

Exhibit 25: Transcript of the June 09, 2008 Deposition of Samuel McCargo

DETROIT FREE PRESS, INC., ET AL v. CITY OF
DETROIT

SAMUEL MCCARGO

June 9, 2008

000364

Prepared for you by



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1 STATE OF MICHIGAN
2 IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE
3
4 DETROIT FREE PRESS, INC., a
5 Michigan Corporation,
6 Plaintiff,
7 Case No. 08-100214-CZ
8 Hon. Robert J. Colombo, Jr.
9 DETROIT NEWS, INC.,
10 Intervenor Plaintiff,
11 vs.
12 CITY OF DETROIT,
13 Defendant.
14 _____
15
16
17 The Videotaped Deposition of SAMUEL MCCARGO,
18 Taken at 660 Woodward Avenue, 23rd Floor,
19 Detroit, Michigan,
20 Commencing at 10:09 a.m.,
21 Monday, June 9, 2008,
22 Before Leisa M. Pastor, CSR-3500, RPR, CRR.
23
24
25

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1 APPEARANCES:
2
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4 HERSCHEL P. FINK
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21 Appearing on behalf of Christine Beatty.
22
23 ALSO PRESENT:
24 Marlene Ring
25 Travis Jewell - Video Technician

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1 Detroit, Michigan
2 Monday, June 9, 2008
3 10:09 a.m.
4
5 VIDEO TECHNICIAN: We are now on the
6 record. This is the videotaped deposition of Samuel
7 McCargo being taken on Monday, June 9th, 2008. The
8 time is now 10:09 and 3 seconds a.m. We are located
9 at 660 Woodward Avenue in Detroit, Michigan. We are
10 here in the matter of Detroit Free Press versus City
11 of Detroit. This is case No. 08-100-214-CZ. This
12 matter is being held in the Circuit Court for the
13 County of Wayne. My name is Travis Jewell, video
14 technician.
15 Will the court reporter swear in the
16 witness and the attorneys briefly identify themselves
17 for the record, please.
18 SAMUEL MCCARGO,
19 was thereupon called as a witness herein, and after
20 having first been duly sworn to testify to the truth,
21 the whole truth and nothing but the truth, was
22 examined and testified as follows:
23 MR. ZUCKERMAN: I think we can go around
24 the table and introduce ourselves. Since you're
25 first...

<p style="text-align: right;">Page 5</p> <p>1 MR. BEDROSIAN: George Bedrosian, attorney 2 for Mr. McCargo. 3 MR. ZUCKERMAN: Richard Zuckerman for the 4 Free Press. 5 MR. STEWART: James E. Stewart for the 6 Detroit News. 7 MR. FINK: Herschel Fink for Detroit Free 8 Press. 9 MR. WASSOM: Brian Wassom for the Detroit 10 Free Press. 11 MR. MORGANROTH: Jeffrey Morganroth for 12 Christine Beatty. 13 MR. THOMAS: James Thomas on behalf of 14 Mayor Kwame Kilpatrick. 15 MR. LIEDEL: William Liedel on behalf of 16 Defendant City. 17 MR. ZUCKERMAN: I'm also advised that Mr. 18 Bill Goodman, lawyer for the City, as well -- or the 19 City Council is on his way and has consented to us to 20 begin the deposition before he gets here. 21 EXAMINATION 22 BY MR. ZUCKERMAN: 23 Q. And with that, Mr. McCargo, my name is Richard 24 Zuckerman. I'm with the Free Press. I'm going to be 25 starting the examination, and can you tell us, please,</p>	<p style="text-align: right;">Page 7</p> <p>1 10:12 a.m. 2 BY MR. ZUCKERMAN: 3 Q. Did you have a chance to look at that, Mr. McCargo? 4 A. Briefly, I've looked at the first two pages. 5 Q. Okay, this has been identified, or we've stamped it, 6 with the alphanumeric of FREEP, F-R-E-E-P, 306 through 7 and including 316, and this is the subpoena served 8 upon you. It calls for the production of certain 9 documents on page 6 or Bates page 315; do you see 10 that? 11 A. I'm not sure I'm looking at the same document. The 12 Bates numbering I have on the document in front of me 13 is 306 through 309, you asked me which page now? 14 Q. 315? 15 A. I'm sorry. 16 Q. Let me give you a better copy. 17 A. No problem. I think I can find it. 18 Q. Okay. 19 A. The numbers were cut off at the bottom. All right. 20 Yes. 21 Q. Okay, there are five categories of documents that 22 have -- that were requested; do you see those? 23 A. At the bottom of the first paragraph? 24 Q. Yeah, the bottom of page 6, carrying over to page 7? 25 A. Correct.</p>
<p style="text-align: right;">Page 6</p> <p>1 for the record, again, your name and your occupation? 2 A. My name is Samuel Edward McCargo. I'm an attorney. 3 Q. And are you associated with a law firm? 4 A. Yes, I am. 5 Q. And which one? 6 A. Lewis & Munday. 7 Q. Okay, and how long have you been with Lewis & Munday? 8 MR. LIEDEL: You know, for the record, just 9 for the record, Defendant City objects to the taking 10 of a deposition of a non-City party in a FOIA lawsuit. 11 We understand the Court's rulings, but I want it clear 12 by participating, we're not waiving any privileges nor 13 waiving any of our objections to the taking of a third 14 party. 15 BY MR. ZUCKERMAN: 16 Q. Mr. McCargo, do you remember my last question? 17 A. Yes. I've been affiliated with Lewis & Munday since 18 June of 2004. 19 Q. Thank you. And you're here pursuant to a subpoena 20 served upon you; is that correct? 21 A. Correct. 22 MR. ZUCKERMAN: All right, I'm going to 23 mark this as Exhibit 1. 24 MARKED BY THE REPORTER: 25 DEPOSITION EXHIBIT NUMBER 1</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. Which would be 315 carrying over to 316? 2 A. Correct. 3 Q. Did you cause the search to be made for those 4 documents in response to this subpoena? 5 A. Yes. 6 Q. Okay, and what exactly did you do in order to locate 7 the documents requested? 8 A. I reviewed the files and records that I had that 9 contained these information -- this information. I 10 reviewed e-mail messages that I had regarding this 11 information. I reviewed productions that I had made 12 previously pursuant to other subpoenas regarding this 13 information, much -- much of which is overlapping, and 14 I compared the e-mails I had with the hard copies of 15 any documents that I had to make sure that a complete 16 set was available, and I produced to my attorney the 17 set of documents I was able to locate consistent with 18 this subpoena. 19 Q. Okay, are there any documents called for by that 20 subpoena that were not produced because of a privilege 21 assertion or otherwise? 22 A. I do not believe that there are any specific documents 23 that were excluded based on a privilege assertion. 24 Q. Were there any documents excluded for any other 25 reason?</p>

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1 A. There were documents -- documents that would have been
2 excluded that were beyond the scope of this subpoena,
3 anything that -- that I might have had in my files and
4 records that were not consistent with the subpoena.
5 By that, I mean the trial in this matter and the
6 litigation of this case spans several years, and so
7 there would have been a rather large litigation file,
8 and those matters were excluded because they were not
9 described in the subpoena.

10 Q. That's fine. All right, we'll go to the next exhibit
11 which we'll mark as No. 2.

12 MARKED BY THE REPORTER:
13 DEPOSITION EXHIBIT NUMBER 2
14 10:16 a.m.

15 BY MR. ZUCKERMAN:
16 Q. This is FREEP 355. It's a letter to Mr. Fink by
17 Mr. Bedrosian, and you are a copy of that; do you see
18 that in the lower, left-hand corner?

19 A. Yes.

20 Q. Okay. Just take a moment to read that. And then if
21 you'll let me know when you're done.

22 A. I've reviewed it.

23 Q. Does this letter accurately reflect the categories of
24 documents that you turned over to your lawyer to turn
25 over to Mr. Fink?

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1 A. Yes.

2 Q. Okay. Thank you. Okay, Mr. McCargo, you know this is
3 a Freedom of Information Act Request that you're
4 testifying in? This lawsuit's a Freedom of
5 Information Act lawsuit by the Free Press and the News
6 against the City of Detroit and others?

7 A. I understand it is a Freedom of Information Act
8 litigation. I do not understand it to be a specific
9 Freedom of Information Act Request.

10 Q. Okay. What do you understand the lawsuit to be about?

11 A. It is my understanding that the City of Detroit
12 received requests for production of certain written
13 records that fell within the definition of public
14 records under the Freedom of Information Act and that
15 there was an allegation in this complaint that written
16 documents falling within the definition of public
17 records under the Freedom of Information Act were not
18 produced in total, and this action was brought to
19 compel production of those documents that had not been
20 previously produced, and also to seek costs and
21 expenses in association with the efforts to recover
22 those documents.

23 Q. Fine. Have you ever represented Christine Beatty?

24 A. No.

25 Q. Has your law firm as far as you know?

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1 A. No.

2 Q. What law firm were you with before you joined Lewis &
3 Munday in 2004?

4 A. I was not with a law firm before joining Lewis &
5 Munday in 2004.

6 Q. What were you doing before 2004?

7 A. Immediately prior to 2004, joining Lewis & Munday, I
8 was in California training in a program for franchise
9 operations. Immediately prior to that, I was a
10 vice-president for The Wellness Plan, a health
11 maintenance organization in the city of Detroit.

12 Q. Okay, do -- did any of the two organizations or jobs
13 you just described provide legal services to anybody?

14 A. Prior to becoming vice-president of business
15 development and marketing, I was also associated with
16 the office of general counsel of The Wellness Plan,
17 and inside that entity as a part of that office, legal
18 counsel was provided to that client internally.

19 Q. And Ms. Beatty, I would assume, was not a client of
20 The Wellness Plan?

21 A. No, she was not.

22 Q. Okay. At some point, you became a counsel of record
23 in a lawsuit generally described as Deputy Chief Gary
24 A. Brown versus Kwame Kilpatrick, Mayor of City of
25 Detroit, etcetera; do you recall that?

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1 A. Yes.

2 Q. All right. Just so that we can identify the case for
3 purposes of this deposition, I'm going to hand you
4 another exhibit, which will be 3, I guess.

5 MARKED BY THE REPORTER:
6 DEPOSITION EXHIBIT NUMBER 3
7 10:20 a.m.

8 BY MR. ZUCKERMAN:
9 Q. Okay, just -- it's a FREEP 482 through and including
10 486. In actuality, there are two lawsuits in this one
11 exhibit, and I'll go through them each individually,
12 and tell me when you've finished reviewing the
13 document.

14 A. Okay, I've reviewed the document.

15 Q. Okay. The -- the lawsuit that we're going to be
16 talking about during part of the deposition is this
17 lawsuit, and is -- there is -- your name is listed as
18 co-counsel for Kilpatrick only; do you see that on the
19 first page of this exhibit, FREEP 482?

20 A. Correct.

21 Q. Okay. And this is the -- what we'll generally refer
22 to as the whistleblower suit, can we refer to it that
23 way? Just so that it's kind of an easy frame of
24 reference?

25 A. Can we refer to it as the Brown whistleblower suit?

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1 Q. Okay, the Brown whistleblower suit, that's fine. If
2 you look at 485, that's page 485 of this exhibit --
3 **A. Yes.**
4 Q. -- that's the Harris suit?
5 **A. Yes.**
6 Q. That, too, was a whistleblower suit?
7 **A. It's my understanding it was.**
8 Q. Did you file an appearance in that case?
9 **A. No.**
10 Q. Were you rendering legal services to anyone in that
11 case?
12 **A. No.**
13 Q. Okay. If you go back to the first page of 482, in
14 relation to when this case, that is the Brown
15 whistleblower case, was filed, when were you hired as
16 co-counsel for Kilpatrick only?
17 **A. It is my understanding that my retention was**
18 **approximately a year after the lawsuit was originally**
19 **filed.**
20 Q. And before it went to trial?
21 **A. It -- are you asking the amount of time between my**
22 **original involvement and the date it went to trial?**
23 Q. No, I'm asking you if you were hired before trial.
24 **A. Yes.**
25 Q. Okay. Do you know why it was that Mayor Kilpatrick

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1 needed another lawyer in this case?
2 MR. THOMAS: Objection as to form,
3 objection as to foundation.
4 BY MR. ZUCKERMAN:
5 Q. Do you understand my question?
6 **A. Yes.**
7 Q. Would you please answer?
8 MR. THOMAS: May I place something on the
9 record?
10 MR. ZUCKERMAN: Sure.
11 MR. THOMAS: If this communication was
12 something that was received from the mayor, I would
13 suggest it would be within the attorney-client
14 privilege. It is my intention to assert on behalf of
15 the mayor his privileges and his rights under the
16 constitution.
17 MR. ZUCKERMAN: My question didn't ask for
18 a communication.
19 **A. We don't know.**
20 MR. ZUCKERMAN: Well, this question did
21 not. Will you please reread the question for the
22 witness?
23 (The requested portion of the record was
24 read by the reporter at 10:23 a.m.)
25 **A. I was not involved in any discussions where the**

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1 **decision was made to hire another attorney, so I have**
2 **no knowledge of the rationale of decision-making that**
3 **went into seeking outside counsel.**
4 **BY MR. ZUCKERMAN:**
5 Q. And you have no knowledge of that as you sit here
6 today?
7 MR. THOMAS: Objection as to form.
8 **A. I've had no discussions with anyone about those**
9 **decision-making collaborations and discussions that**
10 **took place in this matter.**
11 **BY MR. ZUCKERMAN:**
12 Q. Okay, what was your role to be in this case if, in
13 fact, you were given a specific role?
14 **A. To provide representation to the mayor specifically in**
15 **what had become a whistleblower action headed for**
16 **trial, to prepare for and to participate as trial**
17 **counsel in the whistleblower action before judge**
18 **Michael J. Callahan.**
19 Q. Okay. And did you -- were you told at any time in
20 what capacity the mayor was sued in this case?
21 **A. I'm not sure I understand your question.**
22 Q. Okay. My question relates to whether you were
23 representing the mayor as mayor of the city or as an
24 individual, assuming that there is a difference
25 between the two?

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1 (Whereupon William Goodman enters the
2 deposition at 10:25 a.m.)
3 **A. I have perceived there's a difference between the two.**
4 **I was retained in this specific action to represent**
5 **Kwame Kilpatrick as mayor of the city of Detroit as it**
6 **is described in the caption.**
7 **BY MR. ZUCKERMAN:**
8 Q. Okay. Did that caption ever change?
9 **A. I don't know. It may have changed prior to my**
10 **entering the case.**
11 Q. But after you entered the case?
12 **A. It changed in that several of the defendants were**
13 **dismissed from the action and ultimately deleted from**
14 **the caption, so yes, it is changed.**
15 Q. Did the caption change as to the description Kwame
16 Kilpatrick, Mayor, City of Detroit?
17 **A. No.**
18 Q. During the course of that case up through verdict, did
19 you ever learn that there were text messages between
20 the mayor and any other person?
21 **A. Yes.**
22 Q. Okay. And just so we have an understanding, when I
23 say text messages, I mean text messages provided
24 through a company called SkyTel, whose formal name
25 might be Bell Industries, but when I say text

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1 messages, those are the text messages I have reference
2 to. Did your answer mean that or mean something else?
3 **A. My answer meant that I was aware of text messages and**
4 **that one of the providers or sources through which**
5 **text messages were exchanged between the mayor and**
6 **various employees and individuals associated with the**
7 **City was SkyTel.**
8 Q. When did you first learn that there were such text
9 messages?
10 **A. The -- I don't know the exact date, but there was a**
11 **story in the paper indicating that the mayor and his**
12 **staff had an objective for the City of converting the**
13 **communication modality among staff and City**
14 **individuals to electronic communications, so there was**
15 **a series of news articles essentially praising and**
16 **encouraging this transition to an electronic media.**
17 Q. Okay, and this, to be clear, I asked -- my question
18 was did you learn this before the verdict in the case?
19 **A. Yes.**
20 Q. Okay. Did you learn that there was some other text
21 messaging device or company or source other than
22 SkyTel that was being utilized by the mayor prior to
23 the verdict in this case?
24 **A. I cannot give you specific names of other entities,**
25 **but I did learn, it was my understanding, that there**

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1 **were several companies involved with the mayor and the**
2 **mayor's staff in text messaging modalities and**
3 **creating this text -- this new text message**
4 **environment --**
5 Q. Okay.
6 **A. -- and the City.**
7 Q. But you just don't know what other companies by name
8 other than SkyTel?
9 **A. That is correct.**
10 MR. MORGANROTH: Objection as to form.
11 BY MR. ZUCKERMAN:
12 Q. Did you learn that -- did you learn prior to verdict
13 that Ms. Beatty also had a text messaging device?
14 **A. Yes.**
15 Q. Did you learn prior to verdict that Ms. Beatty and the
16 mayor were communicating with each other utilizing
17 text messaging devices?
18 **A. Yes.**
19 MR. MORGANROTH: Objection as to form.
20 BY MR. ZUCKERMAN:
21 Q. Okay. Did you learn or come to understand that the
22 text messaging devices being used by Ms. Beatty to
23 communicate with the mayor and vice versa were SkyTel
24 messaging devices?
25 **A. Yes.**

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1 Q. Can you tell me how you learned that other than
2 through reading it in the newspaper?
3 **A. I learned specifically about the SkyTel text messaging**
4 **modality when a request by plaintiff's counsel by way**
5 **of a subpoena led to a motion in front of Judge**
6 **Callahan to quash the subpoena for the SkyTel text**
7 **messages.**
8 Q. Okay. Did you ever talk to Ms. Beatty about text
9 messages?
10 **A. I --**
11 MR. THOMAS: Objection as to foundation.
12 **A. I don't recall if I ever spoke to her directly about**
13 **text messages.**
14 **BY MR. ZUCKERMAN:**
15 Q. Well, how would you have spoken to her indirectly?
16 **A. In meetings or through other individuals who were**
17 **co-counsel with me on the case. There were several**
18 **lawyers on the defense side who were involved and**
19 **interacted with the various defendants, and our**
20 **communications were not always direct with all of the**
21 **parties, it was oft times indirect --**
22 MR. THOMAS: At this point, I'm going to
23 assert the privilege on behalf of the mayor as it
24 relates to communications. If, in fact, there was a
25 formal or informal joint defense agreement, it would

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1 be, in fact, privileged.
2 MR. LIEDEL: And also any discussions
3 between co-counsel is part of the work product
4 privileges.
5 BY MR. ZUCKERMAN:
6 Q. Mr. McCargo, is Ms. Beatty a party in this case?
7 **A. No.**
8 Q. Okay, did she have counsel in this case?
9 **A. I don't know.**
10 MR. MORGANROTH: Objection as to
11 foundation.
12 BY MR. ZUCKERMAN:
13 Q. Did you ever meet with anyone who said that they were
14 representing Ms. Beatty in connection with the Brown
15 whistleblower case up through verdict?
16 **A. Yes. I don't remember the lawyer's name, but there**
17 **was a dispute that arose about the use of Ms. Beatty's**
18 **private personal records in the Brown case and at some**
19 **point, she had independent counsel representing her in**
20 **that matter, I just don't remember who that lawyer**
21 **was.**
22 Q. Okay, what do you mean her independent personal
23 records?
24 **A. Financial records associated with the purchase of her**
25 **home, financial records between she and Fifth Third**

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1 **Bank. I don't recall the exact content of all those**
2 **records, but that is essentially the essence of it.**
3 **Those records became the subject of disputes within**
4 **this case, because there was some attempt to make them**
5 **part of the evidentiary package associated with this**
6 **litigation.**
7 Q. Okay. At any time, did you sign -- strike that.
8 Do you know what a joint defense agreement
9 is?
10 **A. Generally, but not specifically.**
11 Q. Okay. Do you know what a common interest agreement
12 is?
13 **A. Generally, but not specifically.**
14 Q. Do you know if there's a difference between the two?
15 **A. No.**
16 Q. Okay. At any time in connection with the Brown
17 whistleblower case, did you ever see a draft, joint
18 defense, common interest, or other such agreement?
19 **A. No.**
20 Q. Okay. Did you ever sign such a joint defense, common
21 interest, or other such agreement?
22 **A. Not directly.**
23 Q. Okay. I mean did -- did you ever sign such a thing at
24 all?
25 **A. No. I received and reviewed contracts with the City**

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1 **of Detroit, from the City of Detroit that,**
2 **essentially, ordered the relationships in this lawsuit**
3 **and established various co-counsel and distinct**
4 **relationships, and those are the documents that I'm**
5 **referring to that, to the best of my knowledge,**
6 **outlined or structured, to the extent that there was**
7 **such, this joint defense or co-defense relationship as**
8 **you see described in these documents you've given me**
9 **here.**
10 Q. Is this a document other than the contract that
11 engaged you to provide the legal services, or is it
12 terms and conditions within such a contract?
13 **A. Within such a contract.**
14 Q. Okay. Did you ever have an oral joint defense, common
15 interest, or other such understanding with any other
16 counsel in the Brown whistleblower case?
17 **A. There were occasions during the litigation where there**
18 **was oral agreements between counsel that we had a**
19 **joint strategy to pursue regarding specific aspects of**
20 **the case.**
21 Q. Okay.
22 **A. That -- that is my understanding of this joint or**
23 **collaborative relationship.**
24 Q. Okay. Other than the lawyers who are reflected on the
25 caption that's in front of you, which is Exhibit 3, I

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1 guess, Exhibit 3, did the mayor have any other lawyers
2 representing him in this case?
3 MR. THOMAS: Mr. Zuckerman, can we have a
4 timeframe so that we can just put that in front of it?
5 BY MR. ZUCKERMAN:
6 Q. From two weeks before the case was filed through the
7 dismissal that's referenced on Exhibit 3.
8 **A. If you are separating individual lawyers in the law**
9 **department from the law department, yes, there were**
10 **several lawyers in the law department who throughout**
11 **this case were involved in representing the mayor.**
12 Q. Okay, first tell me their names.
13 **A. The first corporate counsel that I became aware of who**
14 **was involved was Ruth Carter. Second deputy corporate**
15 **counsel was Brenda Braceful.**
16 Q. Can you spell that? Not Brenda, the last name.
17 **A. B-r-a-c-e-f-u-l. John Johnson became corporate**
18 **counsel and entered into the representation subsequent**
19 **to Ruth Carter. Those are the -- and, of course,**
20 **Valeria Colbert-Osamuede was active in this matter.**
21 **Those are the names that I know specifically and that**
22 **I actually worked with, who I understood to, at**
23 **various points in time, be representing the mayor.**
24 Q. How about any lawyer not within the law department
25 that is not reflected on the caption that's Exhibit 3?

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1 **A. None during the pendency of the lawsuit that I'm aware**
2 **of. There were no other lawyers who, outside the**
3 **scope of the names I've given you, who represented the**
4 **mayor during the course of this litigation.**
5 Q. Okay, thank you. Do you remember when the trial
6 began?
7 **A. I believe it was August 21st.**
8 Q. And the year?
9 **A. 2007.**
10 Q. And it ended when?
11 **A. September 11, if I'm not mistaken, 2007.**
12 Q. Okay. And did you sit through the entire trial?
13 **A. Most of it.**
14 Q. Okay. And the mayor took the stand in that trial?
15 **A. Correct.**
16 Q. Okay. Do you remember how many days he was on the
17 stand?
18 **A. One.**
19 Q. Okay. Do you know the term calling adverse?
20 **A. Yes.**
21 Q. Was -- would you describe your understanding of the
22 term for the record?
23 **A. When an attorney who represents another party calls**
24 **that party to the witness to essentially examine them**
25 **by way of cross-examination, because they perceive**

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1 that the information to be ascertained from the
2 witness will be adverse or hostile. The same theory
3 could be applied if it is not a party if there is a
4 witness that it is anticipated that the lawyer will
5 receive a hostile response, they may bring a motion
6 before the Court to have him declared a hostile
7 witness and then call them under the adverse witness
8 statute.

9 Q. Okay, was he called adverse? Was the mayor called
10 adverse in this case?

11 A. Yes.

12 Q. By Mr. Stefani?

13 A. Yes.

14 Q. Are you the lawyer that defended him when he was
15 called adverse?

16 A. Yes.

17 Q. Okay. So you are the -- the only lawyer that would
18 have objected or otherwise made legal arguments in
19 connection with his examination by Mr. Stefani; is
20 that correct?

21 A. Not true.

22 Q. Okay, who else would have made arguments?

23 A. Any of the two lawyers representing the City of
24 Detroit would have also made objections but it --
25 particularly to the extent where there was a common or

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1 joint issue or strategy involved in the case.

2 Q. Well, I meant just when the mayor was on the stand.
3 It's my understanding generally that when a witness is
4 on the witness stand at a trial only one lawyer can
5 defend him. Was it different in this case?

6 A. I thought your question was not only defend but raise
7 objections.

8 Q. During his testimony.

9 A. During his testimony. The City of Detroit was treated
10 as a separate party during this litigation and was
11 free to raise objections in its own stead.

12 Q. And who was the lawyer that would have been free to
13 raise objections for the City during the testimony of
14 the mayor?

15 A. It is my understanding that Ms. Colbert-Osamuede would
16 have been raising those objections.

17 Q. Okay. So the mayor was on the stand, this was
18 considered cross-examination?

19 A. Correct.

20 Q. You didn't call him back on direct, did you?

21 MR. THOMAS: Objection as to form.

22 BY MR. ZUCKERMAN:

23 Q. Did you call him back on direct?

24 A. No.

25 Q. Was he prepped for his testimony?

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1 A. Yes.

2 MR. THOMAS: Objection.

3 MR. ZUCKERMAN: What's the objection?

4 MR. THOMAS: Time preparation.

5 MR. ZUCKERMAN: I didn't ask for a
6 communication; I asked for a statement of fact.

7 MR. THOMAS: Well, the act of preparation.

8 MR. ZUCKERMAN: You think that's
9 privileged?

10 MR. THOMAS: I think it's a verbal answer.

11 MR. ZUCKERMAN: Pardon?

12 MR. THOMAS: I think it's a verbal answer.

13 MR. ZUCKERMAN: Are you instructing him not
14 to answer?

15 MR. THOMAS: It's not my witness.

16 MR. ZUCKERMAN: Would you repeat the
17 question, please?

18 COURT REPORTER: Question: Was he prepped
19 for his testimony --

20 MR. BEDROSIAN: He can instruct --

21 MR. ZUCKERMAN: I don't think he can. I
22 was just asking --

23 MR. BEDROSIAN: Then why did you ask him
24 if --

25 MR. ZUCKERMAN: Well --

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1 MR. BEDROSIAN: -- he's instructing -- his
2 lawyer, and any instructions that Mr. McCargo needs,
3 he'll get from me.

4 MR. ZUCKERMAN: That's fine by me.

5 MR. THOMAS: Just so that the record is
6 clear, the Court in a prior hearing had indicated that
7 objections could be made, legitimate objections could
8 be made based on privileges that exist. I'm alerting
9 Mr. Bedrosian to that, I'm not instructing him, but I
10 think that we're getting into a sensitive area, and I
11 tried to indicate for the record what that is.

12 MR. ZUCKERMAN: Thank you. Could you
13 please repeat the question?

14 (The requested portion of the record was
15 read by the reporter at 10:40 a.m.)

16 A. Can you explain to me what you mean by the term
17 prepped?

18 BY MR. ZUCKERMAN:

19 Q. Well, you knew that he would be called -- did you know
20 that Mr. Stefani was going to call the mayor adverse
21 in this case?

22 A. Yes.

23 Q. Okay. And prep to me means meeting with a witness or
24 a client, in this case, a client before he's called to
25 the witness stand to go over with him what he might be

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1 asked, so he would better understand the questions
2 that might be posed to him and to also understand
3 perhaps what the case is about, what the plaintiffs
4 want, and the type of documents he might be shown
5 while he's being called adverse on cross-examination,
6 the general things lawyers do to prepare a witness
7 before they are submitted either for a deposition or
8 for testimony.

9 **A. If your term prep includes all of that, then it is a
10 privileged communication, an attorney-client
11 privileged communication, and I would assert the
12 privilege. If you're asking me solely did I meet with
13 the client, that's another matter.**

14 Q. Okay. Let me just put a clear question on the record
15 based -- after I made that definition. In light of
16 what I said preparation was, did you meet with the
17 mayor to prepare him to testify?

18 **A. In light of your definition of the question,
19 privileged.**

20 Q. Okay, did you meet with the mayor?

21 **A. Yes.**

22 Q. Did you meet with the mayor before he testified?

23 **A. Yes.**

24 Q. Okay, how many times did you meet with the mayor
25 before he testified in this case?

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1 **A. I do not recall.**

2 Q. More than once?

3 **A. In all likelihood, yes.**

4 MR. THOMAS: I'm having trouble with the
5 air-conditioning, I'm sorry.

6 MR. ZUCKERMAN: I'm sorry.

7 MR. THOMAS: I can't hear.

8 MR. ZUCKERMAN: I said more than once.

9 MR. THOMAS: And I didn't hear your
10 response.

11 THE WITNESS: I said in all likelihood,
12 yes.

13 BY MR. ZUCKERMAN:

14 Q. Do you think you met with him five times?

15 **A. During what period of time are you asking?**

16 Q. From the time you were hired in this case until --
17 until -- until verdict.

18 **A. More than five times.**

19 Q. Okay. Can you give me some idea as to the total
20 amount of time that you might have met with him?

21 **A. No.**

22 Q. Okay. Can you tell me of the more than five times how
23 many were before he testified?

24 **A. I thought your original question was did I meet with
25 him before he testified. Are you asking me now how**

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1 **many times I met with him before and after he
2 testified?**

3 Q. No, now I just want to know how many times you met
4 with him before he testified, if you can recall.

5 **A. I cannot recall, but it was more than five.**

6 Q. Okay, were these what I will call one-on-one meetings,
7 just you and the mayor?

8 **A. Sometimes.**

9 Q. Okay. On the occasion there were other people
10 present, do you recall who else was present?

11 MR. LIEDEL: I'm sorry, I missed that
12 question. Could I have that question back?
13 (The requested portion of the record was
14 read by the reporter at 10:44 a.m.)
15 MR. LIEDEL: Thank you.

16 **A. Attorneys representing the mayor or the City.
17 BY MR. ZUCKERMAN:**

18 Q. Was Ms. Beatty ever present?

19 **A. I don't recall, but I believe there may have been some
20 meetings with Ms. Beatty specifically on this Fifth
21 Third Bank matter.**

22 Q. What do you mean by the Fifth Third Bank matter?

23 **A. Fifth Third Bank matter raised evidentiary issues in
24 this case, and the question of what to do about those
25 evidentiary issues involved not only Ms. Beatty**

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1 **specifically, but it also involved the City and the
2 City's long-term relationship with Fifth Third Bank,
3 and therefore, there were administrative issues
4 associated with the Fifth Third Bank issue in addition
5 to evidentiary issues.**

6 Q. Do you have a clear recollection of Ms. Beatty being
7 at one or more meetings or are you sort of surmising
8 this?

9 MR. MORGANROTH: Objection as to form.

10 **A. I do not recall a specific location or time. I have a
11 specific recollection that there was at least one
12 meeting about this Fifth Third Bank matter and the
13 issues associated with that where Ms. Beatty and the
14 mayor were in the meeting.**

15 **BY MR. ZUCKERMAN:**

16 Q. Did Ms. Beatty have counsel at that meeting?

17 **A. Possibly.**

18 Q. Tell me what went on at the meeting. Tell me who said
19 what to whom, if you can recall.

20 **A. All I can recall about that meeting is that there was
21 an issue about the Fifth Third Bank and the Fifth
22 Third Bank's relationship with the City and that if
23 there was an ongoing dispute between Ms. Beatty and
24 Fifth Third Bank, it might adversely affect the
25 relationship between Fifth Third Bank and the City.**

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1 **And as I recall the meeting ending, the individuals**
2 **there agreed that they would later confer among**
3 **themselves and with others to determine what to do**
4 **about that, and I was not involved in those further**
5 **discussions.**
6 Q. Okay. Now, going back to the trial for a second,
7 Ms. Beatty also testified at the trial; did she not?
8 **A. Correct.**
9 Q. And she was called adverse, as well?
10 MR. MORGANROTH: Objection as to form.
11 BY MR. ZUCKERMAN:
12 Q. Was she called adverse?
13 **A. Yes.**
14 Q. And did she testify before or after the mayor?
15 **A. Prior.**
16 Q. Immediately prior?
17 **A. Day before.**
18 Q. Okay. Did she have counsel in court representing her
19 when she testified?
20 MR. MORGANROTH: Objection as to
21 foundation.
22 **A. She testified as an employee of the City and was**
23 **represented by the City's attorneys.**
24 **BY MR. ZUCKERMAN:**
25 Q. Okay. When Ms. Beatty testified, did you know that

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1 Ms. Beatty and the mayor had commun -- had been
2 communicating with each other via text messaging?
3 MR. MORGANROTH: Objection as to form and
4 foundation.
5 **A. Yes.**
6 **BY MR. ZUCKERMAN:**
7 Q. Okay, when the mayor testified, did you know that the
8 mayor and Ms. Beatty had been testifying -- had been
9 communicating with each other via text messages?
10 **A. Yes.**
11 MR. MORGANROTH: Objection as to form.
12 BY MR. ZUCKERMAN:
13 Q. Did you ever ask to see any text messages?
14 **A. No.**
15 Q. Did anyone ever discuss with you the content of those
16 text messages?
17 MR. THOMAS: Mr. Zuckerman, you're going a
18 little bit too fast for me. Did you ever ask to see
19 text messages, we have to have a time frame for that,
20 please.
21 BY MR. ZUCKERMAN:
22 Q. Up to the time -- from any time up to the time that
23 the mayor and Ms. Beatty testified, did you ask to
24 see -- did anyone show you text messages?
25 **A. No.**

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1 Q. Okay. Did you ever ask to see any?
2 **A. No.**
3 Q. Okay. Did you have any idea what the content of the
4 text messages were that were exchanged between Ms.
5 Beatty and the mayor, from whenever through the date
6 they testified at this -- at the Brown trial?
7 **A. The content, I understood, of the text messages was**
8 **described in my motion to quash the text messages, and**
9 **that was governmentally privileged matters of a**
10 **deliberative nature.**
11 Q. Okay, but in order to reach a conclusion that a
12 privilege applies, would you agree with me that you
13 have to know what the content of the communication is?
14 **A. No.**
15 Q. You do not?
16 **A. No. You may ask for an in camera inspection and**
17 **determine after it's inspected.**
18 Q. Okay, then what basis did you have to assume that the
19 deliberative process privilege, assuming there is such
20 a thing, applied when you put that forth in your
21 motion?
22 MR. THOMAS: Objection because I think
23 you're getting into what potentially might have been
24 an attorney-client communication.
25 **A. By ascertaining the nature of the use of the text**

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1 **message equipment.**
2 **BY MR. ZUCKERMAN:**
3 Q. Could you explain what you mean by that?
4 **A. What is it used for, finding out what it's used for.**
5 Q. And what did you find out that it was used for, or
6 what did you conclude it was used for?
7 MR. THOMAS: Objection if it involves any
8 communication with my client.
9 **A. Concluded that it was used for matters very similar to**
10 **those that the press had described when they had**
11 **talked about the creation of this new electronic media**
12 **and that the press had said their intent was to create**
13 **a vehicle where executives of the City could**
14 **communicate with each other, deliberate with each**
15 **other, conduct City business in electronic format so**
16 **as to swiftly and efficiently handle the business of**
17 **the City and not be tied to their desk and their**
18 **chairs and meetings and the like, so it was my**
19 **understanding that the media description of what all**
20 **of these texts machineries and communications were**
21 **within the City were consistent with what the media**
22 **had said.**
23 Q. Was it your understanding at the time that Ms. Beatty
24 testified that the text messaging devices that she was
25 using from SkyTel were subject to City control?

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1 **A. No.**
2 Q. Did you have another opinion about whether they were
3 subject to City control or do you just not know?
4 MR. MORGANROTH: Objection as to form. I
5 think you're getting into work product.
6 **A. I was sufficiently ignorant about those relationships**
7 **so that I had no idea of who owned, controlled, or**
8 **what the true relationships were legally with the --**
9 **with those -- with this new electronic media that was**
10 **being created. I understood it was being used by City**
11 **executives. Beyond that, I had no knowledge of the**
12 **legal technicalities of the relationships.**
13 **BY MR. ZUCKERMAN:**
14 Q. Okay, through the time the mayor and Ms. Beatty
15 testified, were you aware of or did you know of a June
16 2000 City directive discussing electronic
17 communications?
18 **A. I'm not sure I was aware of anything.**
19 MR. THOMAS: Well, objection that that
20 directive may or may not be a directive.
21 MR. MORGANROTH: Objection as to form and
22 foundation.
23 **BY MR. ZUCKERMAN:**
24 Q. Was the question clear to you?
25 **A. I think I answered it, no, I don't --**

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1 Q. Okay.
2 **A. -- have any knowledge, have never seen any such**
3 **directive at least as far as I recall.**
4 Q. All right. I'm going to show you --
5 MR. ZUCKERMAN: I'll mark this as an
6 exhibit.
7 **MARKED BY THE REPORTER:**
8 **DEPOSITION EXHIBIT NUMBER 4**
9 **10:52 a.m.**
10 **BY MR. ZUCKERMAN:**
11 Q. I'm not going to ask you much about it.
12 **A. I've never seen this before, but there is one item in**
13 **here in this --**
14 Q. I haven't asked you any questions --
15 **A. Oh, okay.**
16 Q. -- yet, Mr. McCargo.
17 **A. Okay, all right.**
18 MR. ZUCKERMAN: Let me just mark this for
19 the record. This is Exhibit 4, FREEP 532 through and
20 including 536.
21 **BY MR. ZUCKERMAN:**
22 Q. The directive I had reference to in my few prior
23 questions was this directive, and my question is have
24 you ever seen this before?
25 **A. No.**

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1 Q. Okay. Turn to the last page. Page 536. Are you
2 there?
3 **A. Yes.**
4 Q. Do you recognize that as the mayor's signature?
5 MR. LIEDEL: Well, I'm going to object.
6 First of all, the witness has indicated he's never
7 seen this particular document before, and everybody
8 has the same document and to ask him for an opinion as
9 to whether it's his signature or not I think it's
10 completely improper, it goes beyond -- he doesn't have
11 any foundation for that.
12 MR. MORGANROTH: Objection as to form and
13 foundation.
14 MR. ZUCKERMAN: Can you -- would you repeat
15 the question, please?
16 (The requested portion of the record was
17 read by the reporter at 10:55 a.m.)
18 **A. It looks familiar, but I could not verify that this**
19 **is, in fact, the mayor's signature.**
20 **BY MR. ZUCKERMAN:**
21 Q. That is fine, thank you very much, Mr. McCargo. Do
22 you know what ADR is, alternate dispute resolution?
23 **A. Yes.**
24 Q. And there's a variety of different ADRs, some of which
25 in the Michigan system would be facilitation or

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1 mediation, would you agree with me?
2 **A. Yes.**
3 Q. Okay. Was this case either facilitated or mediated
4 prior to trial commencing?
5 **A. It is my understanding that it was both, mediated and**
6 **facilitated prior to trial.**
7 Q. And how do you come to have that understanding?
8 **A. Upon entering the case, I was advised that mediation**
9 **had already taken place and therefore, I would not be**
10 **participating in the mediation process.**
11 Q. Okay, was there any other type of ADR prior to the
12 commencement of trial?
13 **A. None that I -- that I was involved in.**
14 Q. Okay, do you know if that mediation --
15 **A. Yeah, the case evaluation is what I'm speaking of**
16 **earlier.**
17 Q. Okay. So when you said mediation prior to the
18 commencement of trial, you mean case evaluation?
19 **A. I'm dating myself, yes.**
20 Q. That's all right.
21 **A. When I first became introduced to it many, many years**
22 **ago, it was called mediation and then it was -- the**
23 **name was changed to case evaluation, I apologize.**
24 Q. Things get more fancy as...
25 **A. I apologize.**

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1 Q. Was a settlement value assigned to this case prior to
2 trial by the evaluators?
3 **A. It is my understanding that a settlement value had**
4 **been assigned prior to my entering this case.**
5 Q. Do you know who the case evaluators were?
6 **A. No.**
7 Q. Okay. And do you know what the evaluation amount was?
8 **A. I do not know precisely, but I understand it was**
9 **between 2 and \$3 million.**
10 Q. Okay, did the City reject that?
11 **A. It is my understanding that, I'm not positive, but it**
12 **is my understanding that both parties rejected it.**
13 Q. Okay. And that -- there's more than both parties
14 here.
15 **A. All parties rejected that --**
16 Q. Okay.
17 **A. -- was my understanding.**
18 Q. All right. Okay, during the course of the trial, did
19 you learn that Mr. Stefani was trying to obtain text
20 messages from SkyTel?
21 MR. MORGANROTH: Objection as to form and
22 foundation.
23 **A. During the course of the trial?**
24 **BY MR. ZUCKERMAN:**
25 Q. Yes.

