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I N D E X

2

DAY ONE

3

January 12, 1998

4

5

PAGE REFERENCE

6

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E X H I B I T S

2

DAY ONE

3

January 12, 1998

4

5

NUMBER

DESCRIPTION

IDENTIFIED

6

No. 1

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Application

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No. 3

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No. 24

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No. 25

Purchaser's Closing Statement

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\$250,000 Promissory Note 12-4-92

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25 (** ADMISSION OF ABOVE EXHIBITS STIPULATED **)

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1 MONDAY, JANUARY 12, 1998
2 TACOMA, WASHINGTON
3 9:10 A.M.
4

<<<<>>>>

5
6 JUDGE BROWN: Good morning. This is a
7 public fact-finding hearing of the Washington State
8 Commission on Judicial Conduct in the matter of the
9 Honorable Grant Anderson, judge of the Superior Court
10 of Washington for Pierce County. This is the
11 commission's case No. 96-2179-F-64.

12 My name is Stephen E. Brown, and by designation
13 of the commission chair, Margo Keller, I will be the
14 presiding officer in this proceeding.

15 Will counsel please introduce yourselves, and,
16 Mr. Bulmer, if you would introduce your client,
17 please.

18 MR. TAYLOR: Your Honor, Paul Taylor on
19 behalf of the commission.

20 MR. BULMER: Your Honor, I'm Kurt Bulmer.
21 I have the pleasure of representing the Honorable
22 Grant Anderson. This is my client, Mr. Anderson.
23 And if I may take the liberty also to introduce
24 Mr. Anderson's wife, Patty, who is sitting behind
25 him.

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1 JUDGE BROWN: Thank you.
2 The members of the Washington State Commission
3 on Judicial Conduct sitting on this panel today will
4 introduce themselves.

5 Dale?
6 MS. BRIGHTON: I'm Dale Brighton. I'm a
7 lay alternate from Wenatchee.

8 MS. CAVER: I'm Vivian Caver, lay member
9 from Seattle.

10 JUDGE DONOHUE: I'm Mike Donahue. I'm a
11 Superior Court judge from Spokane.

12 MR. CLARKE: My name is Harold Clarke.
13 I'm an attorney. I practice in Spokane.

14 JUDGE SCHULTHEIS: My name is John
15 Schultheis. I'm a judge with the Court of Appeals in
16 Division III in Spokane.

17 JUDGE BROWN: All right. And I am
18 Stephen E. Brown. I'm a District Court judge for
19 Grays Harbor County.

20 In this proceeding the burden of proof rests
21 upon the commission, and the commission's case will
22 be presented by the commission counsel previously
23 identified. The rules of evidence applicable in
24 civil proceedings before the Superior Courts of
25 Washington shall govern, and all facts must be proved

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1 by clear, cogent and convincing evidence.
2 The commission will present its case first,
3 followed by the respondent's case. Commission
4 counsel will be offered an opportunity to present any
5 rebuttal evidence, and both parties will be permitted
6 and are encouraged to provide the commission with

7 closing argument and recommend a disposition of the
8 case.

9 As part of the duties of presiding officer, it's
10 my duty to rule on the evidentiary and other
11 procedural questions, and I'll make my rulings based
12 upon the legal principles applicable in civil trials
13 according to the rules of the commission. I may
14 under the commission's rules refer any of these
15 matters to the entire hearing panel. These
16 proceedings are not criminal in nature.

17 The witnesses in the case shall first be
18 subject to direct examination, then cross examination
19 and reasonable redirect and recross examinations. In
20 addition, the members of the commission are permitted
21 to examine any and all witnesses concerning their
22 testimony, in which case counsel will be permitted an
23 opportunity to object and also have an opportunity
24 for further inquiry respecting any such witness.

25 These proceedings are also being recorded by a
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1 court reporter and are open to the public.

2 At the present time the commission has the
3 following matters on record:

4 The statement of charges filed on August 4th,
5 1997; the answer to the statement of charges filed
6 August 25th, 1997; the notice of fact-finding hearing
7 dated October 31st, 1997; the first amended notice of
8 fact-finding hearing dated November 4th, 1997; I
9 believe members also have the brief of commission
10 counsel.

11 And also prior to this hearing, the counsel to
12 this matter have stipulated and the presiding officer
13 has signed a prehearing order, and that order
14 provides as follows:

15 The hearing will start on January 12th at
16 9:00 a.m., the morning session running till
17 12:00 p.m. The afternoon sessions will start at
18 1:30 p.m. and run until 4:30 p.m. We'll try to keep
19 the same schedule each day.

20 There's been some agreed exhibits prepared by
21 the parties, and the commission thanks counsel for
22 that, which will save quite a bit of time. The
23 agreed exhibits are stipulated as being admitted,
24 relevant and authenticated.

25 Let's see. And also by the prehearing order,
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1 the parties have stipulated that any witnesses in the
2 case are excluded from the hearing except for the
3 respondent's spouse and any designated experts.

4 Also at this time I would like to introduce the
5 clerk for the hearing, Judy Curler. She's seated
6 down here.

7 I'd like to ask the clerk at this time to file
8 the finding of probable cause.

9 THE CLERK: The finding of probable cause
10 is filed.

11 JUDGE BROWN: So at this time, if there
12 are any witnesses that are under subpoena here today
13 in the courtroom, I'd ask that you please step out of
14 the courtroom and wait until you're called as
15 witnesses.

16 Do counsel recognize any witnesses in the
17 courtroom?

18 MR. TAYLOR: No.

19 MR. BULMER: No.

20 JUDGE BROWN: Okay. Thank you.

21 Are there any objections by counsel to any part
22 of the record identified to this point?

23 MR. TAYLOR: No, Your Honor.

24 MR. BULMER: No, sir.

25 JUDGE BROWN: Regarding the stipulated

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1 exhibits, would it be appropriate to enter those at
2 this time?

3 MR. TAYLOR: I believe so, Your Honor.

4 MR. BULMER: Certainly.

5 JUDGE BROWN: I believe we have a binder,
6 and there's one available for each member of the
7 commission. Maybe, Judge Schultheis, you could
8 assist with that.

9 (PAUSE IN PROCEEDINGS.)

10 MR. BULMER: I would note for the record,
11 Your Honor, we've just handed out the exhibit books,
12 but this is organized in a way that there are some --
13 don't be distressed if you turn and find some tabs
14 that are blank. We left intentionally some chunks of
15 blank reserved.

16 JUDGE BROWN: Thank you.

17 So the exhibits stipulated to and presented to
18 the commission in the form of the binder are admitted
19 at this time.

20 Are there any other preliminary motions or
21 procedural matters?

22 MR. BULMER: Your Honor, it just occurs
23 to me sitting here, on a little tiny matter, we are
24 going to put in some other exhibits in the course of
25 this proceeding, and they're probably going to have

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1 exhibit numbers that are on here. So perhaps what we
2 should do is take the index that's at the front and
3 attach that as the record now as to the ones that
4 were agreed to and stipulated to at this point.

5 Would that be a mechanical way of sort of
6 keeping track in the future in case there's any
7 dispute?

8 MR. TAYLOR: Sounds like a good idea.

9 MR. BULMER: I think we've got two of
10 them. We'll just use one of mine.

11 JUDGE BROWN: The stipulated exhibits
12 will be admitted as exhibit numbers according to the
13 index filed in the front of the binder.

14 MR. BULMER: Thank you.

15 JUDGE BROWN: Any further preliminary
16 matters?

17 MR. TAYLOR: No, Your Honor.

18 MR. BULMER: No, Your Honor.

19 JUDGE BROWN: Are we ready for opening
20 statements, counsel?

21 MR. TAYLOR: Yes.

22 Ladies and gentlemen of the commission, this is
23 a case about three things: trust, betrayal and
24 accountability.

25 Trust. Judge Anderson held a position of trust

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1 in administering the estate of a deceased client.
2 Trust. The public trusted Judge Anderson to comply
3 with the law at all times and to act in a manner that
4 promotes public confidence in the integrity of the
5 judiciary.

6 Betrayal. Shortly before he went on the bench,
7 Judge Anderson sold an asset of the estate to a
8 friend of his for \$300,000. After he went on the

9 bench, and in exchange for payments to him personally
10 that ultimately totaled over \$30,000, Judge Anderson
11 reduced the price that the estate was to receive by
12 approximately \$100,000.

13 Stated bluntly, the Honorable Grant Anderson,
14 while sitting as a Pierce County Superior Court
15 judge, took a payoff. Judge Anderson betrayed his
16 client for his own gain, and he betrayed the public's
17 trust in him.

18 Betrayal. Judge Anderson also betrayed the
19 public's trust by lying repeatedly during the course
20 of the commission's investigation of this matter.

21 Accountability. Under the Code of Judicial
22 Conduct, Judge Anderson must be held accountable for
23 his actions.

24 Let me tell you what this case is about in more
25 detail. Charles Hoffman was a long-time client of

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1 Judge Anderson while Judge Anderson was in private
2 practice. Before Mr. Hoffman died, Anderson prepared
3 a will for him. That will named Judge Anderson as
4 the personal representative of the estate.

5 When Mr. Hoffman died in 1989, his estate
6 included various assets, and you'll see them up there
7 on the chart. First, there was a corporation,
8 Hoffman-Stevenson, Inc. Hoffman-Stevenson, Inc.,
9 owned real estate and a building in Tacoma that
10 housed a bowling alley.

11 The other corporation that the state owned that
12 is germane to this case is Pacific Lanes, Inc.
13 Pacific Lanes owned the bowling alley business that
14 was housed and the realty and buildings owned by
15 Hoffman-Stevenson. Pacific Lanes owned the bowling
16 alley equipment, the pins, the balls, the shoes; it
17 ran the restaurant; it ran the bar. Pacific Lanes
18 ran and owned the bowling alley operation.

19 Shortly after Mr. Hoffman's death back in 1989
20 and as personal representative of the estate, Judge
21 Anderson, you will see, named himself president of
22 Hoffman-Stevenson and president of Pacific Lanes. So
23 by that point, as personal representative of the
24 estate, Judge Anderson owed it a fiduciary duty, the
25 highest duty of loyalty, honesty, integrity and good

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1 faith. As president of Hoffman-Stevenson and Pacific
2 Lanes, he had that same high fiduciary duty to those
3 two corporations.

4 By 1992, three years after Mr. Hoffman's death,
5 the estate had still not closed. Judge Anderson was
6 still the president of Hoffman-Stevenson and he was
7 still the president of Pacific Lanes.

8 I should tell you, though, with regard to the
9 bowling alley operation run by Pacific Lanes, Judge
10 Anderson was not there on a day-to-day basis. There
11 was full-time staff and management that ran the
12 bowling alley as it had been run during the time that
13 Mr. Hoffman was alive.

14 Also by 1992, Judge Anderson decided to run for
15 the Superior Court bench in Pierce County in the
16 state of Washington. He won the seat in the
17 primaries, and just three days later, on
18 September 19th, 1992, Judge Anderson finalized an
19 agreement to sell the bowling alley operation owned
20 by Pacific Lanes, to sell that operation to his
21 long-time business associate and friend, William
22 Hamilton.

23 The agreement provided that Hamilton would pay
24 at closing \$300,000; that he would pay \$50,000 in
25 cash, with a note for another \$250,000. The deal,

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1 though, was expressly made contingent on Mr. Hamilton
2 obtaining liquor and gambling licenses, because
3 without those licenses, he couldn't effectively run
4 the bowling alley operation. So the agreement signed
5 on September 19th provided that closing would take
6 place on the first day of the first month after the
7 licenses had been approved.

8 Two weeks later, at the end of September 1992,
9 Hamilton applied for liquor and gambling licenses.
10 Now, to no one's surprise, those licenses didn't
11 issue immediately. The state does background checks,
12 financial background, criminal background, various
13 checks, and it takes some time for the agencies to do
14 the work to make sure that the licensees are fit for
15 liquor and gambling licenses. Ultimately, it wasn't
16 until late November 1992 that the licenses were
17 approved.

18 At that point, on December 4th, the sale closed.
19 Closing papers were signed. As required by the
20 agreement they had signed on September 19th and as
21 documented in the closing papers, Mr. Hamilton paid
22 \$50,000 in cash to Pacific Lanes; he executed a note
23 for \$250,000.

24 Now, a few days later, a few days after the
25 close, Judge Anderson took that note, that promissory

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1 note for \$250,000, he took it to a bank, a bank which
2 had previously loaned money to Pacific Lanes, Judge
3 Anderson took that note and pledged it as collateral
4 to the bank for a loan the bank had made to Pacific
5 Lanes previously. Judge Anderson went and said,
6 "Here's a note for \$250,000, and if we, Pacific
7 Lanes, default on our loan with the bank, you, Bank,
8 are entitled to the payments of \$250,000 under that
9 note."

10 That's where matters stood until late December
11 1992 and early January 1993. During that period,
12 several things happened:

13 First, Judge Anderson bought a new Cadillac
14 automobile for approximately \$36,000. He financed
15 the purchase with a car loan, a loan from Sound Bank,
16 where his friend Bill Hamilton had been the president
17 and the founder.

18 Second, January 8th, 1993, Judge Anderson was
19 sworn in as a Superior Court judge in Pierce County.

20 Third, Bill Hamilton, on or about that same day,
21 on or about that same day, Bill Hamilton, whose
22 company had just purchased Pacific Lanes, or the
23 bowling alley operation from Pacific Lanes, for
24 \$300,000, Bill Hamilton went to Judge Anderson and
25 said, "I'll make those Cadillac loan payments for

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1 you. I will pay the \$800 a month that you're
2 obligated to pay." Judge Anderson accepted that
3 offer on the spot, and ultimately Mr. Hamilton's
4 company made over \$30,000 in loan payments on Judge
5 Anderson's behalf.

6 Judge Anderson and Mr. Hamilton now insist these
7 loan payments were a gift, an unsolicited gift. But
8 along about the same time that gift was made,
9 something else happened, something very important.
10 The two struck a deal to reduce the price paid to

11 Pacific Lanes by approximately \$100,000. They simply
12 agreed after the fact, long after the fact, to treat
13 the sale as not having closed in December, when all
14 the papers were signed and had closed, but instead
15 they decided to treat it as having closed in
16 September of 1992.

17 Once they agreed to this rewrite of history, it
18 was easy for them to look at each other and say,
19 "Well, gee, Bill Hamilton is entitled to the profits
20 that were earned by the bowling alley business from
21 September 1 forward." Those profits were
22 approximately \$100,000. In exchange for the loan
23 payments, Judge Anderson gave away \$100,000 of his
24 client's money.

25 Regrettably, the evidence will show in this
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1 proceeding that the timing of the supposed gift, the
2 arrangement for the Cadillac loan payments, was not a
3 coincidence. The evidence will show that the offer
4 to make the loan payments was a quid pro quo for the
5 after-the-fact agreement to reduce the price of the
6 bowling alley by \$100,000.

7 Judge Anderson gave away \$100,000 of the
8 estate's money in exchange for payments on his
9 Cadillac that totaled \$30,000. Judge Anderson not
10 only violated his fiduciary duty, the evidence will
11 show that he took a payoff while he was on the
12 Superior Court bench.

13 For their part, Judge Anderson and Mr. Hamilton
14 now say there was no connection between the loan
15 payments and the reduction in the price. They say
16 they had always intended to treat the sale as having
17 closed in September and they'd always intended that
18 Mr. Hamilton would get the profits from that date
19 forward.

20 The evidence will show that this is not true.
21 Why do I say that? For at least seven reasons:

22 First, in connection with the sale, there were a
23 number of documents written, reviewed, approved and
24 signed by Judge Anderson, a lawyer with substantial
25 business law experience, and by Mr. Hamilton, a very

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1 experienced businessman. None of those documents
2 make any reference anywhere, directly or indirectly,
3 to this agreement to give Mr. Hamilton the profits
4 from September 1 forward and to reduce the price
5 accordingly.

6 Why don't those documents contain such an
7 agreement? Because that agreement did not exist
8 until later, when the offer for the Cadillac loan
9 payments was made and accepted.

10 Second, the second reason the evidence will show
11 that these payments were not a gift: Judge Anderson,
12 when he took the note for \$250,000 on December 9th,
13 1992, and he pledged it to the bank, he gave it to
14 the bank as collateral, Judge Anderson never said
15 anything to the bank about any supposed agreement to
16 reduce the amount of the note by \$100,000. Just the
17 contrary. He represented to the bank in writing:
18 This note is free and clear of any encumbrances.

19 Why didn't he tell the bank about the agreement
20 to reduce the price of the note, the value of the
21 note? Because it didn't exist until later, when the
22 car payments entered the equation.

23 The third reason, the third reason the evidence
24 will show that these payments were not a gift: Judge

25 Anderson back in 1993, before these proceedings came
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1 along and before any of these events came to light,
2 Judge Anderson acknowledged the link between the
3 bowling alley sale and the car payments; he
4 acknowledged the link that he now steadfastly denies.

5 Shortly after the New Year, he brought the
6 Cadillac home and his wife said to him, "Where did we
7 get that? How are we paying for it?" He said,
8 "Don't worry. It's a commission from Bill Hamilton.
9 As the attorney who sold the bowling alley to him,
10 I'm entitled to a commission."

11 Judge Anderson, in a deposition during the
12 course of this investigation, adamantly and
13 steadfastly denies that he made that statement to his
14 wife. As a result, the statement of charges alleges
15 that he testified falsely. Judge Anderson will
16 testify in these proceedings, as will his ex-wife,
17 and the commission, you ladies and gentlemen, can
18 decide who's telling the truth and who is not.

19 Fourth, the fourth reason the evidence will show
20 that these payments were no gift, that they were quid
21 pro quo: It wasn't until this investigation and
22 these events began to come to light that the gift
23 story emerged.

24 Let me explain. Bill Hamilton didn't make the
25 loan payments personally, didn't make them out of his
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1 personal funds. Instead, the loan payments came from
2 Pacific Recreation. That was the company that was
3 buying the bowling alley operation from Pacific
4 Lanes. So the payments were being made each month by
5 Pacific Recreation. But at the time the payments
6 were being made, Mr. Hamilton, he knew they were no
7 gift. That's why he was treating them as an expense
8 on his books and he was deducting them as an expense
9 for federal income tax purposes.

10 Now, gifts, of course, are not expensable for
11 tax purposes, and it wasn't until after Mr. Hamilton
12 was deposed the first time in this investigation that
13 he went to his accountant and, in his words, he
14 recast the tax returns to treat the payments long
15 after the fact as a gift as opposed to the expense
16 they had always been until this investigation
17 started.

18 Fifth, the fifth reason the evidence will not
19 support the defense that these payments were a gift:
20 You will hear Judge Anderson and Mr. Hamilton say
21 that Hamilton was entitled to the profits from
22 September 1 forward because he had been managing the
23 bowling alley in September, October, November and
24 December of 1992. That's what they now say.

25 But back then, Judge Anderson's law firm was
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1 charging Pacific Lanes a monthly fee to manage the
2 bowling alley during the period when Hamilton and
3 Anderson now say, "Oh, no, Bill Hamilton was managing
4 that bowling alley back then."

5 You're also going to hear evidence about what
6 Judge Anderson told the state of Washington back in
7 1992 about who was running the bowling alley from
8 September through December of 1992, and he didn't
9 tell the state of Washington it was Bill Hamilton.

10 More fundamentally, you will not hear any
11 credible evidence during this proceeding that Bill
12 Hamilton was managing the bowling alley from

13 September 4th. In fact, it was being run by the same
14 person who had run it when Mr. Hoffman was alive,
15 during Judge Anderson's tenure as personal
16 representative, and thereafter, even under
17 Mr. Hamilton's ownership.

18 Sixth, the sixth reason that the evidence will
19 show that these payments were not a gift: Judge
20 Anderson told other falsehoods in his deposition in
21 the investigation of this proceeding. He told
22 falsehoods designed to downplay, minimize and
23 eliminate the link between the price reduction and
24 the Cadillac payments.

25 Let me explain. Once the after-the-fact
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1 agreement was reached to give Hamilton the profits
2 from September forward, once that agreement was
3 reached, they had to determine how much profit was
4 actually earned by the bowling alley. So Judge
5 Anderson in mid-January 1993 called the bowling
6 alley's accountant and said, "Figure it out."

7 And that's what he did. And thereafter the
8 accountant worked with Judge Anderson and
9 Mr. Hamilton to figure out what the profit had been,
10 the profit that would go to Mr. Hamilton in the form
11 of a reduction in the amount of the note.

12 The accountant began his work in 1993,
13 mid-January 1993, when he got a call from Judge
14 Anderson. But Judge Anderson in his deposition told
15 a different story. He says that his involvement in
16 the price-reduction process, the agreement to reduce
17 the price, the machinations to effectuate that, he
18 testified repeatedly that his involvement ended by no
19 later than December 31, 1992.

20 Why did he do that? He did it in order to
21 create a gap, to create a gap in time, between the
22 price-reduction agreement and Hamilton's offer to
23 make the Cadillac payments. He wanted to try to
24 establish that the agreement to reduce the amount of
25 the note had existed long before the Cadillac loan

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1 offer was made.

2 But the evidence will show, as the statement of
3 charge alleges, that this too was false testimony.
4 The evidence will show that Judge Anderson was
5 actively and personally involved in the process as
6 late as March 9th, 1993. He didn't end his
7 involvement, as he testified, by no later than
8 December 31, 1992.

9 The seventh reason, the seventh reason the
10 evidence will show that these payments were no gift:
11 Other than telling his wife that the payments were a
12 commission, the Cadillac was a commission from Bill
13 Hamilton, Judge Anderson never told anyone about the
14 payments, much less that they were somehow a gift,
15 until this matter came to light. This is
16 particularly significant as the events relating to
17 the bowling alley unfolded.

18 Let me explain. There's one other person who
19 was nominally involved in the price-adjustment
20 process, a lawyer named Steve Fisher. He practices
21 here in Tacoma. He's Judge Anderson's former law
22 partner. By the time Judge Anderson went on the
23 bench in January of 1993, the assets of the estate
24 had gone into a trust, and Judge Anderson named his
25 friend and former law partner, Steve Fisher, to be

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1 trustee of the trust.
2 So while Judge Anderson remained president of
3 Pacific Lanes and president of Hoffman-Stevenson,
4 those two companies were now owned and within a
5 trust. Mr. Fisher was the trustee of that trust. He
6 was effectively the owner of the assets.

7 Lawyer and Trustee Fisher will come in here and
8 testify, "Yeah, I signed off and approved this
9 after-the-fact adjustment. I signed off and approved
10 the price reduction."

11 But he's also going to testify that he didn't
12 know anything about this estate prior to the time he
13 assumed the trusteeship. He's going to testify he
14 simply accepted what he was told by Judge Anderson.
15 He's going to testify that he was relying on Judge
16 Anderson.

17 He will testify that while he was told about the
18 adjustment agreement, he was not told about its
19 long-after-the-fact nature and he was not told that
20 Judge Anderson, who was giving him this advice, was
21 receiving payments on the car loan from Mr. Hamilton,
22 who was on the other side of the transaction.

23 So despite his fiduciary obligations as
24 president of Pacific Lanes, full disclosure, no
25 self-dealing, full disclosure, Judge Anderson did not

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1 tell Trustee Fisher when he was giving him advice,
2 "By the way, I'm being paid by Bill Hamilton."

3 Why? Judge Anderson now says, "Well, it was
4 nobody's business." Not surprisingly, Trustee
5 Fisher, Judge Anderson's friend, is going to come in
6 here and testify, "Well, I would have wanted to know
7 about those payments and I should have known about
8 those payments so that I could make my own unbiased
9 decision about what I was being told by Judge
10 Anderson."

11 Those are some of the many reasons why
12 regrettably the evidence does not support the notion
13 that these payments were a gift.

14 Let me talk a little bit now about what happened
15 after these events. No. 1, each and every month
16 Mr. Hamilton's company, Pacific Recreation, made the
17 payments on Judge Anderson's Cadillac loan, \$800 a
18 month each and every month.

19 Next, by the fall of 1993, Mr. Hamilton realized
20 he liked the bowling alley business, so he decided he
21 wanted to buy the ground and the buildings in which
22 the business sat. He wanted to buy the ground and
23 the buildings from Hoffman-Stevenson, Inc.

24 Grant Anderson in the fall of 1993 was still
25 president of Hoffman-Stevenson, Inc. The assets,

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1 including Hoffman-Stevenson, were still in a trust
2 run by Trustee Fisher. Again, Trustee Fisher had to
3 turn to Grant Anderson for input on this transaction,
4 and again Grant Anderson decided it was nobody's
5 business that he was getting payments from the buyer,
6 Bill Hamilton, so again Grant Anderson didn't tell
7 Trustee Fisher, his friend, Steve Fisher, he didn't
8 tell him about Cadillac payments.

9 After this sale, the loan payments continued.
10 By May of 1995, approximately two-and-a-half years
11 later, Pacific Recreation had made payments totaling
12 over \$30,000 on Judge Anderson's car loan. Pacific
13 Recreation had bought and paid for Judge Anderson's
14 Cadillac.

15 There's going to be additional evidence, but
16 that's the core of the case. Mr. Hoffman trusted
17 Judge Anderson. He trusted him to manage his assets
18 and his estate with undivided loyalty and in the best
19 interests of the beneficiaries.

20 Judge Anderson betrayed that trust for personal
21 gain. While sitting as a Superior Court judge in
22 Pierce County, he gave away \$100,000 that didn't
23 belong to him, and in exchange he got \$30,000 that
24 shouldn't have been given to him.

25 The evidence will show also that Judge Anderson
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1 betrayed the commission, this body, by repeatedly
2 testifying falsely while the commission was
3 investigating and trying to unravel and figure out
4 what had occurred.

5 I said the case is about trust, betrayal and
6 accountability. That brings us to accountability.
7 First, hold me accountable for everything I've said
8 this morning. I submit to you, though, that the
9 evidence will prove everything I've said and much
10 more.

11 And when it does, you face the difficult task of
12 holding Judge Anderson accountable. But at the close
13 of the case, I'll come before you in closing
14 arguments and urge this body to hand out the
15 strongest punishment permissible under the
16 commission's rules.

17 Thank you.

18 MR. BULMER: Good morning, ladies and
19 gentlemen. I'm not going to take very long in my
20 opening.

21 This story is not that complicated. This is a
22 story which, in order for the commissioners, the
23 commission, to prove its case -- it's always
24 difficult to characterize this case since you're also
25 the commission, so I don't want to make you the

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1 accusers, since you're ultimately going to have to
2 make a decision based on the law here, but I'll use
3 the term "commission" because it's easy.

4 So the commission's case is a circumstantial
5 case. This case is a case of circumstantial evidence
6 in which you are being asked to adopt the most
7 cynical of approaches. You will be asked ultimately
8 to determine that because Mr. Hamilton and
9 Mr. Anderson had a handshake deal, that you should
10 disregard that handshake deal and apply the most
11 cynical of screens to the facts that will come in.

12 There's not going to be a significant difference
13 in the major fact pieces you hear today, which is why
14 you have an exhibit book with 70 or 80 exhibits
15 already agreed upon. The basic pieces are in place.

16 There's going to be no question the evidence
17 you're going to hear is that Mr. Hoffman died,
18 Mr. Anderson was the attorney and personal
19 representative for the estate, Mr. Anderson became
20 president of these corporations. There's not going
21 to be a significant amount of dispute about the fact
22 that at some point the bowling alley was sold.

23 There's not going to be a significant amount of
24 dispute about the fact that at some point Judge
25 Anderson bought a Cadillac and that payments were

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1 made on the Cadillac through Pacific Rec by
2 Mr. Hamilton. And there's not a significant amount

3 of dispute that in March of 1993, the price was
4 reduced on the sale of the bowling alley.

5 The question that you're going to be asked to
6 draw, however, from the facts we'll put on is: Is
7 the price reduction that was applied the result of a
8 bribe to Judge Anderson for this Cadillac?

9 Mr. Taylor is correct, this is a story about
10 trust. This is a story about people who can make
11 handshake agreements and understand what an agreement
12 is and are prepared to effectuate that agreement
13 without having to have every single thing be an
14 800-page contract with 30 lawyers.

15 This is about trust. This case is going to be
16 about trust, and it's trust with people who have
17 dealt with each other for years, who arrive at a fair
18 price for the sale of an asset, and having arrived at
19 a fair price for the sale of that asset, when they
20 cannot close the price of that asset in a timely
21 fashion and therefore the value of that asset goes
22 down, how, when you are the buyer and the seller and
23 you know what the fair price was, do you account for
24 it going down?

25 It's not profit we're talking about here. What
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1 the evidence will show is that the bowling alley
2 business is cyclical. It's very important in the
3 bowling alley business that you understand that you
4 have high-cash months during what's called the fall
5 and winter bowling season. In the spring and summer,
6 you lose money and you have cash drain.

7 One of the things you buy when you buy a bowling
8 alley is that positive cash flow. Otherwise it's
9 going to cost you more money later when you have to
10 put it in to make up for the negative cash flow
11 months.

12 Now, there's going to be a fair amount of
13 accounting documentation. If you've looked at those
14 exhibits, you're going to find that quite a few of
15 them have a lot of numbers on them. They add up,
16 there's different variations, there's different ones.
17 And there's a danger in these proceedings, as we all
18 know who have been here a time or two, of everyone
19 sort of glazing over when you start talking about
20 numbers, and there's paragraphs, and some are
21 deductions and some are additions and that sort of
22 thing.

23 But ultimately it's not going to be crucial,
24 because ultimately the accountant is going to say,
25 the accountant who did these, "These were the ones

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1 that in my professional opinion needed to be done to
2 take into account the fact that the bowling alley,
3 when it was ultimately closed, had spent the cash
4 flow," because here's what happened:

5 They agreed to close September 1st, is what the
6 evidence is going to show, contingent upon the
7 gambling licenses. Everybody knew that the reason
8 you want to have a September 1st closing is because
9 you need that fall cash flow money. Everybody knew
10 that the price of this thing was really a million
11 dollars. There was underlying land which was being
12 bought on an option, and what you're going to hear in
13 the testimony is that the million dollars is what
14 needed to come out of the combined sale of the asset
15 and the business. Standing alone, neither of them
16 were worth anywheres near as much. You need both

17 prongs. You need the land and the bowling alley
18 asset, and you need the business.

19 Once it was determined that a million dollars
20 was the price, then it just became a question of
21 allocating as best they could to make a reasonable
22 transaction, reasonable amounts of money out of the
23 transaction. It's really a million-dollar deal, and
24 in a million-dollar deal, 300 was allocated for
25 purchase of the business itself.

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1 Now, purchase of the business, everyone knows
2 and they're going to testify that when you buy a
3 bowling alley, you buy the winter cash flow. But you
4 know what? They didn't close because they couldn't
5 get the gambling and they couldn't get the liquor
6 licenses. And what happened? The estate continued
7 to run the bowling alley in the sense of handling its
8 money. And during that time period, the estate spent
9 up the money.

10 So the evidence will show that when they did
11 close and Mr. Hamilton finally walked in the door,
12 the fall cash flow, which was an integral part of the
13 deal, was gone. They had spent that asset of the
14 business. Now you had a bowling alley which was
15 worth a million dollars in September, because it was
16 assumed that you would take over in September and you
17 would be entitled to have that cash flow. But
18 instead, you close later in December, and now what
19 are you going to do about the deal?

20 However, what the evidence will show is the
21 estate got exactly what it had bargained for. The
22 estate got exactly what it had bargained for. It had
23 bargained for a million-dollar deal. If they'd
24 closed September 1st, there would have been a \$50,000
25 down payment and a \$250,000 note and Mr. Hamilton

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1 would have put his money down every month until the
2 note was paid off, or sooner if he chose to do so.
3 They didn't close the 1st, but if they had, the
4 evidence will show, the estate would not have gotten
5 any of the fall cash flow, would not have gotten any
6 of that money.

7 Instead, the estate got the fall cash flow, so
8 the estate put that approximately 100,000, it's
9 actually 92, but we'll, you know -- well, let's call
10 it what it is. It's 92,000. It's not 100,000. The
11 estate got the 92,000, and if you add up the numbers,
12 which is one of the exercises we'll go through here,
13 the estate got the 92,000; the estate got \$50,000 in
14 down payment; the estate, because it didn't have much
15 money, Mr. Hamilton's company paid bills for the
16 estate, and so the estate got credit for that, and
17 then the estate ended up with a note.

18 When they talk about a price reduction, what
19 really happens is the note is reduced, and if you add
20 up those numbers, you still end up with \$300,000.

21 So what you're going to have to look at is,
22 you're going to have to say, "No one in their right
23 minds would have done this deal except that
24 Mr. Anderson was bribed." That's the conclusion
25 they're going to ask you to reach when you get to the

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1 end of this matter, that no reasonable person would
2 have given the credits that were involved except if
3 someone was bribed to do it.

4 That leaves the car. We're going to have a lot

5 of talk here today or in the next couple of days, as
6 we all sit here, about Cadillac, and it's always
7 going to be a Cadillac, you know, a Cadillac, as
8 though it's not a car, it's not an automobile, it's a
9 Cadillac, because there's something inherently bad
10 about a Cadillac.

11 Well, you'll just see through that. You'll know
12 we're just talking about a car.

13 What you're going to hear as we learn about
14 these two men, Mr. Hamilton and Mr. Anderson, you're
15 going to learn that both of them are people who
16 pulled themselves up by the bootstraps. They're both
17 people who came from relatively poor backgrounds and
18 made themselves into self-made men by honest hard
19 work.

20 You're going to hear that Judge Anderson got
21 elected to the bench, and at that time Judge Anderson
22 was driving what anybody in this room would recall as
23 their college beater, a car that had a hundred-plus
24 thousand miles on. He loved that car, but it was a
25 beater.

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1 He was leaving a law firm that he had built up
2 over some 25 to 30 years. He was getting a large
3 amount of money from the law firm. He had a
4 settlement in an insurance case matter. He was going
5 to the bench for the first time with a regular income
6 not dependent upon hourly billings like those of us
7 sometimes have.

8 And he gave himself a treat and he bought a car.
9 You know what he did? He bought a car, and the first
10 thing he did was he put down \$9,000 out of his own
11 pocket to buy that car. They don't talk about that
12 \$9,000 that came out. And he gave himself a treat.

13 And what happened? He had a friend; he had a
14 friend, Mr. Hamilton. Now, they're not going to
15 seriously contest here that the price, the
16 million-dollar price, was not a fair price. You
17 have to remember that. There's a sort of vague
18 implication, but there's nothing to show that the
19 million-dollar price is not a fair price.

20 What's going to happen here is, Mr. Hamilton is
21 going to explain to you that he was in a situation
22 where for years he'd seen his friend, he'd worked
23 with his friend. We're going to talk to you quite
24 extensively about the development of this
25 relationship and how they got to know each other and

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1 what their world was and what they did in their world
2 for each other.

3 Mr. Hamilton is going to tell you about how he
4 looked out there and saw his friend, Mr. Anderson,
5 looking at his new car, and he walked out there, and
6 one of the very first things his friend said to him
7 was, "I hate making payments. I don't like to make
8 payments. Boy, I don't like to make payments."
9 Mr. Hamilton heard him whining about making payments.

10 He's going to talk about his history when he'd
11 had loans at Mr. Hamilton's bank, about how
12 Mr. Anderson wouldn't make payments. Mr. Anderson
13 would avoid making payments and then would come in
14 and put a large amount down in lump sum and then wait
15 and then put a large amount lump sum down.

16 Mr. Hamilton is going to tell you about how at
17 that point he'd been thinking about what could he do
18 for his friend, and these payments seemed to be a

19 natural thing for him to do.

20 And then we're going to run into a very
21 difficult social issue with these two men. One was
22 making a gift and didn't know how to not look like a
23 piker by backing out. The other was getting a gift
24 and didn't know how to look like he was not insulting
25 his friend, who could well afford it -- Mr. Hamilton

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1 was worth over four million bucks in this time
2 period, you need to understand -- without insulting
3 his friend who had insisted upon it.

4 And what the commission will ask you is to reach
5 a determination that that gift would never have been
6 made except to bribe Judge Anderson to get a little
7 extra money out of the bowling alley when, if they'd
8 closed September 1st, Mr. Hamilton would have paid
9 the same amount he ended up paying; when, if they'd
10 closed September 1st, the estate would have ended up
11 getting exactly the same amount of money it ended up
12 getting in this matter.

13 There's a lot of talk about Judge Anderson
14 telling falsehoods or lying. You have to remember
15 what the evidence will show in this process how this
16 comes about. This is not a normal kind of a case.
17 This is not a normal situation where you have a case
18 and you have an opportunity to know what the issues
19 are and both sides are briefed and there's filings
20 and then you do depositions.

21 This deposition that they're talking about, if
22 you can call it a deposition, is an interview under
23 oath. The party that's coming to be deposed does not
24 know what the issues are going to be; they haven't
25 been named; they haven't been identified; they don't

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1 know what's going to be required; they don't know
2 what's going on ahead of time. You walk in the door
3 and they get to ask you anything they want to, and
4 you answer as best you can.

5 You're going to find that the so-called lies and
6 falsehoods in this deposition are those that fall
7 within the ordinary range of normal memory. We're
8 talking about him being deposed in 1996 about events
9 that happened in 1992, 1993. We're not talking about
10 the big issues. There's nothing changed in these
11 people's story in terms of the big issue at any time.
12 Was Judge Anderson bribed? No. Was this a gift?
13 Yes.

14 You're going to be asked to look at
15 circumstantial evidence and apply it and then apply a
16 cynical screen to the circumstantial evidence and
17 say, "No reasonable person would have made the
18 adjustments that were made in this case but for those
19 car payments."

20 And when we get to the end of this case, I will
21 argue to you about the law. We'll talk about the
22 law; we'll talk about burden of proof; we'll talk
23 about what perjury requires; we'll talk about what
24 PDC forms require.

25 But ultimately we're going to talk about whether

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1 or not people can make a deal in which they
2 understand what the fundamental premise of the deal
3 is; when that premise changes, is it crooked to make
4 sure that in fact the deal you made is the deal which
5 is delivered.

6 Thank you very much.

7 JUDGE BROWN: I think at this point the
8 commission would like to take a short break of
9 approximately five minutes and then we'll continue.
10 (RECESS TAKEN.)
11 JUDGE BROWN: Thank you. Before we
12 begin, there is a matter that needs to be disclosed.
13 In late 1993 and early 1994, one of the members of
14 the commission, Judge Schultheis, had an
15 attorney/client relationship with Mr. Kurt Bulmer.
16 That matter was disclosed to both counsel.
17 So is there any objection by either counsel to
18 Judge Schultheis sitting on the commission?
19 MR. TAYLOR: No objection whatsoever,
20 Your Honor.
21 MR. BULMER: No objection, Your Honor.
22 JUDGE BROWN: All right. You may
23 proceed.
24 MR. TAYLOR: Counsel for the commission
25 calls the Honorable Grant Anderson.

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1
2 GRANT ANDERSON, being first duly sworn to
tell the truth, the whole
3 truth and nothing but the
truth, testified as follows:
4

5 DIRECT EXAMINATION

6 BY MR. TAYLOR:
7 Q Good morning, Your Honor.
8 You testified in your deposition that you did
9 not tell your wife that the Cadillac was a commission
10 from Bill Hamilton in exchange for the bowling alley
11 sale. Do you recall that?
12 A I recall -- can you -- yes.
13 Q Okay.
14 A Whatever I said in the deposition is what I said.
15 Q Okay. And you understand in the statement of charges
16 it alleges that that testimony was knowingly false?
17 A I understand that too.
18 Q Okay. At the time that issue came up in the
19 deposition, when we were discussing the Cadillac, the
20 gift issue, that wasn't the first time you had
21 thought about that issue in four years, was it?
22 MR. BULMER: Objection to the form of the
23 question.
24 Q You had been thinking about the Cadillac many times
25 prior to your questioning about that issue, had you

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1 not?
2 A I can't tell you that my mind was a total blank, no.
3 Q No. And, in fact, we had interviewed you prior to
4 your deposition; do you recall that?
5 A Yes.
6 Q And in the course of that deposition, we asked you
7 about the Cadillac payments, did we not; in the
8 course of that interview, we asked you about the
9 Cadillac payments, did we not?
10 A Yes.
11 Q And we asked your lawyer to furnish us documents
12 relating to the Cadillac, did we not?
13 A You'd have to ask my lawyer, but I'm going to say
14 yes.
15 Q Well, do you recall being carbon-copied on a letter
16 from Mr. Bulmer to us transmitting a number of
17 documents from you relating to the Cadillac?
18 A I think so.

19 Q Would you like to look at the correspondence to
20 refresh your --
21 A I'm sure there was.
22 Q Okay. And he sent those documents to us, and you
23 knew it, and so by the time of the deposition in
24 which you gave the testimony that's alleged to be
25 false, the fact that the commission was investigating

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1 the Cadillac was no surprise to you, was it?
2 A No.
3 Q And you anticipated you would be asked questions
4 about that, didn't you?
5 A Yes.
6 Q And you met with your lawyer prior to the deposition,
7 didn't you?
8 A Yes.
9 Q And you talked about various issues that would relate
10 to your deposition?
11 MR. BULMER: Objection. Attorney/client
12 privilege.
13 MR. TAYLOR: I'll rephrase that.
14 JUDGE BROWN: All right.
15 Q (Continuing by Mr. Taylor) You met with your lawyer
16 and you prepared for your deposition?
17 A Yes.
18 Q Okay. Charles Hoffman was a client of yours?
19 A Yes.
20 Q For how long?
21 A A number of years. I can't give you a specific
22 period of time.
23 Q What kind of work did you do for him?
24 A Mr. Hoffman was introduced to me when he retook over
25 the Surfside condominium project. The project had

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1 been started, the project had been foreclosed upon,
2 all before my time, and my understanding was the bank
3 had it for a period of time, two or three years, and
4 they had made arrangements for him with a mentor,
5 another person, to take the project back and try and
6 work it out for them, and it was someplace in that
7 line that he came to me to work primarily on the
8 Surfside project.
9 Q Thereafter did you provide him legal advice on
10 various transactions?
11 A Yes.
12 Q At some point he asked you to prepare his will?
13 A Yes.
14 Q You did so?
15 A Yes.
16 Q You named yourself as personal representative with
17 his approval?
18 A He's the one that requested it.
19 Q Very well. You understood that in undertaking the
20 responsibility of becoming a personal representative,
21 that you were undertaking a fiduciary duty?
22 A Yes.
23 Q The will provided that once his estate closed, the
24 assets would flow into a trust?
25 A Yes.

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1 Q His ex-wife, Millie Hoffman, was the beneficiary of
2 the trust?
3 A Yes.
4 Q And the co-beneficiary or the beneficiary at the
5 point where his ex-wife died was a hospital in
6 Ilwaco?

7 A I believe they got 90 percent, and his son, who I
8 have never seen, got 10 percent.
9 Q That's his estranged son?
10 A Yes.
11 Q At the time of his death, Mr. Hoffman was the owner
12 of Hoffman-Stevenson, Incorporated?
13 A Yes.
14 Q Hoffman-Stevenson owned a bowling alley in Tacoma?
15 A Yes.
16 Q A bowling alley known as Pacific Lanes?
17 A Yes.
18 Q And is the bowling alley operation itself run by
19 Pacific Lanes?
20 A Yes.
21 Q Pacific Lanes paid rent to Hoffman-Stevenson for use
22 of the ground and the buildings, didn't it?
23 A Yes.
24 Q Can you tell us why the lease provided that the rent
25 was 6,000 a month but it was booked at 12,000 a

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1 month?
2 A Most -- well, now, you'd have to show me the lease.
3 I can indicate to you in a general sense, he had
4 three corporations. There was Surfside Inn. He
5 operated his business wholly within three
6 corporations almost totally. The ocean and Surfside
7 was a loser for tax purposes, and the rent was
8 sometimes adjusted to take what might have been
9 profits from the bowling alley to offset losses from
10 the other corporation.
11 Q So notwithstanding that the lease said "X" for tax
12 purposes, the books under your direction were being
13 maintained as "Y"; is that correct?
14 A When you say under my direction, these were under
15 Mr. Hoffman's direction. I do not recall under my
16 direction.
17 Q And thereafter, after he died, was not the accounting
18 treatment the same?
19 A Generally yes.
20 Q Very well. You made yourself president of Pacific
21 Lanes when he died?
22 A Yes.
23 Q Now, the bowling alley, once you took over after he
24 died, you weren't there every day running the bowling
25 alley?

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1 A No.
2 Q Who was doing that?
3 A Jackie Louise Pagni, who had been with him for 25, 26
4 years, had been there ever since the bowling alley
5 was started, was the primary person. Her daughter
6 was hired as the manager because Jackie did not want
7 responsibility. She would open it, she would take
8 care of all the books, she was in charge of all the
9 gambling, but she did not want to confront with
10 vendors and people of that nature, so her daughter
11 was a manager who would be there on the day-to-day
12 basis.
13 She worked a shift, I think Jackie opened in the
14 morning, ran it till mid-afternoon. Janet Nimick,
15 her daughter, would then come in the afternoon and
16 run into the evening and close at the end of the day
17 and be responsible for face-to-face contact with the
18 vendors, decisions that had to be made,
19 follow-through on directions that I gave relative to
20 what was going to be done, repairs, otherwise.

21 Q So is it fair to say Jackie Pagni knew that bowling
22 alley inside and out?
23 A That Jackie Pagni did?
24 Q Yes.
25 A I think probably as much as anybody.

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1 Q More so than you?
2 A More so than me.
3 Q More so than Bill Hamilton when he came along?
4 A Yes.
5 Q After you became personal representative, you weren't
6 running the bowling alley on a daily basis?
7 A When you say that, and you've asked me that once
8 before, no, I was not there on a daily basis, but I
9 was there on a regular basis.
10 Q As the personal representative, you were entitled to
11 attorneys fees for your efforts?
12 A Yes.
13 Q You couldn't be paid those fees until you had closed
14 the estate and submitted a fee application to the
15 court?
16 A I think generally that's true, yes.
17 Q Shortly after you were elected, in approximately
18 December of 1992, you submitted a fee application?
19 A Yes.
20 Q And the court approved it?
21 A Yes.
22 Q Approved about \$112,000 in attorney's fees for your
23 firm for work on the estate?
24 A I think that's right, yes.
25 Q On top of those attorney's fees, you had also been

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1 receiving, billing and receiving on a monthly basis,
2 a management fee, correct?
3 A Yes.
4 Q And that management fee was -- well, was it over
5 \$100,000, approximately 125,000?
6 A Over a four-year period, that would be about right.
7 Q Okay. And you were getting fees from Pacific Lanes?
8 A Yes.
9 Q And the Surfside?
10 A Yes.
11 Q When you went in to the court for your petition to
12 get your attorney's fees of \$112,000, did you
13 disclose to the court that you had already been paid
14 on an ongoing basis \$100,000?
15 A I don't believe I did.
16 Q Now, the monthly management fee for Pacific Lanes, by
17 the fall of 1992, you were charging them \$1800 a
18 month?
19 A I believe that's right.
20 Q And you charged them and they paid \$1800 a month in
21 September?
22 A Yes.
23 Q For a management fee?
24 A The management fee that came from, whether it was
25 Surfside or Hoffman-Stevenson or Pacific Lanes, went

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1 into what I'm going to call a management pot. It was
2 the management of the assets of the estate, and those
3 assets of the estate included the three corporations.
4 They included probably more work, in terms of
5 distance of doing it, at Surfside and Pacific Lanes.
6 They were not allocated to this operation or that
7 operation.
8 Time records were kept. They were roughly

9 equivalent to what Mr. Hoffman had been taking out of
10 the corporation by way of salary for doing that job
11 when he was alive.
12 Q By the fall of 1992, your firm was getting separate
13 management checks paid to you by Pacific Lanes and
14 the Surfside, correct?
15 A They were getting checks, yes, but were they for --
16 I'm sorry, maybe I missed your question. It was for
17 management of the assets of the estate. Whether that
18 was Pacific Lanes or whether that was Surfside or
19 wherever it was, those were all accounted for on a
20 time-keeping basis and those were all taxable
21 deductions from the various corporations and their
22 tax returns.
23 Q Whose approval did you have in the fall of 1992 for
24 Pacific Lanes to be paying your law firm a management
25 fee of \$1800 a month?

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1 A I think that had been an ongoing payment for
2 three-and-a-half years, and it was like on auto
3 pilot. I think it was just done.
4 Q Was Mr. Hamilton managing the bowling alley as of
5 September 1, 1992?
6 A He took over management to the extent that I had
7 managed it before that in terms of the ongoing, if
8 you want to call them policy decisions of what went
9 on in the bowling alley. I would come in for lunch;
10 I would come in after hours. I was not there on a
11 day-to-day basis, but I would confer with my manager,
12 whether it was Jackie Pagni or whether it was Janet
13 Nimick, as to different things that had to be done,
14 whether things that had broken down had to be fixed,
15 as to items or anticipated remodeling, a myriad of
16 decisions, sometimes personnel decisions that they
17 were faced with that they handled but I made.
18 After September 1st, I stepped out of that
19 capacity.
20 Q Now, in your deposition you told us that Mr. Hamilton
21 as of September 1st had authority and responsibility
22 for the pull-tab business. That's your recollection
23 today?
24 A In the general sense, yes, that is my recollection.
25 Jackie Pagni ran that. She's the one that put in the

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1 games, did the accounting, did the reports or put
2 together all the stuff.
3 Q He was also responsible for the gambling operations;
4 you told us that. Do you recall that?
5 A Yeah, in the same sense that I had been before.
6 Q Why don't you take a look at Exhibit 1, please.
7 A (Witness complies.)
8 Q Exhibit 1 is an application you submitted to re-up
9 Pacific Lanes' gambling license in late September of
10 1992?
11 A Yes, that's what it appears to be.
12 Q Third page, you signed it?
13 A Yes.
14 Q Declared under penalty of perjury that the
15 information submitted is true, accurate and complete
16 to the best of your knowledge, that last box?
17 A I guess that's what it says, yes.
18 Q Is there any doubt in your mind that's what it says?
19 A Yes. No.
20 Q Okay. Now, turn to page 2.
21 A (Witness complies.)
22 Q See box 5?

23 A Yes.
24 Q This was submitted in September. You signed this on
25 September 28th, 1992?

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1 A Uh-huh.
2 Q Several weeks after September 1, 1992?
3 A Yes.
4 Q And box 5 on page 2 says, "List all managers and
5 supervisors involved in your gambling activities."
6 Did you put Bill Hamilton's name there?
7 A No.
8 Q Did you put his company's name there, Pacific
9 Recreation?
10 A No. And I didn't put my name there either.
11 Q Did you list anybody other than Louise Pagni?
12 A No. She ran the operation. When you say a manager,
13 I mean, there's an overall manager. I suppose in all
14 respects I could have fired her and then she would
15 not be a manager. But did I at any time ever
16 directly manage, i.e., did I put any pull tabs in,
17 did I take any out, did I count any, did I weigh
18 them? I relied on Ms. Pagni and the accountants to
19 do the monthly reports to the commission. To that
20 extent, I managed.
21 It's how you use the words, Mr. Taylor.
22 Q Okay. So it's correct that even though, in your
23 words, Mr. Hamilton had authority and responsibility
24 for the operation of the pull-tab business as of
25 September 1, you consciously decided not to list him

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1 in the gambling license?
2 MR. BULMER: Objection. Mischaracterizes
3 his testimony.
4 Q I don't mean to mischaracterize your testimony. I
5 just want to understand it, sir.
6 JUDGE BROWN: Overruled.
7 You may answer.
8 A Did I consciously -- this was filled out by somebody
9 else. It was not filled out by me. And although I'm
10 sure I perused it when I signed it, because I knew
11 what it was, I did not make a conscious decision not
12 to list him any more than I made a conscious decision
13 not to list myself.
14 As I went down here, the manager was Jackie
15 Pagni in terms of who runs that operation. That's
16 the person I listed.
17 Q Now, the application was prepared by Janet Nimick?
18 A You'd have to --
19 Q Down about--
20 A Okay. That's what it says, yes.
21 Q And certainly she better than anybody would have
22 known who was managing the gambling business at that
23 time, wouldn't she?
24 A You'd have to ask her. She knew her mother was, who
25 was Louise Pagni, in terms of the operation.

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1 Q She was there every day?
2 A Who?
3 Q Janet Nimick?
4 A For the most part, yes.
5 Q The fall of 1992 you were running for the Superior
6 Court bench?
7 A Yes.
8 Q You were elected in the primaries to begin service in
9 January of '93?
10 A Yes.

11 Q In 1992 you began discussions with Bill Hamilton
12 about selling the bowling alley business to
13 Mr. Hamilton; do you recall that?
14 A I initially began discussions with Mr. Hamilton about
15 selling the bowling alley business initially, not
16 necessarily to him, but about selling the bowling
17 alley business, yes.
18 Q By mid-1992 you were talking about selling the
19 bowling alley business to Bill Hamilton?
20 A Yes.
21 Q You had known Mr. Hamilton for many years?
22 A Yes.
23 Q You were a shareholder at the bank he owned?
24 A Yes.
25 Q Were you a shareholder at more than one bank he owned

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1 or just one?
2 A Two.
3 Q Okay. Did --
4 A When you say he owned --
5 Q He was the majority owner?
6 A I'm not even sure about that. He was --
7 Q Let me rephrase.
8 A Okay.
9 Q You and he were co-owners of the bank?
10 A Inasmuch as I may be a co-owner of General Motors if
11 I have some stock in General Motors.
12 Q Weren't these closely held corporations, Your Honor?
13 A Probably closer than General Motors. I had some
14 stock, he had stock. How much he had, I don't know.
15 And he certainly had more than I did, I'm sure of
16 that.
17 Q Weren't there a total of about ten shareholders of
18 Sound Bank?
19 A I don't know. I think there are more than that, but
20 I don't know.
21 Q Now, he had given you advice on business transactions
22 over the years?
23 A Yes.
24 Q And you had given him advice?
25 A Yes.

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1 Q And these were various commercial deals?
2 A Yes.
3 Q Strip malls?
4 A What?
5 Q Strip malls, for example?
6 A Yes.
7 Q Banks?
8 A Not much in the bank. The banks were his business.
9 Maybe on an outside thing about should I locate here
10 or shouldn't I from a market standpoint, but in terms
11 of the banks, I did not give him or talk to him much
12 about banks or bank operation. That was almost
13 strictly his business.
14 Q Prior to September 1, 1992 -- you had been giving him
15 advice for years prior to September 1, 1992?
16 A In an informal way, yes.
17 Q Okay.
18 A When you say "giving him advice," the answer is yes,
19 but I did not bill him for it. He was not a client
20 of mine, did not come to my office.
21 Q Prior to September 1992, had he ever, for example,
22 bought a car for you?
23 A No.
24 Q Had he ever made car payments for you?

25 A No.

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1 Q Had he ever given your wife jewelry?

2 A No.

3 Q Had he ever given you jewelry?

4 A No.

5 Q Had he ever given your kids gift certificates at
6 Christmas?

7 A No, not that I'm aware of, not that I remember.

8 Q Prior to September 1992, had he given you so much as
9 a jug of whiskey at Christmas?

10 A Probably would have been wine, and I'm going to say
11 yes.

12 Q Anything more than a bottle of wine at Christmas
13 exchanged between you and Mr. Hamilton prior to
14 September '92?

15 A Between the two of us, probably something in that
16 range or those ranges.

17 Q Take a look at Exhibit 21, please.

18 A (Witness complies.)

19 Q Your discussions with Mr. Hamilton about selling the
20 bowling alley business to him culminated in an
21 agreement signed September 19th, '92?

22 A That was an agreement. They really more properly
23 culminated in the agreement that is Exhibit 20 signed
24 August 26th, 1992.

25 Q Okay. Well, let's take a look at that, then.

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1 Exhibit 20. See in the upper left-hand corner where
2 it says "Draft"?

3 A I see that.

4 Q Is that Mr. Hamilton's handwriting or yours?

5 A It's not mine.

6 Q Dated August 26th?

7 A Yes.

8 Q It says that Bill Hamilton is -- well, actually it
9 says "Corporation to be formed"?

10 A Yes.

11 Q Pacific Recreation hasn't even entered the scene yet?

12 A That's true. It was in the formation or was being
13 formed.

14 Q Okay. And this agreement provided that Mr. Hamilton
15 would pay \$50,000 down?

16 A Yes.

17 Q And \$250,000 over time?

18 A Yes.

19 Q The agreement was contingent on something, wasn't it?

20 A Yes.

21 Q The agreement was contingent on transfer of all state
22 and local permits, specifically including gambling
23 licenses and liquor licenses; do you see that?

24 A Yes.

25 Q That's page 3, paragraph 13.

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1 Following the execution of this agreement on
2 August 26th, did -- this was supposed to close on
3 September 1?

4 A Yes.

5 Q Between August 26 and September 1, 1992, you didn't
6 submit any papers to the gambling commission or the
7 liquor commission to facilitate a transfer, did you?

8 A No.

9 Q Bill Hamilton didn't, did he?

10 A I don't know.

11 Q This agreement was never effectuated, was it?

12 A This was the essence of the agreement right here.

13 Q That was the essence of the agreement?
14 A Yes.
15 Q And if we look right at the very first page it
16 says -- your office or you wrote this, by the way?
17 A Yes, it was done in my office.
18 Q So somebody decided to put in bold print, "This
19 contract controls the terms of sale of the property."
20 That was true, wasn't it?
21 A That's what it says.
22 Q And you said this document was the essence of the
23 agreement, so we know, if we turn to page 3,
24 paragraph 14, that when he says there are no verbal
25 or other agreements which modify or affect this
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1 agreement, we know that's a true statement, don't we?
2 A That's what it says.
3 Q Can you show me anywhere in Exhibit 20 where it says
4 that if the deal doesn't close on September 1st,
5 Mr. Hamilton gets the profits of Pacific Lanes
6 nevertheless?
7 A No, I can't.
8 Q Can you show me anywhere in Exhibit 20 the essence of
9 your original understanding, can you show me anywhere
10 where it says that even if the sale doesn't close,
11 according to this agreement, the \$250,000 obligation
12 he would be assuming would be reduced by the profits
13 of the bowling alley?
14 A That was never the understanding.
15 Q So your answer is, then, that doesn't appear in this
16 agreement?
17 A That does not appear in the agreement.
18 Q And this agreement says nothing about Mr. Hamilton,
19 the agreement which is the essence of your
20 understanding with no verbal agreements on the side,
21 this agreement doesn't say anything about
22 Mr. Hamilton getting the cash flow from September 1st
23 forward if the deal doesn't close in September, does
24 it?
25 A It does not say that.

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1 Q And it doesn't say anything about Pacific Recreation
2 getting the cash flow from September 1 forward if the
3 deal doesn't close, does it?
4 A Pacific Recreation, from my recollection, was in the
5 formation stages but had not been formed yet or had
6 not been finished.
7 Q Now, if we go back to page 3, paragraph 13,
8 section B, it says, "This matter shall be closed as
9 soon as reasonably possible but no later than
10 September 1, 1992."
11 Do you see that?
12 A Yes.
13 Q Did the transaction close on September 1, 1992?
14 A No, not close in the formal sense of closing. Was
15 there a closing statement, no.
16 Q Did he pay you any money on September 1, 1992?
17 A No.
18 Q Did Pacific Recreation pay Pacific Lanes --
19 A No.
20 Q -- any money on September 1, 1992?
21 A No.
22 Q Were any closing papers signed on September 1, 1992?
23 A No.
24 Q Bill of sale?
25 A No.

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1 Q So as of September 1, 1992, no assets had changed
2 hands between Pacific Lanes and Pacific Recreation?
3 A That's right.
4 Q Okay. Let's turn now to Exhibit 21.
5 A (Witness complies.)
6 Q This is a subsequent agreement you entered into?
7 A Yes.
8 Q And that's because the first one marked "Draft" by
9 Mr. Hamilton had lapsed?
10 A I don't know about the marking of "Draft." That, to
11 my knowledge, was not a draft. That was the
12 agreement. This was a subsequent agreement because
13 the regulators, and I can't tell you, and I'm
14 informed of this, whether it was the gambling
15 commission or the liquor commission or both of them,
16 indicated it could not be from a corporation to be
17 formed, it needed a name, and by that time Pacific
18 Recreation Enterprises had been completed as a
19 corporation, (1); and (2) because September 1st had
20 passed, they would not recognize the prior August
21 26th agreement.
22 Q Well, no one contacted the liquor or gambling
23 commission between August 26th and September 1, did
24 they?
25 A I did not.

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1 Q Okay.
2 A That's all I can tell you.
3 Q Looking at Exhibit 21, Mr. Hamilton was going to buy
4 the bowling alley operation from Pacific Lanes for
5 \$300,000?
6 A The operation portion of it was attributable -- was
7 \$300,000, yes.
8 Q He was going to pay \$50,000 in cash?
9 A Yes.
10 Q With a balance of 250,000 to be paid in the note?
11 A Yes.
12 Q Now, it also talks about lease in here or a rent rate
13 for Pacific Recreation, Mr. Hamilton's company, to
14 rent the grounds and buildings from
15 Hoffman-Stevenson?
16 A Yes.
17 Q That was 6,000 a month?
18 A I believe so.
19 Q Why did you give Mr. Hamilton a lease rate of 6,000 a
20 month if all along the payment from Pacific
21 Recreation -- or, I'm sorry, from Pacific Lanes --
22 to Hoffman-Stevenson had been booked at 12,000 a
23 month?
24 A As I indicated, the 12,000 rate was a rate, if that
25 was the rate, and I frankly don't at this juncture

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1 remember, but it was driven by tax considerations
2 between the corporations as opposed to the true fair
3 market rental rate. And there's a big spectrum of
4 what is fair rent in a commercial facility, and that
5 was a fair rent at that time for this deal.
6 Q Just so I understand, then, on the books you had two
7 sets of rents. You had the 12,000 rent, or whatever
8 it may have been, for tax purposes, and you had the
9 6,000 that was in the lease; is that what you're
10 saying?
11 A In which lease? I don't --
12 Q In the lease between Hoffman-Stevenson and Pacific
13 Lanes, Inc.?
14 A I do not recall what -- I don't have that lease in

15 front of me, and I don't recall it, very frankly.
16 Q Regardless, you decided to give Mr. Hamilton the
17 lease rental rate as opposed to the tax rental rate
18 you had been using?
19 A It resulted in a total payment, I believe, of six for
20 this and -- what was the payment on the note? Was it
21 three? Yes, 3,000. It resulted in a total payment
22 of \$9,000 per month.

23 Q Now, did Exhibit 21, like Exhibit 20, reflect the
24 essence of your understanding with Mr. Hamilton?

25 A Exhibit 21 reflected the true essence of the

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1 understanding all the way through. Exhibit 21 was
2 frankly done to accommodate the regulators. The
3 prices and terms are still the same. To get to
4 closing, it was accomplished to put in the name of
5 the corporation and to leave the closing date open as
6 they required.

7 Q Well, had you been in touch with the gambling
8 commission --

9 A No, I had not.

10 Q Had you been in touch with the gambling commission
11 between August 26th of '92 and September 19th of
12 1992?

13 A I had not.

14 Q Had you been in touch with the Washington State
15 liquor commission from August 26th, 1992, through
16 September 19th, 1992?

17 A Personally I had not.

18 Q Had you assigned anyone that task?

19 A Had I assigned? At this juncture I can't say
20 specifically. It would have been -- whether it was
21 Mr. Hamilton or Ms. Pagni, I did not personally do
22 it, but Ms. Pagni was the manager and the person that
23 did and was responsible for at least the gambling.
24 And when I say gambling, it's the pull-tab
25 operations.

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1 Q Exhibit 20 --

2 MR. BULMER: I don't mean to interrupt,
3 but one of the witnesses, it has come to my
4 attention, has now come into the room, and I'd like
5 to have him excused. And that's Mr. Schafer.

6 JUDGE BROWN: All right.

7 Mr. Schafer?

8 MR. SCHAFFER: Yes.

9 JUDGE BROWN: My name is Stephen Brown,
10 presiding officer of the commission. At the
11 commencement of the hearing today, an order was
12 entered excluding witnesses from the courtroom.
13 You're under subpoena as a witness, so I'd ask that
14 you leave the hearing room at this time until you're
15 called in as a witness. I believe once you're called
16 as a witness, then you can remain in the hearing
17 room.

18 MR. SCHAFFER: If I may comment, as you
19 certainly know, I have been a very vocal critic of
20 our government and specifically of this commission --

21 JUDGE BROWN: Excuse me, Mr. Schafer,
22 you're interrupting the proceedings --

23 MR. SCHAFFER: -- and I cannot --

24 JUDGE BROWN: Excuse me, Mr. Schafer.

25 MR. SCHAFFER: -- exercise the

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1 constitutional right to criticize government if I'm
2 not allowed to observe government. It being a

3 fundamental constitutional right, I suggest that you
4 should restrict it in the most narrow manner
5 possible.

6 I have never spoken with Mr. Anderson about any
7 of the things he is testifying about. If you want to
8 fashion a fairly narrowly fashioned order that
9 excludes me only from such witness testimony as could
10 even conceivably be affected by anything as to which
11 I may be asked to testify, I would honor that.

12 But a broad-brush banishment from this public
13 proceeding that bears no relevance to any perceived
14 harm, that has such a chilling effect on my ability
15 to observe and to criticize the manner in which this
16 proceeding and this commission conducts its important
17 work, I think is frankly unconstitutional. I think I
18 have the right to be here to be able to talk with the
19 press --

20 JUDGE BROWN: Excuse me, sir. You're
21 interrupting the proceedings by your speech. We need
22 to move along. I'd ask that you please leave the
23 hearing room, Mr. Schafer.

24 MR. SCHAFFER: I'm asking that you fashion
25 an order that limits my exercise, my constitutional

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1 rights, in the most narrow means possible.

2 JUDGE BROWN: The order has already been
3 fashioned and was agreed to by counsel for the judge
4 and counsel for the commission.

5 MR. SCHAFFER: Well, sir, I don't believe
6 you have jurisdiction over this citizen.

7 JUDGE BROWN: Are you refusing to leave,
8 Mr. Schafer?

9 MR. SCHAFFER: I'm refusing to leave.

10 JUDGE BROWN: All right. The hearing
11 will be in recess at this point. We need to consult.

12 We'll be in recess. We cannot proceed with
13 Mr. Schafer in the courtroom in violation of the
14 commission's orders.

(RECESS TAKEN.)

15 JUDGE BROWN: Be seated.

16 Mr. Schafer, are you still refusing to leave the
17 hearing room?

18 MR. SCHAFFER: I believe I still have a
19 constitutional right to observe this proceedings.

20 JUDGE BROWN: So you're not willing to
21 leave voluntarily?

22 MR. SCHAFFER: No, I'm not.

23 JUDGE BROWN: Counsel, this is an order
24 by stipulation. Do counsel still wish to have such

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1 an order?

2 MR. TAYLOR: Commission counsel takes no
3 position one way or the other.

4 JUDGE BROWN: Mr. Bulmer?

5 MR. SCHAFFER: Excuse me. May I -- I
6 understand that this --

7 JUDGE BROWN: Mr. Schafer, would you
8 please be quiet? Thank you.

9 Do you still wish the order, Mr. Bulmer?

10 MR. BULMER: Yes, sir.

11 JUDGE BROWN: Is there any way that the
12 order can be fashioned any more narrowly than
13 excluding until his testimony?

14 MR. BULMER: I'm thinking, Your Honor.
15 Give me a second.

16 JUDGE BROWN: Certainly.

17 (PAUSE IN PROCEEDINGS.)
18 MR. BULMER: Give me a second here, Your
19 Honor.
20 JUDGE BROWN: All right.
21 (PAUSE IN PROCEEDINGS.)
22 MR. BULMER: This is an important
23 decision for us to make. May I for one second
24 approach my client, Your Honor?
25 JUDGE BROWN: That's fine, Mr. Bulmer.

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1 (ATTORNEY/CLIENT CONFERENCE.)
2 JUDGE BROWN: Mr. Bulmer?
3 MR. BULMER: No, Your Honor, I think not.
4 We would like him excused.
5 JUDGE BROWN: All right. Mr. Akana, if
6 you would provide Mr. Schafer with a copy of the
7 order entered by the commission pursuant to the
8 stipulation of counsel.
9 (DOCUMENT PROVIDED TO MR. SCHAFER.)
10 MR. SCHAFER: I was just handed a
11 photocopy of a typewritten two pages that bears no
12 date and no signature, and I've never seen this
13 before.
14 Is that what you wanted delivered to me?
15 JUDGE BROWN: Yes.
16 MR. SCHAFER: Thank you. I have it.
17 JUDGE BROWN: All right. In there
18 contains the order of the presiding officer to
19 exclude witnesses.
20 MR. SCHAFER: Was this entered in a
21 public proceeding pursuant to the Open Meetings Act,
22 or was it a null and void act pursuant to the Open
23 Meetings Act?
24 JUDGE BROWN: It's a valid order of this
25 proceeding.

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1 MR. SCHAFER: When was it entered? Was
2 it entered in a public proceeding?
3 JUDGE BROWN: Are you still refusing to
4 leave even after you've been given an order,
5 Mr. Schafer?
6 MR. SCHAFER: I've not been given an
7 order.
8 (DOCUMENT PROVIDED TO MR. SCHAFER.)
9 MR. SCHAFER: I have been given a
10 two-page document that's been through four, five fax
11 machines. It says it was filed January 8th in the
12 Commission on Judicial Conduct. It says it is a
13 prehearing order signed by the Honorable Stephen
14 Brown.
15 I ask again, was this a matter conducted in an
16 open proceeding consistent with the state Open
17 Meetings Act, or is it a null and void act pursuant
18 to the state Open Public Meetings Act? That is my
19 question. I do not consider this a valid order.
20 JUDGE BROWN: So you don't intend to
21 leave the courtroom?
22 MR. SCHAFER: No, sir.
23 JUDGE BROWN: You're under subpoena by
24 Mr. Bulmer to give testimony on behalf of the judge
25 in this action.

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1 MR. SCHAFER: I do not believe that I am.
2 JUDGE BROWN: Mr. Bulmer?
3 MR. BULMER: Yes, sir.
4 MR. SCHAFER: I have never received

5 anything under any process of any court of this state
6 or any process of any tribunal of this state that's
7 recognized in the state constitution. I have
8 received a document that had been through many
9 photocopies bearing, I don't recall what signature.

10 And I would say furthermore that the use of this
11 ploy to exclude a critic from the proceeding when my
12 only involvement in the conduct with which the
13 defendant is charged is so remote as to not be
14 relevant to excluding me.

15 I'm willing to dismiss myself for testimony
16 that might be given by my only nexus, that being
17 William L. Hamilton, my former client, of a brief
18 conversation I had with him.

19 MR. BULMER: On January 7th, 1998, I
20 conducted a deposition of Mr. Schafer. In that
21 deposition, if I may read into the record a portion
22 of it, and I can publish the deposition, and I
23 believe Mr. Taylor has a copy.

24 MR. SCHAFER: Can I ask you to read the
25 entire and not just selective reading --

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1 JUDGE BROWN: Mr. Schafer, please be
2 quiet so Mr. Bulmer can proceed. Thank you.

3 MR. BULMER: Starting at page 48 -- I'm
4 asking the questions, starting at line 21:

5 "QUESTION: It goes in the record. Now, I think
6 I've only got one thing left. I need to get you
7 subpoenaed for next week.

8 "ANSWER: Do I get witness fees for this?

9 "QUESTION: They're right here.

10 "ANSWER: I see a check. Since mostly what I've
11 been doing has been for the public good, a little
12 payment now and then might not hurt.

13 "QUESTION: It's only 15 bucks, I've got to tell
14 you.

15 "ANSWER: It helps.

16 "QUESTION: I'm handing you, on the record, a
17 copy of a subpoena for your attendance at the hearing
18 next week, along with a witness fee check of \$15.

19 "ANSWER: Is there a particular day?

20 "QUESTION: I've got you -- no, I want to talk
21 about that on the record with you right now.

22 "ANSWER: Okay.

23 "QUESTION: It starts on January 12th."

24 And then there's an ongoing --

25 MR. SCHAFER: Please read it all. Don't

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1 summarize and selectively --

2 JUDGE BROWN: Mr. Schafer, please be
3 quiet. Thank you.

4 MR. BULMER: And then there was a
5 discussion about how to accommodate so he doesn't
6 have to sit here for the whole time period. And then
7 it says -- let me back up.

8 "QUESTION: It starts on January 12th --"

9 I'm back on line 13, page 49:

10 "QUESTION: It starts on January 12th. And so
11 pursuant to custom or whatever, that's when you -- at
12 the start of the proceeding -- I obviously don't
13 expect you to sit or to be available full time during
14 this, and I'm happy to work with you if you think --
15 I would think that you would be Thursday. Okay?

16 "ANSWER: The first Thursday?

17 "QUESTION: Yes. So it would be 12, 13, 14 --
18 15th, I think.

19 "So do you think you would be available on the
20 15th? I could probably give you an hour's notice
21 ahead of time as to -- we'd call your office. I'm
22 looking for a way to accommodate your schedule in a
23 reasonable way so that you don't have to sit down
24 there that whole time.

25 "ANSWER: Well, I may be trying to take in as
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1 much of it as I can, but I cannot be there full time,
2 you know. Just give me as much notice as you can,
3 and --

4 "QUESTION: What I'm saying --

5 "ANSWER: My office is physically quite close,
6 as you know.

7 "QUESTION: What I'm saying is I'm agreeing on
8 the record to relieve you of the responsibility to be
9 there January 12th on the basis that I will plan on
10 calling you on the 15th. And I will give you at
11 least an hour's notice ahead of time, if not the
12 night before. Is that acceptable to you?

13 "ANSWER: Yes.

14 "QUESTION: Okay. Now, I don't want to leave
15 any misunderstandings here. In terms of your -- in
16 terms of your availability, there's been a motion to
17 exclude witnesses, and you'll be on the list. So you
18 just said something about you're going to be
19 attending full time. I don't want you to walk out of
20 here having you made a statement like that --

21 "ANSWER: Just a minute. Because I'm on your
22 witness list, am I somehow disqualified from being
23 able to observe?

24 "QUESTION: I'm just letting you know that
25 witnesses are going to be excluded -- you've said

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1 something, so I don't want you to walk out of here
2 leaving a false impression in your face. So I'm
3 letting you know right now.

4 "ANSWER: I'm telling you right now I intend to
5 observe as much of the proceeding as I am permitted
6 to unless I'm in jail.

7 "QUESTION: I'm not trying to argue it. I
8 just -- I didn't want you to make a statement like
9 that on the record, that you were planning to sit
10 there, with me knowing that witnesses are to be
11 excluded, without telling you that that's the lay of
12 the land.

13 "How you come at that, I'm not trying to argue
14 about that. I'm just telling you what the deal is.

15 "ANSWER: Let me say, you know, I do not
16 consider myself to have been subpoenaed to attend.

17 "QUESTION: And why is that?

18 "ANSWER: Because I do not recognize anything
19 that I have received yet as being the legal process
20 that's legally binding on me.

21 "QUESTION: What did I just hand you?

22 "ANSWER: This sheet of paper right here.

23 "QUESTION: Okay. So it's your position that
24 this document signed by Judge Brown, which is a
25 subpoena for attendance at a hearing on January 12,

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1 1998, at 9 a.m., is not legally binding on you?

2 "ANSWER: I do not consider -- you know, I'll
3 say what I just said. I do not consider myself to
4 have been under legal compunction to be in any
5 particular place at any particular time at this
6 point. And I'll let you figure out what you need to

7 do.
8 "QUESTION: I want the record to reflect, then,
9 I will get a copy --
10 "ANSWER: And basically what I'm saying is, I
11 want to be able to observe that proceeding.
12 "QUESTION: I will get a copy of --
13 "ANSWER: And if you are attempting to exclude
14 me from that, you have one hell of a fight on your
15 hands, Mr. Bulmer.
16 "QUESTION: I will get a copy of the document I
17 just handed you and a copy of the check for
18 attachment --
19 "ANSWER: You can keep your check.
20 "MR. BULMER: No, I'm giving you the document.
21 You can do what you want to. I have a copy, which we
22 will mark as Exhibit 6, of the document, along with a
23 copy of the check. And having done that, I don't
24 have anything further.
25 "Mr. Taylor?

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1 "MR. TAYLOR: I have no questions."
2 And that was the proceeding. So he was properly
3 served directly, and he received service with a
4 check, and I have a copy of the subpoena which was
5 given to him.
6 MR. SCHAFFER: I was handed a sheet of
7 paper. I was not served with legal process.
8 JUDGE BROWN: The deposition is to be
9 published at this time.
10 MR. SCHAFFER: And I have never seen the
11 deposition.
12 JUDGE BROWN: And, Judge Anderson, at
13 this time why don't you step down. I'm sorry about
14 this.
15 JUDGE ANDERSON: Okay.
16 MR. BULMER: It has been a long time
17 since I've done this. I'm not sure what the
18 mechanics are. I hand it to the clerk, I guess.
19 MR. SCHAFFER: Your Honor, I was never
20 given an opportunity to view or correct that
21 deposition either, deposition transcript.
22 JUDGE BROWN: Mr. Schafer, the commission
23 would like to proceed at this time. We're scheduled
24 to proceed. And since you are under subpoena to be
25 here today by the attorney, Mr. Bulmer, on behalf of

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1 the judge to give testimony in this matter, and they
2 are asking that the witness be excluded from the
3 hearing and the commission has so ordered, you need
4 to leave in order for this hearing to proceed.
5 MR. SCHAFFER: As I said, I have not been
6 served with legal process. I've been handed a sheet
7 of paper that is not legal process. There is a
8 difference, and if you want to put me in jail or
9 otherwise sanction me violating my federal and state
10 constitutional rights, I think you are acting
11 inappropriately. I think you are missing the
12 significant issues here.
13 JUDGE BROWN: So you're refusing to
14 leave?
15 MR. SCHAFFER: I am.
16 JUDGE BROWN: Because of that, the
17 commission's hearing is not able to go forward at
18 this time. So we'll take a recess and then the
19 commission will pursue its options.
20 MR. BULMER: Thank you, Your Honor. I'm

21 sorry for this.

(LUNCH RECESS TAKEN.)

22
23 JUDGE BROWN: I'd like to apologize to
24 counsel for our delay. We've been debating on how to
25 proceed. So hopefully we'll have fewer interruptions

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1 than before.

2 MR. BULMER: Thank you.

3 MR. TAYLOR: Thank you, Your Honor.

4

5 GRANT ANDERSON, being previously sworn to
tell the truth, the whole
6 truth and nothing but the
truth, further testified as
7 follows:

8

9

DIRECT EXAMINATION (Continued)

10 BY MR. TAYLOR:

11 Q Good afternoon, Your Honor.

12 A Good afternoon.

13 Q Before the recess we had talked about Exhibit 20, and
14 that was a document that was signed on August 26th of
15 1992, and it had provided that Mr. Hamilton or a
16 corporation to be formed, apparently didn't exist,
17 was going to pay \$300,000, 50,000 in cash and 250,000
18 over time.

19 And you testified that this document accurately
20 reflected the essence of your agreement; is that
21 right?

22 A Yeah. By essence, I mean the important term to
23 Mr. Hamilton was the fall cash flow on September 1st.
24 The document before it, No. 19 -- I think it's 19.
25 There's no 19 in this book. I think it's one that

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1 was added -- actually was the true draft or initial
2 draft with the -- the corrections from that and the
3 final agreement are what came down to Exhibit 20, and
4 the essence of -- "essence," I'm not sure that's the
5 right word, but the deal points were terms, fall cash
6 flow, from Mr. Hamilton's standpoint, and the liquor
7 and gambling licenses.

8 Q The fall cash flow, that was some oral understanding
9 that you and Mr. Hamilton had?

10 A That was September 1st. That's where that was
11 crucial.

12 Q Well, does it say in Exhibit 20 anywhere that if the
13 deal doesn't close on September 1st, Mr. Hamilton --

14 A No, it does not.

15 Q And Exhibit 20 accurately sets forth your agreement,
16 correct?

17 A When you say "accurately," it set forth the essence
18 of the agreement, yes.

19 Q The last paragraph says, "...no verbal or other
20 agreements which modify or affect this agreement."
21 Was that true?

22 A That's what it says.

23 Q Was it true?

24 A It's true to the -- when you say that, say somebody
25 buys or sells a house and you have an earnest money

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1 and sometimes you put in there that it includes the
2 chandeliers or doesn't include them. Reasonable
3 people assume it does include the chandelier. When
4 they show up, there's no chandelier.

5 It again embodied the essence of the terms, the
6 fall cash flow, from Mr. Hamilton's standpoint, and

7 the liquor and gambling license.
8 Q Does it say anywhere in Exhibit 20 if the sale does
9 not close on September 1 --
10 A No, it does not, sir.
11 Q -- he gets the fall cash flow?
12 A No, it does not say that.
13 Q Okay. Let he come back to my questions so we're
14 clear. Were there any verbal or other agreements
15 that modified or affected Exhibit 20 that don't
16 appear in Exhibit 20?
17 A At this juncture, not that I can recall.
18 Q Now, the sale didn't close on September 1, did it?
19 A No, it did not.
20 Q In fact, no one had done anything to move the
21 transaction along by September 1 in that short
22 five-day window between August 26th and September 1,
23 had they?
24 MR. BULMER: Objection. Lack of
25 foundation.

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1 Q You hadn't done anything?
2 A I had not, that's correct.
3 Q And you're not aware that Mr. Hamilton had done
4 anything?
5 A You'll have to ask Mr. Hamilton. I don't know.
6 Q Okay. Well, time passed from September 1 forward;
7 Pacific Lanes was still running the bowling alley
8 operation?
9 A Yes.
10 Q Mr. Hamilton had no right, title or interest in the
11 bowling alley operation whatsoever, did he?
12 A In a legal sense, no. Had it closed, had it
13 transferred, had there been a closing statement, no.
14 Q Well, in any sense, he had no right, title or
15 interest in the bowling alley as of September 1, did
16 he?
17 A He had what I guess I would call for lack of a better
18 term at this time an implied managerial role, the
19 understanding being that if and when this closed --
20 there was no assumption or at least no thought on
21 anybody's part, although the possibility did exist,
22 that the licenses would not subsequently transfer.
23 Or "transfer" is the wrong word. I believe
24 because he had a new entity, he would get his own
25 license. I don't believe he was -- he was not buying

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1 the stock in Pacific Lanes or in Hoffman-Stevenson.
2 He had his own, and he was buying the assets, so he
3 had his license new, not a transfer of license, as I
4 recall or understood the process.
5 Q I want to talk more about the implied managerial role
6 in just a minute.
7 A Okay.
8 Q Before we do that, let's get back to Exhibit 21,
9 which is where we were at when we broke. What is
10 Exhibit 21?
11 A Exhibit 21, it says it's a business acquisition and
12 lease agreement.
13 Q This was the deal between you and Bill Hamilton,
14 Exhibit 21?
15 A That was the subsequent agreement that was frankly
16 put together to accommodate the closing of the
17 transaction.
18 Q Well, what does that mean?
19 A What does that mean? It means that -- and it was not
20 information that I found out personally, but I was

21 advised that they needed a corporation, an actual
22 name, that that name had been completed shortly after
23 the 1st of September, and I can't tell you the exact
24 date, and that the Exhibit 20 was not adequate for
25 the regulator because it had a closing date which had

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1 obviously already passed.
2 Q You're not suggesting that Exhibit 20 was ever filed
3 with the liquor or gambling commission, are you?
4 A I don't know.
5 Q You never did it?
6 A I did not do it.
7 Q Do you know of anything Bill Hamilton did prior to
8 September 19th to get approval from the liquor or
9 gambling authorities?
10 A Do I know?
11 Q Do you know?
12 A No.
13 Q Did you do anything to --
14 A All I can tell you is I did not do anything.
15 Q Isn't it correct that the first applications to the
16 liquor and gambling commissions were submitted on
17 September 29th, 1992?
18 A It's whatever -- I do not know that. You'd have to
19 point me to the documents.
20 Q You wouldn't dispute that, would you? For example,
21 Exhibit 1 that you submitted --
22 MR. BULMER: I object to asking him
23 whether he would dispute something or not. He said
24 he doesn't know. He's already answered the question.
25 JUDGE BROWN: Sustained.

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1 Q Going back to Exhibit 21, 50,000 in cash and 250,000
2 in a note?
3 A Yes.
4 Q Okay. And he was going to buy the bowling alley
5 business in exchange for that 300,000?
6 A There's two parts to it, yes. I mean, he was
7 buying -- the whole transaction was a million-dollar
8 transaction, as it was categorized when you put the
9 property and the business. But the business portion
10 of it, 300,000 was allocated to, yes.
11 Q We've heard reference to the million-dollar
12 transaction. Isn't it true that by the end of 1993,
13 when all was said and done, Mr. Hamilton had only
14 paid close to 800,000?
15 A I don't know that.
16 Q Now, this agreement, Exhibit 20 -- I'm sorry,
17 Exhibit 21 -- was contingent upon Mr. Hamilton
18 securing liquor and gambling licenses?
19 A Yes.
20 Q And it wouldn't close until the first day of the
21 first month after he secured those licenses?
22 A I'm sure the closing documents were signed on the
23 day he received the last approval, which was
24 December 4th, I believe.
25 Q But the deal was not going to go forward until liquor

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1 and gambling licenses were issued?
2 A No. They were a key of the deal, if you want to call
3 it that way, a key part of it.
4 Q And is it correct that the liquor and gambling
5 operations at the bowling alley accounted for some
6 70 percent of the revenues of the bowling alley?
7 A I don't know the percentage. Substantial percentage,
8 yes.

9 Q For Exhibit 21 signed on September 19th, were there
10 any verbal agreements, any side deals on this?
11 A The understanding was, and at that time it had been
12 in effect already, that Mr. Hamilton -- that the deal
13 was, the other -- I know it says it's not, and in
14 anticipation, but the understanding was that
15 everything was effective when he was buying and the
16 price that was determinative of was a price on
17 September 1st. That was the understanding. And that
18 could not be effectuated with the gambling and liquor
19 people, and thus this instrument.

20 But in effect he was, if you want to call him
21 the general manager, the overall manager, not
22 day-to-day, but as I had been, starting
23 September 1st.

24 Q Where does that agreement appear in Exhibit 21?

25 A It does not.

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1 Q Does it appear anywhere in writing that you can point
2 us to?

3 A Not that I'm aware of.

4 Q Now, Mr. Hamilton effectively received \$100,000 for
5 being the manager, then, from September through
6 December; 92,000 more accurately?

7 A When you say "effective," he received that. The
8 transaction of the deal was that he would get the
9 benefit of the cash or the bowling season cash.

10 A bowling alley is worth -- because it's a
11 cyclical business, there's a price that it's worth on
12 a given day, and the given day was September 1st, and
13 that was at the beginning of the bowling season and
14 not some later day.

15 Because in the summers -- you know, if you're a
16 seller, you always would like to sell on the 1st of
17 May or 1st of June, and if you're a buyer, you always
18 want to buy the 1st of September. And the prices are
19 different at different times because of the big cycle
20 of the cash flow for the year.

21 Q Well, that --

22 A And that was a deal point for Mr. Hamilton.

23 Q On September 19th it was still worth 300,000 to
24 Mr. Hamilton, was it not?

25 A I would say that the million-dollar transaction would

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1 have been worth less to him on December 19th.

2 Q You executed and he executed a document --

3 A Yes, we did.

4 Q -- saying the price was \$300,000?

5 A Yes, we did.

6 Q Is there anything in Exhibit 21, the final deal you
7 signed, that talks about Mr. Hamilton being entitled
8 to the profits of the bowling alley from September 1
9 forward?

10 A No.

11 Q Is there anything that says he's entitled to the cash
12 generated from September 1 forward?

13 A No.

14 Q Is there anything that talks about reducing the note
15 for 250,000 to some lesser amount?

16 A No.

17 Q Well, this agreement was signed on September 19th,
18 1992. At that point did the deal close?

19 A No.

20 Q Did any money change hands?

21 A No.

22 Q Did Mr. Hamilton pay a cent for anything to do with

23 the bowling alley?
24 A No.
25 Q Following September 19th, 1992, Pacific Lanes was the
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1 entity paying rent to Hoffman-Stevenson?
2 A I don't know where the checks were written on the
3 books, but I'm going to say that's where the
4 adjustments came in later. But I don't know. The
5 check probably came from -- and I'm not the
6 bookkeeper, and I didn't write or sign those checks
7 or any of them, but came from Pacific Lanes to
8 Hoffman-Stevenson.
9 Q Let me rephrase. Mr. Hamilton wasn't paying rent
10 after September 19th, was he?
11 A Not to my knowledge.
12 Q And Pacific Recreation wasn't paying rent, was it?
13 A It depends on how you categorize the deal. The
14 understanding was that as of September 1st, that's
15 the date that the operation would have transferred,
16 and all adjustments were made back to that date.
17 Q During the period September 19th through the end of
18 September 1992, did Pacific Recreation ever pay any
19 rent to Hoffman-Stevenson for the bowling alley
20 building?
21 A I don't know. When I say that, it closed on
22 December 4th in a formal sense. Monies were paid.
23 They were probably paid from Pacific Lanes'
24 checkbook, if that's your question.
25 Q The rent?

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1 A I think the rent probably was, but I don't have the
2 checkbook in front of me and I don't know if it was,
3 but I assume it was.
4 Q Paid by Pacific Lanes?
5 A I suspect it was.
6 Q And not by Pacific Recreation?
7 A I suspect, but I don't know.
8 Q Well, who was paying the employees at Pacific Lanes
9 from September 19th forward?
10 A The Pacific Lanes checkbook was still the one that
11 was operational.
12 Q Bill Hamilton wasn't paying the employees, was he?
13 A No. Was he paying them out of his pocket?
14 Q Yes.
15 A No.
16 Q Pacific Recreation was not paying employees, was it?
17 A I don't believe so.
18 Q The taxes on money that was coming in, receipts,
19 Pacific Lanes was paying the taxes on those receipts,
20 wasn't it?
21 A Which kind of taxes? I don't know which --
22 Q Any state taxes, B & O, Internal Revenue Service,
23 federal taxes?
24 A I don't know. I mean, the accountant -- whatever --
25 and I'm not being obstinate, I'm just telling you

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1 that I hired an accountant that would take the
2 numbers that came in and prepare the appropriate tax
3 returns and pay the taxes.
4 Q You're not aware that Pacific Recreation ever paid
5 any taxes on anything to do with the bowling alley
6 from September through December 1992?
7 A I am not personally aware of it, no.
8 Q And you're not aware that Bill Hamilton ever paid
9 taxes on anything to do with the bowling alley from
10 September through December 1992, are you?

11 A No.
12 Q The supplies for the bowling alley, the liquor, for
13 example, who was buying that and paying money, was it
14 Pacific Lanes or Pacific Recreation, during the
15 period September --
16 A My understanding is the checks would have been
17 written by Pacific Lanes.
18 Q And that was coming out of Pacific Lanes funds?
19 A Yes.
20 Q Mr. Hamilton wasn't pouring money into Pacific Lanes,
21 was he?
22 A Not to my knowledge.
23 Q Pull tabs, who was buying the pull tabs and dealing
24 with the gambling commission during this period; was
25 it Pacific Lanes or Pacific Recreation?

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1 A Actually, I think, when you say that, the license was
2 still in Pacific Lanes' name, because Mr. Hamilton
3 did not have -- and I'm not sure whether his liquor
4 license or his gambling license cleared first, but he
5 did not have a license, so it would have been Pacific
6 Lanes' license. Jackie Pagni functionally managed or
7 ran that operation.
8 Q And is it correct that you didn't apply to change the
9 liquor license until the end of September of 1992, to
10 change it from Pacific Lanes?
11 A If you can point me to the document, I know I signed
12 something. I don't know which one it is, sir.
13 Q Exhibit 13.
14 A Yes, that would have been my signature on
15 September 28th.
16 Q So that's the first time you did anything to transfer
17 a liquor license from Pacific Lanes to Pacific
18 Recreation; is that correct?
19 A To my knowledge, yes.
20 Q Now, the closing papers were signed on December 4th
21 of 1992?
22 A Yes.
23 Q And on that date Mr. Hamilton delivered \$50,000?
24 A Actually, I believe he delivered \$100,000.
25 Q Including the option for the building?

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1 A Yes.
2 Q I just want to focus on the purchase of the operation
3 right now.
4 So he delivered 50,000 in connection with his
5 obligation to purchase the operation, and then he
6 delivered also a note?
7 A Yes.
8 Q For 250,000?
9 A Yes.
10 Q Okay. Now take a look at Exhibit 24, please.
11 A (Witness complies.)
12 Q It's a bill of sale?
13 A Yes.
14 Q It says what Mr. Hamilton is paying and it says what
15 he's getting?
16 A Yes.
17 Q Does the bill of sale say anything about Mr. Hamilton
18 being entitled to the profits from September 1
19 forward?
20 A No.
21 Q Does it say the note for \$250,000, does it say that's
22 going to be reduced based on the profits from
23 September 1 forward?
24 A At that point there was no anticipation that it would

25 be reduced.

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1 Q Does it say anything about him being entitled to the
2 cash flow from September 1 forward?
3 A No, it does not.
4 Q Does it say anything other than he was paying 50,000
5 in cash and 250,000 over time?
6 A I don't believe so.
7 Q Now, in fact, in this bill of sale Pacific Lanes,
8 through you as president, warranted that you were
9 responsible for anything that happened prior to the
10 date of close, right?
11 A If that's what it says, it's probably standard
12 language.
13 Q Was it true language?
14 A For anything that happened prior to the date of sale?
15 Q That's right.
16 A I must say in our understanding, anything that
17 happened after September 1st, the plus or the minus,
18 would have been in Mr. Hamilton's ballpark.
19 Q Okay. So the bill of sale is incorrect?
20 A Which would be -- I'm sure this is boiler plate that
21 came off the computer, but from the understanding
22 standpoint, yes.
23 Q You signed this boiler plate?
24 A Yes, I did.
25 Q Important transaction when you're receiving \$300,000

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1 on behalf of an estate for which you're the personal
2 representative?
3 A Important transaction. My primary goal at that point
4 was to get 100,000 in hand on behalf of the estate,
5 which would not be refundable in any event.
6 Q Turn to Exhibit 25, please.
7 A (Witness* complies.)
8 Q Now, this is not a boiler-plate document, is it; this
9 was custom-crafted for this transaction?
10 A For the most part, I'm looking here, it was
11 custom-crafted, yes.
12 Q Okay. Exhibit 25, that's a purchaser's closing
13 statement?
14 A Yes.
15 Q It says what he's getting, says what you're
16 receiving?
17 A Yes.
18 Q Does the closing statement prepared just for this
19 transaction and not with boiler plate, does it say
20 anything about Mr. Hamilton or his company being
21 entitled to the profits from September 1 forward?
22 A No.
23 Q Does it say anything about him being entitled to cash
24 flows from September 1 forward?
25 A No.

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1 Q Does it say anything about reducing the price of the
2 note or reducing -- strike that.
3 Does it say anything about reducing the value
4 of the promissory note that's listed there at
5 \$250,000?
6 A No.
7 Q Exhibit 26, that's the promissory note that
8 Mr. Hamilton signed for \$250,000?
9 A Yes.
10 Q Does that say anything about the value of the note
11 being subject to a reduction?
12 A It was not anticipated that it would be subject to a

13 reduction at the time it was signed.
14 Q Does it say anything about him being entitled to
15 profits?
16 A No.
17 Q Was that anticipated at the time it was signed?
18 A Of the note?
19 Q Yes.
20 A I would say yes.
21 Q Can you show us anywhere in the closing papers where
22 that agreement existed?
23 A No.
24 Q Can you show us in any of the drafts it exists?
25 A No.

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1 Q Can you show us in any of the documents ever signed
2 by you or Mr. Hamilton at any time of the transaction
3 where this agreement that he gets the profits exists?
4 A Not in writing in these documents.
5 Q And these are the same documents that say there's no
6 verbal agreements?
7 A That's what they say, yes.
8 Q Okay. Turn to Exhibit 23, please.
9 A (Witness complies.)
10 Q Exhibit 23 is something you signed on behalf of
11 Pacific Lanes as its president?
12 A Yes.
13 Q And that's called a security agreement and general
14 pledge, right?
15 A Yes.
16 Q And what you were doing there -- let me back up.
17 Pacific Lanes had in the past borrowed money
18 from First Interstate Bank?
19 A Yes.
20 Q And under that loan agreement, Pacific Lanes was
21 obligated to provide to the bank as collateral
22 anything it obtained in the future, right?
23 A Can you repeat that, please?
24 Q There was an after-acquired-assets provision in the
25 loan agreement between Pacific Lanes and First

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1 Interstate?
2 A I don't know.
3 Q Well, why did you provide the note to the bank as
4 collateral?
5 A I have no idea what was in the original note. Why
6 did I provide it?
7 Q Yes.
8 A Because I wanted to close the estate. I called the
9 bank. They had a general creditor's claim in the
10 estate for Mr. Hoffman's guarantee of the corporate
11 notes, and I wanted -- the only thing that I needed
12 to close the estate or remained of closing the estate
13 was a release of that creditor's claim.
14 And I called them, I sent initially -- as I
15 recall, I sent \$100,000 to the bank as a down payment
16 or a payment against principal, and subsequently when
17 Mr. Hamilton, after December 4th, I can't remember
18 the date, when I got his hundred thousand dollars, I
19 sent that to them, and that was in exchange for the
20 release of the creditor's claim as far as the estate
21 was concerned.
22 And in that process, I mean, and it's fairly
23 simple, they said, "Do you have anything else?" And
24 the note was a piece of paper, if you want to call it
25 additional collateral, and I said, "Sure," and I sent

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1 that over too, and they said, "Fine."
2 It's just about that simple.
3 Q So you gave the note to the bank as collateral, and
4 you intended and did warrant and represent to them
5 that if Pacific Lanes defaulted on its loan, the bank
6 would be sitting there with a note for 250,000 that
7 it could enforce?
8 A No. The note on its own terms said -- I can't
9 remember whether it was 3,000 a month or more. There
10 was no provision where the "or more" -- there was no
11 provision that I recall that they would get the
12 payments, the 3,000 a month payments, or they would
13 get the "or more" if that was ever paid.
14 I don't believe in the release agreement that it
15 even referred to this note. It was just something
16 that from my standpoint it was an extra inducement
17 for them to release it. I assigned it to them. They
18 had it.
19 The underlying loan had started, when I took
20 over the estate, at about \$440,000. All the payments
21 had been made on a regular basis. I paid 200,000
22 cash. There was a balance of not more than, I
23 believe, \$200,000, or in that vicinity, that was
24 secured by the mortgage, or deed of trust perhaps,
25 I'm not sure, against all of the underlying real

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1 estate and through UBC recordings transactions, which
2 I had just sold for a million.
3 So they had security all over the place, and
4 this was just an added inducement.
5 Q Maybe I asked the question the wrong way.
6 A Well, maybe I said too much --
7 Q Maybe we can work together.
8 A -- but that was it.
9 Q You gave the bank a security interest in a note for
10 \$250,000, right?
11 A I said, "Here's an initial piece of collateral,
12 here's the note."
13 Q A security interest, according to what you signed?
14 A Yes.
15 Q Okay. And that means that if Pacific Lanes defaults
16 on its loan with the bank, that the bank is protected
17 because it's got a note for \$250,000 payable to
18 Pacific Lanes. Isn't that what a security interest
19 does?
20 A Depends on how much security you want. I mean, it's
21 an extra piece of collateral that they had. And it
22 speaks by its own terms. They had all kinds of
23 security.
24 Q Did you tell the bank that there was any agreement in
25 place to reduce the value of --

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1 A There was no agreement in place to reduce the value.
2 Q That didn't come up until later, did it?
3 A No, it did not.
4 Q It did come up later or --
5 A No, it -- when you say did or did not come up
6 later --
7 Q Let me reask it.
8 A There was no agreement in place when this note was
9 delivered to the bank.
10 Q So we know by December 9th, 1992, there was no
11 agreement in place to reduce the value of the note,
12 was there?
13 A No.
14 Q In fact, you represented to the bank that this note

15 was free and clear of any encumbrances of any nature,
16 and that was true, wasn't it?
17 A At that juncture it was a note that was just exactly
18 what it said on its face, for \$250,000 payable at
19 \$3,000 or more per month.
20 Q Not subject to any contingencies whatsoever at that
21 time?
22 A At that time, no.
23 Q Okay. You bought a Cadillac on Christmas Eve of
24 1992?
25 A Yes.

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1 Q That was an important purchase to you?
2 A When you say "important," that's all relative. It
3 was a purchase for me.
4 Q I'll withdraw it.
5 You didn't take delivery that day, did you?
6 A No.
7 Q That was sometime in early January?
8 A Yes.
9 Q Price was \$36,000?
10 A Yes.
11 Q You got a car loan from Sound Bank --
12 A Yes.
13 Q -- for 36,000?
14 Was Mr. Hamilton still working at Sound Bank at
15 that time?
16 A I don't believe so.
17 Q Was he officing at Sound Bank?
18 A He was officing next door.
19 Q Now, you went into the bank on or about -- turn to
20 Exhibit 75, please.
21 A Which number, sir?
22 Q 75, Your Honor.
23 A (Witness complies.)
24 Q Shortly after you got the loan, you yourself paid
25 down 9,000 on that loan?

