVIDENCE WHICH WE OFFERED THE OTHER DAY
28 FROM MISS ABRAMSON AND MR. ROSEN AS TO HIS CHARACTER FOR

1 DISHONESTY AND INCOMPETENCE, EVIDENCE THAT HE HAS
2 COMMITTED ACTS OF PERJURY --

3 THE COURT: I HAVE ALREADY RULED ON THIS, AND IT IS
4 NOT RELEVANT. WHAT THE INQUIRY HERE WAS MR. HUNT AN
5 ADMITTED PERJURER DURING THE CANTOR-FITZGERALD. THAT WAS
6 THE AREA OF INQUIRY.

7 MR. CRAIN: YES. OUR POSITION WAS IF THE COURT
8 CAREFULLY EXAMINES THE -- THE COURT AND ALL OF US
9 CAREFULLY EXAMINE THE ISSUE PRESENTED IN THE O.S.C. AS TO
10 CANTOR-FITZGERALD, THAT REALLY WHAT MR. HUNT DID IN HIS
11 DEPOSITION IS IRRELEVANT. I DON'T HAVE A PROBLEM REALLY
12 WITH THIS COURT HEARING IT, BUT WHAT I DO SUGGEST --
13 ALTHOUGH -- IN VIEW OF THE FACT --

14 THE COURT: HOW COULD IT BE IRRELEVANT FOR AN
15 ATTORNEY REPRESENTING A CLIENT TO KNOW THAT HIS CLIENT
16 IS -- HAS PERJURED HIMSELF IN A CIVIL LAWSUIT DEPOSITION?

17 MR. CRAIN: WELL --

18 THE COURT: HOLD ON.

19 AND WAS INVOLVED IN THE PERJURY OF ANOTHER
20 WITNESS IN THAT SAME DEPOSITION TO CHOOSE THEN NOT TO GET
21 INTO THAT.

22 MR. CRAIN: WELL --

23 THE COURT: SO HOW COULD YOU SAY IT'S IRRELEVANT.
24 ALTHOUGH YOU MAY OR MAY NOT BE RIGHT IN THE ULTIMATE
25 ISSUE, THE QUESTION HERE IS IS IT ADMISSIBLE EVIDENCE.
26 CLEARLY, IT'S ADMISSIBLE EVIDENCE.

27 MR. CRAIN: THE COURT OVERRULED THE OBJECTION?

28 THE COURT: LET'S GO AHEAD.

1 MR. CRAIN: I JUST DID WANT TO ADD THAT WE WOULD
2 OFFER ALSO AS TO MR. BARENS' CHARACTER HIS NUMEROUS
3 LAWSUITS AGAINST HIM FOR MALPRACTICE IN WHICH HE'S GIVEN
4 FALSE STATEMENTS --

5 THE COURT: WE TALKED ABOUT THIS WEEKS AGO. I'M
6 NOT GOING TO ALLOW THAT TYPE OF EVIDENCE.

7 MR. CRAIN: VERY WELL.

8 THE COURT: WHETHER IT EXISTS OR NOT.

9 MR. CRAIN: YEAH.

10
11 (PETITIONER'S COUNSEL CONFER.)

12
13 REDIRECT EXAMINATION +

14
15 BY MR. CRAIN:

16 Q MR. HUNT, AT THE BEGINNING OF THE
17 CROSS-EXAMINATION MR. MC MULLEN ASKED YOU SOME QUESTIONS
18 ABOUT MR. KARNY'S DEPOSITION, AND I BELIEVE HE ASKED IF
19 YOU HAD HAD DISCUSSIONS WITH MR. KARNY IN WHICH MR. KARNY
20 ADMITTED GIVING FALSE TESTIMONY. IS THAT CORRECT, THAT
21 MR. KARNY DID ADMIT THAT TO YOU?

22 A AMONG OTHER PLACES HE ADMITTED IT ON THE
23 STAND IN SAN MATEO COUNTY.

24 Q THAT'S WHAT I WAS GOING TO ASK YOU.

25 MR. KARNY TESTIFIED AS A PROSECUTION WITNESS
26 IN THE SAN MATEO TRIAL IN 1982; CORRECT?

27 MR. MC MULLEN: OBJECTION.

28 THE WITNESS: I TOOK HIM ON CROSS-EXAMINATION, AND

1 I BROUGHT ALL THOSE ISSUES OUT.

2 BY MR. CRAIN:

3 Q IN CROSS-EXAMINATION BEFORE THE JURY IN SAN
4 MATEO DID MR. KARNY ADMIT THAT HE HAD LIED UNDER OATH IN
5 THE GIVING OF THIS CANTOR-FITZGERALD DEPOSITION?

6 A YES.

7 Q NOW, THE SAN MATEO TRIAL, YOU WERE ON TRIAL
8 IN THE ESLAMINIA MATTER; CORRECT?

9 A CORRECT.

10 Q ON MOTION OF THE PROSECUTION, THE PROSECUTION
11 WAS ALSO ALLOWED IN ADDITION TO THE ESLAMINIA EVIDENCE TO
12 PRESENT A REPEAT OF THE LEVIN TRIAL; IS THAT CORRECT?

13 MR. MC MULLEN: OBJECTION. RELEVANCY.

14 THE COURT: SUSTAINED.

15 MR. CRAIN: WELL, IT'S FOUNDATIONAL, YOUR HONOR.

16 THE COURT: WHERE ARE YOU GOING?

17 MR. CRAIN: I THINK IT'S -- ALL RIGHT.

18 IT GOES TO THE CANTOR-FITZGERALD TESTIMONY
19 HERE OF MR. HUNT ON CROSS-EXAMINATION.

20 THE COURT: DIRECT THE QUESTION TO HIM. LET ME
21 HERE WHAT IT IS.

22 BY MR. CRAIN:

23 Q NOW, MR. MC MULLEN HAS READ TWO OR THREE
24 PORTIONS OF YOUR TESTIMONY AT SAN MATEO; IS THAT CORRECT?

25 A YES.

26 Q I BELIEVE YOU WERE ON THE STAND SOME 22 COURT
27 DAYS, SOMETHING LIKE THAT?

28 A CORRECT.

1 Q YOU WERE CROSS-EXAMINED FOR APPROXIMATELY HOW
2 MANY OF THOSE COURT DAYS, WOULD YOU SAY?

3 A ABOUT 11 --

4 MR. MC MULLEN: OBJECTION. RELEVANCY.

5 THE COURT: I'LL SEE WHERE IT'S GOING.

6 THE WITNESS: 11 OR 12.

7 BY MR. CRAIN:

8 Q AND YOU WERE ASKED QUESTIONS BEFORE THE JURY
9 ABOUT THE CANTOR-FITZGERALD DEPOSITION OF YOUR OWN; IS
10 THAT RIGHT?

11 A YES. EVERYBODY'S POSITION CAME OUT AT THAT
12 TRIAL ABOUT CANTOR-FITZGERALD, THE PROSECUTION WITNESSES
13 AND MINE.

14 Q AND YOU GAVE TESTIMONY TO THE JURY JUST AS
15 YOU HAVE GIVEN HERE TODAY THAT IN FACT YOU DID LIE IN
16 CERTAIN INSTANCES IN THAT DEPOSITION?

17 A YES.

18 MR. MC MULLEN: OBJECTION. RELEVANCY.

19 THE COURT: WHAT'S THE RELEVANCE?

20 MR. CRAIN: IT SHOWS A PRIOR CONSISTENT STATEMENT.

21 THE COURT: IS ANYBODY CHALLENGING HIM THAT HE
22 LIED? IS HE NOW SAYING THAT HE TOLD THE TRUTH?

23 LET'S MOVE ON.

24 MR. CRAIN: OKAY.

25 BY MR. CRAIN:

26 Q AND MR. MC MULLEN -- WELL, I GUESS THAT'S
27 ALONG THE SAME LINES.

28 NOW, IN -- LET'S GO TO THE KILPATRICK ISSUE.

1 YOU TOLD US ABOUT A CONTRACT THAT MR. KILPATRICK ENTERED
2 INTO WITH MICROGENESIS IN NOVEMBER OF 1983; CORRECT?

3 A YES, TWO DIFFERENT CONTRACTS.

4 Q AND --

5 THE COURT: YOU SAID THERE WAS ONLY ONE DOCUMENT,
6 THOUGH, DIDN'T YOU?

7 THE WITNESS: SUBSTANTIALLY THEY REPRESENT ONE
8 AGREEMENT, YES, BECAUSE THEY'RE INTERLOCKING.

9 MR. CRAIN: YOUR HONOR, COULD THIS BE MARKED NEXT
10 IN ORDER? I BELIEVE IT'S 1887.

11 THE COURT: IS IT ALREADY ON THE EXHIBIT LIST?

12 MR. CRAIN: NO.

13 THE COURT: 2- --

14 THE CLERK: 286.

15 THE COURT: NO, 286 SHOULD BE THE LETTER TO MR.
16 BARENS, FIVE PAGES.

17 MR. KLEIN: IT'S PROBABLY OVER THERE, YOUR HONOR.

18 THE COURT: MR. CRAIN, IS 286 OVER THERE?

19 MR. KLEIN: THAT IS THE LETTER TO BARENS IN '95?

20 THE COURT: FIVE-PAGE LETTER.

21 MR. CRAIN: NO, YOUR HONOR.

22 MR. MC MULLEN: YOUR HONOR HAD IT.

23 THE COURT: I HAD A COPY GIVEN TO ME BY THE WITNESS
24 TO LOOK AT. SOMEONE HAD A XEROX COPY.

25 MR. CRAIN: I THINK WHAT I'D LIKE TO DO IS OFFER
26 THE ORIGINAL.

27 THE WITNESS: THAT'S FINE. THAT IS THE CARBON
28 COPY.

1 MR. CRAIN: THE CARBON IS PROBABLY EASIER TO READ.
2 THE COURT: THE ONLY NOTATION -- "CHANGE ORIGINAL,
3 J.H." THAT IS ON PAGE FOUR. I DON'T KNOW WHICH COPY THAT
4 YOU GUYS WERE LOOKING AT.

5 AT THE BREAK WHY DON'T YOU GUYS LOOK AT THIS, THE
6 CARBON COPY AND ANOTHER COPY AND MAKE SURE THE CLERK HAS
7 COPIES OF THIS.

8 287 WILL BE THIS NOVEMBER, '83 AGREEMENT.

9 THE WITNESS: CORRECT.

10 THE COURT: THIS IS WITH KILPATRICK.

11
12 (MARKED FOR ID = PETITIONER'S 287,
13 DOCUMENT.)
14

15 THE COURT: ALL RIGHT.

16 GO.

17

18 BY MR. CRAIN:

19 Q YOU SAID THERE IS A CHANGE IN 286. WAS THAT
20 CHANGE MADE BEFORE BARENS WAS SENT THE LETTER?

21 A WELL, AFTER -- YOU KNOW -- IT IS DIFFICULT TO
22 WORK WITH CARBON, BUT I -- SOMEWHERE RIGHT BEFORE I PUT
23 THAT LETTER TO MR. BARENS IN THE ENVELOPE I MADE SOME
24 SMALL CHANGE, AND I NOTED IT ON MY CARBON COPY FOR THE
25 PURPOSES OF MY OWN RECORDS.

26 THE COURT: ALL RIGHT.

27 YOU GUYS GET TOGETHER AND FIND THE COPY THAT
28 WAS SENT.

1 MR. CRAIN: YES.

2 MR. MC MULLEN: WE HAVE A COPY OF THE ONE THAT WAS
3 SENT TO BARENS.

4 BY MR. CRAIN:

5 Q ALL RIGHT.

6 LET'S MOVE BACK TO EXHIBIT 287. I NOTICE IT
7 HAS A MARKING DOWN HERE AT THE BOTTOM WHERE IT SAYS,
8 "DEFENDANT'S EXHIBIT 5 -- 3-18-85." DO YOU KNOW WHAT THAT
9 IS A REFERENCE TO?

10 A YEAH. MR. TITUS USED THIS DOCUMENT IN
11 CROSS-EXAMINATION OF DR. EUGENE BROWNING. MR. TITUS HAD
12 BROWNING ON CROSS DURING MY PRELIMINARY HEARING AND USED
13 THOSE TWO.

14 THE COURT: PRELIMINARY HEARING IN LOS ANGELES OR
15 SAN MATEO?

16 THE WITNESS: LOS ANGELES ON THE SAN MATEO CASE --
17 I MEAN, ON THE LEVIN CASE.

18 MR. CRAIN: YOUR HONOR, THIS IS, FOR THE RECORD, A
19 DOCUMENT CONSISTING OF SIX PAGES AND THE FIRST THREE PAGES
20 ARE DESIGNATED "EXCLUSIVE MARKETING AGREEMENTS," AND THE
21 REMAINING THREE PAGES ARE DESIGNATED "LICENSING
22 AGREEMENT."

23 THE COURT: IT WILL BE MARKED 287.

24

25 (MARKED FOR ID = PETITIONER'S 287,
26 DOCUMENT.)

27

28

1 BY MR. CRAIN:

2 Q CALLING YOUR ATTENTION, MR. HUNT, TO THIS
3 DOCUMENT, HAVE YOU SEEN THIS BEFORE?

4 A YES.

5 Q WHAT IS IT?

6 A IT IS A -- IT REPRESENTS THE NOVEMBER, 1983
7 AGREEMENTS THAT I HAVE BEEN REFERRING TO THROUGH OUT MY
8 TESTIMONY WITH MR. KILPATRICK.

9 MR. CRAIN: YOUR HONOR, IS IT ALL RIGHT IF I STAND
10 HERE? I NEED TO REFER TO IT.

11 THE COURT: YES.

12 MR. CRAIN: THANK YOU.

13 BY MR. CRAIN:

14 Q THIS WAS, AS YOU TOLD US, USED AT YOUR
15 PRELIMINARY HEARING BY MR. BARENS' ASSOCIATE, LEWIS TITUS;
16 IS THAT RIGHT?

17 A YES.

18 Q AND CALLING YOUR ATTENTION TO PAGE THREE OF
19 THE DOCUMENT, DOES THAT CONTAIN YOUR SIGNATURE?

20 A YES, IT DOES.

21 Q IS THAT ON BEHALF OF MICROGENESIS, INC., AS
22 ITS PRESIDENT?

23 A YES.

24 Q DOES IT ALSO CONTAIN THE SIGNATURE OF THE
25 UNITED FINANCIAL OPERATIONS, INC., PRESIDENT ON THERE?

26 A HE SIGNED THIS IN MY PRESENCE, YES, IT DOES.

27 THE COURT: THAT'S MR. KILPATRICK?

28 THE WITNESS: YES, IT IS WILLIAM KILPATRICK,

1 PRESIDENT.

2 BY MR. CRAIN:

3 Q CALLING YOUR ATTENTION TO -- SO DO PAGE SIX
4 OF THE DOCUMENT, DOES THAT ALSO CONTAIN YOUR SIGNATURE AS
5 THE PRESIDENT OF MICROGENESIS, INC.?

6 A YES, IT DOES.

7 Q DOES IT ALSO CONTAIN THE SIGNATURE OF WILLIAM
8 KILPATRICK AS PRESIDENT OF UNITED FINANCIAL OPERATIONS,
9 INC.?

10 A YES, IT DOES.

11 Q DOES IT ALSO CONTAIN THE SIGNATURE OF, I
12 BELIEVE THAT'S MR. --

13 A ROY ROBINSON.

14 Q THE PRESIDENT OF SATURN ENERGY AND RESOURCES,
15 LTD.?

16 A YES, IT DOES.

17 Q AND ARE THOSE THE PARTIES YOU HAVE BEEN
18 DISCUSSING, THE CORPORATIONS, IN YOUR TESTIMONY ABOUT THIS
19 AGREEMENT?

20 A YES.

21 Q ALL RIGHT.

22 NOW, I NOTICE IN THIS AGREEMENT IT MAKES
23 REFERENCE TO ON PAGE FOUR WHERE IT -- IT IS SHOWN THAT THE
24 AGREEMENT ON NOVEMBER 19, 1983, DESCRIBES MICROGENESIS AS
25 THE LICENSOR; IS THAT RIGHT?

26 MR. MC MULLEN: OBJECTION. BEST EVIDENCE.

27 THE COURT: I ASSUME IT'S PREPARATORY.

28 MR. CRAIN: YES, YOUR HONOR.

1 THE WITNESS: YES, IT DOES. IT DESCRIBES
2 MICROGENESIS AS THE LICENSOR OF THE ATTRITION MILLS
3 TECHNOLOGY, AND IT DESCRIBES WILLIAM KILPATRICK'S OUTFIT
4 AS THE LICENSEE. WE WERE TRANSFERRING TO HIM TECHNOLOGY
5 RIGHTS, WHICH HE WAS DESIROUS OF RECEIVING FROM OUR
6 COMPANY.

7 THE COURT: DID YOU EVER USE THIS FORM BEFORE?

8 THE WITNESS: NO. ACTUALLY I THINK THAT WAS
9 PREPARED BY MR. KILPATRICK'S OUTFIT. DECLAN O'DONNELL WAS
10 THERE ON THE DAY THAT THESE DOCUMENTS WERE SIGNED, AT
11 LEAST DURING PART OF THAT DAY, AND IT WAS MY UNDERSTANDING
12 MR. O'DONNELL HAD PREPARED THAT WITH MR. KILPATRICK.
13 THESE AGREEMENTS WERE ALREADY READY AT THE TIME THAT I
14 CAME TO THE OFFICE.

15 THE COURT: YOU SIGNED THIS IN COLORADO?

16 THE WITNESS: YES, I DID.

17 THE COURT: WHERE IN COLORADO?

18 THE WITNESS: AT MR. KILPATRICK'S OFFICES WHICH
19 WERE -- SOMEWHERE IN DENVER, AS I RECALL. HE LIVED IN
20 LIKE LITTLETON AT THE TIME, AND IT WAS IN HIS OFFICES,
21 WHICH WERE IN DENVER.

22 THE COURT: WHY ISN'T IT DATED?

23 THE WITNESS: IT'S DATED ON THE TOP LINE OF THE
24 PAGE --

25 THE COURT: LEFT BLANK.

26 MR. CRAIN: IT'S DATED ON THE THIRD OR FOURTH --

27 THE COURT: IT SAYS "BLANK OF NOVEMBER."

28 THE WITNESS: AS FAR AS -- I DON'T KNOW. I DON'T

1 KNOW.

2 YOU'LL ALSO SEE ON PAGE 4 IT SAYS "19TH DAY
3 OF NOVEMBER, 1983." ON ONE AGREEMENT IT JUST HAS
4 "NOVEMBER, 1983," AND ON THE OTHER ONE IT SAYS, "NOVEMBER
5 19TH, 1983."

6 IT WAS -- THERE WAS SOME DISCUSSION ABOUT
7 WHETHER THE FIRST AGREEMENT SHOULD BE RETYPED. INSTEAD WE
8 DECIDED TO INTERLINEATE BECAUSE WE ALL HAD TO CATCH PLANES
9 AND THINGS LIKE THAT.

10 BY MR. CRAIN:

11 Q WAS THIS ALL SIGNED AT THE SAME TIME,
12 REFERRING TO ALL SIX PAGES IN EXHIBIT 287?

13 A ALL PAGES WERE SIGNED AND SOME INITIALS WERE
14 PUT IN SOME OF THE PLACES WHERE CHANGES WERE MADE BETWEEN
15 MR. KILPATRICK AND I.

16 Q A FEW MINUTES AGO BEFORE JUDGE CZULEGER ASKED
17 YOU A QUESTION I ASKED YOU IF MICROGENESIS, INC., WAS THE
18 LICENSOR. REFERRING TO EXHIBIT 287, DOES THIS AGREEMENT
19 INDICATE,

20 (READING):

21 "LICENSOR IDENTIFIES THE FOLLOWING
22 TECHNOLOGY AS PROPRIETORSHIP
23 PROPERTIES TO BE LICENSED HEREUNDER
24 BY ITSELF OR ITS" --

25 MR. MC MULLEN: OBJECT, YOUR HONOR. OBJECT AS BEST
26 EVIDENCE.

27 MR. CRAIN: I'M TRYING TO HAVE THE WITNESS EXPLAIN
28 SOMETHING TO THE COURT.

1 THE COURT: JUMP TO THE QUESTION.

2 MR. CRAIN: SURE.

3 BY MR. CRAIN:

4 Q DOES IT DESCRIBE ATTRITION MILLING EQUIPMENT
5 AS DEVELOPED BY DR. EUGENE BROWNING AS SOMETHING OF THE
6 LICENSED PROPERTY BELONGING TO MICROGENESIS, THE LICENSOR?

7 MR. MC MULLEN: AGAIN, YOUR HONOR, BEST EVIDENCE.

8 THE COURT: OVERRULED.

9 THE WITNESS: IT DESCRIBES THE ATTRITION TECHNOLOGY
10 THAT IS BEING LICENSED AS PROPRIETARY. USES THE WORD
11 "PROPRIETARY" TO THE LICENSOR, MICROGENESIS OF NORTH
12 AMERICAN.

13 BY MR. CRAIN:

14 Q WHAT DID THAT MEAN?

15 A THAT MEANT THAT MR. KILPATRICK WAS ENTERING
16 THESE COVENANTS WITH MICROGENESIS AND PROMISES
17 CONSIDERATION TO ACQUIRING SOMETHING THAT HE DIDN'T FEEL
18 HE HAD, WHICH WAS THE RIGHTS TO THE TECHNOLOGY. HE NEEDED
19 TO BUY IT FROM US.

20 Q SO, IN OTHER WORDS, WAS IT YOUR BELIEF THAT
21 BY PLACING HIS SIGNATURE ON THAT DOCUMENT MR. KILPATRICK
22 WAS ACKNOWLEDGING THAT THE LEGAL RIGHTS TO THE ATTRITION
23 MILLS INVENTED BY DR. BROWNING BELONGED TO MICROGENESIS?

24 MR. MC MULLEN: OBJECTION. CALLS FOR SPECULATION.

25 THE COURT: HE CAN STATE HIS UNDERSTANDING.

26 THE WITNESS: MY UNDERSTANDING WAS HIS WHOLE REASON
27 FOR DEALING WITH US WAS THAT HE NEEDED TO BUY SOMETHING
28 THAT WE CONTROLLED. HE RECOGNIZED THE FACT THAT WE

1 CONTROLLED IT, AND HE WAS WILLING TO GIVE EXTREMELY
2 CONSIDERABLE CONSIDERATION, SUBSTANTIAL CONSIDERATION TO
3 ACQUIRE IT FROM US AND THAT'S WHY HE SIGNED THESE
4 CONTRACTS.

5 Q DID YOU DISCUSS THESE VIEWS THAT YOU HAD
6 PRIOR TO TRIAL WITH YOUR THEN ATTORNEY ARTHUR BARENS?

7 A YES, I DID.

8 MR. CRAIN: YOUR HONOR, THIS IS PROBABLY A GOOD
9 TIME.

10 THE COURT: HOW MUCH MORE DO YOU GOT?

11 MR. CRAIN: 15 MINUTES AT MOST, I THINK.

12 THE COURT: LET'S GO INTO LUNCH. LET'S SEE IF WE
13 CAN WRAP THIS UP.

14 THE WITNESS: GREAT.

15 MR. CRAIN: I JUST THOUGHT THAT MR. MC MULLEN --
16 MAYBE HE DOESN'T HAVE ANYTHING.

17 THE COURT: ARE YOU GOING TO HAVE ANYTHING MORE,
18 MR. MC MULLEN?

19 MR. MC MULLEN: AT THIS POINT, NOT TOO MUCH. I'M
20 WAITING TO SEE WHAT HAPPENS.

21 THE COURT: FOR FEAR OF GIVING YOU A BREAK AND
22 COMING BACK FOR MORE THAN FIVE MINUTES, LET'S GO AHEAD AND
23 GET THIS WITNESS OFF THE STAND.

24 YOU HAVE A WITNESS AT 1:30; RIGHT?

25 MR. MC MULLEN: WE HAVE A WITNESS AT 1:30 THAT'S IN
26 FROM DENVER THAT WE'D LIKE TO TAKE.

27 THE COURT: IS THIS THE ONE THAT IS IN CUSTODY?

28 MR. MC MULLEN: NO, THIS IS THE ONE THAT'S FLOWN IN

1 FROM COLORADO. WE NEED A FEW MINUTES WITH THE CUSTODY,
2 AND WE MADE ARRANGEMENTS TO BE HERE AT 1 O'CLOCK TO
3 INTERVIEW THAT PERSON. WE ALSO NEED A FEW MINUTES TO
4 INTERVIEW THAT ONE FROM COLORADO.

5 MR. KLEIN: ARE WE TALKING ABOUT KILPATRICK AND
6 O'DONNELL?

7 THE COURT: I ASSUME SO. YOU GUYS WILL TAKE CARE
8 OF THAT DURING LUNCH. LET'S GO AHEAD AND FINISH THIS
9 WITNESS.

10 BY MR. CRAIN:

11 Q YOU MENTIONED IN YOUR CROSS-EXAMINATION THAT
12 YOU HAD REFERENCED OR CONSIDERED AN ARTICLE ABOUT
13 MR. KILPATRICK IN A DENVER MAGAZINE OF SOME SORT?

14 A YES.

15 Q AND WHAT DID THAT MAGAZINE ARTICLE, WHAT
16 SIGNIFICANCE DID IT HAVE RELATIVE TO PLACING SOMETHING IN
17 A TIME FRAME?

18 A WELL, IT'S SIGNIFICANCE --

19 MR. MC MULLEN: OBJECTION. IRRELEVANT.

20 THE COURT: I'M NOT SURE -- YOU WERE SAYING -- HE
21 FOUND SOMETHING ABOUT KILPATRICK IN A MAGAZINE ARTICLE
22 THAT HE HAD SHOWED HIM THAT HAD SAID THE BANKRUPTCY --

23 MR. CRAIN: I THINK THE QUESTION HAD TO DO WITH THE
24 INDICTMENT AGAINST MR. KILPATRICK. NOT THE INDICTMENT FOR
25 WHICH HE IS NOW IN FEDERAL PRISON, A PREVIOUS INDICTMENT,
26 BUT AN INDICTMENT THAT HAD BEEN PREVIOUSLY --

27 THE COURT: I UNDERSTAND THE CONTEXT.

28 WHAT IS THE QUESTION?

1 BY MR. CRAIN:

2 Q WAS IT YOUR UNDERSTANDING, DO YOU RECALL NOW,
3 OR DO YOU NEED TO SEE ANYTHING WITH REGARD TO WHETHER OR
4 NOT MR. KILPATRICK'S ORIGINAL INDICTMENT FOR 27 COUNTS OF
5 FRAUD AND SO FORTH HAD BEEN CONCLUDED IN HIS FAVOR PRIOR
6 TO THE NOVEMBER, 1983 CONTRACT?

7 A YES. I SAW THIS ARTICLE ENTITLED, "SEEKING
8 SHELTER" IN LIKE A DENVER MAGAZINE. MR. KILPATRICK
9 PROVIDED ME A REPRINT, AND I THINK IT SAID HE HAD BEATEN
10 ALL BUT ONE OF HIS CHARGES, AND HE HAD BEEN SUBSTANTIALLY
11 VINDICATED. THAT'S THE WAY MR. KILPATRICK PRESENTED IT.

12 THE COURT: AND THAT HE WAS OUT OF BANKRUPTCY?

13 THE WITNESS: I DON'T KNOW IF HE WAS AT THAT TIME,
14 BUT I GOT A NEWS RELEASE FROM SATURN ABOUT THE FACT THAT
15 U.F.O.I. HAD ENTERED BANKRUPTCY REORGANIZATION.
16 MR. KILPATRICK SENT ME A LETTER ON THE SAME POINT. I
17 STILL HAVE BOTH, YOUR HONOR.

18 MR. CRAIN: YOUR HONOR, COULD THIS BE MARKED AS
19 NEXT IN ORDER?

20 THE COURT: 288, WHICH IS THE MAGAZINE ARTICLE.

21 MR. CRAIN: YES, YOUR HONOR.

22

23 (MARKED FOR ID = PETITIONER'S 288,
24 DOCUMENT.)

25

26 BY MR. CRAIN:

27 Q THIS APPEARS TO BE AN ARTICLE NOVEMBER, 1983
28 FROM A MAGAZINE ENTITLED "DENVER BUSINESS." IS THAT THE

1 ARTICLE ABOUT MR. KILPATRICK YOU WERE REFERRING TO?

2 A YES.

3 Q DOES THAT MAKE REFERENCE TO THE FACT THAT HE
4 HAD BEEN THE TARGET OF AN EXTENSIVE FEDERAL INVESTIGATION,
5 BUT IT APPEARED TO NOW HAVE BEEN CLEARED UP AND HE WAS
6 PLANNING TO SUE THE FEDERAL GOVERNMENT?

7 MR. MC MULLEN: OBJECTION. LEADING.

8 THE COURT: THE DOCUMENTS SPEAKS FOR ITSELF. WE
9 HAVE THE DOCUMENT.

10 THE WITNESS: EXACTLY --

11 THE COURT: HOLD ON.

12 THE WITNESS: OKAY.

13 BY MR. CRAIN:

14 Q NOW, THE JUDGE ASKED YOU SOME QUESTIONS ABOUT
15 YOUR ORIGINAL CONTRACT WITH MR. BROWNING, AND DO WE HAVE
16 THAT HERE IN THE COURTROOM AT THIS TIME, MR. HUNT?

17 MR. MC MULLEN: OBJECTION. RELEVANCY.

18 THE COURT: I'LL ALLOW THAT.

19 THE WITNESS: THE JANUARY AGREEMENT WITH
20 DR. BROWNING, NO, I DON'T BELIEVE THAT IS IN THE
21 COURTROOM.

22 BY MR. CRAIN:

23 Q WE'RE NOT GOING TO PROCEED INTO THE LUNCH
24 HOUR LOOKING FOR THAT.

25 A NO. IT'S DEFINITELY NOT IN THE COURTROOM.
26 IT'S IN MY FILES, AND WE CAN HAVE IT HERE MONDAY.

27 Q IN ANOTHER AREA, WAS THERE EVER ANY
28 DISPUTE -- STRIKE THAT.

1 AT THE SANTA MONICA TRIAL INVOLVING THE LEVIN
2 CASE DID THE PROSECUTION PRESENT EVIDENCE THAT THE B.B.C.
3 AND YOU OWED LEGAL DEBTS?

4 A YES.

5 Q TO INVESTORS AND OTHER PEOPLE?

6 A YES.

7 Q AND PRIOR TO TRIAL, DID YOU HAVE DISCUSSIONS
8 WITH MR. BARENS THAT THIS EVIDENCE WOULD BE PRESENTED
9 AGAINST YOU AND THAT THE DEFENSE SHOULD FIGURE OUT WAYS TO
10 COUNTER IT WITH OTHER EVIDENCE?

11 A YES, I DID, INCLUDING THAT DISCUSSION AT
12 WHICH MR. JENSEN WAS PRESENT AND MADE SOME NOTES, WHICH IS
13 ONE OF THE EXHIBITS.

14 Q AND WERE YOUR DISCUSSIONS WITH MR. BARENS
15 CONCERNING THE NEGOTIATIONS WITH MR. KILPATRICK RELATIVE
16 TO THIS PROSECUTION EVIDENCE THAT WE HAVE JUST TALKED
17 ABOUT?

18 A YES.

19 Q REGARDING THE PROGRESSIVE INVESTIGATION THAT
20 JUDGE CZULEGER ASKED YOU ABOUT, WERE YOU EVER PROSECUTED
21 BY THE UNITED STATES ATTORNEY'S OFFICE OR ANY OTHER
22 PROSECUTORIAL AGENCY FOR ANYTHING INVOLVING MR. LEVIN'S
23 DEFRAUDING OF PROGRESSIVE SAVINGS & LOAN OF \$150,000?

24 MR. MC MULLEN: OBJECTION. IRRELEVANT.

25 THE COURT: OVERRULED.

26 THE WITNESS: NO.

27 BY MR. CRAIN:

28 Q NOW, YOU HAVE SAID THAT JUST BEFORE THIS

1 MARSDEN HEARING TOOK PLACE -- FIRST OF ALL, WHAT WAS
2 YOUR -- INTENTION TO BE AT THAT MARSDEN HEARING AT THE
3 TIME YOU HAD THIS DISCUSSION WITH MR. BARENS?