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1 **A. Yes.**
2 Q. Okay, how did you become aware of that?
3 **A. After the mayor's testimony, Mr. Stefani made**
4 **statements to either myself or my associate that he**
5 **planned to attempt to re-subpoena SkyTel records, and**
6 **my associate along with Mr. Stefani's associate worked**
7 **to have placed into Mr. Stefani's hands a copy of the**
8 **preexisting order regarding the SkyTel records, and**
9 **that order was the -- my associate obtained my**
10 **permission to do that, and so that order was, in fact,**
11 **transmitted to Mr. Stefani on, I believe it was August**
12 **the 29th.**
13 Q. Okay, did you tell Ms. Beatty that Mr. Stefani was
14 trying to get SkyTel messages?
15 **A. No.**
16 Q. Did you tell the mayor that?
17 MR. THOMAS: Objection.
18 COURT REPORTER: I'm sorry, who objected?
19 MR. THOMAS: Attorney-client privilege.
20 I'm sorry, objection, should I say something?
21 COURT REPORTER: I gotcha.
22 MR. THOMAS: I'll say my name next time.
23 **A. Privileged.**
24 **BY MR. ZUCKERMAN:**
25 Q. Okay. When did you turn over this -- can you call it

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1 a motion?
2 **A. No.**
3 Q. The prior motion?
4 **A. Order.**
5 Q. Order. When did you, if you can recall, turn that
6 over to Mr. Stefani?
7 **A. My associate transmitted it via e-mail on August 29th.**
8 Q. Okay. Did you meet with the mayor on August 28th, if
9 you recall?
10 **A. I don't recall.**
11 Q. Okay. Did you meet with the mayor the day after you
12 turned over this order to Mr. Stefani?
13 **A. I don't believe so.**
14 Q. Okay. What happened next with respect to the attempt
15 to obtain the SkyTel messages, as best as you can
16 recall?
17 **A. Nothing.**
18 MR. MORGANROTH: Objection as to
19 foundation.
20 **A. Nothing.**
21 **BY MR. ZUCKERMAN:**
22 Q. Okay. When is the next time that the SkyTel messages
23 became an issue that you had to deal with as a lawyer
24 for Mayor Kilpatrick in this case?
25 **A. October 17th.**

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1 Q. Nothing between the September date and October 17th?
2 **A. No.**
3 Q. Okay. Between this -- the date you mentioned and
4 October 17th, did you have any conversations with Ms.
5 Beatty about SkyTel messages?
6 **A. No.**
7 Q. When was the verdict returned?
8 **A. September 11th, 2007.**
9 Q. Okay, and for this record, do you recall the amount of
10 the verdict in round numbers?
11 **A. 6.5 million.**
12 Q. Okay. That's allocated between the two plaintiffs?
13 **A. Correct.**
14 Q. In some respect?
15 **A. Correct.**
16 Q. Was a decision made to appeal that verdict?
17 MR. LIEDEL: Well, I'm going to object,
18 because now you're talking about the strategies of
19 counsel, and I think that's privileged information.
20 MR. ZUCKERMAN: I only asked if a decision
21 was made.
22 MR. GOODMAN: Well, I would like if a
23 privilege is being asserted to know what the nature of
24 the privilege is.
25 MR. LIEDEL: Well, I think the privilege is

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1 a work product and a deliberative process with respect
2 to the clients.
3 MR. GOODMAN: Well --
4 MR. ZUCKERMAN: Mr. Bedrosian isn't saying
5 anything, so if you would repeat my question.
6 (The requested portion of the record was
7 read by the reporter at 11:02 a.m.)
8 MR. MORGANROTH: Object as to form.
9 MR. LIEDEL: See you're asking what the
10 decision was, the substance of any communications
11 between the clients and the counsel.
12 BY MR. ZUCKERMAN:
13 Q. Since your lawyer has not directed you not to
14 answer -- well, I'll wait.
15 MR. MORGANROTH: Objection as to form.
16 COURT REPORTER: I'm sorry?
17 MR. MORGANROTH: Objection as to form.
18 COURT REPORTER: Thank you.
19 MR. THOMAS: Just so the record's clear, if
20 it involved any conversation with my client,
21 obviously, there's a privilege.
22 **A. I made no such decision.**
23 **BY MR. ZUCKERMAN:**
24 Q. Was a notice of appeal filed or...
25 **A. No.**

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1 Q. Okay. Although I'll get to them later, you produced
2 from your office e-mails that talked about juror
3 misconduct; do you remember producing those e-mails to
4 me?
5 **A. Yes.**
6 Q. Okay. And those e-mails regarding juror misconduct
7 had to do with whether or not there was an appealable
8 basis from the verdict in this case?
9 **A. Yes.**
10 Q. Okay. Was there any other basis to appeal in any of
11 the e-mails that you recall providing to me?
12 **A. Yes.**
13 Q. Okay, what were the other bases for appeal?
14 **A. There were primarily evidentiary issues. The ones**
15 **that I can remember most prominently are the denial of**
16 **the defendant's right to offer the testimony of Mr.**
17 **Falvo (ph.).**
18 Mr. Falvo would have testified -- there was
19 essentially an offer of proof made but would have
20 testified about the misconduct of Mr. Gary Brown that
21 was virtually identical to the conduct that was the
22 subject of the action leading to his demotion and
23 removal. There were a series of debates about the
24 attorney general's investigation and report. The
25 parties had stipulated to introduce that record, but

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1 the Court sui sponte established a procedure requiring
2 the attorney general to come in and testify before the
3 Court.
4 If the Court liked what he said, then the
5 Court might allow us to offer that testimony, but we
6 might not be able to offer that testimony. So there
7 were those kinds of, how can I put it, unusual
8 evidentiary matters that were of concern along with
9 the juror misconduct.
10 Q. Okay, when you say attorney general, you mean of the
11 State of Michigan?
12 **A. Yes.**
13 Q. Okay. I want to go back for a second, and I apologize
14 for getting somewhat out of order, to the -- the
15 document that you authorized your associate to give to
16 Mr. Stefani.
17 **A. Yes.**
18 Q. The first question is who was your associate that you
19 gave this authorization to?
20 **A. Sidney Turner.**
21 Q. Okay. And then the next question is, was this an
22 order that you gave to Mr. Stefani, a copy of an
23 order?
24 **A. A copy of an order.**
25 Q. And what was, to the best of your recollection, the

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1 content of that order?
2 **A. Judge Callahan had ordered that any SkyTel records**
3 **produced as a result of a subpoena by the plaintiff be**
4 **delivered directly to the Court, and not the parties,**
5 **and that the Court would review those records and on**
6 **an issue-by-issue basis, determine what records within**
7 **the whole body of records may be admissible in the**
8 **trial.**
9 Q. Did any of those SkyTel messages get to the judge
10 pursuant to his order?
11 MR. MORGANROTH: Objection as to
12 foundation.
13 BY MR. ZUCKERMAN:
14 Q. Okay, after the verdict, there was some form of ADR
15 involving Val Washington; is that correct?
16 **A. Correct.**
17 Q. Okay, can you tell me how that came to be?
18 **A. The plaintiff filed a motion for attorney fees and**
19 **special interrogatories were served on the defendants**
20 **three days after the verdict was entered. The parties**
21 **had not resolved the issue of interest on the**
22 **judgment. So a judgment could not be entered.**
23 The Court instructed the parties, I believe
24 through plaintiffs' office, to resolve the issues on
25 attorney fees and to identify -- I mean on interest,

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1 and to identify a mutually acceptable facilitator
2 because the judge was going to send the issue of
3 attorney fees to facilitation, and as a part of going
4 back to the Court for the entry of the judgment, the
5 parties were also obligated to go back with
6 information sufficient for the Court to enter an order
7 of facilitation on attorney fees.
8 Q. And that is the facilitation that Mr. -- or Judge
9 Washington was appointed to facilitate?
10 MR. THOMAS: Excuse me.
11 A. Correct.
12 BY MR. ZUCKERMAN:
13 Q. Just for the record can you give me his full name and
14 title as you understand -- understood it then?
15 A. Valdemar Washington.
16 Q. Okay.
17 A. Period.
18 Q. Is he an ex-judge?
19 A. Yes, he's an ex-judge. I don't think that that is a
20 title, though.
21 Q. Okay, although, a lot of former judges are called
22 judges out of a matter of courtesy.
23 And this was a -- Mr. Washington was picked
24 through mutual agreement of the plaintiffs and the
25 defendants in the Brown case?

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1 A. Yes.
2 Q. Okay. Was -- what was the status of the Harris case
3 at that time, if you know?
4 A. I had no knowledge.
5 Q. Okay, and is it correct to say that the facilitation
6 was solely on the matter of attorneys' fees?
7 A. That was the Court's order yes.
8 Q. Okay, and can you tell me, or actually tell the
9 record, what you mean or what -- what did the Court
10 mean about just facilitating attorneys' fees?
11 A. In an employment case of this nature, there's a
12 statutory provision on attorney fees and costs that
13 would normally result in a post-trial hearing for the
14 purpose of identifying reasonable and necessary
15 attorney fees and costs, applying the appropriate
16 legal principles to limit those costs so that they
17 comply with the law, and presenting evidence in front
18 of the Court for that purpose, including experts if
19 necessary.
20 In order to avoid that process, the Court
21 ordered the parties into facilitation to accomplish by
22 way of agreement and facilitation essentially what
23 would be accomplished if, in fact, a hearing had been
24 convened to resolve the disputes of the parties
25 regarding attorney fees and costs.

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1 Q. Would you agree with me that just -- this is an
2 informal, less costly way to see if the parties could
3 reach agreement on whatever it is the Court ordered
4 you to try to work out?
5 MR. MORGANROTH: Objection as to form.
6 A. It can be.
7 BY MR. ZUCKERMAN:
8 Q. Right. And when did this facilitation occur?
9 A. October 17th, 2007.
10 Q. And is it correct to say that the only thing that was
11 in the Court's order and the only thing the parties
12 thought they were facilitating when you began on
13 October 17th was the issue of attorney fees?
14 MR. MORGANROTH: Objection as to form and
15 foundation.
16 A. The only thing that was in the order was the attorney
17 fees and the costs.
18 BY MR. ZUCKERMAN:
19 Q. Okay, were you going there to facilitate anything else
20 other than that issue?
21 A. We were not ordered to do anything other than to
22 facilitate attorney fees and costs. ADR's a fluid
23 process, so you never know what you may be discussing
24 in addition to what's in the order, but the order,
25 itself, was as to attorney fees and costs.

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1 Q. Okay. Who, to your recollection, was representing
2 each of the parties at this facilitation?
3 A. It was my role to represent the mayor, and the City
4 was represented by Ms. Valerie Colbert-Osamuede and
5 Mr. Wilson Copeland.
6 Q. Mr.?
7 A. Wilson Copeland.
8 Q. Okay. Any other attorney there?
9 A. Each office, I believe, at least Mr. Copeland's office
10 and my office had an associate present.
11 Q. Okay. And how about on the plaintiff's side?
12 A. Mr. Stefani was present and his associate, Mr. Frank
13 Rivers.
14 Q. Among yourself and Ms. Osamuede and Mr. Copeland, was
15 one of you designated the lead person?
16 A. No.
17 Q. Okay. So that was fluid, too?
18 MR. MORGANROTH: Objection as to form.
19 A. It was -- it was fluid and to some extent controlled
20 by the facilitator.
21 BY MR. ZUCKERMAN:
22 Q. Okay, were the three of you in the same room, meaning
23 yourself, Ms. Osamuede and Mr. Copeland?
24 A. For significant portions of the process, yes.
25 Q. Okay, when did the facilitation begin?

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1 **A. I believe that the actual facilitation activities**
2 **commenced about eleven a.m.**
3 Q. Okay. And that was at whose office?
4 **A. Charfoos' office, the Charfoos law firm on Woodward**
5 **Avenue.**
6 Q. Okay. Did you meet with anyone prior to the
7 facilitation to discuss the facilitation?
8 **A. Yes.**
9 Q. Who did you meet with?
10 **A. I met with my associate and the associate from Mr.**
11 **Copeland's office about the actual document defendants**
12 **had prepared in response to plaintiff's motion for**
13 **attorney fees, and I met very briefly with Mr.**
14 **Copeland while we awaited the arrival of Ms. Valerie**
15 **Colbert-Osamuede.**
16 Q. Did you meet with Ms. Beatty prior to the facilitation
17 to discuss the facilitation?
18 **A. No.**
19 Q. Did you meet with the mayor prior to the facilitation?
20 **A. No.**
21 Q. Do you have any understanding of whether Ms. Beatty
22 knew there was a facilitation?
23 **A. I have no idea.**
24 Q. Do you have any understanding of whether the mayor
25 knew there was a facilitation?

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1 MR. THOMAS: Objection.
2 **A. I don't know.**
3 **BY MR. ZUCKERMAN:**
4 Q. Okay. Was Mr. Johnson the head of the City law
5 department at the time of the facilitation?
6 **A. Yes.**
7 Q. Was he there at the beginning?
8 **A. Not at the beginning.**
9 Q. Okay. Do you know why he wasn't there at the
10 beginning?
11 **A. No.**
12 Q. Okay. Do you know where he was when the facilitation
13 began?
14 **A. No.**
15 Q. Did you have a way to contact him?
16 **A. No.**
17 Q. Okay.
18 **A. Other than to call his office.**
19 Q. Well, okay, sometimes you have an office phone, a cell
20 phone?
21 **A. I didn't have his cell phone.**
22 Q. And not a pager?
23 **A. Not a pager.**
24 Q. Describe for the record, if you can, how this process
25 got started, what was going on, say, between 11 and

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1 12:00 to get this thing going?
2 MR. LIEDEL: Well, I'm going to object.
3 You're asking for what occurred within the
4 facilitation process which is confidential under the
5 court rules.
6 MR. ZUCKERMAN: Do you understand the
7 question?
8 **A. Yes.**
9 **BY MR. ZUCKERMAN:**
10 Q. Okay, just generally speaking, not -- not
11 communications between people, just how does this
12 thing work?
13 **A. This particular process worked differently than most**
14 **facilitations I've participated in. There was no**
15 **original joint meeting with the parties' attorneys and**
16 **the facilitator. When we arrived, we being the**
17 **defense team, plaintiffs' lawyers were already there**
18 **and already sequestered and secluded in an area out of**
19 **sight from the defense lawyers.**
20 **Defense lawyers were, at the direction of**
21 **Mr. Val Washington, assigned the -- what was then a**
22 **large hearing room, like a mock trial room, as a**
23 **facility that we could use to meet in, confer in, and**
24 **conduct whatever business defendants had to conduct**
25 **among themselves.**

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1 **Mr. Washington moved back and forth between**
2 **the two rooms in discussing the aspects of**
3 **facilitation between the parties. That is essentially**
4 **the format and structure.**
5 Q. And this is sometimes referred to, and I think
6 somewhere this has been referred to in this case as
7 kind of like shuttle diplomacy?
8 **A. Correct.**
9 Q. Okay, and that shuttle diplomacy began about 11 a.m.?
10 **A. Yes, or shortly thereafter.**
11 Q. Okay, and the topic of the shuttle diplomacy was an
12 attempt to facilitate the attorney's fees that might
13 be due Mr. Stefani as the prevailing lawyer in the
14 case; is that correct?
15 MR. MORGANROTH: Objection as to form.
16 **A. Attorney fees and costs.**
17 **BY MR. ZUCKERMAN:**
18 Q. Okay. Subject to objections, how did that go? Was it
19 a successful facilitation for the first several hours?
20 MR. MORGANROTH: I'm going to object,
21 sounds like work product to me, the strategies, and
22 getting into mental processing.
23 **BY MR. ZUCKERMAN:**
24 Q. Well, let's say between 11 and 1:00, did you reach an
25 agreement?

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1 **A. We did not reach an agreement.**
2 Q. Did you --
3 **A. If you're asking me based on my experience with**
4 **facilitation how did this stack up to others, most**
5 **facilitations I've been involved in usually run**
6 **anywhere from a half a day to a full day and sometimes**
7 **maybe even continue several days. So to have a**
8 **facilitation that starts and you spend the first two**
9 **hours not making a lot of progress was nothing**
10 **unusual.**
11 **It's the -- from my perspective in being in**
12 **a facilitation, that is the ordinary course of events**
13 **when you go into facilitation. So there was nothing**
14 **extraordinary about the fact we were exchanging**
15 **proposals back and forth and there was some wrangling**
16 **about the positions of both sides.**
17 Q. How long did -- I'm -- I don't want to put words in
18 your mouth. Would you consider this a normal lack of
19 progress?
20 **A. Yes.**
21 Q. Okay, how long did this normal lack of progress go on?
22 **A. Hour and a half, maybe two hours.**
23 Q. Till about what time?
24 **A. Maybe about 2:00. Maybe a little after 2:00.**
25 Q. Did something happen at about that time to change the

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1 normal lack of progress to something else?
2 **A. Two things occurred. One was Mr. Washington conveyed**
3 **to defense attorneys an inquiry by the plaintiff's**
4 **lawyers, who, again, were sequestered out of sight, as**
5 **to whether or not the defense attorneys were**
6 **interested and would be willing to engage in a**
7 **facilitation that was expanded to include settling the**
8 **entire case.**
9 Q. Did you respond to that request?
10 **A. Not immediately. We advised Mr. Washington that we**
11 **did not have authority but we wanted to chat for a few**
12 **moments, and he then left us to do that. Defense**
13 **counsel decided among themselves that it would not be**
14 **a bad idea to try to obtain authority to engage in a**
15 **broader-based facilitation.**
16 **Mr. Washington returned. We advised him we**
17 **did not have such authority but that we would attempt**
18 **to reach our clients or decision-makers who might give**
19 **us authority. The primary source of authority that we**
20 **were focusing on at that time was the City because the**
21 **City was the source of the money, and Mr. Washington**
22 **had made it clear in the facilitation that he**
23 **considered the source of the money to be the lead in**
24 **the facilitation.**
25 Q. Okay. And it was -- was it your understanding that

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1 whatever amount of money was going to be paid in this
2 lawsuit, whether it be for some or all of the verdict,
3 some or all of the attorneys' fees, some or all of the
4 costs, that money was coming solely from the City of
5 Detroit?
6 **A. Correct.**
7 Q. Well, was there an attempt made to reach a
8 decision-maker to see if the facilitation could be
9 expanded?
10 **A. The attorneys for the City left my presence and went**
11 **off into a -- their own corner with their cell phones,**
12 **and it's my understanding efforts were being made to**
13 **reach a decision-maker at the City.**
14 Q. When you say the attorneys for the City went off on
15 their own, was that Mr. Copeland and Ms. Osamuède?
16 **A. Yes, I don't mean collectively, I mean we separated.**
17 **I believe Ms. Osamuède went to a place where she could**
18 **privately speak on the phone, but we all sort of**
19 **dissipated while Ms. Osamuède made those efforts to**
20 **reach a decision-maker at the City.**
21 Q. Did she tell you who she called?
22 **A. She told us she was attempting to reach her immediate**
23 **superior, Mr. Johnson.**
24 Q. Okay. And what happened next?
25 **A. Mr. Val Washington returned to this room where we were**

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1 **sort of scattered and asked that I come with him out**
2 **of the room, essentially separated me from the other**
3 **defendants, and asked if I would join him outside in**
4 **the parking lot.**
5 Q. Do you know what time this was?
6 **A. Had to be sometime between 2:15 and 3:15, I can't give**
7 **you exact times but it was in that hour, in that hour**
8 **period of time.**
9 Q. I think in response to one of my earlier questions,
10 you said two things happened when you were talking
11 with -- well, strike that.
12 **MR. ZUCKERMAN: Can you roll back a little**
13 **bit and see where Mr. McCargo said two things so I can**
14 **figure out what I want to ask him?**
15 **(The requested portion of the record was**
16 **read by the reporter at 11:25 a.m.)**
17 **MR. LIEDEL: For the record, I'd make a**
18 **relevancy objection since it seems like we're going**
19 **far beyond the areas that the Court indicated it to be**
20 **inquired upon.**
21 **BY MR. ZUCKERMAN:**
22 Q. What was the second thing, Mr. McCargo?
23 **A. The matter we're discussing now.**
24 Q. Okay. And the matter we're discussing now is when Mr.
25 Washington asked you, separated you from the other

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1 defense lawyers and asked you to -- asked to talk with
2 you; is that correct?
3 **A. Correct.**
4 Q. And he asked to talk with you in a parking lot?
5 **A. Correct.**
6 Q. Wasn't there any other office available at the firm?
7 MR. MORGANROTH: Objection as to form,
8 objection as to foundation.
9 **A. I really -- I really don't know. I -- the impression**
10 **I had when we arrived there is that we had paid \$500**
11 **to this entity for certain specific facilities, and we**
12 **were using those facilities, and the other option for**
13 **a place to go was to go out in the nice weather in the**
14 **parking lot.**
15 **BY MR. ZUCKERMAN:**
16 Q. Okay, so now you and Mr. Washington are in the parking
17 lot.
18 **A. Yes.**
19 Q. Did he say anything to you from the time he separated
20 you from the rest of the defense lawyers till the time
21 he got you in the parking lot?
22 MR. LIEDEL: Well, I'm going to object
23 again, you're going into matters covered by the court
24 rule and the facilitation.
25 MR. ZUCKERMAN: Well, it's a yes or no

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1 question.
2 MR. THOMAS: Can we have a continuing
3 objection on this, Mr. Zuckerman?
4 MR. ZUCKERMAN: No, I'd rather have these
5 objections be specific. That's a yes or no question.
6 **A. I don't recall if there was just general small talk as**
7 **we walked out into the parking lot. It may have been**
8 **small talk, because Mr. Washington's mother was ill or**
9 **something to that effect, and we were having**
10 **discussions through the day about the fact that Ms.**
11 **Colbert's mother was ill and Mr. Washington's mother**
12 **was ill, and my partner's wife had just died, so there**
13 **was a lot of small talk totally about matters**
14 **unrelated to this issue.**
15 **BY MR. ZUCKERMAN:**
16 Q. Well, what happened when you got to the parking lot?
17 **A. Mr. Washington advised me that he had been instructed**
18 **by Mr. Stefani to deliver to me a package and deliver**
19 **it only to me, that he was not to deliver it to anyone**
20 **else. As I recall, he indicated to me he had not read**
21 **the contents of the package, and asked me to take a**
22 **look at the package and also advised me, at that time,**
23 **that Mr. Stefani was interested in expanding the scope**
24 **of facilitation to engage in. I believe the term was**
25 **used a global set of issues, and if I'm not mistaken,**

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1 **also, he gave me a very brief indication of what those**
2 **were. I don't think he had a lot of details. He said**
3 **there were a couple of whistleblower cases in another**
4 **case that's unrelated that he wants to talk about.**
5 Q. And you understood "global" meaning to resolve and try
6 to settle without the necessity of appeal the verdict
7 in the Brown case?
8 MR. MORGANROTH: Objection as to form.
9 **A. The first time Mr. Washington spoke to me about**
10 **expanding the scope of settlement, I understood it to**
11 **be the Brown case alone. That's -- he may not have**
12 **said that, but that was my understanding of what he**
13 **was talking about.**
14 **This discussion in the parking lot, it**
15 **appeared as though what he was saying is Mr. Stefani**
16 **has a series of items on his plate that he would like**
17 **to try to resolve all at one time while we're there.**
18 **Some related and some unrelated.**
19 Q. Did he tell you what they were?
20 **A. He did not make it very clear. I -- one of the items**
21 **he mentioned, and I don't know whether he said this**
22 **then or I learned it later, but it had to do with the**
23 **water board case, so it was totally unrelated to**
24 **Whistleblower Act issues.**
25 Q. Okay. Did he give you a package in the parking lot?

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1 **A. Yes, he did.**
2 Q. Okay. Can you describe what the package looked like?
3 **A. It was an envelope, and inside the envelope was what**
4 **appeared to be a -- either a motion with a brief or a**
5 **supplemental brief, itself, that was in the form of**
6 **one of these consolidated documents that the court**
7 **rules now allow, where you can put both a motion and a**
8 **brief all in one document.**
9 Q. Was this in a manila envelope, not a letter sized
10 envelope?
11 **A. Manila envelope.**
12 Q. Okay, I assume you opened it?
13 **A. Yes, not in his presence, I opened it after he left my**
14 **presence.**
15 Q. Okay. And did you read it?
16 **A. Part of it.**
17 Q. Do you remember what part?
18 **A. First few pages.**
19 Q. What did those first few pages say, if you recall?
20 **A. I do not recall the exact language of those first few**
21 **pages. I recall the essence of what was there, and**
22 **the essence was that Mr. Stefani was asking for an**
23 **escalator in his demand for attorney fees. He was**
24 **asserting that he had been forced to work more hours**
25 **and had been forced to put in a greater effort in this**

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1 lawsuit than he would normally put in and that he
2 should get additional attorney fees.
3 He alleged in this motion that there was
4 information in this motion that, had that information
5 been made available during the course of trial, it
6 would have been -- made it easier for him to prove
7 some of the allegations he was asserting in trial. It
8 then had in this document some excerpts, allegedly,
9 from text messages, some of them very short, some of
10 them long, some of them appeared to be cut off, but
11 the first few pages I saw, it had some excerpts
12 allegedly from text messages from SkyTel.
13 MR. ZUCKERMAN: I'm told we only have two
14 minutes of tape left; is that right? So do you want
15 to take a break to reload the tape? Or we'll take a
16 break, anyway.
17 MR. THOMAS: It conforms with the volume of
18 my bladder.
19 VIDEO TECHNICIAN: Going off the record.
20 The time is 11:31 and 50 seconds a.m.
21 (Recess taken at 11:31 a.m.)
22 (Back on the record at 11:45 a.m.)
23 VIDEO TECHNICIAN: We are back on the
24 record. This marks the beginning of tape No. 2. The
25 time is 11:45 and 12 seconds a.m.

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1 BY MR. ZUCKERMAN:
2 Q. Okay, if I'm not mistaken, we left off where you had
3 opened the package that Mr. Washington had given you,
4 you had made some form of review of its content, and
5 it was either a motion brief or a combined motion
6 brief or something like that; is that accurate?
7 A. That's accurate.
8 Q. Okay. Did you read the whole thing?
9 A. No.
10 Q. Is there any reason why you didn't read the whole
11 thing?
12 A. There are probably three primary reasons I didn't read
13 the whole thing. One was I felt I had the gist of the
14 motion from the pages that I had reviewed. Number
15 two, the other lawyers, defense lawyers had apparently
16 become concerned about where I was, and so they came
17 looking for me, and Mr. Copeland was the first to
18 arrive, and when I noticed he was standing over my
19 shoulder, I then discontinued the review of the -- of
20 the document.
21 I, essentially, closed it up and put it
22 back in the envelope, so the primary reasons were that
23 I had -- I had the gist of what was in the -- in the
24 motion, and others were coming around, and it had been
25 given to me in what I perceived to be a strictly

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1 confidential, private transmittal, and so I was trying
2 as best I could to preserve that because I understood
3 it to be a confidential transmittal to me and to my
4 client.
5 Q. Now, is it -- is it fair to say that as you were
6 reading the Stefani document, you had a recollection
7 in your mind of what the allegations were in the Brown
8 case?
9 A. Yes.
10 Q. Okay. And you had a recollection in your mind at the
11 time you read the Stefani document about what the
12 mayor said when he testified in that case?
13 A. Yes.
14 MR. MORGANROTH: Objection as to form.
15 BY MR. ZUCKERMAN:
16 Q. And did you also have a recollection when you read
17 that document as to what Ms. Beatty testified to when
18 she testified in this case?
19 A. Yes, not verbatim, but yes, I had a recollection to
20 what the witnesses had testified to in the case.
21 Q. Now, the impression that you formed after reading
22 whatever portion of this brief that you read, did that
23 cause you any concern about the testimony in that
24 case?
25 MR. THOMAS: Objection.

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1 MR. MORGANROTH: Objection as to work
2 product. His conclusions.
3 A. I think that is work product.
4 BY MR. ZUCKERMAN:
5 Q. Okay. Would it be fair to characterize your
6 impression of the Stefani motion as explosive?
7 MR. THOMAS: It would be fair to conclude
8 that I will be objecting to that, as well.
9 MR. MORGANROTH: I'm going to object as to
10 form on top of the work product objection.
11 A. What do you mean by the term explosive?
12 BY MR. ZUCKERMAN:
13 Q. Well, that contradicted the testimony of the mayor and
14 Ms. Beatty in the trial that you just defended?
15 A. I did not --
16 MR. MORGANROTH: Objection to form and
17 foundation.
18 A. I did not reach that conclusion based on what I read.
19 BY MR. ZUCKERMAN:
20 Q. Okay. But you considered the portion that you read --
21 well, strike that.
22 What did you do next when Ms. Osamuede and
23 Mr. Copeland came out to -- to the parking lot to find
24 you?
25 MR. LIEDEL: You know, again, I'm going to

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1 object to -- this still discussing what goes on within
2 the facilitation, and I think it's governed not only
3 by the court rule for confidentiality, but also, it
4 involves the work product between the attorneys that
5 were operating as a team.
6 **A. I shared with Mr. Copeland and, ultimately, with**
7 **Ms. Osamuede, because I don't believe they were both**
8 **standing there at the same time, that the document**
9 **that I had alleged that Mr. Stefani had obtained**
10 **access to the SkyTel records that had been subject of**
11 **our previous motion to quash.**
12 **BY MR. ZUCKERMAN:**
13 Q. Okay. What was their reaction? First, Ms. Osamuede.
14 **A. Well, Mr. Copeland was the first person I spoke to.**
15 Q. Okay, then Mr. Copeland first.
16 **A. And his reaction was in the form of questions, and the**
17 **questions were essentially questions of disbelief that**
18 **these documents could have been obtained when there**
19 **was a clear order of the Court out there prohibiting**
20 **such documents from finding their way into the hands**
21 **of plaintiffs' attorney.**
22 Q. Did Mr. Copeland read the package at that time?
23 **A. No.**
24 Q. So he was just going based upon what you told him the
25 essence of the package was; is that fair?

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1 **A. That's as far as I can tell you, I -- he was over my**
2 **shoulder, I don't know if he saw anything while**
3 **standing over my shoulder that gave him more**
4 **information, but his reactions were to the statements**
5 **I made to him.**
6 Q. Okay. Did -- did you discuss with him, in general,
7 the content of the messages or just the fact that Mr.
8 Stefani appeared to be quoting from messages?
9 **A. The latter.**
10 Q. Okay, so you didn't communicate to him the content of
11 these messages?
12 **A. Correct.**
13 MR. MORGANROTH: Objection as to form.
14 **BY MR. ZUCKERMAN:**
15 Q. And he had no reaction to the content because
16 apparently at this juncture, he didn't -- he didn't
17 know the content?
18 **A. I cannot speak to what his internal reactions were to**
19 **the content. I can say that Mr. Copeland was privy to**
20 **the motion in 2004 seeking to quash the records, so at**
21 **the very least, it was my understanding that he was**
22 **fully aware of the content that was at issue during**
23 **the motion practice in '04.**
24 Q. Okay. Then Ms. Osamuede joined you -- the two of you;
25 is that right?

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1 **A. Correct.**
2 Q. How soon after Mr. Copeland arrived?
3 **A. Very shortly, because it appeared that Ms. Osamuede**
4 **was completing a phone conversation, closing up her**
5 **cell phone and then walked off.**
6 Q. And then what happened when she joined you and Mr.
7 Copeland?
8 **A. Either Mr. Copeland or I shared with her the same**
9 **information I had shared with Mr. Copeland, generating**
10 **the same general response.**
11 Q. Did either Ms. Osamuede or Mr. Copeland appear to know
12 what the content of those text messages -- what the
13 content of text messages were?
14 MR. MORGANROTH: Objection as to
15 foundation.
16 MR. THOMAS: Objection as to contents.
17 **A. Nothing to suggest to me that any of them had anymore**
18 **knowledge than what was reflected in our previous**
19 **motion.**
20 **BY MR. ZUCKERMAN:**
21 Q. Did Ms. Osamuede ask to read the Stefani document?
22 **A. No.**
23 Q. Okay. And have you told us everything that was said
24 between the three of you in the parking lot that day?
25 **A. I believe so.**

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1 Q. Okay. What happened next?
2 MR. LIEDEL: My same objection since you
3 want it question by question.
4 MR. ZUCKERMAN: I understand.
5 **A. I attempted to comply with my original assurance to**
6 **Mr. Washington, and that is that I would get back to**
7 **him after I'd reviewed the messages, the document he**
8 **gave me, and I, if I recall correctly, walked back to**
9 **the building where Mr. Washington was seated in that**
10 **common room that we had all been in, and called him**
11 **over and asked him if he could locate Mr. Stefani.**
12 MR. ZUCKERMAN: Okay. I'm going to mark
13 this as an exhibit.
14 COURT REPORTER: This is No. 5.
15 MR. ZUCKERMAN: It's No. 5.
16 MARKED BY THE REPORTER:
17 DEPOSITION EXHIBIT NUMBER 5
18 11:55 a.m.
19 **BY MR. ZUCKERMAN:**
20 Q. Take your time and go through it. Just for the
21 record, this is Exhibit 5, FREEP 543 through and
22 including 560.
23 **A. I've reviewed it.**
24 Q. Okay. Do you know whether or not this was the
25 document that Mr. Stefani gave to Mr. Washington to

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1 give to you?
2 **A. I do not know for sure, but I don't believe it is.**
3 Q. Okay, and why don't you believe that?
4 **A. This document appears to be a rambling collection of**
5 **thoughts and comments, blank spaces in it, references**
6 **to names and people, some of which I don't recall**
7 **seeing at all in the document that was given to me.**
8 **It has a long introduction before it gets to any of**
9 **the text messages, and what I recall seeing was**
10 **something a lot more refined, a lot more specific, a**
11 **lot more, I don't know, final in its composition than**
12 **this.**
13 Q. Okay, let me just see if we can go to one page and --
14 page 544, which is page 2 of this exhibit, and you see
15 in the second paragraph, there is a -- the second
16 paragraph there's really one sentence, it says the
17 perjury by the mayor and Beatty did not stop at
18 discovery but continued right throughout trial; do you
19 see that?
20 **A. Yes.**
21 Q. Do you recall that sentence being on the first page of
22 what you read?
23 **A. No.**
24 Q. Let's go back and -- you can put that aside since you
25 do not believe that's the document you actually

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1 received, so put it down someplace. Where we left
2 off, you were back in the building, is -- is that
3 right?
4 **A. Yes.**
5 Q. Okay, and just because I forgot what you said, what --
6 what was transpiring when you went back in the
7 building?
8 **A. I spoke to Mr. Washington and asked him if he could**
9 **locate Mr. Stefani, so that I could speak to Mr.**
10 **Stefani because I hadn't seen him, didn't know where**
11 **he was, and had -- had no interaction with him during**
12 **the exchange of this document at all.**
13 Q. And did he locate Mr. Stefani?
14 **A. Yes, apparently he did, I assume he did.**
15 Q. Because Mr. Stefani appeared?
16 **A. Yes.**
17 Q. Okay. And how soon after you asked to talk to Mr.
18 Stefani did Mr. Stefani appear?
19 **A. Shortly, very shortly.**
20 Q. Okay.
21 **A. It wasn't an hour, it was just a few minutes.**
22 Q. And then you and Mr. Stefani had a conversation?
23 **A. About three to five minutes at max.**
24 Q. And what was said?
25 **A. Essentially, I asked -- I told Mr. Stefani that I had**

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1 received this package given to me by Mr. Washington
2 and I didn't know anything about any of this. I
3 didn't go into the detail, but that was essentially
4 the comment I made to him, and I asked him what was it
5 he planned to do.
6 And he explained to me that he had planned
7 to file this supplemental brief, and I asked him if he
8 had already done so, and he said he had not done so.
9 And I asked him then, well, what is it you want to do?
10 And his response, essentially, was I want to proceed
11 with facilitation as I've described it with -- to Mr.
12 Washington.
13 Q. What did you understand that to mean?
14 **A. That he wanted to pursue this global discussion that**
15 **he had transmitted to me through Mr. Washington that**
16 **came along with the package of documents.**
17 Q. Okay. One question. You said -- you said to Mr.
18 Stefani you didn't know anything about any of this; is
19 that accurate?
20 **A. That's correct.**
21 Q. What did you mean "any of this?" What is the "this"
22 you didn't know about?
23 **A. The package of documents that were given to me**
24 **reflected a series of steps and procedures that had to**
25 **have taken place to put this information in Mr.**

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1 **Stefani's hands if, in fact, it was accurate.**
2 **Somehow, if these were legitimately SkyTel**
3 **records, SkyTel had produced it. Somehow, it had been**
4 **produced without notice to the other parties.**
5 **Somehow, it had been produced without notice to the**
6 **Court. Somehow, the normal procedure of SkyTel as it**
7 **had been described to me back in 2004 had been**
8 **circumvented.**
9 In the 2004 procedure, SkyTel informed the
10 parties that they had an internal department that
11 was -- that specialized in the response -- responses
12 to subpoenas for documents. They had a very rigorous
13 procedure that you had to go through. In fact, there
14 was a lawyer who was a national specialist in this,
15 and I was being told as I read this document all of
16 this somehow doesn't exist or either had been
17 circumvented. So I didn't know anything about that.
18 I didn't know anything about the content of these --
19 this alleged document. I didn't know whether what Mr.
20 Stefani claimed he had was, in fact, original or
21 accurate or complete or correct.
22 A package of documents had been given to me
23 that having looked at those documents, a whole worth
24 of questions existed and arose to which I had no
25 answers as I stood there in that parking lot.