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1 A Yes.
2 Q And you did so by taking a check to the bank?
3 A Yes.
4 Q And was that on January 8th of 1993, if you'll look
5 at the second entry under the transactions?
6 A Yes.
7 Q If we look back a couple of pages, we see at page 3 a
8 copy of the check you gave the bank on that day?
9 A What page?
10 Q Page 3 of Exhibit 75, Your Honor.
11 A Yes.
12 Q Okay. Was it on that day, January 8th, 1993, when
13 you went into the bank, that Bill Hamilton made the
14 offer to pay your car payments?
15 A I can't recall if that was the day.
16 Q Was it before that day or after that day?
17 A It was not before that day, I know that.
18 Q Now, the first payment he made on your behalf was
19 January 26th, correct?
20 A Yes.
21 Q So we know that Mr. Hamilton made the offer to make
22 your car payments sometime between January 8th and
23 January 26th, don't we?
24 A Yes.
25 Q And wasn't it between January 8th and January 26th of

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1 1993 that you called accountant Kevin Iverson and
2 said, "Bill Hamilton and I need you to do some

3 adjustments to the value of a note"?
4 A No.
5 Q When did that happen, Your Honor?
6 A I never -- to my recollection, I never called Kevin
7 Iverson and made any such request of Kevin Iverson.
8 Q Well, how about following January; did you have any
9 discussions with Kevin Iverson and Bill Hamilton
10 about the reduction process?
11 A I did, I'm sure I did, from the material I have seen.
12 I have no independent recollection of any
13 conversation with any of them.
14 Q Now, in your deposition you told us that your
15 involvement in this adjustment process was done by
16 December 31, 1992. Are you changing that?
17 A It was done in the sense that in my mind the pieces
18 were in place. Mr. Hamilton had been operating the
19 facility since September 1. That was the agreement I
20 had with him. The licenses had been transferred.
21 The notes had been signed. The hundred thousand
22 dollars -- the note, I guess, not notes; the note had
23 been signed. An option agreement had been signed.
24 \$100,000 had been paid, and all the pieces were
25 there.

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1 There was no agreement to adjust. That
2 transaction took place sometime after January, and I
3 believe it took place per Mr. Fisher and the
4 accountant.
5 Was I advised of it? Probably, from what I see,
6 that it was at least discussed with me. Do I have
7 any independent recollections? I think I've stated
8 no.
9 Q Well, take a look, for example, at Exhibit 61.
10 A (Witness complies.)
11 Q It says here: Pacific Lanes purchase price
12 adjustments per discussions with Grant Anderson and
13 Bill Hamilton.
14 Did you have any purchase price adjustment
15 discussions with anybody following December 31, 1992?
16 A That I did not have any discussions. What it says
17 down here is: Need to adjust for cash flow from
18 September 1 to December 31.
19 Had I verified that with them? I --
20 Q My question --
21 A -- suspect I did. Did I have a discussion to verify
22 that? I suspect I did. Do I have a memory of any
23 independent conversations with Mr. Hamilton? I do
24 not.
25 Q My question again, sir: Did you have any purchase
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1 price adjustment discussions with anybody following
2 December 31, 1992?
3 MR. BULMER: Objection. Asked and
4 answered. two or three times now.
5 JUDGE BROWN: Overruled.
6 A I'm trying to think of how to -- did I direct it, did
7 I say it? No. Did I have a discussion? I believe I
8 did, with perhaps Mr. Fisher, perhaps Mr. Iverson,
9 even perhaps Mr. Hamilton. Do I remember
10 individually or any specific conversation? I think I
11 have said no.
12 Q So you're now saying you did have discussions,
13 purchase price adjustment discussions, after
14 December 31, 1992; is that it?
15 A The discussions -- what I remember, what I would say,
16 is I verified that the cash flow was, by agreement,

17 to be Mr. Hamilton's. Did I direct -- when you say
18 discussion, I mean, that's maybe was I made aware of,
19 did I mechanically come up with any numbers, did I
20 formulate any transaction? I did not. Was I aware
21 of aware of or did I discuss in the sense somebody
22 may have told me or I may have said that's fair and
23 reasonable? Probably.
24 Q So I understand it, then, is it your testimony that
25 you probably had discussions after December 31, 19 --

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1 A With somebody, yes.
2 Q Let me finish my question.
3 A I'm sorry.
4 Q You probably had discussions with somebody after
5 December 31, 1992, about the purchase price
6 adjustment process; is that right?
7 A Yes.
8 Q So you want to change your deposition testimony?
9 A No. You have to show me where it is, but as I read,
10 and I think you're looking at page 21 or 22, what I
11 meant by that is everything was in place prior to
12 that time. I don't believe I'm --

13 MR. TAYLOR: Move to publish the
14 deposition of Judge Anderson. Here's the original.

15 JUDGE BROWN: He's asking that the
16 deposition be published.

17 MR. BULMER: I'm going to ask a
18 mechanical question, since Mr. Taylor has more
19 experience with this than me.

20 When it's published, is the whole thing part of
21 the public record or just the portions for which he
22 has discussions? Because I've seen it introduced
23 both ways. Sometimes you put in the whole thing,
24 sometimes you only put in a portion.

25 JUDGE BROWN: It's my recollection that

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1 only the portion that's discussed is the part that
2 becomes a part of the public record.

3 MR. TAYLOR: However Judge Anderson's
4 counsel wants to handle it is fine.

5 JUDGE BROWN: The deposition will be
6 published. Only the portions referred to will be
7 available for public record.

8 MR. BULMER: Thank you very much.

9 Q (Continuing by Mr. Taylor) Turn to page 22 of your
10 deposition, please.

11 A (Witness complies.)

12 Q Line 6. We were discussing Exhibit 61, weren't we,
13 and I asked you, referring to what is now Exhibit 61,
14 I said, "Up at the top, it says Pacific Lanes
15 purchase price adjustments per discussions with Grant
16 Anderson and Bill Hamilton," just as it appears at
17 the top of 61, correct?

18 A That's what it says, yes.

19 Q And you said, "Yes, I see that." And I said, "Did
20 you have any such discussions after January 1, 1993?"

21 "ANSWER: I don't believe so, not to my
22 knowledge.

23 "QUESTION: Is it your recollection that the
24 deductions reflected herein took place prior to
25 December 31st, 1992?

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1 "ANSWER: Yes."
2 My question is: Do you want to change that
3 testimony to say that you had discussions after
4 December 31st, 1992, or are you standing on your

5 deposition testimony?
6 A It depends on how you interpret this testimony, sir.
7 When it says the discussions, yes, and you gave me
8 the heading, but it says up here, "Need to adjust for
9 cash flow from September 1 to December 31."

10 That's -- and all of those positions have
11 been discussed, and those are all in place prior to
12 December 31st 1992. After December 31st, 1992, I
13 merely talked -- and I have no independent
14 recollection of conversations, but there would have
15 been verification of those facts with the accountant
16 or Mr. Fisher or Mr. Iverson, is probably all that I
17 can think of.

18 Q In fact, you met with all three of those gentlemen,
19 Hamilton, Iverson and Fisher, on the same day, didn't
20 you, about the purchase price adjustment?

21 A I have no independent recollection of such a meeting.

22 Q Why don't you take a look at Exhibit 100, please.

23 A (Witness complies.)

24 Q Turn to page 7, please.

25 A (Witness complies.)

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1 Q Do you see the top entry is March 9, 1993?

2 A Yes.

3 Q And under "Time Keeper" there, that's Time Keeper 3,
4 and you recall from your law firm that that was
5 Mr. Fisher?

6 A This is a different law firm, so I don't -- after I
7 left, the firm split into two different law firms, so
8 I'm not sure in this -- after January 1, I'm not sure
9 who was what time keeper.

10 MR. BULMER: We'll stipulate on the
11 record that No. 3 was Mr. Fisher at that time.

12 A Okay.

13 Q So we see an entry there, March 9th of 1993, it says,
14 Mr. Fisher's time entry: Meeting with Grant
15 Anderson, Bill Hamilton and Kevin Iverson.

16 Was there any business that you were conducting
17 with all three of those gentlemen at that time other
18 than the adjustment of the purchase price?

19 A I have no independent recollection of that meeting.
20 But if I were there, it would have been to verify the
21 facts of the -- or earlier said about "Need to adjust
22 for cash flow from September 1 to December 31," and
23 that would have been to give the history, if that's
24 it, or verify the history or what Mr. Fisher knew or
25 understood.

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1 Q So you were there to provide input to Mr. Fisher in
2 his role as trustee by then, right?

3 A If I was there, and I assume that I was if this was
4 said -- as I indicated, I have no independent
5 recollection of it, but I'm assuming I was because of
6 the time entry that he put down, that he fully
7 understood the transaction, he had the knowledge that
8 he had from observing the alley operation and maybe
9 Surfside and the other things before, anything to do
10 with the trust and the trust assets, and I would have
11 been there to verify and make sure that he did not
12 have any misunderstandings.

13 Q Well, Mr. Fisher -- let me back up for a minute.

14 By this time, by January, in fact, the assets of
15 the estate had gone into a trust?

16 A Yes.

17 Q You made Mr. Fisher the trustee?

18 A Yes.

19 Q Mr. Fisher --
20 A Actually, the court made Mr. Fisher the trustee, I
21 believe.
22 Q You petitioned the court?
23 A Yes.
24 Q Mr. Fisher had not been involved in negotiating the
25 bowling-alley-operation sale to Bill Hamilton, had

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1 he?
2 A Directly involved, no.
3 Q Okay. And he had no knowledge about the specifics of
4 the transaction other than what you told him,
5 correct?
6 A You'll have to ask him that. I frankly don't -- he
7 knew what I told him, but he also was in the office
8 when this was taking place. He may have observed it,
9 he may have anticipated, because it was anticipated
10 he would be trustee when I left, and I'm not sure
11 what he observed, what he saw or what he knew.
12 And I'm just being honest with you. I don't
13 know.
14 Q During the course of the negotiations, you never sat
15 down and briefed him, for example?
16 A I talked to him about a lot of things during that
17 transition period about this, about Surfside, about
18 the bowling alley, about other clients that were
19 going. I was winding up a practice of 25 years, and
20 this was not the only client, and I was splitting
21 files to a number of different folks.

22 And I do not have any independent recollection
23 of how much I may have told him or how much
24 specifically about what, but it was not like he
25 walked in cold on January 1st, or whatever it was,

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1 and said, "Here I am. I have no idea what's going
2 on."
3 Q Well, isn't it pretty close to that, Your Honor?
4 A Huh?
5 Q Wasn't it pretty close to that, Your Honor?
6 A I don't think so.
7 Q You've read Mr. Fisher's deposition testimony?
8 A I did, yes.
9 Q When he said he just picked up the case and he didn't
10 know anything about it, do you agree or disagree with
11 that?
12 A Well, you'll have to show me where he says that. I
13 don't know that. I think, in my estimation, he knew
14 more about it or knew some about it. How much, I
15 don't know.
16 Q Whether the meeting took place on March 9th, as is
17 documented in the billing files of Mr. Fisher's firm,
18 or maybe a little earlier or maybe even a little
19 later, I understood you to say that you were at that
20 meeting to verify what Fisher was being told about
21 things.

22 MR. BULMER: Objection. I think that
23 mischaracterizes his testimony. He very carefully
24 said he didn't know whether he was there and if he
25 was there, then that's what happened.

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1 JUDGE BROWN: Overruled.
2 A There would have been, and again I have no
3 independent recollection, there was an adjustment
4 being made by the accountant, as I now understand,
5 and I would have been there to perhaps see that every
6 assumption that the accountant made of making those

7 adjustments was at least accurate as Mr. Fisher
8 understood them and as I would have understood them.
9 Q So you were there to make sure that what the
10 accountant did was consistent with your deal with
11 Hamilton?
12 A I would believe so.
13 Q And you were giving Mr. Fisher input on that, saying,
14 "Yes, this is consistent with my deal with Hamilton"?
15 A I don't remember that I said anything, but I
16 probably -- if anything would have been inconsistent,
17 I would have so advised.
18 Q Okay. Did you ever tell Mr. Fisher at any time that
19 Mr. Hamilton's company, the company that was buying
20 the bowling alley, the company that was the
21 beneficiary of the price-reduction agreement, did you
22 tell Trustee Fisher in these discussions that
23 Mr. Hamilton's company was making your car payments?
24 A Well, the answer is I did not know that
25 Mr. Hamilton's company was making the car payments,

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1 so --.
2 Q Did you tell him Mr. Hamilton was making your car
3 payments?
4 A No, I did not.
5 Q Did you tell him anybody affiliated with Pacific
6 Recreation was making your car payments?
7 A No, I did not.
8 Q And that was because you had decided that was in your
9 words, quote, "nobody's business"?
10 A That would have been part of it, and at that juncture
11 I was -- in my mind, I had turned it over to
12 Mr. Fisher. He was the trustee; he made all the
13 decisions in the negotiations relative to what was
14 going on. I was out of there. I was going on the
15 bench, and I was not an active participant.
16 Q Now, in addition to not telling Trustee Fisher, you
17 didn't tell the beneficiaries of the trust that you
18 were getting payments from the other side of the
19 transaction, did you?
20 A No, I did not.
21 Q And Millie Hoffman, Mr. Hoffman's ex-wife, your
22 client's ex-wife, she was one of the beneficiaries?
23 A Yes.
24 Q And the reason you didn't tell her is because you
25 wanted to, quote, "keep her happy and placated"?

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1 A Millie was, I'm not sure, getting very elderly, maybe
2 borderline on senile. Yes, I wanted to keep her
3 happy.
4 Q And placated?
5 A "Placated" maybe is a word I used, might be accurate.
6 I never had much conversation with Millie at all.
7 Q Well, if there's any doubt, Your Honor, why don't you
8 take a look at page 33 of your deposition.
9 A (Witness complies.)
10 Q Line 11, you say you wanted to keep her happy and
11 placated?
12 A Yes.
13 Q That was your word?
14 A That was my word.
15 Q Okay. Now, you say she was getting a little elderly?
16 A She was elderly.
17 Q But she had a lawyer, didn't she?
18 A At some point down the line, she did have a lawyer.
19 I can't remember when she had one, but, yes, she did.
20 Q And that lawyer was writing letters to you about how

21 the estate was being handled?
22 A No. When you say "how the estate was being handled,"
23 there --
24 Q Let me rephrase that.
25 A Okay.

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1 Q Was the lawyer writing -- strike that.
2 Was the lawyer corresponding with you about the
3 estate?
4 A The only recollection I have of a lawyer
5 corresponding with me was wanting at some point, and
6 I cannot tell you when, a lawyer wrote me a letter
7 because she wanted monies from the estate.
8 Q How much a month did she want from the estate?
9 A I don't know. I don't know that any amount ever came
10 up.
11 Q Did you tell her lawyer -- because she was senile,
12 this beneficiary of the estate, did you tell her
13 lawyer instead, "Bill Hamilton is making payments for
14 me at \$800 a month"?
15 A No. The estate had closed by then. There was a
16 trust in effect, and that trust was for her benefit.
17 Mr. Fisher handled that. Any correspondence I would
18 have had with a lawyer would have been a substantial
19 period of time before that, I believe. I never had
20 any, no lawyer that I recall, after January 1st.
21 Q Did you ever tell Millie Hoffman, the beneficiary of
22 this --
23 A To my knowledge I've never seen Billy Hoffman in my
24 life. He was gone.
25 Q Did you ever tell Millie Hoffman's attorney --

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1 A Oh, I thought you said Billy. I'm sorry.
2 Q No, I'm sorry.
3 Did you ever tell Millie Hoffman's attorneys
4 that Pacific Recreation, Bill Hamilton's company, was
5 making payments on your behalf of \$800 a month?
6 A No, I did not.
7 Q Now, in the fall of 1993, Mr. Hamilton's company,
8 Pacific Recreation Enterprises, bought the real
9 estate from Hoffman-Stevenson that housed the bowling
10 alley?
11 A Yes.
12 Q You were still president of Hoffman-Stevenson then?
13 A Yes.
14 Q You signed the closing papers on behalf of
15 Hoffman-Stevenson?
16 A Yes.
17 Q And do you recall there were some structural issues
18 that came up in the course of discussions about the
19 deal?
20 A When do I recall that?
21 Q During the period when there were negotiations about
22 the sale of the bowling alley building to Pacific
23 Recreation.
24 A I was not involved in those discussions.
25 Q Didn't you and Mr. Fisher have discussions about

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1 structural issues relating to the bowling alley?
2 A Not that I recall.
3 Q Didn't Mr. Fisher ask you specifically about
4 structural issues during the period when the sale of
5 the building was being negotiated?
6 MR. BULMER: Is this in 1993?
7 MR. TAYLOR: Yes, fall of 1993.
8 A I have no recollection, and I can't sit here and tell

9 you that he did not inform me of what was going on or
10 that there were structural problems with the bowling
11 alley, but I have no recollection of any conversation
12 with him about those structural problems.
13 Q Take a look at Exhibits 31 and 32 and 33.
14 A (Witness complies.)
15 Q These are some of the closing papers that were signed
16 when Bill Hamilton's company, Pacific Recreation,
17 bought the building from Hoffman-Stevenson?
18 A Yes.
19 Q You signed off on behalf of Pacific Lanes?
20 A Yes.
21 Q As president of Pacific Lanes?
22 A Yes.
23 Q Okay. Did you ever tell Trustee Fisher -- Trustee
24 Fisher had to approve of this deal, didn't he?
25 A Trustee Fisher negotiated the deal.

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1 Q Okay. Did you ever tell Trustee Fisher by this
2 point, fall of 1993, that Pacific Recreation or Bill
3 Hamilton was making your car payments?
4 A Not to my knowledge.
5 Q And, again, that was because you didn't think it was
6 anybody's business?
7 A He was the trustee. He was making all the deals. I
8 was out of there, except when he came to me and he
9 explained to me, "This is what we did, and will you
10 sign these, please? You're still president,
11 unfortunately," and I said, "Okay."
12 Q Now, did you say anything to him about the fact that
13 the price he was going to pay for the bowling alley
14 building was lower than the price you and Hamilton
15 had negotiated back in December of '92 for the price
16 of the buildings?

17 MR. BULMER: Objection. Lack of
18 foundation.

19 JUDGE BROWN: Overruled.

20 A I don't know that -- I mean, it was apparent he knew
21 what the transaction was back in '92 and he knew what
22 the Pacific Lanes price was. He also knew what the
23 option price was. I don't know that I sat down and
24 did the mechanics or the math for him and said that
25 it is less than. I assume that he's a competent

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1 counsel who can calculate where he's coming from and
2 what he's doing when he makes a transaction.
3 Q Now, you didn't tell Mr. Fisher about the car
4 payments. Did Mr. Fisher tell you that Bill Hamilton
5 was paying him \$15,000 in this final closing?
6 A No, he did not.
7 Q Did you learn that later?
8 A Yes.
9 Q When did you learn that?
10 A I can't tell you. Someplace down the line in these
11 transactions.
12 Q Okay. Do you know why Bill Hamilton, the buyer, paid
13 the seller's lawyer \$15,000?
14 A I had nothing to do with the transaction.
15 Q Okay. By May of 1995, Mr. Hamilton -- or, I'm sorry,
16 by the spring of 1995, Bill Hamilton came to you and
17 said, "I don't want to make anymore loan payments,"
18 right?
19 A Yes.
20 Q But then he went ahead and made the final payment,
21 didn't he?
22 A Yes.

23 Q That final payment was a lump sum of, what, \$8,000
24 and change?

25 A Give or take change, yes.

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1 Q Why did he make the payment after he told you he
2 wasn't going to make the payments?

3 A When he told me that, it was right near the end of
4 May. I was just leaving. It was a Memorial Day
5 week, not weekend but week, and I can't remember
6 which side of it it was. I was just leaving to go to
7 Arizona. I have a brother who has a place in
8 Arizona.

9 And it was when -- my recollection is that just
10 prior to my going is when he said, "Grant, I'm not
11 going to make them anymore," and I said, "Okay. When
12 I get back, I'll take care of it." And when I got
13 back, he said -- because whether I told him or I
14 said, "I'll take care of it or I'll pay it off," I
15 did intend to pay it off. And I left, and when I
16 came back he said, "I paid it."

17 Q Was that a surprise?

18 A Probably. But, I mean, was it a super surprise? Not
19 really. I mean, did I anticipate that, did I ask him
20 to do it? No. But he said he did it.

21 Q You paid him back this \$8,000?

22 A Yes.

23 Q Did you write him a check?

24 A No.

25 Q Did you give him a note?

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1 A No.

2 Q What did you give him?

3 A Cash.

4 Q What bills?

5 A Probably mostly fifties and hundreds, mostly
6 hundreds.

7 Q Get a receipt?

8 A No.

9 Q Did you ever see anything in Bill Hamilton's records
10 that says he got this money?

11 A No. I have never seen Bill Hamilton's records.

12 Q Pacific Recreation's records that were produced in
13 this lawsuit, did you see anything there that says
14 they got this money?

15 A No, I did not.

16 Q Do you have any documents at all that corroborate
17 this \$8,000 in cash being exchanged?

18 A He paid my note, my car was paid off, I paid him.

19 Q Were the bills old or new or rumpled or crisp?

20 A Both. I don't remember.

21 Q Well, do you remember what they looked like, or are
22 you speculating?

23 A Well, it was some -- did I go through them? No. Do

24 I carry cash? Yes. You know, these days if you go
25 to the bank, you get nice new crisp ones because they

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1 look like funny money. The older ones tended to
2 be -- which are probably in the transition, I don't
3 know.

4 Q Well, these bills didn't look like they'd been
5 stashed in a sock somewhere for several years, did
6 they?

7 A They were bills in an envelope.

8 MR. TAYLOR: Nothing further.

9 MR. BULMER: We reserve our examination
10 of the judge until our part of the case.

11 JUDGE BROWN: All right.
12 MR. TAYLOR: Commission counsel will call
13 William Hamilton at this point.
14
15 WILLIAM HAMILTON, being first duly sworn to
tell the truth, the whole
16 truth and nothing but the
truth, testified as follows:

17
18 DIRECT EXAMINATION

19 BY MR. TAYLOR:

20 Q Good afternoon, Mr. Hamilton. You're a businessman?
21 A That's correct.
22 Q Bought and sold a number of businesses over the
23 years?
24 A Bought a few.
25 Q Sold a few?

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1 A Not very many.
2 Q What kind of businesses do you think you've sold over
3 the years?
4 A Oh, I've sold some commercial banks that I've been
5 involved in as the chief executive.
6 Q Other kinds of businesses?
7 A Other businesses, I believe as they've terminated,
8 I've just closed them down. I don't recall anything
9 specific about selling any of the businesses.
10 Q How about buying businesses from time to time over
11 the years?
12 A I bought a few businesses.
13 Q Is it fair to say that you've been involved in a
14 number of commercial transactions over the years?
15 A Yes.
16 Q Okay. Become friends with any of the people you were
17 dealing with in those deals?
18 A Yes.
19 Q In any of those transactions, did you ever buy a car
20 for someone who was on the other side of the deal?
21 A No, Mr. Taylor.
22 Q Did you ever make any gifts with a value of \$30,000
23 to someone on the other side of a deal?
24 A No.
25 Q \$20,000?

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1 A I've made gifts, many gifts, in my past to people
2 that I've been associated with, not necessarily that
3 I purchased businesses from them.
4 Q I'm just focusing on people that you had a
5 buyer/seller or a seller/buyer relationship. What
6 I'm asking is, did you ever make a gift of \$10,000 to
7 someone who was on the other side of a transaction to
8 you?
9 A Where I what?
10 Q I'm sorry?
11 A What was the question?
12 Q Did you ever make a gift of 10,000 or 15,000 to
13 someone who was on the other side of a transaction
14 with you while the transaction was pending?
15 A No.
16 Q Turn to Exhibit 20, please.
17 A (Witness complies.)
18 Q Is that your handwriting in the upper left-hand
19 corner?
20 A It appears to be.
21 Q Is there any doubt in your mind?
22 A I don't think so.

23 Q It says "Draft"?
24 A That's correct.
25 Q What was Exhibit 20?

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1 A Well, Exhibit 20 appears to be a photocopy of the
2 original purchase and business acquisition and lease
3 agreement.
4 Q This was the first deal you signed with Judge
5 Anderson to purchase the bowling alley operation?
6 A That's correct.
7 Q And it was going to be purchased on your behalf by a
8 corporation to be formed?
9 A That's correct.
10 Q Under this agreement, you were going to pay 50,000
11 cash at close and sign a note for 250,000?
12 A That's part of the agreement.
13 Q Okay. And the agreement was supposed to close, what,
14 five days later, September 1?
15 A Can you refer me to what part of the agreement you're
16 referring to?
17 Q Yeah. Page 3, paragraph 13(d).
18 A Yes. "This matter shall be closed as soon as
19 reasonably possible, but no later than September 1."
20 Q Now, this agreement was contingent on you obtaining a
21 liquor license?
22 A I believe so.
23 Q And it was contingent upon your obtaining a gambling
24 license?
25 A I believe so.

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1 Q Did you submit, between August 26th and September 1,
2 five days later, did you submit any gambling license
3 applications to the state of Washington?
4 A No, I didn't.
5 Q Now, does this agreement say anything about you being
6 entitled to the profits of the bowling alley from
7 September 1, 1992, forward, even if it doesn't close
8 that day?
9 A Well, I don't think it even talks about if it doesn't
10 close. It says very clearly that, "The transaction
11 will close not later than September 1st," so that
12 would imply to me, and it was my intent, and the
13 intent of the transaction, that I would receive the
14 cash flow from September 1st on.
15 Q Even if it didn't close?
16 A Well, that was my understanding, yes.
17 Q Was that a verbal agreement or a side agreement you
18 had with Judge Anderson?
19 A Not necessarily. It was an understanding of the deal
20 that we had struck.
21 Q The understanding being that you would get the
22 profits whether it closed or not?
23 A The profits or the losses; that the transaction would
24 close effective September 1st, 1992.
25 Q Okay. That's not what the agreement says, is it?

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1 A It's what it says to me, sir.
2 Q Can you point us to where it says --
3 A Right there.
4 Q -- effective --
5 A "The matter shall close as soon as reasonably
6 possible, but not later than September 1st, 1992."
7 Q Did you pay any money on September 1, 1992?
8 A I know I didn't.
9 Q You see the last paragraph, paragraph 14, where it
10 says, "There are no verbal or other agreements that

11 modify or affect this agreement." Was that true?
12 A I don't know that I read that agreement, that
13 paragraph.
14 Q Well, I'm not asking whether you read it. We'll get
15 to that. Was it a true statement?
16 A "There are no verbal or other agreements which modify
17 or affect this agreement"? There was an
18 understanding on my part.
19 Q Is that something you had discussed with Judge
20 Anderson?
21 A I believe so.
22 Q Okay.
23 A The whole transaction was -- my purchase price and
24 everything was contingent on taking over effective
25 September 1st, which was the beginning of the bowling

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1 season.
2 Q So that was a verbal agreement you had?
3 A An understanding.
4 Q A verbal understanding?
5 A An understanding.
6 Q Well, was it an understanding you and Judge Anderson
7 had reached?
8 A It was an understanding I had reached.
9 Q Okay.
10 A I can't say what he reached.
11 Q Well, after September 1, 1992 -- strike that.
12 Is there any question the deal did not close on
13 September 1, 1992?
14 A No question in my mind.
15 Q Okay. And it did not close?
16 A Closing means many things. The transaction
17 monetarily did not close. I did, in fact, take over
18 the management as his agent on September 1st, 1992.
19 Q Okay. We'll get to that in just a minute.
20 As of September 1, 1992, Hoffman-Stevenson owned
21 the bowling alley building?
22 A Hoffman-Stevenson, Incorporated, owned the real
23 estate, yes, and some of the equipment.
24 Q Did your company, Pacific Recreation, pay any rent to
25 Hoffman-Stevenson in September of 1992?

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1 A All of the proceeds of the operation of the bowling
2 alley remained in the accounts of Pacific Lanes,
3 Incorporated, to the best of my knowledge, from
4 September 1st, 1992, through December 31st, 1992.
5 Q Again, my question is, sir, and it's a simple one:
6 Did you write a check for rent -- and when I say
7 "you," Pacific Recreation -- write a check for rent
8 to Hoffman-Stevenson in September 1992?
9 A No, sir, I didn't.
10 Q Did you pay him cash?
11 A No, sir.
12 Q October/November --
13 A No, sir.
14 Q -- did Pacific Recreation pay rent to
15 Hoffman-Stevenson?
16 A No, sir.
17 Q December?
18 A No.
19 Q Started paying rent when, January?
20 A I'm not sure.
21 Q Could have been later?
22 A Could have been.
23 Q In September of 1992, did Pacific Recreation pay any
24 salaries of anybody who worked at the bowling alley?

25 A My corporation did not take active management of the
FOOT OF PAGE 133

1 corporation until January 1st, 1993.

2 Q So you didn't pay any salaries in September/October
3 1992?

4 A Pacific Recreation did not pay salaries.

5 Q And you personally didn't pay salaries?

6 A No, I did not.

7 Q October/November, did Pacific Recreation pay the
8 salaries of anybody who worked at the bowling alley?

9 A No, they didn't.

10 Q Did you?

11 A No.

12 Q Pacific Recreation during this whole time period --
13 we'll just talk about fall, being September, October,
14 November, December -- did Pacific Recreation pay any
15 electric bills?

16 A No, they didn't.

17 Q Gas bills?

18 A No, they didn't.

19 Q Did you personally?

20 A No, I didn't.

21 Q Payroll taxes?

22 A No.

23 Q B & O taxes?

24 A Not that I know of.

25 Q From September through December 1992, did Pacific
FOOT OF PAGE 134

1 Recreation pay even a penny towards the operation of
2 the bowling alley, Pacific Lanes?

3 A Pacific Recreation Enterprises, Incorporated, was a
4 corporation that was formed. It was processing
5 licenses; it was paying licensing fees; it was paying
6 city licenses; establishing gambling licenses, liquor
7 licenses, and in fact did not take over in its own
8 account for its own behalf any of the management, any
9 of the expenses of Pacific Lanes during any time
10 before January 1st, 1993.

11 Q So is the answer to my question that during the fall
12 of 1992, Pacific Recreation didn't pay a penny of
13 anything to do with the operation of the bowling
14 alley?

15 A Yes. It paid the hundred thousand dollars to Pacific
16 Lanes in December of 1992.

17 Q Put aside the money that was paid at closing. Is it
18 correct that Pacific Recreation didn't pay a penny
19 towards the operation of the bowling alley in the
20 fall of 1992?

21 A That's correct.

22 Q Now, in your deposition you told us that prior to the
23 close, you personally were putting your personal
24 funds into Pacific Lanes' bank account during the
25 fall of 1992; do you recall that?

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1 A Not specifically. Do you want to refer me to where
2 you would be talking about that?

3 Q Yes.

4 MR. TAYLOR: Your Honor, I would move to
5 publish, and would it be okay to use the Minu-script
6 versions for the witness to look at?

7 MR. BULMER: Of course. Whatever is the
8 easiest.

9 MR. TAYLOR: May I approach the witness,
10 Your Honor?

11 JUDGE BROWN: Fine. The deposition of
12 William Hamilton will be published.

13 Proceed.
14 Q (Continuing by Mr. Taylor) Turn to page 41, line 20,
15 please.
16 A I'm not sure I know how to work this thing, but I'll
17 try.
18 Are we talking about the original one or
19 Volume II?
20 Q Volume I, please, January 21.
21 A Page 41?
22 Q Page 41, line 20.
23 A Line 20. Okay.
24 Q Does that refresh your recollection that you told us
25 that you were putting your personal funds into the
FOOT OF PAGE 136
1 bank account of Pacific Lanes during the fall of
2 1992?
3 A If I'm looking at the right thing, page 20 said,
4 "Just trying to clean things up."
5 Q Page 41.
6 A That's what I've got, I think, is page 41. Oh, you
7 gave me Grant Anderson's deposition.
8 Q I'm sorry. That's my fault.
9 A All of this is Grant Anderson's deposition.
10 MR. BULMER: That might explain it.
11 Q Let me try this again, Mr. Hamilton.
12 January 21, 1997, version.
13 A Okay.
14 Q Page 41, line 20, does that refresh your recollection
15 that you testified that you were putting your
16 personal funds into the bank account of Pacific Lanes
17 during the fall of 1992?
18 A Well, let me find the question, I guess. Where does
19 the question begin?
20 Q Well, I'm not sure the answer and the question were
21 necessarily that correlated.
22 The question begins on page 40, line 24.
23 A "Let me ask it this way. Tentative purchase price
24 adjustment \$131,137. Was that an increase in the
25 purchase price or a decrease?" And my answer begins
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1 on line 2: "It didn't have anything to do with --"
2 Q Mr. Hamilton, you don't need to read it all right
3 now.
4 A Well, I might need to to refresh my memory.
5 Q Please, go ahead.
6 A All right.
7 (PAUSE IN PROCEEDINGS WHILE
8 WITNESS REVIEWS DOCUMENT.)
9 A Okay. What was the question?
10 Q Do you recall testifying that you took over
11 management on an agreement and started throwing your
12 money into the account of Pacific Lanes,
13 Incorporated; do you see that?
14 A That's what I said.
15 Q That wasn't true, was it?
16 A Yes, it was.
17 Q You were putting personal funds into the bank account
18 of Pacific Lanes?
19 A It says before that that we would close by
20 September 30 -- excuse me, August 30, for possession
21 September 1.
22 It was my understanding and my agreement with
23 Grant Anderson and the estate that I would take
24 possession of the bowling alley September 1st, 1992.
25 All of the funds generated through that operation
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1 from that time forward would be mine, would be the
2 property of my corporation when the deal ultimately
3 closed.

4 It didn't really make any difference whether it
5 closed September 1st or six months later. It was my
6 understanding that all of the money that went through
7 there which was part of the purchase price would be
8 mine. The same as if it had lost money, I would have
9 suffered the loss. If it had made money, I would
10 have made the money. So all of the money in there, I
11 presumed was mine.

12 That was the basis of that statement.

13 Q So when you testified that you started throwing your
14 own money into the account of Pacific Lanes, Inc.,
15 you didn't mean you were personally financing the
16 corporation at that point?

17 A No. It's not necessary to finance the corporation at
18 that point.

19 Q Now, you also told us in that deposition that in this
20 same time period you personally, Bill Hamilton, spent
21 \$100,000 on the facility from September to October
22 1992. That wasn't true, was it?

23 A Again, you want to refer me to where I said that?

24 Q Let's see. Page 43, line 14.

25 A "Let me back up. We have got the adjustments

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1 described in Exhibit 5."

2 Q Do you see where it says:

3 "Separate and apart from those, you were making
4 capital expenditures on the facility?

5 "ANSWER: On the facility, that's correct.

6 "QUESTION: Those were before it closed?

7 "ANSWER: By my best recollection, yes.

8 "QUESTION: How much?

9 "ANSWER: Six figures, but I can't tell you
10 exactly how much."

11 That wasn't true, was it?

12 A Sir, we're talking about a deposition that was taken
13 in January 1997 about events that happened some five
14 years prior to that. It was difficult for me to
15 recall. I didn't go into the deposition prepared to
16 answer anything other than to try to explain to you
17 what I thought was a misunderstanding as to what the
18 transaction really was.

19 At that time of this deposition, I couldn't tell
20 you when I started putting money in that account. I
21 do know that shortly after, now that I looked at my
22 records, that by 1993, closely into 1993, I had
23 several hundred thousand dollars invested in Pacific
24 Lanes, so if I was off by a little bit of time on
25 that, that was an error on my part.

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1 Q Now, as I understand it, you were the manager of the
2 bowling alley; you were managing the bowling alley
3 operation from September 1 forward?

4 A No, I was not the active manager of the bowling
5 alley.

6 Q Were you managing the bowling alley?

7 A I was overseeing the operations of the corporation
8 that employed people to manage the day-to-day
9 operations of the bowling alley.

10 Q That was Pacific Recreation, your company, that was
11 buying this business and got the benefit of the
12 profits. Was it even licensed to do business in the
13 city of Tacoma at this time?

14 A I believe the corporation became licensed to do

15 business in the city in November of 1992, but I as an
16 individual was operating with the permission of Grant
17 Anderson as the personal representative of the estate
18 and the president of the corporation to oversee the
19 day-to-day operations and oversee the people that
20 were operating the day-to-day operation of Pacific
21 Lanes.

22 Q Now, those people are Jackie Pagni?

23 A That's correct. She was one of the employees.

24 Q She had been there forever, hadn't she?

25 A Well, I don't know about forever. She had been there

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1 a number of years.

2 Q Clear back when Mr. Hoffman was alive and he was
3 running the bowling alley?

4 A Yes.

5 Q Who knew more about the bowling alley business at
6 that point, you or Ms. Pagni?

7 A Mrs. Pagni was very capable of running the day-to-day
8 operation of the bowling alley.

9 Q Okay. Now, you weren't at the bowling alley on a
10 day-to-day basis, were you?

11 A I was there quite often during that period of time.

12 Q Couple times a weeks max?

13 A No, not necessarily. It could have been daily
14 sometimes, sometimes three, four times a week. I
15 would say I was there almost every day for some
16 period of time.

17 Q Why don't you take a look at page 113 of your
18 deposition.

19 A (Witness complies.)

20 Q "QUESTION: How many times would you estimate that
21 you met with the day-to-day management of the bowling
22 alley during the time period September 1, 1992,
23 through the end of December 1992?

24 "ANSWER --"

25 A Excuse me, counsel. Are we going to the second

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1 deposition now?

2 Q Yes. I'm sorry.

3 A Oh, all right.

4 Q Page 113, line 5.

5 A I was going to say I ran out at 108.

6 Q Do you have line 5 there, page 113?

7 A Yes.

8 Q Okay. You see I asked you:

9 "How many times would you estimate that you met
10 with the day-to-day management of the bowling alley
11 during the time period September 1, 1992, through the
12 end of December 1992?

13 "ANSWER: A couple of times a week probably on
14 average."

15 Do you want to change that now?

16 MR. BULMER: Objection. Request the
17 entire answer be read.

18 MR. TAYLOR: Sure.

19 Q (Continuing by Mr. Taylor) "A couple times a week
20 probably on average. I was in and out of the
21 facility at least that often."

22 Was it more than a couple times a week?

23 A Sir, again we're talking about something that
24 happened five years previous to that, and I testified
25 just a moment ago that I was in and out of there

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1 quite often, sometimes daily. I see no inconsistency

2 with the second half of that, which says I was in and

3 out of the facility at least that often.
4 Q Without meeting with the day-to-day management?
5 A Could be.
6 Q Weren't you meeting with them on an irregular basis?
7 A I was meeting with them -- whenever I was in there, I
8 was talking with the day-to-day management. That was
9 the purpose of being in there.
10 Q Would you agree that your meetings with day-to-day
11 management were only irregular?
12 A I would agree that what I said was what I said. I
13 would be in there a couple times a week probably on
14 average. I was in and out of the facility at least
15 that often.
16 Q Let me read you something and you tell me if you
17 agree or disagree with it. "I met with the
18 day-to-day management on an irregular basis to
19 determine the needs, if any, they might have for
20 information or services that I could provide."
21 True statement?
22 A Again, where are you reading from?
23 Q 112, line 20.
24 A "I met with the day-to-day management on an irregular
25 basis to determine the needs if any that they might

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1 have for information or services that I could provide
2 while I was going through the application process and
3 approval process with the gambling commission and the
4 liquor board."
5 That's correct.
6 Q True statement?
7 A True statement.
8 Q Irregular basis?
9 A Irregular can mean any number of things.
10 Q What did you mean?
11 A Irregularly. I didn't go in at 8 o'clock every
12 morning. I didn't go in at 8 o'clock every other
13 morning. I went in whenever I found time to get over
14 there. I was permanently employed at the time, and I
15 went over there almost every day; at least a couple
16 of times a week.
17 Q Which do you think it was, or do you know?
18 A I don't know. I couldn't tell you how often I go
19 over there right now. I operate it the same way
20 today as I did then, sir.
21 Q As manager, kind of overall manager over the
22 day-to-day management, I assume you were working with
23 the checkbook of Pacific Lanes to make sure
24 everything was going right?
25 A No, sir. I never looked at the checkbook. Still

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1 don't. Don't sign on the checking account, but I own
2 100 percent of it.
3 Q Now, Pacific Lanes was paying legal fees during this
4 period, writing checks every month for legal fees.
5 What were those fees for?
6 A I didn't know they were paying legal fees during that
7 period of time.
8 Q Well, as manager of the bowling alley, isn't that
9 something you needed to know?
10 A Not necessarily.
11 Q Did you know --
12 A I never looked at the checkbook, I said, Mr. Taylor.
13 Q Okay. As manager, did you make any purchases from
14 liquor vendors?
15 A I beg your pardon?
16 Q As manager, were you making the purchases from the

17 local liquor distributors?
18 A No. I didn't have anything to do with the day-to-day
19 management, picking up the liquor, buying the
20 supplies, making the payroll, and ever since 1993,
21 when Pacific Recreation took over, I still have never
22 done that.
23 Q How about pull tabs; were you responsible for the
24 pull-tab operation?
25 A No more than I am now.

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1 Q In fact, back then you couldn't be involved in pull
2 tabs because you didn't have a license; is that
3 right?
4 A Pacific Recreation Enterprises didn't have a license
5 to operate the pull tabs, correct.
6 Q And you, Bill Hamilton, hadn't gone through a
7 criminal background check to enable you as an
8 individual to be working with a gambling business,
9 had you, by that point?
10 A No, I hadn't.
11 Q Okay.
12 A My involvement, Mr. Taylor, was at the corporate or
13 what I considered to be the fiscal level, the
14 operation of the facility, not the operation of the
15 day-to-day management. I wouldn't know how to load a
16 pull-tab game today.
17 Q Were you hiring employees and firing employees?
18 A No. That was left up to the day-to-day management,
19 Mrs. Pagni.
20 Q Okay. Now, do I understand correctly that you
21 believe you're entitled to -- part of the reason you
22 believe you're entitled to those hundred thousand or
23 so in profits is because you were the manager or the
24 super manager or whatever it was of the bowling alley
25 during this period?

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1 A No. I'm entitled to the cash flow from the operation
2 of the bowling alley because that was part of the
3 deal. That was what I was buying for \$300,000.
4 Q How much was Ms. Pagni getting paid to be the manager
5 of the bowling alley?
6 A I don't recall.
7 Q You were the manager, weren't you?
8 A I was the manager? I was the overall supervisor of
9 the corporation.
10 Q But you can't tell us how much you were paying the
11 manager?
12 A Can't tell you what I was paying then any employee or
13 what they are being paid now. My son is the general
14 manager there now and he takes care of the salaries
15 of everyone.
16 Q Why don't we turn to Exhibit 21, please.
17 A (Witness complies.)
18 Q Now, what is Exhibit 21?
19 A It is a cleaned-up version of Exhibit 20.
20 Q Okay. And you needed Exhibit 21 because Exhibit 20
21 had lapsed?
22 A No. We needed Exhibit 21 because the requirements of
23 the liquor and gambling people were that the licensee
24 by name had to have their name on the purchase
25 agreement, and Exhibit 20 says that the purchaser

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1 will be William Hamilton for a corporation to be
2 formed. And Exhibit 21 says that the purchaser will
3 be Pacific Recreation Enterprises, because the
4 corporation had been formed.

5 Q Now, prior to September 19th, 1992, you hadn't yet
6 made any effort to get licenses for Pacific
7 Recreation or anybody else from the liquor and
8 gambling commissions?
9 A Prior to what date?
10 Q September 19th.
11 A Yes. I'd been to visit the liquor and the gambling
12 commission in August, had picked up the forms
13 necessary, had given them to my agents to prepare the
14 forms, and they were subsequently submitted on, I
15 believe, September 29th.
16 Q Okay. So prior to September 19th, no applications
17 for licenses --
18 A Had been filed, that's correct.
19 Q Okay. After September 19th, it wasn't until a couple
20 of weeks later that you applied for the licenses?
21 A That I sent the money in or took the money down to
22 Olympia and delivered the applications, that's
23 correct, on September 29th.
24 Q Take a look at Exhibit 3, please.
25 A (Witness complies.)

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1 Q This is a license application you submitted to the
2 Washington State Gambling Commission?
3 A It appears to be.
4 Q Will you look at the last page, please? I'm sorry,
5 page 4, second-to-the-last page.
6 A Okay.
7 Q Your signature?
8 A That's my signature.
9 Q September 29th, 1992?
10 A That's my handwriting.
11 Q Right above that, "...information submitted is true,
12 accurate, and complete...", to the best of your
13 knowledge?
14 A That's correct.
15 Q And you believed that was true, didn't you?
16 A I believed that was true.
17 Q Take a look at page 3, please.
18 A (Witness complies.)
19 Q Now, in block 7 that occupies most of page 3, we see
20 the gambling commission was asking for various kinds
21 of information from you; do you see that?
22 A I see block 7. I don't know where you're going, so I
23 guess I'll wait for the question.
24 Q We'll get to where I'm going.
25 Do you see the part that says, "Submit the

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1 following documents and information"?
2 A Yes, I do.
3 Q And you submitted information?
4 A It would appear as though I did.
5 Q One of the things the gambling commission wanted was,
6 "Copies of all --" looking down at box F, and there's
7 an "X" in box F -- "contractual obligations between
8 the applicant and any licensee of the commission. (If
9 oral, provide details.)"
10 Now, Pacific Lanes was a licensee of the
11 commission, we know that, don't we?
12 A Yes.
13 Q Okay. Did you ever tell the gambling commission
14 about this understanding that you were going to be
15 getting the profits from September 1 forward?
16 A I submitted an application that had the date of
17 September 1st for the closing in the beginning and
18 was told to go home and bring back one that had the

19 name of the corporation on it.
20 Q In connection with the gambling license application
21 submitted September 29th, 1992, and in response to,
22 "Copies of all contractual obligations between the
23 applicant and any licensee. (If oral, provide
24 details)," did you, in connection with that
25 application, tell the commission in writing, orally

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1 or otherwise, "I'm entitled to the profits under this
2 contractual agreement from September 1 forward"; did
3 you tell that to the commission?

4 A I don't recall, Mr. Taylor.

5 Q You're not saying you told that to anybody at the
6 commission, are you, sir?

7 A I'm saying I don't recall whether I did or didn't. I
8 barely remember going down there.

9 Q Well, didn't you make an effort recently to refresh
10 your recollection about that and you went down to the
11 gambling commission and studied the file in
12 connection with this case?

13 A I went to the gambling commission and the liquor
14 commission to try to find the draft agreement that I
15 knew existed, but I couldn't find, that was written
16 before Exhibit 20, that was the basis of Exhibit 20,
17 and ultimately found that in Mr. Schafer's file of my
18 representation, but I did not find it at the gambling
19 commission or the liquor board.

20 I was trying to assist you in finding documents
21 that would establish something in writing that
22 September 1st was the date that Mr. Anderson and I
23 had agreed to transfer control of the monetary
24 resources of Pacific Lanes.

25 Q We never found that document, did we?

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1 A I found the document in Mr. Schafer's file, yes.

2 Q Well, I assume Judge Anderson will offer that at this
3 hearing.

4 Let's go back to Exhibit 21, please.

5 A (Witness complies.)

6 Q I'm sorry. Strike that. Exhibit 7.

7 A (Witness complies.)

8 Q This was a financial statement submitted to the state
9 of Washington by Pacific Recreation Enterprises?

10 A That's correct.

11 Q And a financial statement as of September 25th, 1992?

12 A I don't see the September 25th, but -- oh, yes, I do
13 too, on the first page, yes.

14 Q Second page, signed by you on September 29th?

15 A It says September 29th.

16 Q That's the day you signed it?

17 A Yes.

18 Q Okay. Go back to the first page, please, under
19 block A, "Assets."

20 A (Witness complies.) I see that.

21 Q Do you see the last entry or line under "Assets" is
22 personal property?

23 A Okay.

24 Q And there's no amount listed there?

25 A Okay.

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1 Q Is it correct that as of September 25th, 1992,
2 Pacific Recreation had no personal property?

3 A Pacific Recreation Enterprises was a corporation that
4 had been formed, I believe, on August 20th. All of
5 these documents that were sent into the regulators
6 were prepared by my accountant at that time, Michael

7 Favres, at my request, and I signed them at the time
8 I stood in front of the counter and made my
9 application.
10 Q Well, that wasn't my question, sir. My question
11 was --
12 A Was there any personal property?
13 Q Yes.
14 A Not that I'm aware of.
15 Q Didn't own the pins or the balls or the shoes?
16 A Had absolutely nothing in the way of ownership that
17 had closed at Pacific Lanes since it was subject to
18 the licensing.
19 Q Okay. Now, you say you signed this while standing at
20 the counter at the liquor board or gambling board?
21 A One or the other.
22 Q Didn't you mail it?
23 A I don't believe so. I believe I went down there to
24 file these.
25 Q Well, you signed it on 9/29 at the counter but the
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1 gambling commission received it on 10/1/92.
2 A That doesn't mean that they didn't stamp it in
3 another department. My recollection is that I went
4 to Olympia to make these applications.
5 Q Fair enough.
6 Back to the first page, the middle line says,
7 "Notes receivable and accounts receivable." Do you
8 see that?
9 A That's correct.
10 Q You didn't list there this right that your company
11 had to get all the profits from Pacific Lanes from
12 September 1, 1992, forward, did you?
13 A No, sir, I didn't.
14 Q Okay. Did you list that with the state in anything
15 you filed?
16 A Did I list that?
17 Q Yes.
18 A I didn't know what the value of that asset would have
19 been. It might have been a liability, for all I knew
20 at the time.
21 Q You knew the bowling alley had never lost money from
22 September to December of any year, didn't you?
23 A I knew that the cash flow, if it was ever going to
24 exist, would exist during that period of time.
25 Q And you knew it had never lost money during that

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1 period?
2 A Not during any of the financial information I had
3 ever seen.
4 Q You didn't really anticipate that you were going to
5 be losing money on this oral understanding, did you?
6 A No.
7 JUDGE BROWN: How much further would you
8 have?
9 MR. TAYLOR: I'll be awhile. Might be a
10 good time to take a break.
11 JUDGE BROWN: We'll take our afternoon
12 break here. Ten minutes.
13 (RECESS TAKEN.)
14 JUDGE BROWN: We're ready to proceed.
15 MR. TAYLOR: Very well. Thank you, Your
16 Honor.
17 Q (Continuing by Mr. Taylor) You ultimately learned in
18 late November of 1992 that your applications for
19 liquor and gambling licenses for Pacific Recreation
20 had been approved?

21 A I believe I learned that the gambling license had
22 been approved in November. I didn't learn that the
23 liquor application had been approved until the first
24 part of December.

25 Q Okay. Was it -- you nevertheless closed the

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1 transaction, though, on December 4th?
2 A That's right. I remember learning the liquor license
3 was approved on the morning of December 4th and went
4 directly to Mr. Anderson's office and closed that
5 afternoon.
6 Q And you paid, pursuant to the business acquisition
7 agreement, you paid 50,000 in cash for purchasing the
8 bowling alley operation?
9 A That's correct. Pacific Recreation Enterprises drew
10 a check for \$50,000 payable to Pacific Lanes.
11 Q You also signed a note that day?
12 A Signed a note from Pacific Recreation Enterprises to
13 Pacific Lanes for \$250,000.
14 Q Why don't you take a look at Exhibit 25, please.
15 A (Witness complies.)
16 Q That's a closing statement for the transaction?
17 A Yes, it is.
18 Q Signed by you on December 4th?
19 A It's dated December 4th, signed by me, yes.
20 Q Okay. Now, this explains what you were paying and
21 what you were getting in return? When I say you, I
22 mean Pacific Recreation Enterprises.
23 A That's correct.
24 Q Does it say anywhere in here that you're entitled to
25 the profits from September 1 forward?

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1 A No, it doesn't.
2 Q Does it say anything in here that Pacific Recreation
3 is entitled to the profits from September 1 forward?
4 A No, it doesn't.
5 Q Does it say in here that you're entitled to the
6 positive cash flow from September 1, 1992, forward?
7 A No, it doesn't.
8 Q Does it say Pacific Recreation is entitled to a
9 positive cash flow?
10 A No it doesn't.
11 Q Now, it references the promissory note there for
12 \$250,000; do you see that?
13 A Yes, it does.
14 Q Does it say anything about that note being adjusted
15 to account for the profits from September through
16 December?
17 A No, it doesn't.
18 Q Does it say anything about the note being reduced to
19 account for cash flow from that point forward?
20 A No, it doesn't.
21 Q Did you ask that this closing statement be changed to
22 reflect such agreements?
23 A No.
24 Q Turn to Exhibit 24, please.
25 A (Witness complies.)

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1 Q It's a bill of sale you received from Grant Anderson?
2 A Seems to be.
3 Q Well, is there any doubt about that?
4 A No.
5 Q Okay. And it says there that you're paying \$300,000?
6 A It says that Pacific Recreation Enterprises pays
7 \$300,000.
8 Q Okay. Does this bill of sale say anything about

9 reducing the amount of 300,000 to 200,000 to account
10 for profits from September forward?
11 A No, it doesn't, Mr. Taylor.
12 Q Does it say anything about reducing the 300,000 to
13 200,000 to account for cash flow?
14 A No, it doesn't.
15 Q Does it say anything whatsoever about reducing the
16 price to anything less than \$300,000?
17 A No, it doesn't.
18 Q Okay. Did you ask that this be changed?
19 A No.
20 Q And if we go down to paragraph 3, we see towards the
21 end of the second line:
22 "...Seller warrants to Purchaser that it,"
23 seller, "will pay and be responsible for all
24 outstanding indebtedness of PACIFIC LANES and the
25 operation...prior to the date of closing."

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1 So as I understand it, then, Pacific Lanes was
2 going to be responsible for all the debts of the
3 company for the period up to December 4th and you
4 were going to get all the profits of the company; was
5 that the deal?
6 A Mr. Taylor, I don't believe the transaction is
7 documented to include the understanding -- we've
8 talked about this before. The understanding was the
9 transaction would take place as of September 1st,
10 1992. Cash flow would be adjusted.
11 If I may explain, you're dealing with two people
12 that have known one another for now over 20 years.
13 I've been in a number of business transactions in my
14 own capacity. I've observed tens of thousands of
15 transactions, I'm certain, in 35 years in the banking
16 business. Not every transaction can be memorialized
17 for every contingency. There was no reason to
18 believe that there would ever be a question about
19 this, because we have consenting adults, we have
20 reasonable people that had come to that agreement,
21 so, no, no document on December 4th reflected the
22 September 1st understanding.
23 Q Well, as a banker, an experienced banker and a
24 veteran banker, you understand the importance of a
25 promissory note?

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1 A That's correct.
2 Q And you understand the importance of that note
3 memorializing the agreement relating to the money
4 representing that note?
5 A That's correct.
6 Q That's critical to banks, isn't it?
7 A Well, we like to think so.
8 Q And any business transaction?
9 A Sure.
10 Q Exhibit 26, the note, you signed that?
11 A I signed that as president of the corporation, yes.
12 Q Okay. Does this note say anything about any
13 agreement to reduce the value of the note from its
14 face value of 250,000?
15 A No, and it wasn't reduced. Pacific Lanes received
16 \$250,000. Received \$50,000 down, which brought the
17 balance from 300 to 250. It received payments from
18 me, or from my corporation, and it received the cash
19 flow out of the account from September 1st through
20 December 31st.
21 Q Well, let's break that down for a second. The
22 300,000, you paid \$50,000, right?

23 A That's correct.
24 Q And Pacific Recreation did not then pay \$250,000 out
25 of its funds to Pacific Lanes, did it?

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1 A Pacific Recreation, under the terms of the agreement
2 and the understanding, was to receive the cash flow
3 from September 1st forward. Pacific Lanes,
4 Incorporated, and the estate of the Hoffmans, or
5 Mr. Hoffman, helped themselves to the cash flow to
6 the tune of, if I remember correctly, \$92,000. The
7 balance of that, between 92 and 250, was paid by
8 Pacific Recreation Enterprises.

9 Q When you say Pacific Lanes helped itself to the
10 money, what did you mean by that?

11 A I just meant that the Pacific Lanes, Incorporated,
12 checking account, where the money was domiciled from
13 December 1st through December 31st, the authorized
14 signers on that account under the direction of the
15 estate, Mr. Anderson, withdrew that money and paid
16 estate business as well as kept the operating
17 business going on a day-to-day basis.

18 Q But in reality Pacific Recreation was supposed to be
19 getting that money?

20 A In reality, when December 31st arrived, it was my
21 understanding that the accountant would determine the
22 dollar amount that was available after the operation
23 from September 1st through December 31st, keeping in
24 mind we closed on December 4th, and we didn't stop on
25 December 4th and make any adjustments either, even

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1 though the purchase and sale agreement said closing
2 will occur on the 1st of the month following. We
3 didn't stop on December 4th. When we got approval on
4 December 4th, we didn't wait till the 1st of the
5 month following. We wanted to close as soon as
6 possible. So we closed on December 4th.

7 The accounting stayed in the account of Pacific
8 Lanes, Incorporated, through December 31st, which was
9 the end of their accounting period. The accountant
10 was then to determine the proper accounting of the
11 funds from September 1st to December 31st, and I had
12 every expectation that someone would write me a
13 check, so there would have been no adjustment. I
14 expected to get a check for the funds that were left
15 over in that account.

16 Q Well, where do we find that agreement?

17 A That was the understanding. That was the purpose of
18 the September 1st closing, that there would be
19 positive funds under normal circumstances left over
20 in that account.

21 Q Can you show us any document that provides --

22 A That's the understanding that we had. It goes back
23 to the earnest money agreement that we referred to
24 before, Exhibit 20, I believe it was.

25 Q And you testified, isn't it correct, that that

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1 agreement accurately reflected your understanding of
2 your verbal agreements about Judge Anderson?

3 A That the closing would take place as of
4 September 1st, yes.

5 Q Well, that's not what Exhibit 20 says, does it?

6 A That was my understanding of the agreement. That was
7 the impetus of the agreement.

8 Q Going back to this, so we all understand, 50,000 in
9 cash paid by Pacific Recreation, wrote a check. The
10 250,000, the payment of that, was handled by giving

11 you credit for money that had been earned by Pacific
12 Recreation from September to October, right?
13 A No. The payment of that was established by the funds
14 that were in the account kept by the estate from the
15 operation of the bowling alley in the account of
16 Pacific Lanes, Incorporated, from September 1st to
17 December 31st.
18 Q That's cash that had accrued prior to close on
19 December 4th?
20 A That's cash that accrued prior to close and after
21 close, from prior to December 4th and from
22 December 4th to December 31st.
23 Q And the note, then, was reduced by the amount of cash
24 that had been accrued by Pacific Lanes from September
25 through December 4th?

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1 A That had been accrued in the Pacific Lanes account,
2 that's correct.
3 Q And had been earned by Pacific Lanes?
4 A Earned by the Pacific Lanes operation. I'm not
5 certain that the semantics of the corporation, that
6 it had been earned by the operation of Pacific Lanes,
7 the business.
8 Q And that money earned by that business was applied
9 for your benefit to reduce the value of the note or
10 reduce the amount owed under the note, correct?
11 A Eventually, yes.
12 Q Okay. So you, Bill Hamilton, and your corporation,
13 Pacific Recreation, never gave \$250,000 out of your
14 account and put it in Pacific Lanes' account?
15 A We gave the difference between the \$92,000 and the
16 \$250,000 out of the Pacific Recreation account. We
17 allowed, since it couldn't be paid back, the estate
18 to keep the money that they had taken from the
19 Pacific Lanes account. If they had given that money
20 back to me, I would have used it in the operation and
21 then I would have subsequently made the payments in
22 accordance with the structure of the note.
23 But since they couldn't pay it back to me
24 because they had spent it, I had two choices:
25 forgive it or take an application against what I owed

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1 them. Given those two choices, I elected the latter.
2 Q So there was an obligation that they would pay you
3 affirmatively the money -- strike that.
4 Pacific Lanes had an obligation that it would
5 pay you the money that had been accrued from
6 September 1 forward?
7 A The obligation was from the -- yes, Pacific Lanes was
8 the selling entity. Pacific Lanes, through its
9 president, Grant Anderson, agreed that the closing
10 would be effective September 1st or the accounting
11 would be effective, the cash flow would be accounted
12 for.
13 Q So they were obligated to give you that cash from
14 September 1 forward?
15 A They were obligated to give me the cash from
16 September 1st to December 31st.
17 Q And that's another obligation that appears nowhere in
18 writing?
19 A That is the obligation that does not appear.
20 Q Now, the money you ultimately got credited for
21 included pull-tab revenues?
22 A All of the revenues of the business are jumbled
23 together into one accounting method. I couldn't tell
24 you which money I received. There's a restaurant

25 operation, there's a cocktail operation, there's a
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1 bowling operation, there's a pull-tab operation,
2 there's video games, there's shoe rentals, there's
3 ball sales.

4 Q Isn't it correct that the gambling, pull-tab
5 accounts, were probably 50 percent of the income of
6 the bowling alley, plus or minus?

7 A At that time the gambling revenues were somewhat less
8 than 50 percent, but approximately 50 percent of the
9 gross revenues, definitely.

10 Q Okay. Turn to Exhibit 92, please.

11 A (Witness complies.)

12 Q Do you have that before you?

13 A Yes, I do.

14 Q Exhibit 92 is signed by you?

15 A That's correct.

16 Q In February of 1993?

17 A That's correct.

18 Q And this is a report to the Washington State Gambling
19 Commission concerning pull-tab revenues earned by
20 Pacific Recreation, correct?

21 A That's correct.

22 Q And the report period is for October through December
23 of 1992, correct?

24 A That's correct.

25 Q That's the time period you were supposedly entitled

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1 to and earning the profits from the operation,
2 correct?

3 A That's the time that the operation was being run
4 through the Pacific Lanes account, that's correct,
5 the time that I had agreed to purchase the business
6 and get the revenues for.

7 Q And the money was going through the account for the
8 benefit of Pacific Recreation?

9 A It was going through the account for the benefit
10 of -- yes, it was domiciled in the account of Pacific
11 Lanes for the benefit of the ultimate cash flow
12 adjustment.

13 Q Okay. But didn't you tell the Washington State
14 Gambling Commission on the report for October,
15 November, December 1992 for Pacific Recreation for
16 pull-tab revenues, no activity until January 1, 1993?

17 A For the corporation known as Pacific Recreation
18 Enterprises, which was licensed in December, there
19 was no activity.

20 Q It had earned no revenue?

21 A It had no activity, and it was not functioning under
22 that license.

23 Q And as of February 1993, you were warranting that
24 Pacific Recreation had earned no pull-tab revenues
25 during the period October through December '92,

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1 correct?

2 A I was warranting that the pull-tab operations of
3 Pacific Lanes, the bowling alley, Pacific Lanes
4 restaurant specifically is the way the license is
5 carried, were not reported under the license of
6 Pacific Recreation Enterprises, Incorporated.

7 Q Did you ever go back and amend this statement once
8 the reduction was effectuated?

9 A No. I had no reason to.

10 Q Okay. Now, in early January of 1993, you learned
11 that Judge Anderson was purchasing a Cadillac?

12 A I learned that he had purchased a Cadillac in early

13 January 1993.
14 Q How did you learn that?
15 A He came to my office and showed it to me.
16 Q Had you previously encouraged a Cadillac salesman by
17 the name of Mark Rauschert in early September of 1992
18 to call up Judge Anderson because you thought the
19 judge wanted to buy a Cadillac?
20 A I recall Judge Anderson commenting to me that he was
21 interested in buying a new car and that he admired
22 the Cadillac, and he was looking at Lincolns and
23 several other automobiles. He obviously was familiar
24 with Buicks, because he was driving one, and asked me
25 who I dealt with at Osborne-McCann, the only Pierce

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1 County Cadillac dealer.
2 I told him it was Mr. Rauschert, and he asked me
3 to call Mr. Rauschert if I could remember, when it
4 was convenient, and have Mr. Rauschert give him a
5 call at his office, he would like to discuss that.
6 Q So you called Mr. Rauschert and asked him to call
7 Judge Anderson?
8 A That's correct.
9 Q How did Judge Anderson finance the purchase of the
10 Cadillac?
11 A He came to Sound Banking Company and borrowed the
12 money.
13 Q You were there?
14 A Not at the time.
15 Q Was your office there?
16 A I officed next door to the bank.
17 Q How did you learn that Judge Anderson had bought a
18 Cadillac?
19 A You know, I don't specifically recall.
20 Q Wasn't it when he pulled up in front of the bank?
21 A Could have been.
22 Q Is that your recollection?
23 A Possibly. That is my -- that's as good as anything.
24 Q Was it the truth?
25 A It's as true as anything else I would say. I don't

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1 specifically recall when I exactly knew that he had
2 purchased the Cadillac.
3 Q In January of 1993, did you make an offer to make the
4 payments on Judge Anderson's Cadillac?
5 A Later in January, yes.
6 Q When in January, then?
7 A Oh, I believe he came to the office on the 9th of
8 January. He had returned from a trip with his wife.
9 He had picked up the car, if I recall, had come to
10 the bank to make a payment on a loan that he had
11 taken earlier in December, showed me the car,
12 lamented at the time that this was the first car
13 payment he had had in, I don't know, 20 years,
14 10 years, something of that nature. I believe he was
15 driving a '79 automobile with a couple hundred
16 thousand miles on it.

17 And either at that time or shortly thereafter, I
18 thought it would be a very friendly gesture on my
19 part to a friend that had been nice to me for many,
20 many years, to offer him a gift, and I offered to
21 make some payments on his Cadillac.

22 Q What did he say?
23 A Well, ultimately after a little foot-shuffling and
24 the fact that it wasn't necessary and so on, which I
25 was perfectly aware of, he graciously accepted my

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1 offer.
2 Q And did you personally begin making those payments?
3 A I directed that the payments be made on -- first of
4 all, I wrote a check out of Pacific Recreation
5 Enterprises for the payment in January and then set
6 it up on an automatic charge to come out of that
7 checking account.
8 Q Okay. Just so I'm clear, is it your best
9 recollection that you made the offer to make these
10 payments when he came in and made the first lump-sum
11 payment on the loan?
12 A That's my best recollection.
13 Q Okay. Once Pacific Recreation began making these
14 payments, did it book them as an expense or a gift?
15 A When Pacific Recreation -- I don't do the books of
16 Pacific Recreation, so we'll start with that. I
17 wrote a check, I maintained a checking account.
18 There is also the daily operation checking account.
19 There was over a million dollars at that time running
20 through those checking accounts. Each check is an
21 expense of something.
22 I believe what you're getting at is a deductible
23 expense for tax purposes. I don't make that
24 determination. I'm not qualified to make that
25 determination. I book it as a check. The checking

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1 account register is given to the CPA, and he makes
2 the allocation as to whether it's for a taxable
3 deduction or nontaxable deduction, whether it's
4 capitalized as an asset or whether it's expensed in
5 general.
6 Q My question is, these payments were treated as an
7 expense on the books of Pacific Recreation?
8 A That is correct.
9 Q Okay. And taxes were reduced based on these being a
10 deduction from the income of the business, correct?
11 A No, that isn't correct. There were no taxes due, so
12 whether the tax, whether this was deducted or not
13 deducted was irrelevant, because there was a net
14 operating loss of the corporation, and as the
15 payments weren't deducted, there still would not have
16 been any taxes due.
17 Q Didn't you subsequently change the tax treatment of
18 Cadillac payments?
19 A Yes, I did.
20 Q And you paid extra taxes?
21 A Not in 1993, I didn't.
22 Q Later on?
23 A I made payments on the Cadillac in 1993 fiscal and
24 1994 fiscal and paid it off in 1995's fiscal. All of
25 those payments at that time reflected as a tax

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1 deduction. That was an error on my part. It was an
2 inadvertent error. I didn't know that it was not
3 deductible. I didn't know that it was deductible.
4 The point was that during that period of time,
5 there was a net operating loss in the corporation,
6 and during all three of those years, had those
7 payments at the time they were made not been deducted
8 for tax purposes, it still would have affected no tax
9 liability.
10 Q You signed the corporation's tax returns each and
11 every one of those years?
12 A I believe I did.
13 Q You're warranting that the information there is true
14 and correct?

15 A To the best of my knowledge.
16 Q And you see on the tax form where you also warrant
17 that you've read the return and it's true and
18 correct, and that was true also, or did you not read
19 it?
20 A I probably didn't read it.
21 Q Now, was it after your first deposition in this
22 matter, during the investigation, that you decided to
23 change the tax treatment of these payments from an
24 expense to a gift?
25 A Yes. I went to your office for that deposition. You

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1 were kind enough to ask me these questions like
2 you're asking me now. I went home. The next day I
3 went to my accountant and I said, "I want you to
4 explain these applications and these taxes and these
5 adjustments," and everything that you were asking me
6 then about, the numbers.

7 He explained them to me once again. I said,
8 "You mean we've been deducting these payments and
9 they're not tax deductible," and he says, "No, but it
10 doesn't make any difference because the corporation
11 owes you money and it had an NOL carry forward," and
12 things of that nature that I've just parroted to you
13 again.

14 And I said, "Well, if they're not to be
15 deducted, then we need to be filing an amended tax
16 return because it's not correct." He agreed to do
17 so.

18 This was in January of 1997, I believe, whatever
19 the date was, January 21st. So it was probably the
20 very next day, if I recall, and I instructed him to
21 file that. He said he would as soon as the immediate
22 crush of taxes was over with, and we in fact did file
23 an amended tax return in the late spring of 1997.

24 I made an unintentional error. I'm responsible
25 for that. I advised my accountant that I'd been

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1 advised otherwise through your service, and he agreed
2 and filed the amended tax return. We sent it in and
3 we paid a few dollars taxes because the effect had
4 brought all the way through fiscal '96 and resulted
5 in a slight amount of taxes due at that time.

6 Q So were these payments a gift or an expense?

7 A These payments were a gift.

8 Q Okay. Let's take a look at your amended tax return.
9 Please bear with me. Take a look at Exhibit 82.

10 A (Witness complies.)

11 Q Is this the amended return you filed?

12 A Yes, it is.

13 Q Signed it Bill Hamilton?

14 A Signed it William Hamilton, president of Pacific
15 Recreation Enterprises.

16 Q Turn to the second page, please.

17 A (Witness complies.)

18 Q You told the IRS, "Personal expenses mistakenly run
19 through the business"; is that right?

20 A That was the phrase used by my accountant, yes.

21 Q Well, this was a two-page filing that you signed.
22 You read it before you signed it?

23 A Yes, I did.

24 Q And did you ask that be changed to read "Gift
25 mistakenly run through corporation"?

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1 A No, because I don't see the distinction. I don't
2 even see it today. It's a word.

3 Q Very well. For how long did Pacific Recreation make
4 the Cadillac payment for Judge Anderson?
5 A Out of the Pacific Recreation account, the Cadillac
6 payments were made beginning in January of 1993,
7 monthly through, I believe, April of 1995.
8 Q By April of 1995, the balance remaining on the loan
9 was approximately \$8,000?
10 A That's correct.
11 Q Did you approach Judge Anderson in May of 1995 and
12 ask him to pay off the balance of the loan?
13 A Well, that's not a correct expression of what
14 happened, but the result was that, yes.
15 Q Didn't you ask --
16 A Can I explain?
17 Q Didn't you ask him to pay off the loan?
18 A When Judge Anderson came to me --
19 Q Just a minute here, Mr. Hamilton.
20 A No, I did not ask Judge Anderson to pay off the loan.
21 Q Why don't you take a look at page 5 of your
22 deposition.
23 A (Witness complies.)
24 Q Line 16, "It was my request that he pay it off."
25 Did you ask him to pay off the balance of the

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1 loan?
2 A He stated to me that he was going to pay it off, so I
3 asked him to do so.
4 Q I'm sorry, where are you reading from?
5 A I don't know that I am reading.
6 Q Okay.
7 A I'm telling you what happened.
8 Q Okay. So you didn't request that he pay off the
9 loan?
10 A Judge Anderson came into my office, told me that his
11 wife had just that day or just within the last day
12 filed for a divorce. I used that as the moment to
13 advise him that since I knew them both and was
14 friends of them both, I didn't feel it was
15 appropriate that I should continue, since they were
16 ultimately getting a divorce, that I should continue
17 making payments on the Cadillac.
18 He took that at that moment and said, "My gosh,
19 that's certainly all right. You've been very
20 convenient or very good to make them as long as you
21 have. Thank you very much. I'll just pay it off."
22 And I said that that would be a good idea.
23 Q So, again, my question is: Did you ask him to pay it
24 off or did he volunteer to pay it off?
25 A He volunteered to pay it off. I accepted that.

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1 Q Okay. Take a look at page 5, line 9. And you can
2 read along with me. "My recollection is, after I
3 approached Judge Anderson about paying off the
4 obligation, he agreed to do so..."
5 Is that the way it happened, or did he bring up
6 the idea?
7 A Mr. Taylor, again, we're talking about something that
8 happened five years ago. At the time, this was my
9 recollection.
10 Q And your recollection is different today, and that's
11 okay.
12 A The semantics of whether he approached me or I
13 approached him, the idea was he told me that he was
14 getting a divorce. I used that as a reason to stop
15 making the payments. It was a socially uncomfortable
16 item for him. It was socially uncomfortable for me.

17 I didn't know how to stop, in the first place. This
18 gave me an opportunity to stop.
19 Q Okay. You say --
20 A So I took advantage of that. He said, "I will pay it
21 off," and I just said, "When?"
22 Q So you looked at this as an opportunity to stop
23 making the loan payments?
24 A That is correct.
25 Q But then you nevertheless -- I say you, Pacific

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1 Recreation -- following this conversation went ahead
2 and paid off the loan, right?
3 A I said I would pay it off -- when I asked him when he
4 was going to pay it off, he said, "When I return from
5 my trip." I've been through this before in another
6 occasion, and I really didn't want to approach a very
7 good friend that I had given a gift to and start now
8 renegeing over the last \$8,000. It was a sensitive
9 issue for me socially at the time, and it's very
10 sensitive for me to talk about it now, especially
11 sitting here looking him in the eye.
12 But it gave me an opportunity to get out of a
13 bargain. So I got out of the bargain. He offered to
14 pay it off. I said, "When?" He said, "When I get
15 home." So that I'd never have to talk about this
16 again, I said, "Good, I'll pay it off." Whether I
17 said it out loud or I said it to myself, I said,
18 "I'll pay it off."
19 I immediately wrote a check to the bank, paid
20 the loan off. He came back some weeks later and gave
21 me back the money.
22 Q Now, you're not saying that you told Judge Anderson
23 you'd pay it off?
24 A My recollection is that I said, "I will pay it off."
25 Q Okay. He paid you back?

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1 A He paid me back.
2 Q 8,000?
3 A \$8,000, whatever the dollar amount was, yes.
4 Q Plus or minus. Paid you back in cash?
5 A Paid me in cash.
6 Q And he delivered the cash to you personally?
7 A He delivered the cash to me personally.
8 Q Did you ever tell Kevin Iverson that someone else
9 brought the cash to you?
10 A No, but there's a lot of water under the bridge in
11 the last five years and the story has been told many
12 times by many people. My recollection is that Judge
13 Anderson, my friend, came to me when he came back
14 from his vacation and walked in with what excess
15 cash, as far as I was concerned, he had from his
16 vacation and gave it to me. Paid me back, thanked
17 me, picked up his title and walked out the door.
18 Q This cash, did you give him a receipt?
19 A No, I didn't give him a receipt.
20 Q Did you put the cash in a bank?
21 A No, I didn't.
22 Q Now, the final loan payment of \$8,000, plus or minus,
23 had been made by Pacific Recreation, right?
24 A Had been made out of the Pacific Recreation account
25 at my direction, yes.

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1 Q So the money belonged to Pacific Recreation?
2 A Yes.
3 Q Did you deliver the 8,000 in cash, take the money and
4 give it to Pacific Recreation?

5 A No, sir, I didn't.
6 Q Okay. Where did the cash go?
7 A Cash went in my pocket. I probably spent it. I
8 have, you know, six children. I've got a wife. When
9 my wife goes to Arizona for two weeks, she spends
10 more money than that, so I was grateful to get it
11 back.
12 Q What form were the bills in, sir?
13 A I have no idea, sir.
14 Q Were they old and crumpled, or were they brand new
15 and crisp?
16 A I have no idea.
17 Q Did they look like they had come out of someone's
18 sock?
19 A All money looks like it comes out of someone's sock,
20 so I guess -- no, I don't think there was anything
21 distinctive about it.
22 Q Now, you testified in your deposition that you didn't
23 pay the money, the cash, to Pacific Recreation, but
24 it was used to reduce your shareholder loan account
25 with Pacific Recreation?

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1 A Ultimately all the payments that I made out of the
2 corporation, all \$800 monthly payments and the
3 \$8,000, were added together and were adjusted and
4 applied to the 200-and-some-thousand dollars that was
5 then owing to me when the amended tax return was done
6 in 1997.
7 Q Okay. Well, you told us in your deposition that you
8 had made an adjustment in 1996 to your shareholder
9 loan account to reflect the \$8,000 that you had
10 received. Do you recall doing that?
11 A You want to refer me to it?
12 Q Yeah. Page 91, line 11.
13 A It begins on line 8.
14 "I can't tell you how the accountant would have
15 handled it. All I know is that the entire payment
16 went away and they were a just transaction of the
17 same ilk. These adjustments were being made -- I
18 believe they were being made in '96."
19 Q There were no such adjustments made in 1996, were
20 there?
21 A They were made in the '96 books, but they were made
22 as of August 31st, 1996, was the end of the fiscal
23 year. When I said they were made in '96, I don't
24 think that I was saying they were made in calendar
25 1996. In fact, they weren't made until probably

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1 April of 1997, when the amended tax return was
2 signed.
3 Q Why did you tell us on January 21st, 1997, that the
4 adjustments had been made if they weren't made until
5 April of 1997 and they hadn't existed yet?
6 A They were made in the 1996 books.
7 Q Didn't you tell us later on in your deposition that
8 they weren't done in '96?
9 A I don't know.
10 Q Well, do you recall one way or another?
11 A I can tell you that the adjustments were made by the
12 accountant at the fiscal year-end 1996 books. When
13 they were made by him, you'll have to ask him. I
14 don't know.
15 Q Well, you did tell us that you know now no
16 adjustments were done in 1996; do you recall telling
17 us that?
18 A I did tell you what, sir?

19 Q You told us that no adjustments were made during
20 1996. Is that accurate?
21 A I don't really recall.
22 Q Well, take a look at page 183, line 16.
23 A (Witness complies.)
24 A One-eighty-what?
25 Q Page 183. It's Volume II, sir.

FOOT OF PAGE 184

1 MR. BULMER: Starting at what line?
2 MR. TAYLOR: Line 16.
3 MR. BULMER: Thank you.
4 Q (Continuing by Mr. Taylor) Do you have that before
5 you, sir?
6 A Yes.
7 Q "QUESTION: What adjustment was made to any of the
8 books in 1996 relating to the 8,000 cash that you
9 received from Judge Anderson in 1995?
10 "ANSWER: We know now that no adjustment was
11 made during 1996.
12 "QUESTION: During 1996, no adjustment was made?
13 "ANSWER: That's correct."
14 MR. TAYLOR: I have nothing further at
15 this time.
16 A That isn't the complete answer.
17 Q Please read on.
18 A It says, "That's correct. At the end of fiscal '96
19 there was a general adjustment closing out all of the
20 miscellaneous expense for rent that I never had
21 taken. I had purchased some land..." etcetera,
22 etcetera.
23 So there were a lot of adjustments being made as
24 of the end of fiscal 1996 that resulted in the
25 corporation owing me \$225,000 as of that date.

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1 Q So those were the adjustments that didn't exist and
2 were in the future at the time you were deposed and
3 you said, yeah, they've been made to reflect the
4 \$8,000 in cash you received?
5 A Well, I'm confused, so --
6 MR. TAYLOR: I have nothing --
7 A I guess they take what they are.
8 MR. TAYLOR: -- further.
9 JUDGE BROWN: All right.
10 MR. BULMER: Mr. Hamilton, are you tired?
11 THE WITNESS: I'm just fine, thank you.
12 MR. BULMER: Mr. Hamilton is going to
13 have to come back tomorrow, and I can start, of
14 course -- we've got 45 minutes and I can do that --
15 or we can kick off tomorrow.
16 I think we're going to finish on time, from
17 where we're looking. I told you on the phone,
18 Judge Brown, we were going to finish, I believed,
19 before the end of the week, and I don't see any
20 reason why we won't. My druthers would be to come
21 back tomorrow when he's fresh.
22 (COMMISSION MEMBERS CONFERRING.)
23 JUDGE BROWN: Okay. Is that all right,
24 counsel? Do you think it's timely, or are we going
25 to run out of time?

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1 MR. TAYLOR: If Kurt wants to do it that
2 way, that's okay.
3 JUDGE BROWN: All right. We'll recess
4 for the day at this time.
5 MR. BULMER: Start at 9:00 tomorrow?
6 JUDGE BROWN: Yes, 9 o'clock.

9 SCHULTHEIS, NORA REYNOLDS and TODD WHITROCK.

10

11 A P P E A R A N C E S

12

13

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1

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2

DAY TWO

3

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2

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3

January 13, 1998

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15	No. 30	Pac. Lanes Purchase Price Adjustment Per Discussions with Grant Anderson and Bill Hamilton w/handwritten notes 3/9/93	246
17	No. 37	Real Estate Excise Tax Affidavit	308
18	No. 60	Pac. Lanes Purchase Price Adjustment Per Discussions with Grant Anderson and Bill Hamilton w/fax log of 2-16-93	244
19	No. 100	Detail Fee Transaction File List for Fisher, Koppe & Hoefel 6/30/93	381
20	No. 127	Amortization Schedule 8-16-92	211
21	No. 128	Amortization Schedule 8-23-92	212
22	No. 130	Comfort & Smith Invoice 6-20-92	203

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TUESDAY, JANUARY 13, 1998
TACOMA, WASHINGTON
9:00 A.M.

<<<<>>>>

JUDGE BROWN: Please be seated.

Good morning. This is the second day of the hearing In Re The Honorable Judge Anderson. The commission members who are present today are the same commission members who were present at the hearing at all times yesterday: Dale Brighton, Vivian Caver, Judge Donahue, Harold Clarke, Judge Schultheis and Judge Brown.

Anything preliminarily?

MR. TAYLOR: Before we begin this morning, this afternoon I intend to call Diane Anderson, who is Judge Anderson's ex-wife. Mr. Bulmer has indicated that he is going to attempt to exclude testimony from her about conversations she had with Judge Anderson on the basis of spousal privilege.

It's our position that he has waived the privilege, and we've prepared a brief on this, and if it works for Your Honor, perhaps we could argue this right after the morning recess, and then I'll know

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whether to call Ms. Anderson.

JUDGE BROWN: All right, after the recess.

MR. BULMER: I'm not as well organized as Mr. Taylor, but I have one case that I'm having copied that I'll give you that sort of is where we're coming from, I guess, so I'll get that to you.

JUDGE BROWN: All right.

MR. BULMER: Ready, Mr. Taylor?

MR. TAYLOR: All set.

MR. BULMER: I'll get Mr. Hamilton.

JUDGE BROWN: Mr. Hamilton, you can resume the witness stand. You're still under oath from the previous day's testimony.

THE WITNESS: Thank you.

WILLIAM HAMILTON, being previously sworn to
tell the truth, the whole

18 truth and nothing but the
19 truth, further testified as
20 follows:

21 CROSS EXAMINATION

22 BY MR. BULMER:

23 Q Good morning, Mr. Hamilton.

24 A Good morning.

25 Q Mr. Hamilton, I would like the commission to get to
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1 know you a little bit better. Would you tell the
2 commission in narrative form just a little bit about
3 your personal history and your background and your
4 upbringing and up through when you came to Tacoma and
5 opened your first bank?

6 A I was born one of two sons to a mother and father in
7 The Dalles, Oregon, in 1942. My father was a car
8 salesman; my mother was a registered nurse.

9 I graduated from high school, and during my
10 senior year in high school, I was awarded a
11 scholarship of sorts to work for U.S. Bank, which was
12 called the United States Bank of Portland at the
13 time. It's still -- in fact, I think they just
14 merged.

15 JUDGE BROWN: Excuse me, Mr. Hamilton.
16 Could you raise that microphone?

17 THE WITNESS: Certainly. How's that?

18 JUDGE BROWN: That's fine. Thank you.

19 A (Continuing) I started working for the bank when I
20 was in high school. The idea was that if I was ever
21 going to go to college, I would have to do so with
22 someone else paying the tuition. There just wasn't
23 the funds. Even though tuition at that time was \$400
24 a quarter, I remember that, that was a lot of money.
25 I don't think my father ever made that in a week, or

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1 in a month for that matter. They were good parents.
2 They provided what they could.

3 I started working for the bank. I finished high
4 school. I went into active duty in the National
5 Guard. This was when there were no wars at the time,
6 if I remember correctly, and spent six years in the
7 Guard.

8 I would work at the bank for a year, then I
9 would go to school for 12 months, and this program
10 was designed where the bank would pay the tuition and
11 give you \$50 for books. You had to save your money,
12 and they had a forced savings program where they
13 would take from my money, which was about \$150 a
14 month, they would take taxes, and then they would
15 take the majority of the money. I would have 20 or
16 \$30, I remember, so I had to live at home, and that
17 would go into a savings account, and that was for the
18 spending money and room and board at school.

19 So I went to the University of Oregon, and I met
20 a lovely lady down there at the time and came back to
21 The Dalles. And, of course, when you come back to
22 try and live at home after being away, it's not the
23 easiest thing in the world, and so I worked again and
24 I commuted to Portland to go to night school at
25 Portland State College, ultimately going back to

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1 school the following year after my work phase.

2 My wife and I had gotten married in the
3 meantime, and she was pregnant with our first child.

4 I left the program and went to work for the bank full

5 time, never completing my undergraduate studies.

6 I stayed with that bank, ultimately leaving and
7 going to work for an independent bank called the
8 First State Bank of Oregon in the mid '60s and had, I
9 guess, the good fortune to be made a branch manager
10 at a very early age, in my early 20s.

11 And so I left that bank to come to Tacoma for an
12 opportunity to broaden my experience and broaden my
13 family of then three children in 1969 to Tacoma. And
14 shortly after I arrived in Tacoma, the bank I was
15 working for merged with Seattle-First National Bank,
16 and I was asked to join a group that was forming a
17 bank in Fircrest; it became Western Community Bank.
18 They'd been trying to form this bank since the '60s.

19 Even though I was young -- I was in my
20 mid 20s -- I had been in the business and that's the
21 only thing I ever did, so I didn't know what I didn't
22 know. So I felt that if they asked me to join them,
23 I must know enough to do the job. And, fortunately,
24 for 20 years we were able to grow this institution
25 and it prospered, and when the opportunity came in

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1 1989, when KeyCorp approached me to sell the bank, I
2 had spent -- by that time I was 48 years old, and I
3 had spent 30 years in the business. Doesn't seem
4 like a lot of miles, but 30 years is 30 years.

5 My children were grown. My first wife and I
6 were divorced in 1972. My parents were both passed
7 away. I had my family. I'd adopted my two
8 stepchildren back when they were two and three. My
9 wife and I had another child, who is now 23 years
10 old, and so I had six children. Four of them had
11 gone to universities. One has an advanced degree now
12 and teaches in the Tacoma School District. My two
13 younger sons are the sons that work the bowling
14 alley. My older son has another business that I
15 assisted him in when he got out of college in the
16 '80s.

17 I believe that's what brought me to the sale of
18 the bank.

19 Q Okay. What was your position at -- did it start off
20 as Western?

21 A Yes, it started as Western Community Bank, and I was
22 the original chief executive officer and the only
23 chief executive officer for its 20-year history.

24 Q And you had an ownership position in it?

25 A I had an ownership position, yes.

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1 Q When did you first learn about Chuck Hoffman?

2 A I met Mr. Hoffman probably in the early '80s through
3 his friend and my friend, Don Medley, now deceased.

4 Q And through Mr. Hoffman did you become aware of his
5 various business interests?

6 A Yes, I did. Mr. Hoffman was introduced to me by his
7 friend, Mr. Medley, who was his financial adviser. I
8 shouldn't say that was the mid '80s. Don died in the
9 mid '80s, so it would have been in the early '80s.
10 And to look at it as a banker, to see if there was
11 any way I could assist him financially in his
12 ventures, for lack of a better word.

13 He had involved himself in Long Beach,
14 Washington, and had quite a mess down there, and I
15 became familiar with the bowling alley only because
16 that was the business in this community, even though
17 I had been to Long Beach, or Ocean Crest, I believe
18 it's called.

19 Q At some later time, then, did you become interested
20 in actually purchasing the bowling alley?
21 A It never even entered my mind till Grant Anderson
22 approached me with that concept, or if I could find
23 someone else or if I had any interest, in the spring
24 of 1992.
25 Q At that time had Mr. Anderson become the trustee or

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1 personal representative of the estate?
2 A Yes. He approached me in that capacity, yes.
3 Q Were you aware of his role in connection with the
4 Hoffman estate?
5 A I don't know that I was specifically aware of his
6 role. We didn't discuss his legal practice. I was
7 not even aware that Chuck Hoffman had passed away.
8 The last time I had seen Chuck, he and I were both
9 pallbearers at our mutual friend, Don Medley's,
10 funeral in 1985.
11 Q When did Mr. Anderson approach you about -- you said
12 spring of '92, roughly?
13 A Spring of '92, yes.
14 Q About purchasing the bowling alley?
15 A It was late spring, March, April, something along
16 that line, that he indicated he was contemplating
17 running for judge. I wasn't sure I knew what that
18 meant, the relevancy of it. And I didn't know that
19 he had any other involvements in the law other than
20 as an attorney at that time. He was just my friend.
21 He happened to be a lawyer, is the way it appeared to
22 me.

23 And he approached me to see if I or if anyone I
24 knew -- since I dealt in the financial community,
25 people would come to me with needs or opportunities

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1 from time to time, and he approached me to see if I
2 knew or if I had any interest for one of my sons or
3 something, because he knew I'd been involved in
4 getting financially involved with my oldest son when
5 he got out of college, and he knew I had a son
6 getting out of college.

7 He approached me to see if I had any interest or
8 knew anyone that had any interest, and I indicated
9 that I might and let me look at the finances and
10 things of that nature.

11 Q And did you proceed to look at the finances?

12 A I looked at the financial information that was
13 provided and made my own cursory analysis and
14 indicated that I would discuss it with my son.

15 I don't remember the chronology of all this. It
16 covered, you know, a couple of months of sporadic
17 involvement.

18 Q What sort of things did you do in that process? You
19 said you talked with your son. Did you do anything
20 else to get --

21 A I called my son in Pullman.

22 Q Whose name is --? Excuse me.

23 A My son's name is Sean, S-E-A-N, and Sean was 22, 23
24 at the time, graduating from Pullman, not a lot of
25 jobs available. He'd taken his interviews. He was

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1 graduating with a communications degree, which I'm
2 not sure what that meant, still am not.

3 He indicated that he'd be interested in anything
4 that he thought his father would direct him to
5 because he didn't have anything going. He had taken
6 his interviews, and he had been the house kitchen

7 manager, was president of his pledge class, things of
8 that nature. He's a good boy. He's a very intense
9 man, and I felt this is something that he could
10 handle. He's a very likable young man.

11 And so I approached him. He said he would be
12 interested. He graduated in -- I believe they
13 graduate from Pullman in May, early May. He came
14 home. We went to the bowling alley, kind of walked
15 through it. He looked at it. I introduced him to
16 Grant, who knew him, and basically then he went off
17 to work at other tasks while I saw what I could do.

18 I then took the financial information, did my
19 own cursory analysis. I recall visiting a friend of
20 mine who was an attorney by the name of Patrick
21 Comfort. Pat, I knew as a banker, had involved
22 himself in a bowling center, a new bowling center, in
23 the early '80s, and it was not a successful venture,
24 and I figured if anybody could tell me the pitfalls
25 that I should look for that I couldn't see, Pat would

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1 be able to assist me.

2 So in June, early June, I talked with Pat. He
3 gave me his input, his advice, and then I moved on
4 and made what I considered to be the commitment
5 shortly thereafter.

6 Q Okay. Let's come back and cover a couple of those
7 steps if we can.

8 Let's talk about Mr. Comfort. You went and
9 talked with Mr. Comfort. If you would turn to
10 Exhibit 130, please.

11 A 130?

12 Q Yes, sir.

13 A Okay.

14 Q What is Exhibit 130, please?

15 A It is the bill from Comfort & Smith to me dated
16 June 20, 1992. The handwriting on it is mine.

17 Q Thank you.

18 And at the bottom on the left-hand side it says,
19 "Paid from personal funds." Do you see that
20 handwriting?

21 A Yes.

22 Q When did you put that on there?

23 A I don't recall specifically.

24 Q What about over here where it says "Paid," and then
25 there's, looks like a date, 7/6/92 and then a number?

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1 A That's probably just my notation that as I was
2 starting on this transaction, I kept these bills that
3 were paid from personal funds, meaning that at some
4 point I would want to reach back in and try to get
5 that money from the company, which, now that I look
6 at it, I don't think I ever did. But I paid it
7 July 6th, which was shortly after the invoice came
8 out.

9 Q And this is a reflection of your conversation with
10 Mr. Comfort?

11 A This is the bill for the conversation that I had with
12 Mr. Comfort.

13 Q What did Mr. Comfort tell you about the bowling
14 alley?

15 A Outside of a friend telling me he probably wouldn't
16 do it, I do recall that he said, "If you are going to
17 do this -- you're obviously someone that is going to
18 do what he's going to do, it's your money, you're the
19 one that's been in the financial business, not me.
20 But whatever you do, if you are going to buy the

21 bowling alley, be sure that you recognize that
22 leagues are everything, and the league season is a
23 season, like the fireworks business," is the way I
24 remember it, you know. You build fireworks all year
25 long and you sell it over two weeks, and if there's

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1 not going to be a 4th of July, you're in trouble.

2 If there are no bowling leagues -- you begin in
3 September and you end in April, barring the fact that
4 leagues canceled over the last two days because of
5 the snow, so they'll expend another two days at the
6 end of the season, God willing.

7 But other than that, it lives and dies by the
8 league season. It begins in September and ends in
9 the spring, and then you basically die the rest of
10 the year.

11 Q Is that what advice you came away with from
12 Mr. Comfort?

13 A That was the primary advice that I recall: You want
14 to capture all of the cash flow that you can because
15 you're going to need it.

16 Q Okay. Do you recognize that document, please?

17 A I recognize the handwriting.

18 Q Okay. Whose handwriting is that?

19 A That's mine.

20 Q And what is that?

21 A Looks like a photocopy of a Columnar paper with my
22 own scratches. This is probably the memorialization
23 of one of my thoughts about buying it. It looks like
24 it was something that probably took place about the
25 time I was contemplating the purchase, meeting with

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1 Pat Comfort maybe.

2 MR. BULMER: Ask for admission.

3 MR. TAYLOR: No objection.

4 JUDGE BROWN: It will be admitted as
5 Exhibit 18.

6 MR. BULMER: Also, if I may, to explain,
7 he has the long one, but we couldn't find a reducer,
8 so it's on two pages.

9 Q (Continuing by Mr. Bulmer) At the top of Exhibit 18,
10 which is the first page of the two-page version --

11 A I'll just refer to that two-page version.

12 Q Okay. At the top of that page, then, there's a
13 listing of numbers. What do those numbers reflect?

14 A Well, if I recall, this was -- I don't even know if
15 it adds up, but this was the cash that existed in the
16 petty cash, the till cash, what they call the bank.
17 This was the cash that was on hand at the bowling
18 alley, where it was, and it would indicate how much
19 cash I had to buy.

20 Q And the next group of words seem to have question
21 marks. What would that indicate?

22 A These were questions that came out of my looking at
23 the financial information and my discussions with
24 Pat, I recall. In other words, there's a device
25 called a claw. It's where you throw quarters and try

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1 to pick up a teddy bear or something. I couldn't see
2 where the revenues from that were going, and so I
3 questioned, is that part of the gambling revenues?
4 What's the game room? There was a game room full of
5 video machines. Where was that money going, where
6 could I find it in the operating statement?

7 The machines, specifically the candy machine,
8 the cigarette machine, the pop machine out on the

23 A Well, I was taking the shortage, the difference
24 between those numbers and the needed 42,000. And
25 again without checking the math, because it looks

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1 like I was dealing with very rough numbers, that I
2 would be short 15 to 17,000 per month times those
3 four months.

4 So in the summer I would need 60 to \$65,000 to
5 come up to zero on those revenues, plus, of course,
6 any cost of goods sold that were not even thrown in
7 there.

8 Q So in contemplating this deal, what did that tell
9 you?

10 A Well, that told me that I wanted to make sure I got
11 it at the beginning of the season. I didn't want to
12 buy this in the summertime and start with a hole,
13 start with a negative. I wanted to get all the cash
14 flow that was necessary. I suppose by the word
15 "profits," we're talking about cash flow, get all the
16 cash flow, get all the cash in the bank, so that when
17 the next summer rolled around, I would have the
18 resources generated, or at least as much of the
19 resources necessary, generated through the operation
20 of the business, to make it through the fall and
21 summer.

22 Q What's the difference between cash flow and profit?

23 A Well, cash flow is all the money that comes in less
24 all of the expenses that are out. Expenses are not a
25 tax number. It is the checks that are written. I

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1 think cash flow is appropriately defined as the
2 difference between current assets and your current
3 liabilities. That's working capital. So the amount
4 of cash that is generated after the payment of the
5 day-to-day expenses is the cash flow.

6 Profit, on the other hand, is a number that is
7 determined by taking noncash expenses, such as
8 depreciation and amortization, things of that nature.

9 Q So just because you have a month where you make
10 positive cash flow, if I'm understanding you
11 correctly, of \$10,000 doesn't necessarily mean you
12 made a profit of \$10,000?

13 A That's correct.

14 Q Now I'm going to ask you to look at Exhibits 127 and
15 128.

16 A (Witness complies.)

17 Q What is Exhibit 127?

18 A Exhibit 127 is a computer-generated amortization
19 schedule dated August 16, 1992, that effectively on
20 line, looks like 31, it states that the loan that I
21 was asking about would be \$250,000. You go up to the
22 second line down, where it says --

23 Q Wait a second. I better throw in my foundation here.

24 Is this a document you asked to have prepared?

25 A This is a document that I had prepared, yes.

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1 Q And why did you have this document prepared?

2 A I had this document prepared so that I could fill in
3 the blanks, as it were, in a draft of an agreement,
4 earnest money agreement, I'll refer to as the
5 agreement to purchase and lease that Grant and I had
6 been discussing.

7 Q And what does this document tell you?

8 A This document tells me that after I made the \$50,000
9 cash down payment on the purchase of the building, I
10 was going to have a note for \$250,000 payable to the

11 Pacific Lanes, Incorporated, and that that note, back
12 up at the top where it says "Nominal annual rate,"
13 would have an interest of seven-and-a-half percent,
14 and I was trying to derive at what would the payment
15 be to amortize this thing over ten years.

16 As it states on lines 32 and 33, the payments,
17 \$2967.54, were 119 months and then a balloon payment
18 of slightly greater than that of 2968.22. Those 120
19 payments would amortize \$250,000 at seven-and-a-half
20 percent, and so this became the basis for the
21 \$3,000-a-month payment, which was a rounded number to
22 purchase the business.

23 Q And what is Exhibit 128?

24 A Exhibit 128 is the same type of a document, but it is
25 dated August 23rd. I was relying on people that are

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1 much more literate than I when it comes to computers,
2 which is just about anybody.

3 And so from the 16th to the 23rd, the lady I had
4 do this took that time to generate the second
5 schedule for me, and so on August 23rd, I was given
6 an amortization schedule to show \$650,000 at
7 seven-and-a-half percent at \$6,000 a month for, in
8 this case it looks like it's going to take 15 years
9 to be fully amortized.

10 The significance of this document was it was
11 prepared so that I could determine where the balance
12 would be if I were paying for this, since the offer
13 that I was going to make was that I would pay
14 \$6,000-a-month lease payments to the
15 Hoffman-Stevenson corporation that owned the real
16 estate, and that I wanted the option to purchase the
17 property, but that under any circumstances I would do
18 it within ten years.

19 So if you go down to payment 24, which would
20 have been in 1994, I guess, August 23rd, 1994, after
21 that the balance would be \$599,099.49.

22 So in the earnest money document you will see
23 that the option price at the end of the two years was
24 \$600,000, and that's where that number was generated
25 from. So it's as if I were getting benefit of the

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1 principal portion, roughly \$2,000 a month, of the
2 payment, should I purchase it. If I didn't purchase
3 it, then I wouldn't get any benefit of the bargain.

4 Q All right. At this point, in late August, had you
5 and Judge Anderson began to arrive at what the terms
6 of the deal would be?

7 A My recollection is that I arrived at the terms, what
8 I was willing to do, in concept in June or July, and
9 Grant was involved in the political process of the
10 election and so on and so forth. We had an agreement
11 in principal, but it wasn't until August that the
12 agreement was ever reduced to writing between the two
13 of us.

