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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
BEFORE THE GRAND JURY

---000---

PEOPLE OF THE STATE OF CALIFORNIA,)	
)	
PLAINTIFFS,)	INDICTMENT
)	
V.)	NO. 211045
)	
RONALD R. GONZALES, JOSEPH AUGUST GUERRA III, AND NORCAL WASTE SYSTEMS, INC.,)	
)	
DEFENDANTS.)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SAN JOSE, CALIFORNIA

VOLUME 10
PAGES 1508-1698

APRIL 20, 2006
APRIL 26, 2006
MAY 2, 2006

---000---

APPEARANCES:

FOR THE PEOPLE:	JULIUS FINKELSTEIN DEPUTY DISTRICT ATTORNEY
	JAMES GIBBONS-SHAPIRO DISTRICT ATTORNEY
OFFICIAL COURT REPORTER:	SUE HERFURTH, C. S. R. LICENSE NO. 9645

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I N D E X

W I T N E S S

P A G E

TODD THOMPSON	1510
BILLY RAY JONES (RESUMED)	1548
TODD THOMPSON (RESUMED)	1586
TONY ARREOLA	1621
MICHAEL SANGI ACOMO (RESUMED)	1670

EXHIBIT

P A G E

112	1538
113	1545
114	1628
115	1634
116	1670
117	1675
118	1677
119	1679
120	1682
121	1683
122	1693

SUE HERFURTH, CSR #9645

1510

1 SAN JOSE, CALI FORNIA APRIL 20, 2006

2

3

PROCEEDINGS:

4

(ROLL WAS CALLED BY THE FOREPERSON AND THE

5

FOLLOWING PROCEEDINGS WERE HAD.)

6

MR. FINKELSTEIN: UNLESS THERE IS ANY MATTER TO

7

TAKE UP ON THE RECORD, I' LL HAVE THE NEXT WITNESS STEP IN.

8

THE FOREPERSON: I DON' T KNOW OF ANYTHING AT THIS

9

POINT.

10

MR. FINKELSTEIN: VERY GOOD. THANK YOU.

11

TODD ELLIOTT THOMPSON,

12

CALLED AS A WITNESS, HAVING FIRST BEEN DULY SWORN, TESTIFIED

13

AS FOLLOWS:

14

THE WITNESS: I DO.

15

EXAMINATION:

16

BY MR. FINKELSTEIN:

17

Q. COULD YOU PLEASE STATE YOUR FULL LEGAL NAME FOR

18

THE RECORD?

19

A. TODD ELLI OT THOMPSON.

20

Q. AND CAN YOU SPELL YOUR NAME FOR THE REPORTER,

21

PLEASE.

22

A. T-O-D-D, E-L-L-I -O-T-T, T-H-O-M-P-S-O-N.

23

Q. MR. THOMPSON, I JUST WANT TO ADVISE YOU THAT IF YOU

24

RETAINED COUNSEL, THE GRAND JURY WILL PERMIT YOU A

25

REASONABLE OPPORTUNITY TO STEP OUTSIDE THE GRAND JURY ROOM

26 AND CONSULT WITH COUNSEL, IF YOU SO DESIRE. DO YOU
27 UNDERSTAND THAT?

28 A. I DO. THANK YOU.

SUE HERFURTH, CSR #9645

1511

1 Q. WHERE DID YOU ATTEND COLLEGE?

2 A. I STARTED AT PURDUE UNIVERSITY IN INDIANA FOR TWO
3 YEARS. I WENT TO THE UNIVERSITY OF CALIFORNIA AT SANTA
4 BARBARA, WHERE I GOT A BACHELOR OF ARTS DEGREE. I WENT TO
5 CORNELL UNIVERSITY, GOT A MASTER OF SCIENCE IN AGRONOMY. I
6 ATTENDED LAW SCHOOL AT THE UNIVERSITY OF CALIFORNIA,
7 BERKELEY.

8 Q. WHEN DID YOU GRADUATE FROM LAW SCHOOL?

9 A. 1983.

10 Q. ARE YOU LICENSED TO PRACTICE LAW IN THE STATE OF
11 CALIFORNIA?

12 A. I AM.

13 Q. WHEN WERE YOU FIRST ADMITTED TO THE CALIFORNIA
14 STATE BAR?

15 A. 1986, I THINK. I STARTED PRACTICING IN '85. I
16 THINK IT WAS '86 WHEN I FINALLY --

17 Q. WHAT WAS YOUR FIRST JOB AS AN ATTORNEY?

18 A. MY FIRST JOB AS AN ATTORNEY WAS OUT OF LAW SCHOOL
19 IN 1983. I WORKED FOR A FEDERAL COURT TRIAL JUDGE. I WAS
20 WHAT'S CALLED A LAW CLERK, AND MY JOB WAS TO ASSIST HIM IN
21 DECIDING CASES.

22 Q. WHAT DID YOU DO AFTER THAT?

23 A. I CAME TO SAN FRANCISCO AND STARTED WORK FOR HOWARD
Page 4

24 RICE. AT THAT TIME IT WAS HOWARD RICE, NEMEROSKI, KENNEDY,
25 FALK, AND ROBERTSON.

26 Q. CAN YOU SPELL NEMEROSKI FOR THE COURT REPORTER?

27 A. I THINK SO. N-E-M-E-R-O-B-S-K-I. WE CALLED HIM
28 NEMO.

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1512

1 Q. WHAT WAS YOUR POSITION WHEN YOU WERE FIRST HIRED?

2 A. I WAS WHAT'S CALLED AN ASSOCIATE ATTORNEY, WHICH IS
3 JUST GENERALLY AN ATTORNEY, BUT I WAS NOT A PARTNER IN THE
4 FIRM; THEY WERE CALLED ASSOCIATES.

5 Q. AND HOW LONG DID YOU REMAIN WITH HOWARD RICE?

6 A. FOR 18 YEARS.

7 Q. YOU LEFT WHEN?

8 A. DECEMBER 1983. ACTUALLY, NOVEMBER 1983 -- I'M
9 SORRY. 2003.

10 Q. WHAT AREAS OF LAW DID YOU PRACTICE IN WHILE YOU
11 WERE AT HOWARD RICE?

12 A. YOU KNOW, I WAS GENERALLY A BUSINESS LITIGATOR. I
13 DID BUSINESS LITIGATION, WHICH MEANS I PREPARED AND TRIED
14 CASES. AND I DID IT IN A VARIETY OF AREAS; LAND USE, AND
15 I'M ADMITTED TO THE PATENT BAR AND I DID PATENT CASES.

16 ALSO, I DID GENERALLY WHATEVER THE CLIENTS NEEDED.
17 SO, WHATEVER KIND OF LITIGATION WORK THEY DID, THAT'S WHAT I
18 TRIED TO DO FOR THEM.

19 Q. WHAT WAS YOUR POSITION WHEN YOU LEFT HOWARD RICE?

20 A. I WAS, IN SORT OF GENERIC TERMS, A PARTNER.
21 ALTHOUGH BECAUSE HOWARD RICE IS A CORPORATION, I WAS A

22 SHAREHOLDER AND DIRECTOR OF THE CORPORATION.

23 Q. I TAKE IT THE COMPENSATION PAID TO A PARTNER OR
24 SHAREHOLDER IS GREATER THAN THAT OF AN ASSOCIATE?

25 A. GENERALLY SPEAKING, YES.

26 Q. WHY DID YOU LEAVE HOWARD RICE?

27 A. YOU KNOW, BEING AN ATTORNEY IS A TOUGH JOB. I HAD
28 DONE IT FOR 18 YEARS. I REALIZED IF I STAYED AT HOWARD RICE

SUE HERFURTH, CSR #9645

1513

1 I WOULD CONTINUE IN A JOB THAT TOOK UP ALL OF MY LIFE, AND I
2 JUST DIDN'T -- I JUST REALIZED AFTER 18 YEARS THAT I DIDN'T
3 WANT TO DO THAT ANYMORE.

4 Q. WHAT DID YOU DO AFTER LEAVING HOWARD RICE?

5 A. WELL, I TOOK A JOB WITH THE CALIFORNIA COURT OF
6 APPEAL. I'M WHAT'S CALLED A RESEARCH ATTORNEY. THE COURT
7 OF APPEAL IS THE COURT ABOVE THE TRIAL LEVEL. SO IN
8 COURTROOMS LIKE THIS, TRIALS ARE HELD, AND IF ONE OF THE
9 PARTIES TO THE TRIAL FEELS THAT SOMETHING WENT WRONG, THEY
10 CAN TAKE THAT TO APPEALS COURT AND ASK THE APPEALS COURT TO
11 MAKE SURE IT'S OKAY. THE APPEALS COURTS ALL SIT IN PANELS
12 OF THREE JUDGES. ALL THREE OF THOSE JUDGES CONSIDER EACH
13 CASE, OR SOME SET OF THREE JUDGES CONSIDERS EACH CASE.

14 EACH JUSTICE HAS TWO ATTORNEYS WHO WORK UNDERNEATH
15 THEM, HELP THEM WITH THE WORK THEY DO. I'M ONE OF THE
16 ATTORNEYS FOR JUSTICE SANDRA MARGULIES OF THE FIRST DISTRICT
17 COURT OF APPEAL.

18 Q. DID YOU TAKE A SUBSTANTIAL CUT IN PAY WHEN YOU
19 CHANGED FROM HOWARD RICE TO THE FIRST DISTRICT COURT OF

20 APPEAL?

21 A. YOU KNOW, YES. I HOPE -- SAD TO SAY, I REGRET THAT
22 TO THIS DAY, BUT --

23 Q. WAS NORCAL WASTE SYSTEMS, INCORPORATED A CLIENT OF
24 YOURS WHEN YOU WERE WORKING AT HOWARD RICE?

25 A. YES.

26 Q. WHEN DID YOU BEGIN REPRESENTING NORCAL?

27 A. AS BEST I CAN REMEMBER, IT WAS 1991. OR, I'M
28 SORRY, 1992 OR 1993.

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1514

1 Q. DO YOU KNOW NORCAL CEO, MIKE SANGIACOMO?

2 A. I DO.

3 Q. DID YOU KNOW NORCAL'S CHIEF OPERATING OFFICER OR
4 CEO, ARCHIE HUMPHREY?

5 A. YES.

6 Q. DID YOU KNOW NORCAL'S CHIEF FINANCIAL OFFICER OR
7 CFO, MARK LOMELE?

8 A. YES.

9 Q. DID YOU EVER MEET SOMEONE NAMED BILL JONES?

10 A. OH, YEAH.

11 Q. SO YOU KNOW MR. JONES AS WELL?

12 A. YES.

13 Q. DID YOU REPRESENT NORCAL DURING THE TIME THAT
14 NORCAL WAS SEEKING A CONTRACT FROM THE CITY OF SAN JOSE FOR
15 RECYCLE PLUS SERVICES?

16 A. I CERTAINLY DID. ALTHOUGH I DON'T MEAN TO IMPLY I
17 NECESSARILY DID ANY WORK IN CONNECTION WITH THAT, BUT AT THE

18 TIME THAT I NOW UNDERSTAND THEY WERE APPLYING FOR THE
19 CONTRACT WITH SAN JOSE, I CERTAINLY WAS DOING LEGAL WORK FOR
20 THEM OF SOME SORT OR ANOTHER.

21 Q. OKAY. AND THAT WOULD INCLUDE THE TIME THAT
22 NORCAL -- THAT WOULD INCLUDE THE TIME THAT NORCAL'S PROPOSAL
23 WAS BEING CONSIDERED BY THE SAN JOSE CITY COUNCIL, THAT
24 WOULD HAVE BEEN OCTOBER THROUGH DECEMBER OF 2000?

25 A. AT THE TIME I DIDN'T KNOW THAT WAS HAPPENING, BUT I
26 CERTAINLY WAS REPRESENTING NORCAL IN SOME CAPACITY, I'M
27 SURE. IT JUST WAS NOT IN CONNECTION WITH THAT PARTICULAR
28 MATTER.

SUE HERFURTH, CSR #9645

1515

1 Q. SO YOU HAD NO INVOLVEMENT IN THE PROCESS THAT
2 RESULTED IN THE PROPOSAL THAT NORCAL SUBMITTED TO THE CITY
3 OF SAN JOSE BACK IN 2000?

4 A. I HAD A SMALL INVOLVEMENT.

5 Q. SO YOU WERE AWARE THAT THAT WAS GOING ON?

6 A. I DON'T THINK I WAS. I'M NOT TRYING TO MISLEAD
7 YOU, BUT THAT'S THE ANSWER TO YOUR QUESTION.

8 Q. SO ARE YOU ABLE TO TELL US HOW IT IS YOU WERE
9 INVOLVED IN THE PROCESS, BUT NOT AWARE THAT THE PROPOSAL WAS
10 BEING SUBMITTED TO THE CITY?

11 A. AS -- I'M NOT SURE. I THINK THAT I CAN, BUT I FEEL
12 I WOULD LIKE TO TAKE ADVANTAGE OF YOUR OFFER.

13 Q. GO AHEAD. WE'LL WAIT.

14 A. I'M SORRY TO ALL OF YOU --

15 MR. FINKELSTEIN: THAT'S ALL RIGHT,
Page 8

16 MR. THOMPSON.

17 THE WITNESS: YOU KNOW --

18 MR. FINKELSTEIN: MR. THOMPSON, PLEASE DON'T
19 ADDRESS THE GRAND JURY.

20 THE WITNESS: I'M SORRY.

21 (WHEREUPON, THE WITNESS LEFT THE COURTROOM.)

22 A JUROR: IF HE WERE TO WANT TO SPEAK TO HIS
23 LAWYER AFTER EVERY QUESTION, WOULD WE BE ABLE TO LIMIT THAT
24 ACCESS?

25 MR. FINKELSTEIN: NO. HE HAS A RIGHT TO CONSULT
26 WITH HIS ATTORNEY.

27 A JUROR: WOW.

28 MR. FINKELSTEIN: HOPEFULLY WE'RE GOING TO TRY TO

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1516

1 AVOID THAT FROM HAPPENING. BUT PLEASE, IF A WITNESS CHOOSES
2 TO CONSULT WITH AN ATTORNEY OR ASSERTS PRIVILEGES, YOU
3 CANNOT CONSIDER THAT IN ANY WAY, SHAPE, OR FORM AS EVIDENCE
4 OF ANYONE'S GUILT OR LACK OF GUILT. PLEASE DO NOT PAY
5 ATTENTION TO THAT.

6 THE WITNESS: THE ANSWER TO YOUR QUESTION IS I
7 BELIEVE THAT I CAN EXPLAIN THAT TO YOU.

8 Q. WOULD YOU DO SO.

9 A. YES. SOMETIME IN THE SUMMER OF THE YEAR 2000, I AM
10 PRETTY SURE IT WAS THE YEAR 2000, I WAS ASKED BY NORCAL TO
11 REVIEW AND NEGOTIATE A CONTRACT, WHICH WAS SOMETHING I DID
12 FOR THEM REGULARLY.

13 IT TURNS OUT THIS CONTRACT, AND I THINK IT WAS A
Page 9

14 SET OF TWO CONTRACTS, WAS A CONTRACT BETWEEN CALIFORNIA
15 WASTE SYSTEMS AND NORCAL. AND AS IT TURNS OUT LATER, THAT
16 CONTRACT UNDERLAID THE RELATIONSHIP BETWEEN NORCAL AND
17 CALIFORNIA WASTE SYSTEMS WHEN NORCAL BID FOR THE SAN JOSE
18 WORK.

19 I'M NOT SURE. I DON'T REMEMBER ANYMORE IF AT THE
20 TIME I WAS EVEN AWARE OF THE PURPOSE OF THIS OR HOW IT WOULD
21 BE USED. AND AFTER THAT TIME, I HAD NOTHING TO DO WITH THIS
22 MATTER UNTIL WELL AFTER THE CONTRACT HAD BEEN BID AND
23 AWARDED.

24 Q. OKAY. NOW, YOU SAID CALIFORNIA WASTE SYSTEMS. DID
25 YOU MEAN CALIFORNIA WASTE SOLUTIONS --

26 A. SOLUTIONS. I'M SORRY. CWS, WE CALLED IT.

27 Q. YOU CAN USE CWS; WE'RE FAMILIAR WITH THAT. SO DID
28 YOU HAVE ANY INVOLVEMENT IN THE PROCESS THAT LED TO THE

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1517

1 SIGNING OF AN AGREEMENT BETWEEN NORCAL AND THE CITY OF SAN
2 JOSE IN MARCH OF 2001?

3 A. OTHER THAN WHAT I JUST TOLD YOU, WHICH IS REVIEWING
4 THE CONTRACT BETWEEN CWS AND NORCAL, NO.

5 Q. OKAY.

6 A. AND AS I THINK I SUGGESTED TO YOU, I DON'T BELIEVE
7 THAT I WAS AWARE THE PROCESS WAS HAPPENING AT THE TIME IT
8 WAS HAPPENING.

9 Q. OKAY. SO HAVE YOU SEEN A COPY OF THE NORCAL
10 AGREEMENT, THE ORIGINAL NORCAL AGREEMENT WITH THE CITY OF
11 SAN JOSE?

- 12 A. I'M SURE I HAVE.
- 13 Q. BUT THAT WAS AFTER IT WAS EXECUTED?
- 14 A. WELL AFTER. WHEN I SAY WELL AFTER, IT WAS PROBABLY
- 15 A YEAR AFTER OR SOMETHING LIKE THAT.
- 16 Q. I WOULD LIKE YOU TO LOOK AT WHAT'S BEEN MARKED AS
- 17 EXHIBIT 72 IN THIS PROCEEDING AND TELL ME WHETHER OR NOT
- 18 YOU'VE SEEN THAT DOCUMENT BEFORE.
- 19 A. YES, I HAVE.
- 20 Q. ARE YOU THE TODD THOMPSON WHOSE NAME APPEARS AFTER
- 21 THE WORD "FROM" ON THE TOP OF THE MEMO?
- 22 A. YES.
- 23 Q. ARE YOU THE AUTHOR OF THAT MEMO?
- 24 A. YES.
- 25 Q. YOU PREPARED THE MEMO?
- 26 A. I DID.
- 27 Q. WHEN DID YOU PREPARE THE MEMO?
- 28 A. I DON'T REMEMBER. BUT I HAVE NO REASON TO DOUBT IT

SUE HERFURTH, CSR #9645

1518

- 1 WAS ON OR ABOUT THE 20TH OF NOVEMBER OF 2003. I DO REMEMBER
- 2 PREPARING IT, JUST NOT THE EXACT DATE.
- 3 Q. OKAY. AND WHY DID YOU PREPARE THAT MEMORANDUM?
- 4 A. YOU KNOW, I HAVE BEEN INSTRUCTED THAT I CAN'T
- 5 ANSWER QUESTIONS LIKE THAT, BECAUSE THEY INVOKE OR AT LEAST
- 6 SUGGEST THE ATTORNEY WORK PRODUCT PRIVILEGE WHICH HAS BEEN
- 7 ASSERTED, I UNDERSTAND, BY HOWARD RICE WITH RESPECT TO THIS
- 8 MEMO.
- 9 Q. YOUR FORMER EMPLOYER?

10 A. THAT' S RIGHT.

11 Q. OKAY. DID YOU GIVE A COPY OF THIS CONFIDENTIAL
12 MEMORANDUM TO MIKE BAKER?

13 A. I' M AFRAID I HAVE TO INVOKE THE ATTORNEY WORK
14 PRODUCT PRIVILEGE AGAIN IN RESPONSE TO THAT QUESTION AND
15 DECLINE TO ANSWER.

16 Q. OKAY. DO YOU WANT TO CHECK WITH YOUR ATTORNEY TO
17 SEE IF THAT' S APPROPRIATE --

18 A. IF YOU FEEL STRONGLY ABOUT WANTING AN ANSWER NOW,
19 I' M HAPPY TO DO THAT.

20 Q. YES.

21 (WHEREUPON, THE WITNESS LEFT THE COURTROOM.)

22 THE WITNESS: THE ANSWER IS EITHER I -- I PROBABLY
23 DIDN' T GIVE THE MEMO TO MIKE PERSONALLY, BUT I CERTAINLY HAD
24 IT GIVEN TO HIM.

25 Q. YOU TRANSMITTED IT IN SOME FASHION?

26 A. I CAUSED IT TO BE GIVEN TO MIKE, A COPY.

27 Q. WHEN WAS THAT?

28 A. ON OR ABOUT THAT SAME DAY.

SUE HERFURTH, CSR #9645

1519

1 Q. WHO IS MIKE BAKER?

2 A. MIKE BAKER IS ANOTHER PARTNER AT HOWARD RICE.
3 AGAIN, I USE THE TERM PARTNER SORT OF ADVISEDLY.

4 Q. ON PAGE THREE OF THIS CONFIDENTIAL MEMORANDUM, IS
5 THERE A PARAGRAPH THAT DOCUMENTS WHAT MIKE SANGI ACOMO TOLD
6 YOU ABOUT A MEETING THAT HE HAD WITH THE MAYOR OF SAN JOSE?

7 A. UH -- I' M GOING TO ANSWER THAT QUESTION, BUT I WANT

8 TO MAKE CLEAR BEFORE I DO THAT MY ATTORNEY HAS BEEN TOLD
9 THAT, AS A RESULT OF PROCEEDINGS, A JUDGE HAS SAID THAT THE
10 ATTORNEY WORK -- THE ATTORNEY-CLIENT COMMUNICATION PRIVILEGE
11 HAS BEEN WAIVED WITH RESPECT TO THAT PARAGRAPH. AT LEAST
12 THAT'S THE REPRESENTATION THAT HAS BEEN GIVEN TO ME, SO I'M
13 PREPARED TO ANSWER THOSE QUESTIONS ABOUT COMMUNICATIONS, BUT
14 ONLY BECAUSE I HAVE BEEN TOLD THE PRIVILEGE HAS BEEN
15 DECLARED WAIVED WITH RESPECT TO THIS PARAGRAPH.

16 Q. OKAY. AND SO, GIVEN YOUR REMARKS ON THE RECORD,
17 LET ME SET FORTH WHAT THE PEOPLE'S POSITION IS WITH REGARD
18 TO THE DOCUMENT.

19 A. THAT'S FINE. ALTHOUGH I DON'T HAVE A POSITION, I
20 JUST HAVE BEEN TOLD THAT.

21 Q. OKAY. OUR POSITION IS THAT THIS ENTIRE MEMO IS NOT
22 PROTECTED BY EITHER THE ATTORNEY-CLIENT PRIVILEGE OR THE
23 WORK PRODUCT PRIVILEGE, WHICH IS WHY IT'S IN EVIDENCE BEFORE
24 THIS GRAND JURY AND WHY THERE IS NO PROTECTIVE ORDER THAT
25 REQUIRES IT TO BE RETURNED TO HOWARD RICE OR THAT ANY
26 PORTIONS OF IT BE REDACTED. AND OUR POSITION IS, JUST SO
27 WE'RE CLEAR, THAT AS TO THE ATTORNEY-CLIENT PRIVILEGE, ANY
28 ATTORNEY-CLIENT COMMUNICATIONS THAT ARE DISCLOSED IN THIS

SUE HERFURTH, CSR #9645

1520

1 UNPROTECTED PIECE OF EVIDENCE, THIS CONFIDENTIAL MEMORANDUM,
2 NO LONGER HAVE A PRIVILEGE, IF THEY EVER DID.

3 AND AS TO ANY WORK PRODUCT STATEMENTS IN THE MEMO,
4 WHICH ARE DISCLOSED IN THIS MEMO, THAT PRIVILEGE HAS BEEN
5 LOST AS WELL.

6 SO THAT'S OUR POSITION. I UNDERSTAND THAT YOU MAY
7 OR MAY NOT ACCEPT THAT.

8 A. IT'S NOT THAT I DO OR DON'T. I'M PREPARED TO
9 ANSWER ANY QUESTION THAT ANY JUDGE FEELS OR RULES IS
10 APPROPRIATE.

11 WE'VE RECEIVED COMMUNICATIONS FROM ATTORNEYS FOR
12 NORCAL AND HOWARD RICE, AND SO WE'RE KIND OF CAUGHT IN THE
13 MIDDLE.

14 SO MY UNDERSTANDING IS THIS WILL PROBABLY GO TO A
15 JUDGE, AND THE JUDGE WILL RESOLVE THESE QUESTIONS.

16 Q. THAT'S FINE.

17 MR. FINKELSTEIN: AND LADIES AND GENTLEMEN, AS I
18 INDICATED IN THE PAST, PLEASE, YOU NEED NOT CONCERN YOURSELF
19 WITH THESE LEGAL MATTERS; IT'S NOT A MATTER THAT SHOULD IN
20 ANY WAY INFLUENCE YOU OR SWAY YOU IN ANY DECISIONS YOU MAY
21 BE ASKED TO MAKE IN THIS INVESTIGATION.

22 PLEASE BEAR THAT IN MIND. YOU SHOULD NOT HOLD
23 AGAINST THE WITNESS OR ANY PARTIES THE FACT THAT THEY ARE
24 TRYING TO ASSERT OR HAVE ASSERTED ANY PRIVILEGE.
25 BY MR. FINKELSTEIN:

26 Q. SO WHAT IS THE ANSWER TO THE QUESTION? DOES THIS
27 CONFIDENTIAL MEMORANDUM DOCUMENT WHAT MIKE SANGIACOMO TOLD
28 YOU ABOUT HIS MEETING WITH THE MAYOR OF SAN JOSE?

SUE HERFURTH, CSR #9645

1521

1 A. PORTIONS OF THE DOCUMENT REFLECT CONVERSATIONS THAT
2 I HAD WITH MIKE SANGIACOMO ON THAT TOPIC.

3 Q. OKAY. AND IN PARTICULAR, THE PARAGRAPH ON PAGE
Page 14

4 THREE THAT BEGINS, "ACCORDING TO MIKE," REFLECTS SUCH A
5 CONVERSATION, CORRECT?

6 A. SOME OF THAT PARAGRAPH DOES.

7 Q. OKAY. AND THE MIKE THAT YOU ARE REFERRING TO IN
8 THIS PARAGRAPH, WOULD THAT BE MIKE SANGIACOMO --

9 A. YES, IT WOULD. NORCAL CEO.

10 Q. AND IS IT TRUE THAT MIKE SANGIACOMO TOLD YOU THAT
11 AT SOME POINT HE, BILL JONES, AND DAVID DUONG ATTENDED A
12 MEETING WITH THE MAYOR?

13 A. TO THE BEST OF MY RECOLLECTION, YES, HE DID TELL ME
14 THAT.

15 Q. THAT WOULD BE THE MAYOR OF SAN JOSE, CORRECT?

16 A. YES.

17 Q. AND DID MR. SANGIACOMO GO ON TO TELL YOU THAT AT
18 THAT TIME THE MAYOR SAID THAT HE WOULD SEE THAT NORCAL WAS
19 AWARDED THE COLLECTION CONTRACT IF CWS WOULD SIGN WITH THE
20 TEAMSTERS?

21 A. I'M NOT SURE THAT HE SAID THAT TO ME. I
22 KNOW -- LET ME LEAVE IT AT THAT. I'M NOT CERTAIN THAT HE
23 SAID THAT.

24 Q. DID HE SAY WORDS TO THAT EFFECT?

25 A. I'M NOT CERTAIN OF THAT EITHER. I'M NOT SORT OF
26 HEDGING ABOUT THE EXACT TEXT.

27 Q. DID YOU MAKE THAT UP?

28 A. YOU KNOW, THAT QUESTION, I HAVE BEEN INSTRUCTED, IS

SUE HERFURTH, CSR #9645

1522

2 RESPOND TO THAT, AND I INVOKE THAT PRIVILEGE.

3 Q. AT THE TIME YOU PREPARED THIS CONFIDENTIAL
4 MEMORANDUM BACK IN NOVEMBER OF 2003, WERE YOU ATTEMPTING TO
5 BE AS ACCURATE AS YOU POSSIBLY COULD?

6 A. I'M AFRAID I HAVE TO DECLINE TO ANSWER THAT AS WELL
7 ON THE GROUNDS OF THE ATTORNEY WORK PRODUCT PRIVILEGE.

8 Q. WERE YOU TRYING TO FABRICATE THE STATEMENTS OF
9 OTHERS?

10 A. I'M AFRAID I HAVE TO DECLINE TO ANSWER THAT
11 QUESTION ON THE GROUNDS OF THE ATTORNEY WORK PRODUCT
12 PRIVILEGE.

13 Q. WHEN DID MIKE SANGIACOMO TELL YOU THAT HE,
14 BILL JONES, AND DAVID DUONG ATTENDED A MEETING WITH THE
15 MAYOR?

16 A. I CAN'T TELL YOU FOR CERTAIN, BUT I BELIEVE THAT IT
17 WAS AROUND NOVEMBER OF 2002.

18 Q. THE YEAR BEFORE?

19 A. YES.

20 Q. AND HOW DID HE COMMUNICATE THAT INFORMATION TO YOU?

21 A. IT WOULD HAVE BEEN IN A CONVERSATION WITH HIM.

22 Q. WHO ELSE WAS PRESENT TO OVERHEAR THAT CONVERSATION?

23 A. IF ANYONE WAS, I DON'T REMEMBER.

24 Q. DID YOU TAKE ANY NOTES OF THAT CONVERSATION?

25 A. I'M GOING TO HAVE TO CONSULT MY COUNSEL.

26 MR. FINKELSTEIN: GO AHEAD.

27 (WHEREUPON, THE WITNESS LEFT THE COURTROOM.)

28 BY MR. FINKELSTEIN:

1 Q. DO YOU HAVE THE QUESTION IN MIND?

2 A. YES.

3 Q. WHAT IS YOUR RESPONSE?

4 A. I DON'T RECALL TAKING ANY NOTES. I DON'T BELIEVE
5 THAT I DID.

6 Q. OKAY. DID MICHAEL SANGIACOMO TELL YOU THE MAYOR
7 ALSO PROMISED THAT THE CITY WOULD REIMBURSE CWS FOR ANY
8 DIFFERENCE IN WAGES BETWEEN ITS ILWU CONTRACT AND THE WAGES
9 PAID TO THE TEAMSTERS?

10 A. MORE OR LESS. WHAT I'M SURE MICHAEL TOLD ME WAS
11 THAT THE MAYOR WOULD SEE THAT NORCAL WAS REIMBURSED FOR
12 EXTRA COSTS THAT WERE INCURRED BY CWS TAKING ON THE
13 TEAMSTERS. WHETHER IT WAS EXACTLY THE DIFFERENCE BETWEEN
14 THE TEAMSTERS AND THE ILWU CONTRACT, I'M NOT SURE MIKE SAID
15 THAT TO ME, BUT THE GENERAL GIST OF THAT SENTENCE HE DID SAY
16 TO ME.

17 Q. DID HE USE THE PHRASE, THE CITY WOULD MAKE NORCAL
18 WHOLE?

19 A. I DON'T KNOW WHETHER HE DID, BUT THAT WAS THE
20 IMPORT OF WHAT HE TOLD ME.

21 Q. AND AT THE TIME THAT MR. SANGIACOMO TALKED TO YOU
22 ABOUT THESE MATTERS, DID YOU KNOW THAT NORCAL HAD ORIGINALLY
23 BID ITS PROPOSAL TO THE CITY OF SAN JOSE CONTEMPLATING THAT
24 ITS SUBCONTRACTOR, CWS, WOULD USE ILWU WORKERS?

25 A. YOU KNOW, I'M SORRY AGAIN, BUT I HAVE TO CONSULT
26 WITH MY ATTORNEY.

27 MR. FINKELSTEIN: OKAY.

28 (WHEREUPON, THE WITNESS LEFT THE COURTROOM.)

1 THE WITNESS: I THINK I HAVE THE QUESTION IN MIND,
2 BUT IT MIGHT BE USEFUL TO HAVE THE REPORTER READ IT.

3 MR. FINKELSTEIN: THE REPORTER WILL READ THE
4 QUESTION BACK, PLEASE. DON'T RESPOND UNTIL THE REPORTER
5 INDICATES SHE IS DONE.

6 (THE LAST QUESTION WAS READ.)

7 THE WITNESS: WHAT'S REFLECTED IN THAT MEMO COULD
8 HAVE BEEN THE RESULT OF MORE THAN ONE CONVERSATION.

9 BY MR. FINKELSTEIN:

10 Q. WITH WHOM?

11 A. WITH MR. SANGIACOMO.

12 Q. OKAY.

13 A. AND I BELIEVE THAT DURING THE COURSE OF PROBABLY, I
14 ASSUME, THE FIRST CONVERSATION, MR. SANGIACOMO WOULD HAVE
15 EXPLAINED TO ME WHAT YOU JUST ASKED ABOUT. THAT IS, THAT
16 THE CONTRACT HAD BEEN BID ASSUMING THAT CWS WOULD BE
17 ORGANIZED BY THE ILWU. AND BECAUSE I THINK I LEARNED IT IN
18 THAT SAME CONVERSATION, THAT'S WHY I'M ANSWERING YOUR
19 QUESTION. I UNDERSTAND THAT THE PRIVILEGE HAS BEEN WAIVED
20 BECAUSE OF THOSE CONVERSATIONS.

21 Q. IS IT TRUE THAT THOSE PROMISES ARE NOWHERE
22 REFLECTED IN WRITING?

23 A. I'M SORRY. I'M GOING TO HAVE TO CONSULT COUNSEL.

24 (WHEREUPON, THE WITNESS LEFT THE COURTROOM.)

25 THE WITNESS: AT THE TIME I WROTE THE MEMO, IT WAS
26 MY UNDERSTANDING THAT WHATEVER PROMISES THE MAYOR MADE WERE
27 NOT REFLECTED IN WRITING. AND I BELIEVE I WAS TOLD IN FACT
28 THAT THERE WASN'T ANY WRITING THAT REFLECTED THIS.

1 BY MR. FINKELSTEIN:

2 Q. TOLD BY WHOM?

3 A. BY MR. SANGIACOMO IN THAT CONVERSATION.

4 Q. OKAY. AND WAS IT YOUR UNDERSTANDING THAT THIS
5 MEETING WITH THE MAYOR OF SAN JOSE TOOK PLACE PRIOR TO
6 OCTOBER 9, 2000?

7 A. I'M FAIRLY CERTAIN WE DID NOT DISCUSS DATES, BUT
8 MR. SANGIACOMO TOLD ME THAT IT HAPPENED BEFORE WHATEVER THE
9 DECISION DATE WAS FOR AWARDING THE CONTRACT.