000333

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1 Q. So is it fair to say that when you said you didn't
2 know anything about any of this, you meant both the
3 alleged content as well as how Mr. Stefani obtained
4 the messages?
5 MR. MORGANROTH: Objection as to form.
6 BY MR. ZUCKERMAN:
7 Q. Or whatever he had looked at that appeared to be
8 messages?
9 MR. MORGANROTH: Objection as to form.
10 A. I think you simplify it. Those are two factors, but I
11 think my description is even broader than that, not
12 only how he came into possession of that, but how a
13 preexisting set of legal limits and guidelines had
14 been circumvented or avoided, how a preexisting,
15 formalized staff of experts on subpoenas had delivered
16 these records directly to Mr. Stefani. And keep in
17 mind I was also fully aware that in August, my office
18 had just delivered to Mr. Stefani the actual order of
19 the Court on this matter, and so the questions that I
20 had were broad in scope, and numerous, and not just
21 simply how he got them or what the content was.
22 BY MR. ZUCKERMAN:
23 Q. So if I can try to generalize, and you're free to
24 disagree with me, you were very concerned about the
25 process by which Mr. Stefani came into possession of

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1 this information; is that accurate?
2 A. That's correct.
3 Q. Were you also concerned about the content?
4 A. I was concerned about the content.
5 Q. Okay. Why?
6 A. Because I had no reason to believe it was accurate or
7 was complete. I thought it might well be another form
8 of advocacy, like that that I had faced with regard to
9 the allegations about the Manoogian Mansion case, the
10 Manoogian Mansion allegations. During the course of
11 the Manoogian Mansion disputes, between Mr. Stefani
12 and the State Police, some 15 different versions of
13 the alleged Manoogian Mansion party had been alleged
14 and had been investigated, and reams of paper and
15 document -- and documents have been created trying to
16 chase down this Manoogian Mansion thing.
17 Mr. Stefani had been actively engaged with
18 the -- with Mr. Schram of the State Police in
19 generating new leads and creating new theories and
20 putting together packages of information that
21 established that, in fact, the Manoogian Mansion party
22 had occurred, and I'm sitting here now with another
23 package of information likened to those same things I
24 faced with the Manoogian Mansion that raised more
25 questions for me than it answered, and since my

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1 experience with the Manoogian Mansion matter suggested
2 that you need to be very careful about accepting what
3 you hear until it is fully investigated and you know
4 all of the facts.
5 I was concerned about the content, the
6 context of the documents, I was concerned about the
7 accuracy, I was concerned about the way they were cut
8 up. There was some sections deleted, there were
9 dot-dot-dots used to show where information had been
10 removed, I used the term truncated in other
11 descriptions of it, so that was the scope of my
12 concern.
13 Q. Is it fair to say you had a healthy skepticism about
14 the completeness and accuracy of the allegations that
15 Mr. Stefani was making in this --
16 A. Oh, yes.
17 Q. -- brief or motion that he gave to you?
18 A. Oh, yes.
19 Q. And what time of the day did your healthy skepticism
20 arise, because I'm trying to figure out what time you
21 left the parking lot to go inside?
22 A. We are still in -- and I told you before, this is
23 sometime between 2:15 and 3:15.
24 Q. Okay.
25 A. So we're still in that hour stretch.

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1 Q. Okay, but you -- you're now inside talking with Mr.
2 Stefani directly and you're --
3 A. No, we're outside in the parking lot.
4 Q. When the skepticism starts to germinate, you're out in
5 the parking lot, or are you back out in the parking
6 lot with Mr. Stefani?
7 A. The skepticism starts to germinate when I first
8 reviewed the few pages of the document.
9 Q. Okay.
10 A. That's when the skepticism begins.
11 Q. Okay.
12 A. That -- that is what generated the first plateau of --
13 of lack of confidence in the accuracy and veracity of
14 what I was looking at.
15 Q. Okay, now that's in the parking lot, we've gone
16 inside, you're now talking with Mr. Stefani. Is there
17 anything else that you and he said while you two were
18 talking alone?
19 A. As I recall, my conversations with Mr. Stefani did not
20 take place inside. Mr. Stefani --
21 Q. Ah.
22 A. -- came outside, he and I spoke very briefly in the
23 parking lot, he then left and went back inside the
24 building.
25 Q. When you were talking with him, did you challenge him

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1 on -- on the accuracy of what he was alleging in this
 2 motion?
 3 MR. LIEDEL: You know, I'm going to object
 4 to relevancy, whether he's challenged him or didn't
 5 challenge him and we're still talking about the
 6 facilitation process, but none of that has anything to
 7 do with the FOIA case, whether he challenged him or
 8 not, whether he had skepticism over the veracity of
 9 this document, I mean how is that related at all to
 10 the issues here?
 11 MR. ZUCKERMAN: Would you please read back
 12 my question?
 13 (The requested portion of the record was
 14 read by the reporter at 12:11 p.m.)
 15 **A. I did not confront him and tell him that he was a liar**
 16 **with regard to what he alleged in the motion.**
 17 **BY MR. ZUCKERMAN:**
 18 Q. Okay. Did you confront him using any type of
 19 language? I won't necessarily ask you the type of
 20 language, but sometimes lawyers talk to lawyers in
 21 colloquialisms.
 22 **A. It was my intent by making the comment that I made to**
 23 **him to let him know that I was not buying into what he**
 24 **did, that I was not convinced of what he had, and that**
 25 **the information I had was so incomplete that I was**

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1 **unable to take a definitive position on what was being**
 2 **presented to me one way or the other.**
 3 Q. And so then that concluded your conversation with Mr.
 4 Stefani in the parking lot?
 5 **A. That is correct.**
 6 Q. Okay, what happened next? As far as you're concerned?
 7 **A. As I recall, what happened next was I had a**
 8 **conversation with either Mr. Copeland or Ms. Osamuede**
 9 **advising me that one or the other of them had been**
 10 **able to reach Mr. Johnson.**
 11 Q. Okay. How did it come to -- I think I must have
 12 missed this, how did it come to pass that someone went
 13 to call Mr. Johnson?
 14 **A. Well, the --**
 15 MR. MORGANROTH: Well, I'm just going to
 16 object as to form because I think you did cover this
 17 already.
 18 **A. I'd be happy to go over it again.**
 19 **BY MR. ZUCKERMAN:**
 20 Q. Yeah, please do.
 21 **A. When Mr. Washington first mentioned settling the whole**
 22 **case, we advised Mr. Washington we didn't have**
 23 **authority. Mr. Washington, without saying it**
 24 **directly, made it clear to us that as a facilitator,**
 25 **he expected us to try to see if we could get**

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1 **authority. We did not challenge that, we felt that**
 2 **was a reasonable request on his part.**
 3 **Likewise, we felt it would not be**
 4 **unreasonable to try to find out what the true bottom**
 5 **line was. Since Mr. Washington's focus was on the**
 6 **source of the money for settlement, it became the**
 7 **primary contact point for purposes of pursuing this**
 8 **original request from Mr. Stefani, and therefore, Ms.**
 9 **Osamuede initiated the process of trying to contact**
 10 **Mr. Johnson at that time. That was before I ever got**
 11 **the package.**
 12 Q. Okay. Did she try to contact Mr. Johnson after she
 13 learned of the existence of the package?
 14 MR. MORGANROTH: Objection as to
 15 foundation.
 16 **A. I do not know whether she initiated a contact with**
 17 **Mr. Johnson or not. All I can tell you is that from**
 18 **the point she originally initiated her efforts to try**
 19 **to locate Mr. Johnson, there were reports back and**
 20 **forth regarding her efforts to reach him, contacts**
 21 **with him, whether or not he was on his way, if there**
 22 **were others he had to talk to before he came down, so**
 23 **I don't know for sure whether she was calling him or**
 24 **he was calling her, but it appeared to me at some**
 25 **point she reached him.**

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1 **BY MR. ZUCKERMAN:**
 2 Q. Did that -- did that appear to you after she knew
 3 about the content of the package?
 4 **A. It appeared to me she had reached Mr. Johnson before**
 5 **she knew about the content of the package.**
 6 Q. Did anyone else try to reach Mr. Johnson other than
 7 Ms. Osamuede?
 8 MR. MORGANROTH: Objection as to
 9 foundation.
 10 **A. I did not.**
 11 **BY MR. ZUCKERMAN:**
 12 Q. Do you know if anyone else did?
 13 **A. I do not know.**
 14 Q. Okay. And did Mr. Johnson then come downtown or --
 15 **A. Yes.**
 16 Q. Okay.
 17 **A. Yes, he did.**
 18 Q. Okay.
 19 **A. Come down to the Charfoos office --**
 20 Q. Okay.
 21 **A. -- which was not downtown.**
 22 Q. Did he tell you why he was coming downtown?
 23 **A. No.**
 24 Q. So --
 25 **A. I had no conversation with Mr. Johnson about the**

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1 inquiry or his decision to come downtown.
2 Q. But you learned he was coming downtown?
3 A. I learned he was coming.
4 Q. Who told you?
5 A. I learned from Ms. Colbert-Osamuede.
6 Q. Okay, what did she tell you?
7 A. Mr. Johnson's coming downtown.
8 Q. Okay.
9 A. He's coming to the meeting.
10 Q. Okay. When she told you that, was that after she knew
11 about the content of the package?
12 A. It may have been after she knew about -- knew about
13 the package. I don't know when you say the content of
14 the package, there was no discussion about the content
15 of the package. There was only a discussion with Ms.
16 Osamuede and Mr. Copeland about the fact that a
17 package had been given to me, it had been given to me
18 in confidence, I had been told by Mr. Washington it
19 was to be given to me and the only -- and that the
20 allegations in the package were that the plaintiffs
21 had obtained access to these SkyTel records, so that
22 was all the information that I shared with her.
23 Q. All right. So what -- as far as you know, based on
24 what you told her, what Ms. Osamuede knew about the
25 content of the package was that it somehow contained

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1 the content of SkyTel messages; is that fair?
2 A. More specific than that.
3 MR. MORGANROTH: Objection as to form.
4 A. My -- my understanding is that she was aware that the
5 package -- if, in fact, plaintiffs had obtained these
6 records, they were the very same records that we had
7 opposed on the grounds of the governmental
8 deliberative privilege.
9 BY MR. ZUCKERMAN:
10 Q. Okay.
11 A. And so it was my understanding that she was fully
12 aware of the significance of the governmental
13 deliberative privilege as it had been argued and
14 debated in the earlier motions.
15 Q. Okay. And what about -- what about Mr. Copeland? Did
16 he understand -- did he understand that whatever
17 Stefani had given you, motion, brief, combined,
18 contained alleged excerpts from SkyTel messages?
19 MR. MORGANROTH: Objection, foundation.
20 MR. THOMAS: Objection, form.
21 MR. MORGANROTH: Objection as to form,
22 also, and foundation.
23 A. I did not mention anything to them about excerpts from
24 SkyTel records. My comment to them was Mr. Stefani
25 asserts that he has obtained the SkyTel records that

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1 we had opposed in the motion.
2 BY MR. ZUCKERMAN:
3 Q. Okay.
4 A. So I didn't say anything about excerpts about two or
5 three lines, you know, 18 messages, only that he had
6 obtained those records that had been the subject of
7 our motion.
8 Q. And then you said that to both of them, Mr. Copeland
9 and Ms. Osamuede?
10 A. As I recall, I specifically recall saying it to Mr.
11 Copeland and may have said it to both of them together
12 when Ms. Osamuede joined us, or Mr. Copeland may have
13 relayed the message that I gave him to her.
14 Q. Okay.
15 A. I just don't recall that.
16 Q. So Mr. Johnson is then on the way downtown; is that
17 right?
18 A. That is correct.
19 Q. Okay. And do you know how much time elapsed until he
20 got downtown?
21 MR. MORGANROTH: Objection as to form.
22 A. I cannot answer that.
23 BY MR. ZUCKERMAN:
24 Q. Okay. And do you know what time he got downtown?
25 A. I believe he arrived sometime between 2:45 and 3:30.

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1 Q. Other than what you've told us that you've said to Ms.
2 Osamuede and Mr. Copeland, did you have any other
3 discussions with them about the Stefani motion and
4 brief between the time you told us about what you said
5 and the time that Mr. Johnson showed up?
6 A. No.
7 Q. Okay. Did you have any discussions with them at all
8 about the Brown case during that period of time?
9 A. Brown and Harris?
10 Q. Brown and Harris.
11 A. Yes, I did have discussions about Brown and Harris.
12 Q. Okay, can you tell us without relating the content the
13 subject matter of the conversations?
14 A. Yes. The subject matter was to be informed of the
15 response to the inquiry regarding authority to engage
16 in negotiations through the facilitation process in
17 both the Brown and Harris cases.
18 Q. Okay. Anything else that you recall -- any other
19 subject matters you recall?
20 A. No.
21 Q. Okay. Then Mr. -- Mr. Johnson shows up between 2:45
22 and 3:30; is that right?
23 A. Correct.
24 Q. And then did you and -- and/or Ms. Osamuede and Mr.
25 Copeland meet with him?

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1 **A. Very briefly.**
2 MR. MORGANROTH: Objection as to form.
3 **A. Very briefly.**
4 **BY MR. ZUCKERMAN:**
5 Q. Okay.
6 **We all stood together in the parking lot very briefly.**
7 Q. Ah, okay. So he shows up, you're all in the parking
8 lot, I presume he parks his car. Then what happens?
9 MR. LIEDEL: Can we have a more direct
10 question in terms of "then what happens," because I
11 continue to raise my objection with respect to the
12 contents of what occurs within the facilitation.
13 **BY MR. ZUCKERMAN:**
14 Q. I don't -- without talking about communications, just
15 what happens next after he gets there? I mean you can
16 say we had a conversation, we went inside, he wanted
17 to meet Mr. Stefani. I mean we can start at that
18 level of generalization if you like.
19 **A. As I recall, shortly after Mr. Johnson arrived, the**
20 **facilitator joined us, came out to talk to the defense**
21 **counsel. I don't remember exactly how that was**
22 **coordinated, but that is my recall because I remember**
23 **the facilitator standing with us in the parking lot**
24 **talking to the three of us.**
25 Q. Okay. And do you recall the subject matters of the

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1 conversation?
2 **A. The facilitator?**
3 Q. Yes.
4 **A. Loosely, yes.**
5 Q. And what are they?
6 **A. One was -- had authority been obtained to participate**
7 **in negotiations. Number two was the scope of those**
8 **facilitation activities going to include Brown,**
9 **Harris, and I believe it was either Rucker or Fluker**
10 **or something of that nature, there was a third case.**
11 Q. Okay.
12 **A. And the facilitator wanted to know, of course, whether**
13 **or not now there were sufficient representatives there**
14 **of the defendants to talk about money. He -- his**
15 **entire focus from the moment we got there was, who is**
16 **the person who can make decisions about money.**
17 Q. And who was that?
18 **A. That was the City, and that would have been Mr.**
19 **Johnson.**
20 Q. Okay.
21 **A. As I understood it.**
22 Q. Okay, I understand that. And so when Mr. Washington
23 came out and met with you, had there now been
24 authority to try to have a global settlement?
25 **A. I perceived and I believe that the answer to that**

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1 **question was yes.**
2 Q. Okay, and that was a change from how this facilitation
3 started?
4 MR. LIEDEL: Objection to the form of the
5 question.
6 **BY MR. ZUCKERMAN:**
7 Q. You didn't have verbal settlement authority when the
8 facilitation began, did you?
9 **A. We had never asked for it.**
10 Q. Okay.
11 **A. So I want to be careful about saying it had changed,**
12 **it had never been an issue, so I can't say that we**
13 **were sent there and told, you can't do this. It had**
14 **just never been raised before.**
15 Q. Okay.
16 **A. So it was raised for the first time and now having**
17 **raised it, we had authority in Mr. Johnson.**
18 Q. And the scope was now to try to settle the Brown and
19 Harris case and this case you referred to as Fluker?
20 **A. Yes.**
21 Q. Okay.
22 **A. Fluker didn't last long in the discussions. And**
23 **attorney fees, yes.**
24 Q. And attorney fees?
25 **A. The entire case, which would have been attorney fees,**

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1 **costs...**
2 **BY MR. ZUCKERMAN:**
3 Q. Okay.
4 **A. -- costs.**
5 Q. And did you consider the scope to be different than
6 the scope that was initially your charge when the
7 facilitation began?
8 **A. Oh, I considered the scope definitely different than**
9 **the scope ordered by the Court.**
10 Q. Okay. How about what you thought the scope was when
11 you began the facilitation?
12 **A. When I began the facilitation based on my experience?**
13 **The facilitation, they had no expectations on a hard**
14 **and fast limitation on what could end up on the table**
15 **as a part of the facilitation discussions, because my**
16 **experience has been even to resolve what people**
17 **believe you're going there to talk about, you may need**
18 **to add other items to the table, and that had been my**
19 **experience with facilitation, so the fact that we were**
20 **sent there to resolve attorney fees and costs did not**
21 **mean to me that under no circumstances would there be**
22 **anything else put on the table.**
23 Q. Okay, what happened next?
24 **A. The facilitator began the process of shuttle diplomacy**
25 **back and forth again in an effort to get a settlement**

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1 figure. The early part of the shuttle diplomacy was
2 to eliminate this Fluker case, so probably the first
3 thing that happened was to eliminate that from the
4 scope of settlement possibilities.

5 Q. And just one other question in general. Did Mr.
6 Johnson meet with Mr. Stefani at all as far as you
7 know?

8 A. I don't recall.

9 Q. Okay. Once this shuttle diplomacy started, did you or
10 Mr. Johnson or Ms. Osamuède or Mr. Copeland meet with
11 Mr. Stefani?

12 A. No.

13 Q. Okay. So how long did this shuttle diplomacy go on?

14 A. Till about 5:00.

15 Q. Okay. And was the shuttle diplomacy successful in
16 reaching a resolution of some -- of some kind?

17 A. Partially so. We were -- we were time limited. Mr.
18 Washington had to leave to catch a flight or
19 something, and so the process probably would have
20 continued there longer to try to resolve all matters
21 that were at issue but because of the time
22 limitations, we essentially got to a resolution of the
23 attorney fees issues, the interest issue, the actual
24 verdict amount for the both -- both of the cases. The
25 waiver of appeal rights, and a schedule for approvals

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1 for this proposed settlement.

2 Q. What do you mean by that? Who -- who's going to
3 approve what?

4 A. The Plaintiff Gary Brown was not present. The
5 Plaintiff Harold Nelthrope was not present. City
6 Council as a public body could not be present, had to
7 be involved by way of appropriate public meetings.
8 The mayor was not present. So those individuals were
9 not present, and in order to make any such proposed
10 settlement agreement operative, approval of those
11 individuals had to be obtained from their counsel.

12 Q. At this time, did you think you'd need Ms. Beatty's
13 approval to settle this case?

14 A. I don't --

15 MR. MORGANROTH: Objection as to form.

16 A. I don't even recall that Ms. Beatty's issue was
17 discussed at that time.

18 BY MR. ZUCKERMAN:

19 Q. Okay, and that's the Fifth Third Bank issue?

20 A. That's correct.

21 Q. Okay, when you say the attorney fee issue was
22 resolved, can you quantify that for us?

23 A. One figure was agreed to for Brown, and one figure was
24 agreed to for Harris. That one figure resolved the
25 verdict amount in Brown which was 6.5 million. It

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1 resolved the interest which was approximately a
2 million and a half. Plaintiff had pending attorney
3 fees and costs of approximately a million dollars. So
4 when the single figure was agreed to, it resolved all
5 of those.

6 Q. Okay. And then the City waived its appeal rights?

7 A. Correct.

8 Q. Okay, as to both the Brown case and the Harris case?

9 A. Correct.

10 Q. So if I am adding this right --

11 MR. MORGANROTH: Objection as to form. The
12 Harris case didn't go to trial, so it was more than
13 just waiver of appeal rights.

14 BY MR. ZUCKERMAN:

15 Q. What was the -- how was -- how was Harris resolved?

16 A. A total figure of \$400,000 was established for Harris.
17 I did not know the details of the Harris litigation,
18 so I have no idea what other issues were being
19 packaged and resolved and what disputes were going on
20 between the parties. There may have been other things
21 that when you say \$400,000 it made a lot of things go
22 away that I simply was not aware of.

23 Q. So are you aware of the fact that Harris -- the Harris
24 case went away for 400,000?

25 A. That's my understanding.

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1 Q. Okay. And what was the total amount allocated to the
2 Brown/Nelthrope case if you recall? I'm not sure I
3 got my addition right.

4 A. 8 million.

5 Q. 8 million, okay. Do you have any idea -- strike that.
6 At the time -- did you do any calculation
7 about what percentage of the entire amount that Brown
8 and -- and Nelthrope could get was represented by the
9 \$8 million?

10 A. No.

11 Q. But it was a \$6.5 million verdict?

12 A. \$6.5 million verdict with \$1.5 million interest. We
13 had a judgment, there was no other verdict, we had a
14 judgment.

15 Q. Judgment, okay, I mean that sounds like a hundred
16 percent on the dollar?

17 A. No, it wasn't, we put the attorney fees in there for a
18 million dollars, it is in excess of \$8 million.

19 Q. So if I'm doing my calculations right, it's
20 eight-ninths?

21 A. Could be.

22 Q. Okay. So that's something like 88 percent or more?

23 A. Could be.

24 Q. In your experience in settling cases through an
25 alternate dispute resolution, is that an average

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1 settlement amount?
2 MR. LIEDEL: You know, I'm going to object.
3 How is this at all relevant to the issues that are in
4 front of the -- the Court in this FOIA case? I
5 mean -- and now you're asking for his opinion with
6 respect to other cases that have, you know, a myriad
7 of other problems with it. I mean you know that this
8 isn't related at all; you're just trying to get an
9 opinion out of him.
10 MR. MORGANROTH: I'm going to object as to
11 form and foundation, also.
12 BY MR. ZUCKERMAN:
13 Q. Mr. McCargo, do you understand my question?
14 **A. My experience has been that there is no average**
15 **amount. Each case settles on its own facts and its**
16 **own merits. I have been involved in cases depending**
17 **upon where they are in the litigation process to avoid**
18 **any additional cost of the attorney fees or interest**
19 **or appeal costs, it settles dollar on the dollar.**
20 **I've been involved in some cases where they have cases**
21 **have settled for 90 percent of the amount of**
22 **liability, it all depends upon the facts of the case**
23 **as they stand in that individual situation.**
24 Q. Did you -- did you ever form an opinion -- strike
25 that.

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1 Back then when you were doing this
2 facilitation, did you form an opinion as to why it was
3 this case settled for \$8 million?
4 MR. LIEDEL: Well, you know, again, I'm
5 going to object. Now you're asking for opinion
6 testimony from the witness and it's not relevant at
7 all and -- and you know, if Judge Colombo ever reads
8 it, this is part of the problem I brought the
9 protective motion for.
10 MR. ZUCKERMAN: I believe that's a yes or
11 no question. Will you read it back, please?
12 (The requested portion of the record was
13 read by the reporter at 12:33 p.m.)
14 **A. Yes.**
15 **BY MR. ZUCKERMAN:**
16 Q. Why?
17 **A. Because the facilitator did an effective job of**
18 **getting the parties to the bottom line that he felt**
19 **the parties would go to to settle the case.**
20 Q. Had nothing to do with the content of the Stefani
21 brief/motion?
22 **A. The Stefani brief and motion was never discussed**
23 **during the negotiations. No dollar amount was ever**
24 **placed on the Stefani brief and motion. My assessment**
25 **of the Stefani brief and motion was that it was a**

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1 trigger to initiate further negotiations and to
2 broaden the scope of the negotiations, so I cannot say
3 that the Stefani fee (sic) and motion played no role
4 in the entire process, but the Stefani brief and
5 motion did not result, in my estimate, in a premium
6 being paid in this -- in this case.
7 **It was my assessment as we stood there at**
8 **that time that we had a judgment, we had very little**
9 **chance of success on appeal because the major appeal**
10 **issues had evaporated, and that had we pursued an**
11 **appeal, the dollar amount we were facing there would**
12 **simply have escalated at approximately \$30,000 a month**
13 **in interest alone.**
14 Q. What --
15 **A. Not to mention the additional attorney fees that the**
16 **defendants would face in the event of a failed appeal.**
17 Q. At the time this \$8 million was agreed upon, did you
18 still have a healthy skepticism about the authenticity
19 and accuracy of the content of the Stefani motion and
20 brief?
21 **A. Yes.**
22 MR. LIEDEL: You know, I have the same
23 objection as to the relevancy of this whole line of
24 questioning.
25 **A. I -- I had a healthy suspicion about the authenticity**

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1 **of them, but no doubt that whether they were authentic**
2 **or not, the motion, itself, would have been an**
3 **embarrassing disclosure.**
4 **BY MR. ZUCKERMAN:**
5 Q. In what sense?
6 **A. In the sense that the Manoogian Mansion disclosures**
7 **that turned out to be totally baseless from all the**
8 **investigations became a -- an embarrassing dynamic of**
9 **the litigation and remained so for months and months**
10 **in the case.**
11 Q. And you thought that -- strike that.
12 How did that experience -- what did you
13 conclude based on that experience with respect to the
14 Stefani motion and brief? I'm trying to figure out
15 what you thought would happen with the content of the
16 Stefani motion and brief if this case didn't settle?
17 **A. My experience with this litigation was twofold**
18 **regarding these types of issues. One was after the**
19 **original gag order was lifted by Judge Callahan,**
20 **anything that was filed in these proceedings, any**
21 **major event that took place was disclosed to the media**
22 **and was published and became a part of ancillary**
23 **public activity to the litigation. The disclosure**
24 **came from the Court on one hand.**
25 **If, in fact, the disclosure had not come**

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1 from the Court, it was my experience that plaintiff's
 2 counsel went directly to the media, and not only
 3 plaintiff's counsel, I think plaintiff had a
 4 relationship with the media and went directly to the
 5 media with information. It was my assessment that the
 6 use of the media and the PR was a part and parcel of
 7 plaintiff's strategy for litigating the case, and so
 8 it was my assessment that the two were intertwined,
 9 and that had been my experience with the Manoogian
 10 Mansion matter, as well as the depositions of the
 11 mayor, the depositions of Mr. Brown, the depositions
 12 of -- of Mr. Harris, many of them were actually
 13 published verbatim.

14 Q. Well, in order -- strike that.
 15 Would'n't you then have to have concluded
 16 that Mr. Stefani's recitation of the text messages was
 17 accurate in order to come to the conclusion that they
 18 would be embarrassing?

19 A. No.
 20 Q. Why not?
 21 MR. MORGANROTH: Objection as to form.
 22 A. No.
 23 BY MR. ZUCKERMAN:
 24 Q. Why not?
 25 A. The Manoogian Mansion allegations were never -- never

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1 proven to be factual or accurate, yet, they were
 2 embarrassing, and so by way of a parallel, it appeared
 3 to me that the same set of dynamics would exist in the
 4 circumstances as was faced with the Manoogian Mansion
 5 allegations.

6 Q. What --
 7 A. That was my judgment.
 8 Q. Okay. What happened at 5:00? Did it -- at or about
 9 5:00? Did the facilitation process at Charfoos'
 10 office conclude?
 11 A. We ran out of time at Charfoos' office because the
 12 facilitator had to leave and because we had limited
 13 time at that office. The facilitator indicated that
 14 normally, he does not allow a facilitation to end when
 15 you have a settlement on the figures without putting
 16 something in writing. Since he was in what I would
 17 call an emergent situation, an ignig -- exigent
 18 situation, he had to leave. He encouraged the parties
 19 to meet and put something in writing to codify the
 20 agreements that the parties that reached as of the
 21 time that we had to break up.
 22 Q. So what did you do?
 23 A. We agreed to meet at Mr. Stefani's office later that
 24 evening to do just that.
 25 Q. And how soon after you left Charfoos did you meet at

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1 Mr. Stefani's office?
 2 A. I believe I arrived at Mr. Stefani's office maybe
 3 about 6:15. Mr. Copeland probably arrived about 6:30.
 4 If I'm not mistaken, Ms. Colbert-Osamuede arrived
 5 sometime after that.
 6 Q. Did you go direct from Charfoos' office to Stefani's
 7 office?
 8 A. No.
 9 Q. Where did you go?
 10 A. Get something to eat.
 11 Q. Okay, did you go with -- did you go with anyone?
 12 A. Nope, by myself.
 13 Q. Did you talk to anyone during this period of time?
 14 A. Nope.
 15 Q. How about, do you know what -- do you know if Ms.
 16 Osamuuede went direct from Charfoos to Mr. Stefani's
 17 office?
 18 A. I do not know precisely. I know that the delay in the
 19 facilitation had to do with the fact that Ms.
 20 Osamuuede's mother was ill, something emergent had
 21 happened and it was my understanding that she wanted
 22 to check on her mother before she arrived at Mr.
 23 Stefani's office, so I don't know that that's where
 24 she went, but I left under the impression that she was
 25 going to check on her ill mother.

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1 Q. Do you know if Mr. Johnson went direct from Charfoos
 2 to Stefani's office?
 3 A. Mr. Stefani (sic) didn't go to --
 4 Q. Mr. Johnson.
 5 A. -- I mean Mr. Johnson didn't go to Mr. Stefani's --
 6 Q. Okay.
 7 A. -- office as I recall.
 8 Q. And what about Mr. Copeland? Did he go direct as far
 9 as you know?
 10 A. Mr. Copeland indicated he was going to get something
 11 to eat. I do not know where he went, but he -- we all
 12 split up, and he indicated he was going to get
 13 something to eat, as well.
 14 Q. Okay. So then at the periods of time you described,
 15 you all appeared at Mr. Stefani's office. Is it fair
 16 to say that was for the purpose of trying to negotiate
 17 the complete terms of the settlement agreement?
 18 A. Before we left the Charfoos office, Mr. Stefani was
 19 waving a document around that he indicated reflected
 20 what he had been drafting out of our sight in the back
 21 room during these discussions. So he indicated I have
 22 already prepared something in writing that I believe
 23 captures what it is we ought to be agreeing to based
 24 on what we've said here and what we've done here
 25 today, and he indicated he was going to go to his

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1 office and while we were getting a bite to eat, he was
2 going to try to get his secretary to come back into
3 the office, something to that effect, and essentially
4 work on typing up what he had drafted.
5 MR. ZUCKERMAN: Okay, we'll mark another
6 exhibit, please.
7 COURT REPORTER: This will be 6.
8 MR. ZUCKERMAN: Okay, No. 6.
9 MARKED BY THE REPORTER:
10 DEPOSITION EXHIBIT NUMBER 6
11 12:43 p.m.
12 BY MR. ZUCKERMAN:
13 Q. This is FREEP 561 through and including 569, and I'm
14 going to direct your attention to page 565 through
15 569 --
16 A. Yes.
17 Q. -- and have you take a look at it, and then we can
18 talk about it.
19 A. 565.
20 MR. BEDROSIAN: I don't really care, but
21 how come I never get a document? I've been sitting
22 here like a potted plant. You know, I really don't
23 care, I know what the document is, but I don't even
24 want one, I just want to know why I don't ever get
25 one.

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1 MR. ZUCKERMAN: I just --
2 MR. BEDROSIAN: In all the years of my
3 practice -- and everybody knows everything, anyway, I
4 don't know what -- this is just...
5 MR. ZUCKERMAN: Here's your own personal
6 set.
7 MR. BEDROSIAN: Thank you very much.
8 MR. ZUCKERMAN: You're welcome.
9 MR. LIEDEL: Is it engraved?
10 MR. ZUCKERMAN: No. I'm used to handing
11 everything to the left.
12 MR. LIEDEL: Can I use you as a witness
13 when we finally get to trial in this case?
14 MR. ZUCKERMAN: That will not happen again.
15 MR. BEDROSIAN: Okay.
16 A. Okay, I've reviewed it.
17 BY MR. ZUCKERMAN:
18 Q. Okay. Mr. McCargo, do -- is 565 through and including
19 569 the -- the handwritten document from Mr. Stefani
20 that you've just testified about?
21 A. It appears to be, yes, I cannot verify it, but it does
22 appear to be.
23 Q. Okay. You notice that there's a lot -- would you like
24 to, you know, amend your answer at all?
25 A. Well, yes, it was yellow.

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1 Q. Ah.
2 A. It was on yellow paper.
3 Q. All right. You'll notice there's a lot of crossouts,
4 interlineations, changes?
5 A. Yes.
6 Q. Okay. Can you go through here and tell me if any of
7 those are in your handwriting?
8 A. Some of them are.
9 Q. Okay. Starting at 565, can you tell me which are,
10 which changes, crossouts, interlineations are yours?
11 A. On the first page, in No. 1, there's a rep -- there's
12 a term "destroy" there that's been crossed out. And
13 the term "surrender" and "designated by," those two
14 terms right there are my handwriting. To -- in the
15 left-hand-margin. They both apply to that same
16 section.
17 Q. Can you tell me why you changed the word destroy to
18 surrender?
19 MR. LIEDEL: You know, same objections as
20 to -- you're asking for his thought process in working
21 on a settlement document, apparently, and it's
22 certainly not relevant to the final documents created.
23 MR. THOMAS: Well, I'll agree in that it's
24 thought process, and, therefore, it is work product
25 protected. Go ahead.

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1 A. I was unwilling to participate in any document that
2 purported to require the destruction of the records
3 that are referenced here in No. 1.
4 BY MR. ZUCKERMAN:
5 Q. Why?
6 A. Because I did not believe that in the process of
7 settling the case, it is appropriate to provide for
8 the destruction of documents that have yet to be
9 examined to determine what their content is and what
10 the legal import is. I had not seen those documents,
11 did not know precisely what was in them, and I was
12 aware that it was going to be necessary to see them,
13 for someone to see them, to analyze them, and to
14 destroy them would have destroyed the ability to do
15 that.
16 Q. Anything else on this page that's your handwriting?
17 A. Yes. There is another arrow that points to the
18 left-hand-margin by a question that says, are there
19 any more records, SkyTel?
20 Q. Okay.
21 A. And that is a -- an inquiry by me as to whether or not
22 there were other sets or other copies of these
23 records.
24 Q. Was that some language you wanted inserted or was that
25 kind of a margin note to yourself?

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1 **A. It was a margin note, really, to myself.**
2 Q. Okay. Do you recognize anyone else's handwriting on
3 this page other than Mr. Stefani's?
4 **A. No. I do not.**
5 Q. Okay.
6 **A. And I cannot verify that the handwriting here is Mr.**
7 **Stefani's.**
8 Q. Okay, someone else might have written or printed the
9 initial document?
10 **A. That is correct.**
11 Q. Okay, and let's look at page 566.
12 **A. You missed one.**
13 Q. Oh, I'm sorry, I thought you were finished.
14 **A. At the very -- no, at the very bottom of the page,**
15 **there's a phrase "agents and investigators," that**
16 **appears to be my handwriting.**
17 Q. Okay. I got it, but was that an insert or a margin
18 note?
19 **A. I believe that's a margin note.**
20 Q. Okay.
21 **A. That's another note.**
22 Q. You just wanted to see if an agent or an investigator
23 might have had a set of discovery --
24 **A. Correct.**
25 Q. -- is that right?

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1 **A. That is correct.**
2 Q. Okay, 566, is there anything on this page that's in
3 your handwriting?
4 **A. Up at the very top, in parentheses but scratched out**
5 **is the phrase "specific amount must be set."**
6 Q. That's b-e, new word, s-e-t?
7 **A. Yes.**
8 Q. Okay.
9 **A. That's another note. And then at the bottom of that**
10 **paragraph, there is a phrase "amount for forfeiture of**
11 **settlement, 2666666."**
12 Q. Right.
13 **A. That appears to be my handwriting.**
14 Q. The number 2,666,666 is your handwriting?
15 **A. Right.**
16 Q. Okay. All right, then is it your handwriting that
17 crossed out the amount of settlement or something?
18 **A. It may have been -- it appears that there was a series**
19 **of notes, the specific amount and the amount for**
20 **forfeiture written in, and both are crossed out, and**
21 **there appears to be a number inserted.**
22 Q. Okay. And then anything else on this page in your
23 handwriting?
24 **A. There is at the bottom of the page "GB 3 mill." That**
25 **appears to be mine.**

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1 Q. Okay, and is that a margin note, or is that going to
2 be put in the agreement somewhere?
3 **A. Well, if you'll look to the right, you'll see 3**
4 **million on that line, so it may have been a margin**
5 **note or it may have been a specific amount that was**
6 **later put in on the line.**
7 Q. Did you put that \$3 million figure in the paragraph,
8 itself, on page 566?
9 **A. I don't -- I'm not sure what you're asking.**
10 Q. Well, you've indicated to the left, GB 3 million is
11 you, but there's a -- looks like a 3 million -- the
12 number 3 million appears to be written into the
13 paragraph itself, and I was asking if the number 3
14 million is in your handwriting?
15 **A. The number 3 million appears to be in my**
16 **handwriting -- both of those 3s appear to be my 3s,**
17 **and one 3 is inside a bracket.**
18 Q. Yes.
19 **A. So I would need to see the original document, but if**
20 **the document were revised, it was -- apparently, the**
21 **intent of this was to identify that number as the**
22 **number that would go in that paragraph no matter how**
23 **the paragraph was rewritten.**
24 Q. Okay. Turn to 567. There's nothing interlineated or
25 changed on that page, is there?