14 Q What was the price going to be?

15 A I believe the price had been established overall at a
16 million dollars. I made an allocation to pay no more
17 than 300,000 for the blue sky, so to speak, the right
18 to purchase it, the business assets, the goodwill and
19 equipment there was, and the Pacific Lanes,
20 Incorporated, corporation.

21 There was part of the assets that looked
22 like the physical assets were carried in the
23 Hoffman-Stevenson corporation, which was really the
24 real estate, but some of the equipment had found its

25 way on their books, which made no sense to me.

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1 Q So let me back up. A million dollars to purchase
2 this business?

3 A A million dollars to purchase the whole package, yes.

4 Q Which included the land and the building?

5 A The land and the building, 700,000; the business and
6 the equipment, the tables, chairs, salt and pepper
7 shakers, that type of stuff, for 300,000.

8 Q And the business name?

9 A The business name was something that was important to
10 me. I didn't want the corporation name, because I
11 knew Chuck Hoffman and I didn't want the unknown
12 undisclosed liabilities. It was kind of a nightmare,
13 that one would never know what they were until it was
14 too late to do anything about it. But I did want the
15 name. The name Pacific Lanes was important to me.

16 JUDGE BROWN: The court reporter needs a
17 recess. We'll be in recess.

18 (RECESS TAKEN.)

19 Q (Continuing by Mr. Bulmer) Before the break I
20 believe we were discussing the deal, so to speak, as
21 to at least what you were buying and weren't buying.
22 Could you explain the structure of the purchase?

23 A Well, the structure of the purchase was that I would
24 pay, if I purchased everything, a million dollars,
25 plus, of course, the appropriate interest. And the

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1 way I would do that was really my input into this.
2 And as Exhibit 18 shows, I was looking at the cash
3 flow, what could this business reasonably expect to
4 pay, and that was this \$10,000 number, using the very
5 basic numbers that I was using.

6 So it was going to be \$300,000 with \$50,000
7 down. I would lose that \$50,000. I would loan the
8 money to the corporation. There would be no personal
9 liability other than the fact that I would loan
10 \$50,000 to the corporation. The corporation would
11 use that \$50,000 as the down payment, bringing the
12 balance down to \$250,000, and then I would make a
13 \$3,000-a-month payment for ten years at
14 seven-and-a-half percent.

15 The balance of the million dollars was 700,000,
16 and I would pay \$50,000, again loaning it to the
17 corporation. The corporation would then pay it to,
18 in this case, Hoffman-Stevenson, Incorporated, the
19 corporation that owned the real estate, as a
20 nonrefundable option. In other words, I would buy an
21 option; I would pay \$50,000.

22 So I would have a total investment from the
23 corporation to the estate's two corporations of
24 \$100,000. That option amount would be applicable to
25 the \$700,000 purchase price should I ever exercise

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1 the option or in any other way buy the property. But
2 it would not be refundable should I never buy it.

3 And then I have a ten-year lease, if I recall.
4 That was my intent, to have ten years, so that in ten
5 years I would either own the real estate -- I
6 wouldn't own the real estate, I definitely would own
7 the business by that time -- but I would pay \$6,000 a
8 month triple net, which means that I would pay \$6,000
9 a month to the estate, or in this case to the
10 corporation.

11 All of the other expenses relative to the
12 ownership of the property complete would be mine

13 also. I would pay the taxes; I would pay the
14 insurance; I would pay the maintenance, things that
15 sometimes are not covered in the lease and remain
16 with the landlord.

17 It was important to Grant Anderson as a
18 representative of the corporation that they be
19 through with the expense of the thing, know exactly
20 what they were going to get, and the intent was that
21 they would get \$6,000 a month.

22 Q And have no expenses to offset that?

23 A And have no expenses relative to the ownership of the
24 real estate costs.

25 Q They wouldn't have the landlord expenses. If they

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1 sprung a leak, who would pay for the roof?

2 A Maintenance repairs were all mine, so I bought the
3 building from that standpoint.

4 Q If the parking lot needed to be repaved, you'd pay
5 for that?

6 A You're hitting all of them.

7 Q Okay. Now, from your point of view, then, you were
8 putting \$100,000 in; is that correct?

9 A I was going to loan the corporation \$100,000 and in
10 fact did loan the corporation \$100,000, my
11 corporation, Pacific Rec. Pacific Rec would then
12 spend that \$100,000, \$50,000 down on the business and
13 \$50,000 for the purchase of an option.

14 Q What did you consider your personal financial
15 exposure?

16 A I considered my personal financial exposure to be
17 what I loaned that corporation. That was very
18 important to me, that I at least nominally was
19 limiting my downside, my exposure. Because these
20 were corporate obligations, they were not being
21 guaranteed by me.

22 So I would loan the corporation what money it
23 needed, which is consistent with what I do with my
24 other businesses. I capitalize them relatively
25 nominally, if there is such a word, and then loan the

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1 corporation the money so that if and when the money
2 is available within the corporation, it can be paid
3 back as a loan, and loan payments are not taxable,
4 whereas dividends would be.

5 Q Where did the million-dollar number come from?

6 A I believe the judge, who was just Grant at the
7 time -- I have a rough time thinking of him that
8 way -- I believe he established that number, that
9 that was a minimum dollar amount, could I work within
10 that number.

11 Q Did you think that was a good price?

12 A I don't think I thought about the price at all. The
13 question is, did I think I could afford to pay for it
14 over the period of time that I was willing to commit
15 myself, and thus Exhibit 18 and that type of thought
16 process.

17 You know, it's the payment. I think a lot of
18 times a lot of us in this society look at that.
19 It's not what I'm going to pay for the car, it's
20 do I pay \$200 a month. We don't think about whether
21 it's two years, five years or ten years.

22 Q We're still at the due-diligence steps, as I refer to
23 them, of putting stuff together to define the deal.

24 Did you take other steps, begin to contact licensing
25 people, that sort of thing?

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1 A Yes. During the late summer of 1992, I did contact
2 the licensing establishments. I inquired as to the
3 city as to what I had to do; I inquired as to the
4 gambling commission with their local representatives;
5 and same with the liquor board. They were processing
6 applications at the field level at that time, so I
7 made contact with the local liquor agent that was
8 assigned to Pacific Lanes at that time.

9 Q Mr. Taylor seemed to indicate repeatedly that none of
10 the documentation apparently went in until sometime
11 in late September. Was that your first contact with
12 these agencies?

13 A No, that wasn't.

14 Q What steps were you taking before you sent those
15 applications?

16 A Well, I had to (1) inquire as to what was required.
17 I came from a regulated industry, the banking
18 business, and so I was aware that there was
19 regulation involved.

20 There was no one on staff that could assist me
21 with those regulations, because these things were all
22 established outside of their realm of influence. So
23 I had contacted, like I say, the local liquor
24 representative, who told me what I must do: I must
25 fill out applications, due detail, and he gave me the

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1 forms.

2 I passed those forms on to my accountant that I
3 was hiring at the time to prepare these forms, and
4 keeping in mind that that is my style, that I buy the
5 expertise of people that do things for a living, so I
6 hired the accountant to fill in the accounting
7 information, to fill in the blanks. That's a
8 Mr. Michael Favres, and he had those forms in the
9 month of maybe July or August.

10 I had inquired in the middle of August of
11 Mr. Schafer to form the corporation that was going to
12 be necessary since I wanted to deal from a corporate
13 limited liability, and he began his engagement. He
14 formed that corporation.

15 Q Who is Mr. Schafer?

16 A Mr. Schafer is an attorney that I engaged to form the
17 corporation.

18 Q Pacific Recreation?

19 A Pacific Recreation.

20 Q When approximately did you approach him?

21 A Sometime in the middle of August. I approached him
22 after I had what I considered to be the deal made
23 with Grant Anderson. I approached him saying, "Okay,
24 it's now time to form the corporation." As I recall,
25 we spent a few moments together and I told him the --

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1 Q I want to caution you not to get into conversations
2 you actually had with him. I didn't ask that, and I
3 know your attorney wanted to preserve your privilege
4 in that area, so --

5 A Okay.

6 Q But you went to Mr. Schafer. It's not within the
7 privilege as to what the purpose was. You went to
8 Mr. Schafer for what purpose?

9 A I went to Mr. Schafer strictly for the purpose of
10 forming the corporation.

11 Q And in the process of that, did you give him some
12 documents?

13 A I didn't recall that I did, but I discovered that
14 later.

15 Q Let's get into that now, then. When did it come back
16 that -- you said you'd struck the deal basically in
17 the spring, I think, or in the early summer. It got
18 reduced to paper approximately when, do you think?
19 A Well, I believe Grant and I met on a number of
20 occasions in July and early August to memorialize the
21 understanding. It probably started on the back of a
22 yellow pad or a napkin over lunch or breakfast. He
23 took it to his office and came forth with a
24 preliminary document.

25 Q I've handed you a document which has been marked

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1 preliminarily as Exhibit 19. Can you identify that
2 document?

3 A Yes. That is the draft, as it were, of the business
4 acquisition and lease agreement.

5 Q Do you recognize that to be so?

6 A Yeah.

7 MR. BULMER: Move for its admission.

8 MR. TAYLOR: The only issue I have is
9 there's handwriting that appears throughout the
10 document. I'm not sure whose handwriting that is.

11 MR. BULMER: Let's cover that now so that
12 everyone -- well, I think the commission -- because
13 if they don't have their copies, they won't know what
14 he's talking about.

15 MR. TAYLOR: Maybe we could just
16 establish whose handwriting it is.

17 Q (Continuing by Mr. Bulmer) Do you have proposed
18 Exhibit 19 before you?

19 A Yes, I do.

20 Q And you see there's handwriting on it. Let's
21 eliminate the squiggles in the corner that crosses
22 off an exhibit from a deposition, and I will just
23 purport to the commission that was a CJC hearing.
24 Exhibit 19 is my writing.

25 Now, other than that, can you identify the

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1 handwriting on this document?

2 A Well, the majority of the handwriting is mine.

3 Q Which handwriting is not yours?

4 A Outside of what you referred to, page 2,
5 paragraph 12, looks like the word "Hamilton" is not
6 in my handwriting. Page 3, under paragraph C, the
7 writing is not my handwriting.

8 Other than that, it looks like the handwriting
9 is mine.

10 MR. TAYLOR: No objection.

11 JUDGE BROWN: 19 is admitted.

12 Q Did you originally give this document to Mr. Schafer?

13 A Yes, I did.

14 Q Did you have a copy in your own files?

15 A No, I didn't.

16 Q Did you provide a copy of this document to the
17 Commission on Judicial Conduct?

18 A No, I didn't.

19 Q Have you seen this document before today, recently?

20 A Yes, I have.

21 Q Where did you get it?

22 A When I went to Mr. Schafer's office to retrieve my
23 file regarding this between depositions for the
24 commission, I found it in his file, or my file in his
25 office.

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1 Q Let's talk about some of the handwriting on here.

2 Paragraph 3 says a nonrefundable option deposit of,

3 it looks like, 15. That's your handwriting?
4 A That's my handwriting.
5 Q What does that reflect?
6 A This document was the premise of the deal with the
7 numbers not filled in. Down at the bottom it looks
8 like it was prepared August 6th, 1992. That looks
9 like something that would come out of Grant's legal
10 office; possibly his secretary prepared it that way
11 on that date. At least that's what it means to me.
12 And that's my recollection, that it was prepared
13 sometime early in August as a result of informal
14 notes taken in a conversation.
15 It reflects that I would make -- these are me
16 putting these numbers down saying I will make a
17 \$50,000 nonrefundable option deposit on the property.
18 Q Okay. Turn to page 2 of the exhibit, paragraph 9.
19 A Paragraph 9, I assume you're referring to (b), where
20 I wrote --
21 Q Yes. Is that your handwriting?
22 A That's my handwriting.
23 "-- Hamilton shall pay Pacific \$50,000 in cash,"
24 referring to the business now, because Pacific owned
25 the business, against a purchase price of 300,000,

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1 balance of 250, payable as follows.
2 "As follows" would then bring me to the exhibit
3 that talks about the amortization of \$3,000 a month.
4 I didn't know what the "as follows" was, because on
5 this date that we discussed, the amortization
6 schedule had yet to be produced.
7 Q Turning to page 3, paragraph 13(a), do you know whose
8 scratch-outs those are?
9 A I believe Grant scratched those out in conversation
10 with me.
11 Q You already testified that the language in paragraph
12 (c) is Mr. Anderson's?
13 A That's correct.
14 Q In paragraph (e), there is a scratch-out. Would you
15 read paragraph (e), please, as it was originally
16 drafted?
17 A It says that, "This matter shall be closed as soon as
18 reasonably possible, but no later than September 30,
19 1992."
20 Q And "30" has been scratched out?
21 A "30" has been scratched out and "1" has been
22 inserted.
23 Q This is a photocopy, so it's kind of hard to see. So
24 the "1" is just before the little comma?
25 A No, the "1" is between the "r" and the "30". That

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1 isn't a comma, I don't believe. Maybe it is. I
2 guess it is a comma.
3 Q There's a "1" above that?
4 A Yeah, there's a "1".
5 Q Did you make that change?
6 A I made that change.
7 Q Why did you make that change?
8 A Because it was critically important to me by that
9 time that I -- the deal was, and that's why I
10 produced this, that I wanted the cash flow from the
11 first, the first of the season, which is the first of
12 the month. The season begins the day after Labor
13 Day.
14 Q So would the deal have been acceptable to you if it
15 had remained September 30?
16 A I would not have paid what I paid had it been on

17 September 30. I would have to rethink my position.
18 I thought my position based on the entire season.
19 Q Turn to Exhibit 20, then.
20 A (Witness complies.)
21 Q Exhibit 20 is another version of Exhibit 19?
22 A I believe Exhibit 20 is the typewritten
23 memorialization of handwritten notes that I made and
24 that Grant had elsewhere, because this is the
25 agreement.

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1 Q It's dated August 26, 1992?
2 A I dated it August 26th, which was the date we signed
3 it.
4 Q Up in the upper left-hand corner are the words
5 "Draft." Do you see that?
6 A Yes.
7 Q When were those put there?
8 A I put the word "Draft" there when I was photocopying
9 this for the commission's subpoena in January 1997.
10 Q Why did you do that?
11 A Well, because I noticed that I had two agreements. I
12 had this exhibit and I had Exhibit 21 in my files. I
13 knew that there had been a draft, and Mr. Taylor's
14 subpoena prompted me to submit all drafts. I'm going
15 back into files of five years ago trying to conjure
16 whatever I can find.

17 I did this hurriedly. I was under the
18 impression, as I prepared for that deposition, that
19 there was just a misunderstanding and that I needed
20 to go forth and explain the obvious, I guess to me,
21 or what I knew to be the deal.

22 And so I hurriedly put this information together
23 for the commission subpoena, and I remember that I
24 knew there was a draft, so as I'm copying it, as I
25 look at Exhibits 20 and 21, superficially they look

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1 identical, and in the middle of the night standing at
2 a copy machine, they were identical to me.

3 So I knew there had been a draft. I saw my
4 handwritten notes on Exhibit 20, presumed that was
5 the draft, made a note to myself that this was
6 probably the draft.

7 Q At the time you were appearing for your deposition,
8 the first deposition with the commission, did you
9 have a copy of Exhibit 19?

10 A No, I did not.

11 Q Now let's look at Exhibit 20 and look at some of the
12 differences, then, that are between Exhibit 19 and
13 Exhibit 20.

14 Turn your attentions to the first paragraph.
15 No, I'm sorry, turn to paragraph 4. Is that your
16 handwriting in Exhibit 20 reflecting the numbers?

17 A That's correct.

18 Q Are those numbers the numbers, then, which you
19 extrapolated from the amortization tables which we
20 discussed here earlier today?

21 A That's correct.

22 Q And so when you gave the example about the \$600,000,
23 is that \$600,000 you were referring to in September?

24 A That's right, and that was, after two years' worth of
25 payments, what would the balance on that \$650,000

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1 amortization be, and I rounded it to these numbers.

2 Q Turn to paragraph 9(b) on Exhibit 20.

3 A (Witness complies.)

4 Q Does that then include the -- you testified as to

5 Exhibit 19 that there was going to be an "as
6 follows," and does that now reflect the "as follows"?
7 A Yes. The "as follows" would be \$250,000 over ten
8 years. The "as follows" would be the \$3,000 a month
9 at seven-and-a-half percent.
10 Q And also the figure includes 30,000 for the goodwill
11 at Pacific Lanes?
12 A That was a discussion for allocation purposes of what
13 it was that I was buying.
14 Q On Exhibit 20, turning to paragraph 13, paragraph 13
15 is an additional paragraph; is that correct?
16 A Yes.
17 Q Are these requirements which needed to be met from
18 your point of view as to whether the deal would go
19 through?
20 A Yes. Before Pacific Recreation Enterprises,
21 Incorporated, would purchase or I would purchase as
22 an individual -- at this point I signed this as an
23 individual because the corporation had yet to be
24 formed -- I wanted to make sure that I could operate,
25 and it was very material that these contingencies be

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1 met.
2 Q And paragraph (a) includes just the transfer of the
3 state and local gambling permits?
4 A Successful transfer of all state and local permits,
5 meaning we're in the city of Tacoma, so there were
6 occupancy permits and things, specifically including
7 the gambling license and the liquor license.
8 Q If you could not get the gambling license or the
9 liquor -- well, let me back up.
10 In the bowling alley business, how important are
11 the gambling license and the liquor license?
12 A Bowling makes up about 20 to 25 percent of the
13 revenues of this bowling center, so the balance of
14 those revenues or the vast majority come from the
15 gambling, liquor, food, other services.
16 Q In your opinion could you have operated a successful
17 bowling alley without the gambling or liquor
18 licenses?
19 A No.
20 Q And in paragraph 13(d), it would appear to reflect
21 that the date has now been changed to September 1st,
22 1992?
23 A That's correct.
24 Q What does that paragraph mean to you, 13(d)?
25 A What September 1st meant to me was that September 1st

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1 was the "as of" date that was material to me, that if
2 I was going to pay \$300,000 for the business, that I
3 have possession of it, that the figures that the
4 revenue had to be for the benefit of the purchaser,
5 in this case me, from September 1st on.
6 Q You signed this August 26th, 1992, correct?
7 A That's correct.
8 Q Was it feasible realistically that this matter would
9 actually close by September 1st, 1992?
10 A No, it wasn't feasible, and that's why I'm sure --
11 the way Grant explained it to me, that's why they put
12 September 30 in the draft, because it wasn't
13 reasonable, but it was reasonable to me that I wanted
14 the revenues, so that's what that paragraph meant.
15 It just wasn't drafted very carefully, is the way I
16 look at it.
17 Q I want to turn your attention now to Exhibit 21.
18 That's a subsequent iteration of the business and

19 acquisition lease agreement?
20 A Yes, it is.
21 Q Dated September 19?
22 A It's dated September 19.
23 Q How did that agreement come about?
24 A My best recollection is that after I was preparing
25 for the submission of the documents as prepared by

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1 Mr. Favres at my direction, I had discussed the
2 previous document, No. 20, with the various
3 regulatory agencies, or at least the liquor agency.

4 I do recall their representative,
5 Mr. Norman Cothorn, and he indicated to me after
6 looking at 20 that it was critically important for
7 their benefit that I make up my mind, am I a
8 corporation or am I an individual.

9 My recollection is that in my world, which dealt
10 with businesses and real estate as an example, where
11 earnest money agreements are readily assignable, it
12 was no big thing to put "William Hamilton for a
13 corporation to be formed." In the world of these
14 agencies, it was critically important to them that
15 they investigate the entity that was going to do the
16 business.

17 So he sent me home to clean it up, so to speak.
18 I had a document dated August 26th. The corporation,
19 from my knowledge, was just being formed. I was not
20 even certain on August 26th that it had been formed,
21 and after I was sent home to get the document, this
22 is the next edition of that same document retitled as
23 "Agreement between Pacific Recreation Enterprises,"
24 and then it goes on to say "a corporation to be
25 formed," which is extraneous.

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1 But all through this document, every place that
2 it used to say Hamilton, it now says Pacific
3 Recreation. That was the purpose of this document,
4 was for the regulatory authorities.

5 JUDGE BROWN: We will take a brief recess
6 at this point.

(RECESS TAKEN.)

8 JUDGE BROWN: Thank you.

9 At this time the Commission on Judicial Conduct
10 is joined by an additional member. If you would
11 stand and identify yourself, please.

12 MS. REYNOLDS: I'm Nora Reynolds.

13 JUDGE BROWN: And you're a lay member of
14 the commission; is that right?

15 MS. REYNOLDS: Right, and I'm an
16 alternate.

17 Q (Continuing by Mr. Bulmer) Before the break we were
18 discussing Exhibit 21, I believe, Mr. Hamilton.

19 A I'm there.

20 Q So you were describing one of the differences between
21 Exhibit 20 and 21 was the insertion of the now-formed
22 corporation Pacific Recreation Enterprises?

23 A That was the intent of drafting the agreement, was to
24 clean up that portion of it.

25 Q Turn to page 3 of Exhibit 21.

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1 A (Witness complies.)

2 Q Paragraph 13(d).

3 A I see that.

4 Q And that paragraph provides "That this matter shall
5 be closed as soon as reasonably possible on the first
6 of the month following the receipt of all approvals";

7 is that correct?
8 A That's what it says.
9 Q Why was that change made?
10 A Well, I don't recall that it necessarily needed to be
11 changed, but that the transaction obviously had gone
12 past September 1st, and I didn't want to delay it any
13 further should that be discovered as now we're past
14 the closing date, now we have to go back and do it
15 again, because there's weeks involved as these
16 documents are discussed at the regulatory level for
17 communication.

18 So since we'd passed September 1st, we'd already
19 made the deal, we knew that September 1st was the
20 relevant "as of" date, so let's make this open-ended,
21 because we don't know how long this process is going
22 to take, whether it's going to take days or weeks or
23 months.

24 I had no inkling that it would take as long as
25 it did, because here I was a chief executive of a

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1 bank, I had been -- you know, my net worth is on the
2 readerboard, I'm part of a disclosure process. The
3 state agencies -- I assumed the state had access to
4 other agency information. I had been a banker
5 submitting my financial information to the state
6 agencies and been subject to their scrutiny since I
7 was 26 years old, so I figured that there wasn't
8 anything they really needed to know about me. They
9 knew my criminal history, they knew everything about
10 me.

11 Q You didn't have a criminal history, did you?

12 A No, I didn't. That was a form that was filled out.

(LAUGHTER.)

14 Q You scare a lawyer when you say something like that.

15 Okay, I wanted to make sure. They knew you
16 didn't have a criminal history?

17 A They knew I didn't have a criminal history.

18 Q All right. Now, you testified in your mind it was as
19 of September 1st was how the accounting was going to
20 work out; is that correct?

21 A That's correct.

22 Q Did you have any fear, by putting in a paragraph like
23 this, that the agreement that you believe was in your
24 mind was somehow going to be reneged on by
25 Mr. Anderson?

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1 A No. I had my reason to believe that. Mr. Anderson
2 and I had known one another for many, many years.
3 He's an honorable person, I'm an honorable person.
4 That's the way business is done. If you try to
5 presume every possibility, no business would ever be
6 done.

7 The reality is, you memorialize your intents to
8 the best of possibility, to the best of your ability,
9 and you move forward with that. And, in fact, that's
10 what we did and that's what happened, and I had no
11 reason to think anything to the contrary.

12 Q I'd ask you to turn to Exhibit 27, please.

13 A I'm there.

14 Q Exhibit 27 is a lease agreement showing a term
15 starting December 1st and signed by you and
16 Mr. Anderson apparently on November 6th, 1992?

17 A That's the date of the notarization of my signature,
18 yes.

19 Q Why was this document executed?

20 A My recollection is this document was a requirement of

21 one of the regulatory agencies. I don't recall which
22 one. Possibly the gambling agency. You enter into
23 an earnest money agreement, which are subject to the
24 previous exhibits, that say that the whole deal is
25 subject to the approval of these agencies. Then you

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1 get communication from the agencies that say that,
2 "We tentatively will approve this as soon as you
3 enter into and provide us copies of the closing
4 documents."

5 One of those closing documents would be the
6 lease, so they ask for the lease. The lease was
7 contingent, by virtue of the earnest money agreement,
8 on the approval of the licenses, so we entered into
9 this apparently in response to an inquiry from the
10 gambling commission, if I remember correctly.

11 Q Okay. When did you get approval, then?

12 A I believe the approval from the gambling commission,
13 what I considered to be their approval, was
14 forthcoming very quickly after the submission of this
15 last document. They then sent me a letter. To my
16 recollection it said, "Okay, we are now prepared to
17 issue a license. Now send us a copy of the closing
18 documents, then we will issue the license."

19 The liquor board, which the investigator had
20 told me that he had done his investigation, I mean,
21 immediately, so by the first part of October, he was
22 ready to go, and he was going through his motions, so
23 I then contacted him and said, "Okay, I'm ready to go
24 now with the gambling commission. Where's the liquor
25 board approval?"

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1 And that started that hurry-up process, and we
2 determined what was holding that up, and that
3 ultimately came later.

4 Q Handing you what's been marked Exhibit 16, what is
5 Exhibit 16, please?

6 A Exhibit 16 is a communication, it's a temporary
7 permit from the Washington State Liquor Control Board
8 issued December 4th, 1992.

9 Q Do you recognize that document?

10 A I do.

11 Q Where did you see it first?

12 A I believe I was given this by Norman Cothorn the day
13 that it became available, the morning of the 4th of
14 December is my recollection.

15 MR. BULMER: Ask for admission of
16 Exhibit 16.

17 MR. TAYLOR: No objection.

18 JUDGE BROWN: It will be admitted.

19 Q (Continuing by Mr. Bulmer) Disregard the facts line
20 at the top, which obviously is contemporaneous. You
21 picked this up, you believe, on the morning of
22 December 4th?

23 A That's my recollection, is I picked this up directly
24 from Norman Cothorn.

25 Q Where would you have done that?

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1 A In his office in Tacoma.

2 Q Then what did you do on the 4th?

3 A I went immediately to the law offices of Grant
4 Anderson and wrote two \$50,000 checks and closed the
5 transaction.

6 Q Prior to getting Exhibit 16, could you have closed
7 the transaction?

8 A I didn't believe I had received all of my approvals

9 until I had received this document.
10 Q The exhibits we were just looking at before, the
11 purchase and acquisition agreement, 21, I believe,
12 was the one with sort of the open-ended closing
13 paragraph in it, correct?
14 A That's correct.
15 Q Under that, what would your understanding have been
16 as to when the matter would have closed if that
17 agreement had been followed?
18 A If we'd followed that agreement to the letter, we
19 wouldn't have closed until the first of the month
20 following the receipt of this approval, which would
21 have put it at January 1st, 1993.
22 Q Did you follow that agreement?
23 A No, we didn't.
24 Q Why not?
25 A We had an understanding we would close as soon as

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1 possible. The effective financial date was
2 September 1st. When it officially closed was
3 irrelevant in our minds, or at least in my mind. It
4 could have closed at any time, whenever the approvals
5 were received. I don't believe I ever even looked
6 back at this agreement ever again, until recently, of
7 course.
8 Q During the period of time from September through the
9 end of December, then, what was your management role
10 at the bowling alley?
11 A My management role at the bowling alley was then and
12 is the same today. I generally make myself available
13 to the day-to-day management. At that time it was
14 Mrs. Pagni and her daughter. Now it is my son and
15 the staff. I make myself available to them on a
16 frequent basis should they have questions.
17 I review financial information. By that, I'm
18 talking about the financial statements and operating
19 statements. I have spent the majority of my time in
20 the capital expenditures, repairs, maintenance,
21 facilities, things of that nature that I consider
22 within the realm of my expertise, since it's my
23 money, and they have a lot of zeros behind those
24 dollars.

25 The day-to-day management of counting the pull
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1 tabs and buying the food and the liquor and training
2 the staff and polishing the balls are not anything
3 that I know anything about, and I depend on the
4 people that work there. There's over 40 full-time
5 staff in this organization. It runs all but two days
6 out of the year from 8:00 in the morning until 2:00
7 in the morning.
8 Q Has your role, management role, in the bowling alley
9 changed appreciably after December 4th or after
10 January 30th of 1992?
11 A No, it didn't.
12 Q When you signed the formal closing papers on
13 December 4th, 1992, did you and Grant Anderson have
14 an agreement to adjust the price of the sale of the
15 bowling alley in exchange -- to account for the cash
16 flow differential?
17 A No, we didn't.
18 Q What was your expectation as to how the cash flow
19 differential would be accounted?
20 A My expectation was that the money would be domiciled
21 in the account of Pacific Lanes, Incorporated. Since
22 we were so close to the end of the year and we

23 obviously had passed September 1st, there would be
24 some money left over out of the normal day-to-day
25 operation.

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1 It was my expectation, as I testified to
2 Mr. Taylor, that there would be cash flow available
3 as of the end of whenever, after September 1st. So
4 since we were so close to -- their calendar year-end,
5 their accounting year-end, is December 31st, whereas
6 my accounting year began December 1st. That was the
7 fiscal year selected for my corporation from the very
8 beginning. It runs from September 1st to August 30th
9 of each year.

10 So since we had to make an adjustment from
11 September 1st to December 4th, why not make that
12 adjustment to December 31st, let them complete their
13 books, rather than stop in the middle of an afternoon
14 and start operating out of new accounts, out of new
15 gambling reports, out of new checking accounts,
16 things of that nature.

17 So I expected that sometime after December 31st,
18 the accountant would come to me and say, "Pacific
19 Lanes has in their account this amount of money that
20 belongs to Pacific Rec for that period of time of
21 operation," and that the appropriate people for the
22 estate would then authorize a check be written to
23 Pacific Recreation.

24 There was no reason to contemplate an
25 adjustment. I thought the cash would be there. I

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1 certainly hadn't taken it out.

2 Q Did you learn that the cash wasn't there?

3 A Eventually, yes.

4 Q When do you think you learned that?

5 A Oh, my recollection is when Mr. Iverson, the
6 accountant for the operation, produced these
7 adjustments, I think he called them -- they became
8 the adjustments, but the middle of February 1993,
9 probably, there was a document produced that said,
10 "This is the amount of money that is no longer
11 available."

12 Q Well, you knew before that that some sort of
13 adjustment was going to have to be made?

14 A Well, I knew that the adjustment would be made. I
15 knew that the money was owed my corporation. I don't
16 recall how soon after the first of the year I learned
17 that the money would not be available.

18 Q I'd ask you to turn to Exhibit 60.

19 A I'm there.

20 Q What is Exhibit 60, please?

21 A Exhibit 60 is a document prepared by Kevin Iverson,
22 the CPA, faxed to me on February 16th, to my fax
23 number.

24 Q That's your fax number at the back, where it says --

25 A 588-3503 was my fax number at the time.

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1 And this is purported to be the adjustments
2 needed to adjust the cash flow from September 1st to
3 December 31st, and it's so stated.

4 Q When was the first time you saw this document?

5 A The best of my recollection was on February 16th,
6 1993.

7 Q Did you have anything to do with the initial drafting
8 of this document?

9 A No, I didn't.

10 Q Did you come up with any of the vocabulary or words

11 that are used on this document?
12 A No, I didn't.
13 Q Were those provided to you by someone else?
14 A This document appeared in my fax machine directly
15 from the accountant. There's his numbers, they're
16 his words.
17 Q The top entry says, "Pacific Lanes purchase price
18 adjustment per discussions with Grant Anderson and
19 Bill Hamilton." Did you have anything to do with the
20 creation of that verbiage?
21 A No, I did not.
22 Q Did you have discussions with Mr. Iverson about
23 purchase price adjustments prior to this day?
24 A I don't believe so.
25 Q Did you have discussions with him about any sort of

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1 adjustments which needed to be made?
2 A No.
3 Q Did you have discussions with him about the need to
4 make adjustments for cash flow?
5 A No.
6 Q When do you think you first -- did you have
7 discussions with anybody about the need to make
8 adjustments?
9 A Before this time, I don't recall.
10 Q Looking down at the middle of the language, there's a
11 line that says, "Original purchase price" and "Really
12 took possession January 1st, 1993." The next line
13 is, "Need to adjust for cash flow from September 1st
14 to December 31st."
15 Do you see that line?
16 A I do.
17 Q Does that reflect your understanding of what this
18 document was intended to do?
19 A That's correct.
20 Q That wasn't the final document, though, was it?
21 A No. There were several editions of this document.
22 Q Look at Exhibit 30.
23 A (Witness complies.)
24 Q Do you have that?
25 A I have that.

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1 Q What is Exhibit 30?
2 A It's another edition of the same document with some
3 additions. Looks like it's longer. There's some
4 handwriting on it.
5 Q Is any of the handwriting yours?
6 A None of the handwriting is mine.
7 Q Have you had an opportunity previous to this to
8 examine Exhibit 60 and Exhibit 30?
9 A Yes, I have.
10 Q From your perspective, when the adjustments are
11 finished on this matter, as it's reflected on these
12 sheets, are you better off or worse off with the
13 later?
14 A What Exhibit 30 tells me is that there is more money
15 missing from my operation than the previous exhibit
16 reflects.
17 Q Do you know what happened as a result of -- were you
18 at a meeting on March 9th, 1993, with Mr. Iverson and
19 Mr. Anderson and Mr. Fisher?
20 A I don't specifically recall being at a meeting on
21 March 9th, 1993, but I very possibly could have been.
22 Q Did you agree to a purchase price adjustment of the
23 property?
24 A I agreed to accept a reduction in the amount of money

25 I owed the estate for the money that was not

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1 available in the checking account from September 1st
2 to well into 1993.

3 Q Is that your understanding of what was meant by a
4 purchase price adjustment?

5 A That's my understanding of purchase price adjustment,
6 yes.

7 Q Did you tell Mr. Iverson at any time that you needed
8 to find -- that there needed to be a specific number
9 to be applied for the adjustments?

10 A Mr. Iverson created these numbers. I didn't tell him
11 anything. He told me.

12 Q Would you have accepted whatever they were?

13 A I would have accepted whatever he told me. I had no
14 way of determining anything to the contrary.

15 Q So if they had been higher, you would have taken a
16 higher number?

17 A I would have taken a higher number.

18 Q If they had been lower, you would have taken a lower
19 number?

20 A Very much so.

21 Q At that point, whenever whatever adjustments were
22 made were made, did that wrap up the initial round of
23 buying of the bowling alley operation?

24 A My recollection is on March 9th, or with the date of
25 this document, this was the final adjustment to be

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1 made when I purchased the business, the \$300,000 part
2 of the transaction, yes.

3 Q How much did you pay as of March 9th, had you paid,
4 on the \$300,000 part of the transaction?

5 A Well, according to this, I had paid the difference
6 between \$300,000 and roughly \$125,000. I believe if
7 you follow the math here, it's -- what it means to me
8 is there was a \$300,000 purchase price. There was a
9 tentative purchase price adjustment of some 92,000
10 dollars. That was the amount of money that should
11 have been in the account from September 1st to
12 December 31st.

13 Since it was gone, I was given credit for that,
14 which brought the balance to \$207,000. Then I made a
15 \$50,000 cash down payment from my corporation to
16 Pacific Lanes, and then the bottom portion of it, the
17 31,000, were payments made out of my operating
18 account subsequent to January 1st, 1993.

19 The general staff management continued the same
20 practices out of my Pacific Recreation account that
21 they had out of the Pacific Lanes account prior to
22 December 31st, so there was an additional \$31,000
23 taken out of my account and paid for non-bowling-
24 alley-related expenses to the estate, which brought
25 the balance down to, it appears, \$125,513. So I paid

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1 all of the money, paid the entire 300,000, because
2 eventually I paid the loan off at 125,000.

3 Q During opening, this is the part where I said
4 everyone sort of glazes over, but I'd like to spend
5 just a minute or two going over it, because this is
6 numbers, so let's get going.

7 The starting price at the top is the 300,000
8 that you had agreed to pay, correct?

9 A That's correct.

10 Q And while there was a \$250,000 note out there, that
11 was the original price \$300,000?

12 A That's correct.

13 Q We get down here where it says, "Tentative purchase
14 price adjustment." We're skipping down through that
15 accounting process as to how Mr. Iverson got there.
16 And that's 92,829; is that correct?
17 A That's correct.
18 Q And what is your understanding again of what that
19 number represents?
20 A My understanding is that those are the funds, the
21 cash flow, that would have been in the account that
22 the estate would have written a check to me after
23 December 31st, 1992, which was the fall money.
24 Q Who would have had that money had you closed
25 September 1st, if you had actually taken possession

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1 September 1st?
2 A If my corporation had been approved and the
3 corporation had been in business, that \$92,829 would
4 have been in the account of Pacific Recreation
5 Enterprises.
6 Q And if that had occurred, would you have been
7 entitled to any sort of adjustment against the note
8 for that amount of money?
9 A No.
10 Q We come to the adjusted purchase price, based on
11 that, then, of 207. The next line down in the cash
12 down. That's the amount that you wrote on December
13 4th; is that correct?
14 A That's the check I wrote to Pacific Lanes,
15 Incorporated, on December 4th.
16 Q So that further would reduce, then, the amount that
17 you're going to owe by that 50,000?
18 A That's correct.
19 Q Then the next group of numbers, do those represent --
20 well, they say what they are, "Payment made by
21 Pacific Rec on behalf of Pacific Lanes," correct?
22 A That's correct.
23 Q And those are funds which your corporation, after
24 January 1st, paid but which were really Pacific
25 Lanes' bills; is that right?

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1 A That's correct.
2 Q If we had never had any other adjustment to this
3 matter, if we ignore everything above that line, what
4 would have been the obligation, to your
5 understanding, of Pacific Lanes to Pacific Recreation
6 for that \$31,000?
7 A Pacific Lanes, Incorporated --
8 Q Right.
9 A -- to distinguish between the bowling alley, their
10 corporation would have owed Pacific Recreation
11 \$31,658 for funds that were taken out of Pacific
12 Recreation's account to pay non-bowling-alley-related
13 expenses of the Pacific Lanes, Incorporated.
14 Q So that's an amount of money that -- if Pacific
15 Lanes, Incorporated, was cash flush, all right, let
16 me put it that way, what would you have expected to
17 happen to that \$31,000, plus or minus?
18 A Well, first of all, I wouldn't have expected it to be
19 taken in the first place. Notwithstanding that, I
20 would have expected, once the accountant derived at
21 the figure, that they would have written me a check
22 because they would have realized the error and I
23 would have had my \$31,658 back into the account right
24 along with the \$92,000, which would have been then
25 the funds, the cash flow, available to carry me

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1 through the entire 12-month season.
2 Q So, then, that number -- they didn't have the cash,
3 though, did they?
4 A Apparently not.
5 Q So that number was then applied as well against the
6 purchase price?
7 A Well, that -- yes.
8 Q And that bottom --
9 A The note was further reduced.
10 Q All right, the note was further reduced. And the
11 bottom number, then, "Amount owing," 125,513, who
12 owes that amount of money?
13 A Pacific Recreation Enterprises. That is the balance
14 of the \$250,000 note after those two adjustments, the
15 92 and the 31, are made, that Pacific Rec owes
16 Pacific Lanes, Inc., the balance of that money on
17 that quarter-of-a-million-dollar note.
18 Q When these adjustments were made, however, that
19 wasn't the end of your involvement of selling of the
20 bowling alley or the bowling alley assets to the
21 estate, was it?
22 A That wasn't the end of my involvement of buying the
23 assets of the bowling alley, no.
24 Q Who were you dealing with at this point? And we're
25 talking in March of '93.

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1 A In March of '93 my recollection is that I had been
2 dealing with the Fisher firm at that point, dealt
3 specifically with Stephen Fisher as the trustee, and
4 his staff.
5 Q Mr. Fisher was the trustee of the trust that had been
6 set up --
7 A That's what I understand.
8 Q -- when the estate was closed?
9 Ultimately, in the fall of 1993, you ended up
10 not exercising the option but rather buying the
11 property outright; is that a fair summary?
12 A That's correct.
13 Q How did that come about?
14 Don't take too long. Hit the high points.
15 A I don't know that there are any high points. There
16 are lots of points.
17 In the spring of 1993, late spring, April, it
18 became apparent to me that I was approaching the end
19 of the season, and my staff was telling me that we
20 were running out of money. I had made these
21 prepayments, in effect, so the summer money was gone.
22 I had made \$125,000 worth of reductions.
23 So looking forward to the fact that I was going
24 to have to now, in addition to putting in my original
25 contemplated hundred thousand dollars, I was going to

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1 have to put in a like amount, probably, to get
2 through the summer.
3 I had made some decisions structurally by that
4 time or physically in the bowling alley. We were
5 building a second cocktail lounge; I was painting the
6 building; we were buying some additional fixtures; I
7 had found it necessary to put in some additional
8 heating and air-conditioning equipment.
9 So I had been faced with ownership decisions.
10 The reality of ownership had come to me, and my lease
11 called for me to make those additions.
12 So the dollar amount had grown from a
13 contemplated original hundred, hundred and a quarter,
14 to two-and-a-half times that. That's what I was

15 looking at. That was more than my appetite, so to
16 speak, would have been on a short-term basis,
17 short-term meaning go to the bank and sign a note for
18 \$100,000 and try to figure out how I'm going to pay
19 it off in four to six months, since I knew the
20 bowling alley wasn't going to do that.

21 So I --

22 Q Do you need to take a break, Mr. Hamilton? Are you
23 okay?

24 A No, I'm fine. Thanks.

25 Q I interrupted your train of thought.

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1 A No, no, that's all right.

2 So I moved forward and started searching for
3 some term type financing, term meaning over a period
4 of time rather than possibly 90 days from now. And I
5 believe that's when I first thought about the fact
6 that maybe I would end up buying this real estate now
7 because I had chased my \$100,000 with an obligation
8 of well over that again, and, you know, you just
9 can't back out of that.

10 The money was in, so the idea of an option and
11 maybe backing out of this at some future point if it
12 didn't work right was no longer an option to me. I
13 had bought the place. I had bought the land, I had
14 bought the building, because I was chasing my money,
15 and I would have had to walk away from all of it, and
16 there was way too much money involved in it at that
17 time.

18 So I, I think, started looking for term
19 financing to work towards the purchase of the
20 property.

21 Q And then at some point did you discover that there
22 were structural problems with the building that you
23 had not anticipated?

24 A Well, that was later on. Again, in the summer of
25 1993, while we were going through the summer repairs

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1 and I was spending the money that I contemplated I
2 would spend and paying the payrolls and everything,
3 to add insult to injury, we discovered broken trusses
4 in the attic. And, again, that summer we closed the
5 building as an unsafe structure, and I spent another
6 high-five-figure unanticipated sum just to get the
7 bowling structure back open again for the fall
8 leagues.

9 Q And then in the fall did you go ahead then and
10 negotiate an agreement to buy the property?

11 A I believe by that time I had already discussed this
12 at some length with Mr. Fisher, and it would have
13 been in the summer -- I think I approached him
14 sometime during the summer -- with the concept that I
15 was contemplating this and would the trust be
16 amenable to the purchase price and could we discuss
17 terms.

18 Then while we were in those discussions, my
19 recollection is, we discovered the broken trusses in
20 what was still their building. So since it was their
21 building and I still could walk, I could still just
22 go away and they would possibly have some -- "they"
23 meaning the estate or the estate corporation, would
24 have some possible downstream liabilities for me for
25 nondisclosure of structural problems that they may or

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1 may not have been aware of.

2 I don't remember who wanted out of it worse,

3 whether I wanted in to chase my money or he wanted
4 out because of the liability, but the discussions
5 went about rather quickly then.
6 Q During those discussions, was Judge Anderson involved
7 in those discussions?
8 A No. Judge Anderson was conspicuously absent from
9 those discussions.
10 Q We're not going to get into the details of the
11 agreement, because we'll get into that when
12 Mr. Fisher comes, but ultimately in the fall, about
13 the end of October, the deal was finalized; would
14 that be correct?
15 A Yes, the end of October, first of November, I had
16 obtained conventional financing to cash out the trust
17 and purchase the building, which included a payoff of
18 what was left of the \$300,000.
19 Q Now, we all know that in January of 1993, you began
20 to make \$800-a-month payments on Judge Anderson's
21 automobile, correct?
22 A Yes, the end of January.
23 Q How did you learn that Grant Anderson had purchased a
24 new automobile?
25 A My recollection is that he was looking at various

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1 automobiles in December. I don't recall the Cadillac
2 as being any different than any of the rest of them.
3 He came into my office, which was adjacent to
4 the bank, first part of January, and it may have been
5 the 9th, which was the day he was in the bank to make
6 that payment, or whenever it was, and that's when I
7 learned that he had actually made the purchase of the
8 automobile.
9 Q Did you have any involvement whatsoever with Judge
10 Anderson's getting the loan at your bank?
11 A None whatsoever.
12 Q Were you a day-to-day managing officer of the bank at
13 that point?
14 A No, I was not. I had already resigned as chief
15 executive of the bank. That summer I was there as a
16 consultant and remained there through 1996 in that
17 capacity.
18 Q When did you make a determination to make these
19 payments for Judge Anderson?
20 A I don't recall specifically, Mr. Bulmer. I believe
21 that -- I could stop there, I guess, but my
22 recollection, my best recollection, is that Judge
23 Anderson, who was a judge by that time, but I knew
24 him then and still know him now as Grant --
25 Q Sure.

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1 A So I have a rough time -- I don't want to be
2 disrespectful, but he's my friend, not my judge, I
3 guess.
4 Q That's fine.
5 A I recall him coming in, talking about the purchase of
6 the Cadillac. In fact, it was sitting out in front
7 of the office, and we talked about its physical
8 appearance, etcetera.
9 I recall him lamenting -- and, again, I don't
10 want to be disrespectful -- lamenting the fact that
11 this is a financial obligation now, this is not
12 something that he took lightly. Judge Anderson,
13 Grant Anderson, was not a big borrower of money. I
14 had banked him over a number of years and he had
15 borrowed money, but he took it very seriously.
16 And so it reminded me at that time that, my

17 gosh, I had never ever gotten a bill from him ever
18 for 15 years' worth of services. Each time he would
19 give me something, it would be for the price of a
20 breakfast or a lunch or something of that nature;
21 let's go to a Husky game; let's go to dinner; let's
22 spend Saturday bumming around together. It was that
23 kind of a relationship. We were friends. He's as
24 good a male friend as I have.

25 And so I remember saying, gosh, I felt kind of
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1 cheap at that time, because attorneys cost a lot of
2 money. I've spent a lot of money on attorneys, and
3 I'd never spent a dime for the advice and counsel and
4 friendship that I had gotten from Grant.

5 I was doing well at that time. My children were
6 out of college. I had placed the bowling alley --
7 you know, I was in the bowling alley. I was in other
8 businesses. They were financed. I had finally
9 retired after 30-plus years in my business. My
10 health was reasonably good. I felt good.

11 So I said, "Let me pay you something for your
12 services," and that's how that came about. I
13 couldn't just walk up to him and say, "Here." That
14 would humiliate him. He didn't want anything. He
15 wasn't in a position to take anything, he explained
16 to me. And I said, "Well, you can take a gift. I
17 can give you a gift, can I not?" and he said, "Yes."

18 So to make it palatable to him in my mind, I
19 said, well, you know, I'm not just going to hand him
20 a check or hand him some cash or something of that
21 nature. That would have not been socially acceptable
22 to him, so let's make it something that he can live
23 with.

24 And it was \$800, is the way I looked at it. It
25 was \$800 a month, and I said, "Let me make some

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1 payments on your Cadillac."

2 Q Did you have any expectation as to how many payments
3 it would be?

4 A Nothing specific, but in my mind I figured, you know,
5 a year or two, something like that. I look at \$800,
6 and that rounds out to be about \$10,000, give or
7 take, and, you know, I thought 10, \$15,000.

8 There were other circumstances at the time that
9 were going on in his life that I knew about as a
10 friend that gave me cause to think that maybe that
11 would be a reasonable amount.

12 Q At this point, in January 1993, what was your
13 understanding -- you made reference to it -- of
14 Mr. Anderson's situation?

15 A Well, this is where it gets difficult, because we're
16 dealing with people that I know and care for.

17 Grant and Diane had -- my contact was with
18 Grant, and I believed that their personal
19 relationship was in a deteriorating capacity. I had
20 observed them together on a few occasions. I had
21 been with him as friends, and he had confided in me
22 the deterioration of their personal relationship.

23 And what I was referring to in my previous
24 statement was that I was under the impression that to
25 the extent that Grant could find a way -- his

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1 children were grown, his children were moved out -- I
2 expected him, although he never said this
3 specifically, but I expected him to eventually
4 separate from Mrs. Anderson, from Diane.

5 That would give me, I guess, a time line in
6 which I could then stop making the payments. And
7 ultimately that's exactly what did happen.
8 Q Now, we know that initially you wrote a check, and
9 then after that it went on an automatic payment
10 program; is that correct?
11 A That's correct.
12 Q And those payments came from the Pacific Recreation
13 Enterprises account?
14 A That's correct.
15 Q Did you ever discuss or tell Grant Anderson what the
16 source was of the actual payment of those accounts?
17 A No, I didn't.
18 Q At about the time you made this gift, I know this is
19 highly personal and I apologize, but what
20 approximately was your net worth at the time you made
21 this gift, in January of '93?
22 A My net worth has fluctuated, but well above
23 \$2 million.
24 Q Ultimately, time went by, and you described yesterday
25 in your testimony that the dissolution happened and

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1 you used that as an opportunity to discuss with Judge
2 Anderson stopping the payments, correct?
3 A That's correct.
4 Q Yesterday you made reference to that as being sort of
5 a socially acceptable but uncomfortable situation.
6 Could you explain that?
7 A If I recall the context of the question, it was what
8 prompted me to stop making the payments. Grant and
9 Diane lived together, well, all through '93 and all
10 through '94, is my recollection. I do recall that he
11 talked to me about moving in the winter of 1994, but
12 didn't.
13 Q He talked about moving in with you possibly, didn't
14 he?
15 A Yes, he did.
16 Q Thank you. Go ahead.
17 A And ultimately didn't move out of their home until
18 the winter of 1995. Then, of course, he's moved into
19 an apartment, he's paying rent. There again, I don't
20 have a moment that I felt socially that I could say,
21 "Gee, now, now that you've got additional burdens of
22 finances, now I'm going to stop making the payments."
23 Q Why is that? Why can't you just walk up to a guy
24 who's your friend and say, "Gee, Grant, I've been
25 making these \$800 payments, but I don't want to make

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1 them anymore"?
2 A Well, it's just not my style. First of all, I'm
3 not missing any meals, as you can well tell, so I
4 didn't -- by that time I had spent tens of thousands
5 of dollars on the services that I'd got from him for
6 nothing. If I had paid for the entire car, it still
7 wouldn't have been too much.
8 This man is my friend. I care a great deal for
9 him. And so I had given him a gift. How do you stop
10 giving a gift once you've given a gift? It was just
11 unacceptable for me to make any arbitrary change. My
12 financial condition hadn't deteriorated. Quite
13 frankly, it was not something that I thought about.
14 I didn't wake up in the morning saying, "Gee, how am
15 I going to get out of this deal today?"
16 Q You didn't want to be a piker?
17 A I didn't want to be a piker in the first place, and I
18 didn't want to be a piker at the end.

19 Q So the marriage deteriorated further, the
20 dissolution, and he came to you and indicated that
21 was going on, and that's when you raised the issue to
22 him about stopping making the payments?
23 A I guess I became a piker on that.
24 Q All right.
25 A I expected through all of his conversations with me

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1 during his separation and so on -- and I spent a
2 great deal of time with him after that as his friend.
3 You know, he wasn't sure he made the right decision,
4 he was hemming and hawing about, you know, this. He
5 felt badly about a woman that he had been with for
6 many, many years. He cares for Diane as a person, or
7 cared for her. I don't know where he stands today.
8 I can tell you at that time he cared a great deal
9 about her. He loves his boys very much, and the
10 effects that this was going to have on them, and
11 Grant was troubled with this.

12 So I wasn't sure there wasn't going to be a
13 reconciliation or anything of this nature. But on
14 the day in May that he said to me, "Today is the day
15 that she filed, we are irretrievably broken," that's
16 when I became a piker, to use your phrase.

17 Q I don't mean to insult you and I apologize, sir.

18 A That's when I took advantage of the moment.

19 Q And you then told him -- and you paid it off on that
20 day?

21 A I paid it off on that day.

22 Q Why did you do that?

23 A Because I didn't want to deal with this situation
24 ever again socially.

25 Q But this money was still going to be owed?

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1 A But it wasn't something that he could forget. It
2 wasn't \$800. There was going to be another payment
3 due before he came back from his trip. I wanted to
4 make sure that the dollar amount that I was paying
5 off, the dollar amount that was due, wasn't after
6 another \$800 payment. So it was, "Okay, I'll pay it
7 off."

8 I didn't have to pay it off. And I remember in
9 my mind, my recollection was that I just said, "Okay,
10 when," you know, "when is this going to happen? Why
11 doesn't it happen today?"

12 Well, he was creating spending money for his
13 trip, and that was when he told me he was going on a
14 trip.

15 So I don't recall -- I shouldn't say I don't
16 recall. My recollection is I said I would pay it off
17 and he could pay me back. That way there would never
18 be a question that I'd have to bring this up again.
19 He wouldn't forget \$8,000. This wasn't something I
20 would have to socially deal with again.

21 Q Because he now owed it to a friend?

22 A Because he now owed it to me. Well, he owed it to
23 me. There's a difference between my giving him a
24 gift. The gift was over with. Now he owed me
25 \$8,000.

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1 Q And he did pay the 8,000?

2 A And he did pay me the \$8,000.

3 Q And much was made that this 8,000 was in cash. Are
4 you a person that deals in cash or likes cash?

5 A Like cash? I'm a person that deals with cash, yes.

6 I cash checks quite frequently. Keep in mind I said

7 I was a banker from the time I was 18. It is not
8 easy, and as the recipient of being a merchant or a
9 banker and seeing, you know, \$3.29 checks to the
10 Dairy Queen being bounced, I always felt
11 uncomfortable with people, merchants, and I had
12 empathy for the merchants that are taking these
13 checks from people, this IOU, not knowing whether
14 it's any good or not. And I never wanted to put
15 anyone in that position any more than I had to.

16 So to the extent that I've grown financially
17 over the years, I've always carried cash. I carry
18 cash on my vacations, carry cash all the time. It's
19 not that I'm -- you know, I go to the bank and cash a
20 check for several thousand dollars a month.

21 Q So is it surprising to you that this \$8,000 was
22 ultimately spent out of your pocket, then?

23 A Was it surprising that I spent it?

24 Q Was it surprising to you?

25 A Unfortunately, no.

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1 Q Mr. Taylor asked you a very narrow question about
2 gifts to people on the other side of you during
3 transactions. Do you remember those questions?

4 A I do.

5 Q Let's ask a broader question. What other -- have you
6 given other gifts in the '92/'93 period of time?

7 A I have given gifts to many people over the years,
8 before, during and after that period of time. But in
9 that period of time -- I was asked to recall that --
10 I have several instances of where I have, quote,
11 "given" people money outright, some of it in cash,
12 some of it in checks. Friends, people in need.

13 I have, quote, "loaned" people money without any
14 expectation of repayment and without ever receiving
15 repayment. Friends, business friends, that I know
16 would not take the money regardless of their need.
17 Socially I gave them the opportunity to say it was a
18 loan, even though I never had any expectation of
19 payment and never have received any payment and never
20 have written it off and never have taken a tax
21 deduction for these obligations.

22 So, yes, I have done that a number of times over
23 the years and continue to do that.

24 Q Give them on the scale of \$800-a-month payments?

25 A No.

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1 Q Anything that large, that small?

2 A I can't think of any transaction or any gift that
3 I've given anybody that is as small as \$800, outside
4 of, you know, the usual charitable things that one
5 might involve themselves in.

6 Q So these gifts that you're talking about that you
7 have in mind to friends or family or business people
8 are greater than the money that's involved here with
9 Mr. Anderson?

10 A Yes.

11 Q I know it's difficult and it's getting late, it's
12 getting towards lunch, but the question is pregnant
13 in the air, as they say. We need a couple of
14 examples. Can you give me a couple of examples from
15 back in that time period?

16 A Well, to begin with, I thought of Grant Anderson not
17 on the other side of a business transaction, but on
18 another plane. My business transaction with Grant
19 Anderson was over with in the summer of 1992, as far
20 as I was concerned, when I agreed to buy the bowling

21 alley.

22 Now, then, in 1993, which was a lifetime after
23 that, in my estimation, Grant Anderson, my friend, I
24 realized that I have not treated him fairly in my
25 opinion, so as in the past, I have -- well, I have

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1 another attorney who did for me similar things that
2 Grant did, Mr. Christopher Hoss (phonetic). And,
3 again, I hate to talk about people that aren't here,
4 but I'll talk about my relationship with Christopher
5 Hoss.

6 He was an attorney in private practice. I used
7 him in my professional capacity, ultimately hiring
8 him as general counsel for my bank. We became good
9 friends. After we sold the bank, both he and I were
10 out of a job, which was part of the deal. We officed
11 together.

12 He provided me the same kind of service that
13 Grant was providing me, you know, just general
14 counsel, "Look at this document," and in his case he
15 even drafted some documents for me, which I don't
16 believe I've ever asked Grant to do, but I don't
17 recall specifically, never sending me a bill, never
18 dealing with that.

19 He had found himself embroiled in a very bad
20 situation financially with an apartment complex that
21 he had bought, a number of multiple units, rental
22 units. I was the owner of the first position
23 personally; I had purchased a contract from the
24 original owner. He, on the other hand, had purchased
25 the property from the original buyer, who was a

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1 client of his, and under his management, during his
2 management, the project fell far behind in all of its
3 obligations, which included quite a delinquency on
4 the first mortgage to me personally and the second
5 mortgage to the contract seller.

6 He came across a buyer. As a matter of fact, I
7 think I brought him the buyer, to try to figure a way
8 for him to get out and me to get something out of
9 that without completely taking apart my friend.
10 Again, it was not a question of money. It was a
11 question of a friendship.

12 So the sale closed on this transaction, these
13 duplexes and triplexes. I think there were 11 units,
14 11 doors, four duplexes and one triplex. And in
15 order for this sale to go through, there had to be
16 some serious discounting on the underlying balances,
17 because he was without resources to pay this. He was
18 starting a practice again, etcetera.

19 And I believe I discounted over \$40,000 worth of
20 principal and interest to allow that transaction to
21 close, and then, after the discounting or
22 contemporaneous with that, I loaned him another
23 \$15,000 so that he could pay the second mortgagee,
24 who was completely behind me.

25 I had no obligation to do that. That was just
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1 me helping a friend. This transaction would have
2 been in the '91/'90 era, and I knew then that the
3 probability of ever getting that \$15,000 back was --
4 forget the \$42,000 that I discounted that I was never
5 going to get back. I realized that I probably would
6 never get the \$15,000 back.

7 And, in fact, he nominally paid interest on it
8 for about a year, year-and-a-half, which took me into

9 the '93/'94 era, and I've never gotten another dime,
10 we've never discussed it, I've never brought it up.
11 Just my expectation was fulfilled.

12 Q Socially uncomfortable for you?

13 A Socially uncomfortable for me.

14 Q I don't want to spend a lot more time with this, but
15 I think we should just cover one or two more just
16 because the issue is -- go ahead. Do you have any
17 more?

18 A My recollection is, and I was recalled to this from
19 time to time when, as this transaction has been tried
20 out in the newspaper, people would come to me and
21 recall their financial involvement with me or, to use
22 their word, my generosity, "Gee, if you ever need
23 anything, let me know."

24 There was a gentleman that I had done business
25 with in the clothing business, and his name is Randy

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1 Berggren. He owned a clothing firm called Berggren
2 out in Lakewood, and I bought clothes from him. We
3 became friends over the years, and I know his wife
4 and his children and back and forth. Randy is much
5 younger than I.

6 He had fallen on hard times and actually filed
7 personal and business bankruptcy over this.
8 Subsequent to that bankruptcy, or as that was going
9 through, he was concerned because he had come to me
10 for some level of counsel on how he would make a
11 living, and another mutual friend and I put him back
12 in business, providing funds and cosigning loans, and
13 he is in business today in Tacoma, Tacoma Custom
14 Clothiers and Shirtmakers, it's called. It's down on
15 Ninth Street.

16 And he recalled that in addition to cosigning
17 and giving him money which he did repay out of that
18 new business, that I personally gave him several
19 thousand dollars a month for several months to feed
20 his family during this transitional period. That was
21 a gift that I gave him. There was no note. Frankly,
22 I hadn't even remembered it.

23 And our friendship has prevailed and lasted
24 these years.

25 Q Any more, one more?

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1 A Oh, golly. There was an old customer of mine by the
2 name of Richard Chiarovano. When I met him, he was
3 the treasurer of Days Clothing here in Tacoma. A
4 very fine gentleman, lovely wife, two children grown.
5 Days closed up. He took his retirement and his
6 resources and invested them in the jewelry business,
7 jewelry manufacturing and, to the best of my
8 knowledge, lost it all.

9 To the extent that he had found himself in
10 1990/1991 where he had, I believe it was either a
11 sales tax or an income tax liability or something
12 along that line, he was in dire straits for money.

13 He had been a customer at my bank. That was my
14 relationship. He was a fine gentleman, a fine
15 person. He needed ten grand, and he needed it now.
16 There was no basis in the world for a bank loan, even
17 though he approached me in that capacity, so I wrote
18 him a personal check.

19 He did sign a note. It is secured by some
20 business assets of his that I suppose I could realize
21 on, but some seven or eight years later, nine years
22 later, eight years, I guess, he's never paid a dime.

23 We've discussed it from time to time as he brings it
24 up. He still acknowledges the debt. I've never
25 charged it off. I've never asked him for the money.

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1 I considered it a gift.
2 Those are just some that come to my mind out of
3 that geographic time -- or that chronological time.

4 Q Did there come a time when you got involved in a
5 business with your brother, I think, maybe, a
6 dry-cleaning business?

7 A Yeah. I have one brother. He's three years older
8 than I am, and he kind of disappeared in the '70s. I
9 saw him when our father died in 1972 and didn't see
10 him again until the early '80s.

11 At that time our mother was still alive, and she
12 was living here in Tacoma, and my brother called me
13 from the Southwest someplace, and he had reached the
14 bottom of his barrel, so to speak, and finally
15 reached out for some help that he thought I could
16 help him with. I mean, I was the only relative he
17 had.

18 So he found his way to Tacoma. I put him up in
19 an apartment. He became physically and emotionally
20 healing in the process. I gave him money every week
21 to pay his expenses and bought him a car and kind of
22 let him heal from within.

23 Over a period of months we looked for something
24 for him to get involved in. Eventually we found a
25 dry-cleaning business, and so I went to the bank and

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1 co-signed a loan, or actually I got the money. He
2 did not have any credit.

3 We had to put him through bankruptcy, which was
4 very ticklish for him. I mean, this is my big
5 brother. He's the one with the college education,
6 and he's coming to his little brother, and his little
7 brother is actually assisting him. We've reconciled
8 that over the years, and that's a personal matter.
9 But nonetheless, I gave him the money to buy the
10 laundry, and as luck would have it, he operated it.

11 Subsequent to that -- we're talking a period of
12 years now -- he started going to church. He met a
13 lovely lady who was the pastor of the Presbyterian
14 church where he was going, and they got married.
15 This was his third marriage.

16 And after one trying weekend when I was -- I
17 regularly went to his laundry on Saturday, usually
18 would take one or more of my six children with me,
19 and we would physically clean the laundry because
20 that was more than he could put into his schedule, he
21 felt, so that's what we would do.

22 And I would assist him with what he was behind,
23 you know. I learned how to clean shirts and press
24 shirts and things of that nature, which was not a
25 career ambition of mine, but nonetheless --.

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1 And on a particular Saturday, we had some words,
2 and I'm not a structurally religious person, but the
3 following Monday I got a call from the broker that
4 had sold us this thing, and she says that it's time
5 to -- "I have someone interested in buying this.
6 Would you be interested in selling it?" and I said
7 "Certainly."

8 MR. TAYLOR: Your Honor, perhaps we could
9 go to a question-and-answer format.

10 JUDGE BROWN: I think that would be good.

11 Can we try some questions and answers --
12 MR. BULMER: Sure.
13 JUDGE BROWN: -- instead of just an
14 open-ended personal life history? I think we need to
15 get back to something that's relevant to these
16 proceedings.
17 Q (Continuing by Mr. Bulmer) So did you -- I'm just
18 interested in what you -- you helped your brother buy
19 the cleaners?
20 A I helped my brother buy the cleaners. That day we
21 sold the cleaners.
22 MR. TAYLOR: Object on the basis of
23 relevance.
24 JUDGE BROWN: What's the relevance of him
25 helping his brother by the cleaners?

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1 MR. BULMER: The issue in this proceeding
2 has been that somehow this was unusual, this
3 transaction that Mr. Hamilton had with Judge Anderson
4 was unusual, and is not characteristic of how this
5 man operates in relationship with his family and his
6 friends.
7 JUDGE BROWN: Objection will be
8 sustained.
9 MR. BULMER: Okay.
10 Q (Continuing by Mr. Bulmer) I'm almost done, Mr.
11 Hamilton. In fact, I am done, except for one more
12 question.
13 Did you make the car payments to Judge Anderson
14 as a payoff for adjustments to be made to the note on
15 the bowling alley?
16 A I did not.
17 Q Thank you.
18 MR. TAYLOR: I have just a couple
19 questions maybe we can get in before the break.
20 JUDGE BROWN: All right.

21
22 REDIRECT EXAMINATION

23 BY MR. TAYLOR:
24 Q We heard a lot about a lot of gifts to a lot of
25 people, and you've told us you made a gift to Richard

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1 Chiarovano. He was the clothing salesman or the
2 clothing store?
3 A No. Richard Chiarovano was a friend that had a
4 business, jewelry business.
5 Q Okay, he was the jeweler. And you made a gift to
6 him?
7 A That's correct.
8 Q Didn't you make a loan to him? That was a loan you
9 made to him, wasn't it?
10 A He accepted it on the basis that he sign a note in
11 1991/'92. He's never made a payment, so I consider
12 it a gift. For him to accept it, he considered it a
13 loan. It was socially more palatable at that time.
14 Q Didn't he come to you and ask you for a loan; isn't
15 that what happened here?
16 A He came to me and asked me for some money.
17 Q Did he come to you and ask you for a loan?
18 A I don't recall that word.
19 Q Why don't you take a look at page 33 of your
20 deposition, line 3.
21 A (Witness complies.)
22 Q Do you see there: "What were the circumstances under
23 which you gave that," referring to the money, "to
24 Dick Chiarovano?"

25 "ANSWER: He approached me for a private loan."

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1 Now, you testified, Mr. Hamilton, about a
2 conversation you had with a lawyer, Pat Comfort. Do
3 you recall Mr. Comfort?

4 A Actually, I'd like to read the complete answer.

5 JUDGE BROWN: Would you answer the
6 question, please?

7 A Mr. Pat Comfort, do I recall knowing him?

8 Q Do you recall a meeting you testified about with
9 Mr. Comfort?

10 A Yes.

11 Q And you met with him because he knew about bowling
12 alleys, right?

13 A I met with him because he had been an owner of a
14 bowling alley and he was a business lawyer and a
15 friend.

16 Q And you wanted advice from him because you were
17 thinking about buying a bowling alley?

18 A I don't know that I wanted advice from him. I wanted
19 him to listen to my idea and see if he found any
20 holes in it.

21 Q And you say he talked to you about leagues and the
22 importance of leagues, right?

23 A That's correct.

24 Q How they begin in September and end in April?

25 A That's correct.

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1 Q And I wrote this down. You said he told you, this
2 lawyer from whom you were seeking advice and paying
3 for advice, he told you to capture all the cash that
4 you can because you're going to need it during the
5 summer months.

6 Do you recall that advice you got from Lawyer
7 Comfort?

8 A That's essentially it.

9 Q Okay. Turn to page 21 -- or Exhibit 21, please.

10 Before we get there, that was important to you,
11 wasn't it, to get the cash from September forward?

12 A It was important to me that I capture as much of the
13 business operation during the affluent part of the
14 season to make it through the downturn of the season.

15 Q And that was one of the most critical parts of the
16 deal, wasn't it, to get that cash, because otherwise
17 you'd be bankrupt essentially come the following
18 summer, right?

19 A Well, no, we wouldn't be bankrupt. The point is, the
20 operation would not provide the cash probably to make
21 it through the summer.

22 Q So you needed that cash?

23 A Needed the cash.

24 Q Okay. Turn to page 21, please -- or Exhibit 21.

25 A I have that.

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1 Q Turn to the second paragraph -- or to the second
2 page.

3 A (Witness complies.)

4 Q Paragraph 11. This is the document you signed, and
5 this is the deal you and Mr. Anderson had after you
6 got your advice from Lawyer Comfort.

7 Does paragraph 11 say that the inventory,
8 equipment and goodwill purchased by Enterprises --
9 that's you, Pacific Enterprises -- the things you're
10 purchasing shall not include any accounts receivable
11 or cash? Was that your deal with Judge Anderson?

12 A Yeah. I was not to buy the cash in the till for

13 \$300,000.
14 Q Or the accounts receivable, the money that was coming
15 in from September 1 forward?
16 A No. There are no accounts receivable in this
17 business except maybe a rubber check that someone
18 bounced. That's what accounts receivable are. And
19 the cash that's referred to there is the till cash or
20 the, quote, "bank," that \$5150. That's referred to
21 elsewhere that I paid for outside of the \$300,000.
22 Q Well, let me ask you another question. It also goes
23 on to say: "Nor shall Enterprises be responsible for
24 any accounts payable at the date of closing."
25 I heard your testimony about the adjustment

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1 agreement. Isn't it true that you calculated the
2 money that came in from September through December,
3 the revenue that was generated, and you reduced that
4 by the amount of money that had been paid out from
5 September through December, correct?
6 A I don't want to misunderstand the statement, so could
7 you read that for me or tell me another way?
8 Q The purchase price adjustment, the starting point of
9 that was, you calculated the revenue, the gross
10 revenue that had been received, correct?
11 A I didn't calculate it at all. My understanding was
12 that from September 1st to the date of the adjustment
13 or the end of the year, December 30th, that all of
14 the revenues coming through the bowling alley and all
15 of the expenses relative to the bowling alley would
16 be paid out of that cash flow, and whatever was left
17 over after that cash flow would be paid to Pacific
18 Recreation Enterprises.
19 Q But by the time we get to the price adjustment
20 process, wasn't the first step to calculate the
21 revenues, the gross revenues? Isn't that what we see
22 right at the beginning of, I don't know, I want to
23 say Exhibit 60 or so? We got to the net income.
24 A Mr. Taylor, I didn't do these adjustments, so you're
25 going to have to talk to Mr. Iverson, because he's

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1 the one that generated these adjustments.
2 Q Okay. Well --
3 A I don't know how he came to these conclusions.
4 Q Let's look at Exhibit 60. I think you went through
5 this in some detail with Mr. Bulmer. I think these
6 numbers, we went through it twice; do you recall
7 that?
8 A I went through, I believe, Exhibit 30 with
9 Mr. Bulmer.
10 Q Well, let's use Exhibit 30, then. First thing we did
11 was take the net income from December and the net
12 income in August, correct?
13 A That's correct, or the net loss in this instance.
14 Q Okay. So the business had earned a net cash flow of
15 \$45,000, right?
16 A That's correct.
17 Q And took the gross cash flow -- and the gross cash
18 flow, that was the cash that was supposed to be
19 yours, right?
20 A That was part of the cash that should have been mine.
21 Q And you eliminated from that the expenses that had
22 been incurred by the company, by Pacific Lanes, from
23 September through December, right?
24 A That's how he arrived at that number. He took the
25 income less the expenses.

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1 Q And if we go back to Exhibit 20, then, we see that
2 you weren't responsible for any accounts payable at
3 closing. Weren't the adjustments, Mr. Hamilton,
4 exactly the opposite of what the agreement in
5 paragraph 11 says?

6 You were taxed for, if you will, the accounts
7 payable of the business from September 1 forward, and
8 that was used to reduce the gross revenue, correct?

9 A No. Accounts payable in the context of the agreement
10 in Exhibit 20 would be that after the closing took
11 place, that if there were any outstanding payables of
12 Pacific Lanes, Incorporated, I would not owe them.

13 Accounts payable are not paid out of cash, so as
14 the cash came in -- through the daily operations from
15 September 1st on, you have cash coming in -- you pay
16 bills. Those are not necessarily accounts payable;
17 those are bills that are paid.

18 So it's after you reach the point of closing,
19 after you actually close the books, which would have
20 been as of September 1st, was the date that any
21 accounts payable that that corporation still had
22 would be theirs.

23 Q So any accounts payable after September 1 were still
24 the responsibility of Pacific Lanes?

25 A Any outstanding payables that were from the results
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1 prior to September 1 would have still been theirs. I
2 have no idea what they were, if there were any.

3 Q And Mr. Iverson will testify that those were then
4 used to reduce the gross revenues that you were
5 credited with, correct?

6 A I don't know what Mr. Iverson will testify.

7 Q One last question before the break. You essentially
8 got the benefit of the money earned from September
9 forward in 1992 by Pacific Lanes?

10 A That's correct. That was my bargain.

11 Q Okay. Your company, Pacific Recreation, didn't pay
12 the income tax on that money, did it? Wasn't the
13 income tax paid by Pacific Lanes?

14 A There was no income tax. Pacific Lanes, the
15 operation, lost money during that period of time, as
16 the exhibit shows.

17 Q Let me ask it a different way, Mr. Hamilton. For tax
18 purposes, wasn't the income assigned to Pacific Lanes
19 and you did not pay tax on it, Pacific Recreation?

20 A Ultimately, Pacific Recreation would have paid tax on
21 any profits. I'm not sure I understand the question,
22 so I would probably have to defer to the accountant
23 for any questions regarding accounting.

24 Q Did you pay the income tax on the money Pacific
25 Recreation received that had been earned by Pacific

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1 Lanes, yes or no?

2 A I took a reduction in the amount owing for that
3 money, so I guess the answer to that is no.

4 MR. TAYLOR: Is now a good time for a
5 break, Your Honor?

6 JUDGE BROWN: In a moment. Are you
7 through with your questions?

8 MR. TAYLOR: I have quite a bit more. I
9 have probably have another 45 minutes.

10 JUDGE BROWN: All right. Then we'll take
11 a break. We'll recess for lunch. We'll resume at
12 1:30. Thank you.

13 (LUNCH RECESS TAKEN.)

14 JUDGE BROWN: Please be seated. We're

15 ready to continue the examination of Mr. Hamilton.
16 Mr. Hamilton, can you resume the witness stand.
17 Q (Continuing by Mr. Taylor) Good afternoon,
18 Mr. Hamilton.
19 A Good afternoon, Mr. Taylor.
20 Q You testified at length towards the end of the
21 morning session about many, many gifts you had made.
22 A Yes.
23 Q And I take it from your testimony there's more you
24 could tell us about?
25 A I'm sure there are.

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1 Q Okay. You also testified, though, that you had never
2 taken a tax deduction for any of these gifts. Did I
3 write that down right?
4 A To the best of my knowledge, that's correct.
5 Q So it's correct that the only supposed gift you ever
6 treated for tax purposes as an expense was the
7 Cadillac payments you made on Judge Anderson's
8 behalf?
9 A Mr. Taylor, I think as it relates to what was
10 deducted for tax purposes and what was deducted from
11 the checking account for operating purposes, you're
12 going to have to ask the accountant who prepared the
13 tax return. I did not consciously deal with that
14 issue at all.
15 Q Is it correct that the Cadillac payments for Judge
16 Anderson were treated as an expense and for tax
17 purposes used to reduce your taxable income?
18 A To the extent that there would have been taxable
19 income, which there wasn't at the time, the answer to
20 that is yes. That was done by the accountant.
21 Q And you'd never done that with any other gift?
22 A Any gifts that I had given personally, to the best of
23 my knowledge, have never been deducted for tax
24 purposes.
25 Q Take a look at Exhibit 18, please.

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1 A (Witness complies.)
2 Q Turn to the second page of Exhibit 18.
3 A (Witness complies.)
4 Q Down there at the bottom, we see a number that says,
5 it looks like apostrophe 1992?
6 A Yes.
7 Q What are those --
8 JUDGE BROWN: One moment.
9 Ms. Reynolds, you probably don't have this
10 exhibit and will be supplied that later on -- that
11 was admitted when you were not here -- unless there's
12 an extra copy at this point. Probably not.
13 THE WITNESS: I have an extra copy here.
14 It's on one piece of paper.
15 JUDGE BROWN: Well, she can probably
16 share with the other members of the commission at
17 this point.
18 Go ahead.
19 Q (Continuing by Mr. Taylor) The second page of
20 Exhibit 18, down there at the bottom it says
21 apostrophe '92. Do you see that?
22 A Yes, I do.
23 Q What are those numbers?
24 A My recollection is those are the income numbers, the
25 gross income numbers or spendable income numbers,

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1 available for overhead purposes for the months of
2 May, June and August of '92.

3 Q Was it May, June, July and August, but July it was
4 closed?
5 A That's correct.
6 Q And you got these numbers from the accountant?
7 A I got those numbers from the accounting records.
8 Q Okay. So somebody calculated how much gross
9 revenue -- at the end of August, or following the end
10 of August, somebody calculated how much gross revenue
11 had been earned and then you wrote that down?
12 A Or I could have gotten that from an old accounting
13 report. The point is, I was taking numbers that were
14 available to me either through interpolation or from
15 accounting reports or from some internal-generated
16 thing that said in May and June there was 28, 23, it
17 was closed in July. I might have guessed at 25 for
18 August based on old records. I went back in '91 and
19 pulled out the 28. The 25 might have come from '91
20 also, because this was being prepared prior to August
21 of '92, by my recollection.
22 Q Okay. I was just curious because I'd seen the August
23 '92 numbers in here, the numbers for the close of
24 August '92, and your testimony was this was generated
25 well before then?

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1 A Yeah. My recollection is it was generated in June of
2 '92. I just -- you can tell I'm not much of a
3 bookkeeper.
4 Q In June 1992, you say. Did you know in June of 1992
5 that it was going to close in July of 1992? Who told
6 you that?
7 A The bowling alley was closed at that time when I was
8 dealing with this.
9 Q Well, you didn't prepare it in June, then; it was
10 later?
11 A Could have been July.
12 Q Could it have been September when you prepared this?
13 A No, I don't believe it was, no.
14 Q Okay. Now, your conversation with Judge Anderson
15 when, as you described it, he explained to you he
16 didn't like making car payments, do you recall that?
17 A That was my recollection. He did not like making
18 payments, period.
19 Q And he'd complained to you or, as his lawyer said, he
20 had whined to you about making payments, however you
21 want to characterize it?
22 A He lamented the beginning of a financial obligation
23 even though he obviously could afford it, etcetera,
24 etcetera.
25 Q And that conversation occurred the day he came in, I

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1 think you said January 9th, the day he came in and
2 paid the \$9,000?
3 A My recollection is it was on or shortly thereafter
4 that he commented about that.
5 Q And that was the day -- whether it was the 8th or the
6 10th or 12th or whatever, that was the day you first
7 saw the Cadillac?
8 A That was the day that I first saw the Cadillac, yes.
9 Q Tell me as best you can what he said that day about
10 payments and complaining about them.
11 A Well, I believe I've testified about that. It wasn't
12 so much he was complaining about the payments, it's
13 just the idea that here he is, he's back from
14 vacation, he's starting a new job, he's bought a new
15 car for the first time in a long time.
16 I know him, and he knew that I knew him and his

17 borrowing habits. He never really made regular
18 payments, if I recall, when he borrowed money from my
19 bank that I was aware of. He might set it up on a
20 monthly payment, but then he would come in, just like
21 he did on this transaction, and take a check from
22 whatever source and apply that, a partnership draw,
23 something unusual, not a regular monthly payment.
24 He wasn't a payment kind of guy, I guess is the
25 best way to put it. I don't know how else to state

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1 it.
2 Q Okay. You've got a pretty good recollection of this
3 conversation, it sounds like?
4 A No, not necessarily the conversation, just a
5 recollection of my friend and the way he did
6 business.
7 Q Okay. Have you ever testified that the conversation
8 was much briefer with no reference to him lamenting
9 about car payments or buying a new car or anything
10 like that?
11 A I don't recall.
12 Q Why don't you take a look at page 88 of your
13 deposition.
14 A (Witness complies.)
15 Q Starting at page 87, line 23, line 20:
16 "QUESTION: You had no knowledge in advance of
17 him arriving at the bank in his Cadillac that he had
18 bought a Cadillac?
19 "ANSWER: That's true.
20 "QUESTION: What happened then? He pulled up
21 and you saw the car and he told you about it; what
22 happened?
23 "ANSWER: Actually, my office is in another room
24 since I retired. He pulled up. I can always hear
25 his voice. You'd have to be there to understand what

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1 kind of bank this is. It was right at closing time,
2 which is always when he arrives. He's in there
3 negotiating, and he's talking about this car."
4 Then you go on to say: "Always, when he is
5 through with his transaction, he would stick his head
6 in my door. We'd chat about life in general. I
7 think the bank was closed. He had made his
8 arrangements, done what he was going to do. My car
9 was parked out front, right alongside his, and he
10 went out to show me his new acquisition."
11 The new acquisition was the Cadillac?
12 A Yes.
13 Q And I asked you, "What did he say?"
14 And you said, your response: "What did I say?"
15 I said, "What did he, Judge Anderson, say?"
16 "ANSWER: Just the fact that he had bought a new
17 car.
18 "QUESTION: What did you say?
19 "Nothing, other than, I guess, 'It's a fine
20 looking car.'"
21 That's the same conversation where you now say
22 he talked about lamenting or whining about the car
23 payments?
24 A Not specifically, no. As I just testified, I don't
25 know when we had that conversation and when he talked

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1 about that. I'm not specific whether it was that
2 day, it was the next day. It was sometime between
3 that day and when I made the first payment, which was
4 some weeks later.

5 Q Okay. I just want to get your recollection now.
6 A Yeah.
7 Q The "as of September 1" agreement, the agreement that
8 you would get the profits or the cash flow, however
9 you want to describe it, as of September 1, that's
10 something you and Judge Anderson had discussed in
11 early August?
12 A I don't believe we discussed the fact of the cash
13 flow, the profits or anything. The transaction was
14 to close then. The purpose of that statement wasn't
15 necessarily that -- to me, as the person, my
16 understanding of it was whether it could officially
17 close with all the approvals, I think I've testified
18 I didn't think that was possible. But the spirit of
19 the deal, the control, the cash flow, the financial
20 reality, would take place effective September 1st.
21 Q Okay. So you knew it couldn't close September 1,
22 when you signed the agreement?
23 A I think I testified to that, yes.
24 Q Okay. And that's something you and Judge Anderson
25 had discussed?

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1 A We didn't discuss it in detail either way, sir.
2 Q Okay. You knew it couldn't close September 1. And
3 you said the spirit of the deal was, even though it
4 couldn't close September 1, you would get the cash
5 flow from that point forward, even if it didn't
6 close?
7 A That was my understanding.
8 Q Based on conversations with Judge Anderson?
9 A Based on my understanding of the deal.
10 Q Okay. And I think you called it a handshake deal
11 that you had with Judge Anderson?
12 A I don't recall whether we shook hands or not. That's
13 a phrase.
14 Q That's a phrase that you used. Is that a good way to
15 describe the understanding you and Judge Anderson
16 had?
17 A We had an understanding between two businessmen that
18 have known one another and trusted one another for
19 many, many years.
20 Q Okay. Now, Exhibit 20, please.
21 A (Witness complies.)
22 Q That's the document that accurately reflected your
23 verbal agreements and understandings with Judge
24 Anderson?
25 A That's the document that he drafted that I signed

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1 that accurately reflected the material deal that we
2 made.
3 Q Okay. And a very material term was that you would
4 get the cash flow from September 1 forward even
5 though you knew it wouldn't close September 1; is
6 that right?
7 A It was material to me that the September 1st date
8 appear in the document as the intended closing date.
9 Q Was it material to you also -- in the overall scheme
10 of the transaction, it was material to you that you
11 get the cash flow as of September 1 even though you
12 knew it couldn't close September 1. Was that
13 important?
14 A Yes, that is.
15 Q That's the deal you and Judge Anderson had?
16 A That is correct.
17 Q Can you show us where in Exhibit 20 it says that even
18 if the deal doesn't close September 1, and you knew

19 it wasn't going to close September 1, can you show us
20 where it says you get the cash flow from that point
21 forward?

22 MR. BULMER: Objection. That's not a
23 question that was asked and answered on direct.

24 JUDGE BROWN: Sustained.

25 Q Did this Exhibit 20 accurately reflect your agreement
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1 with Judge Anderson?

2 A The agreement fairly reflected my understanding of
3 the transaction.

4 Q Very well.

5 A And my understanding of everything that we had
6 discussed.

7 Q Okay. Now, you were entitled to this cash flow or
8 the profits because you had agreed to treat the sale
9 as having closed on September 1?

10 MR. BULMER: Objection to the form of the
11 question. Cash flow and profit are not the same
12 thing, and it's been a consistent thing.

13 Q However you want to phrase it.

14 JUDGE BROWN: Go ahead, counsel.

15 A What was the question?

16 Q Well, the deal, were you supposed to get the profits
17 or the cash flow?

18 A The cash flow, all of the cash that was generated
19 from September 1st through the end of the year or
20 through whenever I closed officially, was to be left
21 behind, net of the expenses that were used or
22 necessary to generate that cash.

23 Q Okay. So it was the cash flow you were getting and
24 not the profit?

25 A It was the cash flow, yes.

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1 Q Okay. And you were getting that because you had
2 agreed to treat the sale as having closed as of
3 September 1?

4 A That was the accounting understanding, yes.

5 Q Okay. Didn't you tell us once upon a time that the
6 reason you got the profits during this period -- not
7 the cash flow but the profits -- you were entitled to
8 profits because you were managing the corporation;
9 isn't that what you said previously?

10 A I don't know, sir.

11 Q Why don't you take a look at page 50 of your
12 deposition.

13 A (Witness complies.)

14 Q Beginning at line 4: "Through my efforts, through my
15 efforts," this is your testimony, "they received
16 \$131,000. They received it as an advance payment.
17 This was under my tutorage of the corporation."

18 Then it goes on to say:

19 "QUESTION: So in making the purchase of the
20 operation, you were credited with 131,000 that was
21 generated during the time that you managed it?

22 "ANSWER: That's probably an accurate statement.
23 I don't know that it is the right dollar amount, but
24 I was credited some dollar amount.

25 "QUESTION: Whether the dollar amount is

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1 accurate, you got credit for that dollar amount in
2 the purchase price?

3 "ANSWER: That's correct.

4 "QUESTION: We got September through December
5 profit of \$45,000.

6 "ANSWER: Uh-huh.

7 "QUESTION: And you were given credit for that
8 because it was under your management?

9 "ANSWER: That's correct."

10 Under your deal with Judge Anderson,
11 Mr. Hamilton, were you entitled to the cash flow or
12 the profit?

13 A My understanding is that I would get the cash flow.

14 At the time I took this deposition, I hadn't had
15 an opportunity to review any of the documents. I was
16 there to try to assist you, Mr. Taylor, in
17 understanding the way I understood the transaction.

18 And given what I had in front of me at the time
19 and the length of time I had to study it, I would say
20 that the difference between profit and cash flow,
21 that word has been thrown around and intermingled
22 here quite a bit, and I probably didn't focus on it
23 at the time.

24 Q Now, you say you hadn't had a chance to review any
25 documents. Hadn't you, in connection with getting

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1 documents together to produce in response to the
2 subpoena for this deposition, hadn't you been up till
3 midnight copying documents?

4 A No. I said I was up late the night before in my
5 office where I worked trying to even find the files
6 and then get the documents in the mail or get them
7 prepared to take to you.

8 I believe, if I recall, I had sent the documents
9 to you previously and you hadn't even gotten them, so
10 we had to go back through some months later. It was
11 just like a day or so before my time to appear that I
12 realized that you had notified me that you hadn't
13 received the documents, so I had to refind the files,
14 recopy the documents in preparation of the deposition
15 with you, so I hadn't had a chance to review them at
16 all.

17 Q Okay. Well, hadn't you reviewed them enough to sit
18 there and see two earnest money agreements? You were
19 trying to figure out what was going on between the
20 two, and so you decided, "Ha, this one is the draft."
21 Had you had enough time to do that?

22 A No. As a matter of fact, that evening I saw two
23 documents with different dates. I didn't look at
24 them to determine what the difference was, other than
25 the dates I saw handwritten on the one dated

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1 August 26th, I presumed that was the draft, and
2 therefore I wrote the word "Draft" on it, because I
3 knew there had been a draft and your subpoena duces
4 tecum had asked for any drafts that I might have in
5 my possession.

6 So as I copied that, I wrote in pencil in the
7 upper left-hand corner the word "Draft" as a reminder
8 to myself that that might be responsive to your
9 request.

10 It wasn't in the first deposition on
11 January 21st that I even noticed or you didn't
12 question any difference between the two. I just
13 submitted them to you. It wasn't until during the
14 second deposition some six months later that I,
15 during that deposition, realized that these two
16 exhibits were even different and brought that to your
17 attention in the June deposition.

18 Q Can you point that out to me in the June deposition,
19 Mr. Hamilton?

20 A That's what I said. I pointed it out to you in the

21 June deposition.
22 Q Can you show me now where it says that anywhere in
23 this deposition?
24 A Well, not off the top of my head, no. But my
25 recollection was that during the June deposition was
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1 when I, at least, came to the realization that these
2 documents were in fact different.
3 Q So it's your testimony, then, that in your
4 preparation for the second deposition, you found this
5 document and wrote "Draft" on it, after your first
6 and before your second?
7 A No. It was in preparation of the response to the
8 first deposition that I wrote "Draft" on it.
9 Q Okay. Now, in the first deposition, didn't you tell
10 us that you had written "Draft" on it simultaneously
11 with its preparation back in 1992?
12 A I don't believe so.
13 Q Why don't you take a look at page 15, please.
14 A (Witness complies.)
15 Q It says:
16 "QUESTION: What is Exhibit 1?
17 "ANSWER: This is the draft of the acquisition
18 and lease agreement for the purchase of corporate
19 assets for Pacific Lanes and the lease of the bowling
20 alley.
21 "QUESTION: When you say 'draft,' I notice it is
22 dated and executed by you and Judge Anderson. Was
23 this intended to be original -- was this intended
24 originally to be a final and then it was later
25 revised, or what exactly was the significance of this
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1 in your mind?
2 "ANSWER: My recollection was that we had
3 discussed these realities on more than a few
4 occasions with nothing ever being produced in
5 writing. I had gone ahead and started the formation
6 of my corporation and things of that nature, so he
7 memorialized for our purposes his understanding of
8 the agreement, leaving some blanks which I filled in.
9 That is my writing, and I wrote the word 'Draft' on
10 it, and I put the word 'August 26th' on it."
11 A Again, what page are you referring to?
12 Q Page 16.
13 A 16?
14 Q When did you write the word "Draft" on it? Was it,
15 as you testified, when it was originally prepared, or
16 was it at 11 o'clock at night?
17 A It was in 1997, and I don't see anything inconsistent
18 with that.
19 Q Very well. Now, is it fair to say that under this
20 handshake deal between you and Judge Anderson, that
21 you were acting as the owner for some purposes but
22 you weren't acting as the owner for other purposes;
23 is that a fair way to describe it?
24 A I was acting as the owner in the same purpose as I
25 act as the owner today. The only difference was that
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1 neither I nor the corporation I was forming were the
2 licensees for gambling and liquor, but everything
3 that I did then every day is exactly what I do now
4 everyday. Or everything that I don't do, more
5 importantly, is what I don't do now.
6 Q Again, my question is: Is it fair to characterize
7 the handshake deal as though you were acting as the
8 owner for some purposes but you weren't acting as the

9 owner for other purposes; is that a fair description?
10 A I don't know that that's a fair explanation. I
11 characterized my understanding of it, I believe, in
12 my answer.
13 Q Why don't you take a look at page 70 of your
14 deposition, please.
15 A (Witness complies.)
16 Q Line 16:
17 "Stated simply, then, is it correct for some
18 purposes you and Judge Anderson acted as though there
19 had been a change in ownership and for other purposes
20 you did not act as though there had been a change in
21 ownership; is that a simple way to describe it?
22 "ANSWER: That is a simple description, yes.
23 "QUESTION: And an accurate description?
24 "ANSWER: By my understanding, yes."
25 So for some purposes you were the owner and for

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1 other purposes you weren't?
2 A Again, at that time I wasn't interested in semantics.
3 I didn't realize the gamesmanship with words. But to
4 answer your question --
5 Q I'm not trying to play games. I just want to get an
6 understandings of what the deal was.
7 A It was a simple description that for some purposes I
8 was the owner; for the purposes of the gambling and
9 the liquor board, I was not the owner.
10 Q And where in all of the documents that deal with this
11 transaction and deal with the estate's money, not
12 Judge Anderson's money, but the estate's money, where
13 can we look to to find out which purposes you were
14 the owner for and which purposes you weren't the
15 owner for; where is that documented?
16 A There is nothing documented to that extent.
17 Q Okay.
18 Q With regard to these ownership issues, where can we
19 find the ground rules for how you and Judge Anderson
20 were going to be treating not his money but the
21 estate's money?
22 A Where can we understand where he was going to be
23 dealing with it? You'd have to ask him.
24 Q No, I'm asking --
25 A My understanding was September 1st was the closing

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1 date, the "as of" date. That was my understanding.
2 That was the basis on which we closed the
3 transaction.
4 Q Is there anything that details the scope of what your
5 ownership was going to be and what your ownership was
6 not going to be?
7 A Just an understanding between two people that
8 understood the deal.
9 Q Okay. Now, the deal, as I understand it, it was a
10 million-dollar deal overall between the purchase of
11 the operation and the purchase of the ground and
12 buildings?
13 A That's correct.
14 Q Take a look at Exhibit 37, please.
15 A (Witness complies.)
16 Q That's the real estate excise tax affidavit that you
17 signed in connection with the purchase of the ground
18 and buildings from Hoffman-Stevenson?
19 A That's correct.
20 Q And you signed it there and then Judge Anderson as
21 president of Hoffman-Stevenson?
22 A Yes.

23 Q And the purchase price for the ground and buildings,
24 the gross purchase price -- gross sales price, I'm
25 sorry -- is \$508,096?

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1 A That's what it says.

2 Q Was that accurate?

3 A Well, not in my mind, it wasn't accurate, other than
4 the fact that that was the amount of money that was
5 being transferred at that time. This was prepared by
6 Mr. Fisher's office.

7 I had obviously given him \$50,000 as
8 nonrefundable option money. I don't know how they
9 handle that, but that wasn't part of a transaction
10 that was closing at that particular time.

11 Q So the \$508,096 --

12 JUDGE BROWN: I'm sorry. Does he need to
13 be advised of his rights, the witness?

14 MR. TAYLOR: His counsel is present.

15 JUDGE BROWN: I mean, the document is
16 signed under penalty of perjury, and I believe the
17 testimony he just said was, "I don't believe that's
18 accurate."

19 Is there some problem or can we just continue?
20 I just wanted to bring that up. You can continue if
21 you want.

22 Q (Continuing by Mr. Taylor) Going back to this
23 document, Mr. Hamilton, the gross sales price was
24 \$508,096.07, and you just testified that was not
25 accurate in your mind, correct?

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1 A What I'm saying is that --

2 MR. BULMER: Just a minute, Mr. Hamilton.
3 That mischaracterizes his testimony. His
4 testimony was that it was not accurate to his way of
5 thinking, is what he said.

6 MR. TAYLOR: Maybe we can have the court
7 reporter read back the answer.

8 (THE LAST COMPLETE ANSWER WAS READ.)

9 Q (Continuing by Mr. Taylor) So in your mind, the
10 \$508,096.07 was not an accurate figure, right?

11 A In my mind the \$508,000 figure was the amount of
12 money that was being transferred from my account to
13 the selling account at that particular time.

14 Q Was that or was that not an accurate figure of the
15 gross sales price?

16 A That is not all the money that I had paid for the
17 building over a period of time, but that was the
18 amount of money that was transferred at that moment.

19 Q Again, my question --

20 A My understanding of an excise tax affidavit is that
21 at that time that I was signing that document, that
22 was the amount of money that was being transferred.

23 Q My question is, and it's a simple one, the
24 \$508,096.07, at the time you signed it, did you
25 believe it to be accurate?

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1 A Yes, I did.

2 Q Okay. So the gross sales price was \$508,000. That's
3 the price you paid to buy the ground and buildings
4 from Hoffman-Stevenson, Incorporated; is that right?

5 A That's not a fair characterization. That's the
6 amount of money I paid on October 11th, 1993.

7 Q Okay. Well, tell us about the money you paid that
8 doesn't show up on the excise tax affidavit.

9 A Well, in my mind, again, my understanding is that I
10 had already paid sometime before that, almost a year

11 before that, I had paid a \$50,000 option price for
12 the purpose of securing that, so to me that was a
13 part of the real estate transaction.
14 Q Why didn't you pay excise tax on the \$50,000, then?
15 A I'm not an accountant. I don't know.
16 Q Did you make any effort, before signing this under
17 penalty of perjury, to figure out what was right and
18 what was wrong and what was accurate and what wasn't,
19 or did you just sign it?
20 A The effort I made was to know that on the day I
21 signed this, they were authorized to receive
22 \$508,096.07, and I caused that amount of money to go
23 to them.
24 Q And you had previously paid \$50,000, right, for the
25 option?

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1 A I paid \$50,000 the previous year for the option.
2 Q So that gets us to 558,000.
3 A That was in mind how much I had put in there, in
4 addition to a number of \$6,000 monthly payments.
5 Q How many? By fall there would have been, what, six?
6 A Actually, no. I believe they had gone back to
7 September of 1992, and those adjustments would have
8 been made all the way back.
9 Q You didn't pay any rent, you didn't pay any rent at
10 all from September through December during that
11 period, correct?
12 A It was deducted from the account as part of the
13 adjustments, yes.
14 Q Long after the fact?
15 A I didn't write -- well, not long after the fact. The
16 adjustments were done in February and March of 1993.
17 Q Okay. So we've got 508,000 under the excise tax,
18 whether it's accurate or not. We've got 50,000 on
19 the option.
20 You've got, what, September through September;
21 you've got 12 months of rent payments. We'll give
22 you the credit for the 6,000 you weren't paying each
23 month September through December. That gets you to
24 72,000 for rent; is that right? By the time you
25 bought the buildings, you had paid 72,000 in rent?

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1 A That seems reasonable.
2 Q Okay. What other monies had you paid?
3 A I don't believe the estate had received any other
4 funds.
5 Q Okay. Had you paid any of the estate's obligations?
6 A Not knowingly.
7 Q Okay. How do we get to the million-dollar deal?
8 A Well, how do you get to the \$700,000 deal for the
9 real estate? You have the \$300,000 deal which was
10 the business.
11 Q No, let's back up. I understood -- you tell me if I
12 misunderstood your testimony. I understood your
13 testimony, and from opening statements on, that this
14 was and always would be a million-dollar transaction
15 and you decided on your own to allocate 300,000 to
16 the business operation and 700,000 to the real
17 estate.
18 What I'm trying to understand is, regardless of
19 how you allocate it, did the estate get a million
20 dollars for selling the operation and the ground and
21 buildings, and if so, how do you get there?
22 A Well, by my way of adding is at the time I made the
23 transaction, it was to be \$300,000 for the business,
24 \$700,000 for the real estate. We've accounted for

25 the \$300,000, by my way of understanding at least,
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1 before lunch. That left 700,000.

2 There was \$50,000 in option money, which left
3 650. There was \$72,000 worth of payments, which
4 brings us down under \$600,000, and there was \$508,000
5 at the time of closing of the purchase of the real
6 estate. The purchase of the real estate was done
7 over a year after the million-dollar transaction was
8 closed or was contemplated.

9 This was not a fulfillment of an option. This
10 was a brand-new deal for a broken building that
11 ultimately I spent over a half-million dollars on
12 trying to keep the ceiling off the ground.

13 I wouldn't have paid \$650,000 more for the
14 building and had to go out and borrow money, pay loan
15 fees, pay an increased interest rate, pay appraisals,
16 pay environmental statements, and so there was a
17 brand-new deal struck with Mr. Fisher for the
18 purchase of the building. It had nothing to do with
19 the option. The option was the basis of the
20 beginning of the discussions.

21 Q Let's back up a second and take a look at Exhibit 20,
22 please.

23 A (Witness complies.)

24 Q Exhibit 20, my recollection is you hand-wrote in
25 those -- if you look at the first page, paragraph 4,

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1 see those handwritten figures in there?

2 A That's correct.

3 Q Okay. You put those there?

4 A That's right.

5 Q And these were part of the deal?

6 A Those were part of the deal, the option, should I
7 ever exercise it, as of August 26th, 1992.

8 Q Okay. And that provided that if you were to buy it
9 two years in the future, you were going to pay
10 \$600,000?

11 A Under the terms of the option agreement.

12 Q Okay. And then if you were to buy it in '96, the
13 price was down to 540 and then in '98, 475. So the
14 longer you took before you bought it, the less you
15 would have to pay for it, right?