10 Q. MR. THOMPSON, YOU ARE THE AUTHOR OF THIS
11 CONFIDENTIAL MEMORANDUM MARKED EXHIBIT 72, CORRECT?

12 A. I THINK I'VE ALREADY ANSWERED THAT, BUT YES, IT IS
13 CORRECT.

14 Q. DID ANYONE HELP YOU WRITE THE MEMO, OR DID YOU
15 WRITE IT ALL BY YOURSELF?

16 A. PROBABLY I GOT NO ASSISTANCE.

17 Q. OKAY. AND THE MEMO REFLECTS YOUR WORDS, CORRECT?

18 A. (NO RESPONSE.)

19 Q. YOU WERE THE PERSON WHO DECIDED WHAT WORDS TO PUT
20 IN THIS MEMO, RIGHT?

21 A. YES.

22 Q. AND IN THAT SAME PARAGRAPH YOU HAVE WRITTEN, AFTER
23 THE REFERENCE TO THE MEETING WITH THE MAYOR, "SUBSEQUENTLY,
24 ON OCTOBER 9," CORRECT?

25 A. YES, THAT'S CORRECT.

26 Q. WELL, DOESN'T THAT SUGGEST TO YOU, SIR, THAT THE

27 MEETING WITH THE MAYOR HAPPENED PRIOR TO OCTOBER 9?

28 A. SIR, I'M NOT TESTIFYING ABOUT WHAT HAPPENED.

SUE HERFURTH, CSR #9645

1526

1 YOU'VE ASKED ME ABOUT A CONVERSATION I HAD WITH MIKE
2 SANGIACOMO, AND THAT PRIVILEGE WITH RESPECT TO THAT
3 CONVERSATION HAS BEEN WAIVED. I'M DOING MY BEST TO RECITE
4 TO YOU THAT CONVERSATION. I'M NOT HERE TESTIFYING AS A
5 WITNESS ABOUT WHAT HAPPENED, BECAUSE I WAS NOT INVOLVED IN
6 ANY OF THESE INCIDENTS.

7 Q. I UNDERSTAND.

8 A. SO YOU'RE WELCOME TO QUESTION ME ABOUT THAT, BUT I
9 WAS NOT CALLED --

10 Q. I UNDERSTAND. BUT IMMEDIATELY AFTER THE STATEMENT
11 IN YOUR MEMO ABOUT "ACCORDING TO MIKE," AND THE REFERENCE TO
12 MEETING WITH THE MAYOR, YOU USED THE ENGLISH WORDS
13 "SUBSEQUENTLY, ON OCTOBER 9."

14 DOESN'T THAT SUGGEST TO YOU THAT YOUR
15 UNDERSTANDING WAS THAT THE MEETING HAD OCCURRED PRIOR TO
16 OCTOBER 9?

17 A. I HAVE ANSWERED YOUR QUESTION AS TO WHAT HAPPENED
18 DURING THE CONVERSATION AS TO WHICH I UNDERSTAND THE
19 PRIVILEGE HAS BEEN WAIVED. I TAKE YOUR CURRENT QUESTION TO
20 CALL FOR MATTERS THAT ARE POTENTIALLY PROTECTED BY THE
21 ATTORNEY WORK PRODUCT DOCTRINE, AND I'M GOING TO DECLINE TO
22 ANSWER.

23 Q. OKAY. NOW, PRIOR TO PREPARING THIS CONFIDENTIAL
24 MEMORANDUM, DID YOU ALSO SPEAK WITH BILL JONES?

25 A. ON THIS TOPIC, YOU MEAN? I SPOKE WITH BILL JONES
26 INNUMERABLE TIMES PRIOR TO PREPARING THE MEMO.
27 Q. ON MANY DIFFERENT TOPICS?
28 A. ON MANY DIFFERENT TOPICS.

SUE HERFURTH, CSR #9645

1527

1 Q. DID BILL JONES TELL YOU THAT ON OCTOBER 9 HE HAD A
2 MEETING WITH MORALES?
3 A. I UNDERSTAND THAT THE ATTORNEY-CLIENT CONVERSATIONS
4 THAT FORM THE BASIS OF THIS PARAGRAPH, THE PRIVILEGE HAS
5 BEEN WAIVED, AND THEREFORE I WILL ANSWER THE QUESTION
6 BECAUSE -- ACTUALLY, COULD YOU REPEAT THE QUESTION OR HAVE
7 THE QUESTION REPEATED?
8 Q. SURE. DID BILL JONES TELL YOU THAT ON OCTOBER 9,
9 HE HAD A MEETING WITH MORALES?
10 A. I AM GOING TO GO TALK WITH MY COUNSEL.
11 MR. FINKELSTEIN: SURE.
12 (WHEREUPON, THE WITNESS LEFT THE COURTROOM.)
13 THE FOREPERSON: LET ME REMIND THE JURORS, YOU ARE
14 NOT TO COMMENT OR DISCUSS THE TESTIMONY.
15 THE WITNESS: I DO HAVE THE QUESTION IN MIND.
16 THANK YOU.
17 I WAS THE AUTHOR OF THAT SENTENCE. IT IS ACCURATE
18 THAT I'M NOT PERMITTED TO DISCUSS WITH YOU HOW I GAINED THAT
19 INFORMATION, OTHER THAN I DO FEEL I CAN AND AM OBLIGATED TO
20 TELL YOU THAT I DON'T BELIEVE IT WAS AS PART OF A
21 CONVERSATION I HAD WITH BILL JONES WHILE BILL JONES WAS A
22 CLIENT OR EMPLOYED BY A CLIENT.

23 BY MR. FINKELSTEIN:

24 Q. YOU INTERVIEWED HIM IN JUNE OF '03 AFTER HE LEFT
25 NORCAL, RIGHT?

26 A. UH -- I BELIEVE THAT -- AS I UNDERSTAND IT, A MEMO
27 REFLECTING MY DISCUSSIONS WITH BILL ON THAT, YOU KNOW,
28 DURING THAT TIME HAS BEEN PRODUCED.

SUE HERFURTH, CSR #9645

1528

1 I UNDERSTAND THAT I CAN SAY THAT I WAS THE AUTHOR
2 OF THAT MEMORANDUM AND THAT, TO THE BEST OF MY KNOWLEDGE,
3 IT'S ACCURATE.

4 Q. AND YOU'RE SAYING THAT, GOING BACK TO THE
5 CONFIDENTIAL MEMORANDUM, EXHIBIT 72, YOUR TESTIMONY IS THAT
6 THE STATEMENT IN THE MEMO, AT THAT TIME THE MAYOR SAID THAT
7 HE WOULD SEE THAT NORCAL WAS AWARDED THE COLLECTION CONTRACT
8 IF CWS WOULD SIGN WITH THE TEAMSTERS, THAT'S NOT AN ACCURATE
9 STATEMENT?

10 A. I'M NOT CERTAIN THAT IT'S AN ACCURATE STATEMENT,
11 THAT'S RIGHT.

12 Q. IN WHAT WAY IS IT NOT ACCURATE?

13 A. I'M -- I FEEL CONFIDENT THAT THE MAYOR ASKED IN
14 SOME MANNER FOR CWS TO SIGN WITH THE TEAMSTERS.

15 Q. OKAY.

16 A. WHAT I'M NOT CONFIDENT ABOUT IS WHETHER IT WAS, AS
17 I SAY, CONDITIONED ON OR THAT THE MAYOR SAID THAT HE WOULD
18 SEE THAT NORCAL WAS AWARDED THE COLLECTION CONTRACT, IF.

19 Q. OKAY. IN THIS CONVERSATION WE HAVE BEEN TALKING
20 ABOUT, YOUR CONVERSATIONS WITH MR. SANGIACOMO THAT ARE TO

21 SOME EXTENT REPORTED IN THIS CONFIDENTIAL MEMO, EXHIBIT 72,
22 DID MR. SANGIACOMO SAY ANYTHING TO YOU WITH REGARD TO THE
23 MAYOR MAKING ANY SUGGESTION OR REFERENCE TO THE AWARDING OF
24 A CONTRACT TO NORCAL IN THE CONTEXT OF HIS ASKING IN SOME
25 FASHION THAT CWS SWITCH TO THE TEAMSTERS?

26 A. IT WAS MADE CLEAR TO ME IN THAT CONVERSATION THAT
27 THE CONTRACT, THE DECISION ON THE CONTRACT WAS PENDING, AND
28 THAT THIS REQUEST TO HAVE CWS SIGN WITH THE TEAMSTERS WAS

SUE HERFURTH, CSR #9645

1529

1 MADE IN THE CONTEXT OF THE CONTRACT PENDING.

2 Q. PENDING BEFORE THE SAN JOSE CITY COUNCIL?

3 A. WHOEVER IT WAS PENDING BEFORE. AND I CAN'T TELL
4 THAT YOU I KNOW IN FACT EXACTLY WHAT GOVERNMENTAL ENTITY
5 APPROVED IT. BUT, ANYWAY, THE APPROVAL WAS PENDING.

6 AND WHAT I CAN'T RECALL IS WHAT -- WHETHER THERE
7 WAS THIS SORT OF QUID PRO QUO AND WHETHER MIKE TOLD ME THAT
8 THAT HAD HAPPENED. I DON'T RECALL THAT.

9 Q. WHEN YOU SAY "QUID PRO QUO," YOU MEAN THIS EXPLICIT
10 QUID PRO QUO?

11 A. I DO.

12 Q. DID MR. SANGIACOMO, IN THIS CONVERSATION OR
13 CONVERSATIONS YOU HAD WITH HIM, SUGGEST ANYTHING THAT YOU
14 UNDERSTOOD AS AN IMPLICIT QUID PRO QUO?

15 A. IF HE DID, I DON'T RECALL IT. SO THE ANSWER IS, I
16 DON'T RECALL HIM SAYING THAT.

17 Q. WELL, CAN YOU GIVE US ANY EXPLANATION OR
18 UNDERSTANDING AS TO WHY YOU PUT INTO THIS MEMORANDUM A

19 STATEMENT THAT SUGGESTS AN IMPLICIT QUID PRO QUO IF YOUR
20 RECOLLECTION IS, AS YOU TOLD US, THAT YOU DON'T FEEL
21 COMFORTABLE THAT THAT'S ACCURATE?

22 A. UNFORTUNATELY -- AND BELIEVE ME, I FEEL
23 UNFORTUNATELY -- I HAVE TO DECLINE TO ANSWER THAT QUESTION
24 ON THE GROUNDS OF ATTORNEY WORK PRODUCT PRIVILEGE.

25 Q. AT THE TIME THAT YOU AUTHORED THIS MEMO ON NOVEMBER
26 20, 2003 OR THEREABOUTS, DID YOU BELIEVE IT TO BE ACCURATE?

27 A. I HAVE TO DECLINE TO ANSWER THE QUESTION ON GROUNDS
28 OF THE ATTORNEY WORK PRODUCT PRIVILEGE.

SUE HERFURTH, CSR #9645

1530

1 Q. DID SOMEONE --

2 A. AND ALSO, I'VE GOT TO SAY THAT I'M UNCOMFORTABLE
3 ANSWERING AS TO AN ENTIRE, YOU KNOW, HOWEVER MANY PAGE
4 DOCUMENT THAT I HAVE NOT REVIEWED. OR DID YOU MEAN JUST
5 THAT SENTENCE?

6 Q. WELL, MY QUESTION WENT TO THE ENTIRE MEMORANDUM.

7 A. YEAH. I CAN'T ANSWER THAT QUESTION.

8 Q. WHAT REASON DID YOU HAVE -- ARE YOU SUGGESTING THAT
9 SOMEONE MAY HAVE ASKED YOU TO PUT INACCURATE INFORMATION
10 INTO THIS MEMO?

11 A. I'M NOT SUGGESTING, I'M CERTAINLY NOT SUGGESTING
12 THAT. OTHER THAN THAT, I CAN'T ANSWER YOUR QUESTION BECAUSE
13 IT ASKS FOR INFORMATION THAT MAY BE PROTECTED BY THE
14 ATTORNEY WORK PRODUCT PRIVILEGE.

15 Q. AND BY THE ATTORNEY WORK PRODUCT PRIVILEGE, YOU
16 MEAN CORE WORK PRODUCT OR GENERAL WORK PRODUCT?

17 A. IN MY MIND, IT'S NOT PARSED OUT. I'M NOT SITTING
18 HERE TRYING TO MAKE A LEGAL CASE TO YOU. I'M TRYING TO DO
19 MY BEST TO PRESERVE MY ETHICAL OBLIGATIONS AS I UNDERSTAND
20 THEM.

21 Q. ARE YOU SUGGESTING THAT ANSWERING THAT QUESTION
22 WOULD DISCLOSE OPINIONS OR IMPRESSIONS OR CONCLUSIONS THAT
23 YOU MAY HAVE FORMED AS AN ATTORNEY?

24 A. YES.

25 Q. NOW, THE LAST SENTENCE IN THIS PARAGRAPH:

26 AT THAT MEETING, MORALES SAID THAT HE WOULD
27 BLOCK THE GRANT OF THE CONTRACT TO NORCAL IF THE
28 TEAMSTERS WERE NOT ALLOWED TO ORGANIZE CWS.

SUE HERFURTH, CSR #9645

1531

1 IS THAT AN ACCURATE STATEMENT?

2 A. TO THE BEST OF MY KNOWLEDGE, IT IS AN ACCURATE
3 STATEMENT.

4 Q. THAT INFORMATION WAS COMMUNICATED TO YOU BY
5 BILL JONES, CORRECT?

6 A. I'M GOING TO HAVE TO DECLINE TO ANSWER THAT
7 QUESTION ON THE GROUNDS OF ATTORNEY WORK PRODUCT.

8 Q. WORK PRODUCT. ARE YOU'RE SAYING THAT WHO
9 COMMUNICATED THAT STATEMENT TO YOU WOULD REVEAL AN OPINION,
10 IMPRESSION OR CONCLUSION THAT YOU FORMED?

11 A. IN THE MANNER OF HOW I PREPARED THAT MEMORANDUM,
12 YES.

13 Q. I'M NOT ASKING YOU HOW YOU PREPARED IT; I'M ASKING
14 WHETHER OR NOT THE SOURCE OF THAT INFORMATION WAS

15 COMMUNICATION FROM BILL JONES.

16 A. I UNDERSTAND, MR. FINKELSTEIN. I'M SORRY. I'VE
17 ANSWERED THE QUESTION AS BEST I CAN.

18 Q. OKAY. LET ME SHOW YOU A DOCUMENT THAT'S BEEN
19 MARKED AS EXHIBIT 15 IN THIS PROCEEDING. HAVE YOU SEEN THAT
20 DOCUMENT BEFORE?

21 A. YES.

22 Q. AND WE HAVE BEEN REFERRING TO THIS AS THE OCTOBER 9
23 ADDENDUM OR THE ADDENDUM, RIGHT -- THAT'S HOW WE HAVE BEEN
24 REFERRING TO IT. IF I ASK YOU QUESTIONS ABOUT THE ADDENDUM
25 OR THE OCTOBER 9 ADDENDUM, YOU WILL UNDERSTAND THAT WE'RE
26 REFERRING TO THIS DOCUMENT, CORRECT?

27 A. YES.

28 Q. AND THE DOCUMENT HAS WHAT PURPORTS TO BE THE

SUE HERFURTH, CSR #9645

1532

1 SIGNATURES OF MICHAEL SANGIACOMO AND DAVID DUONG WITH A
2 SIGNATURE DATE OF OCTOBER 9, 2000, CORRECT?

3 A. I SEE JUST WHAT YOU SEE. THAT'S CORRECT. THAT'S
4 WHAT I SEE.

5 Q. OKAY. WHEN WAS THE FIRST TIME THAT YOU SAW THAT
6 DOCUMENT?

7 A. IT WAS IN NOVEMBER OR DECEMBER OF 2002, PROBABLY
8 NOVEMBER.

9 Q. SO THAT WOULD HAVE BEEN MORE THAN TWO YEARS AFTER
10 THE SIGNATURE DATE ON THE DOCUMENT.

11 A. YES. SLIGHTLY MORE.

12 Q. GOING BACK TO YOUR CONFIDENTIAL MEMORANDUM, EXHIBIT

13 72, IS IT AN ACCURATE STATEMENT THAT, AS FAR AS YOU KNEW, NO
14 ATTORNEYS REPRESENTING NORCAL WERE INVOLVED IN THE PROCESS
15 LEADING TO THE ADDENDUM?

16 A. THAT STATEMENT WAS ACCURATE TO THE BEST OF MY
17 KNOWLEDGE AT THE TIME I WROTE IT.

18 Q. AS OF NOVEMBER OF 2003, WHEN YOU PREPARED THIS
19 MEMO, THAT WAS AN ACCURATE STATEMENT?

20 A. THAT'S RIGHT. AND I READ THE TYPO IN THE SECOND
21 SENTENCE.

22 Q. AS FAR AS THE SECOND SENTENCE, IS IT ALSO ACCURATE
23 THAT YOU WERE NOT AWARE OF THE ADDENDUM UNTIL TWO YEARS
24 LATER, AND YOU WERE AS CLOSE TO THE SITUATION THAN ANYONE
25 HERE?

26 A. AS ANYONE, YES. THAT STATEMENT WAS TRUE TO THE
27 BEST OF MY KNOWLEDGE AT THE TIME.

28 Q. BEAR WITH ME A MOMENT. LET'S TURN TO PAGE FIVE.

SUE HERFURTH, CSR #9645

1533

1 A. OF THE THOMPSON MEMORANDUM?

2 Q. YES. EXHIBIT 72, THE CONFIDENTIAL MEMORANDUM.

3 IS IT TRUE THAT IN LATE NOVEMBER, MARK LOMELE
4 FIRST CONTACTED YOU ABOUT THESE ISSUES?

5 A. THAT STATEMENT WAS TRUE TO THE BEST OF MY KNOWLEDGE
6 AT THE TIME I WROTE THIS.

7 Q. ABOUT THESE ISSUES -- WHEN YOU USED THE PHRASE,
8 THESE ISSUES, YOU WERE REFERRING TO REIMBURSING NORCAL FOR
9 REIMBURSING CWS FOR THE EXTRA COSTS ASSOCIATED WITH THE
10 SWITCH FROM LONGSHOREMEN TO TEAMSTERS, AND CWS' S CLAIMS

11 ABOUT EXCESS GARBAGE MIXED IN WITH THE RECYCLABLES?

12 A. I AM GOING TO HAVE TO CONSULT WITH COUNSEL.

13 MR. FINKELSTEIN: OKAY.

14 (WHEREUPON, THE WITNESS LEFT THE COURTROOM.)

15 THE WITNESS: I WONDER IF I CAN HAVE THE QUESTION
16 REREAD.

17 MR. FINKELSTEIN: ABSOLUTELY. MADAM REPORTER.

18 (THE LAST QUESTION WAS READ.)

19 THE WITNESS: I BELIEVE THAT'S CORRECT.

20 MR. FINKELSTEIN: AND IS IT ALSO TRUE THAT YOU
21 ADVISED NORCAL -- STRIKE THAT. LET ME START AGAIN.
22 BY MR. FINKELSTEIN:

23 Q. IS IT ALSO TRUE THAT YOU ADVISED NORCAL THAT
24 BECAUSE THE ADDENDUM IS UNCONDITIONAL, IT IS PROBABLY
25 BINDING EVEN IF THE CITY NEVER AGREES TO REIMBURSE THE
26 DIFFERENTIAL COSTS?

27 A. I BELIEVE THAT STATEMENT WAS TRUE WHEN I WROTE IT,
28 OR I BELIEVED IT TO BE TRUE WHEN I WROTE IT.

SUE HERFURTH, CSR #9645

1534

1 Q. OKAY. NOW, DID YOU NEGOTIATE AN AGREEMENT WITH
2 CWS -- STRIKE THAT.

3 I WANT TO RETURN TO THE PARAGRAPH ON PAGE THREE,
4 THE "ACCORDING TO MIKE" PARAGRAPH.

5 IN PREPARING THIS MEMORANDUM BACK IN NOVEMBER
6 2003, YOU WERE COGNIZANT OF THE DIFFERENCE OR DISTINCTION
7 BETWEEN A FACT AND A CONCLUSION, CORRECT?

8 A. NO. I'M NOT SURE, EVEN AS I SIT HERE TODAY, THAT

9 I'M AWARE OF THAT.

10 Q. AS A MATTER OF ENGLISH USAGE, YOU UNDERSTOOD THAT
11 THE PHRASE "ACCORDING TO MIKE" IMPLIED THAT WHAT FOLLOWED
12 WAS A STATEMENT BY MIKE, CORRECT?

13 A. YES.

14 Q. AND FOLLOWING THE PHRASE "ACCORDING TO MIKE," YOU
15 HAVE WRITTEN AT THAT TIME THAT THE MAYOR SAID THAT HE WOULD
16 SEE THAT NORCAL WAS AWARDED THE COLLECTION CONTRACT IF CWS
17 WOULD SIGN WITH THE TEAMSTERS.

18 THAT'S WHAT YOU'VE WRITTEN, CORRECT?

19 A. IS YOUR QUESTION JUST IS THAT WHAT I WROTE?

20 Q. YES.

21 A. YES. THAT'S WHAT I WROTE.

22 Q. IS IT YOUR TESTIMONY THAT THAT STATEMENT, THAT
23 SENTENCE I JUST READ, WAS NOT ACCORDING TO MIKE?

24 A. I GAVE YOU MY BEST RECOLLECTION ABOUT THAT. I
25 DON'T FEEL COMFORTABLE GOING BEYOND THE ANSWER THAT I GAVE
26 YOU PREVIOUS.

27 Q. CAN YOU TELL US THE ANSWER AGAIN, PLEASE.

28 A. OKAY. I CAN DO THAT. I RECALL MIKE TELLING ME

SUE HERFURTH, CSR #9645

1535

1 THAT THE MAYOR ASKED NORCAL TO IN SOME MANNER SEE THAT OR
2 CAUSE IT TO HAPPEN THAT CWS BECAME ORGANIZED BY THE
3 TEAMSTER'S UNION.

4 WHAT I DON'T RECALL IS MIKE SAYING THAT, QUOTE,
5 THE MAYOR SAID THAT HE WOULD SEE THAT NORCAL WAS AWARDED THE
6 COLLECTION CONTRACT, IF.

7 Q. DID MIKE SAY ANY WORDS THAT SUGGESTED THAT THAT WAS
8 THE CASE TO YOU?

9 A. I DON'T KNOW.

10 Q. I'M SORRY?

11 A. I DON'T KNOW. IF HE DID, I DON'T REMEMBER.

12 Q. AND AT THE TIME YOU WROTE THIS MEMO IN NOVEMBER OF
13 2003, YOU BELIEVED IT TO BE ACCURATE?

14 A. WELL --

15 Q. YOU BELIEVED THAT PARAGRAPH TO BE ACCURATE?

16 A. YES. AT THE TIME I WROTE IT IN NOVEMBER, 2003, I
17 BELIEVED THAT TO BE TRUE AND ACCURATE, I THINK. I'VE TOLD
18 YOU ABOUT MY UNCERTAINTY ABOUT THAT, FRANKLY. BUT AT THE
19 TIME I WROTE IT, MY BEST TESTIMONY IS THAT I BELIEVED IT TO
20 BE ACCURATE.

21 Q. OKAY. NOW, IS IT TRUE AND CORRECT THAT -- WE'RE
22 HAVING TECHNICAL DIFFICULTIES.

23 A. IT HAPPENS.

24 Q. I THINK I'VE SOLVED THE PROBLEM.

25 IS IT TRUE THAT YOU NEGOTIATED AN AGREEMENT WITH
26 CWS UNDER WHICH NORCAL WOULD BEGIN MAKING PAYMENTS WITHOUT
27 ACKNOWLEDGING ANY DEBT UNDER THE ADDENDUM?

28 A. I BELIEVE -- WHEN I WROTE THAT, I BELIEVED IT TO BE

SUE HERFURTH, CSR #9645

1536

1 TRUE, THAT STATEMENT.

2 COULD I CONSULT WITH COUNSEL?

3 MR. FINKELSTEIN: ABSOLUTELY.

4 (WHEREUPON, THE WITNESS LEFT THE COURTROOM.)

5 THE WITNESS: I WOULD LIKE TO AMEND MY ANSWER TO
6 SAY SIMPLY, YES, IT'S TRUE THAT I DID NEGOTIATE THE
7 AGREEMENT REFLECTED IN THE MEMORANDUM.

8 BY MR. FINKELSTEIN:

9 Q. OKAY. LET ME SHOW YOU WHAT HAS BEEN MARKED IN THIS
10 PROCEEDING AS EXHIBIT 79. CAN YOU TELL US IF YOU HAVE SEEN
11 THAT DOCUMENT BEFORE?

12 A. I BELIEVE SO. I DON'T HAVE A STRONG MEMORY OF
13 THIS, BUT I BELIEVE THAT I HAVE SEEN IT.

14 Q. AND DO YOU BELIEVE THAT THIS IS THE INTERIM
15 SETTLEMENT BETWEEN NORCAL AND CWS THAT YOU HELPED NEGOTIATE?

16 A. YES, I DO.

17 Q. NOW, IF YOU CAN RETURN TO EXHIBIT 72, CONFIDENTIAL
18 MEMORANDUM. IF YOU CAN TURN TO PAGE NINE, IS IT ACCURATE
19 THAT YOU LISTENED IN ON A PHONE CALL ON JUNE 18, 2003, IN
20 WHICH A GENTLEMAN NAMED GUERRA REPEATED SOME AMOUNTS AND HIS
21 INTENT TO CAUSE THE CITY TO PAY THEM?

22 A. IT'S TRUE THAT I SAT IN ON THAT TELEPHONE CALL. I
23 GOTTA TELL YOU, I DON'T HAVE A CONCRETE MEMORY OF THE
24 AMOUNTS.

25 Q. I UNDERSTAND. AND WHO IS MR. GUERRA?

26 A. I DON'T KNOW, BUT AT THE TIME I UNDERSTOOD HIM TO
27 BE A HIGH AIDE TO THE MAYOR OF SAN JOSE.

28 Q. OKAY --

SUE HERFURTH, CSR #9645

1537

1 A. YOU KNOW -- I'M SORRY. I MAY HAVE GIVEN YOU FALSE
2 INFORMATION. I'M NOT SURE IF IT'S CLEAR. I DON'T HAVE

3 ANYTHING TO SAY ABOUT THE FEBRUARY, REFERENCE TO THE
4 FEBRUARY PHONE CALL, AS TO WHICH I CAN ONLY TELL YOU THAT
5 THAT WAS -- I BELIEVED THAT TO BE TRUE WHEN I WROTE IT.

6 I CAN TELL YOU THAT I WAS PART OF THE JUNE CALL
7 THAT'S REFERENCED THERE.

8 Q. I DIDN'T UNDERSTAND YOU TO BE TESTIFYING ABOUT --

9 A. OKAY. I'M SORRY. I REALIZE THAT I MAY NOT HAVE
10 LISTENED TO YOUR QUESTION AS CAREFULLY AS I SHOULD.

11 Q. LET ME REPEAT IT.

12 A. OKAY.

13 Q. AND PLEASE --

14 A. I APOLOGIZE.

15 Q. -- PAUSE BEFORE ANSWERING TO MAKE SURE I COMPLETED
16 MY QUESTION.

17 IS IT TRUE THAT YOU LISTENED IN ON A PHONE CALL ON
18 JUNE 18, 2003, IN WHICH GUERRA REPEATED SOME AMOUNTS AND HIS
19 INTENT TO CAUSE THE CITY TO PAY THEM?

20 A. IF THAT WAS THE QUESTION, MY ANSWER WAS CORRECT AND
21 THE ANSWER IS YES. I DON'T RECALL AMOUNTS, BUT I DID LISTEN
22 IN ON THE TELEPHONE CALL.

23 Q. DID YOU TAKE ANY NOTES OF THAT CONVERSATION?

24 A. YES, I DID.

25 Q. OKAY.

26 MR. FINKELSTEIN: I WILL ASK TO HAVE MARKED AS
27 EXHIBIT 112 THREE PAGES OF NOTES. THE BATES STAMP AT THE
28 BOTTOM OF THE FIRST PAGE IS N075749. THE LAST PAGE IS BATES

1 STAMP 075751.

2 THE DATE -- THE TOP FIRST ENTRY ON THE NOTES
3 READS, "NOTES ON 6/18/03 CALL. "

4 THE FOREPERSON: SO MARKED.

5 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
6 JURY EXHIBIT 112.)

7 BY MR. FINKELSTEIN:

8 Q. CAN YOU TAKE A LOOK AT EXHIBIT 112 AND TELL US
9 WHETHER OR NOT YOU RECOGNIZE THAT DOCUMENT?

10 A. I HAVE TO CONSULT WITH COUNSEL.

11 Q. OKAY.

12 A. THANK YOU.

13 (WHEREUPON, THE WITNESS LEFT THE COURTROOM.)

14 THE WITNESS: YES, I DO RECOGNIZE THAT DOCUMENT.

15 BY MR. FINKELSTEIN:

16 Q. IS THAT YOUR HANDWRITING?

17 A. IT IS MY HANDWRITING.

18 Q. WHAT IS EXHIBIT 112?

19 A. I TOOK THOSE NOTES DURING A CALL; IN FACT, THE CALL
20 IN QUESTION WE JUST SPOKE ABOUT THAT WAS REFERENCED IN THE
21 MEMORANDUM.

22 Q. THAT WOULD BE THE JUNE 18, 2003 CALL WITH
23 MR. GUERRA, CORRECT?

24 A. I DON'T REMEMBER WHEN. THAT'S WHAT THE NOTES SAY,
25 BUT THAT'S RIGHT. I'M NOT TRYING TO EVADE YOUR QUESTION.
26 YES.

27 Q. DO YOU HAVE ANY REASON --

28 A. BUT --

SUE HERFURTH, CSR #9645

1 Q. MR. THOMPSON --

2 A. I ' M SORRY.

3 Q. HAVE YOU FINISHED -- DO YOU UNDERSTAND THIS IS A
4 FORMAL INVESTIGATION BEFORE THE GRAND JURY? DO YOU
5 UNDERSTAND THAT?

6 A. YES. I AM VERY WELL AWARE OF THAT.

7 Q. DO YOU UNDERSTAND, BECAUSE IT ' S A FORMAL
8 INVESTIGATION, WE PROCEED BY QUESTION AND ANSWER?

9 A. YES.

10 Q. OKAY. AND YOU CAN, YOUR ANSWER CAN BE AS LONG AS
11 IT NEEDS TO BE AND I WON ' T CUT YOU OFF. BUT PLEASE DON ' T
12 EDITORIALIZE OR ENGAGE IN COLLOQUIES WITH THE JURY OR MAKE
13 COMMENTS OR OBSERVATIONS. OKAY?

14 A. I WASN ' T AWARE I WAS DOING ANY OF THOSE THINGS. I
15 WAS TRYING TO CLARIFY THE ANSWER I HAVE MADE. I ' M NOT SURE
16 WHY YOU DIDN ' T WANT ME TO CLARIFY.

17 Q. GO AHEAD AND CLARIFY.

18 A. I DID TAKE NOTES. I DON ' T RECALL THE DATE OF THE
19 CALL. THE NOTES SAY IT WAS JUNE 18. I HAVE NO REASON TO
20 DOUBT THAT DATE.

21 Q. THAT ' S JUNE 18 OF 2003, CORRECT?

22 A. YES.

23 Q. WHEN DID YOU PREPARE THOSE NOTES OF THAT PHONE
24 CONVERSATION?

25 A. THEY WERE TAKEN CONTEMPORANEOUSLY.

26 Q. AT THE TIME YOU PREPARED THESE NOTES, WERE THE
27 FACTS AND STATEMENTS MADE IN THE CONVERSATION FRESH IN YOUR
28 RECOLLECTION?

1 A. I 'M GOING TO HAVE TO DECLINE -- ACTUALLY, LET ME
2 CONSULT WITH COUNSEL.

3 Q. ALL RIGHT.

4 (WHEREUPON, THE WITNESS LEFT THE COURTROOM.)

5 THE WITNESS: THE ANSWER TO YOUR QUESTION IS
6 YES.

7 BY MR. FINKELSTEIN:

8 Q. GOOD. AND AT THE TIME YOU MADE THESE NOTES, WERE
9 YOU TRYING TO BE AS TRUE AND ACCURATE AS YOU COULD?

10 A. I AM AFRAID TO HAVE TO DECLINE TO ANSWER THAT
11 QUESTION ON THE GROUNDS OF THE ATTORNEY WORK PRODUCT
12 PRIVILEGE.

13 Q. YOU' RE DECLINING TO SAY WHETHER OR NOT YOU WERE
14 TRYING TO BE AS TRUE AND ACCURATE AS YOU COULD BE WHEN YOU
15 MADE THOSE NOTES ON THE GROUNDS OF ATTORNEY WORK PRODUCT?

16 A. YES.

17 Q. YOU' RE ASSERTING THAT WHETHER OR NOT YOU WERE
18 BEING, ANSWERING WHETHER OR NOT YOU WERE TRYING TO BE AS
19 TRUE AND ACCURATE AS YOU COULD WOULD DISCLOSE PRINCIPLES OR
20 IMPRESSIONS OR CONCLUSIONS ABOUT MATTERS THAT YOU WERE
21 ENGAGED TO WORK ON?

22 A. YES. IT WOULD DISCLOSE MY THOUGHT PROCESSES AS AN
23 ATTORNEY AS I UNDERSTAND IT.

24 Q. DO YOU UNDERSTAND THAT I 'M JUST TRYING TO LAY A
25 FOUNDATION FOR PAST RECOLLECTION RECORDED?

26 A. I DO. AND IF YOU LIKE, I 'LL GO CONSULT WITH MY
27 COUNSEL ABOUT THAT QUESTION.

28 (WHEREUPON, THE WITNESS LEFT THE COURTROOM.)

SUE HERFURTH, CSR #9645

1541

1 BY MR. FINKELSTEIN:

2 Q. HAVE YOU CONSULTED, AND ARE YOU ABLE TO ANSWER THE
3 QUESTION?

4 A. YES. MY UNDERSTANDING IS THAT HOWARD RICE HAS
5 ASSERTED THAT THE NOTES I TOOK WERE ATTORNEY WORK PRODUCT,
6 AND THAT THEY BELIEVE THAT IT'S IMPROPER TO ANSWER QUESTIONS
7 ABOUT THE NOTES SUCH AS THE ONE YOU JUST POSED.