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1 **A. No.**
2 Q. Okay, and that has to do with Ms. Beatty?
3 **A. Correct.**
4 Q. Okay. 56 --
5 **A. This page kind of standing here all by itself.**
6 Q. Right. It's just one by -- it says 3D, one, two,
7 three, four, five, six, seven lines?
8 **A. Right.**
9 Q. And then the rest is blank?
10 **A. Right.**
11 Q. Okay, is that how you remember the page?
12 **A. I'm not sure if that's how I remember the page, but I**
13 **remember the concept of this coming up that evening**
14 **and I think that was the first time it came up and it**
15 **was a -- isolated --**
16 Q. Okay.
17 **A. -- in some fashion like this.**
18 Q. Okay. Are you saying that this was -- this page 567
19 was put into this document after the -- after Stefani
20 had printed up the rest of the document?
21 **A. I do.**
22 MR. MORGANROTH: Objection as to form.
23 **A. I do not know the answer to that.**
24 **BY MR. ZUCKERMAN:**
25 Q. Okay.

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1 A. All I'm saying is that if you look at the pages, they
2 don't flow. 3D is here all by itself, there's a
3 significant amount of paper space, and then 4 picks up
4 over here. I don't know what was happening with the
5 person or persons who were doing the original
6 drafting. I just know that this matter with Christine
7 Beatty, as I recall it, the first time I recall
8 discussing it was at his office, and it was as it is
9 here on this one page all by itself.

10 Q. Okay. Let me just ask you, the first time you saw
11 this document, these handwritten notes, was at
12 Stefani's office or before?

13 A. No, I saw it -- I recall Mr. Stefani when we were
14 leaving showing --

15 Q. Ah, okay.

16 A. -- this document saying -- and he was saying I've been
17 in the back room working on something, and here it is,
18 I've got it already written, I'm going to go and get
19 it typed. So I don't recall editing it or changing it
20 at Charfoos. I remember looking at it in detail
21 at -- at Mr. Stefani's office.

22 Q. Okay, is it -- is it correct -- strike that.
23 Page 567, do you think that was added at
24 Stefani's office, kind of inserted at Stefani's
25 office, as opposed to being part of the document he

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1 was -- he had at Charfoos' office?
2 MR. MORGANROTH: Objection as to form and
3 foundation.

4 A. I didn't know.

5 BY MR. ZUCKERMAN:

6 Q. Okay, he said he didn't know. Okay, page 568, is
7 there anything on here that's in your handwriting?

8 A. Yes. In the very first paragraph, that little symbol
9 that represents plaintiffs --

10 Q. Ah, okay.

11 A. -- is mine, and the Fluker paragraph, that's out.

12 Q. Yes.

13 A. I don't know that that's my line across it, but it
14 looks like it may be my word out there in the margin.

15 Q. Okay.

16 A. At the very bottom, the word -- the terms "inclusive
17 of interest," that looks like it may be my
18 handwriting.

19 Q. Ah, okay.

20 A. Okay?

21 Q. Three lines up from the bottom?

22 A. Right.

23 Q. Okay.

24 A. And "lump sum" in the bottom, left-hand corner may be
25 my writing.

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1 Q. Okay.

2 A. Looks like that's just a note of some kind.

3 Q. And then on 569, is there anything there that's in
4 your handwriting?

5 A. No.

6 Q. Okay. Do you see on paragraph No. 8 --

7 A. Yes.

8 Q. -- do you see there's an insertion "the monetary terms
9 of this settlement?"

10 A. Yes.

11 Q. Okay, do you know who put that there?

12 A. No.

13 Q. Do you know when it was put there?

14 A. No.

15 Q. Do you know why it was put there?

16 A. No.

17 Q. Okay. Is it fair to assume -- strike that.
18 Do you have any recollection of whether
19 that was there the first time you received a copy of
20 this document?

21 A. I don't -- I don't recall. It may have been, but I
22 just don't recall.

23 Q. When you were at Mr. Stefani's office going over this,
24 eventually, the three of you were there, yourself,
25 Ms. Osamuede and Mr. Copeland?

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1 A. Yes.

2 Q. Okay, and did you -- did you meet in one of his -- in
3 one of his conference rooms in order to discuss this
4 particular document?

5 A. I don't know that he has more than one conference
6 room.

7 Q. Oh, you're right.

8 A. We were all in that one conference room with the bears
9 and the dogs and the whatnot.

10 Q. Okay. Was there a conversation between the three of
11 you and Mr. Stefani while you're in that one
12 conference room regarding this document?

13 A. I would have to say yes, to the extent that we talked
14 about some of these items here and specifically to the
15 extent that we talked about the schedule, the approval
16 schedule in -- in 8.

17 Q. Okay, was there a discussion about the phrase "the
18 monetary terms of this settlement?"

19 A. No, I don't recall that.

20 Q. And --

21 A. There were discussions about the time frames.

22 Q. Okay.

23 A. They were very significant.

24 Q. Okay, what are the -- well, why don't we just have you
25 answer the next question, then it's 1:00, and we can

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1 break --
2 **A. Okay.**
3 Q. -- for lunch. What were the time frames and why were
4 they significant?
5 **A. Okay.**
6 Q. I guess that's two questions.
7 **A. Okay. This agreement, if you -- if you look at the**
8 **first page of it, the -- the original description of**
9 **the document was a settlement agreement proposal for**
10 **global resolution, the claims and several matters,**
11 **that's really what this was -- that's what this**
12 **document was, that's what we were -- we were talking**
13 **about at his office, this proposal for resolution.**
14 **In order to make this proposal a reality,**
15 **subsequent approvals had to occur. This paragraph 8**
16 **was designed to establish a schedule of approvals that**
17 **allowed for a valid and informed response to this, so**
18 **the very first individuals who had to approve it were**
19 **the plaintiffs. Two of them were local, so their time**
20 **period was very short.**
21 **One plaintiff, Mr. Harris, didn't live in**
22 **the Detroit area, so he was given a greater period of**
23 **time. The mayor was given a ten-day period of time.**
24 **The City originally had a 30-day period of time, but**
25 **the City's lawyers believed that the City would have**

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1 **to go through a series of committees and approvals**
2 **processes and that 30 days might not be long enough,**
3 **and so 45 days was established for the City.**
4 **The objective was to have everyone else**
5 **prove what they were -- prove -- conduct their**
6 **approvals, deliver those to the City, and then the**
7 **City would act after all the other approvals were**
8 **done. That's the way the agreement is drafted, and so**
9 **the time frames were very critical, they were tied to**
10 **the substantive approvals and what information had to**
11 **go to various parties for the party at the next level**
12 **to conduct their approval, and -- and the 45 days for**
13 **the City had to do with everyone's expectation at that**
14 **time that it might take up to 45 days for the process**
15 **of approval to make its way through the City and get**
16 **to a final approval.**
17 MR. ZUCKERMAN: Okay, do you want to break?
18 I mean I'm not going to finish in ten minutes.
19 MR. BEDROSIAN: Oh, I know that, get
20 your -- if you've got a subject that you --
21 MR. ZUCKERMAN: No.
22 MR. BEDROSIAN: -- or you think you're
23 finished with this one?
24 MR. ZUCKERMAN: I think I'm pretty finished
25 with this one for the time being.

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1 Okay. We're going to go off the record and
2 take a break for lunch.
3 VIDEO TECHNICIAN: Going off the record.
4 This marks the end of tape No. 2. The time is 12:59
5 and 55 seconds p.m.
6 (Recess taken at 12:59 p.m.)
7 (Back on the record at 1:54 p.m.)
8 VIDEO TECHNICIAN: We're back on the
9 record. This marks the beginning of tape No. 3, and
10 the time is 1:54 and 13 seconds p.m.
11 BY MR. ZUCKERMAN:
12 Q. Okay, Mr. McCargo, you're still under oath. Do you
13 understand that?
14 **A. I certainly do.**
15 Q. Okay. I want to go back a little bit. I want to
16 leave Mr. Stefani's office, go back in time a little
17 bit to the facilitation at the Charfoos office, okay?
18 **A. Yes.**
19 Q. You may or may not be aware of the fact that
20 Mr. Stefani gave a deposition in this case on
21 January 30, 2008; are you aware of that?
22 **A. I'm aware he gave a deposition under order from Judge**
23 **Colombo if that's the one you're referring to.**
24 Q. Yeah, it is. And you know, he was asked similar
25 questions about what went on at the facilitation,

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1 that's a statement on my part, I'm not asking you to
2 acknowledge that. And I want to ask if you agree or
3 disagree with the following things that Mr. Stefani
4 said.
5 MR. LIEDEL: Well, wait a second, I'm going
6 to object. It's inappropriate to ask a witness to
7 comment on another witness' testimony, and you know
8 that, Mr. Zuckerman.
9 MR. MORGANROTH: Same objection.
10 MR. LIEDEL: You can ask him a question in
11 terms of what this witness knows or, you know, what
12 his testimony would be, but it's not appropriate to
13 ask him to comment on another witness.
14 BY MR. ZUCKERMAN:
15 Q. Did you ask Mr. Stefani if he had filed the brief or
16 motion that he showed you?
17 **A. Yes.**
18 Q. Okay.
19 MR. MORGANROTH: Wait, I just want to
20 object to form. That's already been asked and
21 answered in this deposition today.
22 BY MR. ZUCKERMAN:
23 Q. Did you say to Mr. Stefani give -- give me, meaning
24 you, Mr. McCargo, some time?
25 **A. I may have.**

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1 Q. Okay. Did that mean give you, Mr. McCargo, some time
2 before Mr. Stefani would consider filing the motion
3 and/or brief?
4 **A. It meant two things. One, give me some time to**
5 **complete the process of investigating our authority to**
6 **negotiate an expanded facilitation topic and, of**
7 **course, to -- in order to do that, the prerequisite**
8 **would be to do so before filing any motion.**
9 Q. Did you tell Mr. Stefani, "Boy, I was lucky I got the
10 mayor right at the airport"?
11 **A. I don't know that I said that specifically. I did**
12 **tell him that I spoke to the mayor.**
13 Q. Okay. What did you say besides that that -- or what
14 did you say to the best of your recollection today?
15 **A. I don't recall saying anything further to Mr. Stefani**
16 **about that other than that -- I had reached the mayor**
17 **by phone or something to that effect.**
18 Q. Okay. Did you call him on your cell phone?
19 **A. Yes.**
20 Q. So you had his phone number?
21 **A. Yes.**
22 Q. Okay. And did you have a conversation with the mayor?
23 **A. Yes.**
24 Q. How long did it go?
25 **A. I don't recall.**

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1 Q. Was the subject matter the motion and brief that Mr.
2 Stefani had given you?
3 MR. MORGANROTH: Objection.
4 **A. That's privileged.**
5 MR. MORGANROTH: Objection.
6 BY MR. ZUCKERMAN:
7 Q. Okay. Did you tell the mayor about the content of the
8 motion and brief that Mr. Stefani had given you?
9 **A. Yes, I did.**
10 MR. MORGANROTH: Objection, privileged.
11 BY MR. ZUCKERMAN:
12 Q. Did you discuss anything else in that phone -- strike
13 that.
14 What did you discuss in the phone call with
15 the mayor?
16 **A. That's privileged.**
17 Q. Okay. After the phone call, what is the next thing
18 you said to Mr. Stefani?
19 **A. Nothing.**
20 MR. MORGANROTH: Objection as to
21 foundation.
22 BY MR. ZUCKERMAN:
23 Q. Is that when you said, "boy, I was lucky I got the
24 mayor right at the airport"?
25 MR. THOMAS: Objection, that assumes that

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1 he said that. He said previously he did not think he
2 said that.
3 BY MR. ZUCKERMAN:
4 Q. Okay, after you talked to the mayor, what is it you
5 told Mr. Stefani?
6 **A. I don't believe I told --**
7 MR. MORGANROTH: Objection as to
8 foundation.
9 **A. -- Mr. Stefani anything. I believe my conversation**
10 **was with the facilitator that passed the information I**
11 **gave to him along to Mr. Stefani; that's what I**
12 **recall.**
13 BY MR. ZUCKERMAN:
14 Q. All right, what did you tell the facilitator?
15 **A. I told the facilitator that I had been -- two things,**
16 **I told him it was my understanding that the City had**
17 **reached Mr. Johnson, that he was on his way and that I**
18 **had reached the mayor by phone.**
19 Q. Okay. Did you say anything else at all to the
20 facilitator about your conversation with the mayor
21 other than you had a conversation with the mayor?
22 **A. Not that I recall.**
23 Q. Okay. Okay. Just -- I don't like to hop around but
24 I'm going to have to. Just -- let's go back just to
25 get in context to this -- these handwritten notes

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1 because that's where we left off before lunch?
2 **A. Yes.**
3 Q. Okay.
4 MR. MORGANROTH: You're back on Exhibit 6?
5 MR. ZUCKERMAN: I'm back on whatever that
6 was. Was that No. 6?
7 MR. THOMAS: 6.
8 MR. ZUCKERMAN: 6, okay.
9 **A. Do you want me to have those in front of me?**
10 BY MR. ZUCKERMAN:
11 Q. Yeah, you can. There you go.
12 Just so the record's clear, Mr. McCargo,
13 and I'm sorry to hop back and forth like this, the
14 phone call that you testified that you made to the
15 mayor, did you make that phone call after you had
16 received the Stefani motion and -- and brief and after
17 you had looked at it?
18 **A. Yes.**
19 Q. Okay. At some point, did those handwritten notes get
20 reduced to writing or typing?
21 **A. Yes.**
22 Q. Okay. I'm going to show you No. 7.
23 MR. ZUCKERMAN: Here you go, George, so I
24 don't forget you.
25 MARKED BY THE REPORTER:

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1 DEPOSITION EXHIBIT NUMBER 7
2 2:01 p.m.
3 MR. LIEDEL: Have -- have you marked this
4 as an exhibit?
5 MR. ZUCKERMAN: This is No. 7.
6 MR. GOODMAN: I don't have one. Do you
7 have an extra one?
8 BY MR. ZUCKERMAN:
9 Q. Okay. Tale -- would you take a look at that document?
10 It's labeled "Settlement Agreement," and it's FREEP
11 370 through 373.
12 **A. Okay.**
13 Q. Okay. Without a word-for-word comparison, is
14 Exhibit 7, as best as you can tell by the time it took
15 you to look through this, the typed up version of
16 Exhibit 6?
17 **A. It appears to be, if I notice any discrepancies I'll**
18 **point them out, but from what I see right now, it**
19 **appears to be.**
20 Q. Okay. And do you know -- if you turn to page 372
21 which is page 3 of the settlement agreement.
22 **A. Yes.**
23 Q. Okay. Do you know when the mayor signed this?
24 **A. Excuse me?**
25 Q. Do you know when --

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1 **A. There's no signature of the mayor on this.**
2 Q. I'm sorry I can't read -- I can't read the
3 handwriting. Who signed for the mayor?
4 **A. I did.**
5 Q. Okay. And that's your signature where it says "by"?
6 **A. Yes.**
7 Q. When did you sign it?
8 **A. October 17th.**
9 Q. Okay. And under your signature is that of Ms.
10 Osamuade?
11 **A. Correct.**
12 Q. And were you there when she signed it?
13 **A. I believe so.**
14 Q. Okay. On the 17th?
15 **A. Yes.**
16 Q. And then under the City of Detroit, her signature, Ms.
17 Osamuade's signature is by the "by"?
18 **A. Yes.**
19 Q. Okay. And that was signed on the 17th?
20 **A. I believe so, yes.**
21 Q. All right. Whose signature is under hers?
22 **A. Wilson Copeland.**
23 Q. Okay, and you recognize his signature?
24 **A. Yes.**
25 Q. Okay, and did he sign on the 17th?

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1 **A. I believe so, yes.**
2 Q. Okay, and then on the -- page 373 which is page 4, the
3 first signature under Stefani & Stefani Professional
4 Corporation appears to be Mike Stefani's signature.
5 Were you there when he signed it?
6 **A. Yes.**
7 Q. Okay, and then do you know who the "and" is under
8 there?
9 **A. No.**
10 Q. Okay. The page 8 -- I'm sorry, paragraph 8 on page 3
11 contains the time frame of the approvals that you
12 previously discussed this morning; is that correct?
13 **A. Yes.**
14 Q. Okay. And there -- if you take a look at that, that's
15 the same kind of timeline that -- is that the same
16 timeline as you discussed this morning or is that a
17 slightly changed timeline?
18 **A. This appears to be the same timeline.**
19 Q. Okay. Do you see at the first sentence, it says, "As
20 a condition precedent to this agreement becoming
21 operative, the monetary terms of this settlement must
22 be approved by Gary Brown, Harold Nelthrope, Walter
23 Harris, Mayor Kwame Kilpatrick, and the City Council
24 of the City of Detroit"; do you see that?
25 **A. Yes.**

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1 Q. Okay. Are there other conditions precedent or terms
2 of this agreement other than monetary terms?
3 **A. The conditions precedent, as I understand it, are**
4 **those stated right here in paragraph 8. The**
5 **agreement, itself, was a proposed settlement**
6 **agreement, and, therefore, all of the terms of the**
7 **agreement ultimately had to be approved by all parties**
8 **in order to execute the series of documents that were**
9 **contemplated by this document.**
10 Q. Okay. Did -- did you consider this the settlement
11 agreement of this case?
12 **A. No.**
13 Q. Why --
14 **A. I considered this the proposed settlement agreement as**
15 **the original document stated and as it is described in**
16 **the companion escrow agreement.**
17 Q. Well, we'll get to that. But this document doesn't
18 say anywhere, does it, that it's proposed or a draft
19 or anything like that. If it does, could you point
20 that phrase or word to me?
21 **A. The language proposed was in the original caption to**
22 **the handwritten notes of Mr. Stefani. It says,**
23 **"proposal for global resolution of claims in several**
24 **matters". Now that language was stricken. I don't**
25 **know who struck it or why, but that original title was**

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1 the description of the document, not only in terms of
2 the technical contents but of the intent of the
3 document, coupled with paragraph 18, which was an
4 opting procedure, which said that it had to be
5 approved before it became operative, so my
6 understanding of this document was that this was a
7 proposed settlement agreement.

8 Q. But you'll agree with me that word is nowhere in here?
9 A. It is not in the final, signed document.

10 Q. Okay. In addition to the monetary terms, there are
11 terms or conditions or whatever you want to call them
12 in paragraphs 1, 2, and 3; is that -- is that correct?
13 A. Yes.

14 Q. Okay. The paragraph 1 basically says that Stefani &
15 Stefani will, for itself and its employees and
16 shareholders, agree to transfer ownership of and
17 surrender to any (sic) attorney designated by the
18 mayor and the City all records, originals, copies of
19 text messages from SkyTel Messaging for the pager
20 leased by the City of Detroit and issued to Christine
21 Beatty for the period of September 2nd -- September
22 through October 2002 and April through May 2003.
23 Do you see that?
24 A. There was one area of reading you said any attorney,
25 and that's not the --

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1 Q. An? An attorney?
2 A. Yes, yes.

3 Q. Okay. The guide notes speak for itself, but thank
4 you. Why would this not be a term that had to be
5 disclosed to and approved by the City of Detroit?
6 MR. LIEDEL: You know, I'm going to object
7 as to relevancy. We're here with respect to this
8 settlement agreement. In terms of his interpretation
9 of it or other matters, I think it's covered by the
10 work product privileges.
11 MR. ZUCKERMAN: Well --
12 MR. LIEDEL: And it's not -- certainly not
13 relevant to the issues left here. It may be of
14 interest, but it's not relevant.
15 MR. ZUCKERMAN: Could you read the question
16 back, please?
17 (The requested portion of the record was
18 read by the reporter at 2:10 p.m.)
19 A. I had no reason to believe that this document
20 prohibited disclosure of this term, this -- the -- the
21 document, itself, does not prohibit disclosure of any
22 content in this document, so anything in here could
23 have been disclosed to anyone. There is nothing in
24 this document that prohibits disclosure of the content
25 of this document to anyone.

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1 BY MR. ZUCKERMAN:
2 Q. But it is the disclosure -- I'm sorry -- the terms in
3 paragraph 1 is not a condition precedent that requires
4 the approval of the City of Detroit, is it?
5 A. That's a different question. You asked --
6 Q. Okay, that's --
7 A. -- me --
8 Q. -- a different question. That is a different
9 question.
10 A. There is no specific language in here requiring that
11 this be approved by the City of Detroit. That's
12 different than was it free to disclose it to the City
13 of Detroit.
14 Q. Do you know whose idea it was to limit the conditions
15 precedent that required City of Detroit approval to
16 the monetary terms of the settlement only?
17 A. I do not. It's not my handwriting, and I do not know
18 whose handwriting that is.
19 Q. Okay. Was the only thing left to do with this
20 settlement agreement as of October 17th to have the
21 various parties listed in paragraph 8 approve it?
22 A. No.
23 Q. Okay, what -- what needed to be done other than having
24 the people in paragraph 8 approve the document?
25 A. The document outlines a specific set of supplementary

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1 agreements that have to be executed in connection with
2 and as a part of this. If you go through this
3 document, there may be as many as six to eight
4 different agreements that must be executed in order
5 for this -- this quality of settlement terms to become
6 operative. I'd be happy to go through them if you
7 want me to.
8 Q. No, I -- I take your answer.
9 A. Okay.
10 Q. Okay. Could this -- could the Brown and Nelthrope
11 case have been settled without the inclusion of
12 paragraph 1 of this settlement agreement?
13 MR. MORGANROTH: Foundation.
14 MR. THOMAS: Objection, foundation.
15 MR. LIEDEL: The same relevancy objection.
16 A. I cannot speak for the plaintiffs. I have no idea
17 what was in their thinking. I can tell you that it
18 could have been settled from my perspective without
19 that language in there.
20 BY MR. ZUCKERMAN:
21 Q. So the ownership and transfer of SkyTel Messengers --
22 of messaging -- text messaging -- or from or to
23 Christine Beatty's pager at -- for the dates indicated
24 in paragraph 1, this case could have been settled
25 without any of those things being turned over; is that

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1 right?

2 **A. Ultimately.**

3 MR. MORGANROTH: Objection -- objection as

4 to form.

5 **A. The essence of this case could have been settled**

6 **without that. As I have said on many occasions, and I**

7 **repeat again, this case could have and should have**

8 **been settled on dollar amounts alone, because the**

9 **defendants were essentially with their backs against**

10 **the wall in terms of any possibility of success on**

11 **appeal. The dollar amounts established by way of**

12 **verdict were not going to change. There was going to**

13 **be no reduction in the exposure that the defendants**

14 **face, and in addition to which on the attorney fees**

15 **issue, we had done an analysis of the attorney fees**

16 **claims by the plaintiff, and we were only able to**

17 **identify about a hundred thousand dollars of the**

18 **attorney fee claim that we could challenge.**

19 So we were facing a situation where going

20 to the judge would not have changed the dollar amount.

21 Even if we litigated the attorney fee issue, a

22 hundred, maybe \$200,000 would have been shaved off and

23 we still would have had a verdict, a judgment, and

24 actual exposure in these amounts that you see here.

25 If you're asking me, in terms of my

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1 representation of my client, could I have agreed at

2 this point to settle this case without putting in

3 place protection of my client's right to get access to

4 these documents and to get new counsel involved to

5 represent him, and to do that in a way that was --

6 that I was obligated to do as I understand my

7 professional obligations, no, I could not have done

8 that and lived up to my professional obligations. But

9 in terms of the substance of this case, the dollar

10 amounts were a whole other issue.

11 **BY MR. ZUCKERMAN:**

12 Q. Well, can you explain what you mean by that, about not

13 living up to your professional obligations and why

14 another lawyer was necessary?

15 **A. I certainly can.**

16 MR. LIEDEL: Can I have a continuing

17 relevancy objection as to this whole line of

18 questions?

19 MR. ZUCKERMAN: Well, I don't know where

20 the question's going to stop, so at some point --

21 MR. THOMAS: All right, so then, you know,

22 let me at least chime in. We are into attorney-client

23 conversations with the potential that we may be

24 disclosing fact -- have privilege exposure.

25 MR. ZUCKERMAN: Well, I asked Mr. McCargo

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1 what he meant by words he used so...

2 MR. THOMAS: If it includes anything

3 relating to the trail of attorney-client relationship,

4 confidences that were given to him within that

5 relationship, then I suggest that they're not proper

6 questions.

7 **A. I am first responding to your question only as to the**

8 **Brown case, because I was not involved in the Harris**

9 **case even though Harris was a significant factor, I**

10 **understand, in the City's interest in settling these**

11 **cases.**

12 But as to the Brown case, I reached the

13 conclusion in my own professional judgment that by the

14 end of the day on October the 17th, I did not believe

15 that I could effectively and aggressively represent my

16 client in a way that the client was entitled to be

17 represented under the rules. I felt that my

18 effectiveness had been compromised. I felt that going

19 forward, I would always be looking over my shoulder as

20 to whether or not I was putting myself into a

21 conflicted position with my client, and I did not

22 believe in my judgment that it was appropriate for me

23 to continue in that representation when I, as a

24 lawyer, believed that I did not possess the level of

25 effectiveness that the rules essentially required that

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1 **you have if you're going to represent a client.**

2 **BY MR. ZUCKERMAN:**

3 Q. Well, I tried to locate the rules to see what rules

4 you might be speaking of, because I think I've either

5 read or heard your discussion before, and did you

6 actually go get the rules of professional

7 responsibility to find out some rule, or are you just

8 going based on your understanding of what the rules

9 are?

10 **A. Based on my understanding of the rules.**

11 Q. Do you know of the rule 1.16, declining or terminating

12 representation?

13 **A. 1.16, yes.**

14 Q. Yes. Is that --

15 MR. BEDROSIAN: You're not getting into

16 ethics, are you?

17 THE WITNESS: That's exactly what that is.

18 **BY MR. ZUCKERMAN:**

19 Q. Right. Well, I'm -- is that one of the rules that you

20 were thinking about at the time you decided the rules

21 required you or necessitated you or counseled you to

22 withdraw?

23 MR. BEDROSIAN: Why don't we leave that

24 area for down on, you know, where everybody's going to

25 end up, anyway.

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1 MR. ZUCKERMAN: Ah.
2 MR. THOMAS: In front of Judge Colombo, you
3 mean? Because there's a privilege issue there, and
4 you're going to have him testifying as to his
5 clients, relating to communications that he might have
6 had with his client, and then his testimony is as to
7 the -- his client.
8 MR. ZUCKERMAN: If privilege needs to be
9 asserted, it can be asserted.
10 MR. BEDROSIAN: He has a familiarity with
11 the rules of professional conduct. He obeys them, he
12 understands them, and he knows them very, very well.
13 You're going to waste about 20 minutes convincing
14 yourself that he knows the rules and knew them long
15 before anyone around this table. For the past 25
16 years, he's been lecturing on the rules. He knows the
17 rules of professional conduct.
18 MR. ZUCKERMAN: I don't doubt that for a
19 minute, I don't doubt it except he said the rules, and
20 I'm trying to see what rules he had in mind, and I
21 only have two that I've been able to find, which is
22 1.16 and 3.3, and I just wanted to know if those are
23 the rules he had in mind when he testified about the
24 rules.
25 **A. I did not reference a specific rule, I did not**

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1 **research a rule as Mr. Bedrosian has indicated, I have**
2 **a general, and had a general working knowledge of the**
3 **rules as of October 17th. It was my understanding**
4 **that one of the optional provisions for withdrawing**
5 **from representation would be, in this instance, the**
6 **loss of effectiveness, at least in the lawyer's**
7 **opinion, in representing the client.**
8 MR. ZUCKERMAN: Okay.
9 BY MR. ZUCKERMAN:
10 Q. I'm going to show you another exhibit, No. 8.
11 MARKED BY THE REPORTER:
12 DEPOSITION EXHIBIT NUMBER 8
13 2:19 p.m.
14 BY MR. ZUCKERMAN:
15 Q. And you can tell me when you're finished reading this.
16 **A. I'm done.**
17 Q. Okay, have you ever seen this before?
18 **A. Yes.**
19 Q. You have. Do you know when the first time it is that
20 you saw this?
21 **A. Sometime around the time that this lawsuit was filed.**
22 Q. Okay. Just for the record, this is an October 19th,
23 2000, letter from the Free Press to Ellen Ha, H-a, of
24 the City Law Department, and it's a Freedom of
25 Information Act Request, it's FREEP 488. Did you see

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1 this? When you say when this lawsuit was filed, do
2 you have any recollection of when -- what -- what date
3 that was?
4 **A. I -- my understanding is sometime in January of 2008.**
5 Q. Okay. It's dated October 19th, which is two days
6 after Exhibit 7 is dated, which is October 17th; is
7 that correct?
8 **A. Correct.**
9 Q. Did anyone on or about October 19th or soon thereafter
10 tell you about the existence of this Free Press FOIA
11 request?
12 **A. No.**
13 Q. Okay, and so you never heard about it or saw about it
14 until the time you just testified?
15 **A. Correct.**
16 Q. Okay. I'll show you another exhibit.
17 MARKED BY THE REPORTER:
18 DEPOSITION EXHIBIT NUMBER 9
19 2:22 p.m.
20 MR. ZUCKERMAN: This is 9.
21 BY MR. ZUCKERMAN:
22 Q. Okay. Tell me when you've finished reading it.
23 **A. I've read it.**
24 Q. Okay. Have you seen this document before?
25 **A. Yes.**

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1 Q. All right, this is October 27th, 2007, FREEP 375.
2 It -- it's styled as a pleading, but it's a notice of
3 rejection of proposed settlement terms arising out of
4 October 17th, 2000, facilitation; do you see that?
5 **A. Yes.**
6 Q. Okay. Was this document filed in a court?
7 **A. No.**
8 Q. Was it exchanged between lawyers?
9 **A. Yes.**
10 Q. Okay. Did -- who typed it --
11 MR. MORGANROTH: Objection as to
12 foundation.
13 **A. I don't know.**
14 BY MR. ZUCKERMAN:
15 Q. Okay. When is the first time you saw this?
16 **A. This was prepared in my office. I just don't know who**
17 **typed it.**
18 Q. Ah, okay.
19 **A. And so it was reviewed by me sometime very close to**
20 **when it was actually typed.**
21 Q. Okay. And then did you send it to Mr. Stefani in some
22 way?
23 **A. I delivered it to Mr. Stefani.**
24 Q. Okay, personally?
25 **A. Yes.**

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1 Q. At his office?
2 A. No.
3 Q. At his home?
4 A. No.
5 Q. Where?
6 A. At Mr. Copeland's office.
7 Q. Okay. And was it delivered on the date of October
8 27th?
9 A. No.
10 Q. When was it delivered?
11 A. December 5th.
12 Q. Why the delay?
13 A. You want all of the reasons? Because there's a series
14 of factors that caused the delay.
15 MR. MORGANROTH: Before you start, I'm
16 going to assert the privilege at this point.
17 MR. THOMAS: And to the extent it
18 applies --
19 BY MR. ZUCKERMAN:
20 Q. Yeah, I understand that. Go ahead to the extent --
21 you know, be mindful of the privilege as I'm sure you
22 are.
23 A. The Court had originally established a November 2,
24 2007, hearing date on Mr. Stefani's motion for
25 attorney fees. That was the outside parameter in

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1 which we were operating to bring closure to these
2 facilitation and settlement procedure. That was the
3 original date the Court set.
4 So the idea was to try to get all of these
5 matters resolved prior to November 2, so we didn't
6 have to go back into court for another hearing.
7 Mr. Stefani's first initiation of a series of
8 documents to review as part and parcel of the list of
9 the documents that had to be created from the October
10 17th proposed settlement agreement was about the 26th
11 of -- of September -- October, I'm sorry.
12 The documents were not completed before
13 various parties began the process of either leaving
14 town or they became ill. The November 2 date was
15 extended, because it was expected that it would take
16 30 to 45 days for the City to complete its approval
17 processes. So the pressure of the November 2 date was
18 taken off when it was extended by the Court, but
19 thereafter, the notion of being able to close this
20 matter the first week of November fell.
21 The second week of November, Valerie
22 Colbert-Osamuede became ill and she was out for
23 approximately eight or nine days. Also, during the
24 first few days of November, I advised Mr. Stefani that
25 it was my understanding, my client was going to be out

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1 of town on November the 1st and for some time
2 thereafter. Ms. Valerie Colbert-Osamuede did not
3 return from her illness until November the 13th.
4 On November the 15th, I went to Florida on
5 vacation for approximately ten days. I did not return
6 from vacation until November 26th or the 27th. As a
7 result of that, notwithstanding the fact that Mr.
8 Stefani's clients had signed several of the settlement
9 documents, it was physically impossible to get
10 everyone together before the first week in December of
11 2007.
12 Q. And that's why the October 17th, the terms of the
13 October 17th agreement as referenced in Exhibit 7 was
14 rejected by the mayor on October 27th?
15 A. I thought your question was --
16 Q. Why did the --
17 A. -- why was it delivered --
18 Q. Ah.
19 A. -- why was it not delivered --
20 Q. Okay.
21 A. -- until December the 5th.
22 Q. I'm sorry, okay. And it was rejected solely for the
23 reasons expressed in this Exhibit 9?
24 A. That's privileged.
25 Q. Okay. Was there any discussion with Mr. Stefani about

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1 Exhibit 9?
2 A. Not the specific exhibit but about the rejection.
3 Q. Did you have those discussions?
4 A. Yes.
5 Q. What did you tell him?
6 A. It was rejected.
7 Q. Did he ask why?
8 A. I don't recall if he asked why as much as he asked,
9 well, what are we going to do?
10 Q. Okay, and what did you tell him?
11 A. I told him we can proceed to put together documents
12 that will satisfy all of the parties, notwithstanding
13 the rejection.
14 Q. And did he ask what documents you mean?
15 A. I'm not sure that he asked what documents I meant as
16 much as he had already sent the documents, and it was
17 a question of restructuring or revising documents that
18 he had already sent --
19 Q. Did you --
20 A. -- so we were working from a package of documents he
21 had sent.
22 Q. Did you tell him how those documents had to be
23 restructured or revised?
24 A. We negotiated that, there was no hard and fast set way
25 that they had to be restructured or revised. He and I

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1 discussed the methodology to revise them so as to meet
2 all of the conditions outlined in this settlement
3 agreement and, yet, still bring closure to these
4 matters.
5 Q. Okay. To the best of your recollection, what was --
6 what were the terms being negotiated such that the
7 settlement would be acceptable to all parties? What
8 specific things were being done?
9 MR. THOMAS: Objection as it relates to
10 privilege --
11 MR. ZUCKERMAN: I've only --
12 MR. THOMAS: -- when you say acceptable to
13 all the parties.
14 BY MR. ZUCKERMAN:
15 Q. What was being done such that the -- there would be a
16 settlement agreement signed by all the parties? That
17 was the goal, wasn't it?
18 MR. THOMAS: Well, that's the same question
19 in a different fashion. There's still a privilege
20 involved.
21 MR. MORGANROTH: Objection as to
22 foundation.
23 MR. LIEDEL: There's also a work product
24 privilege, I think.
25 BY MR. ZUCKERMAN:

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1 Q. You're talking to Mr. Stefani, aren't you, about how
2 to make the documents acceptable to all the parties?
3 A. Correct.
4 Q. Okay.
5 A. Several documents.
6 Q. Several documents. Tell me the documents.
7 A. Brown/Nelthrope settlement agreement. Harris
8 settlement agreement. Allocation letter. Beatty
9 settlement of Fifth Third Bank issue. Exchange of
10 documents with the plaintiffs, Nelthrope and Brown.
11 Those were the ones we were discussing with
12 Mr. Stefani, there were others that I understood
13 Mr. Stefani was discussing with either his staff or
14 the plaintiffs that we were not privy to.
15 Q. Okay. I'll hand you another exhibit.
16 MARKED BY THE REPORTER:
17 DEPOSITION EXHIBIT NUMBER 10
18 2:32 p.m.
19 MR. ZUCKERMAN: This is No. 9.
20 COURT REPORTER: 10.
21 MR. ZUCKERMAN: 10, okay. I'm also going
22 to hand you No. 11 at the same time. And 12.
23 MARKED BY THE REPORTER:
24 DEPOSITION EXHIBIT NUMBERS 11-12
25 2:33 p.m.

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1 MR. THOMAS: This escrow agreement is No.
2 11 or 12?
3 MR. ZUCKERMAN: The escrow is 11 and the
4 supplement is 12. Well, they're out of order, but
5 okay, and one more which will be 13. I'm sorry, you
6 don't have one.
7 THE WITNESS: I don't have a 13. George
8 has one.
9 MR. ZUCKERMAN: I need a 13 back. I
10 thought I gave you one.
11 MARKED BY THE REPORTER:
12 DEPOSITION EXHIBIT NUMBER 13
13 2:34 p.m.
14 (Discussion off the record at 2:34 p.m.)
15 (Back on the record at 2:35 p.m.)
16 BY MR. ZUCKERMAN:
17 Q. Just take your time, if you like, to look through
18 them.
19 A. I've flipped through them.
20 Q. Okay.
21 A. If there --
22 Q. Can I go back to No. 9, the notice of rejection again,
23 please, with you?
24 A. Yes.
25 Q. This is just because it leads into other questions.