16 A That's correct.

17 Q And working backwards, the earlier you bought it, the
18 more you'd have to pay for it; that's also right?

19 A That's correct.

20 Q And the price that you paid when you bought the
21 ground and buildings, you didn't pay this option
22 price that had been bargained for and negotiated, did
23 you?

24 A I certainly didn't.

25 Q You paid something less, didn't you?

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1 A Paid something less.

2 Q So that part of the agreement was gone, right?

3 A I didn't exercise the option.

4 Q You bought the buildings, right?

5 A Under a separate agreement and a separate negotiation
6 with a separate seller representative, I negotiated
7 the purchase of a building that I had now been in for
8 over a year that we realized the trusses were broken,
9 that ultimately I made the decision to buy the
10 building.

11 I bargained for a price. Had I known even then
12 a year later what I know now, I would not have paid

13 the 508. I spent more than that putting the trusses
14 back together.
15 Q So you ended up with a bad deal?
16 A I ended up with a bad building, not a bad deal.
17 Q The business has done pretty well?
18 A The business has paid its bills.
19 Q Hasn't it done better than that?
20 A I believe we broke into the profit for the first time
21 here just this last year.
22 Q Well, didn't you tell me, January of '97, referring
23 to the '96 fiscal year, "Well, among all of my
24 involvements, companies, accounts and so on, Pacific
25 Recreation is now a very high gross business."

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1 Fair statement?
2 A It's a very high gross business is a fair statement.
3 Q Let me ask one question. You had the option to buy
4 the building in '94 for 600,000, and we know that if
5 you bought it sooner, the price would have been
6 sooner under your option formula. You bought the
7 building, right?
8 A Yes.
9 Q Okay. You didn't pay the option price?
10 A That's correct.
11 Q So the option disappeared?
12 A The option went away.
13 Q Okay. So as I understand it, then, under the
14 business acquisition and lease agreement, the part
15 about you getting the profits as of September 1,
16 1992, which isn't spelled out in the agreement,
17 that survived the fact that it didn't close on
18 September 1, 1992, right?
19 A My understanding of the "closing as of" date of
20 September 1st was my understanding.
21 Q But the option evaporated; you were no longer bound
22 by the purchase price set forth in the business
23 acquisition and lease agreement, right?
24 A The option that we're talking about is a separate
25 document that resulted out of the business

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1 acquisition and lease agreement. I've never seen
2 that in evidence, but there is a separate option and
3 a memorandum of option that was prepared as part of
4 the closing in December of 1992.
5 Q Okay. Well, look at Exhibit 29. It is in evidence,
6 the option.
7 A (Witness complies.)
8 Q Same price there as in the business acquisition
9 agreement, right?
10 A It appears to be.
11 Q Well, is there any doubt in your mind?
12 A No.
13 Q Okay. Let's back up for a second. Tell me how much
14 money Pacific Recreation -- I don't want to hear
15 about adjustments. Tell me how much money out of
16 pocket Pacific Recreation paid to Pacific Lanes and
17 Hoffman-Stevenson to buy the bowling alley operation
18 and the ground and buildings.
19 MR. BULMER: Objection. Unfair question.
20 You can't limit the client or the testimony by --
21 Q We'll get to the adjustments. Right now I want to
22 break it down. First how much money did you pay out
23 of pocket?

24 JUDGE BROWN: The objection will be
25 overruled. The witness can answer the question if

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1 he's able to.
2 A I can't answer every bit of it, but I can answer that
3 I paid \$50,000 down on the building on the option,
4 \$50,000 down on the business. In my mind I paid
5 \$300,000 for the business; I paid a series of \$3,000
6 payments or caused them to be paid; I paid a series
7 of \$6,000 payments; and I paid \$508,000 at the time
8 my loan closed in the fall of 1993.
9 Q Isn't it correct, Mr. Hamilton, at the end of the day
10 this was not a million-dollar deal? Even if you
11 factor in adjustments or everything else, you still
12 come out at \$900,000 or less?
13 A By my recollection, there was a discount at the time
14 of the negotiation of the purchase of the building of
15 approximately \$100,000. That was to induce me to go
16 out and buy the building at that time with the broken
17 trusses, an unknown liability, and that turned out
18 that that unknown liability, to bring it back up to
19 occupied position, which I just finished in calendar
20 1997, after a series of different repairs, cost in
21 the neighborhood of a half a million dollars.
22 Q Okay.
23 A So that discount of 100,000 cost me 500,000 and
24 wasn't that good of a bargain to be done in advance
25 by me.

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1 Q What did you get out of your insurance claim that you
2 filed for the broken-down building, how much money?
3 A After three years of litigation, I got a judgment
4 against them for that \$500,000.
5 Q Okay.
6 A And I paid my attorney more than the discount for the
7 fees to get that judgment.
8 Q I'll leave that between you and your attorney.
9 This deal, the reduction from the
10 million-dollars deal down to 900,000, or whatever it
11 was, you negotiated that with Steve Fisher?
12 A Didn't negotiate anything with Steve Fisher about a
13 million-dollar deal. I negotiated the purchase of a
14 building with Steve Fisher, and the basis of the
15 beginning of that negotiation was the option
16 document.
17 Q And as trustee he was the seller?
18 A He was representing the selling entity in my opinion.
19 Q Okay. He wasn't representing you?
20 A He wasn't representing me in any way.
21 Q As part of this deal, you paid Fisher \$15,000?
22 A As part of the deal, I was to pay all of Fisher's
23 costs relative to that, and he estimated those fees
24 to be that.
25 Q And you paid those fees?

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1 A And I paid those fees as part of my purchase price.
2 Q The man on the other side of the transaction?
3 A It was part of the purchase price. I could have paid
4 \$115,000, I suppose, or whatever the price would have
5 been, to the estate and they would have paid him.
6 Mr. Fisher says the amount of money that I'm to
7 pay is a net deal, "And you have to cover all my
8 costs," because he had apparently talked to his
9 client and dealt with it as if this were a net
10 transaction to them.
11 Q You say you could have paid the estate the 15,000 and
12 they could have paid it to Mr. Fisher.
13 MR. BULMER: I'm going to object now. I
14 don't see the relevance of this whole line of

15 testimony and what he was paying Mr. Fisher months
16 later.

17 MR. TAYLOR: Goes to credibility, Your
18 Honor. We've heard from the very start of this trial
19 that this was a million-dollar transaction. This
20 witness testified that he allocated it at 700,000 for
21 the buildings, 300,000. We now know that --

22 JUDGE BROWN: I'll overrule the objection
23 at this time.

24 Q (Continuing by Mr. Taylor) You could have paid the
25 estate that \$15,000, right?

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1 A If the transaction -- if I had gotten a letter from
2 Mr. Fisher that says, "Pay this amount of money," and
3 it included the 15,000, then I would have paid it.

4 The transaction as he conveyed it to me was that
5 I would pay -- there were components of the
6 agreement. I would pay off their underlying loan at
7 First Interstate Bank, which turned out to be
8 108,000. I would pay off my balance owing on the
9 Pacific Lanes note, which was about a hundred-and-a-
10 quarter. I would pay \$400,000 in cash.

11 The first and the last number added up to the
12 508. The balance went to them, and whenever he got
13 through with it, he would send me a bill for what his
14 fees were.

15 Q That was an understanding you had with Mr. Fisher?

16 A That's correct.

17 Q Handshake deal, or was it in writing?

18 A I don't believe it was in writing.

19 Q Okay. Can we find anywhere in the papers that as a
20 part of this million-dollar deal or \$900,000 deal,
21 you were obligated to pay Steve Fisher \$15,000?

22 MR. BULMER: Objection. That's a total
23 mischaracterization of his testimony. He's already
24 testified several times that this was a totally
25 different deal, and to come forward now and capture

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1 him by tricking him, saying this was part of this
2 million-dollar deal or \$900,000 deal, is a wrongful
3 statement of what he said to this point. It should
4 now be allowed.

5 JUDGE BROWN: I don't believe the
6 attorney is testifying, he's asking a question. So
7 either the witness can answer it or not. If it's
8 inaccurate, the witness can answer accordingly.

9 So the objection will be overruled.

10 A Would you repeat the question, please? Sorry.

11 Q (Continuing by Mr. Taylor) Let me simplify it. The
12 \$15,000 that you paid to Fisher, you say you were
13 obligated to pay to Fisher, that obligation appears
14 nowhere in writing, correct?

15 A That obligation appears in the same level of
16 obligation that I made for 30 years as a businessman.

17 Q Handshake deal?

18 A He said, "This is a transaction that will be net to
19 my clients. Will you pay whatever the costs are of
20 the transaction?" I didn't know if it was going to
21 be 15,000 or 15 cents. But whatever it was, it was,
22 and I agreed to do that, and when he gave me the
23 bill, I paid it.

24 Q Excuse me, sir.

25 Going back to the adjustment very briefly, under

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1 the adjustment, you got the benefit of the cash flow
2 from September 1 forward, right?

3 A From September 1 to September 30.
4 Q December 30?
5 A Excuse me, December 30.
6 Q You didn't pay a cent for that right in September,
7 did you?
8 A I agreed to pay \$300,000 for that right. Did I write
9 anybody a check in September? The answer to that is
10 no.
11 Q Did you pay any money for that right all the while
12 your cash flow was accruing? Did you pay any money
13 for that right in October?
14 A No, sir, I didn't.
15 Q Did you pay any money for that right in November?
16 A During those months there were funds being drawn out
17 of that to the estate and to the various accounts, so
18 under that scenario, yes, I was paying for it. I
19 just didn't know I was paying for it.
20 Q Let me rephrase. Did Pacific Recreation pay money to
21 Pacific Lanes -- and when I say "money," I mean cash
22 changing hands -- in November?
23 A Pacific Recreation did not pay any money to anyone.
24 Q Okay. Now, as I understand it, it's your testimony
25 that at the end of the year 1992, Pacific Lanes had

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1 the option of either writing you a check or giving
2 you a credit, right?
3 A No, I don't believe that's what I testified. What I
4 said is I expected them to write me a check after the
5 accounting had been determined.
6 Q Okay. But at the end of the day, they couldn't write
7 you a check?
8 A That's what I was told.
9 Q And did they tell you that part of the reason there
10 were fewer funds is because Judge Anderson's firm had
11 just gotten a \$100,000 attorney's fee paid?
12 A I don't believe I knew what their attorney's fee bill
13 was at the time.
14 Q Okay. Now, the problem was, as I understand it,
15 there wasn't enough money left in Pacific Lanes to
16 write you the check so you got a credit, right?
17 A That was my understanding.
18 Q Okay. And Pacific Lanes had been paying a variety of
19 operational expenses through September, October,
20 November, December, right?
21 A Pacific Lanes had been paying the normal day-to-day
22 operating expenses and cost of goods sold and --
23 Q Payroll?
24 A -- payroll.
25 Q Paying thousands and thousands and thousands of

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1 dollars a month in expenses, right?
2 A That's correct.
3 Q So at the end of the day, isn't it true that they
4 were paying money so that you could earn money; isn't
5 that what happened in this transaction?
6 A From September 1st to December 31st, 1992, all of the
7 proceeds, the gross proceeds, less all of the
8 expenses -- and I'm not talking about taxable or
9 nontaxable, but all of the expenses -- were deducted
10 from those gross proceeds, and the positive cash flow
11 that was left over was my understanding of what was
12 to be left in the account after the day-to-day
13 operation of Pacific Lanes, the bowling alley.
14 Q So stated in other words, they spent money to
15 generate the cash flow that you got, right?
16 A They didn't spend anything. The operation of Pacific

17 Lanes, which was mine under my understanding,
18 starting with all the cash, starting at zero on
19 September 1st, all of the cash to be generated less
20 all of the expenses that are to be paid, whatever was
21 left over at the end of the day on December 31st,
22 1992, was to be mine.

23 Q Let me put it a different way. If Pacific Lanes had
24 stopped paying its employees, stopped paying its
25 electric bills, stopped paying B & O tax, stopped

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1 paying for pull tabs and vendors and liquor and
2 everything else, no cash would have been generated to
3 give to you; is that right?

4 A If they had stopped operating --

5 Q Yeah.

6 A -- or just stopped paying the bills?

7 Q Stopped paying the bills.

8 A If they'd have stopped paying the bills, then this
9 would have been in violation of the earnest money
10 that said there would be no accounts payable. They
11 would have been outstanding payables.

12 Q That's fair. Let me ask it a different way. But for
13 the expenditures of money by Pacific Lanes from
14 September through December 1992, there would have
15 been no cash flow generated to give to you, right?

16 A But for the cash generated by the day-to-day
17 operations and the expenses to pay for the services
18 and the goods to create that revenue, there wouldn't
19 have been any positive cash flow to leave behind for
20 me as of December 31st, 1992.

21 Q Now, what if this deal hadn't closed in December?

22 What if you hadn't gotten that approval from the
23 liquor people on December 4th, what if it hadn't been
24 till April of the following year, April of '93?

25 Under your handshake agreement with Judge

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1 Anderson, would you have then gotten a \$200,000
2 credit on the purchase price, or how would that have
3 worked?

4 A I don't believe we ever discussed that. I don't know
5 how it would have worked, because I was working so
6 hard to get it closed on September 2nd and
7 September 3rd and every other day until we finally
8 got it on December 4th. The morning I got the last
9 approval, I didn't wait. I went up to his office and
10 gave him the hundred thousand dollars, and we closed
11 it that afternoon. If that had happened a month
12 before, I would have been just as happy.

13 Q Back in October you didn't know it was going to close
14 in December, did you?

15 A Back in October I thought it was going to close in
16 October.

17 Q But it didn't?

18 A But it didn't.

19 Q So you didn't discuss what would happen if it closed
20 sometime after December, but you discussed what would
21 happen in advance of closing in December?

22 A We discussed in September the effective date of the
23 closing. I can't speculate what would have happened
24 had we gone on and on.

25 Q Now, the money you received, the cash flow or the

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1 profit or however we want to characterize it, you
2 treated that as your money, right? When I say "you,"
3 I mean Pacific Recreation.

4 A Pacific Recreation Enterprises treated that as if we

5 would have gotten a check from Pacific Lanes,
6 Incorporated, for that dollar amount, yes.
7 Q So for the purpose of your deal with Judge Anderson,
8 it was treated as Pacific Recreation's money, right?
9 A My deal -- Pacific Rec's deal with Pacific Lanes,
10 yes.
11 Q Correct. All right. But for other purposes, wasn't
12 it treated as Pacific Recreation's money?
13 A I believe that's --
14 Q Or, I'm sorry, Pacific Lanes?
15 A I'm not sure I understand the question.
16 Q Well, Pacific Lanes told the gambling commission in
17 February of 1992 that the 200,000 gross in pull-tab
18 revenues for the last quarter of '92 was their money.
19 Do you recall that exhibit we looked at
20 yesterday?
21 A I recall that exhibit. I believe they were reporting
22 that the gross revenues for that operation were under
23 their license. I believe that's the purpose of their
24 report.
25 Q So for licensing purposes with the gambling

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1 commission, it was Pacific Lanes' money?
2 A It was Pacific Lanes' license. They were the
3 licensee at the time, so the operation was being
4 conducted under their license.
5 Q Well, didn't we look at the exhibit that reports it
6 as their income?
7 A I'm not going to characterize their exhibit other
8 than the fact that my understanding is that it is
9 their license and these are the funds that are going
10 through the books of that licensee, and all of the
11 funds were being accounted for in the corporate name
12 of Pacific Lanes, Incorporated, who was the licensee.
13 During that period of time it was operating the
14 gambling and dispensing the liquor.
15 Q Well, let's move on to pull tabs. For B & O tax
16 purposes, payroll taxes and other taxes that were
17 paid September through December 1992, it was treated
18 as Pacific Lanes' money, right?
19 A Again, I believe all of these things were all handled
20 the same by the accountant.
21 Q What was your --
22 A You would have to talk to him about how that would be
23 handled, but as far as I'm concerned, all the taxing
24 authorities were handled the same. They were all
25 being handled as if the funds -- which is exactly the

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1 case. The licensee handling all of the funds was
2 that corporation, Pacific Lanes, Incorporated.
3 Q Well, as manager of the bowling alley and tutor of
4 the corporation, the corporation Pacific Lanes, whose
5 money did you think it was back in the last quarter
6 of '92 when Pacific Lanes was paying taxes on it? In
7 your capacity as manager and corporate tutor, whose
8 money was it?
9 A Ultimately, if there was any left over at the end of
10 the day in December, it would have been paid back
11 from Pacific Lanes, Inc, to Pacific Lanes, Inc., as an
12 adjustment for any positive cash flow over that
13 four-month period.
14 Q Isn't it true, Mr. Hamilton, that for the rest of the
15 world, for anybody who looked at this transaction,
16 gambling authorities, taxing authorities, liquor
17 authorities, pull tab authorities, this was treated
18 as Pacific Lanes' money, right?

19 A I don't know.
20 Q Isn't it true that the only time it was treated as
21 your money was pursuant to this handshake unwritten
22 agreement with Judge Anderson, for whom you made the
23 Cadillac payments?
24 A No, I don't think that's a fair characterization at
25 all.

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1 MR. TAYLOR: Nothing further.
2 JUDGE BROWN: Mr. Bulmer, do you have any
3 further questions for this witness?
4 MR. BULMER: Not very many.
5 JUDGE BROWN: All right.
6

7 RECROSS EXAMINATION

8 BY MR. BULMER:
9 Q How much was the deal worth that you negotiated with
10 Judge Anderson in your mind, the original deal?
11 A The original deal was worth a million dollars.
12 Q And then did you have a second deal you negotiated
13 with Mr. Fisher?
14 A I had a deal to buy the building from Mr. Fisher and
15 the land from Mr. Fisher.
16 Q Was Judge Anderson involved, as far as you knew, in
17 the land and building deal from Mr. Fisher?
18 A I never discussed the deal with Mr. Anderson at all.
19 Q In fact, circumstances had changed dramatically,
20 hadn't they, concerning the building and the land
21 from when you negotiated the deal with Judge Anderson
22 in late August or in August of '92 to when you
23 negotiated the deal with Mr. Fisher in the summer of
24 '93, hadn't it?
25 A Yeah. I had had an opportunity to realize the

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1 condition of the physical structure, so, yes, the
2 condition had changed dramatically.
3 Q Excuse me a minute while I bring this easel over.
4 All right. Let's stop doing this in our head.
5 Let's use Mr. Taylor's own numbers, okay, just so we
6 can figure out what happened here.
7 How much did you pay on the note between the
8 combination of the cash flow that had been used by
9 Pacific Lanes and that you ended up ultimately paying
10 on?
11 A \$300,000.
12 Q And how much did you pay down for the option on the
13 building?
14 A \$50,000.
15 Q And how much did you pay -- I'm spread out too much
16 here. I'll do the best I can.
17 And how much did you pay that's reflected in the
18 excise tax amount?
19 A \$508,000.
20 Q And then there was another 72,000, which I --
21 A I believe we talked about 12 payments of 6,000, and
22 12 payments of 3,000 we never talked about.
23 Q Well, let's just get the 12 payments of six. That's
24 the 72, correct?
25 A That's correct.

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1 Q And that is going to be 930,000, right?
2 A That looks more like a seven than a nine, but --.
3 Q My handwriting is famous for --
4 A Same as mine.
5 Q All right. Now, at the time that you negotiated with
6 Mr. Fisher to renegotiate the building, had you had

7 any estimates as to what it would cost to fix the
8 building?
9 A I had a very preliminary estimate, not to fix the
10 building but to stabilize the building.
11 Q What was that number?
12 A Somewhere in the neighborhood of \$75,000 sticks in my
13 mind.
14 Q When you bought the building in the fall, you assumed
15 all liability and responsibility for the building; is
16 that correct?
17 A That's correct.
18 Q You relieved the estate, I guess it would be at that
19 point, of any responsibility or any further
20 obligation in connection with that building?
21 A I relieved the estate of not only the connection and
22 any responsibility for the building but all liability
23 for all parties involved. I remember signing a
24 release that released everybody that ever walked
25 through there, if I remember correctly.

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1 Q So even with a disastrous building on their hands,
2 the estate ended up with at least 930,000; is that
3 your understanding?
4 A That's my understanding.
5 Q Are you aware that in business transactions,
6 sometimes the buyer will pay the seller's closing
7 costs?
8 A Yes.
9 Q Did you consider the \$15,000 you paid Mr. Fisher to
10 be essentially the buyer paying the seller's closing
11 costs?
12 A Yes, I did.
13 Q I'd ask you to turn to your deposition, page 127.
14 A (Witness complies.) I have it.
15 Q During that deposition, did you advise Mr. Taylor
16 that you had put the word "Draft" in pencil up there
17 prior to your meeting with him for the January
18 deposition? This is the second deposition, correct?
19 A Yeah. I'm looking at page 127. Which line am I
20 looking for?
21 Q Line 22.
22 A Line 22. I'm sorry

(PAUSE IN PROCEEDINGS WHILE
WITNESS REVIEWS DOCUMENT.)

25 A Yes, I advised him on page 128, lines 1, 2 and 3, I

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1 said, "During my first --" let's see, I'll start back
2 on line 25.
3 "And I remember during our first deposition
4 those questions came up here and during my copying
5 information for your January subpoena, I had written
6 in pencil in the corner of the earlier document the
7 word 'draft,' because I could not recall why I would
8 have two documents that, looked at rather quickly,
9 said the same thing."
10 Q Have you been involved in any substantial amount of
11 litigation in your banking career?
12 A Well, "substantial" is a relative word. Over 35
13 years, I have found it necessary to sue people on a
14 number of occasions, yes.
15 Q Have you been deposed?
16 A I've been deposed a few times.
17 Q Have you ever been deposed where your personal
18 integrity was at issue?
19 A Never.
20 Q When you were deposed in January, did you feel your

21 personal integrity was at issue?
22 A Never.
23 MR. BULMER: I think I'm almost done,
24 Your Honor, but I'd like one moment just to consult
25 with my client if I might.

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1 (ATTORNEY/CLIENT CONFERENCE.)
2 MR. BULMER: Thank you for indulgence.
3 We have no further questions.
4 JUDGE BROWN: All right. At this time,
5 counsel --
6 MR. TAYLOR: Your Honor, I have some very
7 brief questions that came up in response to that
8 cross, if you'll indulge me for five minutes.
9 JUDGE BROWN: All right.

10
11 FURTHER REDIRECT EXAMINATION

12 BY MR. TAYLOR:
13 Q Mr. Hamilton, would you agree that when deals aren't
14 in writing, you get into problems about what they
15 meant sometimes?
16 A I don't recall that in any of my dealings.
17 Q Well, one of the things you did here in your
18 multiplication showing you paid \$930,000, you gave
19 yourself the benefit up here of the adjustment,
20 right?
21 A That's correct.
22 Q Okay. And that includes -- in that adjustment we
23 dealt with \$24,000 for rent, September, October,
24 November, December, right?
25 A We dealt with excess rent, yes.

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1 Q And then you gave yourself that same rent down here,
2 \$24,000 extra, or am I missing something?
3 A Those were your numbers, sir. I don't know.
4 Q Okay. This dilapidated building you bought, you took
5 that property on an "as is" basis; is that right?
6 A That's correct.
7 Q One last question. You were asked about litigation
8 in your banking career. Are you aware of any pending
9 potential litigation relating to your activities as a
10 banker?

11 MR. BULMER: Objection.
12 MR. TAYLOR: He opened the door, Your
13 Honor.

14 MR. BULMER: I did not open the door. I
15 asked whether he'd been subject to depositions in the
16 past. Besides, it's not relevant as to anything
17 that's pending now. These are all matters that
18 involve 19 --

19 JUDGE BROWN: Objection will be
20 sustained.

21 MR. TAYLOR: No further questions, Your
22 Honor.

23 JUDGE BROWN: Proceedings before the
24 Commission on Judicial Conduct provide that the
25 members of the commission may ask questions of a

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1 witness.
2 Are there any members who wish to ask a
3 question?
4 MR. CLARKE: Yes.
5 JUDGE BROWN: Okay, Mr. Clarke.
6

7 EXAMINATION
8 BY MR. CLARKE:

9 Q Mr. Hamilton, without regard to documents, I just
10 want to get it from you as to ultimately what you
11 paid for the package, if you will, the bowling alley
12 and the real property. Let me see if I can
13 understand these numbers, because we've done this
14 about three different ways.

15 You initially paid, we know, \$100,000 between
16 the option on the down payment on the alley, correct?

17 A That's correct.

18 Q You paid some monies then for about, we'll just call
19 it a year, from 9/1 of '92 to the fall of '93, till
20 you struck the new deal?

21 A That's correct.

22 Q Okay. And on the bowling alley purchase, it was
23 \$3,000 a month?

24 A On the business purchase, yes.

25 Q I should say the business, I'm sorry.

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1 So three times 12 would be 36?

2 A That's correct.

3 Q And then on the real property, the rent was \$6,000?

4 A That's correct.

5 Q And six times 12 would be 72?

6 A 12 times six.

7 Q Thank you. I appreciate your help on the math.

8 And that's, of course, giving you 100 percent
9 credit for those payments, not counting them as rent
10 but counting them towards the purchase price?

11 A That's correct.

12 Q Okay. When you struck the new deal in the fall of
13 '93, what happened to the note for the business? Did
14 it -- was it canceled at that time, was it over?

15 A I paid the note off in full at the closing of the
16 real estate transaction, so that was an additional
17 100 and whatever balance it was, 125, I believe it
18 was.

19 Q Did you pay that a hundred cents on the dollar?

20 A A hundred cents on the dollar.

21 Q So was there 508 plus 125?

22 A On that date, I believe the estate received \$508,000
23 worth of credit. Out of my loan proceeds, I paid off
24 the \$108,000 balance on their first deed of trust at
25 First Interstate Bank. I caused a \$125,000 note to

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1 be paid to them, and they got \$400,000 worth of cash,
2 or \$400,000 worth of check -- I don't want to confuse
3 the word "cash" here -- and I paid their closing
4 costs of what turned out to be \$15,000.

5 Q Did you say 108 was the underlying balance or 180?

6 A 108 is what had been paid down through the efforts of
7 the estate and my payments.

8 Q So it was 233 plus the 400, so 633 was the amount
9 that you delivered on that date, roughly, 630?

10 A 108 -- again, I don't think very well from that
11 standpoint. 108, 400 and about 100-and-a-quarter,
12 whatever that adds up to.

13 Q Okay.

14 A Plus \$15,000 worth of closing costs down the stream.

15 Q So about 200 plus six, so the total ended up, you
16 paid a little over \$800,000 for the business and the
17 land in the end after 12 months?

18 A If that's what those numbers add up to.

19 Q Okay. And I'm being very rough when I say 800. It's
20 a little more than 800, but between 800 and 850.

21 A Plus, of course, we have the adjustments.

22 Q Well, but I'm talking about what you ultimately paid

23 dollars out, because we've gone around on this for
24 about two hours now.

25 A What I paid out after I purchased the business.

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1 Q All right.

2 A You've got all the ingredients. Whether the math is
3 right or not, I don't know, but you've got the
4 ingredients.

5 Q Okay. I appreciate that. Then I'll sit at the break
6 and add them up. Thank you.

7 JUDGE BROWN: Are there any other
8 questions from members?

9 MR. CLARKE: I've got some others. It
10 will take me a few minutes to go through this, if
11 that's okay with the presiding officer.

12 JUDGE BROWN: Go ahead.

13 MR. CLARKE: Do you want me to go ahead
14 now?

15 JUDGE BROWN: Sure.

16 Q (Continuing by Mr. Clarke) The other question I had
17 in terms of accounting was, on Exhibit 30 you were
18 talking about cash flow, as to what the cash was in
19 the business at the end of the year that you were
20 entitled to, correct?

21 A That's what this was intended to do, was adjust the
22 cash flow from September 1st to December 31st, 1992.

23 MR. TAYLOR: Excuse me. Are we on
24 Exhibit 30?

25 MR. CLARKE: Yes.

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1 MR. TAYLOR: Thank you.

2 Q (Continuing by Mr. Clarke) You had \$45,000, which
3 was the starting number, if you will, correct; that
4 was the profit that was to be there?

5 A That was the profit that was to be there.

6 Q And as I look down, it looks like there were some
7 excess legal and accounting paid that someone said
8 normally that wouldn't be paid by a bowling alley
9 business?

10 A That's what it says, yes.

11 Q If I add those two numbers together, it's about
12 \$60,000. If I add that 14 back into the 45, and
13 there's some change, but I come to about 60, correct?

14 A That's correct.

15 Q Now, the rent would normally be paid by the bowling
16 alley to the landlord, whether it be
17 Hoffman-Stevenson or somebody else, the trust or the
18 estate, correct?

19 A That's correct.

20 Q Okay. And the depreciation wasn't a number that
21 would be added in for cash flow purposes, would it?
22 That's not a cash flow number, is it?

23 A Depreciation is a noncash number, yes.

24 Q That's why I'm trying to stay with cash numbers. So
25 far we've got \$60,000 as a cash number?

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1 A That's correct.

2 Q As I look down below on the left-hand side, there was
3 some insurance that the business would normally pay,
4 the bowling alley business would normally pay, \$4300
5 insurance. That would be a bill they would normally
6 pay, correct?

7 A Yes.

8 Q And they would also owe, just like all small
9 businesses, the payroll taxes and the business taxes?

10 A That's correct.

11 Q We all get to pay those if we're in business.
12 When I add those numbers together, they come to
13 about \$27,000. And I'm rounding again, as I've done
14 in all my questions so far, okay.
15 Is that correct?
16 A I add those three numbers together -- I'm sorry,
17 yeah, 27,000. I'm sorry, those two.
18 Q If I took the 27 from the 60, wouldn't there be about
19 \$33,000 that I would expect in cash in that account
20 at the end of the year?
21 A No, I don't believe that's a fair characterization of
22 what this is intended to be.
23 This was created by the accountant, and I would
24 really hope that he could explain it, but my
25 understanding of it, sir, is that the \$45,000 worth
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1 of profit, going back up to the top, plus the fair
2 market rent -- my rent was \$6,000 that I agreed to.
3 They had taken 12,000 out of the account and paid it
4 over to Hoffman-Stevenson every month, so they had to
5 give me back the excess rent, which was --
6 Q I'm sorry. I read that as four times six being 24.
7 A No. It's the difference between four times 12 and
8 four times six. Coincidentally, they took out
9 exactly double the amount of rent that should have
10 been there and transferred it from the Pacific Lanes
11 account, the operating account, to the
12 Hoffman-Stevenson account.
13 Q All right.
14 A And then you go on to the depreciation, which is a
15 noncash figure of some \$25,834. That had been taken
16 out as a deduction in the profit and loss, but it was
17 truly cash, so it should have still been there.
18 Q And I guess I don't have enough business experience
19 to know how depreciation --
20 A Well, I'm not an accountant, so I would hope that
21 that question could be answered more probably from
22 the accountant.
23 Q I'll ask the accountant, then.
24 I was just trying to look at cash figures as
25 opposed to, you testified earlier as to profit and
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1 loss, which of course would include appreciation.
2 This statement includes appreciation?
3 A Yes. You would add all these numbers together and
4 that would create the cash that should be there, and
5 that's why it came down to the \$92,829 worth of cash
6 that should have been there that wasn't. And then
7 the other \$31,000 figure that you referred to were
8 expenses that were taken out of the Pacific Rec
9 account by these same managers.
10 Q Okay.
11 A I made the mistake of saying business as usual. I
12 just didn't know what business as usual was.
13 Q Who controlled the funds in and out of Pacific Lanes
14 in the fall of '92? Did you control the actual
15 expenditures?
16 A No. The day-to-day operation was under the direction
17 of Jackie Pagni, the general manager.
18 Q But you testified earlier that you oversaw the fiscal
19 operation, and I didn't know if that included how
20 these payments were going to be made or not.
21 A No.
22 Q Okay. Had you ever had prior business deals with
23 Judge Anderson?
24 A In my capacity as a banker, I had advanced money to

25 him, and people under my direction had advanced money
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1 to him.
2 Q Other than the loans, though? I understand that. I
3 was thinking in terms of business deals.
4 A No personal dealings that I recall as far as
5 investing with him in any way.
6 Q Did you support him in his campaign for judge?
7 A I supported him in his campaign for Superior Court
8 judge. I think I made 100,000 -- not 100,000, a \$100
9 donation.
10 Q On the car payments that you made starting in '93,
11 why did Pacific Resources (sic) make those payments
12 rather than you individually? I don't understand
13 that.
14 A Referring to Pacific Rec?
15 Q Pacific Rec.
16 A I had the payments made out of the Pacific Rec
17 account because it was convenient. It's a high gross
18 volume business as opposed to a high net profit
19 business, and there's a lot of cash flow going
20 through there.
21 That corporation owed me at various times
22 upwards of three to four hundred thousand dollars,
23 and there was a lot of cash in there. Rather than me
24 take the money from my proceeds, it was convenient to
25 take it out of there.

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1 The account was at the bank where the loan was.
2 I had already set up another automatic charge out of
3 there for a company vehicle that my son used in the
4 business, and it just -- it's an expedience thing.
5 And the accountant, these entries were made in
6 the books of the business and the checking account.
7 That's what was going to the accountant, and he would
8 prepare the accounting reports appropriately from
9 those.
10 Q The last thing I have is, you've talked a couple
11 times about it was your understanding how this deal
12 was going to be structured in terms of the cash flow
13 in the fall of '92. I wasn't sure, though,
14 ultimately when you sat down and discussed with Judge
15 Anderson -- which I guess I'm asking that question.
16 Did you ultimately sit down and discuss with him
17 this question of the offset or the credit, or
18 whatever you want to call it, in late '92 or early
19 '93; did you ultimately do that?
20 A No, I don't believe I discussed the credit with Judge
21 Anderson at all, because (1) we didn't know, first of
22 all, that there would ever be any money left over
23 until after the books were closed on December 31st.
24 It took the accountant until the middle of February
25 to determine what the true profit-and-loss figure and

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1 cash flow figure should have been.
2 By that time, I'm sure it was clear to the
3 trust, in this case Mr. Fisher, that the funds were
4 not there. I never saw the checkbook. I didn't know
5 whether the funds were there or not. I was not a
6 signer on the account. The bank statements were
7 forwarded directly from the bank to the accountant,
8 and I believe the checkbook balance was never kept at
9 the bowling center.
10 So I could never walk into that bowling center
11 and see how much money was in the bank, so I didn't
12 know if we were working positive, negative or

13 otherwise. They never kept a running balance in the
14 checkbooks.

15 So there were never any discussions with Judge
16 Anderson, now-Judge Anderson, about these adjustments
17 or the money missing by me, because I found out about
18 it from the accountant, and I met with the accountant
19 on a number of occasions, and I talked with Fisher,
20 who was the person representing the corporation at
21 the time.

22 Q Okay. Thank you, Mr. Hamilton.

23 MR. CLARKE: Thank you, Mr. Brown.

24 JUDGE BROWN: Ms. Reynolds?

25

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1 EXAMINATION

2 BY MS. REYNOLDS:

3 Q Do you see any discrepancy between what you call the
4 handshake deal and the original written agreement?
5 And I'm looking at Exhibit 20, item 11. Is there any
6 inconsistency?

7 A Well, you had the pleasure of not being here through
8 the first 12 go-throughs.

9 (LAUGHTER.)

10 A Paragraph 13(d) refers to the closing to be as soon
11 as reasonably possible, but no later than
12 September 1st. It was my understanding that was the
13 date of transfer of the financial control of the
14 business if not, in fact, the effective licenses.

15 Q I guess what I'm wondering, and again I wasn't here,
16 is if the nature of what you called the handshake
17 deal is in any way different than the written
18 agreement?

19 A Not in my mind, it isn't. They're consistent. If I
20 had -- let me see if there's another way.

21 If I had in my experience stopped every
22 transaction that came across my desk or through me
23 personally in my own businesses and made every
24 possible contingency available on the document
25 itself, I don't know that much business would ever go

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1 on.

2 A perfect example of that is, I guess,
3 paragraph 1. I mean, we're talking about -- with no
4 disrespect at all intended, we're talking about the
5 practice of law by word processor. "Agreement made
6 between William Hamilton for a corporation to be
7 formed." The very next exhibit says "Agreement made
8 between Pacific Recreation Enterprises, corporation
9 to be formed." Doesn't even belong in there. The
10 corporation is formed.

11 I sold a \$20 million bank and had to have the
12 drafts retyped repeatedly to take out the words Idaho
13 and Massachusetts. And I don't mean that
14 disrespectfully.

15 I'm just saying that some things are implied in
16 every deal, and there was an understanding between
17 Grant Anderson and I, him representing the seller and
18 me representing the buyer, that this was the deal.
19 September 1 was material. All of my conclusions as
20 to value were based on that.

21 Q And what are you saying was implied in this deal?

22 JUDGE BROWN: I'm sorry. That question
23 was asked and answered several times, so unless --

24 MS. REYNOLDS: I'm just trying --

25 JUDGE BROWN: The transcripts will be

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1 available to you --
2 MS. REYNOLDS: Okay, sorry.
3 JUDGE BROWN: -- to go over that. But at
4 this point in the day, I don't want to continue to
5 ask for this witness to repeat his testimony again.
6 I know that that's difficult for you since you
7 arrived late, but I think in the interests of moving
8 this along, that, you know, if you think -- I'll
9 allow you to proceed, but you might want to think
10 about that you're not asking him to restate his
11 entire testimony for you.
12 Q (Continuing by Ms. Reynolds) I'm just trying to
13 understand if this so-called handshake deal was an
14 amendment or an alteration or how you view that?
15 A The word "handshake," I think, came out of one of the
16 attorneys representing this thing.
17 My understanding was that the September 1st
18 memorialization was right there in that paragraph.
19 That was my understanding was the effective date of
20 closing for financial purposes.
21 Q Okay.
22 MS. REYNOLDS: Thank you.
23 JUDGE BROWN: Ms. Caver?
24 MS. CAVER: Yes.
25

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1 EXAMINATION
2 BY MS. CAVER:
3 Q On your deciding to offer to pay the car note, in
4 your mind that was a personal gift, your personal
5 gift, to provide this to Judge Anderson?
6 A I don't think I thought about it as a personal or a
7 business gift. I guess it was a -- it was my
8 decision totally apart and separate on another track.
9 The bowling alley transaction was completely
10 over, in my mind, in the fall of 1992,. A lot of
11 water went under the bridge. A lot of things were
12 happening in my life, in his life. And he's in
13 January of 1993 now not a representative of an estate
14 that I bought something from, not a person on another
15 side of a transaction -- which I never looked at him
16 as that. I made a deal with a corporation.
17 Now my friend, my good friend, Grant Anderson,
18 is no longer going to be able to provide me a service
19 for which I have paid nothing, and I decided that I
20 wanted to do something for him that he would find
21 socially acceptable in accepting from me personally.
22 Q And with that decision, that was personal?
23 A That was a personal decision.
24 Q And I go back to the original question I was asking.
25 Why did you not pay out of your personal pocket than

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1 from than from the recreation business?
2 A The --
3 Q Because then the recreation business paying it
4 becomes the recreation --
5 A Well, the Pacific Recreation Enterprises owed me --
6 Q I know you own it. I understand you own it.
7 A I think that's the problem of --
8 Q I'm just trying to figure why you didn't pay it from
9 your own personal account.
10 A Well, I had several hundreds of thousands of dollars
11 in the corporation and was continuing to build on
12 that. That's where the cash flow was. I think I
13 left it up to the accountant to make the adjustments
14 against my personal account that it owed me.

15 MS. CAVER: Thank you.
16 JUDGE BROWN: Any other questions? Well,
17 I have a question.

18
19 EXAMINATION

20 BY JUDGE BROWN:
21 Q Referring to Exhibit 37, which is the real estate
22 excise tax affidavit, do you have that?
23 A Yes.
24 Q Does the \$508,096.07 listed as a gross sale price
25 include the 15,000 you paid to the trustee of the
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1 Hoffman estate, Mr. Fisher?
2 A No, it doesn't.
3 Q And why not?
4 A Well, I didn't know there was any \$15,000 at the day
5 I signed this. I didn't have any idea what the cost
6 of that would be. That came out somewhat later, to
7 the best of my recollection.
8 Q So that was paid later?
9 A To the best of my recollection, it was paid later.
10 Q Are you sure it was paid later?
11 A I'm not sure, no.
12 Q Do you know?
13 A No.
14 Q Could it have been paid at the time?
15 A No, I don't believe it was paid at the time. Do I
16 know? No, I don't know for sure. I think I remember
17 signing a check for \$15,000 somewhat later.
18 Q What was the payment for?
19 A The payment was for the costs, as I understood it,
20 the costs of putting this transaction together, all
21 of the seller's costs.
22 Q Wouldn't the closing costs be known at the time the
23 sale is closed?
24 A I don't know that we were covering -- we weren't
25 talking about the excise tax and those kind of costs.

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1 I'm talking about the attorney's costs.
2 I had no idea -- this covered quite a period of
3 time -- how much time and effort and expense
4 Mr. Fisher had gone through in his representation
5 back and forth with whoever the heck he had to talk
6 to, the heirs.
7 You know, I've become somewhat familiar with the
8 billing practices, the varied billing practices, of
9 different attorneys, and I have no idea how any of
10 them justify their costs of a particular transaction.
11 Q Well, Mr. Fisher called you on the phone and said,
12 "You owe us \$15,000"?
13 A If I remember correctly, I got a bill.
14 Q So there is something in writing reflecting the
15 \$15,000?
16 A At the time I believe there was, and I wrote a check
17 for \$15,000, by my best recollection.
18 Q Thank you.

19 JUDGE BROWN: Anything else?
20 Thank you, Mr. Hamilton.
21 MR. TAYLOR: Your Honor, begging the
22 court's indulgence, I have two questions.
23 JUDGE BROWN: I'm sorry. I guess we need
24 the allow commission counsel and counsel for the
25 judge to follow-up on the questions asked by the

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1 commission.
2 MR. BULMER: Since we both stood up,

3 that's probably correct.
4 JUDGE BROWN: That is in the rules.
5 MR. TAYLOR: Only a couple questions,
6 Your Honor.
7

8 FURTHER REDIRECT EXAMINATION

9 BY MR. TAYLOR:
10 Q Mr. Hamilton, just to clarify, when you were
11 answering Commissioner Clarke's questions, you said
12 the \$250,000 note was paid in full?
13 A That's correct.
14 Q Okay. What you meant to say was 250,000 less the
15 adjustment you had been credited for?
16 A I believe I testified to what I meant. The
17 adjustments were mine, my dollars that they took, so
18 I consider that, as I've always stated, that that was
19 my money and I paid it.
20 Q At the close in the fall of '93 on the ground and
21 buildings, you didn't pay \$250,000 on the note?
22 A No. I paid a balance of \$125,000.
23 Q Okay. Now, you talked briefly about Exhibit 30 with
24 Commissioner Clarke. Do you have that in front of
25 you?

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1 A Yes, I do.
2 Q And you talked about -- he asked you specifically
3 about the fair market rent calculation. Do you
4 remember that?
5 A That's correct.
6 Q And you testified that Pacific Lanes had been paying
7 12,000 a month each month to Pacific Recreation,
8 right?
9 A That's what I was informed from the accountant, yes.
10 Q You have no --
11 MR. BULMER: Objection to the
12 mischaracterization. I think you just misspoke,
13 that's all. You said paying 12,000 a month from
14 Pacific Lanes to Pacific Rec.
15 MR. TAYLOR: I'm sorry.
16 Q (Continuing by Mr. Taylor) You testified Pacific
17 Lanes was paying \$12,000 a month rent to
18 Hoffman-Stevenson, right?
19 A That's what I was told.
20 Q But you've since learned that wasn't happening,
21 haven't you?
22 A No, I haven't.
23 Q Have you heard about how the lease said six on the
24 books and on the books only, and for some
25 advantageous tax reasons they decided to put 12?

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1 A I have no idea what you're talking about.
2 Q Okay.
3 MR. TAYLOR: I have nothing further, Your
4 Honor.
5

6 FURTHER RECROSS EXAMINATION

7 BY MR. BULMER:
8 Q Mr. Hamilton, did you have anything to do with the
9 preparation of Exhibit 37, the excise tax affidavit,
10 other than the signature?
11 A No, I didn't.
12 Q Did you rely on the numbers that were provided to you
13 by whoever prepared this as to what would be
14 accurately reflected for purposes of a real estate
15 excise tax affidavit as to what the gross sale price
16 was?

17 A I relied on this document which was presented to me,
18 I believe, at the bank offices of First Interstate
19 Bank when I signed all the papers that had been
20 forwarded down by the bank for my signature and by
21 Mr. Fisher representing the seller.
22 Q Would it be fair to say that you considered Pacific
23 Rec, although it was a corporation, to be yours, to
24 be your corporation?
25 A I owned 100 percent of the stock in the corporation.

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1 All the money that was in the corporation as either
2 capital or loans came from me personally. So for
3 better or worse, I guess I look at it as an invisible
4 barrier for accounting purposes. It was mine.

5 Q So if \$800 a month came out of there, is that \$800 a
6 month less that was going to go to you in some other
7 way?

8 A No.

9 MR. BULMER: Nothing further. Thank you.

10 MR. TAYLOR: Nothing further.

11 JUDGE BROWN: All right. Thank you very
12 much, Mr. Hamilton. You may step down.

13 MR. BULMER: May Mr. Hamilton be excused?
14 I think we talked about this. I believe there are
15 some reasons --

16 MR. TAYLOR: That's fine, Your Honor.

17 JUDGE BROWN: You are excused from
18 attendance.

19 THE WITNESS: Thank you very much.

20 JUDGE BROWN: All right. I believe at
21 this time we'll be at recess for at least ten
22 minutes.

(RECESS TAKEN.)

23
24
25
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* * *

1 THE FOLLOWING PROCEEDINGS WERE HELD OUTSIDE
2 THE PRESENCE OF THE COMMISSION MEMBERS.

* * *

3 JUDGE BROWN: Please be seated.

4 Okay. This is on commission counsel's motion in
5 limine?

6 MR. BULMER: Mine, actually.

7 JUDGE BROWN: Your motion. Okay.

8 MR. BULMER: What we're here for is, the
9 next witness is scheduled as Diane Anderson, just so
10 I can lay the groundwork for this, and she's the
11 ex-wife, former wife, of Judge Anderson, and she's a
12 commission witness, and I'm moving on a couple
13 grounds to exclude her testimony and for motion in
14 limine.

15 (1) All of her testimony will be hearsay. In a
16 deposition she has no direct knowledge of the events,
17 and based on her deposition, her testimony will be
18 hearsay, rather than raise that issue when she's in
19 here.

20 And, secondly, on the marital privilege, the
21 marital privilege issue breaks into two different
22 categories of communication that's protected under

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1 the privilege. One is the testimonial privilege,
2 which is if you remained married. The other one is
3 the confidential communication privilege which
4 survives the dissolution, and that's the privilege

5 that we're talking about here, which is confidential
6 communication.

7 The confidential communication privilege under
8 the statute is protected and a former spouse cannot
9 be examined about communications which took place
10 during the course of the marriage. However, that
11 privilege, the right to assert that, can be waived.

12 Waiver can occur in two ways. I don't think
13 there's significant disagreement between the
14 commission and I, the lawyer and I, on the law about
15 this. It can be waived two ways. It can be either
16 express or implied waiver.

17 There is clearly no express waiver here, so the
18 issue is implied waiver. The commission's position
19 is that Judge Anderson, by answering a couple of
20 questions during the course of his first deposition
21 in this matter, has impliedly waived the privilege as
22 it extends to confidential communications between he
23 and his wife.

24 There is no question that the communication
25 that's involved in here happened during the course of
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1 their marriage. I haven't provided it, but the case
2 law is clear there's a presumption of confidentiality
3 in the matter. So the requirements are met. And but
4 for the implied waiver, clearly she would not be able
5 to testify.

6 So the question then is what constitutes implied
7 waiver. And interestingly enough, we rely basically
8 on some of the same law.

9 The language which Judge Anderson is supposed to
10 have expressed to waive this is in answer to a
11 question, "Did you tell anyone," and we agree with
12 the parenthetical here in their brief, "about the
13 loan payments on your behalf by Hamilton's company?"
14 "ANSWER: Perhaps my wife."

15 And this sequence of questions:

16 "Did you ever tell your wife that the Cadillac
17 payments were a commission as to the sale of Pacific
18 Lanes to Mr. Hamilton?

19 "No, because they weren't.

20 "Did you ever make any statements to that effect
21 to your wife?

22 "Not that I'm aware of. I don't know why I
23 would have, because they were not."

24 If you go, then, to the law of waiver, it always
25 speaks to the witness who testified voluntarily about
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1 the contents, the contents of a confidential marital
2 communication. There was no testimony by Judge
3 Anderson as to the contents of any marital
4 communication. He denied the existence, and this is
5 an important distinction. He said, no, there wasn't.

6 Why do we have waiver? We have waiver because
7 if you impliedly talk about the confidences that took
8 place in the communication, then obviously, as we
9 heard here today, you've opened the door to the
10 inquiry.

11 But if you don't talk about the contents of it,
12 then you have not had a waiver because you haven't
13 talked about the private communication or privileged
14 information.

15 And I provided you that case, the Southwestern
16 case, which talks about the fact that a "no" answer
17 in response to those kinds of questions is not the
18 divulgence of a privileged communication since no

19 privileged communication issued. If you have
20 answered the question "no" in a marital communication
21 situation and you haven't provided any information,
22 case after case talks about the contents in these
23 things.

24 One of the cases they cite is Swearingen, and
25 Swearingen talks about some of the public policy

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1 things behind it, and then Swearingen talks about
2 waiver, and it says:

3 "In addition --" it's a Supreme Court case and
4 they give the cite, Washington State Supreme Court.
5 "In addition to his own divulgence on the witness
6 stand of his communications to his wife, Swearingen
7 must be held to have waived privilege as to his
8 communications."

9 Judge Anderson did not testify as to any
10 communication. All this testimony is is a denial of
11 a conversation. He doesn't talk about any
12 confidential communication. So I don't believe that
13 the implied -- there's certainly no express waiver,
14 so that the implied waiver occurs when you deny the
15 existence.

16 This would be -- let's put it in a posture that
17 some of us are more familiar with, privileged
18 communication. So-and-so: "Have you ever talked
19 with a lawyer about this issue?" "No."

20 Does that mean that the commission could go to
21 every lawyer that you've ever talked to and go and
22 say, "Well, your attorney/client privilege is waived.
23 We get to ask every lawyer every question that came
24 up"? No, it isn't. It's a denial of the
25 conversation.

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1 Does that mean that occasionally things will
2 happen that go against the social good? That's
3 entirely possible, but again there's Washington case
4 law that talks about that, and that case law talks
5 about how important this entire marital privilege
6 issue is.

7 There's a case called Breimon vs. General
8 Motors, which is 8 Wn.App. 747, and it talks about
9 importance of the marital privilege and what some of
10 the public policy reasons are behind it. It says
11 that it's very important to maintain it, and it says
12 at page 750:

13 "Trust would be dispelled if a spouse was
14 required to analyze each statement as to whether it
15 might later be, as defendant argues, a socially
16 desirable objective to disclose the confidential
17 communication."

18 And then it talks about, "A spouse should not be
19 placed in fear that a future change in marital status
20 would find its innermost secrets broadcast."

21 So there may well sometimes be socially
22 objectionable things that would otherwise warrant,
23 but you've got to preserve the privilege, and there
24 was no express waiver here, and the implied waiver is
25 not there since he didn't reveal any privileged

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1 communication; he just denied the existence of a
2 conversation.

3 We also would renew our objection again that any
4 evidence she brings in will be hearsay as to the
5 existence of anything about the payments.

6 JUDGE BROWN: Thank you.

7 Mr. Taylor?

8 MR. TAYLOR: Thank you, Your Honor.

9 Commission counsel intends to call Diane
10 Anderson for approximately a 10-minute examination.

11 Judge Anderson testified in his deposition, he
12 was asked, "Did you ever tell your ex-wife that the
13 Cadillac payments were a commission from Bill
14 Hamilton?" He testified unequivocally, "No."

15 Ms. Anderson will be called to testify to just
16 the contrary, that the two discussed it and that
17 Judge Anderson told his then-wife that the Cadillac
18 payments were a commission from Bill Hamilton.

19 That is the only conversation that occurred
20 within the scope and duration of the marriage that
21 I'll be asking about.

22 There are two objections that have been raised.
23 The first is hearsay. She will be asked to recite
24 what she was told by Judge Anderson, the respondent
25 in these pleadings. Under 801(d)(2), it's a clear

FOOT OF PAGE 367

1 admission by a party, Judge Anderson. There is no
2 hearsay issue.

3 As to the marital privilege, Judge Anderson at
4 his deposition was represented by Mr. Bulmer.
5 Mr. Bulmer was sitting right there. While he was
6 sitting there, Judge Anderson was asked a question:
7 "In essence, did you tell anyone that the payments
8 were being made by Mr. Hamilton?" He said, "Perhaps
9 my wife."

10 Right there, a waiver occurs because he
11 disclosed the subject matter of a conversation
12 between he and his wife. That's enough for waiver.

13 But it goes further, because in this case Judge
14 Anderson added what, in a criminal case at least,
15 would be called the exculpatory no defense, which is
16 once he opened the door a little bit, he then crafted
17 it to put it in an exculpatory, as opposed to
18 inculpatory, vein.

19 Why do I say that? Because we then went into
20 the detail. He said, "Perhaps I told my wife the
21 payments were a commission." Then he went into --
22 or, "Perhaps I told my wife the payments were being
23 made by Hamilton." Then he went into detail: "Well,
24 did you tell her this?" "No." "Did you tell her
25 this?" "No."

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1 So he opened the door, and now having open the
2 door, he wants to quickly shut it again. But the
3 Syosset case, the very recent case out of the Third
4 Circuit, says that's not the law. Once you open the
5 door, the door remains open. You can't selectively
6 open it for those you want to come in and then close
7 it for those you want to keep out.

8 The Texas case, the Hamilton case that's cited,
9 lacks one thing that we have here. In that case the
10 spouse at issue always said, "No, I never had any
11 conversation," always said no. That's all the record
12 was in that case from a district court in Texas back
13 in 1930, some 67 years ago, and hasn't been cited
14 since.

15 In this case we have something different, which
16 is, he opened the door. "Did you tell anyone the
17 payments were being made by Hamilton?" "Perhaps my
18 wife." That's enough for a waiver of the spousal
19 privilege.

20 The other issue that plays in the background of

21 this motion, Judge Anderson denies this conversation
22 ever occurred. He says it's made up. If that's the
23 case, she's not testifying as to any marital
24 communications, because under his view of the case
25 and his presentation of the case and his theory of

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1 the case, the conversation never occurred, so there's
2 no privilege as a result because in his view the
3 conversation didn't happen.

4 We'd ask that the motion be denied.

5 JUDGE BROWN: Can I ask you a question?
6 If we compare this to another privilege, if the
7 witness says they told their lawyer about it, does
8 that waive their privilege as to the lawyer?

9 MR. TAYLOR: No. The two privileges are
10 different. We have to remember that under the rules
11 of the attorney/client privilege, the general subject
12 matter of a conversation, we all know, is not
13 privileged, and you're entitled to probe around the
14 edges to find out the general subject matter.

15 And that's why, when you testify as to the
16 general subject matter in the attorney/client
17 privilege, it's not a waiver. You're required to,
18 because the general subject matter is not privileged.

19 Spousal privilege is different, though. It is
20 an absolute barrier, an absolute barrier, to any
21 inquiry of any sort about any discussions between two
22 spouses when they're married. But the waiver issue
23 is correspondingly different, because once you say
24 anything about a conversation with your spouse,
25 you've waived it. Even if it's the general subject

FOOT OF PAGE 370

1 matter of the conversation, you've waived it, whereas
2 with attorney/client privilege it would be different.

3 Another example would be, and different from the
4 attorney/client privilege, the priest/penitent
5 privilege or the physician/patient privilege. Those
6 all work the same way as the marital privilege:
7 Absolute bar, but once you open the door, as occurred
8 here, it's been waived.

9 So I don't think we can look to the
10 attorney/client privilege for the answer to the
11 question. I think we have to look at the traditional
12 spousal privilege, priest/penitent and the like, and
13 we find the answer there, which is, the instant you
14 open the door, however slightly -- and here it was
15 much more than slightly -- the privilege has been
16 waived.

17 MR. BULMER: First, we would argue that,
18 of course, "perhaps" is not an opening and of course
19 it is not a discussion of anything about
20 confidentiality. If they wanted to waive, they had
21 to ask him the next question, which was, "What was
22 the nature of that conversation?"

23 Secondly, as to what was just expressed, here's
24 what the statute says, 5.60.060, as to marital
25 communication. It says: "...be examined without the

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1 consent of the other, examined as to any
2 communication made by one to the other during the
3 marriage."

4 The next section, which is the attorney/client
5 privilege, says: "...shall not, without the consent
6 of his or her client, be examined as to any
7 communication made by the client to him or her."

8 The statute says the same thing for both

9 provisions. There's nothing in the statute that
10 makes the distinction.

11 JUDGE BROWN: The motion to exclude the
12 testimony of Diane Anderson on the grounds of marital
13 privilege is granted. The statement "Perhaps my
14 wife" did not waive the privilege. At most it may
15 have disclosed a possible subject, but the contents
16 of any communication were not voluntarily disclosed,
17 and without that, the privilege is not waived.

18 MR. TAYLOR: Your Honor, would Your Honor
19 entertain, assuming we do additional research this
20 evening, a motion for reconsideration in the morning?

21 JUDGE BROWN: You can bring a motion to
22 reconsider at any time. I mean, you can do that.
23 We'll have to review it and see.

24 MR. TAYLOR: Thank you.

25 JUDGE BROWN: Offers of proof are also

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1 available under the rules of evidence. If that would
2 be necessary or not, I don't know, to preserve the
3 record.

4 We'll take a short break and then we'll
5 continue.

6 MR. TAYLOR: Your Honor, if it makes
7 sense, in order to avoid a perhaps protracted
8 proceeding later at some higher court or some other
9 court, does it make sense, notwithstanding Your
10 Honor's ruling, to put on the testimony -- it will be
11 ten minutes -- so that the testimony is preserved for
12 potential de novo review of this matter?

13 I understand the court's ruling, and I'm not
14 trying to back-door it, but I'm just saying, as a
15 practical solution in the interests of judicial and
16 lawyer economy, does it make sense to go forward with
17 this very brief examination, with the understanding,
18 of course, that right now it's not deemed admissible
19 evidence?

20 JUDGE BROWN: Mr. Bulmer?

21 MR. BULMER: I guess I don't know how
22 that would come in. Would we do it to the whole
23 panel; would we just do a short little statement in
24 front of you? I'm concerned obviously about undue
25 influence.

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1 JUDGE BROWN: Right.

2 MR. BULMER: I think it's pretty clear on
3 their briefing.

4 JUDGE BROWN: I think the record itself,
5 I guess in examining and in your motion, I think that
6 preserves the issue. Don't you also have previous
7 sworn testimony or a statement?

8 MR. TAYLOR: We have a declaration of
9 Diane Anderson which is not presently part of the
10 record.

11 JUDGE BROWN: Perhaps that could be added
12 by way of an offer of proof on the issue, if that's
13 what you're looking for.

14 Maybe I just opened too much there. Maybe I
15 shouldn't have.

16 MR. TAYLOR: It's acceptable to
17 commission counsel, Your Honor, perhaps with the
18 caveat that it be filed under seal and not reviewed
19 by the sitting members of the commission.

20 JUDGE BROWN: Let's hold off on that, the
21 issue on whether or not to proceed. Let's just hold
22 off on that for now. In looking at it, it would

23 involve, you know, trying that whole issue but then
24 the commission not considering it because it's
25 privileged.

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1 Let's hold off on that for right now, and we can
2 proceed with another witness.

3 MR. TAYLOR: We do have another witness,
4 Your Honor.

5 JUDGE BROWN: Okay. Give me a couple
6 minutes and then we'll get started on that.

7 (RECESS TAKEN.)

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FOOT OF PAGE 375

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THE FOLLOWING PROCEEDINGS WERE HELD
IN THE PRESENCE OF THE COMMISSION MEMBERS.)

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JUDGE BROWN: Thank you.

7

We have an additional member of the commission
who's joined us this afternoon, Mr. Whitrock.

8

9

MR. WHITROCK: Todd Whitrock. I'm a lay
member of the commission, and I'm from Longview,
Washington. That might explain my tardiness. It was
a very difficult drive getting up here even today.

10

11

12

13

Thank you.

14

JUDGE BROWN: All right.

15

MR. TAYLOR: Commission counsel calls
Kevin Iverson.

16

17

18

KEVIN IVERSON, being first duly sworn to
tell the truth, the whole
truth and nothing but the
truth, testified as follows:

19

20

21

DIRECT EXAMINATION

22

BY MR. TAYLOR:

23

Q Good afternoon, Mr. Iverson. What do you do for a
living?

24

25

A I'm a certified public accountant.

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1

Q How long have you been a CPA?

2

A I've been working as a CPA for ten years, eight years
licensed.

3

4

Q In the course of your work as a CPA, have you done
work for Grant Anderson?

5

6

A Yes.

7

Q Have you done work for Bill Hamilton?

8

A Yes.

9 Q Have you done work for Mr. Hamilton's company,
10 Pacific Recreation?
11 A Yes.
12 Q And did your firm do work for the Hoffman estate?
13 A Yes.
14 Q Were you involved in that?
15 A Yes.
16 Q I want to take you back to very late 1992, or early
17 1993. Were you involved in calculating a reduction
18 of the purchase price for the sale of the bowling
19 alley operation by Pacific Lanes to Mr. Hamilton's
20 company, Pacific Recreation?
21 A Yes.
22 Q When did you first learn that the assets of Pacific
23 Lanes had been sold to Pacific Recreation?
24 A I did the work on them in early January, but I
25 believe I did find out a little bit before then.

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1 Q Okay. Did Judge Anderson contact you in early
2 January 1993 about an adjustment to the purchase
3 price?
4 A Yes.
5 Q How did he contact you?
6 A He actually contacted my former partner in about
7 November, and then I found out about it probably mid-
8 December or early January, and I don't know if it was
9 my former partner that told me or Grant or Bill.
10 Q When you say you first learned about it in November,
11 was that the sale of the assets or the adjustment to
12 the purchase price?
13 A That was the sale.
14 Q Okay. You didn't learn about any adjustment to the
15 purchase price in November of '92?
16 A Not that I remember.
17 Q Your first knowledge of an adjustment to the purchase
18 price, was that when Judge Anderson called you?
19 A It would have been about, and this is different from
20 what I told you before, but probably early in
21 December.
22 Q About --
23 A When they did the closing on December 4th, I remember
24 now that I was the one that had them wait until
25 December 31st to do the adjustments because of

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1 payroll tax reasons and so forth.
2 Q Okay. Did you previously testify that you first
3 learned of the adjustment process when Judge Grant
4 Anderson called you up in mid-January?
5 A Mid-January, I did tell you that in my deposition.
6 Q Okay. Regardless of when you first learned about it,
7 did you work with Judge Anderson in January 1993 on
8 the adjustment process?
9 A Well, I did the work myself, but I did contact him.
10 Q Okay. And you contacted him from time to time from
11 January 1993 forward?
12 A I believe so.
13 Q Okay. And that was because you needed information
14 from Judge Anderson?
15 A No. We were just verifying everything.
16 Q You were verifying figures with Judge Anderson?
17 A Well, explaining them.
18 Q Did you ever see any documents that reflected an
19 agreement to adjust the purchase price?
20 A No.
21 Q Did you ask to see any?
22 A No.

23 Q Who told you there was such an agreement?
24 A I don't know if anybody ever told me there was such
25 an agreement. I was just told that the sale was
FOOT OF PAGE 379
1 supposed to take place September 1st, and we made the
2 adjustment accordingly.
3 Q And that was what you were told by Hamilton and
4 Anderson?
5 A Hamilton and Anderson.
6 Q Okay. And you took them at their word that such an
7 agreement existed?
8 A Yes.
9 Q What did you do, just generally speaking?
10 A We adjusted what we called the purchase price
11 adjustment, or what I called the purchase price
12 adjustment, for the cash flow that was earned between
13 September 1st and December 31st.
14 Q And that's Exhibit 30. Take a look at Exhibit 30,
15 please.
16 A (Witness complies.)
17 Q Okay. Up at the top it says, "Pacific Lanes purchase
18 price adjustments per discussions with Grant Anderson
19 and Bill Hamilton." Do you see that?
20 A Yes.
21 Q And you decided to put that title on it based on your
22 discussions with Grant Anderson and Bill Hamilton?
23 A Yeah, I picked out that title.
24 Q Okay. Now, your discussions with Judge Anderson
25 about the purchase price adjustments, those
FOOT OF PAGE 380
1 conversations took place in January, we know?
2 A Yeah, I would imagine, especially dealing with these
3 numbers. They would have had to take place after
4 the year closed, since this is predicated on
5 December 31st.
6 Q And, in fact, you had conversations with Judge
7 Anderson as late as mid-March of 1993 about the
8 purchase price adjustments?
9 A I can't tell you if it was with Grant Anderson, but
10 we did do the final one on, like, March 11th.
11 Q Okay. Was it March 11th or was it the March 9th date
12 that appears?
13 A March 9th maybe, yeah.
14 Q Take a look at -- there was a meeting that day on
15 March 9th?
16 A I can't remember.
17 Q Take a look, please, at Exhibit 100.
18 A (Witness complies.)
19 Q And turn to page 7.
20 A (Witness complies.)
21 Q Do you see the top entry there on the right-hand
22 column about four lines down which says "Discussions
23 regarding Iverson and all books"?
24 Now, I'll represent to you that these are the
25 time records of Steve Fisher, attorney Steve Fisher.
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1 A Yes.
2 Q It says, "Meeting with Grant Anderson, Bill Hamilton
3 and Kevin Iverson" on March 9th, 1993. Does that
4 refresh your recollection that you did, in fact, have
5 a meeting that day with those gentlemen?
6 A I don't remember ever having a meeting with all four
7 of us.
8 Q Do you deny that you had such a meeting on that day?
9 A I can't deny it either.
10 Q Okay. These conversations that you had with

11 Mr. Anderson, is there any doubt they took place
12 after he became a judge?
13 A No.
14 Q No, they took place after he became a judge?
15 A I believe he was already, yeah, a judge.
16 Q Okay. And you didn't have any conversations with
17 Judge Anderson about the adjustment in 1992, did you?
18 A I don't believe so.
19 Q Okay. How many times would you estimate you spoke or
20 met with Judge Anderson about this process in 1993?
21 A No more than three or four.
22 Q Did you call him at the courthouse?
23 A I called and left a message.
24 Q Now, putting aside these adjustments for a moment,
25 you were the accountant for Pacific Recreation?

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1 A Yes.
2 Q And you're aware that there were some Cadillac
3 payments being made by Pacific Recreation?
4 A Yes.
5 Q And for tax purposes, was Pacific Recreation treating
6 those payments as a gift or an expense?
7 A As an automobile expense.
8 Q And under section 162 of the Internal Revenue code,
9 that means they were an ordinary, necessary expense
10 of the business?
11 A Yes.
12 Q Okay. At the time these payments were being deducted
13 as ordinary and necessary expenses of Pacific
14 Recreation, had Bill Hamilton told you that these
15 were payments for Judge Anderson's Cadillac?
16 A No.
17 Q Do you now know that?
18 A Yes.
19 Q Who told you?
20 A I can't remember if this was Grant or Bill that told
21 me first.
22 Q And that was about January of 1997?
23 A I believe so, yeah.
24 Q And that's when you prepared the amended tax return
25 that told the IRS, no, these aren't expenses, they

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1 were a gift?
2 A For Bill Hamilton's corporation, yes.
3 Q Okay. Did you ever talk with Bill Hamilton about him
4 receiving approximately \$8,000 in cash in
5 approximately May of 1995?
6 A I believe I did.
7 Q Okay. And he told you he had received some cash?
8 A Correct.
9 Q And who did he tell you had physically delivered and
10 handed the cash to him?
11 A I understood him to say that Grant's girlfriend had
12 done that.
13 Q Not Judge Anderson, but his girlfriend?
14 A Correct.
15 Q Now, this adjustment process that you went through,
16 money earned by Pacific Lanes was effectively
17 credited to the purchase price to be paid by Pacific
18 Recreation?
19 A Correct.
20 Q Is it true that for federal income tax purposes,
21 Pacific Lanes paid the tax on that money?
22 A Not really.
23 Q Not really? Can you explain that?
24 A Because the 94 or \$92,000 that we're talking about,

25 or the monies that we're talking about, the profit or
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1 the loss, reduced the gain or in this case increased
2 the loss that would have been shown on the sale.
3 Q Okay. Well, who did Pacific Lanes' 1992 tax returns?
4 A I did.
5 Q And in detailing the income of Pacific Lanes for
6 1992, in that tax return you did not reduce the
7 income by the amount that had been credited to
8 Mr. Hamilton, did you?
9 A It did reduce the income because of the fact of the
10 loss on the sale. If there hadn't been a credit of
11 the purchase price, there would have been a \$15,000
12 gain on the sale. Because of the credit, there was a
13 \$76,000 loss, and that \$76,000 loss lowered their
14 income tax they had to pay.
15 Q You and I had a conversation last week?
16 A Yes.
17 Q And do you recall we talked about this tax issue?
18 A Yes.
19 Q Did you tell me in that conversation that Pacific
20 Lanes had paid the income tax on the money it had
21 earned from September through December 1992?
22 A What I told you in that conversation is I had never
23 looked at it from that standpoint and you could be
24 right but I would look at it more.
25 Q Did we subsequently discuss the matter again?

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1 A I don't believe so.
2 Q Okay. Explain to me how, then, Pacific Recreation --
3 explain to me how it was that Pacific Lanes did not
4 pay the tax on this money.
5 A That Pacific Lanes did not pay the tax on this money?
6 Q The 92,000 by which the purchase price was reduced.
7 A Well, the purchase price, you're talking cash flow
8 now. The profit that was involved in that was about
9 45,000, if I remember correctly.
10 Q Okay.
11 A The August loss minus the December loss.
12 Q Who paid the tax on the profit of 45,000?
13 A The 45,000?
14 Q Yes.
15 A Ultimately Pacific Lanes did not pay it, because that
16 45 reduced the profit they would have shown on the
17 sale.
18 Q So is it correct the 45 was attributed to Pacific
19 Lanes for tax purposes, although by the time various
20 adjustments are done, they did not pay tax on it?
21 A Yeah. Accounting-wise they did not pay any
22 additional tax.
23 Q Tax-wise, though, it was deemed their income?
24 A Tax-wise it was deemed their income.
25 Q Very well. And not Pacific Recreation's income?

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1 A And not Pacific Recreation's income, correct.
2 Q Okay. Did Bill Hamilton ever object to that
3 treatment?
4 MR. BULMER: Objection. Lack of
5 foundation as to whether Bill Hamilton ever even knew
6 about it.
7 Q Did he ever object to you about that treatment?
8 MR. BULMER: Same objection.
9 JUDGE BROWN: Overruled.
10 Q Did Bill Hamilton ever object to you that, "No, my
11 company, Pacific Recreation, should be credited with
12 that \$45,000 for income tax purposes"?

13 A I don't believe so.
14 Q Did Grant Anderson ever object that the company of
15 which he was president was deemed the owner of that
16 profit for tax purposes; did he ever make that
17 objection to you?
18 A No.
19 Q Okay. During the time Judge Anderson was personal
20 representative of the estate and thereafter, there
21 was a lease in place between Pacific Lanes, which
22 operated the bowling alley, and Hoffman-Stevenson,
23 which owned the building?

24 A I believe so.
25 Q Okay. And is it your recollection that that lease
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1 was for approximately \$6,000 per month?
2 A For Pacific Lanes and Hoffman-Stevenson?
3 Q Yes.
4 A I believe we accounting-wise were doing \$12,000 a
5 month.
6 Q Well, I understand we're going to get to
7 accounting-wise \$12,000, but --
8 A Okay.
9 Q But it's your understanding that the actual lease was
10 for 6,000 a month?
11 A Oh, I don't think I ever saw the actual lease.
12 Q Okay.
13 A You're talking Pacific Lanes and Hoffman-Stevenson?
14 Q Pacific Lanes leasing from Hoffman-Stevenson.
15 A I don't think I ever saw a lease.
16 Q Well, then, where did the \$12,000 number that for
17 accounting purposes was being booked, where did that
18 come from?
19 A That came from the facts that there was two
20 corporations, Hoffman-Stevenson and Pacific Lanes.
21 Pacific Lanes would make money. Hoffman-Stevenson
22 was losing a lot of money, so tax-wise we were taking
23 the rent to lower the taxes on Hoffman-Stevenson's
24 side -- or on Pacific Lanes' side. It kind of offset
25 with Hoffman-Stevenson.

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1 Q So as I understand it, Pacific Lanes was always
2 showing a profit for tax purposes?
3 A They would have without the rent, or they were at
4 least more profitable or not as big of a loss as
5 Hoffman-Stevenson was.
6 Q Okay. And Hoffman-Stevenson was always losing money?
7 A Correct.
8 Q So it was in Pacific Lanes' interest to show on the
9 books as high a rent as possible so that it would
10 reduce the taxes on it, the profit-generating entity
11 of the estate, correct?
12 A It was in the estate's interest, yeah.
13 Q And similarly, the fact that Hoffman-Stevenson was
14 shown on the books as getting lots of money each
15 month didn't hurt Hoffman-Stevenson because they were
16 always losing money anyhow?
17 A Yeah. And no money ever actually transferred like
18 that. It was just a book entry.
19 Q Explain.
20 A The \$12,000 would be credited to rent, or actually
21 debited to rent and credited to the note payable to
22 Hoffman-Stevenson.
23 Q But no money changed hands?
24 A Periodically I believe money would come from Pacific
25 Lanes to Hoffman-Stevenson to pay bills.

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1 Q Not in the amount of 12,000 a month rent?
2 A Not necessarily.
3 Q In fact, most of the time no money changed hands?
4 A Not on a monthly basis.
5 Q And nevertheless the rent was being booked at 12,000
6 a month?
7 A Correct.
8 Q Reducing Lanes' taxes and having no impact, then, on
9 Hoffman-Stevenson, correct?
10 A Reducing the tax liability of the two entities on the
11 whole.
12 Q Did Judge Anderson ever object to that treatment of
13 the rent to you?
14 A Not to my knowledge.
15 MR. TAYLOR: I have nothing further at
16 this time, Your Honor.
17 MR. BULMER: I'm a little torn here, Your
18 Honor. We were going to recall Mr. Iverson on our
19 side of the case. On the other hand, some of the
20 commission members have indicated an interest in
21 working through the numbers. I don't mean to lay it
22 off on them, but this is the man who can explain
23 those.
24 But that's going to take some time, and what I
25 told Mr. Taylor I was prepared to do is, if

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1 Mr. Iverson is available, and I think he is, is
2 finish up our side of Mr. Iverson tomorrow but have
3 him come back and do him tomorrow morning but do my
4 side as well at that time.
5 I guess what I'm saying is, I'd like to excuse
6 the witness for this afternoon, have him come back
7 tomorrow morning and wrap all this up in one shot.
8 MR. TAYLOR: That's fine with commission
9 counsel, Your Honor.
10 JUDGE BROWN: All right.
11 MR. BULMER: And just for the commission,
12 Mr. Taylor and I have talked pretty extensively. We
13 still think we're on a good track. We'll finish up
14 by Friday for sure.
15 JUDGE BROWN: All right. We'll recess
16 for the day at this time.
17 Maybe I can talk with counsel about the schedule
18 for the rest of the week.
19 Thank you. We're in recess until 9 o'clock
20 tomorrow.

(PROCEEDINGS ADJOURNED
AT 4:20 P.M.)

FOOT OF PAGE 391

1
2 BEFORE THE COMMISSION ON JUDICIAL CONDUCT
3 OF THE STATE OF WASHINGTON
4)
5)
6 In Re the Matter of)
7)
8 The Honorable Grant L. Anderson) NO. 96-2179-F-64
9 Pierce County Superior Court)
10 930 Tacoma Avenue South)

10
11 TRANSCRIPT OF PROCEEDINGS
12 DAY THREE
13 January 14, 1998
14 Tacoma, Washington

21
22 Kim L. Otis, RPR-CM
23 Certified Court Reporter
24 Washington CSR No. OTIS*KL441C9
25 GENE BARKER & ASSOCIATES, INC.
406 Security Building
Olympia, Washington 98501
(360) 943-2693

1 BE IT REMEMBERED that Day Three of a hearing
2 was held in the above-entitled matter at Courtroom G,
3 U.S. Federal Courthouse, 1717 Pacific Avenue, Tacoma,
4 Washington on January 14, 1998.

5 This matter came on before the Commission on
6 Judicial Conduct, the Honorable STEPHEN E. BROWN,
7 presiding; and Commission Members DALE BRIGHTON, VIVIAN
8 CAVE, HON. MICHAEL E. DONOHUE, HAROLD CLARKE, HON. JOHN
9 SCHULTHEIS, NORA REYNOLDS and TODD WHITROCK.

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11
12 A P P E A R A N C E S

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3 January 14, 1998

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1 TACOMA, WASHINGTON; WEDNESDAY, JANUARY 14, 1998

2 --oo0oo--

3 MR. TAYLOR: Good morning, Your Honor.

4 Commission counselor respectfully moves this morning for

5 reconsideration of the order excluding the testimony of

6 Diane Anderson. In the alternative, we move to admit the

7 deposition testimony of Diane Anderson as an unavailable

8 witness under 804(b)(1).

9 Let me explain first the basis of the motion for

10 reconsideration. And this is my fault, but sometimes in

11 the heat of trial you forget things that are germane and

12 perhaps central to an issue, and in the course of arguing

13 it yesterday, arguing the motion, we did not address, I

14 did not address the fact that approximately two weeks ago

15 Diane Anderson was deposed, not by me, but by

16 Mr. Bulmer. And let me touch briefly on the questions

17 that Mr. Bulmer asked.

18 First he said, "Now, in the declaration, Miss

19 Anderson, that you submitted, you indicate that

20 Mr. Anderson, Grant Anderson, told you that payments for

21 the car were a commission from Mr. Hamilton, is that

22 correct?"

23 Answer: "Yes, that's correct."

24 He went on to ask her, Mr. Bulmer went on to ask
25 Diane Anderson about the following clearly spousal
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1 communication. Question: "Tell me, tell me what the
2 exact words are that you recall at this point."

3 Answer: "In discussing the car and how it was being
4 paid for, the discussion was that I, Grant Anderson, was
5 selling the bowling alley and I, Grant Anderson, am
6 allowed a commission for the sale as a realtor."

7 Question: "Did you believe at the time that this
8 was a commission, that the Cadillac payments were in fact
9 a payment of a commission by Mr. Hamilton?"

10 Answer: "Yes, I did believe that."

11 Your Honor, by putting Ms. Anderson effectively on
12 the witness stand through the deposition and asking those
13 questions, the spousal privilege was clearly waived. The
14 door was open wide to the subject. The exact contents,
15 we talked yesterday how we didn't get into contents.
16 Well, in this deposition Mr. Bulmer on behalf of Judge
17 Anderson clearly got into the contents of marital
18 communications. And what's happening here now is a
19 distortion of the truth-finding process because what
20 happened, they opened the door, peeked inside to see what
21 was there, they saw what was there, they don't like it,
22 now they want to shut the door. There was a waiver by
23 deposing her and asking her specifically about marital
24 communications. And as in Syosset, the third circuit
25 case I talked about yesterday, they can't shut that door

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1 now.

2 So, on reconsideration, we respectfully submit that
3 there has been a waiver. But, in the alternative, if the
4 court concludes there was no waiver, we have a motion in
5 the alternative. Under ER 804(a), Your Honor, a witness
6 is deemed unavailable if the witness is exempted by
7 ruling of the court on the ground of privilege from
8 testifying. If the motion excluding Diane Anderson's
9 live testimony stands, she has been excluded on the
10 grounds of privilege from testifying. That makes her
11 expressly unavailable under 804(a)(1).

12 That brings us then to 804(b). If a witness is
13 unavailable, can you bring in former testimony. The test
14 there is, yes, if it's a deposition taken in the action
15 and the party against whom the testimony is offered had
16 the chance to develop the testimony by direct or cross
17 examination. And here Mr. Bulmer had the chance to
18 develop the testimony by direct examination. It was his
19 examination. So she is unavailable if the ruling stands
20 and the deposition qualifies for admission under
21 804(b)(1), the hearsay exception for unavailability.

22 Thank you, Your Honor.

23 MR. BULMER: First, Your Honor, I would submit
24 under CR 59, I believe, that a motion for reconsideration
25 require a new basis or require information that was not

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1 otherwise available prior to arguing the prior motion, so
2 I would submit under CR 59 the motion for reconsideration
3 is inappropriately brought at this time. There is no new
4 evidence and no new law, there is nothing which was not
5 available to them at the time we argued the prior
6 motion.

7 Secondly, as to the issue of waiver, what the law is
8 is that the waiver has to be expressed by the person who
9 holds the privilege. Now, the way the Commission would
10 set this matter up is they plead matters which are
11 covered within the privilege and then they would have us

12 not be able to conduct discovery into what their
13 witnesses are going to say in the event that the court
14 ruled on it if the court allowed it to come in. They are
15 the ones who tried to force the door to be opened by
16 disclosing privileged material and now they would
17 preclude us from asking the witness they declared who has
18 already disclosed the privileged material as to what the
19 scope of that is. We didn't open the door. The
20 Commission had already engaged in the process of getting
21 this information out and disclosing it and we followed
22 through with a proper inquiry.

23 We don't waive our rights by asking it and Judge
24 Anderson does not because he didn't waive it. The fact
25 that she chooses to talk about it in contravention of it
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1 is a separate matter entirely, so waiver doesn't occur
2 when the Commission has already raised the issue in the
3 process. We don't have any other alternative than,
4 obviously, in proper preparation, to ask her the
5 question.

6 As to this ER trick, for lack of a better term, the
7 problem with that is that if the information is
8 privileged information, the information is privileged,
9 and the fact that they may be excluded because of the
10 privilege doesn't mean that you get to go back to the
11 testimony and put it in. This testimonial privilege that
12 is here is that you can't be examined about, you can't be
13 compelled to testify about issues about which issue is
14 covered by the confidentiality; otherwise, the privilege
15 would be nothing. And in the process she could come
16 forward, violate the rule and testify about it. All
17 right. Then we assert our right to have her excluded and
18 then you introduce the deposition where they violated the
19 rule and it gets to get in because they can't possibly
20 be --

21 I ran into this argument before, but it makes no
22 logical sense that the person who violates the privilege
23 can violate the privilege in a deposition, then be
24 excluded and then you come around and put the violated
25 testimony in through the privilege or through this

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1 process. You know, it's either excluded or it's not
2 excluded, and the fact that they're not available for
3 perhaps other things that were said in their deposition,
4 I don't know the answer to that.

5 JUDGE BROWN: Thank you.

6 MR. TAYLOR: First of all, Your Honor, under
7 rule 59 of consideration, the rule, 59(g), expressly
8 speaks to substantial justice. Let me address that for a
9 moment.

10 JUDGE BROWN: Fifty-nine is not an issue, Rule
11 59 is not an issue for the Commission.

12 MR. TAYLOR: Very well, Your Honor.

13 JUDGE BROWN: We'll consider your motion.

14 MR. TAYLOR: Mr. Bulmer could have, prior to
15 deposing Ms. Anderson, made his motion in limine. He
16 could have sought to exclude the testimony as privileged,
17 he had that right. Instead, what Judge Anderson wanted
18 to do was to play it both ways. He took the deposition,
19 we didn't, he did. There had been no violation of the
20 spousal privilege prior to then. She had not been
21 spelled to testify against anybody including Judge
22 Anderson. There had been no deposition prior to that
23 time. The first and only deposition of Ms. Anderson was
24 taken at Judge Anderson's behest. And what happened is
25 he wanted to know what she was going to say and then

1 decide, well, gee, I think I want to assert a privilege
2 now because I don't like it, and that's to be contrasted
3 with his current wife who he's listed as a witness and
4 for whom he expressly waived privilege.

5 So what he's doing is picking and choosing
6 privilege, no privilege, finding out what's there,
7 asserting privilege, withdrawing privilege. It's just
8 not right, Your Honor, it's not fair and, Your Honor,
9 returning not in the context of Rule 59 and substantial
10 justice, but just plain justice and fairness, if
11 Ms. Anderson is excluded and if her deposition testimony,
12 which I submit is plainly admissible under 804, if that
13 is excluded, the Commission counsel will have no choice
14 but to urge the Commission to drop the charge, to drop a
15 charge for which the Commission has already found there
16 is probable cause to believe that Judge Anderson violated
17 the Code of Judicial Conduct. For those reasons, I urge
18 the court to reconsider the matter or, alternatively, to
19 deem the deposition admissible under 804(b).

20 (Pause in the proceedings.)

21 JUDGE BROWN: Okay. Well, I'll take a few
22 moments to consider the issue. Thank you.

23 (Whereupon, a recess was taken.)

24 JUDGE BROWN: The Commission on Judicial
25 Conduct proceeds pursuant to our Rules of Procedure. The

1 Rules of Procedure provide that the Civil Rules are
2 applicable, and that would be the Civil Rules that apply
3 in courts of the State of Washington shall apply in all
4 public proceedings under these rules, and that also
5 includes the Rules of Evidence applicable to civil
6 proceedings. That's Rule 8 of our rules.

7 A marital privilege, like other privileges, is a
8 rule of evidence; it's not in the evidence rules, but it
9 is a rule of evidence. So privileges do apply in public
10 proceedings for the Commission on Judicial Conduct.
11 That's also clearly contemplated by Rule 20(b) which
12 contemplates the waiver of the medical confidentiality
13 privilege, so it's clear the rules contemplate that
14 privileges exist. I know that wasn't argued by the
15 parties, but as it's a public proceeding, I like to point
16 that out where we're coming up with these rules of
17 evidence, they aren't just made up as we go along.

18 The issue to be decided is whether or not Judge
19 Anderson can claim the marital privilege as to the
20 testimony of his former wife, Diane Anderson.

21 Counsel has clearly indicated that the privilege
22 would apply to any statements by her regarding
23 communications made during the marriage unless that
24 privilege was waived.

25 The information before me yesterday is contained in

1 the memorandum filed by Commission counsel indicating
2 that in the deposition of Judge Anderson the following
3 testimony was provided:

4 Question: "Did you disclose to Mr. Fisher the fact
5 that payments on your car were being made by Mr. Hamilton
6 and/or an entity controlled by Mr. Hamilton?"

7 Answer: "I don't know that, not that I recollect,
8 but I don't recall."

9 Question: "Did you tell anyone?"

10 Answer: "Perhaps my wife."

11 The Commission argued that that constituted a waiver
12 of the privilege. My ruling as presiding officer was
13 that that statement did not constitute a waiver as it

14 merely informed the questioning party of a person who was
15 told about a subject matter but not about the contents.
16 And, in a similar manner, it would be the same as where a
17 question was asked, what if you said perhaps "I told my
18 lawyer" rather than perhaps "I told my wife," would his
19 attorney-client privilege be waived, and the answer
20 clearly is no. I think the answer clearly as to this
21 spousal privilege is also no. It's not a waiver.

22 Today, in arguing for the motion to reconsider that
23 decision, new information was provided regarding the
24 deposition of Diane Anderson. Judge Anderson's attorney,
25 Mr. Bulmer, subpoenaed Diane Anderson for deposition and
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1 asked her the questions clearly detailing the contents of
2 the communications that she states were made by Judge
3 Anderson during the marriage regarding the payments on
4 the car which were made by Mr. Hamilton. At that point
5 my ruling is that the judge waived the privilege by doing
6 that. The discovery in this matter was made pursuant to
7 the Civil Rules regarding discovery applicable in the
8 courts of the State of Washington or Superior Courts, and
9 those are sections between Rule 26 and 37 and the
10 parties' counsel provided an order to the presiding
11 officer agreeing that discovery would take place pursuant
12 to those rules.

13 The only remaining question raised by Mr. Bulmer
14 was, well, this is discovery, we're entitled to know what
15 the subject matter of her testimony would be before being
16 required to assert the privilege. However, Rule 26(b)
17 provides for discovery scope and limits. Parties may
18 obtain discovery regarding any matter not privileged
19 which is relevant to the subject matter involved in the
20 pending action. That's rule 26(b)(1). So if the matter
21 is privileged as asserted by Mr. Bulmer, then by him
22 obtaining some discovery as to that privileged matter,
23 the privilege was waived. And that is the position of
24 Commission counsel and, in any event, they asked the
25 questions, the procedure should have been to assert the
FOOT OF PAGE 407

1 privilege there and either seek an order or seek a ruling
2 from the Commission regarding whether or not it was
3 appropriate or whether or not the privilege would be
4 honored and then proceed with discovery later on if it's
5 not privileged. So in light of that new information
6 which clearly constitutes a waiver of the privilege which
7 was not brought to the presiding officer's attention
8 yesterday, the motion to exclude or the motion to
9 reconsider the court's ruling is granted and I, the
10 presiding officer, will reverse the ruling granting the
11 motion to exclude Diane Anderson, and so that motion now
12 will be denied and Diane Anderson may be called as a
13 witness in this action to testify regarding that subject
14 matter.

15 MR. BULMER: If I May, Your Honor, at least I
16 would like to make my record clear. There's been a lot
17 of new evidence come in here. I want to make sure it's
18 perfectly clear in the record as to what happened in this
19 process. Diane Anderson breached the waiver pursuant to
20 subpoena from the Commission before she was deposed. She
21 submitted a declaration under oath that breached the
22 privilege.

23 The information you don't have in all of this
24 because we've been moving so quickly here is that the
25 Commission subpoenaed her and obtained a declaration from
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1 her which breached the privilege at that point and that

2 was provided and was included as part of the probable
3 cause.

4 JUDGE BROWN: That's her privilege. She can
5 decide to speak or not. That's her choice.

6 MR. BULMER: No, she responded -- it's not --
7 when she provides -- I don't mean to argue with you, I
8 want to make sure my record is clear, Your Honor. She
9 required them to issue a subpoena, her testimony was, and
10 they subpoenaed it, the Commission breached the waiver,
11 they didn't contact us, or breached the privilege, they
12 didn't contact us. She didn't assert it, it's not waived
13 at that point. At that point they have put it into the
14 record, they have put the declaration into the record,
15 they have pled it into the record, it's not a waiver. We
16 objected in our answer to it occurring and then we
17 proceeded forward and I think we're entitled at that
18 point, having breached it, to explore the grounds under
19 which it happened and what the background was for a
20 declaration that they had already --

21 Under the rule it says you can't examine her on the
22 issue. The Commission's own counsel in essence examined
23 her by subpoenaing her. She said in her deposition it
24 was in the alternative to coming in. So they've already
25 examined her on the issue. Now we are entitled to come

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1 and find out what that scope of that examination was.

2 JUDGE BROWN: Well, you have provided me no
3 case, no rule other than the force of your argument. The
4 Commission counsel has provided me with case law and also
5 its argument, which is persuasive.

6 MR. BULMER: I would reserve or at least want
7 the record to be clear that the testimony is coming in
8 over objection, which I presume it is, but I want to make
9 sure I am clear on that and an opportunity to move for
10 reconsideration. And I believe the way it works now, I
11 can move that we can produce something additionally, so
12 we'll --

13 JUDGE BROWN: Sure.

14 MR. TAYLOR: Your Honor, in light of a de
15 facto offer of proof, I would like to make my own offer
16 of proof subject to perhaps counsel would like to examine
17 Miss Anderson on this issue. The Commission counsel did
18 not and could not subpoena Ms. Anderson and force her to
19 give a declaration. That is not what happened. That
20 would be a violation of the rules. We did not violate
21 the rules. She was subpoenaed for a deposition, she
22 volunteered to provide a declaration and we accepted that
23 declaration. That's all that happened.

24 JUDGE BROWN: Are we ready to proceed with
25 today's testimony?

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1 MR. BULMER: I guess we are, Your Honor.

2 JUDGE BROWN: All right.

3 (Pause in the proceedings as the Commission
4 joined the proceedings.)

5 JUDGE BROWN: Thank you. Mr. Iverson, resume
6 the witness stand and you are still under oath.

7
8 KEVIN IVERSON, having been previously duly sworn on oath
9 or affirmed to tell the truth, the whole truth and
10 nothing but the truth, testified as follows:

11 JUDGE BROWN: Counsel.

12 JUDGE SCHULTHEIS: Judge Brown, did you want
13 us to introduce ourselves for the benefit of the court
14 reporter?

15 JUDGE BROWN: She does have everybody's name,

16 but for the record, Commission members that are present
17 today, perhaps if you'd state your name today. Go
18 ahead.

19 MS. BRIGHTON: Dale Brighton.

20 MS. CAVER: Vivian Caver.

21 JUDGE DONOHUE: Michael Donohue.

22 MR. CLARKE: Harold Clarke.

23 JUDGE SCHULTHEIS: John Schultheis.

24 MS. REYNOLDS: Nora Reynolds.

25 MR. WHITROCK: Todd Whitrock.

INTRODUCTIONS

411

1 JUDGE BROWN: And Stephen Brown.

2

3

CROSS EXAMINATION

4 BY MR. BULMER:

5 Q Mr. Iverson, I know you covered this a little bit
6 yesterday, but just give us a little bit about your
7 credentials. You are a CPA?

8 A Yeah, I am a CPA. I started working for Gary Frind in
9 approximately '88 and bought into his business in '94 and
10 now I'm out on my own.

11 Q And in 1992 and '93 when the events which are at issue in
12 this case were going forward, you were not a partner yet
13 in the firm?

14 A Correct.

15 Q You were an employee of Mr. Frind?

16 A Yes.

17 Q And Mr. Frind, it was his CPA firm?

18 A Correct.

19 Q And at that time you said something yesterday about been
20 doing it for ten years but been a CPA for eight. What
21 does that mean?

22 A You need two years of experience before you actually get
23 your CPA license. I had passed the CPA exam and so
24 forth, but I had to wait that two years to get the
25 license.

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1 Q May I approach. You have kind of a low voice so we will
2 move this a little bit there. Okay. Now, say your
3 name.

4 A Kevin Iverson.

5 Q So you went to work in 1988 for your work experience or
6 whatever that would be called?

7 A Correct.

8 Q And so in 1990 is when you actually became a CPA,
9 licensed CPA?

10 A Yeah.

11 Q When do you believe you first learned that the bowling
12 alley had been sold?

13 A I believe I first learned it in early December.

14 Q Of 1992?

15 A Of 1992.

16 Q And how did you learn it?

17 A I really don't know exactly. I don't know if my former
18 employee, Gary Frind, told me or if Grant or Bill told
19 me.

20 Q You said yesterday something about making the suggestion,
21 however, to run it through the end of the year, is that
22 correct?

23 A Correct. I came up with the suggestion to go to the end
24 of the year strictly on a personal reason, that it would
25 un-complicate my life in that I wouldn't have to run two

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1 sets of W-2s and do two sets of payroll reports. It was
2 just a nice clean cut-off date.

3 Q When do you believe you first learned that some sort of

4 adjustments needed to be made for cash flow?
5 A That would have probably been early December also.
6 Q I'm going to ask the Commission and you also to turn to
7 Exhibit 60, please. Do you recognize Exhibit 60?
8 A Yes, I prepared that.
9 Q What is that?
10 A That was a sheet that I prepared to -- this was the
11 original one, I believe, that I prepared to show the cash
12 flow effect on Mr. Hamilton not receiving the business
13 until December 31st.
14 Q That has a fax dated 2-16-93 on it from Mr. Frind's
15 office or earlier testimony was that that was
16 Mr. Hamilton's fax number. I don't want you to answer
17 yes. Would that be consistent with your understanding?
18 A Yes.
19 Q Now, at the top of that sheet it says "Pacific Lanes
20 Purchase Price Adjustments." Do you see that language?
21 A Yes.
22 Q Who came up with that language?
23 A I did.
24 Q Who came up with the idea of making the cash flow
25 adjustments by way of a purchase price adjustment?

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1 A I did.
2 Q And did you make that recommendation?
3 A I made that recommendation because in my mind there was
4 no other way to do it because the Pacific Lanes and
5 Hoffman-Stevenson did not have the money to do it any
6 other way.
7 Q Now, further down on the sheet after "Original purchase
8 price" and "Really took possession" is language which
9 says, "Need to adjust for cash flow from September 1 to
10 December 31." Do you see that language?
11 A Yes.
12 Q Who came up with that language?
13 A I did.
14 Q Why did you put that language on this?
15 A I was making the distinction between a profit and loss
16 and the cash flow of the business.
17 Q Did you understand that to be your instructions as to
18 what you were supposed to do from Mr. Anderson or
19 Mr. Hamilton or someone?

MR. TAYLOR: Objection. Question is vague.

JUDGE BROWN: Overruled.

22 A I don't think they ever gave me instructions concerning
23 the cash flow. I believe that I was told that the
24 adjustments for the profit would have to be made and I
25 explained to them that the cash flow was actually more

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1 vital than the profit and loss.
2 Q Now, did anyone ever suggest to you that you come up with
3 some sort of a specific number in relationship to the
4 adjustments?
5 A No.
6 Q Did anyone ever suggest to you any of the vocabulary to
7 put on this or any of the other sheets that were
8 prepared?
9 A Not that I remember.
10 Q Did anyone ever tell you what numbers to put in?
11 A No.
12 Q All the numbers that are on these sheets are based on
13 your calculations?
14 A Correct.
15 Q These were your calculations based on your experience as
16 a CPA?
17 A Correct.

18 Q Would you agree with me that a different CPA might do it
19 differently?
20 A Strong possibility.
21 Q I am going to ask you to turn to Exhibit 61, please.
22 Before we get to that exhibit, let me check off this one
23 on my list. Yesterday you said that you thought that you
24 had three or four conversations with Judge Anderson, or
25 discussions perhaps, I don't mean to mischaracterize it,
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1 after January probably about issues connected with this
2 spread sheet or the adjustment sheet?
3 A Correct.
4 Q Do you have any recollection as to how long those
5 conversations would have been?
6 A I recall them all being very short. Like I said, I would
7 call him, he would call me back and it would probably
8 just be a couple minutes on the phone.
9 Q All right, now, turning to Exhibit 61, what is 61?
10 A Sixty-one was a later draft of or later version of
11 Exhibit 60.
12 Q I think we can all agree Mr. Taylor and I think that
13 there's some facts, notations at the top of "'97" and
14 that was just produced in the process of this litigation
15 so that that would not have been on the original,
16 correct?
17 A I believe so.
18 Q Okay. Now, on 61 do you recognize any of the writing?
19 A The writing in the middle of the page like the "Pre final
20 sale adjustment," that's my writing.
21 Q The writing at the top that says "3/9/93" is not your
22 writing, correct?
23 A Correct.
24 Q And the writing in the bottom left-hand corner that has
25 \$3,000 a month and ends with 207,171 is not your writing,
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1 correct?
2 A Correct.
3 Q And over on the right-hand side where it says January
4 payment, February, March, is also not your writing?
5 A Correct.
6 Q Yesterday we told the Commission we'd try to walk through
7 this a little bit if we can and I would like to do that
8 now.

9 I admit to not being an accountant, so if I use some
10 bad vocabulary or something that's incorrect, please
11 correct me in the process as we go forward here.

12 This blow-up is a copy of Exhibit 61, correct?

13 A Correct.
14 Q All right, let's spend a minute talking about this
15 thing. This top line then, the "\$300,000" is what?
16 A That was the original purchase price.

17 Q For the --
18 A For the business effective September 1st, 1992.
19 Q What is the net income financial statement line?
20 A That was we did, the company I work for, I didn't
21 especially, they did a monthly financial statement for
22 Pacific Lanes. And when they brought in their books for
23 December, which is generally about ten or 15 days after,
24 so it would be in mid January, we ran a financial
25 statement just like we would in the normal course of
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1 their every month business and we came up with that net
2 income for the year. That was before any of the sales
3 figures were put into it.
4 Q Now, what sales figures?
5 A The sale of the business.

6 Q All right. So it had the revenue of the --
7 A It had the revenue of the business, everything for this
8 December statement was just like if the business had
9 never been sold.
10 Q Now, in preparing a financial statement, what elements
11 would be in a financial statement?
12 A All the income and all the expenses, they would bring in
13 their checkbook, a sheet breaking down all their income.
14 We would accrue, accrue meaning that we would expense
15 something in the month for that month even though they
16 may not pay it until the following month. Basically
17 every financial aspect of the business.
18 Q All right. So this was an accrual financial statement?
19 A An accrual financial statement.
20 Q Come back and cover that for me again. If in December
21 I've got a bill for electrical or I know electrical is
22 coming but I haven't paid it yet, would that have showed
23 up on this?
24 A We would expense the bill and accrue the expense and it
25 would show up as a payable.