4 A I DON'T UNDERSTAND THE QUESTION.

5 MR. MC MULLEN: OBJECTION --

6 BY MR. CRAIN:

7 Q WELL, DID YOU DISCUSS WITH MR. BARENS WHAT
8 YOU WERE PROPOSING TO DO ONCE YOU WENT INTO COURT AND MADE
9 THIS MARSDEN MOTION?

10 A YES. AND HE ACKNOWLEDGED THAT ON THE RECORD
11 ALSO LATER.

12 Q AND IT WAS IN THIS CONTEXT THAT YOU HAD THIS
13 DISCUSSION WITH MR. BARENS ABOUT THESE THINGS THAT YOU
14 KNEW ABOUT HIM; IS THAT RIGHT?

15 A WELL, YEAH, IT CAME OUT AS A RESULT OF HIM
16 BRINGING IT UP.

17 Q RIGHT. AND WAS THERE SOME UNDERSTANDING THAT
18 WAS EXPRESSED THAT AT THAT PARTICULAR MEETING WHEN YOU
19 WERE IN THE CUSTODY TANK NOT ONLY THAT -- THIS WAS NOT
20 SOMETHING THAT YOU INTENDED TO BRING UP AT THE MARSDEN
21 HEARING BEFORE JUDGE RITTENBAND OR ON FUTURE OCCASIONS OR
22 DID THAT COME UP DURING THAT PARTICULAR CONVERSATION IS
23 WHAT I AM ASKING.

24 A NO, I DIDN'T TELL HIM THAT ON SOME FUTURE
25 OCCASION I WOULD NOT BE BRINGING ALL THIS OUT. I TOLD HIM
26 THAT HE DID NOT HAVE TO WORRY, THOUGH, THAT THE FACTS --
27 YOU KNOW, JUST THE FACTS ABOUT WHAT HE DID, DIDN'T DO WITH
28 RESPECT TO WITNESSES, THAT THAT WAS THE CORE ISSUE THAT

1 NEEDED TO BE PRESENTED TO THE COURT, FOR ANY COURT AT ANY
2 FUTURE POINT IN TIME, AND THAT ALL THE OTHER STUFF, IT WAS
3 MY VIEW OF THE INFORMATION AT THAT TIME THAT IT WAS
4 PERIPHERAL.

5 Q NOW, WAS THERE ALSO A -- A DEMONSTRATION
6 CONCERNING THE ATTRITION MILL AT SOME TIME THAT TOOK PLACE
7 IN GARDENA WHERE A NUMBER OF PEOPLE CAME AND OBSERVED IT
8 AND IT WAS VIDEOTAPED AND MR. DONALD BRAND, FOR EXAMPLE,
9 THE NOTED IRVINE PROPERTY OWNER WAS THERE?

10 MR. MC MULLEN: OBJECTION. LEADING AND VAGUE AS TO
11 "SOME TIME."

12 THE COURT: IT IS LEADING, BUT I'M DOING IT TO SAVE
13 TIME.

14 MR. CRAIN: I'M DOING IT BECAUSE WE'RE INTO THE
15 COURT'S LUNCH HOUR, AND I AM TRYING TO SAVE --

16 THE COURT: THAT'S WHY I --

17 MR. CRAIN: I'M NOT TRYING TO LEAD, BUT TO THE
18 EXTENT I AM, THAT IS THE REASON.

19 THE COURT: LET'S GET THE ANSWER.

20 THE WITNESS: IT WAS MAY 15, 1984. DONALD BRAND
21 WAS NOT THERE BUT A NUMBER OTHER BUSINESS PEOPLE WERE AND
22 THE ATTRITION MILLS WERE DEMONSTRATED TO A LARGE GROUP OF
23 INVESTORS.

24 THE COURT: WHAT WAS THE DATE?

25 MR. CRAIN: JUNE.

26 THE WITNESS: MAY.

27 BY MR. CRAIN:

28 Q FINALLY, MR. MC MULLEN ASKED YOU IF

1 MR. BARENS HAD BEEN SUCCESSFUL IN -- IN GETTING BAIL FOR
2 YOU, AND PRIOR TO THAT HAD YOU HAD ANY DISCUSSIONS WITH
3 MR. BARENS CONCERNING HIS ABILITY TO GET BAIL SET BY THE
4 COURT IN CONNECTION WITH THE LEVIN CASE?

5 A AT SOME POINT BEFORE BAIL WAS SET --

6 MR. MC MULLEN: OBJECTION. RELEVANCY.

7 THE COURT: OVERRULED.

8 THE WITNESS: HE TOLD ME THAT THE JUDGE AND HIM
9 WERE PART OF THE SAME HILLCREST CROWD AND THEY HAD WORKED
10 OUT AN -- HE HAD WORKED OUT AN ARRANGEMENT WITH THE JUDGE
11 IN EXCHANGE FOR GIVING THE CASE -- ARRANGING AND WORKING
12 WITH THE CASE TO GET THIS CASE WHICH HE WANTED TO HEAR IN
13 HIS COURTROOM, THAT I WOULD BE GIVEN A REASONABLE BAIL.

14 BY MR. CRAIN:

15 Q DID THE FILING OF AN AFFIDAVIT OF PREJUDICE
16 AGAINST JUDGE LIGHT ENTER INTO WHAT MR. BARENS TOLD YOU
17 ABOUT HIS BEING ABLE TO GET BAIL FOR YOU?

18 MR. MC MULLEN: OBJECTION. RELEVANCY.

19 THE COURT: SUSTAINED.

20 BY MR. CRAIN:

21 Q AND -- ALL RIGHT.

22 MR. CRAIN: YOUR HONOR, I HAVE NOTHING FURTHER.

23 MR. KLEIN: JUST ONE SECOND.

24
25 (PETITIONER'S COUNSEL CONFER.)

26
27 MR. CRAIN: ALL RIGHT.

28 THE WITNESS: MR. CRAIN, THERE WAS JUST ONE --

1 THE COURT: LET'S FINISH UP.

2 MR. MC MULLEN.

3 MR. MC MULLEN: THANK YOU.

4

5 RECROSS-EXAMINATION @

6

7 BY MR. MC MULLEN:

8 Q IN ANSWERING SOME OF THE QUESTIONS THAT THE
9 JUDGE HAD, I HAD A QUESTION WITH RESPECT TO THAT. WITH
10 RESPECT TO THE ATTRITION MILL THAT WAS SENT OUT TO THE
11 DESERT REGARDING THE GOLD MINE?

12 A SUPERSTITION MOUNTAIN.

13 Q YOU DON'T REALLY KNOW WHETHER THAT MACHINE
14 WORKED OUT THERE, DO YOU?

15 A IT WORKED AT THE GARDENA WAREHOUSE WITH ORE
16 THAT HAD BEEN TAKEN FROM THE MINE SITE THROUGH THE MILL,
17 AND IT DID GRIND THE MATERIAL AND WE SENT SAMPLES OF THE
18 GROUND MATERIAL BACK TO MR. MORTON TO SAY, "IS THIS WHAT
19 YOU WANT AS FAR AS AN OUTPUT?"

20 HE SAID, "YEAH, THAT'S EXACTLY WHAT."

21 WE PUT IT ON THE FLAT BED AND SENT IT OUT
22 THERE. IT WAS ASSEMBLED ON THE SPOT. BEFORE WE ACTUALLY
23 STARTED TO PROCESS ORE THERE IT WAS REPOSSESSED.

24 Q BUT MR. MORTON -- MORTON STOPPED PAYMENT ON
25 THE MONEY OWING EVERY MONTH BECAUSE THE MACHINE DIDN'T
26 WORK; ISN'T THAT CORRECT?

27 A MR. MORTON IN JULY, AFTER JUNE 6, 1984, AND I
28 GOT INTO A DISPUTE OVER WHETHER WE WERE PERFORMING ON OUR

1 END OF THE DEAL AND WHETHER HE WAS PERFORMING ON HIS
2 RESPONSIBILITIES. DR. BROWNING HAD SET THE MACHINE UP AND
3 ATTACHED SOME VERY THIN TUBING AND WHEN THE MACHINE WAS
4 TURNED ON THE TUBING COLLAPSED --

5 MR. MC MULLEN: OBJECTION. NONRESPONSIVE.

6 THE COURT: SUSTAINED.

7 BY MR. MC MULLEN:

8 Q HE STOPPED MAKING PAYMENTS TO YOU FOR THE
9 MACHINE, "YES" OR "NO"?

10 A HE DIDN'T STOP PAYMENT ON A CHECK. HE
11 STOPPED MAKING FURTHER PAYMENTS AS RESULT OF THE -- OF
12 CERTAIN THINGS THAT RELATED TO THE ATTRITION MILLS.

13 Q NOW, IT WAS YOUR GOAL DURING THIS TIME THAT
14 YOU WERE WORKING WITH THE ATTRITION MILL AND SELLING THE
15 TECHNOLOGY TO THE GOLD MINING CONCERNS AND TO
16 MR. KILPATRICK THAT YOU HAVE -- THAT YOU MAKE A PROTOTYPE
17 OF THE MILL; ISN'T THAT CORRECT?

18 A I WANTED A PROTOTYPE, AND I GOT A PROTOTYPE.

19 MR. MC MULLEN: MAY I JUST HAVE ONE MOMENT?

20 THE COURT: YES.

21

22 (PAUSE.)

23

24 MR. MC MULLEN: NOTHING FURTHER.

25 THE COURT: ALL RIGHT.

26 ANY FURTHER QUESTIONS?

27 MR. CRAIN: I HAD ONE OTHER QUESTION THAT I FORGOT
28 TO ASK ABOUT.

1 THE COURT: ONE QUESTION.

2

3

FURTHER REDIRECT EXAMINATION +

4

5 BY MR. CRAIN:

6

Q WHEN YOU HAD DISCUSSIONS WITH MR. BARENS
7 ABOUT BAIL DID THE SUBJECT OF A PROPERTY BOND COME UP?

8

MR. MC MULLEN: OBJECTION. IRRELEVANT.

9

THE COURT: WHERE IS THE RELEVANCE?

10

MR. CRAIN: BECAUSE HE POINTED OUT THAT -- THAT
11 MR. BARENS WAS WONDERFUL IN ONE SENSE, HE WAS ABLE TO GET
12 MR. HUNT BAIL. I WAS ABLE TO SHOW THE COURT THE TRUE
13 CONTEXT OF THAT, AND MR. BARENS WAS TOTALLY IGNORANT AS TO
14 THE MANNER IN WHICH ONE COULD BAIL OUT --

15

THE COURT: IT'S NOT GOING TO MAKE MUCH DIFFERENCE.

16

MR. CRAIN: ALL RIGHT.

17

THE WITNESS: MR. CRAIN, SO I DON'T HAVE TO GET
18 BACK UP HERE, JUST ONE QUESTION AND ANSWER. I WOULD JUST
19 GIVE YOU THE ANSWER.

20

THE COURT: WHAT IS THE QUESTION YOU WANT HIM TO
21 ASK?

22

THE WITNESS: I READ MR. STEIER'S REPORT OR THE
23 INTERVIEW REPORTS OF MR. STEIER THAT HE HAD MET WITH ME IN
24 CONNECTION WITH THE PROGRESSIVE MATTER. BEFORE I TOOK THE
25 STAND I WAS AWARE OF IT BUT IT DIDN'T REFRESH MY
26 RECOLLECTION AS TO THAT MEETING. I CERTAINLY DON'T DENY
27 IT, HAVING BEEN IN MR. STEIER'S OFFICE. I JUST SAW HIM
28 FLEETINGLY ON ONE OCCASION. IT MADE NO IMPRESSION ON ME,

1 BUT APPARENTLY IT DID ON HIM.

2 MR. CRAIN: I HAD A NOTE, BUT I FORGOT.

3 THE COURT: LET'S TAKE OUR AFTERNOON RECESS AND
4 HAVE EVERYONE BACK AT 1:30.

5 YOU'LL HAVE YOUR WITNESS AVAILABLE?

6 MR. MC MULLEN: YES. THERE IS THE NONCUSTODY
7 WITNESS AT 1:30.

8

9 (AT 12:15 P.M. A RECESS WAS TAKEN

10 UNTIL 1:30 P.M. OF THE SAME DAY.)

11

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1 LOS ANGELES, CALIFORNIA; THURSDAY, MAY 9, 1996

2 1:40 P.M.

3 DEPARTMENT NO. 101

HON. J. STEPHEN CZULEGER, JUDGE

4
5 (APPEARANCES AS HERETOFORE NOTED.)

6
7 THE BAILIFF: REMAIN SEATED, COME TO ORDER,
8 DEPARTMENT 101 IS AGAIN IN SESSION.

9 THE COURT: IN THE MATTER OF IN RE JOSEPH HUNT, THE
10 RECORD WILL REFLECT THAT ALL COUNSEL ARE PRESENT,
11 PETITIONER IS PRESENT.

12 PETITIONER, HAVE ANY FURTHER WITNESSES?

13 MR. KLEIN: MAY I ADDRESS THE COURT, YOUR HONOR?

14 THE COURT: YES.

15 MR. KLEIN: THERE IS A NUMBER OF CHAIN OF CUSTODY
16 MATTERS THAT WE NEED TO TIE UP. SUBJECT TO THAT MAY WE
17 REST? THERE IS A NUMBER --

18 MR. CRAIN: A FEW OTHER MINORS THINGS, IF WE COULD
19 PROCEED.

20 THE COURT: I AM GOING TO TAKE CARE OF ALL EXHIBITS
21 AT THE END.

22 MR. KLEIN: I THINK WE MAY NEED TO RECALL A NUMBER
23 OF WITNESSES JUST FOR MINOR CHAIN OF CUSTODY.

24 THE COURT: WHY DON'T YOU TALK TO THE OTHER SIDE,
25 SEE IF YOU CAN WORK OUT CHAIN OF CUSTODY MATTERS.

26 MR. KLEIN: WE WILL DO THAT, BUT WE DON'T WANT TO
27 REST --

28 THE COURT: THE ONLY QUESTION I HAVE IS: DO YOU

1 HAVE ANY FURTHER WITNESSES?

2 MR. KLEIN: NOT AT THIS TIME.

3 MR. CRAIN: AT THIS TIME, WITHOUT RESTING AND WITH
4 THE COURT'S PERMISSION, IF WE COULD JUST PROCEED WITH
5 THEIR CASE AND THEN WE WILL CALL THESE WITNESSES IN
6 REBUTTAL ON THE CHAIN OF CUSTODY.

7 THE COURT: I AM ASSUMING YOU ARE GOING TO WORK OUT
8 STIPULATIONS. I TOLD YOU THAT MONTHS AGO THAT I WANTED
9 THOSE THINGS WORKED OUT.

10 MR. CRAIN: I AM JUST TRYING TO GET AN ASSURANCE
11 FROM THE COURT THAT IF THERE ARE SOME OTHER THINGS THAT
12 COME TO MIND THAT WE ARE NOT ABLE TO PRESENT RIGHT AT THIS
13 PRECISE MOMENT, BECAUSE THEY ARE READY TO PROCEED WITH
14 THEIR CASE, IT CAN BE DEEMED PART OF OUR --

15 THE COURT: IT DEPENDS ON WHAT IT IS. YOU KNOW, I
16 AM ALWAYS OPEN AND REASONABLE.

17 MR. CRAIN: I KNOW.

18 MR. KLEIN: THE OTHER THING, YOUR HONOR, THE SECOND
19 WITNESS THEY INTEND TO CALL IS THE CUSTODY WITNESS.

20 THE COURT: IS THAT MR. KILPATRICK?

21 MR. MC MULLEN: YES, YOUR HONOR.

22 MR. KLEIN: WE WERE JUST HANDED A REVISED
23 DECLARATION. IN OTHER WORDS, HE MADE CHANGES ON THE
24 DECLARATION THAT HAD PREVIOUSLY BEEN SUBMITTED TO US AS AN
25 EXHIBIT, AND WE HAVE NOT HAD A CHANCE TO GO OVER THAT IN
26 ORDER TO PREPARE THE EXAMINATION OF HIM. WE WOULD JUST
27 ASK MAYBE TEN MINUTES BETWEEN TWO WITNESSES TO LOOK AT IT
28 CAREFULLY.

1 THE COURT: WHAT KIND OF CHANGES?

2 MR. MC MULLEN: YOUR HONOR, WHEN WE INTERVIEWED
3 MR. KILPATRICK A FEW DAYS AGO OVER IN THE COUNTY JAIL WE
4 GAVE HIM A COPY OF HIS DECLARATION TO REVIEW. JUST NOW WE
5 TALKED TO HIM, HE HANDED US SOME REVISIONS, THEY ARE VERY
6 MINOR. I WAS GOING TO GO OVER THEM WITH HIM WHEN HE WAS
7 ON THE WITNESS STAND. THEY ARE VERY MINOR.

8 THE COURT: LET'S SEE WHAT THEY ARE.

9 ALL RIGHT.

10 CALL YOUR NEXT WITNESS.

11 MR. MC MULLEN: WE CALL MR. DECLAN O'DONNELL TO THE
12 STAND.

13 PLEASE COME FORWARD, SIR.

14

15 DECLAN JOSEPH O'DONNELL, @
16 CALLED AS A WITNESS BY THE RESPONDENT, WAS SWORN AND
17 TESTIFIED AS FOLLOWS:

18

19 THE CLERK: STEP RIGHT OVER HERE. STAND BEHIND THE
20 COURT REPORTER.

21 FACE ME AND RAISE YOUR RIGHT HAND.

22 THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE
23 TESTIMONY YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE
24 THIS COURT SHALL BE THE TRUTH, THE WHOLE TRUTH, AND
25 NOTHING BUT THE TRUTH, SO HELP YOU GOD?

26 THE WITNESS: YES.

27 THE CLERK: PLEASE TAKE THE STAND.

28 PLEASE STATE AND SPELL BOTH YOUR FIRST AND

1 LAST NAME.

2 MR. MC MULLEN: JUST PULL THIS BACK, SIT BACK AND
3 HOLD DOWN THAT THERE.

4 THE WITNESS: DECLAN O'DONNELL. FIRST NAME
5 D-E-C-L-A-N, MIDDLE INITIAL J, FOR JOSEPH,
6 O'D-O-N-N-E-L-L.

7 THE COURT: YOU MAY INQUIRE.

8 MR. MC MULLEN: BEFORE I PROCEED, YOUR HONOR, I
9 WOULD AT THIS TIME ASK THAT RESPONDENT'S EXHIBIT X,
10 DECLARATION OF DECLAN O'DONNELL, BE MARKED FOR
11 IDENTIFICATION.

12 THE COURT: IT WILL BE MARKED.

13

14 (MARKED FOR ID = RESPONDENT'S X,
15 DECLARATION OF DECLAN O'DONNELL.)

16

17 MR. MC MULLEN: IT IS ON THE EXHIBIT LIST.

18

19 DIRECT EXAMINATION @

20

21 BY MR. MC MULLEN:

22 Q SIR, WHAT IS YOUR OCCUPATION OR PROFESSION?

23 A I AM AN ATTORNEY LICENSED TO PRACTICE IN
24 COLORADO.

25 Q HOW LONG HAVE YOU BEEN LICENSED TO PRACTICE
26 IN COLORADO?

27 A 34 YEARS.

28 Q AND WHAT KIND OF PRACTICE DO YOU HAVE? COULD

1 YOU DESCRIBE YOUR PRACTICE?

2 A RIGHT NOW IT IS A TAX AND SECURITY, AND
3 BELIEVE IT OR NOT, OUTER SPACE OR ASTERIAL LAW, AT THE
4 TIME RELEVANT TO THIS CASE IT WAS TAX SHELTERS AND
5 SECURITY LAW.

6 THE COURT: OUTER SPACE LAW?

7 THE WITNESS: YES, SIR.

8 THE COURT: ARE SURE YOU DON'T PRACTICE IN
9 CALIFORNIA?

10 THE WITNESS: I DO A LOT OF BUSINESS OUT HERE,
11 JUDGE.

12 THE COURT: I BELIEVE IT.

13 GO.

14 BY MR. MC MULLEN:

15 Q DO YOU KNOW SOMEONE BY THE NAME OF WILLIAM
16 KILPATRICK?

17 A YES. HE IS A CLIENT OF MINE.

18 Q HOW LONG HAS MR. KILPATRICK BEEN A CLIENT OF
19 YOURS?

20 A HE CONTRACTED WITH ME FIRST IN 1977, LATE,
21 AND THE FIRST SUBSTANTIAL BUSINESS I DID WITH HIM WAS IN
22 '78.

23 Q WHAT KIND OF -- WHAT KIND OF REPRESENTATION
24 DID YOU PROVIDE FOR MR. KILPATRICK?

25 A GENERALLY SPEAKING BUSINESS REPRESENTATION.

26 Q AND DID YOU EVER REPRESENT MR. KILPATRICK
27 WITH RESPECT TO BUSINESS DEALINGS WITH A PERSON BY THE
28 NAME OF EUGENE BROWNING?

1 A YES.

2 Q GENE BROWNING?

3 A YES.

4 Q AND DID YOU EVER REPRESENT MR. KILPATRICK
5 WITH RESPECT TO BUSINESS CONDUCTED WITH JOE HUNT OR THE
6 B.B.C. AND ITS COMPANIES?

7 A YES, BRIEFLY. I HAD ONE MEETING.

8 Q AND AT THAT MEETING DID YOU MEET JOE HUNT?

9 A YES.

10 Q AND IS HE HERE IN THE COURTROOM TODAY?

11 A YES. HE IS SITTING RIGHT OVER THERE.

12 THE COURT: WHAT IS HE WEARING?

13 THE WITNESS: GOT ON A BLUE SHIRT AND WHITE
14 SLEEVES.

15 THE COURT: INDICATING THE PETITIONER, JOSEPH HUNT.

16 MR. MC MULLEN: MAY I APPROACH THE WITNESS?

17 THE COURT: YES.

18 BY MR. MC MULLEN:

19 Q SHOWING YOU WHAT'S BEEN MARKED AS
20 RESPONDENT'S EXHIBIT X FOR IDENTIFICATION. WOULD YOU TAKE
21 A LOOK AT THAT TWO-PAGE DOCUMENT ENTITLED DECLARATION?

22 A YES.

23

24 (WITNESS COMPLIES.)

25

26 Q ARE YOU DONE READING IT?

27 A YES.

28 Q DO YOU RECOGNIZE THAT AS YOUR DECLARATION?

1 A YES. THAT'S MY SIGNATURE.

2 Q IS EVERYTHING IN THAT DECLARATION TRUE AND
3 ACCURATE AS YOU SIT HERE AND TESTIFY TODAY?

4 A NO. MY MEMORY IS NOT THAT GOOD. THE SENSE
5 OF IT IS RIGHT, BUT SOME OF THE DETAILS WILL BE LACKING.

6 Q WELL, AS WE GO THROUGH IT WE WILL CLARIFY
7 ANYTHING THAT YOU WANT TO CHANGE HERE TODAY IN YOUR
8 TESTIMONY.

9 WITH RESPECT TO YOUR REPRESENTATIONS OF
10 MR. KILPATRICK AND HIS BUSINESS DEALINGS WITH GENE
11 BROWNING, WHAT IS IT THAT YOU DID WITH MR. KILPATRICK IN
12 THAT REGARD?

13 A AT WHAT TIME WAS THIS?

14 Q AROUND THE FIRST PART OF EITHER THE END OF
15 '83 OR THE BEGINNING OF '84.

16 A WITH REGARDS TO BROWNING?

17 Q YES.

18 A OKAY. MR. BROWNING, DR. BROWNING, BY THE
19 WAY, I THINK HE IS A PH.D., PRESENTED MR. KILPATRICK WITH
20 AN ATTRITION MILLING MACHINE.

21 MR. CRAIN: I WILL MOVE TO STRIKE IT AS A
22 CONCLUSION. THERE IS NO FOUNDATION.

23 MR. KLEIN: ALSO HEARSAY.

24 THE COURT: I ASSUME THIS IS PREPARATORY TO
25 EXPLAINING SUBSEQUENT ACTION BY THIS WITNESS.

26 MR. MC MULLEN: YES. WITH RESPECT TO HIS
27 REPRESENTATIONS OF MR. KILPATRICK.

28 MR. CRAIN: HE DIDN'T WITNESS THESE EVENTS WITH

1 BROWNING, SO THAT'S ALL CONCLUSIONARY.

2 THE COURT: I WILL ALLOW IT.

3 MR. KLEIN: THIS IS NOT OFFERED FOR THE TRUTH BUT
4 JUST TO SHOW WHAT HE DID?

5 THE COURT: THAT'S WHAT IT SOUNDS LIKE.

6 I HAVE RULED. LET'S GO.

7 THE WITNESS: ALL RIGHT.

8 THE MACHINE WAS INTRIGUING IN THAT IT CLAIMED
9 TO MILL PARTICLES, EVEN DIAMONDS, THE TOUGHEST MATERIALS
10 YOU COULD FIND TO A 200 MESH OR LOWER, WHICH IS LIKE FACE
11 POWDER, MAKE-UP, VERY, VERY FINE. AND THIS HAD A
12 STRATEGIC ADVANTAGE TO KILPATRICK, IF HE COULD ACQUIRE IT.

13 AND I THINK THE BASIC BUSINESS PROPOSITION
14 WAS THAT IT WOULD FIT INTO METHANOL PLANTS HE HAD JUST
15 PROMOTED IN THE TAX SHELTER VEIN, BECAUSE IF YOU COULD
16 MAKE THE METHANOL AND SLIP IN A SLURRY, ADD SOMETHING LIKE
17 GUNPOWDER TO IT YOU HAD A TREMENDOUS FUEL FOR FUEL PLANTS.
18 THAT WAS -- THAT WAS WHY HE WAS SO INTERESTED. SO WITH
19 THAT BACKGROUND AND HAVING UNDERSTOOD THAT IMMEDIATELY,
20 AND I RECOGNIZED THIS BEING IMPORTANT BECAUSE --

21 MR. KLEIN: WHAT HE THOUGHT, YOUR HONOR, IS
22 IRRELEVANT.

23 THE COURT: IS THE OBJECTION RELEVANCY?

24 MR. KLEIN: YES.

25 THE COURT: OVERRULED.

26 MR. CRAIN: WITHDRAWN.

27 THE COURT: JUST STATE THE GROUNDS.

28 OVERRULED. GO.

1 THE WITNESS: SO WITH JUST THAT MUCH BACKGROUND I
2 WAS ASKED TO DROP EVERYTHING AND HURRIEDLY GET BROWNING
3 CONTRACTED WITHOUT DUE DILIGENCE, JUST DO IT.

4 BY MR. MC MULLEN:

5 Q SO DID YOU PREPARE A CONTRACT WITH RESPECT TO
6 THIS MILLING DEVICE OF DR. BROWNING'S WITH RESPECT TO YOUR
7 CLIENT, MR. KILPATRICK?

8 A YES.

9 Q AND WHAT WAS THE NATURE OF THAT CONTRACT THAT
10 YOU PREPARED?

11 A LICENSE AGREEMENT, AN EXCLUSIVE MARKETING
12 AGREEMENT.

13 Q BETWEEN?

14 A BROWNING AND A COMPANY THAT HE HAD, WHOSE
15 NAME I DON'T EVEN REMEMBER AT THIS POINT, AND UNITED
16 FINANCIAL OPERATIONS, INC., WHICH WAS KILPATRICK'S
17 ADMINISTRATIVE COMPANY.

18 Q NOW, WITH RESPECT TO YOUR REPRESENTATIONS OF
19 MR. KILPATRICK AND IN PARTICULAR IN THIS INSTANCE WITH
20 DRAFTING THE CONTRACT BETWEEN DR. BROWNING AND HIS COMPANY
21 AND KILPATRICK, DID YOU MAINTAIN RECORDS AND FILES WITH
22 RESPECT TO THOSE BUSINESS AND -- THE BUSINESS THAT WAS
23 CONDUCTED AND THE REPRESENTATIONS THAT YOU PROVIDED TO
24 MR. KILPATRICK?

25 A YES, WE DID KEEP FILES IN THE LAW FIRM, AND
26 KILPATRICK KEPT THEM AT UNITED FINANCIAL OPERATIONS.

27 Q PRIOR TO COMING IN TO TESTIFY HERE TODAY DID
28 YOU SEARCH FOR A FILE THAT WOULD CONTAIN AN AGREEMENT THAT

1 YOU HAVE JUST DESCRIBED?

2 A YES. UNSUCCESSFULLY.

3 Q NOW, WHAT YOU HAVE JUST TESTIFIED TO IS
4 COVERED, IS TALKED ABOUT OR STATED IN PARAGRAPH ONE OF
5 YOUR DECLARATION, WHICH IS EXHIBIT --

6 THE COURT: X.

7 BY MR. MC MULLEN:

8 Q -- X, AND IN LIGHT OF WHAT YOU HAVE SAID WITH
9 RESPECT TO YOUR DECLARATION, IS THERE ANYTHING IN THAT
10 PARAGRAPH THAT DOESN'T SIT RIGHT WITH YOU NOW AS BEING
11 ACCURATE?

12 A YES. THE SIX MONTHS, GIVE OR TAKE. I JUST
13 DON'T REMEMBER THE EXACT DATE. OKAY.

14 Q THAT'S ON LINE EIGHT?

15 A YES.

16 Q YOU ARE UNCERTAIN ABOUT THAT TIME FRAME; IS
17 THAT CORRECT?

18 A YES.

19 Q AT SOME POINT IN TIME WERE YOU INVOLVED WITH
20 NEGOTIATIONS BETWEEN MR. KILPATRICK AND MR. HUNT AND HIS
21 COMPANIES, SUCH AS MICROGENESIS?

22 A YES.

23 Q AND DID MR. KILPATRICK SEEK YOUR ADVICE WITH
24 RESPECT TO CERTAIN NEGOTIATIONS BEING CONDUCTED BETWEEN
25 THE PARTIES I JUST MENTIONED?

26 A YES.

27 Q AND DO YOU REMEMBER WHEN THAT OCCURRED,
28 APPROXIMATELY?

1 A I PLACE IT THE BEST I CAN IN JUNE OF '84.

2 Q NOW, WITH RESPECT TO JUNE OF '84, ARE YOU
3 REFERRING TO A MEETING IN LOS ANGELES THAT YOU ACTUALLY
4 ATTENDED?

5 A YES.

6 Q PRIOR TO THAT PARTICULAR MEETING IN JUNE OF
7 '84 DID YOU PROVIDE MR. KILPATRICK WITH ANY ADVICE,
8 PROFESSIONAL ADVICE OR OTHER TYPES OF REPRESENTATION WITH
9 RESPECT TO THE NEGOTIATIONS BETWEEN HUNT AND HIS PEOPLE
10 AND YOUR CLIENT?

11 A I WAS ASKED TO DRAFT AN AGREEMENT AND I DID
12 SO, AND I BELIEVE AN ATTORNEY FOR B.B.C. DID LIKEWISE AND
13 WE WEREN'T HAPPY WITH IT. AND WE HAVE -- KILPATRICK HAS A
14 LOT OF LITTLE RULES. OKAY. ONE OF THE RULES IS THAT WE
15 USE OUR CONTRACTS. HE IS A GOOD BUSINESSMAN AND HE
16 DOESN'T LIKE TO USE OTHER PEOPLE'S CONTRACTS. WE DRAFT
17 OUR OWN.