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1 This is dated October 27th, and when is the first time
2 it was delivered or disclosed to Mr. Stefani?
3 A. He was advised of it prior to November 1st for sure.
4 Q. Okay.
5 A. When it was actually delivered to him was December 5.
6 Its date is October 27th, which is the date the
7 proposed settlement agreement establishes as the due
8 date for the response of the mayor under subparagraph
9 8 of your Exhibit 7.
10 Q. Okay. Now, during the facilitation with
11 Mr. Washington and the meeting with Mr. Stefani
12 thereafter at his office and any discussions that you
13 had with Mr. Stefani through the time the mayor signed
14 this rejection, did you not have authority to engage
15 in what you've referred to as a global resolution of
16 the Brown/Nelthrope matter?
17 MR. MORGANROTH: Objection as to form.
18 A. I had no authority to settle Brown, Nelthrope, Harris,
19 or any matter that I was handling for my client.
20 BY MR. ZUCKERMAN:
21 Q. Did Mr. Johnson have that authority as far as you
22 know?
23 A. I do not know.
24 Q. Okay. What was Mr. -- as far as you know, what was
25 Mr. Johnson's purpose in coming to the facilitation?

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1 A. I knew --
2 MR. MORGANROTH: Objection as to form,
3 asked and answered.
4 A. As I indicated before, the facilitator wanted the
5 person with the control over the money to be at the
6 facilitation. Ms. Valerie Colbert-Osamuede had a
7 limited cap on her dollar settlement authority. Mr.
8 Johnson had some other level of authority, to what I
9 do not know, but I know that in -- as between the two
10 of them, there were different levels of economic
11 settlement authority that they had and that exists
12 within corporate counsel's office.
13 BY MR. ZUCKERMAN:
14 Q. Okay. And when Mr. -- did you tell Mr. Stefani prior
15 to November 1st that the September -- that the
16 settlement terms arising out of the October 17th
17 facilitation were rejected?
18 A. I believe I did.
19 Q. Okay. And that was in a phone call?
20 A. I believe so.
21 Q. Okay. And what was his reaction?
22 A. I don't specifically recall his reaction. I recall
23 that the discussions were that we needed to move ahead
24 with structuring documents that still allowed the
25 parties to consummate a settlement.

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1 Q. Okay. And then is it correct that Exhibits 11, 12,
2 I'm sorry, let me get these in order, Exhibits 10, 11,
3 12, and 13 are the documents that consummate the
4 settlement of the Brown, at least the Brown/Nelthrope
5 case?
6 A. You have to take me through them one at a time.
7 Q. Okay, 10 is the confidentiality agreement.
8 A. Confidentiality agreement was the separate matter with
9 the exchange of documents between the plaintiffs and
10 the individuals, the mayor, and Ms. Beatty.
11 Q. Okay. And 11 is an escrow agreement.
12 A. Escrow agreement is part and parcel of the
13 confidentiality agreement in that it, in fact, holds
14 the -- sets up a procedure to hold the records that
15 Mr. Stefani had in a safety deposit box during the
16 pendency of our completion of the settlement
17 prerequisites.
18 Q. Okay, 12 is a supplement to escrow.
19 A. That is a document designed to correct a problem that
20 arose by the bank. Originally, the bank had assured
21 the parties that the escrow arrangement was a dual
22 arrangement. In other words, a lockbox was being
23 prepared that it required both parties who were
24 lessees to be present to access the box.
25 The bank then later gave us notice that

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1 they did not have such a limitation and, therefore,
2 this document was executed to confirm what the
3 agreement of the parties was.
4 Q. And then Exhibit 13.
5 A. Exhibit 13 is the Brown/Nelthrope settlement agreement
6 which was sent by Mr. Stefani originally on June -- I
7 mean on October 26th and was the document for the
8 settlement of the Brown/Nelthrope case that we
9 negotiated.
10 Q. Okay. If you'll look at Exhibit 10, which is FREEP
11 361 through and including 369, this document is
12 effective November 1st?
13 A. That's the effective date in -- in the document, yes,
14 that's -- that was the date that was plugged in
15 consistent with what we have discussed previously, and
16 that is that the original target date for getting all
17 documents executed was November 1.
18 Q. Okay. And if you'd turn to page 9, do you recognize
19 the mayor's signature?
20 A. It appears to be his signature.
21 Q. Did he sign that in your presence?
22 A. Nope.
23 Q. How about Ms. Beatty, did she sign it in your
24 presence?
25 A. Nope.

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1 Q. Okay. Are these four documents, 10, 11, 12, and 13,
2 all of the settlement documents relating to the
3 Brown/Nelthrope case?
4 A. Settlement of the Brown/Nelthrope case is document
5 with your numbers 000496, it's Exhibit No. 13.
6 Q. Okay.
7 A. This is Brown/Nelthrope. The supplemental -- the
8 escrow agreement and the supplemental escrow agreement
9 is the resolution of the exchange of documents which
10 was a separate transaction between Brown, Nelthrope,
11 the mayor, and Beatty.
12 Q. And what about -- did you mention the confidentiality
13 agreement, No. 10?
14 A. That's what I'm referring to.
15 Q. Okay.
16 A. There are three documents here.
17 Q. Yes, I know. So 10, 11, and 12 are, in your words,
18 part of the settlement agreement or not part of the
19 settlement agreement?
20 A. Not part of -- not part of the Brown, Harris
21 settlement. They are separate documents that are not
22 interrelated or interdependent in any way.
23 Q. Okay. Is it true or not that the essence of at least
24 Exhibit 10 is discussed in Exhibit 7, which you
25 referred to as the proposed settlement agreement?

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1 MR. MORGANROTH: Objection as to form.
2 **A. The proposed settlement agreement, I think I used the**
3 **term a quilt. That is precisely what this is, and the**
4 **original document that described it said, "proposal**
5 **for global resolution of claims in several matters."**
6 **This document was a hodgepodge of issues being**
7 **resolved, coming off of, apparently, Mr. Stefani's**
8 **table. So seven listed several matters that were**
9 **being resolved that required different agreements for**
10 **different matters and different subagreements for some**
11 **of these matters. The information in the**
12 **confidentiality agreement and in the escrow agreement**
13 **are included and are -- constitute one of the**
14 **paragraphs in the hos -- in the quilt agreement from**
15 **October 17th.**
16 Q. Why isn't the confidentiality agreement, the escrow
17 agreement, and the supplemental agreement --
18 supplemental escrow agreement included in the
19 settlement agreement and general release which is
20 Exhibit 13?
21 **A. The confidentiality agreement, escrow agreement, and**
22 **supplement to the escrow agreement was a document**
23 **designed to resolve issues between parties who were**
24 **properly included in the decision-making regarding the**
25 **issues that were being resolved. Ms. Beatty was**

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1 involved in the release of her personal rights. Ms.
2 Beatty's rights could not be released by the City of
3 Detroit. The City of Detroit could not negotiate away
4 Ms. Beatty's rights. They were her personal, private
5 rights.
6 **The documents that represented Mr. Brown**
7 **and Mr. Nelthrope, the subject matter of which I**
8 **cannot discuss because there is not an order that**
9 **protects me from discussing the subject matter,**
10 **there's an order that protects Mr. Stefani, I cannot**
11 **tell you what's in those documents, but I can tell you**
12 **that those documents were of a personal and private**
13 **nature for Mr. Brown and Mr. Harris -- I mean**
14 **Nelthrope.**
15 **The issues with regard to those and the**
16 **issues that were driving the resolution on those**
17 **documents were not issues that the City could resolve**
18 **or should resolve. So what this document did was**
19 **separate out in a single document those matters that**
20 **the parties who were signatories to had the authority**
21 **to resolve by way of a single document.**
22 Q. Why would Ms. Beatty, who is not a party to this case,
23 be included in a settlement that involves a lawsuit
24 relating to the City?
25 MR. LIEDEL: You know, I'm going to object

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1 to the relevancy. I'm not getting anyplace.
2 BY MR. ZUCKERMAN:
3 Q. Do you understand what I'm saying? Ms. Beatty is
4 included in this settlement, and if she had -- and I
5 don't understand why she's in this settlement.
6 MR. MORGANROTH: I'm going to object as to
7 form.
8 BY MR. ZUCKERMAN:
9 Q. Can you explain that?
10 **A. That is precisely what I've just said --**
11 Q. Okay.
12 **A. -- to you. Let me see if I can't repeat it.**
13 Q. No, that's -- but that is the answer?
14 **A. If I did not make it clear, let me make it clear. Ms.**
15 **Beatty was not a party to the Brown/Harris --**
16 **Brown/Nelthrope litigation. However, a matter came up**
17 **in Brown/Nelthrope that adversely affected her**
18 **personally. It had both short- and long-term effect**
19 **on her. It created potential claims that she would**
20 **have against the plaintiffs and plaintiffs' attorney,**
21 **and even though it had some tangential impact on the**
22 **Brown/Nelthrope lawsuit, the rights that were involved**
23 **were Ms. Beatty's rights.**
24 **The City had no control or authority or**
25 **right to resolve her litigation rights and her claims.**

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1 **So she could not be included. In my judgment, it**
2 **would be inappropriate to include her in the**
3 **Brown/Nelthrope settlement.**
4 MR. ZUCKERMAN: Let -- can we take a
5 two-minute break, please?
6 VIDEO TECHNICIAN: Going off the record.
7 The time is 2:47 and 10 seconds p.m.
8 (Discussion off the record at 2:47 p.m.)
9 (Back on the record at 2:47 p.m.)
10 VIDEO TECHNICIAN: We are back on the
11 record. The time is 2:47 and 52 seconds p.m.
12 BY MR. ZUCKERMAN:
13 Q. Okay. If you will look at page 5 -- 365 of the
14 confidentiality agreement, in actuality, it probably
15 starts on -- I'm sorry to do this to you, it's -- it's
16 really paragraph 4 beginning on page 2 where I'm going
17 to talk to you about paragraph 4. If you'll look at
18 4A, B, C, D, E, F, I'll just tell you what I'm looking
19 at.
20 I'm looking at the liquidated damages
21 provisions that are contained in there, and I have
22 some questions about those.
23 **A. Okay.**
24 Q. So --
25 MR. LIEDEL: And for the record, again, I'm

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1 going to have a relevancy objection. You're asking
2 him to explain these documents away as opposed to
3 producing the documents so...

4 MR. ZUCKERMAN: I'm sorry, as opposed to
5 what?

6 MR. LIEDEL: As opposed to simply producing
7 the documents which is what a FOIA case is supposed to
8 be. You want interpretation of these documents, which
9 is not what FOIA was designed to do, and everybody on
10 that side of the table knows it.

11 MR. THOMAS: What about this side?

12 BY MR. ZUCKERMAN:

13 Q. Okay, look at 4B as it carries over to page 4, and it
14 says, last sentence of 4B, in the event that any
15 employee of S & S violates this provision, liquidated
16 damages to the City of Detroit in the amount of
17 two-million-six-six-six, etcetera, and such employee
18 shall, in turn, be liable for liquidated damages in
19 the same amount to S & S. Do you see that language?

20 **A. Yes, I do.**

21 Q. Okay, and then if you look at C, there's a similar
22 liquidated damages penalty amount in that paragraph,
23 although, not specified by a dollar amount?

24 MR. MORGANROTH: Objection as to form.

25 MR. ZUCKERMAN: Strike that.

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1 BY MR. ZUCKERMAN:

2 Q. That's a -- that's just a confidentiality agreement on
3 the terms. D is the liquidated damages paragraph; is
4 that right?

5 **A. Yes, as to Brown.**

6 Q. Right, and E is to Nelthrope?

7 **A. Right.**

8 Q. And F is to Harris, correct?

9 **A. Correct.**

10 Q. And basically, is it your understanding that what this
11 means is that if there are disclosures, that the
12 parties may be liable to pay liquidated damages?

13 **A. In part. This is one of those series of -- of**
14 **provisions that I mentioned to you earlier.**
15 **Apparently, what Mr. Stefani was doing was**
16 **establishing a stacked set of agreements, part of**
17 **which I had no involvement in. The import of that**
18 **language is to say that if the employees of**
19 **Mr. Stefani's office do something to cause**
20 **Mr. Stefani's office to have to pay liquidated**
21 **damages, those employees then got to pay Mr. Stefani.**

22 Q. Okay.

23 **A. It goes further then to put Mr. Brown and Mr.**
24 **Nelthrope in the same condition as Mr. Stefani's**
25 **employees, not as though they were his clients but as**

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1 **though they were his employees. The supplemental**
2 **agreement and this one contemplated that there would**
3 **be some additional agreements between Mr. Stefani's**
4 **office and his employees and Mr. Stefani and his**
5 **client to reconcile these stair-stepped or tiered**
6 **liquidated damage clauses, and -- so it's not simply a**
7 **liquidated damage clause, it's also a reconciliation**
8 **of rights between the law firm Stefani & Stefani and**
9 **those other individuals.**

10 Q. But the essence is that if there are breaches of
11 certain kinds, someone's got to pay some money to
12 somebody?

13 **A. Yes.**

14 Q. Okay.

15 MR. MORGANROTH: Objection as to form.

16 BY MR. ZUCKERMAN:

17 Q. And D, E, and F require that that money be paid to the
18 City?

19 **A. Correct.**

20 Q. And does this -- strike that.

21 If this agreement is for the benefit of
22 Ms. Beatty and it's Ms. Beatty's documents or at least
23 some of Ms. Beatty's documents that are sought to be
24 protected, why isn't Ms. Beatty getting the money?

25 **A. This is the way the document was structured as a**

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1 **third-party beneficiary agreement.**

2 Q. Well --

3 **A. If you're asking what was in the minds of all of the**
4 **parties, I can't tell you that. If you're asking me**
5 **what they said, that's privileged, but this is the way**
6 **the document was structured.**

7 Q. The money that's referenced in these paragraphs, isn't
8 that money that was being paid like, for example, in
9 4D, this is money paid to Mr. Brown by the City?

10 MR. MORGANROTH: Objection as to form.

11 **A. You're asking does 4D obligate Mr. -- obligate the**
12 **City to pay Mr. Brown money?**

13 BY MR. ZUCKERMAN:

14 Q. No, the liquidated damages of \$3 million, how does
15 that relate to the amount of the Brown settlement?

16 **A. Well, this is not the exact amount that Mr. Brown got**
17 **out of the settlement if that's what you're asking.**

18 Q. Do you remember what Mr. Brown got out of the
19 settlement?

20 **A. There's an allocation letter.**

21 Q. Okay.

22 **A. You probably have it.**

23 Q. Okay. And what about the \$2 million that
24 Mr. Nelthrope is required to pay?

25 **A. Again, that's not the exact amount that Mr. Nelthrope**

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1 got out of the settlement, either.
2 Q. And Mr. Harris the \$400,000?
3 A. That is the amount that Mr. Harris got out of the
4 settlement.
5 Q. So at least with respect to Mr. Harris, the \$400,000
6 that he might have to pay in liquidated damages really
7 looks like money he has to give back to the City under
8 certain circumstances?
9 A. I cannot comment on what it looks like. I can tell
10 you that it is a \$400,000 penalty provision that the
11 parties felt was sufficient penalty to prohibit the
12 violation of the contract that's involved here.
13 Q. Okay. And none of that money's going to go to Ms.
14 Beatty?
15 A. No.
16 MR. MORGANROTH: Objection as to form.
17 BY MR. ZUCKERMAN:
18 Q. Okay. Would you look at 13, which is the settlement
19 agreement and general release? Paragraph 11 on page 3
20 says, "Entire Agreement"; do you see that?
21 A. Yes.
22 Q. Is this the entire agreement relating to the
23 settlement of the litigation described in paragraph 2?
24 A. Yes.
25 Q. Okay. So you do not consider the confidentiality

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1 agreement, escrow agreement, and supplemental escrow
2 agreement to be settlement documents of the litigation
3 described in paragraph 2 of Exhibit 13?
4 A. Correct --
5 MR. MORGANROTH: Objection as to form,
6 asked and answered.
7 BY MR. ZUCKERMAN:
8 Q. Pardon? Your answer is?
9 A. Correct.
10 Q. Okay. I've just handed you another exhibit. This
11 will be 14.
12 MARKED BY THE REPORTER:
13 DEPOSITION EXHIBIT NUMBER 14
14 2:57 p.m.
15 BY MR. ZUCKERMAN:
16 Q. Have you read it?
17 A. Yes.
18 Q. Okay. This is a November 13th FOIA request from the
19 Detroit Free Press; do you see that?
20 A. Yes.
21 Q. When is the first time you saw this?
22 A. January 2008.
23 Q. Okay. When is the first time -- strike that.
24 Did you hear about this November 13th
25 request before you actually saw the document?

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1 A. I don't recall specifically. I may have. If you
2 remember, I indicated on the 15th of November I went
3 away on vacation, and I was gone for the rest of the
4 month, virtually the rest of the month of November,
5 came back on the 5th of December, and did the closing.
6 It is conceivable that I heard about this
7 Christmastime or just before the first of the year.
8 So it would have been late December, but I really
9 believe the first time I heard about it would have
10 been in January of '08.
11 Q. Okay, let me show you 15.
12 MARKED BY THE REPORTER:
13 DEPOSITION EXHIBIT NUMBER 15
14 2:59 p.m.
15 MR. LIEDEL: Do you have another one? I
16 think we're short one.
17 BY MR. ZUCKERMAN:
18 Q. 15 is FREEP 490 through 491, a December 7th, 2007,
19 letter to the Free Press from Ms. Ha, of the City Law
20 Department. Have you ever seen this before?
21 A. You know, I really don't remember seeing this. I may
22 have heard about it, but I don't recall actually
23 seeing this document.
24 Q. Okay. And did you discuss this with anyone?
25 MR. THOMAS: Privilege again.

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1 MR. ZUCKERMAN: Pardon?
2 MR. THOMAS: Privilege.
3 MR. ZUCKERMAN: I can ask if he discussed
4 it with someone, I --
5 MR. THOMAS: No --
6 MR. ZUCKERMAN: -- didn't ask the content.
7 MR. THOMAS: -- just a kindly reminder if
8 it exists.
9 MR. ZUCKERMAN: Did you say kindly or
10 timely?
11 MR. THOMAS: Kindly, I'm never timely.
12 A. Not the letter, but I did discuss the request.
13 BY MR. ZUCKERMAN:
14 Q. Okay, who did you discuss it with?
15 A. I believe I was interviewed by Ms. Ha, maybe Ms.
16 Osamuede.
17 Q. Anyone else that you recall?
18 A. I can't recall. I may have been interviewed by
19 Ms. McPhail.
20 Q. Okay. There was an earlier letter from Ms. Ha; did
21 you ever see that one?
22 A. Not that I recall.
23 Q. Okay.
24 A. No.
25 Q. This might be difficult, but in your response to our

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1 document request, you produced a series of e-mails?
2 **A. Yes.**
3 Q. Okay. If necessary, I'll mark them all, and I'll
4 offer them as exhibits, but do you recall whether any
5 of those e-mails discussed the two series of documents
6 that -- that you have described, the settlement
7 agreement of November 1st, which is Exhibit 13, and
8 the confidentiality agreement No. 10, the escrow
9 agreement, No. 11, and the supplemental escrow
10 agreement No. 12?
11 **A. Yes.**
12 Q. Well, I'm in particular curious as to whether there
13 are any e-mails discussing just Exhibits 11, 12,
14 and -- 10, 11, and 12, the confidentiality agreement,
15 escrow agreement, and supplemental agreement?
16 MR. LIEDEL: I'm sorry, I don't understand
17 the question. Is the question that do any of his
18 e-mails discuss these? Is that what the --
19 MR. ZUCKERMAN: That's what I thought the
20 question was. Now, only the e-mails he produced to
21 me. And I can go through every one of them and see.
22 **BY MR. ZUCKERMAN:**
23 Q. Do you have any independent recollection of the
24 e-mails discussing those three agreements as opposed
25 to the settlement agreement, itself?

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1 **A. What I recall is that Mr. Stefani and I exchanged**
2 **documents back and forth by e-mail. I do not recall**
3 **if every e-mail specifically referenced in detail**
4 **every document that we were talking about, and that's**
5 **why I'm -- I can't say specifically whether it**
6 **actually referenced this document, but I do know that**
7 **sometime around November 1, there were communications**
8 **with Mr. Stefani about executing the documents and a**
9 **closed -- and a closing, and I believe around about**
10 **that time, these documents were also in -- in the**
11 **scope of the things he and I was (sic) talking about.**
12 **BY MR. ZUCKERMAN:**
13 Q. I guess the question is really this: Was there any
14 understanding that the Exhibits 10, 11, and 12 would
15 not be discussed in an e-mail?
16 **A. You have to help me with that.**
17 Q. Okay. Was -- Exhibit 10 is a confidentiality
18 agreement, Exhibit 11 is the escrow, and Exhibit 12 is
19 the supplement to escrow?
20 **A. Yes.**
21 Q. Was there ever any understanding that you are aware of
22 where the existence of those three documents would not
23 be discussed in e-mails?
24 **A. No. Let -- as to the escrow agreements, the escrow**
25 **agreements -- my associate actually executed this**

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1 **first escrow agreement in my absence, and it -- if I'm**
2 **not mistaken, in doing so, she would have notified all**
3 **defense attorneys of this document and she would have**
4 **done it by e-mail, Cindy Turner.**
5 **It was also my understanding that Wilson**
6 **Copeland's office communicated to all of the lawyers**
7 **about the escrow agreement and the escrow arrangement,**
8 **so I know there was nothing that prohibited any**
9 **discussion about that.**
10 **As to the confidentiality agreement, I**
11 **don't know that there was any prohibition except that**
12 **Mr. Stefani and I both understood that this document**
13 **was related to these personal and private and**
14 **privileged matters between the specific individuals**
15 **involved, and we handled the document, the**
16 **confidentiality document in that way.**
17 **BY MR. ZUCKERMAN:**
18 Q. Okay, I appreciate your response, but I'd just like
19 the reporter to repeat my question and then --
20 MR. BEDROSIAN: That was -- his question --
21 the question was was there any communication saying
22 that we're not going to e-mail about these things?
23 **A. Not that I recall.**
24 **BY MR. ZUCKERMAN:**
25 Q. Okay. I don't mean just an e-mail communication about

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1 not to communicate via e-mail, any kind of
2 conversation, communication that these three documents
3 or any one of these three documents would not be
4 referenced in an e-mail?
5 **A. No, the only thing I can remember about that is there**
6 **was at one point in time a document was inadvertently**
7 **sent to, I think, Valerie Colbert-Osamuede, and there**
8 **was an e-mail exchange between Valerie and Mr. Stefani**
9 **and myself about the fact that a document was sent to**
10 **her that she was not involved in negotiating. That's**
11 **the only thing that I recall.**
12 Q. Was that one of the documents we've referenced today?
13 **A. I don't know whether it is one of the documents we've**
14 **referenced today because I don't have it. I recall**
15 **something about it, but I don't have it.**
16 Q. Okay. Now, ultimately, this case settled?
17 MR. MORGANROTH: Objection.
18 **BY MR. ZUCKERMAN:**
19 Q. The Brown/Harris case.
20 **A. Brown --**
21 Q. Brown/Harris/Nelthrope, also.
22 **A. Brown and Nelthrope settled and Harris settled.**
23 Q. Okay.
24 **A. Two separate --**
25 Q. And part of -- I don't want to get into a dispute with

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1 you -- somewhere along the line of that settlement,
 2 there came a time when the escrow agreement and the
 3 supplemental escrow agreement would be utilized? In
 4 some resp -- would be effectuated?
 5 **A. Yeah, the escrow agreement?**
 6 Q. Yes.
 7 **A. The escrow agreements were executed on October --**
 8 **first one October 17th, signed, I believe, on the**
 9 **22nd.**
 10 Q. Okay. And then how were those agreements put into
 11 effect? How was that agreement put into effect?
 12 **A. Mr. Stefani and I executed a joint lease agreement at**
 13 **Comerica Bank consistent with the language in the**
 14 **escrow agreement.**
 15 Q. And then once you -- and that was a safety deposit
 16 box?
 17 **A. Yes.**
 18 Q. Okay. Once you rented the safety deposit box, what
 19 did you do next with respect to the safety deposit
 20 box?
 21 **A. We went to the safety -- this was all done on the same**
 22 **day.**
 23 Q. Okay.
 24 **A. The bank representative showed us to the safety**
 25 **deposit box, Mr. Stefani had a package of documents**

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1 **that he represented were, in fact, the documents that**
 2 **were supposed to be placed in the safety deposit box.**
 3 **The box was opened, Mr. Stefani placed it in the box**
 4 **and the box was then secured.**
 5 Q. Okay, did you go through those documents?
 6 **A. No.**
 7 Q. How did you know they were what they were supposed to
 8 be?
 9 **A. Mr. Stefani represented that the documents were, in**
 10 **fact, the records that he had obtained. I had no**
 11 **other way of knowing that they were, in fact, what he**
 12 **said -- what he said they were, that they were the**
 13 **full set of text messages that he said they were.**
 14 Q. Okay. You simply took his word?
 15 **A. Essentially, yes.**
 16 Q. Okay. And those -- was it in, like, a sealed manila
 17 or something like that?
 18 **A. I don't believe manila, I believe it was more a brown**
 19 **accordion.**
 20 Q. Did you meet him there or did you go with him from
 21 some mutual location?
 22 **A. If I am not mistaken, Mr. Stefani came to my office,**
 23 **and we walked across the street from my office.**
 24 Q. Your office is in this building?
 25 **A. My office is in this bidding.**

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1 Q. Okay.
 2 **A. Comerica is right across the street.**
 3 Q. Right. Okay, that's kind of like what I call the main
 4 branch.
 5 **A. Yes, okay.**
 6 Q. And did you have a conversation with him on the way
 7 over about the case, including the settlement?
 8 **A. I don't recall any conversation with him.**
 9 Q. Okay, and so you got there and you put the money --
 10 you put the -- I'm sorry, you put the envelope in the
 11 safety deposit box?
 12 **A. Yes.**
 13 MR. THOMAS: This is not a grand jury, Mr.
 14 Zuckerman.
 15 MR. ZUCKERMAN: Thank you, Mr. Thomas.
 16 MR. THOMAS: Takes you back to the old
 17 days, doesn't it?
 18 MR. ZUCKERMAN: What's the next exhibit?
 19 16, is that right?
 20 MR. STEWART: 16.
 21 MARKED BY THE REPORTER:
 22 DEPOSITION EXHIBIT NUMBER 16
 23 3:11 p.m.
 24 MR. LIEDEL: Richard, he's got about ten
 25 minutes left is what he said.

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1 MR. ZUCKERMAN: Ten minutes? Okay. Do you
 2 have another tape?
 3 MR. LIEDEL: Do you want this?
 4 MR. GOODMAN: Yeah, why not.
 5 BY MR. ZUCKERMAN:
 6 Q. Just take a look at 16 for me, please.
 7 MR. MORGANROTH: Do you have one more of
 8 those?
 9 MR. ZUCKERMAN: Somewhere. It should be.
 10 BY MR. ZUCKERMAN:
 11 Q. Did you go through those?
 12 **A. I've looked at them, yes.**
 13 Q. Okay, this is the -- do you recognize these as the
 14 lease for the relevant safety deposit box?
 15 **A. Yes.**
 16 Q. Okay. Who, if you know, filled out the information
 17 regarding Samuel E. McCargo?
 18 **A. I filled out the information regarding Samuel E.**
 19 **McCargo.**
 20 Q. And do you know if Mr. Stefani filled out the
 21 information regarding himself?
 22 **A. I believe he did.**
 23 Q. Okay. And this required joint entry?
 24 **A. Yes.**
 25 Q. Okay. And the -- there was a Lewis & Munday, P.C.,

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1 check for 67.50?
2 **A. Yes.**
3 Q. Was that an expense of the firm that was chargeable to
4 a client?
5 **A. Yes.**
6 Q. Okay. What client paid this 67.50?
7 **A. That's privileged.**
8 Q. Did you submit a bill to the client for 67.50?
9 **A. That's privileged.**
10 Q. Was the client an individual?
11 **A. That's privileged.**
12 Q. Did you bill the City for the 67.50?
13 **A. No.**
14 Q. Did you bill any entity for the 67.50?
15 **A. That's privileged.**
16 Q. Was there another trip or trips to the box after the
17 first one to open it?
18 **A. One.**
19 Q. Okay, and when was that?
20 **A. I believe it was December the 7th.**
21 Q. And who went to the box with you?
22 **A. Mr. Stefani's son and Mr. William Mitchell, III.**
23 Q. Is Mr. Mitchell a signatory on the box?
24 **A. No.**
25 Q. Why did he go?

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1 **A. Because Mr. Mitchell, under the sup -- under the**
2 **escrow agreement, Mr. Mitchell was the designated**
3 **representative to receive the information and**
4 **documents in the box.**
5 Q. Okay. And was the information, the documents in the
6 box taken out of the box at that time?
7 **A. By Mr. Stefani's son, yes.**
8 Q. And given to Mr. Mitchell?
9 **A. Yes.**
10 Q. What happened to the documents thereafter?
11 **A. I do not know.**
12 Q. Okay. Now, you know that package that Mr. Stefani
13 showed you at the facilitation, what we've called the
14 motion brief or motion in brief?
15 **A. Yes.**
16 Q. Was that included in the box?
17 **A. No.**
18 Q. Where was that? Where was a copy of that if --
19 **A. The original, the only copy I had, was delivered to**
20 **the Manoogian Mansion on the 19th of October.**
21 Q. Okay. Who delivered it?
22 **A. I did.**
23 Q. Okay, why?
24 **A. Because it was my decision that in the process of**
25 **withdrawing from the representation of the SkyTel**

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1 **matters, that I should, in fact, deliver confidential**
2 **information to the residence of my client consistent**
3 **with my understanding of how the information had been**
4 **provided to me.**
5 Q. Was there substitute counsel by then? You were
6 withdrawing?
7 **A. I was withdrawing from the representation of the**
8 **SkyTel matters. There was no litigation about the**
9 **SkyTel matters --**
10 Q. Okay.
11 **A. -- it was a new, evolving entity so --**
12 Q. But --
13 **A. -- on the same day, I learned that there was another**
14 **lawyer who was going to and had agreed to accept**
15 **representation as a result of my withdrawal.**
16 Q. And who was that?
17 **A. Mr. Mitchell.**
18 Q. Okay. Why didn't you deliver the brief motion to
19 Mr. Mitchell instead of the Mansion?
20 **A. Because as I indicated, my understanding of how it was**
21 **delivered to me in confidence was that it was**
22 **delivered to me with the intent that it was a**
23 **confidential document for myself and my client.**
24 **So I delivered it to the client, and the**
25 **client at that point could deliver it to whatever**

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1 **counsel he wanted to represent him. In fact, I had**
2 **not met with Mr. Mitchell at the time I met -- I**
3 **delivered the package to my -- to the Manoogian**
4 **Mansion.**
5 Q. Okay, the package, can we just call it the motion and
6 brief, because that will get confused with the other
7 package. The motion and brief when you took it to the
8 Mansion, did you take it from your office in this
9 building and drive out to the Mansion?
10 **A. Yes.**
11 Q. Was anybody with you?
12 **A. Not directly with me in my car, no.**
13 Q. Was someone following you?
14 **A. No.**
15 Q. Did someone meet you there?
16 **A. Yes.**
17 Q. Who?
18 **A. Mr. Copeland.**
19 Q. Okay. And do you know where he came from?
20 **A. No.**
21 Q. Okay. And why was he there?
22 **A. To make a recommendation of alternate counsel in light**
23 **of my withdrawal.**
24 Q. Okay, I thought that was Mr. Mitchell.
25 **A. Mr. Mitchell was someone that I met with later.**

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1 Q. Okay.

2 **A. I had not met with Mr. Mitchell when I went to the**

3 **Mansion.**

4 Q. Okay, I'm sorry, I thought you knew, though, however,

5 that when you went to the Mansion with the motion in

6 brief Mr. Mitchell was going to take over?

7 MR. THOMAS: This whole conversation I want

8 to object to, and the reason why is what you're

9 talking now is about strategy and discussions relating

10 to the replacement of counsel, and to the extent that

11 another attorney was there and he's having discussions

12 with him, arguably with -- with the other client, I

13 think that those are privileged.

14 MR. ZUCKERMAN: Well, I'm only asking if

15 there is other counsel involved. I'm not asking for a

16 communication.

17 MR. LIEDEL: Well, no, I mean we're getting

18 into who's saying what, what's recommended, what's

19 going to be happening, and I think this whole area is

20 an area that this is very firmly on privilege.

21 BY MR. ZUCKERMAN:

22 Q. Well, the last question I asked was simply I was under

23 the impression that when you drove out to the Mansion,

24 you knew Mr. Mitchell was going to take over. If

25 that's not accurate, then it's not accurate. Is that

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1 accurate or not?

2 **A. It's inaccurate.**

3 Q. It's inaccurate, okay.

4 VIDEO TECHNICIAN: Counsel, we have only a

5 minute left.

6 MR. ZUCKERMAN: Okay, we'll go off and you

7 can --

8 MR. GOODMAN: I would -- before you go off,

9 I would ask that if privilege is asserted, any

10 particular privilege is asserted, that it be

11 identified specifically.

12 THE WITNESS: Are we changing the rules of

13 the game now? When we first arrived, Mr. Goodman, we

14 established that I would identify privilege if it's

15 attorney-client privilege and work product if it's

16 work product. Those were the --

17 MR. ZUCKERMAN: I don't have a problem with

18 that.

19 THE WITNESS: Those are the guidelines --

20 (Whereupon everyone starts talking at the

21 same time at 3:19 p.m.)

22 MR. THOMAS: Let's make this record --

23 MR. ZUCKERMAN: Yeah.

24 MR. THOMAS: -- on the next tape.

25 MR. ZUCKERMAN: Okay. I think he was

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1 talking about the objections.

2 THE WITNESS: Oh, okay.

3 MR. THOMAS: Yeah, I was talking about --

4 THE WITNESS: Oh, I thought he was talking

5 about me. Okay.

6 MR. LIEDEL: Do you want to close it out so

7 we can get a new tape?

8 MR. ZUCKERMAN: Oh, yeah, sorry.

9 VIDEO TECHNICIAN: Going off the record.

10 This marks the end of tape No. 3.

11 MR. LIEDEL: Yeah, the objection --

12 VIDEO TECHNICIAN: The time is 3:18 and 49

13 seconds p.m.

14 (Recess taken at 3:18 p.m.)

15 (Back on the record at 3:23 p.m.)

16 VIDEO TECHNICIAN: We are back on the

17 record.

18 MR. ZUCKERMAN: Okay.

19 VIDEO TECHNICIAN: This marks the beginning

20 of tape No. 4. The time is 3:23 and 44 seconds p.m.

21 BY MR. ZUCKERMAN:

22 Q. Okay, Mr. McCargo, I think we left off with the fact

23 that on October 19th, you drove to the Mansion with a

24 copy of the Stefani motion and brief and Mr. Copeland

25 either met you there or was there or came soon

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1 thereafter; is that accurate?

2 **A. Correct.**

3 Q. Okay. Did you meet with anyone when you were there

4 other than Mr. Copeland?

5 **A. That's privileged.**

6 Q. Who did you give the motion and brief to?

7 **A. I believe that's privileged, as well.**

8 Q. Okay. Did you give the motion and brief to anybody on

9 the mayor's security team?

10 **A. That's privileged.**

11 MR. THOMAS: Objection as to form and asked

12 and answered.