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1 Q So I'd pay it at some other time, but in calculating this
2 number, you would have already taken into account the
3 electrical bill which was going to be paid at some future
4 time, is that right?
5 A Correct.
6 Q Now, what is that \$50,127?
7 A That means that prior to an adjustment to the sale, the
8 Pacific Lanes lost \$50,000 for the year of 1992 from
9 December through or January through December.
10 Q And then the next line, "Net Income, August Financial
11 Statement," I take it it's the same thing, just earlier?
12 A Same thing except that was January through August of '92.
13 Q That number was 95, so at that point they had lost
14 \$95,000 plus change?
15 A Correct.
16 Q And then you drew this line here, what does that line
17 mean to you?
18 A That's just showing that it's going to be the difference
19 of those two.
20 Q And that difference is shown here on this line to be
21 45,545?
22 A Correct.
23 Q What does that 45,545 represent?
24 A That means that between September 1 and December 1 they
25 made a book profit of \$45,000.

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1 Q And you used that term yesterday as well. What is a book
2 profit?
3 A When I say book profit, I mean what the books include
4 doesn't necessarily tie to cash flow.
5 Q So this is not necessarily cash?
6 A Correct.
7 Q And the non-cash parts of that would have been taken into
8 account as to how you arrived at these numbers up here?
9 A Correct. Those were book profits above it or book losses
10 in that case.
11 Q So in doing your calculations, what did you need to do
12 then in your next step to adjust for cash flow?
13 A We needed to make adjustments for anything that would
14 have been different if Bill would have taken, or
15 Mr. Hamilton would have taken, possession September 1st
16 and also anything that didn't involve cash flow.
17 Q Let's talk about the most difficult concept in that
18 regard first then. Is that what these add-backs are for
19 then?

20 A The add-backs are things that were included in the
21 financial statements that wouldn't have been included if
22 Mr. Hamilton would have taken possession.
23 Q Or that were non-cash events?
24 A Or that were non-cash.
25 Q And is that what depreciation is, is that non-cash?

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1 A Correct, depreciation is non-cash.
2 Q Explain if you can why depreciation as non-cash has to be
3 added back in order to get the cash flow?
4 A Depreciation is a concept where if you buy something and
5 the government in many cases will make you depreciate it
6 over a number of years, the year that you buy it, you
7 have the big cash outlay, but then in future years when
8 you're depreciating it, you're getting an expense but
9 you're not outlaying any cash, so in that case they took
10 an expense during the year of the amount of the
11 depreciation and they didn't outlay the cash for it.
12 Q So correct me if I'm wrong then, when you calculate this
13 number, a non-cash event has occurred, is that correct?
14 A Correct.
15 Q In calculating that number?
16 A Correct.
17 Q But because you're trying to determine cash, you have to
18 take that out of the calculation?
19 A Yes.
20 Q Is that what you're doing?
21 A (Nods head affirmatively).
22 Q Then what about fair market rent, this is your
23 handwriting here?
24 A Correct.
25 Q "\$12,000 per month accrued to H/S."

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1 A Hoffman-Stevenson.
2 Q Why did you take that into account?
3 A Because the deal that they had for September 1st showed
4 that they were going to be paying \$6,000 a month.
5 Q Let's make sure we got the "theys" clear. The "they" for
6 \$6,000 a month was?
7 A The deal for Pacific Lanes included the property for
8 Pacific Lanes, too, or the property that Pacific Lanes
9 was on, and if Mr. Hamilton would have taken possession
10 September 1st, he would have had to pay \$6,000 a month
11 rent.
12 Q And so why --
13 A On the statement \$12,000 a month was accrued, so an extra
14 \$6,000 a month was included into the loss.
15 Q Let me make sure I understand it. Up here when you did
16 the financials, you included \$28,000 worth of rent, is
17 that correct?
18 A In the four months between September and December we
19 included \$48,000.
20 Q Did I say 28? I am sorry, \$48,000. But if Mr. Hamilton
21 had owned it during that time period, he would have only
22 been paying \$6,000 a month?
23 A Or \$24,000 for the four months.
24 Q So this puts back then rent which was taken out up there
25 but which Mr. Hamilton would not have paid?

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1 A Correct.
2 Q And since it would not have been paid, that would have
3 been cash that would have been left in the account?
4 A Correct.
5 Q Now, the next one, not necessarily in order, is excess
6 legal and accounting at 14,600. These are your
7 calculations on the depreciation?

8 A Correct.
9 Q And then the excess legal and accounting, what are these
10 calculations, those are your calculations again?
11 A Yes. The 37,650 was legal and accounting for the whole
12 year through December. I subtracted the 20,450 which was
13 the legal and accounting through August and then I
14 subtracted out four months times \$650 a month is what
15 Mr. Hamilton would have paid our firm to prepare the
16 bookkeeping, to prepare his financial statements and
17 anything over and above that we considered excess legal
18 and accounting.
19 Q So he would have paid the four times 650 in any case?
20 A Correct.
21 Q And this is how much they paid during the whole year for
22 both of those?
23 A Mm-hmm (witness nods head affirmatively).
24 Q If I got this correctly and this next number, the 20,450
25 is what they paid up through August?

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1 A Mm-hmm (witness nods head affirmatively).
2 Q In this excess legal and accounting, were the
3 \$1800-a-month management fees being paid to
4 Mr. Anderson's firm, were they lumped into that legal?
5 A Yes.
6 Q Next down is an item called less -- let me back up. None
7 of these have little parenthesis in front of them, right?
8 A Correct.
9 Q So what does that mean?
10 A That means they are actually being added back to the
11 profit number.
12 Q All right. Now, "Less Purchase of Bank," what does that
13 mean?
14 A That has to do with the fact that the bowling alley,
15 Pacific Lanes, has at the end of any day \$5,150 in cash
16 in various tills, and when they did the change over, that
17 money got left there, so that's an entry we made to make
18 Mr. Hamilton actually pay for purchasing that money.
19 Q Now, if we went back to Exhibit 60, is there an entry
20 there for purchase of cash?
21 A No.
22 Q Is Mr. Hamilton better or worse off between Exhibit 60
23 and 61?
24 A He's worse off.
25 Q The next line down under "Less Purchase of Bank" is

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1 "Pacific Lanes Payment, \$12,000." What does that
2 represent?
3 A That would have been the four monthly payments
4 Mr. Hamilton would have had to pay Hoffman-Stevenson or
5 Pacific Lanes for the purchase of the business.
6 Q But that has parenthesis around it. What does that mean?
7 A That means that's cash he would have had to outlay that
8 he had to pay for just like he paid for the purchase of
9 the bank here.
10 Q Let's make sure I understand this. What that means is if
11 he bought it September 1st, these are cash things which
12 would not have gone out because he owned it?
13 A Correct.
14 Q But these two are cash which would have gone out because
15 he owned it?
16 A Correct.
17 Q Have I stated that correctly?
18 A Yes.
19 Q Next is "Tentative Purchase Price Adjustment, \$92,829."
20 What is that then?
21 A That's just the total of all the above from the 45,000

22 adding in the 24,000, 25,000, 14,000, and subtracting out
23 the 5,000 and the 12,000.

24 Q And what does that number represent to you?

25 A That represented the amount of cash that would have been

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1 in the business or the amount of cash flow generated by
2 the business during the four months.

3 Q Does that represent the amount of cash, at least in your
4 opinion, that would have been left in the business had
5 Mr. Hamilton been operating the business?

6 A Correct.

7 Q The next line is "Adjusted Purchase Price, \$207,171."
8 What does that represent?

9 A That's the \$300,000 minus the \$92,829.

10 Q All right. So this is the part that always confused me.
11 These could have been sort of inserted here, right, I
12 mean, we really take this number and this number to get
13 there?

14 A Correct.

15 Q We sort of ignore those numbers since that's sort of the
16 total of those numbers. We take the 300,000, jump down
17 here and deduct that number because that's the amount of
18 cash that would have been down, and this is what you came
19 up with as to the adjusted purchase price?

20 A Correct.

21 Q Why did you recommend that, to do it an adjusted purchase
22 price? Was there any other way to do it?

23 A Well, because during this time Pacific Lanes was spending
24 out moneys that they had owed from prior and there wasn't
25 \$92,000 left in the account to turn over to Bill

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1 Hamilton.

2 Q So then you arrived at what would have been the adjusted
3 purchase price taking into account the cash that Pacific
4 Lanes had spent. And then "Cash Down" represents?

5 A Mr. Hamilton gave \$100,000 cash down, 50,000 against the
6 business and 50,000 against the building.

7 Q The object of this exercise was to find out how much
8 Mr. Hamilton still owes, is that correct?

9 A Correct.

10 Q And so we get down to "Amount Owing." What we are trying
11 to determine here is how much Mr. Hamilton owes Pacific
12 Lanes, is that correct?

13 A Correct.

14 Q So since this was the price and you had already paid
15 that, you have to take it out to find out how much he
16 still owes because he already paid. Am I saying this
17 right?

18 A Yes.

19 Q Now, we next have a series of calculations which are not
20 up here. At that point you could have just drawn a line
21 there, is that correct?

22 A Correct.

23 Q And if you had done that, the amount he owes would have
24 been?

25 A \$157,000.

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1 Q Excuse me?

2 A \$157,000.

3 Q However, you then made some additional calculations,
4 correct?

5 A Correct.

6 Q Or recommended. And these are payments made by Pacific
7 Rec. Enterprises, Incorporated on behalf of Pacific
8 Lanes. Why did you put these entries in?

9 A Because in January a lot of payments were made out of the

10 new corporation which was Pacific Recreational
11 Enterprises to pay bills that were Pacific Lanes' bills.
12 Q What would have been the appropriate way for Pacific
13 Recreation to have handled those bills?
14 A Most appropriate probably would have been to turn them
15 over to Pacific Lanes and let Pacific Lanes pay them.
16 Q Because they were Pacific Lanes' bills, obligations?
17 A Correct.
18 Q Now, particularly the three months insurance and the 4th
19 quarter payroll, were those items which had been taken
20 into account up in the accrued financial statement?
21 A Yes.
22 Q So they had already been taken into account and
23 determined that number?
24 A Yes.
25 Q If I understand this correctly. But despite that Pacific
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1 Rec. had gone ahead and paid them?
2 A Correct.
3 Q And so the first one of that type is three months
4 insurance which Pacific Recreation had paid after January
5 1st?
6 A Yeah, that came out of Bill Hamilton's Pacific Rec.
7 Enterprise checkbook. He paid for a whole year that went
8 from October through September.
9 Q All right. But for that insurance for those months was
10 the liability of Pacific Lanes' ?
11 A Correct.
12 Q But Bill Hamilton had actually spent cash, is that
13 correct?
14 A Yes.
15 Q Then the 4th quarter payroll and business taxes, same
16 scenario?
17 A Well, in that scenario the ladies running the bowling
18 alley, they just paid it, because to them nothing had
19 changed. They got the bills from us, we prepared the 4th
20 quarter payroll tax and business tax report, we sent them
21 to them and they just wrote a check because they didn't
22 have any differentiation between corporations.
23 Q Whose liability was that?
24 A It was Pacific Lanes' liability.
25 Q All right. And then next there is a January installment

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1 on First Interstate Bank. The Hoffman-Stevenson or
2 Pacific Lanes had a loan outstanding with First
3 Interstate?
4 A Correct.
5 Q And payments were made from --
6 A From Pacific Lanes.
7 Q So this is a Hoffman-Stevenson or Pacific Lanes' debt
8 that's owing?
9 A Correct.
10 Q But there's a payment made in January?
11 A Yes.
12 Q That was the obligation of Pacific Rec.?
13 A No, it was the obligation of Pacific Lanes and it was
14 paid out of Pacific Recreation.
15 Q Thank you for correcting me. And next we have a January
16 Mildred Hoffman payment. We haven't spent a lot of time
17 talking about Mildred Hoffman in this matter. What was
18 that payment?
19 A Mildred Hoffman was owed money from Pacific Lanes and
20 every month they would write her an interest check, and
21 they did the same thing, they just continued to pay it,
22 they paid it out of Pacific Rec. when it should have been
23 paid out of Pacific Lanes.

24 Q All right. So all of those numbers are cash that came
25 out in January?

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1 A Correct.
2 Q The next one is "Less Pacific Lanes NSF Redeposit." What
3 does that represent?

4 A At the end of the year Pacific Lanes had some checks that
5 had been basically some bounced checks, and when they
6 were redeposited and made good on, the bank put them into
7 the Pacific Rec. account because Pacific Lanes' account
8 had been closed down.

9 Q All right. So let me get this correct. These checks
10 were ultimately honored?

11 A Correct.

12 Q All right. And if they had been deposited to Pacific
13 Lanes' account, Pacific Lanes would have gotten the \$978?

14 A Correct.

15 Q But they ended up being deposited to Pacific Recreation
16 bank account so Pacific Rec. actually got the \$978?

17 A Correct.

18 Q This is a calculation to take that into account?

19 A Yes.

20 Q And then "Pacific Lanes Check to Start New Accounts,
21 750," what does that represent?

22 A When they opened up the new Pacific Rec. accounts, they
23 wrote a check from Pacific Lanes to open them. So
24 Pacific Lanes was giving them the \$750 to open the new
25 account.

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1 Q So this is money that Pacific Rec. had basically taken
2 from Pacific Lanes' accounts?

3 A Correct.

4 Q And needed to be accounted for?

5 A Yes.

6 Q And all of those total \$31,658, is that correct?

7 A Correct.

8 Q All right. And so what does that amount represent to
9 you?

10 A That's the amount of money that in total that Pacific
11 Recreation Enterprises paid on behalf of Pacific Lanes in
12 the month of January.

13 Q After taking into account the fact that they had gotten
14 advantage of 978 and the 750?

15 A Correct.

16 Q Now, drawing a line here from "Cash Down" up, okay, if
17 none of that needed to be done, okay, for whatever
18 reasons, would these adjustments have had to have
19 occurred in any case?

20 A Correct.

21 Q And if none of that had happened and these adjustments
22 had to be made post transaction adjustments, who would
23 have owed that \$31,000?

24 A After Pacific Rec. paid it, Pacific Lanes would have owed
25 that money to Pacific Rec.

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1 Q Pacific Lanes?

2 A Pacific Lanes ultimately should have paid that money.

3 Q All right. And so they should have written a check for
4 \$31,658?

5 A Correct.

6 Q Okay. Now, instead, Pacific Lanes didn't have the money
7 as far as you knew?

8 A Correct.

9 Q How did you treat that \$31,000?

10 A We treated it as a note payment.

11 Q On the January --

12 A Yeah, the January payment.
13 Q All right. So at that point were you treating basically
14 after the adjusted price a note of roughly \$157,000?
15 A Correct.
16 Q And then you treated the money that Pacific Rec. owed
17 Pacific Lanes since they didn't have the money as a
18 payment on the note?
19 A Correct.
20 Q A lump sum down payment or lump sum payment?
21 A Yes.
22 Q And so that's what that was. And so then if I'm doing
23 this right, you then ended up with 125,513. What does
24 that represent?
25 A That's the amount that Pacific Rec. owed Pacific Lanes as

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1 of February of 1993.
2 Q Who got to spend that \$92,000?
3 A Pacific Lanes.
4 Q If the bowling alley had closed and Pacific Rec. had
5 taken control September 1st, who would have spent that
6 \$92,000?
7 A The money would have either been in the bank account of
8 Pacific Rec. or Pacific Rec. would have spent it.
9 MR. BULMER: That's the best I can do in
10 explaining it. I've walked through it. I know
11 ordinarily the Commission members would wait until the
12 end, but I'd ask, Judge Brown, that if there are
13 questions about this -- is this objectionable to you, I'm
14 sorry, Mr. Taylor?
15 MR. TAYLOR: I do object to an interruption of
16 the witness prior to redirect.
17 MR. BULMER: I finished with that I think.
18 JUDGE BROWN: Maybe you can just have the
19 transparency there so if it needs to be referred to.
20 MR. BULMER: We'll leave this all set up.
21 Q You continued to do the books for Pacific Recreation?
22 A The firm did, yes.
23 Q Okay. And also for Pacific Lanes and for
24 Hoffman-Stevenson?
25 A Yes.

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1 Q And was the amount owed for Hoffman-Stevenson or Pacific
2 Lanes, was the \$125,000 in fact treated as being owed by
3 Mr. Hamilton?
4 A By his corporation, yes.
5 Q I would ask you to turn to Exhibit 114. Do you recognize
6 Exhibit 114?
7 A Yes, I prepared that.
8 Q And what does Exhibit 114 reflect?
9 A It's a monthly recap just basically taking the financial
10 statements and making it into just a very simple income
11 and expense.
12 Q This does not represent cash flow, is that correct?
13 A Correct.
14 Q However, if we look in May, June, July, August and
15 September, at the totals at the bottom -- let me go
16 back.
17 Where it says, "Net Income/Loss" at the bottom,
18 those are sort of the cumulative totals, or not totals,
19 from up above, just organizes them?
20 A These are monthly totals, yeah, just organizes the
21 monthly net income or loss for each month for the three
22 years.
23 Q For '90, '91 and '92?
24 A Correct.
25 Q And if we look at May, June, July, August and September -

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- 1 or August, anyhow - that would show that there would be
2 at least losses during those months?
3 A Correct.
4 Q And based on your experience as an accountant in
5 following these matters, would that also reflect -- would
6 cash flow follow a similar pattern?
7 A Cash flow would follow a similar pattern.
8 Q Up to 1993 were you familiar with generally the cash flow
9 connected with the bowling alley?
10 A Yes.
11 Q What was your experience or what was your understanding
12 as to how the cash flow business works in a bowling
13 alley?
14 A A bowling alley is very cyclical in that when the bowling
15 season starts in about September, they get a lot of
16 revenue in and the cash flow is very good, but then six
17 or seven months later when the summer starts, no one
18 wants to bowl during the summer and the cash flow is just
19 the opposite, it's very bad.
20 Q Yesterday Mr. Taylor asked you some questions about when
21 did you learn about the car payments being made by
22 Pacific Rec., Mr. Hamilton, on behalf of Judge Anderson,
23 do you recall that?
24 A I don't recall the exact time, but it was sometime after
25 Mr. Schafer had been into our office.

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- 1 Q I mean, you jumped ahead. I first asked you if you
2 recall --
3 A Sorry.
4 Q -- the testimony that you gave yesterday.
5 A Do I recall the testimony?
6 Q Yes.
7 A Yes.
8 Q All right. Today sitting here when do you think you
9 first became aware of the car payments being made by
10 either Mr. Hamilton or Pacific Rec.?
11 A It was prior to my giving the deposition, which was in
12 January of '97, so probably a couple months prior to that
13 at least.
14 Q At least sometime earlier in '96?
15 A Yes.
16 MR. BULMER: I have nothing further at this
17 time.
18 MR. TAYLOR: May I have about five minutes?
19 JUDGE BROWN: Okay.
20 (Whereupon, a recess was taken.)
21

REDIRECT EXAMINATION

- 22 BY MR. TAYLOR:
23 Q Good morning, Mr. Iverson. As an accountant, you're a
24 person of great detail?
25

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- 1 A Yes.
2 Q And when you're doing your accounting work, what are your
3 professional obligations as far as documenting what
4 you're doing and what you're relying on, what do you have
5 to do?
6 A We just keep our work papers and so forth.
7 Q What are those work papers for?
8 A Situations like this.
9 Q You mean so that if there's ever a question about what
10 happened, people can look to the accountant to
11 reconstruct, is that right?
12 A Yes.
13 Q Okay. And when you're working off a certain proposition

14 that something exists, you want to have a document that
15 shows that that exists, right?
16 A Generally, yes.
17 Q Where in your work papers do we find the document that
18 says Mr. Hamilton was treated as the owner as of
19 September 1, 1992; where is that agreement in your work
20 papers?
21 A I don't believe there is one in the work papers.
22 Q Did you ever ask Mr. Hamilton or Judge Anderson for a
23 copy of the agreement?
24 A I don't believe so.
25 Q Do you think your professional duties might have

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1 obligated you to do that?
2 A No.
3 Q You said another accountant might have handled this
4 situation differently. What did you mean by that?
5 A Well, every accountant handles things differently.
6 Q Well, what did you mean, though? What things differently
7 would somebody else do?
8 A I am just saying maybe another accountant would have said
9 we'll have to maybe book a note from Pacific Lanes owing
10 Pacific Rec. for the 96,000 and then every month when
11 Pacific Lanes gets their \$3,000 check, they can turn
12 around and pay \$3,000 back to Pacific Rec.
13 Q When you were doing this work, who was your client?
14 A My client would have been probably both of them as the
15 firm, and it was the firm's client. We did the work for
16 Pacific Lanes, we did the work for Hoffman-Stevenson and
17 we also started doing the work for Bill Hamilton.
18 Q So you had all three and, well, plus, so you were doing
19 accounting work for Judge Anderson?
20 A I don't think I had his personal tax return then. I
21 couldn't tell you for sure.
22 Q But at the time you had Mr. Hamilton and Pacific
23 Recreation and Pacific Lanes?
24 A Yeah, that was the first thing I ever did for
25 Mr. Hamilton.

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1 Q Did you ever think that you might have a conflict of
2 interest in trying to adjust money between the two
3 accounts?
4 A No.
5 Q Thought never crossed your mind?
6 A Nope.
7 Q When did you first learn of an alleged agreement to give
8 Mr. Hamilton the benefit of the cash flow or profit or
9 whatever it was from September 1 forward?
10 A I don't know for sure, but I believe it was in early
11 December.
12 Q In early December. Have you testified repeatedly to the
13 contrary?
14 A I think I did tell you that the adjustments were made in
15 January, and none of the adjustments could have been made
16 prior to the closing of the books on December 31st.
17 Q Didn't you testify as recently as yesterday that you
18 first learned of the agreement to give Mr. Hamilton the
19 benefit of the cash, you first learned that in January?
20 Didn't you testify -- let me start over.
21 You testified yesterday that you learned of the sale
22 in December, but you learned of the agreement to give
23 Mr. Hamilton the benefit of the cash in January. Was
24 that your testimony yesterday?
25 A If it was, I was mistaken.

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1 MR. TAYLOR: Okay. Your Honor, I move to

2 publish the deposition of Mr. Iverson.
3 JUDGE BROWN: All right. It will be
4 published.
5 Q (Continuing By Mr. Taylor) When did you first decide that
6 you learned of the adjustment agreement in December, was
7 that this past Saturday?
8 A Probably not too long ago.
9 Q Well, was it this past Saturday?
10 A It may have been this past Saturday.
11 Q And you were working with Mr. Bulmer?
12 A Yes.
13 Q You had been through this transaction before?
14 A Pardon?
15 Q You had been through these issues before?
16 A Correct.
17 Q Okay. Why don't you turn to page 9 of your deposition,
18 line 9.
19 Question: "When did you first learn of the sale of
20 Pacific Lanes to Mr. Hamilton?"
21 Answer: "In mid January."
22 Question: "Mid January of 19 --"
23 Answer: "'93."
24 Question: "How did you learn of it?"
25 Answer: "I can't tell you for sure. I believe

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1 Grant Anderson just called me up and said, 'I have sold
2 the business and we have to make these adjustments.'"
3 Question: "Is that your best recollection?"
4 Answer: "Yeah."
5 Now, please turn to page 37 of your deposition, line
6 12.
7 "In the course of this exercise, did you have any
8 discussions with Mr. Hamilton or Mr. Anderson about when
9 risk of loss passed in this transaction?"
10 Answer: "What do you mean risk of loss?"
11 Question: "For example, if the bowling alley had
12 burned down in October."
13 Answer: "No, I never had that because, you know,
14 you know, I didn't know this happened until January."
15 Is it fair to say you really don't know when you
16 learned of the sale or the adjustment process at this
17 point, Mr. Iverson?
18 A No. It's fair to say that when I gave this deposition, I
19 was working off going back and reviewing my work papers
20 because it had happened about three or four years
21 earlier, and in discussions over the last year, I have
22 recalled other things.
23 Q I thought it was discussions on Saturday.
24 A Well, I discussed with Kurt Bulmer that I had.
25 Q Where in your work papers do we find - your work papers

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1 which you maintain as an accountant so we can reconstruct
2 this transaction - where in your work papers do we find
3 you starting in December making notes about an adjustment
4 process?
5 A I don't think you do.
6 Q Okay. Just so I'm clear on something, Judge Anderson
7 first talked to you about these Cadillac payments, that
8 was after Mr. Schafer had been nosing into the
9 transaction; did I understand that right?
10 A Yeah, Mr. Schafer -- correct.
11 Q Okay. Prior to that he had never mentioned it to you?
12 A Not that I recall.
13 Q Prior to that he had never told you they were a gift?
14 A Not that I recall.
15 Q Okay. Now, you indicated that it was your idea to do

16 this adjustment based on a cash flow, right?
17 A Correct.
18 Q So Bill Hamilton had never come to you and said, "We have
19 a deal that I get the cash flow from September 1
20 forward," did he?
21 A I don't believe he came to me in those words, no.
22 Q And Judge Anderson never said, "We have a deal, a
23 handshake deal, that Bill Hamilton gets the cash flow
24 from September 1 forward," did he?
25 A Not in those words, no.

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1 Q Well, what did they tell you was the agreement?
2 A Well, I was the one that said that it should be based on
3 cash flow, so neither of them used the word cash flow
4 that I remember until after I brought it up.
5 Q What did they tell you was their agreement?
6 A I don't actually recall exactly. I wasn't the only one
7 dealing with it. They also had who was then my employer,
8 Gary Frind, who had the first meeting with them and then
9 that lady named Betty Andahl who was doing all the
10 monthly work.
11 Q What did they tell Mr. Frind was their deal?
12 A You will have to ask Mr. Frind.
13 MR. BULMER: Objection, hearsay.
14 JUDGE BROWN: Sustained.
15 Q (Continuing By Mr. Taylor) What did Judge Anderson tell
16 Mr. Frind was the deal?
17 MR. BULMER: Objection, hearsay.
18 MR. TAYLOR: Party opponent, Your Honor.
19 MR. BULMER: Lack of foundation.
20 MR. TAYLOR: If he doesn't know, he doesn't
21 know. If he does, I think I am entitled to know the
22 answer.
23 JUDGE BROWN: The only way he would know would
24 be possibly being a second statement made by Mr. Frind to
25 him unless he was present, so then we would have another

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1 layer of the hearsay.
2 MR. TAYLOR: I'll rephrase, Your Honor.
3 JUDGE BROWN: That would make it a sustainable
4 objection.
5 Q (Continuing By Mr. Taylor) Were you present when Judge
6 Anderson met with Mr. Frind?
7 A I can't even tell you if he did meet with Mr. Frind.
8 Q Do your work papers contain anything about a meeting
9 between Judge Anderson and Mr. Frind?
10 A Not to my knowledge.
11 Q Do your work papers contain anything about a meeting
12 between Hamilton and Frind?
13 A I don't know if it was in my work papers, but there is a
14 sheet of paper with Gary Frind's handwriting on it
15 talking about a discussion with Bill.
16 Q Okay. And that was a discussion that the business had
17 been sold, right?
18 A Yeah.
19 Q And that paper says nothing about an adjustment
20 agreement, does it?
21 A I couldn't tell you.
22 Q Let's touch on a few of these items. Excess legal and
23 accounting. Describe for me how you got to that number.
24 A Again, in the December statement that showed the \$50,000
25 loss, there was \$37,000 and \$650. The August 1, which is

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1 above, had the \$95,000 loss, that had 20,450. So I
2 subtracted those two and that was the legal and
3 accounting that was paid between September and December.

4 And the only one Mr. Hamilton would have had to pay or
5 Pacific Rec. would have to pay would be our \$650 a month,
6 so I subtracted four times 650 out of that and came up
7 with \$14,600.

8 Q How do you know that, that the only thing Mr. Hamilton
9 would have to pay if he was the owner was your 650 a
10 month?

11 A Well, of what was paid. I can't tell you that he
12 wouldn't have had other attorney fees or something.

13 Q How do you know that the attorney's fees that you gave
14 Hamilton the benefit for, how do you know they didn't
15 benefit Mr. Hamilton, or do you?

16 A I don't know for sure.

17 Q Well, did you just guess?

18 A Nope.

19 Q Did you ask Hamilton or Anderson?

20 A No.

21 Q How did you reach the conclusion that Mr. Hamilton should
22 get the benefit of that?

23 A Because when we started doing work for Mr. Hamilton in
24 January, he paid \$650 a month to us for his accounting.

25 Q So based on that, you assumed that there were no legal
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1 fees paid back in September through December that
2 benefitted the business and thus benefitted Mr. Hamilton,
3 right?

4 A I believe at that time I did look back and track it down,
5 but I couldn't tell you offhand.

6 Q Can't find that in your work papers, can we?

7 A I would be able to find that if I went through it month
8 by month.

9 Q Okay. Do you recall what kind of legal fees they were
10 for?

11 A \$1800 a month was for the management fee or whatever you
12 would call it.

13 Q Okay. And you subtracted that?

14 A Pardon?

15 Q That accounts for \$7200 but what about the extra?

16 A I'd have to look back through the papers.

17 Q Did it strike you as odd that -- as an accountant, did it
18 strike you as odd that Mr. Hamilton was being treated as
19 the owner from September 1 forward, but that Judge
20 Anderson's firm had been paid a management fee from
21 September 1 forward? Did that ever strike you as
22 unusual?

23 A No.

24 Q Now, the goal of this exercise was to figure out expenses
25 that would not have occurred had Mr. Hamilton been the

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1 owner from September 1 forward, is that right?

2 A No, the goal was to get the number, the cash flow number.

3 Q Let me rephrase it then. Was the goal to get the cash
4 flow by eliminating expenditures that wouldn't have
5 occurred but for --

6 A That possibly would not have occurred, yeah.

7 Q Well, among the payments that were made during this
8 period, about \$70,000 in improvements on the building,
9 right?

10 A I believe so.

11 Q Okay. Plus or minus?

12 A Yeah.

13 Q And those were payments that benefitted the business,
14 right?

15 A Benefitted the business when they were done, yes.

16 Q Okay. And they gave Mr. Hamilton a better building in
17 which to operate his bowling alley once he finally took

18 over in January, right?
19 MR. BULMER: Objection, lack of foundation.
20 MR. TAYLOR: I can establish foundation, I
21 believe, Your Honor.
22 JUDGE BROWN: It will be sustained for lack of
23 foundation at this time.
24 Q (Continuing By Mr. Taylor) You're aware of the tenant
25 improvements that were being made?

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1 A Yes.
2 Q Story Acoustics?
3 A Yeah, I know about that.
4 Q Wilson refrigeration?
5 A I believe so.
6 Q AMF Bowling?
7 A AMF Bowling was probably the bigger one.
8 Q Refinishing the lanes, right?
9 A I believe so.
10 Q Had to have the lanes in good shape by September 1 for
11 the league season?
12 A For the new league season, yes.
13 Q Now, isn't it correct that Mr. Hamilton got the benefit
14 of all those improvements, but under your analysis, he
15 didn't pay for them through the adjustment or otherwise?
16 A I would disagree with that comment.
17 Q Where did he pay for them?
18 A He paid for them in the original \$300,000 because, to my
19 knowledge, the bowling lanes were improved in like June,
20 I may be off a little bit on the date. And if you buy a
21 business, you're buying it as is, you're not assuming
22 liabilities.
23 Q He didn't ultimately pay \$300,000, did he?
24 A No, he didn't because there were adjustments after the
25 fact.

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1 Q He paid 300,000 less expenses that you put on Pacific
2 Lanes' part of the ledger or side of the ledger, in
3 simple terms?
4 A The adjustments, correct.
5 Q And among the expenses that you tagged on the estate were
6 the refinishing of the bowling lanes, figured the estate
7 should pay for that?
8 A I didn't figure who would pay for it.
9 Q Who did decide that?
10 A I know they were accrued on the financial statement prior
11 to then when they were done.
12 Q They were paid out during this period where Mr. Hamilton
13 was the as-of owner?
14 A And that's why they didn't have the \$92,000 of cash.
15 Q Now, you said that Mr. Hamilton could have written or
16 that Pacific Lanes could have written a check for this
17 adjustment to Pacific Recreation but it didn't have the
18 money, right?
19 A Correct.
20 Q Where in your work papers do we find anything that says
21 Hamilton, whose going to buy the business for \$300,000,
22 instead should get a check for \$92,000?
23 A That's nowhere in my work papers.
24 Q Okay. Insurance. We talked about three months
25 insurance. This was for the fourth quarter of 1992?

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1 A Correct.
2 Q You said that was a -- whose liability was that?
3 A Bill Hamilton paid for a year policy on the bowling
4 alley. That covered October 1st through September 30th.
5 Q But under you analysis who was responsible for it?

6 A I would have said Pacific Lanes was responsible because
7 they were -- or it was an expense if they would have
8 continued to have the business they would have had to
9 pay.
10 Q So Pacific Lanes, under your treatment of this, Pacific
11 Lanes paid for the insurance during the period when
12 Mr. Hamilton was treated as the as-of owner, do I
13 understand that properly?
14 A Yeah, a normal business expense.
15 Q Okay. Fair market rent.
16 A Yes.
17 Q You are familiar with Title 26, Section 162 of the
18 Internal Revenue Code?
19 A Nope, not by that.
20 Q Okay. Let me do it a different way. To deduct an
21 expense, it has to be treated as ordinary -- it has to be
22 ordinary and necessary, right?
23 A Yeah.
24 Q And, as an accountant, that's something that you learned
25 in the first days of accountancy school or business

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1 school?
2 A Yes.
3 Q Okay. We see here for adjustment purposes someone
4 decided fair market rent was \$6,000. Is that what you
5 decided or was that Mr. Hamilton?
6 A That was their decision in the purchase agreement on the
7 building.
8 Q Okay. For years the rent had been booked at double that,
9 right?
10 A Correct.
11 Q Under your firm's supervision?
12 A Under our firm's and the firm that did it prior, yes.
13 Q And that flowed in for tax purposes for Hoffman-Stevenson
14 and Pacific Lanes, correct?
15 A Yes.
16 Q So you had represented all along to the Internal Revenue
17 Service that the ordinary and necessary rent expense was
18 not \$6,000 but \$12,000?
19 MR. BULMER: Objection, characterization of
20 him. He testified that it was his firm and the prior
21 firm.
22 JUDGE BROWN: Sustained.
23 Q (Continuing By Mr. Taylor) Your firm had represented that
24 the ordinary and necessary rental expense was 12,000, not
25 6,000, correct?

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1 A Yes, but that would have at times have included the fact
2 that Hoffman-Stevenson also paid for all the bowling
3 equipment, the pin setters and all that stuff.
4 Q I am just talking about rent.
5 A And that was part of that rent.
6 Q When did that change?
7 A I couldn't tell you exactly. They still use the same pin
8 setters, but they have been depreciated off the books.
9 Q So in this rent that Mr. Hamilton was supposed to be
10 paying, did he get the benefit of these pin setters such
11 that it caused the rent to be \$12,000 for Pacific Lanes?
12 A Well, the pin setters were all much older then.
13 Q Did they get the benefit of them?
14 A How they came up with the 6,000 I can't tell you, I mean,
15 that was their deal.
16 Q Did you ever ask them?
17 A Nope.
18 Q Did it strike you as odd that rent that had been booked
19 as ordinary and necessary at 12,000 all of a sudden was

20 cut by 50 percent?
21 A Nope.
22 Q Take a look, please, at Exhibit 118. What is Exhibit
23 118?
24 A That's the financial statement that Gary Frind &
25 Associates prepared for the end of the year of 1992.

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1 Q Okay. Did you have any involvement in this?
2 A Yeah, I probably did most of it.
3 Q Okay. That's your best recollection?
4 A Yeah.
5 Q Okay. What is the purpose of preparing a financial
6 statement for a corporation?
7 A This is -- this one is prepared for two reasons; number
8 one, it gives them a nice copy to save, and in this one
9 we also combine Pacific Lanes, Alphond's Restaurant and
10 Hoffman-Stevenson in the one financial statement.
11 Q As an accountant you're aware that banks frequently ask
12 companies give us your financial statements?
13 A Correct, yes.
14 Q And they want audited financial statements?
15 A Well, if they want an audited one, they ask for an
16 audited one.
17 Q Financial statements are important in your business?
18 A In my business, they are, yes.
19 Q They're perhaps one of the most important things an
20 accountant does, aren't they?
21 A Correct.
22 Q And you know when you prepare them that other people are
23 relying on them?
24 A Correct.
25 Q People you don't even know?

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1 A Correct.
2 Q Banks?
3 A Yes.
4 Q The government?
5 A Yes.
6 Q Lots of different important agencies and businesses,
7 right?
8 A Possibly.
9 Q Okay. So you take these seriously?
10 A Yes.
11 Q Okay. This was prepared -- well, page 3 we see a cover
12 letter March 11th, 1993?
13 A Correct.
14 Q And that's about when this work was concluded?
15 A Yes.
16 Q And that's two days after the final adjustment sheet that
17 we looked at March 9th, 1993?
18 A Correct.
19 Q So you waited to do the adjustments before you did the
20 financial statement?
21 A Correct.
22 Q Why was that?
23 A Well, the adjustments change the financial statement for
24 Pacific Lanes.
25 Q Okay. Why don't you turn to the third to the last page

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1 of the exhibit.
2 MR. BULMER: Page number 7.
3 Q Yeah, page 7 and it starts with note 5, "Pacific Lanes
4 Sale." When you make the financial statement or prepare
5 a financial statement, Mr. Iverson, we sometimes see
6 notes after all the numbers and figures?
7 A Correct.

8 Q What is a note for, why do you put that there?
9 A The notes just give somebody reading a financial
10 statement hopefully a better understanding of something
11 that might have been out of the ordinary or --
12 Q Out of the ordinary?
13 A Yeah, for example, you said the Pacific Lanes sale.
14 That's something that's not going to happen every year.
15 Q Now, you said in there, "All the equipment, leasehold
16 improvements, cash on hand and inventory." Was
17 Mr. Hamilton supposed to get the cash or was he not
18 supposed to get the cash?
19 A He wasn't supposed to get the cash.
20 Q Okay. "All the equipment, leasehold improvements, cash on
21 hand and inventory were sold for 207.171." Was that the
22 purchase price or was the purchase price \$300,000?
23 A After the adjustment the purchase price was \$207,000.
24 Q You say it's effective December 31. I thought the
25 adjustments all hinged on September 1st.

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1 A The sale was effective -- when I actually booked the sale
2 of \$207,000, it was effective December 31st.
3 Q And the next sentence you're telling banks and the IRS,
4 et cetera, "A note for \$125,513 at 7-1/2 percent payable
5 in monthly installments starting February 1993 was
6 signed." Where is that note?
7 A I don't think we have it.
8 Q Who signed it?
9 A I couldn't tell you.
10 Q Who was it to and who was it from?
11 A Well, it was supposed to be from Pacific Rec. to Pacific
12 Lanes.
13 Q And where do we find an agreement that says they were
14 supposed to sign a note for \$125,513?
15 A It was the Exhibit 61.
16 Q The adjustment sheet?
17 A The adjustment sheet.
18 MR. TAYLOR: I have nothing further, Your
19 Honor.
20

REXCROSS EXAMINATION

21 BY MR. BULMER:
22
23 Q Under your ethical responsibilities as an accountant, do
24 you have a duty to at least look at matters to see if
25 they appear to be honest or fair?

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1 A Correct.
2 Q And when you were advised that adjustments needed to be
3 made to take into account the cash flow during September
4 to December, did that strike you as something dishonest
5 or unethical?
6 A They talked about adjustments for the profit and loss,
7 but, no, that's not dishonest.
8 Q You have been involved in business transactions as an
9 accountant?
10 A Yes.
11 Q Is it unusual in your opinion for there to be post sale
12 adjustments for cash or profit and loss?
13 A Not at all.
14 Q Did Judge Anderson have any input or control over the
15 language that you put in or that was put in over Mr.
16 Frind's - I guess it's yours - let's turn to the front of
17 this - Exhibit 118, combined financial statement?
18 A No.
19 Q Let me back up. But that's Mr. Frind's signature?
20 A Yeah, that's Gary Frind's signature.
21 Q Is your signature on here?

22 A My signature is not on here.
23 Q Did you, however, prepare this?
24 A I prepared it.
25 Q Did Mr. Anderson have any input as to the vocabulary or
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1 how the words were structured in note 5?
2 A No.
3 Q If there are mistakes in here, whose responsibility are
4 those?
5 A They're my mistakes.
6 Q Mr. Taylor asked you about work papers. Would these
7 constitute work papers in your opinion?
8 A Yes, they would to me.
9 Q And on this work paper doesn't it say that this is done
10 for a need to adjust for cash flow from September 1st to
11 December 31st?
12 A Yes.
13 Q Is that your memorialization of why this was being done?
14 A Yes.
15 Q Did you ever discuss with Judge Anderson the accounting
16 matter which was going forward with the \$12,000 rent?
17 A No, I didn't.
18 Q Do you know when the origin of the \$12,000 rent was?
19 A No, I don't.
20 Q Do you know how long it had been in place?
21 A From prior to my old firm doing the books.
22 Q So before Gary Frind & Associates did it, it was the
23 prior firm?
24 A I believe so.
25 Q What was the name of the prior firm?

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1 A Knight, Vale & Gregory.
2 Q When you figure out the financial statements that are in
3 here, to come up with this December process, this 45, if
4 there had been expenses to refinish the bowling alley, to
5 replace the acoustics or to do something like that, have
6 those been taken into account in those statements?
7 A They were taken into account prior to August, August or
8 prior.
9 Q All right. And if, however, let's say that one had
10 happened or a payment had been made or bill had been
11 incurred to do something during September through
12 December, okay, go with me that far. Let's assume that
13 they repaired refrigerators or something in October,
14 let's say. Now, if they had done that and those expenses
15 had gone and been paid, would that have been taken into
16 account when you would get to the December financial
17 statement?
18 A If it would have been expensed, it would have been taken
19 into account.
20 Q And if it was not expensed, as a result -- as a result of
21 that, if a payment had come out, it would have reduced
22 the cash?
23 A If a payment would have come out to something that we
24 didn't expense, it would have reduced cash.
25 Q And so if you took that out, all right, in this equation,

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1 if you had been asked to take those out, would you have
2 taken those out down here under the add back? In other
3 words --
4 A Under the "Less," where I have "Purchase of Bank" and
5 "Pacific Lanes Payment."
6 Q All right. And the result of that would have been what?
7 A It would have made the purchase price adjustment less.
8 Q In which case, the amount owing by Mr. Hamilton would
9 have --

10 A Would have increased.
11 MR. BULMER: That's all I have, Your Honor.
12 MR. TAYLOR: Nothing further, Your Honor.
13 JUDGE BROWN: Does any member of the
14 Commission wish to ask a question of the witness?
15 JUDGE BROWN: Okay. Vivian.
16

17 EXAMINATION

18 BY MS. CAVER:
19 Q Clarification question. In terms of when did you say you
20 learned about the car payment?
21 A When did I learn about the car payment?
22 Q Yes, what year?
23 A Oh, it would have been in '96.
24 Q '96?
25 A Yeah, before I gave my deposition, which I believe was
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1 '97.

2 MS. CAVER: Thank you.
3

4 EXAMINATION

5 BY MS. BRIGHTON:
6 Q Mr. Iverson, I just have a couple of questions of
7 clarification also. On this Exhibit 118, note 5, where
8 it states a note for \$125,000 at 7 and a half percent.
9 A Mm-hmm (witness nods head affirmatively).
10 Q Did I understand you to say that neither Judge Anderson
11 or Mr. Hamilton told you about this, that you don't --
12 you didn't see a copy of that? I wasn't sure about what
13 you said.
14 A I didn't see a copy of any signed note.
15 Q How would you have known to put that in here?
16 A I put that in there based on Exhibit 61 where we came
17 down to the note being \$125,000.
18 Q So it was just, it was somebody else's figures?
19 A It was kind of an assumption on my part.
20 Q And then on Exhibit 60 or I think it was 60 or 61 where
21 it stated that Pacific Recreation had paid the bills for
22 the lanes for the bowling alley, you said you made out
23 the forms for payroll tax?
24 A And business taxes.
25 Q And fees, I guess it said, and then you gave it to the

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1 ladies at the bowling alley to make out the check.

2 A Correct.

3 Q I guess I don't understand that. It sounds to me like
4 the bowling lanes paid those expenses, but it was listed
5 under Pacific Recreation. Can you clarify that for me?

6 A Effective January 1st the lanes' accounts were closed
7 down, Pacific Rec. opened up their own account. When we
8 sent back the tax reports, the ladies that were running
9 it, they just paid them out of the account that was in
10 front of them. They didn't differentiate that the
11 business had been sold. To them it was just business as
12 usual.

13 Q Okay. Thank you.

14 JUDGE BROWN: Any other questions?

15 JUDGE DONOHUE: I guess just a clarification
16 for me if you don't mind.
17

18 EXAMINATION

19 BY JUDGE DONOHUE:
20 Q I know you've been asked this and I guess I should be
21 satisfied with the answers I've heard, but if you could
22 be more precise, I would like to know precisely who told
23 you and when they told you that the cash flow needed to

24 be adjusted or, not that the cash flow, that there needed
25 to be some adjustment September 1 to December 31?

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1 A I can't tell you precisely who told me or I can't tell
2 you when or who precisely.
3 Q All right. Is that kind of an adjustment part of an
4 ordinary accountancy practice?
5 A It is in the businesses I deal with being very small
6 businesses. Things are done and there's adjustments
7 afterwards for mistakes that are found or whatever. In
8 this case, it was a big adjustment as a percentage of the
9 deal, but that was because the bowling business is so
10 cyclical. You make so much money and then you lose so
11 much money and you hope that it just evens out and you
12 make a little bit.
13 Q Have you handled other bowling, I guess, accountancy for
14 other bowling establishments?
15 A No, I haven't, but I have been associated with a couple.

16
17 EXAMINATION

18 BY MR. CLARKE:
19 Q You weren't asked, were you, to determine whether the
20 change of four months changed the value of the business?
21 A No.
22 Q So you weren't asked to say, well, the sale price on
23 September 1 was 300,000; based on what had transpired in
24 the last four months, the sales price should now be X?
25 A Not in that vocabulary.

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1 Q You didn't offer an opinion as to whether the \$300,000
2 was a fair value at any point in time?
3 A I didn't have a say if it should be more or less, no.
4 Q Well, in fact, in cyclical businesses, don't typically
5 buyers look at the cycles and determine values based on
6 year-to-year performance rather than a four-month period?
7 A Yes. The agreed-upon price, to my understanding, the
8 \$300,000, included the fact that he was going to get the
9 benefit of all the cash flow at the beginning of the
10 cycle.
11 Q Okay. But, again, typically, you don't adjust during the
12 course of the year your value of your business up or down
13 depending on the cycle, you look at it over either a
14 three- or five-year span?
15 A When you buy a business, though, you're buying cash flow
16 and if you're going to buy a business, you know, my
17 example I have given to the attorneys here is that if you
18 were going to buy some stock today and it got delayed for
19 whatever reason and then in the meantime the stock paid a
20 dividend, when you go to buy the stock a week from now
21 after the dividend, you're going to pay less because the
22 dividend has brought down the value of that stock.
23 Q Either that or you would ask for the check for the
24 dividend?
25 A Ask for the check for the dividend.

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1 Q And in that respect if you went through that analysis
2 with this case, what you would do is look to see what the
3 cash was in the bank -- and I should back up. I presume
4 Pacific Lanes ran out of a checking account?
5 A Pacific Lanes ran out of a checking account, yeah.
6 Q And like all businesses or most businesses in that regard
7 then, they would put their receivables into the checking
8 account and then would pay the payables out of the
9 checking account?
10 A Correct.
11 Q Okay. And in that regard, then, in order to determine

12 what that quote-unquote dividend had been for those four
13 months, wouldn't you have to do a cash reconciliation for
14 the end of August 1992 to start your base and then do a
15 cash reconciliation at the end of '92 in December to find
16 out what the difference was?

17 A I understand what you're saying, but that's not
18 necessarily true, because the cash flow statement, the
19 adjustment statement that I did, that's what it was
20 accounting for. What that doesn't account for is the
21 fact that they spent the money on what Mr. Taylor said,
22 on things that they had done prior that they hadn't been
23 paid.

24 Q But you can take that into account on a cash
25 reconciliation statement?

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1 A Correct.

2 Q And, in fact, in this case what you did was you started
3 with the base of the financial statements, which includes
4 depreciation and all kinds of things, it doesn't give us
5 a number of what was in the checking account?

6 A Correct. If we did a cash flow statement, which is what
7 I think you're getting at, if we did a cash flow
8 statement, that would make a few of those adjustments
9 like I did, but a cash flow statement wouldn't adjust for
10 the differentiation of the rents, it wouldn't adjust for
11 the excess legal or accounting, so we would have had a
12 cash flow statement and then below that we would have had
13 additional adjustments.

14 Q You could have gone back and made those adjustments based
15 on the information?

16 A Correct.

17 Q Was it your understanding that the adjustment was to be
18 made for, quote, cash flow based upon the financial
19 statements or was it to be based upon the cash the
20 business earned in the four months from August to
21 December?

22 A It was my understanding that it would have been adjusted
23 for the cash that the business made, the cash flow it
24 generated.

25 Q We are using those terms sort of interchangeably.

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1 There's a difference, is there not, based on our
2 discussion of the cash the business earned between August
3 and December, again, if we were running cash
4 reconciliation statements versus cash flow based upon
5 profit and loss statements?

6 A Correct.

7 Q So you picked one rather than the other based upon the
8 instructions you were given?

9 A I picked the one that told me what cash flow Bill
10 Hamilton's business could have made if they would have
11 taken possession September 1st.

12 Q But, again, the basis for that is the fact that we
13 started out with at the end of August either a profit or
14 a loss as opposed to a zero in the checking book?

15 A Correct.

16 Q Okay. Was there a new checking account set up for
17 Pacific Recreation as of January 1?

18 A I believe they went down to the bank, I don't know if it
19 was exactly January 1. It was at the same bank as the
20 Pacific Lanes' accounts.

21 Q And, in fact, then, who kept the checkbook for Pacific
22 Lanes, do you know?

23 A The Pagnis who were the mother and daughter there.

24 Q Was kept at the bowling alley?

25 A Was kept at the bowling alley.

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- 1 Q Did your firm do the month-to-month statements based upon
2 the checks that they would write?
3 A Correct. They would make us copies and give them to our
4 firm about a week and half to two weeks after the end of
5 the month.
6 Q Do you know what input if any, Bill - and I am asking for
7 your personal knowledge - any input that Bill Hamilton
8 had or Mr. Hamilton had during the fall of 1992 in terms
9 of writing those checks?
10 A No, I don't because I wasn't the one that dealt with them
11 on a month-to-month basis.
12 Q Who was?
13 A Lady named Betty Andahl.
14 Q You don't know whether he knew what was going on in the
15 checkbook or not in the fall?
16 A I couldn't tell you.
17 Q Based upon the information you gave us in Exhibit 61 or
18 62, whatever it was, I guess it was 61, it looks like
19 there wasn't any cash in the account of Pacific Lanes at
20 the end of the year because Pacific Recreation had to
21 step forward to make payments?
22 A Very little if any.
23 Q Very little if any. Where did the cash come from that
24 Pacific Recreation apparently had in early January to
25 write the checks?

FOOT OF PAGE 470

- 1 A That came from Bill Hamilton's line of credit, I believe.
2 Q So he was feeding the business at that point?
3 A Right.
4 Q So if he were to say at the end of the year I want a
5 check for whatever is in the checking account because I
6 thought that was the deal, there wasn't a check to give
7 him at the end of the year?
8 A Correct.
9 MR. CLARKE: Those are all the questions I
10 have. Thank you, sir.
11 JUDGE SCHULTHEIS: I have no questions.
12 JUDGE BROWN: Does counsel wish to ask any
13 follow-up matters?
14

FURTHER REDIRECT EXAMINATION

- 15 BY MR. TAYLOR:
16 Q Just two brief follow-ups. You made a statement that
17 with very small -- you as an accountant, you work with
18 small businesses, and that for very small businesses
19 things are done differently. What did you mean by that?
20 A Well, if you're going to merge Boeing and McDonnell-
21 Douglas, they spend years and years getting this thing or
22 months and months putting these things together and
23 making sure everything is done exact. When a small
24 business sells, it's generally -- a lot of it's -- they
25

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- KEVIN IVERSON/Further Redirect-Taylor
1 have contracts, but a lot of the stuff is on the
2 handshake. The prior business owner many times will stay
3 on free of charge just to help them with a smooth
4 transition. They try to work the best together to get
5 everything done. But generally they have a date in mind
6 and if it doesn't get done by that, they still kind of
7 use that date.
8 Q You are familiar with the term GAP, generally accepted
9 accounting principles?
10 A Yes.
11 Q What are GAPs?
12 A Just what they say, they are the generally accepted

13 accounting principles, principles that you're supposed to
14 rely on that generally will take you to the right answer.
15 Q Those are the rules for accountants?
16 A Correct.
17 Q Okay. Do GAPs distinguish between very small businesses
18 and large businesses?
19 A No, they don't.
20 Q Supposed to do them all the same way?
21 A Theoretically, yes.
22 Q Exhibit 118, we talked about note 5 to that. That is not
23 your representation, is it; isn't that management's
24 representation that a note for \$125,000 was signed?
25 A That was my -- the note that I put in there, though,
FOOT OF PAGE 472

1 Grant or Bill didn't write that note for me.
2 Q Let's turn to the third page of Exhibit 118, the cover
3 letter.
4 A Yes.
5 Q First paragraph, last sentence. "All information
6 included in these financial statements is the
7 representation of the management of Pacific Lanes, Inc.
8 and...Hoffman-Stevenson Inc." In fact, as an accountant,
9 if you make a representation or if you make a statement
10 that it's your representation, you've lost your
11 independency as an accountant, have you not?
12 A Well, it was their representation based on Exhibit 61,
13 but I took that -- or I took Exhibit 61 and put it into
14 the note form.
15 Q Did you lose your independency then in preparing this
16 financial statement?
17 A I don't think so.
18 MR. TAYLOR: Okay. Nothing further, Your
19 Honor.
20

21 FURTHER RE-CROSS EXAMINATION

22 BY MR. BULMER:
23 Q Did anyone give you specific instructions on how to come
24 up with the adjustment? In other words, we had some
25 questions could it have been done by some cash
FOOT OF PAGE 473

1 reconciliation process or something. Did you come up
2 with your own idea how to handle that?
3 A Yes.
4 MR. BULMER: I have nothing further.
5 JUDGE BROWN: No other questions from the
6 Commission? All right. Thank you, Mr. Iverson, you may
7 step down. Is the witness excused at this point?
8 MR. TAYLOR: For Commission counsel purposes,
9 yes, Your Honor.
10 MR. BULMER: Thank you for asking.
11 (Pause in the proceedings.)
12 MR. TAYLOR: Commission counsel calls
13 Mr. Steve Fisher.
14 JUDGE BROWN: Raise your right hand.
15

16 STEPHEN FISHER, having been first duly sworn on oath or
17 affirmed to tell the truth, the whole truth and nothing
18 but the truth, testified as follows:
19

20
21 DIRECT EXAMINATION

22 BY MR. TAYLOR:
23 Q Good morning, Mr. Fisher. You're an attorney?
24 A Yes, I am.
25 Q How long have you been practicing law?
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STEPHEN FISHER/Direct-Taylor

- 1 A Since 1977.
2 Q In 1992 were you a partner of Judge Anderson's?
3 A Yes, I was.
4 Q How long had you and Mr. Anderson been law partners?
5 A Since 1980.
6 Q Friends?
7 A Yes, we are.
8 Q Good friends?
9 A I would say we're good friend, yes.
10 Q And even after he went on the bench, he comes by the
11 office for coffee and donuts sometimes?
12 A Periodically he'll stop in.
13 Q Okay. And he has done so over the course of this case or
14 this investigation?
15 A Yes, he has.
16 Q And sometimes he'd come in and talk with you about the
17 investigation?
18 A Minimally.
19 Q Talked about fees once, you remember?
20 A Yes, we did talk about those fees.
21 Q Those were fees that had been charged to the estate?
22 A That's correct.
23 Q Okay. In early 1993 did you become a trustee of the
24 Hoffman estate?
25 A Yes, I did.

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- 1 Q Explain just procedurally how things were before you
2 became the trustee and then what happened when you became
3 the trustee just in terms of ownership and the like.
4 A I'm sorry, as to --
5 Q That's an awkward question. I'm not an estate lawyer.
6 Prior to your becoming trustee, the assets were in
7 the estate?
8 A That's correct.
9 Q What does that mean?
10 A Well, that the assets had not been transferred
11 technically to anyone else, they had not been sold from
12 the perspective of those assets were still part of the
13 general estate.
14 Q Okay. And in early January 1993 they went into the
15 trust?
16 A That's correct.
17 Q Okay. So we can kind of, if we take Hoffman-Stevenson
18 and Pacific Lanes and put aside the other assets, if we
19 can draw a circle around them and now they're in the
20 trust?
21 A Technically they were supposed to be transferred to the
22 trust. That didn't happen immediately.
23 Q Okay. But conceptually that's what happened?
24 A Correct.
25 Q And you were the trustee of the trust?

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- 1 A That's correct.
2 Q And, in legal terms, that means that you're the legal
3 owner, so to speak?
4 A That's correct.
5 Q For the benefit of others?
6 A That's correct.
7 Q Okay. And the others were the hospital down in Ilwaco?
8 A That would be Ocean Beach Hospital, yes.
9 Q That was the beneficiary of the trust?
10 A One of the beneficiaries.
11 Q And that hospital was in -- by the time you came on
12 board, that hospital was in desperate financial straits?
13 A Yes, they were.

14 Q Who were the other beneficiaries of the trust?
15 A Well, Mildred Hoffman was still alive at that time, so
16 she would have been one of the beneficiaries, she was the
17 primary beneficiary at that time. And then the residual
18 beneficiaries then would have been Ocean Beach Hospital
19 and Edward Curtis Hoffman, who was the son of
20 Mr. Hoffman.
21 Q To your knowledge, during the time Judge Anderson was
22 handling the estate, had Milly Hoffman, the widow
23 Hoffman, complained that she wasn't getting any money out
24 of the estate?
25 A Not that I know of. I really don't know.

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1 Q Okay. You weren't involved in the estate to speak of in
2 1992, were you?
3 A Well, that's a difficult question. I did have some
4 involvement. My time records show that I had some
5 involvement in 1992. To say that I was actively involved
6 on a daily basis in the estate would be incorrect.
7 Q Okay. We're here focusing on one particular aspect of
8 the estate which is the bowling alley. Now, you know now
9 that the bowling alley -- a sale closed or at least
10 papers were signed on December 4th, 1992, to sell the
11 operation of the bowling alley?
12 A Yes.
13 Q Now, at the time the sale closed on December 4th, you
14 weren't involved in the transaction, were you?
15 A No, I was not.
16 Q You first became involved in this bowling alley operation
17 transaction in January of or after January of 1993,
18 right?
19 A Well, I was aware of events that were going on, but from
20 a strictly technical point as to when I started handling
21 those issues, that would have been after January 1993.
22 Q You became trustee on or about January 6th?
23 A That's correct, of 1993.
24 Q '93. And at the time you became the trustee, did you
25 have any knowledge of the details of the bowling alley

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1 transaction?
2 A Of the specific details, no, but I was aware of what was
3 going on.
4 Q You knew in general there had been a deal?
5 A Correct.
6 Q But you didn't know the details of the deal?
7 A That's correct.
8 Q And you were relying on Judge Anderson to provide those
9 details, were you not?
10 A I was relying on Judge Anderson and other individuals and
11 the file itself.
12 Q Okay. And those other individuals were Bill Hamilton?
13 A Bill Hamilton would have been one of those.
14 Q Kevin Iverson?
15 A Correct.
16 Q And you recognized you needed Judge Anderson's help, is
17 that right?
18 A Absolutely.
19 Q Okay. Now, well, did you subsequently learn or did you
20 at any time learn there was some sort of agreement to
21 adjust the purchase price that Mr. Hamilton was paying
22 for the operation of the bowling alley?
23 A Yes, I learned of that in late January of 1993.
24 Q And who told you about it?
25 A My records indicate that that would have come from Judge
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1 Anderson.

2 Q Okay. Did he ever show you any document saying here's
3 the deal that we're going to adjust the purchase price?
4 A There was no specific document.
5 Q There was no general document?
6 A There was no general document.
7 Q Did you ever ask to see such a document?
8 A I don't recall whether I asked to see anything, but I do
9 not believe that I did.
10 Q Okay. You took Judge Anderson at his word?
11 A Well, I reviewed the facts of the situation at that time.
12 Q Now, this adjustment process, you were the trustee?
13 A Correct.
14 Q And so you had the blessing ultimately, is that right?
15 A That's correct.
16 Q In your role as trustee, were you relying on Judge
17 Anderson for accurate information about the adjustment
18 agreement?
19 A The information that he was providing to me, I wanted it
20 to be accurate, yes.
21 Q It was important to you that it be accurate?
22 A Yes, it was.
23 Q And unbiased?
24 A Yes.
25 Q You understood that the business was being purchased by

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1 Mr. Hamilton's company, Pacific Recreation?
2 A Yes, I did.
3 Q In the course of the discussions with Judge Anderson that
4 you had sometime in January, February of 1993 about the
5 adjustment process, when you were relying on him for
6 accurate, unbiased information, did he tell you that Bill
7 Hamilton's company was paying for his car?
8 A No, he did not.
9 Q And, in fact, at the time you didn't believe that such
10 payments were being made, did you?
11 A I did not.
12 Q Okay. And it came as a surprise to you in your
13 deposition in this matter when you learned that the
14 payments had been made?
15 A It was a surprise to me.
16 Q Okay. And in your capacity as trustee, when you were
17 dealing with Judge Anderson, it would have been important
18 for you to know that Mr. Hamilton's company was paying
19 for Judge Anderson's car, wouldn't it?
20 A I would have liked to have known. I am not sure that it
21 would have changed any of the decisions I made, but I
22 would have liked to --
23 Q You should have been told, is that your view?
24 A Should have been told, I'm not sure that it would have
25 affected anything, because I'm not sure it would have

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1 affected my decisions. I would have liked to have known
2 as the trustee in a perfect world.
3 Q Well, wouldn't you have wanted to know so that you could
4 determine whether his opinion or his information was
5 being somehow jaded in some fashion?
6 A That's what I said in my deposition, yes.
7 Q And that was true?
8 A That's true.
9 Q Okay. Turn to Exhibit 100, please, page 7, please. What
10 is Exhibit 100?
11 A These would be transaction file lists from my office for,
12 it looks like, January 5th, 1993 through May 26th of
13 1993.
14 Q These are the computerized time sheets, for want of a
15 better term?

16 A That's correct. I will state that these are only my time
17 records.
18 Q They don't include the rest of the firm?
19 A No, they do not.
20 Q And your time keeper under the TMKR, that stands for time
21 keeper?
22 A Yes. And I am number 3.
23 Q You're number 3. Look at the first entry on page 7,
24 please, dated March 9th, 1993.
25 A I'm sorry.

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1 Q Top entry on page 7.
2 A Yes.
3 Q Do you recall a meeting on March 9th with you, Grant
4 Anderson, Bill Hamilton and Kevin Iverson?
5 A Yes, I do.
6 Q That was a meeting about the adjustment process?
7 A Yes, that was the final meeting that we had.
8 Q And that's where everybody got together and said this is
9 the final adjustment?
10 A That's correct.
11 Q Okay. And, again, even at that time you were relying on
12 Judge Anderson for his input in that meeting?
13 A And everyone else's and my file.
14 Q Okay. At this meeting did Judge Anderson say anything
15 about car payments?
16 A No.
17 Q Did Mr. Hamilton?
18 A No.
19 Q Accountant Iverson?
20 A No.
21 Q Jumping ahead now to the fall of 1993, did Mr. Hamilton's
22 company, Pacific Recreation, purchase the bowling alley
23 buildings or the real estate from Hoffman-Stevenson?
24 A Yes.
25 Q Were you involved in that process?

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1 A Yes, I was.
2 Q You were negotiating with Bill Hamilton?
3 A I was dealing with him at that time, yes, I was.
4 Q In the course of your dealings with Hamilton, did you
5 need to rely on Judge Anderson for various things and
6 various kinds of information?
7 A I checked my time records again, and it's interesting,
8 when there were problems at Pacific Lanes when Pacific
9 Lanes was closed down on July 30th, I only have one
10 contact with Judge Anderson, and that probably -- that
11 was a couple days after that, and there is no other time
12 records that relate to me dealing with Judge Anderson in
13 negotiating that.
14 Q Well, no other records in your time sheets. Do you
15 record like a phone call, if it's a short phone call, do
16 you record it as .4 or do you not record it?
17 A I record all my time. I keep fairly accurate time
18 records.
19 Q Okay. So maybe there is more than one conversation, but
20 maybe not?
21 A There could have been.
22 Q Okay. Again, my question is, during the course of your
23 discussions with Hamilton about him buying the real
24 estate, did you have to get information from Judge
25 Anderson?

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1 A I don't believe so.
2 MR. TAYLOR: I would like to publish
3 Mr. Fisher's dep, Your Honor.

4 JUDGE BROWN: It will be published.
5 Q Take a look at page 42, please, line 22.
6 A Yes.
7 Q Question: "Who was involved in that renegotiation?" We
8 are talking about the bowling alley real estate sale.
9 Answer - and this is your answer - "Bill Hamilton and I
10 were there for sure. And I believe I also talked to
11 Grant Anderson to understand some of the events that were
12 out there because I knew on the periphery that there were
13 problems with the building. I had to get more
14 information as to what the significant problems were.
15 The person who had that information was Grant Anderson."
16 Now, when you did that, were you relying on Judge
17 Anderson for accurate and unbiased information?
18 A Yes, I was.
19 Q Okay. By the fall of 1993 after Mr. Hamilton had made
20 something close to \$5,000 in payments on Judge Anderson's
21 car, did he tell you anything about that?
22 A No, he did not.
23 Q Is that something you would have wanted to know again so
24 that you could make accurate, unbiased decisions as a
25 trustee?

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1 A It's probably something that I would have wanted to know.
2 MR. TAYLOR: Nothing further, Your Honor.
3 Let me ask one more question.
4 Q Throughout the time that the Hoffman estate was open, the
5 law firm was being paid a management fee from various of
6 the entities in the estate, right?
7 A Correct.
8 Q Okay. Being paid a management fee by Pacific --
9 A Correct.
10 Q And then there was the Surfside which was the condo
11 complex out on the beach?
12 A In Ocean Park, yes.
13 Q Being paid a management fee for that, too?
14 A Correct.
15 Q And those management fees coming from both entities on a
16 monthly basis continued right through the closing of the
17 estate in December 1992?
18 A The records reflect that, yes.
19 MR. TAYLOR: Nothing further, Your Honor.
20

CROSS EXAMINATION

22 BY MR. BULMER:
23 Q Good morning, Mr. Fisher.
24 A Good morning.
25 Q Is there any doubt in your mind that the March 9th, 1993
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1 meeting occurred?
2 A There is no doubt in my mind.
3 Q Do you remember where it happened?
4 A It happened in my office. We're in Suite 8 now, we were
5 down in Suite 1 at that time.
6 Q And where in your office?
7 A There was a small conference room, we were buying two
8 units up above and we were stuck in a small unit until
9 the other tenants could move out.
10 Q Do you remember where people were sitting?
11 A I can recall it with -- I just recall that meeting.
12 Judge Anderson was sitting to me left, Bill Hamilton was
13 sitting across from me and Kevin Iverson was sitting
14 across to my left.
15 Q Why do you recall it so?
16 A It was an important meeting to me.
17 Q Why was it important?

18 A Because I had started reviewing the materials the last
19 week of January of 1993, I had gone through the process
20 of reviewing the documents, talking to all the
21 individuals that were involved, including Judge Anderson,
22 Kevin Iverson, and Bill Hamilton, reviewing all the
23 records and I had to make a final decision. It was my
24 job to make a decision and I wanted to be clear on what
25 that final decision was going to be. It was a very

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1 important meeting to me.

2 Q Because you were the trustee?

3 A Correct.

4 Q And it involved a substantial amount of dollars?

5 A Correct.

6 Q And what was the decision you were being asked to make?

7 A I was being asked to look at the transaction from the
8 perspective that I knew that this business was to close
9 in September of 1992. I was to look at the cash flow
10 that had been generated over the course of a period of
11 time from September through December of 1992. And I was
12 aware that those funds had been used by the estate for
13 other obligations of the estate and had -- and that there
14 was an adjustment that needed to be made for those cash
15 flow problems.

16 Q You were told about the agreement by Judge Anderson
17 apparently?

18 A Correct.

19 Q An adjustment. However, did you as a trustee have an
20 independent obligation to look and see whether, none the
21 less, the agreement made any sense in the context of the
22 transaction?

23 A Absolutely. I had that obligation as a trustee and as an
24 attorney.

25 Q And when you reviewed it and part of your process of

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1 meeting with Mr. Hamilton and Mr. Anderson and
2 Mr. Iverson was to ascertain that in fact within the
3 context of this transaction this made sense as something
4 to be done?

5 A That's correct.

6 Q If you'd turn to Exhibit 61, I believe, in your book. We
7 have already ascertained that this writing in the center
8 of the screen here is Mr. Iverson's, all right. Other
9 than that, do you recognize the other writing on this
10 page?

11 A That is my writing.

12 Q So the 3/9/93 is your writing?

13 A That's correct.

14 Q And sort of these numbers down in the left-hand corner is
15 also your writing?

16 A That's correct.

17 Q And what about this January, February, March over on the
18 right-hand side?

19 A That's my writing.

20 Q When do you believe you made those notations?

21 A I believe I made those on March 9, 1993.

22 Q So those would be your meeting -- sort of your meeting
23 notes from that meeting?

24 A That's correct.

25 Q And as a result of that meeting when we look at the lower

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1 portion where it says, "Adjust purchase price down from
2 260 to 207," did you understand that coming out of that
3 meeting then that that was the recommendation that was
4 going to be followed, the purchase price was going to be
5 adjusted down?

6 A That's correct.
7 Q Today sitting here, you didn't have the advantage of
8 everyone else in here, could you explain every number on
9 there if I asked you to go through it?
10 A Honestly, no. I have an understanding of some of the
11 numbers, but to sit here and say that I honestly know
12 what each one of those numbers means would be very
13 difficult for me to testify to. I truly was relying
14 extensively on our accountant to assist me with these
15 numbers.
16 Q At the time, however, that you basically approved this
17 way of handling matters, do you believe you had spent
18 sufficient time listening and investigating to ascertain
19 that they looked valid to you?
20 A I had spent over six weeks and I don't have any doubt in
21 my mind that I had fully investigated this and determined
22 that these numbers worked.
23 Q There's been discussion about the fall of '93 resale of
24 the - that's my word, I'm sorry - fall of '93
25 Mr. Hamilton actually ended up buying the building and
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1 the land, is that correct?
2 A That's correct.
3 Q And how did that come about?
4 A Well, at that time, and I had said I believe August in my
5 deposition, but on July 30th, the building inspectors for
6 the City of Tacoma had come out and closed the bowling
7 alley. And at that point in time we became, meaning our
8 office, became very concerned about how we were going to
9 keep the bowling alley open because of structural
10 problems with the building. In fact, the building was
11 going to collapse. And at that point in time we started
12 working with Mr. Hamilton to, number one, reopen the
13 bowling alley because I was concerned about damages if I
14 don't go out and allow his business to operate. And from
15 that point forward over a period of weeks Mr. Hamilton
16 then discussed the possibility of paying off the note and
17 exercising the option.
18 Q In the course of those negotiations did you have
19 conversations with -- the primary beneficiary was this
20 hospital?
21 A Correct.
22 Q And had you made efforts to find the son?
23 A I had made efforts to find Edward Curtis Hoffman and had
24 been unsuccessful. It was a pretty frustrating situation
25 because he -- we had information on him, we just couldn't

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1 find him.
2 Q And Milly Hoffman had also been a beneficiary?
3 A She had been a beneficiary, but she died on January 22nd
4 of 1993.
5 Q And under the provisions of the will or the trust, she
6 only got anything as long as she was alive?
7 A That's correct.
8 Q Was she continuing to get stuff from the trust or had
9 arrangements been made to sort of buy her out?
10 A She died so shortly after I became involved, I really
11 don't recall.
12 Q Okay. But the primary beneficiary like 90 percent or
13 something was the hospital?
14 A Was the Ocean Beach Hospital.
15 Q Okay. And in the course of negotiating with
16 Mr. Hamilton, did you keep Ocean Beach Hospital advised
17 as to what the various sales options were and what the
18 discussions were?
19 A Yes, I did.

20 Q Ask you to turn to Exhibit 110.
21 Judge Brown, I think I'm going to be done in like 15
22 minutes or something. I don't know if Mr. Taylor is
23 going to have much redirect.
24 MR. TAYLOR: Five minutes of redirect.
25 MR. BULMER: I would propose with your

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1 indulgence - we're pretty much on schedule - to stay a
2 little this afternoon and get Mr. Fisher done, but, of
3 course, that's your command.
4 JUDGE BROWN: Just move the lunch hour back a
5 little bit. That would be fine.
6 MR. BULMER: Thank you.
7 Q Now looking at Exhibit 110. Do you see that before you?
8 A Yes, I do.
9 Q 110 is a series of letters sent from your office to
10 various persons in September, October of 1993, November?
11 A That's correct.
12 Q And are those documents which are designed to reflect at
13 least in part the negotiations that have gone on with
14 Mr. Hamilton?
15 A They reflect some of the information. There obviously
16 were more.
17 Q There are other letters?
18 A Yes, that's correct.
19 Q These are representative of the letters?
20 A That's correct.
21 Q All right. And I notice that the first letter is to
22 Mr. Ronald Bender, Administrator of Ocean Beach
23 Hospital. Is that indeed what he was, was the
24 administrator?
25 A He was the administrator at the hospital at that time.

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1 Q Was he like your primary contact?
2 A He was my primary contact, although, I had been dealing
3 with Victor Vanderdoes, who was the administrator prior
4 to that, and I was also dealing with the hospital board.
5 Q And the first line of that letter says, "Pursuant to our
6 telephone conversation of September 15th, 1993, the Board
7 of Commissioners has approved the offer made by Pacific
8 Recreation Enterprise, Inc., pursuant to the terms of my
9 letter dated September 15th, 1993," is that correct?
10 A That's correct.
11 Q So you had sent a letter September 15th outlining the
12 terms of the purchase by Mr. Hamilton, Pacific
13 Recreation, Inc.?
14 A Well, and I also explained risk, benefits and
15 alternatives that were available to the hospital, because
16 there were substantial risks at this time, and so I was
17 explaining to them more than just the fact that there was
18 an offer made out there, I explained to them other
19 problems that existed, and they were also in desperate
20 need of cash at this time, so there were a myriad of
21 interests that were involved at this period in time.
22 Q And you were explaining those to the hospital?
23 A That's correct.
24 Q And as part of them taking into account why they should
25 or should not accept the offer from Mr. Hamilton?

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1 A Yes.
2 Q Did Judge Anderson have anything to do whatsoever with
3 how the offers were structured, as far as you know, and
4 what kind of dollars were involved?
5 A He had no involvement in this.
6 Q Well, Mr. Taylor asked you questions about your
7 deposition. In earlier testimony you testified that you

8 checked your time records and you had one quick
9 conversation with them. Then he asked you about the
10 testimony at page 42 of your deposition. Do you believe
11 you were incorrect when you answered those questions?
12 A Well, what I would say is that I know I was dealing with
13 Judge Anderson before, I was surprised when I looked at
14 my records to see that I only had one conversation with
15 him after the bowling alley was shut down. I believe I
16 keep pretty good records, time records, and I was
17 surprised -- and this was not only my records, these were
18 the records of my partner, Rick Hoefel. Judge Anderson
19 was only contacted during this process, from our time
20 records, only one time. And that was different than what
21 had occurred back in January when I needed sufficient --
22 significant help from Judge Anderson.

23 Q January of '92?

24 A January of '93.

25 Q At the time of your deposition you had not spent a lot of
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1 time poring over all your time records?

2 A I had not.

3 Q After that deposition sounds like you pored over your
4 time records?

5 A Well, I did, I mean, they are two or three inches thick,
6 I thought it was important to look.

7 Q Your testimony today is based on your refreshed
8 recollection after reviewing those time records?

9 A That's correct.

10 Q In that negotiation process with Mr. Hamilton, did you
11 expect the hospital to have ended up in the exact
12 bargained-for position, not the hospital, but I guess the
13 trust technically, an exact bargained-for position that
14 they had started from back when the original sale and
15 option was negotiated with Mr. Hamilton?

16 A I did not believe that was possible, and the reason for
17 that is the insurance company, the insurance carrier for
18 the building had indicated that they would not cover the
19 loss. The possibility existed that Mr. Hamilton could
20 walk away from this transaction and we would have a
21 building that was worthless because we didn't have any
22 money to repair it. We didn't have the ability to pursue
23 litigation against the insurance company. The asbestos
24 problem was very severe. I'm not sure that there is
25 anybody else who would have even considered that building

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1 under the circumstances with the structural problems, the
2 roof problems, and the asbestos problems.

3 Q So if the estate came out dollars somehow less than they
4 would have if the entire original performance under the
5 original option and purchase had taken place, is that
6 based on yours and the hospital's evaluation that
7 Mr. Hamilton could use sort of the leverage at this
8 point?

9 A That was our opinion of the circumstances at that time
10 and they had changed because the building was falling
11 down.

12 Q At the time the transaction was brought to conclusion,
13 who prepared the various documents to reflect, in the
14 fall of '93 now, who prepared those documents?

15 A Those were prepared in my office.

16 Q I ask you if you would turn to Exhibit 32, please.

17 A Thirty-two?

18 Q Please.

19 A I do have that.

20 Q And that's a Real Estate Excise Tax Affidavit prepared to
21 reflect the sale to Mr. Hamilton?

22 A That's correct.

23 Q And did your office prepare those documents?

24 A Yes.

25 Q And the number of gross sales price which is \$508,000 and
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1 some extra?

2 A Yes.

3 Q Who calculated that number?

4 A That would have been determination made by me and

5 Mr. Hamilton, but I believe I'm the one that selected

6 that number.

7 Q Were there other considerations in terms of this sale

8 other than the -- were there other financial

9 considerations being taken into account other than this

10 gross sales price?

11 A No, I believe that was the sales price. That's the

12 number I used at that time.

13 Q Let's see if we can run through the two or three

14 different components then of how this was being paid

15 off.

16 A Okay.

17 Q If you can recall.

18 A Yes.

19 Q Mr. Hamilton was going to give some money to the -- all

20 cash to the estate?

21 A That's correct.

22 Q Or to the trust, I'm sorry.

23 A To the trust.

24 Q And that cash was going to be allocated first to --

25 A To pay off the underlying note or pay off the note and
FOOT OF PAGE 498

1 then \$400,000 towards the lease option.

2 Q All right. And the underlying note we're referring to

3 was a note from Hoffman-Stevenson to First Interstate?

4 A Well, let's clarify that. There was the note on the

5 bowling alley, goodwill, property, et cetera, that was

6 almost exactly equal to the amount that was owed to First

7 Interstate. So by paying off the balance that was owed

8 on the note, that would also pay off the underlying to

9 First Interstate, and then you've got the \$400,000 that

10 would be reflected as versus the \$600,000 option price.

11 Q Okay. So did you do any sort of mental calculation or

12 whatever as to what it was sort of costing the estate so

13 to speak to have gotten caught in this situation?

14 A Well, if you just look at the numbers, it looks like

15 there's a reduction of \$200,000. The option would have

16 been exercisable at I believe \$600,000 in October of

17 1994.

18 Q And you reviewed that with the hospital before you agreed

19 to enter into that?

20 A I presented that to the hospital, the hospital board was

21 to have a meeting and review the information that I had

22 provided, and they subsequently agreed to accept the

23 terms of Mr. Hamilton's offer.

24 Q Thank you. Now, there was some discussion earlier in

25 this proceeding about some sort of a fee Mr. Hamilton may
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1 have paid, a \$15,000 fee. Was there such a fee?

2 A There was a fee of \$11,000.

3 Q Okay. And that was paid to you by Mr. Hamilton?

4 A That was paid to our office, yes.

5 Q To your office. And was that fee included in this gross

6 sales price?

7 A It was not included as part of the gross sales price.

8 Q Should it have been, do you know?

9 A I don't know. I really don't know.

10 Q And why was that fee paid?
11 A That fee was paid because I had indicated to Mr. Hamilton
12 that the hospital and the trust itself didn't have any
13 money. Mr. Hamilton didn't have an attorney at that
14 time, we were doing all the work, and I felt that that
15 would be the cost of the sale and that I wanted the net
16 of what turned out to be approximately \$400,000 to go
17 into the trust. I was looking for a net sale.
18 Q And so when you advised him that you were looking for a
19 net sale, one of the factors you took into account was
20 going to be these costs?
21 A Correct.
22 Q Did you ever discuss any of that fee with Judge Anderson?
23 A No, I did not.
24 Q Now, you presented this document, or your office did
25 anyhow, and a series of other documents, several of which

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1 are exhibits here, in the fall of 1993 for signature by
2 Judge Anderson?
3 A That's correct.
4 Q In his capacity as president of Pacific Lanes?
5 A That's correct.
6 Q And so in the fall of 1993 he continued to be the
7 president of Pacific Lanes?
8 A Yes, he was.
9 Q Had there been any attempt to remove him prior to that
10 point?
11 A Well, there was a situation in our office where I had
12 requested that we remove him. We didn't follow through
13 on it; you know, hindsight, I wish we had done this. The
14 records indicate that we were attempting to do this in
15 March of '93 and there was just no follow-through. And
16 that would have applied to Hoffman-Stevenson, Pacific
17 Lanes.
18 Q But when it came to your attention it hadn't been done in
19 October, roughly, when this was all happening in October,
20 it could have been done at that point?
21 A It could have been done at that time. In fact, it even
22 looks like the paperwork had been prepared earlier on; it
23 just was never submitted to terminate or have him resign.
24 Q Why did you go ahead and do it this way?
25 A It was expedient at the time.

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1 Q Was it important to the hospital to get its cash?
2 A We were trying to close this immediately. They needed
3 money. They wanted money.
4 Q And were you afraid the deal could still go sideways with
5 Mr. Hamilton?
6 A Well, that was always a concern. I mean if the building
7 falls down, that's a concern.
8 MR. BULMER: I'm trying to avoid recalling
9 Mr. Fisher. I know I promised, but I'm almost there.
10 JUDGE BROWN: Go ahead.
11 (Pause in the proceedings.)
12 Q As part of this transaction, did -- never mind. That's
13 all right. Thank you.
14

REDIRECT EXAMINATION

15 BY MR. TAYLOR:
16 Q Judge Anderson as president of Pacific Lanes and Pacific
17 Lanes and Hoffman-Stevenson, you say that you just didn't
18 get around to taking him off as president?
19 A I had delegated that to Rick Hoefel and it was not
20 accomplished.
21 Q Okay. Well, let me ask you something. Didn't you ask
22 Judge Anderson to stay on as president to be the one to
23

24 sign the documents?

25 A No.

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STEPHEN FISHER/Redirect-Taylor

1 Q Let me read you Judge Anderson's testimony and you tell
2 me if you agree with it or disagree?

3 A Okay.

4 Q "I was a fiduciary" -- this is Judge Anderson
5 testifying. "I was a fiduciary only in the sense that he,
6 Mr. Fisher, asked me to stay on to sign the documents."

7 Is your recollection different?

8 A If you want to put it in that context. To stay on to
9 sign those documents on October 11th or -- that may have
10 been the case. I don't recall that.

11 Q Now, changing the president of a corporation -- you are a
12 transactional lawyer?

13 A More or less. I used -- I did a lot of plaintiff's
14 personal injury work in the past.

15 Q Okay. But isn't it simply a matter of pulling out a
16 boiler plate resolution out of your word processor that
17 says, "I, Grant Anderson, resign dated this blank date of
18 blank," and then same word processor you get a corporate
19 resolution that says, "We hereby appoint Steve Fisher as
20 president"?

21 A It's, I believe, a very simple transaction.

22 Q A 5-minute process?

23 A Absolutely. That's why I am convinced that this was done
24 in February or March and just not signed off.

25 Q Now, you talked about your independent obligation to see

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1 if the adjustment deal made sense.

2 A Correct.

3 Q And that was an important one to you, right?

4 A It was very important to me.

5 Q But, again, you were working from the information you
6 had?

7 A Yes.

8 Q Judge Anderson, Hamilton?

9 A My file and Kevin Iverson.

10 Q They could --

11 MR. BULMER: Let him finish the answer,
12 please.

13 Q Oh, I'm sorry.

14 A And I said Kevin Iverson, and I'm done.

15 Q They could have told you the sale was supposed to have
16 closed as of June 1992 and you wouldn't have been the
17 wiser, would you?

18 A They could have told me that, but I knew what was going
19 on in our office, only from the perspective that I knew
20 that Bill Hamilton was involved with Pacific Lanes, I
21 knew there were problems with the gambling license, I
22 knew there were problems with the liquor license, I knew
23 there were problems with the asbestos in the ceiling of
24 the building. That was just general information that was
25 in our office at the time before January of 1993.

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1 Q Didn't you tell me in your deposition that until January,
2 February of 1993 you didn't know the case?

3 A I didn't know the case very well, I will admit that.

4 Q They could have told you then, well, we are supposed to
5 treat it as having closed in October of 1992?

6 A They could have told me anything; it was my job to
7 investigate and make an independent decision.

8 Q Okay. You talked about the reason for the price
9 renegotiation in the fall of '92. You talked about,

10 well, there were asbestos problems, ceiling problems and

11 the like, right?
12 A Well, there was a roof problem and a structural wall
13 problem and the asbestos had really been considered
14 before, but the structural problems were extremely
15 significant.
16 Q Okay. The asbestos, Hamilton had known about that even
17 before he bought the operation?
18 A Absolutely.
19 Q When he signed the option, he took the property on an as-
20 is basis?
21 A That's correct.
22 Q One last thing. You weren't here yesterday, but we were
23 talking about getting all the money paid, does it add up
24 to a million dollars or \$800,000 or what have you, and
25 the option fee, the \$50,000 fee that was paid for the

FOOT OF PAGE 505

1 option was always included as part of ultimately what was
2 supposed to be a million dollar transaction. That was a
3 non-refundable option fee, was it not?
4 A I believe it was.
5 Q Okay. So that money was gone and he had to pay the
6 \$600,000 under the option agreement?
7 A That's correct.
8 Q The full 600 and he wasn't entitled for a credit of
9 \$50,000?

10 A I believe that's correct.

11 MR. TAYLOR: Nothing further, Your Honor.

12 JUDGE BROWN: Any other questions,

13 Mr. Bulmer?

14 MR. BULMER: I think I've just got two.

15

16 RE CROSS EXAMINATION

17 BY MR. BULMER:

18 Q Do you recall whether or not he asked you, Judge Anderson
19 asked you to stay on or you asked Judge Anderson to stay
20 on, if you did, whether it was -- he was also on in
21 January?

22 A That's correct.

23 Q In January there were some transactional documents that
24 needed to be done, in '93?

25 A That's correct.

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1 Q And do you recall whether or not you asked him perhaps to
2 stay on in January?

3 A That makes more sense. I mean, I do believe that at that
4 point in time there were transactions that were being
5 closed and where he had all of the information and I had
6 asked him to complete those transactions, and that makes
7 perfect sense.

8 Q Okay. Now, for some reason this price that was paid in
9 October has become important. Was that price established
10 based on an analysis of the value and risk at that time
11 and, therefore, the best price you could achieve was
12 obtained?

13 A Absolutely.

14 MR. BULMER: Thank you. Nothing further.

15 JUDGE BROWN: Anyone on the Commission have
16 any questions of the witness?

17 MS. BRIGHTON: I had one question.

18

19 EXAMINATION

20 BY MS. BRIGHTON:

21 Q Mr. Fisher, in the course of my adulthood and married
22 life we have bought and sold several pieces of property,
23 both to strangers and within the family, and I can
24 understand doing things on a handshake, although probably

25 that's not a very good idea, but you as a trustee of
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1 someone else's property, is it the standard or acceptable
2 operating procedure to make decisions on a handshake?
3 Would you do that?

4 A Is it standard, I would say no. Does it occur, yes, it
5 does. Is it the best practice in the world, no. You
6 understand that. It's not the best practice in the
7 world.

8 Q Thank you.

9 JUDGE BROWN: Any other questions?

10 MR. CLARKE: I have a question.

11

12

EXAMINATION

13

BY MR. CLARKE:

14 Q Yesterday I asked Mr. Hamilton about the purchase price -
15 perhaps counsel can refer you to that - talked about the
16 ultimate purchase price for this property. I thought I
17 heard Mr. Hamilton say that he paid the underlying note
18 on the property in excess of the \$400,000, but, in
19 actuality, it was included, is that correct? In other
20 words, the underlying note on the real property was paid
21 out of the \$400,000?

22 A To be honest with you, I'd have to check my records. I
23 may be a little confused at this point.

24 Q I am looking at Exhibit 110 which talks about your
25 letters back and forth and there's letters to the bank,
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1 an October 6th, '93 letter to the bank. "From the funds
2 which First Interstate Bank is lending the Pacific
3 Recreation" - is the second paragraph - "you were
4 directed to pay the balance owed to" and it goes on, and
5 it looks to me like out of \$400,000, you paid the
6 underlying, you directed the underlying being paid, which
7 would be normal course of events in a real estate
8 transaction. That's a double question, that's terrible.
9 But the bottom line is was the underlying paid out of the
10 \$400,000, the underlying mortgage on the real property?

11 A You know, you're asking me that question now and I
12 believe it was, but I'm not sure that I am totally
13 accurate. I don't have all of those documents in front
14 of me.

15 Q Sure, and I recognize that was a mere four years ago, but
16 if it was paid out of, then in addition to the 400, there
17 was the 108, which was the remaining balance on the note
18 for the bowling alley business?

19 A Correct.

20 Q Plus we know that he paid 100 and the two option payments
21 and whether we count them or not, they were actual cash
22 paid?

23 A Yes.

24 Q And then there's a question of how you count the payments
25 for the approximately one year he was involved?

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1 A That's correct.

2 Q So the first three numbers I had were 608 and then
3 however you count the payments, whether you count them
4 part of the purchase price or not?

5 A That would be correct.

6 Q Okay. That helps me define and I don't know why I was
7 hung up on that issue. I apologize for going in circles
8 on that. Thank you.

9

10

EXAMINATION

11

BY JUDGE DONOHUE:

12 Q You mentioned a couple of times that you knew what was

13 going on in your office. Again, we're talking about the
14 period of time from September to the end of the year.

15 A Yes.

16 Q 1992. Does that extend to knowing, I guess, the basic
17 nature of this transaction and particularly, as has been
18 alleged, that it was to be as if closed on September 1,
19 1992?

20 A I can say that we had a small, relatively small office
21 and we are real close, the staff and the attorneys, and
22 we would often talk about what was going on in the
23 office, so I did know during that period of time what was
24 going on with the bowling alley. I had been more
25 involved with the condominiums, so I knew that even

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1 better, but I was aware that a transaction was being
2 handled, there was a sale, and, I mean, I recall
3 specifics relating to the difficulty in getting and
4 transferring the gambling license and the liquor
5 license. I knew those things were happening. I knew
6 that there had been discussions about the asbestos in the
7 bowling alley. How I came to know those things, it was
8 just general information in the office because I was,
9 again, on the periphery involved in this.

10 Q And I guess specifically the term or the unstated term of
11 the agreement that it was closed or as if closed on
12 September 1, 1992, were you aware of that?

13 A To say that I had that knowledge as of the period of time
14 in September, October, or November, or December of 1992,
15 I did not know that.

16 Q All right.

17 JUDGE BROWN: Any other questions from the
18 Commission? Did counsel have any follow-up questions?

19 MR. TAYLOR: No, Your Honor.

20

21 FURTHER RECROSS EXAMINATION

22 BY MR. BULMER:

23 Q Do you know whether Mr. Hamilton had been operating the
24 bowling alley during those months, September, October
25 November, December?

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1 A I believe he was operating the bowling alley during that
2 period of time.

3 Q Okay.

4 MR. TAYLOR: I have a question.

5

6 FURTHER REDIRECT EXAMINATION

7 BY MR. TAYLOR:

8 Q What's the basis for that belief?

9 A Again, it was the same type of situation where it was my
10 understanding that he had been operating the bowling
11 alley. How he was doing it, I don't know, but that was
12 my understanding. General information within the office.

13 Q You can't tell us any more detail about what you thought
14 he was doing?

15 A I cannot.

16 Q Okay. And if Judge Anderson and Mr. Hamilton testified
17 about what Hamilton was or wasn't doing, you'd defer to
18 their testimony?

19 A Absolutely, that's true.

20 Q Thank you.

21 MR. BULMER: Nothing further, Your Honor.

22 JUDGE BROWN: Okay. Thank you. You may step
23 down. We'll recess at this time for lunch and we'll go
24 for -- why don't we try for 1:45 instead of 1:30.

25 (Noon Recess)

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1 JUDGE BROWN: Thank you.

2 MR. TAYLOR: Your Honor, at this point counsel
3 for the Commission rests its case subject to calling Miss
4 Diane Anderson when she arrives later on this afternoon,
5 subject also to the -- we've got three additional
6 exhibits that are fairly bulky that we'll be sending out
7 for copying and we'll be introducing those and we have
8 agreed those are admissible. And then subject also to
9 Mr. Bulmer and I confirming that everything we think is
10 in the record is in the record, but I don't think there
11 will be any disputes about that either. We should be
12 able to present a stipulation to that effect.

13 JUDGE BROWN: All right.

14 MR. BULMER: Everything has gone real smooth
15 except for that last little part. I would just like to
16 confirm what I think is in the record at this point,
17 which I think is real easy, just in terms of exhibits,
18 and it's just then we know we are all working from the
19 same set of documents from this stage.

20 What I have, if I may, is the original index that we
21 admitted at the beginning, and since that time, on my
22 list anyhow, we admitted an additional Exhibit 15, which
23 was a tax lien form, a licensing form -- no, we admitted
24 a 15, which was a tax license form from the Commission.
25 We admitted a 16, which is a letter from the Liquor

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1 Control Board. I have an admission of an 18, which is
2 Mr. Hamilton's handwritten notes, and I have admission of
3 a 19, which is a business and acquisition lease form with
4 some written notations on it.

5 And then Mr. Taylor and I have agreed that we will
6 be admitting by stipulation an Exhibit 131, 132 and 133.
7 Each of those are public disclosure forms; 1993 public
8 disclosure form for 131, 1994 public disclosure forms for
9 132, and 1995 public disclosure forms for 133. And
10 that's what I have in the record.

11 MR. TAYLOR: That's consistent with our
12 records, Your Honor.

13 JUDGE BROWN: All right.

14 MR. BULMER: Thank you, Your Honor.

15 JUDGE BROWN: The record will reflect that
16 those items are admitted as agreed to by the parties and
17 agreed to by the Commission.

18 MR. BULMER: Then I guess we proceed with our
19 case at this point, Your Honor. We have reserved,
20 pending Miss Anderson testifying, any arguments as to
21 dismissal at this point which would otherwise be
22 appropriate.

23 JUDGE BROWN: That's correct.

24 MR. BULMER: I want to make sure my record is
25 clear.

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1 Then we would initially call Mr. Billy White.

2 JUDGE BROWN: Raise your right hand to be
3 sworn.

4
5 BILLY WHITE, having been first duly sworn on oath or
6 affirmed to tell the truth, the whole truth and nothing
7 but the truth, testified as follows:

8
9 JUDGE BROWN: Please be seated.

10 Mr. Bulmer, and also, Mr. Taylor, when you're
11 speaking from the podium area, be sure and speak up so
12 all the Commission members can hear you speak. I know
13 you're trying to do that, but moving around, it comes and
14 goes.

15 MR. BULMER: I'm usually not known for not
16 being heard I think is my experience in life.

17

18 DIRECT EXAMINATION

19 BY MR. BULMER:

20 Q Could you state your name, please.

21 A Billy White.

22 Q That's a pretty powerful microphone so I think you can
23 sit straight so you don't have to get uncomfortable.

24 A Okay.

25 Q Where do you work, Mr. White?

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1 A Pacific Lanes.

2 Q How long have you worked there?

3 A Seventeen years.

4 Q Were you there when Mr. Hamilton bought the bowling
5 lanes?

6 A Yes, I was.

7 Q When did you first learn that Mr. Hamilton was going to
8 be purchasing the lanes?

9 A I learned about it in the spring of '92.

10 Q How did you come to learn about it?

11 A Well, Mr. Anderson had told Jackie Pagni and Janet, who
12 was managing the center at the time and --

13 MR. TAYLOR: I am going to object on the
14 grounds of hearsay with the witness going any further
15 with this conversation.

16 JUDGE BROWN: It will be sustained.

17 Q (Continuing By Mr. Bulmer) Did there come a time that you
18 came to understand that the bowling alley had been sold?

19 A Yes.

20 Q What was your understanding?

21 A I understood that Mr. Hamilton had purchased the bowling
22 center from -- that Grant had sold it.

23 Q When did you come to understand that?

24 A He was officially announced at a president/secretary
25 meeting. It was on SeaFair Sunday, it was in August, I

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1 don't know the exact date. We have a banquet each year
2 at that time before our fall league starts as a thank you
3 to our league officers, kind of a question-and-answer,
4 and we have a buffet and all and both Mr. Anderson and
5 Mr. Hamilton was there and Mr. Hamilton was announced as
6 the new owner, and he told the league officers, you know,
7 that he looked forward to working with them and hoped we
8 had a good season and a good year for all.

9 Q You were present at that banquet?

10 A Yes, I was.

11 Q You were involved in organizing the banquet?

12 A I organized it, yes.

13 Q That was in August of '92?

14 A Yes.

15 Q Whenever SeaFair Sunday was that year?

16 A Yes, August, maybe it was August the 4th, 5th. I don't
17 remember the exact date.

18 Q And that was the league secretary banquet, is that what
19 it's called?

20 A It's a league officers banquet, presidents and
21 secretaries.

22 Q And who attends that banquet?

23 A We invite all of our league officers, both presidents and
24 secretaries, and probably 65 to 70 percent of the leagues
25 involved attend.

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1 Q And did there come another occasion when Mr. Hamilton or
2 Mr. Anderson announced Mr. Hamilton's purchase of the

3 lanes?
4 A We had a meeting with all the employees and staff, and I
5 want to say it was around the first part of December.
6 Q December?
7 A Yeah. It's been quite a few years ago.
8 Q Was it December or September?
9 A I mean September, I'm sorry. And he was introduced as a
10 new owner and Mr. Anderson thanked everybody for, you
11 know, the work that they had done for him over the years.
12 Q Who was at that meeting?
13 A All the employees.
14 Q What was your job at that time?
15 A I didn't have an official title, but I was still night
16 manager, I still was in charge at night, I made all the
17 decisions.
18 Q From the employee meeting in early September did it
19 appear to you that Mr. Hamilton was running the bowling
20 alley?
21 A Yes, it did.
22 Q Did you see Mr. Hamilton at the bowling alley?
23 A I only saw him maybe one or two times a week because I
24 worked nights and most of the business was conducted
25 during the day, I mean, stuff he was involved in. He did

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1 stop in occasionally at night just to see how things were
2 going, but I didn't see him on a daily basis.
3 Q Prior to the September meeting, had you seen him in the
4 bowling alley before then?
5 A I had seen him in and out, you know, if I happened to
6 stop in and he'd be wandering through and checking things
7 out and asking questions.
8 Q As the night manager on September 1st, '92, was there any
9 doubt in your mind who was running the bowling alley?
10 A Not at all.
11 Q Who was that?
12 A Bill Hamilton.
13 Q What's your job now?
14 A I'm still manager.
15 Q Has Mr. Hamilton's manner of managing the bowling alley,
16 at least as far as you're concerned, changed appreciably
17 from 1992 to this day?
18 A Not a whole lot. He knows more about the bowling
19 business now, I mean, you know, as far as league
20 organization and things like that, and working with pull
21 tabs and liquor, you know, that he had never been
22 involved in before. He's a lot more aware of, you know,
23 the laws. And he was always, you know, looking to make
24 changes to make it a better place for the business and
25 for our customers.