18 Q DO YOU REMEMBER, AS YOU TESTIFIED TO TODAY,
19 WHEN YOU DRAFTED THIS AGREEMENT?

20 A IT WOULD HAVE BEEN IMMEDIATELY BEFORE THE
21 MEETING, SO IN MAY PROBABLY.

22 Q AND WHAT DO YOU REMEMBER ABOUT THE
23 AGREEMENT?

24 A I THINK I TRACKED -- WELL, I DON'T HAVE IT
25 IN HAND, SO I CAN ONLY TELL YOU WHAT I REMEMBER NOW YEARS
26 LATER. BUT WHAT WAS ON MY MIND WAS THAT MR. BROWNING
27 APPARENTLY AFTER HE SIGNED WITH KILPATRICK --

28 MR. CRAIN: THIS IS NONRESPONSIVE AND CONCLUSION.

1 OBJECTION.

2 THE COURT: SUSTAINED.

3 MR. CRAIN: MOVE TO STRIKE.

4 THE COURT: THE LAST ANSWER WILL GO OUT.

5 MR. MC MULLEN: I WILL JUST ASK ANOTHER QUESTION.

6 BY MR. MC MULLEN:

7 Q SIR, TO THE BEST OF YOUR RECOLLECTION CAN YOU
8 DESCRIBE THE NATURE OF THE AGREEMENT THAT YOU DRAFTED IN
9 APPROXIMATELY MAY OF '84?

10 A YES. IT WAS TO CURE A PROBLEM.

11 Q WHAT WAS THE PROBLEM?

12 MR. CRAIN: I AM GOING TO MAKE A BEST EVIDENCE
13 OBJECTION. THIS WITNESS CAN'T TESTIFY TO THE CONTENTS OF
14 WRITINGS THAT AREN'T BEFORE THE COURT, SO I MOVE TO STRIKE
15 HIS TESTIMONY.

16 THE COURT: IS THIS ONE OF THE EXHIBITS?

17 MR. KLEIN: NO.

18 MR. MC MULLEN: NO, IT IS NOT.

19 MR. CRAIN: HE IS JUST TELLING US ABOUT SOME
20 PURPORTED DOCUMENT THAT NO ONE CAN SEE IN THIS COURTROOM
21 WITH HIS OR HER OWN EYES. I MOVE TO STRIKE HIS TESTIMONY.
22 I OBJECT TO ANYTHING FURTHER ABOUT IT.

23 THE COURT: OVERRULED. HE CAN TESTIFY.

24 BY MR. MC MULLEN:

25 Q JUST YOUR BEST RECOLLECTION OF THE NATURE --
26 WELL, IF YOU COULD ANSWER THE PENDING QUESTION.

27 YOU SAID YOU WROTE A CONTRACT TO SOLVE A
28 PROBLEM. WHAT WAS THE PROBLEM?

1 A WE HAD DISCOVERED THAT MR. BROWNING SIGNED AN
2 AGREEMENT WITH MR. HUNT'S NOMINATED COMPANY, WHICH I THINK
3 THE NAME WAS MICROGENESIS, WHICH WAS CONTROLLED BY HIM.
4 AND HE SOLD THE SAME RIGHTS THAT HE HAD SOLD TO
5 KILPATRICK'S, UNITED FINANCIAL OPERATIONS, INC. WE HAD
6 ALSO HAD WORD THAT HE APPROACHED A MERGER CANDIDATE BY THE
7 NAME OF SATURN ENERGY, WHICH WAS A PUBLIC COMPANY OUT OF
8 CANADA THAT WE WERE ABOUT TO MERGE WITH, AND HAD SOLD
9 OTHER RIGHTS TO ANOTHER FELLOW BY THE NAME OF SWARTOUT, I
10 FORGET HOW TO SPELL IT.

11 MR. KLEIN: DOUBLE HEARSAY, YOUR HONOR.

12 THE COURT: OVERRULED.

13 THE WITNESS: WHOSE NAME OF HIS COMPANY WAS
14 COGENCO, C-O-G-E-N-C-O. SO WE DEVELOPED A KIND OF A
15 FORMAT OF GOING, FOLLOWING GENE AROUND.

16 THE COURT: GENE BEING?

17 THE WITNESS: BROWNING.

18 AND WHEN HE WOULD SELL THESE RIGHTS THAT WE
19 ALREADY BOUGHT WE WOULD KIND OF TRY TO ADOPT, LIKE
20 MR. SWARTOUT TO GET ON BOARD WITH US BECAUSE HE IS
21 OBVIOUSLY A BELIEVER IN THE TECHNOLOGY, AND GO TO WORK FOR
22 US AND SIMPLY HAVE THEM -- FOR INSTANCE, SWARTOUT SIGNED A
23 LICENSE AGREEMENT BACK TO US UNDER THE ORIGINAL TERMS THAT
24 WE BOUGHT IT FOR. SO IT WOULD BE LIKE A QUICK CLAIM DEED
25 OF THE TECHNOLOGY BACK TO MR. KILPATRICK'S COMPANY.
26 THAT'S WHERE I STARTED WITH MR. HUNT. WE FIGURED WE HAD
27 THE SAME SITUATION.

28 MR. KLEIN: THAT'S A CONCLUSION, YOUR HONOR. MOVE

1 TO STRIKE.

2 THE COURT: OVERRULED.

3 BY MR. MC MULLEN:

4 Q JUST GOING BACK A LITTLE BIT. THE FIRST
5 PARAGRAPH OF YOUR DECLARATION ON LINE EIGHT YOU SAID YOU
6 WERE A LITTLE -- YOU WERE UNCERTAIN THAT IT WAS SIX
7 MONTHS, GIVE OR TAKE. WHAT DO YOU MEAN, "GIVE OR TAKE"
8 WHAT?

9 A I THINK THAT THAT WOULD HAVE GONE BACK INTO
10 '83, SO IT WOULD HAVE BEEN INSTEAD OF EARLY '84 IT WOULD
11 HAVE BEEN IN THE LAST QUARTER OR THE LAST HALF OF '83.

12 THE COURT: WHAT WOULD HAVE BEEN --

13 THE WITNESS: WE CONTRACTED WITH BROWNING.

14 BY MR. MC MULLEN:

15 Q SIR, YOU MENTIONED -- WELL, LET ME ASK
16 ANOTHER QUESTION. WAS THE COMPANY THAT WAS ACTUALLY
17 NEGOTIATING WITH MR. HUNT, WAS THE NAME OF THAT COMPANY
18 THE UNITED FINANCIAL OPERATIONS, INCORPORATED?

19 A YES.

20 Q THAT WAS KILPATRICK'S COMPANY?

21 A YES.

22 Q YOU MENTIONED MERGER. DID YOU REPRESENT
23 MR. KILPATRICK WITH RESPECT TO SOME MERGER ASSOCIATED WITH
24 UNITED FINANCIAL OPERATIONS, INCORPORATED?

25 A YES. I REPRESENTED BILL KILPATRICK
26 PERSONALLY AND UNITED FINANCIAL OPERATIONS, INC., WHICH
27 WAS HIS WHOLLY OWNED COMPANY.

28 Q WHEN DID KILPATRICK START TO NEGOTIATE WITH

1 SATURN -- WELL, LET ME WITHDRAW THAT.

2 WHO WAS UNITED FINANCIAL OPERATIONS
3 INCORPORATED WITH?

4 A A COMPANY CALLED SATURN ENERGY, WHICH WAS A
5 BRITISH COLUMBIA CORPORATION.

6 Q WHEN DID NEGOTIATIONS BEGIN BETWEEN UNITED
7 FINANCIAL OPERATIONS INCORPORATED AND SATURN, TO MERGE, TO
8 THE BEST OF YOUR MEMORY?

9 A IT BEGAN PROBABLY IN '82, BECAME PROBABLY
10 EFFECTIVE SOMETIME IN '83 AS A PROPOSAL.

11 Q WHY WAS UNITED FINANCIAL OPERATIONS SEEKING
12 TO MERGE WITH SATURN?

13 A TO GO PUBLIC.

14 Q FOR WHAT PURPOSE DID MR. KILPATRICK AND
15 UNITED FINANCIAL OPERATIONS WANT TO GO PUBLIC?

16 A THAT'S A COMPLICATED THING. YOU SHOULD ASK
17 BILL KILPATRICK THAT. MY OPINION IS STRICTLY --

18 MR. KLEIN: THEN I OBJECT TO THIS AS BEING
19 IRRELEVANT.

20 THE COURT: SUSTAINED.

21 WHERE ARE WE GOING?

22 MR. KLEIN: CAN WE HAVE A CONTINUING OBJECTION
23 ABOUT THE BEST EVIDENCE RULE TO DOCUMENTS THAT HE DOESN'T
24 HAVE, JUST SO THE RECORD IS CLEAR.

25 THE COURT: SOUNDS LIKE THE BEST EVIDENCE IS THE
26 WITNESS' TESTIMONY, IF THE DOCUMENT STILL EXISTS.

27 MR. KLEIN: RIGHT.

28 THE COURT: WHERE ARE WE GOING?

1 MR. CRAIN: IF THAT WERE TRUE --

2 MR. MC MULLEN: WHAT WE ARE TRYING TO ESTABLISH IS,
3 AND I WILL GET RIGHT TO IT RIGHT NOW, AND THAT IS THAT THE
4 MERGER WAS A CONDITION PRECEDENT TO ANY KIND OF A DEAL TO
5 BE CONSUMMATED WITH HUNT AND HIS PEOPLE.

6 THE COURT: LET'S GET RIGHT TO IT.

7 MR. MC MULLEN: OKAY.

8 BY MR. MC MULLEN:

9 Q IN YOUR NEGOTIATIONS WITH HUNT WAS THE MERGER
10 OF UNITED FINANCIAL OPERATIONS, INC. AND SATURN SOMETHING
11 THAT WAS REQUIRED BEFORE ANY AGREEMENT COULD BE REACHED
12 BETWEEN THOSE TWO PARTIES?

13 A I BELIEVE THERE WAS A CONDITION, AND THEN ON
14 THE OTHER HAND, I STILL HAVE A MEMORY THAT THERE WAS STILL
15 NO DEAL, AND AT LEAST PART OF WHAT THEY WERE TRYING TO DO
16 WAS ABSOLUTELY CONTINGENT ON THE MERGER AND THAT WOULD
17 HAVE BEEN THE MARKETING PART.

18 Q SHOWING YOU --

19 MR. MC MULLEN: MAY I APPROACH THE WITNESS?

20 THE COURT: YES.

21 BY MR. MC MULLEN:

22 Q SHOWING YOU WHAT HAS BEEN PREVIOUSLY MARKED
23 AS PETITIONER'S EXHIBIT 4 FOR IDENTIFICATION. WOULD YOU
24 TAKE A LOOK AT THAT DOCUMENT, PLEASE?

25 THE COURT: I AM SORRY.

26 DID YOU SAY EXHIBIT 4?

27 MR. MC MULLEN: YES.

28 MR. CRAIN: MAY I APPROACH THE WITNESS TO SEE WHAT

1 HE IS LOOKING AT?

2 THE COURT: YES.

3

4 (PAUSE.)

5

6 BY MR. MC MULLEN:

7 Q DOES THAT DOCUMENT -- FIRST OF ALL, DID YOU
8 DRAFT THAT DOCUMENT?

9 A I DON'T THINK SO.

10 Q DOES THAT DOCUMENT LOOK FAMILIAR TO YOU?

11 A YES.

12 Q AND TELL US ABOUT WHY IT LOOKS FAMILIAR TO
13 YOU?

14 A I THOUGHT THIS WAS DRAFTED BY MR. HUNT'S
15 ATTORNEYS.

16 Q ALL RIGHT.

17 DRAWING YOUR ATTENTION TO PAGE TWO OF THAT
18 DOCUMENT AND WHERE IT TALKS ABOUT CONSIDERATION FOR
19 OPTION?

20 A YES.

21 Q AND IT TALKS ABOUT EQUAL NONREFUNDABLE
22 MONTHLY PAYMENTS OF \$6000 -- EXCUSE ME -- \$333,000.

23 A YES.

24 Q OVER AN 18-MONTH PERIOD OF TIME.

25 A YES.

26 Q WOULD YOU HAVE ADVISED -- AS MR. KILPATRICK'S
27 LAWYER WOULD YOU HAVE ADVISED HIM TO SIGN THIS AGREEMENT
28 WITH THIS CONSIDERATION PARAGRAPH --

1 MR. KLEIN: CALLS FOR SPECULATION.

2 MR. CRAIN: IRRELEVANT AND SPECULATION.

3 THE COURT: COUNSEL, YOU GOT TO TAKE TURNS.

4 MR. CRAIN: I WILL DO THE OBJECTION. IRRELEVANT
5 AND CALLS FOR SPECULATION.

6 THE COURT: CALLS FOR SPECULATION. SUSTAINED.

7 BY MR. MC MULLEN:

8 Q DID YOU EVER TALK TO MR. KILPATRICK ABOUT
9 THIS AGREEMENT, PETITIONER'S 4?

10 A I AM SURE I DID. YOU KNOW, I DON'T REMEMBER
11 SAYING, "PAGE TWO THIS OR THAT," BUT I AM SURE WE TALKED
12 ABOUT IT.

13 Q EARLIER YOU TESTIFIED THAT ONE OF THE THINGS
14 THAT YOU TRIED -- PRIOR TO YOUR MEETING IN JUNE WAS TO FIX
15 THIS PROBLEM WITH RESPECT TO MR. HUNT AND THE DISPUTE OVER
16 THE OWNERSHIP RIGHTS OF THE ATTRITION MILLS, WHAT HAPPENED
17 WITH THAT?

18 A I THOUGHT THAT WE WERE UNABLE TO MAKE AN
19 AGREEMENT WITH MR. HUNT TO AND THROUGH TODAY THAT WAS MY
20 THINKING, BUT IN PREPARING FOR THIS CASE I HAD SEEN AN
21 EXHIBIT THAT MAKES ME WONDER BECAUSE IT IS A DOCUMENT THAT
22 I WAS NOT FAMILIAR WITH, BUT IT LOOKED LIKE IT WAS SIGNED.
23 BUT THIS ONE THAT YOU HANDED ME HERE I WILL ASSURE YOU WAS
24 NOT SIGNED.

25 Q WHEN YOU WERE AT THE MEETING IN JUNE OF 1984
26 WAS MR. KILPATRICK ALSO IN ATTENDANCE AT THAT NEGOTIATING
27 MEETING?

28 A YES.

1 Q AND WAS ONE OF THE REQUIREMENTS, IF YOU KNOW,
2 OF MR. KILPATRICK WITH RESPECT TO ANY AGREEMENT THAT WE
3 WOULD REACH WITH MR. HUNT AND MR. HUNT'S COMPANIES, WAS
4 ONE OF THE REQUIREMENTS THAT HE HAVE A PROTOTYPE MACHINE
5 THAT WAS WORKING FOR HIS APPLICATION THAT HE WAS INTENDING
6 TO USE IT FOR?

7 A WELL, LET ME SAY THIS ABOUT THAT BECAUSE THE
8 WORDING IS AWKWARD. HE WOULD SIGN --

9 MR. KLEIN: OBJECTION. NONRESPONSIVE.

10 THE WITNESS: I CAN'T ANSWER IT THE WAY THAT --

11 THE COURT: WHO IS GOING TO DO THE
12 CROSS-EXAMINATION?

13 MR. KLEIN: HE IS.

14 THE COURT: YOU ARE THE ONLY ONE THAT IS GOING TO
15 OBJECT, THEN.

16 MR. CRAIN: NONRESPONSIVE. MOTION TO STRIKE.

17 THE COURT: MOTION TO STRIKE IS GRANTED. HE DIDN'T
18 SAY MUCH.

19 GO.

20 BY MR. MC MULLEN:

21 Q WAS MR. KILPATRICK, IF YOU KNOW, WAS HE
22 INTERESTED IN SEEING A MACHINE, AN OPERATING MACHINE, THAT
23 WOULD FULFILL HIS NEEDS BEFORE HE ENTERED INTO AN
24 AGREEMENT WITH MR. HUNT?

25 A WELL, IF THE AGREEMENT PROVIDED HE COULD SEE
26 IT, THEN HE WOULD ENTER THE AGREEMENT, BUT HE MIGHT ENTER
27 AN AGREEMENT BUT IT WOULDN'T DO ANYTHING UNTIL HE GOT WHAT
28 HE PAID FOR, AND HE IS NOT GOING TO PUT OUT ANY MONEY.

1 Q DURING THE TIME --

2 MR. CRAIN: AGAIN, THAT'S SPECULATION.

3 THE COURT: SUSTAINED. THE ANSWER WILL GO OUT.

4 MR. CRAIN: I WOULD ASK IF THE COURT WOULD TELL THE
5 WITNESS TO ANSWER THE QUESTION AS POSED TO HIM AND NOT
6 GIVE NONRESPONSIVE ANSWERS.

7 THE COURT: I THINK HE IS TRYING TO GIVE RESPONSIVE
8 ANSWERS.

9 TIGHTEN UP THE QUESTIONS. COME ON.

10 MR. MC MULLEN: THANK YOU.

11 BY MR. MC MULLEN:

12 Q AT THE TIME THAT YOU MET WITH MR. HUNT IN
13 JUNE OF '84 WAS MR. KILPATRICK IN BANKRUPTCY PROCEEDINGS?

14 A YES.

15 Q AND WAS MR. KILPATRICK AT THAT TIME UNDER THE
16 CLOUD OR UNDER THE BURDEN OF A FEDERAL INDICTMENT?

17 A YES.

18 Q AND WITH RESPECT TO THE INDICTMENT, WOULD THE
19 INDICTMENT BE AN IMPEDIMENT TO MR. KILPATRICK GOING
20 FORWARD WITH AN AGREEMENT WITH MR. HUNT REGARDING THE
21 ATTRITION MILLS?

22 A NO.

23 Q WHY IS THAT?

24 A HE CAN DO WHATEVER HE WANTS.

25 Q DO YOU KNOW WHAT WERE THE IMPEDIMENTS FOR
26 MR. KILPATRICK IN YOUR DISCUSSIONS WITH HIM?

27 A WELL, HE WOULD BE MORE CAREFUL ABOUT THINGS
28 BECAUSE HE WAS UNDER INDICTMENT.

1 Q AND HOW ABOUT THE BANKRUPTCY PROCEEDINGS, WAS
2 THAT A PROBLEM FOR KILPATRICK ENTERING INTO AN AGREEMENT
3 WITH THE HUNT PEOPLE WITH RESPECT TO THE ATTRITION MILLS?

4 A WELL, HE WAS A DEBTOR IN POSSESSION SO
5 EVERYTHING WOULD BE SIGNED ACCORDINGLY, BUT HIS BANKRUPTCY
6 ESTATE WAS QUITE VIABLE IN THE SENSE THAT HE HAD JUST
7 FINISHED MARKETING 120 MILLION DOLLARS WORTH OF TAX
8 SHELTERS AND HAD RECEIVABLES OF ABOUT 100 MILLION, AND HAD
9 A COMPANY THAT WAS FOLLOWED VERY CLOSELY BY THE PRESS, IN
10 PARTICULAR LIKE THE FINANCIAL PRESS, SO I THINK HE WOULD
11 COME OFF, EVEN THOUGH HE IS IN BANKRUPTCY THE ORDINARY
12 PERSON WOULD CONSIDER HIM TO BE SOMEBODY YOU COULD DO
13 BUSINESS WITH.

14 Q AND YOU MENTIONED THERE WAS SOME SORT OF
15 OWNERSHIP PROBLEM PRIOR TO GOING TO THE JUNE '84 MEETING,
16 NEGOTIATING MEETING. WAS THAT MADE KNOWN TO MR. HUNT THAT
17 MR. KILPATRICK WAS CLAIMING OWNERSHIP OF THE ATTRITION
18 MILLS?

19 A ABSOLUTELY. ABSOLUTELY.

20 MR. CRAIN: I MOVE TO STRIKE THAT BECAUSE THERE IS
21 NO FOUNDATION. MR. MC MULLEN ASKS THESE QUESTIONS THAT DO
22 ASK THE WITNESS FOR HIS PERSONAL KNOWLEDGE, AND THEN THE
23 WITNESS BLURTS OUT, FOR EXAMPLE, "ABSOLUTELY.
24 ABSOLUTELY." SO AS FAR AS WE ARE CONCERNED, IT IS A
25 CONCLUSION. I WOULD MOVE TO STRIKE IT.

26 THE COURT: I WILL ALLOW THE ANSWER TO STAND.
27 BY MR. MC MULLEN:

28 Q AND FROM YOUR PERSONAL KNOWLEDGE WHAT DID YOU

1 OBSERVE TO BE THE REACTION OF MR. HUNT WHEN CONFRONTED
2 WITH THIS NOTION OR THIS CONTENTION THAT KILPATRICK HAD
3 THE OWNERSHIP RIGHTS OF THE ATTRITION MILLS?

4 A I THINK THEY LAUGHED ABOUT IT. IT WAS KIND
5 OF LIKE, "OF COURSE, HE SOLD IT SEVERAL TIMES. THEY ALL
6 DO." SO THEY KIND OF JUST ASSUMED THAT THEY COULD PUT IT
7 BACK TOGETHER AND RUN WITH WHATEVER WAS LEFT.

8 MR. MC MULLEN: MAY I APPROACH THE WITNESS?

9 THE COURT: YES.

10 BY MR. MC MULLEN:

11 Q SHOWING YOU WHAT'S BEEN MARKED AS
12 PETITIONER'S EXHIBIT 287. WOULD YOU LOOK AT THAT
13 DOCUMENT.

14 A I HAVE REVIEWED IT PRIOR TO TRIAL.

15 Q AND DOES THAT DOCUMENT LOOK FAMILIAR TO YOU?

16 A YES AND NO.

17 Q HOW DOES IT LOOK FAMILIAR TO YOU?

18 A IT IS MY AGREEMENT THAT I DRAFTED FOR
19 COGENCO, WHICH IS MR. SWARTOUT, BUT I AM NOT FAMILIAR WITH
20 THE MARKINGS ON IT, AND I WAS UNFAMILIAR WITH IT AS A
21 SIGNED AGREEMENT.

22 Q DO YOU HAVE A RECOLLECTION OF WHAT COGENCO
23 IS?

24 A THAT WAS MR. SWARTOUT, ANOTHER PERSON THAT
25 BROUGHT THE ATTRITION MILLING MACHINE FROM DR. BROWNING.

26 Q SO THIS 287 IS A FORM OF A CONTRACT THAT YOU
27 PREPARED WITH RESPECT TO COGENCO?

28 A YES.

1 Q AND MR. KILPATRICK'S COMPANY, UNITED
2 FINANCIAL OPERATIONS; IS THAT CORRECT?

3 A YES.

4 Q AND WHAT WAS THE PURPOSE OF THAT AGREEMENT
5 BETWEEN, IF YOU REMEMBER, COGENCO AND KILPATRICK?

6 A TO TAKE A LICENSE. THIS IS A MARKETING
7 AGREEMENT. THIS PARTICULAR ONE. THE SECOND ONE IS A
8 LICENSING AGREEMENT FROM COGENCO TO UNITED FINANCIAL
9 OPERATIONS, INC., AND TWO OF ITS AFFILIATES THAT ARE
10 MENTIONED IN HERE AS A WAY OF CURING THE PROBLEM OF
11 DR. BROWNING CONVEYING HIS TECHNOLOGY TO COGENCO AFTER HE
12 ALREADY CONVEYED IT TO U.F.O.I.

13 Q AND TO YOUR KNOWLEDGE DID SUCH AN
14 AGREEMENT -- WAS SUCH AN AGREEMENT SIGNED BY THE PARTIES
15 WITH RESPECT TO COGENCO AND UNITED FINANCIAL?

16 A YES.

17 Q AND YOU MENTIONED THAT YOU HAD DRAFTED SOME
18 KIND OF A CONTRACT OR AGREEMENT TO TAKE TO THE JUNE '84
19 MEETING WITH RESPECT TO OWNERSHIP, CONCERNING OWNERSHIP
20 RIGHTS OF THIS ATTRITION MILLS TECHNOLOGY. WOULD IT HAVE
21 BEEN OF SIMILAR FORM AS THE ONE THAT YOU HAVE IN FRONT OF
22 YOU THERE?

23 A AS I REMEMBER IT TODAY, I THOUGHT THAT'S WHAT
24 WE WERE DOING, YES. I THOUGHT IT WAS THE SAME KIND OF
25 THING.

26 MR. MC MULLEN: IF I MIGHT APPROACH THE WITNESS?

27 THE COURT: YES.
28

1 BY MR. MC MULLEN:

2 Q SHOWING YOU WHAT'S BEEN MARKED AS
3 PETITIONER'S EXHIBIT 7. WOULD YOU LOOK AT THAT AND TELL
4 ME IS THAT A CONTRACT THAT YOU DRAFTED?

5 A NO, I DID NOT DRAFT THIS.

6 Q AND SHOWING YOU WHAT'S BEEN MARKED AS
7 PETITIONER'S EXHIBIT 5 FOR IDENTIFICATION. WOULD YOU LOOK
8 AT WHAT'S ENTITLED LICENSING AGREEMENT?

9 A ARE THESE THE SAME?

10 Q THAT I AM UNSURE OF.

11 MR. KLEIN: EXCUSE ME.

12 CAN HE ASK THE WITNESS A QUESTION?

13 BY MR. MC MULLEN:

14 Q THE QUESTION I HAVE FOR YOU IS: DID YOU
15 DRAFT THIS CONTRACT PETITIONER'S EXHIBIT 5?

16 A I DON'T THINK SO.

17 Q DO YOU RECOGNIZE EXHIBIT 5 AS SOMETHING YOU
18 HAVE SEEN IN CONJUNCTION WITH THE NEGOTIATIONS BETWEEN
19 KILPATRICK AND HUNT IN THE SUMMER MONTHS OF '84.

20 A VAGUELY. I COULDN'T PASS A QUIZ ON THIS, BUT
21 GENERALLY THIS WAS THE KIND OF THING THEY WERE TALKING
22 ABOUT. I BELIEVE THIS WAS PREPARED BY MR. HUNT'S
23 ATTORNEYS.

24 Q WHEN YOU MET WITH HUNT AND THE PEOPLE FROM
25 THE B.B.C. WITH MR. KILPATRICK IN JUNE OF '84, DID YOU SIT
26 DOWN AND CONDUCT AN ORDINARY, WHAT WOULD BE A CUSTOMARY
27 BUSINESS NEGOTIATIONS SESSION?

28 A NO.

1 Q HOW WOULD YOU DESCRIBE WHAT OCCURRED WHEN YOU
2 MET?

3 MR. CRAIN: OBJECTION. THIS IS IRRELEVANT. I KNOW
4 EXACTLY WHERE COUNSEL IS GOING, AND HE KNOWS WELL THIS HAS
5 NOTHING TO DO WITH ANY ISSUE IN THIS CASE.

6 THE COURT: I DON'T. LET ME HEAR IT SUBJECT TO
7 MOTION TO STRIKE.

8 BY MR. MC MULLEN:

9 Q WOULD YOU DESCRIBE THE NEGOTIATING PROCESS
10 THAT OCCURRED WHEN YOU ATTENDED THE MEETING IN JUNE OF '84
11 IN LOS ANGELES AT THE B.B.C. OFFICES.

12 A YES. IT WAS SORT OF FREE-FLOATING AND PEOPLE
13 WOULD WALK AROUND AND MILL AROUND, AND IT WAS ONLY A
14 COUPLE OF PEOPLE THERE AND MOST OF THE TIME MR. HUNT HAD A
15 BROKEN LEG OR BROKEN ANKLE AND HE WAS ON A CRUTCH AND HE
16 WAS PERSONALLY VERY UNCOMFORTABLE.

17 MR. PITTMAN WAS THERE AND HE CAME IN AND OUT.
18 AND I WAS WANTING TO MEET THE ATTORNEY, AND I DIDN'T HAVE
19 A CHANCE TO MEET HIM. AND I THINK ONE OTHER PERSON,
20 MR. MAY, I MET. THEY WOULD COME WALKING THROUGH AND IN
21 AND OUT, BUT THERE WAS NEVER REALLY A MEETING. IT WAS
22 KIND OF LIKE WE PUT ON A MOVIE ON TELEVISION AND WATCHED
23 IT FOR TWO HOURS, BUT IT WASN'T A BUSINESS MEETING LIKE I
24 WAS EXPECTING.

25 Q WHEN YOU ATTENDED THAT MEETING IN JUNE OF '84
26 IN YOUR REPRESENTATION OF MR. KILPATRICK, WAS IT YOUR
27 INTENTION TO HAVE READY CASH FOR A CONTRACT THAT WAS GOING
28 TO BE NEGOTIATED AT THAT TIME FOR MR. HUNT AND HIS

1 ORGANIZATION?

2 A NO. NO, I WOULDN'T.

3 Q TO YOUR KNOWLEDGE, TO YOUR PERSONAL
4 KNOWLEDGE, WAS THAT CONVEYED TO MR. HUNT DURING THAT
5 MEETING?

6 A WELL, AT SOME POINT, YES, IT BECAME
7 ABSOLUTELY CLEAR THAT WE WEREN'T PUTTING OUT ANY MONEY.

8 MR. CRAIN: MOTION TO STRIKE AS NONRESPONSIVE. THE
9 QUESTION WAS: WAS IT CONVEYED.

10 THE COURT: SUSTAINED.

11 MR. CRAIN: THANK YOU.

12 BY MR. MC MULLEN:

13 Q HOW WAS IT CONVEYED OR HOW WAS IT
14 COMMUNICATED TO HUNT THAT THERE WAS NO MONEY COMING?

15 MR. CRAIN: ASSUMES FACT NOT IN EVIDENCE.
16 OBJECTION.

17 THE COURT: REFRAME IT. LAY A FOUNDATION.

18 BY MR. MC MULLEN:

19 Q WAS THE SUBJECT DISCUSSED AT THE MEETING IN
20 JUNE OF '84 OF MONEY BEING UP FRONT, MONEY BEING GIVEN BY
21 KILPATRICK TO HUNT FOR THIS AGREEMENT?

22 A AS PART OF THE OVERALL DISCUSSIONS, YES. I
23 DIDN'T -- IT DIDN'T COME OUT WITH BIG BILLBOARDS ON IT, IT
24 WAS JUST PART OF WHAT WAS GOING ON.

25 Q WHAT WAS SAID WITH RESPECT TO ANY MONEY THAT
26 WOULD BE FORTHCOMING IMMEDIATELY FROM THAT MEETING ON
27 JANUARY?

28 MR. CRAIN: OBJECTION. ASSUMES FACTS NOT IN

1 EVIDENCE.

2 THE COURT: OVERRULED. BUT LAY A FOUNDATION WHAT
3 WAS SAID, AND I UNDERSTAND IT WAS A DESCRIPTION OF THE
4 MEETING, PEOPLE COMING AND GOING, WALKING IN AND OUT. I
5 DON'T KNOW WHO IS THERE.

6 BY MR. MC MULLEN:

7 Q WHAT WAS SAID?

8 THE COURT: DID YOU TELL ANYONE THAT YOUR CLIENT
9 WAS NOT GOING TO GIVE THEM ANY MONEY?

10 THE WITNESS: I DON'T REMEMBER SAYING THAT.

11 THE COURT: DID YOU TELL ANYONE THAT THERE WAS
12 GOING TO BE A PARTICULAR TIME PERIOD IN WHICH THEY WOULD
13 RECEIVE MONEY FROM YOUR CLIENT?

14 THE WITNESS: NO. NO.

15 THE COURT: WAS THERE ANY PROMISES MADE OF MONEY
16 BEING FORTHCOMING AT ANY POINT?

17 THE WITNESS: NO.

18 BY MR. MC MULLEN:

19 Q DID MR. KILPATRICK SAY ANYTHING ABOUT MONEY
20 FORTHCOMING IMMEDIATELY?

21 A YES. IF WE RAISE IT, YOU WOULD HAVE IT.

22 Q WHEN YOU SAY, "IF WE RAISE IT" --

23 MR. CRAIN: IS HE ASKING ABOUT WHAT MR. KILPATRICK
24 ALLEGEDLY SAID AT THE MEETING?

25 THE COURT: THAT'S WHAT I UNDERSTAND THE QUESTION
26 TO BE.

27 MR. MC MULLEN: I AM LOST NOW.

28

1 BY MR. MC MULLEN:

2 Q WHAT DID MR. KILPATRICK SAY WITH RESPECT TO
3 THAT?

4 A IF WE RAISED MONEY, WE WILL HAVE MONEY.

5 Q WHEN YOU SAY "WE RAISE MONEY," WHAT WAS HE
6 TALKING ABOUT?

7 A HE IS TALKING ABOUT TWO PROMOTERS GETTING
8 TOGETHER, JOE AND BILL, AND SEEING IF THEY COULD RAISE
9 MONEY ON THE ATTRITION MACHINE.