13 BY MR. ZUCKERMAN:

14 Q. Did you give the motion and brief to Mrs. Kilpatrick?

15 **A. That's privileged.**

16 Q. Who was at the mansion when you got there?

17 **A. That's privileged.**

18 Q. Was Ms. Beatty at the mansion?

19 **A. That's privileged.**

20 Q. On what theory?

21 **A. The theory of --**

22 MR. THOMAS: Let me make my objection. By

23 stating that Ms. Beatty was or was not is alluding to

24 potential persons, and so, therefore, it would lead

25 you to only one conclusion. I learned that in

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1 Mr. Stefani's deposition.
2 BY MR. ZUCKERMAN:
3 Q. Well, Ms. Beatty was never your client, correct?
4 **A. Correct.**
5 Q. Was she there on October 19th or wasn't she?
6 **A. I don't know.**
7 Q. Did you see her?
8 MR. THOMAS: Objection as to foundation.
9 BY MR. ZUCKERMAN:
10 Q. How many people were there?
11 **A. I don't know.**
12 MR. MORGANROTH: Objection as to
13 foundation.
14 BY MR. ZUCKERMAN:
15 Q. How many people -- did you meet with anybody?
16 **A. Yes.**
17 Q. Okay. Was it a meeting in a particular room?
18 **A. Yes.**
19 Q. It wasn't like you -- you knocked on the door, dropped
20 the motion and brief down and left, was it?
21 MR. THOMAS: Objection to the form of the
22 question.
23 BY MR. ZUCKERMAN:
24 Q. Was it that?
25 **A. Not exactly.**

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1 Q. Okay. You went in with the motion and brief, correct?
2 MR. MORGANROTH: Objection as to form.
3 BY MR. ZUCKERMAN:
4 Q. Did you go in with the motion and brief?
5 **A. Yes.**
6 Q. And you went into some room in the Mansion, correct?
7 **A. Yes.**
8 Q. First floor?
9 **A. Yes.**
10 Q. And there were people in the room; is that correct?
11 **A. That's privileged.**
12 Q. The mere existence of people in a room is privileged?
13 **A. Yes.**
14 Q. Was there more than you and one other person in that
15 room?
16 **A. That's privileged.**
17 Q. Was it more than you and Mr. Copeland in that room?
18 **A. That's privileged.**
19 Q. Was anyone from the mayor's security team in that
20 room?
21 **A. Not in that room.**
22 Q. Outside the room?
23 **A. Yes.**
24 Q. Was there anyone in that room other than a lawyer?
25 **A. That's privileged.**

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1 Q. How long were you in the room?
2 **A. I don't recall.**
3 Q. Do you know how long you were in the Mansion in toto?
4 **A. Less than a half an hour.**
5 Q. Was there a discussion in the room with the people you
6 won't tell me about?
7 **A. That's privileged.**
8 Q. You won't tell me about whether there was any
9 discussions? I'm not asking you content or even
10 subject matter.
11 MR. MORGANROTH: But that's work product,
12 what he did.
13 MR. ZUCKERMAN: I didn't ask him what he
14 did. I asked him if he had a conversation.
15 MR. MORGANROTH: That is what he did.
16 BY MR. ZUCKERMAN:
17 Q. Okay. What -- did you have a conversat --
18 **A. The conversation that I had at the Mansion, I would
19 assume, was privileged, sir.**
20 Q. Yes, but you did have a conversation?
21 **A. I said that's privileged.**
22 Q. How long were you in the room? Did I ask you that?
23 **A. Yes, you did.**
24 Q. And you don't remember?
25 **A. Don't remember exactly.**

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1 Q. Okay. Were you -- was your entire --
2 MR. GOODMAN: Mr. Zuckerman, may I request
3 that if the witness asserts the privilege, then I
4 think you already agreed that you're going to identify
5 it as either work product or attorney-client.
6 MR. THOMAS: Would you speak up, please?
7 MR. GOODMAN: I just asked that he
8 identified the privilege as work product or
9 attorney-client that's he's asserting.
10 MR. THOMAS: Or both.
11 MR. GOODMAN: Or neither.
12 BY MR. ZUCKERMAN:
13 Q. I don't want to ask all the questions again,
14 Mr. McCargo. Can you give me an idea what privileges
15 you were asserting?
16 **A. They were both attorney-client privileges and work
17 product privileges that I was asserting.**
18 Q. Okay. For all the questions about who was at the
19 mansion and what were you discussing and if there were
20 discussions, etcetera, etcetera?
21 **A. Both, yes.**
22 MR. GOODMAN: Let me just say for the
23 record that I think the assertion of the
24 attorney-client privilege at this point is dubious and
25 the judge has, himself, declared that whether such a

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1 privilege is viable at this stage of this litigation
2 is also dubious or at least is an open question as far
3 as he's concerned.
4 MR. THOMAS: And in what way do we proceed?
5 Do we violate the privilege and then worry about it
6 later, or do we ask the judge for direction? I think
7 we make the assertion of privilege.
8 MR. GOODMAN: Well, you don't ask me for
9 direction.
10 MR. THOMAS: I think the proper
11 procedure --
12 MR. GOODMAN: I'm just -- I'm just
13 objecting to the objection of the assertion only
14 because -- only because I don't think that work
15 product privilege applies at this stage of the game.
16 MR. THOMAS: Well, you're not -- you're not
17 bound by whatever he says, but I think the proper way
18 to proceed is to have him assert the privilege if he
19 feels it is privileged, and at that point, then we
20 argue to Judge Colombo. I mean I don't -- which is
21 what he said.
22 MR. MORGANROTH: I don't think the judge
23 said anything about it being dubious.
24 MR. GOODMAN: No, I corrected that.
25 MR. MORGANROTH: He actually invited --

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1 MR. GOODMAN: I corrected --
2 MR. MORGANROTH: Okay, I'm sorry. He
3 invited the -- any time there's an objection as to
4 privilege, he indicated that it be asserted.
5 MR. GOODMAN: He said he did not know
6 whether a such a privilege continued -- had continued
7 viability at this point. I said I don't recognize it.
8 MR. MORGANROTH: Well, I think the law is
9 clear on that, though, in that work product is
10 preserved before, after, and during.
11 MR. ZUCKERMAN: Well, this is all
12 academically interesting, but we're not going to get
13 anywhere here.
14 MR. GOODMAN: No.
15 MR. ZUCKERMAN: I mean Mr. McCargo will
16 answer --
17 MR. THOMAS: Will you stop asking
18 questions?
19 MR. ZUCKERMAN: No. We'll --
20 MR. THOMAS: What do we do?
21 MR. ZUCKERMAN: We'll -- you know,
22 Mr. McCargo will answer questions or not, and whatever
23 anyone wants to do they'll do, that's all. You know.
24 BY MR. ZUCKERMAN:
25 Q. Let's see, Mr. McCargo, what I want to do is find the

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1 exhibit that is the mayor's rejection of the
2 October 17th settlement agreement. And of course, I
3 can't find it.
4 A. 9.
5 Q. 9? Okay. Do you know -- do you know if that
6 rejection was based wholly or partially on your
7 meeting at the Mansion on October 19th?
8 A. That's privileged and work product.
9 Q. Okay. Okay, I'm going to just mark the next exhibit
10 for the record.
11 COURT REPORTER: 17.
12 MR. ZUCKERMAN: Is this 17?
13 COURT REPORTER: Yes.
14 MARKED BY THE REPORTER:
15 DEPOSITION EXHIBIT NUMBER 17
16 3:32 p.m.
17 BY MR. ZUCKERMAN:
18 Q. Have you looked at 17?
19 A. Yes, I have.
20 Q. Okay. This is a letter authored by you?
21 A. Yes.
22 Q. And this, in essence, Mr. Liedel was asked by Judge
23 Colombo to make an inquiry of a variety of people,
24 including yourself, about what happened to what's
25 referenced in here as the documents that were

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1 delivered, whether you have possession of documents
2 delivered to you by Val Washington. Do you see that
3 in the first sentence?
4 A. Yes.
5 Q. You understood that to be the -- or did you understand
6 that to be the Stefani motion and brief that we are
7 now talking about?
8 A. Yes.
9 Q. And where it says, "Please be advised that on or about
10 October 19th, I delivered the documents to the
11 personal residence of my client, Mayor Kwame
12 Kilpatrick", that is an accurate statement?
13 A. Yes.
14 Q. And that is the documents we've just been discussing
15 in the series of questions relating to your visit to
16 the Mansion; is that correct?
17 A. Yes, sir, Mr. Zuckerman.
18 Q. Okay, and why do you say "documents" plural?
19 A. I don't know that there was any planned use of the
20 term plural to suggest there was more than one
21 document. There were multiple pages, and so in
22 referring to the document since there were multiple
23 pages, I just used plural.
24 Q. Our understanding of -- of what this document was,
25 it's kind of cobbled together from various

1 recollections, is that it was a motion and a brief,
 2 and you have at least that recollection of it?
 3 **A. I think I tried to explain that earlier when you asked**
 4 **me about it. I don't recall it being a separate**
 5 **package or motion, separate package of briefs. It was**
 6 **either a motion and brief all stapled together or it**
 7 **was a motion and brief combined as the Court allows**
 8 **you to do. You have a section that says motion. You**
 9 **don't put a new caption on, you just skip down, and in**
 10 **the middle, you put brief and it continues on. I**
 11 **don't remember that.**
 12 Q. Well, I guess my -- my question was really because of
 13 the plural whether or not there were exhibits to that
 14 thing.
 15 **A. Oh, I don't recall whether there were exhibits or not.**
 16 **I -- if there were exhibits, they were beyond the**
 17 **point I reviewed the documents because I never went**
 18 **back to it again after I looked at it on the 17th.**
 19 Q. So as far as you're concerned, what it is that was in
 20 this -- what's in the safety deposit -- I'm sorry,
 21 what is it that you delivered to the Mansion on
 22 October 19th, was the motion and brief combined or
 23 otherwise that may have had excerpts but no exhibits
 24 attached?
 25 **A. Right, I don't recall there being anything other than**

1 **that one document that appeared to be a motion and**
 2 **brief or motion and brief running together. I did not**
 3 **see any originals or any exhibits that purported to**
 4 **be -- that I recall that purported to be separate**
 5 **documents.**
 6 Q. Well, let's go back to the Mansion again. When you
 7 got there, you turned over the motion and brief, you
 8 gave it to somebody; is that correct?
 9 MR. THOMAS: Objection, that's
 10 attorney-client privileged.
 11 **A. I delivered it to the residence.**
 12 **BY MR. ZUCKERMAN:**
 13 Q. Okay. That's -- I mean you know what happened to it,
 14 you're just not willing to tell me; is that accurate?
 15 **A. No, I delivered it to the residence. You asked me did**
 16 **I put it in someone's hands specifically, I'm telling**
 17 **you I delivered it to the residence.**
 18 Q. Did you see it pass into someone else's possession?
 19 **A. No.**
 20 Q. You did not?
 21 **A. No.**
 22 Q. Okay, was it put on a table?
 23 **A. Yes.**
 24 Q. Okay. And it was in this room with people you won't
 25 identify?

1 **A. Yes.**
 2 Q. Okay. And so it was kind of sitting there on the
 3 table?
 4 **A. On the table.**
 5 Q. Was it unsealed?
 6 **A. No, it was -- packaged just the way it had been given**
 7 **to me and --**
 8 Q. Was it -- was its supposed content described to the
 9 people in the room?
 10 MR. THOMAS: Objection, privileged.
 11 **A. We are back now to what I consider to be privileged**
 12 **matter.**
 13 MR. GOODMAN: Privileged? Being...
 14 THE WITNESS: Privileged being both
 15 attorney-client privilege and work product. I was in
 16 the process of withdrawing from the representation on
 17 one hand and I had an existing representation on
 18 another hand, and there was the possibility of
 19 identifying alternate counsel.
 20 Since those three things were going on
 21 simultaneously, I perceived that the discussions I had
 22 were private and confidential and part and parcel of a
 23 shared work product in that process.
 24 BY MR. ZUCKERMAN:
 25 Q. Okay, when you left, did anyone say thank you?

1 **A. That's privileged.**
 2 Q. I tried.
 3 **A. Good try.**
 4 MR. ZUCKERMAN: Can we talk for five
 5 minutes just among us? Can we go off for five
 6 minutes?
 7 MR. BEDROSIAN: No, Sam and I will walk
 8 out.
 9 MR. ZUCKERMAN: Well, I think the three of
 10 us will walk out.
 11 MR. BEDROSIAN: I didn't know how many you
 12 meant.
 13 VIDEO TECHNICIAN: Going off the record --
 14 MR. ZUCKERMAN: Yes, off the record.
 15 VIDEO TECHNICIAN: -- the times 3:36 and 40
 16 seconds p.m.
 17 (Recess taken at 3:36 p.m.)
 18 (Back on the record at 3:46 p.m.)
 19 VIDEO TECHNICIAN: We are back on the
 20 record. The time is 3:46 and 22 seconds p.m.
 21 COURT REPORTER: Is this it? Notice of
 22 rejection.
 23 MR. ZUCKERMAN: Okay, thanks.
 24 BY MR. ZUCKERMAN:
 25 Q. Okay, we're back on the record. One or two more

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1 questions about the Mansion visit on October 19th.
2 **A. Yes?**
3 Q. Mr. Copeland was there; is that correct?
4 **A. Correct.**
5 Q. Who was he represent --
6 MR. THOMAS: That was your one question.
7 BY MR. ZUCKERMAN:
8 Q. Who was he representing?
9 **A. It was my understanding that it was a joint**
10 **representation that Mr. Copeland was participating in,**
11 **that's what I understood.**
12 Q. But yes, who -- who was his client?
13 **A. His client was both the City and the mayor.**
14 Q. The mayor in his capacity as mayor?
15 **A. Yes.**
16 Q. Okay, so you -- but you don't have any understanding
17 of whether he'd actually been hired by the City to
18 represent the mayor at that time, do you?
19 MR. THOMAS: Objection as to form.
20 **A. No, I don't know whether there had been any specific**
21 **interaction between he and corporate counsel in that**
22 **regard. I only know what had transpired between Mr.**
23 **Copeland and myself.**
24 **BY MR. ZUCKERMAN:**
25 Q. And your understanding of Mr. Copeland's status on

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1 October 19th is from a conversation with him --
2 **A. Yes.**
3 Q. Okay. Did anyone else tell you that he -- on
4 October -- on or before October 19th, did anyone else
5 tell you that Mr. Copeland was representing the mayor
6 in his official capacity as mayor?
7 **A. No.**
8 MR. ZUCKERMAN: Okay. I have -- I thought
9 I'd marked this, but I didn't, I don't think. This
10 will be the next exhibit, which is 18?
11 COURT REPORTER: 18.
12 MR. ZUCKERMAN: I don't think we've gone
13 over this.
14 MARKED BY THE REPORTER:
15 DEPOSITION EXHIBIT NUMBER 18
16 3:50 p.m.
17 BY MR. ZUCKERMAN:
18 Q. Are you ready?
19 **A. Yes.**
20 Q. Okay. This is FREEP 374. It's essentially the
21 mayor's approval of the terms and conditions of the
22 settlement as approved by City Council on
23 October 23rd; is that correct?
24 **A. That's the title of the document, yes.**
25 Q. Okay. And this document is the mayor's approval of

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1 the settlement agreement and release presented to the
2 City Council; is that correct as far as you know?
3 **A. I have no idea what under -- what was underlying the**
4 **City Council's action. All I know is that there was**
5 **an action taken by City Council that approved certain**
6 **terms and conditions of the settlement and that this**
7 **document was a reaction to that specific act.**
8 Q. Okay. One other item, the first settlement agreement
9 that -- or the first document that bears the words
10 "settlement agreement" is dated October 17th. That's
11 Exhibit 7; is that correct? Or you can take a look at
12 it? Okay, here it is.
13 MR. THOMAS: What was the question?
14 **A. 7, yes.**
15 **BY MR. ZUCKERMAN:**
16 Q. I just wanted to point him to Exhibit 7.
17 **A. Yes.**
18 Q. The first document that in chronological order has the
19 word "settlement agreement" at the top?
20 **A. Yes.**
21 MR. MORGANROTH: You're not including 6?
22 MR. ZUCKERMAN: Pardon?
23 MR. MORGANROTH: You're --
24 MR. ZUCKERMAN: I'm not including 6.
25 MR. MORGANROTH: All right.

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1 MR. ZUCKERMAN: Just 7.
2 BY MR. ZUCKERMAN:
3 Q. Was there any kind -- are you aware of whether or not
4 there was a public announcement about the settlement
5 of the Brown/Neilthrope case after the October 17th?
6 **A. I don't know whether there was a public announcement,**
7 **but at some point in time, it was all over the papers.**
8 **I mean I don't know how that happened.**
9 Q. Was that October 18th?
10 **A. I don't know exactly when that was. I don't think it**
11 **was the 18th, but I just don't know.**
12 MR. ZUCKERMAN: Okay, I don't have anymore
13 questions.
14 MR. STEWART: I have a few --
15 THE WITNESS: Yes.
16 MR. STEWART: -- questions. Oh, I need the
17 microphone.
18 EXAMINATION
19 BY MR. STEWART:
20 Q. You all set?
21 **A. I'm ready.**
22 Q. All right. Mr. McCargo, I'm James Stewart. I was
23 introduced earlier; I represent the News.
24 **A. Mr. Stewart, my pleasure.**
25 Q. Now, you indicated when we first talked this morning

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1 that you had been working with The Wellness Plan just
2 before you joined Lewis & Munday in 2004; am I
3 correct?
4 **A. I had worked with The Wellness Plan prior to that, but**
5 **immediately before joining Lewis & Munday, I had been**
6 **in California in a training program for franchise**
7 **operations.**
8 Q. What kind of franchise operations?
9 **A. Fat Burgers.**
10 Q. What kind of franchise?
11 **A. Fat Burgers.**
12 Q. F-a-t burgers?
13 **A. Yes.**
14 Q. And I take it that was a business you were thinking
15 about getting into?
16 **A. I was there with my son, and I was thinking about**
17 **getting into it with my son with the primary objective**
18 **of helping my 25, 26-year-old-son get off into the**
19 **world of entrepreneurial endeavors.**
20 Q. So prior to joining Lewis & Munday, you had been
21 either in the franchise program or you had been at The
22 Wellness Plan in an executive capacity --
23 **A. Correct.**
24 Q. -- is that right?
25 **A. Correct.**

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1 Q. About how long was -- was that that those two events
2 were going on?
3 **A. I joined The Wellness Plan in July of 1995.**
4 Q. Okay.
5 **A. I remained at The Wellness Plan until September of**
6 **1993 -- I mean 2003. The Wellness Plan went into a**
7 **rehabilitation program. I left The Wellness Plan and**
8 **went into mediation and facilitation training at the**
9 **end of the year, and then I left the mediation and**
10 **facilitation training and went to California to do the**
11 **Fat Burger training, and I was in California from**
12 **January until the end of March of 2004.**
13 Q. And you joined Lewis & Munday in, roughly, March or
14 April of 2004?
15 **A. I began my discussions with Lewis & Munday about**
16 **joining them in April of 2004, and actually**
17 **consummated the transition by June of 2004.**
18 Q. And when were you retained by the mayor in this case?
19 **A. I actually filed my appearance on June 2, 2004, but**
20 **the City did not actually complete its process of**
21 **approving the contract for some months thereafter.**
22 Q. Okay. You joined, if I'm right, you joined Lewis &
23 Munday in June of 2004?
24 **A. Correct.**
25 Q. And you appeared for the mayor on June 2nd, did you

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1 say, 2004?
2 **A. That's correct.**
3 Q. Was that the first thing you did at Lewis & Munday as
4 far as legal work?
5 **A. My association with the mayor was not part and parcel**
6 **of my transition with Lewis & Munday. In fact,**
7 **Lewis & Munday was unaware of my retention to work**
8 **with the mayor when we started talking back in April**
9 **of 2004, so when I went to Lewis & Munday, the mayor's**
10 **case was one of several that I was involved in when I**
11 **started there. I was also doing arbitration work in**
12 **the interim, so I had my own arbitration practice at**
13 **the same time so --**
14 Q. As an arbitrator?
15 **A. Yes, as an arbitrator, and I still do.**
16 Q. Did you -- you brought the mayor's representation with
17 you to Lewis & Munday?
18 **A. I brought this case. Lewis & Munday had represented**
19 **the City and the mayor's office --**
20 Q. Yes.
21 **A. -- for years and years and years before we ever had**
22 **any conversations, so the -- the contract that was**
23 **approved to represent the mayor in the Brown/Nelthrope**
24 **case was simply an addendum or an amendment to**
25 **existing contracts, as I recall it, somehow affiliated**

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1 **with the long-term relationship with Lewis & Munday**
2 **and the City.**
3 Q. Okay, my question is this: Did you bring the mayor
4 case, or was it part of existing work at Lewis &
5 Munday?
6 **A. It came with me.**
7 Q. All right. So you had been retained by the mayor
8 prior to joining Lewis & Munday?
9 **A. Almost simultaneously with joining Lewis & Munday.**
10 Q. Now, during the time -- well, could you tell me
11 generally without going into great detail, what had
12 you done professionally prior to 1995, when, I think
13 you said, you went to The Wellness Plan?
14 **A. I graduated from the University of Michigan in 1975.**
15 **I joined the law firm of Riley & Roumell which**
16 **specializes in labor and employment work. I also had**
17 **the good fortune of being there with them when they**
18 **were doing constitutional work for the Detroit Board**
19 **of Education in Bradley versus Middleton, the school**
20 **desegregation litigation. I was the second chair to**
21 **George Roumell on that particular case when I went**
22 **there.**
23 **I remained at Riley & Roumell until August**
24 **of '78 when I decided that one way to better expand my**
25 **labor and employment experience was to actually go**

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1 inside an entity and work in the labor and employment
2 area, and so I became Assistant Superintendent for the
3 Highland Park Schools, which I did for approximately
4 two years. I left that and returned to Riley &
5 Roumell, picked up labor and employment and litigation
6 work at Riley & Roumell.
7 I then set up my own practice in northwest
8 Detroit with a lawyer there who was sort of the Dean
9 of the area, Richard Harris, and worked with him for
10 approximately a year or so. Then I affiliated with
11 Stanley Kirk and we formulated a partnership.
12 I moved downtown and set up my own
13 practice, I operated my own firm, it was a boutique
14 firm. My areas of specialty were employment and
15 litigation, employment discrimination, retaliation. A
16 lot of trial work. And then stayed with that firm
17 until July of 1995, which is when I then went into The
18 Wellness Plan.
19 Q. So from July 1995 when you went into The Wellness
20 Plan --
21 A. Yes.
22 Q. -- until this representation by the mayor in 2004 --
23 A. Yes.
24 Q. -- had you been lead trial counsel on any case that
25 had been tried by jury at that time?

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1 MR. LIEDEL: You know, I'm going to object
2 to the relevancy, but go ahead.
3 A. During the time I was at The Wellness Plan?
4 BY MR. ZUCKERMAN:
5 Q. Yes.
6 A. Oh, no, I was inside counsel, I was in their Office of
7 General Counsel.
8 Q. Okay.
9 A. I over -- I oversaw litigation in that area. My
10 litigation experience preceded going to --
11 Q. So am I correct, just to understand this, that you had
12 not been lead trial counsel on a case tried to jury
13 since sometime prior to 1995 when you went to The
14 Wellness Plan?
15 A. That's true.
16 Q. All right. Have you been lead trial counsel on any
17 case that's been tried to jury since you joined
18 Lewis & Munday, other than this?
19 A. Yes.
20 Q. Okay, how many roughly?
21 A. I left this case, and two weeks later, I started a
22 jury trial that lasted for two weeks immediately
23 thereafter. So there's been one -- one case since --
24 since this --
25 Q. Since this case concluded?

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1 A. Yes, correct.
2 Q. And had you been lead trial counsel on any cases that
3 were tried to jury from 2004 until this case was
4 tried?
5 A. 2004 to this case?
6 Q. Yeah, when you went to -- from the time you went to
7 Lewis & Munday until this case was tried, had you been
8 lead trial counsel on any case tried to jury?
9 A. No.
10 Q. Okay. You mentioned earlier the meeting you had when
11 you were talking to Mr. Zuckerman, a meeting with --
12 Christine Beatty was there -- concerning the Fifth
13 Third relationship; do you remember that generally?
14 A. Yes.
15 Q. Okay. And you said there was a meeting with Christine
16 Beatty and some others about the Fifth Third
17 relationship, and do you remember testifying that
18 there was some issue or question concerning if Ms.
19 Beatty had an adverse relationship with Fifth Third,
20 how would that affect the City's relationship with
21 Fifth Third?
22 A. Correct.
23 Q. Okay, and I believe you testified that at the meeting,
24 there was no resolution of that, but some people left
25 to resolve that or discuss it?

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1 A. Correct.
2 Q. Who were those people?
3 A. I can't remember all of the names, but my recollection
4 of the individuals who were involved would have been
5 Brenda Braceful from the corporate counsel's office,
6 Ruth Carter may have been involved in those
7 discussions and meetings, and somehow, I remember
8 someone from the bank, I don't remember the person's
9 name, but there was someone from the bank with whom
10 there was a close relationship. I don't remember the
11 name.
12 Q. Okay. Now, regarding Ms. Beatty, you testified that
13 there was the issue of these records of hers that were
14 part of this confidentiality agreement?
15 A. Yes.
16 Q. Okay. That were to be returned to her?
17 A. Yes.
18 Q. And they were -- they were described, as I understand
19 it, in the October 17th settlement agreement as the,
20 quote, records or the KB records in the
21 confidentiality agreement?
22 A. Part of the KB records, yes.
23 Q. Yeah, they were part of the quote/unquote KB records?
24 A. Yes.
25 Q. Now, were they part of the records that Mr. Stefani

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1 brought over to put in the safe deposit box?
2 **A. I don't recall.**
3 Q. You testified earlier -- I believe --
4 **A. -- I don't recall.**
5 Q. -- if I'm correct --
6 **A. Right.**
7 Q. -- that what Mr. Stefani told you he had was the text
8 messages; is that correct?
9 **A. What Mr. Stefani told me he had were the text**
10 **messages. What he told me -- actually what he told me**
11 **he had was all of the records that were covered by the**
12 **escrow agreement. That's what he told me. These are**
13 **the records that are covered by the escrow agreement.**
14 **That included the text messages.**
15 Q. Did you ask him if that included Ms. Beatty's records?
16 **A. I did not ask him specifically, but the description of**
17 **what was in the escrow agreement was pretty clear to**
18 **me.**
19 Q. Okay.
20 **A. I knew what he was speaking of when he said, "these**
21 **are the records included in the --"**
22 Q. In Ms. Beatty's records, then well let me go back.
23 Let's assume Ms. Beatty's records then were in those
24 escrow agreement records as Mr. Stefani described to
25 you, okay?

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1 **A. (Witness nods.)**
2 Q. Those documents were then taken out of the safety
3 deposit box and given to the mayor's attorney,
4 Mr. Mitchell; is that right?
5 **A. Correct.**
6 Q. Did -- were those given to Ms. Beatty's lawyer, to
7 your knowledge?
8 **A. The agreement required that they be delivered to the**
9 **lawyer designated by the mayor.**
10 Q. Even though they were Ms. Beatty's records?
11 **A. The agreement provided they were to be given to the**
12 **lawyer designated by the mayor.**
13 Q. Okay. Now, when you saw -- let me go back. Let's go
14 back to the time of the October 17th facilitation?
15 **A. Yes.**
16 Q. Okay. Now, I take it at that time you knew that the
17 mayor and Ms. Beatty had been cross-examined at trial
18 regarding whether or not they had a personal or sexual
19 relationship; is that right?
20 **A. Yes.**
21 Q. Okay. And you recall that they denied it?
22 **A. Yes.**
23 Q. Okay. Now, you told us --
24 MR. THOMAS: I'm going to object to the
25 form of that question because the words that were

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1 used, unless you're using them in the colloquial and
2 just as a general statement, but if you're
3 specifically talking about a romantic relationship or
4 a personal sexual relationship, these have -- these
5 have specific meaning as it relates to the testimony
6 in the transcripts, so were you loosely saying
7 personal/sexual, or were you referring to specific
8 words?
9 MR. MORGANROTH: I'm going to join in on
10 that objection as well.
11 MR. THOMAS: So it's a long way of saying,
12 Jim, vagueness or --
13 MR. STEWART: Okay.
14 MR. THOMAS: -- the form of the question.
15 BY MR. STEWART:
16 Q. Well let's go back. You knew, I take it, Mr. McCargo,
17 from the trial that Mr. Kil -- Mayor Kilpatrick and
18 Ms. Beatty had been cross-examined as to whether they
19 had a personal relationship?
20 **A. There were specific questions asked of them about**
21 **specific allegations of a sexual relationship --**
22 Q. Yes, at trial.
23 **A. -- at trial.**
24 MR. MORGANROTH: Same objection as before.
25 MR. THOMAS: Join.

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1 BY MR. STEWART:
2 Q. And they both denied that at the trial; is that right?
3 **A. That's correct.**
4 Q. All right. Now, when you see the Stefani motion,
5 let's call it, on October 17th --
6 **A. Correct.**
7 Q. -- you said you read, I believe, part of it?
8 **A. Yes.**
9 Q. Did you read anything in that motion to lead you to
10 conclude that it was arguing that there, in fact, was
11 a personal or sexual relationship between the mayor
12 and Ms. Beatty?
13 MR. MORGANROTH: Objection.
14 BY MR. STEWART:
15 Q. Put aside whether it's -- you thought it was true or
16 not --
17 MR. BEDROSIAN: You said arguably, you used
18 the word conclude.
19 MR. MORGANROTH: I've got an objection to
20 form for that reason, as well.
21 BY MR. STEWART:
22 Q. Okay, let's -- let's just see if we can do it more
23 simply.
24 You read -- you read part of the -- the
25 Stefani motion, correct?

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1 **A. Yes.**
2 Q. Did you conclude from that, that that document was
3 suggesting a sexual relationship between the mayor and
4 Ms. Beatty?
5 **A. Concluding that --**
6 MR. MORGANROTH: Objection as to form.
7 **A. -- Mr. Stefani was asserting that in his motion.**
8 **BY MR. STEWART:**
9 Q. You did conclude that?
10 **A. Yes, that that's what he was asserting.**
11 Q. And was he asserting that the mayor and Ms. Beatty had
12 lied under oath?
13 **A. Yes.**
14 Q. And was that the gist of the Stefani motion, as you
15 understood it?
16 **A. Only part of it.**
17 MR. MORGANROTH: Objection as to form.
18 **BY MR. STEWART:**
19 Q. I'm sorry, I couldn't hear you.
20 **A. Only part of it.**
21 Q. What was the part of the gist? Well, let me go back
22 and ask it this way. So that was at least part of the
23 gist of the motion to you?
24 **A. (Witness nods.)**
25 Q. You have to say --

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1 **A. Yes.**
2 Q. Yes. Were there other parts of it that you thought
3 were the gist of that motion?
4 **A. Of what I reviewed, there was one other component. He**
5 **was alleging that there had been some decision made**
6 **prior to Ms. Beatty's receipt of an anonymous letter**
7 **to the effect that Mr. Brown should be fired or would**
8 **be fired from his position as a police officer with**
9 **the City of Detroit.**
10 Q. And that's what -- what we have talked about, those
11 two items are what you thought the gist of the motion
12 was?
13 **A. That was the gist of his motion.**
14 Q. Okay. And had Ms. Beatty testified at trial as to
15 whether or not Mr. Brown had been fired?
16 **A. She testified at trial that Mr. Brown had been removed**
17 **from his position, effectively resulting in a demotion**
18 **and that he had not been fired, but that he had been**
19 **removed.**
20 Q. And was -- was it your conclusion that Mr. Stefani was
21 arguing that she had lied about that?
22 **A. No. Mr. Stefani, in my estimate in reading the**
23 **document, had given up on the notion of the semantics**
24 **between removal as opposed to firing.**
25 Q. Mm-hmm.

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1 **A. The gist of his argument seemed to be that some**
2 **information had come to Ms. Beatty and the mayor**
3 **causing them to make a decision to remove, or whatever**
4 **it was, and that that information had preceded the**
5 **anonymous letter.**
6 Q. All right. Now, in -- in your career as a litigator.
7 **A. Yes.**
8 Q. -- how many cases do you -- civil cases do you think
9 you've settled that involved the payment of money?
10 Hundreds? Thousands?
11 **A. Maybe thousands.**
12 Q. All right. Have you ever used a safety deposit box to
13 store documents while the settlement was being worked
14 out?
15 **A. Yes.**
16 Q. How often?
17 **A. Some real estate disputes, it happens over and over**
18 **and over again. I mean I can't give you an exact**
19 **number, but the scope of my litigation has involved**
20 **subject matters where the use of safety deposit box**
21 **for escrow purposes of documents associated with**
22 **litigation is not uncommon at all.**
23 Q. Whose idea was it to use the safety deposit box in
24 this litigation?
25 **A. I believe it was --**

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1 MR. MORGANROTH: Objection as asked and
2 answered, foundation.
3 **A. It was Mr. Stefani's idea to use the box.**
4 MR. STEWART: Now, during the trial --
5 would you get me the 1082 exchange documents -- that
6 October 18th letter from --
7 (Discussion off the record at 4:1 p.m.)
8 (Back on the record at 4:12 p.m.)
9 MR. STEWART: Let's mark this as 19 if you
10 would, please.
11 MARKED BY THE REPORTER:
12 DEPOSITION EXHIBIT NUMBER 19
13 4:12 p.m.
14 MR. STEWART: If you'd give us a minute,
15 we'll find 20.
16 MARKED BY THE REPORTER:
17 DEPOSITION EXHIBIT NUMBER 20
18 4:13 p.m.
19 (Discussion off the record at 4:13 p.m.)
20 (Back on the record at 4:14 p.m.)
21 **BY MR. STEWART:**
22 Q. If you have 19 and 20 in front of you, Mr. McCargo,
23 please take a few minutes and look at them. And I'll
24 suggest to you that I believe that 20 is in response
25 to 19, but you can make your own determination.

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1 **A. Okay.**
2 Q. Okay. Let's identify these for the record.
3 Exhibit 19 is an October 18th, 2007, letter from
4 Wilson A. Copeland to Michael L. Stefani indicating a
5 c.c. to a number of people including Samuel E.
6 McCargo.
7 Exhibit 20 is an e-mail from Mike Stefani
8 dated October 18th, '07, at 4:54 p.m. to Wilson
9 Copeland, c.c. McCargo, Samuel E., re:
10 Brown/Nelthrope, etcetera.
11 As to Exhibit 19, the letter, Mr.
12 McCargo --
13 **A. Yes.**
14 Q. -- do you remember seeing that?
15 **A. Yes.**
16 Q. Do you recall Exhibit 20? Do you recall seeing that?
17 **A. I don't recall seeing this. I wouldn't dispute that I**
18 **may have, I just don't recall seeing it.**
19 Q. I'm sorry, what?
20 **A. I wouldn't dispute that I have seen it, but I just**
21 **don't recall seeing this.**
22 Q. Okay.
23 **A. This e-mail.**
24 Q. Would you go on Exhibit 20, please, and we'll go down
25 to where the paragraph starts "by the way".

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1 **A. Yes.**
2 Q. All right. And I'm just going to read this so we have
3 it in front of us:
4 "By the way, I have recently received
5 phone calls from several media sources
6 requesting that I confirm the settlement of 8.4
7 million. I have refused to comment on any
8 amount, but I have responded as specified
9 exactly as required by the tentative settlement
10 agreement and no more:
11 "By the way, one of the media people told
12 me that someone from the law department told
13 them that they were asking counsel to approve a
14 settlement of both cases for 8.4 million, so
15 don't blame me if it gets out."
16 Did I read that, more or less, accurately?
17 **A. Yes.**
18 Q. All right. Do you recall any discussions with
19 Mr. Stefani about someone in the law department
20 telling the media about the settlement --
21 **A. No.**
22 Q. -- on October 18th?
23 **A. No, sir, no.**
24 Q. Do you recall ever hearing that from anyone, that
25 somebody in the law department had told the media that

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1 the -- on October 18th that the counsel was being
2 asked to approve 8.4 million?
3 **A. I may have heard after this media explosion I**
4 **mentioned to you earlier. I told you that shortly**
5 **after this happened, it was all over the papers.**
6 Q. Yes.
7 **A. I may have heard that the reason it was all over the**
8 **papers is that there had been a leak in the law**
9 **department somewhere, but I don't recall anyone**
10 **specifically coming to me saying, "Mr. McCargo, the**
11 **law department has leaked this information to the**
12 **media."**
13 Q. Did you ever form any conclusion in your own mind as
14 to who leaked it from the law department?
15 **A. No. There are always leaks from the law department.**
16 Q. I beg your pardon?
17 **A. There are always leaks from the law department.**
18 Q. Now, let's go back, if we can, to the time during the
19 trial, itself. In fact, from the period 2004 when you
20 became counsel in the whistleblower case through
21 trial --
22 **A. Yes.**
23 Q. -- okay? Did you have occasion to talk to anyone from
24 SkyTel during that period?
25 **A. Yes.**

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1 Q. Can you tell me when that was roughly?
2 **A. August 2004.**
3 Q. I'm sorry?
4 **A. August 2004.**
5 Q. And what was -- what prompted your discussion with
6 SkyTel?
7 **A. Motion to quash the subpoena.**
8 Q. Filed by Mr. Stefani (sic)?
9 **A. Mr. Stefani?**
10 Q. I'm sorry, filed by you?
11 **A. Filed by me.**
12 Q. All right. Who did you talk to at SkyTel?
13 **A. The director of their, for want of a better word,**
14 **subpoena maintenance department.**
15 Q. Do you recall his name?
16 **A. Mr. Will Marsden is, I believe, his name.**
17 Q. What did you talk to him about?
18 **A. Mr. Marsden had transmitted either to me or one of the**
19 **other defense counsel a copy of the subpoena, and we**
20 **had filed a motion on that subpoena. Mr. Marsden**
21 **either wanted to know the status, or I was calling to**
22 **give him the status of the motion to let him know that**
23 **we were waiting to have it heard by the Court and that**
24 **once the Court made a decision, we would communicate**
25 **the decision to him.**

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1 Q. Was your motion to quash ever heard?
2 **A. Yes.**
3 Q. What was the result of that?
4 **A. The motion was granted in part.**
5 Q. And is that when it was granted in part by Judge
6 Callahan ordering that the records be delivered to
7 him?
8 **A. Correct.**
9 Q. Did you communicate that to SkyTel?
10 **A. Yes.**
11 Q. When did you do that roughly?
12 **A. Either the same day or the next day after the judge**
13 **made his ruling.**
14 Q. And who did you communicate to at SkyTel?
15 **A. I believe it was Mr. Marsden, but it may have been to**
16 **one of his associates. There was another woman whom**
17 **they gave me the name who I could communicate with in**
18 **the event I missed him.**
19 Q. Was the correspondence from you to SkyTel?
20 **A. I believe that there was a letter sending a copy of**
21 **the order.**
22 Q. Was there e-mail between you and anyone at SkyTel
23 other than possibly that letter being by e-mail?
24 **A. I don't recall the e-mail, but I believe the letter**
25 **was sent by fax first and then sent hard copy.**

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1 Q. Can you tell me, generally, what the letter said?
2 **A. Attached is a copy of the order.**
3 Q. Nothing more?
4 **A. As far as I can recall.**
5 Q. Do you recall suggesting to SkyTel that they had no
6 obligation to produce the records now?
7 **A. No.**
8 Q. Did you tell SkyTel during the first communication,
9 the first communication that they had no obligation to
10 produce the records while your motion was pending?
11 **A. No.**
12 MR. MORGANROTH: Objection as to form.
13 BY MR. STEWART:
14 Q. Did you ever hear back from SkyTel in response to the
15 second communication?
16 **A. I believe I got confirmation that they received the**
17 **order.**
18 Q. Can you recall roughly when in the context of your
19 first communication, I think you said August '04 --
20 **A. Yes.**
21 Q. -- the second communication occurred?
22 MR. THOMAS: Just so the --
23 **A. When you say second communication --**
24 MR. THOMAS: -- communication with the
25 order, Mr. Stewart?