8 Q. DO YOU UNDERSTAND THAT THEY PRODUCED THIS DOCUMENT
9 TO US?

10 A. YEAH, I DO.

11 Q. WAS THIS DOCUMENT AN ATTACHMENT TO YOUR
12 CONFIDENTIAL MEMORANDUM MARKED EXHIBIT 72?

13 A. I DON'T RECALL.

14 Q. IF YOU GO BACK TO EXHIBIT 72, YOUR CONFIDENTIAL
15 MEMORANDUM, THE PORTION --

16 A. I SEE -- I'M SORRY. YOU'RE ASKING A QUESTION. GO
17 AHEAD.

18 Q. THE PORTION OF THE MEMORANDUM THAT RECITES THAT YOU
19 LISTENED IN ON A PHONE CALL ON JUNE 18, 2003, IN WHICH
20 GUERRA REPEATED THESE AMOUNTS AND HIS INTENT TO CAUSE THE
21 CITY TO PAY THEM.

22 THEN THERE'S A REFERENCE TO, I GUESS, ATTACHMENT
23 19, CORRECT?

24 A. THAT'S THE REFERENCE, YES. AND IT'S CERTAINLY
25 LOGICAL TO THINK THAT WAS THE ATTACHMENT, BUT I CAN'T TELL
26 YOU IT WAS. I DON'T RECALL.

27 Q. SO WE AT LEAST KNOW AS TO EXHIBIT 112, THOSE ARE
28 YOUR NOTES MADE CONTEMPORANEOUSLY OF A PHONE CALL IN WHICH

SUE HERFURTH, CSR #9645

1542

1 MR. GUERRA FROM THE MAYOR'S OFFICE PARTICIPATED, CORRECT?

2 A. YES.

3 Q. JUST -- LET'S TRY TO SAVE TIME. I UNDERSTAND THAT
4 WE HAVE TO HAVE MORE QUESTIONS AND MAYBE HAVE RULINGS FROM
5 THE JUDGE. CAN YOU JUST READ THE NOTES AS IS WITHOUT
6 EXPLANATION OR ANY COMMENTS?

7 A. YES.

8 Q. PLEASE READ THEM SLOWLY, SO THE REPORTER CAN MAKE
9 AN ACCURATE RECORD. THERE'S A TENDENCY WHEN YOU'RE READING
10 TO SPEED THROUGH IT.

11 A. THESE NOTES ARE ON STATIONERY THAT SAYS "SAN
12 FRANCISCO CHAMBER OF COMMERCE, WHERE BUSINESS STARTS."

13 MY HANDWRITING SAYS:

14 "NOTES ON 6/18/03 CALL."

15 NEXT LINE SAYS "GUERRA, DUONG, AND US."

16 IT SAYS "GUERRA: DEALING WITH" -- IT'S THE
17 ABBREVIATION FOR WITH, "WINDOW OF TIME WHEN CERTAINTY, NOT
18 PAST '04," REFERRING TO 2004.

19 "DAVID, YOU SHOULDN'T HAVE AGREED W,"

20 ABBREVIATION FOR WITH, "MORALES PAST '04," FOR
21 2004.

22 "DAVID: ILWU GOING TO LOOK AT THIS
23 CONTRACT."

24 GO TO THE NEXT PAGE ON THE SAME STATIONERY,
Page 37

25 NUMBER N07575 AT THE TOP.
26 "GUERRA: MIKE ALWAYS SAID NO EXTRA MONEY,
27 I'VE SAID HOW MUCH WE'LL COVER: WHAT'S CHANGED?"
28 THEN I HAVE A BRACKET.

SUE HERFURTH, CSR #9645

1543

1 IT SAYS "I.E., WHY MAKE DEAL W," ABBREVIATION
2 FOR WITH, "TEAMSTERS THAT IS MORE GENEROUS THAN WE
3 OFFERED." CLOSE BRACKET.

4 "GUERRA: IN YEARS FOUR AND FIVE, GIVE \$2.4
5 MILLION," OR ABBREVIATION FOR MILLION, THEN

6 "GUERRA: YEAR ONE, \$1.9 MILLION.

7 "YEAR TWO, \$2.1 MILLION.

8 "YEARS THREE TO FIVE, \$2.4 MILLION."

9 GOING TO THE NEXT PAGE, SAME STATIONERY,
10 NUMBER 075751.

11 "DAVID'S JOB TO ADJUST TEAMSTERS TO ACCOUNT
12 FOR THAT."

13 Q. OKAY. NOW, LOOKING AT PAGE TWO OF EXHIBIT 112,
14 YOUR NOTES OF THE JUNE 18, 2003 MEETING. THE NUMBERS THAT
15 YOU HAVE WRITTEN DOWN ON YOUR NOTES, DO THEY MATCH THE
16 NUMBERS ON EXHIBIT 72, YOUR CONFIDENTIAL MEMORANDUM OF
17 NOVEMBER 20, 2003 ON PAGE NINE?

18 A. THEY ARE VERY CLOSE.

19 Q. HOW ARE THEY DIFFERENT?

20 A. IN THE MEMO IT SAYS YEAR TWO, \$2.1 MILLION. IN THE
21 MEMO IT SAYS \$2.15 MILLION. AND IN THE MEMO, I REFERRED TO
22 DATES THAT I, AS FAR AS I KNOW, REFER TO THE FISCAL YEAR

23 PERIODS OF THOSE YEARS, THE MONTHS THAT THOSE FISCAL YEARS
24 RAN.

25 Q. OKAY. BUT OTHER THAN THAT, DO THE NUMBERS APPEAR
26 TO AGREE?

27 A. YES.

28 MR. FINKELSTEIN: PERHAPS THIS WOULD BE A

SUE HERFURTH, CSR #9645

1544

1 CONVENIENT TIME TO TAKE A SHORT RECESS.

2 THE FOREPERSON: BEFORE WE RECESS, LET ME READ YOU
3 AN ADMONITION OF CONFIDENTIALITY.

4 YOU ARE ADMONISHED NOT TO REVEAL TO ANY PERSON
5 EXCEPT AS DIRECTED BY THE COURT WHAT QUESTIONS WERE ASKED OR
6 WHAT RESPONSES WERE GIVEN OR ANY OTHER MATTERS CONCERNING
7 THE NATURE OR SUBJECT OF THE GRAND JURY'S INVESTIGATION
8 WHICH YOU LEARNED DURING YOUR APPEARANCE BEFORE THE GRAND
9 JURY, UNLESS AND UNTIL SUCH TIME AS THE TRANSCRIPT OF THIS
10 GRAND JURY PROCEEDING IS MADE PUBLIC. VIOLATION OF THIS
11 ADMONITION MAY BE PUNISHABLE AS A CONTEMPT OF COURT.

12 DO YOU UNDERSTAND THAT?

13 THE WITNESS: YES, I DO.

14 MR. FINKELSTEIN: TO CLARIFY THAT, YOU CAN CONSULT
15 WITH COUNSEL AS LONG AS COUNSEL AGREES TO BE BOUND BY THE
16 ADMONITION.

17 THE WITNESS: THANK YOU FOR THAT CLARIFICATION.

18 MR. FINKELSTEIN: IN OTHER WORDS, YOU CAN CONSULT
19 FREELY WITH COUNSEL, BUT THERE WOULD BE NO POINT IN HAVING
20 THE ADMONITION IF COUNSEL CAN GO ON TELEVISION TONIGHT AND

21 REPEAT EVERYTHING YOU SAID.

22 THE WITNESS: I UNDERSTAND.

23 (A BRIEF RECESS WAS TAKEN.)

24 BY MR. FINKELSTEIN:

25 Q. MR. THOMPSON, I'LL JUST REMIND YOU YOU'RE STILL
26 UNDER OATH, HAVING BEEN PREVIOUSLY SWORN IN THIS
27 INVESTIGATION. YOU KNOW THAT, DON'T YOU?

28 A. YES, I UNDERSTAND.

SUE HERFURTH, CSR #9645

1545

1 MR. FINKELSTEIN: I WILL ASK TO HAVE MARKED AS
2 EXHIBIT 113 A SIX-PAGE REDACTED MEMORANDUM TO FILE FROM
3 TODD THOMPSON DATED JULY 9, 2003, REGARDING INTERVIEW WITH
4 BILL JONES, 6/24/03.

5 THE FOREPERSON: SO MARKED.

6 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
7 JURY EXHIBIT 113.)

8 BY MR. FINKELSTEIN:

9 Q. MR. THOMPSON, DID YOU PREPARE EXHIBIT 113?

10 A. YES.

11 Q. AND WHEN DID YOU PREPARE IT?

12 A. I DON'T HAVE ANY REASON TO DOUBT THAT I PREPARED IT
13 MORE OR LESS ON THE DATE STATED, JULY 9, 2003.

14 Q. AND IS THIS A MEMORANDUM YOU PREPARED REGARDING AN
15 INTERVIEW THAT YOU HAD WITH BILL JONES ON OR ABOUT JUNE 24,
16 2003?

17 A. YES, IT IS.

18 Q. AT THE TIME YOU INTERVIEWED MR. JONES, IS IT

19 CORRECT THAT HE WAS NO LONGER EMPLOYED BY NORCAL?

20 A. YES, THAT'S CORRECT.

21 Q. AND DO YOU BELIEVE THAT THE MEMORANDUM ACCURATELY
22 REFLECTS INFORMATION THAT MR. JONES COMMUNICATED TO YOU?

23 A. YES, I DO.

24 Q. AND ARE THERE ANY PORTIONS OF THE MEMO THAT YOU
25 THINK YOU MIGHT BE ASSERTING ANY PRIVILEGES OVER?

26 A. MY UNDERSTANDING IS THAT THE HOWARD RICE LAW FIRM
27 HAS COMMUNICATED TO MY ATTORNEY THAT THEY HAVE ASSERTED THE
28 WORK PRODUCT PRIVILEGE AS TO THE ENTIRETY OF THIS DOCUMENT.

SUE HERFURTH, CSR #9645

1546

1 Q. RIGHT --

2 A. AND I WILL RESPECT THAT ASSERTION OF PRIVILEGE
3 UNTIL TOLD OTHERWISE BY THE COURT.

4 Q. YOU INTEND TO ASSERT THE WORK PRODUCT PRIVILEGE AS
5 TO THIS DOCUMENT; IS THAT CORRECT?

6 A. YES.

7 Q. NOTWITHSTANDING THAT IT'S BEEN REDACTED BY THE
8 HOWARD RICE FIRM AND PRODUCED TO US?

9 A. YES.

10 Q. MR. FINKELSTEIN: I THINK THIS WOULD BE AN
11 APPROPRIATE TIME TO RECESS. WE'RE GOING TO HAVE TO SEEK A
12 RULING FROM THE COURT ON THIS PRIVILEGE ISSUE, AND I DON'T
13 THINK WE CAN REALLY GO MUCH FURTHER UNTIL WE GET A RULING
14 FROM THE COURT.

15 SO, MR. THOMPSON, I WILL DIRECT -- I THINK WE'RE
16 GOING TO BE IN SESSION ON MAY 1; IS THAT CORRECT,

17 MR. FOREMAN?

18 THE FOREPERSON: YES.

19 MR. FINKELSTEIN: I WILL DIRECT THAT YOU RETURN
20 HERE ON MAY 1, 2006 AT 10:00 A.M. SO THAT WE CAN RESUME YOUR
21 QUESTIONING.

22 THE WITNESS: I UNDERSTAND. I WILL BE HERE.

23 MR. FINKELSTEIN: THE FOREPERSON WILL REMIND YOU
24 OF THE ADMONITION.

25 THE FOREPERSON: I READ YOU THE ENTIRE ADMONITION.
26 BASICALLY ANYTHING THAT YOU HEARD, SAID, OR SAW TODAY IS NOT
27 TO BE COMMUNICATED WITH ANYBODY EXCEPT AS WAS MENTIONED
28 EARLIER WITH YOUR ATTORNEY, SUBJECT TO THE SAME

SUE HERFURTH, CSR #9645

1547

1 RESTRICTIONS.

2 THE WITNESS: I UNDERSTAND AND I RECALL.

3 MR. FINKELSTEIN: THANK YOU VERY MUCH. SEE YOU
4 MONDAY, MAY 1 AT 10:00 A.M.

5 THE FOREPERSON: WE WILL ADJOURN FOR NOW AND
6 RECONVENE AT 1:30.

7 A JUROR: WHAT DOES REDACTED MEAN?

8 MR. FINKELSTEIN: EDITED. IT'S LAWYER TALK FOR
9 EDITED. THAT'S WHY THERE'S THESE BLACK MARKS ON THE
10 DOCUMENT.

11 THE FOREPERSON: ARE THERE ANY OTHER QUESTIONS
12 FROM JURORS?

13 A JUROR: THIS IS PROBABLY A DUMB LEGAL QUESTION
14 OR SOMETHING, BUT I DON'T UNDERSTAND. IF SOMEBODY HAS

15 WRITTEN A MEMO, IT'S IN PUBLIC AND IT'S BEEN GIVEN TO YOU,
16 WHY CAN'T YOU TALK ABOUT IT?

17 MR. FINKELSTEIN: I REALLY CAN'T ANSWER THAT
18 QUESTION, BECAUSE I AGREE WITH YOU, BUT PLEASE REMEMBER THAT
19 THESE LEGAL MATTERS ARE NOT SOMETHING THAT SHOULD IN ANY WAY
20 CONCERN YOU OR AFFECT YOU OR INFLUENCE YOU IN ANY WAY,
21 SHAPE, OR FORM.

22 THANK YOU.

23 (THE LUNCHEON RECESS WAS TAKEN.)

24

25

26

27

28

SUE HERFURTH, CSR #9645

1548

1 SAN JOSE, CALIFORNIA

APRIL 20, 2006

2

3

AFTERNOON SESSION:

4

THE FOREPERSON: LET ME CALL THE GRAND JURY BACK

5

TO ORDER. LET THE RECORD SHOW THAT ALL 19 JURORS ARE

6

PRESENT.

7

(PAGE 1548, LINE 7, THROUGH PAGE 1561, LINE 8 HAVE

8

BEEN REDACTED AND ARE UNDER SEAL.)

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SUE HERFURTH, CSR #9645

1561

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THE FOREPERSON: WE WILL GET YOU INFORMATION AS
Page 44

10 QUICKLY AS POSSIBLE. I' LL PROBABLY SEND YOU AN E-MAIL THIS
11 AFTERNOON.

12 MR. FINKELSTEIN: ALL RIGHT.

13 THANK YOU VERY MUCH, LADIES AND GENTLEMEN. THANK
14 YOU FOR YOUR ATTENTION.

15 THE FOREPERSON: ANY OTHER QUESTIONS?

16 THEN LET' S ADJOURN FOR THIS AFTERNOON, AND WE WILL
17 MEET BACK OVER IN OUR CHAMBERS.

18 (COURT WAS ADJOURNED FOR THE DAY.)

19

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SUE HERFURTH, CSR #9645

1562

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1562 - 1585

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(PAGES 1562 THROUGH 1585 HAVE BEEN REDACTED AND ARE

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UNDER SEAL.)

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SUE HERFURTH, CSR #9645

1586

1 SAN JOSE, CALI FORNIA

MAY 2, 2006

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PROCEEDINGS:

4

(ROLL WAS CALLED BY THE FOREPERSON.)

5

MR. FINKELSTEIN: UNLESS ANYONE HAS ANY QUESTIONS,

6 I'LL ASK THE WITNESS TO STEP BACK ON THE STAND.

7 TODD THOMPSON,

8 HAVING BEEN PREVIOUSLY SWORN, TESTIFIED ON HIS OATH AS

9 FOLLOWS:

10 EXAMINATION, RESUMED:

11 BY MR. FINKELSTEIN:

12 Q. MR. THOMPSON, I'LL JUST REMIND YOU THAT YOU'RE
13 STILL UNDER OATH, HAVING BEEN PREVIOUSLY SWORN IN THIS
14 INVESTIGATION.

15 SINCE YOU LAST TESTIFIED BEFORE THE GRAND JURY,
16 HAVE YOU RECEIVED A COPY OF AN ORDER FROM THE SUPERIOR COURT
17 REGARDING VARIOUS PRIVILEGE CLAIMS THAT YOU ASSERTED LAST
18 TIME?

19 A. I HAVE, AND I HAVE A COPY OF THAT ORDER IN FRONT OF
20 ME.

21 Q. LET'S RETURN TO SOME OF THE AREAS THAT YOU WERE
22 UNABLE TO ANSWER LAST TIME. LET'S START WITH EXHIBIT 72,
23 AND LET ME HAND IT UP TO YOU.

24 LET ME BEGIN BY ASKING YOU WHY YOU PREPARED THIS
25 MEMORANDUM MARKED EXHIBIT 72.

26 A. AS WE DISCUSSED LAST TIME -- I KNOW YOU ASKED ME --
27 IN DECEMBER OF 2003 I SWITCHED JOBS. I WAS EMPLOYED BY
28 HOWARD RICE AND I DECIDED TO GO TO THE COURT. SO I HAD A
SUE HERFURTH, CSR #9645

1587

1 NUMBER OF RESPONSIBILITIES WHEN I LEFT HOWARD RICE, AND I
2 HAD TO TURN THOSE RESPONSIBILITIES TO OTHER ATTORNEYS AT
3 HOWARD RICE WHO WOULD THEN TAKE OVER FOR ME GOING FORWARD.
4 BECAUSE ONCE I JOINED THE COURT, I WAS NO LONGER ALLOWED TO
5 HAVE ANY ONGOING RESPONSIBILITY FOR PRIVATE CLIENTS,

6 OBVIOUSLY.

7 SO PART OF WHAT I WAS DOING CONCERNED NORCAL AT
8 THAT TIME, AND I PREPARED -- MIKE BAKER IS AN ATTORNEY AT
9 HOWARD RICE, AS I MENTIONED LAST TIME, AND HE WAS GOING TO
10 TAKE OVER MY RESPONSIBILITIES RELATED TO NORCAL. SO AS PART
11 OF MY GOING AWAY FROM HOWARD RICE I SAT DOWN AND PREPARED
12 THIS MEMO TO GIVE HIM AN IDEA, TO GIVE HIM -- SAID
13 MODESTLY -- TO GIVE HIM THE BENEFIT OF MY WISDOM OF WHAT I
14 UNDERSTOOD TO HAVE HAPPENED WITH RESPECT TO NORCAL, WHAT I
15 UNDERSTOOD TO BE THE LEGAL PROBLEMS HE WAS GOING TO CONFRONT
16 IN GENERAL IN ORDER TO REPRESENT NORCAL ON AN ONGOING BASIS.

17 Q. YOU WERE TRYING TO BRIEF HIM ON WHAT WAS GOING ON
18 WITH THE CLIENT, NORCAL, ESSENTIALLY.

19 A. MORE THAN THAT, BUT THAT'S PART OF WHAT I WAS
20 TRYING TO DO.

21 Q. WHAT ELSE WERE YOU TRYING TO ACCOMPLISH WITH THIS
22 MEMO?

23 A. TO GIVE HIM SOME SENSE OF MY THOUGHTS OF WHERE
24 THINGS WOULD GO IN THE FUTURE AS WELL. SO BRIEF HIM AND
25 SORT OF MAKE SUGGESTIONS FOR WHERE THINGS MIGHT GO.

26 Q. CAN YOU TELL US HOW THIS MEMO WAS PREPARED?

27 A. YES. I ASSUME IT WAS ON OR VERY NEAR TO NOVEMBER
28 20 WHEN I STARTED. I SAT DOWN AT THE WORD PROCESSOR AND I

SUE HERFURTH, CSR #9645

1588

1 PERSONALLY TYPED UP THE TEXT THAT YOU SEE. I MUST HAVE,
2 ALTHOUGH I DON'T RECALL ANYMORE, JUDGING FROM THE WAY THIS
3 WAS DONE I MUST HAVE REFERRED TO VARIOUS MATERIALS THAT I

4 HAD. PART OF WHAT I WANTED TO ACCOMPLISH, AS WELL AS
5 TELLING MIKE WHAT I KNEW, WAS TO GATHER SOME OF THE MORE
6 IMPORTANT EXISTING DOCUMENTS THAT HE MIGHT WANT TO REFER TO
7 OR HE SHOULD KNOW EXISTED.

8 SO, AS I RECALL, I COULD BE WRONG, BUT I THINK
9 THAT THIS WAS GIVEN TO MIKE AS PART OF A BINDER WHERE A
10 NUMBER OF OTHER EXISTING DOCUMENTS THAT ARE REFERRED TO BY
11 NUMBER HERE WERE ALSO IN THE BINDER.

12 I THINK THAT'S HOW IT WAS DONE.

13 Q. SO PRESUMABLY IF YOU LOOK ON THE FIRST PAGE OF YOUR
14 CONFIDENTIAL MEMORANDUM, EXHIBIT 72, YOU SEE THERE'S A
15 REFERENCE AT THE END OF THE SECOND PARAGRAPH, UNDER THE
16 HEADING "A," A BACKGROUND TO SOME ATTACHMENT FOR INCLUSION,
17 CORRECT?

18 A. THAT'S MY UNDERSTANDING, YES. THAT'S WHAT THAT
19 MEANS, THAT THERE IS SOME ASSOCIATED DOCUMENT TO LOOK AT.

20 Q. OKAY. SO I GUESS THE FIRST QUESTION I WANT TO
21 REVISIT IS, DID MIKE SANGIACOMO MAKE THE STATEMENTS
22 ATTRIBUTED TO HIM ON THE FIRST FULL PARAGRAPH OF PAGE THREE
23 OF EXHIBIT 72?

24 A. UH -- AS I SAID LAST TIME, FOR THE MOST PART YES,
25 BUT NOT ENTIRELY. HE DID TELL ME THAT AT SOME POINT HE,
26 BILL JONES, AND DAVID DUONG ATTENDED A MEETING WITH THE
27 MAYOR, AND AT THAT TIME THE MAYOR SAID HE WOULD SEE THAT
28 NORCAL WAS AWARDED THE COLLECTION CONTRACT IF CWS WOULD SIGN

SUE HERFURTH, CSR #9645

1589

1 WITH THE TEAMSTERS. THE FIRST PART OF THAT I DON'T THINK
Page 49

2 MIKE TOLD ME. I THINK THAT'S AN ASSUMPTION THAT I MADE,
3 THAT IS AS A QUID PRO QUO THE MAYOR WOULD SEE THAT NORCAL
4 WAS AWARDED THE COLLECTION CONTRACT. I DON'T HAVE ANY
5 MEMORY THAT MR. SANGIACOMO TOLD ME THAT IN WORDS OR WITH
6 THAT SPECIFICITY THAT THAT PARTICULAR QUID PRO QUO WAS WHAT
7 THE MAYOR OFFERED.

8 I WAS JUST GOING TO FINISH.

9 Q. GO AHEAD.

10 A. IT'S CERTAIN TO ME THAT MIKE SAID THAT THE MAYOR
11 WANTED NORCAL TO ARRANGE FOR CWS TO SIGN WITH THE TEAMSTERS,
12 AND I'M CERTAIN THAT THE MAYOR ALSO PROMISED THAT HE WOULD
13 DO HIS BEST OR IN SOME WAY CAUSE THE CITY TO REIMBURSE
14 NORCAL OR CWS FOR THE EXCESS COST THEY WOULD INCUR. AS YOU
15 KNOW AND I'M SURE THE GRAND JURY KNOWS, THEY ORIGINALLY
16 INTENDED TO HAVE THE INTERNATIONAL, ILWU --

17 Q. THE LONGSHOREMEN?

18 A. YES, LONGSHOREMEN AND WAREHOUSEMAN'S UNION.

19 Q. WHY DID YOU PHRASE THE SECOND SENTENCE IN THE
20 FOREGOING STATEMENT IN EXHIBIT 72, AT THAT TIME THE MAYOR
21 SAID THAT HE WOULD SEE THAT NORCAL WAS AWARDED THE
22 COLLECTION CONTRACT IF CWS WOULD SIGN WITH THE TEAMSTERS, IN
23 THE MANNER THAT YOU DID?

24 A. WELL, I THINK -- I'M NOT SURE HOW TO ANSWER YOUR
25 QUESTION. WHY DID I PHRASE IT THAT WAY?

26 I THINK I RECALL THAT MR. SANGIACOMO CONVEYED TO
27 ME THE IMPRESSION THAT IT WAS IMPORTANT TO HIM THAT IT WAS
28 IMPORTANT TO THE PROCESS OF HAVING NORCAL AWARDED THE

SUE HERFURTH, CSR #9645

1 CONTRACT THAT CWS SIGN WITH THE TEAMSTERS. AND I DO RECALL
2 THAT HE GAVE ME THAT IMPRESSION.

3 I THINK THAT, OVER THE YEAR THAT PASSED SINCE WE
4 HAD THIS DISCUSSION, THAT I JUST KIND OF FORMED ON MY OWN
5 THE ASSUMPTION THAT THE MAYOR SAID THAT HE WOULD SEE THAT
6 NORCAL WAS AWARDED THE COLLECTION CONTRACT. THAT IS, I
7 THINK MIKE DID NOT TELL ME EXACTLY WHAT THE QUID PRO QUO
8 WAS, AND IN THE YEAR THAT ELAPSED IT DEVELOPED, IN MY MIND,
9 AN ASSUMPTION THAT THAT WAS THE CASE.

10 Q. AS A LAWYER, THE CONCEPT OF QUID PRO QUO, THIS FOR
11 THAT, THAT CAN HAVE SOME LEGAL SIGNIFICANCE, CORRECT?

12 A. CERTAINLY IN CERTAIN CIRCUMSTANCES IT CAN, YES.

13 Q. I TAKE IT YOU WERE TRYING TO BE AS ACCURATE AS YOU
14 COULD IN THE PREPARATION OF THIS MEMO, CORRECT?

15 A. YES.

16 Q. AT THE TIME YOU PREPARED THIS MEMO, DID YOU BELIEVE
17 IT TO BE ACCURATE?

18 A. I THINK THAT I DID. I REALIZE THAT SOUNDS
19 INCONSISTENT WITH WHAT I'M TELLING YOU TODAY, BUT I CAN'T,
20 IT WAS NOT -- I THINK THAT AT THAT POINT I HAD COME TO
21 BELIEVE THIS ASSUMPTION THAT I MADE, THAT IS, I DON'T THINK
22 I RE-EXAMINED IT IN MY HEAD WHEN I WROTE IT DOWN.

23 Q. AT THE TIME YOU WROTE THIS NOVEMBER 20, 2003
24 MEMORANDUM, EXHIBIT 72, IT WAS YOUR BELIEF THAT THE SENTENCE
25 THAT READS, "AT THAT TIME THE MAYOR SAID THAT HE WOULD SEE
26 THAT NORCAL WAS AWARDED THE COLLECTION CONTRACT IF CWS WOULD
27 SIGN WITH THE TEAMSTERS," THIS SOME WAY OR SOMEHOW CONVEYED
28 THE IMPORT OF WHAT MR. SANGIACOMO HAD EXPLAINED TO YOU?

1 A. YES. AT THE TIME I THINK I BELIEVED THAT TO BE
2 TRUE.

3 Q. OKAY. AND HAS ANYTHING HAPPENED SINCE THAT TIME TO
4 CAUSE TO YOU TO QUESTION WHETHER YOUR BELIEF WAS ACCURATE OR
5 NOT?

6 A. YES.

7 Q. WHAT WAS THAT?

8 A. I RE-EXAMINED THE MEMO WHEN IT WAS PRODUCED TO THE
9 GRAND JURY HERE. AND IT WAS PRESENTED TO ME TO LOOK AT,
10 BECAUSE THERE WAS AN ASSUMPTION THAT I WOULD BE ASKED TO
11 TESTIFY ABOUT IT. I LOOKED AT IT, AND WHAT I HAD WRITTEN
12 THERE DID NOT CONNECT UP WITH MY MEMORY.

13 Q. THAT WOULD HAVE BEEN IN 2006?

14 A. YES.

15 Q. WOULD IT BE FAIR TO SAY THAT YOUR RECOLLECTION IN
16 2003 ABOUT YOUR CONVERSATION WITH MR. SANGIACOMO WAS CLOSER
17 IN TIME THAN IT IS THREE YEARS LATER, IN 2006?

18 A. YES.

19 Q. DO YOU HAVE ANY REASON TO BELIEVE YOUR RECOLLECTION
20 IN 2006 IS MORE ACCURATE THAN IT WAS IN 2003?

21 A. YES.

22 Q. WHAT REASON IS THAT?

23 A. BECAUSE AT THE TIME I WAS WRITING THE MEMO, I WAS
24 OBVIOUSLY VERY INVOLVED WITH THE PROCESS OF WRITING THE
25 MEMO. NOW THAT IT'S WRITTEN, IT'S THERE ON THE PAGE, I STEP
26 BACK AND THINK ABOUT WHAT HAPPENED. AND I THINK I HAVE
27 MORE, GRANTED I HAVE MORE DISTANCE CHRONOLOGICALLY, BUT I
28 ALSO THINK I HAVE MORE DISTANCE EMOTIONALLY.

1 Q. IS THERE SOMETHING EMOTIONAL ABOUT THE CONTENT OF
2 THIS MEMO BACK IN 2003?

3 A. EMOTIONAL IS THE WRONG WORD. I SIMPLY MEANT I HAVE
4 MORE DISTANCE FROM IT MENTALLY.

5 Q. BUT BACK IN 2003 WHEN YOU PREPARED THE MEMO, YOU
6 WERE TRYING TO BE ACCURATE, I TAKE IT?

7 A. YES, I THINK TRYING IS THE OPERATIVE WORD. BUT
8 THAT'S RIGHT, I WAS GENERALLY TRYING TO BE ACCURATE.

9 Q. NOW, STAYING WITH THAT SAME PARAGRAPH ON PAGE
10 THREE, AT THE END OF THE PARAGRAPH IT SAYS:

11 SUBSEQUENTLY ON OCTOBER 9, BILL HAD A MEETING
12 WITH MORALES.

13 CORRECT?

14 A. THAT'S WHAT IT SAYS, YES.

15 Q. THE BILL REFERS TO BILL JONES?

16 A. IT DOES.

17 Q. THE WORD SUBSEQUENTLY IN THE PHRASE "SUBSEQUENTLY
18 ON OCTOBER 9" REFERS TO THIS MEETING BEING SUBSEQUENT TO
19 WHAT?

20 A. MY UNDERSTANDING WAS THAT THE OCTOBER 9 MEETING
21 CAME AFTER THE MEETING BETWEEN DAVID DUONG AND THE MAYOR AND
22 BILL JONES THAT MIKE SANGIACOMO HAD DESCRIBED TO ME.

23 Q. OKAY. SO IS IT CORRECT, AS THE MEMO REFLECTS, THAT
24 BILL JONES TOLD YOU THAT ON OCTOBER 9 HE HAD A MEETING WITH
25 MORALES?

26 A. I BELIEVE SO. THE SOURCE -- WELL, I BELIEVE SO.

27 Q. AND WAS BILL JONES THE SOURCE OF THAT INFORMATION?
28 A. YES. AND WHAT I WAS GOING TO SAY WAS I WOULD HAVE

SUE HERFURTH, CSR #9645

1593

1 LEARNED THAT FROM BILL AT THE TIME WHEN I INTERVIEWED HIM.
2 AND I KNOW YOU PRESENTED TO ME LAST TIME A MEMO I PREPARED
3 IN CONNECTION WITH THAT.

4 Q. I'LL GET TO THAT.

5 A. I'M SORRY. I DON'T MEAN TO PUSH.

6 Q. IS IT ALSO ACCURATE THAT AT THAT MEETING
7 MR. MORALES TOLD BILL JONES THAT HE WOULD BLOCK THE GRANT OF
8 THE CONTRACT TO NORCAL IF THE TEAMSTERS WERE NOT ALLOWED TO
9 ORGANIZE CWS?

10 A. I BELIEVE THAT'S WHAT BILL JONES TOLD ME. IF I
11 CAN -- THE MOST ACCURATE ACCOUNT WOULD BE IN THE MEMO I
12 PREPARED.

13 Q. GIVE ME A MOMENT. WHY DON'T WE TURN TO EXHIBIT 113
14 NEXT. I THINK YOU TOLD US LAST TIME THAT YOU PREPARED THIS
15 MEMORANDUM ON OR ABOUT JULY 9, 2003?

16 A. YES.

17 Q. AND THIS WAS BASED, WAS THIS BASED ON AN INTERVIEW
18 THAT YOU HAD WITH BILL JONES ON THE AFTERNOON OF JUNE 24,
19 2003?

20 A. I BELIEVE SO, THAT'S WHAT IT SAYS, AND I'M
21 CONFIDENT THAT'S TRUE.

22 Q. HOW LONG DID THE INTERVIEW LAST?

23 A. I THINK IT WAS ABOUT THREE HOURS. IT WAS MOST OF
24 AN AFTERNOON.

25 Q. WHERE DID THE INTERVIEW TAKE PLACE?

26 A. I DROVE TO BILL JONES' OFFICE AT ALLIED WASTE.
27 IT'S ON THE PENINSULA, SAN CARLOS, IN THAT AREA.

28 Q. LET ME ASK YOU THIS: I WANT TO GO OVER YOUR

SUE HERFURTH, CSR #9645

1594

1 INTERVIEW WITH BILL JONES, WHICH WAS BACK IN 2003. DO YOU
2 FEEL YOU HAVE SUFFICIENT RECOLLECTION OF THAT
3 INTERVIEW -- LET ME FINISH.

4 A. I WILL.

5 Q. THAT YOU COULD TESTIFY FULLY AND ACCURATELY FROM
6 YOUR PRESENT RECOLLECTION OF THAT INTERVIEW?

7 A. NO. I REMEMBER THE INTERVIEW HAPPENING, BUT I HAVE
8 VERY LITTLE MEMORY OF THE CONTENT.

9 Q. FAIR ENOUGH. THIS MEMORANDUM, EXHIBIT 113, WAS IT
10 MADE AT A TIME WHEN THE INTERVIEW WAS FRESH IN YOUR MEMORY?

11 A. YES.

12 Q. WAS IT MADE BY YOU YOURSELF?

13 A. IT WAS.

14 Q. AND DO YOU RECALL THAT THE MEMORANDUM IS TRUTHFUL
15 AND ACCURATE REGARDING WHAT BILL JONES TOLD YOU?

16 A. YES. IT'S ALWAYS POSSIBLE I MISINTERPRETED HIM, I
17 SUPPOSE, BUT I DID MY BEST TO BE ACCURATE, AND I BELIEVE IT
18 TO BE AN ACCURATE ACCOUNT OF WHAT WAS SAID DURING THE
19 INTERVIEW.