10 Q I SEE.

11 DID KILPATRICK SAY ANYTHING ELSE ABOUT ANY
12 MONEY THAT MIGHT BE FORTHCOMING IN THE NEAR FUTURE?

13 MR. KLEIN: -- EXCUSE ME.

14 I OBJECT TO ANYTHING THAT HE THINKS ABOUT
15 MR. HUNT, BECAUSE THERE IS NO FOUNDATION FOR IT AS TO
16 KILPATRICK, AND I HAVE AN OBJECTION.

17 THE COURT: REFRAME THE QUESTION.

18 MR. KLEIN: THE LAST ANSWER I JUST OBJECT TO --
19 NEVER MIND.

20 BY MR. MC MULLEN:

21 Q DID MR. KILPATRICK SAYING ANYTHING ELSE ABOUT
22 MONEY THAT WAS GOING TO BE FLOWING FROM HIM TO MR. HUNT IN
23 THE IMMEDIATE FUTURE WITH RESPECT TO THE NEGOTIATIONS?

24 A WHAT HE SAID TO ME?

25 Q NO. TO HUNT?

26 A AT THIS SORT OF MEETING?

27 Q YES?

28 A I THINK HE MADE IT CLEAR THAT HE WASN'T

1 WRITING ANY CHECKS.

2 Q WAS -- WERE THERE ANY DISCUSSIONS ABOUT THE
3 TIMING OF WHEN MONEY WOULD BE FLOWING TO THE HUNT
4 ORGANIZATION FROM KILPATRICK'S ORGANIZATION?

5 A YES.

6 Q WHAT WAS SAID WITH RESPECT TO THAT, AND WHO
7 SAID IT?

8 A IT IS HARD TO PIN THAT DOWN BECAUSE I HAVE A
9 REMEMBRANCE OF HOW I LEFT THE MEETING AND HOW I GOT THAT
10 IMPRESSION. I CAN'T REMEMBER WHO SAID IT OTHER THAN WHAT
11 KILPATRICK WOULD HAVE SAID AND THAT WAS THAT --

12 MR. CRAIN: I OBJECT TO WHAT HE WOULD HAVE SAID.

13 THE COURT: JUST WHAT HE DID SAY.

14 BY MR. MC MULLEN:

15 Q JUST WHAT HE DID SAY?

16 A I CAN'T REMEMBER HIS EXACT WORDS. I CAN'T
17 REMEMBER HIS EXACT WORDS. HOWEVER, YOU GOT TO KNOW THERE
18 IS A MERGER PENDING WITH A PUBLIC COMPANY, AND THAT WAS
19 VERY IMPORTANT TO THESE PEOPLE.

20 MR. CRAIN: THAT'S NONRESPONSIVE. MOTION TO
21 STRIKE.

22 THE COURT: I ALLOW THE ANSWER TO STAND. THERE HAS
23 BEEN TESTIMONY.

24 BY MR. MC MULLEN:

25 Q WAS THERE DISCUSSION OF THAT JUNE '84 MEETING
26 ABOUT THE MERGER?

27 A YES. QUITE A BIT. THAT WAS A LARGE PART OF
28 IT.

1 Q WAS THERE DISCUSSIONS ABOUT THE TIMING OF
2 THAT MERGER DURING THE MEETING?

3 A OH, YES.

4 Q AND WHAT DID MR. KILPATRICK SAY ABOUT THE
5 TIMING OF THE MERGER?

6 A EVERYTHING WAS PRETTY MUCH COMPLETED EXCEPT
7 THE APPROVAL OF THE BRITISH COLUMBIA REGULATORY AUTHORITY.

8 Q AND IN FACT, DID THAT GET APPROVED BY THAT
9 AUTHORITY?

10 A NO. IT WAS REJECTED.

11 Q WHEN DID THAT HAPPEN?

12 A I DON'T HAVE A DATE, BUT IT WOULD HAVE BEEN
13 MANY MONTHS AFTER THIS EVENT. MANY MONTHS, MAYBE A YEAR.

14 Q YOU SAID EARLIER, YOU ANSWERED A QUESTION AND
15 SAID PROMOTERS RAISING MONEY. WHO DID YOU MEAN? WHO WAS
16 TO RAISE MONEY?

17 A WE HADN'T WORKED THAT OUT YET. IT WOULD HAVE
18 BEEN WORKED OUT.

19 Q BUT WAS THAT DISCUSSED DURING THE JUNE '84
20 MEETING?

21 A WE DIDN'T GET THAT FAR. WE DIDN'T GET ANY
22 SPECIFICS, AND AS FAR AS I AM CONCERNED, I DON'T REMEMBER
23 THAT THERE WAS EVER A CONTRACT.

24 Q AND WITH RESPECT TO EXHIBIT 7, THIS LICENSING
25 AGREEMENT, PETITIONER'S 7, TO YOUR KNOWLEDGE, WAS THAT
26 EVER SIGNED, THAT AGREEMENT?

27 A I AM SURE IT WAS NOT.

28 Q AND WITH RESPECT TO PETITIONER'S 4, THIS

1 OPTION AGREEMENT, TO YOUR KNOWLEDGE, WAS THAT EVER SIGNED?

2

3 A I AM SURE IT WAS NOT.

4 Q WITH RESPECT TO EXHIBIT 5, LICENSE AGREEMENT,
5 TO YOUR KNOWLEDGE, WAS THAT EVER SIGNED?

6 A I AM SURE IT WAS NOT.

7 Q DURING THE JUNE MEETING WAS THERE ANY -- DID
8 YOU OVERHEAR OR HEAR ANY DISCUSSION ABOUT FINANCIAL, THE
9 FINANCIAL CONDITION OF THE B.B.C. AT THAT TIME IN JUNE OF
10 '84?

11 MR. CRAIN: OBJECTION. CALLS FOR HEARSAY.

12 THE COURT: LAY A FOUNDATION.

13 MR. HUNT WAS THERE, YOU CAN SAY WHAT MR. HUNT
14 SAID.

15 HOW MUCH MORE DO YOU HAVE WITH THIS WITNESS?

16 MR. MC MULLEN: I AM ALMOST DONE.

17 THE COURT: OKAY.

18 BY MR. MC MULLEN:

19 Q DID MR. HUNT SAY ANYTHING ABOUT THE FINANCIAL
20 CONDITION OF THE B.B.C. WHEN YOU WERE THERE IN JUNE OF
21 '84?

22 MR. CRAIN: OBJECTION. IRRELEVANT.

23 THE COURT: OVERRULED.

24 THE WITNESS: HE SAID THEY WERE HAVING TROUBLES
25 WITH CARS AND THEY WERE SELLING SOME CARS OFF. I GOT THE
26 IMPRESSION --

27 MR. CRAIN: I OBJECT TO THAT. HE HAS ANSWERED THE
28 QUESTION.

1 THE COURT: ALL RIGHT.

2 MR. CRAIN: HIS IMPRESSION IS NONRESPONSIVE.

3 MR. MC MULLEN: MAY I JUST HAVE A MOMENT, YOUR
4 HONOR?

5 THE COURT: YES.

6

7 (PAUSE.)

8

9 BY MR. MC MULLEN:

10 Q DID YOU DRAFT SOME KIND OF AGREEMENT BETWEEN
11 THE B.B.C. AND KILPATRICK SOMETIME AFTER THE BROWNING
12 AGREEMENT THAT YOU HAVE EARLIER TESTIFIED TO WAS SIGNED BY
13 BROWNING AND KILPATRICK?

14 A YES. SOME TIME.

15 THE COURT: I AM SORRY. YOU LOST ME. WHAT WAS THE
16 QUESTION AGAIN? DID YOU PREPARE AN AGREEMENT?

17 BY MR. MC MULLEN:

18 Q DID YOU PREPARE A JOINT VENTURE AGREEMENT
19 BETWEEN THE B.B.C. AND KILPATRICK SOMETIME AFTER THE
20 AGREEMENT, THE AGREEMENT THAT YOU DRAFTED AND WAS ENTERED
21 INTO BETWEEN BROWNING AND KILPATRICK.

22 MR. CRAIN: OBJECTION. UNINTELLIGIBLE.

23 THE WITNESS: WELL--

24 THE COURT: I THINK -- DO YOU UNDERSTAND THE
25 QUESTION?

26 MR. MC MULLEN: I WILL WITHDRAW THE QUESTION. LET
27 ME ASK ANOTHER QUESTION.

28

1 BY MR. MC MULLEN:

2 Q DID YOU DRAFT AN AGREEMENT, SOME KIND OF A
3 JOIN VENTURE AGREEMENT BETWEEN THE B.B.C. AND KILPATRICK?

4 A IT WAS AN AGREEMENT, WHETHER THE NAME WAS
5 JOINT VENTURE I DON'T REMEMBER EXACTLY THE NAME OF IT, BUT
6 I DID DRAFT AGREEMENT FOR THIS MEETING IN JUNE.

7 Q OKAY.

8 AND WHEN DID YOU DRAFT THAT AGREEMENT?

9 A IT WOULD HAVE BEEN IN MAY.

10 THE COURT: OF.

11 THE WITNESS: 84?

12 BY MR. MC MULLEN:

13 Q AND WAS THAT AGREEMENT EVER SIGNED?

14 A NO.

15 Q AND TO THE EXTENT THAT YOU CAN REMEMBER ABOUT
16 IT COULD YOU DESCRIBE THE AGREEMENT, THE TERMS OF THE
17 AGREEMENT TO THE EXTENT THAT YOU CAN REMEMBER ABOUT IT?

18 A I HATE TO DO THAT. I THOUGHT IT WAS SIMILAR
19 TO --

20 MR. CRAIN: THIS IS ANOTHER BEST EVIDENCE PROBLEM.
21 THE MAN IS TALKING ABOUT A LEGAL CONTRACT THAT NOBODY
22 CAN --

23 THE COURT: THAT'S NOT A BEST EVIDENCE OBJECTION.
24 THE QUESTION IS -- IT IS REALLY COMPLETELY IRRELEVANT.

25 MR. CRAIN: I WILL BE --

26 THE COURT: IF YOU DRAFT AN AGREEMENT THAT NOBODY
27 EVER SIGNED WHO CARES.

28 GO.

1 MR. MC MULLEN: NOTHING FURTHER.

2 THE COURT: CROSS-EXAMINATION?

3 MR. CRAIN: MAY I HAVE JUST A MOMENT?

4 THE COURT: YES.

5

6 (PAUSE.)

7

8 CROSS-EXAMINATION +

9

10 BY MR. CRAIN:

11 Q MR. O' DONNELL, WHEN DID YOU FIRST MEET WITH
12 KILPATRICK?

13 A I FIRST MET MR. KILPATRICK IN APPROXIMATELY
14 EARLY 1977.

15 Q AND ARE YOU HOUSE COUNSEL TO MR. KILPATRICK,
16 OR DO YOU REPRESENT OTHER CLIENTS?

17 A I HAVE A PRIVATE LAW FIRM. I AM NOT HOUSE
18 COUNSEL.

19 Q HE IS ONE OF MANY CLIENTS; RIGHT?

20 A YES.

21 Q AND SOME OF THESE EVENTS THAT YOU TESTIFIED
22 TO HAZY IN YOUR MIND?

23 A YES.

24 Q THAT BECAUSE OF THE PASSAGE OF TIME?

25 A YES.

26 Q AND DID YOU REPRESENT -- YOU ARE AWARE THAT
27 MR. KILPATRICK HAS HAD VARIOUS MATTERS IN WHICH HE HAS
28 BEEN CHARGED CRIMINALLY BY THE UNITED STATES ATTORNEY'S

1 OFFICE WITH VIOLATING FEDERAL CRIMINAL LAWS; RIGHT?

2 A YES.

3 Q AND HAVE YOU REPRESENTED HIM IN CONNECTION
4 WITH ANY OF HIS CRIMINAL PROSECUTION?

5 A NO.

6 Q NOW, YOU TESTIFIED THAT YOU CAME TO LOS
7 ANGELES IN 1984; CORRECT?

8 A I BELIEVE THAT'S CORRECT, YES.

9 Q IN FACT, YOU PLACE THAT IN YOUR DECLARATION;
10 CORRECT?

11 A YES.

12 MR. CRAIN: WHICH WAS MARKED AS X, I BELIEVE.

13 BY MR. CRAIN:

14 Q IF YOU NEED TO LOOK AT SOMETHING, FEEL FREE.
15 JUST SO WE ARE CLEAR ON THIS.

16 YOU MADE ONE TRIP ONLY TO LOS ANGELES; IS
17 THAT RIGHT?

18 A YES.

19 Q AND IT WAS AT THAT TIME THAT YOU MET
20 MR. HUNT?

21 A YES.

22 Q HAD YOU MET MR. HUNT BEFORE?

23 A NO.

24 Q WAS THAT THE ONLY TIME IN YOUR LIFE YOU EVER
25 MET MR. HUNT?

26 A IT IS THE ONLY ONE I REMEMBER.

27 Q AND THAT TRIP WAS MADE SOMETIME AFTER JUNE 6,
28 1984; CORRECT?

1 A YES.

2 Q THAT'S WHAT YOU PLACE IT IN THE DECLARATION
3 THAT YOU ASSUMED ON JUNE 28, 1995; IS THAT RIGHT?

4 A YES.

5 Q BUT THE TRIP OCCURRED AFTER JUNE 6, 1984;
6 RIGHT?

7 A YES.

8 Q SO THE MEETING OBVIOUSLY THAT YOU DESCRIBED
9 THE FREE FLOATING MEETING TOOK PLACE AFTER JUNE 6, 1984;
10 RIGHT?

11 A THAT'S WHAT I EXPECT, YES.

12 Q WELL, IN FACT, THAT'S WHAT HAPPENED BECAUSE
13 THAT'S WHAT YOU PUT IN YOUR DECLARATION THAT WAS CORRECT
14 AS YOU TOLD US EARLIER; RIGHT?

15 A YES, BUT I SEE ANOTHER MISTAKE ON HERE.

16 Q OKAY.

17 BUT THAT'S NOT ONE OF THEM; RIGHT?

18 A NO. THAT'S MY BEST MEMORY.

19 Q JUST POINT TO THE PARAGRAPH WHERE THE OTHER
20 MISTAKE IS IN CASE I WANT TO ASK YOU ABOUT IT.

21 THE COURT: WE DON'T HAVE A RECORD THAT WAY.

22 MR. CRAIN: HE IS NOW LOOKING AT EXHIBIT X.

23 THE COURT: WHAT PARAGRAPH?

24 THE WITNESS: MY SIGNATURE JUNE 28 OF 1994.

25 BY MR. CRAIN:

26 Q WHEN YOU SIGNED THE DECLARATION EXHIBIT X?

27 A YES, BUT I AM NOT SURE OF THAT DATE. THAT
28 MAY BE THE RIGHT DATE, I DON'T REMEMBER. THAT MAY BE

1 RIGHT.

2 Q YOU MEAN YOU HAVE MAY SIGNED IT REFLECT THAT
3 IT WAS EXECUTED THAT DATE, BUT THAT YOU MAY HAVE MADE
4 ERROR ABOUT THAT; IS THAT RIGHT?

5 A YES.

6 Q HOWEVER, PARAGRAPH THREE IS CORRECT; IS THAT
7 RIGHT? THAT YOU MADE ONE TRIP TO LOS ANGELES WITH
8 KILPATRICK AFTER JUNE 6, 1984, TO NEGOTIATE WITH THE
9 B.B.C. REGARDING THE ATTRITION MILLS; RIGHT?

10 A YES.

11 Q OKAY.

12 NOW, OVER THE PERIOD OF TIME THAT YOU
13 REPRESENTED MR. KILPATRICK CAN YOU PROXIMATE THE NUMBER
14 OF, FOR WANT OF A BETTER TERM, LEGAL MATTERS THAT YOU
15 REPRESENTED HIM ON?

16 A THOUSANDS.

17 Q AND DID YOU MEET WITH MR. KILPATRICK
18 FREQUENTLY?

19 A NO.

20 Q DID YOU TALK WITH HIM FREQUENTLY?

21 A AMAZINGLY NOT.

22 Q DID YOU COMMUNICATE WITH HIM FREQUENTLY?

23 A SOMEHOW, YES, WE WOULD COMMUNICATE.

24 Q AND IN YOUR WORK AS AN ATTORNEY DID YOU
25 BECOME ACQUAINTED WITH MR. KILPATRICK'S VARIOUS
26 BUSINESSES?

27 A YES.

28 Q WOULD YOU SAY THAT YOU BECOME INTIMATELY

1 ACQUAINTED WITH HIM?

2 A YES.

3 Q WAS THAT FROM REVIEWING DOCUMENTS THAT
4 PERTAINED TO THEM?

5 A JUST HAPPENED I DON'T KNOW HOW TO EXPLAIN IT,
6 MAYBE DOCUMENTS WOULD BE A GOOD WAY, YES.

7 Q TALKING TO OTHER PEOPLE ABOUT HIS BUSINESSES,
8 WOULD THAT BE A SOURCE OF THE INFORMATION THAT YOU USED TO
9 GET?

10 A YES.

11 Q TALKING TO MR. KILPATRICK ABOUT IT?

12 A YES.

13 Q SEEING CORPORATE BALANCE SHEETS AND OTHER
14 FINANCIAL STATEMENTS?

15 A YES. I SAW EVERYTHING.

16 Q AND FROM ALL THESE THINGS THAT YOU SAW AND
17 ALL THIS INFORMATION THAT YOU GATHERED ABOUT
18 MR. KILPATRICK YOU DETERMINED THAT MR. KILPATRICK WAS AN
19 INDIVIDUAL WHO CONTROLLED A LOT OF ASSETS; IS THAT RIGHT?

20 A WHEN?

21 Q WELL, AT VARIOUS TIMES.

22 A YES.

23 Q AND MR. KILPATRICK --

24 THE COURT: LET'S FOCUS DOWN. WE GOT '77 TO 1995
25 PERIOD HERE AT VARIOUS TIMES. IT IS NOT HELPFUL.

26 MR. CRAIN: IT IS FOUNDATIONAL. THEN WE WILL
27 NARROW IT DOWN.

28 THE COURT: LET'S NARROW IT DOWN SO IT IS RELEVANT.

1 BY MR. CRAIN:

2 Q YOU TOLD US IN YOUR DIRECT EXAMINATION THAT
3 AT ONE POINT YOU DESCRIBED CERTAIN ASPECTS OF MR.
4 KILPATRICK'S NET WORTH. DO YOU REMEMBER THAT TESTIMONY A
5 LITTLE WHILE AGO?

6 A I --

7 Q REGARDING MILLIONS, TEN OF MILLIONS OF
8 DOLLARS OF ACCOUNTS RECEIVABLE AND OTHER MATTERS?

9 A YES, THAT'S NOT HIS NET WORTH, THAT WAS
10 CORPORATE RECEIVABLE.

11 Q WHEN WE ARE SAYING "THE CORPORATE," WE ARE
12 TALKING ABOUT THE CORPORATE FINANCIAL SITUATION OF
13 U.F.O.I.; IS THAT RIGHT?

14 A YES.

15 Q AND THE TIME THAT YOU WERE RELATING THAT THE
16 CORPORATE FINANCIAL PICTURE WAS IN THAT WAY WAS WHEN?

17 A IN THE '80'S.

18 Q AND CAN YOU TELL US AGAIN WHAT THE FINANCIAL
19 POSITION WAS AS YOU DESCRIBED IT ON DIRECT EXAMINATION OF
20 U.F.O.I.?

21 MR. MC MULLEN: OBJECTION. VAGUE AS TO TIME.

22 THE COURT: REFRAME IT. GIVE US A FOCUS OF TIME.

23 BY MR. CRAIN:

24 Q '83, '84. ESSENTIALLY THE SAME THROUGHOUT
25 THAT PERIOD?

26 A YES. IN THAT TIME PERIOD THEY HAD RUN A
27 GRAND JURY ON BILL AND ME AND SEVERAL OTHER PEOPLE, SEVEN
28 DEFENDANTS, THREE OF THEM WERE LAWYERS.

1 Q WAIT JUST A SECOND. LET ME JUST STOP YOU
2 RIGHT THERE?

3 A OKAY.

4 Q YOU SAY THEY LAUNCHED A FEDERAL GRAND JURY.
5 IN OTHER WORDS, THE UNITED STATES GOVERNMENT CONVENED A
6 GRAND JURY AND ISSUED AN INDICTMENT; IS THAT RIGHT?

7 A YES.

8 Q AND WAS THAT A 26 OR 27 COUNT INDICTMENT THAT
9 CHARGED MR. KILPATRICK WITH RUNNING A VERY LARGE-SCALE TAX
10 SHELTER SCAM?

11 A YES. 27 COUNTS.

12 Q AND YOU WERE A CO-DEFENDANT IN THAT
13 INDICTMENT?

14 A YES.

15 Q WERE YOU CONVICTED YOURSELF IN THAT MATTER?

16 A PARDON ME?

17 Q WERE CONVICTED AS A RESULT OF THAT
18 INDICTMENT?

19 A NO. NO, NOBODY WAS. WELL, SOME PEOPLE PLED
20 GUILTY, BUT ANYONE WHO WENT TO TRIAL GOT OFF.

21 Q THAT WAS A TRIAL BEFORE A JUDGE ONLY IN
22 DENVER?

23 A YES, JUDGE MACHE.

24 Q DURING '83 OR '84 YOU WERE ABOUT TO TELL US
25 THE FINANCIAL POSTURE OF U.F.O.I. WAS WHAT?

26 MR. MC MULLEN: OBJECTION. FOUNDATION.

27 MR. CRAIN: HE ASKED ON DIRECT EXAMINATION.

28 THANK YOU. I AM SORRY.

1 THE COURT: DON'T THANK YOU THE COURT FOR RULING
2 GIVE ME A CHANCE TO RULE.

3 MR. CRAIN: I KNOW IT IS A BAD HABIT.

4 THE WITNESS: I WOULD CALL IT VERY COMPLICATED AND
5 YET SUBSTANTIAL.

6 BY MR. CRAIN:

7 Q BY "SUBSTANTIAL" WHAT DO YOU MEAN?

8 A THERE WAS ON THE SURFACE A LOT OF MONEY
9 AROUND.

10 Q WHAT KIND OF MONEY?

11 A RECEIVABLES IN THE 50 TO 100 MILLION DOLLAR
12 RANGE.

13 Q WHAT OTHER KIND OF ASSETS DID U.F.O. HAVE --
14 U.F.O.I. HAVE DURING THIS PERIOD?

15 A CLAIMS TO TECHNOLOGIES, MOST OF WHICH HAD
16 BEEN PROMOTED TO TAX SHELTER INVESTORS, AND THAT ALSO HAD
17 CONTROL OF ABOUT A BILLION TONS OF COAL, ABOUT ONE HUNDRED
18 MILLIONS TONS OF WHICH WERE SOLD TO TAX SHELTER INVESTORS.

19 Q WHAT OTHER ASSETS DID U.F.O.I. HAVE.

20 MR. MC MULLEN: OBJECTION. RELEVANCE.

21 THE COURT: I WILL ALLOW IT BRIEFLY.

22 THE WITNESS: BOY, I WOULD LIKE TO GET FINANCIAL
23 STATEMENT OR SOMETHING. I AM HAVING A HARD TIME
24 REMEMBERING ON THAT.

25 BY MR. CRAIN:

26 Q WELL, GIVE IT YOUR BEST SHOT.

27 THE COURT: IF HE DOESN'T HAVE A RECOLLECTION,
28 LET'S MOVE ON.

1 DO YOU HAVE ANY RECOLLECTION OF ANY OTHER
2 RIGHTS OWNED BY THE COMPANY?

3 THE WITNESS: I DON'T, BUT IT WOULD BE HARD FOR ME
4 TO SAY THERE WEREN'T ANY BECAUSE I KNEW THERE WERE.

5 THE COURT: OKAY.

6 LET'S GO, MR. CRAIN.

7 BY MR. CRAIN:

8 Q NOW, IN THAT INDICTMENT IT WAS ALLEGED THAT
9 MR. KILPATRICK AND THE OTHER DEFENDANT HAD DEFRAUDED THE
10 FEDERAL GOVERNMENT OF 120 MILLION DOLLARS; IS THAT RIGHT?

11 A YES.

12 MR. MC MULLEN: OBJECTION. RELEVANCE.

13 THE COURT: I WILL ALLOW THAT QUESTION.

14 BY MR. CRAIN:

15 Q AND YOU MENTIONED MR. BROWNING, EUGENE
16 BROWNING, IS THIS SOMEONE YOU KNOW PERSONALLY?

17 A YES.

18 Q AND YOU TOLD US THAT MR. BROWNING HAD, THAT
19 HE WAS THE INVENTOR OF THE ATTRITION MILLS AS FAR AS YOU
20 KNEW?

21 A THAT'S WHAT HE CLAIMED, YES.

22 Q AND YOU DETERMINED THAT IN YOUR BELIEF MR.
23 BROWNING HAD SOLD HIS RIGHTS TO THE ATTRITION MILL TO A
24 NUMBER OF DIFFERENT PEOPLE OR COMPANIES; IS THAT CORRECT?

25 A WELL, WE FOUND OUT A COUPLE OF THEM AND A FEW
26 THAT HE APPROACHED BUT NOT CONTRACTED, SO WE GOT THE
27 PICTURE THAT HE WAS MARKETING.

28 Q SO YOU GOT THE PICTURE THAT MR. BROWNING WAS

1 RUNNING AROUND TRYING TO SELL HIS RIGHT ANY RIGHTS --
2 STRIKE THAT.

3 YOU GOT THE PICTURE THAT MR. BROWNING WAS
4 RUNNING AROUND CLAIMING TO HAVE RIGHTS IN THE ATTRITION
5 MILLS AND TRYING TO SELL THESE RIGHTS TO A NUMBER OF
6 DIFFERENT COMPANIES; IS THAT RIGHT?

7 A THAT WAS THE IMPRESSION WE GOT, YES.

8 Q AND YOU FOUND OUT THAT SOME OF THESE PURSUITS
9 AT LEAST OF MR. BROWNING WAS SUCCESSFUL; RIGHT?

10 A COGENCO, WE WERE SURE OF THAT, AND THEN WE
11 WERE, WE BELIEVED THAT MR. HUNT HAD ALSO ACQUIRED THEM.

12 Q YOUR BELIEF WAS THAT MR. HUNT OWNED RIGHTS TO
13 THE ATTRITION MILLS PURSUANT TO AN AGREEMENT WITH EUGENE
14 BROWNING; IS THAT RIGHT?

15 A YES.

16 Q AND YOU ALSO BELIEVE THAT COGENCO HAVE
17 PURCHASED RIGHTS FROM ATTRITION MILLS FROM MR. BROWNING OR
18 DR. BROWNING, AS YOU REFERRED TO HIM; CORRECT?

19 A YES.

20 Q AND BY THE WAY, ARE YOU AWARE OF THE PURCHASE
21 OF THE CONTROLLING INTEREST IN COGENCO BY MICROGENESIS
22 DURING 1983?

23 MR. MC MULLEN: OBJECTION. CALLS FOR SPECULATION.

24 THE COURT: SUSTAINED.

25 MR. CRAIN: I AM JUST ASKING HIM IF HE IS AWARE OF
26 THAT.

27 THE COURT: LAY A FOUNDATION.

28 YOU COULD HAVE BROUGHT A REPORT THIS WEEK.

1 BY MR. CRAIN:

2 Q HAVE YOU READ ANY REPORTS OR ANY BOOKS ABOUT
3 THIS CASE THAT DESCRIBE THE PURCHASE OF COGENCO BY
4 MICROGENESIS IN THE EARLY '80'S?

5 A NO. AND I DON'T KNOW THAT.

6 Q YOU JUST DON'T HAVE ANY INFORMATION ON THAT
7 FACT; IS THAT RIGHT?

8 A YES. IF I DID, I FORGOTTEN IT.

9 Q IN NOVEMBER OF 1983, YOU WERE ALSO WORKING AS
10 AN ATTORNEY FOR MR. KILPATRICK; IS THAT RIGHT?

11 A YES.

12 Q AND WHEN I SAY "MR. KILPATRICK," YOU ALSO
13 INCLUDE IN THAT HIS BUSINESS IN CASE I DON'T SAY IT;
14 RIGHT?

15 A YES.

16 Q AND YOU SAID YOU SEARCHED YOUR FILES FOR
17 BUSINESS RECORDS THAT RELATE TO U.F.O.I. NEGOTIATIONS WITH
18 THE B.B.C. AND MR. HUNT AND MICROGENESIS?

19 A YES. THE WORDS "SEARCH" WAS ONE TRIP TO A
20 STORAGE AREA THAT I COULD NOT GET INTO. I SEARCHED
21 EVERYTHING PLACE IN MY OFFICE, AND IT TURNED OUT THAT
22 THESE FILES WENT INTO DEEP STORAGE, AND WHEN I WENT THERE
23 I WASN'T ABLE TO GET IN THERE.

24 Q AND WHEN DID YOU GO THERE TO SEARCH FOR THESE
25 FILES?

26 A WITHIN -- THE LAST TIME WAS ABOUT A MONTH OR
27 TWO AGO.

28 Q YOU WERE UNABLE TO GET IN BECAUSE WHY?

1 A I HAVE IT IN A STORAGE AREA IN A MOTEL THAT I
2 OWN, AND WE HAVE WATER DAMAGE AND THEY HAD EXCAVATED AND
3 TAKEN OUT OF IT A WHOLE BUNCH OF THE BUILDING. THEY HAD
4 REPLACING ALL PIPES.

5 Q OKAY.

6 WHEN DID THAT DAMAGE GET REPAIRED TO ENABLE
7 YOU TO GET IN AND GET THE FILES?

8 A RECENTLY.

9 Q HOW RECENTLY?

10 A A COUPLE OF THREE WEEKS.

11 Q IN THE LAST THREE WEEKS HAVE YOU MADE SOME
12 EFFORT TO GET THE FILES, HAVE YOU BEEN ABLE TO GET IN
13 THERE?

14 A I HAVE BEEN UNABLE TO GET BACK THERE. IT IS
15 CALLED, CALLED WALSENBURG IN SOUTHERN, COLORADO.

16 MR. CRAIN: MAY I APPROACH THE WITNESS, YOUR HONOR?

17 THE COURT: YES.

18 BY MR. CRAIN:

19 Q SHOWING YOU THIS DOCUMENT HERE, WHICH HAS
20 BEEN MARKED AS PETITIONER'S 287, THE SIX PAGES, WHEN DID
21 YOU FIRST SEE THAT DOCUMENT?

22 A IN THIS FORM, TODAY.

23 Q AND WHERE DID YOU SEE IT?

24 A THE DISTRICT ATTORNEY'S OFFICE SHOWED IT TO
25 ME.

26 Q HAVE YOU SEEN IT IN SOME OTHER FORM SOMEWHERE
27 ELSE?

28 A YES. THIS IS THE FORM THAT I USED FOR

1 COGENCO, AND I IMAGINE FOR BROWNING.

2 Q NOW, YOU ARE FAMILIAR WITH THAT MR.
3 KILPATRICK SIGNATURE, AREN'T YOU?

4 A YES.

5 Q YOU SEE MR. KILPATRICK'S SIGNATURE ON THIS
6 DOCUMENT IN TWO PLACES, DON'T YOU, ON PAGE THREE?

7 A UH-HUH.

8 Q YES?

9 A YES.

10 Q AND ON PAGE 6?

11 A YES.

12 Q AND DID YOU SEE THIS SIGNATURE HERE BELOW MR.
13 KILPATRICK'S SIGNATURE ON PAGE SIX WHERE IT SAYS "SATURN
14 ENERGY AND RESOURCES LIMITED"?