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1 MR. STEWART: Yes.
2 **A. When you say second communication, are you referring**
3 **to the response from SkyTel to me, or are you**
4 **referring to the transmittal of the amended order?**
5 BY MR. STEWART:
6 Q. Well, let me see if I understand what's happened here.
7 You indicated you had your first communication with
8 SkyTel about August '04 to tell them you had filed a
9 motion to quash; is that correct?
10 **A. That is correct.**
11 Q. All right. And did you -- in that communication, did
12 you tell them anything more than that?
13 **A. Only that as soon as I heard -- got a decision from**
14 **the Court, I would communicate to them what the**
15 **decision was.**
16 Q. And the second communication was when you were
17 communicating the decision of the Court; is that
18 correct?
19 **A. Correct.**
20 Q. Now about when was the second communication versus
21 August '04? Was it a month later, a year later, two
22 years later?
23 **A. The motion was an emergency motion. The SkyTel issue**
24 **came up, like, a Wednesday, and the emergency motion**
25 **date, the return date on the subpoena was seven or**

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1 **eight days later, so the emergency motion had to be**
2 **heard during the short period of time between the**
3 **service of the subpoena and the return date, so we're**
4 **talking days.**
5 Q. Was there more than one subpoena issued to SkyTel
6 during the pendency of the case?
7 **A. There is some indication in my record that a second**
8 **subpoena was issued, but I never got a copy of it.**
9 Q. Was there more than one motion to quash a subpoena
10 filed in the case by any of the defendants?
11 **A. I filed one motion, and in my files, there is a second**
12 **motion addressing a second subpoena that I'd never**
13 **saw. That second motion was filed by the City, not by**
14 **me.**
15 Q. Do you know whatever happened with the second motion
16 that was filed?
17 **A. I have no idea.**
18 Q. But that was -- but the time you were talking to
19 SkyTel was in regard to the first motion?
20 **A. That is correct.**
21 Q. Did you have any other communications with anyone from
22 SkyTel from June 2004 through the completion of trial?
23 **A. Yes.**
24 Q. What was that, please?
25 **A. After the original order was entered, Mr. Stefani**

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1 challenged the accuracy of the order, so the judge
 2 brought us back in, heard Mr. Stefani's concerns, made
 3 some modification in the order, issued an amended
 4 order in September, two or three weeks later, and that
 5 amended order was sent to SkyTel.
 6 Q. By you?
 7 A. I believe so, yes.
 8 Q. Okay.
 9 A. Me or someone in my office.
 10 Q. All right, fair enough. Have we now talked about all
 11 the communications you had with SkyTel from 2004
 12 through the completion of the trial?
 13 A. That's all the communications I recall having with
 14 SkyTel.
 15 Q. Did you have any communications with SkyTel from the
 16 time the verdict came in through the end of the year?
 17 A. No.
 18 Q. Have you had any communications with SkyTel since --
 19 A. No.
 20 Q. -- your last communication you testified to?
 21 A. No.
 22 Q. Are you aware of whether any other lawyers for any of
 23 the other defendants in the case, the whistleblower
 24 case, had communications with SkyTel?
 25 A. The only ones during the course of this case that I'm

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1 aware of that had contact with SkyTel from the defense
 2 side was the City. The motion that was brought -- my
 3 motion was styled a joint motion, so technically, it
 4 was a motion on behalf of all of the defendants, and
 5 so loosely, you could say that when I communicated
 6 with SkyTel, it was all of the defendants who joined
 7 in that motion were communicating with SkyTel, but the
 8 only other motion or pleading that I'm aware of was
 9 the -- this second motion allegedly addressing another
 10 subpoena that I had never seen.
 11 Q. Do you know if any of the lawyers for any of the other
 12 defendants had any communication with SkyTel?
 13 A. I do not know.
 14 MR. MORGANROTH: Objection as to form.
 15 A. I do not know beyond what I have just told you.
 16 BY MR. STEWART:
 17 Q. Okay. Do you know if Mr. Mitchell ever had any
 18 contact with SkyTel?
 19 A. I do not know for a fact that Mr. Mitchell had any
 20 contact with SkyTel.
 21 Q. What information do you have regarding Mr. Mitchell
 22 calling Sky -- or contacting SkyTel?
 23 A. That's privileged and work product.
 24 Q. Just to be clear and understanding your objection and
 25 your assertion of privilege, you have knowledge of

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1 Mr. Mitchell contacting SkyTel?
 2 MR. MORGANROTH: Objection as to form.
 3 MR. THOMAS: And asked and answered.
 4 A. I've answered that, indicated it's privileged, and I
 5 have no knowledge in fact of the matters you asked me
 6 about.
 7 BY MR. STEWART:
 8 Q. We talked some regarding Mr. Mitchell here about your
 9 decision to withdraw from representing the mayor as to
 10 the SkyTel matter; is that right?
 11 A. Yes.
 12 Q. All right. When was the first time you contemplated
 13 resigning as counsel for the mayor regarding the
 14 SkyTel matter?
 15 A. October 17th, 2007.
 16 Q. Was that after you saw Mr. Stefani's motion that we've
 17 talked about?
 18 A. Later.
 19 Q. It was after -- but it was after you saw the motion?
 20 A. After, yes, later --
 21 Q. Yes.
 22 A. -- later in that -- in the evening.
 23 Q. Is what you saw in the Stefani motion that we've
 24 talked about part of your decision to withdraw?
 25 A. Not alone.

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1 Q. There were other factors?
 2 A. Correct.
 3 Q. Can you tell us what the other factors were?
 4 A. They are, essentially, the factors that I had
 5 described earlier when I talked about --
 6 MR. THOMAS: I would just object to form,
 7 it's been covered.
 8 A. -- when I talked about my lack of belief in the
 9 veracity and the information that was being given to
 10 me. When I went to Mr. Stefani's office, it became
 11 for me a litany of learning of bits and pieces of
 12 information about what had apparently transpired to
 13 get the parties to the point where we were on October
 14 the 17th.
 15 This whole notion of how Mr. Stefani got
 16 these records was disclosed to me by Mr. Stefani by
 17 stating that a subpoena had been sent. However, no
 18 copy of the subpoena had been served on any of the
 19 defense counsel, in addition to which Mr. Stefani
 20 advised that it had been sent directly to SkyTel.
 21 My original contacts with SkyTel and with
 22 Mr. Marsden was that any time something of that nature
 23 occurs, SkyTel contacts the entity that is the subject
 24 of the subpoena and puts them on notice. Nothing like
 25 that had occurred in this case.

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1 Mr. Stefani's account of the events that
2 led to where we were continued to add more and more
3 doubt in my mind about the SkyTel records, the
4 validity of these SkyTel records and also more and
5 more doubt about the number of individuals and parties
6 who may be involved in this, SkyTel being one of them,
7 in this whole release or disclosure of these records.
8 It became clear to me that the SkyTel
9 records were no longer a small subset of the
10 employment case that I had been retained to represent
11 the mayor in. It was a much bigger issue now. That
12 issue, itself, now was encompassing both the original
13 motion having to do with governmental deliberative
14 privilege. Now, Mr. Stefani was alleging there's
15 material in there that is other than governmental
16 deliberative privileges, and it became clear to me
17 that an investigation was going to have to be
18 undertaken, that counseling of anyone who participated
19 in any subsequent litigation would be involved, and
20 that likely there might be some litigation from this
21 matter, and I did not feel that since I had been
22 involved in the case, represented the mayor, and had
23 been so committed to this governmental deliberative
24 privilege issue that I can be effective in
25 representing my client.

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1 Q. When you say you had been committed to the
2 governmental deliberative process, privilege --
3 A. Correct.
4 Q. -- assuming one exists, you had found out in
5 Mr. Stefani's motion that at least he believed that
6 there was a lot more in these e-mails than just
7 governmental business?
8 A. That's what he was alleging.
9 Q. Text messages, I should say?
10 A. That is true.
11 Q. And were you concerned that you had emphasized the
12 deliberative process privilege, and, in fact, it now
13 appeared there might be very private personal matters
14 concerning a sexual relationship in these text
15 messages?
16 MR. MORGANROTH: Objection as to form, it
17 sounds like it's work product to me, too.
18 A. I was not so concerned about any specific matter
19 Mr. Stefani had alleged. I was concerned that it
20 appeared Mr. Stefani was representing that there was a
21 whole host of possible items in these text messages
22 that could be privileged or otherwise, and that my
23 previous assumption about what was in these text
24 messages had been very narrow, and so narrow that
25 whatever else was in there could essentially truncate,

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1 could essentially supercede anything that I thought
2 and could be in conflict with anything I had thought
3 and would put me in a position that I couldn't
4 effectively represent my client in dealing with those
5 other issues.
6 BY MR. STEWART:
7 Q. Now, the subpoena that had been sent in trial from
8 SkyTel to Mr. Stefani was for Ms. Beatty's records
9 right, not the mayor's?
10 A. Yes.
11 Q. And forgive me if you've been asked this already, I
12 frankly can't remember. Did you ever talk to
13 Ms. Beatty about what was in her text messages that
14 had been subpoenaed?
15 MR. MORGANROTH: Objection as to form.
16 A. I don't recall if I specifically talked to Ms. Beatty
17 or if the information I received regarding Ms. Beatty
18 came from her deposition transcript and my -- my
19 consultation with other lawyers who had represented
20 her up until that point because I had not done
21 anything in defense of Mr. Beatty -- Ms. Beatty when I
22 came into the case and she'd already been deposed.
23 So the information I obtained regarding
24 Ms. Beatty I think I obtained from what was in the
25 record or from counsel that had previously been

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1 involved there.
2 BY MR. STEWART:
3 Q. Did you obtain any information regarding the content
4 of these text messages of Ms. Beatty's that had been
5 subpoenaed, other than from the sources you've just
6 told under the circumstances?
7 A. I obtained information about the content of these text
8 messages to the extent that I learned that they were
9 not stored by, not in the possession of, and not at
10 the City or available in anyone's hands at the City
11 that could get them and review them and make them
12 available. They didn't exist at the City.
13 Q. Did you take any actions to ask anyone to get these
14 text messages for you?
15 A. I inquired of members of corporate counsel office what
16 efforts had been undertaken to get them and whether
17 they were accessible, and I was advised, learned from
18 corporate counsel's office that they were not
19 available, they were not in the possession of the
20 City, and that I -- just no way for me to get my hands
21 on them.
22 Q. And who would that have been at corporate counsel?
23 A. That would have been either/or Ms. Braceful or
24 Ms. Carter, Ruth Carter.
25 Q. Did you ever ask anyone else if they could obtain the

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1 text messages?

2 **A. I don't believe I asked anyone else. I -- I had been**

3 **brought in under the oversight of Ms. Carter and**

4 **Ms. Braceful. They -- those were the persons in**

5 **corporate counsel office to whom I reported, and when**

6 **I talked to the people I reported to, I did not go**

7 **beyond them or over their heads.**

8 Q. We talked about, or I should say you and Mr. Zuckerman

9 talked about, the confidentiality agreement that I

10 believe was marked as 10 -- 11? 10 or 11? Exhibit

11 10, thanks very much. Okay, you recall that?

12 **A. Yes.**

13 Q. Whose idea was it to draft the confidentiality

14 agreement?

15 MR. THOMAS: Objection, work product.

16 COURT REPORTER: I'm sorry, I didn't hear

17 the objection.

18 MR. THOMAS: I'm objecting to work

19 product -- Mr. Thomas -- and I'm objecting as to form

20 and foundation.

21 **A. That's privileged, work product.**

22 **BY MR. STEWART:**

23 Q. Did Mr. Stefani do the first draft of the

24 confidentiality agreement?

25 MR. MORGANROTH: Objection as to form,

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1 objection as to foundation.

2 **A. I believe so.**

3 **BY MR. STEWART:**

4 Q. You believe Mr. Stefani did the first draft of the

5 confidentiality?

6 **A. I believe it was in some documents that he sent either**

7 **a standalone or a part of some other documents from**

8 **which it was drawn.**

9 Q. Did you talk to Mr. Stefani about the need for a

10 confidentiality agreement?

11 MR. THOMAS: Well, I object to the form of

12 the question. Are we talking about before it was

13 drafted?

14 MR. STEWART: Yes.

15 MR. THOMAS: Or after that initial

16 handwritten draft was made? The question is -- I'll

17 object to the form of the question.

18 BY MR. STEWART:

19 Q. Well, let's see. You'll agree with me, I take it,

20 Mr. McCargo that the October 17th settlement agreement

21 did not call for any specific confidentiality

22 agreement?

23 **A. It did not --**

24 MR. MORGANROTH: Objection as to form.

25 MR. FINK: It did.

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1 MR. STEWART: It did?

2 (Discussion off the record at 4:39 p.m.)

3 (Back on the record at 4:39 p.m.)

4 BY MR. STEWART:

5 Q. Let me ask you something.

6 **A. The October 17th agreement called for several**

7 **agreements.**

8 Q. All right. Do you recall when you first talked to

9 Mr. Stefani about doing what became Exhibit 10, the

10 confidentiality agreement between the mayor and

11 Ms. Beatty and the plaintiffs?

12 **A. The exact date, I do not recall, but I know that the**

13 **negotiations between Mr. Stefani and I took place**

14 **sometime between October 26th and November the 1st.**

15 Q. That would have been after the mayor's rejection of

16 the October 17th agreement?

17 **A. The rejection is the 27th of October. The first pass**

18 **of documents sent to me by Mr. Stefani that actually**

19 **got in my hands were on the 26th, the day before.**

20 Q. You said that Mr. -- that when you sent the rejection

21 by the mayor to Mr. -- advised Mr. Stefani the mayor

22 was rejecting the settlement, that that was around

23 October 27th, the date of the agreement, the date of

24 the rejection; is that right?

25 **A. Yeah, these matters took place very close to together,**

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1 **26th, 27th, yes.**

2 Q. And when you were asked what his reaction was, the

3 discussion was how can we get this case settled?

4 **A. Yes.**

5 Q. Is that right?

6 **A. Yes.**

7 Q. Did you then propose a separate document that became

8 Exhibit 10, the confidentiality agreement, as a way to

9 get the settlement done?

10 **A. I don't know whether I proposed it or whether**

11 **Mr. Stefani mentioned it. All I can tell you is that**

12 **Mr. Stefani and I both agreed that exchanging these**

13 **documents and doing that by way of a separate**

14 **agreement was probably the best way to resolve this**

15 **specific issue. I just don't recall whether it was in**

16 **the original documents he sent me and we pulled it out**

17 **or whether a specific suggestion was made.**

18 **We both came to the agreement in a very**

19 **short period of time that these matters should be**

20 **pulled out into a separate document because they were**

21 **unrelated to it and required specific signatures of**

22 **the individuals.**

23 Q. Did you -- did you read Mr. Stefani's deposition at

24 any time?

25 **A. A long time ago. I read it shortly after it became**

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1 published in the website or something like that.
2 Q. Okay.
3 A. So that was months ago.
4 Q. That's the last time you read it?
5 A. Yes.
6 MR. STEWART: Okay. Anything further?
7 I don't have anything more. Thank you very
8 much.
9 MR. GOODMAN: I have questions. Do you
10 want me to wear your mic? Do you want me to wear the
11 microphone?
12 MR. STEWART: Oh, maybe I'll pass it over
13 to you.
14 (Discussion off the record at 4:43 p.m.)
15 (Back on the record at 4:43 p.m.)
16 MR. ZUCKERMAN: Does that mean you're done
17 objecting?
18 MR. GOODMAN: He's still objectionable.
19 EXAMINATION
20 BY MR. GOODMAN:
21 Q. Good afternoon, Mr. McCargo, as you know, my name is
22 Bill Goodman. I represent the Detroit City Council.
23 A. Mr. Goodman.
24 Q. I appreciate that you've been here a long time and
25 patiently answered questions, so I will try to be, if

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1 not abrupt, at least careful with our time here today,
2 okay?
3 A. Certainly.
4 Q. I want to go first to October the 17th and the meeting
5 with -- the facilitation meeting and talk a little bit
6 about the chronology of what transpired there. Excuse
7 me.
8 You've testified that you believe that the
9 process of attempting to get authority to open the
10 negotiations up beyond simply attorneys' fees and
11 attempt to see whether there was any possibility for a
12 global settlement, that that was an impulse that
13 existed among the defense counsel before you received
14 the document, the so-called brief from Mr. Stefani; am
15 I correct?
16 A. Correct.
17 Q. And that, in fact, you think that you had already
18 attempted or somebody on your team had attempted and
19 perhaps had reached the authorities and had already
20 received authority before you were handed that brief
21 by Mr. Stefani, or excuse me, by Judge Washington on
22 behalf of Mr. Stefani; is that correct?
23 A. No, I did not testify that I was aware someone had
24 actually reached someone. I was aware that efforts
25 were being made to reach Mr. Johnson. Whether he had

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1 actually been contacted or not, I didn't know, but I
2 knew that Valerie Colbert-Osamuede was trying to reach
3 him after the first request for an expanding of the
4 negotiations to include the Brown case.
5 Q. And you believe that to have taken place before you
6 were handed the Stefani brief by Judge Washington --
7 A. Yes, sir.
8 Q. -- am I right?
9 A. Yes, sir.
10 MR. LIEDEL: For the record, I'm going
11 to -- I'm objecting to the discussion concerning
12 what's occurring during this facilitation process.
13 MR. GOODMAN: Well, I disagree with the
14 assertion of any privilege in that connection, but
15 beyond that, let's move on. I have here...
16 (Whereupon Mr. Zuckerman passes a note to
17 Mr. Goodman at 4:46 p.m.)
18 MR. GOODMAN: I have here --
19 MR. LIEDEL: A note from Mr. Zuckerman.
20 BY MR. GOODMAN:
21 Q. -- a note -- a statement of Samuel -- Samuel E.
22 McCargo which you presented to the Detroit City
23 Council --
24 A. Yes.
25 Q. -- at the time of the City Council hearings. I

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1 apologize for having only my own marked-up copy, but
2 for the purposes of the record, we'll perhaps mark it
3 as an exhibit.
4 A. Sure, no problem.
5 MR. GOODMAN: Would you mark that?
6 MARKED BY THE REPORTER:
7 DEPOSITION EXHIBIT NUMBER 21
8 4:46 p.m.
9 BY MR. GOODMAN:
10 Q. In a moment, I'm going to read it to the witness first
11 and then I can hand it to him, and he can read it.
12 Did you not state on page 3 of what's been marked --
13 MR. MORGANROTH: I'm sorry, did you mark
14 that as an exhibit?
15 MR. GOODMAN: Exhibit 21.
16 MR. MORGANROTH: 21?
17 MR. GOODMAN: Indeed, 21.
18 MR. MORGANROTH: You don't have copies?
19 MR. GOODMAN: I'm sorry, I don't, I
20 apologize.
21 MR. FINK: We can run copies after.
22 MR. MORGANROTH: I just don't know what
23 he's asking about.
24 MR. GOODMAN: I'll read it, show it
25 around...

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1 MR. FINK: Do you want to take a minute to
 2 have Brian make copies?
 3 MR. GOODMAN: Brian, are you willing to --
 4 MR. WASSOM: Be happy to.
 5 MR. BEDROSIAN: Why don't you try the
 6 question first and then, you know --
 7 MR. FINK: Whatever -- whatever everybody
 8 wants to do, I don't care. Take a minute, it's
 9 just --
 10 MR. BEDROSIAN: Ten minutes --
 11 MR. FINK: No, it's right after -- he's got
 12 to change tapes, anyway.
 13 MR. GOODMAN: Okay, go ahead.
 14 VIDEO TECHNICIAN: Going off the record.
 15 This marks the end of tape No. 4. The time is 4:46
 16 and 42 seconds p.m.
 17 (Recess taken at 4:46 p.m.)
 18 (Back on the record at 4:53 p.m.)
 19 VIDEO TECHNICIAN: We are back on the
 20 record. The beginning of tape No. 5. The time is
 21 4:53 and 7 seconds p.m.
 22 BY MR. GOODMAN:
 23 Q. Going to page 3, Mr. McCargo.
 24 A. Yes.
 25 Q. The second full paragraph, starting with "before", do

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1 you see that?
 2 A. Yes.
 3 Q. Did you not state in your written statement that
 4 before the defense attorneys could explore a potential
 5 expanded scope of negotiations with their clients --
 6 A. With all the clients.
 7 Q. Excuse me, let me finish the question -- plaintiff's
 8 attorney sent a confidential package to you through
 9 the facilitator --
 10 A. You mis --
 11 Q. -- am I right?
 12 A. You misread it. With all their clients, Mr. Goodman,
 13 it didn't say "with their clients."
 14 Q. With all their clients?
 15 A. With all their clients. The City had to initiate --
 16 MR. MORGANROTH: I just want to object as
 17 to form.
 18 BY MR. GOODMAN:
 19 Q. Going now then, or let me just see if you can recall
 20 your testimony which was given to the Detroit City
 21 Council in public hearing on April the 10th, 2008.
 22 MR. MORGANROTH: What page?
 23 MR. GOODMAN: Page 21.
 24 A. Yes.
 25 BY MR. GOODMAN:

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1 Q. Do you recall saying, quote, the lawyers had come to
 2 the consensus that we should address our clients to
 3 see if we could get authority to do that. Before that
 4 could happen, I was pulled out of the meeting by the
 5 facilitator, end quote; do you remember saying that?
 6 A. That's correct.
 7 Q. So it was really -- you were given by the facilitator
 8 Mr. Stefani's brief before the lawyers could address
 9 your client -- could address the clients to see if
 10 they could get authority to enter into a global
 11 settlement; is that correct?
 12 MR. MORGANROTH: Objection as to form.
 13 A. No, sir, there were two clients, Mr. Goodman. I
 14 advised the defendants that I -- other defense counsel
 15 that I would not attempt to reach my client unless the
 16 City indicated it was willing to expand the scope of
 17 discussions and it was willing to commit to put
 18 dollars into that. So the City was pursuing
 19 Mr. Johnson to try to get his approval, but I was not
 20 going to do anything in trying to contact the mayor
 21 until the City confirmed that they had done that.
 22 That was my testimony before Council, as well.
 23 BY MR. GOODMAN:
 24 Q. You testified before Council that you --
 25 A. To that effect.

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1 Q. -- would not contact --
 2 A. That's correct --
 3 Q. -- and told the City Council --
 4 A. That's correct.
 5 COURT REPORTER: I can't get either one of
 6 you --
 7 MR. BEDROSIAN: Wait, wait, wait.
 8 MR. MORGANROTH: And I'm objecting as to
 9 form.
 10 MR. GOODMAN: Let me start all over again.
 11 MR. BEDROSIAN: Let Bill Goodman finish his
 12 question before you answer, and let Sam McCargo finish
 13 his answer before you start another question.
 14 MR. GOODMAN: I never interrupt a witness,
 15 Mr. Bedrosian, and I don't intend to start now.
 16 MR. BEDROSIAN: Well, the reporter was just
 17 telling you that right now. That's what she just said
 18 to you.
 19 BY MR. GOODMAN:
 20 Q. Let's try it again, Mr. McCargo. Is it your testimony
 21 here today that when you testified before the Detroit
 22 City Council that you said that you would not contact
 23 the mayor until the -- the lawyer for the City of
 24 Detroit contacted the City of Detroit, namely,
 25 Mr. Johnson; is that right?

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1 **A. During my testimony I explained that, yes.**
2 Q. Have you reviewed your testimony before testifying
3 here today at deposition?
4 **A. Yes, I reviewed the transcript.**
5 Q. Can you point out to me in the transcript where you
6 said that?
7 **A. I cannot point out to you in the transcript off the**
8 **top of my head where I said that, but I do recall**
9 **explaining that to Council.**
10 Q. All right. And in the sworn -- in the formal
11 statement for which you wrote out and then read to
12 Council in the open hearings --
13 **A. Yes.**
14 Q. -- is there anywhere where you indicate that you've
15 made that -- that lawyers for the City of Detroit
16 contacted Mr. Johnson before, even before you received
17 the Stefani -- the Stefani brief?
18 **A. My statement isn't --**
19 MR. LIEDEL: You know, I'm going to object
20 to relevancy, Mr. Goodman.
21 BY MR. GOODMAN:
22 Q. Over the objection, please.
23 **A. My statement does not contain that kind of -- the**
24 **written statement does not contain that kind of**
25 **detail.**

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1 Q. All right. At any rate, once you did receive the
2 brief from Mr. Stefani, you did contact the mayor; is
3 that right?
4 **A. Yes.**
5 Q. And how promptly was that done?
6 MR. MORGANROTH: Object to form.
7 **A. My recall is that the time that I made the call to the**
8 **mayor was approximately 3:25, 3:30 that day.**
9 BY MR. GOODMAN:
10 Q. And when did you get the brief from Mr. Stefani?
11 **A. I think I testified earlier sometime between 2:15 and**
12 **3:30.**
13 Q. And you contacted the mayor around 3:45; is that
14 right?
15 **A. Yes, after the City advised me that they were**
16 **interested in pursuing expanded discussions, I**
17 **contacted the mayor.**
18 Q. And by 5:00, the amount of \$8.4 million had been
19 agreed upon to settle all three cases; is that right?
20 **A. That's correct.**
21 MR. MORGANROTH: Objection as to form.
22 BY MR. GOODMAN:
23 Q. Now --
24 **A. Not all three cases, only two cases.**
25 Q. Two cases, excuse me, that's right, Brown and

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1 Nelthrope being one, and Harris being the second one,
2 correct?
3 **A. And the Fluker case had been taken off the table.**
4 Q. Fluker?
5 **A. Fluker --**
6 Q. The Fluker case was not settled?
7 **A. Correct, not settled.**
8 Q. But by the time -- after speaking with the mayor by --
9 which happened around 3:45, and before 5:00, the
10 amount of \$8.4 million had been agreed upon to settle
11 two of those cases, correct, sir?
12 **A. Yes.**
13 Q. Now --
14 MR. MORGANROTH: I can't hear.
15 MR. GOODMAN: You can't hear?
16 MR. MORGANROTH: No.
17 MR. GOODMAN: Would you mind getting off my
18 cord here? Thank you.
19 (Discussion off the record at 5:00 p.m.)
20 (Back on the record at 5:00 p.m.)
21 BY MR. GOODMAN:
22 Q. Is it your testimony here today, Mr. McCargo, that
23 Mr. Johnson had the final word as to the authority to
24 settle and for how much to settle?
25 **A. I did not know what the scope of his authority was. I**

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1 **did know that Mr. Johnson had more settlement**
2 **authority than Ms. Valerie Colbert-Osamuede and that**
3 **was why she contacted him.**
4 Q. Did you understand what the chain of command was
5 beyond Mr. Johnson, in other words, whatever his top
6 level of authority was, where he had to go in order to
7 get more authority beyond that?
8 **A. I never understood the various committees or**
9 **individuals or sources that Mr. Johnson would have to**
10 **go through to get to final settlement.**
11 Q. Do you remember a hearing before the Detroit City
12 Council on September 19th, 2007, in which the Brown
13 and Nelthrope case was discussed?
14 **A. September 19th?**
15 Q. Yes.
16 **A. Yes.**
17 Q. All right, and you appeared there; is that right?
18 **A. That's correct.**
19 Q. You gave some brief testimony, I believe, is that
20 right?
21 **A. I didn't give any testimony.**
22 Q. Well, you spoke briefly; am I right about that?
23 **A. Very briefly.**
24 Q. But you listened to Mr. Johnson speak at length; is
25 that right?

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1 **A. Correct.**
2 Q. And you heard Ms. McPhail testify, is that right, or
3 speak before City Council?
4 **A. I don't know, maybe she did. I remember Mr. Johnson**
5 **and Ms. Valerie Colbert-Osamuede doing most of the**
6 **talking.**
7 Q. Well, I wonder if you remember this exchange between
8 Mr. Johnson and Ms. McPhail on page 19 of the
9 September 19th, 2007, transcript, 19 and 20. Mr.
10 Johnson says:
11 "Now there's been no discussion at all of
12 settling at this point. But if those
13 discussions are entertained, we certainly wanted
14 Ms. McPhail to articulate what the settlement
15 process the mayor's putting in place now," and
16 then Ms. McPhail says:
17 "Thank you, thank you, good to see all of
18 you. The mayor in his second term initiated a
19 process by which matters that are really
20 significant get reviewed on the 11th floor and
21 essentially what happens is that if the case is
22 one of significant policy considerations, such
23 as it might involve challenging Council's
24 ordinance or something like that, or it's a
25 million dollars or more that's being talked

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1 about in terms of settlement, that it comes to
2 me for review and recommendation to the mayor,
3 so that's why at this point I am involved in it
4 and a part of the discussions."
5 Do you recall her saying that?
6 **A. If I was there, she said it. I don't specifically**
7 **recall it, I don't doubt that she said something like**
8 **that.**
9 Q. Did you understand that any settlement over a million
10 dollars would have to be approved by the mayor going
11 through Ms. McPhail first?
12 **A. I did not understand, Mr. Goodman, what that 11th**
13 **floor thing was about. I did not understand what that**
14 **approval process was she was describing had been or**
15 **would be or was going to be implemented. I simply did**
16 **not know what all of those steps were for approval. I**
17 **know she'd mentioned the one thing there is that if**
18 **there is a million-dollar figure, somehow she's**
19 **involved in reviewing and communicating something to**
20 **the mayor, which is not to the Council, that's all I**
21 **knew.**
22 Q. Did you --
23 MR. LIEDEL: For the record, I continue my
24 relevancy objections because these have absolutely
25 nothing to do with the FOIA requests.

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1 BY MR. GOODMAN:
2 Q. Did you ever speak with Ms. McPhail before you entered
3 into the settlement negotiations or during the
4 settlement negotiations on the Brown and Nelthrope
5 case?
6 **A. Are you mean -- do you mean before entering into the**
7 **facilitation on October the 17th?**
8 Q. Let's put it this way. On October the 17th, did you
9 talk to Ms. McPhail?
10 **A. No, I did not.**
11 Q. After you spoke with the mayor after 3:45 p.m., or
12 thereabouts, did anyone else, as far as you know,
13 speak with the mayor about settling this case?
14 **A. I do not know.**
15 Q. Did the mayor authorize a particular figure to settle
16 this particular case?
17 **A. Privileged.**
18 Q. Nonetheless, you had agreed and signed the settlement
19 agreement by the end of the afternoon or evening of
20 October 17th; am I correct?
21 **A. A proposed settlement agreement.**
22 Q. And that settlement was sufficiently concrete so that
23 the very next day it was taken to the Detroit City
24 Council Committee on Internal Operations, and approval
25 was asked for that amount to settle those cases; am I

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1 correct?
2 **A. I have no --**
3 MR. MORGANROTH: Objection as to form.
4 **A. I have no idea whether the sufficiency of the**
5 **agreement had anything to do with this 18th meeting.**
6 **I had no idea what that meeting was or what that**
7 **committee was. I was not involved, I just don't know**
8 **what that committee was or how it came about.**
9 BY MR. GOODMAN:
10 Q. You do now know, though, that there was approval by or
11 that the matter was sent to the entire City Council
12 for approval on October the 18th --
13 **A. No, no, my understanding is that the 18th was some**
14 **kind of subcommittee --**
15 Q. Right.
16 **A. -- operations committee or something, there was --**
17 **there was no total City Council meeting on the 18th,**
18 **and I didn't know what that committee was.**
19 Q. I apologize, I didn't state my question clearly. Let
20 me state it so that you understand it, and that is not
21 what I intended to say.
22 **A. Okay.**
23 Q. Nonetheless, you understand that on October the 18th,
24 the very next day, the matter was taken to the
25 Internal Operations Committee of the Detroit City

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1 Council and then forwarded to the entire City Council
2 which finally approved the settlement on the 23rd, you
3 do understand that; is that right?
4 **A. I know that now.**
5 Q. All right.
6 MR. FINK: What date?
7 MR. GOODMAN: The 23rd.
8 BY MR. GOODMAN:
9 Q. So that the agreement to settle all three cases or all
10 two -- both cases, excuse me, for \$8.4 million was
11 sufficiently concrete by the end of October the 17th
12 for it to -- for the corporate counsel to then
13 initiate the process the very next day to finalize
14 authority to settle the case; am I right?
15 MR. MORGANROTH: Objection as to form,
16 asked and answered.
17 MR. GOODMAN: Over objection.
18 **A. I have no idea what level of sufficiency was required**
19 **for corporate counsel to move the matter to City**
20 **Council, and I was totally surprised that counsel**
21 **acted on the 23rd to approve this matter.**
22 BY MR. GOODMAN:
23 Q. You were surprised?
24 **A. Yes.**
25 Q. Did you ever express that surprise to anyone?

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1 **A. No.**
2 Q. Did you ever tell Mr. Johnson this -- that you're
3 surprised?
4 **A. No.**
5 Q. Did you consider it inappropriate for this action to
6 have been taken so quickly and suddenly?
7 **A. Not inappropriate, but it was surprising.**
8 Q. Did you consider it abrupt?
9 **A. Yes.**
10 Q. Did you ever tell anybody that it was -- that this
11 action was taken abruptly?
12 **A. No.**
13 Q. You never said anything to Mr. Johnson about it?
14 **A. No.**
15 Q. To Ms. Osamuède about it?
16 **A. No.**
17 Q. Now, you've been shown a document here today, and I
18 forget what the exhibit number is -- that reflects a
19 FOIA request of the City of Detroit Law Department
20 from the Detroit Free Press that's dated October the
21 19th, 2007; do you recall seeing that document?
22 **A. Yes.**
23 MR. GOODMAN: I don't have the number in
24 front of me. Does anybody know the exhibit number?
25 MR. MORGANROTH: 8.

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1 MR. GOODMAN: 8?
2 MR. MORGANROTH: No, no, hold on.
3 MR. FINK: October 19th, yeah, is that the
4 one you're looking for?
5 MR. GOODMAN: Yeah, it's 8.
6 BY MR. GOODMAN:
7 Q. Do you have it there in front of you, Mr. McCargo?
8 MR. FINK: Which one are you looking for?
9 MR. GOODMAN: October 19th, Exhibit 8.
10 MR. FINK: It's actually October 19th or
11 17th?
12 MR. GOODMAN: 19th.
13 MR. FINK: The letter?
14 MR. GOODMAN: Yeah.
15 MR. FINK: There you go.
16 THE WITNESS: Wait a minute, wait, wait. I
17 thought I had it, I do not. Do you want to give me
18 it?
19 MR. ZUCKERMAN: Sure.
20 THE WITNESS: No, this is November 13th.
21 MR. ZUCKERMAN: October 19th.
22 THE WITNESS: October 19th, okay. I now
23 have October 19th in front of me, Mr. Goodman.
24 BY MR. GOODMAN:
25 Q. And when's the first time you saw that particular

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1 letter?
2 **A. I believe the first time I saw it was when it was**
3 **published by either the News or the Free Press, and I**
4 **believe that that was sometime in January of 2008.**
5 Q. And I believe you have already testified that you were
6 interviewed in connection with this matter by both
7 Ms. Ha and Ms. McPhail; is that correct, sir?
8 **A. Not in connection with this letter. I was interviewed**
9 **in connection with the pending lawsuit that was filed,**
10 **I believe it was either late December or early January**
11 **2008.**
12 Q. Were you interviewed by them together?
13 **A. You know, I don't -- for some reason, I remember at**
14 **least a part of the time both of them were in the same**
15 **room. But I believe the -- the -- I remember**
16 **answering questions of Ms. Ha -- Ms. Ha primarily.**
17 Q. Now, in the -- did Ms. Ha show you the City's response
18 to that initial request, sir?
19 **A. No.**
20 MR. GOODMAN: Does anybody happen to know
21 whether that's been marked as an exhibit?
22 MR. LIEDEL: It's not.
23 MR. FINK: It was in Stefani's deposition.
24 MR. GOODMAN: Yeah, I have a copy of it,
25 sorry. Would you just mark this as an exhibit for the

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1 moment? We'll have it copied later.
2 MARKED BY THE REPORTER:
3 DEPOSITION EXHIBIT NUMBER 22
4 5:11 p.m.
5 COURT REPORTER: This is No. 22.
6 BY MR. GOODMAN:
7 Q. Mr. McCargo, I'm going to show you what's been marked
8 as McCargo Exhibit 22 and ask you, first of all, to
9 review it and then ask you whether you've read it.
10 MR. GOODMAN: What's the date of that?
11 October 29th.
12 **A. This appears to be the same format as what is already**
13 **in the record as Exhibit 3, and I cannot, now that I'm**
14 **looking at it, I cannot remember whether when I saw**
15 **them on the Internet whether it was one or both of**
16 **these.**
17 **BY MR. GOODMAN:**
18 Q. All right, but Exhibit 3, for the record, is dated
19 December 7th --
20 **A. 7th, yes.**
21 Q. -- 2007?
22 **A. Right.**
23 Q. Exhibit 22, for the record, is dated October 29th,
24 2007.
25 MR. ZUCKERMAN: You want to clarify what

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1 Exhibit 3 number you're talking about? Because I
2 don't think it's Exhibit 3 in this deposition.
3 MR. GOODMAN: Isn't it in this deposition?
4 MR. ZUCKERMAN: No, that's --
5 MR. GOODMAN: Oh, I --
6 MR. ZUCKERMAN: -- Exhibit 3 is from the
7 Stefani deposition.
8 MR. GOODMAN: I apologize.
9 MR. ZUCKERMAN: So if you don't have the
10 number, do it by Bates.
11 MR. GOODMAN: Good idea.
12 MR. ZUCKERMAN: Thank you.
13 BY MR. GOODMAN:
14 Q. Mr. McCargo, you --
15 MR. FINK: It's 15 in this deposition.
16 MR. ZUCKERMAN: Pick a number.
17 MR. FINK: It's 15.
18 BY MR. GOODMAN:
19 Q. I just want to ask you about the letter dated which is
20 marked McCargo Exhibit 22 and dated October 29th,
21 2007.
22 **A. If I saw this, it would have been late December, early**
23 **January, I think, of 2008.**
24 Q. Did Ms. Ha show this letter to you or inquire of you
25 about this letter?