20 Q. DID YOU TAKE NOTES OF THE INTERVIEW?

21 A. I DID. AND THIS MEMO WOULD HAVE BEEN PREPARED WITH
22 VERY COMPLETE RELIANCE ON THE NOTES I TOOK.

23 Q. WERE THE NOTES MADE CONTEMPORANEOUS WITH THE
24 MEETING?

25 A. WHILE I WAS TALKING TO BILL.

26 Q. WELL, GIVEN THAT, WHY DON'T WE START WITH JUST
27 HAVING YOU READ THE MEMORANDUM, AND PLEASE READ SLOWLY FOR
28 THE REPORTER'S SAKE.

SUE HERFURTH, CSR #9645

1595

1 A. OKAY. THERE ARE REDACTED PORTIONS I GUESS I WON'T
2 BOTHER TO MENTION.

3 Q. OKAY.

4 THE WITNESS: ON THE AFTERNOON OF JUNE 24,
5 2003, I INTERVIEWED BILL JONES AT HIS OFFICE NEAR
6 THE BFI RECYCLING CENTER IN SAN CARLOS. THE
7 INTERVIEW LASTED APPROXIMATELY THREE HOURS.

8 BILL SAID THAT HE SHOWED RICH LANSER AND PAM
9 REID, R-E-I-D, AT HIS FORMER OFFICE WITH NORCAL
10 WHERE HIS FILES WERE REGARDING THIS MATTER AND
11 OTHERS. THE FILES ARE IN A LARGE BLACK FILING
12 CABINET AT THE SANTA CLARA OFFICE OF LAGCO,
13 L-A-G-C-O. THAT'S THE LOS ALTOS GARBAGE COMPANY.

14 FOR PART OF THE INTERVIEW, BILL REVIEWED
15 CALENDAR ENTRIES IN HIS PDA. WHERE DATES ARE
16 GIVEN IN THIS MEMORANDUM, THEY WERE TAKEN FROM
17 BILL'S PDA.

18 BILL WAS THE GENERAL MANAGER AT LOS ALTOS
19 GARBAGE COMPANY WHEN THE SAN JOSE BID WAS
20 SUBMITTED, CONTINUING THROUGH THE FIRST FEW MONTHS

21 OF CONTRACT PERFORMANCE. HE WAS DIRECTLY
22 RESPONSIBLE FOR PREPARING THE BID AND IMPLEMENTING
23 THE CONTRACT WITH THE CITY, SUBHEADING A, THE
24 ADDENDUM.

25 PREPARATION FOR SUBMISSION OF A SAN JOSE BID
26 BEGAN AS EARLY AS MARCH, 2003. BILL AND
27 JOHN NICOLETTI PLAYED GOLF WITH MAYOR GONZALES ON
28 MARCH 6, IN AN EFFORT TO BEGIN BUILDING A PRESENCE

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1596

1 IN SAN JOSE.

2 ON MARCH 28, BILL ATTENDED A MEETING OF THE
3 SAN JOSE CITY COUNCIL AT WHICH CITY STAFF
4 DISCUSSED THE STATUS OF PREPARATION OF THE RFP,
5 THE REQUEST FOR PROPOSALS FOR THE HAULING
6 CONTRACT.

7 THE RFP WAS SUBSEQUENTLY APPROVED BY THE CITY
8 COUNCIL ON APRIL 4 AND RELEASED TO POTENTIAL
9 BIDDERS ON APRIL 28. DURING SUBSEQUENT MONTHS,
10 BILL AND OTHERS COURTED MEMBERS OF THE CITY
11 COUNCIL AND THE MAYOR, AND THEY HIRED BARBARA
12 OLSEN, A POLITICAL CONSULTANT, TO HELP SECURE THE
13 CONTRACT.

14 BILL'S FIRST EXPOSURE TO CALIFORNIA WASTE
15 SOLUTIONS OCCURRED AT THE FIRST PRE-BID MEETING AT
16 CITY COUNCIL CHAMBERS. THIS WAS PROBABLY A
17 MEETING AT MAY 19. AT THAT MEETING PAUL
18 ROTTENBERG, A CONSULTANT TO CWS, APPROACHED BILL,

19 INTRODUCED HIMSELF AS REPRESENTING CWS AND SAID, I
20 UNDERSTAND WE'RE GOING TO PARTNER, UNQUOTE, IN
21 CONNECTION WITH THE SAN JOSE CONTRACT.

22 THIS WAS THE FIRST BILL HAD HEARD OF CWS.
23 BILL BELIEVES THAT MIKE SANGIACOMO AND DAVID
24 DUONG, THE CEO OF CWS, MUST HAVE HAD DISCUSSIONS
25 ABOUT A JOINT EFFORT TO OBTAIN THE SAN JOSE
26 CONTRACT.

27 FROM THAT MEETING THROUGH THE SUBMISSION OF
28 THE BID, BILL SAID HE AND ROTTENBERG WERE, QUOTE,

SUE HERFURTH, CSR #9645

1597

1 JOINED AT THE HIP, UNQUOTE.

2 NORCAL AND CWS HAD BEEN TALKING ABOUT THE
3 CONTRACT FOR A WHILE, UNQUOTE, BEFORE IT WAS SENT
4 TO ME FOR LEGAL REVIEW. BILL WORKED WITH
5 ROTTENBERG ON THE TERMS OF THE CONTRACT AT
6 MEETINGS IN SAN FRANCISCO OR AT LAGCO'S SANTA
7 CLARA OFFICE. ONE MEETING OCCURRED ON MAY 30 IN
8 SAN FRANCISCO. CWS'S INITIAL OFFER WAS TO CHARGE
9 NOTHING FOR PROCESSING, AND TO PAY NOTHING FOR
10 RECEIPT OF THE RECYCLABLES, AND NORCAL ACCEPTED
11 THIS OFFER.

12 BILL HAD, QUOTE, NO QUALMS, UNQUOTE, ABOUT
13 THE OFFER AT THE TIME. HE DID NOT KNOW WHAT THE
14 OTHER POTENTIAL PROCESSORS MIGHT HAVE OFFERED.
15 BILL DOES NOT KNOW WHAT ASSUMPTIONS THE BID WAS
16 BASED ON AND HE SAW NO BACKUP SUPPORTING IT.

17 ROTTENBERG ALSO HELPED PREPARE NORCAL' S
18 RESPONSE TO THE CITY' S RFP. THE SECTION IN THE
19 RESPONSE DESCRIBING THE RECYCLABLE SORTING
20 EQUIPMENT AND MARKETING PROCESS WAS WRITTEN BY
21 ROTTENBERG FOR HIS EMPLOYEES. THE CONTRACTOR
22 PREPARING NORCAL' S RESPONSE WAS BRUCE MURPHY, AND
23 ROTTENBERG FORWARDED THIS SECTION DIRECTLY TO
24 MURPHY FOR INCLUSION IN THE RESPONSE AT THE LAST
25 MINUTE.

26 ALMOST DOWN TO THE DEADLINE FOR SUBMISSION OF
27 THE RESPONSE, CWS' S PARTICIPATION WAS UNCERTAIN
28 BECAUSE IT WAS NOT CLEAR THAT CWS COULD MEET THE

SUE HERFURTH, CSR #9645

1598

1 RFP' S REQUIREMENTS, AND ROTTENBERG KEPT MISSING
2 DEADLINES. NORCAL WENT SO FAR AS TO PREPARE AN
3 ALTERNATIVE VERSION OF THE RECYCLE SECTION STATING
4 THAT NORCAL WOULD BUILD THE RECYCLING FACILITY
5 JUST IN CASE CWS DID NOT QUALIFY.

6 CWS HAD VIRTUALLY NO INPUT INTO THE CONTENT
7 OF THE REMAINDER OF NORCAL' S RESPONSE TO THE RFP
8 WHICH WAS SUBMITTED TO THE CITY ON JUNE 14.

9 ONCE THE RESPONSES HAD BEEN SUBMITTED, A CITY
10 COMMITTEE REVIEWED THEM. PROPOSALS BY REPUBLIC
11 WASTE AND A PARTNERSHIP BETWEEN GREEN TEAM AND
12 WASTE MANAGEMENT WERE THROWN OUT AS NONCOMPLIANT.
13 THE REMAINING VIABLE RESPONSES WERE FROM NORCAL,
14 GREEN TEAM, BFI, AND WASTE MANAGEMENT.

15 NORCAL WAS GIVEN AN OPPORTUNITY TO MAKE A
16 PRESENTATION TO AND ANSWER QUESTIONS FROM THE
17 REVIEW COMMITTEE. NORCAL AND CWS REPRESENTATIVES
18 MET IN SAN FRANCISCO ON AUGUST 9 TO DISCUSS AND
19 REHEARSE FOR THIS INTERVIEW, WHICH OCCURRED ON
20 AUGUST 10. MIKE AND BILL PRESENTED ON BEHALF OF
21 NORCAL, AS DID DAVID DUONG.

22 DUONG DISCUSSED THE HISTORY OF CWS AND ITS
23 PLANNED ROLE IN THE PROGRAM. DUONG'S BROTHER
24 VICTOR AND PAUL ROTTENBERG ALSO ATTENDED THIS
25 INTERVIEW.

26 APPARENTLY, THE INTERVIEW WAS VIDEOTAPED AND
27 A COPY OF THE VIDEOTAPE IS MAINTAINED BY THE CITY
28 ENVIRONMENTAL SERVICES DEPARTMENT.

SUE HERFURTH, CSR #9645

1599

1 THROUGHOUT SEPTEMBER, BILL ATTENDED STRATEGIC
2 MEETINGS REGARDING THE POTENTIAL CONTRACT. ON
3 SEPTEMBER 22, BILL RECEIVED A TELEPHONE CALL FROM
4 THE CITY'S ESD, ENVIRONMENTAL SERVICES DEPARTMENT,
5 VISITING HIM TO --

6 Q. I'M SORRY. YOU SAID VISITING?

7 A. SORRY.

8 INVITING HIM TO STOP BY AND PICK UP A COPY OF
9 THE CITY STAFF'S RECOMMENDATION. BILL WENT TO ESD
10 WITH RICH LANSER AND BARBARA OLSEN. STAFF'S
11 RECOMMENDATION WAS TO SELECT NORCAL. BETWEEN THAT
12 DATE AND OCTOBER 10, WHEN THE CONTRACT WAS

13 OFFICIALLY AWARDED, NORCAL WAS ENGAGED IN FURIOUS
14 POLITICKING.

15 ON SEPTEMBER 27, BILL MET WITH MIKE MAHONEY
16 AND DUONG TO DISCUSS ISSUES RELATED TO SAN JOSE,
17 POSSIBLY REAL ESTATE OR LABOR ISSUES. ON
18 SEPTEMBER 29, BILL CALLED RON PROTO TO DISCUSS THE
19 ILWU. BY THIS TIME NORCAL AND CWS HAD HATCHED A
20 PLAN TO HAVE THE ILWU ASSERT THE RIGHT TO ORGANIZE
21 CWS'S SAN JOSE FACILITY AND THOUGHT PROTO MIGHT
22 ASSIST THEM. HE WAS NOT HELPFUL.

23 SOMETIME BETWEEN SEPTEMBER 22 AND THIS
24 MEETING WITH PROTO, THE TEAMSTERS HAD INDICATED TO
25 NORCAL OR CWS THAT IT EXPECTED TO ORGANIZE CWS'S
26 SAN JOSE FACILITY. ALSO ON SEPTEMBER 29, BILL HAD
27 A CONFERENCE CALL WITH DUONG, WHICH HE THINKS
28 PROBABLY ADDRESSED THE LABOR ISSUE.

SUE HERFURTH, CSR #9645

1600

1 DURING THE WEEK PRECEDING OCTOBER 10, BILL
2 AND MIKE MET WITH MOST OF THE CITY COUNCIL MEMBERS.
3 THEY DISCUSSED THE TEAMSTERS ISSUES WITH, QUOTE,
4 THE MAJORITY OF THE CITY COUNCIL MEMBERS.

5 ON OCTOBER 6, BILL AND MIKE SANGIACOMO
6 ATTENDED A MEETING WITH THE MAYOR. BILL NO LONGER
7 REMEMBERS WHETHER DUONG ATTENDED, BUT IT MAKES
8 SENSE HE WAS THERE BECAUSE THEY MET IN A, QUOTE,
9 BIG ROOM, UNQUOTE. DURING SUBSEQUENT
10 CONVERSATIONS, MIKE HAS SUGGESTED TO BILL THAT THE

11 TEAMSTERS ISSUE WAS DISCUSSED DURING THAT MEETING,
12 BUT BILL DOES NOT REMEMBER THE ISSUES BEING
13 DISCUSSED THEN.

14 ACCORDING TO BILL, QUOTE, THAT DOESN'T MEAN
15 IT DIDN'T HAPPEN, UNQUOTE. BILL HAS NO MEMORY OF
16 DEALING DIRECTLY WITH DUONG ABOUT THE DIFFERENTIAL
17 PAY ISSUE. LAST, ON OCTOBER 6 BILL AND MIKE MET
18 WITH CITY COUNCILMEMBER DIQUISTO. EARLY ON
19 OCTOBER 9 BILL HAD A MEETING WITH BOB MORALES,
20 HEAD OF SAN FRANCISCO AND SAN JOSE TEAMSTERS
21 LOCAL, WHO AT THAT MEETING SAID THAT HE HAD BEEN
22 UNAWARE THAT NORCAL WAS GOING TO CONTRACT OUT THE
23 RECYCLABLES PROCESSING. MORALES WAS UPSET THAT
24 CWS WAS ORGANIZED BY ILWU AND HADN'T SIGNED A
25 MEMORANDUM OF UNDERSTANDING WITH THE TEAMSTERS.
26 MORALES SAID HE WAS GOING TO BLOCK THE GRANT OF
27 THE CONTRACT TO NORCAL IF HIS CONCERNS WEREN'T
28 SATISFIED.

SUE HERFURTH, CSR #9645

1601

1 BILL TOOK MORALES'S MESSAGE TO A MEETING AT
2 NORCAL'S SAN FRANCISCO OFFICES LATER THAT DAY.
3 THE ADDENDUM IN WHICH NORCAL PROMISED TO REIMBURSE
4 THE TEAMSTERS/ILWU PAY DIFFERENTIAL WAS A PRODUCT
5 OF THIS MEETING AND WAS SIGNED THAT DAY. DUONG
6 MAY HAVE ATTENDED PART OF THE MEETING, BILL IS NOT
7 SURE. BILL POINTED OUT TO MIKE THAT THE ADDENDUM
8 AS WRITTEN WAS A, QUOTE, BLANK CHECK, UNQUOTE, TO

9 CWS. BILL RECOMMENDED THAT NORCAL AGREE TO
10 REIMBURSE ONLY THE DIFFERENCE BETWEEN TEAMSTERS
11 WAGES UNDER THE THEN CURRENT TEAMSTERS' CONTRACT,
12 NOT TO REIMBURSE DIFFERENCES UNDER FUTURE, PAREN,
13 MORE GENEROUS, CLOSE PAREN, CONTRACTS. BILL HAD A
14 COPY OF THE TEAMSTERS' CONTRACT THEN IN EFFECT,
15 BUT DUONG REFUSED TO PROVIDE BILL WITH A COPY OF
16 THE ILWU CONTRACT FROM CWS' S OAKLAND FACILITY.

17 IN BILL'S MEMORY IT WAS SUBSEQUENT TO THAT
18 MEETING THAT JOE GUERRA SAID THAT THE CITY WOULD
19 REIMBURSE THE DIFFERENTIAL, ALTHOUGH IT IS
20 POSSIBLE IN THE MAYOR HAD SAID THIS EARLIER. AT
21 SOME POINT MORALES BECAME AWARE OF THE CITY'S
22 PROMISE. MORALES TOLD DUONG HE DIDN'T UNDERSTAND
23 WHY DUONG WOULDN'T AGREE TO A NEW TEAMSTERS
24 CONTRACT BECAUSE, QUOTE, IT WASN'T HIS, BRACKET,
25 DUONG'S, CLOSE BRACKET, MONEY. THE CITY WAS GOING
26 TO PAY CWS BACK. AND IT CONTINUES, BUT THE REST
27 IS REDACTED.

28 Q. OKAY.

SUE HERFURTH, CSR #9645

1602

1 MR. FINKELSTEIN: LADIES AND GENTLEMEN, AS I
2 INDICATED BEFORE, REDACTED MEANS EDITED. THERE HAVE BEEN
3 PORTIONS BLACKED OUT BECAUSE THE COURT HAS MADE RULINGS
4 ABOUT SUSTAINING PRIVILEGES AS TO THOSE PORTIONS, AND YOU
5 SHOULD NOT SPECULATE WHAT MAY HAVE BEEN SAID IN THOSE
6 PORTIONS OR WHY IT'S BEEN BLACKED OUT.

7 LET ME FOLLOW UP WITH A FEW QUESTIONS ON A COUPLE
8 OF SENTENCES IN HERE.

9 BY MR. FINKELSTEIN:

10 Q. NEAR THE BOTTOM OF THE FIRST PAGE YOU HAVE WRITTEN:
11 DURING SUBSEQUENT MONTHS, BILL AND OTHERS
12 COURTED MEMBERS OF THE CITY COUNCIL AND THE MAYOR,
13 AND THEY HIRED BARBARA OLSEN AS A POLITICAL
14 CONSULTANT TO HELP SECURE THE CONTRACT.

15 CORRECT?

16 A. YES.

17 Q. DID MR. JONES -- WAS THAT HIS WORD?

18 A. COURTED? PROBABLY NOT. THAT'S PROBABLY MY
19 CHARACTERIZATION.

20 Q. WHAT IS IT, AS BEST YOU CAN RECALL, WHAT HE SAID,
21 AS YOU QUOTE, COURTING CITY COUNCILMEMBERS AND THE MAYOR?

22 A. I DON'T RECALL OTHER THAN ANYTHING MORE ELABORATE
23 THAN SIMPLY MEETING WITH THEM, TRYING TO EXPLAIN TO THEM WHO
24 NORCAL WAS AND WHAT THEY WANTED TO DO, THAT SORT OF THING.
25 I KNOW IT SAYS HERE THEY PLAYED GOLF WITH THE MAYOR. THAT'S
26 THE SORT OF THING I UNDERSTOOD TO HAVE HAPPENED.

27 Q. WHAT WAS YOUR UNDERSTANDING OF THE ENGLISH WORD
28 "COURTED" AS YOU USED IT IN THIS MEMORANDUM?

SUE HERFURTH, CSR #9645

1603

1 A. MY UNDERSTANDING OF COURTING IS IN A ROMANTIC
2 RELATIONSHIP, A MAN COURTS A WOMAN OR VICE VERSA IN ORDER TO
3 CAUSE THEM TO FALL IN LOVE.

4 Q. IN THE CONTEXT OF POLITICS, WHAT DOES THE COURTED

5 MEAN?

6 A. IT COULD HAVE BEEN A LARGE NUMBER OF THINGS. IN
7 THIS CASE, I SIMPLY MEANT WHAT WE THINK OF AS LOBBYING.
8 THEY TALKED TO ME IN ORDER TO PERSUADE ME AS TO THE JUSTNESS
9 OF THEIR CAUSE, WHICH HERE WAS NORCAL GETTING THE CONTRACT.

10 Q. LET'S TURN TO PAGE THREE OF THIS MEMORANDUM. AT
11 THE END OF THE FIRST FULL PARAGRAPH AT THE TOP OF PAGE THREE
12 YOU HAVE WRITTEN:

13 BETWEEN THAT DATE AND OCTOBER 10, WHEN THE
14 CONTRACT WAS OFFICIALLY AWARDED, NORCAL WAS
15 ENGAGED IN FURIOUS POLITICKING.

16 WERE THOSE MR. JONES'S WORDS?

17 A. NO. AGAIN, THOSE ARE MY WORDS, I'M FAIRLY
18 CERTAIN -- THAT'S MY CHARACTERIZATION --

19 Q. WHAT WAS IT THAT MR. JONES TOLD YOU THAT YOU
20 CHARACTERIZED AS FURIOUS POLITICKING?

21 A. IT'S THE NEXT SEVERAL PARAGRAPHS, BASICALLY THE
22 REST OF THE MEMO, THAT'S WHAT HE TOLD ME, AND MY
23 CHARACTERIZATION OF ACTIVITIES IS FURIOUS POLITICKING. I
24 DON'T THINK HE TOLD ME SPECIFIC ACTIVITIES THEY ENGAGED IN
25 THAT I DIDN'T INCLUDE IN THE MEMO, IF YOU UNDERSTAND WHAT
26 I'M SAYING.

27 Q. OKAY. SO THIS WAS YOUR SORT OF SUMMARIZATION AND
28 CHARACTERIZATION OF THE EVENTS BELOW?

SUE HERFURTH, CSR #9645

1604

1 A. YES. AND IF YOU DON'T AGREE THAT'S FURIOUS
2 POLITICKING, I WOULD JUST SAY I GET CARRIED AWAY, I GUESS.

3 BUT HE DIDN' T TELL ME OF ANY SPECIFIC ACTIVITIES NORCAL
4 UNDERTOOK THAT I DID NOT PUT DOWN IN THE MEMO, SO FAR AS I
5 KNOW.

6 Q. MOVING NEXT TO THE SECOND FULL PARAGRAPH ON THE TOP
7 HALF OF PAGE THREE. YOU HAVE WRITTEN:

8 BY THIS TIME, NORCAL AND CWS HAD HATCHED A
9 PLAN TO HAVE THE ILWU ASSERT THE RIGHT TO ORGANIZE
10 CWS' S SAN JOSE FACILITY.

11 WHAT DID YOU MEAN BY "HATCHED A PLAN"?

12 A. YOU KNOW, WHAT I MEANT BY HATCH A PLAN IS WHAT I
13 MEANT SIMPLY AS A PLAN, THAT WAS THEIR PLAN TO HAVE THE ILWU
14 ORGANIZED -- MY LANGUAGE MAKES IT SOUND -- ONE THINKS OF
15 HATCHING A PLAN, IT SOUNDS A LITTLE BIT INAPPROPRIATE. BUT
16 AS FAR AS I KNOW THEY HAD JUST DECIDED WHAT THEY WOULD DO IS
17 EVALUATE ILWU. IF THERE WAS SOME SORT OF MANEUVERING IT
18 TOOK, I DON' T KNOW WHAT IT WAS.

19 Q. WELL, IN TERMS OF ENGLISH USAGE, WHAT DID YOU
20 UNDERSTAND THE USE OF THE WORD HATCH TO IMPLY?

21 A. AGAIN, HATCH IS WHAT ONE DOES TO AN EGG TO GET IT
22 TO TURN INTO A FULL-FLEDGED ORGANISM.

23 Q. THAT WOULD BE A LITERAL MEANING. YOU WEREN' T
24 TALKING ABOUT EGGS HERE, RIGHT?

25 A. NO, I WAS TALKING ABOUT A PLAN. YOU WOULD SIT ON
26 THE PLAN IN HOPES IT WOULD BE REALIZED, I GUESS.

27 Q. WERE YOU SUGGESTING ANYTHING IMPROPER OR ILLEGAL?

28 A. YOU KNOW, I DIDN' T MEAN TO, BECAUSE, AGAIN, WHAT I

1 KNEW IS WHAT YOU SEE HERE, SO I GUESS EVERYONE CAN ATTACH
2 THEIR OWN SIGNIFICANCE TO THAT. BUT AS I UNDERSTAND IT, THE
3 ILWU HAD ORGANIZED MR. DUONG'S FACILITY IN OAKLAND AND IT
4 WAS NATURAL FOR THEM TO ORGANIZE -- I SHOULDN'T SAY THAT I'M
5 NO EXPERT ON LABOR LAW. IT WOULD SEEM TO A LAYPERSON, IT
6 CAN BE NATURAL TO HAVE THE ILWU ORGANIZE A RECYCLING
7 FACILITY IN SAN JOSE AS WELL.

8 MY UNDERSTANDING WAS ALSO THAT THE BID NORCAL AND
9 CWS MADE CONTAINED FINANCIAL ASSUMPTIONS IN IT, AND PROBABLY
10 DAVID'S OFFER TO NORCAL TO PROCESS THE RECYCLING BASICALLY
11 FOR FREE, RIGHT, FOR THE COST OF WHAT HE COULD GET FOR IT,
12 WAS BASED ON THE ASSUMPTION THAT THE ILWU SCALE WAGES WOULD
13 BE AT HIS FACILITY. AND OF COURSE THE LOGICAL WAY TO GET
14 THAT IS TO HAVE THE ILWU ORGANIZE IT. I GUESS THAT'S WHAT I
15 WOULD HAVE MEANT BY HATCH THE PLAN, THAT THAT SORT OF THING
16 WENT INTO IT.

17 Q. IN THE THIRD FULL PARAGRAPH ON PAGE THREE, YOU HAVE
18 WRITTEN:

19 DURING THE WEEK PRECEDING OCTOBER 10, BILL
20 AND MIKE MET WITH MOST OF CITY COUNCILMEMBERS.
21 THEY DISCUSSED THE TEAMSTERS ISSUE WITH, QUOTE,
22 THE MAJORITY, CLOSE QUOTE, OF THE CITY
23 COUNCILMEMBERS.

24 CORRECT?

25 A. YES. THAT'S WHAT I WROTE.

26 Q. DO YOU RECALL ANY MORE DETAILS OR PARTICULARS ABOUT
27 THAT?

28 A. I DON'T, AND I WISH I COULD TELL YOU I RECALLED

1 WHAT THE TEAMSTERS ISSUE MEANT. SITTING HERE I WOULD
2 INTERPRET THAT AS MEANING WHETHER OR NOT TO HAVE THE
3 TEAMSTERS ORGANIZE THE CWS FACILITY, BUT WHETHER IT MEANS
4 ANYTHING MORE THAN THAT, I NO LONGER REMEMBER.

5 Q. OKAY. NOW, IF WE GO TO THE LAST FULL PARAGRAPH ON
6 PAGE FOUR OF THE MEMORANDUM WHICH BEGINS IN BILL'S MEMORY,
7 YOU HAVE IN THE PARAGRAPH THE SENTENCE:

8 AT SOME POINT MORALES BECAME AWARE OF THE CITY'S
9 PROMISE.

10 CORRECT?

11 A. YES.

12 Q. WHAT PROMISE BY THE CITY ARE YOU REFERRING TO?

13 A. IT SHOWS YOU HOW ONE CAN BE CARELESS WITHOUT
14 KNOWLEDGE. IT WASN'T THE CITY'S PROMISE, BUT I WAS
15 REFERRING TO MORALES BECAME AWARE THAT THE MAYOR HAD TOLD
16 MIKE SANGIACOMO THAT THE MAYOR WOULD SEE THAT THE CITY
17 REIMBURSED NORCAL OR CWS FOR THE WAGE DIFFERENTIAL.

18 SO LOOKING AT IT, IT CERTAINLY WASN'T THE CITY'S
19 PROMISE UNLESS YOU CONSIDER THE MAYOR TO BE THE CITY, WHICH
20 IN THIS CIRCUMSTANCE I DON'T THINK HE WAS.

21 Q. DID MR. JONES EXPLAIN HOW HE LEARNED THAT MORALES
22 HAD BECOME AWARE OF WHAT YOU HAD DESCRIBED AS THE CITY'S
23 PROMISE OR THE MAYOR'S PROMISE?

24 A. LOOKING AT THIS, IT SEEMS AS THOUGH DAVID DUONG
25 MUST HAVE SUBSEQUENTLY TOLD BILL ABOUT THIS, ABOUT THE
26 COMMENT THAT MORALES MADE. I THINK THAT WHAT HAPPENED WAS
27 THAT DAVID DUONG WAS SPEAKING WITH BILL JONES AND SAID TO
28 BILL, YOU KNOW, HE MORE OR LESS SAID TO ME HE DIDN'T

1 UNDERSTAND WHY I WOULDN'T SIGN A CONTRACT WITH HIM BECAUSE
2 IT WASN'T HIS MONEY.

3 SO IF MUST HAVE BEEN DAVID TOLD BILL AND BILL TOLD
4 ME.

5 Q. THANK YOU FOR THAT CLARIFICATION. LET'S LOOK NEXT
6 AT EXHIBIT 112, AND COULD YOU JUST, GIVEN THE PASSAGE OF
7 TIME, TELL US WHAT THAT IS?

8 A. THESE ARE NOTES I MADE BY HAND WHILE I WAS SITTING
9 IN MIKE SANGIACOMO'S OFFICE IN SAN FRANCISCO LISTENING TO A
10 PHONE CALL THAT INVOLVED MR. GUERRA, DAVID DUONG, AND
11 OTHERS, WHO, I'M NOT SURE WHO ALWAYS WAS INVOLVED. IT WAS
12 ON THE SPEAKERPHONE.

13 Q. THEY WERE PREPARED CONTEMPORANEOUSLY WITH THAT
14 CONVERSATION?

15 A. YES.

16 Q. AND IF I WERE TO ASK YOU QUESTIONS ABOUT THAT
17 CONVERSATION, YOU DO YOU FEEL YOU HAVE SUFFICIENT
18 RECOLLECTION SO THAT YOU COULD TESTIFY FULLY AND ACCURATELY
19 FROM YOUR SPOKEN PRESENT RECOLLECTION REGARDING A
20 CONVERSATION?

21 A. NO, I'M SURE I COULD NOT.

22 Q. I TAKE IT, GIVEN THAT THOSE NOTES WERE
23 CONTEMPORANEOUS TO THE CONVERSATION, THEY WERE MADE AT A
24 TIME WHEN THE CONVERSATIONS WERE FRESH IN YOUR RECOLLECTION?

25 A. YES.

26 Q. AND THEY WERE MADE BY YOURSELF?

27 A. YES.

28 Q. AND ARE THE NOTES A TRUE STATEMENT, TO THE BEST OF

SUE HERFURTH, CSR #9645

1608

1 YOUR KNOWLEDGE, OF WHAT WAS SAID IN THE CONVERSATION?

2 A. I HOPE THEY ARE A TRUE CHARACTERIZATION OF WHAT WAS
3 SAID. THESE NOTES DO, TO SOME EXTENT, REFLECT MY SORT OF
4 FILTERING, BUT THIS IS A RELATIVELY ACCURATE RECOUNTING OF
5 WHAT WAS SAID. YOU CAN SEE WHERE I SAID, A COLON WHERE I AM
6 MORE OR LESS PARAPHRASING MR. GUERRA.

7 Q. I TAKE IT THAT THE CALL TOOK PLACE JUNE 18, 2003,
8 AS THE NOTES REFLECT?

9 A. I DON'T HAVE ANY REASON TO DOUBT THAT.

10 Q. COULD YOU EXPLAIN TO US WHAT YOU MEANT BY DEALING
11 WITH A WINDOW OF TIME.

12 A. I THINK I CAN. IT'S BEEN A WHILE, BUT AS I RECALL
13 THE TOPIC OF THIS CONVERSATION AT THAT TIME, AND IT WAS THE
14 MAJOR TOPIC OF THE CALL, WAS -- WELL, LET ME BACK UP. THE
15 CONTEXT HERE WAS THAT CALIFORNIA WASTE SOLUTIONS DIDN'T
16 IMMEDIATELY SIGN A CONTRACT WITH THE TEAMSTERS. AND I DON'T
17 REMEMBER WHEN THEY SIGNED THE CONTRACT, BUT IT WAS SEVERAL
18 MONTHS INTO THE EXECUTION OF THE GENERAL HAULING CONTRACT.

19 Q. SO THAT WOULD HAVE BEEN AFTER JULY 1 OF '02?

20 A. ABSOLUTELY. SUBSTANTIALLY AFTER. MONTHS.

21 Q. DO YOU RECALL THAT BEING SOME TIME IN 2003?

22 A. YES.

23 Q. DO YOU RECALL IT BEING PRIOR TO THIS PHONE
24 CONVERSATION?

25 A. YES. THAT'S WHERE I WAS HEADED. AND THERE WAS A
26 PRIOR PHONE CONVERSATION WHICH I WAS NOT PART OF, BUT WHICH

27 I UNDERSTOOD TO HAVE DEALT WITH HOW MUCH -- AND THAT
28 OCCURRED AT A TIME BEFORE THE TEAMSTERS' CONTRACT WAS

SUE HERFURTH, CSR #9645

1609

1 ENTERED INTO. AND SO AT THAT TIME IT WAS DISCUSSED WHAT
2 REIMBURSEMENT WOULD BE APPROPRIATE FOR THE DIFFERENTIAL IN
3 COSTS BETWEEN THE ILWU AND THE TEAMSTERS.

4 SO BY THE TIME THE JUNE 18TH CALL OCCURRED, DAVID
5 DUONG HAD SIGNED A CONTRACT WITH THE TEAMSTERS. SO
6 NOW -- AND I BELIEVE THAT THE DISCUSSION WAS -- DAVID WAS --
7 I CAN'T TELL YOU WHETHER -- WELL, I BELIEVE HE WAS
8 ANTICIPATING OR WAS CONCERNED THAT THE EXPENSES OF ENTERING
9 INTO THE TEAMSTERS' CONTRACT WOULD BE GREATER THAN WHAT HAD
10 BEEN ANTICIPATED DURING THEIR FEBRUARY PHONE CALL.

11 WHEN MR. GUERRA SAID, DEALING WITH A WINDOW OF
12 TIME CERTAINTY NOT PAST 2004, THAT MEANT THIS CERTAINTY
13 REFERS TO COSTS AND THE CERTAINTY OF THE AMOUNT OF THE
14 DIFFERENTIAL COSTS.

15 NOW, WHY THEY SAID NOT PAST '04, I'M NOT SURE. I
16 DON'T RECALL ANY MORE WHY THERE WAS CERTAINTY UP UNTIL THE
17 END OF 2004.