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1 Q Do you remember a December bonus meeting when bonuses
2 were handed out?
3 A Yes, we had another meeting and we did receive bonuses.
4 Q In December?
5 A Yes.
6 Q Of '92?
7 A Yes.
8 Q Who actually handed those bonuses out?
9 A Jackie and Janet gave the employees their money.
10 MR. BULMER: I have nothing further at this
11 time.
12

13 CROSS EXAMINATION

14 BY MR. TAYLOR:
15 Q Good afternoon, Mr. White. Did I understand this SeaFair
16 banquet where it was announced Mr. Hamilton was the

17 owner, that was August 4th or 5th?
18 A It was the same day they have the SeaFair races because
19 we were watching those while we were doing the banquet.
20 Q No doubt in your mind that meeting occurred well before
21 August 26th?
22 A It was well before August the 26th.
23 Q Did he say he was the owner or he was going to be the
24 owner?
25 A He was introduced as the new owner, the proprietor of
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BILLY WHITE/Cross-Taylor
1 Pacific Lanes.
2 Q Okay. Now, from that point forward you saw him once or
3 twice a week?
4 A Personally, but he was in more than that.
5 Q You personally observed him once or twice a week?
6 A Yes.
7 Q Okay. Janet or was it Jackie Pagni was the manager of
8 the bowling alley?
9 A Jackie and Janet.
10 Q Between the two of them, they were responsible for the
11 day-to-day operations?
12 A Yes. Under his direction.
13 Q Do you personally know what directions Mr. Hamilton gave
14 Miss Pagni and Miss Nimick? Let me strike that.
15 Were you ever present when Mr. Hamilton gave
16 instructions to Ms. Pagni or Miss Nimick?
17 A Yes.
18 Q How many times?
19 A Maybe three, four, five, I don't know. We were in the
20 process of changing some pull tabs and he wanted to go in
21 a different direction with them.
22 Q Okay. So he got involved in the pull tabs?
23 A Asking questions and all. We wanted to do some
24 restructuring of our open play prices.
25 Q Now, when we talked out in the hall a few minutes ago,
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1 you said the restructuring of the prices probably
2 happened in January of '93. Did I get that down right?
3 A I think it was around the first -- it was between
4 December and January.
5 MR. TAYLOR: Okay. I have nothing further.
6 MR. BULMER: Nothing further, Your Honor.
7 JUDGE BROWN: Okay. Excuse me, Mr. White, at
8 this point the members of the Commission may have a
9 question. Does anyone have a question for Mr. White?
10 MR. CLARKE: I just had one question.
11

12 EXAMINATION

13 BY MR. CLARKE:
14 Q Mr. White, you indicated the employees received some
15 checks for bonuses in December of '92. Did Mr. Hamilton
16 hand you your bonus check?
17 A No, I was given mine by Janet.
18 Q Okay. And who was signing the checks in December of '92?
19 A The bowling alley checks?
20 Q Right.
21 A At the time Janet and Jackie were signing it, you know, I
22 wasn't writing checks or anything, so -- Janet always
23 signed our paychecks and she paid the bills, so -- who
24 was authorized other than Jackie and Janet, I don't know.
25 Q Thank you.

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1 JUDGE BROWN: Any other questions from the
2 Commission?
3 JUDGE BROWN: All right. Any follow-up

4 questions?

5 MR. TAYLOR: No, Your Honor.

6 MR. BULMER: I need to speak with the witness
7 private for just a second. I know this is very unusual.
8 (Counsel conferring with each other)

9

10 REDIRECT EXAMINATION

11 BY MR. BULMER:

12 Q Mr. White, do you recall whether or not it was cash or
13 checks that were distributed at the bonus period?

14 A It was cash.

15 Q So you just got asked some questions about checks, but do
16 you remember whether it was -- it was cash?

17 A We were paid cash. I thought the question regarding
18 checks was to who was authorized to sign payroll checks.
19 The bonus we received was in cash.

20 Q Thank you.

21 A I'm sorry if I misunderstood that. I thought payroll
22 checks.

23 JUDGE BROWN: Any other questions from the
24 Commission? All right. Mr. White, you may step down.
25 Thank you very much.

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1 (Pause in the proceedings)

2

3 PATRICK C. COMFORT, having been first duly sworn on oath
4 or affirmed to tell the truth, the whole truth and
5 nothing but the truth, testified as follows:

6

7 JUDGE BROWN: Please be seated.

8

9

10 DIRECT EXAMINATION

11 BY MR. BULMER:

12 Q Could you state your name, please.

13 A My name is Pat Comfort, Patrick C.

14 Q And you're an attorney here in Tacoma?

15 A Yes, I am.

16 Q How long have you been an attorney?

17 A Since 1955.

18 Q Have you ever been involved in the bowling alley
19 business?

20 A Yes, I was involved from 1983 to 1991.

21 Q In that process did you own a bowling alley?

22 A I was a partner in a partnership that formed a
23 corporation, the corporation operated the bowling center,
24 and I was a shareholder of the corporation.

25 Q During the course of that time did the bowling alley have
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1 various financial problems?

2 A It had considerable financial problems.

3 Q And did you come to learn about what you considered to be
4 the financial basis of bowling alleys?

5 A The hard way.

6 Q Okay. And at some point did you come to meet with
7 Mr. Bill Hamilton?

8 A Mr. Hamilton came to my office in the month of June of
9 1991, on the 5th of June.

10 Q 1991 or 1992?

11 A Excuse me, 1992. I have a file that was started in June
12 of 1992 that reflects the visit and the billing that
13 reflects the visit on the 5th of June of that year.

14 Q I'm going to hand you the exhibit book, if I may, and ask
15 you to turn to 129, if I've got that in there right side
16 up.

17 A Yes.

18 Q And also 130.
19 A I have those before me.
20 Q Is 130 the billing that you sent to Mr. Hamilton?
21 A Yes, with the exception that there's some writing on it
22 in longhand that was not on there at the time of the
23 billing.
24 Q All right. And then what is 129, please?
25 A 129 is a form that we fill out when a new case comes into
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1 the office. You'll note that it's dated June 5, which
2 would not necessarily be the date when the client comes
3 in, but it is the date when the file is started. In this
4 instance, it happens to be the same date that the client
5 came in. And the name of the client with his business
6 address, phone number, the general subject matter and
7 that is listed on our file. In this instance it was
8 asset purchase and that would be carried through on to
9 our file to identify the subject matter of the conference
10 or the representation. Type of law, that's for coding
11 purposes, to keep track of the type of law that we have
12 to report to our insurance carrier the type of cases that
13 we handle at the end of the year. The code on the right
14 hand correlates to the codes that are in the bottom area
15 of the reporting sheet. The type of fee is either hourly
16 or contingency. We handle both. In this instance, it
17 was hourly. Billing status; it was an active, which
18 means that it would be billed monthly according to our
19 procedures. You can't see it, but at the bottom, very
20 bottom there's a 20 and that's filled in by my secretary,
21 it's for the cycle number. We bill on the 10th, 20th and
22 30th of the month. This file would be billed on the 20th
23 or shortly after the 20th of the month.

24 Q And then there's a page 2 to the exhibit?
25 A Page 2, I'm embarrassed to say, is my office notes that I
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1 took during the course of the conference with the
2 exception of the top entry, which is Hamilton, which was
3 written more than likely after the conference to identify
4 into which file these notes should be deposited. And on
5 the bottom what you can't read, but it says Paradise
6 Bowl, I don't know when that was written on there, but it
7 is in my handwriting. I note in my original notes that
8 it's in different colored ink and that's why I know it
9 isn't written at the same time as the conference. And I
10 understand now that this related to a different --
11 Pacific Bowl, not Paradise, and I am familiar with the
12 difference between the two. That's merely a scribe's
13 error.

14 Q And so on June 5th, 1992, you had a meeting with
15 Mr. Hamilton about asset purchase, which you understood
16 to be a bowling alley?

17 A I understood that he was going to purchase a bowling
18 center, bowling alley.

19 Q And what was your discussion with Mr. Hamilton?

20 A Well --

21 MR. TAYLOR: Hearsay.

22 JUDGE BROWN: I'll overrule it at this time.

23 Go ahead.

24 A We discussed generally the fact that he was going to
25 acquire, he wanted to acquire a bowling alley. I had

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1 available financial data from the bowling alley in which
2 I was interested, the Narrows Plaza Bowl, and I was
3 hopeful that I could help him with a comparison of our
4 own operation with what he projected the operation of the
5 bowling center, Pacific Bowling Center to be, if that's

6 the correct bowling center.

7 I recall that I advised him that it was a financial
8 risk based upon my own experiences. Quite frankly, he
9 had provided some financing to me at earlier times and I
10 think he was well aware of the problems that we had at
11 Narrows Plaza Bowl.

12 He indicated to me that he was going to form a
13 corporation for this effort. He did not engage me for
14 that purpose, nor did I anticipate that he would.

15 My notes reflect, and I haven't gotten an
16 independent recollection, but my notes reflect that he
17 talked about a lease with an option to buy. My
18 understanding was that he was going to buy the equipment
19 and that he was going to lease the premises. I
20 forewarned him, and I recall this, that it was management
21 intensive. By that I mean, that you had to have somebody
22 daily at the operation that knew what he or she was doing
23 because you're dealing with a lot of cash, and whenever
24 you're dealing with a lot of cash, you have to have not
25 only competent employees, but you have to have people

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1 capable of surveying the operation at all times. I had
2 thought that that had been possibly a problem in some
3 areas of the bowling center that I was attached to.

4 I also indicated to him that the bowling business
5 was cyclical. Your months of October -- really starting
6 in September, but fundamentally October through April are
7 very good months. Those are the months that you have the
8 leagues and you have a steady business and your bowling
9 center is very busy and during the months of sometimes
10 starting in May as early as May and most times by at
11 least the middle of May through the month of August, it's
12 a tragedy, there just isn't anybody in your center to
13 speak of. So that I forewarned him that he would have to
14 make sure that he had sufficient cash from his operating
15 months projected to take care of the hiatus or that he
16 should get a moratorium.

17 My own group had discussed with our financing bank a
18 moratorium, but had never been able to obtain one. By
19 moratorium, I mean not having to make a capital payment
20 during or mortgage payment during May, June, July and
21 August and then picking up that payment during the eight
22 solid months of September through April.

23 Q Do you remember anything else about the substance of your
24 conversation?

25 A Well, I do recall that we talked about income stream,

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1 what income he had projected. We went over projections.
2 At this time I have no independent recollection of what
3 these income figures were. I see that there are some
4 written on my notes, but, quite frankly, I think I know
5 what they mean, but it's in retrospect, I have no
6 recollection of the exact figures that we talked about.
7 But we did go over the figures.

8 Q Do you have a sense as to whether you were positive or
9 negative about him purchasing the bowling alley?

10 A I recall very clearly that I tried to go through my
11 files, own files, before he came in to kind of dig out
12 some information that I might use to discourage him. He
13 was not discouraged, however. He left -- I mean, Bill is
14 a very confident type individual and, frankly, he left
15 the conference and I was left with a firm impression that
16 I had not impressed him with my negative attitude.

17 Q Now, your own bowling center, you've bought it two or
18 three different times or sold it?

19 A We purchased it -- we built it. We constructed it in

20 1983. We sold it in 19 -- I believe it's 1991, to S & J
21 Sports, Inc., which was a corporation owned by Steve
22 Mattingly. We sold the equipment and all the furnishings
23 and we leased the premises on a long-term lease. I think
24 it was a ten-year lease. Mr. Mattingly operated through
25 his corporation the bowling center for about three or

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1 four years and then we had to foreclose our security
2 interest because he lost a lot of money and, quite
3 frankly, one of my partners put a lot more money through
4 him into the venture and it still wasn't enough.

5 Contemporaneous with that forfeiture of S & J
6 Sports' interest, we entered into negotiations for sale
7 with I think it was Washington Bowling, Inc., which
8 was --

9 Q Let me interrupt you. I am going to get an objection
10 here pretty soon.

11 You bought and sold the bowling -- in essence, you
12 have sold the bowling alley two or three times is what it
13 amounts to?

14 A We've never sold the premises, we have always leased the
15 premises and re-leased the premises. We've sold the
16 bowling center three times.

17 Q Which is the business part?

18 A The business part, three times.

19 Q All right. And in the course of coming to understand the
20 sale of the business center, is the bowling alley worth
21 more at the beginning of the league season than it is
22 later in the league season?

23 MR. TAYLOR: Calls for speculation unless he
24 is talking about Pacific Lanes, Inc., bowling center.

25 MR. BULMER: He can testify as to whether he

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1 would pay more or less.

2 MR. TAYLOR: Object on the grounds of
3 relevance then as to what this gentleman would say.

4 JUDGE BROWN: Overruled.

5 A I think anybody in the bowling business recognizes that
6 you're going to get more for your bowling center at the
7 beginning of your season or shortly before. And the
8 reason for that is very simple, that somebody who wants a
9 bowling center wants to come in so that they can take
10 advantage of obtaining the fall revenues as a cushion
11 against the summer drought. And if you come in and try
12 to sell, say, in May, then you're selling off a weak
13 period coming up.

14 The income stream, the cash stream of a bowling
15 center is central to the determination of whether or not
16 it's going to be sold and for how much.

17 Q So if you were buying a bowling alley, is it worth more
18 to you in September than it is at the end of December or
19 end of January?

20 A I wouldn't buy in December or January unless there was an
21 adjustment of the price.

22 Q Thank you very much.

23 ////

24 ////

25 ////

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1 CROSS EXAMINATION

2 BY MR. TAYLOR:

3 Q Mr. Comfort, just one question. Looking at your notes
4 that's page 2 of Exhibit 129, about four entries down,
5 does that say "Buy equipment"?

6 A Says "Buy equipment."

7 Q "\$400,000"?

8 A "\$400,000 on time."
9 Q What's it say next to that?
10 A Well, I think what it says is a short form of everything.
11 Q Okay. I have no further questions. Thank you,
12 Mr. Comfort.
13 MR. BULMER: No further questions.
14 JUDGE BROWN: The Commission members may have
15 questions. Any questions from the Commission members?
16 You may step down. Thank you very much.
17 (Pause in the proceedings.)
18 MR. BULMER: Our next witness is Mr. Schafer.
19 And I talked with Mr. Taylor and I would like to put a
20 short micro explanation on the record.
21 JUDGE BROWN: Why don't you wait.
22 MR. BULMER: Pardon me?
23 JUDGE BROWN: Shouldn't you wait for
24 Mr. Schafer to be in here for that?
25 MR. BULMER: That would be fine.

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1 (Pause in the proceedings.)
2 JUDGE BROWN: Go ahead, Mr. Bulmer. Did you
3 have an explanation?
4 MR. BULMER: Just a quick one. I am going to
5 call Mr. Schafer now and I am not going to ask him very
6 many questions, it's going to be very quick, but we went
7 through a lot of conundrums here in this process and I
8 would like to, as I talked to Mr. Taylor about, the
9 prosecution has rested now and there is a different
10 theory of the case which could have come in and that's
11 what Mr. Schafer would have testified; in other words, he
12 was our response to that line of theory, which I am not
13 going to go into, but I did want to explain that theory
14 did not come in in the course of these proceedings and
15 that's why this is such a reduced inquiry. We had to
16 reserve our option in case that came in during the
17 prosecution's side of the case.
18 JUDGE BROWN: All right.
19 MR. BULMER: Mr. Schafer.
20 JUDGE BROWN: You can step up here,
21 Mr. Schafer. Raise your right hand to be sworn. Do you
22 solemnly swear or affirm the testimony you're about to
23 give will be the truth?
24 THE WITNESS: I so affirm.

25 ////

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1 DOUGLAS A. SCHAFER, having been first duly sworn on oath
2 or affirmed to tell the truth, the whole truth and
3 nothing but the truth, testified as follows:
4
5 DIRECT EXAMINATION
6 BY MR. BULMER:
7 Q Could you state your name and spell it for the reporter,
8 please.
9 A Douglas, with one S, A. Schafer, S-C-H-A-F-E-R.
10 Q What's your profession, Mr. Schafer?
11 A I am a business lawyer.
12 Q Here in Tacoma?
13 A Yes, I am.
14 Q Was there a time when Mr. Hamilton came and consulted
15 with you as a client?
16 A There were various times when he came and consulted me.
17 Q I need to be more specific. Did Mr. Hamilton come and
18 consult with you about forming a corporation for the
19 purposes of purchasing what's called Pacific Recreation,
20 not for purchasing, but for setting up a corporation
21 called Pacific Recreation?

22 A He approached me about forming a corporation in August of
23 1990, saying that he needed the corporation to purchase a
24 bowling alley business.
25 Q You just said August of 1990.

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1 A I am sorry, 1992. Thank you for correcting me.
2 Q Did you set up that corporation for him?
3 A I prepared the papers, which I believe he signed as the
4 incorporator, but I don't recall if he was the
5 incorporator. I believe he was. It could have been that
6 I was the incorporator. It's a relatively insignificant
7 position. He was the only director and I am quite
8 confident of my recollection of that.
9 Q That was in August, roughly, of '92?
10 A August of 1992, I believe. I assume it's in the record,
11 the papers from that.
12 Q I ask you now to turn to Exhibit 19, please. You have
13 the exhibit book in front of you.
14 A Okay. I'm looking at a three-page document captioned
15 "Business Acquisition and Lease Agreement" in the
16 typewritten title.
17 Q All right. And discounting the "Exhibit 5" and
18 handwriting off in the right-hand corner, which we know
19 was put on later at your deposition --
20 A You are referring to the handwritten "CJC" something?
21 Q That's my awful writing, yes, it says "hearing." Exhibit
22 19. And the little squiggled-out thing that says
23 "Exhibit 5."
24 A Right.
25 Q Do you recognize this as a document that was in your

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1 file?
2 A I believe it was. It looks like the document that I
3 recall being in my file for Pacific Recreation
4 Enterprises, Inc.
5 Q And do you have a present recollection as to whether that
6 document was given to you by Mr. Hamilton?
7 A My recollection is, yes, it was given to me by
8 Mr. William L. Hamilton.
9 Q And did you provide a copy of this Exhibit 19 to the
10 Judicial Conduct Commission?
11 A Yes, I did.

12 MR. BULMER: Thank you. I have nothing
13 further.

14 MR. TAYLOR: No questions, Your Honor.

15 JUDGE BROWN: The rules provide that members
16 of the Commission may ask questions of the witness. Does
17 any Commission member have a question? All right.

18 MR. SCHAFER: May I just ask the question as
19 to why I was precluded from observing this hearing all
20 week on the basis of these questions that were provable
21 from my deposition?

22 JUDGE BROWN: You may step down. You're free
23 to remain in the courtroom at this point.

24 MR. SCHAFER: Thank you very much.

25 MR. BULMER: It's my understanding that

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1 Mr. Schafer will not be called on rebuttal, and so I just
2 want to make sure the record is clear.

3 MR. TAYLOR: That Mr. who --

4 MR. BULMER: Schafer.

5 MR. TAYLOR: No.

6 MR. BULMER: Thank you. As we talked before
7 the noon hour, I have called the three people I have
8 available.

9 MR. TAYLOR: The witness and her attorney are

10 due down from Seattle at 3:30.

11 JUDGE BROWN: All right. Looks to me like we
12 have a recess of approximately one hour, so we'll try
13 that. If they're here earlier, you let us know.

14 (Whereupon, a recess was taken from 2:30
15 to 3:30 p.m.)

16 MR. TAYLOR: Commission counsel calls Miss
17 Diane Anderson.

18 MR. BULMER: Judge Brown, I am not going to
19 reargue my motion at this point, but I would like the
20 record to show that this is still occurring over our
21 objection, which I think it's pretty clear from the
22 earlier testimony, but --

23 JUDGE BROWN: The record reflects that.

24 MR. HALL: Your Honor, my name is Camden Hall;
25 I am Mrs. Anderson's attorney. I'm here representing her

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1 in this proceeding. She's down here by subpoena only.

2 JUDGE BROWN: You can step forward, please.
3 Raise your right hand to be sworn.

4

5 DIANE ANDERSON, having been first duly sworn on oath or
6 affirmed to tell the truth, the whole truth and nothing
7 but the truth, testified as follows:

8

9

DIRECT EXAMINATION

10 BY MR. TAYLOR:

11 Q Good afternoon, Ms. Anderson. Thank you for coming
12 here.

13 What do you do for a living?

14 A Right now I am an administrative assistant.

15 Q And have you ever been involved in politics?

16 A Yes, I have.

17 Q Can you tell us about that, please.

18 A Yes. I am also an elected official for the City of
19 Fircrest. I'm on the city council.

20 JUDGE SCHULTHEIS: Could she speak into the
21 microphone, please.

22 A Oh, I'm sorry. I'm also position 2 the City of Fircrest
23 City Council, my second term.

24 Q How long have you been on the council with the City of
25 Fircrest?

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1 A This is my second term, I'm just starting now, and it
2 will be -- I have been on four years, this is the
3 starting of my fifth year.

4 Q Were you formerly married to the Honorable Grant
5 Anderson?

6 A Yes, I was.

7 Q Were you married to Judge Anderson in early 1993?

8 A Yes, I was.

9 Q Sometime in early 1993 did Judge Anderson come home with
10 a new Cadillac?

11 A Yes, that's correct.

12 Q Was that a surprise to you?

13 A Yes, it was.

14 Q Can you tell the Commission why, please?

15 A Well, I didn't know that we were going to get a new car.
16 It just arrived at the household.

17 Q Sometime after he brought it home, did you discuss the
18 Cadillac with him?

19 A Yes, it was discussed.

20 Q Can you tell the Commission, please, what was discussed.

21 A It was discussed how the payments were going to be made
22 on the vehicle.

23 Q What did he say?

24 A He indicated that he had just completed a closure of
25 selling a large item through his firm, it was a bowling
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1 alley, and that the vehicle was a commission that he was
2 allowed to get the same as a realtor would.

3 Q Did he tell you who was making the payments?

4 A Yes, he did.

5 Q Can you tell the Commission who he told you?

6 A Yes, it was Mr. Hamilton, Bill Hamilton.

7 MR. TAYLOR: I have nothing further, Your
8 Honor.

9

10 CROSS EXAMINATION

11 BY MR. BULMER:

12 Q You were acquainted with Mr. Hamilton prior to that time?

13 A Yes, I am.

14 Q How did you know Mr. Hamilton?

15 A I knew him socially as well as a business acquaintance
16 with my ex-husband.

17 Q Had he been a participant in family social events with
18 your family?

19 A With his wife and him we had gone to a few social events,
20 that is correct.

21 Q Had he been the back-up driver at your son's wedding?

22 A When you say that, I don't remember totally. It's very
23 possible.

24 Q Was your son going to --

25 A Which son are you referring to?

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1 Q Volunteer fire department.

2 A Yes, okay.

3 Q Did you have a son who was a member of the volunteer fire
4 department?

5 A That's correct.

6 Q When he got married, was the plan to try to take him in
7 the fire truck?

8 A That's right. That's what threw me. I am sorry, I
9 couldn't recall the fact that Bill Hamilton was the back-
10 up and that is very possible.

11 Q What kind of social events then did you share -- did you
12 and Mr. Anderson have social events with Mr. and
13 Mrs. Hamilton?

14 A We did. We went to Husky football games on occasion
15 together in a motor home. If we had a large gathering in
16 our home, he was invited to that, and his wife. And we
17 went to -- maybe three or four times we went out to
18 dinner as couples.

19 Q Did you sometimes go to precharity events, something that
20 Mr. Hamilton --

21 A That's correct, we did.

22 Q Something called the BASH?

23 A Yes.

24 Q That's a Tacoma event of some sort?

25 A Yes, he had a room prior to BASH and we would go and

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1 socialize there.

2 Q Are you aware of any gifts that Judge Anderson has given
3 over the years to Mr. Hamilton?

4 A No, I'm not, other than gifts that we gave to our friends
5 at Christmastime if that's what you're referring to.

6 Q Do you know whether or not Judge Anderson ever gave Bill
7 Hamilton a painting?

8 A I'm not aware of that.

9 Q In December of 1992 did Judge Anderson bring any other
10 cars home to look at that you saw? You said it was a
11 surprise.

12 A I don't recall. I do not recall.
13 Q You don't recall any other cars?
14 A No, I don't recall.
15 Q Did Judge Anderson take you out to look at any cars
16 before he brought the Cadillac?
17 A I don't have a recollection of that.
18 Q When did the car first come home that you were surprised
19 to see?
20 A I believe it was the end of '92, in that month.
21 Q Around Christmas?
22 A Of December.
23 Q Around Christmastime?
24 A Yes, that's correct.
25 Q Do you recall whether your son Scott went to look at the

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1 car with Judge Anderson?
2 A I do not recall, but it's very possible that he did.
3 Q Where were you living at the time in late '92, early '93?
4 A I was living where I reside now in Fircrest.
5 Q That was your and Judge Anderson's home?
6 A That's correct.
7 Q Where did you have the conversation with him that you
8 related here?
9 A It would be in the household, within the house.
10 Q Do you recall it being in the house or are you guessing?
11 A I am probably guessing because I don't recall exactly at
12 what time that conversation occurred.
13 Q Do you remember what time of day it was?
14 A No, I do not.
15 Q Do you remember what room it was in?
16 A No, I do not.
17 Q Do you remember who else was present, if anyone?
18 A No, I do not.
19 Q Do you remember when in approximate time that the car
20 came home that the conversation occurred?
21 A It would have been probably into the new year in 1993 at
22 some time that the discussion occurred, but I do not have
23 a total recollection of actually when it did occur.
24 Q Did Judge Anderson used to carry cash?
25 A Yes, he did.

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1 Q Large amounts of cash?
2 A It would be say up to 3, 4, \$500, yes.
3 Q Did he carry more cash sometimes when you went on trips?
4 A I would have to guess if he did, I do not know.
5 Q Do you know whether or not Judge Anderson made a \$9,000
6 payment on the car in January of 1993 as a down payment?
7 A No, I do not, I am not privy to that.
8 Q So you wouldn't know whether your husband spent \$9,000?
9 A No, I would not in this -- I'm not aware if he did.
10 Q What was the state of your marriage with Judge Anderson
11 in late '92, early '93?
12 A It was fine.
13 Q Was money an issue in your marriage?
14 A No, it wasn't at all.
15 Q Did Judge Anderson specifically use the word commission
16 when he talked with you?
17 A Yes, he did.
18 Q You specifically remember that word?
19 A Yes, I do.
20 Q You don't remember where it was or what time or what room
21 it was in, but you specifically remember the word
22 commission?
23 A Yes, I do.
24 Q At that time did you own -- did you or Judge Anderson own
25 a condominium down at Surfside, a time share?

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1 A I'm not sure at what time that we did own one, but, yes,
2 we have owned and we do own time shares at Surfside, yes.
3 Q Were you acquainted with Judge Anderson's involvement
4 with the Surfside condominium as part of his
5 responsibilities as attorney or personal representative
6 of the Hoffman estate?
7 A Yes, I was aware he was involved.
8 Q Did he ever discuss business at home with you?
9 A Not in great detail, but, yes, he did on occasion.
10 Q Did he ever discuss the fact that he was selling Surfside
11 time share condominiums and may have been earning
12 commissions on that?
13 MR. TAYLOR: Could we have a time frame on
14 that, please.
15 MR. BULMER: I've asked ever.
16 JUDGE BROWN: Overruled. You can answer the
17 question if you can.
18 A Okay, would you repeat it.
19 Q Did he ever discuss with you the fact that as part of his
20 -- did he ever discuss with you that he was selling -- I
21 said it best the first time; I should have it read back.
22 (Question read back by the Court Reporter.)
23 A To the first half of your question, did he tell me that
24 he was selling time shares, yes, he did. Did he say that
25 he was getting a commission, I do not recall him saying

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1 he got a commission for those.
2 MR. BULMER: Thank you. Nothing further.
3
4 REDIRECT EXAMINATION
5 BY MR. TAYLOR:
6 Q Have you tried to be honest with us today to the best of
7 your ability?
8 A Yes, I have.
9 Q Is your testimony in any way influenced by the fact that
10 you and Judge Anderson are now divorced?
11 A No, it isn't. No, it isn't.
12 MR. TAYLOR: Thank you.
13

14 RECROSS EXAMINATION

15 BY MR. BULMER:
16 Q Would you agree, Ms. Anderson, that you don't have a
17 perfect memory of the events that were occurring in 1992
18 and 1993 around January and December?
19 A I would say that that is part of my past and I guess that
20 I would say that I have blanked out an awful lot of that
21 portion of my life and so it is not real sharp in my mind
22 because I'm going forward with my life.
23 MR. BULMER: Thank you very much.
24 THE WITNESS: You're welcome.
25 JUDGE BROWN: The rules of the Commission on

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1 Judicial Conduct provide that the members of the
2 Commission may ask questions of any witness. Are there
3 any members that have any questions for this witness? No
4 questions? You may step down. Thank you very much.
5 THE WITNESS: Thank you.
6 JUDGE BROWN: Is this witness excused from the
7 further proceeding?
8 MR. TAYLOR: Yes, Your Honor.
9 MR. BULMER: Yes, Your Honor.
10 MR. TAYLOR: Your Honor, subject to the
11 admissions of Exhibits 131, 132 and 133, which I believe
12 we have stipulated --

13 MR. BULMER: Yes, sir.
14 MR. TAYLOR: Subject to distributing those,
15 the Commission counsel rests its case. Thank you.
16 JUDGE BROWN: 131, 132 and 133 are admitted
17 pursuant to the stipulation and will be distributed.
18 The Commission's case has rested.
19 Mr. Bulmer, did you wish to make any motions at this
20 time?
21 MR. BULMER: Yes. I don't know whether you
22 wish me to make them to the entire panel or to you.
23 That's why I wasn't sure what the mechanics --
24 JUDGE BROWN: What is the nature of your
25 motion?
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1 MR. BULMER: I am going to ask for dismissal
2 of two of the accounts.
3 JUDGE BROWN: That should be made before the
4 entire panel.
5 MR. BULMER: All right. The state has now
6 rested. By agreement of the parties, even though we went
7 on early, the evidence before you is restricted to that
8 which you heard prior to our witnesses and to Miss
9 Anderson, who was just on.
10 There are seven different counts of misconduct
11 alleged against Judge Anderson in these proceedings. I'm
12 asking for dismissal of two, which are Counts B and C, at
13 this time.
14 JUDGE DONOHUE: B and C?
15 MR. BULMER: Excuse me, it's hard to track.
16 It's 3(B) and (3)C are the paragraphs that they're listed
17 under, which I believe are on pages 9 and 10 of the
18 Statement of Charges.
19 Paragraph 3(B) is Judge Anderson violated Canons 1
20 and 2(A) by pledging the note for the \$250,000 to First
21 Interstate Bank as security for a loan without disclosing
22 the existence of the alleged agreement to reduce the
23 amount of the note.
24 Now, this is a problem for the state because they
25 are in a conundrum --

FOOT OF PAGE 549
1 JUDGE BROWN: Excuse me, I don't wish to
2 interrupt, but I believe instead of referring to the
3 state, maybe Commission might be a better --
4 MR. BULMER: I'm happy to -- I am used to
5 state, but I'll say Commission. The Commission has a
6 problem in this matter because under their theory, okay,
7 there wasn't any deal at that point, and so under the
8 theory of the state, there wasn't a deal when the note
9 was presented. That deal was struck later as they say up
10 here. No mention of price adjustment, no mention of
11 price adjustment.
12 So the evidence that's before you at this point is
13 under the state's theory that's come in is that there is
14 no evidence that there was a deal when the note was
15 pledged, and the note was pledged early in December, the
16 note was turned over, I think, like December 9th I think
17 is what the evidence would show or someplace in that time
18 period.
19 So if you looked at the evidence that's come in to
20 this point, Judge Anderson, if you look without
21 disclosing the existence of the alleged agreement to
22 reduce the amount of note, the testimony is that there
23 was no agreement to reduce the amount of the note. In
24 fact, the testimony is that that came from Mr. Iverson
25 who suggested how to come at that. There was an
FOOT OF PAGE 550

1 agreement between Mr. Hamilton and Mr. Anderson to do an
2 adjustment to take into account the cash flow, but how
3 that was to be effectuated was what's at issue. And
4 there had been no agreement at that point to reduce the
5 note. So this count has to fall even if you give all due
6 inferences to what went through because there has been no
7 evidence from anybody that there was an agreement to
8 reduce the note at that point.

9 The second one is 3(C), which reads, "Judge Anderson
10 violated Canons 1 and 2(A) of the Code of Judicial
11 Conduct by charging Pacific Lanes a monthly management
12 fee during the period when Mr. Hamilton was allegedly
13 managing the Pacific Lanes."

14 There is no evidence that he was charging Pacific
15 Lanes a monthly management fee. What the evidence is was
16 Pacific Lanes' funds went to make estate management fees,
17 \$1800 a month, came from Pacific Lanes for estate
18 management. There was no evidence that this fee was for
19 managing Pacific Lanes. The evidence is that there was
20 money which came out, which we agree, \$1800 a month was
21 coming out during this time period to pay for estate
22 management. That's what Mr. Iverson testified to, that's
23 what Judge Anderson, I believe, testified to. There is
24 no evidence to show that that fee was being charged for
25 management of the bowling lane. Obviously, the count

FOOT OF PAGE 551

1 here, what this count is trying to say is, well,
2 Mr. Hamilton was managing it, they must have been
3 cheating the Pacific Lanes by charging for it. But
4 that's not what the evidence at this point is. The
5 evidence is that it was for the estate management fees.

6 Thank you.

7 MR. TAYLOR: I'll address the latter charge, 3
8 (C) first in terms of the issue of was there evidence
9 that he was charging the Pacific Lanes a management fee.
10 One of the last things we went over with Mr. Fisher this
11 morning was that throughout the period from 1989 through
12 1992, the end of December, 1992, he said that the
13 Surfside and Pacific Lanes separately were paying
14 management fees each month to Judge Anderson's law firm.

15 I think the evidence is fully consistent with the
16 charge certainly viewed -- I am honestly not sure what
17 standard applies in this type of a proceeding, but if we
18 apply any of the traditional standards, the evidence is
19 certainly sufficient to deny any motion to dismiss.

20 As to count 3(B), the agreement to reduce the amount
21 of the note, Judge Anderson testified, no, it didn't
22 exist at the time he went to the bank, but my notes are,
23 and I certainly defer to the Commission's recollection,
24 that Mr. Hamilton said that agreement existed prior to
25 December 9th of 1992 when the note was pledged to the

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1 bank. So I think the evidence viewed in the light most
2 favorable to Commission counsel certainly supports that
3 charge in the face of a motion to dismiss.

4 Thank you.

5 JUDGE BROWN: Do you wish to make any further
6 argument?

7 MR. BULMER: No, sir.

8 JUDGE BROWN: The Commission will be in recess
9 at this time to consider the motion.

10 MR. BULMER: Your Honor, if I may, I would
11 have no objection, so we can all go home, maybe we could
12 have the ruling tomorrow morning.

13 JUDGE BROWN: I guess maybe that would be
14 appropriate. There is no other testimony today?

15 MR. TAYLOR: No, Your Honor.
16 JUDGE BROWN: So any decision on the motion
17 will be announced when the session opens tomorrow.
18 MR. BULMER: Thank you, Your Honor.
19 (Whereupon, the proceedings were adjourned
20 at 3:50 p.m.)
21
22
23
24
25

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C E R T I F I C A T E

1
2
3 STATE OF WASHINGTON)
4) ss
5 COUNTY OF THURSTON)
6 I, Kim L. Otis, a duly authorized Notary Public and
7 Certified Court Reporter in and for the State of
8 Washington, residing at Olympia, do hereby certify:
9 That the annexed and foregoing Transcript of
10 Proceedings consisting of pages 398 - 553 was reported by
11 me and later reduced to typewriting by means of
12 computer-aided transcription; that said transcript as
13 above transcribed is a full, true and correct transcript
14 of my machine shorthand notes of said proceedings heard
15 on the 14th day of January, 1998, before the Commission
16 on Judicial Conduct.
17 WITNESS MY HAND AND OFFICIAL SEAL this 30th day of
18 January, 1998.
19

Notary Public in and for the State
of Washington, residing at Olympia.
My commission expires 11-2-2000.

21
22
23 Kim L. Otis, RPR-CM
Washington CSR No. OTIS*KL441C9
24 GENE BARKER & ASSOCIATES, INC.
406 Security Building
25 Olympia, Washington 98501

FOOT OF PAGE 554

BEFORE THE COMMISSION ON JUDICIAL CONDUCT
OF THE STATE OF WASHINGTON

3 _____)
4)
5 In Re the Matter of)
6)
7 The Honorable Grant L. Anderson) NO. 96-2179-F-64
8 Pierce County Superior Court)
9 930 Tacoma Avenue South)
10 Tacoma, Washington 98402)
11)
12)
13 _____)

10 TRANSCRIPT OF PROCEEDINGS
11 DAY FOUR
12 January 15, 1998
Tacoma, Washington
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Kim L. Otis, RPR-CM
Certified Court Reporter
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406 Security Building
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(360) 943-2693

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BE IT REMEMBERED that Day Four of a hearing was held in the above-entitled matter at Courtroom G, U.S. Federal Courthouse, 1717 Pacific Avenue, Tacoma, Washington on January 15, 1998.

This matter came on before the Commission on Judicial Conduct, the Honorable STEPHEN E. BROWN, presiding; and Commission Members DALE BRIGHTON, VIVIAN CAVE, HON. MICHAEL E. DONOHUE, HAROLD CLARKE, HON. JOHN SCHULTHEIS, NORA REYNOLDS and TODD WHITROCK.

A P P E A R A N C E S

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1000 Second Avenue, 38th Floor
Seattle, WA 98104

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Attorney at Law
201 Westlake Ave. North
Seattle, WA 98109

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I N D E X
DAY FOUR
January 15, 1998

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E X H I B I T S
DAY FOUR
January 15, 1998

NUMBER	DESCRIPTION	IDENTIFIED	ADMITTED
14	Appraisal Report of Pacific Bowling Lanes on 3/7/89	586	
19	Business Acquisition and Lease Agreement	597	
20	Business Acquisition and Lease Agreement between Wm. Hamilton and Hoffman-Stevenson 8/26/92	599	
21	Business Acquisition and Lease Agreement between Pacific Rec. Enterprises and Hoffman-Stevenson 9/19/92	599	
61	Later version of Exhibit 60 with handwritten notes	611	
70	Vehicle Purchase Order by Osborne-McCann Cadillac 12/23/92	620	
71	Cashier's check \$36,177.87 to Osborne-McCann Cadillac	620	
72	Loan report dated 12/24/92 for Grant Anderson	621	
73	Loan Purpose Statement & Disbursement Authorization from Sound Banking Co.	622	
74	Commercial Promissory Note 12/24/92	622	
75	Loan History Report by Sound Banking Co. For Grant Anderson	626	
112	Personal Statement of Financial Condition 4/14/92 for Grant Anderson	624	

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E X H I B I T S
DAY FOUR
January 15, 1998

NUMBER	DESCRIPTION	IDENTIFIED	ADMITTED
131	Public Disclosure Form	642	514
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1 TACOMA, WASHINGTON; THURSDAY, JANUARY 15, 1998

2 --oo0oo--

3 JUDGE BROWN: Prior to adjourning for the day
4 yesterday, a motion was made to dismiss charges 3(B) and
5 3(C). First of all, for the record today, if we could
6 have the members of the Commission present today identify
7 themselves. Just state your names.

8 MS. BRIGHTON: Dale Brighton.

9 MS. CAVER: Vivian Caver.

10 JUDGE DONOHUE: Michael Donohue.

11 MR. CLARKE: Harold Clarke.

12 JUDGE SCHULTHEIS: John Schultheis.

13 MS. REYNOLDS: Nora Reynolds.

14 MR. WHITROCK: Todd Whitrock.

15 JUDGE BROWN: Okay. For the purposes of
16 making a decision on the motion, Nora Reynolds and Todd
17 Whitrock are not able to participate in those
18 deliberations because they were not present for the
19 testimony or the entire testimony presented on behalf of
20 the Commission. Each has had the opportunity to read
21 part -- one portion of the transcript from the first
22 day. Mr. Whitrock, did you wish to be heard on that?

23 MR. WHITROCK: Yes. Yesterday just upon
24 leaving we received the transcripts for the opening
25 statements and the testimony of Judge Anderson, and just

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1 for the record, I wanted it to be known that I have read
2 this and completed this document. Hopefully we will
3 have the rest of the transcripts today and by tomorrow
4 will be able to move on this issue.

5 JUDGE BROWN: All right.

6 MS. REYNOLDS: I also have read it. It's
7 complete until the end of Judge Anderson's testimony, but
8 we don't have the transcript beyond that.

9 JUDGE BROWN: All right. So the record
10 should reflect that those two members did not participate
11 in the deliberations on the motion to dismiss.

12 The decision of the Commission and participating
13 members is to deny the motion to dismiss.

14 MR. BULMER: Good morning, Your Honor. Good
15 morning. Call as our first witness this morning, Mark
16 Rauschert.

17 JUDGE BROWN: Raise your right hand to be
18 sworn.

19
20 MARK RAUSCHERT, having been first duly sworn on oath or
21 affirmed to tell the truth, the whole truth and nothing
22 but the truth, testified as follows:

23 JUDGE BROWN: Please be seated.

24 ////

25 ////

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1 DIRECT EXAMINATION

2 BY MR. BULMER:

3 Q Please state your name for the record.
4 A Mark Rauschert.
5 Q Mr. Rauschert, where are you employed?
6 A I'm employed by Osborne-McCann Cadillac here in Tacoma.
7 Q How long have you been employed there?
8 A Going on eight years.
9 Q Was there a time back in 1992 when you sold a Cadillac
10 automobile to Judge Anderson?
11 A There was.
12 Q How did you come to learn that Judge Anderson was
13 interested in a car?
14 A Beginning of the month of December Mr. Hamilton contacted
15 me and gave Mr. Anderson to me as a referral.
16 Q Was Mr. Hamilton a former customer of yours?
17 A Yes.
18 Q Was it unusual for former customers of yours to give you
19 referrals?
20 A No, not at all.
21 Q Is that something you actively promote?
22 A Definitely.
23 Q Do you give a little kind of reward if someone gives you
24 a referral?
25 A We do complimentary oil change.

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1 Q Is that what Mr. Hamilton ultimately got?
2 A Yes.
3 Q Did you then contact Judge Anderson?
4 A I did.
5 Q And when did you contact Judge Anderson?
6 A The first week in December.
7 Q Of nineteen ninety --
8 A Of 1992.
9 Q And what happened as a result of that contact?
10 A Pursued him as a prospect and eventually through the next
11 four or five weeks sold him a car, sold him a new
12 Eldorado.
13 Q During the four or five weeks -- you really sold him the
14 car by the end of December?
15 A Yes.
16 Q So it was really two or three weeks?
17 A Yeah.
18 Q During that time period did you give him any cars to try
19 overnight?
20 A We did. We had two models of Eldorados and he tried
21 both. The second week in December, let's see, 13th or
22 14th, he took a car home and then from the 19th through
23 the 21st over that weekend he also took --
24 Q Do you have your calendars in front of you there?
25 A I do.

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1 Q I don't have them so maybe you could -- when did he first
2 take a car?
3 A First took a car home on the evening of the 14th and
4 brought that one back on the 15th.
5 Q And what days of the week were they?
6 A Monday and Tuesday.
7 Q And then did he take another car home later you said?
8 A The second car he took home was on Saturday the 19th and
9 brought it back on Monday the 21st.
10 Q And ultimately then you effectuated a sale with Judge
11 Anderson?
12 A We did.
13 Q When did you confirm that sale?
14 A The sale was confirmed on the 23rd of December and we
15 received it in payment on the 24th.
16 Q And did you negotiate the price with judge Anderson?

17 A We did between the 21st and 23rd.
18 Q And did Bill Hamilton have input into that price or any
19 control over what the price was going to be?
20 A No.
21 Q Who set the price?
22 A The owner of the store, Tom McCann.
23 Q Was this what I would call sort of a standard
24 negotiation, you started high, he started lower and you
25 got to the middle eventually?

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1 A Typical car deal.
2 Q So you finalized the sale on the 23rd?
3 A We agreed on a selling price on the 23rd.
4 Q And then what happened?
5 A And, of course, Christmas coming up close, and he didn't
6 want to take delivery of the car until after the first of
7 the year, he had a trip he was planning, so I told him we
8 needed to be paid before Christmas and he brought a check
9 down on the 24th. And then on, I believe, the 5th of
10 January I delivered the car to him, the afternoon of the
11 5th.
12 Q So he didn't take delivery of the car until after
13 Christmas?
14 A Right.
15 Q Do you remember what the price of the car was at this
16 point?
17 A Well, the initial price of the car was a little over
18 \$42,000 and the out-the-door price was a little over
19 \$36,000 when we were done negotiating.
20 MR. BULMER: Thank you. Nothing further.
21 MR. TAYLOR: No questions, Your Honor.
22 JUDGE BROWN: Does any member of the
23 Commission have a question? All right. You may step
24 down. Thank you.
25 MR. BULMER: Thank you very much. He can go.

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1 JUDGE BROWN: He's excused.
2 MR. BULMER: Call our next witness, Patti
3 Anderson.
4 JUDGE BROWN: Raise your right hand to be
5 sworn.
6
7 PATTI ANDERSON, having been first duly sworn on oath or
8 affirmed to tell the truth, the whole truth and nothing
9 but the truth, testified as follows:
10
11 DIRECT EXAMINATION
12 BY MR. BULMER:
13 Q State your name, please.
14 A Patti Anderson.
15 Q You have a low voice, Patti, you got to move into the
16 microphone or you can move the microphone toward you.
17 Now say your name again.
18 A Patti Anderson.
19 Q Okay. There's a little water there in case you need
20 it.
21 You're married to Judge Anderson?
22 A Yes, I am.
23 Q When did you get married?
24 A January 1st, 1997.
25 JUDGE SCHULTHEIS: I can't hear you.

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1 A January 1st, 1997.
2 Q Are you comfortable?
3 A Mm-hmm.
4 Q Whatever makes you comfortable.

5 A I'm fine.
6 Q In May of 1995 did you give Judge Anderson \$6800?
7 A Yes, I did.
8 Q What was that \$6800 for?
9 A I believe it was to pay off his car loan.
10 Q What was the form of that payment?
11 A Cash.
12 Q Where did the cash come from?
13 A From cash on hand that I had.
14 MR. SCHAFER: In the audience we cannot
15 hear. I don't know if others --
16 Q (Continuing By Mr. Bulmer) Where did the cash come from?
17 A From cash on hand that I had.
18 Q Okay. Did you have a habit of keeping cash of \$6800 or
19 more on hand?
20 A Normally I keep about five, but we just come back from
21 vacation so I had extra money.
22 Q And come back, that was with Judge Anderson you just come
23 back from?
24 A Yes.
25 Q Why would you keep 5,000 or more dollars of cash on hand?

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1 A It's a habit I've had all my life. I'm a product of
2 parents who went through the depression. They dealt
3 solely in cash, my father did not believe in credit, he
4 did not believe in banks. He passed that on to me to
5 some extent.
6 Q Where did you keep your cash? Not physically. We don't
7 want to worry about disclosure on the public record.
8 What did you keep it in?
9 A In a little cash box in an envelope.
10 Q In your home?
11 A In my home.
12 Q You had it in a cash box?
13 A Yes.
14 Q Did you keep it in an old smelly sock or --
15 A No, I refer to it as my sock, but in a little cash box,
16 yes.
17 Q What was the denominations of the money, do you remember?
18 A Mm-hmm (witness nods head affirmatively). Hundreds, 50s
19 and some 20s.
20 Q Do you continue to keep cash to this day?
21 A Yes, I do.

22 MR. BULMER: Nothing further.
23 MR. TAYLOR: No questions, Your Honor.
24 JUDGE BROWN: Does any member of the
25 commission have a question for the witness? Thank you.

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1 You may step down.
2 MR. BULMER: Call to the stand Judge Anderson,
3 please.
4 JUDGE ANDERSON: I have previously been sworn,
5 but if you want to do it again.
6 JUDGE BROWN: Raise your right hand.
7

8 GRANT ANDERSON, having been first duly sworn on oath or
9 affirmed to tell the truth, the whole truth and nothing
10 but the truth, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. BULMER:
13
14 Q Just say your name so we can test the microphone.
15 A Grant Anderson. Is that okay?
16 Q That's fine.
17 Judge Anderson, give us a very short narrative
18 summary of your family background and professional

19 career.
20 A First part of that is the hard one. Very short. I was
21 raised in Enumclaw. My dad was a 40-year veteran of
22 Weyerhaeuser, working in the mill in Enumclaw. My
23 mother worked at Rainier State School as an attendant.
24 I graduated from Enumclaw High School. I had a paper
25 route in the 6th grade, worked for a landscape gardner,

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1 starting in the 9th grade, played a little football.
2 Went to the University of Washington on not quite
3 but pretty close to a full Weyerhaeuser scholarship for
4 four years, receiving a BA degree in 1960.
5 Q Judge, just a second. It's fine for you to face the
6 Commission, that's a good idea, but you're kind of moving
7 back and forth and suddenly you disappear from the face
8 of the earth.

9 A I graduated in 1960. I rode on crew with the University
10 of Washington, worked at various jobs, which included
11 Weyerhaeuser in the summer, for Brada Marble & Terrazzo
12 part time, various jobs while I was going to school.

13 Went through ROTC. On the same day I was
14 commissioned in the morning, graduated in the afternoon,
15 and married that night.

16 After that, going into the legal part of things, I
17 went to University of Washington Law School where I
18 graduated in 1963. During that time I worked for the
19 Seattle School District as a laborer and, again, various
20 jobs to get through.

21 After graduating from law school and passing the
22 bar, I went into the service and was in the army,
23 initially in the transportation -- well, not initially,
24 always in transportation corps., I was a lawyer in the
25 transportation corps., I did some defense work in the

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1 service. I came out after two years as a captain and at
2 that point I received an army commendation medal for
3 mostly work in running or working the Port of Thule
4 Greenland, which I did one summer.

5 I went to look around at where I wanted to plant my
6 roots and I ended up in the prosecutor's office in
7 Tacoma, Pierce County Prosecutor's Office, where I worked
8 for two years, starting on the criminal side, moving to
9 the civil side, primarily in school law at that time.
10 Prosecutors were heavy in representing school districts,
11 so I did primarily school law, civil work.

12 It was at that juncture that I met my partner who
13 remained after some 25 years, he was a member of the
14 Tacoma School Board. In representing the Tacoma School
15 Board, I met him, joined him in practice, 1967, I guess,
16 give or take a month or two; in 1967 joined him in
17 private practice, remained in private practice with him
18 until the end, and adding a couple of others, Mr. Fisher
19 and Miss Koppe, until I went on the bench in 1993.

20 In that interim I was part-time Fircrest municipal
21 judge from, I'm not sure of the years, but I am going to
22 say - it was 15 years, anyway - '77 to '93. If that's
23 15, that's about where it comes out.

24 On the civic things during that period, that time
25 frame, primarily in the field of education. I was on

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1 the state Board of Education for some 24 years. I think
2 I went on in '69 until I went off when I went on the
3 bench. I was on the Education Commission of the state
4 appointed by the Governor in late '80s. I can't
5 remember exactly, '88 to '93, something in that range.

6 I was involved as the first lay president of the

7 state Board of Education, went through all the chairs,
8 was national president of the National Association of
9 State Board of Education and a number of other
10 educational-related activities.

11 Q And because the family has been, unfortunately, a part of
12 these proceedings, give us just a little summary of your
13 two marriages and your kids.

14 A I was, as I indicated, married in 1960 originally, have
15 two sons, one of whom is -- my oldest son got out of the
16 marine corps. a little over a year ago. He is living
17 with my former wife, he and his wife. He's going to
18 school now. My granddaughter is, only granddaughter is
19 at Okinawa, unfortunate for me.

20 My youngest son is married and lives in Amsterdam.
21 He is a product manager, marketing manager is the right
22 term, for Hewlett Packard-Europe for new products
23 introduced in Europe.

24 My marriage to Diane, don't know how to characterize
25 it, basically fell apart over the years. We grew in

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1 different directions substantially so to the point where
2 it was not a relationship in '92, '93 area. The only
3 thing that probably held it together was -- minimal
4 communication -- only thing that was holding it together
5 was the fact that my youngest son who graduated from
6 graduate school, he and his wife moved back into our home
7 for almost a year while he was looking for proper
8 employment. It was after that when I'd say the empty
9 nest syndrome, is kind of the common nomenclature, that
10 we discovered there really was nothing of a personal
11 relationship and that then terminated.

12 Q Subsequently you married?

13 A Subsequently I married Patsy Kelbaugh who you just saw a
14 few moments ago.

15 Q Now, in the course of your law practice then, did you get
16 to know Mr. Chuck Hoffman?

17 A Yes, I did.

18 Q How did you get to know Mr. Hoffman?

19 A Mr. Hoffman came into my office as a client. He had a
20 series of businesses, but the one that got him to my
21 office was his involvement at the ocean. He had started
22 his dream down there. He built it, the bank foreclosed
23 it, the bank held it for two or three years and couldn't
24 figure out what to do with it, so they made arrangements
25 to give it back to him under the guidance of, I will call

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1 him, a mentor or somebody the bank had selected and said
2 we'll make arrangements if you'll do it through him so
3 they can work out and get their moneys back out. It's
4 that person who then directed him to me, and I have never
5 done any work for that person, but I did know him through
6 social activities with his children and our kids, I say
7 kids, my age.

8 And he came in and I worked primarily on Surfside
9 Estates, which was a condominium development at Ocean
10 Park, Washington.

11 Q Is that a time share condominium?

12 A Started out as a condominium and then was done to months
13 and then to weeks, and it's a time share 48-unit facility
14 at Ocean Park with adjoining building which at one time
15 had housed a restaurant, pool, and then in a separate
16 facility a tertiary treatment plant and its own well.
17 That's all I can remember for the moment.

18 Q All right. And in that process you have already
19 testified that you represented Mr. Hoffman, you prepared
20 his will?

21 A Yes.
22 Q And he asked you to be his personal representative?
23 A He did.
24 Q And then, as we all know, Mr. Hoffman passed away. When
25 did Mr. Hoffman pass away?

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1 A March 1989.
2 Q At that time you obviously got yourself appointed as the
3 personal representative?
4 A I did.
5 Q And when you reviewed the status then of his estate at
6 that point, what did you discover?
7 A He operated everything within three corporations, almost
8 -- when I say almost totally, I mean truly almost
9 totally. One of them was the bowling alley operation,
10 which was Pacific Lanes; the other was Hoffman-Stevenson,
11 which owned the bowling alley and the real estate under
12 it; and the other one as Surfside Inn, and I can't
13 remember if Hoffman-Stevenson owned the land at the
14 ocean, but, anyway, the ocean operation, the restaurant,
15 the sales of the time shares was all under a corporation
16 called Surfside Inn.

17 And the structure was basically, at the ocean, in a
18 deplorable state of repair, it was a total cash drain,
19 and the bowling alley was some source of cash but also in
20 a not good state of repair.

21 Q As a review of those, the status of the estate, did you
22 develop a business plan?

23 A It appeared to me after taking a hard look, I mean, you
24 look at the options and you put together a plan to see
25 how can I come out of this, because my ultimate goal was

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1 to sell it all off, turn it to cash, cash or receivables
2 or something for the trust or for the estate through the
3 trust.

4 What I did was tried to keep all the balls in the
5 air to do enough improvement at the ocean to make it
6 marketable and saleable and worked on two, three, four
7 sales ideas, promotions, schemes, if you want to call
8 them that, but different methods of marketing those time
9 shares. And the time share market was going flatter than
10 a pancake, not a very good -- not a viable market. But
11 it was enough to do the repairs at the ocean to get them
12 in such a condition I could get them sold, and then at
13 the same time trying to keep the bowling alley going,
14 keep moderate repairs to keep that operational and keep a
15 cash flow coming out of it to the point where when the
16 ocean was done, then I would sell the bowling alley.

17 Q When you took over, did you believe that the ocean was
18 saleable in the condition you found it?

19 A You couldn't even give it away.

20 Q It had lots of liabilities?

21 A It had liabilities. You're looking at give or take a
22 thousand time share weeks, and that's fine to say we got
23 these thousand weeks, but those weeks carried a liability
24 with them. I think at that time Mr. Hoffman had kept
25 the weekly annual payment to 65 or \$75 per week. That

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1 translates into \$75,000 per year for the estate to pay
2 plus taxes and the insurance for the estate's part of it,
3 and that was not enough money to do the maintenance.
4 That was just barely enough money to keep it from falling
5 in the ocean. So that was increased, which it had to
6 be, to get them up to a saleable condition, which I
7 ultimately did.

8 Q Were a lot of the units unsold?

9 A As indicated, my mind tells me it was about a thousand --
10 there's 48 units of 48 saleable weeks per unit. About
11 half of them had been sold and about a thousand was what
12 was left in the estate.
13 Q So was the plan to use the cash flow from the bowling
14 alley to support the condos until you could sell them
15 all?
16 A It wasn't just to support them. That's what Mr. Hoffman
17 had been doing, but in that process they were just
18 running farther and farther downhill and they had gotten,
19 to my estimation, in a totally unsaleable condition.
20 Nobody would even look at them. I believe through one
21 of the realtors down there I ran an ad in a San Francisco
22 newspaper or the "Wall Street Journal," "West Coast
23 Journal." Nobody would even look at them. Who is
24 going to pay any money for something that's going to be a
25 \$100,000-a-year drag as you take it over.

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1 Q I am going to jump ahead. I want to finish this track
2 of questions. Ultimately, were you able to get them up
3 to speed and to sell them?
4 A Yes, I ultimately got them sold.
5 Q And did you sell them in a block?
6 A I'm not sure I'm always using the right words, but I
7 basically wholesaled them. I packaged them everything I
8 could and I found a buyer who would buy whole units, all
9 the weeks in a unit, and so I packaged and put together
10 as many whole units as I could and I sold them to Trend
11 West Resorts, which were a spin-off of the time shares,
12 they are a point system where they sell points and they
13 have, I'll call it, inventory all over the western United
14 States.
15 Q All right. Now, in that process, was there a time when
16 you ended up purchasing some weeks?
17 A I ended up purchasing four weeks.
18 Q Who did you purchase those from?
19 A I purchased them from a private individual.
20 Q Who was that?
21 A Jackie Louise Pagni.
22 Q She has been referred to earlier as --
23 A Yes, she had had four weeks, she wanted out, she wanted
24 nothing more to do with the ocean. I can't remember
25 whether she said I'd like to get this much or this seemed

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1 like a fair price, but I paid her a thousand dollars a
2 week for four weeks.
3 Q Were those units that were owned by the estate?
4 A No.
5 Q Were those units which would have been sold to the estate
6 to help package one of these other packages?
7 A No.
8 Q Why did you buy them?
9 A Well, you know, at this juncture I had been going down
10 there over three years. I have an affinity for the
11 ocean, if you want to call it that, for the Long Beach
12 Peninsula, and I knew this was all going to be coming,
13 that was all going to be coming to an end in terms of the
14 estate involvement, and I wanted it so down the line I
15 could have an opportunity to go down there and spend
16 those two, three, four weeks a year, whatever it was, or
17 put them in a rental pool or trade them to --
18 Q Now, I didn't get from you when did you buy these?
19 A To the best of my recollection, I bought them in 1993.
20 '92, excuse me, '92.
21 Q About the time the estate was --
22 A Yes.

23 Q In addition to putting together the packages for the
24 condo and in addition to buying your own unit from Miss
25 Pagni, did you also sell some units, some other units?

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1 A There were a lot of individual units at the ocean because
2 Mr. Hoffman, the thousand, he did not just sell them off,
3 he would do a block here or block there, he would open up
4 different weeks, so there were some units that had 10,
5 20, 30 weeks out of the 48, and so you had 10 weeks in
6 this unit and 30 weeks in this unit and five weeks in
7 this unit and they were spread all over the place.
8 Those were the ones that were not saleable to Trend West
9 who would only buy the whole unit.

10 Q Were those --

11 A And the other ones, I tried various promotions, various
12 schemes to - schemes is the wrong word, that doesn't
13 sound right - but various methods of getting those sold.

14 Q Were some of those owned by private individuals?

15 A Yes, the weeks were, okay. Beyond the individual ones,
16 there were several whole units that had been purchased
17 from Mr. Hoffman way back in day 1 and they were, I am
18 going to say, mostly friends of his, people that he said,
19 "Come invest with me, buy a whole unit and this will be
20 grand and glorious and you will make much money. " They
21 had these whole units at the ocean.

22 Q And were those units which were available for purchase by
23 the estate, would there be any reason why the estate
24 would have bought those?

25 A No, none.

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1 Q They would have been an additional liability?

2 A Yes.

3 Q Did any of those people who owned those units approach
4 you and ask you to sell their units as well?

5 A Every one of them said the ideas or the reason they
6 bought never came to fruition and they wanted out, they
7 wanted their money back, they wanted to leave. And they
8 approached me and said, can you sell these for me.

9 Q And did you sell them for them?

10 A I did.

11 Q And who did you sell them to primarily?

12 A I sold them to Trend West.

13 Q Did that have any impact at all in terms of the estate
14 sales to Trend West?

15 A No. Trend West purchased everything the estate had that
16 I could package as a clear unit for them and they did
17 some of the units where there were three, four, five
18 weeks in where I would trade people, where I would say
19 I'd either buy back a week or two or if they were on the
20 first floor, I said I'll trade you for a week on the
21 second or third floor which are better views of the
22 ocean, to move them out to have a clean unit. But when
23 you got more than that, it was very difficult to get all
24 the people to trade or clean up the unit.

25 Q The units that were owned by other people?

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1 A Yes.

2 Q That you sold to Trend West, did you take a commission on
3 those sales?

4 A Yes, I did.

5 Q And why did you feel you are entitled to that?

6 A I had done the service. They came to me. It was in
7 terms of saying that I want out, if you will find a buyer
8 for me, and in all instances I had said, I can't remember
9 if I said is a commission fair and they, to the one, they
10 said sure.

11 Q Did your taking the commission have any impact at all on
12 the estate?
13 A None whatsoever.
14 Q Did you discuss the taking of those commissions with your
15 wife, Diane Anderson?
16 A I did.
17 Q When in time approximately were these sales going on to
18 Trend West?
19 A Trying to think. Right after the estate started or my
20 involvement started, which would have been '89, I had
21 tried to sell to Trend West and they said, no, and it was
22 over a year and maybe two later that I resurrected them,
23 and at that juncture they saw that it wasn't going to
24 fall apart, that there was some leadership, that it was
25 going to be put back together and they became interested

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1 and began buying. I don't remember the time. I'm
2 going to say '91, '92.
3 Q Were some of these sales going on into '92 you think?
4 A I think most of them were done in '90, but '91 they could
5 have been. I do not have an independent recollection at
6 this time.
7 Q Now, then, let's talk about the bowling alley then.
8 When you took over the estate, the bowling alley was a
9 separate operation, if I understand it correctly, the
10 business itself was under this Pacific Lanes Corporation?
11 A Yes.
12 Q The land was owned by the Hoffman-Stevenson Corporation?
13 A Yes.
14 Q And I think we have a chart over here, but Pacific Lanes
15 itself was a corporation but was also owned by
16 Hoffman-Stevenson?
17 A Mr. Hoffman owned 100 percent of all the corporations.
18 Q What condition was the bowling alley in when you took
19 over?
20 A The bowling alley was in run-down condition.
21 Q Now, when you took over the estate, did there come a time
22 when you or your office began to charge various
23 corporations out of an estate management fee?
24 A Yes.
25 Q And when do you think that fee started?

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1 A Almost in, I wouldn't say day 1, but very early on.
2 Q What was that fee for?
3 A It was roughly equivalent to what Mr. Hoffman had been
4 taking out for his wages and it was for the business
5 management side of things of the corporations as opposed
6 to the estate work.
7 Q So you guys were running the -- you were managing the
8 businesses as well as doing estate work?
9 A Yes.
10 Q As part of the estate work it needed to run the business?
11 A They did, very much, they needed leadership, they needed
12 somebody who could pull it all together.
13 Q And did you just take that as some sort of a flat amount
14 that you figured you were just entitled to?
15 A No, they -- it had to do with availability and it was
16 roughly equivalent to the hours in time. It was taken
17 in from two, maybe three different sources in the
18 corporation, of the different corporations, and it was
19 put in what I am going to call a management pot and all
20 time records were kept, business management time records
21 were kept against that pot and accounted for in that
22 manner. Now, where the money came from that went into
23 the pot was not necessarily related to where the work was
24 done for that pot. A large part of the work was

25 probably done down at the ocean, down at Surfside.

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1 Q So you kept time records for -- you kept two sets of time
2 records?

3 A Yes.

4 Q Attorney time records?

5 A Yes.

6 Q And management time records?

7 A Yes.

8 Q And other people in your office were working on these
9 matters as well?

10 A Yes.

11 Q And the monthly fee would come in and be put into a pot,
12 is that correct?

13 A Yes.

14 Q And then they would look at the time that had been
15 generated in connection by everyone in your office
16 including yourself and charge that against the monthly
17 fee?

18 A Yes.

19 Q And sometimes the monthly fee would cover it and
20 sometimes it wouldn't?

21 MR. TAYLOR: Your Honor, I am going to
22 object. We are getting an awful lot of leading
23 questions here at this point.

24 JUDGE BROWN: Sustained.

25 Q (Continuing By Mr. Bulmer) Would the monthly fee

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1 sometimes cover it and sometimes not?

2 A Yes. They were roughly equivalent.

3 Q Were rental payments for the bowling alley also being
4 paid to Hoffman-Stevenson at that point when you took
5 over?

6 A The rental payments had been set up on the books when I
7 arrived and they stayed in that same fashion. It
8 wasn't, frankly, until yesterday that I learned that that
9 was a paper transaction by the accountant and that a
10 check was never written.

11 Q Was that amount \$12,000 when you took over?

12 A That's the amount that had been on and had been in my
13 understanding primarily generated by tax considerations.

14 Q Okay. Now, when you took over the bowling alley, did
15 you have an appraisal made?

16 A Yes, I did.

17 Q Ask you to turn to Exhibit 14. What is Exhibit 14,
18 please?

19 A This is the appraisal that I had done for estate tax
20 purposes and for my own knowledge as to values and for
21 estate tax purposes.

22 Q This is on the bowling lane?

23 A Yes, this one is on the bowling lane.

24 Q I ask you to turn to page 5 of that appraisal. Now,
25 that's a page with a signature by Mr. Jim Latteri?

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1 A Yes.

2 Q And who is Mr. Latteri?

3 A Mr. Latteri is an appraiser that appraises in Pierce
4 County.

5 Q Independent appraiser?

6 A Yes.

7 Q Was he paid to prepare these appraisals?

8 A Yes.

9 Q And the appraisal that he came up with was \$1 million
10 334,000?

11 A Yes.

12 Q Did you review this appraisal when it came in?

13 A Yes.
14 Q I ask you to turn to page 15 of the appraisal. Page 15
15 is entitled "Description of Improvements." I direct your
16 attention to the third full paragraph and the last
17 sentence that says, "This appraiser would recommend both
18 an electrical inspection and an asbestos inspection."
19 Do you see that?
20 A Yes, I do.
21 Q What did that tell you?
22 A What did that tell me? It told me that he had some
23 reservations, some caveats, if you will, to his appraisal
24 and things that should be looked at as potential problems
25 or influence the value at a later time.

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1 Q Was there an asbestos problem?
2 A In my estimation that was the biggest problem there.
3 The ceiling over all 36 bowling lanes was blown with
4 asbestos and there had been asbestos on the back wall
5 which was behind all the machines, and at one point the
6 state had closed the bowling alley down for, I would say,
7 put a tag on it for encapsulating or removing the --
8 interestingly enough, that was on the wall in the back
9 where there was only one mechanic ever, but it was such
10 that if you walked down that aisle, you could rub it with
11 your shoulder or get some dust. So that had to be
12 encapsulated, basically sheetrocked over.

13 The ceiling was filthy dirty, I mean, it was black
14 through smoke and it was over a period of time starting
15 to come down, starting to hang because it was actually a
16 blown -- I'm not sure how they put it up, but it was up
17 there, it was very visible, and was a problem.

18 I looked at having it removed on more than one
19 occasion and never got an estimate of less than \$200,000,
20 but usually in that range.

21 Q I also note that one of the concerns he has is the, which
22 is in the second paragraph, "The roof surface is of hot
23 mop construction and at present time is in but fair
24 condition. This roof surface will need to be replaced
25 within the next several years." Did that remain the

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1 situation with the roof?
2 A There's two parts to the roof. One is what I call the
3 barrel, the round part. That was in not good shape, but
4 it was not leaking. That's the one that ultimately was
5 replaced but it was getting close. There was the flat
6 area which was over the restaurant and part of the front
7 leaked so bad at one time when it was one of the
8 downpour rains, they had to hire one of the persons to
9 stay all night because buckets filled up faster than they
10 could empty them where you couldn't leave them
11 overnight.

12 I think in my mind the expenditure was a little over
13 \$30,000 to do, I am going to call it, a good band-aid,
14 but hot mop over that roof to repair it. There were
15 roof covering problems, yes.

16 Q At the time you sold the building to Mr. Hamilton, was
17 the roof still a problem?

18 A Yes. It had been fixed temporarily, but it was a fix, it
19 was not a complete --

20 Q You need to pull the --

21 A It was not a --

22 Q You can sit back, but you can pull it toward you a little
23 bit more. In addition to getting the appraisal, which
24 is Exhibit 14, did you also need to get some tax
25 evaluation work done as part of your responsibilities?

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1 A Yes, I did.
2 Q I ask you to turn to Exhibit 116, please. Do you have
3 that?
4 A Yes, I do.
5 Q What is that, Judge?
6 A This is an evaluation statement, I'm going to say,
7 prepared by Alan Weaver of Eisenhower, Carlson, Newlands,
8 & Reha at the time in Tacoma.
9 Q Eisenhower Carlson was a Tacoma law firm?
10 A Yes. Alan Weaver is basically a tax specialist. This
11 was a matter that was, at least I felt, beyond my
12 reasonable capabilities and I wanted some assistance and
13 I hired Al Weaver to prepare the estate tax return.
14 Q Okay.
15 A And he, in using the appraisals that had been
16 accomplished and in consultation with me and in reviewing
17 the estate, put together this evaluation method or
18 approach for estate tax purposes.
19 Q I am going to turn your attention to page 2 of the
20 evaluation, I guess page 3 of the exhibit, and turning to
21 the last sentence on that page and the sentence which
22 carries over to the next page, it says, "The Knight, Vale
23 & Gregory financial report for the period ending December
24 31st, 1988, shows cash of \$197,237. This amount is
25 abnormally high since in a normal cycle the bowling alley

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1 would accumulate more cash during its busy season of
2 October through March which it would need for the much
3 slower period of April through September."
4 Do you see that?
5 A Yes, I do.
6 Q Is that understanding as printed by Mr. Weaver consistent
7 with your understanding of the bowling alley business at
8 that time?
9 A Is and was.
10 Q Had you been aware of that normal cycle in the bowling
11 alley business before Mr. Weaver advised?
12 A Yes, I had.
13 Q Now, next down is a little chart prepared by Mr. Weaver,
14 I guess, or his office?
15 A Yes.
16 Q And he takes into account some discounts for
17 marketability and cost of sale?
18 A Yes.
19 Q What does he conclude is the value of the bowling alley?
20 A He concludes the value of the bowling alley at \$998,000.
21 Q Thank you. Now, did you follow through then with your
22 plan of using the bowling alley to take care of the cash
23 flow for the condos?
24 A Yes.
25 Q And when did the plan seem to come together?

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1 A It was all coming together in 1992.
2 Q And as part of the plan coming together, did there come a
3 time when you determined to sell the bowling alley?
4 A Yes.
5 Q And what was your plan or approach going to be in terms
6 of selling the bowling alley?
7 A I had tried to keep the bowling alley up into not a great
8 shape, but at least a marketable shape, but there were
9 two or three items that I had to do to make it
10 presentable, to take some of the cash that previously had
11 been going to the condos, get the bowling alley into
12 marketable shape. I approached every source that I
13 could relative to marketing the bowling alley, contacted
14 AMF, I contacted Brunswick, I talked to the person who

15 refinishes the lanes. I mean, that's not -- there's only
16 two or three of them in the United States that have that
17 capability and they have quite a network within their
18 schedule or network, I guess. I talked to I think it's
19 Murray and Swift, a business broker, relative to
20 potential listing of the alley as a business. I then --
21 none of which would have met with any real success. I
22 mean, they just didn't. At that point I was turning to,
23 like I said, bringing the alley up to at least a
24 marketable appearance I guess is the right word.

25 Part of that was to cover the asbestos, encapsulate
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1 it so that it was not as obvious, it would be in
2 compliance, in my estimation, minimal compliance with the
3 building standards so it wouldn't be falling down or
4 coming on to people or cause the place to be locked down
5 or the expenditure of great amounts of money which the
6 estate did not have and were not there.

7 I still had concerns about that because I had also
8 talked to banks or the bank that we banked with and at
9 that time financing for these types of purchases, sales
10 or purchases were requiring environmental statements and
11 often major corrections if that were, before financing
12 could be arranged. Asbestos was a major concern of
13 mine.

14 Q Were you fearful that if it was financed through
15 conventional financing, you were going to be required to
16 remove the asbestos?

17 A Yes, or that somebody would come in and look at it and
18 offer a financial package and that would come back and I
19 would be stuck.

20 Q Stuck?

21 A Stuck with having to remove it.

22 Q And what effect did you think that would have on the
23 sale?

24 A It would either kill the sale or create substantial havoc
25 with the price, there were only two ways it goes.

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1 Q So what approach did you then take to sell?

2 A I was looking for avenues, places, people to sell
3 including within the local owners, the owners
4 association. And the bowling alley business is not a
5 growth industry or a growth business and they all had
6 their problems and they frankly weren't interested.

7 I'd talked to Mr. Hamilton as I had in other
8 ventures in the past about suggestions, ideas from him,
9 and it's at that point initially the approach was for
10 assistance and help on where to market it or who might be
11 interested or ideas he might have, that it converted from
12 that to an interest on his behalf.

13 Q When roughly do you think that occurred?

14 A First mention I find in my time sheet is April of 1992.

15 Q So then you had discussion with Mr. Hamilton about the
16 sale?

17 A Yes.

18 Q And did you eventually come to set a price?

19 A Yes.

20 Q How did you set the price?

21 A It was a number of variables in my mind. I started with
22 a million 330 or whatever the number was from
23 Mr. Latteri. I considered that there were no
24 commissions, which would have been substantial on a sale
25 of that.

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1 Q By that you mean real estate commissions?

2 A Real estate commissions or business sale commissions or

3 however it was put together.

4 I knew there were many problems. I have already
5 talked at length about the asbestos problems
6 particularly. I knew of the roofing problems, which I
7 made him aware of. There was also sewer problems that
8 we have not touched on. The sewer was --

9 Q You don't need to cover that.

10 A There were sewer problems that were corrected but still
11 have been overriding that persist to this day. I'm
12 trying to think if I've covered all of the factors, but
13 those are most of the factors that -- and I was aware of
14 the caveats. I'm no electrician, I did not have an
15 inspection, but it was pretty obvious that they were
16 often jerry-rigged or put together and not of the highest
17 professional quality.

18 Q Okay.

19 A And when I took all of those as deducts -- and the most
20 important thing for me in arriving at the price is as-is
21 where-is and it was an effort to limit any exposure by
22 the estate liability wise.

23 Q What price did you come up with?

24 A My very bottom end was a million dollars.

25 Q Is that the price you and Mr. Hamilton agreed to?

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1 A Yes.

2 Q When you offered him the million dollar price or made the
3 offer, had you allocated at that point a price between
4 the land and the bowling alley and the business itself?

5 A No, not initially. The initial discussions were just a
6 package.

7 Q Now, there's documentation in the evidence already that
8 part of the negotiation process ended up in a negotiation
9 of a lease price of \$6,000 a month, is that correct?

10 A Yes.

11 Q How did you arrive at the \$6,000?

12 A That was a negotiated price and it was -- from his
13 standpoint, it was part of a cash flow, what the business
14 could sustain, and it was two parts to it; there was a
15 \$3,000 payment on the business note and \$6,000 lease
16 payment. He was more interested in terms, I was
17 interested in getting a fair price and reasonable terms
18 for the estate, and that was a negotiated reasonable term
19 which got the estate the down payment or the option and
20 got reasonable money on an ongoing basis for the
21 estate.

22 Q Do you recognize the term deal points?

23 A Yes.

24 Q What are deal points?

25 A Deal points, you can have all kinds of little points, but

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1 those are the make or break points of a transaction.

2 Q All right. And from your perspective what did you
3 understand your deal points to be?

4 A My deal points were reasonable -- were fair price,
5 reasonable terms, and as-is where-is.

6 Q And from Mr. Hamilton's point of view what did you
7 understand his deal points were?

8 A Terms, the fall cash flow, and within terms I include the
9 fall cash flow, and the liquor and gambling license, the
10 appropriate licenses, those being the two major ones.

11 Q From your point of view, if any one of those, the terms,
12 the fall cash flow or the licensing had not come through,
13 would the deal have been successful?

14 A No.

15 Q And was it your understanding if you had not been able to
16 get what you considered to be a fair price, which you

17 said was a million dollars, on the as-is where-is, and
18 security on it, would you have been willing to make the
19 deal?
20 A No.
21 Q So the transaction developed at some point. Did there
22 come a time to get it into writing?
23 A Yes.
24 Q Let's turn to Exhibit 19. Do you recognize Exhibit 19?
25 A Yes, I do.

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1 Q What is Exhibit 19?
2 A Exhibit 19 was the first attempt on my part to put the
3 deal on paper. Prior to that point, they had been talk,
4 they had probably been on paper napkins, various and
5 sundry things as that. This is where I came back and
6 made my first attempt at putting down what I thought I
7 had heard and what I could agree to on paper.
8 Q Now, is some of the handwriting on this document yours?
9 A Yes.
10 Q Could you point to where your handwriting occurs.
11 A On page 2, number 12, where it inserts I put in the word
12 Hamilton. On page 3, I think it would be 13.a., that's
13 my scratch-out. And on 13.c. those are words that I
14 added, I can recognize my writing even through these poor
15 copies, but --
16 Q Is any of the rest of the handwriting on this document
17 yours?
18 A No.
19 Q Look at paragraph "e" on page 3 where you --
20 A Yes.
21 Q Where the September 30th is scratched off and a 1 put in,
22 is that your writing?
23 A No.
24 Q Whose writing is that?
25 A That's Mr. Hamilton's.

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1 Q Do you know why that change was made?
2 A Yes. That's when we talked about the deal point when we
3 reviewed this document, that's when he said that that
4 cash flow is imperative, that has to be the date, and
5 that was probably our base understanding that everything
6 was effective September 1st regardless of when the formal
7 closing was.
8 Q So let's look at Exhibit 20 then. Exhibit 20 is another
9 iteration of Exhibit 19?
10 A Yes, it is.
11 Q Turning to page 3 of that document, is that your
12 signature on behalf of Pacific Lanes and
13 Hoffman-Stevenson?
14 A Yes, it is.
15 Q Was this a binding document from your perspective?
16 A Yes, it was.
17 Q When was it executed?
18 A August 26th.
19 Q And looking at paragraph 13.d. on page 3, has the
20 September 1st change been incorporated?
21 A Yes.
22 Q Now, let's look at Exhibit 21, please. Twenty-one is
23 also another iteration of the document?
24 A Yes.
25 Q And what the significance of Exhibit 21?

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1 A This was drafted, by my best recollection, because the
2 regulators wanted not a corporation to be formed but they
3 wanted a named corporation, so we put in the two changes
4 in there were Pacific Recreation Enterprises, and as was

5 pointed out yesterday, this is where the computers are
6 wonderful, they didn't quite take out all of it and left
7 part of it, but it had the named corporation, and the
8 other change was the regulators also did not want a
9 document where the closing date had already basically
10 gone by. So we put an open end closing date on that.

11 Q So that's at paragraph 13.d again?

12 A Yes.

13 Q When 13.d. was taken, what was your understanding as to
14 how you and Mr. Hamilton would do the closing?

15 A I think it's been said many times. The understanding
16 was that it would close for transactional purposes, for
17 control, would be September 1st; for formal purposes,
18 whenever the last license was approved.

19 Q All right. Now, in response to the August 26th
20 agreement, which is Exhibit 20, what happened in terms of
21 your role of managing the bowling alley?

22 A After September 1st I was basically not involved.

23 Q Who was involved?

24 A Mr. Hamilton.

25 Q Did you have a meeting with employees to report that

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1 Mr. Hamilton was taking over?

2 A Yes.

3 Q Was that that meeting that Mr. White referenced
4 yesterday?

5 A That would be the meeting, I have no recollection of the
6 date, but that would have been the meeting that -- there
7 were two meetings. One was the league officers
8 banquet. At that juncture Mr. Hamilton and I were far
9 enough down the road that I was comfortable enough that
10 it was going to happen, even though it had not been
11 signed yet, but that's the front end of the season. I
12 introduced him and it was not much more than an
13 introduction at that point. And then later in the month
14 right around end of August, first of September, I
15 introduced him to the -- he didn't take much introduction
16 because they all knew who he was, he had been around
17 enough, but introduced him to the employees in the
18 monthly meeting.

19 Q There's been a lot of testimony here about the management
20 fee. You got out of the management of the bowling alley
21 but the fee continued to come out of Pacific Lanes, is
22 that correct?

23 A Yes.

24 Q Why is that?

25 A As I indicated, it had been on auto pilot for some

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1 probably 40 months before that going into the pot and
2 accounted for against all the time spent in management of
3 the estate businesses, which included the restaurant, the
4 condo operations, and the bowling alley.

5 Q We then know that the actual papers closing it were
6 December 4th?

7 A Yes.

8 Q We also know that Exhibit 21 provides that it could close
9 the first of the next month?

10 A Yes.

11 Q Why did you go ahead and close on December 4th?

12 A December 4th is when I was advised the last license
13 approval came in. Frankly, I wanted Mr. Hamilton's
14 \$100,000 for the estate because that was non-refundable,
15 that was the option, that was the down payment, and I
16 wanted that \$100,000 in the estate and I wanted him
17 bound, and that's when that could happen.

18 Q He was willing to pay the \$100,000 on December 4th?

19 A Yes, he was, and he did.
20 Q You have known Mr. Hamilton for quite a long time at this
21 point?
22 A Yes.
23 Q Did you have an understanding, a belief, as to what his
24 commitment to a project would be once he had spent
25 \$100,000?

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1 A I can honestly say that Mr. Hamilton yesterday sat up
2 here and said I structured this so I could walk out and
3 leave \$100,000 on the table. I also know Mr. Hamilton,
4 once he puts \$100,000 down, he would chase that \$100,000
5 and finish the transaction.
6 Q Why was that important?
7 A That was his way of doing business, that was his
8 personality. He would always protect, but I also knew
9 him -- enough about his business endeavors, that that
10 wasn't the way he was, and once he put his \$100,000 down,
11 he was locked even if not in a full legal sense.
12 Q Why was that important to you?
13 A Why was that important?
14 Q Yes.
15 A I had the money for the estate, I had an as-is where-is
16 and I had a buyer that I was comfortable with whose
17 integrity and ability to get the estate out of that
18 business and have it converted to a liquid -- it wasn't
19 quite liquid, but just to a fixed financial arrangement.
20 Q What were you trying to arrange on behalf of the estate
21 which was going to become obviously the trust?
22 A I was trying to liquidate and that got down to just
23 money.
24 Q Were you trying to get rid of assets?
25 A Yes.

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1 Q So the trust --
2 A I was trying to get rid of assets so I could give them to
3 the trust in a liquid and/or bank statement form, note,
4 mortgage form, so it was just a matter of collecting
5 money for their usage.
6 Q Okay. You have testified as to what your understanding
7 or agreement was with -- what you believe your agreement
8 was with Mr. Hamilton about the cash flow. Why isn't
9 there more writing about that?
10 A In hindsight, I wish there had been. Obviously, with a
11 sentence or two at some strategic place, I wouldn't be
12 sitting here, I don't believe. Oversight. I was
13 running for office hard at that time because the
14 primaries were in September, which is when I was
15 elected. It just wasn't done.
16 He was a man of integrity and I think I am a man of
17 integrity and that was my understanding, his
18 understanding, and that's the way, in fact, it was played
19 out and accomplished.
20 Q Okay. There's been some discussion about assignment of
21 risk here. What was your understanding as to what would
22 have happened if it had burned down?
23 A It would have been the bowling alley. I mean, if it had
24 burned down, you carried insurance to either rebuild it
25 or take the money, but the risk was if it made money, if

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1 it made cash flow, and it was every intent that it would
2 make cash flow during that time because that was the
3 cycle of the bowling industry, and if for some reason it
4 lost money, that would be Mr. Hamilton's loss.
5 Q When it closed on December 4th, did you understand at
6 that point there was going to be a need for some sort of

7 adjustments to take into account for the late closing?
8 A I knew, yes, I knew there would be some adjustments for
9 the cash flow for the late closing from September 1st to
10 whenever it closed.
11 Q It closed December 4th, but the records clearly show that
12 the adjustments were made through December 31st. Whose
13 idea was it to use December 31st?
14 A That was Mr. Iverson's.
15 Q Do you have a recollection of discussing adjustments for
16 cash flow with Mr. Iverson?
17 A I have no independent recollection of adjusting or
18 discussing adjustments with Mr. Iverson.
19 Q Before or after December?
20 A Before or after.
21 Q December 31st?
22 A December 31st. The only recollection I do have, and you
23 triggered yesterday, I do remember one or two occasions
24 when I'd have a note in chambers saying, "Call Kevin
25 Iverson back," and I would call him back and that's all I

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1 can remember.
2 Q Do you believe you must have had such a contact?
3 A Yes, I do.
4 Q One of the charges against you is you committed perjury
5 or untruthful statements in a deposition taken by
6 Mr. Taylor of you last year, is that correct?
7 A I believe so.
8 Q The basis of that count is the following words:
9 Question: "Up at the top the document says Pacific
10 Lanes purchase price adjustments per discussions with
11 Grant Anderson and Bill Hamilton."
12 Answer: "Yes, I see that."
13 Question: "Did you have any such discussions after
14 January 1st of 1993?"
15 Answer: "I don't believe so, not to my knowledge."
16 Question: "Is it your recollection that the
17 discussions reflected herein took place prior to December
18 31st of 1992?"
19 Answer: "Yes."
20 The statement of charges indicates that the answer,
21 "I don't believe so, not to my knowledge" and the answer
22 "Yes" to the question "Is it your recollection" are
23 alleged to be false.
24 Now, were those false at the time you made them?
25 A No.

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1 Q Did you at the time you made those statements have an
2 independent recollection of any meetings after December
3 31st?
4 A No, I did not.
5 Q Do you have an independent recollection at this point?
6 A As I said, I have no independent recollection of any
7 meetings after December 31st.
8 Q All right. At this point, to your knowledge, to your
9 personal knowledge, not refreshing your recollection from
10 looking at time records or anything else, to your
11 personal knowledge, do you have any memory of any
12 discussions after January 1st, 1993?
13 A No.
14 Q Do you believe it's possible you had such discussions?
15 A After January 1st?
16 Q Yes.
17 A Yes.
18 Q Do you think it's in all likelihood possible?
19 A Probable.
20 Q Probable. Now, the bowling alley closed on December 4th

21 and in the process the estate was also being wrapped up,
22 is that correct?

23 A Yes.

24 Q And when did the estate actually get terminated?

25 A My recollection is January 6th would have been --

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1 between Christmas and New Year's, I went to San Francisco
2 and that was consistent with buying a car before
3 Christmas and not picking it up or getting delivery until
4 January 5th, and I believe the estate closed January 6th,
5 if my memory serves me right.

6 Q We will accept the Commission's representation that you
7 were sworn in as a judge on January 8th, 1993.

8 A Yes.

9 Q Was the estate wrapped up before that?

10 A Yes.

11 Q Sometime that first week in January then before January
12 8th?

13 A Yes.

14 Q All right. We don't have the precise date here,
15 though. At that time the estate was closed?

16 A Yes.

17 Q And then what happened to all the assets under the way
18 the estate was structured?

19 A They went into a trust which at that time would have been
20 for the benefit of Milly Hoffman with the beneficiaries
21 being the hospital and the lost son after she passed
22 away.

23 Q And at that time, at the time the estate was closed and
24 the trust was set up, who became trustee?

25 A Mr. Fisher, Stephen Fisher.

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1 Q Were you a trustee after that date?

2 A No.

3 Q And when the estate closes, obviously your role as
4 personal representative ceases?

5 A Yes.

6 Q And shortly thereafter you went on, you were sworn in
7 January 8th, obviously, we can agree with that?

8 A Yes.

9 Q What was your involvement then with the estate during say
10 the first month or so or two months in January and
11 February?

12 A If Mr. Fisher or Mr. Hoefel, who was in his office, would
13 contact me to verify something or basically I would
14 respond when asked questions and that was mostly the sum
15 total of my involvement.

16 Q Did you do work on behalf of the estate?

17 A No, I did not.

18 Q Or the trust, I'm sorry?

19 A No. The estate was closed. On behalf of the trust, no.

20 Q Did you provide information to Mr. Fisher or Mr. Hoefel
21 upon request?

22 A Upon request, yes.

23 Q Did you charge for that information?

24 A No, I did not.

25 Q This wasn't the only legal affair or matter that you were

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1 closing up in September, October, November and December,
2 was it?

3 A No. I had 25 years of practice that I was closing up,
4 the files. The partnership had divided into two
5 offices. I was talking with clients, I was splitting
6 files, I was -- I had sent out letters to all of my
7 clients advising them of where the files would be if they
8 wanted independent representation or if they wanted to go

9 with one of my partners or to make a selection or -- I
10 can't remember all the mechanics, but there was a number
11 of things going on.
12 Q This was a very busy period?
13 A Yes.
14 Q Getting ready to go on the bench?
15 A Yes.
16 Q I want to go forward to the March 9th, 1997 meeting with
17 Mr. Fisher. Do you remember that meeting sitting here
18 today?
19 A No.
20 Q You've heard Mr. Fisher testify and you've seen his time
21 records. Is there any doubt in your mind that such a
22 meeting occurred?
23 A I'm sure it did.
24 Q Now, we had an extensive session with Mr. Iverson
25 concerning the adjustment sheet that was presented on --
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1 JUDGE BROWN: Let's take a recess at this
2 point.
3 (Whereupon, a recess was taken.)
4 Q (Continuing By Mr. Bulmer) Judge, before the break, I was
5 going to refer you to and do now refer you to Exhibit
6 61. That's the adjustment sheet that we went over with
7 Mr. Iverson yesterday.
8 A Yes, sir.
9 Q Now, did you have any involvement, direct involvement,
10 any involvement with Mr. Iverson in the preparation of
11 this adjustment sheet?
12 A No.
13 Q Do you have any recollection at this point of ever having
14 seen it before this matter came up?
15 A No.
16 Q Did you ever tell Mr. Iverson or anybody that whatever
17 adjustments needed to be made, some specific number
18 needed to be arrived at?
19 A I wouldn't have had a clue.
20 Q So the answer is no?
21 A No.
22 Q If I went through all of these things line by line with
23 you at this point, would you be able to explain them?
24 A Probably not. I mean, I'm in the same status that
25 everybody else in the room is; I heard Mr. Iverson, I
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1 have a half grasp, but do I have an independent and am I
2 an accountant, the answer is no.
3 Q When you were working on the estate, were you dependent
4 upon what the accountants told you?
5 A Yes.
6 Q Did you hire accountants for that purpose?
7 A Yes. I'm not a detail person, I am a generalist, if
8 that's the right word. I hired accountants, I hired
9 whether they were managers or whether you want to call it
10 expertise and I relied on that advice.
11 Q Similar to hiring Mr. Weaver for tax advice?
12 A Yes.
13 Q Did you rely on Mr. Weaver for the tax advice?
14 A I did.
15 Q Did you question his tax advice?
16 A No. When you say did I question it, I mean, I had it
17 explained to me, but I did not question it.
18 Q Now, we know that even though you went on the bench and
19 even though you were no longer a trustee or personal
20 representative in the estate, you did stay as president
21 on, I guess, the three corporations?
22 A Yes.

23 Q Why did you stay as president of those three corporations
24 initially?

25 A Initially, Mr. Fisher asked me to. I think it was part
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1 of his, if you want to call it, due diligence, his
2 ability to make sure he fully understood and grasped the
3 transactions. I had a history of three and a half years
4 of operation at the ocean and in the bowling alley and he
5 was to do all of the work, make all of the decisions, but
6 he wanted my input, if necessary and if he asked me, and
7 for that reason, I stayed on at his request.

8 Q You were getting ready to go on the bench?

9 A Yes.

10 Q All right. And in fact did go on the bench?

11 A Yes.

12 Q In the process of that, did you review the Code of
13 Judicial Conduct?

14 A Yes, I did.

15 Q And on the basis of reviewing that Code of Judicial
16 Conduct, did you have a belief as to whether or not you
17 could stay on these corporations?

18 A Yes. And I am going to paraphrase it because I don't
19 have it in front of me, but I believe it said you had a
20 reasonable time to wrap up estate work, and I'm
21 paraphrasing that. The question might come in as to how
22 you would interpret the word reasonable. In my mind it
23 was reasonable when Mr. Fisher asked me to on behalf of
24 the estate.

25 Q At least in those early months?

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1 A In those early months, yes.

2 Q But you stayed on through the fall, it's obvious?

3 A Yes.

4 Q How did that come about, do you know?

5 A Frankly, I could have sent him over a note or something
6 saying take me off, we talked about it, he was going to
7 do it, he never got the paperwork accomplished.

8 Q Did you know the paperwork had not been accomplished?

9 A No, I did not.

10 Q And in the fall we know the businesses, at least the
11 bowling alley, was sold to Mr. Hamilton and we will talk
12 about that in a minute, but we know that happened?

13 A Yes.

14 Q All right. Were you involved in those negotiations at
15 all?

16 A No.

17 Q But you did sign what we'll call, for lack of a better
18 term, all the closing paperwork?

19 A Yes.

20 Q We don't argue with that a bit?

21 A No.

22 Q Why did you sign that paperwork?

23 A I can't -- I do not have an independent recollection of
24 whether it was Mr. Hoefel or Mr. Fisher that came and
25 said everything is in place, the bank financing is in

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1 place, the deal is done, you are still the president,
2 here is the paperwork.

3 Q And did you sign it?

4 A Yes.

5 Q Why did you go ahead and sign it even though it had now
6 been what, some ten months I guess?

7 A Mainly because they explained in a general sense what had
8 transpired, they said everything is down at the bank,
9 everything is ready to transfer. In hindsight I
10 probably should have said no, redo it, move the dates a

11 couple days, adjust the interest, or whatever is
12 necessary, but to accommodate, I signed.
13 Q Did you have in mind your previous review of the Code of
14 Judicial Conduct when you did that?
15 A Yes.
16 Q What did you have in mind?
17 A It was still reasonable to me at that point, that's in my
18 mind.
19 Q Would agree that other people might apply different
20 interpretation to reasonable?
21 A Yes.
22 Q Let's talk about the negotiations in the fall, which I am
23 using as a shorthand, of '93, for Mr. Hamilton purchasing
24 ultimately the bowling alley, so the fall negotiations.
25 You said you were not involved with those. Were you

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1 generally aware that they were happening?
2 A I wasn't even -- I'm not even sure I was generally
3 aware. I understood -- I did understand that there had
4 been some major structural problems at the bowling
5 alley. Beyond that, I maybe had a general understanding
6 that something was going on, but specifically, I had no
7 understanding.
8 Q Were you a trustee for the estate in the fall of 1993?
9 A No, I was not.
10 Q Other than what was explained to you by Mr. Fisher or
11 Mr. Hoefel, whoever it was that came to you with the
12 paperwork, did you have any knowledge of the scope of the
13 negotiations or the transaction?
14 A Not at all.
15 Q Did you have to rely upon them for the numbers that were
16 presented?
17 A Yes.
18 Q Other than signing the excise tax closing papers, did you
19 have any involvement with those other than signing them?
20 A Other than signing, no.
21 Q Did you have anything to do with the number that was on
22 there?
23 A No.
24 Q Okay, now, let's talk about the car.
25 We know when you took office. Which election were

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1 you elected to office?
2 A I was elected in 1992 to begin my first term in January
3 of 1993.
4 Q So it was the September '92 elections?
5 A September '92 election, right, primary election.
6 Q That was a contested proceeding?
7 A Yes.
8 Q And then spring or in the fall of 1992 what kind of car
9 were you driving?
10 A A '79 Buick Riviera with a couple hundred thousand miles
11 on it.
12 Q Was that your favorite car?
13 A It was a favorite car.
14 Q Obviously, you decided to buy a new car. When do you
15 think you made that decision?
16 A It was getting time in any event, but after the election,
17 after I knew I would have a salary, after I knew I would
18 have moneys coming in from my partnerships, accounts
19 receivable from the partner or partnerships that I would
20 no longer be participating in so it would be net and with
21 no overhead attached. It was just time.
22 Q Were you also going to have a settlement from a health
23 insurance matter?
24 A I did have a settlement.

25 Q And how much was that settlement?

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1 A \$160,000.

2 Q And was that taking place in about the fall of '92?

3 A Yes.

4 Q And so with that knowledge you determined to buy yourself
5 a new car?

6 A Yes.

7 Q And when did you begin to look at cars?

8 A December.

9 Q What kind of cars did you look at?

10 A Basically looked at three cars, three types. I looked
11 at Acuras, I looked at -- the other one I was interested
12 in was the Lincoln Continental Mark VIII, which was just
13 literally brand-new on the street, and the Cadillac
14 Eldorado.

15 Q You heard Mr. - I still can't pronounce his name - we
16 heard the car sales person this morning testify about
17 contact. Did he contact you?

18 A I have no recollection of whether I walked in and saw
19 him, he contacted me, how we met, I don't know. He was
20 the salesman, that's all I can tell you.

21 Q And did you talk with Acura sales persons and Lincoln
22 Continental sales persons?

23 A I went out to Acura because Hinshaw, it is Hinshaw, and I
24 worked for Paul's dad, Duane, when I was a young man
25 mowing lawns in Enumclaw. Yes, I talked with them. And

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1 I talked with Dan Gill at Bill Gill Lincoln Mercury.

2 Q Did you take any of those cars out for an overnight
3 drive?

4 A No.

5 Q But you did the Cadillac?

6 A Yes.

7 Q Did you take those home you believe on the nights that he
8 testified to this morning?

9 A Yes.

10 Q Did you take your son Scott to look at the car?

11 A The car that I ultimately purchased was neither of the
12 two that I took home, those were not satisfactory,
13 whether it was colors or options or what was it. They
14 found one in inventory someplace and brought it up. My
15 son Scott, who was living with us at the time, went with
16 me. I can remember he went with me to the bank when I
17 got the check and went back out to the dealer to give
18 them the check, and I showed them the car which still had
19 things to be done to it, trim to be put on it and parts
20 in the package that I negotiated for.

21 Q That was on December 23rd, December 24th?

22 A December 24th.

23 Q We know that you obtained financing at Sound Bank?

24 A Yes.

25 Q Why did you go to Sound Bank?

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1 A They were my bank.

2 Q To your knowledge, did Mr. Hamilton have any involvement
3 in you obtaining the loan?

4 A Absolutely none.

5 Q Who did you deal with at the bank?

6 A Jim Beshiglia (spelled phonetically) who is the president
7 of the bank, and there's -- it's a small bank and I can
8 tell you there's Pat and there's Donna, and can't even
9 tell you their last names, and they may have typed the
10 note and the paperwork.

11 Q I have to ask a question, okay.

12 A Yes, okay.

13 Q Now, I ask you to turn to exhibits starting at Exhibit
14 70. Do you have that, Your Honor?
15 A Yes, I do.
16 Q And Exhibit 70 is what, please?
17 A It is the order for the car.
18 Q And down at the bottom we see "Salesman, Mark," that's
19 the man that was here this morning?
20 A Yes.
21 Q And this was the negotiated price then?
22 A Yes.
23 Q The \$36,177.87, I guess?
24 A Yes.
25 Q Now, the next exhibit, which is 71, that's a receipt copy

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1 of the check that you actually paid to the car
2 dealership?
3 A Yes.
4 Q And let's go to Exhibit 72. Exhibit 72 was a loan
5 report from the bank, and I want to direct your attention
6 to the block that talks about history and remarks,
7 collateral, detail, sort of in the center?
8 A Yes.
9 Q Typewritten. And it says, "The Andersons are well known
10 to this bank's senior management as a stockholder and a
11 large depositor. Related deposits as of this date equal
12 \$200,423." Was the \$200,000 on deposit at the bank at
13 that time?
14 A \$100,000 was --
15 Q Yes or no?
16 A Yes. I'm sorry.
17 Q What was the composition of that \$200,000?
18 A Approximately 100,000, plus or minus, I think it was
19 plus, it was 100,000 was in at that time Diane's and my
20 checking account in the bank. The other hundred
21 thousand would have been in my mother's account, which is
22 a joint account with myself and my mother.
23 Q You help manage your mother's funds?
24 A Yes.
25 Q So the funds that were available to you were how much?

FOOT OF PAGE 621

1 A \$100,000.
2 Q For your use?
3 A Yes.
4 Q Let's turn to Exhibit 73, please. This document
5 apparently provides that the loan is for purchase of an
6 automobile and you signed that, correct?
7 A Yes.
8 Q For the \$36,177.87?
9 A Yes.
10 Q Let's go to the next page. Exhibit 74. Exhibit 74 is
11 a commercial promissory note for the car?
12 A Yes.
13 Q And that reflects apparently a no down loan?
14 A Yes.
15 Q So you didn't have to put any money down to obtain the
16 funds?
17 A No.
18 Q And so they were going to finance the full amount of the
19 car, is that correct?
20 A Yes.
21 Q And who established the interest rate that you were going
22 to be paying?
23 A Jim Beshiglia.
24 Q Did Mr. Hamilton have any involvement?
25 A None whatsoever.