15 A YES.

16 Q DO YOU KNOW WHAT MR. ROY ROBINSON --

17 A YES.

18 Q THAT'S HIS SIGNATURE TOO, ISN'T IT?

19 A YES, IT LOOKS LIKE IT.

20 Q YOU HAVE SEEN MR. ROBINSON'S SIGNATURE ON
21 OTHER LEGAL DOCUMENTS; RIGHT?

22 A YES.

23 Q AND HE WAS AT THAT TIME THE HEAD OF THE
24 COMPANY THAT WAS PREPARING TO MERGE WITH MR. KILPATRICK'S
25 CORPORATION, U.F.O.I.; RIGHT?

26 A YES.

27 Q NOW, YOU ARE TELLING THE COURT THAT WITH
28 REGARD TO THAT PARTICULAR DOCUMENT YOU DIDN'T PLAY ANY

1 ROLE IN THE NEGOTIATIONS THAT ARE SET FORTH IN THAT
2 DOCUMENT THAT ARE DESCRIBED IN THAT DOCUMENT AND THE
3 RESULTS OF THOSE NEGOTIATIONS THAT ARE DESCRIBED IN THAT
4 DOCUMENT?

5 A I AM JUST A STRANGER TO THIS DOCUMENT.

6 Q SO IT APPEARS THAT MR. KILPATRICK OPTED
7 WITHOUT YOUR ASSISTANCE WITH REGARD TO THE PREPARATION OF
8 THAT DOCUMENT; IS THAT CORRECT?

9 MR. MC MULLEN: CALLS FOR SPECULATION.

10 THE COURT: SUSTAINED.

11 BY MR. CRAIN:

12 Q IN ANY EVENT, YOU DIDN'T ASSIST ANYONE IN
13 PREPARING IT; RIGHT?

14 A NO. I HAVE NO KNOWLEDGE OF THIS.

15 Q NOW, MR. KILPATRICK IS, FOR WANT OF A -- A
16 GOOD WAY TO DESCRIBE MR. KILPATRICK IS HE A
17 WHEELER-DEALER; RIGHT?

18 MR. MC MULLEN: OBJECTION. IRRELEVANT.

19 THE COURT: WELL, CALLS FOR SPECULATION. I AM NOT
20 SURE WHAT IT MEANS.

21 MR. CRAIN: WHEELER-DEALER.

22 THE COURT: WELL, IT COULD BE HAVE A VARIETY OF
23 MEANINGS. LET'S PUT THAT IT WAY.

24 BY MR. CRAIN:

25 Q YOU DESCRIBED HIM AS A PROMOTER; CORRECT?

26 A YES.

27 Q THAT WAS THE WORDS YOU USED IN RESPONSE TO
28 HIS QUESTIONS, MR. MC MULLEN?

1 A YES. AND I MEAN IT IN THE CLASSIC AND BEST
2 SENSE OF THAT WORD.

3 Q MEANING WHAT?

4 A HE IS A TREMENDOUS BUSINESSMAN.

5 Q SO YOU ALSO DESCRIBED IN THAT SAME ANSWER
6 THAT YOU GAVE MR. MC MULLEN YOU SAW MR. HUNT AS PROMOTER
7 ALSO?

8 A YES.

9 Q SO YOU WERE USING THE TERM IN THE SAME SENSE
10 TO DESCRIBE MR. HUNT; IS THAT RIGHT?

11 A YES. I THOUGHT HE WAS A PROMOTER ALSO.

12 Q BY THAT YOU MEAN A TREMENDOUS BUSINESSMAN;
13 RIGHT?

14 A YES.

15 Q WHEN YOU SAY MR. BROWNING -- EXCUSE ME, MR.
16 KILPATRICK WAS A TREMENDOUS BUSINESSMAN, WHY DO YOU SAY
17 THAT?

18 A I HAD EXPERIENCE WITH HIM OVER A LONG PERIOD
19 OF TIME, AND I GOT TO APPRECIATE THE WAY HE THOUGHT AND
20 THE WAY HE ACTED.

21 Q THAT WAS A MAN WHO VAST EXPERIENCE IN THE
22 FIELD OF BUSINESS; IS THAT RIGHT?

23 A MR. KILPATRICK, YES.

24 Q A MAN, MR. KILPATRICK, AGAIN, A MAN WHO HAD
25 OPTED A NUMBER OF DIFFERENT CORPORATIONS?

26 MR. MC MULLEN: OBJECTION. IRRELEVANT.

27 MR. CRAIN: WELL, YOUR HONOR --

28 THE COURT: OVERRULED.

1 MR. CRAIN: THANK YOU

2 THE WITNESS: YES, HE HAS MANY CORPORATIONS AND
3 INTERESTS IN MANY THINGS.

4 BY MR. CRAIN:

5 Q AND A MAN WHOSE CORPORATIONS OFTEN INVOLVED
6 THE ACCUMULATION OF VERY SUBSTANTIAL ASSETS SUCH AS
7 U.F.O.I. ACCUMULATED; CORRECT?

8 A YES.

9 Q MR. KILPATRICK WAS -- AS THIS PROMOTOR OR
10 TREMENDOUS BUSINESSMAN WAS A SOPHISTICATED BUSINESSMAN,
11 WASN'T HE?

12 A YES.

13 MR. MC MULLEN: OBJECTION. CALLS FOR CONCLUSION.

14 THE COURT: OVERRULED.

15 MR. MC MULLEN: VAGUE.

16 THE COURT: OVERRULED.

17 DO YOU HAVE MUCH MORE, MR. CRAIN?

18 MR. CRAIN: YES, YOUR HONOR.

19 THE COURT: LET'S WRAP IT UP. YOU ARE AHEAD ON
20 POINTS.

21 MR. CRAIN: I WOULD EXPECT SO, BUT I HAVE SOME MORE
22 TOPICS TO COVER THAT WERE BROUGHT OUT ON DIRECT
23 EXAMINATION.

24 THE COURT: HE IS THE BEST WITNESS THAT YOU HAVE
25 HAD CALLED.

26 MR. CRAIN: I HOPE HE CONTINUES TO BE SO.

27 BY MR. CRAIN:

28 Q NOW, YOU HAD A CONVERSATION WITH THE DISTRICT

1 ATTORNEY IN THE LAST COUPLE OF DAYS ABOUT YOUR
2 RECOLLECTION OF THESE EVENTS; IS THAT RIGHT?

3 A YES.

4 Q AND DID YOU TELL HIM THAT IT WAS YOUR BELIEF
5 THAT MR. HUNT HAD BEEN TO COLORADO TO NEGOTIATE WITH MR.
6 KILPATRICK, ALTHOUGH YOU WEREN'T PRESENT?

7 MR. MC MULLEN: OBJECTION. CALLS FOR HEARSAY.

8 THE COURT: OVERRULED.

9 THE WITNESS: YES.

10 BY MR. CRAIN:

11 Q AND BY THE WAY, YOUR STATEMENT TO THE
12 DISTRICT ATTORNEY IN THAT INTERVIEW A COUPLE OF DAYS AGO
13 THEY WERE TRUTHFUL, WEREN'T THEY?

14 A I TOLD THEM THAT I NEVER WAS INVOLVED, NEVER
15 MET HIM AND DIDN'T KNOW THAT HE WAS IN DENVER.

16 Q AND DID YOU TELL THE DISTRICT ATTORNEY DURING
17 THAT CONVERSATION THAT YOU THOUGHT THAT THE B.B.C. HAD A
18 FALSE HOPE THAT KILPATRICK WOULD HAVE THE MONEY TO CARRY
19 OUT THIS DEAL?

20 A YES.

21 Q AND YOU SAID IN THAT INTERVIEW YOU LOOKED AT
22 THE NEGOTIATIONS AS TWO PROMOTERS WORKING TOGETHER TO MAKE
23 MONEY; CORRECT?

24 A YES.

25 Q NOW, IN THE DECLARATION THAT YOU SIGNED,
26 WHICH I BELIEVE IS BEFORE YOU AS EXHIBIT X, DO YOU HAVE IT
27 THERE, SIR?

28 A YES.

1 Q YOU DESCRIBED THIS JUNE 1984 MEETING THAT
2 TOOK PLACE AFTER JUNE 6, 1984. DIRECTING YOUR ATTENTION
3 TO PARAGRAPH FIVE AT THE BOTTOM OF PAGE ONE.

4 A OKAY.

5 Q IS THERE ANYTHING IN YOUR DECLARATION THERE
6 CONCERNING ANY DISCUSSION WITH REGARD TO THE OWNERSHIP OF
7 THE MILLS, "YES" OR "NO"?

8 A NO.

9 Q OKAY.

10 NOW --

11 A ABSOLUTELY NOT.

12 Q I HAVE ANOTHER DOCUMENT IF I CAN -- TWO MORE
13 DOCUMENTS.

14 MR. CRAIN: THESE ARE ALL THE SAME; RIGHT?

15 THE DEFENDANT: THOSE ARE ALL THE SAME.

16

17 (PAUSE.)

18

19 MR. CRAIN: I HAVE ANOTHER DOCUMENT HERE I WOULD
20 LIKE TO -- IT IS A CLOSING AGREEMENT. I WOULD LIKE TO ASK
21 THE WITNESS A FEW QUESTIONS ABOUT IT. HAVE IT MARKED AS
22 NEXT IN ORDER.

23 THE COURT: 289.

24

25 (MARKED FOR ID = PETITIONER'S 289,
26 DOCUMENT.)

27

28 THE COURT: WHAT IS IT?

1 MR. CRAIN: IT APPEARS TO BE A MULTI PAGE --

2 THE COURT: HOW IS IT ENTITLED?

3 MR. CRAIN: ENTITLED, "SATURN FROM UNITED, CLOSING
4 AGREEMENT."

5 BY MR. CRAIN:

6 Q ACTUALLY I WROTE ON THE BACK OF THIS ONE,
7 SIR. IF YOU COULD JUST LOOK AT THIS ONE. WAIT A SECOND,
8 AND I WILL PULL THE STAPLE UP HERE.

9 IT THIS A DOCUMENT THAT YOU HAVE EVER SEEN
10 BEFORE?

11 MR. CRAIN: I HAVE ONE FOR THE COURT, YOUR HONOR.
12 ACTUALLY, WHAT I WOULD LIKE TO DO IS TO MARK -- I AM GOING
13 TO CROSS OFF, YOUR HONOR, I WROTE 29 ON THE BACK OF THE
14 COPY. I WANT TO WRITE ON THE BACK OF THE ONE I WANT TO
15 USE AND JUST GIVE A COPY TO THE COURT, IF THAT'S
16 ACCEPTABLE.

17 WOULD YOU HAND THAT TO THE, JUDGE?

18 BY MR. CRAIN:

19 Q IS THERE SOMETHING THAT YOU HAVE SEEN BEFORE
20 MR. O' DONNELL?

21 A YES. I BELIEVE I TRACKED DOWN --

22 Q YOU BELIEVE YOU DRAFTED IT IN THE SUMMER OF
23 1984 SOMETIME IN JULY; IS THAT RIGHT?

24 A I DON'T REMEMBER WHEN THAT -- WHEN IT IS
25 DATED?

26 Q YES, SIR.

27 A YES.

28 Q ALL RIGHT.

1 YOU DRAFTED THIS DOCUMENT ON OR ABOUT JULY
2 12, 1984; CORRECT?

3 A YES.

4 Q AND IN THIS DOCUMENT IT SETS FORTH ON -- I AM
5 GOING TO HAVE TO COUNT THE PAGES BECAUSE ON THIS ONE THEY
6 DON'T APPEAR TO BE MARKED, PERIOD. ONE, TWO, THREE, FOUR,
7 FIVE. IT DISCUSSES CLARIFICATION OF TECHNOLOGY INCLUDING
8 MICRONIZATION AND ATTRITION MILLING TECHNOLOGY BY A
9 LICENSE OF MICROGENESIS OF NORTH AMERICA; IS THAT RIGHT?

10 A YES.

11 Q SO THAT REFERS TO THE FACT THAT MICROGENESIS
12 CORPORATION WAS TO LICENSE ATTRITION MILLING TECHNOLOGY TO
13 U.F.O.I.; IS THAT RIGHT?

14 A YES.

15 Q AND YOU PUT THAT IN THIS DOCUMENT THAT YOU
16 PREPARED; IS THAT CORRECT?

17 A YES.

18 Q AND THEN ON THE FOLLOWING PAGE YOU DESCRIBED
19 AT PARAGRAPH H-3 THAT UNITED OR U.F.O.I. WOULD SERVE AS A
20 GENERAL PARTNER AND ADMINISTRATOR TO INVESTOR PARTNERSHIPS
21 INVOLVING ATTRITION MILLING, THE USE OF ATTRITION MILLING
22 EQUIPMENT IN THESE VARIOUS PLANTS THAT WERE TO BE EITHER
23 BUILT OR CONSTRUCTED OR USED; CORRECT?

24 A YES.

25 Q AND YOU PUT THAT IN THE DOCUMENT THAT YOU
26 PREPARED; RIGHT?

27 A THAT WAS THE PLAN.

28 Q AND THEN ON THE NEXT PAGE YOU HAVE FURTHER

1 REFERENCES TO THE OBTAINING OF THE ATTRITION MILLING
2 TECHNOLOGY FROM MICROGENESIS BY U.F.O.I.; RIGHT?

3 A UH-HUH.

4 Q IS THAT RIGHT?

5 A YES.

6 Q AND ON THE FOLLOWING PAGE AT THE TOP YOU, YOU
7 TALK ABOUT THE COAL MINE IN UTAH THAT WOULD BE USING THIS
8 SAME ATTRITION MILLING TECHNOLOGY OF MICROGENESIS IN
9 CONNECTION WITH ITS OPERATION BY SATURN AND U.F.O.I.; IS
10 THAT RIGHT?

11 A YES.

12 Q AND THEN THE LAST PAGE INVOLVES VARIOUS
13 ACCOUNTS OF VARIOUS STOCK VALUATIONS; CORRECT?

14 A YES. ALLOCATIONS OF STOCKS.

15 Q AND JUST TO SUMMARIZE THIS. AT THE CLOSE OF
16 THESE NEGOTIATIONS THAT ARE BEING DESCRIBED HERE IN THE
17 CLOSING AGREEMENT, YOU AS THE DRAFTER OF THE AGREEMENT
18 DESCRIBED THAT WILL BE MICROGENESIS WHO WILL BE SUPPLYING
19 THE BROWNING INVENTED ATTRITION MILLS TO U.F.O.I.;
20 CORRECT?

21 A YES.

22 Q NOT COGENCO; CORRECT?

23 A RIGHT.

24 Q NOT ANY OTHER CORPORATION BUT MICROGENESIS;
25 RIGHT?

26 A YES.

27 MR. CRAIN: ALSO, YOUR HONOR, I HAVE HERE IF I COULD
28 MARK THIS AS 290. IT IS A LETTER.

1 (MARKED FOR ID = PETITIONER'S 290,
2 DOCUMENT.)

3

4 MR. MC MULLEN: JUST FOR THE RECORD, THIS IS THE
5 FIRST TIME WE HAVE SEEN BOTH OF THESE DOCUMENTS.

6 THE COURT: WHY IS THAT, MR. CRAIN?

7 MR. KLEIN: IMPEACHMENT OF THE WITNESS, YOUR HONOR.

8 THE COURT: I WANTED ALL DOCUMENTS --

9 MR. CRAIN: I THOUGHT THEY HAD IT. MAYBE THEY
10 DIDN'T SEE IT. I THOUGHT THIS DOCUMENT WAS PART OF THE
11 MANY THAT WE --

12 MR. KLEIN: HALF OF THE TESTIMONY WE NEVER GOT ANY
13 DISCOVERY ON EITHER, YOUR HONOR.

14 THE COURT: WAS THERE ANY DISCOVERY TO TURN OVER?

15 MR. KLEIN: I DON'T KNOW.

16 THE PETITIONER: THIS WASN'T TURNED OVER.

17 MR. MC MULLEN: I JUST GOT THE INVESTIGATOR
18 REPORTS, THE DECLARATION, MY NOTES FROM AN INTERVIEW A
19 COUPLE OF DAYS AGO.

20 THE COURT: LOOK --

21 MR. CRAIN: I GOT HIS NOTES TODAY. THEY ARE HANDED
22 TO ME. HE CALLED ME YESTERDAY. HE SAID HE HAD THE NOTES
23 HERE.

24 THE COURT: MY CONCERN IS THE WAY THE EXHIBITS HAVE
25 BEEN HANDLED. I WANT EVERYONE TO SEE THESE EXHIBITS WAY
26 AHEAD OF TIME. I WANT EVERYONE TO KNOW WHAT THEY ARE.

27 LET'S MOVE THROUGH THIS QUICKLY.

28 MR. CRAIN: YES, YOUR HONOR.

1 YOUR HONOR, STILL DOESN'T WANT TO TAKE THE
2 AFTERNOON RECESS?

3 THE COURT: I WANT TO FINISH THIS WITNESS.

4 MR. CRAIN: THIS IS 280, YOUR HONOR.

5 THIS APPEARS TO BE A COPY OF A LETTER SENT BY
6 WILLIAM A. KILPATRICK PRESIDENT TO ROY ROBINSON OF SATURN
7 ENERGY.

8 MR. MC MULLEN: YOUR HONOR, WE WOULD REQUEST THE
9 COURT ORDER COUNSEL TO PROVIDE US WITH A COPY OF THIS
10 EXHIBIT 280.

11 MR. CRAIN: AS I SAY, WHAT I JUST GIVEN TODAY
12 MR. MC MULLEN NOTIFIED ME LATE YESTERDAY THAT HE HAD NOTES
13 OF AN INTERVIEW OF DECLAN O'DONNELL.

14 MR. MC MULLEN: IT WAS INTERVIEW THAT OCCURRED LAST
15 NIGHT AT ABOUT, AFTER WE GOT BROKE FROM COURT.

16 MR. CRAIN: OKAY.

17 THE COURT: THESE ARE DOCUMENTS, YOU KNOW, KEEP IN
18 MIND IF YOU ARE BUILDING A RECORD NASTY HAT'S WELL AND
19 GOOD, BUT YOU GOT A TRIER OF FACT WHO IS SITTING HERE.
20 YOU KEEP MARKING THESE THINGS, AND IF YOU GOT A POINT TO
21 MAKE, LET'S MAKE IT, AND LET'S MOVE ON. LET'S NOT RELY ON
22 THE DOCUMENT. LET'S RELY ON THE TESTIMONY. YOU HAVE GOT
23 TESTIMONY THAT THIS PERSON WAS INVOLVED IN A TRANSACTION
24 WITH MICROGENESIS, IS INVOLVED IN INTIMATELY IN THIS
25 TRANSACTION.

26 YOU GOT RESPONDENTS CALLING THE WITNESS
27 SAYING, "THIS WITNESS IS AN ATTORNEY REPRESENTING SOMEONE
28 WHO APPEARS TO BE OF SUBSTANCE." SEEMS TO ME YOU GOT WHAT

1 YOU WANT. BUT IF YOU WANT TO CONTINUE ON YOUR GOING TO, I
2 THINK, LOSE THE POINT.

3 MR. CRAIN: WE WON'T CONTINUE TOO LONG.

4 BY MR. CRAIN:

5 Q DO YOU RECOGNIZE THIS DOCUMENT, SIR, SHOWING
6 290?

7 A I DON'T REMEMBER IT.

8 Q DOES THAT APPEAR TO BE A COPY OF A LETTER
9 SENT BY MR. KILPATRICK TO MR. ROBINSON?

10 A YES.

11 Q DID YOU MAKE THAT DETERMINATION FROM THE
12 OVERALL APPEARANCE AND FORMAT?

13 A YES.

14 Q AND IT HAS SOME ATTACHMENTS TO IT INCLUDING A
15 NET APPRAISED INTEREST?

16 A YES.

17 Q AND WHAT IS THE NET APPRAISED INTEREST
18 REFLECT THEREON, BOTTOM LINE?

19 THE COURT: OF WHAT?

20 MR. CRAIN: OF PAGE FOUR.

21 THE COURT: OF WHAT, NOT APPRAISE INTERESTS OF
22 WHAT?

23 BY MR. CRAIN:

24 Q IT HAS A SERIES OF NAMES ON THE LEFT NORTH
25 SEA, ALPHA SIX AND SO FORTH. WHAT ARE THESE?

26 A THOSE ARE NAMES OF TWO PARTNERSHIPS WHO
27 PURCHASED TAX SHELTERS IN --

28 MR. MC MULLEN: OBJECTION. RELEVANCE.

1 THE COURT: SUSTAINED.

2 BY MR. CRAIN:

3 Q WHERE IT SAYS AT THE BOTTOM "TOTAL VALUE OF
4 THESE MATTERS IS OVER 30 MILLION DOLLARS," WHAT DOES THAT
5 REFLECT?

6 MR. MC MULLEN: OBJECTION. RELEVANCE.

7 THE COURT: I WILL LET YOU ANSWER THAT, BUT WE ARE
8 GETTING FAR AFIELD.

9 THE WITNESS: THAT IS -- SHOULD I ANSWER THE
10 QUESTION?

11 THE COURT: ANSWER THE QUESTION.

12 THE WITNESS: THE AMOUNT DUE ON THE NOTES.

13 BY MR. CRAIN:

14 Q TO U.F.O.I.?

15 A YES, AT RISK.

16 Q AT ABOUT THE TIME OF THE LETTER THERE TO
17 MR. ROBINSON; RIGHT?

18 A YES.

19 Q SO HAVING SEEN ALL THESE DOCUMENTS INCLUDING
20 THE NOVEMBER 1983 CONTRACT SIGNED BY MR. KILPATRICK AND
21 THESE OTHER DOCUMENTS, IT APPEARS THAT MR. KILPATRICK NOT
22 ONLY HAD CONCLUDED A NOVEMBER 1983 CONTRACT WITH
23 MICROGENESIS, BUT WAS ACTIVELY NEGOTIATING WITH
24 MICROGENESIS FOR ITS RIGHTS TO THE BROWNING ATTRITION
25 MILLS --

26 MR. MC MULLEN: OBJECTION. COMPOUND.

27 BY MR. CRAIN:

28 Q -- DURING 1984; CORRECT?

1 MR. MC MULLEN: COMPOUND. UNINTELLIGIBLE.

2 THE COURT: OVERRULED.

3 WAS MR. KILPATRICK NEGOTIATING WITH
4 MICROGENESIS TOWARDS OBTAINING THESE RIGHTS?

5 THE WITNESS: ACTUALLY, HE NEVER -- HE GOT THEM
6 FROM BROWNING, THIS WAS A CURATIVE ACTION, PERIOD.

7 THE COURT: IF HE OWNS THESE RIGHTS, WHAT WAS HE
8 GOING AROUND TRYING TO BUY UP THE RIGHTS FROM SATURN AND
9 DEALING WITH HUNT TO TRY TO BUY THIS, IF IN FACT HE
10 ALREADY OWNED THEM FROM BROWNING?

11 THE WITNESS: BECAUSE IT IS BETTER TO LINE UP MR.
12 HUNT IN YOUR CAMP RATHER THAN GO TO COURT.

13 THE COURT: AND HE WAS INTENDING TO PAY MR. HUNT
14 SIX MILLION DOLLARS TO LINE THIS UP SO HE WOULDN'T HAVE TO
15 GO TO COURT?

16 THE WITNESS: NO. THAT CONTRACT WAS NEVER SIGNED,
17 AND I DON'T KNOW WHERE IT CAME FROM.

18 THE COURT: WHAT WAS HE PLANNING ON DOING? WHAT
19 WAS HIS INTENT IN NEGOTIATING WITH MR. HUNT TO GET MR.
20 HUNT LINED UP?

21 THE WITNESS: MAKE HIM A CO-PROMOTER.

22 THE COURT: IN RETURN FOR WHAT?

23 THE WITNESS: TO BE DETERMINED. I CAN'T ANSWER
24 THAT BECAUSE I DON'T THINK THIS IS IN EFFECT. I DON'T
25 BELIEVE THIS DOCUMENT --

26 THE COURT: WHAT EXHIBIT IS THAT?

27 THE WITNESS: I MEAN, I DON'T BELIEVE OR
28 DISBELIEVE, I DIDN'T KNOW ANYTHING ABOUT IT.

1 THE COURT: ALL RIGHT.

2 SO TRYING TO AVOID LAWSUIT?

3 THE WITNESS: YES.

4 THE COURT: GO.

5 BY MR. CRAIN:

6 Q BY THE WAY, YOU KNOW, KILPATRICK GOT PUT IN
7 THE FEDERAL PRISON WHERE HE IS NOW FOR DEFRAUDING PEOPLE
8 THAT HE CONTRACTED WITH; ISN'T THAT RIGHT?

9 A YES.

10 MR. MC MULLEN: OBJECTION. RELEVANCY.

11 THE WITNESS: I THINK THE CHARGE --

12 THE COURT: YOU CAN ASK MR. KILPATRICK THAT. I
13 WILL ALLOW THE ANSWER "YES" TO STAND.

14 MR. CRAIN: I THINK ON THIS POINT NOTHING FURTHER.

15 THE COURT: DID MR. KILPATRICK OR ANY OF HIS
16 BUSINESSES PAY DR. BROWNING ANYTHING?

17 THE WITNESS: YES. SMALL AMOUNTS. WE KEPT HIM
18 GOING.

19 THE COURT: HOW MUCH, APPROXIMATELY?

20 THE WITNESS: BILL COULD GIVE YOU RIGHT -- HE WILL
21 TELL YOU THAT EXACTLY, BUT IT WASN'T VERY MUCH, MAYBE
22 10,000, 20,000, SOMETHING LIKE THAT, NOT A LOT OF MONEY.

23 THE COURT: YOU SAID YOU COME OUT TO L.A. JUNE '84
24 WERE ANY CONTRACTS OR AGREEMENT SIGNED AT THAT MEETING?

25 THE WITNESS: NO.

26 THE COURT: ANY MONEY OR STOCK PROMISED IN EXCHANGE
27 DURING THAT MEET, EXCHANGE FOR ANY RIGHTS DURING THAT
28 MEETING?

1 THE WITNESS: NO. THE MEETING REALLY WAS A VISIT.
2 I DIDN'T SEE IT AS A MEETING. I DIDN'T -- NOTHING WAS
3 DIVIDED IN MY PRESENCE. OF COURSE, THEY WEREN'T ALWAYS IN
4 MY PRESENCE.

5 THE COURT: DO YOU KNOW ANYTHING ABOUT OFFER OF
6 HUNT RECEIVING ANY SATURN STOCK?

7 THE WITNESS: THAT WAS IN THE OFFING, IF WE CUT A
8 DEAL, YES.

9 THE COURT: WAS THAT PROMISED TO MR. HUNT?

10 THE WITNESS: NOT AT THAT MEETING, BUT IT WAS
11 INDICATED. I KNOW THAT HE WAS IN LINE TO RECEIVE
12 SUBSTANTIAL SHARES OF STOCKS.

13 THE COURT: IN RETURN FOR WHAT?

14 THE WITNESS: AVOIDING GOING TO COURT.

15 THE COURT: ANY REDIRECT?

16 THE PETITIONER: YOUR HONOR, IF I MAY BE GIVEN SOME
17 PERMISSION TO QUESTION. THIS IS TOTALLY A
18 MISCHARACTERIZATION.

19 THE COURT: NO.

20

21 REDIRECT EXAMINATION @

22

23 BY MR. MC MULLEN:

24 Q THIS EXHIBIT, DID THIS EVER GO THROUGH?

25 A NO. IT JUST A DRAFT DOCUMENT.

26 MR. KLEIN: THAT'S CONCLUSION ON HIS PART. HE
27 CAN'T --

28 THE COURT: OVERRULED.

1 BY MR. MC MULLEN:

2 Q WAS ANY CONTRACT AT ALL EVER FINALIZED
3 BETWEEN THE B.B.C. AND KILPATRICK REGARDING THE ATTRITION
4 MILLS?

5 A OR ANY OF THEIR AFFILIATES?

6 Q CORRECT.

7 A I DIDN'T THINK SO.

8 MR. CRAIN: THAT'S NOT RESPONSIVE. THE QUESTION
9 CALLS FOR CONCLUSION. THERE IS A MOTION TO STRIKE.

10 THE WITNESS: YES --

11 THE COURT: SUSTAINED.

12 THE LAST ANSWER WILL GO OUT.

13 MR. MC MULLEN: OKAY.

14 BY MR. MC MULLEN:

15 Q TO YOUR KNOWLEDGE, WAS ANY CONTRACT BETWEEN
16 B.B.C. AND KILPATRICK FOR THE DEVELOPMENT OF A MILL EVER
17 SIGNED?

18 A NO.

19 Q AND TO YOUR KNOWLEDGE, WAS ANY MONEY PAID BY
20 KILPATRICK TO THE B.B.C. EVER FOR THE DEVELOPMENT OF THE
21 ATTRITION MILLS?

22 A NO.

23 MR. MC MULLEN: THAT'S ALL.

24 THE COURT: ALL RIGHT.

25 MR. CRAIN?

26 MR. CRAIN: NOTHING FURTHER AT THIS POINT.

27 THE COURT: MAY THE WITNESS BE EXCUSED?

28 MR. MC MULLEN: YES.

1 THE COURT: ANY OBJECTION?

2 MR. CRAIN: NO.

3 THE COURT: THANK YOU, SIR. YOU ARE EXCUSED.

4 LET'S TAKE OUR AFTERNOON RECESS. SEE
5 EVERYONE AT BACK IN 15 MINUTES.

6 YOUR NEXT WITNESS IS MR. KILPATRICK?

7 MR. CRAIN: THE POINT IS WITH REGARDS TO THE
8 ON-CALL STATUS OF THIS WITNESS, KILPATRICK IS GOING TO
9 TESTIFY NEXT. IN VIEW OF HIS INTERESTING BACKGROUND, I
10 THINK, YOU KNOW, THAT THE WITNESS SHOULD BE SUBJECT TO
11 RECALL.

12 THE COURT: UPON SUFFICIENT SHOWING.

13 EVERYONE RETURN THE EXHIBITS TO THE CLERK.

14

15 (RECESS.)

16

17 THE COURT: IN THE MATTER OF JOSEPH HUNT, THE
18 RECORD WILL REFLECT ALL COUNSEL ARE PRESENT AND PETITIONER
19 IS PRESENT.

20 YOU CAN CALL YOUR NEXT WITNESS.

21 MR. MC MULLEN: THE NEXT WITNESS IS ON THE STAND;
22 MR. KILPATRICK.

23 MR. CRAIN: MR. O'DONNELL IS STILL HERE. I WANT TO
24 ASK HIM TO TWO MORE QUESTIONS.

25 I THOUGHT YOU HAD A COUPLE OF MORE THAT YOU
26 WANTED TO ASK HIM.

27 MR. MC MULLEN: IF THE JUDGE ALLOWED IT WE HAD A
28 QUESTION OR TWO.

2 1 MR. KLEIN: CAN WE DO IT AFTER KILPATRICK?

2 THE COURT: WE HAVE GOT A WITNESS ON THE STAND. WE
3 HAVE GOT A SECURITY PROBLEM BECAUSE WE HAVE GOT A CUSTODY
4 WITNESS. WE'RE NOT GOING TO KEEP DOING THIS EVERY TIME
5 YOU GUYS GET TOGETHER AND THINK OF SOMETHING MORE TO ASK.
6 WE SPENT AN HOUR AND A HALF ON THIS WITNESS AND YOU HAVE
7 GOT OUT WHAT I THINK YOU WANTED TO GET OUT.

8 MR. CRAIN: I HATE TO INCONVENIENCE HIM. I WOULD
9 LIKE TO GET THESE QUESTIONS --

10 THE COURT: WHAT IS THE GENERAL AREA OF INQUIRY?

11 MR. CRAIN: IT INVOLVES THE WITNESS WHO IS SITTING
12 ON THE WITNESS STAND --

13 THE COURT: SO YOU'D WANT THE WITNESS OFF THE
14 STAND?

15 MR. CRAIN: OR DO IT THE LAST COUPLE OF MINUTES OF
16 THE DAY.

17 MR. MC MULLEN: HE HAS A PLANE FLIGHT TO CATCH.
18 WE'D LIKE TO GET HIM MOVING.

19 THE COURT: LET'S GET GOING.

20 SWEAR THE WITNESS.

21 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

22 YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY YOU
23 MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL
24 BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH,
25 SO HELP YOU GOD?