18 AND NOW I REALIZE I HAVEN'T GIVEN YOU MUCH
19 EXPLANATION, BUT THAT'S THE BEST I CAN DO. CERTAINTY,
20 WINDOW OF TIME OBVIOUSLY REFERS TO THE TIME BETWEEN JULY 1,
21 2002, WHEN THEY STARTED EXECUTING THE CONTRACT, AND THE END
22 OF '04. AND THEY BELIEVED THERE WOULD BE CERTAINTY ABOUT
23 THE DIFFERENTIAL COSTS. IT MAY BE, AND I'M SPECULATING.
24 I'M SORRY FOR RUNNING ON LIKE THIS, BUT AS I SIT HERE I AM

25 THINKING A LITTLE BIT MORE FULLY ABOUT IT.

26 IT MAY BE CERTAINTY REFERRED TO THE FACT THEY HAD
27 ALREADY DISCUSSED THE AMOUNTS THAT WOULD BE PAID TO
28 REIMBURSE THE POTENTIAL DIFFERENTIALS THROUGH THE END OF

SUE HERFURTH, CSR #9645

1610

1 2004.

2 Q. SO THE WORD CERTAINTY REFERS TO HAVING AGREED UPON
3 A FIXED NUMBER FOR THAT DIFFERENTIAL?

4 A. I THINK THAT'S MOST LIKELY. IT'S EITHER THAT OR
5 CERTAINTY AS TO WHAT THE DIFFERENTIAL WOULD BE, BUT I
6 BELIEVE CERTAINTY MEANS HOW MUCH THE REIMBURSEMENT WOULD BE.

7 Q. NOT PAST '04 MEANS REIMBURSEMENT FROM THE CITY
8 IMPLEMENTED NOT PAST 2004?

9 A. I'M NOT SURE THAT WHAT'S THAT MEANT OR THEY HADN'T
10 DISCUSSED WHAT AMOUNT TO BE PAST 2004. IT'S ONE OF THE TWO;
11 I CAN'T TELL YOU. I DON'T THINK THAT IT'S -- THE CITY'S
12 REIMBURSEMENT WOULD NOT CONTINUE PAST '04.

13 Q. NO, I'M NOT SUGGESTING THAT. IN 2003, WAS THE CITY
14 MAKING REIMBURSEMENT TO NORCAL OR CWS FOR THE DIFFERENTIAL
15 IN LABOR COSTS?

16 A. NO. THIS WAS ALL A PROPOSAL.

17 Q. THIS WAS PART OF THE ONGOING EFFORT TO GET THE CITY
18 TO REIMBURSE FOR THESE ADDITIONAL LABOR COSTS, CORRECT?

19 A. YES.

20 Q. WHY DID YOU TAKE NOTES OF THIS CONVERSATION?

21 A. IT WAS FREQUENTLY MY PRACTICE TO DO THAT. I WAS
22 SITTING THERE, I WASN'T A PARTICIPANT IN THE CALL. THIS WAS

23 A WAY, I SUPPOSE, IN PART TO KEEP MYSELF BUSY, BUT WHAT I
24 THOUGHT MIGHT BE IMPORTANT LATER ON.

25 Q. WELL, AT THE TIME OF THIS PHONE CALL, HAD NORCAL
26 ALREADY ENTERED INTO AN INTERIM SETTLEMENT AGREEMENT WITH
27 CWS FOR THE ADDITIONAL LABOR COSTS?

28 A. I DON'T REMEMBER THE DATE.

SUE HERFURTH, CSR #9645

1611

1 Q. WHY DON'T YOU LOOK AT EXHIBIT 79 AND SEE IF THAT
2 REFRESHES YOUR RECOLLECTION.

3 A. YES, IT DOES REFRESH MY RECOLLECTION, AND IT
4 APPEARS THE INTERIM SETTLEMENT AGREEMENT WAS ENTERED INTO IN
5 MARCH, 2003.

6 Q. AT THE TIME OF THIS PHONE CALL ON JUNE 18, NORCAL
7 WAS ALSO PAYING CWS FOR SOME AMOUNTS RELATED TO THESE
8 ADDITIONAL LABOR COSTS?

9 A. THAT'S RIGHT.

10 Q. SO NORCAL HAD ITS OWN INTERESTS IN GETTING THE CITY
11 TO START MAKING REIMBURSEMENTS?

12 A. YES.

13 Q. AND ISN'T THAT ONE OF THE REASONS YOU WANTED TO
14 DOCUMENT THIS PHONE CALL FROM A REPRESENTATIVE OF THE CITY?

15 A. POSSIBLY. I MEAN, AS AN ATTORNEY I FREQUENTLY TOOK
16 NOTES, FOLLOWED CONVERSATIONS; YOU NEVER KNOW WHAT'S GOING
17 TO BE IMPORTANT LATER.

18 Q. DID YOU TAKE NOTES ON YOUR CONVERSATIONS WITH MIKE
19 SANGIACOMO?

20 A. YOU ASKED ME THAT LAST TIME, AND I HAVE BEEN

21 THINKING ABOUT IT IN THE INTERIM, AND I THINK NOT. THAT'S
22 MY BEST RECOLLECTION. IF I DID TAKE NOTES, I ASSUME THEY
23 WOULD BE WITH HOWARD RICE, MY OLD LAW FIRM.

24 Q. WOULD THERE BE SOME REASON WHY YOU WOULDN'T TAKE
25 NOTES WITH MR. SANGIACOMO'S CONVERSATIONS?

26 A. YES. A COUPLE OF REASONS. ONE, IT WAS A MORE
27 INFORMAL SITUATION, THIS CONFERENCE CALL WE HAD WAS,
28 EVERYONE WAS ANTICIPATING, MR. GUERRA WAS AN IMPORTANT

SUE HERFURTH, CSR #9645

1612

1 PERSON AND IT WAS KIND OF AN EVENT.

2 THE CONVERSATION I HAD WITH MR. SANGIACOMO WAS
3 MUCH LESS FORMAL. IT WAS IN HIS OFFICE, AND HE WAS JUST
4 EXPLAINING THINGS TO ME.

5 THE SECOND REASON MAY BE MORE IMPORTANT;
6 MR. SANGIACOMO WAS MY CLIENT AND WAS AVAILABLE TO ME, SO
7 THAT AT ANY TIME I COULD GO BACK TO HIM AND DISCUSS THESE
8 THINGS. IT WASN'T -- WHEN I TALKED TO MR. SANGIACOMO, IT
9 WAS NOT THE FORMAL INTERVIEW YOU HAVE SEEN WITH MR. JONES.

10 IN FACT, YOU KNOW, I NOTICED ON THE FIRST PAGE OF
11 THIS, WHAT I GUESS IS THE THOMPSON MEMO, THE ONE I WROTE ON
12 NOVEMBER 20, I ACTUALLY WARNED MR. BAKER THAT I HAD NEVER
13 INTERVIEWED MIKE SANGIACOMO ABOUT ALL THESE EVENTS, SO WHAT
14 I WAS GOING ON WAS JUST THIS INFORMAL CONVERSATION THE YEAR
15 BEFORE.

16 I NEVER SAT DOWN WITH MR. SANGIACOMO AND DID THE
17 KIND OF DETAILED EXAMINATION OF HIM THAT IS REFLECTED IN THE
18 CONVERSATION I HAD WITH MR. JONES.

19 Q. WHEN YOU SAY YOU NEVER INTERVIEWED MR. SANGIACOMO,
20 YOU MEAN YOU NEVER INTERVIEWED HIM IN SOME KIND OF FORMAL
21 WAY?

22 A. FORMAL, ORGANIZED WAY, YES.

23 Q. BUT YOU DID HAVE CONVERSATIONS WITH HIM?

24 A. ABSOLUTELY.

25 Q. HE DID CONVEY INFORMATION TO YOU?

26 A. YES.

27 Q. SOME OF THAT IS INCLUDED DIRECTLY OR INDIRECTLY OR
28 CHARACTERIZED IN YOUR EXHIBIT 72 MEMORANDUM?

SUE HERFURTH, CSR #9645

1613

1 A. THAT'S RIGHT.

2 MR. FINKELSTEIN: LET ME SEE IF THE JURORS HAVE
3 ANY QUESTIONS FOR YOU.

4 I GUESS -- RETURNING TO THIS THIRD PARAGRAPH ON
5 PAGE THREE OF EXHIBIT 72, ACCORDING TO MIKE SANGIACOMO -- IS
6 THERE ANY OTHER INFORMATION YOU CAN SHARE WITH US AS TO HOW
7 YOU CAME TO WRITE THE PHRASE, "THE MAYOR SAID THAT HE WOULD
8 SEE THAT NORCAL WAS AWARDED THE COLLECTION CONTRACT IF CWS
9 WOULD SIGN WITH THE TEAMSTERS," BEYOND WHAT YOU HAVE TOLD US
10 SO FAR?

11 A. YES. AS I SIT HERE -- WELL, IT SEEMS TO ME ONE
12 LOGICAL QUESTION WOULD BE, WHY IS THAT WRITTEN THAT WAY. AS
13 I SIT HERE, I DON'T RECALL THAT HAVING BEEN SAID TO ME, AND
14 ALL I CAN DO IS PUT IT IN CONTEXT FOR YOU. I HAD NEVER
15 FORMALLY INTERVIEWED MR. SANGIACOMO, AND IN FACT THAT WAS
16 IMPORTANT ENOUGH IN MY MIND THAT IT'S INCLUDED ON THE FIRST

17 PAGE OF THE MEMORANDUM. IT'S A WARNING TO MIKE BAKER THAT
18 IF ANYTHING I SAY IN HERE ABOUT MR. SANGIACOMO IS IMPORTANT,
19 YOU NEED TO GO BACK AND TALK TO HIM BECAUSE I NEVER HAVE IN
20 THE SORT OF SHAKEDOWN WAY THAT'S REFLECTED IN WHAT I DID
21 WITH BILL JONES.

22 WHEN I SIT DOWN WITH A WITNESS TO INTERVIEW THEM
23 FORMALLY, YOU TRY TO GET EVERYTHING OUT OF THEM, TRY TO ASK
24 QUESTIONS IN A DIFFERENT WAY. I NEVER DID THIS WITH
25 SANGIACOMO. THE REASON WHY, ONE, I JUST HADN'T GOTTEN
26 AROUND TO IT.

27 TWO, AS I SAID, HE WAS MY CLIENT. HE WAS ALWAYS
28 AVAILABLE TO ME IF I NEEDED TO TALK TO HIM.

SUE HERFURTH, CSR #9645

1614

1 BUT THREE, MOST IMPORTANT WAS WHAT HE HAD TO SAY
2 WASN'T PARTICULARLY IMPORTANT FOR PURPOSES OF THIS MEMO ON
3 THIS TOPIC BECAUSE, AS THE MEMO REFLECTS, AT THAT TIME I HAD
4 ALREADY DECIDED THAT THE ADDENDUM WAS ENFORCEABLE REGARDLESS
5 OF WHAT HAPPENED. YOU KNOW, THEY WERE STUCK WITH AN
6 ADDENDUM THEY SIGNED, THEY WERE GOING TO HAVE TO REIMBURSE
7 OR PAY CWS REGARDLESS OF WHETHER THE CITY REIMBURSED THEM OR
8 NOT.

9 SO THERE WASN'T MUCH I COULD DO IN TERMS OF
10 LITIGATION THAT WAY, AND THAT'S -- AFTER ALL, I'M A
11 LITIGATION ATTORNEY.

12 SECOND, I ALREADY CONCLUDED IN MY HEAD, ALTHOUGH I
13 SEE THIS SAYS THERE WAS SOME RESEARCH GOING ON, THAT IT
14 DIDN'T REALLY MATTER WHAT THE MAYOR HAD SAID. WE WEREN'T

15 GOING TO BE ABLE TO ENFORCE THE MAYOR'S PROMISE IN COURT FOR
16 VERY LEGAL AND FACTUAL REASONS. I JUST HAD DECIDED THAT
17 NORCAL WASN'T GOING TO BE ABLE TO MAKE THE MAYOR OR CAUSE
18 THE CITY TO MAKE GOOD ON WHAT THE MAYOR SAID, SO IT REALLY
19 DIDN'T MATTER TO ME AS NORCAL'S ATTORNEY AT THAT TIME
20 EXACTLY WHAT HAD HAPPENED THAT DAY. BUT THAT'S WHY I PUT IN
21 THE FIRST PAGE OF THE MEMO TO MR. SANGIACOMO -- I MEAN TO
22 MR. BAKER, IF IT DID BECOME IMPORTANT, HE NEEDED TO
23 INTERVIEW MIKE BECAUSE I NEVER HAD.

24 AND THAT'S THE BEST I CAN DO TO GIVE YOU THE
25 CONTEXT FOR THAT STATEMENT AND WHAT I'M NOW SAYING.

26 Q. AND -- BUT IT IS YOUR BELIEF THAT THAT STATEMENT IN
27 SOME WAY COMPORTS WITH THE IMPORT OF WHAT MR. SANGIACOMO
28 CONVEYED TO YOU?

SUE HERFURTH, CSR #9645

1615

1 A. WHEN YOU PUT IT THAT WAY, I THINK I WOULD HAVE TO
2 AGREE. IN THE SENSE THAT MR. SANGIACOMO -- AND I DON'T
3 REMEMBER NOW ANY MORE, BUT HE CREATED THE IMPRESSION IT WAS
4 IMPORTANT TO NORCAL'S GETTING THE CONTRACT APPROVED THAT HE
5 GO ALONG WITH WHAT THE MAYOR REQUESTED.

6 Q. HE DID TELL YOU THAT IN SOME WAY GOING ALONG WITH
7 THE MAYOR'S REQUEST ABOUT THE TEAMSTERS COULD IMPACT WHETHER
8 OR NOT NORCAL WAS AWARDED THE CONTRACT?

9 A. I DON'T KNOW IF HE SAID THAT, BUT HE CREATED THAT
10 IMPRESSION IN ME. YES. THE FACT THAT HE CREATED THAT
11 IMPRESSION IS WHY AT THIS TIME IN MY HEAD THIS DID MORPH
12 INTO THE SENSE YOU SEE THERE.

13 Q. DID HE EVER SAY THAT HE FELT HE HAD BEEN PRESSURED
14 BY THE MAYOR OR WAS BEING PRESSURED BY THE MAYOR?

15 A. I DON'T RECALL HIM SAYING THAT. I'M FAIRLY CERTAIN
16 HE DID NOT SAY THAT.

17 MR. FINKELSTEIN: I THINK A JUROR HAS A QUESTION.
18 LET'S RETURN TO THE JUNE 18, 2003 PHONE CALL.

19 THE WITNESS: YES.

20 BY MR. FINKELSTEIN:

21 Q. DO YOU RECALL WHO SET UP THIS TELEPHONE CONFERENCE?

22 A. I KNOW THAT MR. SANGIACOMO AND I THINK ALSO
23 MR. DUONG WERE CONTINUOUSLY TRYING TO GET MR. GUERRA ON THE
24 PHONE FOR A CONVERSATION. I BELIEVE THAT HE ALWAYS -- I
25 SHOULDN'T SAY THAT. HE INITIATED THE CALL, AS THEY WERE
26 ALWAYS CALLING, BUT IT DIDN'T NECESSARILY DO ANY GOOD.

27 AT ONE POINT MR. GUERRA OR HIS ASSISTANT SAID
28 WE'RE GOING TO HAVE A CONFERENCE CALL AT THIS DATE AT THIS

SUE HERFURTH, CSR #9645

1616

1 TIME.

2 Q. AND DID NORCAL HAVE AN AGENDA FOR THIS CONFERENCE
3 CALL, A GOAL?

4 A. I DON'T RECALL. IF THERE WAS AN AGENDA, IT WAS TO
5 FIND OUT -- I DON'T RECALL SPECIFICALLY. BUT IF THERE WAS
6 AN AGENDA, IT WAS TO FIND OUT HOW WE MOVE THE PROCESS
7 FORWARD, THE PROCESS OF --

8 Q. GETTING REIMBURSED?

9 A. YES. EXACTLY.

10 Q. AFTER THIS PHONE CALL, WHAT ACTIONS FOLLOWED?

11 A. AFTER THE PHONE CALL, I NOTICE IT'S ACTUALLY
12 DESCRIBED IN MY MEMO. TO REALLY TELL YOU THE TRUTH, NOTHING
13 HAPPENED. THE PHONE CALL HAPPENED, AND VERY LITTLE -- BUT
14 AT SOME POINT LATER, AND I DON'T KNOW HOW THIS CAME TO BE,
15 WE MET A COUPLE TIMES WITH OFFICIALS OF THE CITY TO DISCUSS
16 WHETHER AND HOW TO MOVE THE PROCESS FORWARD, AND THOSE ARE
17 GENERALLY DESCRIBED IN MY MEMO. THEY DIDN'T COME TO
18 ANYTHING.

19 Q. DID YOU EVER MEET WITH REPRESENTATIVES OF THE
20 SAN JOSE CITY ATTORNEY'S OFFICE TO TRY AND GET NORCAL
21 REIMBURSED FOR THESE EXTRA LABOR COSTS?

22 A. NO. THERE WAS A REPRESENTATIVE OF THE CITY
23 ATTORNEY'S OFFICE PRESENT AT THE TWO OR THREE MEETINGS I
24 JUST DESCRIBED TO YOU, BUT AS I RECALL IT WAS A MAN WHOSE
25 NAME I DON'T REMEMBER, AND HE DID NOT PARTICIPATE. IT
26 WASN'T THE CITY ATTORNEY HIMSELF, IT WAS AN ASSISTANT.

27 Q. WAS IT NORM SATO (PHONETIC)?

28 A. THAT NAME DOESN'T RING A BELL, BUT THAT DOESN'T

SUE HERFURTH, CSR #9645

1617

1 MEAN ANYTHING.

2 Q. TO YOUR KNOWLEDGE, PRIOR TO THE CITY COUNCIL'S
3 ACTION IN 2004 AMENDING THE NORCAL AGREEMENT, DID ANYONE
4 FROM THE CITY ATTORNEY'S OFFICE EVER SAY THAT OR EXPRESS
5 AGREEMENT THAT THE CONTRACT SHOULD BE AMENDED TO REIMBURSE
6 NORCAL FOR THESE EXTRA LABOR COSTS?

7 A. NOT TO MY KNOWLEDGE.

8 Q. DO YOU KNOW SOMEONE NAMED TONY ARREOLA?

9 A. YOU KNOW, THE --
10 Q. HE'S OUT IN THE HALLWAY.
11 A. YES, I SAW HIM IN THE HALLWAY. HIS FACE WAS
12 FAMILIAR, SO I WENT OVER, INTRODUCED MYSELF, ASKED HIM WHO
13 HE WAS AND WHETHER HE KNEW ME. HE TOLD ME HIS NAME, AND IT
14 DAWNED ON ME HE WORKED WITH DAVID DUONG. I THINK I WAS, HE
15 WAS IN ON SOME VERY LARGE MEETINGS WE HAD WITH THE
16 ENVIRONMENTAL SERVICES DEPARTMENT AT ONE TIME; THAT'S THE
17 EXTENT OF MY KNOWLEDGE OF HIM.
18 Q. OKAY. IN YOUR MEMORANDUM OF THE BILL JONES
19 INTERVIEW OF JUNE 24, 2003, YOU MENTION SOME NAMES, AND I
20 WANT TO ASK YOU ABOUT THEM.
21 A. YES.
22 Q. RICHARD LANSER, L-A-N-S-E-R. WHO IS HE?
23 A. I DON'T HAVE ANY CURRENT MEMORY OF RICH LANSER, BUT
24 I CAN -- FROM THE MEMO, HE WAS AN EMPLOYEE OF NORCAL.
25 Q. WHAT ABOUT PAM REID?
26 A. SAME ANSWER EXACTLY. I DON'T THINK I HAD EVER
27 HEARD HER NAME BEFORE THIS POINT, BUT SHE MUST HAVE WORKED
28 WITH NORCAL.

SUE HERFURTH, CSR #9645

1618

1 MR. FINKELSTEIN: LET ME CHECK ONE MORE TIME WITH
2 THE JURY.

3 ALL RIGHT, MR. THOMPSON. THANK YOU VERY MUCH FOR
4 RETURNING. WE'RE NOT EXCUSING WITNESSES UNTIL THE
5 CONCLUSION OF THE INVESTIGATION, WHICH MEANS YOU'RE FREE TO
6 GO, SUBJECT TO BEING RECALLED. WE'LL NOTIFY YOUR COUNSEL

7 SHOULD THAT BECOME NECESSARY.

8 THE FOREPERSON: I READ THE FULL CONFIDENTIAL
9 ADMONITION LAST TIME. BASICALLY, YOU ARE NOT TO REVEAL TO
10 ANYBODY WHAT YOU HEARD TODAY, SAID TODAY, OR SAW TODAY UNTIL
11 SUCH TIME AS THE TRANSCRIPT OF THIS PROCEEDINGS MAY BE
12 RELEASED BY THE COURT.

13 THE WITNESS: I UNDERSTAND.

14 MR. FINKELSTEIN: THANK YOU VERY MUCH.

15 THE FOREPERSON: LET US RECESS FOR 10 MINUTES AND
16 RECONVENE AT QUARTER AFTER 11.

17 (A BRIEF RECESS WAS TAKEN.)

18 THE FOREPERSON: ALL JURORS ARE PRESENT.

19 MR. FINKELSTEIN: THANK YOU.

20 BEFORE WE CALL THE NEXT WITNESS, DOES ANYONE HAVE
21 ANY QUESTIONS?

22 A JUROR: WHY DID YOU ASK HIM ABOUT HIS NOTES?

23 MR. FINKELSTEIN: THAT'S A GOOD QUESTION. YOU
24 KNOW THAT THIS IS A FORMAL HEARING, AND THAT MEANS THAT WE
25 HAVE TO FOLLOW THE RULES OF EVIDENCE. AND UNDER THE RULES
26 OF EVIDENCE, WHEN A WITNESS GIVES EVIDENCE THERE'S THREE
27 DIFFERENT WAYS THE WITNESS CAN TESTIFY.

28 THE MOST COMMON IS WHAT WE CALL PRESENT

SUE HERFURTH, CSR #9645

1619

1 RECOLLECTION. IF I ASK THE WITNESS, WHAT IS YOUR ADDRESS,
2 THE WITNESS TELLS US HIS ADDRESS BASED ON WHAT IS IN THE
3 WITNESS'S MEMORY RIGHT NOW AT THE TIME THEY WERE TESTIFYING.
4 THAT'S ONE METHOD. SOMETIMES WITNESSES DON'T REMEMBER

5 SOMETHING, ESPECIALLY IF IT HAPPENED A LONG TIME AGO, SO WE
6 HAVE TWO OTHER WAYS OF GETTING THIS EVIDENCE.

7 THE NEXT WAY IS CALLED RECOLLECTION REFRESHED;
8 WHERE DID YOU LIVE THREE YEARS AGO, WHAT WAS THE ADDRESS?
9 I ' M NOT SURE.

10 LET ME SHOW YOU YOUR OLD DRIVER' S LI CENSE.

11 OH, I REMEMBER NOW, IT WAS 123 MAIN STREET.

12 THAT' S RECOLLECTION REFRESHED. THE WITNESS LOOKS
13 AT THE DOCUMENT AND IS REMINDED ABOUT WHAT HAPPENED THEN.

14 WE HAVE A THIRD POSSIBILITY, WHICH IS CALLED
15 RECOLLECTION RECORDED. THAT MEANS THE WITNESS DOESN' T HAVE
16 SUFFICIENT MEMORY TODAY TO TESTIFY FULLY AND ACCURATELY
17 ABOUT WHATEVER THE QUESTION ASKS ABOUT, AND THE WITNESS' S
18 RECOLLECTION IS NOT REFRESHED BY LOOKING AT THIS. BUT AT
19 THE TIME THE EVENT OCCURRED, THE WITNESS MADE SOME NOTES, A
20 MEMORANDUM, AND RECORDED HIS OR HER MEMORY, AND WE CALL THAT
21 RECOLLECTION RECORDED.

22 I TOOK AN INVENTORY. I DON' T REMEMBER THE SERIAL
23 NUMBERS OF EVERY PIECE OF EQUIPMENT I INVENTORIED BUT I
24 WROTE THEM DOWN. AND EVEN LOOKING AT THAT, I CAN' T REMEMBER
25 THE SERIAL NUMBERS. BUT AT THE TIME I WAS TAKING THE
26 INVENTORY AND I WROTE DOWN NUMBERS, I BELIEVE IT WAS TRUE
27 AND ACCURATE AT THE TIME. THAT' S CALLED RECOLLECTION
28 RECORDED. AND WHEN A WITNESS TESTIFIES FROM RECOLLECTION

SUE HERFURTH, CSR #9645

1620

1 RECORDED, THE PROCEDURE IS THE WITNESS READS INTO THE RECORD
2 WHAT WAS RECORDED.

3 SO IN THE CASE OF THE TELEPHONE CALL OR THE
4 INTERVIEW WITH BILL JONES, THAT'S WHY WE HAD HIM READ INTO
5 THE RECORD WHAT HE RECORDED ABOUT THAT INTERVIEW OR THAT
6 CONVERSATION.

7 DOES THAT ANSWER YOUR QUESTION?

8 A JUROR: YES.

9 A JUROR: WHAT HE WROTE ABOUT WHAT SOMEBODY ELSE
10 SAID IS NOT HEARSAY?

11 MR. FINKELSTEIN: IT IS, BUT SOMETIMES YOU CAN
12 CONSIDER HEARSAY. FOR EXAMPLE, IF IT'S A PRIOR STATEMENT OF
13 SOMEBODY WHO HAS TESTIFIED, LIKE BILL JONES, THAT'S AN
14 EXCEPTION TO THE HEARSAY RULE, AND YOU CAN CONSIDER THAT FOR
15 TWO PURPOSES.

16 ONE, IN ASSESSING THE CREDIBILITY OF WHAT THE
17 WITNESS SAID ON THE STAND. YOU KNOW, IF THIS WERE A ROBBERY
18 CASE AND THE WITNESS TESTIFIED, OH, I GOT A GOOD LOOK AT THE
19 ROBBER. IT WAS 12:00 NOON, THE SUN WAS SHINING WHEN THIS
20 HAPPENED. AND WE SHOWED YOU THAT WHEN THE POLICE CAME THE
21 NEXT DAY TO TALK TO HIM HE SAID IT WAS MIDNIGHT AND IT WAS
22 CLOUDY AND THERE WAS NO MOON OUT, IT WAS VERY DARK, YOU CAN
23 CONSIDER WHETHER HE'S BEING HONEST WITH YOU.

24 AND ALSO, YOU CAN CONSIDER WHAT HE SAID PREVIOUSLY
25 FOR THE TRUTH AND YOU DECIDE WHICH VERSION, IF ANY, YOU
26 BELIEVE IS THE CORRECT VERSION OR ACCURATE VERSION BASED ON
27 ALL THE EVIDENCE.

28 ANYTHING ELSE? I WILL GET THE NEXT WITNESS.

SUE HERFURTH, CSR #9645

1 ANTONIO ARREOLA,
2 CALLED AS A WITNESS, HAVING FIRST BEEN DULY SWORN, TESTIFIED
3 AS FOLLOWS:

4 THE WITNESS: I DO.

5 EXAMINATION:

6 BY MR. FINKELSTEIN:

7 Q. COULD YOU PLEASE TELL US YOUR FULL LEGAL NAME AND
8 SPELL YOUR NAME FOR THE REPORTER.

9 A. ANTONIO, A-N-T-O-N-I-O; ARREOLA, A-R-R-E-O-L-A;
10 V-I-L-L-A-G-O-M-E-Z.

11 Q. THANK YOU. DO YOU GO BY TONY ARREOLA?

12 A. I ALSO GO BY TONY, YES.

13 Q. WOULD IT BE ALL RIGHT IF I REFER TO YOU THAT WAY?

14 A. SURE.

15 Q. MR. ARREOLA, I BELIEVE YOU'RE REPRESENTED BY
16 COUNSEL, CORRECT?

17 A. YES.

18 Q. I WANT TO ADVISE YOU IF YOU WANT TO CONSULT WITH
19 YOUR ATTORNEY BEFORE ANSWERING ANY QUESTIONS, THE GRAND JURY
20 WILL GIVE YOU THAT OPPORTUNITY. JUST LET US KNOW AND YOU
21 CAN STEP OUTSIDE IF YOU NEED TO BEFORE ANSWERING A QUESTION.

22 A. I APPRECIATE THAT.

23 Q. DO YOU UNDERSTAND THAT?

24 A. YES.

25 Q. WHEN DID YOU FIRST MEET RON GONZALES?

26 A. IN THE EARLY '90S, WHEN HE WAS COUNTY SUPERVISOR.

27 Q. WHAT WERE THE CIRCUMSTANCES OF YOUR MEETING?

28 A. I WORKED FOR HIM.

1 Q. IN WHAT CAPACITY?

2 A. AS A POLICY AIDE, DOING PUBLIC POLICY FOR FIRE AND
3 POLICE AND COURTS, THE JUSTICE SYSTEM, BASICALLY.

4 Q. THIS WAS A PAID COUNTY STAFF POSITION?

5 A. CORRECT.

6 Q. WERE YOU EVER INVOLVED IN ANY CAMPAIGN TO ELECT RON
7 GONZALES TO PUBLIC OFFICE?

8 A. YES.

9 Q. WHICH CAMPAIGNS?

10 A. UH -- IT WOULD HAVE BEEN THE MAYOR'S RACE.

11 Q. THE FIRST ONE OR THE SECOND ONE?

12 A. UH -- I DON'T REMEMBER WHAT I DID FOR THE SECOND
13 ONE, BUT THE FIRST ONE I WAS INVOLVED, YES.

14 Q. WHAT YEAR WAS THAT?

15 A. I THINK IT WAS '98.

16 Q. WHAT WAS YOUR INVOLVEMENT IN THE MAYOR'S FIRST RUN
17 FOR OFFICE AS MAYOR OF SAN JOSE?

18 A. I HELPED WITH CAMPAIGN STRATEGY, ADVICE, ALSO
19 FUNDRAISING.

20 Q. WAS THAT A COMPENSATED JOB?

21 A. NO.

22 Q. YOU WERE A VOLUNTEER?

23 A. CORRECT.

24 Q. WE KNOW THE MAYOR WAS ELECTED TO HIS FIRST TERM IN
25 1998, CORRECT?

26 A. YES.

27 Q. DID YOU SUBSEQUENTLY BECOME EMPLOYED AS A MEMBER OF
28 MAYOR GONZALES' STAFF?

1 A. YES.

2 Q. WHEN WERE YOU FIRST EMPLOYED AS A MEMBER OF THE
3 MAYOR' S STAFF?

4 A. I USED TO WORK AT CITY HALL ALREADY, SO I WAS THERE
5 IN FROM 1995 TO THE END OF 1998 AS CHIEF OF STAFF TO ONE OF
6 THE COUNCILMEMBERS. SO I WOULD START WITH HIM JANUARY 1 OF
7 1999, I GUESS.

8 Q. AND WHAT WAS YOUR POSITION ON THE MAYOR' S STAFF?

9 A. UH -- DEPUTY CHIEF OF STAFF.

10 Q. WHO WAS THE COUNCILMEMBER YOU WORKED FOR BEFORE
11 THAT?

12 A. MANNY DIAZ.

13 Q. DID YOU HOLD ANY OTHER POSITIONS ON MAYOR GONZALES'
14 STAFF OTHER THAN DEPUTY CHIEF OF STAFF?

15 A. WELL, MY BACKGROUND HAS ALWAYS BEEN PUBLIC SAFETY,
16 SO MY MAIN POLICY RESPONSIBILITY WAS PUBLIC SAFETY. I WAS A
17 STAFF MEMBER ON THE MAYOR' S GANG TASK FORCE AND ALSO ADVISED
18 HIM ON BUDGET ISSUES RELATED TO THE POLICE AND FIRE
19 DEPARTMENT.

20 Q. WHAT WAS YOUR LAST DAY OF EMPLOYMENT AS A MEMBER OF
21 MAYOR GONZALES' STAFF?

22 A. PHYSICALLY I LEFT THE FIRST PART OF JUNE OF 2000.
23 I DON' T REMEMBER, DON' T RECALL EXACTLY WHAT DATE. MY WIFE
24 WAS GOING TO HAVE OUR FIRST BABY IN THE LATTER PART OF JUNE,
25 SO I LEFT BEFORE THAT. I THINK MY LEGAL, TECHNICAL, WHAT
26 THEY CALL SEPARATION DATE WAS JULY 10 OR 13 OF 2000. I
27 ENDED UP USING VACATION TIME FROM THE DATE I PHYSICALLY LEFT

28 TO THAT DAY.

SUE HERFURTH, CSR #9645

1624

1 Q. HOW WOULD YOU DESCRIBE YOUR RELATIONSHIP WITH MAYOR
2 GONZALES?

3 A. PROFESSIONAL.

4 Q. DID YOU EVER SOCIALIZE WITH THE MAYOR?

5 A. SURE.

6 Q. SO IT WAS MORE THAN PROFESSIONAL OR SIMPLY
7 PROFESSIONAL?

8 A. WELL, I MEAN, SAY OUT OF A YEAR MAYBE I SAW HIM
9 THREE OR FOUR TIMES SOCIALLY.

10 Q. WHAT DID YOU DO AFTER YOU STOPPED WORK AS A MEMBER
11 OF MAYOR GONZALES' STAFF?

12 A. I BECAME A CONSULTANT; I HAD A COMPANY CALLED
13 SILICON VALLEY STRATEGIES.

14 Q. WHAT KIND OF BUSINESS IS THAT?

15 A. I MAINLY DID WHAT THEY CALL ENTITLEMENT SERVICES.

16 Q. WHAT ARE ENTITLEMENT SERVICES?

17 A. HELPING BUSINESSES GET THEIR PERMITS THROUGH THE
18 WHOLE CITY PLANNING PROCESS.

19 Q. AND WAS THIS A SOLE PROPRIETORSHIP, CORPORATION?

20 A. IT WAS MINE. JUST MY WIFE AND I OPENED IT.

21 Q. HOW LONG DID YOU WORK IN THAT BUSINESS?

22 WELL, I STARTED IN 2000. SOMEWHERE AROUND 2001,
23 2003 I STARTED TRANSITIONING MORE INTO REAL ESTATE
24 DEVELOPMENTS, WHICH IS SOMETHING I WANTED TO DO FOR THE LONG
25 RUN. SO IN 2003 I DIDN'T TRY TO GET MORE CLIENTS OR DO MORE

26 BUSINESS DEVELOPMENT, SO BY THE END OF 2004 I STILL HAD A
27 COUPLE OF CLIENTS, OR 2003. ONE WAS -- TROPICANA SHOPPING
28 CENTER WOULD FALL IN THAT GROUP, AND THE LAST ONE I HAD, I

SUE HERFURTH, CSR #9645

1625

1 THINK IT WAS 2005, SOMETIME IN 2005, IT WAS CLEAR CHANNEL
2 OUTDOOR.

3 Q. THEY HAVE BILLBOARDS?

4 A. CORRECT.

5 Q. SORRY. THE NAME OF THE CONSULTING BUSINESS WAS
6 WHAT AGAIN?

7 A. SILICON VALLEY STRATEGIES.

8 Q. WHO ELSE WORKED AT SILICON VALLEY STRATEGIES?

9 A. ON WHICH --

10 Q. WHEN YOU FIRST FORMED THE BUSINESS, WHO WERE THE
11 PEOPLE THAT WORKED FOR THE COMPANY. YOURSELF?

12 A. YES. MYSELF AND SEAN KALI-RAI, HE WOULD WORK AS A
13 SUBCONTRACTOR.

14 Q. CAN YOU SPELL HIS NAME FOR THE REPORTER, PLEASE.

15 A. I WISH I COULD. I'LL TRY. IT'S K-A-L-I, HYPHEN,
16 R-A-I.

17 Q. HE GOES BY SEAN, S-E-A-N?

18 A. CORRECT. BUT HIS LEGAL NAME IS SARANJIT
19 (PHONETIC).

20 Q. WHEN DID HE START WORKING IN THAT BUSINESS?

21 A. I DON'T REMEMBER EXACTLY, BUT HE AND I WORKED ON
22 THE CWS AND ON THE TROPICANA SHOPPING CENTER AND A COUPLE
23 OTHER THINGS, BUT I DON'T REMEMBER EXACTLY.