FOOT OF PAGE 622

1 Q Did Mr. Hamilton have any involvement in the percentage
2 that was established?
3 A No.
4 Q What was the obligation you were assuming pursuant to
5 this commercial promissory note?
6 A Pursuant to this note, I had put it on a car, I was
7 agreeing to pay, I think, \$800 a month for three years
8 with a balloon at the end of that time, if you were to
9 follow the terms of the note precisely as I believe it
10 says.
11 Q And what was your intent, however?
12 A To pay it from distributions from the partnerships that
13 would occur and in the hopefully not too distant future,
14 within the next year.
15 Q You had \$100,000 in the bank and you had other income
16 sources. Why wouldn't you just take the \$100,000 rather
17 than assume an obligation for \$36,000?
18 A The \$100,000 had primarily come from an insurance
19 settlement. It was, if you want to call it, ear marked
20 money. It was money that I had set aside for an
21 investment, not for just going down, going out and
22 blowing, and with my experience, if you start going down
23 that road, it's hard to get away from and pretty soon you
24 end up without any money. And this was my investment,
25 this was part of my future. This was something that I

FOOT OF PAGE 623

1 had ear marked for that purpose and that's why I left
2 that alone.
3 Q So you had some capital available that you --
4 A Yes, I had, for whatever business transaction I chose to
5 go into.
6 Q And you didn't want --
7 A To commit it at that time or cut it down.
8 Q Well, at about this time what do you believe your net
9 worth was?
10 A I went back and kind of reworked it and I am going to
11 say --
12 Q Are you going to say or do you know?
13 A I know my net worth was about a million two.
14 Q Okay. Thank you. Excuse me, I was doing pretty well
15 on my exhibits, but I've lost one here. Exhibit 112,
16 please. This is a personal statement of financial
17 condition dated April 14th, 1992.
18 A Yes.
19 Q Is that your signature at the bottom?
20 A Yes.
21 Q Why would you prepare these?
22 A I prepared them on an ongoing basis from time to time
23 usually for banks, for commercial purposes or lending
24 purposes, and even if I had an outstanding loan of any
25 sort, annually they would always say bring me in annual

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1 statement of whatever it is, and I would do that. So
2 those are part of my way of life. I take the one from
3 the last time, go through it and see if there have been
4 any major changes and --
5 Q And this is obviously in April of '92. Had there been
6 financial changes then between April of '92 and the end
7 of '92?
8 A Yes.
9 Q Because you testified you thought your net worth was
10 about a million two at the end of '92.
11 A I had the benefit when I went back and reworked it of
12 having very complete and very precise thought-through
13 inventory that had resulted from my dissolution or as
14 part of the dissolution process. There had been

15 \$160,000 cash that was added right on top of this from
16 the settlement and there were a couple of pieces of
17 property that I recall that were not included on this.
18 Q All right. You concur with testimony this morning that
19 you picked up the car after Christmas in early January?
20 A Yes.
21 Q And when you picked up the car -- when did you go to the
22 bank after picking up the car?
23 A I can't tell you the -- typically I would -- I don't
24 know.
25 Q I have asked a question inartfully. You went to the

FOOT OF PAGE 625

1 bank and made a down payment, is that correct?
2 A Yes.
3 Q When did you do that, was that before or after you picked
4 up the car?
5 A After I picked up the car.
6 Q Let's turn back to Exhibit 75. This is a print-out from
7 the Sound Banking Company of the activity on your loan,
8 correct?
9 A Yes.
10 Q All right. And if we go into page 3 of the exhibit,
11 this would appear to be a check. What is this check?
12 A That was at least part of a year-end distribution from
13 the law firm of Tuell, Anderson & Fisher.
14 Q For \$9,000?
15 A Yes.
16 Q When you went to the bank, the print-out would show
17 apparently a deposit on the 8th?
18 A Yes.
19 Q Which is apparently the same day you were sworn in?
20 A Yes.
21 Q When you went to the bank and made this \$9,000 payment,
22 were you under any obligation to give them that \$9,000?
23 A No.
24 Q Why did you take this \$9,000 check and deliver it to the
25 bank?

FOOT OF PAGE 626

1 A That was consistent with my intent to use distribution
2 moneys to pay off the Cadillac. Even if I paid 800 a
3 month, that would not take the principal and interest
4 away in three years. I had no anticipation of going
5 three years. I had the check in hand, I went to the
6 bank, and I'm not a payment person with the exception of
7 my house payments, I'm what I call a hunks and globs
8 payment person, so I had my hunk and glob and I took it
9 down and I paid them, and if I did or didn't make the
10 next \$800 payment, they might call me up and if they did,
11 I would make it.
12 Q At some point after you made that payment or at about the
13 time you made that payment, did you have a conversation
14 with Mr. Hamilton about him making the payments?
15 A Yes.
16 Q When in time, if you know, in relationship to the \$9,000
17 payment was that conversation with Mr. Hamilton?
18 A I cannot tell you. I mean, it was after that payment
19 and before he made the next payment; sometime probably
20 early January, but I do not know.
21 Q This would indicate that he made his first payment on
22 your behalf on January 26th?
23 A Yes.
24 Q So it would be a bracket someplace between January 8th
25 and January 26th?

FOOT OF PAGE 627

1 A Yes.
2 Q And is it your memory that it was closer to the 8th than

3 to the 26th?
4 A Yes.
5 Q Now, prior to this conversation, had you ever had a
6 conversation with Mr. Hamilton about him making any
7 payments on a car for you?
8 A No.
9 Q Did you have any agreement with Mr. Hamilton that he
10 would make payments on a car for you as some sort of a
11 benefit to you from the bowling alley transaction?
12 A Absolutely none.
13 Q Now, tell us as best you can about the conversation with
14 Mr. Hamilton, about making the payments.
15 A He is the one that proposed it, suggested it. I
16 resisted. There's a number of factors that one
17 considers.
18 Q Let's back up a minute. Where did the conversation take
19 place as far as you recall?
20 A At his office.
21 Q Which was next door to the bank I think he's testified?
22 A Yes, or it might have been in the street, I mean, in the
23 street in front where the parking is because cars just
24 pull right in front.
25 Q Do you have any present recollection of who else might

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1 have been there?
2 A No.
3 Q Do you think anyone else was there?
4 A I don't.
5 Q Now, you and Mr. Hamilton were talking apparently?
6 A Yes.
7 Q And then what transpired?
8 A I told him that was not necessary, it was --
9 Q You have to start at the beginning. What happened?
10 A He is the one that suggested, he said, "I would like to"
11 and I can't remember, I'm not going to put words in his
12 mouth, you heard him yesterday, but basically he said, "I
13 would like to make the payments or make some payments for
14 you."
15 Q And what did you say?
16 A I said, "That's absolutely not necessary, there's no
17 reason to," but he said, "I insist," and he became quite
18 insistent on wanting to do that.
19 Q Did he say anything to you about why he wanted to or why
20 he was insistent?
21 A Yes.
22 Q What did he say?
23 A He said it was because of what I had done for him in the
24 past. We had had a conversation prior to that which was
25 consistent with me going on the bench and getting out of,

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1 if you want to call it, many of the activities.
2 Q You're fading in and out.
3 A Many of the activities in life, in the educational arena,
4 and telling him that I was no longer available for quasi
5 legal troubleshooting, things of that nature.
6 Q We are going to cover some of the scope of that later.
7 You had had that conversation with him when
8 approximately?
9 A I had that conversation with him earlier than that, and I
10 cannot tell you, but it would have been sometime after I
11 was elected and before that time. It was October or
12 September, October, November, or December, I can't tell
13 you.
14 Q So he made the offer, you said no, and he insisted, and
15 then what happened?
16 A He was very insistent. In the process in my mind I knew

17 there were no strings attached. I know that in his
18 world that was -- it sounds like a lot of money, but in
19 his world, that's not a lot of money, that's nominal. I
20 know I had done --

21 Q What was the number?

22 A The 800 dollars a month was nominal in his world. I
23 knew that I had assisted him perhaps in acquiring some of
24 that over the years, at least troubleshooting on his
25 behalf. And as he was a friend, I don't know quite how

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1 to explain this, but say it would almost have been an
2 affront to him to say, "I just absolutely will not," he
3 became that insistent, and so I said okay.

4 Q At the time you said okay, did you have in mind how many
5 payments he would make?

6 A No.

7 Q Did he tell you how many payments he might make?

8 A No.

9 Q Did you and he make any -- have any discussion or make
10 any arrangements for how long he would pay?

11 A No. And there was some recollection that he talked about
12 several months or a year, but there was no time frame put
13 on that.

14 Q Okay. Now, we all know that Pacific Recreation,
15 Incorporated, were the ones that actually ended up making
16 the payments, correct?

17 A Yes.

18 Q Did you know that?

19 A No.

20 Q Did Mr. Hamilton ever tell you that?

21 A No.

22 Q When did you first learn that Pacific Recreation had been
23 making these payments?

24 A At or about the time that this exhibit was produced,
25 Exhibit 75.

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1 Q Well, I can't leave that there. When this was given to
2 you, when was that roughly in relationship to these
3 proceedings?

4 A Last year.

5 Q So sometime in 1996?

6 A I believe.

7 Q This has a report date?

8 A May, '95. It may have been -- it may have been '95
9 because it was about the time that this was requested,
10 whether it was by Mr. Taylor or for whatever purpose,
11 that's when I became aware of it and when I saw it, so if
12 it says May '95, that would have been the time.

13 Q Well, do you know?

14 A No.

15 Q All right. Do you believe it was after controversy had
16 come up about the car?

17 A Yes.

18 Q And that was the first that you learned that Pacific Rec.
19 had been making the payments?

20 A Yes.

21 Q We also know that through Mr. Hamilton and the other
22 exhibits that Pacific Rec. was apparently expensing these
23 somehow in connection with income tax?

24 A I'm now aware of that.

25 Q All right. Did you know that at the time it was

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1 occurring?

2 A No.

3 Q When did you learn about that?

4 A Again, when this all came up, and I'm still going to say

5 last year, but I'm not sure of the time.
6 Q Mr. Hamilton continued to make the payments?
7 A Yes.
8 Q Why didn't you just go to Mr. Hamilton at some point and
9 say, "Enough is enough, my good friend, don't make any
10 more payments for me"?
11 A Could have, but it was like they were being taken care
12 of, there was no reminder to me one way or the other. I
13 was in the process of a marital disturbance, I guess is
14 the right word. Frankly, I didn't give any thought to
15 it.
16 Q Did you discuss the gift with anyone?
17 A With who?
18 Q Did you discuss the gift with anyone in this time period,
19 '92, '93, '94?
20 A I believe my wife.
21 Q What about your accountant?
22 A And my accountant.
23 Q Who was your accountant in '93?
24 A In '93 it was Mike Metternik (spelled phonetically).
25 Q Did you give any thought as to whether or not this money

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1 might be income to you, reportable income?
2 A I initially thought I'd talked to Kevin Iverson, but it
3 was in reflection when I went back and looked at my
4 return, it was with Mike Metternik. At about the time I
5 prepared, would have been early '94, when I prepared the
6 '93 return, I asked him concerning those payments or
7 talked with him.
8 Q What advice did you receive?
9 A Basically he asked me a series of questions; did you
10 perform services, did you send a bill, did you consider
11 it a gift, yes. Did he consider it a gift, yes. Did you
12 get a W-2, no. Did you get a 1099, no. Forget it.
13 Q Okay. You also apparently discussed this gift with your
14 wife?
15 A Yes.
16 Q You told the Commission that you discussed it with your
17 wife, didn't you?
18 A Yes.
19 Q I'm handing you the published copy of your deposition.
20 I ask you to turn to page 27 of that deposition and
21 direct your attention to the question starting at line
22 5.
23 Question: "How did your wife know that Mr. Hamilton
24 had been making payments on the Cadillac?"
25 Answer: "I told her."

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1 Question: "When he first began making payments on
2 the Cadillac, did you tell her at that point?"
3 Answer: "I expect I did."
4 Question: "What did you tell her?"
5 Answer: "I just told her -- I can't remember
6 precisely. I probably said, you know, Bill said he is
7 going to pick up the payments, something to that effect.
8 I don't know precisely what I told her."
9 Was that your testimony in front of the Commission's
10 counsel on December 17th, 1996?
11 A Yes.
12 Q Did you tell your wife it was a commission?
13 A No.
14 Q One of the counts you are charged with here is giving
15 false testimony when you gave the following testimony to
16 Mr. Taylor in that same deposition:
17 Question: "Did you ever tell your wife that the
18 Cadillac payments were a commission as to the sale of the

19 Pacific Lanes to Mr. Hamilton?"
20 Answer: "No, because they weren't."
21 Question: "Did you ever make any statements to that
22 effect to your wife?"
23 Answer: "Not that I am aware of. I don't know
24 why I would because they were not."
25 So at this point and at the time you made those

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1 statements, were you aware of ever having made any
2 statement to your wife about it being a commission?
3 A No.
4 Q Were you aware that you had conversations with her?
5 A Yes.
6 Q And did you tell the Commission you had conversations
7 with her?
8 A Yes.
9 Q What was the status of your marriage in '92, '93, late
10 '92, early '93?
11 A It was deteriorating. We basically had independent
12 lives. My son and his wife were living in our home and
13 that was kind of the cement that was at least keeping us
14 all under the same roof.
15 Q From your perspective, was there open communication with
16 your wife?
17 A No. The communication was not open, it was not good.
18 That aside, I did not lie to her.
19 Q Now, we know then that in about May of 1995 the Cadillac
20 payment, Cadillac loan was paid off?
21 A Yes.
22 Q We also know that Mr. Hamilton apparently wrote a check,
23 which is one of the exhibits in here, to pay that off,
24 correct?
25 A Yes.

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1 Q All right. When did you first learn that Mr. Hamilton,
2 well, Pacific Recreation, I guess, had -- let me ask you
3 a question a different way.
4 Were you aware that Mr. Hamilton had paid off the
5 loan?
6 A Not initially.
7 Q When did you learn that?
8 A When I got back from, I believe, my trip to Arizona.
9 Q We will come back and cover the history. Were you aware
10 that a check had been written from Pacific Rec.'s account
11 to pay that off?
12 A No.
13 Q Until when? Obviously, you were aware somewhere.
14 A Yeah, basically about the same time that I learned from
15 the bank record, whenever I received that, and I believe
16 last year.
17 Q After all this controversy?
18 A Yes.
19 Q Now, how did it come about that Mr. Hamilton paid off the
20 loan?
21 A Just before I went, I was leaving it was Memorial Day
22 week, I'm going to call it, because I take some leave so
23 I can pick it up with the holiday and get a longer time
24 out of it. I have a brother who lives in Arizona. I
25 was going down to Arizona and just prior to leaving is

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1 when I was out at the bank for some reason, and as I
2 often did, I would stick my head in his office, and
3 that's when he said, well, I think, you know, you and
4 Diane are splitting, I don't want to be in the middle of
5 it, I'm going to terminate making payments. I said,
6 thank you very much, it's been much appreciated, I'll

7 just pay it off when I get back. I don't know whether
8 he said I said that or whether he said when; I said when
9 I get back from Arizona, which would have been the first
10 part of June.

11 Q And as far as you are concerned, was that the end of the
12 matter?

13 A That was the end of the matter.

14 Q What was your intent?

15 A It was my intent to pay it off.

16 Q And when you returned from Arizona, what did you
17 discover?

18 A That he had paid it off.

19 Q What did you decide to do about that? How did you learn
20 about that?

21 A He told me.

22 Q What did you do about that?

23 A I paid him.

24 Q And how did you pay him?

25 A Cash.

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1 Q Why did you pay him with cash?

2 A Why did I pay him with cash? I was in the dissolution
3 process at that time. Putting the Cadillac on the sheets
4 that would be divided, I put it in at full value, and my
5 wife was aware that Mr. Hamilton had been picking up the
6 loan or the payments before that, and that was a concern
7 to her that I would get a credit that I wouldn't have to
8 cover, and so very early on I just took that off the
9 table.

10 Q Let's explain that. That's not easily understood from
11 what you're saying. You were in the middle of a
12 dissolution?

13 A Yes.

14 Q And obviously the Cadillac would have been an asset of
15 the marriage?

16 A Yes.

17 Q And ordinarily the Cadillac would be listed as an asset?

18 A Yes.

19 Q With an offsetting liability?

20 A Yes.

21 Q And what were you trying to achieve by how you listed the
22 asset?

23 A I was trying to get things resolved. I am a public
24 official, I did not want a messy dissolution, not that
25 there isn't not a messy dissolution, but as least

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1 possible, to accommodate within the realm of
2 reasonableness, and I agreed with her the Cadillac would
3 go on at full value and there would be no deduction for
4 any outstanding balance.

5 Q So there was no offsetting liability?

6 A No offsetting liabilities.

7 Q And so why does that lead to you paying Mr. Hamilton in
8 cash?

9 A Because after that everything was being accounted for in
10 terms of income and outgo on my checkbook from community
11 funds, and I had taken personal responsibility for this
12 and I just didn't want it in the checkbook.

13 Q Why wouldn't you want it in the checkbook?

14 A Mainly because her lawyer was going to be going through
15 every check I wrote and it would be community assets, and
16 I would be distributing to pay off an obligation which I
17 had indicated I would take separately.

18 Q Were you afraid it would look like you were playing
19 around with him?

20 A Yeah.

21 Q Some \$8,000 in cash, correct?
22 A Yes.
23 Q Where did you get this cash?
24 A Mostly I got -- Miss Kelbaugh, who was Miss Kelbaugh at
25 the time, now my wife, I got \$6800 from her and I had
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1 \$1200 of my own.
2 Q Why did you have that money?
3 A I always had some cash. I had cash left when I got back
4 from Arizona, I just didn't spend it.
5 Q Do you like to carry cash?
6 A Yes.
7 Q There seems to be some cynicism here that you didn't get
8 a receipt from Mr. Hamilton.
9 A I would have insulted him if I asked for a receipt, being
10 very blunt about it.
11 Q Mr. Hamilton referenced picking up the pink slip at that
12 point. Did you pick up what I call the pink slip, the
13 title to the car?
14 A Yes.
15 Q From Mr. Hamilton?
16 A I don't know if I picked it up from Mr. Hamilton or from
17 the bank. I remember the ladies at the bank saying if
18 you take it down yourself, it gets done faster; if we
19 send it in, it takes a longer period of time.
20 Q Now, you didn't list any of these payments on your public
21 disclosure forms, is that correct?
22 A That's correct.
23 Q As a public official, you're required to file financial
24 public disclosure forms each year?
25 A Yes.

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1 Q And let's turn to Exhibit 131, I believe. Do you see
2 that, Your Honor?
3 A Yes.
4 Q Turn to page 2 of that exhibit.
5 A Page 2?
6 Q Yes. All right. Is that your signature at the bottom?
7 A Yes.
8 Q And that's the date of 4-11-93?
9 A Yes.
10 Q And this is your public disclosure form for what, please?
11 A That's what I was trying to look -- I think it's for the
12 year of 1992.
13 Q Correct. The 1992 form filed in 1993?
14 A Yes. They're due typically by April for the preceding
15 year.
16 Q Let's look at box 5.e. Do you see box 5.e?
17 A Yes.
18 Q And it says, parentheses, "Incumbent office holders
19 only," parentheses?
20 A Yes.
21 Q "Did you, your spouse or dependents receive during the
22 previous calendar year any gift valued at over \$50,000
23 that may have been intended to gain or maintain influence
24 with you or the governmental agency you serve," and
25 that's left blank, correct?

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1 MR. TAYLOR: Excuse me, I think counsel
2 misspoke?
3 A I think you said \$50,000.
4 Q It's \$50. I'm thinking of bigger gifts.
5 A Yes, that is blank.
6 Q Thank you. \$50. That's left blank?
7 A Yes.
8 Q At the time when you filled this out, had you been an

9 incumbent office holder the prior year?
10 A No.
11 Q So you left that blank?
12 A Yes.
13 Q However, even if you had been an incumbent office holder,
14 would you have answered that question yes or no?
15 A I would have answered no.
16 Q And why would you have answered that question no?
17 A Because it says it would have been intended to gain or
18 maintain influence with you or the governmental agency
19 which you serve.
20 Q Okay.
21 A And that clearly was not the case with the gift that I
22 had received.
23 Q By Mr. Hamilton?
24 A From Mr. Hamilton.
25 Q Was Mr. Hamilton ever likely to appear in your court?

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1 A No.
2 Q Were any of Mr. Hamilton's businesses ever likely to
3 appear in your court?
4 MR. TAYLOR: Calls for speculation.
5 A Whether they appeared or not, they would not -- I would
6 have recused myself instantly. We are on an automatic
7 rotation, the stuff that comes to us. That's a matter I
8 would recuse. I would not hear anything that he -- our
9 relationship was well known.
10 Q Would you have heard anything at all involving
11 Mr. Hamilton?
12 A No.
13 Q Would you to this day?
14 A No.
15 Q Let's turn to 132, and look at page 2 of 132. That's
16 your signature?
17 A Yes.
18 Q And this is now dated 4 something '94?
19 A Looks like 4-9-94 or maybe 4-4. It doesn't matter.
20 Q Turning to the same question then as previously, 5.e.,
21 that same question, this time now you have answered no.
22 A Yes.
23 Q And that's consistent with the testimony you just gave?
24 A Yes.
25 Q And let's look at 133 as well then, which is the final

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1 one. That's your signature on page 2?
2 A Yes.
3 Q And this is dated March 9th, I guess, 1993.
4 A '95.
5 Q '95, I'm sorry, and, again, at 5.e. you have answered no?
6 A Yes.
7 Q For the same reasons you already testified to?
8 A Yes.
9 Q At anytime did you consider the gift from Mr. Hamilton to
10 have been intended to gain or maintain influence with you
11 or the governmental entity you serve?
12 A No.

13 MR. BULMER: Your Honor, I have one last
14 section of questions, I think they are going to be about
15 a half hour to 45 minutes. It's sort of a whole new
16 line of questioning. Would this be a good time to break
17 or what do you think?

18 JUDGE BROWN: That's fine. We'll break for
19 lunch at this time.

20 (Noon Recess)

21 Q (Continuing By Mr. Bulmer) Judge Anderson, I now would
22 like to move on and discuss your relationship or turn to

23 your relationship with Mr. Hamilton.
24 When did you first get to know Mr. Bill Hamilton?
25 A In the early '70s.

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1 Q How did that come about?
2 A I was looking for a bank, banking relationship. They
3 were a new bank in Fircrest, the town that I lived in.
4 I had heard good things about him. I went to Western
5 Community Bank, which was the name of that bank, and
6 Mr. Hamilton was the chief executive officer of the bank.
7 Q How old were you at that time?
8 A How old was I?
9 Q In 1970. When were you born?
10 A '38.
11 Q You were born in '38 or you were 38?
12 A No, I was born in '38.
13 Q Okay. You were a relatively young man in the early
14 '70s?
15 A I'm still a relatively young man, but --
16 Q Now, did you develop a banking relationship with
17 Mr. Hamilton then or his bank?
18 A Yes.
19 Q What did that relationship consist of?
20 A Well, initially consisted of opening my account. Their
21 philosophy was service and developing relationships. I
22 was in, I guess, in an entrepreneurial mode of my life
23 and I borrowed money from the bank on occasion is how it
24 at least started.

25 Q Did you get to know Mr. Hamilton in the process of
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1 borrowing money from the bank?
2 A I did.
3 Q Did you go through, in your entrepreneurial stage then,
4 some investments which involved borrowing from the bank?
5 A Yes.
6 Q And can you recall what some of those investments were?
7 A They were more in the '70s and the '80s. One that comes
8 to mind is at 27th and I think 70th, I'm not sure of the
9 cross street, I and another partner bought a piece of
10 land. We had to borrow the down payment and borrowed
11 the first year's payments and then we divided the land,
12 sold off two parcels of it and ultimately built two
13 buildings, one which we sold and one which we leased and
14 then ultimately sold, was one project.
15 Q That was in Tacoma here?
16 A That was in Tacoma.
17 Q Did that involve money you borrowed from Western
18 Community Bank?
19 A Yes.
20 Q In that process, how big was Western Community Bank?
21 A At that time it was a one-branch operation.
22 Q Is where Mr. Hamilton was?
23 A Which is where Mr. Hamilton was.
24 Q So when you borrowed money, who did you deal with?
25 A Initially I dealt with him. Over the years I dealt with

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1 two or three different loan officers, but initially I
2 dealt with Mr. Hamilton. He was, I'm going to say, a
3 younger banker, trying to develop business in the
4 community, and he gave you a lot of service if you wanted
5 it.
6 Q Was there another project at Center and Union?
7 A Center and Union was - not far from here - a piece of
8 land that I bought with the same other partner. We built
9 I think there was three -- there was one major corner
10 tenant and three other occupancies, you call it a small

11 strip mall. Grassi's Florist was in it and still is to
12 this day. And he provided all of the -- I think all of
13 the money up through construction, and at that juncture,
14 at least my mind tells me, somebody came and made us an
15 offer I couldn't refuse, and I was at the point where I
16 had to get take out or final financing and we sold it.

17 Q And that was done, you say, that was with Mr. Hamilton
18 and his bank?

19 A Yes.

20 Q Was there a project at 27th and Proctor?

21 A Yes, 27th and Proctor involved another small mall, what I
22 call a hasty-tasty. It was a small restaurant and four
23 or five commercial fronts. I don't know that I had --
24 that's one with three partners, myself, Mr. Hunt, who had
25 been my partner in the other two projects, and Dave

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1 Tuell, who was my law partner, participated in that. I
2 don't know whether -- I can't at this juncture recall
3 whether we borrowed some of the front money to buy the
4 property or not, but may have or may not.

5 Q Do you recall whether or not at any point Western
6 Community Bank had money in that project?

7 A I cannot recall, honestly.

8 Q On projects that you didn't have Western Community money
9 on, would you discuss them with Mr. Hamilton?

10 A Yes.

11 Q Was there a project called the Skill Building?

12 A Yes.

13 Q What's that?

14 A That was down on Center Street, actually that's two
15 buildings that are together, one was an old casket
16 company and what's now the Skill Building, which was two
17 buildings next door to each other. We have subsequently
18 sold the casket company and retained the Skill Building,
19 and we call it the Skill Building because skill saws,
20 tools -- headquarters there for sales, repairs, that sort
21 of stuff.

22 Q Was that a building as far as you know that had
23 Western --

24 A No, that did not have Western money in it. It was a
25 project that I did discuss with Mr. Hamilton. One of

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1 the things that I usually did and why I appreciated him,
2 I could take the projects in and lay them out and not try
3 and shade him one way or another. In fact, I'd try and
4 make them as bad as I could so I could get the input from
5 him of did I consider this, did I consider that, what did
6 I consider about the area, what kind of leases would be
7 there, what kind of tenants might be there, what kind of
8 financing might or might not be available, all different
9 things to consider as you headed into a project. And
10 sometimes these weren't as you headed in, projects would
11 develop and -- let's go back to the 27th and 70th. That
12 was probably the better part of a year between buying,
13 dividing and selling off lots, building buildings, that
14 sort of thing.

15 Q Was there a project called originally I guess the
16 Butcher, Baker, Candlestick Maker?

17 A That is what's now Billy McHale's out on about 108th or
18 10th and South Tacoma Way. It's right at the
19 interchange. I had apoplexy signing a mortgage as a
20 young man for a building behind the gas station with a
21 50-foot access, thinking that if it went, it would be
22 great, and if it didn't, I'd have the biggest alligator
23 that you ever laid eyes on. And it went very
24 satisfactorily. I had two partners in that. Now

25 there's just one and myself and he is now a retired
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1 banker, had no relationship with Mr. Hamilton, but did I
2 discuss the project with him, yes.
3 Q What about 11th and Marine Drive?
4 A 11th and Marine Drive is a piece of property that I still
5 own. I acquired that from Mr. Hunt, who was my then
6 partner. He owned the place across the street. He had
7 a balloon on his contract. He was buying it, he
8 couldn't make the balloon. I loaned him \$40,000 on a
9 handshake for about two years. He subsequently gave me
10 a deed to the property and then he died. And I don't
11 mean it to sound quite that way, but that was the
12 sequence. And then I had problems on -- he neglected to
13 tell me when he gave me the deed that the city was
14 condemning it for health purposes, and it had a couple of
15 gas tanks under it because it had been an old gas
16 station. So I had talked with Mr. Hamilton about --
17 although he had no money in that, I talked to him -- no
18 money, and I don't mean him, but lent or borrowed money
19 -- about cleaning it up, should I attempt to rebuild the
20 building, just tear it all down, which I ultimately did,
21 which I got lucky getting the tanks out and ended up with
22 a piece of property.

23 Q Was there another investment you had called Cascade
24 Cellar Winery?

25 A Yes.

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1 MR. TAYLOR: Excuse me, Your Honor. I am
2 going to object on the grounds we are somewhat cumulative
3 and far afield from the issues of this case.

4 MR. BULMER: The whole issue in this case is
5 the relationship between these men and what the basis was
6 of how it got built up. If they're willing to stipulate
7 that they had an ongoing exchange of business
8 information, that's fine, but, you know, this case is
9 about what the relationship was between these people.

10 JUDGE BROWN: Objection will be overruled.

11 A I and two other partners in a corporate form purchased
12 and owned Cascade Cellars Winery, which was based in
13 Marysville. We operated that for two or three years.
14 I had financing from Mr. Hamilton's bank relative to that
15 operation. Finally --

16 Q That's fine.

17 A Making grapes and wine had some wonderful benefits;
18 finances was not one of them, and it got to the point
19 where we just closed it and parted it out, sold it off.

20 Q During the course of these various investments, over what
21 period of time did these events occur?

22 A On my side, they were mostly in the '70s and the '80s and
23 almost everything we have talked about took place in that
24 period of time.

25 I also built my own office building, or myself and

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1 my partner, Dave Tuell, did.

2 Some other business ventures --

3 Q When you say through the '80s, is it the end of the '80s,
4 middle of the '80s?

5 A Ran right up to the end of the '80s. I'm not sure,
6 mostly it was in the middle. I can't remember exact
7 dates.

8 Q Now, during this time period, then, did you get to know
9 Mr. Hamilton better?

10 A Yes.

11 Q Did you begin to socialize with him?

12 A Yes.

13 Q And did you begin to meet with him other than in
14 connection with these investments or in connection with
15 social matters?
16 A It was a business relationship which turned into a
17 friendship.
18 Q Well, until the bowling alley transaction, did you and he
19 ever have any transactions other than him as lender and
20 you as borrower?
21 A No. Except for my ownership of stock in the bank that he
22 was --
23 Q You and he began to meet other than at the bank?
24 A Yes.
25 Q And where would you meet?

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1 A Often, most often it would be breakfast, sometimes
2 lunch. I would say more Saturday morning breakfasts
3 would be the more norm.
4 Q What sort of things would you discuss during those
5 lunches?
6 A Sometimes we discussed the projects that we just talked
7 about that were my projects, and it grew over a period of
8 time that we discussed his projects and things that he
9 was involved in, and oftentimes he would ask me about
10 those projects. Often or sometimes he would bring in
11 papers, closing papers or leases or different things and
12 say, take a look at this, what do you think, and I'd
13 eyeball it and go through and give him my impressions.
14 Q We won't go through all of these, but was there some
15 Spokane property that you went through some process?
16 A That was farther away, but he invested in some Spokane
17 properties, subdivided and sold that off.
18 Q Had he bought and sold some real estate contracts as
19 well?
20 A Yes. There were over the years several. I remember one
21 of the first ones back in the '70s a broker had a number
22 of contracts that he wanted to discount and so we -- he
23 would ask me, I'd give him my input as to whether they're
24 primary, secondary, green, seasoned, security behind
25 them, anything I might know about the people who were

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1 selling them who were on the contracts.
2 Q Did he discuss with you during these meetings the dry
3 cleaners that he bought at Gig Harbor for his brother?
4 A Yes, we went through that, the buying of it, how it was
5 structured. And I recall going over there one Saturday
6 and seeing Mr. Hamilton in a tank top scrubbing shirts,
7 which was not typical of his character, let's put it that
8 way.
9 Q You physically went and visited that?
10 A Yes.
11 Q Did you discuss with him his relationship with Mr. Huss,
12 an attorney?
13 A Yes.
14 Q Did you review with him in a similar manner investments
15 in a travel agency?
16 A Yes.
17 Q Did you go over with him some Cabins at Lake Y?
18 A Y Lake, he owns two cabins on Y Lake. One is primarily
19 his. When I say his cabin, the other he purchased for
20 his children's use. That way they didn't have to all
21 stay with him.
22 Q Were there problems with that property?
23 A Yes.
24 Q Drainage, that sort of thing?
25 A Neighbor's drainage.

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1 Q Did you discuss with him a company called Sound Escrow?
2 A Sound Escrow Management was with Chris Huss. That was
3 an escrow software company where he -- I think it was
4 developed by somebody else, but it was primarily
5 marketing escrow software, and I had done some fair
6 escrow work and so I at least had some outside expertise
7 on how it would or should or could work.

8 Q Did you discuss with him the construction company he got
9 into called Pacific Energy Resource?

10 A Yes. He started a small company. His son owns a
11 Fircrest fireplace shop, and in that process, they sell
12 pellet stoves, glass inserts, glass stoves. It was one
13 thing to sell them, but they didn't have the capability
14 of installing them, and so he started a small company
15 whose primary purpose was to install and service those
16 sales.

17 Q Did you go over with him the sale and operation of the
18 fireplace shop itself?

19 A To a very minor extent, not really. I represented
20 another fireplace shop and I was afraid of a conflict so
21 I stayed away from that.

22 Q Did you ever discuss your work with him in connection
23 with the Presto log company?

24 A Yes. He was a primary financier of a Presto log company
25 that was in financial straits and efforts to get that

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1 turned around and back on track.

2 Q Okay. What about a condo at Lakewood?

3 A Yes, I think, that was one where his, I can't remember if
4 it was his son or daughter or somebody purchased it, and
5 I went out and I looked at it, I looked at the condo
6 documents, and I gave him at least my impressions
7 relative to not just what the words say on the paper but
8 how they actually operate, because you can get into
9 condos and some of them can be great and some of them can
10 be terrible depending on the relationships of the people
11 in the association and how it works.

12 Q And finally on my list, what about a video shop with a
13 son-in-law?

14 A That was the Stardust or Starburst Video in the Green
15 Firs Shopping Center which he purchased for actually his
16 son-in-law's operation. Blockbuster moved in across the
17 street, lease came up, rent went up, business done.

18 But over the period of time there were a whole
19 series of discussions about strategic steps to take and
20 what had gone on.

21 Q Were there other thing that you would also talk about
22 other than the ones we have identified?

23 A In the '80s he was active with another partner, buying
24 and selling a number of apartment complexes, and those I
25 would go through. He would tell me about them,

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1 sometimes they were buying partnership interests,
2 sometimes they were buying them in different
3 configurations, and I went through a lot of those with
4 him.

5 Q Okay. In addition then to the investment sorts of
6 things you went through with him and these sort of
7 consultation kind of things we talked about, did you also
8 begin to socialize more with the Hamiltons?

9 A Yes.

10 Q What sort of things would you do with the Hamiltons?

11 A As my former wife indicated yesterday, we would go out to
12 lunch or out to dinner a couple times of year as
13 couples. Once a year I would take Mr. Hamilton to a
14 Husky game; I have season tickets. Occasionally I would

15 go maybe to Seahawks games; the bank would have
16 tickets. Usually just with other customers. Not every
17 year, but occasionally we had parties at our house,
18 Christmas type gatherings, they were always included.
19 He was included in my victory party after the election.
20 He was the backup driver in case there was a real fire
21 and my son and daughter-in-law didn't get the fire truck
22 ride from the church to the reception. He went to my
23 other son's reception. Used to be Bash in Tacoma, which
24 I think is similar to Pancho in Seattle, but it's a
25 charitable auction affair. He always had a pre-party

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1 and then going to that. My then wife and myself were
2 always included in those occasions.

3 Q At some point did you come to perceive that the
4 relationship had changed from that of a banker and
5 borrower or customer to some other sort of relationship?

6 A It had evolved from a straight business relationship to a
7 friendship with a mutual respect for each other's input
8 and ideas.

9 Q Well, in '92 and early '93 it had developed to the point
10 that you were prepared to discuss with him your personal
11 relationship with your wife, for example?

12 A Yes.

13 Q Well, the question in this case, it would seem to me,
14 Your Honor, is why did you, when Mr. Hamilton made the
15 offer to pay the Cadillac payments, why did you accept
16 that offer?

17 A I have given a lot of thought to that. Initially I
18 resisted, I said no, as I think I indicated earlier. I
19 had done a lot for him and with him and he had been very
20 successful in his endeavors. I knew that the amount was
21 in his world not a big amount. I knew there were no
22 strings attached and I knew that for certainty from our
23 relationship. I knew that he would never appear in
24 front of me in where I was going and what I was doing.
25 And his insistence was such that it would have been an

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1 affront to him if I had pursued saying no any harder or
2 longer.

3 Q Your Honor, did you take that payment, those car
4 payments, as a pay-off, as has been alleged here, for
5 somehow reducing or impacting price reduction in
6 connection with the bowling alley?

7 A I guess the question could be phrased better, was I for
8 sale to Mr. Hamilton, and the answer is absolutely not.

9 MR. BULMER: Thank you.

10 MR. TAYLOR: Could we approach for a brief
11 side bar?

12 (Discussion had off the record.)

13

14 CROSS EXAMINATION

15 BY MR. TAYLOR:

16 Q Good afternoon, Your Honor.

17 A Good afternoon.

18 Q You testified this morning that in your opinion Bill
19 Hamilton was a man of integrity. Do you recall that?

20 A Generally, yes.

21 Q Okay. Is your opinion changed by the fact that when I
22 subpoenaed him for deposition two weeks ago, he asserted
23 a fifth amendment privilege?

24 MR. BULMER: Objection, lack of foundation.

25 Q Does your opinion change in light of the fact --

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GRANT ANDERSON/Cross-Taylor

1 JUDGE BROWN: Excuse me. Overruled.

2 Q Does your opinion change, Your Honor, in light of the
3 fact that two weeks ago when I subpoenaed him for a
4 deposition, he asserted a fifth amendment privilege
5 against self incrimination in order to try to avoid being
6 deposed?

7 MR. BULMER: Objection. Lack of foundation,
8 hearsay. There is no proof in this case that he did
9 that. There is no foundation to show that two weeks ago
10 -- counsel has no basis to stand here and say in view of
11 the fact that this happened. He has established no
12 foundation for that basis. He is relying on extrinsic
13 evidence which has not come before this panel.

14 JUDGE BROWN: Objection will be overruled.

15 Q Does that change your opinion, Your Honor?

16 A No.

17 Q Does it change your opinion to know that Mr. Hamilton is
18 the subject of a federal grand jury investigation
19 involving federal banking offenses; does that change your
20 opinion as to his integrity?

21 MR. BULMER: Objection. Lack of foundation
22 and there is no proof that he is the subject of a grand
23 jury investigation.

24 Q Does that change your opinion as to --

25 MR. BULMER: I get a ruling.

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1 JUDGE BROWN: Objection will be overruled.

2 Q (Continuing By Mr. Taylor) Does that change your opinion
3 as to his integrity, Your Honor?

4 A No, it does not.

5 Q Does the fact that he is the subject of an investigation
6 involving violations of 18 U.S.E. 1341 mail fraud, does
7 that change your opinion?

8 A I don't even know what U.S. 1843 is.

9 Q Does that change your opinion?

10 A No, it does not.

11 Q Does the fact that he is involved in investigation of a
12 conspiracy to do fraud to the United States of America,
13 does that change your opinion?

14 MR. BULMER: Objection, lack of foundation.
15 Where is the proof that he is involved in a conspiracy,
16 that he is involved? No foundation.

17 MR. TAYLOR: I can make the record if I need
18 to, Your Honor.

19 Q Does that change your opinion?

20 JUDGE BROWN: The objection is overruled.

21 A No.

22 Q Does it change your opinion to know that Sound Bank is
23 under review for federal banking offenses?

24 A No.

25 Q Interest skimming?

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1 A No.

2 Q Man of integrity, Mr. Hamilton?

3 A Yes.

4 Q Very well. You testified, Your Honor, before the break
5 about a conversation you had with accountant McKendrick,
6 was it?

7 A Metternik.

8 Q That was in early 1994. That's what I wrote down.

9 A Yes. Could have been late '93, early '94, but right in
10 there.

11 Q And you testified that you went there to find out if
12 gifts were taxable?

13 A Mr. Metternik was my then or had been my accountant for a
14 period of time. I didn't go for that purpose. I went
15 for my '93 -- preparation of my '93 tax return.

16 Q In the course of that conversation, did you discuss
17 whether gifts were taxable?
18 A Yes.
19 Q You told him the Cadillac payments were a gift?
20 A I don't know if I said Cadillac payment, but I said, yes,
21 payments were a gift.
22 Q Okay.
23 A In my estimation.
24 Q And he told you those gift payments were not taxable?
25 A That's what he advised.

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1 Q Okay. Around the time of your divorce, Your Honor, did
2 you have a conversation with your wife about the tax
3 implications of the Cadillac?
4 A I don't recall.
5 Q Didn't she express concern that the payments were
6 taxable?
7 A Yes, she did express concern, that she was looking under
8 every rock at that juncture, yes.
9 Q Do you recall this conversation then?
10 A Do I recall it with specificity, no.
11 Q When she expressed concern, you didn't respond, well, no
12 they're not taxable because they are a gift, did you?
13 A I don't recall specifically my response. I said I'll
14 take responsibility for them and whatever we resolved as
15 to taxes is whatever we resolved with her lawyer and in
16 the pleadings.
17 Q In fact, Your Honor, you agreed to pay any taxes on the
18 Cadillac; you told her, "I will pay any taxes," didn't
19 you?
20 A Is that in my final pleading decree or settlement
21 agreement?
22 Q I'm just asking what you remember, Your Honor.
23 A What I remember is I said I would be responsible for
24 those. There was talk about taxes and we put in --
25 whatever the tax language was in the final settlement is

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1 what came down, is what was resolved.
2 Q And you and your wife were worried about taxable income
3 on the Cadillac, quote, coming back to haunt you, weren't
4 you?
5 A She was more concerned than I was.
6 Q Okay. And ultimately you agreed that you would accept
7 liability for taxes on the Cadillac payment, didn't you?
8 A I don't recall that that's what my resolution in my
9 dissolution says. If you have it, I will read it.
10 There's a paragraph relative to whose responsible for
11 taxes under what circumstances and that's -- but I can't
12 tell you what it says.
13 Q Why don't you take a look at page 88 of your deposition,
14 please, page 88 line 16.
15 "Were there any other concerns that she, your former
16 wife, expressed about the Cadillac?"
17 Answer: "Oh, she might -- I'm going back right now
18 -- she might have expressed an income tax concern."
19 Question: "In what respect?"
20 And you answered: "Whether there was taxable income
21 that could have come back later to haunt you and she
22 would be stuck with a portion of it or not."
23 Actually, I started at the wrong place, Your
24 Honor. Let me begin again. I should back up one
25 question.

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1 Line 10. "When you say take that out of the
2 equation, how do you mean that?"
3 Answer: "Just exactly what I said. The Cadillac

4 went in at full value in our negotiations or relatively
5 close thereto, and there was no deduction for any
6 obligation on the other side, on the debit side of the
7 deduct side."

8 Question: "Were there any other concerns that she
9 expressed about the Cadillac?"

10 "Oh, she might -- I am going back right now -- she
11 might have expressed an income tax concern."

12 "In what respect?"

13 Answer: "Whether there was taxable income that
14 could have come -- could have come back later to haunt
15 you and she would be stuck with a portion of it."

16 Question: "What did you say?"

17 "I think I said -- frankly, I don't fully
18 remember. I think I said I will take responsibility for
19 that someplace in here, if I were to recall, if that were
20 to come to be."

21 A If you will allow me to read the next one, I said --

22 Q Please.

23 A I think as I look at the language here, and we were
24 looking at the language of the settlement, it is on -- we
25 ended up, let me see, looking back at the letter. That

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1 was a letter that reflected that language. There were
2 negotiations going on and we ended up where we ended up
3 after the negotiations.

4 Q And you're speaking about the part of the decree that
5 says each party shall bear tax liability?

6 A I think so.

7 Q Okay.

8 A Again, I haven't seen that decree for a while, so --

9 Q When you were having this conversation with your wife and
10 she expressed concerns about income taxes on the
11 Cadillac, didn't you tell her you had gone to accountant
12 McKitrick and he said it's a gift and there's no taxes?

13 A I don't -- I do not recall that. I don't know what I --
14 I don't recall specifically the conversation.

15 Q Okay. Now --

16 A Metternik.

17 Q Metternik, I'm sorry. Commissions, you knew commissions
18 were taxable, right?

19 A Yes.

20 Q Now, you say in this conversation with accountant
21 Metternik; you previously testified that you had this
22 conversation with accountant Iverson?

23 A No, I may have subsequently had a conversation with
24 Iverson. I had the conversation -- I went back and
25 looked at my '93 return, I see that it had been prepared

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1 or at least initially started with Mike Metternik. I
2 went to Mr. Iverson for my '94 return. I had known him
3 from the bowling alley business. Mike Metternik passed
4 away right about tax time in '94, requiring an extension
5 and a late filing by somebody who took over his practice,
6 but I had had the discussion with him prior to that.

7 Q Now, you recall accountant Iverson's testimony that he
8 had a conversation with you sometime in 1996 after these
9 events about the Cadillac had begun to come to light and
10 you went to him and asked him were these payments
11 taxable. Do you recall things the same way as
12 accountant Iverson?

13 A I do not recall the timing on it. I recall the first
14 one, a conversation, and I may have had a subsequent
15 conversation with Iverson. I do not specifically recall
16 the conversation, but I would think that would be
17 reasonably accurate.

18 Q Let me change gears.
19 You testified this morning that you may have had
20 some involvement in the bowling alley sale after December
21 31, 1992.
22 A Depends on when you say some involvement. Generally, I
23 believe I responded to questions that were posed to me by
24 Mr. Fisher and Mr. Hoefel, working with them, and perhaps
25 by Kevin Iverson.

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1 Q Perhaps you went to a meeting?
2 A And perhaps I did.
3 Q Maybe one or two?
4 A When you say two, I don't think so. There's one that
5 appears to be documented, and I have no independent
6 recollection of it, but I expect I was there.
7 Q Okay. So you may have had some conversations, it's
8 possible; you don't recall one way or the other the
9 extent of them, is that it?
10 A They were nothing that was memorable, let's put it that
11 way.
12 Q Okay. Did you ever say, I had no involvement whatsoever
13 in the sale after 1992 with the exception of signing some
14 documents? Does that accurately reflect your
15 recollection?
16 A You have to show me where I said it in here, but is it in
17 my deposition someplace?
18 Q Well, I want to know, is that what --
19 A You show me where you think I said it and I'll tell you
20 if I did, sir. That I probably did, but, you know --
21 Q Page 18, line 17. See where it says, "But I had no
22 participation whatsoever in the sale after 1992 with the
23 exception of signing some documents."
24 A That's what I said.
25 Q Okay. Was it true?

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1 A As I look, I have no independent recollection, and when I
2 made that statement, I believed it to be true, I have no
3 independent recollection of any conversations subsequent
4 to that time to this day. As I have looked at other
5 documents, I expect that there were some conversations of
6 a minimal nature and perhaps one meeting, but I have no
7 independent recollection of them, and what I said there I
8 believed when I said it.
9 Q Okay. You believe things might be different now or is
10 your memory different?
11 A When you say "different now," my memory is still the
12 same, I have no independent recollection.
13 Q Okay. Let's talk about the Surfside. That was the
14 project down at Ocean Beach?
15 A Ocean Park.
16 Q Ocean Park, I'm sorry. And that was a hotel or
17 something that had been turned into time shares, is that
18 a good way to describe it?
19 A No, it was built as a condominium complex to begin
20 with. It changed from straight condominiums. I
21 believe the next declaration made it to months and the
22 final declaration made it to weeks, because it just
23 didn't market.
24 Q Okay. Now, ultimately, then, changed from a condo to a
25 time share?

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1 A Yes.
2 Q And the estate owned a substantial number of time share
3 units in the Surfside?
4 A Yes.
5 Q And you were working for some period of time to line up a

6 buyer?
7 A Yes.
8 Q You wanted to sell the estate's interest to someone else
9 and get the estate out of the business?
10 A Any way I could do it, yes.
11 Q Okay. And you spent a lot of time doing that, working
12 on that?
13 A Yes.
14 Q And you billed the estate for your time?
15 A Yes.
16 Q And you billed them thousands and thousands of dollars
17 because it was hard work, long work?
18 A Long work, it was long distance, there was staff. You
19 understand, the titles in many instances were in terrible
20 shape. Mr. Hoffman would sell a lot of units on
21 contract, taking a minimal down, and the contracts would
22 go sour and he would not take time to clean them up. He
23 would just say I have got a lot in inventory, we'll just
24 leave them and move on to the next one. So I spent much
25 time at Pacific County Title, working on cleaning up the

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1 titles so I could sell any of them or all of them.
2 Q And that was all at the expense of the estate?
3 A Yes.
4 Q Okay. And you ultimately sold a large number of units
5 to Trend West?
6 A Yes.
7 Q And right after that some other people who individually
8 owned units learned that you had sold on behalf of the
9 estate or that you had sold these time shares to Trend
10 West?
11 A Yes.
12 Q Okay.
13 A I believe so.
14 Q And you then sold their units to Trend West?
15 A Yes.
16 Q You were the broker?
17 A Yes.
18 Q And you charged them commissions?
19 A Yes.
20 Q \$5,000 a piece?
21 A I don't remember the number, sir.
22 Q Total of approximately \$45,000?
23 A That may have been the number.
24 Q But for your work for the estate and for which you billed
25 the estate, would you have been in a position to

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1 immediately turn around and be their brokers?
2 A I may or may not have.
3 Q Okay. These people for whom you sold units, did you
4 bill the estate for the time you spent working on selling
5 their units?
6 A I did not. In our deposition, though, you pointed out,
7 I can't remember whether it was three or four hours or
8 some little amount that did get through on my time sheets
9 which was in fact billed to the estate which should not
10 have been.
11 Q Okay. It was a mistake?
12 A Yes.
13 Q Now, continuing forward with the time shares and the
14 Surfside, the bowling alley sold December 4, 1992.
15 About six days later did several members of your law firm
16 purchase time share units from the estate through you?
17 A Yes.
18 Q About how many?
19 A I'm going to say 20, I mean, it could have been give or

20 take.
21 Q You have talked at length about the closing that took
22 place on December 4, 1992?
23 A Yes.
24 Q And you testified this morning you were in a hurry to get
25 that \$100,000 of Bill Hamilton's, you were in a hurry to

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1 get that money for the estate?
2 A I would say hurry I'm not sure is the right word, but,
3 yes.
4 Q Anxious?
5 A Anxious, yes.
6 Q The estate needed the money?
7 A I thought it was good all the way around. It locked in
8 the deal, it gave the estate the money, it was
9 non-refundable.
10 Q Why did the estate need the money at that time?
11 A At that juncture I was probably talking to the bank about
12 releasing the personal guarantee of Mr. Hoffman on the
13 corporations and it was utilized to pay down the
14 principal on the underlying note and obligation.
15 Q Wasn't it just about three weeks later, three weeks after
16 you received, maybe four weeks, four weeks after you got
17 Mr. Hamilton's \$100,000, put it in the estate, that you
18 submitted your fee petition to the estate?
19 A It would have been at the end, first of January or
20 thereabouts, yes.
21 Q That your fee petition was for just about \$100,000?
22 A Yes.
23 Q Is that why you were in a hurry to get the money from
24 Mr. Hamilton for the estate?
25 A No.

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1 Q But for that money from Mr. Hamilton, the estate wouldn't
2 have been able to pay your fees, would it?
3 A It was a time when it was time for the gate to close, the
4 estate to be done and to turn it over clean with the
5 trustee with an approval by the court and the source of
6 funds, whether it was that or other sources initially, it
7 was to pay the bank, to get the release from the, as part
8 of the negotiations for getting the release from the, the
9 partial release.
10 Q Don't we know that the estate didn't have any money and
11 that's why you had to agree to reduce the amount of the
12 note instead of writing a check to Mr. Hamilton for the
13 fall cash flow?
14 A Ultimately that's what developed.
15 Q Right around the same time period?
16 A It was later than that, I believe it was February, March,
17 we talked about that.
18 Q Let's talk for a moment about the fee petition you
19 submitted to the court. That was in December of 1992
20 also, early January?
21 A Yes.
22 Q Okay. You applied for \$112,000 in fees?
23 A Yes, sir.
24 Q Okay. You represented that that application for
25 \$112,000 represented all the attorney time spent on the

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1 estate. Do you recall that?
2 A If that's what the petition says, then -- I don't have it
3 in front of me, but that would sound accurate.
4 Q In fact, you represented in your affidavit that the total
5 attorney time expended in this matter, total attorney
6 time expended in this matter totals 866.12 hours. If
7 you want, you can look to Exhibit 4 to your original

8 deposition that's up there.
9 (Pause in the proceedings.)
10 A Can you tell me where you're looking?
11 Q I've got it at line 18 on the first page.
12 A Yes.
13 Q Okay. You told the court that was the total attorney
14 time you had spent on the matter and you wanted to be
15 paid, right?
16 A Yes.
17 Q The management fees that you had been paid all along,
18 those were time spent by attorneys such as yourself?
19 A Yes.
20 Q And you billed at your attorney rate?
21 A Yes.
22 Q And Mr. Hoefel billed his attorney rate and Fisher and
23 Robin Koppe and everybody?
24 A Yes.
25 Q When you told the court that the total attorney time
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1 expended on the matter totals 866 hours, did you tell the
2 court about the hundred odd thousand you had already been
3 paid for attorney fees?
4 A Those were for management.
5 MR. BULMER: Objection, mischaracterization.
6 He didn't say he had been paid \$100,000 for attorney fees
7 already.
8 MR. TAYLOR: Management fees, call them what
9 you will.
10 MR. BULMER: Call them by the right name.
11 JUDGE BROWN: Go ahead. Mr. Bulmer, make
12 your objection, please.
13 Q (Continuing By Mr. Taylor) Did you tell the court about
14 the fees your firm had already been paid?
15 A No.
16 Q Now, I asked you in your deposition -- we were talking
17 about the fee application. We were talking about the
18 management fees and the attorneys' fees, and I asked you
19 whether once the court approved your fee petition, did
20 you reduce the amount you were actually paid by the
21 amount you had already been paid for the management
22 fees. Do you recall that?
23 A Yes.
24 Q And you told me, yes, you did?
25 A Yes.
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1 Q And that wasn't true, was it?
2 A That was -- to the best of my knowledge at the time that
3 was my recollection. When I left that deposition, I
4 went back to my old office. The secretary said, you're
5 right, my partner came in and said, no, you're wrong, we
6 did it this way. We then verified on the books that I
7 had been wrong and you were notified, I believe, the next
8 day by Mr. Bulmer within a day or two that I was mistaken
9 when I gave that.
10 Q Can you show me correspondence with that notification?
11 A I cannot.
12 Q We touched briefly on the issue of signing documents as
13 the president of companies in 1993. Let's talk about
14 Hoffman-Stevenson in particular. Isn't it true that the
15 reason you stayed on as president of Hoffman-Stevenson is
16 because Mr. Fisher didn't want to be president of
17 Hoffman-Stevenson?
18 A Initially, that's right.
19 Q And that's because he wasn't comfortable signing
20 documents on deals that you had negotiated with Bill
21 Hamilton, isn't it?

22 A No, I think it was mostly relative to deals, and it could
23 have included Bill Hamilton, I shouldn't be so quick on
24 the no, but it did mostly deals done at Surfside relative
25 to the operation of the restaurant, the tertiary

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1 treatment plant, the water. I think that about covers
2 it. And it could have included the bowling alley.

3 Q Well, it did include the bowling alley among the
4 documents he didn't want to sign, right?

5 A In doing his responsibility as a trustee, he wanted to
6 make sure that I looked at them to make sure that they
7 are what he thought they were and that I thought they
8 were when they had been arrived at.

9 Q Didn't he tell you he didn't want to sign them and he
10 wanted you to sign them?

11 A I don't know that he ever used that language.

12 Q In substance?

13 A In substance, he says, I'm willing to be trustee, I'm
14 willing to be attorney for the trustee, I'm willing to
15 take all that responsibility; I want you to stay, I would
16 like you to stay as president of the corporations.

17 Q And to sign the documents and make sure that the deals
18 were the deals that you made before you went on the
19 bench?

20 A Yes.

21 Q Okay. You testified about the conversation where
22 Mr. Hamilton offered to make the gift payments, right?

23 A Yes.

24 Q And you resisted strongly?

25 A I resisted.

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1 Q You didn't want them?

2 A I would say, you know -- when you say I didn't want them,
3 you're putting words in my mouth. I said I resisted.

4 Q You said, no, you wouldn't take the payments?

5 A I said that's not necessary, you don't have to do it,
6 it's absolutely not necessary. Did I affront him and
7 say, hell, no, I did not.

8 Q But he persisted?

9 A Yes.

10 Q Did you continue to say, no, it's not necessary?

11 A To a point, but, obviously, I said yes, ultimately.

12 Q Okay. Wasn't this just a very brief quick conversation
13 standing out on the sidewalk outside the bank?

14 A Oh, I think it was a little more than that. It could
15 have taken place out on the sidewalk or in his office.

16 Q Didn't it go something like, "I want to make some
17 payments for you, there's no obligation, I have no reason
18 to, but I want to make some," and you said, "Are they a
19 gift," and he said, "They are a gift," and he said, "You
20 know, I'll make some and just quit and I'll let you know
21 when they're going to be made," and you said, "Thank you
22 very much," and that was about it, that was literally
23 about the end of it? Is that how the conversation went
24 or was it more involved?

25 A I think you're reading from my deposition, if you show me

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1 the page.

2 Q I am just looking for what you recall today.

3 A What I recall today was not too dissimilar from what you
4 said, and that may have been what I said in the
5 deposition.

6 Q Okay. We talked briefly about public disclosure forms
7 this morning.

8 A Yes.

9 Q Or you talked with your counsel?

10 A Or sometime, yes.
11 Q When you paid off, allegedly gave Mr. Hamilton \$8,000
12 cash to pay him off, that's because you felt at that
13 point you owed him the money?
14 A Yes.
15 Q Short-term loan, in effect?
16 A Did I owe him the money?
17 Q Or his company, whoever.
18 A He said "I paid off your loan" and I paid it back to
19 him. I guess if you want to call it a one-day or
20 one-week loan, I never characterized it or even thought
21 of it that way. I didn't, frankly, know he had done it
22 until I got back.
23 Q Okay. Didn't he tell you, "I'll pay it off and when you
24 get back, you pay me"?
25 A I don't recall that as the conversation.

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1 Q Now, you talked about, well, you didn't get a receipt
2 because you didn't want to offend Mr. Hamilton when this
3 \$8,000 went back and forth?
4 A Yeah.
5 Q This was right around the time of your divorce?
6 A Yes.
7 Q And you talked this morning about you were concerned
8 about your soon to be ex-wife's lawyers poring through
9 all your papers?
10 A Yes.
11 Q So you wanted to have everything in order?
12 A When you say in order --
13 Q You wanted everything documented so --
14 A I did not want --
15 MR. BULMER: Objection. The witness should be
16 allowed to answer the question before he is interrupted.
17 JUDGE BROWN: Go ahead and answer.
18 A I had community funds that were being scrutinized
19 carefully, all the income, whether it was salaries,
20 draws, rents received, and I was accountable for all of
21 those. I had taken the obligation for the Cadillac out
22 of the community aspect of it, saying I would be
23 responsible for that no matter what happened. If
24 Mr. Hamilton had taken care of all of it, it wouldn't
25 have made any difference. As it is, he stopped.

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1 Sometimes you win, sometimes you lose. I came up short
2 on that one. Was it worth making an issue, no.
3 Q Didn't you want a receipt in case that aspect of things
4 was carefully scrutinized?
5 A I guess I never thought of it in terms of needing a
6 receipt for that.
7 Q Now, you and Bill Hamilton had already talked at length,
8 I understand, about your divorce, what was happening and
9 so on and so forth?
10 A When you say at length, we discussed aspects of it, yes.
11 Q Okay. And he knew getting this Cadillac situation
12 changed was important to you in your divorce; you talked
13 about it with him, didn't you?
14 A About getting it changed?
15 Q Getting it paid off.
16 A Oh, no, I don't think so, not that I recall.
17 Q Exhibit 21, please. You testified this morning that
18 this was prepared expressly for the regulators?
19 A When you say expressly, I think primarily, yes.
20 Q And that's because they told you that you couldn't submit
21 an agreement where a closing date had already passed and
22 there had been no closing, right?
23 A There's two things, as I think I indicated, I was made

24 aware of. One is that they needed a finished corporate
25 name as opposed to one that we formed and, two, it could
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1 not be, the closing date could not have passed.

2 Q Okay. But, in your mind, the deal had already closed
3 by --

4 A When you say closed, we agreed to effective transfer of
5 possession, but the formal closing did not occur until
6 after these conditions were met.

7 Q So that was transfer of possession, transfer of
8 management, transfer of everything except on paper,
9 right, by September 19th?

10 A Yes.

11 Q Did you feel when you submitted -- when the business and
12 lease agreement was submitted to the licensing
13 authorities saying the deal hadn't closed yet and
14 indicating that things would be transferred in the
15 future, did you feel that that was all misleading?

16 A In my mind, no. All of the money except for the
17 management, and you can say whether it was good or bad
18 management perhaps, but was all still in Pacific Lane's
19 control and checkbook, and if things didn't work out, he
20 would have just -- it would have just been down the road
21 and business as usual and we would have been right in the
22 same place we were in. This is one of their requirements
23 and we complied with that requirement to get the
24 transaction finished.

25 Q And they want to know when a deal closes, don't they,

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1 gambling authorities and liquor authorities?

2 A It comes up all the time, it's a chicken and an egg thing
3 in the business. I mean, most or a good portion of the
4 value is in those licenses and the ability to have them
5 for the new owners.

6 Q Let me change gears briefly. You indicated this morning
7 you thought you reviewed the Code of Judicial Conduct to
8 determine that it was okay to stay on as president?

9 A That's my recollection, that I had that understanding.

10 Q You got that understanding from reading the code?

11 A At this juncture, I don't have an independent
12 recollection of precisely what I did, whether I read the
13 code, whether I went to a judicial school and had it gone
14 through. I would say, yes, I looked at it, I'm sure I
15 did that.

16 Q You testified this morning that you read the code, I'm
17 sure?

18 A Yes.

19 Q I want to understand that.

20 A I'm sure I did.

21 Q And you concluded that it was okay to stay on as
22 president?

23 A I don't recall the language, but said something about a
24 reasonable time to wrap up affairs of estates.

25 Q All right. Did you ever look at the code to see if it

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1 was acceptable to take \$800 a month from Bill Hamilton?

2 A I cannot recall that I did.

3 Q I want to conclude, Your Honor, with kind of the focus of
4 this case, the deal. You and Bobby White, I think it
5 was Bobby White, bowling alley night manager?

6 A Billy White.

7 Q Billy White, I'm sorry. Testified about an owners
8 banquet that occurred on August 4th of 1992, SeaFair
9 weekend.

10 A I don't recall the weekend. He's the one that recalled
11 that.

12 Q Early August 1992.
13 A My memory is it was prior to the bowling season and
14 that's all I can --
15 Q In that time frame?
16 A Sometime.
17 Q All right. Bill Hamilton was announced as the owner of
18 the facility at that meeting?
19 A I introduced him as the person who would be taking over
20 at that meeting. Whether I used the word owner or he
21 would be the person responsible, I can't tell you the
22 exact language that I used, but I did introduce him at
23 that time, yes.
24 Q Well, I just want to be clear. Did you say he was the
25 owner?

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1 A I don't know, sir.
2 Q Did you believe then he was the owner in early August?
3 A No, I did not.
4 Q All right. You testified this morning that the fall
5 cash flow going to Mr. Hamilton was what you called a
6 deal point?
7 A Yes.
8 Q And you said a deal point is a, quote, make or break
9 point, right?
10 A Yes.
11 Q So this cash flow was central?
12 A Yes.
13 Q Critical to the deal?
14 A As I reflect on it, yes, it was.
15 Q Didn't you tell us Monday, though, when you testified
16 that this cash flow agreement was something more like a
17 chandelier in a house and, well, gee, you thought you
18 might get the chandelier, but you go in the house after
19 you bought it and the chandelier is gone?
20 A I might have used that analogy; in fact, I did use that
21 analogy now that I think about it.
22 Q Well, which was it, was it a deal point, make or break,
23 or was it a chandelier in a house you buy?
24 A No, it was a deal point.
25 Q Exhibit 21, please.

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1 A That's where we're at, I believe.
2 Q Okay. I think we established, and I'm not going to beat
3 a dead horse, I think we established that Exhibit 21 does
4 not say anything about any cash flow agreement, does it?
5 A No, it does not.
6 Q You told us Monday, though, that Exhibit 21 accurately
7 reflected the essence of your agreement. Do you recall
8 that?
9 A No, I think you have the wrong document. I think I made
10 that statement about Exhibit 20, sir.
11 Q Exhibit 20, all right. You're not saying that the cash
12 flow agreement appears in Exhibit 20, are you?
13 A No. It does have a close by September 1, which had been
14 one of the negotiated items going back from the draft,
15 which was Exhibit 19, and specific changes.
16 Q Well, let me ask you point-blank. Exhibit 20, the
17 essence of your agreement, does it say Bill Hamilton's
18 entitled to cash flow as of September 1?
19 A No, it does not.
20 Q Did Exhibit 20 accurately reflect the essence of your
21 agreement?
22 A When you say the essence and the understanding, the
23 essence, as I determined it, was the corporation had not
24 been formed but it had the terms, it had the option
25 arrangement, it had the closing date, it had the

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1 conditions. That was the essence of the agreement.
2 Q But it didn't have the make or break point, did it, Your
3 Honor?
4 A Well, it did in terms of September 1, 1992. Maybe it
5 was inarticulately put down, but that was the essence.
6 Q Let me see if I understand the essence of this deal
7 then. At close he was supposed to pay -- now we are
8 moving forward past September 1 and we haven't closed.
9 At close he was supposed to pay \$50,000 for the bowling
10 alley operation, right, and sign a note for 250?
11 A Okay, for the operation. He actually paid 100,000, they
12 all went together. You didn't do it in parts, it all
13 went together, sir.
14 Q Well, he didn't buy the bowling alley building?
15 A No, but he bought the lease and the option which he
16 signed the lease before the closing actually.
17 Q Okay. Let me see if I understand this. Whether he was
18 going to pay \$50,000 in cash for the operation or 50 for
19 the operation and 50 for the option, by then it was a
20 situation where, as I understand the deal, and you tell
21 me if this was right, he was going to hand you \$100,000
22 and you were going to turn around and hand him \$100,000;
23 he'd end up with the bowling alley operation, right?
24 A I had no idea what he would end up with. He was entitled
25 to the cash flow or whatever the operational money was

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1 for September 1st forward as a cyclical part of the kitty
2 in the business.
3 Q And you knew from your three years running the estate
4 about how much money was going to be generated during
5 that fall cash flow period, didn't you?
6 A I probably had an idea, yes.
7 Q So, again, the deal was in essence he hands you \$100,000,
8 you hand him \$100,000, and he gets the bowling alley
9 operation; is that a fair summary of it?
10 A That's not a fair summary.
11 Q Did it happen some different way?
12 A I did not know where the cash adjustments were, that was
13 all his money, because the deal was effective September
14 1st. He paid \$100,000, which I believe was from his
15 line of credit or borrowed or someplace. Then the
16 transaction completed. Now, if he would have paid me
17 the \$100,000 on September 1st, if the conditions had been
18 met, the bowling or the estate got the same deal that
19 they would have gotten. They had a price and it was
20 date specific for a million dollars with \$100,000 down.
21 Now, where that went in the line didn't make any -- if he
22 had -- if we use your assumption, he would have gotten it
23 but he would have gotten it at a point where it was all
24 downhill from there and he would have had to pump in
25 another hundred, using round numbers, hundred thousand to

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1 cover the losses that were coming up, which he ultimately
2 did for the off season if you want to call it that.
3 Q Turn to Exhibit 19, please, third page. You were the
4 personal representative of the estate?
5 A Yes.
6 Q Responsible for the estate's assets?
7 A Yes.
8 Q Mr. Hoffman had given you that position of trust?
9 A Yes.
10 Q And you accepted that?
11 A Yes.
12 Q All right. You testified this morning, if we look at
13 paragraph A, that you were the one that crossed out in

14 the deal the requirement that before the deal closes
15 someone goes out to get an appraisal to substantiate the
16 agreed-upon price, you crossed that out?
17 A I think I physically crossed that out after our
18 negotiation, yes.
19 Q And that no longer became a part of the deal, deal point
20 or any part else?
21 A That's right.

22 MR. TAYLOR: I have nothing further.

23 ////

24 ////

25 ////

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1 REDIRECT EXAMINATION

2 BY MR. BULMER:

3 Q You're aware, aren't you, that government agencies can
4 investigate anybody they want to?

5 A Yes.

6 Q Are you aware that government agencies investigate people
7 all the time and it doesn't mean they are either crooked
8 or dishonest?

9 A Yes.

10 Q Even the Judicial Conduct Commission conducts
11 investigations of people which doesn't mean that they are
12 bad?

13 A Yes.

14 Q Are you prone to judge people's integrity based on facts
15 that are ultimately determined by an adjudicative process
16 or by the fact that someone has triggered an
17 investigation?

18 A I am sorry, I lost --

19 Q Do you reach a conclusion about someone's integrity just
20 because they are under investigation?

21 A No. Their integrity is established. It depends on
22 whether you are talking of somebody on the outside or
23 somebody I have dealt with. If I have dealt with them,
24 I judge them on my relationships and the understandings
25 and what I have seen and observed in them, not what

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1 somebody else claims.

2 Q Turn to Exhibit 21. Do you have that, Your Honor?

3 A Yes.

4 Q Turning to paragraph 13 of that exhibit, that's page
5 whatever.

6 A Page 3.

7 Q Okay. Do you see that?

8 A Yes.

9 Q Do you see paragraph 13.a.?

10 A Yes.

11 Q What's required under 13.a. for this deal to go through?

12 A There's the city licenses and a bunch of minor licenses,
13 but the two critical licenses are the gambling license
14 and the liquor license because that generates a good
15 portion of the revenue for the business.

16 Q What would have happened to this deal if the gambling or
17 liquor licenses could not be obtained?

18 A The deal would have flipped.

19 Q And who would have gotten the benefit of the cash flow if
20 the deal had flipped?

21 A The Pacific Lanes.

22 Q But the deal didn't flip?

23 A The deal did not flip.

24 Q Because the contingency was met?

25 A Because the contingency was met.

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1 Q You sold at the end of '92 some units to various members

2 of -- time share units to various persons and friends you
3 knew?
4 A Yes.
5 Q How much were those per unit?
6 A A thousand dollars.
7 Q What kind of value had been established per unit by Trend
8 West?
9 A Trend West was quite a bit less, because they were
10 wholesaled in whole blocks. I had a number of, say,
11 spread-around miscellaneous units. The price of selling
12 time shares is extremely high. I had negotiated with
13 another, I think it was Pacific Resorts or I can't
14 remember, some other time share business. They offered
15 me 500, 550 a week, and I think I got them up to about
16 800 a week. I'm not exactly accurate. And that was
17 all they would take, all I had for 800 a week. And I
18 think I sold them 140, 50 last weeks except for the 20 I
19 sold to my friends for a thousand dollars. Yes, that's
20 right.
21 Q That thousand dollars went to the estate?
22 A Yes.
23 Q And if you had sold them off as a package to this other
24 company, the estate would have gotten \$800?
25 A Yes.

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1 Q Did you take any commissions from any of those?
2 A No. No, those were net of closing costs and everything.
3 MR. BULMER: I have nothing further.
4 JUDGE BROWN: Any other questions on recross?
5 MR. TAYLOR: Nothing further, Your Honor.
6 JUDGE BROWN: All right. Does any member of
7 the Commission have a question for the witness? Miss
8 Reynolds.
9

10 EXAMINATION

11 BY MS. REYNOLDS:
12 Q Earlier in your testimony you made a distinction between
13 what you called a closing for transactional purposes on
14 September 1st and a closing for formal purposes when the
15 licenses were approved. Can you elaborate on this
16 distinction between a closing for transactional purposes
17 versus formal purposes?
18 A I'm not sure I was using the right words. It was for
19 all relative purposes he took over possession and the
20 right to all pluses and minuses as of September 1st was
21 the deal. The closing, it could have been December 4th
22 it could have been October, could have been November,
23 whenever the licenses were approved and the other
24 conditions were met. It just happened it was December
25 4th. At that time the documents were signed and the

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1 estate got the \$100,000. That's the formal signing of
2 the option, the bill of sale, receiving the funds, that
3 is the formal closing.
4 Q I'm used to thinking of closing as being closing and --
5 A Yes, but in the real world out there sometimes there's a
6 closing and there's an adjustment period. And, again,
7 it depends again what the deal is. There's a lot of
8 times people take over an operation at one point and
9 there's a number of conditions that don't get met until
10 someplace down the road and there's adjustments back to
11 make the deal whatever it was.
12 It's not like buying a house. And it often works
13 the other way, too, you know, when you close, you close
14 and one moves out and the other moves in, but maybe
15 somebody stays in as a renter and so you end up paying

16 rent back. I'm not sure that's quite the right analogy,
17 but transactions are all different in the real world.
18 Q Okay. Thank you.

19

20

EXAMINATION

21 BY MS. CAVER:

22 Q I just want to get clear in my mind. In paying off the
23 final payment on the car --

24 A Yes.

25 Q -- was this because as a result of a conversation with
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1 Mr. Hamilton, excuse me, who stated that he did not want
2 to get involved with the divorce?

3 A Initially, yes.

4 Q The initial conversation?

5 A The initial conversation was that - whether it was a
6 reason or excuse - but that's what he indicated, yes.

7 He said, I know your wife, I know you, time to call an
8 end.

9 Q Did you not state -- I mean, earlier he said it was a
10 gift and you recognized it as a gift in paying for the
11 car?

12 A Yes, but there was no time line.

13 Q Why did you feel you had to pay him that final payment?

14 A Because he said --

15 Q Did it become a loan then in your estimation?

16 A I had a loan to the bank and he had been making payments,
17 and up to that juncture he said I am -- because of your
18 marital or break-up of your marital relationship, I think
19 it's time I cease making the payments. And I said,
20 fine, thank you, it's been very much appreciated, or
21 words to that effect.

22 Q But then at that point --

23 A At that point I said I will take care of it when I get
24 back from Arizona, I'll pay it off when I get back from
25 Arizona. When I got back, he said, "I paid it," I said,

FOOT OF PAGE 697

1 "Okay, here's the money."

2 Q Thank you.

3 A Whether I paid it to him or to the bank, it would have
4 made no difference.

5 Q Thank you.

6

7

EXAMINATION

8 BY MS. BRIGHTON:

9 Q Judge, I didn't get the dates on your being a judge for
10 Fircrest. Was this part time or pro tem?

11 A Part time.

12 Q It was part time, and how long did you act in that
13 capacity, up to the time you were sworn in?

14 A Yes. Fifteen years, I think.

15 Q That was until January of '93?

16 A '78 probably through December until the end of the year
17 and I am sure they started somebody at the first of the
18 year, give or take a week.

19 Q And what was the date of the final sale on the Surfside
20 units taken by Trend West, when did you complete that?

21 A There were a number of sales to Trend West. They
22 ultimately bought a total of 25 full units and they
23 started out with -- it was over a series. Some of them
24 were open and clean and available initially, some of them
25 over a period of time I had to trade out, some of them

FOOT OF PAGE 698

1 that had three or four or five weeks out of them, if I
2 could trade those weeks into other units that were
3 already mixed or partially sold to clean them up, I did,

4 and when I did that, then they would buy them.
5 Q When were you through with that, when was that out of
6 your hands and into the trust or wherever it went, when
7 did you finalize the last involvement with Surfside?
8 A The last involvement would have been -- the final one was
9 -- Trend West took all of the big units, that was the
10 big block. Then what I was left with was a lot of single
11 units, single weeks that were within this 48 weeks in
12 each unit. Frankly, I closed those up right at the end
13 of '92.

14 Q Okay.

15 A At the end of the year you had to file a whole new public
16 disclosure statement, you had to have special licensing
17 people on board and looking at the next year, you were
18 looking at a whole substantial capital outlay again just
19 to maintain any sales efforts which were not very
20 fruitful.

21 Q Could we go back to you had stated that you had learned
22 somewhere that you could act for a reasonable amount or
23 you stated what you felt was a reasonable amount of time
24 as president after being sworn in. Did you make any
25 attempt at all, and I might be beating a dead horse here,

FOOT OF PAGE 699

1 did you make any attempt at all to find out what was
2 considered reasonable, maybe from someone that had been
3 on the bench for a while, or did you just have no doubt
4 in your mind at all that you could do this as long as you
5 felt was necessary?

6 A I don't know that I could do it as long as I felt was
7 necessary. It was my judgment on reasonable -- what I
8 am going to tell you I can't give a time or a place. I
9 believe I had a conversation with perhaps somebody from
10 the Commission or staff at a judicial conference or at a
11 judicial training in Olympia which all new judges go
12 through relative to that also, and, as is typical, there
13 was no definitive answer.

14 Q And just one last question. Did your relationship with
15 Mr. Hamilton change after you went on the bench or has it
16 remained the same say up to this point?

17 A It changed in that what I told him has been accomplished,
18 I do not troubleshoot, if that's the right word, I do not
19 review his transactions. Do I know what some of them
20 are, yes, we're friends and we're still friends.

21 MS. BRIGHTON: Thank you, Judge Anderson.

22

23

EXAMINATION

24 BY MR. CLARKE:

25 Q Judge Anderson, just a couple of clarifying questions.

FOOT OF PAGE 700

1 On the sale to Trend West, that was apparently a block
2 that was sold to them, 25 units?

3 A Trend West initially was brought to me very early on.
4 They looked at the project. They did not have need for
5 that much inventory. They, frankly, didn't like what
6 they saw, they passed. I went through several tries at
7 hiring people to market them, to see if I could move them
8 one way or the other. And I, frankly, I was getting at
9 the end of my rope because the expenses were continuing
10 on, the annual maintenance fees, getting them up and
11 paying the taxes. The cost of the sales program is
12 horrendous in time share operations. And I went out and
13 recontacted them, if you will, brought them back, and at
14 that time they had a greater need for inventory, they
15 looked and saw that improvements had been made, that it
16 was perhaps not going to slide into the ocean, and I went
17 down and made a deal with them. And I can't remember the

18 deal at this point, but we negotiated and they said,
19 we'll pay you X thousand dollars per one-bedroom unit or
20 X thousand dollars per two-bedroom unit for the whole,
21 all clean units.

22 Q I took it that was in '92, though, sometime it sounds
23 like, maybe not?

24 A I probably started a little earlier than that.

25 Q Okay. But they eventually, whenever that last sale, it
FOOT OF PAGE 701

1 sounds like it was a block deal, you sold them whatever
2 number, 25 or whatever?

3 A Yeah, I think they ultimately ended up owning 25 full
4 units.

5 Q And the money from that deal, we are trying to get to
6 this, the money from that deal came back into the estate?

7 A Yes.

8 Q Because the trust hadn't been set up?

9 A That's right.

10 Q How much was that, do we know?

11 A At this juncture, no, I do not. And I don't mean to
12 avoid you, but you're going back five, six, seven years,
13 and I just don't know.

14 Q Counsel asked you some questions about fees and your firm
15 charged some legal fees and then, in addition to that,
16 there were these management fees that you talked about.

17 A Yes.

18 Q And, ultimately, what we have come to the conclusion is
19 that the two of those added up to 200-plus thousand
20 dollars?

21 A In that range, yes.

22 Q Okay. Were there outside vendors that assisted your law
23 firm with the estate, and I'm talking about other law
24 firms, were there law firms employed?

25 A The only one that was employed was Eisenhower, Carlson
FOOT OF PAGE 702

1 which I employed to do the federal estate tax return
2 because I thought that was beyond my area of expertise.

3 Q That was going to be my exact -- did they do the 706, the
4 estate tax?

5 A If that is a federal estate tax return, yes, sir.

6 Q And did they do the income tax returns for the estate?

7 A I don't believe so. They may have initially, but I don't
8 believe so. I think they were done by - I can't pull a
9 name - it was George Fisher. George Fisher was a former
10 partner in Knight, Vale & Gregory who did the returns for
11 the businesses, and when he retired, he stayed -- the
12 only account he kept was Mr. Hoffman's account on a
13 personal basis.

14 Q Okay. So we had an accountant?

15 A Yes.

16 Q Do you know what the cost was for the estate tax return,
17 the 706, what you were charged?

18 A I do not.

19 Q Just a background question. After Mr. Hamilton left the
20 bank, he apparently was officing literally next door?

21 A Yes.

22 Q And was he sharing space with Mr. Frind, the accountant?

23 A No.

24 Q Were they in the same physical location?

25 A No, miles apart.

FOOT OF PAGE 703

1 Q We had some testimony about the fax number, he said he
2 was officing there for a short time, at the top it said
3 Gary Frind & Associates. Maybe I misunderstood.

4 A I don't remember the document. I think that was Frind
5 faxing to him.

6 Q He didn't office with that accountant?
7 A Oh, no, they were literally miles apart.
8 Q Okay. When you said you were elected in September of
9 '92s, was it a two-person race?
10 A Yes.
11 Q And so whoever won in mid-September --
12 A Whoever won won.
13 Q So you had the fortune, I guess, of having about a
14 three-month look at getting out of the practice before
15 you took the bench?
16 A Yes.
17 Q Fortune in the sense of having time?
18 A Having more time than not.
19 Q And one last thing, and this is a clean-up detail, but on
20 our time line up here it says December 9th, '92, the
21 collateral, the note that goes to the bank as collateral,
22 I think somebody pointed out to us on Exhibit 113,
23 there's a receipt. I hope it's in your book as well.
24 It looks like it's a receipt by the bank for the
25 promissory note, the \$250,000 promissory note and it
FOOT OF PAGE 704

1 looks like it's dated 12-24. Was that the date that you
2 actually gave the note to the bank?
3 A I don't recall that I personally ever took the note down,
4 whether it was Ms. Pagni or Janet Nimick or whether it
5 was my secretary or whether it was somebody that worked
6 for me. I don't recall ever going face-to-face -- my
7 conversations with the bank were telephone and sending
8 documents back and forth, to the best of my recollection.
9 Q And it may be insignificant, but would you have dropped
10 it off at the bank when you were in on Christmas Eve to
11 sign the papers on the car loan?
12 A No, totally different banks.
13 Q Totally different bank?
14 A Totally.
15 Q This is First Interstate and the other one was Sound?
16 A Yes, First Interstate and Sound is in Lakewood.
17

18 EXAMINATION

19 BY JUDGE DONOHUE:
20 Q The question that I had really is for clarification
21 purposes. There is a dispute and some of our attention
22 needs to be focused on the management fees that were
23 received over a period of time. My understanding of
24 your testimony is that that was a fixed amount that was
25 charged against on the basis of time earned?

FOOT OF PAGE 705

1 A Yes.
2 Q And those time records were kept both for legal services
3 provided and also against for management services
4 provided?
5 A Yes, as have been made available, yes.
6 Q Okay. Thank you.
7 MS. BRIGHTON: I forgot I had one more
8 question because I just can't get -- I just don't
9 understand this.

10 EXAMINATION

11 BY MS. BRIGHTON:
12 Q Yesterday the accountant testified that the rent had been
13 \$1200 a month and that it had been --
14 \$12,000.
15 A \$12,000.
16 Q Excuse me, \$12,000, and it had been established before he
17 started with the books, he didn't know where that came
18 from, he didn't know why that had been changed to the
19 6. He was told to do it, but he didn't know what

20 initiated --
21 A The \$12,000 figure was, to the best of my knowledge,
22 established by Knight, Vale & Gregory before I was ever
23 involved, for tax purposes of between the estates, excuse
24 me, between the corporations. I didn't, frankly,
25 realize until Mr. Iverson testified yesterday that it was

FOOT OF PAGE 706

1 a book entry by the accountant and there was never a
2 check written that went back and forth. The \$6,000 was
3 negotiated reasonable real rent as opposed to a tax entry
4 rent that had been taking place before. They were both
5 cash flow numbers. \$9,000 being the \$3,000 payment plus
6 \$6,000 payment were terms that were acceptable to
7 Mr. Hamilton and were acceptable to me on behalf of the
8 estate as covering what would be equivalent of interest
9 and payments, adequate payments to make the -- and they
10 were net, they were truly net payments with no expenses
11 attached period.

12 Q Thank you.

13 JUDGE BROWN: Any other questions from the
14 Commission? Mr. Bulmer, did you wish to ask any
15 follow-up questions?

16 MR. BULMER: Just a couple, Your Honor

17

FURTHER REDIRECT EXAMINATION

18 BY MR. BULMER:

19 Q A couple thing on Surfside. There were other things
20 going on at Surfside other than just the time shares,
21 correct?

22 A Yes.

23 Q In fact, Surfside remained in the estate and got
24 transferred to the trust?

FOOT OF PAGE 707

GRANT ANDERSON/Further Redirect-Bulmer

1 A Yes. What I cleaned up at Surfside were the time share
2 units. In addition to those time share units, there was
3 another building that housed a restaurant, swimming pool,
4 primarily that was it, and a lot of wasted space. And
5 there was a chunk of land that was under that and there
6 was another chunk of land beyond that, but those are just
7 pieces of land, those were transferred to the trust.

8 Q There were some empty lots?

9 A And some empty lots.

10 Q And were there also some ongoing responsibilities in
11 connection with Surfside because the estate or trust was
12 basically still managing the condominium?

13 A At that point the Surfside -- once all of the estate
14 interests in the time shares had been sold, the only
15 overlapping interest would have been in the water, which
16 ultimately ended up going from the homeowners
17 association, but the pool and the tertiary treatment
18 plant.

19 Q Were those matters taken care of after you left the
20 involvement with the estate, as far as you know, whatever
21 happened to them?

22 A Yes, well, they had been resolved so that when Mr. Fisher
23 got them, everything was clean and in place and he had a
24 marketable product that was ready to go out and be
25 marketed without a whole bunch of contingencies on it.

FOOT OF PAGE 708

1 Q This management fee has become an issue in this case
2 somehow. The money was pulled out each month from the
3 various corporations, that's clearly been established
4 here, at least some combination of corporations?

5 A Yes.

6 Q And that established a pool, correct?

7 A Yes.
8 Q And, meanwhile, you were keeping management fee hours and
9 totals on management fees?
10 A Yes.
11 Q And also simultaneously you were accumulating legal fees?
12 A Yes.
13 Q I think you misspoke, but you believe the management pool
14 of funds were being paid -- were being used to pay off
15 your legal fees or were they being paid --
16 A No, no, they were used to pay off the management fees or
17 management hours that were kept.
18 Q All right.
19 A Or reported, I believe is what happened. If I said
20 something different, I was --
21 Q That's your belief as to what happened?
22 A Yes.
23 Q All right. And the management fees, when it came time
24 to close down the estate then, you applied for legal fees
25 at that point?

FOOT OF PAGE 709

1 A Yes.
2 Q Management fees you have learned after your deposition
3 were being paid out of this management fund?
4 A Yes. That fund was roughly equivalent to the salary,
5 which I think was 33 or \$36,000 a year, that Mr. Hoffman
6 had been taking out of those corporations for his
7 management.
8 Q Okay. Thank you.
9 JUDGE BROWN: Mr. Taylor.

10

11 RE CROSS EXAMINATION

12 BY MR. TAYLOR:

13 Q Isn't it true that the work that was being billed as
14 management fees and paid on an ongoing basis was the same
15 kind of work that was being billed as attorney fees and
16 collected at the end of the estate?
17 A No, it was different. It was kept in two different
18 books. There was some -- sometimes it's hard to
19 exquisitely define one or the other and, very frankly,
20 the bookkeeper or my secretary, whoever took my time
21 sheets, would make judgments over whether this was
22 management type work or estate type work when she would
23 put it on one time sheet or the other, but they were kept
24 that way.
25 Q Well, let me ask you about that. For example, under

FOOT OF PAGE 710

1 attorneys' fees for timekeeper 3, 6/30/89 we have
2 discussion with Diane Daily on regarding receipt of
3 additional responses to meeting and photo. Then if we
4 turn to the management fees, we have preparation of
5 checks and payment of monthly bills. We go back and we
6 see the same kind of payment of monthly payments of
7 attorney fees. Was there really any distinction or
8 weren't you just paying yourself on an ongoing basis and
9 saving the rest up?
10 A No, there was a valid attempt in making a distinction.
11 We were not double timing and putting them on one or the
12 other. Sometimes we might split them if in their
13 judgment they could go either direction, but there was a
14 valid attempt to distinguish between management and
15 estate type business. The management fees were deducted
16 on an ongoing basis from the corporate tax returns. The
17 attorneys' fees from the estate were not, as I ultimately
18 understood, not paid until after they had been approved
19 by the court in January of '93.
20 Q Okay. Your Honor, I am not suggesting you're doubling

21 timing the management and attorney fees.
22 I have nothing further.
23 JUDGE BROWN: Excuse me, Mr. Whitrock has a
24 question.
25 ////

FOOT OF PAGE 711

1 EXAMINATION
2 BY MR. WHITROCK:
3 Q Was there a golf course connected to the Surfside
4 property?
5 A Yes.
6 Q Was that part of the estate?
7 A No, it's not owned by the estate. It's a public golf
8 course. I, frankly, as part of the estate even
9 negotiated with some other folks to lease that because it
10 came up for lease during that period of operation. I had
11 two or three buyers of Japanese extraction that flew over
12 and were interested in buying, but they were only
13 interested in buying if they could own or control the
14 golf course and --
15 Q I thought I remembered it being there. I was curious who
16 owned it.
17 A It is there. And I picked them up at the airport and
18 brought them up or they made their way there and they
19 looked it all over and, frankly, it would have been
20 wonderful, but I couldn't deliver that portion which was
21 key to their deal breaker for them.
22 JUDGE BROWN: Any other questions from the
23 Commission? Any other follow-up from either counsel on
24 that?

25 MR. BULMER: No, Your Honor.

FOOT OF PAGE 712

1 MR. TAYLOR: No, Your Honor.
2 JUDGE BROWN: All right. Thank you very
3 much, Your Honor. You may step down.
4 JUDGE ANDERSON: Thank you, sir.
5 MR. BULMER: We rest, Your Honor.
6 MR. TAYLOR: No rebuttal, Your Honor.
7 JUDGE BROWN: All right. It's now 3:15.
8 We'll recess for the day at this time and final arguments
9 will begin at 9 a.m. tomorrow.
10 Anything further?
11 MR. BULMER: No, Your Honor.
12 MR. TAYLOR: No.
13 (Whereupon, the proceedings were adjourned at
14 3:15 p.m.)
15
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FOOT OF PAGE 713

1 C E R T I F I C A T E
2
3 STATE OF WASHINGTON)
4) ss
5 COUNTY OF THURSTON)
6 I, Kim L. Otis, a duly authorized Notary Public and
7 Certified Court Reporter in and for the State of
8 Washington, residing at Olympia hereby certify:

4 January 16, 1998.

5 This matter came on before the Commission on
6 Judicial Conduct, the Honorable STEPHEN E. BROWN,
7 Presiding; and Commission Members DALE BRIGHTON, VIVIAN
8 CAVER, HON. MICHAEL E. DONOHUE, HAROLD CLARKE, HON. JOHN
9 SCHULTHEIS, NORA REYNOLDS and TODD WHITROCK.

10

11 A P P E A R A N C E S

12

13

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FOOT OF PAGE 716

1 I N D E X
2 DAY FIVE
3 January 16, 1998

4

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FOOT OF PAGE 717

1 FRIDAY, JANUARY 16, 1998
2 TACOMA, WASHINGTON
3 9:00 A.M.

4

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5

6

JUDGE BROWN: Good morning.

7

For the record, if the commission members would
8 identify themselves by name this morning.

9

MS. BRIGHTON: Dale Brighton.

10 MS. CAVER: Vivian Caver.
11 JUDGE DONOHUE: Michael Donahue.
12 MR. CLARKE: Harold Clarke.
13 JUDGE SCHULTHEIS: John Schultheis.
14 MS. REYNOLDS: Nora Reynolds.
15 MR. WHITROCK: Todd Whitrock.
16 JUDGE BROWN: Mr. Whitrock, under the
17 rules, in order for a commission member to
18 participate in the deliberations when a member has
19 missed a portion of the testimony, they need to
20 have -- or, excuse me, they need to read the record.
21 Have you been able to do that?
22 MR. WHITROCK: Yes. I received this last
23 night about 6:30 and spent the evening reading
24 through it, and I am ready now to make decisions.
25 JUDGE BROWN: You've read the transcript

FOOT OF PAGE 718

1 for the entire portion of the hearing that you
2 missed?
3 MR. WHITROCK: Yes.
4 JUDGE BROWN: Ms. Reynolds?
5 MS. REYNOLDS: I'd like to say that I
6 have also completed that up to the point where I came
7 in, and past.
8 JUDGE BROWN: All right. Does either
9 counsel have any objection to Commission Member
10 Reynolds or Commission Member Whitrock participating
11 in the deliberations of this case?
12 MR. TAYLOR: No, Your Honor.
13 MR. BULMER: No, Your Honor. And it's my
14 understanding that absent a tie vote or something,
15 Mr. Dallaire will not be participating, then, at this
16 point?
17 JUDGE BROWN: At this point, Mr. Dallaire
18 is not participating.
19 MR. BULMER: Thank you. I understand
20 he's in reserve.
21 JUDGE BROWN: Anything further from the
22 members?
23 All right. The commission is ready for final
24 argument. I believe I'll move over to the jury box
25 so it can be listened to by everyone equally.

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1 MR. TAYLOR: Ladies and gentlemen of the
2 commission, in my remarks this morning, I first want
3 to make some brief introductory remarks about
4 Canon 2, public confidence, and a Cadillac. Second,
5 I want to talk about the evidence: How do we sort
6 through what we saw, what we heard, what we read, and
7 what do we learn from it when we do? Third, I want
8 to talk about credibility and false testimony
9 charges. And, finally, I want to talk about the
10 appropriate discipline.
11 Let me turn to Canon 2. What does it mean; why
12 are we here? Canon 2 of the Code of Judicial Conduct
13 speaks of the need for public confidence in the
14 integrity of the judiciary. It says that a judge
15 must comply with the law at all times and at all
16 times act in a manner that promotes public confidence
17 in the integrity of the judiciary.
18 Why does Canon 2 say that; why do we even have
19 it? Well, I submit to you the reason is that judges,
20 district court judges, superior court judges,
21 appellate court judges, are every day trusted with
22 the most important decisions in people's lives.
23 Every day those judges decide who gets custody

24 of this child, Mom or Dad. Every day they decide, is
25 someone going to lose their house in a foreclosure.

FOOT OF PAGE 720

1 They decide between prison and probation. They make
2 decisions affecting people's life savings. Every day
3 judges make countless decisions that have an enormous
4 impact on the lives of the people who are before
5 them.

6 And the wonderful thing about our system is, it
7 works. It works because people take it as an article
8 of faith. Our system takes it as an article of
9 faith. The judges deciding cases are a paragon of
10 integrity and honesty. In the public's eye, that
11 black robe means a great deal. It means trust.

12 But the system only works if we work constantly
13 to maintain the public's faith in the judiciary,
14 because if the public loses faith in the judiciary,
15 the system breaks down. They will no longer take a
16 judge's word. They will resolve it their own way.
17 That's what the judiciary is designed to avoid.

18 This commission, you ladies and gentlemen, play
19 a vital role in ensuring that our system doesn't
20 break down where, as here, there are serious
21 violations of the Code of Judicial Conduct. It
22 becomes your job, as I said in opening statement, to
23 hold Judge Anderson accountable.

24 Before I address the particulars of the evidence
25 and the appropriate sanction, there's one other thing

FOOT OF PAGE 721

1 I think is important as far as the public and its
2 perception of the judiciary. I have a lot of respect
3 for Mr. Bulmer, but he made a point in opening
4 statement that I think is wrong, as wrong as wrong
5 can be. He tried to downplay the significance of the
6 Cadillac. He said, "Oh, it's just a car, just a car.
7 You'll see through this Cadillac issue."

8 I submit to you that a Cadillac is not just a
9 car. It's a car worth \$37,000. Bill Hamilton paid
10 \$30,000 on Judge Anderson's behalf. Well, maybe to
11 some of the people in this room, a car worth \$37,000
12 and \$30,000 in cash to the judge, maybe to some of
13 the people in this room that's no big deal. But the
14 people in this room aren't the test. When you view
15 the evidence, you have to filter it through the eyes
16 of the public, because we're trying to maintain the
17 public's trust in the judiciary.

18 I submit to you that for someone who rides the
19 bus to work every day, a Cadillac is a big deal. And
20 to someone who rides a bus when they're summoned to
21 jury duty in Judge Anderson's courtroom, that
22 Cadillac is a big deal. \$30,000 for a lot of people
23 in this country, a lot of people in this state,
24 that's a year's salary. 30,000 tax free, that's
25 \$40,000. That's even more people's salary. And

FOOT OF PAGE 722

1 that's what Judge Anderson got from Bill Hamilton.
2 \$30,000 is enough to put a kid through four years of
3 a state university if you're frugal.

4 Don't for a minute let anyone tell you or even
5 suggest that we're here over something trivial or
6 that it's no big deal or it's just a car, because
7 that's wrong. Nothing could be further from the
8 truth.

9 Let me turn now to why we're here. What really
10 happened? You've heard a lot testimony, not all of
11 it consistent, where some witnesses said one thing

12 when they spoke and another thing when they spoke a
13 few minutes later and still something different a few
14 minutes after that.

15 We've had a lot of documents. I might point
16 out, though, that those documents, they don't vary,
17 they don't change. What do those documents tell us?
18 A consistent, unbroken story. They tell us what
19 happened.

20 I submit to you that the evidence shows by
21 clear, cogent and convincing evidence, if not by a
22 stronger standard, that the Cadillac payments were
23 linked to the bowling alley price adjustment. There
24 was a quid pro quo between the reduction in the price
25 and the \$30,000 that basically went into Judge

FOOT OF PAGE 723

1 Anderson's pocket. These payments were not a gift.

2 If you find that these payments were not a gift,
3 you must also find that Judge Anderson engaged in
4 egregious misconduct because, let's not forget, these
5 payments started after he donned the robe, and every
6 month while sitting as a superior court judge for
7 two-and-a-half years, he got \$800, \$800, \$800.

8 Judge Anderson was a fiduciary as the president
9 of Pacific Lanes. He owed it the highest duty of
10 loyalty and honesty. As a part of being a fiduciary,
11 we all know you can't engage in self-dealing at the
12 expense of your client or at the expense of the
13 company for which you're the president. A fiduciary
14 or anybody else can't profit individually at the
15 expense of their company or at the expense of someone
16 to whom they owe the highest duty of loyalty, honesty
17 and integrity.

18 What do the facts show? A price reduction of
19 \$92,000. Pacific Lanes received \$92,000, less than
20 all the agreements, all the documents, required.
21 250,000? No, that note was reduced by \$92,000.

22 What do the facts also show? \$30,000 in
23 payments to Judge Anderson individually, 30,000 in
24 payments by the very company to which he gave the
25 price reduction.

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1 Was there a link between the Cadillac payments
2 and the price reduction? This is a complicated case,
3 and the only way I know how to work through a case
4 like this and the evidence is with a time line,
5 because once we put the evidence into time frames, it
6 becomes very clear, and tragically clear, just what
7 happened in this case.

8 In opening statement, I used this time line and
9 I told you that the evidence would be consistent with
10 this time line and I told you, "Hold me accountable
11 for what I'm saying to you. Hold me accountable for
12 the evidence that I promise to present." Ladies and
13 gentlemen, I submit to you, as I said in opening
14 statement, the evidence is 100 percent consistent
15 with what I said it would show.

16 This is something I prepared this morning. It's
17 a time line, and I've broken it into three realms.
18 First, the period prior to January 8th. Why did I
19 pick January 8th? Because we know within a day or so
20 that that's the day the Cadillac payment offer was
21 made and accepted. Maybe it's January 9th, maybe
22 it's the 7th, maybe it's the 10th, but it really
23 doesn't matter one day or another. That's the first
24 break point.

25 The second break point I labeled "scrutiny," and

1 that's about 1996, when someone started nosing into
2 what had happened here and, according to Kevin
3 Iverson at least, Judge Anderson came in and said
4 here, "Hey, what do I do with these Cadillac
5 payments? Gift, PACs, commission?"

6 But, remember, Judge Anderson changed his story.
7 We heard a lot about Accountant Metternik (phonetic)
8 yesterday for the first time, the first time ever,
9 and we'll talk about that more, because it's
10 important.

11 But let's turn to the no-adjustment-agreement
12 phase. I submit to you that the evidence shows by a
13 clear, cogent and convincing standard that prior to
14 January 8th, there was no adjustment agreement.

15 How do I get there? We start, as you start in
16 any complicated case, with the documents. What are
17 the key documents in this case, what controls the
18 deal between Bill Hamilton and Judge Anderson? The
19 business acquisition agreement, the one that said,
20 "This controls our agreement," the one that says at
21 the end, right above the signatures of Judge Anderson
22 and Bill Hamilton, "There are no verbal or other
23 agreements which modify this." This is the core
24 right there, this is the deal, and this didn't say
25 anything about a price adjustment agreement.