26 THE WITNESS: YES.

27 THE CLERK: PLEASE BE SEATED.

28 STATE YOUR NAME FOR THE RECORD AND SPELL YOUR

2 1 FIRST AND LAST NAME, PLEASE.

2

3

WILLIAM A. KILPATRICK, @

4

CALLED AS A WITNESS BY THE RESPONDENT, WAS SWORN AND

5

TESTIFIED AS FOLLOWS:

6

7

MR. CRAIN: HOW ABOUT --

8

THE COURT: DON'T INTERRUPT.

9

THE WITNESS: WILLIAM A. KILPATRICK.

10

MR. CRAIN: HOW ABOUT IF WE JUST ASK HIM RIGHT

11

HERE. HE'S STILL UNDER OATH. WE'LL JUST GET IT OUT OF

12

THE WAY SO HE CAN LEAVE.

13

THE COURT: WE'LL INTERRUPT MR. KILPATRICK'S

14

TESTIMONY.

15

MR. O'DONNELL, YOU ARE REMINDED YOU ARE STILL

16

UNDER OATH.

17

PUT THE QUESTIONS TO HIM.

18

FROM RIGHT WHERE YOU ARE STANDING.

19

20

DECLAN JOSEPH O'DONNELL, @

21

CALLED AS A WITNESS BY THE RESPONDENT, HAVING BEEN

22

PREVIOUSLY SWORN, RESUMED THE STAND AND TESTIFIED FURTHER

23

AS FOLLOWS:

24

25

CROSS-EXAMINATION (CONTINUED) +

26

27

BY MR. CRAIN:

28

Q DID MR. KILPATRICK REPRESENT A NUMBER OF

2
1 MILLIONAIRE INVESTORS WHO HAD OVER A CERTAIN AMOUNT OF
2 MONEY INVESTED IN TAX SHELTERS DURING THE PERIOD '83, '84?

3 A YES.

4 Q ABOUT HOW MANY AND WHAT WAS THE TOTAL AMOUNT
5 OF THESE TAX SHELTERS?

6 A I CAN REMEMBER THE AMOUNT BECAUSE IT WAS
7 PUBLICIZED QUITE A BIT AT 120 MILLION AND THE NUMBER OF
8 INVESTORS WAS IN THE AREA OF 1,000.

9 Q AND IN YOUR INTERVIEW WITH THE DISTRICT
10 ATTORNEY'S OFFICE DID YOU DESCRIBE MR. KILPATRICK AS
11 SOMEONE WHO TALKED LIKE HE HAD THE MONEY RELATIVE TO THESE
12 NEGOTIATIONS WITH MICROGENESIS?

13 A MR. KILPATRICK TALKS RICH ALL THE TIME.
14 YOU'LL -- HE HAS TO. HE JUST THINKS THAT WAY.

15 Q SO DOES HE GIVE THE IMPRESSION IN HIS
16 DEALINGS WITH PEOPLE OF BEING SOMEONE WHO HAS LARGE
17 AMOUNTS OF MONEY.

18 MR. MC MULLEN: OBJECTION, CALLS FOR SPECULATION.

19 THE COURT: SUSTAINED.

20 BY MR. CRAIN:

21 Q IS THERE SOME OTHER WAY -- BESIDES WHAT YOU
22 HAVE TOLD JUDGE CZULEGER HERE THAT YOU CAN DESCRIBE
23 MR. KILPATRICK IN THIS WAY?

24 A HE EXHUMES CONFIDENCE.

25 MR. CRAIN: APPRECIATE THAT. THANK YOU.

26 THE COURT: I SUPPOSE YOU MEAN "EXUDES" RATHER THAN
27 "EXHUMES".

28

REDIRECT EXAMINATION @

BY MR. MC MULLEN:

Q YOU SAID MR. KILPATRICK'S WEALTH IS
COMPLICATED. WHAT DID YOU MEAN BY THAT?

A IT IS VERY COMPLICATED AT THAT TIME BECAUSE
HE WAS IN BANKRUPTCY AND UNDER INDICTMENT AND THE BASIS OF
THE WEALTH WAS TAX SHELTERS AND A FOUR TO ONE DEDUCTION
HAD BEEN ATTACKED BY THE GOVERNMENT AND THE NOTES WERE IN
QUESTION WHETHER OR NOT THEY WERE COLLECTIBLE.

Q WHEN YOU TALKED ABOUT HIS ASSETS AND WHAT THE
VALUE OF THEM WERE WAS THERE HARD MONEY, CASH MONEY BEHIND
THOSE ASSETS? WHAT WAS -- WHAT WERE THE ASSETS?

A THERE WAS SOME CASH THAT WAS A FOUR TO ONE
WRITE OFF. PEOPLE WOULD PUT IN ONE FOURTH CASH AND WRITE
OFF FOUR FOURTHS.

Q WERE THERE NOTES INVOLVED IN THE CALCULATION
OF THE ASSETS?

A YES, THREE-QUARTERS NOTES.

Q SO ONE QUARTER OF THE ASSETS WERE CASH AND
THREE FOURTHS WERE JUST IN THE FORM OF NOTES?

A YES.

MR. MC MULLEN: NOTHING FURTHER.

THE COURT: ALL RIGHT.

THANK YOU, SIR. YOU ARE EXCUSED.

MR. MC MULLEN: THANK YOU.

MR. CRAIN: THANK YOU AGAIN, YOUR HONOR.

APPRECIATE IT.

2 1 THE COURT: ALL RIGHT.

2 RETURNING TO MR. KILPATRICK.

3 SIR, YOU ARE REMINDED THAT YOU ARE UNDER
4 OATH.

5 PUT A QUESTION.

6 MR. MC MULLEN: THANK YOU.

7 THE COURT: I'M SORRY, I DID -- STATE AND SPELL
8 YOUR NAME FOR THE RECORD.

9 THE WITNESS: K-I-L-P-A-T-R-I-C-K, KILPATRICK, IS
10 THE LAST NAME. WILLIAM. NORMAL SPELLING.

11 THE COURT: YOU MAY INQUIRE.

12 MR. MC MULLEN: YES, YOUR HONOR.

13 BEFORE I DO I WOULD LIKE TO HAVE MARKED AS
14 *RESPONDENT'S EXHIBIT WITH DECLARATION OF KILPATRICK,
15 WILLIAM KILPATRICK, AND W1, WHICH IS A DECLARATION OF
16 WILLIAM KILPATRICK THAT'S BEEN AMENDED.

17 IF I COULD APPROACH?

18 THE COURT: DO WE HAVE W1 ON YOUR --

19 MR. MC MULLEN: THIS IS A NEW ONE. WE HAD A
20 DISCUSSION ABOUT THIS EARLIER. HE MADE SOME CHANGES TO
21 HIS DECLARATION, AND SO I JUST WANTED TO MARK THAT AS AN
22 EXHIBIT. I WOULD LIKE --

23 THE COURT: HOLD ON. THE DECLARATION THAT IS ON
24 THE EXHIBIT LIST WILL BE MARKED AS W.

25 IF YOU HAVE A NEW DOCUMENT IT WILL BE MARKED
26 AS SS.

27 MR. MC MULLEN: YES, YOUR HONOR.

28 THE CLERK: YOUR HONOR, I DID NOT HEAR YOU, SIR?

3
1 THE COURT: W WILL BE MARKED AND SS IS ANOTHER COPY
2 OF ANOTHER DECLARATION OF MR. KILPATRICK.

3
4 (MARKED FOR ID = RESPONDENT'S W,
5 DECLARATION OF WILLIAM KILPATRICK.)

6
7 (MARKED FOR ID = RESPONDENT'S SS,
8 AMENDED DECLARATION OF WILLIAM KILPATRICK.)

9
10 MR. MC MULLEN: MAY I APPROACH AND PROVIDE THE
11 COURT WITH A COPY OF SS?

12 THE COURT: YES.

13
14 WILLIAM A. KILPATRICK, @
15 CALLED AS A WITNESS BY THE RESPONDENT, WAS SWORN AND
16 TESTIFIED AS FOLLOWS:

17
18 DIRECT EXAMINATION @

19
20 BY MR. MC MULLEN:

21 Q SIR, SHOWING YOU WHAT'S BEEN MARKED AS
22 EXHIBIT W --

23 MR. KLEIN: EXCUSE ME.

24 YOUR HONOR, COULD WE ASK MR. O'DONNELL TO
25 WAIT OUTSIDE IF HE WANTS TO WAIT AROUND.

26 THE COURT: I THOUGHT HE WAS ON THE WAY TO THE
27 AIRPORT.

28 MR. MC MULLEN: HE'S PROBABLY WAITING FOR THE --

3
1 FOR THE PERSON WHO IS GOING TO BE DRIVING HIM, I ASSUME.

2 THE COURT: ALL RIGHT.

3 HAVE HIM WAIT OUT IN THE HALLWAY, THEN.

4 BY MR. MC MULLEN:

5 Q DO YOU RECOGNIZE WHAT'S BEEN MARKED AS W AS
6 BEING YOUR DECLARATION, MR. KILPATRICK?

7 A YES.

8 Q AND COULD YOU LOOK AT EXHIBIT S, DOUBLE S.
9 IS THAT ALSO A COPY OF THE -- OF YOUR DECLARATION?

10 A YES, IT IS.

11 Q AND --

12 A SEEMS TO BE.

13 Q IN SS YOU HAVE MADE SOME CHANGES TO THE
14 DECLARATION THAT IS MARKED AS W FOR IDENTIFICATION; IS
15 THAT CORRECT?

16 A THAT'S CORRECT.

17 Q AND WE'LL GO OVER THOSE THROUGHOUT YOUR
18 TESTIMONY.

19 A IN PARAGRAPH TWO --

20 Q JUST WAIT. AS WE PROCEED WE'LL GO THROUGH
21 THAT.

22 OKAY.

23 WHAT WAS -- AS OF 1983, 1984 WHAT WAS UNITED
24 FINANCIAL OPERATIONS, INC.?

25 A IT WAS A COLORADO CORPORATION IN THE BUSINESS
26 OF SELLING TAX SHELTERS. HAD BEEN IN THAT BUSINESS SINCE
27 1977 AND HAD FOUR YEARS OF SALES.

28 Q WAS THAT YOUR COMPANY?

3 1 A IT WAS MY COMPANY. I OWNED ALL SHARES.

2 Q AND DO YOU KNOW JOE HUNT?

3 A YES, I DO.

4 Q DO YOU RECOGNIZE HIM HERE IN THE COURTROOM
5 TODAY?

6 A YES, I DO.

7 Q POINT HIM OUT FOR US, PLEASE?

8 A THE MAN IN THE BLUE AND WHITE.

9 THE COURT: INDICATING THE PETITIONER HUNT.

10 MR. MC MULLEN: THANK YOU.

11 BY MR. MC MULLEN:

12 Q WHEN DID YOU FIRST MEET MR. HUNT?

13 A I DON'T KNOW EXACTLY. LATE '92 -- I MEAN,
14 '82, '83. SOMETIME IN '83. I DON'T REMEMBER EXACTLY.

15 Q AND AT THE TIME YOU MET MR. HUNT WAS HE
16 TRYING TO SELL YOU SOMETHING?

17 A YES, HE WAS -- HE WAS TRYING TO PROMOTE THE
18 BROWNING ATTRITION MACHINE.

19 Q AND WAS HE TRYING TO SELL YOU THAT MACHINE?

20 A SELL IT, LICENSE IT, TRYING GET ME TO USE IT
21 IN MY PROGRAMS.

22 Q AND WHEN HE FIRST APPROACHED YOU WITH RESPECT
23 TO THE ATTRITION MILL WHAT WAS YOUR UNDERSTANDING OF WHO
24 OWNED THE RIGHTS TO THAT BROWNING ATTRITION MILL?

25 A MR. BROWNING. I THOUGHT -- I HAD A LETTER
26 AGREEMENT AS I RECALL WITH MR. BROWNING FOR UNITED
27 FINANCIAL OPERATIONS TO HAVE THOSE RIGHTS.

28 Q DID YOU TELL MR. HUNT THAT YOU HAD A LETTER

3 1 AGREEMENT WITH MR. BROWNING WITH RESPECT TO THE OWNERSHIP
2 OF ATTRITION MILLS?

3 A I BELIEVE I DID.

4 MR. CRAIN: WHEN IS THIS? VAGUE AS TO TIME.

5 THE COURT: FOCUS ON TIME.

6 MR. MC MULLEN: OKAY.

7 BY MR. MC MULLEN:

8 DID YOU -- WHEN DID YOU TELL, IF YOU DID
9 TELL, MR. HUNT THAT YOU HAD A LETTER AGREEMENT THAT YOU
10 OWNED THE ATTRITION MILL?

11 A I DON'T KNOW ABOUT A LETTER AGREEMENT. I
12 TOLD HIM THAT I THOUGHT WE OWNED THE ATTRITION MILL
13 IMMEDIATELY.

14 Q IMMEDIATELY.

15 WHEN DID YOU TELL HIM THIS?

16 A WHEN HE WAS TRYING TO SELL IT TO ME. WHEN HE
17 FIRST BROUGHT UP THE SUBJECT.

18 THE COURT: APPROXIMATELY WHEN WAS THIS?

19 THE WITNESS: WHENEVER WE FIRST MET IN '82 OR '83,
20 WHENEVER IT WAS. I DON'T REMEMBER THE DATE. I DON'T HAVE
21 ANY OF MY DOCUMENTS. I HAVE NOT HAD ACCESS TO THOSE SINCE
22 WE HAVE BEEN TALKING.

23 BY MR. MC MULLEN:

24 Q AFTER YOU TOLD HIM THIS ON YOUR INITIAL
25 CONTACT WITH MR. HUNT DID YOU CONTINUE TO NEGOTIATE WITH
26 MR. HUNT WITH RESPECT TO MARKETING THE ATTRITION MILL?

27 A MY RECOLLECTION OF IT IS THAT -- MR. HUNT HAD
28 ENTERED INTO AN AGREEMENT WITH MR. BROWNING CONCERNING THE

3 1 ATTRITION MILL. MY POSITION WAS THAT WE OWNED THE
2 ATTRITION MILL. WE OWNED THE RIGHTS TO IT, HAVING
3 ACQUIRED SUCH FROM MR. BROWNING AND THAT MR. BROWNING
4 COULD SELL ANY PORTION OF HIS RIGHTS THAT HE SO DESIRED TO
5 SELL BUT THAT WE ARE THE -- WE ALREADY OWNED THE RIGHTS
6 THAT WE HAD AND THAT BASICALLY THOSE RIGHTS WERE -- THAT
7 WE HAD. I DID NOT NEED MR. HUNT IN ORDER TO DO THAT UNTIL
8 OR UNLESS -- THIS WAS ALL MR. BROWNING'S RIGHTS, WERE
9 TRANSFERRED TO MR. HUNT OR TO -- MICROGENESIS OR COGENCO
10 OR WHATEVER COMPANY THEY WERE OPERATING UNDER AT THAT
11 TIME.

12 Q WHAT WERE YOU TRYING TO ACHIEVE BY
13 NEGOTIATING WITH MR. HUNT WITH RESPECT TO THE ATTRITION
14 MILL? WHAT WERE YOU TRYING TO GET FROM MR. HUNT?

4 15 A WE WANTED TO USE THE ATTRITION MILL. WE HAD
16 SEVERAL CONTRACTS CONTINGENT, AT LEAST WITH POWER PLANTS,
17 TO PROCESS THE COAL BURNING PLANTS USED TO -- FOR
18 BURNING -- YOU KNOW IN THE POWER PLANT IN A FAR MORE
19 EFFICIENT MANNER AND CLEANER TO CUT DOWN THE COSTS FOR USE
20 IN POWER PLANTS FOR SIMPLIFICATION.

21 Q WE UNDERSTAND THAT.

22 WHEN YOU WERE NEGOTIATING WITH MR. HUNT WITH
23 RESPECT TO THE ATTRITION MILL WHAT WERE YOU TRYING TO GET
24 FROM MR. HUNT'S ORGANIZATION?

25 A WELL, AFTER IT BECAME -- I'M NOT SURE I
26 UNDERSTAND THE QUESTION.

27 Q NORMALLY WHEN TWO PEOPLE BARGAIN YOUR -- EACH
28 SIDE IS TRYING TO GET SOMETHING FROM THE OTHER.

4 1 A IF THE LICENSE RIGHTS ARE -- IF THE SALES
2 RIGHTS, THE -- THE RIGHT TO USE THAT MACHINE, TO SELL IT,
3 PUT IT INTO PRODUCTION TO ACQUIRE OR TO EXCHANGE IT FOR
4 MONEY.

5 THE COURT: HOLD ON A SECOND.

6
7 (PAUSE.)

8
9 BY MR. MC MULLEN:

10 Q I'M SORRY -- IN THE NEGOTIATION WITH
11 MR. HUNT WHAT WAS IT THAT YOU WERE TRYING -- THAT YOU WERE
12 TRYING TO OBTAIN FROM MR. HUNT BY USE OH --

13 A I WAS TRYING TO GET THE EQUIPMENT THAT
14 MR. HUNT HAD INVENTED FOR OUR USE IN OUR OPERATIONS.

15 Q OKAY.

16 NOW, IN LIGHT OF THE FACT THAT YOU HAVE
17 TESTIFIED THAT YOU CLAIMED TO HAVE OWNED THE OWNERSHIP --
18 THAT YOU CLAIMED TO HAVE THE OWNERSHIP RIGHTS TO THE
19 ATTRITION MILL FROM MR. BROWNING, AND YOU TOLD THAT TO
20 MR. HUNT WHY DID YOU NEGOTIATE FOR THE USE OF THE MACHINE
21 WITH MR. HUNT?

22 A IN OUR EXPERIENCE WITH INVENTORS, THEY DON'T
23 ABIDE BY THE SAME LAWS OF CONTRACTS AS THE REST OF US.
24 THEY DON'T SEEM TO UNDERSTAND THAT AND THEY HAVE A
25 TENDENCY TO SELL THOSE RIGHTS, THREE, FOUR, FIVE, SIX
26 TIMES. EVERY TIME I BOUGHT A PATENT IT SEEMS LIKE I HAD
27 TO GO OUT INTO THE WORLD TO STRAIGHTEN OUT THE PATENT.

28 FOR EXAMPLE, A MR. MOON SHOWED UP FROM LAS

4 1 VEGAS AND HE SAID THAT HE OWNED THE BROWNING RIGHTS.

2 THERE WAS ANOTHER PERSON THAT DIDN'T GET VERY
3 FAR THAT SAID THEY OWNED MR. BROWNING'S RIGHTS.

4 WHEN MR. HUNT SHOWED UP I THOUGHT, "HERE
5 COMES ANOTHER CRAZY THAT THINKS HE OWNS THE BROWNING
6 RIGHTS.

7 Q WHEN DID YOU OBTAIN THOSE RIGHTS FROM
8 BROWNING?

9 A SOMETIME BEFORE I MET MR. HUNT.

10 Q DID YOU OBTAIN THOSE DIRECTLY THROUGH
11 MR. BROWNING OR THROUGH SOME OTHER SOURCE?

12 A DIRECTLY.

13 Q OVER WHAT PERIOD OF TIME DID NEGOTIATIONS --
14 DID THE NEGOTIATIONS TAKE PLACE WITH RESPECT TO THE
15 ATTRITION MILL BETWEEN YOU AND MR. HUNT?

16 A I DON'T RECALL. I RECALL THAT IT WAS SOME
17 POINT IN TIME, IT CAME DOWN TO THE POINT THAT IN ORDER TO
18 DO -- TO SELL THE ATTRITION MILL, TO DO THE THINGS THAT WE
19 NEEDED TO DO WE NEEDED TO CLEAR TITLE.

20 WHETHER IT HAD BEEN TRANSFERRED TO HUNT OR
21 HADN'T BEEN TRANSFERRED TO HUNT, WHATEVER IT WAS, IT
22 NEEDED TO BE CLEARED UP. I DO REMEMBER NOW THAT WE DID
23 ENTER INTO SOME KIND OF NEGOTIATIONS CONCERNING WHATEVER
24 RIGHTS THEY DID HAVE THAT WE WOULD ACQUIRE IN SOME MANNER
25 CONTINGENT UPON OUR COMPLETING THE MERGER WITH SATURN.

26 Q DID THOSE -- NEGOTIATIONS OCCUR BETWEEN
27 APPROXIMATELY THE END OF 1983 THROUGH THE SUMMER MONTHS OF
28 1984?

4 1 A THEY WERE DURING THE PERIOD OF TIME PRIOR TO
2 THE SUMMER OF '84. I DON'T KNOW WHEN THEY STARTED. I
3 DON'T REMEMBER WHEN THEY STARTED.

4 Q DURING THE NEGOTIATIONS WITH MR. HUNT WAS
5 THERE A TIMETABLE TO WHEN YOU THOUGHT MONEY WOULD BE
6 EARNED FROM THE APPLICATION THAT YOU HAD INTENDED FOR THE
7 ATTRITION MILL?

8 MR. CRAIN: I THINK THAT'S OVERBROAD. IT'S SO
9 VAGUE --

10 THE COURT: I DON'T UNDERSTAND THE QUESTION EITHER.
11 REFRAME IT. GO AHEAD.

12 BY MR. MC MULLEN:

13 Q IN YOUR NEGOTIATIONS WITH MR. HUNT YOU HAD
14 ANTICIPATED SOME USE FOR THE ATTRITION MILL; IS THAT
15 CORRECT?

16 A THAT'S CORRECT.

17 Q AND THAT USE WOULD GENERATE REVENUE, MONEY TO
18 YOU; CORRECT?

19 A THAT'S CORRECT.

20 Q FROM THE TIME THAT YOU WERE NEGOTIATING WITH
21 MR. HUNT DID YOU HAVE AN IDEA IN MIND OF HOW LONG IT WOULD
22 TAKE FROM THE TIME THAT YOU WERE NEGOTIATING WITH MR. HUNT
23 TO THE TIME THAT YOU WOULD BE RECEIVING MONEY FOR THE
24 APPLICATION OF THE ATTRITION MILLS?

25 A THE ANSWER TO THAT IS ALMOST AS DIFFICULT AS
26 YOUR QUESTION.

27 MR. CRAIN: I OBJECT TO THE QUESTION BECAUSE I
28 AGREE WITH THE WITNESS, IT'S UNINTELLIGIBLE.

4 1 THE COURT: THE PROBLEM I HAVE IS IT DOESN'T MATTER
2 WHAT HIS STATE OF MIND IS. IT DOESN'T MATTER WHAT HE WAS
3 THINKING. IT MATTERS WHAT HE SAID TO MR. HUNT.

4 LET'S FOCUS ON THAT.

5 BY MR. MC MULLEN:

6 Q DID YOU EVER HAVE DISCUSSIONS WITH HUNT WITH
7 RESPECT TO WHEN YOU EXPECTED TO HAVE REVENUES GENERATED
8 FROM THE ATTRITION MILLS?

9 A I DON'T RECALL SPECIFICALLY WITH HIM, BUT
10 EVERYONE I DEALT WITH I TOLD I WAS CURRENTLY UNDER
11 INDICTMENT ON 27 COUNTS OF TREASURY FRAUD FOR THE TAX
12 SHELTERS THAT I SOLD.

13 Q THAT WAS IN THE SUMMER OF 1984?

14 A I WAS INDICTED IN 1981. THE FINAL TRIAL WENT
15 THROUGH I THINK THREE FORMAL TRIALS, TWO TRIPS TO THE
16 CIRCUIT COURT AND ONE TO THE SUPREME COURT OF THE UNITED
17 STATES AND STRETCHED OUT FROM 1981 TO 1989.

18 Q WHAT WAS THE STATUS OF THOSE INDICTMENTS IN
19 THE SUMMER MONTHS OF 1984?

20 A IN THE SUMMER MONTHS -- EXCUSE ME, IT WOULD
21 HAVE BEEN THE SAME THING FOR THE -- FOR THE PREVIOUS
22 TIME -- I HAD GONE TO TRIAL ON ONE COUNT OF THE 27. THE
23 JURY FOUND ME GUILTY BUT ON THE THIRD DAY OF THE TRIAL THE
24 JUDGE STATED HE COMMITTED REVERSIBLE ERROR ON THE FIRST
25 DAY OF THE TRIAL BUT HE WAS GOING TO LET IT CONTINUE AND
26 IF I WAS FOUND INNOCENT SO BE IT. JEOPARDY HAD ATTACHED.

27 IF I WAS FOUND GUILTY HE WOULD GRANT ME NO
28 LESS THAN A NEW TRIAL. IN THE COURSE OF THAT TRIAL MANY

5
1 THINGS CAME OUT. ULTIMATELY 102 CRIMES COMMITTED BY THE
2 GOVERNMENT IN ORDER FOR THEM TRYING TO CREATE ONE FOR ME
3 TO COMMIT.

4 THE COURT: WHAT WAS THE STATUS IN THE SUMMER OF
5 1984? WERE YOU IN TRIAL, OUT OF TRIAL, CONVICTED, NOT
6 CONVICTED?

7 THE WITNESS: THAT TRIAL HAD BEEN COMPLETED. THAT
8 JUDGE HAD SET ASIDE THE CONVICTION AND GRANTED ME A NEW
9 TRIAL AND THEN PASSED IT ONTO ANOTHER JUDGE WHO WAS
10 CONDUCTING HEARINGS AS TO WHETHER OR NOT THE ENTIRE THING
11 SHOULD BE DISMISSED BECAUSE OF THE SITUATION WITH THE
12 GOVERNMENT EMPLOYEES ACTING ON THAT.

13 AT THAT POINT IN TIME NO DECISION HAD BEEN
14 REACHED BY THE SECOND JUDGE.

15 THE COURT: OKAY.

16 GO AHEAD.

17 BY MR. MC MULLEN:

18 Q DID YOU EVER TALK TO MR. HUNT AND TELL HIM
19 ABOUT YOUR INDICTMENT PROBLEMS WITH THE UNITED STATES
20 GOVERNMENT DURING THE SUMMER MONTHS OF 1984?

21 A WHEN YOU PUT IT DOWN TO SUMMER MONTHS OF 1984
22 I DON'T KNOW HOW I CAN ADDRESS MYSELF TO THAT.

23 Q WELL -- LET ME ASK ANOTHER QUESTION, THEN.
24 DID YOU EVER TELL MR. HUNT ABOUT YOUR
25 INDICTMENT PROBLEMS WITH THE UNITED STATES GOVERNMENT?

26 A MR. HUNT WAS FULLY AWARE OF IT AS WAS
27 EVERYBODY WITH THE B.B.C. --

28 MR. CRAIN: I'M GOING TO OBJECT --

5 1 THE COURT: HOLD ON, MR. KILPATRICK.

2 MR. CRAIN: PARDON ME, NONRESPONSIVE.

3 THE COURT: THE ANSWER WILL GO OUT.

4 THE QUESTION WAS NOT WHAT EVERYONE WAS AWARE
5 OF. THE QUESTION WAS DID YOU EVER TELL MR. HUNT ABOUT
6 YOUR INDICTMENT PROBLEMS AT ANY TIME.

7 THE WITNESS: I DO NOT RECALL A SPECIFIC
8 CONVERSATION WHERE I AT FIRST INFORMED HIM OF THIS. WE
9 HAD DISCUSSIONS ABOUT THE INDICTMENT.

10 BY MR. MC MULLEN:

11 Q IN YOUR -- WELL, DID THE INDICTMENT PRESENT A
12 PROBLEM FOR YOU IN TERMS OF COMPLETING THE AGREEMENT
13 BETWEEN YOURSELF AND MR. HUNT WITH RESPECT TO THE
14 ATTRITION MILLS?

15 A YES.

16 Q AND DID YOU COMMUNICATE THAT TO MR. HUNT?

17 A YES.

18 Q WHAT IS SATURN ENERGY AND RESOURCES?

19 A SATURN ENERGY AND RESOURCES WAS A CANADIAN,
20 BRITISH COLUMBIA CORPORATION PUBLICLY TRADED ON THE
21 BRITISH COLUMBIA EXCHANGE, WHICH WE PLANNED TO MERGE WITH
22 UPON THE COMPLETION OF OUR PROBLEMS WITH THE GOVERNMENT.

23 Q DURING THE NEGOTIATIONS WITH MR. HUNT WAS IT
24 ANTICIPATED THAT YOUR COMPANY UNITED FINANCIAL OPERATIONS,
25 INC. WOULD MERGE WITH SATURN?

26 A YES, IT WAS.

27 Q WAS THAT A CONDITION THAT WAS NECESSARY
28 BEFORE YOU COULD COMPLETE ANY AGREEMENT WITH RESPECT TO

5
1 THE ATTRITION MILL WITH MR. HUNT?

2 A WE MIGHT COMPLETE AN AGREEMENT BUT I COULDN'T
3 PAY ANYTHING BECAUSE I PUT A MORATORIUM UPON THE PAYMENT
4 OF ALL MY RECEIVABLES UNTIL SUCH TIME AS I WAS EXONERATED
5 ON THE INDICTMENT AND UNTIL SUCH TIME AS THE MERGER WAS
6 COMPLETED.

7 Q DID YOU TELL THAT TO MR. HUNT?

8 A I TOLD THAT TO -- YES.

9 Q DO YOU KNOW WHEN YOU TOLD THAT TO MR. HUNT?
10 AT THE VERY BEGINNING?

11 A I CAN'T GIVE YOU A DATE.

12 Q WAS IT AT THE VERY BEGINNING OF YOUR
13 NEGOTIATIONS?

14 A YES, IT WOULD HAVE TO HAVE BEEN.

15 Q SHOWING YOU WHAT'S BEEN --
16 MR. MC MULLEN: MAY I APPROACH THE WITNESS, YOUR
17 HONOR?

18 THE COURT: YES.

19 BY MR. MC MULLEN:

20 Q SHOWING YOU WHAT'S BEEN MARKED AS
21 PETITIONER'S EXHIBIT 4 FOR IDENTIFICATION.

22 WOULD YOU LOOK AT THAT DOCUMENT.

23 THE COURT: I'M SORRY, YOU SAID 4?

24 MR. MC MULLEN: 4, YES.

25 BY MR. MC MULLEN:

26 Q DID YOU EVER SIGN THAT AGREEMENT?

27 A NO, IT IS NOT SIGNED HERE AND I DON'T HAVE
28 ANY RECOLLECTION OF SIGNING IT.

5 1 Q SHOWING YOU WHAT'S BEEN MARKED AS EXHIBIT 5
2 FOR IDENTIFICATION, LICENSE AGREEMENT.

3 WOULD YOU LOOK THAT OVER, PLEASE?
4

5 (WITNESS REVIEWING DOCUMENT.)
6

7 A YES.

6 8 Q DO YOU EVER RECALL THAT AGREEMENT?

9 A I DON'T RECALL SIGNING IT.

10 MR. CRAIN: MAY I APPROACH THE WITNESS WHILE HE IS
11 LOOKING?

12 THE COURT: YES.

13 BY MR. MC MULLEN:

14 Q GOING BACK TO EXHIBIT 4 FOR IDENTIFICATION,
15 COULD YOU LOOK AT PAGE 2 OF THIS EXHIBIT, THE PARAGRAPH
16 THAT'S GOT A LETTER C ON IT AND IT SAYS, "CONSIDERATION
17 FOR OPTION;" RIGHT?

18 COULD YOU READ OVER THAT --

19 A TO MYSELF OR OUT LOUD.

20 Q READ IT TO YOURSELF, PLEASE.
21

22 (WITNESS REVIEWING DOCUMENT.)
23

24 BY MR. MC MULLEN:

25 Q JUST LET US KNOW WHEN YOU ARE DONE.

26 A YES.

27 Q WOULD YOU HAVE AGREED TO THAT PROVISION OF
28 THAT CONTRACT?

6 1 MR. KLEIN: OBJECTION. CALLS FOR SPECULATION.

2 MR. CRAIN: I JOIN IN THAT.

3 THE COURT: SUSTAINED.

4 THE WITNESS: WHAT --

5 THE COURT: HE WILL PUT ANOTHER QUESTION.

6 BY MR. MC MULLEN:

7 Q SHOWING YOU WHAT'S BEEN MARKED AS
8 PETITIONER'S EXHIBIT 7 FOR IDENTIFICATION, WOULD YOU TAKE
9 A LOOK AT THAT, PLEASE?