- 24 Q. WHEN DID YOU FIRST MEET JOE GUERRA?
25 A. IT SHOULD HAVE BEEN PROBABLY IN '95, WHEN I USED TO
26 WORK FOR COUNCILMEMBER DIAZ.
27 Q. WHAT WERE THE CIRCUMSTANCES OF THAT MEETING?
28 A. I DON'T REMEMBER A SPECIFIC MEETING BACK THEN.

SUE HERFURTH, CSR #9645

1626

- 1 Q. WHAT WAS MR. GUERRA DOING BACK THEN?
2 A. I'M SORRY. HE WAS CHIEF OF STAFF TO COUNCILMEMBER
3 FRANK FISCALINI. HIS OFFICE WAS RIGHT ADJACENT TO
4 COUNCILMEMBER DIAZ. FISCALINI REPRESENTED DISTRICT 6 AND
5 MANNY REPRESENTED DISTRICT 5.
6 Q. YOU TWO WERE KIND OF COUNTERPARTS TO DIFFERENT
7 COUNCILMEMBERS?
8 A. WE HELD THE SAME POSITION, YES.
9 Q. HOW WOULD YOU DESCRIBE YOUR RELATIONSHIP WITH
10 JOE GUERRA, AND IF IT'S CHANGED OVER TIME YOU CAN EXPLAIN
11 THAT AS WELL.
12 A. UH -- JOE AND I, FROM BACK IN '95, HAVE ALWAYS JUST
13 HAD, I WOULD SAY, A STRICTLY JUST PROFESSIONAL RELATIONSHIP.
14 I DON'T REMEMBER DOING ANYTHING SOCIALLY WITH HIM.
15 Q. WHEN DID YOU FIRST DO WORK FOR CWS?
16 A. I THINK IT WAS 2001.
17 Q. WHAT WAS -- I TAKE IT YOU WERE ENGAGED TO DO SOME
18 WORK ON BEHALF OF CWS?
19 A. YES.
20 Q. WHAT WAS THE NATURE OF THE ENGAGEMENT?
21 A. CWS HIRED SILICON VALLEY STRATEGIES, AND PART OF

22 THE CONTRACT INCLUDED SEAN, MR. KALI -RAI, AND THE TASKS THEY
23 HIRED US TO DO WAS, ONE, TO HELP IDENTIFY A SITE, A PHYSICAL
24 PROPERTY THAT THEY COULD DEVELOP AS A RECYCLING FACILITY, SO
25 THE REAL ESTATE PART.

26 THE SECOND PART, ONCE THAT HAPPENED AND THEY GOT
27 INTO A REAL ESTATE CONTRACT FOR THE PROPERTY, THEY WANTED TO
28 HIRE US TO OBTAIN THE APPROPRIATE PERMIT SO THEY CAN OPERATE

SUE HERFURTH, CSR #9645

1627

1 A RECYCLING FACILITY.

2 Q. ANYTHING ELSE?

3 A. NO. THAT WAS BASICALLY THE CONTRACT. THAT
4 CONTRACT BASICALLY INVOLVED A NUMBER OF THINGS IN
5 ACCOMPLISHING THAT.

6 Q. I UNDERSTAND. BUT THOSE ARE THE LARGE GOALS OF THE
7 CONTRACT?

8 A. YEAH. MY UNDERSTANDING FROM -- MY RECOLLECTION
9 FROM TALKING TO MR. DUONG, WHO IS PRESIDENT OR WAS PRESIDENT
10 AT THAT TIME OF CWS, WAS THAT I DIDN'T -- THIS IS WHAT HE
11 EXPLAINED. UNDER THE AGREEMENT HE HAD WITH NORCAL, HE WAS A
12 SUBCONTRACTOR. AND PART OF THE CONTRACT HE HAD WITH NORCAL
13 WAS THAT HE NEEDED TO HAVE A RECYCLING FACILITY OPERATIONAL
14 BY A CERTAIN TIME FRAME; OTHERWISE, HE WOULD BE IN BREACH OF
15 CONTRACT IN THAT HE WOULD THEN BE EXPOSED AND NORCAL COULD
16 DROP HIM AS SUBCONTRACTOR. SO HE WAS UNDER KIND OF AN
17 URGENCY TO GET, FIRST, A PROPERTY; AND TWO, BE ABLE TO HAVE
18 THE PERMITS NECESSARY SO HE COULD OPERATE HIS RECYCLING
19 FACILITY.

20 Q. OKAY. JUST BEAR WITH ME A MOMENT.

21 MR. FINKELSTEIN: I'M GOING TO HAVE MARKED AS
22 EXHIBIT 114 A COPY OF WHAT APPEARS TO BE A JUNE 11, 2001
23 CONSULTING AGREEMENT BETWEEN SILICON VALLEY STRATEGIES AND
24 CALIFORNIA WASTE SOLUTIONS, OR CWS. IT'S A FIVE-PAGE
25 DOCUMENT, AND THERE'S A SIXTH PAGE WHICH IS AN ADDENDUM TO
26 THE CONSULTING AGREEMENT.

27 A. A SIX-PAGE ADDENDUM?

28 Q. NO. A ONE-PAGE ADDENDUM TO THE FIVE-PAGE

SUE HERFURTH, CSR #9645

1628

1 AGREEMENT. I'LL SHOW IT TO YOU IN A MOMENT.

2 A. OKAY.

3 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
4 JURY EXHIBIT 114.)

5 BY MR. FINKELSTEIN:

6 Q. CAN YOU TAKE A LOOK AT EXHIBIT 114 AND TELL US IF
7 YOU HAVE EVER SEEN THAT DOCUMENT BEFORE?

8 A. YEAH. THIS LOOKS LIKE THE ORIGINAL CONTRACT THAT
9 WE SIGNED. I HAVEN'T READ IT IN A WHILE, SO --

10 Q. OKAY. YOU NOTICE THERE'S A BATES NUMBER AT THE
11 BOTTOM RIGHT-HAND CORNER OF EVERY PAGE, BEGINS WITH AN S?

12 A. MM-HMM.

13 Q. LET ME REPRESENT TO YOU THIS WAS PRODUCED TO US, TO
14 THE GRAND JURY BY YOUR ATTORNEY IN RESPONSE TO A SUBPOENA.

15 A. OKAY.

16 Q. IF YOU LOOK AT THE LAST PAGE OF THE ORIGINAL
17 CONSULTING AGREEMENT ABOVE THE WORDS TONY ARREOLA, THE

- 18 SIGNATURE LINE, IS THAT YOUR SIGNATURE?
- 19 A. YES.
- 20 Q. STARTING ON PAGE ONE, THERE'S THE ARTICLE ONE,
- 21 WHICH OUTLINES THE SCOPE OF THE WORK, CORRECT?
- 22 A. YES.
- 23 Q. AND I TAKE IT THIS IS ESSENTIALLY WHAT YOUR COMPANY
- 24 WAS RETAINED BY CWS TO ASSIST WITH, CORRECT?
- 25 A. YES.
- 26 Q. THEN LOOKING AT THE LAST PAGE OF EXHIBIT 114 --
- 27 A. THAT'S THE SAME DOCUMENT?
- 28 Q. YES. YOU SHOULD HAVE AN EXHIBIT TAG. DOES IT SAY

SUE HERFURTH, CSR #9645

1629

- 1 114, GREEN?
- 2 A. I'M SORRY. YES.
- 3 Q. THAT'S AN ADDENDUM TO THE AGREEMENT, CORRECT?
- 4 A. YES.
- 5 Q. DO YOU KNOW WHO SIGNED ON BEHALF OF SILICON VALLEY
- 6 STRATEGIES IN THE ADDENDUM?
- 7 A. THAT'S ME AGAIN.
- 8 Q. AND WHAT WAS THE REASON FOR THE ADDENDUM?
- 9 A. UH -- THIS PROJECT WAS TAKING LONGER THAN WHAT WE
- 10 HAD ANTICIPATED, AND THIS BASICALLY WAS AN ATTEMPT FOR ME TO
- 11 GET PAID SOME OF MY FEE THAT WAS GOING TO BE DUE AT THE TIME
- 12 THEY CLOSED ESCROW; BASICALLY AN ADVANCEMENT BEFORE IT WAS
- 13 GOING TO CLOSE.
- 14 Q. THE PURPOSE OF THE ADDENDUM WAS TO ALTER THE
- 15 COMPENSATION ARRANGEMENT?

16 A. IN TERMS OF TIMING. IT WAS MORE OF A FAVOR TO ME
17 BECAUSE I WAS HAVING SOME FINANCIAL TROUBLES AND I NEEDED
18 SOME MONEY, SO HE DID THIS CHANGE.

19 Q. I UNDERSTAND. I'M NOT -- THIS ADDENDUM AFFECTED
20 THE TIMING OF WHEN YOU GOT PAID?

21 A. PART OF IT.

22 Q. IT DIDN'T ALTER THE SCOPE OF THE WORK?

23 A. NO. NO.

24 Q. AND SO THIS ORIGINAL AGREEMENT WAS ENTERED INTO
25 EFFECTIVE JUNE 11, 2001; IS THAT CORRECT?

26 A. I DON'T KNOW LEGALLY WHAT THAT DATE MEANS OR IF IT
27 WAS ACTUALLY IN EFFECT SEPTEMBER 5, BUT ONE OF THE TWO
28 DATES.

SUE HERFURTH, CSR #9645

1630

1 Q. YOU SIGNED THIS DOCUMENT, DID YOU NOT?

2 A. YES.

3 Q. THE FIRST RECITAL SAYS THAT THE CONSULTING
4 AGREEMENT IS MADE EFFECTIVE AS OF JUNE 11, 2001?

5 A. YES.

6 Q. BUT THEN LATER ON THERE'S A CONDITION THAT SAYS
7 THAT UNDER ARTICLE ONE, ENGAGEMENT AND SCOPE OF WORK, THAT
8 ANY WORK THAT REQUIRES CONSULTANT'S DIRECT INTERACTION WITH
9 CITY OF SAN JOSE STAFF OR COUNCILMEMBERS WILL BE PERFORMED
10 NO SOONER THAN JULY 14, 2001, IN ACCORDANCE WITH THE CITY'S
11 REVOLVING DOOR POLICY.

12 A. CORRECT.

13 Q. WHAT WAS THE PURPOSE OF THAT?

14 A. WHEN A CITY EMPLOYEE LEAVES CITY HALL, THERE'S A
15 REVOLVING DOOR. IT BASICALLY SAYS WITHIN A ONE-YEAR TIME
16 FRAME, AND I CAN'T REMEMBER THE SPECIFIC LANGUAGE, BUT MY
17 UNDERSTANDING IS THAT YOU CAN'T HAVE DIRECT INTERACTION WITH
18 CITY STAFF AT A CERTAIN LEVEL, DIRECT INTERACTION ON A
19 SPECIFIC PROJECT THAT YOU'RE WORKING FOR.

20 Q. IN OTHER WORDS, YOU CAN'T LOBBY YOUR FORMER BOSS?

21 A. CORRECT.

22 Q. THAT'S THE IDEA BEHIND THE WORDING?

23 A. YES. OR THE CITY PLANNING LEVEL AT THE HIGHER
24 LEVELS, I BELIEVE, AND OTHER STAFF, YES.

25 Q. I GUESS BOSS IS TOO RESTRICTIVE. YOU CAN'T LOBBY A
26 CITY OFFICIAL ABOVE A CERTAIN LEVEL WITHIN THE FIRST ONE
27 YEAR OF LEAVING OFFICE; IS THAT CORRECT?

28 A. CORRECT.

SUE HERFURTH, CSR #9645

1631

1 Q. LET ME ASK YOU THIS: DURING 2002, HOW DID YOU KEEP
2 TRACK OF YOUR APPOINTMENTS, YOUR MEETINGS; HOW DID YOU KEEP
3 YOUR CALENDAR?

4 A. 2002 --

5 Q. IF YOU COULD ADJUST THE MICROPHONE.

6 A. SOME I KEPT IN WRITING AND SOME I KEPT ON A
7 COMPUTER, YOU KNOW, A CALENDAR.

8 Q. YOU MEAN LIKE OUTLOOK OR SOMETHING?

9 A. YES.

10 Q. HAVE YOU MADE A SEARCH IN RESPONSE TO A SUBPOENA
11 THAT WAS SERVED FOR ANY CALENDAR ENTRIES REFLECTING ANY

12 CERTAIN MEETINGS OR CONTACTS?
13 A. I DID.
14 Q. WERE YOU ABLE TO FIND ANY?
15 A. NOT THAT I CAN RECALL.
16 Q. WE HAVE SOME OTHER INDIVIDUALS' CALENDAR ENTRIES
17 REFLECTING POSSIBLE MEETINGS WITH YOU WHICH MAY OR MAY NOT
18 HAVE OCCURRED, BUT I WANT TO GO THROUGH THEM AND SEE IF IT
19 ASSISTS YOUR RECOLLECTION.
20 A. THANK YOU.
21 Q. BEFORE I DO THAT, LET ME ASK YOU THIS: THE SCOPE
22 OF WORK TO BE PERFORMED FOR CWS HAD TO DO WITH ASSISTANCE IN
23 GETTING PERMITS FOR THE RECYCLE FACILITY, CORRECT?
24 A. RIGHT.
25 Q. WHAT ELSE DID IT HAVE TO DO WITH?
26 A. WELL, DURING THIS TIME CWS HAD IDENTIFIED A COUPLE
27 OTHER SITES IN THE SOUTHERN PART OF THE DOWNTOWN, I THINK IT
28 WAS DISTRICT SEVEN, COUNCIL DISTRICT SEVEN. AND STAFF, I

SUE HERFURTH, CSR #9645

1632

1 THINK, HAD CONCERNS ABOUT THEM BECAUSE OF THE SIZE OR
2 CAPACITY -- PLANNING STAFF, I MEAN. AND THEY ALSO WERE
3 PROTESTED BY COMPETITORS OF CWS, OTHER RECYCLING COMPANIES
4 OR GARBAGE COMPANIES. SO THEY RECEIVED A LOT OF OPPOSITION.
5 SO PART OF THE WHOLE PROCESS INVOLVES DOING OUTREACH TO
6 COMMUNITY GROUPS, NEIGHBORHOOD GROUPS, SURROUNDING
7 BUSINESSES.
8 WHEN WE FINALLY IDENTIFIED THE PROPERTY IN
9 DISTRICT FOUR INITIALLY, I CAN'T REMEMBER IF THIS SITE WAS

10 ALSO PROTESTED BY COMPETITORS. IT MIGHT HAVE, I DON'T
11 REMEMBER, BUT THE OTHER GROUP THAT WAS OPPOSING IT WAS THE
12 EXISTING BUSINESSES IN THE NEIGHBORHOOD EVEN THOUGH IT WAS
13 AN INDUSTRIAL SITE, IT ALSO GOT PROTESTS.

14 SO BASICALLY, IT INVOLVED COORDINATING WITH THE
15 BUSINESSES AND EDUCATING THEM ABOUT THE FACILITY AND HOW
16 IT'S GOING TO ADDRESS THEIR CONCERNS. THEY HAD CONCERNS
17 ABOUT LITTER IN THE NEIGHBORHOOD, TOO MUCH NOISE, BIG TRUCKS
18 GOING THROUGH STREETS DESTROYING THEIR PROPERTY. AND THESE
19 WERE INDUSTRIAL USERS. IT INVOLVED DEALING WITH A NUMBER OF
20 COMMUNITIES INCLUDING THE TEAMSTERS, AND --

21 Q. I'M JUST TRYING TO -- I THINK YOU GAVE ME MORE
22 DETAIL THAN I WAS SEEKING. I'M TRYING TO UNDERSTAND THE
23 SUBJECTS OF YOUR WORK, THE SCOPE OF YOUR WORK. AND I GUESS
24 THE CONTRACT TALKS ABOUT ASSISTING AND OBTAINING REQUIRED
25 PERMITS FOR THE FACILITY, CORRECT?

26 A. I THINK IT WAS A CONDITIONAL USE PERMIT OR SPECIAL
27 USE PERMIT, ONE OF THE TWO.

28 Q. UNDER THE CONTRACT, WERE YOU ENGAGED TO PERFORM

SUE HERFURTH, CSR #9645

1633

1 WORK FOR CWS ON ANY OTHER SUBJECTS?

2 A. NO. BUT THAT INVOLVED A LOT, EVEN THOUGH IT DIDN'T
3 SPELL OUT EXACTLY, YOU HAVE TO WORK WITH THE BUSINESSES
4 THERE. IT'S KIND OF A -- IT INVOLVES LOT OF DIFFERENT
5 THINGS AND GETTING THE SUPPORT.

6 AT THE END OF THE DAY IF THE BUSINESSES, FOR
7 EXAMPLE, WERE TO OPPOSE THE PROJECT, IT COULD HAVE MEANT THE

8 COUNCIL OR PLANNING STAFF WOULD HAVE CONCERNS. BUT THEY
9 DON'T WANT TO HURT THE BUSINESSES AND IN TURN THEY MIGHT
10 MOVE OUT OF TOWN. THERE WAS ONE COMPANY OPPOSED TO IT, AN
11 ELECTRIC COMPANY, ROSENDIN ELECTRIC.

12 SO THOSE KINDS OF THINGS YOU HAVE TO WATCH AND
13 MAKE SURE THAT YOU ADDRESS THEIR CONCERNS AND EDUCATE THEM
14 ABOUT WHAT A RECYCLING FACILITY MADE. SO I INTERACTED WITH
15 PROJECT MANAGERS. WITH CWS I HAD LEARNED A LITTLE BIT ABOUT
16 WHAT A RECYCLE SINGLE STREAM FACILITY MEANT. IT REQUIRED ME
17 TO EDUCATE MYSELF. THAT IS NOT SPELLED OUT IN THE CONTRACT,
18 BUT IT'S VERY INVOLVED.

19 Q. DID YOU DO ANY WORK ON BEHALF OF CWS THAT WAS NOT,
20 THAT DID NOT INVOLVE PERMITTING A FACILITY FOR CWS?

21 A. NO. EVERYTHING I DID WAS GEARED TOWARDS MAKING
22 SURE THAT WHEN THE FACILITY WENT THROUGH THE PLANNING
23 PROCESS IT HAD SUPPORT FROM PLANNING AND FROM THE COUNCIL
24 ULTIMATELY AND THAT THE BUSINESSES, HOPEFULLY, WOULD
25 SUPPORT, YOU KNOW, THIS RECYCLING FACILITY.

26 THE SECOND PART WAS, I THINK WITHIN A YEAR OR A
27 CERTAIN TIME FRAME THEY HAD TO COME BACK FOR A REVIEW, A
28 CONDITIONAL USE PERMIT, I BELIEVE. AND I DON'T REMEMBER,

SUE HERFURTH, CSR #9645

1634

1 IT'S BEEN SO LONG, BUT I BELIEVE THEY GRANTED IT FOR A YEAR
2 OR A LITTLE BIT LESS, AND WITHIN A YEAR CWS HAD TO GO BACK
3 TO THE PLANNING COMMISSION WHERE THEY WOULD HAVE A HEARING
4 AND SEE IF CWS IS ABIDING BY THE CONDITIONS OF A CONDITIONAL
5 USE PERMIT. SO THE PLANNING COMMISSION WOULD BE THE

6 GOVERNING BODY THAT WOULD EVALUATE THIS.

7 IF THEY FOUND CWS WAS A BAD OPERATOR AND HAD CODE
8 VIOLATIONS AND WAS DOING ALL THESE THINGS THAT WERE WRONG,
9 THEY HAD THE RIGHT TO TAKE IT AWAY OR AMEND IT, OR I THINK
10 CHANGE IT. SO THAT ALSO INVOLVED THAT PART.

11 Q. ALL OF THAT RELATES TO THE PERMIT REQUIREMENTS OR
12 CWS, RIGHT, WHAT YOU JUST TOLD US?

13 A. CORRECT.

14 Q. MY QUESTION IS, DID YOU DO ANY WORK FOR CWS OTHER
15 THAN PERMIT REQUIREMENTS FOR CWS?

16 A. NOT THAT I CAN RECALL.

17 Q. I'M JUST ASKING. I AM GOING TO HAVE THIS MARKED AS
18 EXHIBIT 115, AND I'LL SHOW IT TO YOU IN A MOMENT.

19 A. SURE.

20 MR. FINKELSTEIN: A PRINTOUT OF AN ENTRY THAT
21 PURPORTS TO BE FROM JOE GUERRA'S CALENDAR FOR THE DATE
22 SEPTEMBER 12, 2002, STARTING TIME OF 9:30 IN THE MORNING.
23 WHAT YEAR WAS IT?

24 THE WITNESS: 2002.

25 THE FOREPERSON: SO MARKED.

26 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
27 JURY EXHIBIT GRAND JURY 115.)

28 Q. SO WHY DON'T WE ALL TAKE A LOOK AT EXHIBIT 115.

SUE HERFURTH, CSR #9645

1635

1 A. YEAH. I REMEMBER THIS MEETING.

2 Q. JUST A MOMENT. JUST A MOMENT. I THINK YOU SAID
3 YOU DO REMEMBER THIS MEETING?

4 A. YES.

5 Q. AND WAS IT ON SEPTEMBER 12, 2002, AT APPROXIMATELY

6 9:30 IN THE MORNING?

7 A. SOUNDS RIGHT.

8 Q. AND WHERE DID THE MEETING TAKE PLACE?

9 A. IT WAS, I BELIEVE, IN JOE GUERRA'S OFFICE.

10 Q. AND WHO WAS PRESENT BESIDES YOURSELF AND

11 MR. GUERRA?

12 A. BILL JONES AND I BELIEVE ANOTHER PERSON CALLED JOHN

13 NICOLETTI.

14 Q. OKAY. THOSE ARE NORCAL EMPLOYEES?

15 A. THEY ARE. JOHN NICOLETTI WAS, I THINK, ASSISTANT

16 BACK THEN LOCALLY. AND BILL JONES WAS, I BELIEVE, THE

17 PRESIDENT OF THIS AREA AT THAT TIME. AND THERE WAS MYSELF,

18 AND I THINK JOE GUERRA WAS THERE, AND THERE MIGHT HAVE BEEN

19 ONE OTHER PERSON THAT I CAN'T RECALL.

20 Q. WHAT ABOUT ED MCGOVERN?

21 A. I'M SORRY. YES.

22 Q. WHO WAS ED MCGOVERN?

23 A. HE WAS A CONSULTANT, I BELIEVE, WITH NORCAL.

24 Q. AND WHAT WAS THE PURPOSE OF THE MEETING?

25 A. AS I WAS TOLD, AND THIS IS FROM WHAT EITHER DAVID

26 DUONG TOLD ME OR FROM WHAT THESE GUYS SAID, BECAUSE WE MET

27 THEM BASICALLY AT CITY HALL THE DATE OF THE MEETING. AND

28 THIS IS A WHILE BACK, SO I'M TRYING TO REMEMBER THE BEST I

SUE HERFURTH, CSR #9645

1636

1 CAN. BUT THE GOAL -- FIRST OF ALL, I WAS THERE BECAUSE I

2 BELIEVE DAVID COULDN' T MAKE IT.

3 Q. SO YOU WERE REPRESENTING CWS?

4 A. YES. HE WANTED ME TO BE THERE BECAUSE HE COULDN' T
5 MAKE IT FOR WHATEVER REASON. HE WANTED ME TO BASICALLY GO
6 AND LISTEN.

7 Q. OKAY. WERE YOU ON THE CLOCK? WAS THIS PART --
8 WERE YOU BILLING FOR THIS TIME?

9 A. NO, I DIDN' T WORK THAT WAY.

10 Q. IT WAS A SET FEE?

11 A. YEAH. SO -- I DID ATTEND, AND THE PURPOSE OF THE
12 MEETING AS I REMEMBER WAS THEY WERE GOING TO ASK JOE FOR
13 ASSISTANCE IN GETTING MORE MONEY FROM THE CITY.

14 Q. MORE -- WHO WAS THE "THEY" WHO WAS GOING TO ASK
15 JOE?

16 A. NORCAL.

17 Q. WHAT WAS THE REASON FOR MORE MONEY?

18 A. UH -- I DON' T REMEMBER THE SPECIFICS, BUT THEY
19 NEEDED MORE MONEY BECAUSE OF THE CONTRACT. I THINK THEY
20 REALIZED IT WAS DEFICIENT IN TERMS OF WHAT THEY HAD BEEN
21 AWARDED, SO THIS IS WHAT I KNOW FROM DAVID DUONG, AGAIN, SO
22 IT' S ALL SECONDHAND.

23 Q. LET ME STOP YOU. MR. DUONG WANTED YOU TO REPRESENT
24 CWS AT THIS MEETING WITH THE MAYOR' S BUDGET DIRECTOR,
25 JOE GUERRA?

26 A. YES.

27 Q. AND ALSO LET ME ASK YOU, IF YOU WOULD, PLEASE TRY
28 TO PAUSE BEFORE YOU BEGIN YOUR ANSWER, BECAUSE OUR REPORTER

SUE HERFURTH, CSR #9645

1 OVER HERE CAN ONLY TAKE DOWN ONE PERSON AT A TIME, AND WE
2 WANT A GOOD RECORD. THERE IS NO RUSH. JUST LET ME FINISH
3 MY QUESTION. SOMETIMES YOU'RE A LITTLE LONG.

4 A. I APOLOGIZE. I WANT TO MAKE SURE I DON'T FORGET
5 ANYTHING, THAT'S ALL.

6 Q. OKAY. MR. DUONG ASKED TO YOU ATTEND THIS MEETING
7 WITH THE MAYOR'S BUDGET DIRECTOR, MR. GUERRA?

8 A. YEAH. CAN I GIVE YOU A LITTLE BIT OF BACKGROUND IN
9 TERMS OF -- IT FITS WITH THIS --

10 Q. FIRST OF ALL, ANSWER MY QUESTION. THAT'S CORRECT,
11 MR. DUONG ASKED YOU TO ATTEND THE MEETING?

12 A. YES.

13 Q. AND DID MR. DUONG TALK TO YOU BEFORE YOU ATTENDED
14 THE MEETING TO BRIEF YOU ON --

15 A. YES.

16 Q. LET ME FINISH. TO BRIEF YOU ON WHAT THE MEETING
17 WAS ABOUT?

18 A. YES.

19 Q. WHAT DID MR. DUONG TELL YOU THE MEETING WAS ABOUT,
20 THE PURPOSE OF THE MEETING?

21 HE EXPLAINED THIS TO ME, AND I DIDN'T READ ANY
22 DOCUMENTS BUT BASICALLY WHAT HE SAID, AS BEST I CAN
23 REMEMBER, IS THAT HE HAD A CONTRACT WITH NORCAL. HE,
24 MEANING CWS. AND IN THAT CONTRACT IT SAID THAT IF THERE WAS
25 ANY ADDITIONAL COST ABOVE AND BEYOND WHAT HE HAD SUBMITTED
26 TO NORCAL AS PART OF THE ORIGINAL BID THAT WAS SUBMITTED TO
27 THE CITY, WHENEVER IT WAS DONE, THAT NORCAL WAS RESPONSIBLE
28 FOR THAT EXTRA COST 100 PERCENT.

1 OKAY. SO HE EXPLAINED THAT TO ME SAYING, YOU
2 KNOW, THIS IS NOT CWS' S FIGHT, IT' S NORCAL' S FIGHT. BUT HE
3 DIDN' T TRUST NORCAL; HE THOUGHT THAT NORCAL WAS IN THE
4 INTEREST OF HAVING CWS FAIL TO OPEN UP THEIR FACILITY. SO
5 HE WANTED SOMEBODY TO BE THERE TO LISTEN, TO SEE WHAT WAS
6 DISCUSSED.

7 BASED ON THAT ORIGINAL CONTRACT, HE BELIEVED THAT
8 AT THE END OF THE DAY IF HE WENT TO COURT, YOU KNOW, AND HAD
9 A FIGHT WITH NORCAL, HE WOULD PREVAIL IN COURT BECAUSE HE
10 HAD A WRITTEN DOCUMENT THAT SAID THE RESPONSIBILITY FOR THE
11 OPERATIONAL COST -- BECAUSE THE ORIGINAL BID CWS GAVE NORCAL
12 WAS FOR, I CAN' T REMEMBER THE AMOUNT. BUT AFTER THEY MADE
13 THE CHANGE AND ADDED INSTEAD OF THE OTHER UNION THEY HAD
14 VERSUS THE TEAMSTERS, THE COST OF CONTRACT WENT ABOVE AND
15 BEYOND SO -- WHAT WAS AGREED UPON. SO THAT IS BASICALLY
16 KIND OF THE BACKGROUND.

17 Q. WHAT DID MR. DUONG SAY THESE ADDITIONAL COSTS
18 STEMMED FROM? DID HE CHARACTERIZE OR DESCRIBE THEM TO YOU
19 SOMEHOW?

20 A. HE DID. HIS WHOLE ARGUMENT WITH NORCAL, BECAUSE
21 CWS --

22 Q. HOLD ON. I' M NOT ASKING YOU ABOUT HIS DISPUTE WITH
23 NORCAL, I' M ASKING YOU HOW MR. DUONG EXPLAINED TO YOU THESE
24 ADDITIONAL COSTS, WHAT THEY HAD TO DO WITH.

25 A. THAT' S WHAT I WAS TRYING TO EXPLAIN TO YOU. THE
26 DIFFERENCE WAS, AGAIN, LABOR.

27 Q. SO THESE WERE LABOR COSTS?

28 A. RIGHT.

1 Q. WHAT WAS THE DIFFERENCE IN THE LABOR COST BASED ON?

2 A. THIS IS FROM WHAT HE TOLD ME, OBVIOUSLY --

3 Q. I UNDERSTAND.

4 A. HE SAID HE HAD A CONTRACT THAT HAD -- I CAN'T
5 REMEMBER THE NAME OF THE UNION, BUT HE HAD A DIFFERENT
6 UNION.

7 Q. LONGSHOREMEN?

8 A. LONGSHOREMEN. SO THEY GET PAID AT X NUMBER OF
9 DOLLARS PER HOUR, SO HIS ORIGINAL BID HAD THAT AMOUNT, SO
10 THAT'S WHAT HE SIGNED THE CONTRACT WITH NORCAL. NORCAL
11 SIGNED IT. SO WHEN THE CHANGE HAPPENED, HE EXPLAINED THAT
12 HE HAD THE -- THEY CAME TO HIM AND SAID --

13 Q. WHO CAME TO HIM?

14 A. NORCAL. THEY SAID THERE'S GOING TO BE A NEED TO
15 CHANGE, YOU KNOW, YOUR STAFF, AND YOU HAVE TO HAVE
16 TEAMSTERS.

17 SO HE SAID, WELL, WAIT A MINUTE, THIS IS GOING TO
18 COST CWS MORE MONEY; MY ORIGINAL BID WAS FOR WHATEVER THE
19 AMOUNT WAS, SO I'M NOT GOING TO SIGN ANYTHING IN TERMS OF A
20 NEW AGREEMENT WITH YOU THAT SAYS THAT I'M GOING TO EAT THIS
21 COST BECAUSE IT WILL BANKRUPT THE BUSINESS.

22 Q. DID HE SAY "EAT THESE COSTS"?

23 A. YES. SO WHAT ENDED UP HAPPENING OUT OF THIS
24 DISPUTE WAS THAT CWS AGREED AT SOME POINT WITH NORCAL THAT
25 THEY WOULD USE TEAMSTERS INSTEAD TO SIGN AN AGREEMENT
26 BETWEEN BOTH COMPANIES. I NEVER SAW IT, BUT THEY SUPPOSEDLY
27 SIGNED A CONTRACT THAT PUT THE ADDITIONAL COST, THE BURDEN

28 ON NORCAL AND NOT CWS, SO THAT'S HOW THEY SIGNED IT.

SUE HERFURTH, CSR #9645

1640

1 Q. DID MR. DUONG EXPLAIN TO YOU ANYTHING ABOUT WHY
2 NORCAL WAS ASKING CWS TO CHANGE FROM LONGSHOREMEN TO
3 TEAMSTERS?

4 A. DID HE EXPLAIN -- HE SAID THERE WAS A REQUEST MADE
5 OR THEY HAD SOME DISCUSSIONS WITH THE COUNCIL OR THE MAYOR'S
6 LEVEL.

7 Q. THE MAYOR'S LEVEL?

8 A. YES.

9 Q. WHAT DOES THAT MEAN, THE MAYOR'S LEVEL?

10 A. I DON'T REMEMBER IF HE SAID SPECIFICALLY THEY MET
11 WITH THE MAYOR OR IF THEY MET WITH MR. GUERRA, BUT
12 DEFINITELY IT WAS COMING FROM THE MAYOR'S OFFICE.