1 Significantly, you heard Judge Anderson testify
2 that the business acquisition agreement was the
3 essence of the deal between these two gentlemen.

4 Let me read briefly from his testimony at
5 page 56: "This was the essence of our agreement
6 right here." That's page 56 of Judge Anderson's
7 testimony when I called him in my case. At page 61
8 he testified, "Exhibit 21 reflected the true essence
9 of the understanding all the way through."

10 Ladies and gentlemen, if you look at Exhibit 21,
11 there's no reference to any price reduction agreement
12 whatsoever. In fact, if you look at Exhibit 21, it
13 is directly contrary to the notion that some price
14 adjustment agreement existed. It was pointed out in
15 a question from the commission and we talked about it
16 on cross examination of Mr. Hamilton and Judge
17 Anderson.

18 Take a look at paragraph 11 of the price
19 adjustment agreement, Exhibit 21 -- or, I'm sorry,
20 the business acquisition agreement. It says, "The
21 inventory, equipment and goodwill purchased by
22 Enterprises," Bill Hamilton's company, "shall not
23 include any accounts receivable or cash..."

24 We get to the adjustment agreement period, and
25 what did Bill Hamilton get? He got all the money

1 that came in during this time period. That's just
2 the opposite of what Exhibit 21 says. There's
3 nothing in this document that says that Bill Hamilton
4 is entitled to the profits or the cash flow during
5 this period.

6 Let me talk about some of the other documents.
7 We talked with Judge Anderson about the bill of sale
8 and I said to the judge, "Well, is there anything in
9 the bill of sale that says Bill Hamilton is entitled
10 to the profits?" He said no, but he also said
11 something else. At page 79 of his testimony, I asked
12 him, "So the bill of sale is incorrect?" "Well, I'm
13 sure this is just boiler plate that came off the

14 computer." That's how he dealt with the bill of
15 sale, boiler plate.

16 Well, we then went to the closing statement with
17 the judge, Exhibit 25, and at page 79 Judge Anderson
18 admitted the closing statement was not boiler plate,
19 it was custom-crafted for this deal.

20 And how do we know that? If you look at
21 Exhibit 25, the closing statement, it speaks only of
22 this deal, and it sets out the terms: Here's what
23 the estate gets, here's what Bill Hamilton gets. And
24 it says the estate gets \$300,000; \$50,000 in cash and
25 a note for \$250,000. It doesn't say Bill Hamilton

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1 gets \$100,000 back or \$92,000 back.

2 The promissory note. The promissory note that
3 Judge Anderson pledged to the bank for \$250,000, he
4 testified that note was free and clear of any
5 encumbrances. Well, if there was a deal to adjust
6 the purchase price, that note wasn't free and clear
7 of any encumbrances, but he took it to the bank and
8 he pledged, "It's free and clear. Bank, you've got
9 security for \$250,000."

10 Exhibit 7, the Pacific Recreation financial
11 statement submitted to the Washington State Gambling
12 Commission on September 29th, 1992, that's a month
13 after this supposed agreement for the cash flow or
14 the profit, and we'll get to the distinction in a
15 minute. That's a month after that deal was created
16 supposedly.

17 But if you look at Pacific Recreation's
18 financial statement on September 29th, 1992, it says
19 Pacific Recreation has no personal property. But if
20 Bill Hamilton was the owner, if Pacific Recreation
21 was the owner, it had pins, balls, lanes, equipment,
22 everything. But on Exhibit 7 he put zero. If he was
23 entitled to the cash, if he was entitled to the cash
24 from September 1, 1992, forward, why a month later
25 did he put no money, no accounts receivable?

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1 That brings us to a raft of documents,
2 Exhibits 1 through 16 in your notebook. Those are
3 the documents that were submitted to the gambling
4 commission and the liquor authority. If you look
5 through every one of those documents, they weren't
6 submitted until September 29th, 1992. That's the
7 first time documents were submitted to the gambling
8 and liquor commission that said Bill Hamilton is
9 going to be the owner.

10 It didn't say he was the owner, and to that
11 degree it was true. We know he wasn't the owner. He
12 hadn't paid a cent by September 29th; he hadn't paid
13 a cent by December 1st. It wasn't until December 4th
14 that he finally paid the money. That's what the
15 documents show us.

16 What about the testimony? Does the testimony
17 support the notion that there was an adjustment
18 agreement? I submit it does not. And I think one of
19 the key moments and the key witnesses in this case
20 was trustee Steve Fisher.

21 Your Honor, Judge Donohue, asked him a question,
22 and there was a long pause before he answered. Your
23 Honor asked him, "Well, you were involved, you were
24 around Judge Anderson's office, part of the firm.

25 You knew about the deal, you heard bits and pieces of

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1 it," and Your Honor asked him, "Did you ever hear

2 that there was an adjustment agreement?"

3 And I remember Trustee Fisher, he paused, and he
4 was thinking out loud, and he said, "Well, I heard
5 about this and I heard about that, I knew they hadn't
6 gotten liquor and gambling approval by this point,
7 and I knew this and I knew that," and then he kind of
8 paused again and Your Honor had to ask the question
9 again in a follow-up fashion, and he finally said,
10 with his friend, close friend and partner for years,
11 Judge Anderson, sitting out here, he finally looked
12 at all of you and said, "I didn't ever hear about any
13 adjustment agreement until January."

14 I submit Steve Fisher honored his oath and was
15 very candid with you, and I submit the adjustment
16 agreement didn't exist until later, when the gift
17 came along.

18 What other testimony did we hear? We heard
19 Judge Anderson Monday, he was finally forced to admit
20 that the deal, the adjustment deal, Bill Hamilton
21 gets 92,000, it's not in the documents.

22 And then he tried to explain awhile. He said,
23 "Well, it's like when you buy or sell a house and
24 there's chandelier in the house. It's not that big
25 a deal. You expect that it will be there, but you

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1 move in and the chandelier is gone." He tried to
2 liken \$100,000 to a chandelier in a house. That's
3 what he tried to do Monday.

4 By Thursday, the chandelier was gone. And
5 you'll recall he said this was a deal breaker.
6 Mr. Bulmer asked him, "What did you mean by that?"
7 It was a make-or-break part of the transaction, the
8 most important single term in the transaction, but
9 it's not in the documents; it's just not there.

10 Is it a chandelier? Was it a make-or-break
11 point? I submit it was neither. It did not exist
12 until the Cadillac payments came along.

13 Profits or cash flow. Commissioner Clarke
14 focused on this with Kevin Iverson, but we also
15 touched on it with Bill Hamilton, Bill Hamilton, who
16 told us most of the time it was cash flow, cash flow,
17 cash flow.

18 Let me read briefly from page 127 of
19 Mr. Hamilton's testimony:

20 "It was an understanding of the deal that we had
21 struck."

22 "The understanding that you would get the
23 profits whether it closed or not?"

24 And his answer, he said, "The profits or the
25 losses, but the transaction would close effective

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1 September 1, 1992."

2 Well, cash flow and profits are two different
3 things. By the time of this trial, you would expect
4 that Bill Hamilton could have come in and told you
5 what was the deal, but he didn't. One time he said
6 cash flow, another time he said profits.

7 Management, management fees. Was Bill Hamilton
8 the manager of Pacific Lanes from September 1, 1992,
9 forward? I don't think so. I don't think that's
10 what the evidence shows. Was he announced as the
11 owner in August at the Seafair Weekend on
12 August 4th when he wasn't the owner? Sure, he was,
13 but he wasn't the owner, and we all know that.

14 Was he the manager? Again, Commissioner Clarke
15 had a question, "Did you handle the checkbook?" Bill

16 Hamilton's testimony was, "I never looked at the
17 checkbook." Is that a manager of a business, someone
18 who's going to be getting \$100,000 and he never looks
19 at the checkbook? Did he hire and fire anybody? No.
20 What did he do? We heard the night manager,
21 Mr. White, say, "Yeah, I saw Mr. Hamilton a couple
22 times a week, had some meetings." Well, that's
23 consistent with someone who is getting ready to buy a
24 business, but that's not consistent with someone who
25 owns a business or has the right to the cash flow.

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1 Understanding or agreement. Why do I have that
2 there? I want to refer you to page 128 of
3 Mr. Hamilton's testimony. Remember, we'd heard from
4 opening statement forward: Handshake deal, we had
5 agreed, this was the deal.

6 Mr. Hamilton, when I examined him, he said, "The
7 whole transaction was my purchase price and
8 everything was contingent on taking over effective
9 September 1st, which was the beginning of the bowling
10 season."

11 And I asked him, "So that was a verbal agreement
12 that you had?"

13 He answered, "An understanding."

14 And I said, "A verbal understanding?"

15 He said, "An understanding."

16 And I asked him, "Well, was it an understanding
17 that you and Judge Anderson had reached?"

18 And he said, "It was an understanding that I had
19 reached."

20 "Okay."

21 And then he concluded this exchange with, "I
22 can't say what Judge Anderson had reached."

23 If there was a deal for them to adjust the
24 purchase price at this time, wouldn't you think Bill
25 Hamilton would have been able to say, "We had a deal"

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1 instead of saying, "Well, I had an understanding, but
2 I don't know what Judge Anderson thought." That
3 testimony was grossly inconsistent with the notion
4 that there was an agreement. At best maybe Bill
5 Hamilton had an understanding, but that's not enough.

6 What was Bill Hamilton's understanding? Well,
7 if you look at page 104, the redirect examination of
8 Bill Hamilton, he's got this understanding, he
9 doesn't know what Judge Anderson thinks, and why?
10 104, line 13: "I don't believe we discussed the fact
11 of the cash flow, the profits or anything."

12 Maybe Bill Hamilton thought he was getting the
13 money, maybe he thought he was entitled to the money,
14 but there's a reason it wasn't in the documents, and
15 that's because, as Bill Hamilton says, "I don't
16 believe we discussed the fact of the cash flow, the
17 profits or anything," page 104.

18 Bill Hamilton's money. You heard him testify
19 many times that, well, the money was domiciled in the
20 account of Pacific Lanes. I don't know what
21 "domiciled" means. Maybe it means the money was
22 there and Mr. Hamilton thought he had a claim for it,
23 but two experienced businessmen, any experienced
24 businessman, I don't think I've ever heard anybody
25 say money was domiciled in somebody else's account.

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1 But whose money was it? Kevin Iverson, page
2 194: "For tax purposes, Pacific Lane's money." It
3 can't be both ways. It can't be Bill Hamilton's

4 money free and clear, no tax, but taxed to Pacific
5 Lanes. That's Mr. Iverson, page 194.

6 Pacific Recreation, did it pay a cent in
7 September, October, November, December? No. It had
8 taken no financial risk whatsoever, hadn't paid out a
9 penny, and yet Mr. Hamilton says, "Well, it was my
10 money all along." What right did he have to that
11 money; what had he given of value for the right to
12 get that money? The answer is: Nothing.

13 That brings us to what I call the economic
14 substance of the transaction. Step back for a minute
15 and ask yourself what was really happening with this
16 deal. We touched on it with Judge Anderson
17 yesterday, and I think I fairly characterized it that
18 for the operation, who decided the option of buying
19 the bowling alley? For the operation, when it closed
20 on December 4th, Bill Hamilton was to pay \$50,000 in
21 cash, and in exchange he got \$92,000 cash back. Now,
22 he signed a note for \$250,000, but that was payable
23 at 3,000 a month over years and years and years.

24 The economic substance of this transaction --
25 pay 50,000 cash, be entitled immediately to \$92,000
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1 cash back -- makes no sense. Doesn't make business
2 sense, doesn't make economic sense. It makes no
3 sense. Why not? Because the deal didn't exist.

4 Iverson, Kevin Iverson. Why do I have three
5 question marks there? It's because Mr. Iverson
6 testified at one point, "I first learned of the
7 adjustment process in January, when Judge Anderson
8 called me." Then he testified at another point, "No,
9 I learned about it in December, when my partner told
10 me about it."

11 Take a look at Mr. Iverson's transcript, pages
12 186, 187. I submit to you, and it's no criticism of
13 Mr. Iverson, he really doesn't remember what he knew
14 about it.

15 There's one other point to make about
16 Mr. Iverson, which is, and we touched on this in his
17 examination, accountants do work and keep work papers
18 so that a deal can be reconstructed if it's ever
19 examined, examined by an auditor, examined by the
20 state, by the IRS or in a court of law.

21 And he testified about how important work papers
22 are and how an accountant is supposed to have
23 everything documented. Then I asked him, "Where in
24 your work papers can we find the terms of this deal?"
25 And he was candid with us. It's not there, it's not
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1 here, wasn't in Mr. Iverson's file.

2 There's one last point Mr. Iverson made that I
3 think is critical, and it comes back up here to
4 profits or cash flow. Mr. Iverson testified that he
5 was the one who made the decision to make the
6 adjustment based on cash flow. He was the one.

7 When I first heard that, it didn't make a lot of
8 sense to me, because all along Judge Anderson and
9 Mr. Hamilton had been saying, no, they had a deal all
10 along to adjust for cash flow. But if you go and
11 read Mr. Hamilton's testimony -- profits or cash
12 flow, understanding, "I don't know what Judge
13 Anderson thought" -- it make makes a lot of sense,
14 Kevin Iverson in January said, "We'll do an
15 adjustment based on cash flow."

16 That's what the evidence, I think, fairly shows
17 up to January 8th, plus or minus. What happens then?

18 Bill Hamilton offers to pay Judge Anderson's Cadillac
19 loan, \$800 a month. What does the testimony show?
20 Here's what the testimony shows.

21 Diane Anderson. Judge Anderson brought home a
22 Cadillac. She said, "Well, what's this?" And they
23 discussed how are the payments being made. What did
24 Judge Anderson say? He had just completed closure of
25 a large item through his firm, a bowling alley. The

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1 vehicle was a commission that he was allowed to get
2 the same as a realtor would.

3 On cross examination Mr. Bulmer said, "Well, do
4 you remember what room you were in when that
5 conversation occurred? "No." "Do you remember what
6 time of day it was?" "No."

7 Well, I submit to you that it's perfectly
8 consistent she recalls that conversation without
9 knowing every last detail. A conversation like that
10 would stand out in your mind when your husband brings
11 home a Cadillac you've never seen before and it costs
12 \$35,000. I'm sure that's going to stick out in your
13 mind. It was a surprise to her. She testified here:
14 What was the car, what was the Cadillac? It was a
15 commission.

16 Accountant Metternik (phonetic). We heard about
17 him for the first time yesterday. Judge Anderson, in
18 his deposition and on Monday, had talked about
19 conversations with Kevin Iverson. Yesterday for the
20 first time in the course of this whole investigation
21 and trial, we heard about Accountant Metternik.

22 Judge Anderson testified that he went to
23 Accountant Metternik in early 1994, I believe it was,
24 and he said, "I'm getting this gift from Bill
25 Hamilton. Is this taxable to me?" He said he talked

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1 to Accountant Metternik and he came away solid in the
2 conclusion that a gift was not taxable to him.

3 But something else happened in May 1995. On
4 cross examination of Judge Anderson, we went through
5 the fact that in May 1995, during the divorce, he and
6 his wife discussed the Cadillac and she said to him,
7 "I'm concerned about tax consequences on that
8 Cadillac." He didn't say to her, "Well, it's a gift.
9 There's no tax." He didn't tell her what he had
10 supposedly been told by Accountant Metternik. He
11 didn't say gift.

12 What did he say? "I'll pay the taxes on it.
13 I'll take care of the taxes if there's any taxes on
14 it." That's what he said. If any time he would have
15 mentioned that it was a gift, particularly after
16 telling his wife earlier it was a commission, at any
17 time Judge Anderson would have logically said, "It's
18 a gift, no taxes," would have been right there.
19 Didn't say gift; said, "I'll take care of the taxes."

20 Taxes. Pacific Recreation took the tax
21 deduction each and every month, paid \$800, deducted
22 it on the books as an ordinary and necessary expense
23 of the business. We now know that gifts are not
24 deductible.

25 We also heard, though, that Bill Hamilton is a
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1 generous man. He had made many, many gifts in his
2 time. But he admitted, he admitted, this is the only
3 gift that he had ever deducted for tax purposes.
4 Gift. This was no gift; this was a commission.

5 Trustee Fisher. Trustee Fisher, dealing with

6 Judge Anderson, relying on Judge Anderson, asking him
7 questions, what was the deal. Trustee Fisher. If
8 the Cadillac deal was above board, there's no reason
9 for Judge Anderson not to tell his friend and partner
10 of 20 years; if it was above board, he had to tell
11 him, he was obligated to tell him as the president of
12 Pacific Recreation. He had to disclose that if there
13 was no problem. Why didn't he? I think we know the
14 answer to that.

15 Whining and lamenting. Take a look at page 100
16 to 103 of Bill Hamilton's testimony. On friendly
17 cross with Mr. Bulmer, he explained the conversation
18 the first day Judge Anderson drove up to the bank in
19 the Cadillac, had the \$9,000 check, went in and paid
20 it. Bill Hamilton came out on the sidewalk and they
21 talked, and Judge Anderson said how much he didn't
22 like to make car payments and didn't like this, and
23 Bill Hamilton said, "Well, I'd like to make a gift to
24 you," and Judge Anderson said, "No, no, no, no. I
25 can't accept that. I don't want it."

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1 Bill Hamilton persisted and persisted, and
2 finally Judge Anderson gave in and said, "Okay, I'll
3 take \$800 a month. I don't want to do it, but I'll
4 take it." That was Bill Hamilton in response to
5 counsel's questions.

6 Take a look at pages 100 to 103 when he gives a
7 little different rendition of what happened on the
8 day the Cadillac arrived at the bank.

9 Adjustment agreement. Commission or gift, no
10 question, it's on the table by then. And at the same
11 time the Cadillac payments start is when the
12 testimony about the adjustment agreement converges.

13 Trustee Fisher. That's the first time he
14 learned of the adjustment agreement. Post January
15 8th, right around the time of the Cadillac gift,
16 Judge Anderson tells him there's an agreement to
17 adjust the price.

18 Iverson. Put him here, put him there. I don't
19 think he knows. He said both.

20 Mr. Hamilton, Judge Anderson, no doubt they'll
21 tell you the agreement existed then. The question
22 is, did it exist then? I submit it did not.

23 That brings us to the final break point in the
24 time line: Scrutiny. All of a sudden someone is
25 starting to look into what happened with the estate

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1 and the Cadillac. The commission begins its
2 investigation.

3 And what happens? Just as I said in opening
4 statement, as I promised we'd prove in opening
5 statement, Pacific Recreation's tax return gets
6 changed, it gets changed. Payments have been treated
7 as an expense all the way along, all the way along
8 until the investigation starts. Then Hamilton goes
9 in and says, "No, I think these payments were a gift.
10 I'm going to amend my tax return, amend Pacific
11 Recreation's tax return."

12 But even then he was in a hurry, he was in a
13 hurry, because on the second page of the exhibit, the
14 amended tax return, he doesn't say a gift was
15 mistakenly run through the corporation. He says
16 personal expenses run through the corporation.

17 Judge Anderson. We heard Mr. Iverson's
18 testimony that after this all came along, Judge
19 Anderson went and asked Kevin Iverson, "Well, what

20 about this? Gift, taxable, commission,
21 what-have-you?" Well, if Judge Anderson had talked
22 to Accountant Metternik in 1993 and 1994, why did he
23 have to talk to Accountant Iverson in approximately
24 1996?

25 That's the time line. That's what I think the
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1 evidence, fairly characterized, fairly categorized,
2 shows. Prior to January 8th, no adjustment
3 agreement. January 8th, Cadillac comes on the table
4 and all of a sudden everyone converges: Yes, there
5 was an adjustment agreement. There's no question
6 about it by then. Scrutiny: Mr. Hamilton changes
7 the tax return. Business expense becomes a gift.

8 Let me touch now very briefly on the statement
9 of charges, because I submit to you there's one or
10 two charges that the evidence doesn't support.

11 3(A): Judge Anderson violated Canons 1 and 2(A)
12 of the code by accepting an offer to have his car
13 loan payments made by Mr. Hamilton at the same time
14 they were in the process of effectuating the
15 after-the-fact reduction of \$100,000 in the amount
16 owed by Pacific Recreation.

17 Well, the evidence supports that; it supports it
18 by clear, cogent and convincing evidence. We've been
19 through the time line. The evidence supports that
20 charge in spades.

21 Count 3(b): Judge Anderson violated the code by
22 pledging the note for \$250,000 to First Interstate as
23 security without disclosing the existence of the
24 alleged agreement to reduce the amount of the note.

25 The evidence doesn't support that at this point.
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1 That was an alternative charge, because Judge
2 Anderson couldn't have it both ways. He couldn't say
3 the agreement existed at this point without having,
4 in effect, conceded that he defrauded the bank.

5 What do we know now? We know now the adjustment
6 agreement came into being in January, at the time
7 Judge Anderson submitted that note to the bank as
8 collateral warranting that it was free and clear. I
9 think that was true. It was free and clear. There
10 was no agreement.

11 Management fees. 3(C): Judge Anderson violated
12 the code by charging Pacific Lanes a monthly
13 management fee during the period Mr. Hamilton was
14 allegedly managing Pacific Lanes.

15 I think now we know, at the end of the testimony
16 yesterday from Judge Anderson, Bill Hamilton wasn't
17 managing Pacific Lanes. I'm not sure what Judge
18 Anderson was doing for Pacific Lanes at that point in
19 time -- he says he was doing very little -- but Bill
20 Hamilton wasn't managing it.

21 Was Judge Anderson entitled to a monthly
22 management fee for what he was doing? I don't know.
23 But he wasn't not entitled to it because Bill
24 Hamilton was managing it. We know Bill Hamilton
25 wasn't managing it.

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1 3(B), 3(C). I don't think the evidence is there
2 by clear, cogent and convincing evidence. Are there
3 some questions about those issues? You bet. Have I
4 proved it at this point by clear, cogent and
5 convincing evidence? No, I don't believe I have.

6 Let me turn now to the false testimony charges.
7 Those are Counts 3(d), 3(e). Judge Anderson is

8 charged with knowingly giving false testimony.
9 Well, with regard to the conversation with his
10 wife about the Cadillac payments being a commission,
11 you have to make a choice, a difficult choice. Judge
12 Anderson on this one doesn't say, "Well, I don't have
13 an independent recollection." We heard that a lot.
14 But not on the Cadillac. Categorically denies saying
15 it.

16 But his ex-wife, Diane Anderson, there was no
17 doubt in her mind, there was no equivocation. She
18 testified as to what happened.

19 Well, between the two, who had a motive to
20 fabricate, who had something on the line here? Who
21 equivocated on the stand, who didn't? At the end of
22 the day, who do you believe? You have to decide
23 that. It's one or it's the other.

24 But let me give you some other thoughts about
25 credibility in the context with the other testimony

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1 that's charged as false, which is, "Did you have
2 any --" I should quote this so I'm not inaccurate.

3 "Did you have any such discussions about the
4 purchase price adjustment after January 1 of 1993?

5 "I don't believe so, not to my knowledge.

6 "Your recollection that the discussions
7 reflected herein match the adjustment sheet, that
8 didn't start -- wasn't first created until
9 February 16th, was the first draft, we know that.
10 Your recollection that the discussions reflected
11 herein took place prior to December 31st, 1992?

12 "Yes."

13 And that's charged as false.

14 Well, Judge Anderson has now conceded that there
15 were discussions after January 31, 1992. He says he
16 was involved in them, and we know he was. We see a
17 meeting on March 9th, 1993, just like I pledged to
18 you in opening statement. But he now says, "Well,
19 yeah, there may have had some meetings, may have had
20 some discussions, but I have no independent
21 recollection of them." So he's given us something;
22 he's conceded that, yeah, there's something out
23 there.

24 Well, the issue is, why didn't he say that in
25 his deposition? Did he forget, or did he have

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1 another reason? I'll talk about that more in a
2 second.

3 But remember in his deposition, which we went
4 through yesterday afternoon with Judge Anderson,
5 there's something else he also said. He said, "I had
6 no involvement whatsoever, I had no involvement
7 whatsoever in the sale after 1992, with the exception
8 of signing some documents."

9 Well, let's remember, he now says he has a good
10 recollection about a lot of other events that
11 happened right around the same time period. He
12 recalls the Cadillac conversation with Mr. Hamilton.

13 Dated and detail. Detail, interestingly,
14 matched Mr. Hamilton's version, the version he told
15 before he was cross-examined. The two mesh
16 perfectly. On cross examination they didn't quite
17 mesh anymore.

18 Let's remember also that these post-1992
19 conversations were not inconsequential. Trustee
20 Fisher, he didn't know much about the deal. He was
21 relying on Judge Anderson for information about the

22 deal. They talked, Judge Anderson briefed him and
23 filled him in.

24 Kevin Iverson. Kevin Iverson testified that he
25 called Judge Anderson at the courthouse. Well, he

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1 couldn't have called him at the courthouse in 1992,
2 because he didn't begin sitting on the bench until
3 January 8th, 1993.

4 Conversation between he and Trustee Fisher
5 talking about Judge Anderson staying on as president
6 of Pacific Lanes and Hoffman-Stevenson, staying on
7 because Trustee Fisher said, "I don't want to sign
8 these documents that you and Bill Hamilton
9 negotiated. You stay on. You sign them. I'm not
10 going to."

11 Those are not inconsequential conversations that
12 you'd forget. Did he forget, or was there an effort
13 early on in this investigation to put distance
14 between his involvement in the price reduction
15 process and Bill Hamilton's offer to make the
16 Cadillac payments?

17 Let's not forget two other points about
18 credibility. The excise tax affidavit. The excise
19 tax affidavit, I think we all recall. Bill Hamilton
20 was on the stand. We showed it to him, \$508,100.67.
21 Bill Hamilton said, "That's not accurate." Judge
22 Brown said, "Is there anybody in this room who can
23 advise Mr. Hamilton as to his rights?"

24 We remember that excerpt of testimony. Bill
25 Hamilton said that affidavit was not accurate but he

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1 signed it.

2 Credibility. One other person who signed that
3 affidavit that wasn't accurate: Judge Anderson.
4 Just like Bill Hamilton, he said, "I swear under
5 penalty of perjury this is true and correct."
6 Affidavit wasn't correct. Bill Hamilton admitted it.
7 Judge Anderson knew it.

8 Last point about credibility. Judge Anderson
9 would like to discredit his ex-wife. He has to
10 discredit her in the face of that testimony. But he
11 wants you to believe, he has to ask you to believe,
12 Bill Hamilton. We saw yesterday Judge Anderson's
13 unswerving faith in Bill Hamilton. He testified Bill
14 Hamilton's a man of integrity.

15 He knew when he had given that testimony Bill
16 Hamilton had taken the Fifth in this case through his
17 lawyer.

18 MR. BULMER: Objection. Mischaracterizes
19 the evidence. There's no evidence in this case that
20 Mr. Hamilton ever took the Fifth.

21 JUDGE BROWN: Objection will be
22 sustained.

23 MR. TAYLOR: For the record and as an
24 offer of proof, Mr. Hamilton, through his counsel
25 and in a hearing in which Mr. Bulmer participated,

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1 said -- Mr. Hamilton's lawyer said, "I am asserting a
2 Fifth Amendment privilege on behalf of my client. He
3 will not testify at the deposition."

4 MR. BULMER: What that record will show,
5 for the record, is Mr. Hamilton's attorney in a phone
6 conversation said that his client was contemplating
7 taking the Fifth Amendment, and Mr. Taylor said,
8 "That doesn't count. Mr. Hamilton has to be here to
9 take the Fifth Amendment," and --

10 MR. TAYLOR: With all due respect --
11 JUDGE BROWN: I'm sorry. The objection
12 will be sustained. There will be no further
13 reference to the witness taking the Fifth.

14 Please proceed.

15 MR. TAYLOR: Judge Anderson on cross
16 yesterday showed unswerving faith in the integrity of
17 Bill Hamilton. He was asked, "Would it change your
18 opinion, would it change your opinion, if you learned
19 that Mr. Hamilton had taken the Fifth?" Judge
20 Anderson said, "No." "Would it change your opinion,
21 change your opinion if you knew that Bill Hamilton
22 was involved in an investigation of bank fraud, tax
23 fraud, conspiracy?" Judge Anderson said, "No."

24 Now, it's good to be loyal to a friend; there's
25 a lot to be said for that. But as Trustee Fisher's
FOOT OF PAGE 751

1 candid testimony before you makes clear, when you're
2 on the stand, your oath takes precedence over
3 loyalty.

4 I submit a reasonable person trying to be candid
5 with you when asked questions, "Well, what if you
6 were told one of your best friends was taking the
7 Fifth, what if you were told this," he'd have said,
8 "Well, I'd like to think about that. I'd like to
9 think about that."

10 The last couple of charges failed to disclose
11 the payments on the public disclosure forms. If you
12 find it was a gift, you can't find that he violated
13 the code. If you find that it was a commission, he
14 violated the code in spades.

15 The last charge, serving as officer or president
16 of Pacific Lanes, president of Hoffman-Stevenson. He
17 did it. He doesn't dispute it. We'll talk more in a
18 minute about his explanation, but under the code
19 there's no reasonable time period to remove yourself
20 for anything like that. For nine months while a
21 judge served as president of three corporations:
22 Pac Lanes, Hoffman-Stevenson, Surfside. Violations
23 of the code.

24 I want to turn now to the last and most
25 difficult thing that we all have to address.

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1 Assuming you find that the Code of Judicial Conduct
2 has been violated, what's the appropriate discipline,
3 what's the sanction?

4 I've given this a lot of thought both before the
5 trial and during the trial as the evidence has come
6 in and watching how the events unfolded. But as I
7 said in opening statement, I think the evidence bears
8 it out. I think the evidence justifies the
9 commission in returning the strongest possible
10 sanction.

11 Why do I say that? Commission Rule 6 lays out
12 several factors for this body to take into account in
13 determining discipline. That same rule says that
14 commission counsel and Mr. Bulmer should address
15 those factors in their remarks before you. I'd like
16 to touch on just some of them.

17 I'll start with what I think is the most
18 germane: the effect the misconduct has on the
19 integrity and respect of the judiciary. This goes
20 back to what does the public think, can we maintain
21 the public's trust of the judiciary.

22 If you find that the payments were anything
23 other than a gift, that leads inexorably to another

24 conclusion: Judge Anderson is willing to betray his
25 obligations for personal gain. It's that simple. If
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1 you find the Cadillac payments were anything other
2 that a gift, it leads to an unfortunate conclusion.

3 If you find that Judge Anderson knowingly gave
4 false testimony, that leads to the conclusion that a
5 man charged with administering the oath may not
6 necessarily be reliable for his own oath.

7 If you make either one of those findings, I
8 submit that the effect on the integrity of the
9 judiciary would be profound. It would be profound
10 even if it had concluded before Judge Anderson went
11 on the bench. But here it happened while he was
12 sitting as a superior court judge.

13 This strikes at the heart of public respect for
14 the integrity of the judiciary. Stated otherwise,
15 when someone goes into court, we owe them a judge
16 who, beyond question, beyond any question, beyond any
17 doubt, is honest.

18 The public is entitled to a judge who, without
19 question, when they go in there and he's going to
20 make a decision if they get to keep their child,
21 they're entitled to a judge who is beyond reproach.
22 And ask yourself in deliberations, does the evidence
23 say this about Judge Anderson?

24 The considerations talk about an isolated
25 incidence or a pattern. Beginning in 1993, Judge
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1 Anderson took the first payment. It continued each
2 and every month. He could have said stop at any
3 time, and he didn't. He didn't stop until 1995.

4 But it wasn't his idea. Bill Hamilton says,
5 "I'm not going to make any more payments," but then
6 pays the last \$8,000. Each year Judge Anderson filed
7 his public disclosure forms, repeatedly the \$800
8 never showed up.

9 This was a pattern of misconduct that spanned
10 several years: overt acts on a monthly basis, false
11 PDC filings on a yearly basis, and knowingly false
12 testimony during the course of this investigation.
13 That's a pattern of misconduct.

14 Did Judge Anderson cooperate with the
15 proceedings? This is not difficult. If you conclude
16 that he gave knowingly false testimony, we can move
17 on.

18 There's another consideration here about
19 cooperation. I'll address that later.

20 Has the judge acknowledged or recognized that
21 the acts occurred? No. Denied any and all
22 wrongdoing, even as to the tenure as president of
23 Pacific Lanes and Hoffman-Stevenson. Well, the code
24 is clear. 5(C)(3): A judge shall not serve as an
25 officer, director or manager of a corporation or any
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1 business.

2 Judge Anderson told us yesterday that while he
3 read the code, it gives him a reasonable time. Well,
4 a different section, 5(C)(4), talks of personal
5 investments and says you should divest yourself of
6 those investments as soon as you can do so without
7 serious financial detriment.

8 Well, perhaps Judge Anderson yesterday on the
9 stand realized the difference between those two
10 sections, because he said, "Well, yeah, I read the
11 code, but I think I also talked to someone at the

12 commission and they told me it was okay." There's no
13 evidence of that. Judge Anderson hasn't acknowledged
14 anything.

15 One more point on this. Yesterday Commissioner
16 Clarke asked Judge Anderson, he said, "Well, you were
17 elected in a two-person race in the primaries. You
18 were the winner September 19th." He said, "Yeah."
19 And Commissioner Clarke pointed out that this gave
20 Judge Anderson lots of time to clear up his affairs,
21 get out of offices.

22 But Judge Anderson didn't do that. He had all
23 the time in the world. He had time to get Trustee
24 Fisher appointed, get himself out as trustee, get
25 Fisher in as trustee, but he stayed on as president.

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1 Why? Because Steve Fisher didn't want to sign the
2 document that Bill Hamilton and Judge Anderson had
3 negotiated.

4 Effort to change or modify the conduct. Says he
5 didn't do anything wrong. Hasn't disgorged the
6 management fees that under his theory of the case he
7 wasn't entitled to. I think he told us they were on
8 auto pilot. \$7200 maybe is not a big deal to some
9 people in this room. \$7200 is a lot of money to some
10 other people.

11 Disgorged the Cadillac payments? No. Amended
12 his PDC filings? No. There's been no effort to
13 change or modify the conduct. Instead, what do we
14 have? Judge Anderson says, "Well, maybe I would have
15 drafted some documents differently. If I had, I
16 wouldn't be here today."

17 But I submit that he drafted these document
18 accurately. Like he testified, they reflected the
19 essence of the agreement. Did they say something
20 different? No. They reflected the agreement as it
21 existed. Does he wish they say something different
22 now? I think he does.

23 In a perfect world, we wouldn't need a Code of
24 Judicial Conduct and we wouldn't need a Commission on
25 Judicial Conduct. But we need the code and we need

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1 the commission, and the past five days underscore
2 that.

3 I submit that when you view the conduct here
4 through the all-important filter of public confidence
5 in the integrity of the judiciary, the outcome
6 becomes clear. When you deliberate, ask yourself:
7 Would a member of the public appearing before Judge
8 Anderson who had heard all this evidence, would that
9 person be confident in the integrity of Judge
10 Anderson?

11 When you view the evidence, ask yourself: Would
12 a person who had heard the evidence walking into that
13 courtroom deem Judge Anderson above and beyond
14 reproach? Would a person who had heard the evidence
15 entrust the most important decisions in their life to
16 Judge Anderson?

17 Regrettably, I submit to you that the answer to
18 each of these questions is "No."

19 Thank you.

20 JUDGE BROWN: I think at this time we'll
21 take a break.

22 MR. BULMER: That's good. We have to set
23 up a screen and stuff anyhow.

24 MR. SCHAFER: Your Honors, I'm rising to
25 file a motion

1 JUDGE BROWN: Let's go.
2 MR. SCHAFFER: -- just as a friend of the
3 court and a citizen, and I have copies for both
4 counsel, and I'm just asking the commission to
5 consider public disclosure of documents.
6 (COMMISSION MEMBERS EXITING
7 THE COURTROOM.)
8 JUDGE BROWN: I'm sorry, Mr. Schafer.
9 I'm not the commission.
10 MR. SCHAFFER: I have an original and
11 eight copies asking for public disclosure --
12 JUDGE BROWN: I'm asking you to step back
13 behind the bar, Mr. Schafer. Could you step back
14 behind the bar.
15 MR. SCHAFFER: Consider that filed,
16 please.
17 I will.
18 JUDGE BROWN: And don't come in front of
19 the bar again without my permission.
20 MR. SCHAFFER: I believe I heard it was
21 dismissed or adjourned.
22 JUDGE BROWN: Okay? Do you understand,
23 Mr. Schafer?
24 MR. SCHAFFER: I understand what you're
25 saying, Mr. Brown.

1 JUDGE BROWN: Okay. So that's the order
2 from the presiding officer. Do not come in front of
3 that bar without my permission in advance. Are you
4 clear on that?
5 MR. SCHAFFER: I hear you.
6 JUDGE BROWN: Thank you.
7 THE CLERK: What should I do with this?
8 JUDGE BROWN: Just leave it right there,
9 because that's not a way to file a document with the
10 commission.
11 (JUDGE BROWN EXITED THE COURTROOM.)
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1 * * *
2 (THE FOLLOWING PROCEEDINGS OCCURRED IN THE
3 COURTROOM OUTSIDE THE PRESENCE OF THE COMMISSION
4 DURING RECESS.)
5 * * *
6
7 MR. BULMER: (Addressing the court
8 reporter) Will you take this down.
9 JUDGE BROWN: You need to be quiet and
10 sit down and not interfere with this proceeding.
11 MR. SCHAFFER: I'm not interfering.
12 MR. BULMER: He was on this side of the
13 bar --

14 JUDGE BROWN: Have a seat.
15 MR. BULMER: -- bothering me.
16 JUDGE BROWN: Don't come in front of the
17 bar with without my permission.
18 MR. SCHAFER: Let me just explain. I
19 just requested the screen be situated in a fashion
20 that the members of the public and media can observe
21 it as well as the members of the commission, because
22 it's supposed to be a public proceeding, and putting
23 it in such a fashion that the public cannot see it is
24 hardly a public proceeding. That seems to me a
25 straightforward request.

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1 MR. BULMER: I'm out here trying to get
2 ready --
3 JUDGE BROWN: Mr. Schafer, do not come in
4 front of this again.
5 MR. BULMER: This is the second time.
6 JUDGE BROWN: The order that was signed
7 by Judge Felnagle of the Superior Court --
8 MR. SCHAFER: I know what it says. I
9 have a copy of it. I'm just saying it's a public
10 proceeding and I'm asking --
11 JUDGE BROWN: Did you come in front of
12 this bar without my permission during the break?
13 MR. SCHAFER: There -- look, it's an open
14 road, there's no proceeding going on.
15 JUDGE BROWN: Mr. Schafer, did you come
16 in front of that bar without my permission during the
17 break?
18 MR. SHAFER: Mr. Brown, you're growing --
19 I won't say anything.
20 MR. BULMER: Well, I'd like to get it on
21 the record, because I was standing here after you
22 told him to, when he came over here and --
23 MR. SCHAFER: Are we on the record?
24 MR. BULMER: Yes, we are.
25 JUDGE BROWN: Yes, we are.

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1 MR. BULMER: I would like it on the
2 record. Everybody in this room, including the
3 commissioners' clerk, will testify that he came over
4 here and addressed me, he was on this side of the bar
5 when I'm trying to get --
6 JUDGE BROWN: You will sit down.
7 MR. SCHAFER: If you are on the record --
8 JUDGE BROWN: You will sit down. You
9 will not speak to Mr. Bulmer or any other person in
10 front of the bar.
11 MR. SCHAFER: On the record --
12 JUDGE BROWN: You will be quiet.
13 MR. SCHAFER: -- I'm entitled to state my
14 position on the record as well. I simply was trying
15 to advise Mr. Bulmer that --
16 JUDGE BROWN: You've been advised --
17 MR. SCHAFER: -- that I would be
18 requesting that the public be allowed to see the
19 screen.

(JUDGE BROWN EXITED THE COURTROOM.)

(RECESS TAKEN.)

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THE FOLLOWING PROCEEDINGS OCCURRED IN THE
PRESENCE OF THE COMMISSION:

JUDGE BROWN: Go ahead, Mr. Bulmer.
MR. BULMER: Thank you, Judge Brown.

On your seats -- I think I got most of your seats -- there's a little closing memorandum. You don't need to read that now. I'm going to talk about some of the points, and some of them will be there for you to review during the process. They address issues of law, some of which I'm going to talk about in this process. I've filed it, and Mr. Taylor has a copy of course.

As I begin our closing statements, this is my only chance to talk to you, as you all know, and Mr. Taylor gets, of course, another opportunity, and I'm sure he'll be, as he does so eloquently, happy to talk to you about what I talk with you about, but I'm going to try as much as possible to talk about what he talked about, and I also have to talk about Judge Anderson's case.

First, we, of course, don't disagree with the seriousness of these proceedings or the seriousness

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of integrity with the public. Everybody in this room recognizes that, and you all recognize it. Virtually all of you I've argued cases in front of before, I think, except maybe Judge Schultheis or Judge Brown. There's just no question about that, and it's a very serious proceeding, and that's why we're here.

But that's also why, because these are very serious proceedings, there's a burden of proof, and the burden of proof is something that we bandy around, and in a lot of cases, you know, it doesn't make that much difference. In a lot of cases we can kind of slide around on it because either basically we're admitting the conduct and we're trying to figure out what to do about it or the line is so bright that it's either going to be on one side or the other.

I submit to you in this case the line is not that bright. The line is fuzzy. We have a very bright-line position we believe to be there. Mr. Taylor, on behalf of the commission, has a position which attempts to fuzz our lines by racing around the edges, and hopes to raise questions primarily by inference.

This is an inference case. There is not a lot of factual disagreement about the key big events.

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There's not a big argument here that the bowling alley was bought. There's not a big argument about that it closed December 4th. There's no argument that Cadillac payments started in January. There's no argument that in early March some sort of adjustment was effectuated through Kevin Iverson. Those are facts.

The question is: What do you draw from that; what are your inferences from that; what evidence do you have that Judge Anderson and Mr. Hamilton and Mr. Iverson and Patty Anderson and Mr. Fisher and Mr. Comfort are all somehow creating a false picture for you, an improper picture, a picture which didn't exist?

15 And that evidence isn't there. The standard of
16 proof is clear, cogent and convincing, and that,
17 again, just trips out; Mr. Taylor tripped it out
18 several times. But think about what that really
19 says. It got to be greater than a preponderance.
20 You could leave this room today and go back there and
21 say, you know, "If I had to toss a coin, I think
22 Judge Anderson did it." You know, "Boy, I think he
23 probably did."

24 "Probably did" doesn't make it. "Probably did"
25 isn't enough. It's got to be more than a

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1 preponderance. It's got to be -- well, it's not
2 beyond a reasonable doubt. It's got to be weightier
3 than a preponderance. It's got to be clear. You've
4 got to be clear that he committed the violation. And
5 the evidence has to be cogent, and it has to be
6 convincing.

7 And I submit in an inference case, it's easy to
8 create an implication that something happened. It's
9 easy to create an atmosphere in which you apply a
10 cynical screen and you say, "Well, of course the
11 worst must have happened." But that is not what
12 you're allowed to do.

13 What you have to do is say, "Because what our
14 job is is so important and so vital to what we do in
15 this process, because we're going to affect an
16 elected official --" the people have selected Judge
17 Anderson, and an election will come up again, and I
18 guess they'll probably have an opportunity to decide
19 again.

20 This process that we go through is unique. It
21 was added onto the Constitution that says, "We're
22 going to supersede the people's collective wishes
23 because we have perceived that it's so clear, so
24 cogent and so convincing that improper conduct has
25 come, we're going to go past that conduct, we're

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1 going to go past that election, and effectuate that."

2 So I know you understand it, but when you're
3 thinking about this evidence and you go in the back
4 room, Mr. Taylor makes a very good argument. He's a
5 professional lawyer, he is very good, and an
6 outstanding opponent. He's been a gracious one, a
7 professional one. He's let me use his equipment,
8 which I appreciate. He's smart enough to get here
9 sooner than I am so he got the big table and I got
10 the little table.

(LAUGHTER.)

12 He's done a great job.

13 And I'm sitting there and I'm scratching my head
14 and I'm saying, "Boy, what's going on here?" because
15 I think I know what happened, and I'm going to talk
16 about that. I want to make sure that you think about
17 that when you leave the room, because the burden of
18 proof, it seems to me, is sometimes passed on very
19 quickly, and we talk about a little bit of that in
20 the memorandum.

21 Now, in addition to that, of course, we don't
22 have to defend against that which is not charged.
23 There's due process in these proceedings, as we all
24 know, and so there's some talk about other different
25 things that have gone on here, but we only have to

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1 defend what is charged. If there are other charges,
2 maybe they'll come later, I don't know, but this time

3 we only have to defend against what's charged.

4 Now, I didn't know Mr. Taylor was going to take
5 the tack he was going to take, so a couple of my
6 discussions in here relate to counts which I guess
7 he's dropped, and I'm not going to talk about those
8 on the assumption that they're dropped and conceded
9 as gone.

10 A couple of the other counts, which are the
11 perjury counts, it's important to understand the
12 perjury counts, and I've got some discussion in our
13 memo about the perjury counts, because it's not
14 correct that you can find that it was knowingly false
15 testimony if you find Judge Anderson said one thing
16 and in fact something else was true. That's not what
17 happens in perjury or false testimony.

18 Mr. Taylor charged it properly. Knowingly
19 giving false testimony. That means you have to know
20 you're wrong, that's the count, when you give the
21 testimony.

22 The law is extremely clear. You can be
23 mistaken, all right. You can come in there and say,
24 "I was driving a Lincoln Continental," and it turns
25 out it really was a Cadillac all the time. That can

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1 be just flat wrong on the facts, and you can say it,
2 you can swear, "Oh, it was a Lincoln, it was a
3 Lincoln, it was a Lincoln," a hundred times. Unless
4 you know it was a Cadillac, it's not false testimony.

5 And that's because it's very easy for people to
6 get confused. It's very easy in a deposition setting
7 or in a trial setting for people's minds to blur, for
8 words to get difficult, for precision to not be dealt
9 with but rather broader kind of issues for the
10 witness to try and answer the questions to do as best
11 they can to communicate information.

12 That's what the process is about. And when you
13 communicate information, sometimes you're going to be
14 wrong, and under the standard in this state, it takes
15 not only evidence that the person who testified was
16 actually wrong -- clear, cogent, convincing evidence
17 that they were actually wrong -- but it takes a
18 second witness or other significant evidence that
19 shows not only that the fact was factually wrong but
20 to show that the person testifying knew he was not
21 telling the truth when it happened. It's a
22 two-pronged test. You have to go through both of
23 them.

24 And I'll submit to you that some, what was it,
25 three or four years later, when Mr. Anderson's

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1 deposition was taken in connection with the car --
2 remember, we put in carefully the evidence about and
3 he told the commission in this same deposition that
4 he talked to his wife; he told them he talked to her
5 about payments; he told them he told her that Bill
6 Hamilton was making payments.

7 He wasn't hiding the ball. He answered the
8 questions as best he could about commissions based on
9 what he knew at that time, and he still believes it
10 to be true.

11 Unless they've demonstrated he knew it wasn't
12 true when he said it, this word "commission," which
13 is what I ask, then you can't find it. And he
14 equivocates, of course. He also goes on to say, if
15 you read it, "Not that I'm aware of. I don't know
16 why I would because they were not." He equivocates

17 as to the answer, "Not that I'm aware of."
18 And Mr. Taylor doesn't probe beyond that. He
19 doesn't go on to say, "Well, is your awareness
20 wrong," and some of these other kinds of issues. He
21 leaves it that way.
22 The second one is even more undefined. The
23 second one is: "Did you have discussions after
24 January 1st?" "I don't believe so, not to my
25 knowledge." To prove this count, they have to have

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1 shown that in fact to his knowledge, his knowledge at
2 the time he gave it, he knew that was wrong when he
3 gave it.

4 The same with the next question. The next
5 question is a question that I don't think you can
6 ever get a false-testimony count on. "Is it your
7 recollection that the discussions reflected...?"
8 Recollection is the question that was asked, and he
9 said, yes, that was his recollection.

10 They would have to have actual proof someplace
11 that that wasn't his recollection. Usually it takes
12 another witness that comes in and says, "Well, he
13 knew all about it but told me he was going to lie,"
14 or a diary or something someplace where they do it.

15 It's very hard to prove perjury for a lot of
16 reasons, because otherwise people would come in and
17 you wouldn't get answers, you wouldn't get answers on
18 the stand, you wouldn't get answers in depositions.
19 Everyone would say what Mr. Taylor suggests you say:
20 "I don't recall at this time, I don't recall at this
21 time, I don't recall at this time." You would have
22 nothing in the process, you would get nowhere,
23 because everyone would be scared to death that they
24 were going to face false-testimony allegations later.

25 I also talk in our little memorandum about the
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1 public disclosure gift requirements, and I set forth
2 what the rules are there, and it's clear that if they
3 were a gift, you didn't have to disclose them, and
4 Mr. Taylor, I think, also agrees with that.

5 I also then talk about (g), which is the staying
6 on after he was elected. Now, we know we can strike
7 Surfside in from (g). He's charged with serving as
8 president of Hoffman-Stevenson, Inc., and Pacific
9 Lanes, Inc. Now, on Surfside, Inc., the third one
10 that's charged here, I may have missed it, but I
11 haven't seen any evidence about Surfside Inn as to
12 staying on as president that was put in.

13 We can see, of course, that he stayed on at
14 Hoffman-Stevenson and Pacific Lanes, Inc. The
15 question is, how does that apply, and Mr. Taylor and
16 I were talking during the break, and in fact what the
17 Code of Judicial Conduct provides -- at the time of
18 his election, it was in the preamble, and what it
19 says is:

20 "Effective date of compliance. Persons to whom
21 this code becomes applicable should arrange their
22 affairs as soon as reasonably possible to comply with
23 it."

24 The idea obviously is, when you get elected,
25 people can't extract themselves from everything

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1 they've been involved in in all their years. A
2 reasonable time frame is, in fact, anticipated.

3 That preamble section, which was in a different
4 section from what was in the preamble in the '92/'93

5 code, when the code was revised in '95, they moved it
6 out of the preamble, but the same language now exists
7 as a formally codified section. It's the identical
8 same language; it's just in a codified area.

9 And it says the same thing: "Persons to whom
10 this code becomes applicable should arrange their
11 affairs as soon as reasonably possible."

12 And Judge Anderson said, "Look, I was busy,
13 working hard getting all my affairs wrapped up.
14 We got the estate wrapped up. I was the one who knew
15 about what was going on in this process, and
16 Mr. Fisher asked me if I could stay on for a period
17 of time."

18 He did not say, and there was no testimony that
19 he said, "I'll get off this, I want --" or Fisher
20 said, "Stay on to do the Hoffman transaction papers."
21 That's not what it was. What it was was, to
22 effectuate the other documents that were going on,
23 the sale of condominiums and the other things in the
24 process.

25 You know, there aren't a lot of documents that
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1 I've seen that are signed. There's a couple, I
2 think, tax forms, those sorts of things, in this
3 January period. There's a huge heap of documents in
4 October, in the fall, when the deal was renegotiated;
5 there's no question about that.

6 But in the threshold month, month-and-a-half,
7 two months, what's a reasonable time period? And I
8 think a judge could reasonably conclude that, "On
9 something I've been involved in this long and this
10 intensively, it's permissible for me to stay on."

11 Then Mr. Fisher said something very important.
12 He said, "I was supposed to get him off, but we
13 didn't get to it. We even prepared the paperwork,
14 but we didn't get it done."

15 And now they get to the fall, and Judge Anderson
16 told you that he could understand how people could
17 interpret that differently and they could say,
18 "That's plenty of time. You ought to be off."

19 On the other hand, you have to look at what
20 happened and the reasons. He wasn't benefiting from
21 any of this thing. The estate was going to benefit,
22 the trust was going to benefit by signing those
23 documents.

24 He probably should have been off, but he wasn't.
25 It had not happened due to administrative oversight,
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1 so now is it reasonable for him to reach the
2 conclusion, "Jeez, this is a good thing for them to
3 get me off." That's what he did. Some people would
4 disagree. Other people would say, "Ten months after
5 this much involvement where what you're dealing with
6 is not for self-dealing, not for self-benefit, that's
7 all right." We ask you to dismiss the count on that
8 basis.

9 We recognize that other people would say, "No,
10 he should have been off." But if he should have,
11 it's frankly a very minor kind of violation, not one
12 that rises to the level of jettisoning the judge,
13 which is essentially what Mr. Taylor is talking
14 about. And I think that there's enough evidence to
15 show there's some flexibility in that range and
16 there's no specific guidelines on it.

17 Let's talk about what the case is really about,
18 of course, which is this Cadillac deal. Now, I don't

19 have a big fancy time line, I'm not even going to
20 draw a big one, but this case is really about tracks
21 of events.

22 And the first track, which is a really long
23 track -- I'm just going to do it this way -- starts
24 way back here in the 1970s, okay. In the 1970s, two
25 young men come to Tacoma. One's going to be a

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1 lawyer, one's going to be a banker. And they set up,
2 and the banker begins his own bank; he's been asked
3 to do so and he goes forward.

4 The lawyer begins his practice. He leaves, I
5 guess, government service or something and comes in
6 and begins his practice, and he wants to go forward.
7 He has some ambitions, this lawyer. This lawyer
8 wants to develop some investments, he wants to
9 develop a banking relationship, so he goes to the
10 local bank and he strikes up a relationship with his
11 local banker, who understands him, they have a
12 vocabulary they can work with, they can discuss
13 investments back and forth.

14 And this begins a friendship in the 1970s, and
15 that friendship extends on through most of the '70s,
16 well into the '80s, and we get into the early '90s.

17 During that time period that friendship grows.
18 They get to know each other better. They begin to
19 shift a relationship from a business relationship to
20 a personal friendship so that by the time we get to
21 the early '90s, Mr. Anderson is Mr. Hamilton's best
22 male friend, best male friend. They know each other,
23 they get along with each other.

24 Meanwhile, Judge Anderson is moving forward.
25 He's gotten to know the man better. They're spending

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1 lots of time talking. I practically bored you to
2 tears with conversations about the transactions they
3 discussed, about the details they went through, about
4 the investments they've been going through, about the
5 personal involvements with their families, with the
6 weddings.

7 There is no doubt on this record that during
8 this time period, these men became closer friends,
9 became good friends, the kinds of friends who do
10 things for each other.

11 But these are men of a generation before we get,
12 as the popular record says, the New Age sensitive
13 man. These are not going to be people going around
14 hugging each other and looking each other in the eye
15 and saying, "This is great," and "I like you, you
16 like me." This is a different time, this is a
17 different era, and you heard Mr. Hamilton talk about
18 that.

19 Mr. Hamilton comes from a bootstrap background;
20 he pulled himself up. And I like Mr. Hamilton's --
21 I'm not trying to insult him here, but this is a man
22 who shows affection with money, he shows affection
23 with money for people he likes, for friends. He buys
24 businesses for his family. He gets into a
25 dry-cleaning business with his brother to take care

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1 of him because he's the only family member. He buys
2 a video store, which turns out not to be too good,
3 for his son-in-law.

4 This is a man who shows affection with money,
5 and that's the personality trait that we're dealing
6 with here, because you're going to be asked to reach

7 a conclusion as to whether or not this gift makes any
8 sense in the confines of these people, all right, and
9 would this ever happen.

10 And a character trait of Mr. Hamilton is that he
11 shows affection by giving gifts. But he knows that
12 if he just does it, it's not going to be very
13 acceptable. He knows that in his world you have to
14 hide it a little bit, you have to couch it in ways
15 that make it palatable to the person that you're
16 giving it to.

17 And you do it in different ways. You tell them
18 it's a loan, but you know it's not a loan, they're
19 not going to pay it back, but that makes it okay for
20 the person to do. You tell them it's for services
21 that they did, but they know and you know that it's
22 not really there, at least he does, and that's why it
23 gives an excuse, gives him a social excuse.

24 So those men on that track get out here to
25 January, as we all know, of 1993, and at that point

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1 Mr. Hamilton does the thing that he wants to do for
2 his very good best male friend. He makes a money
3 contribution to his friend.

4 Now, he can't make a money contribution to his
5 friend in his political campaign; he can't go plunk a
6 lot of money down there. That's not going to look
7 very good. He can't just hand him money. Guys don't
8 do that, people don't do that: "You're my good
9 friend. I really appreciate everything you've done.
10 I'd like a little affection from you. Here, take
11 money." You don't do it that way. You buy gifts;
12 that's what you do.

13 And in their world, in their world, the world of
14 people with two million bucks net worth -- we're not
15 talking about two million bucks paper worth, we're
16 talking net worth -- in a world where we've got
17 somebody with a million dollars net worth, you don't
18 show the kind of affection that's going on with, what
19 did Mr. Taylor characterize it, so much as a flask of
20 whiskey or a jug of whiskey. You might do that
21 periodically, but you also can do it on a bigger
22 scale and a bigger level, because in your world, not
23 to trivialize people who ride buses, I myself have
24 been known to ride a bus or two, but in their world
25 this is an acceptable range of gift and an

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1 opportunity to do it.

2 And remember what Mr. Hamilton said. To him, it
3 wasn't open-ended at the time they made it. To him
4 it was \$800 a month. That's how he thinks about it,
5 and that's the process he was going through.

6 Now, paralleling this track, however, starting
7 out here in the '80s, is the Hoffman estate. That's
8 going forward. Now, what does Judge Anderson do?
9 Judge Anderson pours himself into this estate.

10 When you go through the exhibits, you'll come
11 back to that exhibit from the people from Eisenhower,
12 the tax guy, Mr. Weaver. I direct your attention to
13 that exhibit, because that exhibit shows a couple of
14 things which I'll talk about in a minute, but it
15 shows in a nutshell what the state of this estate
16 was, and you get some idea that this estate was a
17 disaster, that there were all sorts of liabilities
18 and problems and work had to be done.

19 And Judge Anderson poured himself into this
20 thing to make this thing work. He had pride in it.

21 He wanted it to work right. He was proud of it. You
22 could hear it in his voice. When we got to the last
23 part, when we wandered into Surfside and some of
24 those things, you could hear that, you could hear
25 that he was proud of the work, that he managed to

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1 move these pieces around and make things happen to
2 benefit this estate to make it work.

3 It was a piece of work which he got some fees
4 from it, sure, but you could hear it. It wasn't just
5 the fees; he wasn't grubbing for every dollar here in
6 this process. This was something he was proud of.
7 He had work into it, he was proud of it, he was
8 detailed on it. So he got into this estate very,
9 very much in the process.

10 And what this deal was is very simple. They had
11 to get the condos up to speed because they couldn't
12 get rid of them. They had to use the cash flow from
13 the bowling alley, which is what the business plan
14 was, to get the condos going to pay all the bills and
15 fees, then get the condos going, get them sold off.
16 Now you could make some money.

17 Because you couldn't dump these condos; you
18 couldn't give them away. They were time-shares in a
19 disastrous situation, from what we know. And so he
20 has to use the cash flow to get them cleaned up and
21 get rid of them, and now you can sell the bowling
22 alley and you're ready to move forward and move the
23 assets downstream. That all takes time, and it did.

24 But they get to early 1992. Now, in early 1992
25 the Trendwest sales have gone on, some of the condo

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1 sales are scheduled. It's looking like it's time to
2 maybe be able to wrap this up.

3 So what does Mr. Anderson do? Mr. Anderson
4 tries to find out who can buy this thing, who will be
5 interested in this bowling alley. The bowling people
6 aren't. He can't find any leads from people who are
7 interested in it. He's run out of ideas. He asked
8 some of the local salespeople who could do it. He
9 asked the refinishing people, who were supposed to
10 have leads into all the different other bowling
11 alleys, places to go, and nobody knows how to sell
12 this thing.

13 So he goes to his friend Mr. Hamilton and he
14 says, "Mr. Hamilton, how can I market this? What
15 would be a good way to market it? Let's toss this
16 around. I'm not getting anywhere." And Hamilton,
17 who already knows about the bowling alley, who knew
18 Mr. Hoffman, he had had some investment opportunities
19 with Mr. Hoffman, I'm not sure if I'm remembering
20 this correctly, but I think he even said that maybe
21 he'd helped Mr. Hoffman in connection with the
22 bowling alley at some point.

23 Mr. Hamilton knows about the bowling alley and
24 has some idea. But is he intimately into it? No,
25 but he has a general sense of what's going on in this

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1 bowling alley.

2 And Mr. Hamilton also has a son who's coming out
3 of college, Sean, so Mr. Hamilton says, "Well, let me
4 take a look, I might be interested." So Mr. Hamilton
5 begins to do his due diligence in the process.

6 And in that due diligence, as he decides to
7 determine what he's going to do, what does he learn?
8 He learns that in the bowling alley business there

9 are a few things that you've got to have or you're
10 not going to make it. You got to have gambling;
11 you've got to have liquor licenses; you've got to
12 have the fall season cash flow to carry you through
13 the slow seasons.

14 There can be no question, I mean, I think I beat
15 it to death in here, that in the bowling alley
16 business, everybody knows that you have a season,
17 which is September, but really October, until
18 sometime in the spring, where you make money, and
19 then it's money out the drain in the other months.
20 And you better have set aside money for that period
21 of time.

22 Mr. Hamilton knows this. How do we know this?
23 Well, we know this for a couple of different reasons:
24 (1) We know it because he said it; (2) we knew
25 Mr. Anderson knew about it, we knew Mr. Anderson knew

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1 about it before he took over the bowling alley. But
2 also it's clearly identified in some of the first
3 papers in this estate. Mr. Weaver identifies in
4 those documents that they've got higher-than-normal
5 cash on hand. Why? Because the business is
6 cyclical. That document is being filed in December
7 and they've got more cash; everybody knows about it.

8 But how does Mr. Hamilton specifically know
9 about it? Not from osmosis from Judge Anderson. He
10 knows about it because he goes and talks with Pat
11 Comfort. Now, Pat Comfort is a guy who's had a lot
12 of unfortunate events apparently in connection with
13 bowling alleys. He knows what's going on.
14 Mr. Hamilton knows Mr. Comfort because Mr. Comfort
15 borrowed money from Mr. Hamilton's bank involving
16 bowling alleys in the process.

17 And Mr. Comfort says to him a few things. (1)
18 He tries to discourage him, obviously not
19 successfully. But he also tells him that, "You've
20 got to have the cash flow. You've got to have the
21 money in the fall when you get into these deals or it
22 won't work. You want to buy in the fall. You don't
23 want to buy at any other time. It's important to you
24 to do this."

25 Mr. Hamilton, we know, on Exhibit 18, which is
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1 that two-parter one that we broke up, Mr. Hamilton
2 was well aware of this. Mr. Hamilton did a little
3 quick calculation, as he is prone to do, on pieces of
4 paper and came up with about what he thought, and he
5 came up with he was going to be at least short 60 to
6 65,000 bucks because of what goes on in the summer
7 seasons. He knew he was going to have at least that
8 much to cover in the process.

9 So he knows all that as he enters into those
10 negotiations or enters this process with Judge
11 Anderson. So he has his deal points. His deal
12 points are: I've got to have the cash flow, I've got
13 to have the licenses, and I've got to have some terms
14 which are acceptable to me.

15 Because they're not going to get conventional
16 financing on this loan. Why aren't they going to get
17 conventional financing? Because they've got a
18 building with asbestos in it; they've got a building
19 with asbestos in the barrel, which is dirty and
20 falling down, and everybody in the business knows
21 that the minute somebody goes and gets conventional
22 financing, the bank is going to show up and they're

23 going to say, "We're not loaning a dime until that's
24 taken care of," and that's 200,000 bucks.

25 Mr. Hamilton is prepared to take this risk.

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1 He's prepared to make the payments on it, but he's
2 going to finance it; it's going to be back-financing
3 from the sellers. So he's got his deal points and he
4 has to have good terms, because he's not going to get
5 conventional financing on it.

6 Meanwhile, Judge Anderson has arrived at his
7 deal points, and his deal points are, he wants a
8 million bucks. Now, I told you in my opening that
9 you weren't going to hear any testimony here that the
10 million bucks wasn't a reasonable number, and you
11 haven't. Okay. A million dollars was a reasonable
12 number.

13 Now, if these guys are crooks and cons, the
14 place to slide money around is in that, okay. The
15 place to slide money around is in that pricing figure
16 in there. There's lots of reasons to move the number
17 up and down and back and forth.

18 But everything here shows that a million dollars
19 was a perfectly reasonable price. They had an
20 appraisal for a million-three. Mr. Weaver had
21 knocked off some value for closing costs. He
22 attributed a minimum of 12 percent, you'll find out
23 in his paperwork there, for closing costs alone.
24 That's 130,000 bucks. He'd attributed the fact that
25 there was no market for bowling alleys; he knocked

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1 that off the valuation. He was under a million.

2 Judge Anderson came up with a million. He took
3 into account there's no closing costs here. There's
4 no real estate agent going to be paid. You're not
5 going to have those kinds of cost. You've got a
6 building that's in worse condition; it's got leaks,
7 has sewer problems, the 200,000 asbestos problem is
8 still floating around out there. The million dollars
9 was a fair price.

10 Then they do what all business people do when
11 they get into this situation. They structure the
12 deal and then they figure out: How are we going to
13 allocate it, though? Well, we'll allocate 700,000 to
14 the land and building, and 300,000 for purchasing the
15 business itself. That's an allocation they make.

16 But, you know, we're not here and we're not in a
17 position of stepping back and saying, "I wouldn't
18 have done the deal that way. I think they should
19 have done it differently." This is not a case of
20 trusteeship malpractice. This is not a case where we
21 get to come and second-guess the reasonable business
22 judgments of Judge Anderson.

23 This is a case in which you have to take what's
24 presented to you and you have to decide whether there
25 was corruption in the decisions he made; is there

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1 clear, cogent, convincing evidence of corruption in
2 the decisions he made. Not did he make a mistake,
3 not was he sloppy in drafting it and we wish he'd
4 done it differently; not would other people have
5 prepared documents differently in a different
6 sequence. You have to decide was there corruption in
7 the decisions that were made and let's look at that.

8 So he sets the million-dollar price, and that's
9 what's important to him, is to get the money into the
10 estate. This estate is wrapping up, they need money,

11 so he sets the price. And he needs as-is where-is;
12 that's important to him from his point of view,
13 because he's trying to protect this estate, he
14 doesn't want it left with these documents. And those
15 are, I think from my point of view, the most
16 important pieces of the process. So that's what he
17 does, and they reach an agreement.

18 Now, let's talk about this Kevin Iverson. Kevin
19 Iverson was in here, and Kevin Iverson was not
20 precise on every date and everything that happened,
21 but Kevin Iverson, you couldn't look at that young
22 man and reach a conclusion that he can lie. He's not
23 in here lying, he's not fabricating, he's not making
24 something up.

25 You know, the commission kind of has to make up
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1 its mind. They kept taking runs at our witnesses:
2 Well, Mr. Iverson, do you follow ethical codes?
3 Mr. Iverson, do you understand what general
4 accounting principles are? Mr. Iverson, do you have
5 all your work paper organized?

6 Did Iverson flinch at any of those? He answered
7 them as best he could, he recognized they were out
8 there, and then he defended his position as to what
9 things he did in accounting as best as anybody that I
10 think you could expect to come in here. He'd
11 prepared paperwork. He'd only been an accountant, a
12 licensed accountant, at that point for two years,
13 okay. And he was given this assignment and he
14 prepared them.

15 What did Mr. Iverson say? Mr. Iverson said, you
16 know, in essence, this is not a Boeing/McDonnell
17 Douglas merger deal. You're not going to have 200
18 pieces of paper. These are small business deals. In
19 small business deals, you identify what's important
20 and you go forward and then people try to make them
21 work.

22 And that was important in this case. Everybody
23 would like to have made it work. Think about what
24 happens if they get to December and the licenses come
25 through but now Mr. Hamilton steps up to bat and says

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1 to them at that point, "I don't want to do the deal."

2 And he's got some outs. And if you read that
3 document carefully, there's some title report outs;
4 there's an out there that you can also use, which is,
5 "Is the title report satisfactory to the buyer," is
6 in that contract. He's got some outs in the
7 contract.

8 If he steps up to bat and walks from it, where's
9 the estate then? Where the estate is is they don't
10 have an asset to sell. They know it's got some
11 problems. They have to be back in the market and
12 looking for other places. This is the kind of deal
13 where people know where they want to go, they've
14 identified what's important and now they want to get
15 there. And then they go to the documentation and
16 begin to prepare the documentation to get ready to do
17 this.

18 Now, what do they do meanwhile? They firm it
19 up, they get the idea what they want to do. Judge
20 Anderson begins to run for office. He's busy. These
21 are guys who've known each other for years. They
22 trust each other; they're backup; it's their son's
23 wedding. They know each other. They know they've
24 got a basic deal; they can shake hands. There's no

25 law, you know, that says --

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1 THE COURT REPORTER: Mr. Bulmer --
2 MR. BULMER: I'm sorry. I know I'm
3 talking too fast.

4 There is no law that says I can't do a
5 million-dollar deal on a handshake anyplace. The
6 implication here is unless it's in writing, unless
7 it's precisely done, it's wrong or it's illegal.

8 There's a whole body of law, folks, in contract
9 law which allows for extrinsic evidence to come in --
10 it can come in orally, it can come in outside -- as
11 to what contracts are about, because people write
12 contracts all the time, even the people who do Boeing
13 and McDonnell Douglas deals, and say, "You know, we
14 missed something here."

15 Even if there's an integration clause in the
16 contract that says everything we're going to do is in
17 writing here, even then there's a whole body of law.
18 People come in and say, "You know, we thought we put
19 it in here. We knew it was there, we knew what was
20 going on in the process."

21 And that's what the chandelier is about. He'd
22 like to characterize the chandelier as somehow being
23 an attempt to trivialize this thing. That's not it
24 at all. Judge Anderson was looking for a way to try
25 to explain in his mind a reasonable analogy.

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1 And when you buy a house, you go to those real
2 estate documents, and they're huge. But do you put
3 every single thing in every time? No. You walk
4 through the house -- and I've learned the hard way,
5 and probably some of you have too, but you go through
6 and you walk through the house and you assume that
7 things that are hooked to the walls and things that
8 are on the ceiling are going to be there. You make
9 that assumption. Do we all write them up? Does
10 every single contract include every chandelier and
11 the bushes in front of the house and all that? No.
12 Sure, you could. None of us could afford it, but you
13 could do all that.

14 But you come back after you bought the house and
15 the chandelier is gone, okay, and it's out of there.
16 You assumed it was going to be there. You were
17 entitled to have an assumption it was going to be
18 there and you put it in that way, and then you can
19 fight about it. In this case the chandelier was
20 gone, which is the money.

21 So what do they do? They start to write it up.
22 Now, they write this thing up, but like all good
23 lawyers, they have to do a draft, and they sit down
24 and go over a draft. And when they go over that
25 draft in the process, they prepare a draft.

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1 Now, the draft is important from both people's
2 side. It's important to the seller because the
3 seller wants to establish and make sure his deal
4 points are in, but it's also important to the buyer
5 to make sure their deal points are in.

6 Now, we know that Mr. Hamilton knows it's
7 imperative to get the fall cash flow from independent
8 outside sources. The proof shows he knows that.
9 They sit down to write it. And what do they do when
10 they write it up? They draft it up, they do a rough
11 draft of it, and they do the rough draft apparently
12 in early August, about the time they go out and tell

13 the bowling alley people that Mr. Hamilton is going
14 to be buying this operation.

15 The fall season is crucial. They're having the
16 meeting with the league season people. They
17 anticipate it coming through. This is the time to
18 do the introduction, because you're into marketing,
19 you're into promotion, you're trying to make it
20 happen.

21 So they prepare a document, and that document,
22 of course, is Exhibit 19, which is not one of the
23 ones we talked about here a minute ago in the
24 opening, in Mr. Taylor's opening.

25 Exhibit 19 has a couple of interesting things.
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1 Exhibit 19 first -- and this continues into 20 and
2 21, which are the rest of these --

3 THE COURT REPORTER: Mr. Bulmer, you're
4 speaking so fast that I'm having trouble even
5 understanding you.

6 MR. BULMER: I'm sorry. I speak fast.
7 I'll try to slow down. I know they want to get out
8 of here.

9 All right. Paragraph 1, listen to this:
10 "Hoffman shall lease to Hamilton the entire
11 underlying real estate, building and all attachments
12 thereto, pursuant to a lease to be agreed to between
13 the parties..."

14 That's as open as you can get. These people
15 believe they're going to be able to resolve it.
16 Ordinarily you know what you'd have there? "Pursuant
17 to an agreement in the form that's attached hereto as
18 Exhibit A" as you draft that up. That's the long
19 form of doing it. That's the way you prepare one of
20 these things.

21 But these are people who have faith and trust in
22 one another that they're going to be able to make
23 this work. They understand what the basic terms are.
24 They haven't got the lease in place. They haven't
25 got the lease in place. But they're going to go

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1 forward.

2 Now, there's another important part of
3 Exhibit 19. Exhibit 19, of course, is not a document
4 that Mr. Hamilton has seen since he went, as part of
5 the due diligence, to see Mr. Schafer. He goes to
6 see Mr. Schafer to be his corporation attorney, to
7 help set up the corporation in August of '92.

8 In August of '92, he goes and meets with
9 Mr. Schafer. Mr. Schafer set up a corporation. He
10 gives Mr. Schafer Exhibit 19. The document came
11 from Mr. Schafer's file. We put Mr. Schafer on.
12 Mr. Schafer says, "Oh, yes, that was given to me in
13 August and I gave it to the commission." So this is
14 not Mr. Hamilton's transference over, this didn't go
15 through his hands. "I gave it to the commission."

16 What does Exhibit 19 have on it?

17 JUDGE BROWN: Mr. Bulmer, could you slide
18 the bulletin board part back a little bit?

19 MR. BULMER: I don't need this anymore.
20 I'm pretty much done with that part.

21 Is that better?

22 JUDGE BROWN: Fine.

23 MR. BULMER: Where is the written
24 evidence that these people have an agreement? It's
25 not a lot of written evidence, folks, but we know

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1 that Mr. Hamilton is not a fool. If there's nothing
2 that was clear up here, Mr. Hamilton is not a fool.
3 And we know that he knows the cash flow is
4 imperative. He knows he has to have the cash flow.

5 And what does he get? He gets a document from
6 Judge Anderson, who was less concerned about that
7 issue and concerned about the closing. So Judge
8 Anderson puts a reasonable closing date in there,
9 from Judge Anderson's point of view, right there,
10 September 30.

11 And what happens on this draft document; what
12 does Mr. Hamilton do? This is Mr. Hamilton's
13 writing. He testified to it. This is Judge
14 Anderson's, that's Judge Anderson's. But most of
15 the rest of the writing on the document is
16 Mr. Hamilton's.

17 Right there, remember, I went over it with him:
18 Is that a "1" and a comma or just a big "1"? At
19 first he thought it was a big "1" but it's a comma
20 and a "1". He changes that agreement to a "1",
21 because "1" is important, and September 30 is not
22 acceptable to him.

23 He submits it back, in essence as a counter-
24 offer. He says, "It's got to be September 1, you've
25 got to have September 1." And Mr. Hamilton and

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1 Mr. Anderson knew, when they did that, that September
2 was important, because that's when the season starts,
3 that's what the cash flow was going to begin, and
4 that's when they had to have it.

5 So when they say they knew they had an
6 understanding, this was a deal in which everybody
7 knew you had to have the cash flow. The
8 million-dollar price was premised upon getting the
9 fall cash flow.

10 Pat Comfort said he wouldn't buy a bowling alley
11 for the same price in December that he would in
12 September because of the cash flow. You would have
13 to have -- what were his words, right out of his
14 mouth voluntarily, his words -- price adjustment.
15 That's what he would want. There it is, not from
16 Mr. Hamilton's file, from Mr. Schafer's file in which
17 they negotiated for.

18 If this were a contract case, a contract case in
19 which these parties were now bickering, okay, if
20 Mr Hamilton and Mr. Anderson were now bickering or
21 the parties were now bickering, we would put that on
22 and show that in fact there was an intent to change
23 and there was obviously intent for September 1st to
24 be a crucial date. And then we would go extrinsic
25 and say, "Why was September 1st an important date?"

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1 And we would come in and show exactly what
2 you've got here, that everybody knew, including
3 Mr. Anderson, that fall cash flow was important.
4 That's what's crucial about September 1st. That's
5 what's vital in this kind of a business.

6 So they did the draft, and then they went
7 through Exhibit 20, which is the one that's dated
8 August 26th, very shortly after that, and in that
9 one the draft in fact is changed. It's now
10 September 1st. They've done the adjustment.

11 They know it can't close that quickly; everybody
12 knows it can't close that quickly. They're trying to
13 communicate as best they can, sloppily, but they have
14 an understanding; these are people who trust each

15 other to the point that they're even going to be able
16 to work out a lease that's crucial to this deal.
17 They know that they're talking about getting the fall
18 cash flow.

19 When Judge Anderson talks about it being the
20 essence of the deal, it is the essence of the deal.
21 It's there if you know what's going on, but you can't
22 look at every deal and just read the pieces of paper
23 and say, "Well, we know everything that's going on,
24 we know all the terms and conditions."

25 Why is all this important? This is all

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1 important because the decision to adjust the price
2 that comes up makes business sense; is there an
3 independent track. The commission's posture on this
4 is: But for the car payments, they never would have
5 adjusted the price. That's really what it boils down
6 to. The car payments generated the price adjustment.
7 But for the car payments, we would never have
8 adjusted the price.

9 But they would have adjusted the price. The
10 evidence is clear in this process that was what the
11 expectation was.

12 In essence what the commission's position is
13 is that Mr. Hamilton was so dumb that without an
14 understanding as to what was going to happen to the
15 cash flow, he signed an agreement on December 4th
16 that was for the same price of a bowling alley that
17 he was going to buy September 1st knowing that
18 bowling alleys in December are worth less than
19 bowling alleys in September.

20 Mr. Hamilton is not that stupid. Mr. Hamilton
21 signed the papers because he believed he understood
22 that they would take care of that part. They were
23 signing the deal, he had an understanding as to the
24 deal, and it would go forward. He's not so dumb as
25 to sign a deal and close the deal in December for the

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1 same price that he got.

2 Now, what happened to this money? A lot of talk
3 about this money. Well, there's a lot of shuffling
4 back and forth. It's not that complicated. It's not
5 that elaborate of a process. If you close the deal
6 September 1st, Mr. Hamilton takes control of the
7 property and takes the money, then he pays \$50,000
8 down, he has a \$250,000 note and he pays it, and
9 eventually the estate gets paid off.

10 But they don't close. They don't close. If
11 they had closed then and transferred it, the estate
12 would not have gotten a dime of the fall cash flow.
13 The estate would not have gotten a dime of that
14 money; they would not have any of that for their
15 benefit; it would not have been used for their
16 purposes. It would all have gone into Mr. Hamilton's
17 pocket. But it didn't close.

18 So what happened? The estate got that \$90,000,
19 92,000 and some change. The estate used that money
20 for its purposes. There was excess cash during that
21 time period, and that excess cash got spent on estate
22 debt. The estate got the \$92,000 and spent it,
23 \$92,000 that they would not have had if the deal had
24 closed September 1st, \$92,000 that Mr. Hamilton would
25 have had.

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1 Now, how you get to the 92,000, I went through
2 it carefully with Mr. Iverson because there was some

3 interest in the process. But I said in my opening,
4 as we all know, things glaze over sometimes when you
5 get to financial numbers. But he explained it pretty
6 well, and I couldn't explain it to you again now, but
7 when he got finished, I thought I understood it and
8 there was a reasonable justification for each of his
9 entries.

10 And they all depended on Mr. Iverson to tell
11 them what the number was. Mr. Iverson didn't say,
12 "They came to me and said, 'We've got to get a
13 hundred thousand dollars out of this deal.'" They
14 didn't come to him and say, "You've got to give us
15 some sort of a number, work it backwards like a
16 puzzle." No, Mr. Iverson said, "They're all my
17 numbers. No one told me any number to get to." The
18 number was going to fall out, whatever the number was
19 was what the number was going to be.

20 So the number that was generated, how we got
21 here, sure, you could probably drag in, and he
22 himself admitted, different accountants who would do
23 it differently in the process, but there's no
24 question about Mr. Iverson's integrity or his skill.
25 He prepared it as best as he knew at that time, and

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1 it was acceptable.

2 But there's something very important about his
3 piece of paper. Mr. Iverson created all the verbiage
4 on this form. No one told him how to create it;
5 that's what he said. He created the verbiage on this
6 form; it was his idea. And he was asked about his
7 work papers.

8 Now, the commission would like to focus on this
9 purchase price adjustment. But that's Mr. Iverson's
10 language. Mr. Iverson came up with that vocabulary,
11 price adjustments. He did that because he thought
12 that's how the transaction should be characterized.

13 Now, the most important verbiage on that form is
14 right there: Need to adjust from cash flow from
15 September 1st to December 31st. Right there are the
16 working papers, right there is the statement as
17 reviewed by Mr. Fisher as to what was going on.

18 This document does not get accepted until
19 March 9th, 1993, by Mr. Fisher. Mr. Hamilton and
20 Mr. Anderson could have come in there and they could
21 have said as many times as they want to, "Adjust the
22 price, adjust the price, give us an adjustment, give
23 us some money back, do what you want to."

24 But you know what? Mr. Fisher had Mr. Hamilton
25 by the back of his neck. Because he had the signed

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1 documents, he had the documents that said \$250,000
2 note, he had the documents on the lease and option,
3 Mr. Fisher was in control. Mr. Fisher had this
4 meeting on March 9th because he had spent a couple of
5 months getting up to speed to understand what was
6 going on. He had the principal people that he wanted
7 to get information from come into a room and tell him
8 about what was going on to see if it made any sense
9 to him, if it made any sense to him knowing what he
10 knew and what he had learned about.

11 This deal, if you want to call it that, was not
12 ultimately effectuated by Judge Anderson. It was
13 effectuated by the independent trustee who took an
14 independent look at this.

15 Now, the commission would have you believe that
16 Mr. Fisher was a dupe or Mr. Fisher was a stooge or

17 Mr. Fisher was part of this transaction. Remember,
18 they took a run at him, but they backed off, "What
19 about this excise tax thing and taking a little bit
20 of the money in terms of the closing and having
21 Mr. Hamilton pay you the money?"

22 They took a little stab at his character, but
23 they had to back off because they want him to be good
24 because they want to rely on him for back -- that he
25 hadn't heard any conversations in December, so they

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1 can't beat him up on the excise tax issue if they
2 want to rely on the December testimony.

3 So Mr. Fisher, his notes, his notes, Mr. Fisher
4 sat in a room with these people. It's important to
5 him. The other players say they don't remember the
6 meeting.

7 Now, look. In a conspiracy orchestrated by
8 Mr. Hamilton and Mr. Anderson, where they came in and
9 they changed their testimony from what they said in
10 depositions based on documents they looked at, looked
11 at things they recalled, the easiest thing in the
12 world to have happened was for Mr. Hamilton and
13 Mr. Anderson to come in here and say: "You know, I
14 said I didn't know much about it, I didn't remember
15 the meeting, but you know what, I looked at the time
16 records and now I remember where I was sitting in
17 that meeting, and you're right, and we sat there and
18 went over everything with Mr. Fisher." That's their
19 exoneration.

20 Did they do that? You want to talk about
21 credibility? Did they take the easy way? No. They
22 sat here and the changed their testimony in areas
23 where in fact they'd had their recollection
24 refreshed.

25 For example, let's take this tax thing about

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1 Mr. Meter-whatever-his-name-is. What the deposition
2 testimony says is he was asked about --

3 MR. TAYLOR: Excuse me. That's not in
4 the record.

5 MR. BULMER: All right. I can get it on
6 the record.

7 I believe the deposition has been published, and
8 I believe that I can refer to the deposition for any
9 purposes. It's been published; I believe depositions
10 can be used, quote, for any purpose in the
11 proceeding.

12 JUDGE BROWN: It's not in evidence.

13 MR. BULMER: All right. It's not
14 important.

15 JUDGE BROWN: Mr. Bulmer, in light of the
16 time, if you could wrap up your argument in about 17
17 minutes.

18 MR. BULMER: Is that how long he had?

19 JUDGE BROWN: It's more than he had.

20 MR. BULMER: All right. Of course, I'm
21 defending and he gets rebuttal. But, okay, I'll do
22 the best I can.

23 JUDGE BROWN: You're not going to speak
24 an unlimited amount.

25 MR. BULMER: I understand.

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1 JUDGE BROWN: I want to give you fair
2 warning. I'd like to have an opportunity for a
3 response prior to the noon hour.

4 MR. BULMER: I understand. Thank you,

5 Your Honor. I don't mean to be rude. I'm just
6 trying to sort out what's going on.

7 JUDGE BROWN: All right.

8 MR. BULMER: So this is Mr. Fisher's
9 handwriting. Mr. Fisher is the one who approved
10 this. It was explained to Mr. Fisher. Mr. Fisher
11 went through it thoroughly, and he understood what
12 was going on.

13 And until he accepted that, there wasn't a deal.
14 Until he accepted that, it wasn't final. They came
15 in and told him what they thought, they came in and
16 explained to him what they believed it was, they told
17 him what they understood was going on, and at that
18 time Mr. Fisher signed off on this price reduction
19 right there.

20 This is a transaction which had to occur, at
21 least this part down, no matter what. No matter what
22 would have happened, this \$31,000 would have had to
23 have happened, because this is money that the bills
24 were sent to the wrong place and the people did
25 business the same and they spent money that wasn't

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1 theirs on someone else's bills.

2 It's like if you take over a house and you're in
3 the house and you pay the electrical bill, someone
4 else's electrical bill, because you want to keep your
5 electricity on. In the process you get to go to the
6 prior owner and say, "You owe me 50 bucks for the
7 electrical bill."

8 And that's all this is. So this \$31,000 would
9 have happened anyway.

10 This purchase price adjustment was set pursuant
11 to Mr. Iverson's own calculations based on a
12 perfectly reasonable direction to adjust for cash
13 flow from September 1st to December 31st, which in
14 the industry would have been appropriate because a
15 price adjustment would be appropriate for a bowling
16 alley bought in the fall as opposed to -- or in the
17 winter as opposed to one bought in the fall.

18 Let me talk about the two wives in this case.
19 The first one I want to talk about is Patty Anderson.
20 Mr. Taylor's case is premised upon the \$8,000 cash.
21 He keeps using \$30,000; that includes the \$8,000 in
22 cash.

23 Mrs. Anderson, Patty Anderson, came in and she
24 didn't lie to you. She gave that money. She
25 explained where the money came from. She explained

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1 about her family, about keeping it in tin boxes
2 because of the Depression and those sorts of things.
3 There are people who do that.

4 There's nothing inherently evil in cash.
5 There's nothing wrong with cash. People who think
6 they're not doing anything wrong don't have to go out
7 every time they do something and keep a precise
8 receipt and keep an exact receipt of every single
9 thing they do.

10 She gave this money to the man she was in love
11 with and was going to marry for use. That money got
12 paid. If this money got paid, which it clearly was,
13 and the \$9,000 got paid by Judge Anderson, then the
14 bribe begins to fall down. Judge Anderson put 9,000
15 of his own money in it. If this is a bribe that's
16 been orchestrated in the process, Judge Anderson
17 wouldn't have plunked down his \$9,000 out of his
18 account. It would have come from Mr. Hamilton. Same

19 with the 8,000.

20 Let's talk about Diane Anderson. I'm not afraid
21 of this exhibit of Mr. Taylor's, because if you'll
22 really look at this exhibit, you'll see what's really
23 in there. Diane Anderson came in here and she
24 testified that she didn't remember the room, she
25 didn't remember the location -- or she didn't

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1 remember the time, she didn't remember what else was
2 there, and she testified to a lot of other things
3 too.

4 She testified that she didn't even know that her
5 husband was looking for a car, yet the car salesman
6 talked about how a couple cars came home over the
7 weekend. Mr. Anderson talked about how the son had
8 gone to look at the car they were about to buy, a new
9 car. And she said, "Oh, no, it was a complete
10 surprise when it rolled into the driveway for me."

11 She also talked about, very importantly, that
12 she knew about the condominiums down at Ocean Shores
13 that were going on, and she said, when I asked her
14 about it:

15 "To the first half of your question, did he tell
16 you that he was selling time-shares? Yes, he did.
17 Did he say that he was getting a commission? I do
18 not recall him saying he got a commission."

19 That's the evidence. She doesn't recall. Judge
20 Anderson does recall talking about the commission.

21 Here's what she says: He indicated he had just
22 completed a closure of selling a large item through
23 his firm. She says a bowling alley, commission
24 allowed as a realtor would.

25 She's got pieces, closure, selling large items,

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1 commissions and realtors. Okay.

2 Can you come away convinced that all these years
3 later, she remembers exactly what was going on? This
4 was a marriage in which she didn't apparently even
5 understand that it was in trouble. She's told me the
6 marriage was fine. She told me the marriage was
7 fine. But it wasn't fine, and things were in
8 trouble.

9 And you know what? I wasn't going to be mean to
10 Mrs. Anderson up there, but they asked the integrity
11 questions. We don't question Mrs. Anderson's
12 integrity. She was in here, just like Mr. Hamilton
13 sometimes made mistakes and sometimes Mr. Anderson
14 sometimes made mistakes, telling you the truth as
15 best as she could recall it.

16 But you have to judge her memory. And when we
17 got to the very end of her testimony, what happens?
18 She said, "I would say that that is part of my past
19 and I guess that I would say that I have blanked out
20 an awful lot of that portion of my life, so it is not
21 real sharp in my mind, because I'm going forward with
22 my life."

23 And when she said that, you could see it on her
24 face, this was a person who had been hurt and there
25 was some unhappiness there. And when you're hurt and

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1 you're unhappy and you have vague recollections about
2 things, your memory does funny tricks. Your memory
3 does funny tricks.

4 Can you come away convinced that there's clear,
5 cogent, convincing evidence that Judge Anderson
6 specifically said that it was a commission on a

7 vehicle for the bowling alley, when we have
8 commissions, we have realty, we have closing stuff,
9 when we know those events were also going on at this
10 time in this relationship?

11 What's going on here? And then I'll wrap up, I
12 think, within the time period.

13 Is 11:30 what I've got, Your Honor?

14 Here's what we had. We had a track like this,
15 which was the estate bowling alley. This was going
16 forward like this. We had a much longer track out
17 here, which is Hamilton and Anderson's personal
18 relationship. This deal was completed and wrapped
19 up. There was every business reason to believe that
20 they would do some sort of adjustment in the process.
21 The gift happens here. This is the closing. This is
22 the price adjustment.

23 I submit to you that when you review all this
24 evidence, when you review all this evidence, you will
25 see that there are two clear tracks going on here,

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1 parallel in time. This is a railroad track which
2 goes down here parallel in time, and in that process
3 they went forward. There are rational, reasonable
4 explanations as to this gift and why Judge Anderson
5 would accept it, which you heard him testify about,
6 and why it would go forward. There are legitimate,
7 rational reasons why the closure would occur here and
8 why reasonable people, including the independent
9 trustee, Mr. Fisher, would say this made reasonable
10 sense in that process.

11 The commission's case is not that this is a
12 railroad track, but rather that it's a monorail; that
13 but for this, those events don't happen. You cannot
14 come away from this proceeding, knowing about the
15 bowling alley business, knowing about how important
16 this all was to Mr. Hamilton in terms of the cash,
17 knowing that there were some indications that it was
18 negotiated backwards, knowing that the instruction
19 that Mr. Iverson got was for an adjustment in the
20 price, and reach the conclusion by clear, cogent,
21 convincing evidence that but for this gift between
22 good male friends, this would not have happened.

23 And if you can't reach the conclusion that the
24 only reason that happened was because of this gift,
25 then you have to dismiss those counts against Judge

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1 Anderson.

2 Thank you very much.

3 (PAUSE IN PROCEEDINGS.)

4 MR. TAYLOR: I'll start where Judge
5 Anderson's counsel left off: But for, you have to
6 find the only reason the gift was made was because of
7 the price adjustment process.

8 I think that's what the evidence shows. For 25
9 years these men had been friends: the '70s, the
10 '80s, the '90s. 1992, done deals all the way along.
11 We heard about the winery, the casket company, the
12 building with the only-50-foot-wide opening that he
13 consulted with Mr. Hamilton and his friend and he
14 gulped and said he signed the escrow and the
15 mortgage, the deal went through.

16 No gift, no gift, no gift, no gift. Deals all
17 the way along. Price adjustment process, gift. Was
18 it a gift? Members of the commission can decide
19 that.

20 Burden of proof. Burden of proof is something

21 lawyers can argue about and Weinstein can write
22 about, but at the end of the day, burden of proof is
23 simply nothing more than coming in here and using
24 your common sense.

25 The way I like to look at burden of proof,
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1 whether it's a preponderance case or clear, cogent
2 and convincing or beyond a reasonable doubt, the way
3 I look to look at it, sizing up a witness, I like to
4 ask myself and I like the trier of fact to ask
5 themselves: Would you make the most important
6 decision in your life based on Bill Hamilton telling
7 you something from the witness stand?

8 If Bill Hamilton told you your wife was having
9 an affair, would you get a divorce right then and
10 there? I don't think so. You'd say to yourself,
11 "Well, that doesn't sound right. We've been married
12 a long time. Never seen any signs of it, but he says
13 so. I'll go out and get some corroboration, I'll
14 look around for some corroboration, because this is a
15 serious issue."

16 Well, if you look around for some corroboration
17 on Bill Hamilton and what he told you, it's not
18 there. You can look high for corroboration of Bill
19 Hamilton's testimony about a gift and that the deal
20 existed all along. You can look high, you can look
21 low, you can look at documents, you can look at
22 testimony. There's no corroboration of Bill Hamilton
23 and his version of the facts.

24 If Bill Hamilton says your wife is having an
25 affair, you're not going to go out of here and get a
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1 divorce. That's burden of proof. That's how to size
2 up a witness.

3 Evidence. Where is somebody, anybody, any
4 person at all, other than Bill Hamilton, Judge
5 Anderson, who corroborate the gift story?
6 Mrs. Anderson doesn't. Trustee Fisher should have
7 been able to. He should have been told. The people
8 who should know, they don't say that. Diane Anderson
9 says just the opposite.

10 Trustee Fisher. Let's talk about Trustee
11 Fisher. An independent trustee effectuated the deal.
12 I wrote that down. I don't think that's quite the
13 way that happened. Talked about the meeting
14 March 9th. Trustee Fisher did the best he could with
15 the evidence he had available.

16 Now, it's been argued that Judge Anderson and
17 Bill Hamilton are credible because they didn't come
18 in here and tell you, "Well, this happened March 9th,
19 this happened March 9th, this happened March 9th."

20 There's a reason why they couldn't: because
21 they knew Trustee Fisher was going to be a witness.
22 They could have come in here and said, "Well, we told
23 Trustee Fisher about the Cadillac deal when he was
24 relying on us for advice." No, they couldn't come in
25 here and say that, not in a million years, because

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1 Trustee Fisher comes in and says, "I didn't know
2 about the Cadillac deal."

3 Judge Anderson says, "I didn't tell Trustee
4 Fisher about the Cadillac deal. It was nobody's
5 business." They couldn't come in and tell you
6 something happened on March 9th because there was
7 something there who was going to tell the truth.

8 Next point, it's a quick point, it's a small

9 point, it's a point of law. There have been
10 memorandums submitted about law of perjury, a
11 suggestion that "I don't recall" can't formulate the
12 basis of a charge of perjury.

13 There was a man down the street who used to work
14 for Port Tac here in Tacoma, a guy name Howard Wolf,
15 chief log buyer for Port Tac. Went into a grand jury
16 and said in response to many questions,
17 "I don't recall, I don't have an independent
18 recollection."

19 The Ninth Circuit, in United States vs.
20 Port Tac, says that's perjury, false testimony,
21 knowingly giving false testimony. You can't avoid or
22 evade the charge of giving false testimony by saying
23 "I don't recall" if you recall.

24 Next point, another quick point. We've heard
25 all along how important this fall season cash flow

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1 was to Bill Hamilton. I don't think so. This was a
2 ten-year deal. Mr. Hamilton wasn't buying the
3 bowling alley for the period of September through
4 January, September through February. He was buying
5 it for ten years. He was looking at the cash flow.

6 Mr. Hamilton is a smart guy. We heard a lot
7 about his business acumen. This guy's a shark when
8 it comes to business deals. He knows how to look at
9 paperwork and finance.

10 Ten-year deal. Can he make a buck on it, can he
11 make a profit. He's not looking at two months or
12 three months, he's looking at how the cash flow and
13 profit works out over ten years. Ten-year deal,
14 ten-year lease. This cash flow, two percent, three
15 percent, two or three percent of the money over the
16 life of the deal.

17 Lawyer Comfort: "Get that cash flow,
18 Mr. Hamilton, it's crucial." It's not in the deal.

19 Quick point, perhaps a small point. You can't
20 hand cash back and forth in their world. They can't
21 do that, these two gentlemen. Well, if they're to be
22 believed, \$8,000 cash, delivered by Judge Anderson to
23 Mr. Hamilton.

24 Of course, that's not what Mr. Hamilton told
25 Accountant Iverson. Mr. Hamilton told Accountant

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1 Iverson that Patsy Kelbaugh delivered the money,
2 \$8,000 cash. A to B, B to C, A to B, B to C, C to D.
3 Mrs. Kelbaugh to Judge Anderson, or vice versa, on to
4 Hamilton, into Pacific Recreation.

5 In this day and age, \$8,000 doesn't transfer
6 without something being in writing. Bill Hamilton
7 tried to tell us there was something in writing, an
8 adjustment to his shareholder loan account on Pacific
9 Recreation to reflect him getting that \$8,000.
10 Wasn't there. He testified in his deposition the
11 accountant had done it. Didn't happen.

12 Diane Anderson. Diane Anderson, Trendwest. I'm
13 a big believer in cross examination. I think that's
14 where the truth comes out most of the time.
15 Trendwest deal was done in 1991. Test your memory?
16 Sure. But she said, "No, I don't think it was
17 condominiums or time-shares." It was 1993 by now.
18 What had just closed? It wasn't Trendwest. It was
19 the bowling alley.

20 Another effort to test Diane Anderson's
21 recollection. We heard about a painting: "Well,
22 don't you remember the painting that Judge Anderson

23 gave Bill Hamilton?" She says, "Well, no." I fully
24 expected, when we heard the lifelong relationship
25 between Bill Hamilton and Judge Anderson from both
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1 their mouths, we'd hear about this painting. It
2 disappeared.

3 I'd like to end where I began. The case is
4 about three things: trust, betrayal and
5 accountability.

6 Charles Hoffman, who's been kind of lost in
7 these proceedings, been gone a long time, but Charles
8 Hoffman trusted Judge Anderson, made him his personal
9 representative. Steve Fisher relied on Judge
10 Anderson, his partner of 20 years. He trusted him.
11 Other people trusted Judge Anderson: the liquor
12 commission, the gambling commission and the public,
13 the people who ride the bus to work, people who don't
14 have a Cadillac, people who make \$30,000 a year or
15 \$40,000 a year total. They trusted Judge Anderson.

16 Betrayal. Judge Anderson betrayed his former
17 client, Charles Hoffman. Judge Anderson betrayed
18 Steve Fisher, put him in a horrible position, a
19 horrible position. He should have told Steve Fisher
20 about that Cadillac before Steve Fisher is the man
21 brought in to bless the deal, put his blessing on the
22 deal. He betrayed Steve Fisher.

23 Betrayal. He betrayed the public. The only
24 person, ladies and gentlemen, he did not betray was
25 Bill Hamilton.

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1 Accountability. I said when I began, no one
2 takes pleasure in these proceedings, but they're
3 deadly serious and they're important, and when
4 something like this happens, ladies and gentlemen,
5 the judge must be held accountable. Nothing less
6 will suffice, and the public, who trusts you ladies
7 and gentlemen to maintain the integrity of the
8 judiciary, the public will accept nothing less, and
9 the public is entitled to nothing less.

10 Thank you.

11 JUDGE BROWN: I'll come up here so I can
12 be heard.

13 The public fact-finding hearing of the
14 Washington State Commission on Judicial Conduct in
15 the matter of the Honorable Grant Anderson, judge of
16 the Superior Court of Washington for Pierce County,
17 is now concluded. The commission will notify, in the
18 appropriate manner pursuant to the commission rules,
19 the parties of its decision, which is required by the
20 rules to be announced at a public meeting, which it
21 will be.

22 Anything further from counsel?

23 MR. TAYLOR: No, Your Honor. Thank you.

24 MR. BULMER: No, Your Honor. And thank
25 you.

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1 JUDGE BROWN: Thank you very much.

2 I would also like to say the commission does
3 appreciate the work of counsel for the judge and the
4 commission in presenting this matter this week. We
5 appreciate the effort that both of you put into it.

6 Thank you.

7 MR. BULMER: Thank you, Your Honor.

8 MR. TAYLOR: Thank you.

9 (HEARING CONCLUDED
10 AT 11:45 A.M.)

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