10
11 (WITNESS REVIEWING DOCUMENT.)

12
13 A WOULD YOU LIKE TO ASK ME A SPECIFIC QUESTION
14 OR SHOULD I READ THE WHOLE THING?

15 Q YEAH, DID YOU SIGN THAT AGREEMENT?

16 A IT'S NOT SIGNED HERE. I HAVE NO RECOLLECTION
17 OF SIGNING IT. THERE IS NO PLACE -- THERE IS NO SIGNATURE
18 FOR MY CORPORATION SINCE I HAD NEVER MERGED WITH SATURN.

19 Q DURING LATE '83 AND '94 -- EXCUSE ME, '84,
20 WAS THERE A REASONABLE EXPECTATION BY YOU THAT ANY MONEY
21 WOULD BE IMMEDIATELY FORTHCOMING TO HUNT WITH RESPECT TO
22 YOUR NEGOTIATIONS WITH HIM REGARDING THE ATTRITION MILL?

23 MR. CRAIN: I THOUGHT THE COURT SAID HIS VIEWS WERE
24 IRRELEVANT SO --

25 THE COURT: READ BACK THE LAST QUESTION.

26
27 (RECORD READ.)

28

6 1 THE COURT: REFRAME THE QUESTION.

2 MR. CRAIN: MOTION TO STRIKE THE ANSWER.

3 THE WITNESS: NO.

4 THE COURT: YES.

5 MR. CRAIN: I'M SORRY, IS IT STRICKEN?

6 THE COURT: YES.

7 BY MR. MC MULLEN:

8 Q DID HUNT EVER ASK YOU IF YOU WOULD BE GETTING
9 MONEY WITH -- DID HUNT EVER ASK YOU IF YOU WOULD BE GIVING
10 HIM MONEY LIKE AROUND JUNE OF '84?

11 A NO, NOT THAT I RECALL.

12 Q DID YOU EVER TELL HUNT THAT YOU WOULD BE --
13 THAT YOU WOULD NOT BE GIVING ANY MONEY TO HIM IN THE
14 IMMEDIATE FUTURE AROUND JUNE OF '84 WITH RESPECT TO YOUR
15 NEGOTIATIONS?

16 A WE HAD PUT A MORATORIUM ON ALL RECEIVABLES.
17 I DID NOT HAVE ANY MONEY TO GIVE TO HIM OR TO ANYONE OF
18 CONSEQUENCE UNTIL SUCH TIME THAT I WAS FOUND NOT GUILTY
19 AND THE MERGER WAS COMPLETED, AT WHICH TIME THE PAYABLES,
20 THE RECEIVABLES WOULD START PAYING AGAIN, THE \$30,000,000
21 IN RECOURSE AND 125-, 130- MILLION IN NONRECOURSE.

22 MR. CRAIN: MOVE TO STRIKE AS NONRESPONSIVE.

23 THE COURT: EVERYTHING AFTER THAT HE HAD NO MONEY
24 AT THAT TIME WILL GO OUT.

25 BY MR. MC MULLEN:

26 Q DID YOU TELL HUNT THAT YOU HAD NO MONEY AT
27 THAT TIME?

28 A YES.

6
1 Q DID YOU EXPLAIN TO HIM THE PROBLEMS
2 ASSOCIATED WITH YOUR NOT HAVING ANY MONEY?

3 A YES.

4 Q WHEN DID YOU EXPLAIN THAT? WHEN DID YOU SAY
5 THAT TO MR. HUNT?

6 A ANYTIME MONEY CAME UP.

7 Q DID YOU TELL HIM THAT IN YOUR INITIAL
8 CONVERSATIONS WITH HIM?

9 A I DON'T KNOW. I SAID IT -- IT WAS MY
10 CONTINUING FINANCIAL POSITION WHICHEVER ONE THAT I DEALT
11 WITH THAT HAD TO DO WITH ME MAKING ANY PAYMENTS, I WOULD
12 PREFACE IT WITH, "I HAVE NO WAY TO MAKE PAYMENTS UNTIL I
13 START RECEIVING PAYMENTS FROM MY INVESTORS AGAIN."

14 Q DID YOU HAVE THAT FINANCIAL CONDITION IN THE
15 END OF 1983?

16 A YES.

17 Q AND DID THAT CONDITION CONTINUE THROUGH --
18 INTO THE SUMMER MONTHS OF 1984?

19 A YES.

20 Q AND WITH RESPECT TO THE NEGOTIATIONS YOU HAD
21 WITH MR. HUNT, DID YOU NEED TO SEE A WORKING ATTRITION
22 MILL BEFORE YOU COULD CONTINUE -- CONTINUE WITH THE
23 CONTRACT, FINALIZE THE CONTRACT WITH HIM?

24 A I'D HAVE A WORKING ATTRITION MILL BEFORE I
25 COULD DELIVER ANYTHING TO ANYBODY. THERE WAS NO POINT FOR
26 ME ENTERING INTO AN AGREEMENT FOR A MILL THAT DOESN'T
27 WORK.

28 Q DID YOU TELL MR. HUNT THAT?

6 1 A YES.

2 Q DO YOU REMEMBER WHEN YOU TOLD HIM THAT, WAS
3 IT THE BEGINNING OF THE NEGOTIATIONS?

4 A YES.

5 Q DID YOU EVER SEE AN ATTRITION MILL THAT WAS
6 MANUFACTURED BY HUNT OR HIS ORGANIZATION?

7 A I SAW THE GRINDING PORTION. I SAW THE
8 ATTRITION MILL, I SAW THE GRINDING PORTION OF IT, YES.

9 Q THE END PRODUCT, IS THAT WHAT YOU SAW?

10 A I SAW THE EQUIPMENT THAT DID THE GRINDING.

11 Q WHERE DID YOU SEE THAT?

12 A IN A WAREHOUSE SOMEWHERE IN -- IN THE GREATER
13 L.A. AREA.

14 Q AND THAT MACHINE YOU SAW, WAS THAT A MACHINE
15 THAT WOULD HAVE BEEN SUITABLE FOR THE PURPOSE OF GRINDING
16 COAL, WHICH IS WHAT YOU WANTED TO DO WITH IT?

17 A IT WAS A PORTION OF IT TO GRIND COAL --
18 THAT -- THEY GROUND ROCK AND SO FORTH WITH IT, BUT TO
19 GRIND COAL IT NEEDS TO GRIND IT IN AN OXYGEN FREE
20 ATMOSPHERE AND THAT -- THIS EQUIPMENT WAS IN NO WAY ABLE
21 TO DO THAT. COAL WOULD EXPLODE IN THE SIZES WE NEEDED IT
22 GROUND TO IF OXYGEN IS PRESENT --

23 MR. CRAIN: I'M GOING TO MOVE TO STRIKE AS NO
24 FOUNDATION. THAT'S AN EXPERT OPINION.

25 THE COURT: OVERRULED.

26 BY MR. MC MULLEN:

27 Q DID YOU KNOW IN THE SUMMER MONTHS OF 1984 HOW
28 LONG IT WOULD BE BEFORE YOUR FINANCIAL SITUATION WOULD BE

7 1 SUCH THAT YOU COULD FINALIZE THE CONTRACT WITH MR. HUNT
2 AND HIS ORGANIZATION?

3 A I DID NOT KNOW WHEN IT WOULD -- I KNEW WHAT
4 EVENT IT REQUIRED, BUT THE EVENTS -- THE EVENTS THAT WERE
5 REQUIRED BUT I DID NOT KNOW WHAT DATES THOSE WOULD OCCUR,
6 NO, SIR.

7 Q DID YOU CONVEY -- DID YOU COMMUNICATE THAT TO
8 MR. HUNT, THAT THERE WAS UNCERTAINTY AS TO WHEN YOU WOULD
9 BE READY TO PERFORM DUE TO YOUR FINANCIAL SITUATION?

10 A YES.

11 Q AND DID HE ACKNOWLEDGE HIS UNDERSTANDING OF
12 THAT SITUATION TO YOU?

13 A YES, YES.

14 MR. KLEIN: OBJECTION. CALLS FOR A CONCLUSION.

15 THE COURT: OVERRULED.

16 BY MR. MC MULLEN:

17 Q APPROXIMATELY WHEN DID THAT HAPPEN? WAS IT
18 IN THE BEGINNING OF YOUR NEGOTIATIONS WITH HIM?

19 A IT WAS -- A FOREGONE CONCLUSION IN ALL
20 NEGOTIATIONS. IT WAS THE BASIS OF ALL NEGOTIATIONS.

21 MR. KLEIN: MOVE TO STRIKE AS NONRESPONSIVE.

22 THE COURT: LAST ANSWER CAN GO OUT.

23 BY MR. MC MULLEN:

24 Q DID YOU TELL HIM ABOUT THAT MORE THAN ONCE
25 DURING THE NEGOTIATING PERIOD THAT YOU TESTIFIED TO?

26 MR. CRAIN: ASKED AND ANSWERED.

27 THE WITNESS: MR. HUNT --

28 MR. CRAIN: HOLD ON, MR. KILPATRICK. I HAVE GOT AN

7
1 OBJECTION.

2 ASKED AND ANSWERED REPEATEDLY.

3 THE COURT: HOLD ON. OVERRULED.

4 YOU MAY ANSWER. GO AHEAD.

5 THE WITNESS: MR. HUNT AND HIS ASSOCIATES SET UP
6 THE "60 MINUTES" PROGRAM WHICH I APPEARED ON CONCERNING
7 ALL THE PROBLEMS WITH THE GOVERNMENT. THEY WERE FULLY
8 AWARE OF EVERYTHING GOING ON WITH THE COURTS AND ALL THE
9 THINGS -- THE ENTIRE TIME. WITHOUT HIM I WOULD HAVE NEVER
10 BEEN ON "60 MINUTES." THAT WAS A BIG HELP IN GETTING ON
11 THE PROGRAM. HE WAS FULLY AWARE OF EVERYTHING, IS THE
12 BEST DESCRIPTION I CAN GIVE YOU.

13 BY MR. MC MULLEN:

14 Q WAS THE MERGER BETWEEN UNITED FINANCIAL
15 OPERATIONS AND SATURN A PREREQUISITE TO YOU FINALIZING AN
16 AGREEMENT WITH HUNT AND HIS ORGANIZATION?

17 A I'M SORRY, I -- WOULD YOU ASK ME THAT
18 QUESTION GAIN. I DIDN'T UNDERSTAND.

19 Q WAS A MERGER BETWEEN YOUR COMPANY, UNITED
20 FINANCIAL OPERATIONS, AND SATURN RESOURCES, WAS THAT
21 NECESSARY TO BE ACCOMPLISHED FOR YOU TO FINALIZE YOUR
22 AGREEMENT WITH MR. HUNT AND HIS ORGANIZATION?

23 A IT WAS NECESSARY BEFORE ANY AGREEMENT WOULD
24 BE EFFECTIVE BECAUSE THERE WAS NO MONEY TO DO ANYTHING
25 WITH UNTIL THAT OCCURRED.

26 Q AND DID YOU TELL MR. HUNT THAT DURING THE
27 NEGOTIATING PROCESS?

28 A YES.

7
1 Q AND WHEN -- DID YOU TELL HIM THAT AT THE
2 BEGINNING OF THE NEGOTIATING PROCESS?

3 A IT WOULD HAVE BEEN A PART OF THE NEGOTIATING
4 PROCESS.

5 Q THROUGHOUT THE PROCESS?

6 A THROUGHOUT THE PROCESS --

7 MR. CRAIN: OBJECTION. LEADING THE WITNESS.

8 THE COURT: IT IS. I'LL ALLOW THE QUESTION AND
9 ANSWER.

10 BY MR. MC MULLEN:

11 Q DID YOU TELL HUNT WHEN THE EARLIEST THAT ANY
12 MONEY WOULD BE REALIZED BY MICROGENESIS WOULD BE WITH
13 RESPECT TO THESE NEGOTIATIONS?

14 A THERE WAS NO DATE ON WHICH THAT -- THAT WOULD
15 BE SET. IT WOULD OCCUR WHEN I WAS CLEARED OF THE CHARGES
16 SO THAT WE COULD PROCEED WITH THE MERGER, SO WE COULD
17 START COLLECTING OUR MONEY. THOSE WERE THREE STEPS THAT
18 WERE REQUIRED BEFORE ANY MONEY WOULD FLOW OR BEFORE ANY
19 BUSINESS WOULD TAKE PLACE.

20 Q WOULD YOU TAKE A LOOK AT RESPONDENT'S EXHIBIT
21 W, PARAGRAPH FOUR?

22 A W, PARAGRAPH 4?

23 Q YES.

24
25 (WITNESS REVIEWING DOCUMENT.)

26
27 Q DID YOU EVER TELL MR. HUNT HOW MUCH TIME IT
28 WOULD TAKE BEFORE THESE STEPS COULD BE ACCOMPLISHED BEFORE

7 1 YOU COULD REACH AN AGREEMENT?

2 A WELL, NOT -- I DID NOT GIVE THEM A DATE, BUT
3 I SAID -- I THOUGHT THERE WAS AN ADDITIONAL TWO YEARS OF
4 RESEARCH AND DEVELOPMENT REMAINING, NOT RESEARCH AND
5 DEVELOPMENT PER SE, BUT TO PUT TOGETHER AND TO BUILD THE
6 UNITS THAT WERE TO BE SOLD, ONE, AND TWO, THEY HAD TO GO
7 THROUGH THE ELECTRICAL RESEARCH INSTITUTE PROGRAM BEFORE
8 THEY COULD BE PUT ON A POWER PLANT. THAT WOULD TAKE A
9 MINIMUM OF TWO YEARS BEFORE THEIR DELIVERY OF ANY
10 EQUIPMENT.

11 IF WE STARTED THAT DAY, IT WOULD TAKE TWO
12 YEARS. OF COURSE, WE COULDN'T START THAT DAY BECAUSE I
13 DIDN'T HAVE THE OTHER TWO SITUATIONS IN LINE. I HAD NOT
14 BEEN FOUND -- I HAD NOT BEEN FOUND NOT GUILTY, AND I HAD
15 NOT MERGED WITH SATURN, AND WE COULD NOT COMMENCE THE
16 TWO-YEAR PROGRAM UNTIL THAT DATE.

17 Q AND YOU TOLD THAT TO MR. HUNT?

18 A YES.

19 Q AND WITH RESPECT TO THAT -- THOSE TWO YEARS,
20 DID YOU TELL MR. HUNT THAT HE WOULD NOT RECEIVE ANY MONEY
21 ON THE AGREEMENT UNTIL THAT PERIOD OF TIME PASSED?

22 A YES. THE --

23 Q AND WHEN WOULD -- DID YOU TELL HIM AT THE
24 BEGINNING OF THE NEGOTIATIONS?

25 A PROBABLY -- IT CAME UP AT THE BEGINNING, AT
26 THE END AND AT ALL INTERMEDIATE SITUATIONS. THERE WAS --
27 IT WAS SOMETHING EVERYONE INVOLVED KNEW, AND THERE WAS NO
28 NEED TO RECITE IT AGAIN AND AGAIN AND AGAIN.

8 1 Q DID MR. HUNT ACKNOWLEDGE TO YOU HIS
2 UNDERSTANDING OF THAT DURING THE NEGOTIATION PROCESS?

3 A I CAN'T SAY ON A CERTAIN DATE MR. HUNT SAID,
4 "I UNDERSTAND THAT." IT WAS -- THERE WAS NEVER A QUESTION
5 THAT EVERYBODY UNDERSTOOD.

6 MR. CRAIN: MOTION TO STRIKE AS RESPONSIVE.

7 THE COURT: THE LAST PORTION AS TO WHAT EVERYONE
8 UNDERSTOOD WILL GO OUT.

9 BY MR. MC MULLEN:

10 Q WHAT ARE THE THREE STEPS THAT WERE NEEDED TO
11 BE ACCOMPLISHED BEFORE THE CONTRACT COULD BE COMPLETED,
12 YOU TESTIFIED TO THREE STEPS.

13 A BEFORE ANY EQUIPMENT COULD BE DELIVERED FIRST
14 I HAD TO BE FOUND NOT GUILTY BY THE COURTS TO PROVE THAT
15 MY TAX SHELTERS WERE NOT A FRAUD WHEREBY I WOULD HAVE TO
16 REFUND EVERYTHING.

17 TWO, I WOULD THEN HAVE TO COMPLETE -- I HAD
18 PUT ALL OF MY ASSETS AND ALL OF UNITED FINANCIAL ASSETS
19 INTO A BANKRUPTCY, AND UNILATERALLY HAD PUT A MORATORIUM
20 ON ALL THE PAYMENTS BY THE PEOPLE THAT STILL OWED THE 30
21 MILLION IN FULL RECOURSE.

22 THE BANKRUPTCY WOULD HAVE TO BE CLOSED, WHICH
23 WOULD ORDER THE MERGER WITH -- AS A PORTION OF THIS WOULD
24 BE THE ORDER OF THE MERGER WITH SATURN.

25 AND, THREE, THE -- AS A PORTION OF THAT,
26 THEN, THE PAYMENTS BY THE INVESTORS COULD COMMENCE AGAIN.

27 AT THAT POINT IN TIME WE COULD COMMENCE TO
28 BUILD THE EQUIPMENT AND THE ATTRITION MILLS AND ALL OF THE

8 1 GRINDING EQUIPMENT THAT WOULD GO ONTO THE POWER PLANTS.
2 WHEN IT WAS IN SUFFICIENT SHAPE WE COULD DELIVER IT TO AN
3 E.P.R. PLANT. WE HAD ONE THERE IN DENVER THAT COULD DO
4 IT.

5 WHEN THE E.P.R. PLANTS HAD BEEN RUNNING IT
6 FOR A SUFFICIENT PERIOD OF TIME THAT THEY WERE CONFIDENT
7 THAT THEY COULD ENDORSE IT AND ALLOW IT TO BE PUT ON OTHER
8 PLANTS IN OTHER LOCATIONS THEY WOULD GIVE US A DATE IN
9 WHICH WE COULD DELIVER IT TO THEM AND WE WOULD BE
10 COMFORTABLE THAT WE WOULDN'T BLOW UP THE POWER PLANT.

11 THAT WAS A TWO-YEAR PERIOD OF TIME AFTER THE
12 MERGER AND THE PAYMENTS.

13 Q DID YOU TELL THAT TO MR. HUNT DURING THE
14 NEGOTIATIONS PROCESS?

15 A I TOLD IT TO EVERYBODY. INCLUDING MR. HUNT
16 AND EVERYBODY ELSE.

17 Q DID YOU TELL MR. HUNT THAT AT THE BEGINNING
18 OF YOUR NEGOTIATING PROCESS?

19 A YES.

20 MR. MC MULLEN: MAY I APPROACH THE WITNESS?

21 THE COURT: YES.

22 BY MR. MC MULLEN:

23 Q SHOWING YOU WHAT'S BEEN MARKED AS
24 PETITIONER'S EXHIBIT 287. WOULD YOU PLEASE LOOK AT THAT
25 DOCUMENT?

26
27 (WITNESS REVIEWING DOCUMENT.)
28

8 1 A THIS LOOKS THE SAME.

2 Q THAT'S DIFFERENT. THIS ONE HERE.

3 THE COURT: LET'S PUT A QUESTION TO THE WITNESS.

4 MR. MC MULLEN: I'M SORRY.

5 BY MR. MC MULLEN:

6 Q HAVE YOU LOOKED AT THE DOCUMENT?

7 A I HAVE SEEN THE DOCUMENT BEFORE. I'M -- CAN
8 I LOOK AT THOSE? I HAVE GOT NOTES ON THOSE.

9 THE COURT: LET'S TAKE THE OTHER EXHIBITS AWAY FROM
10 HIM. HE EITHER RECOGNIZES THE EXHIBIT OR HE DOESN'T
11 RECOGNIZE IT; RIGHT?

12 MR. MC MULLEN: YES, YOUR HONOR.

13 BY MR. MC MULLEN:

14 Q LOOKING AT 287, HAVE YOU SEEN THAT DOCUMENT
15 BEFORE?

16 A YES.

17 Q DID I IN FACT HAND YOU THAT DOCUMENT PRIOR TO
18 YOU COMING IN TO TESTIFY?

19 A YES, YOU DID.

20 Q DID YOU REVIEW THAT DOCUMENT PRIOR TO COMING
21 IN TO TESTIFY?

22 A YES.

23 Q AND DID YOU BRING THAT DOCUMENT OUT WITH YOU
24 TO COURT TO TESTIFY?

25 A YES.

26 Q AND DID YOU MAKE SOME NOTES ON THAT DOCUMENT
27 THAT I GAVE TO YOU?

28 A YES, I DID.

8 1 MR. CRAIN: WE ARE TALKING ABOUT -- WHICH NUMBER?

2 THE COURT: 287.

3 BY MR. MC MULLEN:

4 Q HAVE YOU EVER SEEN THIS DOCUMENT BEFORE
5 TODAY?

6 A I DO NOT HAVE RECOLLECTION OF HAVING DONE SO,
7 BUT THE SIGNATURE APPEARS TO BE MINE AS DO THE INITIALS IN
8 THE COLUMNS APPEAR TO BE MINE.

9 Q DO YOU HAVE ANY RECOLLECTION OF SIGNING THIS
10 DOCUMENT?

11 A NOT -- I HAVE NO RECOLLECTION OF SPECIFICALLY
12 SIGNING THIS DOCUMENT. I KNOW THAT THERE CAME A TIME WHEN
13 WE WERE GETTING CLOSE TO THE MERGER WITH SATURN AND CLOSE
14 TO REACHING ALL THE AGREEMENTS WITH SATURN. SATURN BECAME
15 INTERESTED IN US CLEARING UP WHO OWNED IT AND HOW THE
16 TITLE FLOWED, BE IT DIRECTLY FROM BROWNING OR FROM B.B.C.
17 OR FROM WHOEVER IT MIGHT. WE DID CONSIDER, APPARENTLY
18 SIGNED SOME DOCUMENTS CONTINGENT UPON STRAIGHTENING THOSE
19 OUT.

20 Q IF YOU NOTICE BOTH OF THESE DOCUMENTS ARE
21 DATED NOVEMBER OF '83. IS THAT A TIME WHEN YOU NEEDED TO
22 DO THAT FOR SATURN, CLEAR UP THE OWNERSHIP RIGHTS?

23 A WE NEEDED TO CLEAR UP THE OWNERSHIP -- YES,
24 PROBABLY.

25 Q DO YOU REMEMBER SIGNING THIS IN COLORADO?

26 A SEEMS TO ME LIKE THE DISCUSSIONS THAT WE HAD
27 CONCERNING THIS AND TRYING TO REACH SUCH A SITUATION
28 OCCURRED IN CANADA. CONCEIVABLY -- I DON'T REMEMBER

9 1 SIGNING IT, SO I DON'T -- I CAN'T SAY WHERE I SIGNED IT,
2 BUT IT SEEMS TO ME THAT WE HAD THE CONVERSATIONS AT THE
3 TIME WHEN MR. HUNT AND I WERE IN CANADA.

4 Q LOOKING -- IF YOU WOULD TURN TO THE LICENSE
5 AGREEMENT, THE FIRST PAGE OF THE LICENSE AGREEMENT OF THAT
6 EXHIBIT. THERE IS REFERENCE A LITTLE BIT TOWARDS THE
7 BOTTOM OF THE PAGE UNDER 1 SUBDIVISION (E) "DO A POWER
8 WAGON." WHAT IS A "POWER WAGON"?

9 A I HAVE FORGOTTEN. IT WAS SOMETHING -- I
10 THINK -- THE FIRST TIME I HEARD ABOUT IT, I THINK, WAS IN
11 CANADA WHEN AGAIN MR. -- WELL, THE B.B.C. PARTIES THAT
12 WERE WITH ME UP THERE BROUGHT UP THE POWER WAGON, WHICH
13 WAS -- SOME KIND OF A COMBINATION OF THE ATTRITION MILL
14 AND OTHER EQUIPMENT OF BROWNING'S AND OTHER EQUIPMENT FROM
15 OTHER LOCATIONS TO --

16 Q DID THE -- EXCUSE ME?

17 A -- TO BE A MINI POWER PLANT OF SOME SORT.

18 Q DID THE POWER WAGON HAVE ANYTHING TO DO WITH
19 THE MICROGENESIS, HUNT NEGOTIATIONS?

20 A MUST HAVE BECAUSE IT'S ON HERE. THE -- IT
21 WAS A PART OF THE BROWNING -- SOME OF THE UNITS OF
22 BROWNING'S TECHNOLOGY WAS BEING USED ON THE POWER WAGON, I
23 BELIEVE, BUT THE POWER WAGON WAS NOT MR. BROWNING'S
24 INVENTION.

25 Q WITH RESPECT TO NEGOTIATING WITH HUNT AND HIS
26 ORGANIZATION REGARDING THE ATTRITION MILL, WHAT WERE
27 HUNT'S OBLIGATIONS TO BE? WHAT WAS HE SUPPOSED TO DO IN
28 THE AGREEMENT?

9 1 MR. CRAIN: WELL, THAT -- WHAT IS HE TALKING ABOUT?

2 THE COURT: ARE YOU TALKING ABOUT 287?

3 MR. MC MULLEN: NO. I'M JUST ON THE NEGOTIATIONS
4 WITH HUNT.

5 THE COURT: ALL RIGHT.

6 MR. CRAIN: IT'S UNINTELLIGIBLE. AMBIGUOUS.
7 OBJECTION.

8 THE COURT: REFRAME THE QUESTION. FOCUS US ON THE
9 NEGOTIATIONS RATHER THAN THIS DOCUMENT.

10 BY MR. MC MULLEN:

11 Q IN YOUR NEGOTIATIONS WITH MR. HUNT YOU WERE
12 TRYING TO REACH AN AGREEMENT AS TO THE ATTRITION MILL; IS
13 THAT CORRECT?

14 A 99.9 PERCENT OF MY CONCERN WAS THE ATTRITION
15 MILL. THE OTHER STUFF WAS FLUFF.

16 Q DURING YOUR NEGOTIATIONS WITH MR. HUNT, WHAT
17 WERE MR. HUNT'S OBLIGATIONS TO BE WITH RESPECT TO THAT
18 AGREEMENT?

19 A THE PURVEYOR, INVENTOR OF THE INVENTION WAS
20 TO GIVE US A WORKABLE UNIT, WHICH WOULD BE SATISFACTORY TO
21 ATTACH TO THE POWER PLANT FOR E.P.R. TESTING FOR ULTIMATE
22 APPLICATION TO POWER PLANT UTILIZATION.

23 Q WAS THAT TO OCCUR BEFORE ANY MONEY WOULD BE
24 FLOWING TO MR. HUNT?

25 A BROWNING WAS TO RECEIVE -- BROWNING HAD TO BE
26 SUPPORTED, AND MR. HUNT WAS SUPPORTING BROWNING TO A
27 DEGREE, AND WHEN THE MERGER WAS COMPLETED AND WHEN FUNDS
28 AGAIN COMMENCED TO FLOW TO UNITED FINANCIAL OPERATIONS, WE

9 1 WOULD HAVE BEEN WILLING TO HELP WITH THE COST OF THE
2 DEVELOPMENT, YES, BUT IT WAS THEIR RESPONSIBILITY AND THAT
3 WOULD HAVE BEEN -- MY RECOLLECTION OF IT WAS WE WOULD TAKE
4 BACK ANYTHING THAT -- IN THE FUTURE PAYMENT ANYTHING THAT
5 WE CONTRIBUTED TO THE DEVELOPMENT OF IT WOULD HAVE BEEN
6 TAKEN BACK.

7 Q DID YOUR MERGER WITH SATURN FALL APART?

8 A YES.

9 THE COURT: WHEN?

10 THE WITNESS: ULTIMATELY I BELIEVE IT WAS THE
11 SUMMER OF 1985.

12 MR. KLEIN: I MOVE THAT IT BE STRICKEN AS BEING
13 IRRELEVANT.

14 THE COURT: OVERRULED.

15 BY MR. MC MULLEN:

16 Q AND -- I HAD A QUESTION IN MIND THAT LEFT MY
17 MIND.

18 OH, WITH RESPECT TO THE EXHIBIT DOUBLE S, IF
19 YOU COULD JUST -- I'LL JUST TAKE THIS FROM YOU AND GIVE
20 YOU THAT ONE. WITH RESPECT TO SS, DO YOU RECOGNIZE THAT
21 DOCUMENT?

22 A YES, I DO.

23 Q ON THAT DOCUMENT IS THAT YOUR DECLARATION?

24 A YES, IT IS.

25 Q AND IN THAT DECLARATION YOU HAVE MADE SOME
26 CORRECTIONS AND CHANGES TO YOUR DECLARATION?

27 A YES, I HAVE.

28 Q ALL RIGHT.

9
1 I TAKE IT, THEN, THAT THE DECLARATION WAS NOT
2 COMPLETELY ACCURATE AS YOU REREAD IT AND THAT'S WHY YOU
3 MADE THE CHANGES?

4 A THAT'S CORRECT.

5 Q AND AS EXHIBIT SS IS HERE TODAY, IS THAT
6 ACCURATE TO THE BEST OF YOUR RECOLLECTION AND TRUE AND
7 CORRECT?

8 A YES, IT IS.

9 MR. MC MULLEN: NOTHING FURTHER.

10 THE COURT: CROSS-EXAMINATION.

11 MR. CRAIN: HOW LATE DOES THE COURT INTEND TO GO?

12 THE COURT: SORRY?

13 MR. CRAIN: HOW LATE DID THE COURT INTEND TO GO?

14 THE COURT: 4:30. I FIGURE WE CAN FINISH WITH THIS
15 WITNESS.

16 MR. CRAIN: DOUBT IT.

17
18 CROSS-EXAMINATION +

19
20 BY MR. CRAIN:

21 Q MR. KILPATRICK, AS WE CAN ALL SEE, YOU ARE
22 PRESENTLY IN CUSTODY, SIR?

23 A YES.

24 Q PARDON ME?

25 A YES, SIR.

26 Q CAN YOU PULL THE MICROPHONE UP SO I CAN HEAR
27 YOU BETTER?

28

9
1 (WITNESS COMPLIES.)
2

3 Q THANK YOU.

4 WHAT ARE YOU SERVING TIME FOR?

5 A THE CHARGES WERE A BANK, MAIL -- BANK, MAIL
6 AND SECURITY FRAUD.

7 Q BANK, MAIL AND SECURITIES FRAUD?

8 A YES.

9 Q HOW MANY OF THOSE CHARGES WERE YOU CONVICTED
10 ON?

11 A ALL OF THOSE.

12 Q HOW MANY WOULD THAT BE?

13 A I GUESS THERE WERE THREE.

14 Q AND THAT WAS IN COLORADO?

15 A YES.

16 Q SO YOU ARE NOW SERVING A SENTENCE IN THE
17 FEDERAL PENITENTIARY?

18 A CORRECT.

19 Q COULD YOU PULL THE MICROPHONE UP TO YOU? YOU
20 CAN --

21 THE COURT: HE'S GOT DIFFICULTY MOVING. THAT'S THE
22 PROBLEM. HE IS CHAINED.

23 MR. CRAIN: I'M SORRY, I DIDN'T KNOW THAT.

24 MR. MC MULLEN: LET'S PUT IT THERE.

25 BY MR. CRAIN:

26 Q I'M SORRY, I DIDN'T KNOW THAT.

27 IS THAT ALL RIGHT? IT IS JUST HARD TO HEAR
28 YOU.

10 1 ALL RIGHT?