13 Q. WHAT WAS COMING FROM THE MAYOR'S OFFICE?

14 A. THAT THEY HAD TO CHANGE UNIONS. I DON'T REMEMBER
15 THE WORDING, BUT THAT'S WHAT IT BOILED DOWN TO.

16 Q. YOU MEAN THEY HAD TO SWITCH FROM THE LONGSHOREMEN
17 TO THE TEAMSTERS?

18 A. CORRECT.

19 Q. THAT'S WHAT MR. DUONG TOLD YOU?

20 A. AS BEST AS I REMEMBER, YES.

21 Q. THAT WAS IN ADVANCE OF THIS MEETING ON SEPTEMBER
22 12, 2002?

23 A. YES -- NO. I DON'T KNOW IF IT WAS THE DAY BEFORE,
24 BUT IT HAPPENED SOMETIME BEFORE THIS MEETING, YES.

25 Q. WELL, WAS IT -- I UNDERSTAND IT HAPPENED BEFORE THE
Page 104

26 MEETING. I GUESS MY QUESTION IS, WAS MR. DUONG'S
27 EXPLANATION OF THE BACKGROUND OF HOW CWS CAME TO SWITCH FROM
28 LONGSHOREMEN TO TEAMSTERS, WAS THAT TOLD TO YOU IN

SUE HERFURTH, CSR #9645

1641

1 CONNECTION WITH THE MEETING OR FOR SOME OTHER REASON BEFORE
2 THE MEETING?

3 A. I DON'T REMEMBER EXACTLY.

4 Q. DO YOU RECALL WHEN IT WAS TOLD TO YOU IN RELATION
5 TO THIS MEETING?

6 A. I DON'T -- IT'S BEEN SO LONG. BUT SOMEWHERE AROUND
7 CLOSE TO IT, OR I DON'T REMEMBER EXACTLY.

8 Q. YOU RECALL THE MEETING BEING ABOUT THE SUBJECT
9 THAT'S IN THE BRACKETS, CALIFORNIA WASTE SOLUTIONS LABOR
10 COST, THAT WAS THE TOPIC OF THE MEETING?

11 A. WELL, THAT'S KIND OF VAGUE. IT WAS MORE
12 SPECIFICALLY TO THE WHOLE QUESTION THAT THEY WERE GOING TO
13 ASK JOE, THEY MEANING NORCAL AGAIN, IF THEY WERE STILL GOING
14 TO SUPPORT THEM IN DOING THE CONTRACT AMENDMENT.

15 Q. OKAY. UNFORTUNATELY, WE'RE JUST TO THE NOON HOUR,
16 SO WE HAVE TO TAKE OUR RECESS FOR LUNCH AND ASK YOU TO COME
17 BACK AT 1:30.

18 BEFORE YOU LEAVE, THE FOREPERSON HAS AN ADMONITION
19 TO READ TO YOU, SO PLEASE LISTEN CAREFULLY.

20 THE FOREPERSON: THIS IS AN ADMONITION ABOUT
21 CONFIDENTIALITY.

22 YOU ARE ADMONISHED NOT TO REVEAL TO ANY PERSON,
23 EXCEPT AS DIRECTED BY THE COURT, WHAT QUESTIONS WERE ASKED

24 OR WHAT RESPONSES WERE GIVEN OR ANY OTHER MATTERS CONCERNING
25 THE NATURE OR SUBJECT OF THE GRAND JURY'S INVESTIGATION
26 WHICH YOU LEARNED DURING YOUR APPEARANCE BEFORE THE GRAND
27 JURY, UNLESS AND UNTIL SUCH TIME AS THE TRANSCRIPT OF THIS
28 GRAND JURY PROCEEDING IS MADE PUBLIC. VIOLATION OF THIS

SUE HERFURTH, CSR #9645

1642

1 ADMONITION MAY BE PUNISHABLE AS CONTEMPT OF COURT.

2 DO YOU UNDERSTAND THAT?

3 THE WITNESS: I DO.

4 MR. FINKELSTEIN: NOW, JUST TO SUPPLEMENT THAT,
5 YOU ARE REPRESENTED BY COUNSEL, AND YOU CAN SHARE
6 INFORMATION WITH COUNSEL PROVIDED THAT COUNSEL AGREES TO
7 HONOR THE ADMONITION AND NOT FURTHER DISCLOSE WHAT YOU MAY
8 HAVE HEARD OR LEARNED OR BEEN ASKED HERE IN THE GRAND JURY.
9 DO YOU UNDERSTAND THAT?

10 THE WITNESS: YES.

11 MR. FINKELSTEIN: IN OTHER WORDS, THIS ADMONITION
12 WOULD NOT BE VERY EFFECTIVE IF YOU COULD GO OUTSIDE AND TALK
13 TO YOUR LAWYER AND YOUR LAWYER IS ON TV TONIGHT.

14 THE WITNESS: RIGHT.

15 MR. FINKELSTEIN: DO YOU HAVE ANY QUESTIONS ABOUT
16 THE ADMONITION?

17 THE WITNESS: NO, I DON'T.

18 MR. FINKELSTEIN: THANK YOU VERY MUCH. WE'LL SEE
19 YOU AT 1:30.

20 (THE LUNCHEON RECESS WAS TAKEN.)

21

22
23
24
25
26
27
28

SUE HERFURTH, CSR #9645

1643

1 SAN JOSE, CALIFORNIA MAY 2, 2006

2

3

AFTERNOON SESSION:

4

THE FOREPERSON: COULD WE COME TO ORDER, PLEASE.

5

MR. FINKELSTEIN: I'LL HAVE THE WITNESS STEP BACK

6

INSIDE.

7

ANTONIO ARREOLA,

8

HAVING BEEN PREVIOUSLY SWORN, TESTIFIED ON HIS OATH AS

9

FOLLOWS:

10

MR. FINKELSTEIN: MR. ARREOLA, I'LL REMIND YOU YOU

11

ARE STILL UNDER OATH, HAVING BEEN PREVIOUSLY SWORN IN THIS

12

INVESTIGATION. DO YOU UNDERSTAND THAT?

13

A. YES.

14

Q. WHEN WE BROKE WE WERE LOOKING AT THE MEETING OF

15

SEPTEMBER 12, 2002 AT JOE GUERRA'S OFFICE, CORRECT?

16

A. YES.

17

Q. TELL US WHAT HAPPENED AT THAT MEETING.

18

A. UH -- I DON'T REMEMBER ALL THE SPECIFICS. BUT,

19 LIKE I SAID BEFORE, THE GOAL OF THE MEETING WAS TO REMIND OR
20 ASK JOE OF THE COMMITMENT TO HELP NORCAL. I DIDN'T GET
21 INVOLVED WITH ANY DISCUSSIONS BECAUSE I DIDN'T HAVE PRIOR
22 KNOWLEDGE, SO MOST OF THE TALKING WAS BY NORCAL.

23 THEY ACTUALLY INVITED CWS TO THAT MEETING, AGAIN
24 BECAUSE OF DAVID'S BELIEF THAT WAS NOT CWS'S RESPONSIBILITY,
25 IT WAS NORCAL'S, BECAUSE OF THE CONTRACT THEY HAD BETWEEN
26 EACH OTHER.

27 Q. OKAY.

28 A. BUT THAT WAS BASICALLY THE OUTCOME.

SUE HERFURTH, CSR #9645

1644

1 Q. WHAT DID MR. GUERRA SAY AT THIS MEETING?

2 A. I DON'T REMEMBER THE SPECIFIC WORDS, BUT HE
3 DEFINITELY EITHER CONFIRMED THE PRIOR COMMITMENT OR SAID
4 THAT HE WOULD HELP.

5 Q. HELP IN WHAT WAY?

6 A. HE DIDN'T SAY. I DON'T REMEMBER.

7 Q. HELP WITH RESPECT TO WHAT?

8 A. WITH RESPECT TO GETTING THE CONTRACT AMENDMENT.

9 Q. FOR THE EXTRA LABOR COSTS?

10 A. CORRECT. CAN I HAVE MORE WATER? I APOLOGIZE FOR
11 ANSWERING TOO FAST. THE FIRST PART, I HAD A CUP OF COFFEE,
12 I'M ALLERGIC TO CAFFEINE. NOW IF I FALL ASLEEP BECAUSE OF
13 LUNCH, I APOLOGIZE FOR THAT TOO.

14 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS EXHIBIT 110.

15 A. BEFORE YOU GO INTO THAT, I DON'T REMEMBER IF I
16 MENTIONED IT, I THINK THERE WAS ONE OTHER PERSON IN THE

17 MEETING; I DON'T REMEMBER IF I SAID THAT BEFORE. JOHN
18 NICOLETTI .

19 Q. I THINK YOU TOLD US THAT.

20 A. I'M NOT SURE, BUT I THINK HE WAS.

21 Q. LET'S LOOK AT EXHIBIT 110; THIS IS A PRINTOUT OF
22 CALENDAR ENTRIES FOR COUNCILMEMBER REED?

23 A. OKAY.

24 Q. AND LET ME DIRECT YOUR ATTENTION TO AN ITEM ON
25 COUNCILMEMBER REED'S CALENDAR, WHICH IS SEPTEMBER 12, 2002,
26 3:00 P.M. IT SAYS:

27 1055 TIMOTHY, TONY ARREOLA UPDATE ON CWS
28 PROCESS, FOLLOWUP TO GOOD NEIGHBOR MEETING.

SUE HERFURTH, CSR #9645

1645

1 A. WE HAD MORE THAN ONE MEETING RELATING TO THE CWS
2 CONDITIONAL USE PERMIT. SOME MEETINGS WE HAD IN HIS OFFICE,
3 SOME MEETINGS WE HAD AT ROSENDIN ELECTRIC, AND USUALLY IT
4 INCLUDED ALL THE SURROUNDING BUSINESSES THAT WERE
5 PROTESTING. THEY DIDN'T WANT THE FACILITY THERE.

6 Q. MY ONLY QUESTION TO YOU IS, DO YOU REMEMBER SUCH A
7 MEETING?

8 A. THAT SPECIFIC MEETING I DON'T REMEMBER, BUT I DO
9 REMEMBER A NUMBER OF MEETINGS OF THAT NATURE.

10 Q. OKAY. THE CONTACT INFORMATION FOR THE OFFICE
11 NUMBER AND CELL PHONE, DO YOU KNOW WHOSE CONTACT INFORMATION
12 THAT IS?

13 A. MINE.

14 Q. DO YOU REMEMBER AN OCCASION IN APPROXIMATELY

15 SEPTEMBER OF 2002 WHEN COUNCILMEMBER REED CAME TO 1055
16 TIMOTHY TO DISCUSS ISSUES WITH YOU REGARDING CWS?

17 A. I'M NOT SURE IF WE MET ACTUALLY AT TIMOTHY.
18 TYPICALLY WE MET AT ROSENDIN ELECTRIC, SO I DON'T KNOW IF
19 THE 1055 IS REFERRING TO THE ACTUAL MEETING THAT TOOK PLACE
20 AT TIMOTHY OR IT WAS THE SUBJECT MATTER.

21 Q. IN EITHER CASE, DO YOU REMEMBER SUCH A MEETING,
22 WHETHER IT TOOK PLACE AT 1055 TIMOTHY OR SOME OTHER PLACE,
23 IN REGARDS TO THAT SUBJECT MATTER?

24 A. THAT SPECIFIC DATE I DON'T REMEMBER, BUT I REMEMBER
25 MULTIPLE MEETINGS, MORE THAN ONE ON THE SAME SUBJECT, YES.

26 Q. LET ME TRY TO GET AT IT ANOTHER WAY.

27 THE MEETING ON SEPTEMBER 12 AT JOE GUERRA'S OFFICE
28 THAT YOU TOLD US ABOUT THIS MORNING AND AGAIN THIS

SUE HERFURTH, CSR #9645

1646

1 AFTERNOON, WAS THAT THE FIRST TIME YOU HAD ANY DISCUSSIONS
2 WITH ANYONE FROM THE CITY OF SAN JOSE REGARDING
3 REIMBURSEMENTS FOR EXTRA LABOR COSTS?

4 A. AS FAR AS I CAN REMEMBER, YES. BUT AGAIN, I DIDN'T
5 SAY ANYTHING AT THIS MEETING THAT I CAN REMEMBER; I WAS
6 THERE TO LISTEN.

7 Q. SO WOULD IT BE ACCURATE TO SAY THAT ANY DISCUSSIONS
8 YOU MIGHT HAVE HAD WITH ANYONE FROM THE CITY REGARDING
9 ADDITIONAL PAYMENTS TO NORCAL FOR EXTRA LABOR COSTS INCURRED
10 BY CWS WOULD HAVE BEEN ON OR AFTER SEPTEMBER 12, 2002?

11 A. MORE LIKELY, BUT AGAIN, I NEVER REPRESENTED NORCAL.
12 I NEVER ASKED ANYBODY FOR MONIES FOR NORCAL.

13 Q. DID YOU EVER ASK ANYONE FOR MONEY FOR CWS FROM THE
14 CITY?

15 A. UH -- NOT THAT I REMEMBER. WE DID HAVE A
16 DISCUSSION WITH DAVID DUONG, YOU KNOW, AT SOME POINT.

17 Q. YOU TOLD US ABOUT THAT, I THINK.

18 A. I DON'T REMEMBER IF I DID, BUT I WAS CONCERNED --
19 THERE WERE A NUMBER OF THINGS THAT HE WAS CONCERNED ABOUT,
20 BUT ONE OF THE THINGS HE WAS REALLY WORRIED ABOUT WAS THAT
21 THIS NEW RECYCLING FACILITY HE WAS CREATING SO MUCH GARBAGE
22 ASIDE FROM THIS WHOLE OTHER NORCAL THING THAT HE HAD -- AND
23 BEYOND THE FACT HE CHANGED FROM LONGSHOREMEN TO TEAMSTERS,
24 HE ALSO HAD ANOTHER PROBLEM NOW, WHICH WAS THAT THE
25 RECYCLING FACILITY WAS, THE AMOUNT OF GARBAGE THAT WAS
26 COMING IN MIXED WITH THE RECYCLABLES WAS GREATER THAN 10
27 PERCENT.

28 SO HE HAD A LEGAL ISSUE BETWEEN HIM AND NORCAL,

SUE HERFURTH, CSR #9645

1647

1 BUT BECAUSE HE DIDN'T HAVE A CONTRACT DIRECTLY WITH THE
2 CITY, HE HAD TO ASK NORCAL FOR ADDITIONAL MONIES. AND I
3 THINK NORCAL WENT TO THE CITY AND SAID, WE NEED MORE MONEY
4 BECAUSE YOUR CUSTOMERS, YOU KNOW, THE PATRONS OUT IN THE
5 COMMUNITY ARE NOT RECYCLING CORRECTLY. THEY ARE BRINGING IN
6 ALL THIS GARBAGE WITH THE RECYCLABLES.

7 SO THAT WAS AN ISSUE I DISCUSSED WITH DAVID, BUT I
8 DIDN'T WANT TO WORK ON THAT ISSUE ANYMORE, I WAS READY TO
9 MAKE MY TRANSITION. SO WE DREW UP A CONTRACT, WHICH YOU
10 HAVE A COPY OF, THAT ADDRESSED SOME OF THOSE THINGS, AND IT

11 NEVER GOT EXECUTED.

12 Q. MR. ARREOLA, MAYBE I'M ASKING A BAD QUESTION, OR
13 MAYBE YOU'RE NOT HEARING OR UNDERSTANDING. MY QUESTION TO
14 YOU IS THIS: WHEN IS THE FIRST TIME THAT YOU SPOKE WITH
15 ANYONE FROM THE CITY OF SAN JOSE ABOUT THE SUBJECT OF
16 GETTING MORE MONEY FROM THE CITY, EITHER TO NORCAL OR CWS,
17 FOR EXTRA LABOR COSTS?

18 A. AGAIN, I DON'T REMEMBER EVER ASKING ANYBODY FOR
19 MORE MONEY FOR CWS. WHAT WE DO HAVE TO DO --

20 Q. HOLD ON. DID YOU ASK ANYONE FROM THE CITY FOR MORE
21 MONEY FOR NORCAL RELATED TO EXTRA LABOR COSTS?

22 A. NO.

23 Q. OKAY.

24 A. WHAT WE DID DO AS PART OF THE PROCESS IS I MET
25 WITH -- SOMETIMES I WOULD DELIVER INFORMATION, YOU KNOW, TO
26 JOE.

27 Q. JOE GUERRA?

28 A. JOE GUERRA OR I REMEMBER WHEN EITHER THE

SUE HERFURTH, CSR #9645

1648

1 CONDITIONAL USE PERMIT WAS GOING TO BE HEARD AT SOME POINT
2 BY THE PLANNING COMMISSION AND THEY WERE HAVING PROBLEMS,
3 THE WHOLE RECYCLABLES BEING, YOU KNOW, CONTAMINATED BY
4 GARBAGE, THAT AT SOME POINT I KNOW EITHER ME OR DAVID DUONG
5 HIMSELF DIRECTLY EXPLAINED TO EITHER COUNCILMEMBER REED OR
6 SOME OTHER COUNCILMEMBERS ABOUT THIS WHOLE ISSUE WITH THIS
7 CONTRACT THAT YOU'RE TALKING ABOUT TODAY.

8 Q. SO DID YOU EVER SPEAK TO JOE GUERRA ABOUT THE CITY

9 PASSING A RATE INCREASE FOR THE GARBAGE RATES TO BE ABLE TO
10 PAY EXTRA MONEY TO NORCAL OR CWS FOR EXTRA LABOR COSTS?

11 A. YES. I MET WITH --

12 Q. SO NOW -- HOLD ON. SO WHEN WAS THE FIRST TIME THAT
13 YOU EVER SPOKE TO ANYONE FROM THE CITY OF SAN JOSE ABOUT THE
14 SUBJECT OF EXTRA MONEY FROM THE CITY TO NORCAL OR CWS FOR
15 EXTRA LABOR COSTS?

16 A. THAT WAS PROBABLY THE FIRST ENCOUNTER I HAD ABOUT
17 THE WHOLE ISSUE.

18 Q. WHAT WAS?

19 A. THIS MEETING HERE.

20 Q. WHICH MEETING?

21 A. THE ONE YOU HAVE ON THE BOARD WITH MCGOVERN AND
22 BILL JONES AND NICOLETTI .

23 Q. ON SEPTEMBER 12.

24 A. RIGHT.

25 Q. ON SEPTEMBER 12, 2002, WHEN YOU MET WITH
26 JOE GUERRA, THAT WAS THE FIRST TIME YOU WERE INVOLVED IN ANY
27 WAY IN ANY DISCUSSIONS WITH THE CITY --

28 A. TO THE BEST OF MY KNOWLEDGE.

SUE HERFURTH, CSR #9645

1649

1 Q. CONCERNING EXTRA MONEY FOR EXTRA LABOR COSTS?

2 A. YOU'RE TALKING ABOUT THE ORIGINAL AMENDMENT TO THE
3 CONTRACT THAT YOU GUYS WERE INVESTIGATING BY THIS WHOLE
4 ISSUE --

5 Q. FORGET ABOUT WHAT WE MAY BE INVESTIGATING. JUST
6 LISTEN TO MY QUESTION.

7 A. OKAY. I WANT TO UNDERSTAND IT --

8 Q. THAT'S FINE. I'M ASKING YOU FIRST OF ALL ABOUT

9 CONVERSATIONS WITH THE MAYOR, JOE GUERRA, OR ANYONE ELSE

10 FROM THE CITY, OKAY, SO THAT WOULD EXCLUDE DAVID DUONG. IT

11 WOULD EXCLUDE OTHER CONSULTANTS, LOBBYISTS, NORCAL. SO THE

12 FOCUS IS CONVERSATIONS BETWEEN YOU, EITHER WHERE YOU WERE

13 SPEAKING OR LISTENING, AND SOMEONE FROM THE CITY OF SAN

14 JOSE. SO THOSE ARE THE PERSONS I'M FOCUSED ON. AND THE

15 TOPIC IS EXTRA MONEY FROM THE CITY TO EITHER NORCAL OR CWS

16 FOR EXTRA LABOR COSTS. NOT EXTRA MONEY FOR ANYTHING ELSE,

17 NOT FOR TOO MUCH GARBAGE IN THE RECYCLABLES, NOT FOR USE

18 PERMIT ISSUES, NOT FOR ANYTHING ELSE. DO YOU UNDERSTAND MY

19 QUESTION?

20 A. YES. AS BEST, AS I SAID EARLIER, THAT I CAN

21 REMEMBER, I THINK THIS WAS THE FIRST ENCOUNTER, YES.

22 Q. THAT'S ON SEPTEMBER 12, 2002, WHEN YOU WERE ASKED

23 TO FILL IN FOR DAVID DUONG AND ATTEND THIS MEETING, CORRECT?

24 A. YES.

25 Q. WHEN WAS THE NEXT OCCASION WHEN YOU SPOKE WITH

26 ANYONE FROM THE CITY ON THIS SAME SUBJECT?

27 A. I MIGHT HAVE HAD ANOTHER MEETING WITH JOE AND MAYBE

28 SOME OF THESE OTHER INDIVIDUALS THAT ATTENDED THAT ORIGINAL

SUE HERFURTH, CSR #9645

1650

1 MEETING.

2 Q. WHEN WAS THAT?

3 A. IF WOULD HAVE BEEN SOMETIME AFTER THAT.

4 Q. TALKING DAYS, WEEKS, MONTHS, YEARS?

5 A. PROBABLY MONTHS.
6 Q. MONTHS LATER?
7 A. YEAH, OR WEEKS. I DON'T REMEMBER EXACTLY. I'M NOT
8 TRYING TO BE VAGUE; I HONESTLY DON'T REMEMBER.
9 Q. AS YOU SIT HERE TODAY, YOU HAVE NO RECOLLECTION
10 WHATSOEVER OF A SECOND MEETING WITH ANYONE FROM THE CITY ON
11 THIS SUBJECT?
12 A. I DON'T REMEMBER SPECIFIC MEETINGS, BUT THERE COULD
13 HAVE BEEN OTHER MEETINGS I WOULD HAVE ATTENDED, YES.
14 Q. AND DO YOU HAVE ANY RECORDS OR RECOLLECTION ABOUT
15 ANY OF THESE OTHER MEETINGS?
16 A. NO. I MEAN, THE WHOLE THING WAS VERY SPECIFIC. AS
17 I SAID BEFORE THEY, ONE, WANTED TO REMIND OF WHAT THEY HAD
18 COMMITTED BEFORE; OR TWO, GET THE COMMITMENT TO HELP DO A
19 CONTRACT AMENDMENT.
20 Q. I AM JUST TRYING TO GET OUT THE DATES OF MEETINGS
21 OR DISCUSSIONS YOU MIGHT HAVE HAD.
22 A. I WISH I COULD HELP YOU. I HONESTLY DON'T
23 REMEMBER.
24 Q. FAIR ENOUGH. LET ME SHOW YOU WHAT HAS BEEN MARKED
25 AS GRAND JURY EXHIBIT 103. CAN YOU READ THAT FROM WHERE YOU
26 ARE?
27 A. I PROBABLY COULD, BUT CAN I LOOK AT THE DOCUMENT?
28 Q. SURE.

SUE HERFURTH, CSR #9645

1651

1 A. THANK YOU. OKAY.
2 Q. OKAY. DOES THIS DOCUMENT CONTAIN AN E-MAIL YOU

- 3 SENT TO PAUL ROTTENBERG?
- 4 A. YES.
- 5 Q. DID YOU SEND THIS ON SEPTEMBER 13, 2002 AS
- 6 INDICATED?
- 7 A. YES.
- 8 Q. AND WHY DID YOU SEND THIS E-MAIL TO PAUL
- 9 ROTTENBERG, WHAT WAS THE PURPOSE?
- 10 A. PROBABLY AN UPDATE.
- 11 Q. ON WHAT SUBJECT?
- 12 A. UH -- IT APPEARS THAT I HAD A MEETING WITH
- 13 JOE GUERRA.
- 14 Q. WHAT WERE YOU WORKING ON FOR CWS WHEN YOU SENT
- 15 THIS E-MAIL?
- 16 A. THE CONDITIONAL USE PERMIT.
- 17 Q. CONDITIONAL USE PERMIT?
- 18 A. AND THE OPENINGS AND MANAGING OF THE WHOLE PROCESS,
- 19 WHO KNOWS, ALL SORTS OF DIFFERENT THINGS.
- 20 Q. WELL, LET ME DIRECT YOUR ATTENTION TO THE THIRD
- 21 PARAGRAPH, WHICH READS:
- 22 IN ADDITION, CONFIDENTIALLY, JOE GUERRA, THE
- 23 MAYOR'S BUDGET DIRECTOR, HAS COMMITTED TO ME TO
- 24 SUPPORT A GARBAGE RATE INCREASE TO PAY THE COSTS
- 25 OF EMPLOYING TEAMSTERS.
- 26 IS THAT WHAT YOU SAID IN THE E-MAIL?
- 27 A. YES.
- 28 Q. THAT WAS A TRUE STATEMENT?

SUE HERFURTH, CSR #9645

1652

1 A. YES.

2 Q. AND WHEN DID JOE GUERRA MAKE THAT COMMITMENT TO
3 YOU?

4 A. I DON'T KNOW IF I'M REFERRING BACK TO THAT MEETING
5 WHERE WE MET BACK IN -- THE OTHER MEETING YOU HAD UP THERE
6 EARLIER --

7 Q. THE DAY BEFORE?

8 A. RIGHT. BUT ANOTHER THING THAT WAS HAPPENING --

9 Q. BEFORE YOU TELL ME ABOUT WHAT'S HAPPENING, TRY TO
10 ANSWER MY QUESTION, MR. ARREOLA, WHICH IS WHEN YOU -- YOU
11 TOLD US NOW UNDER OATH THAT THE STATEMENT IN YOUR E-MAIL TO
12 PAUL ROTTENBERG OF SEPTEMBER 13, THAT JOE GUERRA HAD
13 COMMITTED TO YOU TO SUPPORT A GARBAGE RATE INCREASE TO PAY
14 FOR THE COST OF EMPLOYING TEAMSTERS WAS A TRUE STATEMENT,
15 CORRECT?

16 A. YES.

17 Q. AND MY QUESTION TO YOU IS WHEN DID MR. GUERRA MAKE
18 THAT COMMITMENT TO YOU? THE ANSWER CALLS FOR A TIME, A
19 DATE.

20 A. PROBABLY THE MEETING WE HAD BEFORE.

21 Q. OKAY. THAT WOULD BE THE SEPTEMBER 12 MEETING?

22 A. YES.

23 Q. IF YOU WERE THERE, AS YOU HAVE TOLD US AND
24 RECOLLECT, SOLELY TO OBSERVE ON WHAT HAPPENED ON BEHALF OF
25 MR. DUONG, WHY IS IT MR. GUERRA MADE THIS COMMITMENT TO YOU,
26 AS YOU SAY IN YOUR E-MAIL?

27 A. I MEAN, WHAT IT READS IS DIFFERENT THAN WHAT
28 HAPPENED.

1 Q. SO YOU'RE SAYING NOW THAT'S NOT A TRUE STATEMENT IN
2 YOUR E-MAIL?

3 A. HE DIDN'T COMMIT IT TO ME SPECIFICALLY; HE
4 COMMITTED TO THE GROUP THAT WAS THERE.

5 Q. WHO WROTE THIS E-MAIL?

6 A. I DID. I KNOW, THE WAY IT READS, IT APPEARS I HAD
7 A SPECIFIC CONVERSATION WITH JOE AND JOE SAID, I'M GOING TO
8 SUPPORT THIS.

9 Q. YOU'RE SAYING NOW THAT WAS NOT TRUE?

10 A. IT WAS REFERRING BACK TO THE MEETING VERY LIKELY
11 FROM LOOKING AT THE INFORMATION.

12 Q. YOU THINK IT WAS POSSIBLY THE MEETING THE DAY
13 BEFORE?

14 A. I THINK VERY LIKELY IT WAS, YES.

15 Q. HAVING LOOKED NOW AT THIS E-MAIL, DOES THAT REFRESH
16 YOUR RECOLLECTION THAT YOU WERE POSSIBLY MORE THAN JUST AN
17 OBSERVER AT THIS MEETING ON SEPTEMBER 12?

18 A. I MEAN, WHAT I SAID THERE IS MAYBE A LITTLE BIT
19 EXAGGERATED. BUT AGAIN, GETTING A USE PERMIT INVOLVED
20 MAKING SURE YOU HAD SUPPORT FROM ALL SOURCES IN THE
21 COMMUNITIES, INCLUDING THE TEAMSTERS. SO IF DAVID WAS
22 FIGHTING OR NEGOTIATING WITH THE TEAMSTERS ON A CONTRACT, HE
23 WANTED ME TO BE, YOU KNOW, PRESENT SO I CAN ALSO MAKE SURE
24 THE TEAMSTERS WERE SUPPORTIVE OF HIS EFFORT TO GET THE
25 CONDITIONAL USE PERMIT.

26 Q. HOW DOES GETTING THAT COMMITMENT FROM JOE GUERRA
27 FOR THE CITY TO PASS A GARBAGE RATE INCREASE TO PAY FOR THE
28 ADDITIONAL COSTS OF USING TEAMSTERS RELATE TO ISSUES

1 REGARDING CONDITIONAL USE PERMITS FOR CWS?

2 A. AGAIN, WHEN CWS GOT THE SUBCONTRACT, THEY WERE
3 FORCED TO OPEN UP A FACILITY BY A CERTAIN TIME FRAME. THAT
4 INCLUDED X NUMBER, AN ASSUMPTION ON THE NUMBER OF EMPLOYEES.
5 SO WHEN WE STARTED NEGOTIATING A CONTRACT WITH THE
6 TEAMSTERS, THAT COULD HAVE HURT HIS EFFORT. IF THE
7 TEAMSTERS ALL OF A SUDDEN BOWED OUT AS A GROUP FROM
8 SUPPORTING CWS, THEN CWS SAW IT POTENTIALLY THAT THEY WOULD
9 BE LEFT IN THE COLD AND LOSE SUPPORT FROM THE COUNCIL.

10 SO KEEPING THE TEAMSTERS, YOU KNOW, ON HIS TEAM
11 MADE A LOT OF SENSE TO THEM. THEY FELT THAT IF THEY LOST
12 THE SUPPORT AND HAD THE COMMUNITY AND BUSINESSES AGAINST
13 THEM -- SO HIS BEST INTEREST WAS, FROM CWS' S PERSPECTIVE,
14 THE WAY HE SAID IT IS THAT HE WANTED TO MAKE SURE THE
15 TEAMSTERS WERE THERE TO SUPPORT THE FACILITY AND DID NOT
16 LEAVE THE SUPPORT BECAUSE HE FELT THAT THEY WOULD BE
17 DOOMED.

18 Q. DAVID DUONG WAS NEGOTIATING WITH THE TEAMSTERS OVER
19 A NEW CONTRACT, RIGHT?

20 A. YES.

21 Q. DAVID DUONG HAD AN AGREEMENT WITH NORCAL THAT
22 REQUIRED NORCAL TO REIMBURSE CWS FOR THE ADDITIONAL COST OF
23 USING TEAMSTERS, CORRECT?

24 A. ABSOLUTELY.

25 Q. SO HOW DID GETTING A COMMITMENT FROM JOE GUERRA TO
26 SUPPORT A RATE INCREASE BY THE CITY OF SAN JOSE TO PAY
27 NORCAL ADDITIONAL MONEY IN ANY WAY IMPACT CWS' S RELATIONSHIP
28 WITH THE TEAMSTERS?

SUE HERFURTH, CSR #9645

1655

1 A. BECAUSE THAT ENSURED THAT WHATEVER CONTRACT HE
2 NEGOTIATED WITH THE TEAMSTERS WAS GOING TO GET FUNDED.
3 Q. WELL, NORCAL WAS ALREADY ON THE HOOK TO FUND THAT.
4 A. YEAH.
5 Q. WAIT A MINUTE. ISN'T THAT WHAT DAVID EXPLAINED TO
6 YOU?
7 A. YES.
8 Q. HOW DID GETTING A RATE INCREASE PASSED BY THE CITY
9 TO REIMBURSE NORCAL IMPACT WHETHER OR NOT CWS HAD A GOOD
10 RELATIONSHIP WITH THE TEAMSTERS?
11 A. I DON'T KNOW WHAT HIS RATIONALE WAS, BUT I CAN MAKE
12 A GUESS OR ASSUMPTION.
13 Q. I DON'T WANT YOU TO GUESS. IN LIGHT OF THIS
14 E-MAIL` IS IT STILL YOUR TESTIMONY UNDER OATH THAT YOU DID
15 NO WORK ON BEHALF OF CWS --
16 A. NO.
17 Q. LET ME FINISH. TO SECURE ADDITIONAL PAYMENTS FROM
18 THE CITY FOR EXTRA LABOR COSTS, EITHER TO NORCAL OR CWS?
19 A. NO. NO. I APOLOGIZE IF I WASN'T CLEAR WHEN YOU
20 ASKED ME THAT AT FIRST.
21 Q. DO YOU WANT TO CHANGE YOUR ANSWER NOW?
22 A. NO. I WANT TO CLARIFY IT. WHAT I SAID EARLIER IS
23 THAT I WAS HIRED TO DO A VERY SPECIFIC TASK. ALONG THE WAY
24 I DID LOT OF OTHER THINGS THAT MADE SURE AT THE END OF THE
25 DAY HE GOT HIS CONDITIONAL USE PERMIT, HAD A PLAN OPERATING
26 THAT INVOLVED ME SITTING IN MEETINGS LIKE THIS, DOING OTHER

27 THINGS. EVEN THOUGH IT WAS NOT PART OF MY SPECIFIC WORK, I
28 DID DO OTHER THINGS.

SUE HERFURTH, CSR #9645

1656

1 Q. NOW YOU TELL US YOU DID DO WORK ON BEHALF OF CWS TO
2 HELP GET THE CITY TO PAY EITHER NORCAL OR CWS FOR THE EXTRA
3 COSTS OF USING TEAMSTERS; IS THAT CORRECT?