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1 **A. I don't remember Ms. Ha showing this to me**
2 **specifically. I believe Ms. Ha may have showed me**
3 **some pleadings in the lawsuit. This may have been**
4 **attached to the pleadings. But it was not pulled out**
5 **and showed to me separately or to ask any questions**
6 **about it. That's why I'm saying I may have seen it,**
7 **the format looks familiar, but I don't recall spending**
8 **any time reviewing it or discussing it.**
9 Q. And do you recall Ms. McPhail asking you questions
10 about this particular letter?
11 **A. I don't recall her asking me questions about this**
12 **specific letter. Ms. McPhail may have asked me**
13 **questions about the underlying facts of the**
14 **October 17th facilitation agreement and activities**
15 **thereafter, that's what -- that's what I was being**
16 **interviewed about.**
17 Q. Now, in this letter, Ms. Ha states to Mr. Schaefer of
18 the Detroit Free Press:
19 "Your request is denied at this time. It
20 is our understanding that currently there is no
21 settlement agreement as parties are working on
22 the details of the agreement."
23 Do you -- I've highlighted, you know, that
24 you've read that before; is that correct?
25 **A. I've seen the highlighting, yes.**

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1 Q. Do you know where she got that information from?
2 **A. No.**
3 Q. Did you ever provide that information to her?
4 **A. No.**
5 Q. Did she ever ask you whether that information was, in
6 fact, correct?
7 **A. No.**
8 Q. Did Ms. McPhail ever ask you any of those questions?
9 **A. No.**
10 MR. GOODMAN: What's the deposition exhibit
11 number for the rejection, the mayor's rejection of the
12 settlement?
13 MR. BEDROSIAN: 17.
14 MR. GOODMAN: 17?
15 MR. FINK: 9.
16 BY MR. GOODMAN:
17 Q. All right, do you have Exhibit -- McCargo Deposition
18 Exhibit 9 in front of you?
19 **A. Yes.**
20 Q. What is the date of that?
21 **A. October 27th, 2007.**
22 Q. And you drafted that; is that correct?
23 **A. Correct.**
24 Q. Now, when you drafted that, did you also draft the
25 approval, the subsequent approval of the agreement

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1 which is dated, I believe, November 1st, 2007?
2 **A. I don't believe so.**
3 Q. That was dated, that was drafted later?
4 **A. I believe so.**
5 Q. But both of these were drafted by you; is that
6 correct?
7 **A. Yes.**
8 Q. Did anyone instruct you to draft the rejection of that
9 agreement?
10 **A. That's privileged.**
11 Q. All right. When you drafted the rejection of the
12 settlement agreement, were you aware that a Freedom of
13 Information Act Request had been -- had been made by
14 the Detroit Free Press and the City of Detroit Law
15 Department?
16 **A. No.**
17 Q. Once you drafted the rejection of the settlement, what
18 date did you -- withdraw that question.
19 When did you draft the rejection?
20 **A. I don't recall the exact date. I believe it would**
21 **have been 26th of October or thereabouts.**
22 Q. Did you send a copy to anybody once you did that?
23 **A. By -- by anybody, who do you mean?**
24 Q. Well, let's start with Mr. Johnson.
25 **A. No.**

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1 Q. Ms. Ha?
2 **A. No.**
3 Q. Mr. Copeland?
4 **A. No.**
5 Q. Your client?
6 **A. That's privileged.**
7 Q. I want to go now for just a moment to this written
8 draft, Stefani handwritten notes, which is marked
9 McCargo Deposition Exhibit No. 6. Do you have that in
10 front of you?
11 **A. Yes.**
12 Q. At the bottom of page -- the page, I guess it's a
13 Bates stamp of some sort, the number is 000565. Do
14 you see starting with the numeral 3 at the bottom of
15 that page?
16 **A. Yes.**
17 Q. It says:
18 "Stefani & Stefani agrees to require each
19 of its employees to agree under penalty of
20 significant monetary charges -- damages --"
21 excuse me "-- to refrain from disclosing to any
22 person or entity the existence or contents of
23 such records or brief or any other matter
24 related to the circumstances concerning these
25 records or the resolution of these cases."

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1 Do you see that language?
2 **A. Yes.**
3 Q. Now, did you understand that the term, that the
4 agreement not to disclose to any person or entity
5 included the Detroit City Council?
6 **A. Yes.**
7 Q. That there was to be no disclosure to the Detroit City
8 Council; is that right?
9 **A. My understanding that Mr. Stefani's employees were not**
10 **going to make disclosure to anyone, including City**
11 **Council.**
12 Q. So that when we go to paragraph 8 of that document,
13 again, where it says, "as a condition precedent to
14 this agreement becoming operative, it must be approved
15 by the mayor, City Council," and so on, and the word
16 "it" is crossed out and instead, the phrase "the
17 monetary terms of this settlement" is inserted, that
18 indicates not only that the Detroit -- that the
19 monetary terms are to be approved by the City Council
20 in order for the agreement to be effective, but that
21 the confidentiality terms are not to be because this
22 is an entity to which such terms are not to be
23 disclosed. This is the -- an entity to which such
24 terms are not to be disclosed --
25 THE WITNESS: No such language --

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1 MR. MORGANROTH: Object to form.
2 **A. No such language to that effect exists in this**
3 **agreement.**
4 **BY MR. GOODMAN:**
5 Q. So it's clear from both of these provisions in the
6 agreement that that's what was intended; was it not?
7 **A. No, sir. The agreement, as I read the agreement,**
8 **Mr. Goodman, the terms of the agreement speak for**
9 **itself. That language that you are attempting to**
10 **impute simply doesn't exist in this agreement.**
11 Q. Do you have any understanding as to why the entire
12 agreement should not have been approved by the Detroit
13 City Council in paragraph 8 of this, rather than only
14 the monetary terms?
15 **A. I did not include that language, and I have no idea**
16 **what the --**
17 MR. MORGANROTH: Objection.
18 **A. -- thinking was behind whoever it was who inserted**
19 **that claim.**
20 **BY MR. GOODMAN:**
21 Q. And in fact, that language --
22 MR. MORGANROTH: It's a little too fast, I
23 want to object to the foundation.
24 THE WITNESS: Okay.
25 MR. MORGANROTH: Go ahead.

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1 BY MR. GOODMAN:
2 Q. That language was not only written in hand by
3 Mr. Stefani on this particular exhibit, but
4 incorporated in the typed version of this agreement;
5 is that correct, sir?
6 **A. I don't know about the first portion of your**
7 **statement, if you're asking me does this phrase appear**
8 **in the typewritten document, the phrase does appear**
9 **there.**
10 Q. Let me find it in the typewritten document. Do you
11 have it in front of you?
12 MR. LIEDEL: Which one?
13 MR. GOODMAN: The settlement agreement, the
14 original October 17th settlement agreement, yeah, here
15 it is.
16 BY MR. GOODMAN:
17 Q. Exhibit No. 7, do you have it?
18 **A. Yes.**
19 Q. And in Exhibit 7, it states that Stefani & Stefani
20 agrees to require Gary Brown and Harold Nelthrope and
21 Walter Harris to enter into a confidentiality
22 agreement and not to disclose the terms of the
23 settlement to any person or entity; is that right?
24 **A. Which phrase?**
25 Q. That's 3A, the first page?

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1 **A. 3A. Yes.**
2 Q. And you understood or entity also to mean Detroit City
3 Council; did you not?
4 **A. Yes, this meant Gary Brown and Harold Nelthrope were**
5 **not to make disclosures to anyone, including City**
6 **Council.**
7 Q. And in paragraph A (sic), there again is incorporated
8 the idea that only the monetary terms are to be
9 disclosed -- are to be approved by City Council as a
10 condition precedent to the agreement --
11 **A. Can you point me to paragraph A?**
12 Q. 8, I apologize.
13 **A. Yes, that's the phrase we referenced earlier in this**
14 **previous exhibit on page Bates stamped 00569.**
15 Q. And now for the moment going to Exhibit 10, Stefani
16 Deposition Exhibit 10, page 4?
17 **A. What is that document, sir?**
18 Q. That's the final confidentiality agreement.
19 MR. ZUCKERMAN: That's 10 here.
20 MR. GOODMAN: Ten. That's what I said.
21 **A. Page 4?**
22 **BY MR. GOODMAN:**
23 Q. Page 4.
24 **A. Yes, sir.**
25 Q. Here again, there is an undertaking by Stefani &

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1 Stefani that Gary Brown, Harold Nelthrope, and Walter
2 Harris are not to disclose the confidentiality
3 agreement to the Detroit City Council; is that
4 correct?
5 **A. No.**
6 MR. MORGANROTH: Objection as to form. It
7 says to anyone.
8 **A. No, that's not what it says. It says "anyone".**
9 **BY MR. GOODMAN:**
10 Q. Any person or entity?
11 **A. That's -- right, so it's not --**
12 Q. And that --
13 **A. -- so it does not specifically say "City Council", I'm**
14 **sorry.**
15 Q. But the entity would include the Detroit City Council;
16 is that right, sir?
17 **A. This is, basically, the same language we've referenced**
18 **up until this point.**
19 Q. So you would agree with that statement, right?
20 **A. I would agree that Harold -- Gary Brown, Harold**
21 **Nelthrope, and Walter Harris, under this agreement,**
22 **are not to make disclosures to anyone or any entity.**
23 Q. Okay. This agreement, Exhibit 10, final
24 confidentiality agreement is signed by Mr. Stefani on
25 behalf of the plaintiffs, Mr. Stefani on behalf of

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1 Stefani & Stefani, and, quote, Kwame Kilpatrick, end
2 quote, on behalf of Kwame Kilpatrick; is that right?
3 **A. Yes.**
4 Q. Did you draft this agreement?
5 **A. Mr. Stefani and I jointly drafted this agreement.**
6 Q. So you authorized and approved it; is that right?
7 **A. What do you mean by authorized and approved it?**
8 Q. You, this -- you -- you approved it, let me take out
9 the word authorized, you approved this agreement; am I
10 right about that?
11 **A. I agreed with Mr. Stefani that this document**
12 **represented the terms of our agreement to the best we**
13 **could put it in writing.**
14 Q. Is there any reason why Kwame Kilpatrick was not
15 identified as Mayor Kwame Kilpatrick?
16 **A. If you look in the first page of the confidentiality**
17 **agreement, in the introductory paragraph, indicates**
18 **that this agreement is being entered into by**
19 **Mr. Kilpatrick individually and personally. And if**
20 **you further go to -- I can't put my finger on it right**
21 **this moment, Mr. Goodman, but there's a provision in**
22 **here that indicates that the plaintiffs agree and**
23 **concur that this document is being executed to**
24 **preserve privacy rights and privileges of Kwame**
25 **Kilpatrick and Christine Beatty, so this was related**

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1 to individual privacy -- privacy rights and privileges
2 for the individuals.
3 Q. So the answer to my question is that the reason he
4 wasn't identified as Mayor Kwame Kilpatrick is to
5 underline that this is a private, personal agreement
6 having nothing to do with his official duties and
7 obligations; is that correct?
8 A. Correct.
9 Q. And as a result of the fact that this is completely
10 personal and private in your view, there was neither a
11 need nor a duty nor an obligation to disclose this to
12 any person or entity other than the parties to the
13 agreement; am I right?
14 MR. MORGANROTH: Objection as to form.
15 MR. THOMAS: And irrelevancy.
16 A. I'm not sure I understand what you're asking. You're
17 asking did I have a duty to disclose this --
18 BY MR. GOODMAN:
19 Q. No.
20 A. -- to anyone else?
21 Q. No.
22 A. I did not have a duty to disclose this to anyone
23 beyond my client if that's what you're asking me.
24 Q. I'm not asking you about your -- your obligations or
25 duties. What I'm saying is that it was your

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1 intention, as one of the people who was involved in
2 drafting this document, to underscore, by leaving any
3 title off of the name Kwame Kilpatrick and by
4 including the language that you've already identified,
5 that there is neither an obligation, nor a duty, nor a
6 requirement to make any disclosure of the contents of
7 this particular agreement to any official body or
8 institution connected with the City of Detroit; am I
9 right?
10 A. That's a work product privilege, Mr. Goodman.
11 Q. Well, we'll find out about that.
12 Was this document reviewed by Valerie
13 Colbert-Osamuede, that -- by this document I mean
14 Exhibit 10, the confidentiality agreement?
15 A. Not to my knowledge.
16 Q. Did this document apply or have any application,
17 whatsoever, to the Harris case as well as the Brown
18 and Nelthrope case?
19 A. It did not apply to Mr. Harris, but the Christine
20 Beatty records that were at issue here were records
21 that were -- records that created a right in her
22 arising out of misconduct that had taken place in both
23 the Harris case and in the Brown case.
24 Q. It looks to me just referring to -- throughout the
25 agreement, but just referring to the first line,

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1 Plaintiffs Gary Brown, Harold Nelthrope, and Walter
2 Harris, plaintiffs, so isn't it the case that the
3 agreement, Exhibit 10, applied to Mr. Harris as well
4 as Brown and Nelthrope?
5 A. Well, yes, to a certain extent as I just indicated.
6 Q. And who was the attorney for Mr. Harris in the
7 litigation?
8 A. Michael Stefani.
9 Q. He was the attorney for the plaintiffs?
10 A. Yes.
11 Q. For Mr. Harris?
12 A. Yes.
13 Q. Who was the attorney for the City of Detroit?
14 A. In which case?
15 Q. The case that's referenced on page 1 of this
16 confidentiality agreement, Walter Harris versus Mayor
17 Kwame Kilpatrick and the City of Detroit?
18 A. The City Law Department was the attorney for the City
19 of Detroit in the Walter Harris case as far as I know.
20 Q. And who was the attorney for Mayor Kwame Kilpatrick in
21 that case?
22 A. The City Law Department was the attorney for Mayor
23 Kwame Kilpatrick in the Walter Harris case.
24 Q. And that would have been both Mr. Johnson and
25 Ms. Colbert-Osamuede?

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1 A. That's correct.
2 Q. Is there any reason why this confidentiality agreement
3 was not shown to them before it was executed, given
4 the fact that their client in a case in which they
5 represented him was referenced in this -- in this
6 agreement?
7 A. The City was not a party to this case in any way,
8 shape, form, or fashion. Mr. Harris was represented
9 by Mr. Stefani. They were not a party to this
10 confidentiality agreement.
11 Q. Paragraph 1B references the case Walter Harris versus
12 Mayor Kwame Kilpatrick; does it not?
13 A. That's a recital clause.
14 Q. So again, your understanding as to the reason that
15 Mr. Johnson and Ms. Colbert-Osamuede were not provided
16 copies of this confidentiality agreement either before
17 or after it was executed is what, sir?
18 A. The City is not a party to this agreement.
19 Q. Going back to the handwritten notes that we've talked
20 about before, and I apologize for going back to them,
21 and I think that's Exhibit 6, Mr. McCargo --
22 A. Yes.
23 Q. -- who else reviewed those handwritten notes other
24 than yourself and Mr. Stefani before they were typed
25 up in a final -- somewhat final form that evening?

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1 A. I can't --
2 MR. MORGANROTH: Objection as to
3 foundation.
4 A. I cannot speak for what any other person or persons
5 did. I know that I reviewed it, and the comments I
6 made are here. Other persons were present at
7 Mr. Stefani's office. Whether they reviewed it or
8 not, I cannot speak for them.
9 BY MR. GOODMAN:
10 Q. Mr. Zuckerman asked you whether the case would have
11 been settled on October the 17th had there been no
12 confidentiality provisions, and I was a little
13 confused as to your answer because I thought at one
14 point you said no, it would not have been settled at
15 that time, but yes, it could well have been settled.
16 Am I right about -- why don't you just try and explain
17 that because I didn't understand it, Mr. McCargo.
18 A. I had a special obligation to my client by the end of
19 the day on October 17th, an obligation arising out of
20 the fact that I was going to be withdrawing from the
21 case.
22 Because of that, I felt it was my
23 obligation to him as his attorney to make sure that in
24 my withdrawal from the case, I did not do or allow
25 anything to happen to adversely affect his rights or

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1 privileges, and, therefore, as the lawyer in that
2 case, I did not feel that I could, in fact, allow this
3 case to close on the 17th without some protection of
4 my client's rights during the process of transitioning
5 to another lawyer.
6 So to the extent that I had any control
7 over the negotiations and over the ultimate content of
8 the proposed settlement agreement that was executed on
9 the 17th, it was incumbent upon me, I felt, to make
10 sure that those kind of protections existed and that
11 would mean the confidentiality provisions here, to
12 protect this information so that it did not become
13 disclosed in a way that would waive or destroy my
14 client's rights or privileges.
15 In terms of settling this case solely on
16 the issue of the questions of dollars and cents, this
17 is what I was referring to with Mr. Zuckerman, this
18 case could have and should have been settled and
19 should have been settled for the dollar amount that
20 was involved because Val Washington, in my estimate,
21 was a very experienced, very professional, very
22 effective facilitator, and it was my impression that
23 he had taken the parties to their absolute bottom
24 line, that plaintiffs would -- plaintiff was not --
25 plaintiff's attorney was not going to go any lower

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1 than he had gone at that point in time.
2 It was also my impression at that time that
3 the real hope for appeal had been lost between the
4 time we appeared at Council on September 19th and that
5 day because that was approximately five to six weeks,
6 and during that five to six weeks we had been
7 investigating the strongest components of an appeal.
8 You and I have discussed this before.
9 Q. Yes, we have.
10 A. Those components of the appeal had to do with juror
11 misconduct. As to those components, Ms. Watson, one
12 of the council members, had given us the name of a
13 juror that she believed that engaged in misconduct.
14 We had submitted the list of names to her
15 to see if she could identify this person, if she and
16 her staff could give us information to further
17 investigate it, and we could not get that. One juror,
18 we had allegations that the juror had, in fact, made
19 racial slurs and epithets in a court of law, and it
20 was actually televised. We went to the TV program,
21 obtained copies of the tapes from the program,
22 reviewed them, it wasn't there. We then went back and
23 got the outtakes, reviewed them, it wasn't there.
24 And so the factors that I felt were
25 important and gave a real likelihood of success on

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1 appeal had evaporated. So we were standing there at
2 that location with a verdict already in place,
3 Mr. Goodman, with the possibility of filing an appeal
4 with no hope of success. Had that happened, all it
5 would have done was run the meter up.
6 Q. All right. So now that I -- now that you've explained
7 that, and I appreciate that, it would be correct to
8 say that the case would not have been settled on
9 October the 17th without confident -- without the
10 confidentiality provisions that were a part of the
11 settlement; am I correct?
12 A. Personally, I would --
13 MR. MORGANROTH: Objection as to form.
14 A. Personally, I would not have allowed it to go into a
15 proposed settlement status, which is what it went --
16 it did not settle, it went into a proposed settlement
17 status.
18 BY MR. GOODMAN:
19 Q. The document was called a settlement agreement, we've
20 already talked about that.
21 A. It was originally called a proposed settlement
22 agreement, Mr. Goodman, and if you look in the escrow
23 agreement itself, it's still referred to as a proposed
24 settlement agreement.
25 Q. The agreement that was signed by the parties was

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1 called a settlement agreement; am I right about that?
2 **A. Originally, if you're looking at this document, it**
3 **says, "Proposal For Global Resolution".**
4 Q. All right. And then what was typed up was titled --
5 **A. It was titled --**
6 Q. -- "Settlement --"
7 **A. Yes, it was titled "Settlement Agreement," but it**
8 **didn't change the substance of what was in the**
9 **document.**
10 Q. I understand.
11 **A. Simply changing the title didn't change the substance**
12 **of what was there.**
13 Q. What was signed was called a Settlement Agreement,
14 right?
15 **A. It was called a Settlement Agreement.**
16 Q. All right.
17 **A. Yes, Mr. Goodman.**
18 Q. And that Settlement Agreement would not have been
19 typed up and signed on that day in your opinion,
20 without the confidentiality provisions; am I right?
21 **A. I would --**
22 MR. MORGANROTH: Objection as to form, as
23 characterized by his testimony.
24 **A. -- I would -- I can't speak for what other lawyers**
25 **would have done, Mr. Goodman. I'm telling you as**

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1 **attorney for the one client I represented, and I only**
2 **represented one client, I personally would not have**
3 **allowed that agreement to go forward with my signature**
4 **in a proposed settlement status if there were not some**
5 **way of protecting my client's rights and privileges**
6 **during the time I was transitioning out.**
7 **BY MR. GOODMAN:**
8 Q. I think you're being clear on that, but I understand
9 you to be saying you would not have signed that
10 agreement on behalf of your client without those
11 provisions; am I right?
12 **A. That's correct.**
13 MR. THOMAS: Objection to the form of the
14 question.
15 **BY MR. GOODMAN:**
16 Q. Okay. Going now to the question of what happened
17 between September the 19th and October the 17th, you,
18 it's -- I understood part of what you were saying to
19 be that the likelihood of success on appeal evaporated
20 over that period of time; is that right?
21 **A. In my estimate, yes.**
22 Q. You heard Mr. Johnson talk to Council about the
23 likelihood of success on appeal on the 19th; is that
24 right?
25 **A. Correct.**

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1 Q. Did he ever raise the issue of juror misconduct in
2 talking to Council on that date if you know?
3 **A. I do not know whether he did or not. Somehow, it was**
4 **raised, and that's what prompted Joanne Watson's**
5 **comment about the potential juror that she believed**
6 **was on the jury by -- through some vehicle of**
7 **misconduct.**
8 Q. Member Watson raised the issue?
9 **A. May have been her that raised the issue.**
10 Q. And then you looked into it afterwards?
11 **A. Of that one person, we were already looking into two**
12 **other issues of juror misconduct before she raised the**
13 **one she raised.**
14 Q. And were the other issues of juror misconduct raised
15 in closed session before the Detroit City Council on
16 September 19th, 2007, when you were discussing
17 likelihoods of settlement and appeal?
18 **A. I don't recall if Mr. Johnson mentioned that at all.**
19 **I'm not saying he didn't, I just don't remember it.**
20 MR. BEDROSIAN: Mr. Johnson --
21 MR. GOODMAN: Mr. Bedrosian is not under
22 oath here today so his testimony will be taken at face
23 value.
24 **BY MR. GOODMAN:**
25 Q. You talked about the deliberative process privilege;

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1 is that correct, sir?
2 **A. Yes, sir.**
3 Q. And you had written a brief, submitted a brief to
4 Judge Callahan with regard to the deliberative process
5 privilege and the subpoena to SkyTel --
6 **A. Yes.**
7 Q. -- during the litigation; am I correct?
8 **A. That's correct.**
9 Q. Now, you asserted in that brief that it was your
10 understanding that the contents of the text messages
11 were covered by deliberative process; is that correct,
12 sir?
13 **A. Some of them, yes.**
14 Q. Did you assert any other basis for opposing that
15 subpoena other than the deliberative process?
16 **A. No, that was the sole basis of attacking the subpoena**
17 **in my motion.**
18 Q. And you arrived at the conclusion that the contents of
19 the text messages were protected by the deliberative
20 process privilege, based upon what information, sir?
21 **A. I can go over this again.**
22 MR. LIEDEL: Someone please explain how
23 this is related, anything related into this FOIA case,
24 then we can re-litigate the entire case is what I
25 understand we're doing.

1 BY MR. GOODMAN:
 2 Q. Go ahead, sir.
 3 **A. I learned after I came into the case from a variety of**
 4 **sources, including the media, that there was a move --**
 5 **movement afoot in the administration to convert the**
 6 **method by which governmental executives did business**
 7 **to an electronic format, to embrace the use of these**
 8 **text messaging devices for purposes of conducting**
 9 **business of the government.**
 10 **It was my understanding from the -- and**
 11 **there were a bunch of articles about this. It was**
 12 **constantly being discussed by staff members that I ran**
 13 **across and engaged in discussion at the City about the**
 14 **use of these text messages and -- and how business**
 15 **could be conducted in an efficient, fast method by**
 16 **simply communicating electronically from wherever the**
 17 **governmental person happened to be, whether they were**
 18 **in another meeting, whether they were in an airplane,**
 19 **whether they were in their car, whether they were**
 20 **walking down a hallway, and so the notion was that**
 21 **this was a method of keeping business going, and it**
 22 **was always about the business of government.**
 23 **When the issue of the deliberative**
 24 **privilege came up, I inquired of corporate counsel,**
 25 **Ruth Carter and Brenda Braceful, what are these text**

1 **message documents used for? Is what I'm reading and**
 2 **what I'm hearing true and accurate? And it was**
 3 **confirmed to me over and over and over again, not only**
 4 **by members of corporate counsel but by individuals I**
 5 **discussed it with in the administration that that's**
 6 **what these documents -- these machines were being used**
 7 **for.**
 8 Q. That's what they were supposed to have been used for?
 9 **A. Yes.**
 10 Q. Now --
 11 **A. No, no, no, not only that that's what they were**
 12 **supposed, that that's what they were being used for.**
 13 Q. Did you ever verify whether, in fact, the particular
 14 text messages that had been subpoenaed during the
 15 litigation by Mr. Stefani were used for those purposes
 16 or for any other purposes?
 17 **A. Let me repeat what I've said before.**
 18 MR. MORGANROTH: Object as to form.
 19 **A. I asked if those messages were available for my**
 20 **review, and I was told, it was my understanding, that**
 21 **those messages were under the control and custody of**
 22 **SkyTel, and that they were not -- not only not readily**
 23 **available to the City, it was my understanding that**
 24 **you couldn't even just call and ask them and get it.**
 25 BY MR. GOODMAN:

1 Q. So nobody whom you -- who you asked was able to tell
 2 you one way or another what the content was of those
 3 text messages; am I right?
 4 **A. Correct, and there was a subpoena outstanding that**
 5 **would have caused that whole body of text messages to**
 6 **be disclosed all at one time, in the public, with the**
 7 **risk that all of this information was true, and**
 8 **without the motion, there would have been no way to**
 9 **protect it. And once it's disclosed it's gone, you**
 10 **can't undo the disclosure.**
 11 Q. The cat's out of the bag?
 12 **A. It's out the bag.**
 13 Q. So once, however, you had seen the Stefani brief and
 14 agreed upon this settlement agreement, including
 15 confidentiality provisions, and later once you drafted
 16 the final confidentiality agreement, it was your view
 17 not that this was -- these were deliberative process
 18 messages but, rather, that these were personal and
 19 private messages; am I right about that?
 20 **A. No. Not that all of them were personal and private.**
 21 **What I feared, based on what I was hearing Mr. Stefani**
 22 **say, was that in addition to the governmental and**
 23 **deliberative process, these text messages had been**
 24 **used for and were being used for other purposes, the**
 25 **scope of which I did not know.**

1 **What he was alleging was that they were**
 2 **used to talk about personal relationships, intimate**
 3 **relationships. He was alleging that they were used to**
 4 **talk about what happened with Mr. Brown in terms of**
 5 **demotion and firing. I mean it was a whole host of**
 6 **possible subject matter that could fall in that new**
 7 **category that was open if, in fact, they were not**
 8 **being used solely for governmental deliberative**
 9 **purposes.**
 10 Q. But in your opinion, some of the messages still
 11 involved deliberative process content?
 12 **A. Yes.**
 13 Q. Given that, why would not the protection of these
 14 messages not be a private and personal matter for
 15 Mr. Kilpatrick and Ms. Beatty, but a public matter for
 16 the City of Detroit, as well?
 17 **A. I'm not sure I understand what you're asking.**
 18 Q. Given the fact that some of these messages involved
 19 deliberative process content, why would not a
 20 confidentiality agreement have applied --
 21 **A. Oh.**
 22 Q. -- to the public -- the public domain, as well as
 23 their own private concerns from your perspective?
 24 **A. Because the efforts to protect those governmental**
 25 **records by way of what I thought was the most**

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1 effective possible way in my professional background
2 was through orders of the Court, and that had failed
3 miserably, Mr. Goodman.
4 I had gone to the Court. I had obtained a
5 motion, filed a motion. I had two orders that
6 theoretically protected the governmental privilege
7 matters that would set up a mechanism for the Court to
8 review them before the Court decided what to disclose
9 and what not to disclose, and that whole process had
10 failed, and so I did not believe -- did not believe
11 that the protection that my client needed in the short
12 run, during my withdrawal and transition to another
13 lawyer, would be adequately secured through that
14 previous method that had failed.
15 Q. Speaking of that, did you ever consider going to the
16 Court and --
17 A. Oh, yes.
18 Q. -- getting additional protection from the Court?
19 A. Oh, yes.
20 Q. -- or getting sanctions from the Court --
21 A. Oh, yes.
22 Q. -- for the disclosure of these messages --
23 A. Yes, I considered that.
24 Q. Did you ever do anything on that --
25 A. No, I rejected it because in my estimate, that would

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1 have been ineffective. I did not believe that it
2 would be reasonable to expect the Court to grant that
3 kind of protection for purposes of allowing my client
4 to get representation and get counsel. I did not
5 believe that going to the Court would prohibit
6 Mr. Stefani from going to the media with those
7 documents while I'm over in court arguing a motion.
8 If you look at the -- the escrow agreement,
9 you'll find that Mr. Stefani even contemplated that,
10 and in an escrow agreement, one of the conditions by
11 which the documents will be returned to him for the
12 purposes of use in whatever way he wanted was if we,
13 in fact, had attempted to go to court and file some
14 kind of a motion, so I did not believe that would be
15 an effective way to protect my client's right during
16 the transition period.
17 Q. Did you ever speak with any of your co-counsel about
18 the possibility of going to court to get protection?
19 A. No.
20 Q. Or write any memos?
21 A. No.
22 Q. In the end, however, what you believed were all
23 deliberative process content messages turned out, in
24 your judgment, to include private and nondeliberative
25 process messages, as well; do you agree with that?

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1 A. I'm not sure I understand that question.
2 Q. What I'm saying is you started out in your -- in your
3 brief, in your motion to quash and your brief by
4 strongly asserting that this was deliberative process.
5 A. Yes.
6 Q. That it had to be protected.
7 A. Yes.
8 Q. Is that right?
9 A. That's correct.
10 Q. You then learned that there were private, personal,
11 possibly romantic, possibly sexual messages?
12 A. That there may be.
13 MR. MORGANROTH: Object to form.
14 BY MR. GOODMAN:
15 Q. There may be?
16 A. There may be additional matters far beyond the scope
17 of the governmental privilege.
18 Q. And that's why you withdrew as the mayor's counsel
19 ultimately, right?
20 A. No, I've explained to you why I withdraw. I withdrew
21 because the facts and circumstances as they evolved, I
22 felt, put me in a position where I couldn't be
23 effective in representing my client zealously from
24 that point forward.
25 Q. I want to hand you or you have in front of you, the

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1 Stefani, what was marked as the Stefani brief
2 Exhibit 5. You said you do not -- you do not believe
3 that this is the document that you were shown on
4 October 17th --
5 A. That's correct.
6 Q. -- am I right about that?
7 A. That's correct.
8 Q. Is the content -- let's go through it just for a
9 moment here. Do you have a copy of it in front of
10 you?
11 A. I'm looking.
12 Q. Here, you can take a look at mine.
13 (Discussion off the record at 5:55 p.m.)
14 (Back on the record at 5:55 p.m.)
15 BY MR. GOODMAN:
16 Q. I want to start toward the end of this, which is
17 pages 9 through 18, which is a long, you'll see what
18 appears to be verbatim transcripts of these things.
19 Or at least purports to be. Do you see that?
20 A. Yes.
21 Q. Does that look familiar to you in what you saw in the
22 version that you saw, is this --
23 A. Some --
24 MR. MORGANROTH: Objection as to form.
25 BY MR. GOODMAN:

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1 Q. Go ahead.
2 MR. MORGANROTH: There's only testimony on
3 two pages, okay?
4 BY MR. GOODMAN:
5 Q. Over objection, go ahead.
6 **A. Some of this looks familiar; some of it does not. The**
7 **form of some of this looks familiar; the form of some**
8 **of it does not. The structure of some of this looks**
9 **familiar; the structure of some of it does not.**
10 Q. Well, the first entry, I don't want to go through all
11 of this in any detail, but for example, on April
12 the 1st, Beatty to Mayor:
13 "I know you're having a very important
14 meeting with Pat Turner, LOL, but I want to tell
15 you I miss you, anyway. I really do. I want
16 you to come and hold me in your arms right now."
17 Does that kind of message look like the
18 kind of thing that you saw in the Stefani document
19 that was delivered to you, ultimately delivered to
20 you, as you recall?
21 MR. MORGANROTH: Objection as to form.
22 BY MR. GOODMAN:
23 Q. Go ahead.
24 **A. What you've just pointed to does look like some of the**
25 **excerpts that I saw. That specific...**

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1 Q. Now in --
2 **A. Entry.**
3 Q. I'm sorry?
4 **A. Entry.**
5 Q. You testified earlier when Mr. Zuckerman was
6 questioning you that you went to the Manoogian Mansion
7 with a copy of the brief, not -- not this exhibit,
8 because it was apparently different than this exhibit,
9 and you had Mr. Copeland with you; is that right?
10 **A. Mr. Copeland was not -- did not go with me,**
11 **Mr. Copeland and I ended up there at the same time.**
12 Q. You met --
13 **A. Yes.**
14 Q. -- Mr. Copeland was there at the same time that you
15 were there?
16 **A. That is correct.**
17 Q. At this meeting, whenever the meeting was?
18 **A. That's correct.**
19 Q. Am I right about that?
20 **A. That's correct.**
21 Q. Fine, and you understood Mr. Copeland to be
22 representing the mayor; is that correct?
23 **A. I understood Mr. Copeland to perceive his**
24 **representation to be a joint representation of the**
25 **City and the mayor at that time.**

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1 Q. And you had been through -- how long had the -- the
2 Brown/Nelthrop trial had taken close to a month,
3 anyway; is that right?
4 **A. Yeah, from August 21st --**
5 Q. No.
6 **A. -- to September 11th, I believe.**
7 Q. Right, never mind. Several weeks, anyway?
8 **A. Yes.**
9 Q. Right.
10 **A. Almost three and a half weeks, I think.**
11 Q. And during that trial, and before the trial, and
12 throughout the trial, Mr. Copeland had appeared as
13 attorney on behalf of the City of Detroit; is that
14 right?
15 **A. That's how he entered his appearance.**
16 Q. He had never appeared as an attorney on behalf of the
17 mayor; is that right?
18 **A. He'd never entered his appearance in that way.**
19 Q. Throughout the trial in the recorded transcript, his
20 appearance was always that as an attorney on behalf of
21 the City of Detroit; am I right about that?
22 **A. All of his formal appearances, as I'm aware of, was as**
23 **attorney for the City of Detroit.**
24 Q. You indicated earlier that during the course of this
25 settlement, I had asked you whether you spoke with Ms.

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1 McPhail on October the 17th, and you had said no. Did
2 you ever speak with her after October the 17th in
3 connection with this settlement?
4 **A. Yes.**
5 Q. On how many occasions?
6 **A. I believe one occasion in September of '07, and then**
7 **in January of '08, in connection with this litigation.**
8 Q. This litigation being the FOIA?
9 **A. Freedom of Information Act.**
10 Q. And the meeting in September of '08 was --
11 **A. '07.**
12 Q. Or '07 was --
13 **A. To prepare for the appearance before Council on**
14 **September the 19th.**
15 Q. Did you meet with Ms. McPhail any time between October
16 the 17th and December the 5th of 2007?
17 **A. Not that I recall, no.**
18 MR. GOODMAN: That's all the questions I
19 have at this time.
20 MR. LIEDEL: Mr. McCargo?
21 THE WITNESS: Yes.
22 MR. LIEDEL: Bill Liedel on behalf of
23 Defendant City. Unlike these other lawyers, I'm
24 really interested in documents.
25 EXAMINATION

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1 BY MR. LIEDEL:
2 Q. As I understand, Exhibit 2 is a letter that your
3 lawyer, Mr. Bedrosian, submitted to Mr. Fink as a
4 result of this subpoena; do you have that there?
5 **A. See if I can locate it. I know it's...**
6 MR. ZUCKERMAN: Here it is.
7 **A. I've got it, May 30th, 2008, yes.**
8 **BY MR. LIEDEL:**
9 Q. Okay, that's a representation by Mr. Bedrosian,
10 correct?
11 **A. Yes, it is.**
12 Q. Okay. So there are no other settlement documents
13 other than what's referenced in your deposition here
14 today and the letter?
15 **A. No, sir.**
16 Q. Okay. You do not have the attorney fee motion?
17 **A. No.**
18 Q. You do not have these text messages?
19 **A. No.**
20 MR. LIEDEL: Okay. And the e-mail
21 communications, Mr. Zuckerman, could I get a copy of
22 those? I mean I don't need them right now but just --
23 just send them. They were not marked as an exhibit in
24 this. If you'd just send them to me. And the lease
25 agreement was that -- that exhibit?

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1 MR. ZUCKERMAN: I'm sorry, the what
2 agreement?
3 MR. LIEDEL: The Comerica lease agreement,
4 is that Exhibit 16, is that what he provided to you?
5 MR. ZUCKERMAN: Yes.
6 **BY MR. LIEDEL:**
7 Q. In your experience, are confidentiality agreements
8 common in employment cases?
9 **A. Yes.**
10 MR. LIEDEL: Thank you, sir.
11 MR. ZUCKERMAN: Can I ask you just on this
12 document business, Mr. McCargo referenced some form of
13 contract with the City with respect to his engagement
14 or joint defense agreement or something like that. Do
15 you remember his testimony early on?
16 MR. LIEDEL: I remember something being --
17 MR. ZUCKERMAN: Can I get a copy of that?
18 MR. LIEDEL: Of what, his contract with the
19 City?
20 MR. ZUCKERMAN: Yeah, uh-huh. Do you need
21 a document request?
22 MR. LIEDEL: I think it's been provided to
23 Mr. Goodman, but let me take a moment to look --
24 MR. GOODMAN: Oh, I think I have it.
25 MR. ZUCKERMAN: Okay.

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1 MR. LIEDEL: And I mean, I don't think that
2 that's privileged, I don't know, I have to look at it.
3 MR. ZUCKERMAN: Okay.
4 MR. BEDROSIAN: Jeffrey?
5 MR. MORGANROTH: No questions at this time.
6 MR. BEDROSIAN: Anybody else?
7 THE WITNESS: Jim, did you have any
8 questions?
9 MR. BEDROSIAN: No, I already went through
10 them; they all said no. Anybody else? Bye-bye.
11 VIDEO TECHNICIAN: That concludes today's
12 deposition. The time is 6:02 p.m.
13 (The deposition was concluded at 6:02 p.m.
14 Signature of the witness was not requested by
15 counsel for the respective parties hereto.)
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1 CERTIFICATE OF NOTARY
2 STATE OF MICHIGAN)
3) SS
4 COUNTY OF MONROE)
5
6 I, LEISA M. PASTOR, a Notary Public in
7 and for the above county and state, do hereby
8 certify that the above deposition was taken before
9 me at the time and place hereinbefore set forth;
10 that the witness was by me first duly sworn to
11 testify to the truth, and nothing but the truth;
12 that the foregoing questions asked and answers made
13 by the witness were duly recorded by me
14 stenographically and reduced to computer
15 transcription; that this is a true, full and correct
16 transcript of my stenographic notes so taken; and
17 that I am not related to, nor of counsel to either
18 party nor interested in the event of this cause.
19
20
21
22 LEISA M. PASTOR, CSR-3500, CRR
23 Notary Public,
24 Monroe County, Michigan
25 My commission expires: 9/7/13

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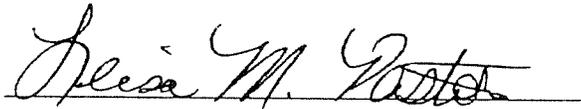
CERTIFICATE OF NOTARY

STATE OF MICHIGAN)

) SS

COUNTY OF MONROE)

I, LEISA M. PASTOR, a Notary Public in and for the above county and state, do hereby certify that the above deposition was taken before me at the time and place hereinbefore set forth; that the witness was by me first duly sworn to testify to the truth, and nothing but the truth; that the foregoing questions asked and answers made by the witness were duly recorded by me stenographically and reduced to computer transcription; that this is a true, full and correct transcript of my stenographic notes so taken; and that I am not related to, nor of counsel to either party nor interested in the event of this cause.



LEISA M. PASTOR, CSR-3500

Notary Public,

Monroe County, Michigan

My Commission expires: September 7, 2013

000439

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