2 A ALL RIGHT.

3 Q SO YOU ARE SERVING HOW LONG OF A SENTENCE
4 OVER THERE IN COLORADO IN THE FEDERAL PRISON?

5 A 51 MONTHS.

6 Q DO YOU LIKE IT IN PRISON THERE?

7 A NO, I DON'T.

8 Q LIKE TO GET OUT --

9 MR. MC MULLEN: OBJECTION. RELEVANCY.

10 THE COURT: ARE YOU GOING SOMEWHERE?

11 MR. CRAIN: I THINK SO, YOUR HONOR. PROBABLY THE
12 KIND OF QUESTION --

13 THE COURT: GO.

14 BY MR. CRAIN:

15 Q YOU'D LIKE TO GET OUT?

16 A CERTAINLY.

17 Q AND WHEN ARE YOU SCHEDULED TO BE RELEASED?

18 A 3, JUNE '96, I'M SORRY, '98.

19 Q SO YOU HAVE GOT OVER TWO YEARS TO GO?

20 A IF MY APPEAL FAILS.

21 Q WHO IS THE APPEAL WITH, THE COURT OR SOME
22 OTHER AGENCY?

23 MR. MC MULLEN: OBJECTION. RELEVANCY.

24 THE WITNESS: WITH THE CIRCUIT COURT, DISTRICT
25 COURT.

26 THE COURT: IS THERE SOME AGREEMENT FOR SOME TYPE
27 OF ASSISTANCE TO THIS WITNESS?

28 MR. MC MULLEN: NO, I --

10 1 MR. CRAIN: I DON'T KNOW WHETHER THERE IS OR NOT,
2 BUT I THINK WE CAN LOOK INTO HOPE, EXPECTATIONS.

3 THE COURT: LET'S ASK HIM THAT DIRECTLY.

4 MR. CRAIN: I JUST HAVE A FEW FOUNDATIONAL MATTERS.

5 THE COURT: LET'S JUMP TO IT.

6 BY MR. CRAIN:

7 Q DID YOU HAVE CONVERSATIONS WITH THE DISTRICT
8 ATTORNEY ABOUT THIS CASE?

9 A NO, NOT REALLY.

10 Q YOU HAVE TALKED TO THIS MAN AND HIS
11 INVESTIGATORS, HAVEN'T YOU?

12 A I TALKED WITH THEM, BUT I HAVE NOT TALKED TO
13 THEM ABOUT -- SPECIFICALLY ABOUT MY CASE.

14 Q OKAY.

15 YOU HAVE A LAWYER REPRESENTING YOU OVER
16 THERE?

17 A NOT RIGHT NOW. I KNOW I'M ON APPEAL FOR
18 INEFFECTIVE COUNSEL.

19 Q IS THIS A HABEAS CORPUS MATTER?

20 A I'M NOT SURE --

21 MR. MC MULLEN: OBJECTION. CALLS FOR AN OPINION.

22 THE COURT: OVERRULED.

23 THE WITNESS: I DON'T UNDERSTAND THE QUESTION ABOUT
24 HABEAS CORPUS.

25 BY MR. CRAIN:

26 Q OKAY.

27 IF THE DISTRICT ATTORNEY WERE TO GIVE YOU
28 SOME HELP WITH REGARD TO THIS CONVICTION OF YOURS YOU

10 1 WOULDNT'T REJECT IT, WOULD YOU?

2 A I WOULD NOT REJECT IT IF JUDAS HELPED ME, BUT
3 I HAVE NOT ASKED FOR IT.

4 Q YOU HAD AN EARLIER INDICTMENT IN THE '80'S
5 FOR 27 COUNTS OF VARIOUS FRAUD; IS THAT RIGHT?

6 A YES.

7 Q THAT WAS INVOLVING SOME MASSIVE TAX SHELTER
8 SCHEME THAT YOU WERE OPERATING; IS THAT RIGHT?

9 A THAT'S CORRECT.

10 Q AND YOU -- IN THAT CASE -- THAT CASE YOU BEAT
11 IT; IS THAT RIGHT?

12 MR. MC MULLEN: OBJECTION. RELEVANCE.

13 THE WITNESS: BEAT IT? I WON. I WAS NOT GUILTY.

14 THE COURT: I'LL LET THE ANSWER STAND.

15 BY MR. CRAIN:

16 Q DID YOU BELIEVE AT THAT TIME AND MAKE
17 STATEMENTS TO THE EFFECT THAT YOU HAD BEEN PERSECUTED BY
18 THE UNITED STATES ATTORNEY'S OFFICE?

19 MR. MC MULLEN: OBJECTION. RELEVANCY.

20 THE COURT: SUSTAINED.

21 MR. CRAIN: EXCUSE ME, YOUR HONOR. WE WERE GOING
22 TO BE PROVIDED SOMETHING BY THE DISTRICT ATTORNEY'S
23 OFFICE. COULD I HAVE JUST A MOMENT BECAUSE WE NEVER GOT
24 IT.

25 THE WITNESS: EXCUSE ME. YOUR HONOR, I'M STARTING
26 TO THINK I MIGHT NEED -- I MIGHT HAVE MISSTATED SOMETHING.

27 THE COURT: YOU WANT TO CLARIFY ONE OF YOUR
28 ANSWERS?

10

1 THE WITNESS: YES, SIR.

2 THE COURT: HOLD ON ONE SECOND.

3

4 (PAUSE.)

5

6 THE COURT: GO AHEAD.

7 THE WITNESS: AFTER THE TRIAL THE JUDGE, I MIGHT
8 ADD, ADDED 15 MONTHS ONTO MY SENTENCE FOR PERJURY BECAUSE
9 I SAID I WAS NOT GUILTY ON THE WITNESS STAND AND THEY SAID
10 I HAVE BEEN FOUND GUILTY AND, THEREFORE, MY STATEMENT WAS
11 PERJURIOUS. SO I GUESS THERE IS A FOURTH CHARGE.

12 BY MR. CRAIN:

13 Q YOU HAD THREE DIFFERENT TYPES OF FRAUD
14 CHARGES AND A CHARGE OF PERJURY?

15 A THEY ADDED TO IT FOR MY STATEMENT OF NOT
16 GUILTY ON THE WITNESS STAND.

17 MR. CRAIN: THIS IS A FEDERAL JUDGE?

18 THE COURT: THIS SOUNDS LIKE IT HAS SOMETHING MORE
19 TO DO WITH THE SENTENCING GUIDELINES.

20 BY MR. CRAIN:

21 Q IN OTHER WORDS, SHE SAT THERE AND HEARD ALL
22 YOUR TESTIMONY AND CONCLUDED THAT YOU HAD LIED TO HER?

23 A SHE SAID, THE JUDGE, JURY HAD FOUND ME GUILTY
24 AND THAT PROVED IT, AND SHE SAID WHEN I SAID I WAS NOT
25 GUILTY I WAS LYING, WHICH WAS -- WHICH IS ONE OF THE
26 FOUNDATIONS OF THE APPEAL.

27 Q HOW OLD ARE YOU?

28 A 62.

10 1 Q BACK IN THE '80'S YOU WERE 50 OR SO?

2 A SIXTEEN YEARS FROM 62.

3 Q YOU WERE BORN IN 1930?

4 A '33.

5 Q '33.

6 YOU WERE IN YOUR EARLY '50'S AND MR. HUNT WAS
7 IN HIS EARLY '20'S WHEN YOU MET; IS THAT CORRECT?

8 A THAT'S CORRECT.

11 9 Q YOU HAD BEEN IN BUSINESS FOR MANY YEARS AT
10 THAT PARTICULAR TIME?

11 A YES.

12 Q LET'S SAY, BEGINNING IN 1983, HOW MANY
13 DIFFERENT TYPES OF BUSINESSES HAD YOU OPERATED?

14 A WHEN I GOT OUT OF THE -- CAME OUT OF THE ARMY
15 AS A CAPTAIN, UNITED STATES ARMY, PROBABLY FILED DENVER'S
16 FIRST HELICOPTER TRAFFIC REPORT. HAD THAT BUSINESS FOR
17 FIVE OR SIX YEARS.

18 FOUNDED GUARDIAN --

19 MR. MC MULLEN: OBJECTION, YOUR HONOR.

20 THE WITNESS: OVER A --

21 THE COURT: WHAT IS THE OBJECTION?

22 MR. MC MULLEN: RELEVANCY.

23 THE COURT: SUSTAINED.

24 MR. CRAIN: WELL, I WANTED THE COURT TO -- TO SEE
25 THE LEVEL OF SOPHISTICATED THAT THE WITNESS HAD.

26 THE COURT: IT'S IRRELEVANT.

27 MR. CRAIN: I THINK IT CORROBORATES THE LAST
28 WITNESS' TESTIMONY ABOUT THAT.

11 1 THE COURT: IT'S IRRELEVANT.

2 BY MR. CRAIN:

3 Q NOW, IN 1983 YOU WERE THE PRESIDENT OF
4 U.F.O.I.; IS THAT RIGHT?

5 A YES, SIR.

6 Q AND HOW LONG HAD THAT BUSINESS BEEN IN
7 OPERATION?

8 A SINCE 1978. ACTUALLY, WE HAD BEEN IN
9 BUSINESS IN '77, BUT IT WAS UNDER A DIFFERENT NAME, BUT WE
10 CHANGED THE NAME.

11 Q WAS THAT BUSINESS PART OF THE FIRST
12 INDICTMENT IN WHICH THERE WERE 27 COUNTS OF FRAUD?

13 A YES, IT WAS.

14 Q YOU KNOW MR. O'DONNELL, DECLAN O'DONNELL?

15 A YES.

16 Q HE'S BEEN YOUR ATTORNEY FOR 18 YEARS OR SO?

17 A NOT 18 YEARS AS OF THAT DATE. NOT AS OF '83,
18 I DON'T BELIEVE.

19 Q NO, AS OF NOW.

20 A O'DONNELL HAS PROBABLY BEEN MY ATTORNEY
21 FOR -- I WOULD SAY CLOSER TO 20 YEARS.

22 Q HE WAS ONE OF THE CO-DEFENDANTS IN THAT FIRST
23 INDICTMENT?

24 A THAT'S CORRECT.

25 Q NOW, YOU HAVE NEVER BEEN A LAWYER, HAVE YOU?

26 A NO, I HAVE NOT.

27 Q SO -- MR. O'DONNELL HAS GIVEN YOU ADVICE FROM
28 TIME TO TIME IN CONNECTION WITH YOUR BUSINESS ACTIVITIES?

11 1 A YES.

2 Q HE IS YOUR PRIMARY LEGAL COUNSEL, IS HE?

3 A HE WAS AT THAT TIME.

4 Q AND YOU MENTIONED -- LET ME JUST JUMP OFF OF
5 THE TRACK HERE FOR JUST A MINUTE.

6 YOU MENTIONED A COMPANY CALLED COGENCO IN
7 YOUR TESTIMONY A LITTLE WHILE AGO?

8 A YES.

9 Q AND YOU'RE AWARE THAT AT SOME POINT
10 MICROGENESIS OBTAINED A CONTROLLING INTEREST IN COGENCO.
11 YOU KNOW THAT, "YES" OR "NO"?

12 A I THINK THEY HAD A CONTROLLING INTEREST IN IT
13 WHEN I FIRST MET THEM. I DON'T -- I DON'T KNOW -- IT MAY
14 HAVE ORIGINALLY BEEN SWARTOUT'S BUSINESS, BUT I THINK IT
15 WAS THEIR BUSINESS.

16 Q U.F.O.I. WHAT SORT OF BUSINESSES DID IT
17 CONTROL?

18 A UNITED FINANCIAL OPERATIONS AT THAT TIME WAS
19 IN THE TAX SHELTER BUSINESS. WE HAD COAL IN WEST
20 VIRGINIA, WE HAD THE ATTRITION MACHINES. WE'D DONE A
21 GREAT DEAL OF RESEARCH FOR THE CONVERSION OF COAL INTO A
22 LIQUID OR GASEOUS FUEL. WE OWNED HERCULES, CALIFORNIA,
23 THE 426 ACRES THAT WAS THERE, OLD PLANTS IN THE DOWNTOWN
24 AREA, AND WE WERE USING IT AS A R & D FACILITY, RESEARCH
25 AND DEVELOPMENT FACILITY IN PENNSYLVANIA, WE HAD ONE --
26 ONE THERE IN DENVER. I THINK THAT WAS ABOUT IT AT THE
27 TIME.

28 Q AROUND '83 WHAT WAS THE TOTAL VALUE OF THE

11 1 ASSETS THAT U.F.O.I. CONTROLLED?

2 MR. MC MULLEN: OBJECTION. IRRELEVANT.

3 THE COURT: OVERRULED.

4 THE WITNESS: I DON'T KNOW THE VALUE OF HERCULES,
5 BUT WE STILL OWED ABOUT A MILLION TWO ON IT. I THINK THE
6 APPRISED VALUE -- IT EVENTUALLY SOLD FOR -- I DON'T KNOW,
7 15, 20 MILLION.

8 I DON'T KNOW -- I HAVE NO WAY TO PUT A VALUE
9 ON THE R & D FACILITIES. THEY WOULD BE OF NO VALUE. I
10 COULDN'T SELL THEM. THEY WERE FOR MY APPLICATION.

11 WE HAD RECOURSE RECEIVABLES OF A LITTLE
12 BETTER THAN 30 MILLION. WE HAD SECURED NONRESOURCE
13 RECEIVABLES OF PROBABLY 125, 130 MILLION. WE HAD
14 CONTINGENT RECEIVABLES OF OVER 200 MILLION FOR THE
15 PURCHASE OF THE PLANTS AS WE SOLD THEM WHEN WE DELIVERED
16 THE ACTUAL PROPERTY.

17 THE FIRST TWO -- THE 120 MILLION AND THE 30
18 MILLION WERE RECEIVABLES FOR THE TAX SHELTER. IF WE
19 DELIVERED THE PLANTS TO THESE PEOPLE WE'D GET ANOTHER, I
20 BELIEVE IT WAS \$6,000,000 A PIECE, AND WE HAD 44 OF THOSE
21 PLANTS TO BE DELIVERED.

22 Q NOW, THAT'S A GENERAL OVERALL PICTURE OF THE
23 STRENGTH OF THE ASSETS THAT YOU JUST TOLD US ABOUT; RIGHT?

24 A ALL OF THE -- CONTINGENT ON THE COLLECTION OF
25 THOSE RECEIVABLES, OBVIOUSLY.

26 Q DID YOU KEEP FINANCIAL RECORDS WITH REGARD TO
27 THESE ASSETS IN THE COURSE OF BUSINESS?

28 A YES, SIR.

11 1 Q AND IN YOUR NEGOTIATIONS AND CONTACTS WITH
2 MR. HUNT IS IT SAFE -- I CAN ASSUME THAT YOU SHOWED HIM
3 THE FINANCIAL RECORDS?

4 A I HAVE NO SPECIFIC RECOLLECTION OF DOING SO.
5 I -- I WOULD HAVE NO REASON NOT TO.

12 6 Q IT WOULD HAVE BEEN PART OF YOUR CUSTOM IN
7 NEGOTIATIONS WITH ANOTHER PARTY TO FILL THEM IN ON THE
8 STRENGTH OF YOUR CORPORATION, WHAT SORT OF ASSETS IT HAD
9 BEHIND IT, WOULDN'T IT?

10 A DEPENDING ON THE NEED TO KNOW.

11 Q SO THAT WOULD HAVE HAPPENED IN THE CASE OF
12 YOUR NEGOTIATIONS WITH MR. HUNT; RIGHT?

13 A PERHAPS. PROBABLY.

14 Q WHEN DID YOU FIRST LEARN ABOUT THE EXISTENCE
15 OF THIS DEVICE KNOWN AS THE ATTRITION MILL?

16 A SOMETIME BEFORE I MET MR. HUNT.

17 Q CAN YOU PLACE --

18 A THREE OR FOUR OR FIVE MONTHS BEFORE I MET
19 HIM.

20 Q WHEN DID YOU MET HIM?

21 A I DON'T REMEMBER. THREE OR FOUR MONTHS AFTER
22 I MET MR. BROWNING.

23 Q CAN YOU TELL US A YEAR?

24 A YOU ARE TALKING 20 YEARS AGO, SIR. I AM
25 SORRY, I DON'T REMEMBER WHAT DATES THESE THINGS OCCURRED.

26 Q ARE SOME OF THESE THINGS HAZY IN YOUR MIND
27 NOW?

28 A YES, THEY ARE.

12 1 Q IS THAT DUE TO THE PASSAGE OF TIME?

2 A YES.

3 Q YOU HEARD OF THE ATTRITION MILL AND LEARNED
4 WHAT ITS VARIOUS APPLICATIONS WERE IN THE WORLD OF
5 BUSINESS; IS THAT RIGHT?

6 A NO, NOT IN THE WORLD OF BUSINESS. THE R & D
7 THAT WE WERE DOING AT OUR R & D FACILITIES CONCERNED THE
8 CONVERSION OF COAL INTO METHANOL, WHICH REQUIRED THE
9 GRINDING OF COAL DOWN TO VERY SMALL PARTICLES. THAT WAS
10 THE MOST EFFICIENT METHOD WITH WHICH TO DO IT. SOMEBODY,
11 AND I DON'T KNOW WHO IT WAS FOUND, MR. -- ONE OF MY JUNIOR
12 SCIENTISTS AT THE R & D FACILITY FOUND MR. BROWNING AND
13 BROUGHT MR. BROWNING TO US AS A POSSIBLE ADJUNCT TO OTHER
14 RESEARCH IN THAT HE MIGHT HAVE SOMETHING BETTER THAN WHAT
15 WE'D COME UP WITH OURSELVES FOR THAT ELEMENT OF OUR R & D.
16 I DON'T REMEMBER WHEN THAT WAS. IT WAS -- AS CLOSE AS I
17 HAVE BEEN ABLE TO TRACE IT DOWN I BELIEVE IT WAS SOMETIME
18 LATE '82 OR EARLY '83.

19 Q NOW, SINCE WE'RE TALKING ABOUT THIS TIME
20 FRAME, WHEN DID THESE CHARGES IN THE FIRST INDICTMENT GET
21 THROWN OUT?

22 A I BELIEVE IT WAS THE FALL OF '82 --

23 MR. MC MULLEN: OBJECTION. RELEVANCY.

24 THE COURT: I'M SORRY, I CAN'T HEAR YOU.

25 MR. MC MULLEN: OBJECTION. RELEVANCY.

26 THE COURT: OVERRULED.

27 BY MR. CRAIN:

28 Q THE FALL OF '82 IS YOUR BEST RECOLLECTION?

12 1 A EXCUSE ME, JUDGE WINTER THROUGH -- REVERSED
2 THE CONVICTION I BELIEVE IN THE FALL OF '82 ON CHARGE NO.
3 1, AND THEN HE WAS RETIRING AND REQUESTED THAT IT BE
4 REFERRED TO ANOTHER JUDGE, JUDGE KANE TO SEE WHETHER OR
5 NOT EVERYTHING SHOULD BE THROWN OUT BEFORE WE RETURNED TO
6 TRIAL.

7 Q AND DID THAT TAKE PLACE -- DID THE CHARGES
8 FINALLY GET THROWN OUT IN THE SUMMER OF 1983?

9 A NO.

10 Q LET ME SHOW YOU --

11 A GO AHEAD.

12 Q LET ME SHOW YOU EXHIBIT 288. A NEWSPAPER
13 ARTICLE FROM DENVER BUSINESS DATED NOVEMBER, '83 AND ASK
14 YOU TO LOOK AT THAT AND SEE IF THAT REFRESHES YOUR
15 RECOLLECTION AS TO WHEN THE CHARGES GOT DISMISSED.

16 THE COURT: DO YOU HAVE A PLACE YOU WANT TO SHOW
17 HIM IN THAT ARTICLE? IT LOOKS FAIRLY LENGTHY.

18 MR. CRAIN: YES, YOUR HONOR.

19 BY MR. CRAIN:

20 Q DO YOU SEE THE DATE NOVEMBER, '83 DOWN HERE
21 AT THE BOTTOM, MR. KILPATRICK?

22 A NOVEMBER, 1983, YES.

23 Q DO YOU SEE IN HERE A DISCUSSION ABOUT THE --
24 AT THE BEGINNING ABOUT THE CHARGES BEING DISMISSED AND
25 YOUR GETTING READY TO FILE A LAWSUIT AGAINST THE FEDERAL
26 PROSECUTORS?

27 A YES, I SEE THAT. I'M STILL TRYING TO LOOK
28 AND SEE WHAT THE DATE OF THIS HAPPENING WAS.

12 1 (WITNESS REVIEWING EXHIBIT.)

2
3 THE COURT: WELL, IF HE DOESN'T HAVE A
4 RECOLLECTION, HE DOESN'T HAVE A RECOLLECTION.

5 THE WITNESS: OKAY. IT WOULD HAVE BEEN PROBABLY
6 THE SUMMER OF '83.

7 BY MR. CRAIN:

8 Q SUMMER OF '83, WHICH IS WHEN THOSE CHARGES
9 WERE THROWN OUT BY THE JUDGE; CORRECT?

10 A RIGHT.

11 Q AND THEN YOU TURNED AROUND AND FILED A
12 LAWSUIT AGAINST THE U.S. ATTORNEY; RIGHT?

13 A WE WERE PLANNING TO. WE DIDN'T.

14 Q NOW, DID YOU READ -- DID YOU EVER GO TO SEE
15 AN ATTRITION MILL?

16 A THE ONLY ATTRITION MILL I HAVE EVER SEEN IS
17 THE ONE THAT B.B. -- THAT THE B.B.C. BUILT, MICROGENESIS,
18 WHOEVER.

19 Q WHERE DID YOU SEE THAT?

20 A CALIFORNIA.

21 Q WHEN WAS THAT?

22 A I DON'T -- I HAVE NO RECOLLECTION OF A DATE.
23 IT WAS PROBABLY IN '83.

24 Q AND THEN IN THE FALL OF '83 THIS CONTRACT
25 THAT YOU DON'T REMEMBER ALL THAT WELL -- WELL, IT'S NOW
26 GONE AWAY.

27 MR. CRAIN: DO YOU HAVE THOSE EXHIBITS? ARE THESE
28 THE ONES YOU WERE SHOWING THE WITNESS?

12 1 MR. MC MULLEN: YES.

2 BY MR. CRAIN:

3 Q IN THE FALL OF '83 YOU -- YOU ENTERED INTO
4 THIS -- SHOWING YOU FOR THE RECORD, EXHIBIT 287.

5 YOU ENTERED INTO THIS AGREEMENT WITH MR. HUNT
6 AND WITH MR. ROY ROBINSON OF SATURN AS IS REFLECTED BY THE
7 SIGNATURES OF THOSE PARTIES ON THIS DOCUMENT; IS THAT
8 RIGHT?

13 9 A WE STARTED -- I DON'T THINK IT WAS EVER
10 COMPLETED, IT WAS NEVER FINISHED SIGNING BY THE B.B.C..

11 Q YOU SEE YOUR SIGNATURE, MR. HUNT'S SIGNATURE
12 AND MR. ROBERT'S SIGNATURE ON THAT DOCUMENT?

13 A THAT'S CORRECT. WHAT WE WERE CONVEYING AND
14 THE RIGHTS WE WERE TRYING TO CONVEY REQUIRED I.N.D.C'S
15 SIGNATURE.

16 Q THE DOCUMENT YOU WERE SHOWN HERE BY
17 MR. MC MULLEN, THE DISTRICT ATTORNEY, YOU HAVE REVIEWED
18 THE DOCUMENT, HAVE YOU NOT? I'M NOW REFERRING
19 COLLECTIVELY TO THIS DOCUMENT.

20 THE COURT: WHICH IS?

21 MR. CRAIN: 287.

22 BY MR. CRAIN:

23 Q THIS DOCUMENT, EXHIBIT 7?

24 A YES.

25 Q THIS DOCUMENT, EXHIBIT 5, WHICH HAS A -- A
26 PAGE FOUR THAT BEGINS, "LICENSE AGREEMENT" --

27 A WAS -- I HAVEN'T SEEN THE FRONT OF THAT.

28 Q AND EXHIBIT 4.

13 1 YOU HAVE SEEN THESE DOCUMENTS BEFORE YOUR
2 TESTIMONY HERE THIS AFTERNOON; IS THAT RIGHT?

3 A YES.

4 Q AND IN FACT, THERE IS NOTHING IN ANY OF THOSE
5 DOCUMENTS THAT IN ANY WAY MAKES REFERENCE TO ANY
6 CONTINGENCY ABOUT CLEARING UP YOUR PROBLEMS WITH THIS
7 CRIMINAL INDICTMENT OR GETTING OUT OF BANKRUPTCY; ISN'T
8 THAT RIGHT?

9 A WELL, THOSE TWO DOCUMENTS, THE FIRST TWO
10 DOCUMENTS WERE NOT SIGNED BY ME. I DON'T SEE HOW THEY'RE
11 RELEVANT TO ANYTHING.

12 Q WE'LL LET THE JUDGE DECIDE THAT.

13 A I DON'T KNOW WHETHER THEY SAY ANYTHING ABOUT
14 THAT OR NOT. THE OTHER TWO DOCUMENTS BOTH HAVE -- DISCUSS
15 THE FACT THAT THEY ARE TO RECEIVE STOCK FROM SATURN ENERGY
16 AND RESOURCES WHICH REQUIRES THAT SATURN, THE SATURN
17 MERGER BEEN COMPLETED IN ORDER TO COMPLETE THOSE
18 CONTRACTS, AND THE SATURN MERGER WAS CONTINGENT UPON MY
19 BEING CLEARED OF THE CHARGES. SATURN WOULD NOT MERGE,
20 THEY NEVER AGREED TO MERGE UNTIL SUCH TIME AS I'M CLEAR OF
21 THE CHARGES.

22 Q I UNDERSTAND YOUR NONRESPONSIVE ANSWER THAT
23 YOU HAVE GIVEN MANY TIMES THIS AFTERNOON.

24 THE COURT: DON'T EDITORIALIZE.

25 MR. CRAIN: YES, YOUR HONOR.

26 BY MR. CRAIN:

27 Q THE QUESTION IS: IS THERE ANYTHING IN THOSE
28 DOCUMENTS THAT IN ANY WAY REFERS TO A CONTINGENCY OF

13 1 GETTING OUT FROM UNDER THE BANKRUPTCY THAT YOU DESCRIBED,
2 "YES" OR "NO"?

3 A CAN'T MERGE UNTIL I GET OUT OF THE
4 BANKRUPTCY.

5 Q IS THERE ANY REFERENCE IN THE DOCUMENTS TO
6 GETTING OUT OF THE BANKRUPTCY? I'M TALKING ABOUT THE
7 BANKRUPTCY, "YES" OR "NO".

8 A NOT IN THOSE DOCUMENTS.

9 Q IS THERE ANYTHING IN THOSE DOCUMENTS THAT I
10 JUST SHOWED YOU, THE SAME DOCUMENT, THAT IN ANY WAY REFERS
11 TO A CONTINGENCY OF YOUR ELIMINATING YOUR PROBLEMS
12 INVOLVING YOUR BEING PROSECUTED AS A CRIMINAL IN THE
13 FEDERAL COURT?

14 A NOT IN THE DOCUMENTS.

15 Q INCIDENTALLY, YOU MENTIONED THE "60 MINUTES"
16 SHOW. YOU APPEARED ON THAT?

17 A YES.

18 Q WHEN WAS THAT?

19 A I BELIEVE THEY FINALLY PUT THE SHOW ON IN
20 EARLY '85 AND AGAIN LATER '85.

21 Q YOU SAID THAT YOU THOUGHT THE B.B.C. WAS
22 RESPONSIBLE FOR GETTING "60 MINUTES" TO PUT YOU ON THE
23 AIR?

24 A I DON'T THINK THEY WERE RESPONSIBLE FOR IT.
25 THEY -- I THINK DOSTI, I THINK, WAS THE FIRST ONE THAT
26 MENTIONED, "THAT YOU OUGHT TO REPORT THIS TO "60 MINUTES."
27 IT'S MY UNDERSTANDING THAT "60 MINUTES" WERE CALLED AND
28 "60 MINUTES" CALLED SHORTLY THEREAFTER.

13 1 Q WERE YOU PRESENT WHEN HE SUPPOSEDLY CALLED
2 "60 MINUTES"?

3 A NO. HE CALLED ME AND SAID HE THOUGHT THIS
4 WAS A GOOD SHOW FOR "60 MINUTES" AND I SHOULD GO FOR IT.
5 HE SAID, "THEY HAVEN'T CALLED ME, AND I'M GOING TO CALL
6 AND ASK THEM."

7 Q YOU WERE NEVER PRESENT WHEN ANYBODY MADE
8 ARRANGEMENTS WITH "60 MINUTES"?

9 A NO. I ALWAYS GIVE THEM CREDIT FOR IT.

10 Q YOU, HOWEVER, WERE CONTACTED BY "60 MINUTES"
11 AND WENT ON THE SHOW?

12 A YES.

13 Q YOU WERE INTERVIEWED BY ONE OF THE "60
14 MINUTES" COMMENTATORS.

15 A YES.

16 Q DID YOU LIE IN YOUR STATEMENTS ON T.V.?

17 A NOT THAT I RECALL. NOT INTENTIONALLY.

18 Q NOW, YOU -- I WOULD LIKE TO CALL YOUR
19 ATTENTION TO ONE OF THE DOCUMENTS BEFORE YOU, WHICH IS
20 EXHIBIT 7, PETITIONER'S 7. YOU HAVE SEEN THAT BEFORE?

21 A I SAW IT TODAY.

22 Q AND IS YOUR HANDWRITING ANYWHERE ON THAT
23 DOCUMENT?

24
25 (WITNESS REVIEWING EXHIBIT.)

26
27 A HAVE YOU GOT A PAGE NUMBER WHERE YOU THINK I
28 MAY BE --

13 1 Q WELL, DO YOU SEE YOUR HANDWRITING ANYWHERE ON
2 THERE IS WHAT I AM ASKING.

3 THE COURT: HOW MUCH MORE DO YOU THINK YOU HAVE,
4 MR. CRAIN?

5 MR. CRAIN: HALF AN HOUR, PERHAPS.

6
7 (PAUSE.)

8
9 (WITNESS REVIEWING EXHIBIT.)

10
11 BY MR. CRAIN:

12 Q HAVE YOU SEEN ANY OF YOUR HANDWRITING UP TO
13 THAT POINT OR NOT?

14 A I DON'T SEE ANYTHING -- THERE'S -- I DON'T
15 SEE ANYTHING IN HERE THAT I READILY RECOGNIZE AS MINE, NO,
16 SIR.

17 Q OKAY.

18 SO YOU CAN'T SAY FOR SURE; IS THAT RIGHT?

19 A I DON'T SEE ANYTHING IN HERE THAT'S UGLY
20 ENOUGH TO BE MY HANDWRITING.

21 THE COURT: HOLD ON. HE --

22 THE WITNESS: HANG ON.

23 BY MR. CRAIN:

24 Q ALL RIGHT.

25 NOW --

26 THE COURT: HOLD JUST A SECOND.

27 I ASSUME HE IS LOOKING AT SOMETHING. HE SAID
28 "HANG ON."

14 1 THE WITNESS: THERE IS ONE WORD -- THEN DOWN BELOW
2 IT IS NOT MINE.

3 BY MR. CRAIN:

4 Q ONE WORD YOU --

5 A I WAS LOOKING AT PAGE 189 THE WORD "MAKE" UP
6 ABOVE THERE COULD BE MY HANDWRITING, BUT THE SAME PERSON
7 HAS MADE THE SAME MARK DOWN BELOW, AND THAT'S NOT MY
8 HANDWRITING.

9 THE COURT: WOULD THIS BE A GOOD TIME TO TAKE OUR
10 EVENING RECESS?

11 MR. CRAIN: I THINK SO, YOUR HONOR.

12 THE COURT: ALL RIGHT.

13 LET'S TAKE OUR EVENING RECESS.

14 LET ME SEE THE RED BOOK.

15
16 (PAUSE.)

17
18 THE COURT: 9 O'CLOCK ON MONDAY LOOKS GOOD.

19 COUNSEL AND PETITIONER ARE ORDERED TO RETURN
20 AT 9 A.M. ON MONDAY.

21 COUNSEL, MAKE SURE WE GET ALL THE EXHIBITS
22 BACK TO THE CLERK.

23 EVERYONE HAVE A GOOD WEEKEND.

24
25 (AT 4:30 P.M. AN ADJOURNMENT WAS

26 TAKEN UNTIL MONDAY,

27 MAY 13, 1996 AT 9:00 A.M.)
28