4 A. YES.

5 Q. WHAT WORK DID YOU DO?

6 A. UH -- ATTEND COMMUNITY MEETINGS, LIKE I SAID,
7 FORWARD INFORMATION.

8 Q. DID YOU MEET WITH THE MAYOR?

9 A. THAT I CAN REMEMBER, NO. EVEN THOUGH IT SAYS IT
10 HERE, I DON'T REMEMBER I EVER MET WITH HIM ABOUT IT.

11 Q. WELL LOOK. IN THE NEXT SENTENCE IN THE PARAGRAPH I
12 READ TO YOU IN THE E-MAIL, IT SAYS:

13 I'M HAVING DINNER WITH THE MAYOR TONIGHT --

14 A. I KNOW.

15 Q. MR. ARREOLA, PLEASE.

16 A. SORRY.

17 Q. FOR THE SAKE OF THE REPORTER, IF NO ONE ELSE,
18 PLEASE LET ME FINISH MY QUESTION BEFORE YOU BEGIN YOUR
19 ANSWER. IF NECESSARY, JUST COUNT TO THREE SILENTLY AND
20 WE'LL WAIT. OKAY.

21 IN THE NEXT SENTENCE IN YOUR E-MAIL, IT SAYS OR
22 YOU HAVE WRITTEN:

23 I AM HAVING DINNER WITH THE MAYOR TONIGHT AND
24 WILL DISCUSS THE MATTER WITH HIM ALSO TO ENSURE

25 SUCCESS.

26 IS THAT WHAT YOU' VE WRITTEN?

27 A. YES.

28 Q. DID YOU HAVE DINNER WITH THE MAYOR THAT NIGHT?

SUE HERFURTH, CSR #9645

1657

1 A. I DON' T RECALL, SIR.

2 Q. DID YOU EVER SPEAK TO THE MAYOR ABOUT GETTING EXTRA
3 MONEY TO NORCAL OR CWS FOR THE EXTRA LABOR COSTS?

4 A. NO. NO. SEE, THAT OFFICE -- LET ME EXPLAIN. HIS
5 OFFICE BASICALLY WORKS THROUGH JOE. AND I ALREADY KNEW THAT
6 JOE WASN' T GOING TO BE SYMPATHETIC TO ANY ARGUMENTS, TO SOME
7 DEGREE, IN TERMS OF HAVING THEM SUPPORT THIS CONDITIONAL USE
8 PERMIT AND WHATEVER ELSE I WAS DOING.

9 Q. WAIT A MINUTE. WE' RE NOT TALKING ABOUT THE
10 CONDITIONAL USE PERMIT. SET ASIDE THE CONDITIONAL USE
11 PERMIT. I THINK YOU' VE TOLD US QUITE A BIT ABOUT THE
12 CONDITIONAL USE PERMIT ISSUE. WE' RE FOCUSED ON SOMETHING
13 DIFFERENT; GETTING EXTRA MONEY FROM THE CITY FOR THE EXTRA
14 LABOR COSTS ASSOCIATED WITH CWS SWITCHING FROM LONGSHOREMEN
15 TO TEAMSTERS. OKAY? THAT' S WHAT I WANT YOU TO FOCUS ON.

16 A. SURE.

17 Q. IN THIS E-MAIL YOU TOLD PAUL ROTTENBERG THAT
18 JOE GUERRA HAD MADE A COMMITMENT TO YOU TO SUPPORT THIS
19 GARBAGE RATE INCREASE TO PAY THE EXTRA COST OF EMPLOYING
20 TEAMSTERS, CORRECT?

21 A. YES.

22 Q. YOU TOLD US THAT' S A TRUE STATEMENT?

- 23 A. I WROTE IT, YES.
- 24 Q. NOT THAT YOU WROTE IT, THAT WHAT YOU WROTE IS TRUE.
- 25 A. I DON'T REMEMBER IF I EVER MET WITH THE MAYOR.
- 26 Q. WE HAVEN'T GOTTEN THERE YET.
- 27 A. OKAY.
- 28 Q. IS IT TRUE THAT JOE GUERRA MADE A COMMITMENT TO YOU

SUE HERFURTH, CSR #9645

1658

- 1 ON OR BEFORE THE DATE OF THIS E-MAIL TO SUPPORT AN EXTRA
- 2 GARBAGE RATE INCREASE TO PAY FOR THE ADDITIONAL COST OF
- 3 USING TEAMSTERS?
- 4 A. AGAIN, SPECIFICALLY TO ME, NO.
- 5 Q. WHY DID YOU SAY THAT IN YOUR E-MAIL?
- 6 A. I DON'T RECALL, SIR. IT'S BEEN SUCH A LONG TIME.
- 7 Q. DID YOU HAVE ANY REASON OR MOTIVE TO EMBELLISH YOUR
- 8 ROLE IN GETTING --
- 9 A. I COULD.
- 10 Q. JUST LET ME FINISH MY QUESTION.
- 11 A. SORRY.
- 12 Q. DID YOU HAVE ANY REASON OR MOTIVE TO EMBELLISH YOUR
- 13 WORK ON GETTING CWS FOR NORCAL EXTRA MONEY TO PAY FOR THE
- 14 TEAMSTERS?
- 15 A. SOMETIMES YOU DO A LITTLE BIT OF THAT, BECAUSE IN
- 16 MY BUSINESS I HAD MULTIPLE CLIENTS; SOMETIMES YOU DIDN'T
- 17 SPEND ENOUGH TIME WITH ONE, SO I COULD HAVE EXAGGERATED WHAT
- 18 ACTUALLY HAPPENED THERE. AND AS I TOLD YOU BEFORE, I DIDN'T
- 19 HAVE A PRIVATE MEETING WITH HIM, IT WAS A GROUP OF PEOPLE,
- 20 AND I DIDN'T EVEN SAY ONE WORD DURING THE MEETING BECAUSE I

21 HAD NO PRIOR KNOWLEDGE OF THE ISSUE, SO I WAS THERE
22 LISTENING; ALL THE TALKING WAS DONE BY THE OTHER PEOPLE,
23 BILL JONES AND MCGOVERN, AND WHOEVER ELSE WAS THERE.

24 Q. SO, ARE YOU SAYING IN THE E-MAIL TO PAUL
25 ROTTENBERG, WHO IS A CONSULTANT FOR CWS, CORRECT?

26 A. YES.

27 Q. THAT YOU WERE EXAGGERATING WHAT HAD HAPPENED IN THE
28 PRIOR MEETING WITH JOE GUERRA AND YOUR ROLE AND IMPORTANCE

SUE HERFURTH, CSR #9645

1659

1 IN GETTING THAT COMMITMENT?

2 A. YES.

3 Q. SO THEN WHAT YOU WROTE MR. ROTTENBERG WAS NOT TRUE,
4 WAS IT?

5 A. NO.

6 Q. WHAT IS THE REASON YOU MADE THIS UNTRUE STATEMENT
7 TO MR. ROTTENBERG IN THE E-MAIL?

8 A. I DON'T REMEMBER EXACTLY. BUT I WAS, WHAT YOU SAID
9 EARLIER, PROBABLY EXAGGERATING JUST BECAUSE I WAS, YOU KNOW,
10 BUSY DOING OTHER STUFF.

11 Q. WERE YOU FABRICATING THE STATEMENT ABOUT HAVING
12 DINNER WITH THE MAYOR AS WELL?

13 A. I DON'T REMEMBER, HONESTLY. HAVE I HAD DINNER
14 BEFORE WITH HIM, YES. BUT I DON'T REMEMBER IF I EVER HAD
15 DINNER WITH HIM THAT NIGHT. WHAT I REMEMBER, JUST AS A GUT
16 REACTION, IS THAT I DID NOT; BUT HONESTLY, I DON'T REMEMBER.

17 Q. WHEN YOU USE THE WORD IN THE SECOND FULL PARAGRAPH,
18 "TEAM," WHO ARE YOU REFERRING TO?

19 A. THE CWS TEAM.

20 Q. WHO IS THE CHUCK WHO HAS ALREADY CONTACTED
21 CARL MOSHER AND ESD?

22 A. THAT'S CHUCK REED. HE WAS HELPING WITH -- SEE,
23 THIS ISSUE IS VERY COMPLICATED. ESD IS THE ENVIRONMENTAL
24 SERVICES DEPARTMENT. THEY ARE NOT THE PLANNING DEPARTMENT,
25 BUT THE ENVIRONMENTAL DEPARTMENT OF THE CITY, AND THEY HAVE
26 A STRONG SAY IN WHETHER OR NOT A RECYCLING FACILITY GETS UP
27 AND OPERATING OR NOT. THAT'S WHAT THAT WAS REFERRING TO.

28 Q. SO IT APPEARS, DOES IT NOT, IN YOUR E-MAIL, THAT

SUE HERFURTH, CSR #9645

1660

1 THE SECOND FULL PARAGRAPH DEALS WITH THE GARBAGE PROBLEM,
2 CORRECT?

3 A. WHICH PARAGRAPH AGAIN?

4 Q. THE SECOND PARAGRAPH DEALS WITH THE GARBAGE
5 PROBLEM.

6 A. THE PARAGRAPH THAT IS NUMBERED TWO?

7 Q. YEAH. IT SAYS --

8 A. I'M SORRY. I WAS LOOKING AT THE WRONG ONE.

9 Q. WHEN YOU'RE TALKING ABOUT CHUCK, YOU'RE TALKING
10 ABOUT THE GARBAGE PROBLEM?

11 A. ONE THING YOU WANT TO CHECK, ON THE PARAGRAPH YOU
12 HIGHLIGHTED YELLOW --

13 Q. I'M NOT TALKING ABOUT THAT. THE FIRST PARAGRAPH
14 SAYS, "PAUL, THANKS FOR COPY OF THE LETTER TO NORCAL."

15 A. CORRECT.

16 Q. THAT'S NUMBER ONE. LET'S GO TO THE NEXT.

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PARAGRAPH TWO:
TEAM, FYI, CHUCK HAS ALREADY CONTACTED
CARL MOSHER.
THAT SECOND PARAGRAPH REFERS TO THE GARBAGE
PROBLEM, DOES IT NOT?
A. ACCORDING TO CHUCK, CHUCK --
Q. JUST A MINUTE. EITHER READ IT TO YOURSELF, OR IF
YOU WANT TO READ IT OUT LOUD FOR SOME REASON, PLEASE READ IT
SLOWLY ENOUGH SO THE REPORTER CAN GET A GOOD RECORD.
A. THAT WAS REFERRING TO THIS WHOLE 10 PERCENT ABOVE
THRESHOLD CONTAMINATION, YES.
Q. YOU SAY GARBAGE PROBLEM IN THE SECOND PARAGRAPH,

SUE HERFURTH, CSR #9645

1661

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RIGHT?
A. YES. TO DISCUSS THE GARBAGE PROBLEM.
Q. IN THE FINISHED PARAGRAPH YOU'RE TALKING ABOUT A
GARBAGE RATE INCREASE TO PAY FOR THE COST OF EMPLOYING
TEAMSTERS, CORRECT?
A. YES.
Q. THAT'S A DIFFERENT SUBJECT, IS IT NOT?
A. CORRECT.
Q. AND THEN WHAT IS YOUR FINAL ANSWER ON WHETHER OR
NOT YOU HAD DINNER WITH THE MAYOR THAT NIGHT TO DISCUSS THE
ADDITIONAL COST OF USING TEAMSTERS?
A. MY GUT TELLS ME THAT I DID NOT MEET WITH HIM, BUT I
HONESTLY DON'T REMEMBER.
Q. YOU COULD HAVE OR NOT, YOU DON'T KNOW?

15 A. YES. BUT I DON'T EVER REMEMBER TALKING TO HIM
16 ABOUT ANYTHING RELATING TO THIS CONTRACT AT ALL. I DO NOT
17 EVER REMEMBER HAVING ANY KIND OF DISCUSSION WITH HIM.

18 Q. SO YOU MADE THAT UP?

19 A. NO. IT SAYS I AM HAVING DINNER. I'M NOT SURE IF I
20 EVER HAD OR NOT IS WHAT I'M SAYING. BUT STEPPING ASIDE FROM
21 THAT, I DON'T REMEMBER AT ALL EVER TALKING TO HIM ABOUT ANY
22 GARBAGE INCREASE AT ALL.

23 Q. WELL, LOOK. IN PARAGRAPH THREE, THE SUBJECT IS THE
24 GARBAGE RATE INCREASE TO PAY FOR THE ADDITIONAL LABOR COST
25 OF USING TEAMSTERS.

26 A. YES. I UNDERSTAND THAT. YES.

27 Q. IN THE SECOND SENTENCE WHEN YOU SAY, "I'M HAVING
28 DINNER WITH THE MAYOR TONIGHT, WILL DISCUSS THE MATTER WITH

SUE HERFURTH, CSR #9645

1662

1 HIM ALSO TO ENSURE SUCCESS," THE MATTER MEANS THE GARBAGE
2 RATE INCREASE TO PAY FOR THE COST OF EMPLOYING TEAMSTERS,
3 RIGHT?

4 A. YES.

5 Q. AND YOUR TESTIMONY IS YOU DON'T BELIEVE YOU EVER
6 MET WITH THE MAYOR TO HAVE THAT DISCUSSION?

7 A. CORRECT. OR EVER, ANY OTHER TIME.

8 Q. WELL, EVER IS ANY TIME.

9 A. SORRY.

10 Q. LOOKING FURTHER IN THIS E-MAIL OF YOURS TO
11 MR. ROTTENBERG, UNDER ITEM THREE WHICH IS LABELED CWS
12 CONTRACT WITH THE CITY OF SAN JOSE, YOU SAY:

13 I WILL MENTION TO CARL THAT WE HAVE SEVERAL
14 COUNCILMEMBERS THAT SUPPORT CWS HAVING ITS OWN
15 CONTRACT WITH THE CITY TO DO RECYCLING.

16 DO YOU SEE THAT?

17 A. YES.

18 Q. AND IS IT TRUE THAT YOU HAD SEVERAL COUNCILMEMBERS
19 THAT SUPPORTED CWS HAVING ITS OWN CONTRACT WITH THE CITY TO
20 DO RECYCLING?

21 A. YES.

22 Q. WHICH COUNCILMEMBERS?

23 A. UH -- THERE WAS NEVER ANY KIND OF SPECIFIC
24 COMMITMENT, BUT I REMEMBER --

25 Q. I'M NOT TALKING ABOUT A COMMITMENT, I'M TALKING
26 ABOUT SUPPORT. THESE ARE YOUR WORDS, RIGHT?

27 A. SUPPORT MEANS MAYBE THEY SAID, YES, WE'RE OPEN TO
28 CONSIDERING DOING THAT. BASICALLY WHAT CWS PEOPLE, SO YOU

SUE HERFURTH, CSR #9645

1663

1 UNDERSTAND --

2 Q. WE DON'T WANT AN UNDERSTANDING ON THIS POINT.
3 WE'VE HEARD A LOT OF EVIDENCE, MR. ARREOLA. WE JUST WANT
4 YOU TO ANSWER MY QUESTIONS.

5 WHICH COUNCILMEMBERS INDICATED TO YOU THAT THEY
6 WOULD SUPPORT CWS HAVING ITS OWN CONTRACT WITH THE CITY TO
7 DO RECYCLING?

8 A. I REMEMBER AT LEAST TWO MEETINGS WITH DAVID DUONG
9 AND CHUCK REED, AND WITH DAVID CORTESE, WHERE DAVID
10 EXPLAINED TO THESE COUNCILMEMBERS THAT -- CWS WAS VERY

11 SUSPICIOUS OF NORCAL IN TERMS OF THEM TRYING TO SABOTAGE
12 THEM. WHAT THEY WERE TRYING TO DO, SIR, IS BASICALLY
13 SEPARATE THEMSELVES AS A SUBCONTRACTOR TO NORCAL SO THAT
14 THEY WOULD HAVE A DIRECT CONTRACT WITH THE CITY, BECAUSE
15 WHEN THEY WERE DEALING WITH THE GARBAGE ISSUE AND GETTING
16 THE PERMIT, THE WAY THE INFORMATION FLOWED FROM THE CITY
17 STAFF, ESD, TO CWS, IS THAT BECAUSE CWS DIDN'T HAVE A
18 CONTRACT WITH THE CITY, THE CITY'S ESD PEOPLE HAD TO SAY TO
19 THE NORCAL PEOPLE, YOU KNOW, YOUR RECYCLING OPERATOR IS
20 FAILING ON THESE PARTS OF THE CONDITIONAL USE PERMIT. SO
21 THIS REFERS TO THAT.

22 CWS WAS TRYING TO FIND A WAY THAT THEY COULD
23 SEPARATE THEMSELVES AS SUBCONTRACTOR FROM NORCAL SO THEY
24 COULD COMMUNICATE DIRECTLY WITH THE CITY. THAT WAS THE MAIN
25 FOCUS OF THAT.

26 Q. WASN'T THE MAIN FOCUS NOT THE LINES OF
27 COMMUNICATION BUT THE LINES OF MONEY?

28 A. NO, SIR. THIS IS A COMPLETELY SEPARATE ISSUE HERE.

SUE HERFURTH, CSR #9645

1664

1 THIS HAS TO DO, AGAIN, WITH WHAT I SAID. THEY DID NOT WANT
2 TO BE A SUBCONTRACTOR TO NORCAL, BECAUSE THEY FELT NORCAL
3 WAS NOT REPRESENTING THEIR BEST INTERESTS IN DISCUSSIONS
4 WITH THE CITY ABOUT WHAT WAS GOING ON ABOUT THE WHOLE
5 GARBAGE CONTAMINATION PROBLEM.

6 Q. SO ITEM FOUR -- ITEM THREE HAS NOTHING TO DO WITH
7 ADDITIONAL FUNDS?

8 A. NO. THAT SENTENCE SPECIFICALLY ONLY TALKS TO THEIR

9 NEED TO SEPARATE THEIR CONTRACT FROM NORCAL. THEY WANTED
10 OUT. THEY DID NOT WANT TO BE A SUBCONTRACTOR.

11 Q. WASN'T IT DAVID'S DUONG'S CONCERN THAT NORCAL MIGHT
12 NOT HONOR ITS OBLIGATION TO REIMBURSE FOR THE ADDITIONAL
13 LABOR COSTS OF USING TEAMSTERS, AND IT WOULD BE BETTER FOR
14 CWS TO GET THE ADDITIONAL FUNDS DIRECTLY FROM THE CITY AND
15 CUT NORCAL OUT OF THE LOOP OF THIS MONEY?

16 A. I DON'T KNOW IF THAT WAS HIS INTENTION.

17 Q. DID HE COMMUNICATE THAT TO YOU?

18 A. WHAT HE COMMUNICATED TO ME, AND I SAW IT BECAUSE I
19 HAD ATTENDED MEETINGS WITH CARL MOSHER --

20 (INTERRUPTION BY THE COURT REPORTER.)

21 A. -- FROM ESD ON THIS WHOLE COMPLIANCE ISSUE ON THE
22 CONDITIONAL USE PERMIT, AND DAVID FELT THAT STAFF WAS
23 COMPLAINING THAT CWS WASN'T REACTING QUICKLY ENOUGH TO
24 CONCERNS RAISED BY ESD. SO DAVID REALLY WAS IN JEOPARDY OF
25 LOSING HIS CONDITIONAL USE PERMIT BECAUSE THEY FELT FROM THE
26 BEGINNING THAT NORCAL WAS NOT ACTING IN THEIR BEST
27 INTERESTS, SO THEY -- SO WHEN ESD SAID TO NORCAL, NORCAL,
28 CWS IS FAILING AT POINTS ONE, TWO, AND THREE OF THE

SUE HERFURTH, CSR #9645

1665

1 CONDITIONAL USE PERMIT, YOU NEED TO CORRECT THEM, THE
2 INFORMATION TO CWS, SO SAID MR. DUONG, TOOK TOO LONG TO GET
3 THERE.

4 SO AS A RESULT OF THAT, STAFF WAS THINKING THAT
5 CWS WAS NOT COMPLYING OR WERE IGNORING THE REQUESTS TO, YOU
6 KNOW, CORRECT CERTAIN THINGS THAT THEY WERE PROCESSING, AS

7 AN EXAMPLE, GLASS; THEY DIDN'T HAVE A PERMIT FOR THAT.

8 SO THERE WERE A NUMBER OF ISSUES THAT CWS JUST DID
9 NOT WANT TO BE UNDER THEIR WHOLE CONTRACT AND HAVE THEIR OWN
10 CONTRACT WITH THE CITY. THEY NEVER REALLY PURSUED IT BUT
11 DID TALK ABOUT IT, AND THE DISCUSSION HAPPENED WITH CHUCK
12 REED. HE REPRESENTED THAT DISTRICT WHERE THE SITE IS.

13 AND CORTESE, I DON'T REMEMBER WHY HE GOT INVOLVED,
14 BUT THEY WERE RECEPTIVE TO THE IDEA BECAUSE OF THE WHOLE
15 INFIGHTING THAT NORCAL AND CWS HAD -- THAT THEY WOULD HAVE
16 THEIR OWN CONTRACT AT SOME POINT.

17 Q. YOU KNEW FROM DAVID DUONG THAT THE MAYOR'S OFFICE
18 WANTED CWS TO GO WITH THE TEAMSTERS INSTEAD OF THE
19 LONGSHOREMEN, CORRECT?

20 A. YES.

21 Q. DID YOU WORK ON BEHALF OF CWS TO DEMONSTRATE TO THE
22 MAYOR'S OFFICE THAT CWS WAS MAKING EFFORTS TO USE THE
23 TEAMSTERS AND GET A NEW CONTRACT WITH THEM?

24 A. SAY THAT AGAIN, PLEASE.

25 Q. DID YOU DO ANY WORK ON BEHALF OF CWS TO COMMUNICATE
26 TO THE MAYOR'S OFFICE THAT CWS WAS MAKING PROGRESS IN
27 WORKING WITH THE TEAMSTERS?

28 A. IN TERMS OF THEIR CONTRACT NEGOTIATIONS?

SUE HERFURTH, CSR #9645

1666

1 Q. YES.

2 A. YES.

3 Q. WHY WERE YOU INVOLVED IN THAT, HOW DID THAT RELATE
4 TO THE CONDITIONAL USE PERMIT?

5 A. IT GOES BACK TO THE OLD THING THEY COULD NOT AFFORD
6 TO LOSE -- I KNOW IT'S FRUSTRATING FOR YOU.

7 Q. I'M NOT FRUSTRATED IN THE LEAST.

8 A. IT GOES BACK TO THE WHOLE SUPPORT; THEY COULD NOT
9 AFFORD TO LOSE THEM AS AN ALLY TO THE FACILITY, SO THEY --
10 THEY WERE KIND OF IN A TOUGH SPOT, SIR.

11 Q. HOW IS THAT?

12 A. ON THE ONE HAND, THEY NEEDED TO NEGOTIATE A
13 CONTRACT WITH THE TEAMSTERS, RIGHT, AND THEY WERE FIGHTING.
14 THEY COULDN'T AGREE ON WHAT WAS FAIR.

15 ON THE OTHER HAND, THEY COULDN'T REALLY NEGOTIATE
16 THAT HARD, BECAUSE IF THEY DID THEY RAN THE RISK THAT THEY
17 WOULD LOSE THEM AS AN ALLY. SO THEY WERE KIND OF CAUGHT IN
18 A BIND THAT WAS VERY, VERY DIFFICULT FOR CWS. THEY HAD NO
19 POWER WITH THE CITY BECAUSE THEY HAD NO DIRECT CONTRACT, YET
20 THEY HAD NORCAL -- AND I'M JUST EXPRESSING WHAT WAS CONVEYED
21 TO ME FROM THEIR POINT OF VIEW -- NOT WORKING IN THEIR BEST
22 INTERESTS, AND WHAT WOULD HAVE BEEN BETTER OFF IN THEIR VIEW
23 WAS IF CWS DISAPPEARED.

24 SO THAT'S WHY IT WAS A VERY DELICATE SITUATION
25 THAT MR. DUONG WAS IN, IN MAKING SURE ON THE ONE HAND THAT
26 HE NEGOTIATED A FAIR CONTRACT; AND ON THE OTHER HAND, THAT
27 THEY COULDN'T AFFORD TO COMPLETELY IRATE [SIC] THEM AND THEN
28 LOSE THEIR SUPPORT.

SUE HERFURTH, CSR #9645

1667

1 Q. WHY WAS IT THAT CWS HAD TO DEAL WITH THE TEAMSTERS
2 INSTEAD OF THE LONGSHOREMEN?

3 A. ACCORDING TO MR. DUONG, IT WAS A COMMITMENT. AND
4 I 'M NOT SURE IF MR. DUONG WAS PRESENT IN THOSE MEETINGS
5 EITHER. BUT APPARENTLY, MR. DUONG SAID THAT WHEN THE ISSUE
6 WAS -- THE CONTRACT WITH NORCAL AND THE CITY CAME TO A VOTE,
7 THAT THERE WAS A DISCUSSION BETWEEN THE NORCAL FOLKS AND THE
8 MAYOR' S OFFICE. NOT SPECIFIC -- IT WAS NOT TOLD TO ME IF IT
9 WAS SPECIFICALLY MR. GUERRA, OR MR. GUERRA OR MR. GONZALES
10 TOGETHER, AND THERE WAS A DISCUSSION BASICALLY THAT NORCAL
11 HAD TO USE TEAMSTER EMPLOYEES FOR THE RECYCLING FACILITY AND
12 NOT THE LONGSHOREMEN.

13 SO THAT' S WHEN THEN NORCAL APPARENTLY, BEFORE THE
14 VOTE TOOK PLACE, THIS AGAIN IS FROM RECOLLECTION, WENT TO
15 MR. DAVID DUONG AND SAID, MR. DUONG, YOU' RE VALUABLE TO THIS
16 TEAM BECAUSE OF X, Y, AND Z BUT -- AND I KNOW YOU GAVE ME
17 THIS CONTRACT THAT SAID X NUMBER OF DOLLARS, BUT THE MAYOR' S
18 OFFICE IS SAYING THAT WE HAVE TO USE TEAMSTERS.

19 SO MR. DUONG THEN SAID TO -- I DON' T KNOW
20 SPECIFICALLY WHICH INDIVIDUAL WITH NORCAL -- WELL, NO, MY
21 CONTRACT WITH YOU IS THAT I 'M GOING TO USE FOR THE
22 EMPLOYEES, LONGSHOREMEN.

23 SEE, HE ALREADY HAD EMPLOYEES THAT WERE GOING TO
24 DO TO THE JOB AND HAD A TRACK RECORD OF DOING THE JOB.

25 SO DAVID DUONG DIDN' T SEE ANY BENEFIT IN CHANGING
26 TO TEAMSTERS. BUT NORCAL BROUGHT THIS NOT TO THEM, SO DAVID
27 DUONG SAID, I 'M WILLING TO DO IT, BECAUSE HE WASN' T GOING TO
28 GET ANY -- IT WAS ALL GOING TO TEAMSTERS.

SUE HERFURTH, CSR #9645

1 HE SAID, I'M WILLING TO DO IT, BUT ONLY IF YOU
2 SIGN AN AGREEMENT, SO HE DRAFTED AN AGREEMENT THAT SAID IF
3 THERE'S A CHANGE -- I DON'T KNOW EXACTLY WHAT THE WORDING
4 IS -- BUT WHATEVER CHANGE IN LABOR COSTS BETWEEN THE
5 ORIGINAL CONTRACT HE GAVE NORCAL AND THIS NEW TEAMSTER
6 VARIABLE, THAT NORCAL WAS GOING TO BE RESPONSIBLE FOR IT.

7 SO THAT'S KIND OF WHAT I REMEMBER, YOU KNOW, FROM
8 THE DISCUSSIONS.

9 Q. SO TO ANSWER MY QUESTION, THE REASON CWS HAD TO
10 NEGOTIATE WITH THE TEAMSTERS IS BECAUSE THE MAYOR'S OFFICE
11 HAD MADE A REQUEST TO NORCAL, WHO IN TURN PASSED IT ON TO
12 CWS?

13 A. EXACTLY. WAY BACK, WHENEVER THE CONTRACT WAS VOTED
14 ON.

15 Q. OKAY.

16 MR. FINKELSTEIN: MR. ARREOLA, I HAVE TO CALL
17 ANOTHER WITNESS WHO HAS COME FROM OUT OF TOWN, SO I'M GOING
18 TO HAVE TO RECESS YOUR TESTIMONY AT THIS TIME SO WE CAN PUT
19 THE OTHER WITNESS ON. SO I AM GOING TO HAVE TO DIRECT YOU
20 TO RETURN THURSDAY MORNING. ARE YOU AVAILABLE THURSDAY
21 MORNING?

22 A. I DON'T REMEMBER.

23 Q. WHY DON'T YOU STEP OUTSIDE AND CHECK WITH YOUR
24 ATTORNEY AND SEE IF YOU'RE AVAILABLE TO RETURN.

25 A. I NEED TO CHECK MY CALENDAR.

26 Q. WHERE IS YOUR CALENDAR?

27 A. IN MY OFFICE.

28 Q. CAN YOU CALL SOMEONE?

1 A. NO. I HANDLE MY OWN CALENDAR.

2 Q. WELL, I'M GOING TO DIRECT THAT YOU RETURN --

3 A. OKAY.

4 Q. -- THIS THURSDAY MORNING, WHICH WILL BE MAY 4 AT
5 10:00 A.M., TO GIVE FURTHER TESTIMONY. THAT'S YOUR
6 DIRECTION AT THIS TIME.

7 IF THERE'S SOME ABSOLUTE PROBLEM THAT PRECLUDES
8 YOU FROM COMING BACK THURSDAY MORNING, HAVE YOUR COUNSEL GET
9 IN TOUCH WITH ME. AND I'LL TRY TO ACCOMMODATE YOU, BUT I
10 CAN'T PROMISE I WILL BE ABLE TO.

11 THE FOREPERSON: I READ YOU THE FULL ADMONITION.
12 BASICALLY, NOTHING THAT YOU HEARD, SAID, OR SAW DURING THIS
13 PROCEEDING IS TO BE COMMUNICATED TO ANYBODY BUT YOUR
14 ATTORNEY, AND THE SAME REQUIREMENT FOR CONFIDENTIALITY
15 APPLIES. DO YOU UNDERSTAND THAT?

16 THE WITNESS: YES, AND I DID MENTION IT TO
17 MR. BROWN.

18 MR. FINKELSTEIN: YOU CAN SHARE THE INFORMATION
19 WITH YOUR ATTORNEY PROVIDED THAT HE OR SHE AGREES TO BE
20 BOUND BY THE SAME ADMONITION NOT TO FURTHER DISCLOSE THE
21 INFORMATION.

22 THE WITNESS: AND I MENTIONED THAT TO HIM, AND HE
23 SAID YES.

24 MR. FINKELSTEIN: THANK YOU. WE'LL SEE YOU ON
25 THURSDAY MORNING.

26 WHY DON'T WE TAKE A FIVE-MINUTE RECESS FOR THE
27 REPORTER'S SAKE.

28 THE FOREPERSON: WE'LL RECONVENE AT JUST BEFORE

1 2: 30.

2 (A BRIEF RECESS WAS TAKEN.)

3 THE FOREPERSON: LET THE RECORD SHOW ALL THE
4 JURORS ARE PRESENT.

5 MICHAEL SANGIACOMO,
6 HAVING BEEN PREVIOUSLY SWORN, TESTIFIED ON HIS OATH AS
7 FOLLOWS:

8 EXAMINATION, RESUMED:

9 BY MR. FINKELSTEIN:

10 Q. MR. SANGIACOMO, GOOD AFTERNOON. THANKS FOR
11 RETURNING. I'LL JUST REMIND YOU THAT YOU'RE STILL UNDER
12 OATH, HAVING BEEN PREVIOUSLY SWORN; DO YOU UNDERSTAND THAT?

13 A. SURE.

14 MR. FINKELSTEIN: I'M GOING TO MARK AS EXHIBIT 116
15 A SEPTEMBER 28, 2000 LETTER TO CARL MOSHER FROM MICHAEL
16 SANGIACOMO. IT'S A FOUR-PAGE LETTER.

17 THE FOREPERSON: SO MARKED.

18 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
19 JURY EXHIBIT 116.)

20 BY MR. FINKELSTEIN:

21 Q. MR. SANGIACOMO, DO YOU RECOGNIZE EXHIBIT 116?

22 A. I REMEMBER WRITING SOMETHING ALONG THIS LINE.

23 Q. IS THAT YOUR SIGNATURE ON THE LAST PAGE OF THE
24 EXHIBIT?

25 A. YES, IT IS.

26 Q. AND DID YOU SEND THIS LETTER TO CARL MOSHER ON OR
27 ABOUT SEPTEMBER 28, 2000?

28 A. I BELIEVE SO.

SUE HERFURTH, CSR #9645

1671

1 Q. WHAT WAS THE PURPOSE OF SENDING THIS LETTER TO
2 MR. MOSHER?

3 A. THERE WERE SOME QUESTIONS ABOUT A SITUATION THAT
4 HAD OCCURRED INVOLVING NORCAL IN SAN BERNARDINO COUNTY; AND
5 HE WAS ASKING FOR THE PARTICULARS AND THE RESOLUTION, I
6 THINK, OF THAT MATTER.

7 MR. FINKELSTEIN: LADIES AND GENTLEMEN OF THE
8 JURY, I'LL CAUTION YOU, THE EVENTS OF SAN BERNARDINO ARE NOT
9 EVIDENCE OF ANYTHING THAT MAY OR MAY NOT HAVE HAPPENED IN
10 THIS MATTER AND SHOULD NOT BE CONSIDERED BY YOU AS EVIDENCE
11 OF ANYONE'S GUILT IN THIS MATTER, BUT I DO WANT TO ASK SOME
12 QUESTIONS OF THE WITNESS ABOUT THIS BECAUSE IT MAY HAVE A
13 BEARING ON WHAT THE WITNESS DID OR DIDN'T DO IN OUR MATTER.
14 SO PLEASE BEAR THAT IN MIND.

15 BY MR. FINKELSTEIN:

16 Q. SO THE EVENTS OF SAN BERNARDINO INVOLVED AN
17 ALLEGATION OF BRIBERY DOWN IN SAN BERNARDINO, DID IT NOT?

18 A. THERE WAS A BRIBERY ALLEGATION, YES.

19 Q. IT INVOLVED A PERSON WORKING ON BEHALF OF NORCAL
20 DOWN IN SAN BERNARDINO?

21 A. AMONG OTHERS, YES.

22 Q. AND THE CITY WANTED TO KNOW SOME MORE INFORMATION
23 ABOUT THAT BEFORE DECIDING WHETHER TO AWARD NORCAL THE
24 CONTRACT, CORRECT?

25 A. I BELIEVE THAT WAS THE CASE, YES.

- 26 Q. THAT WAS THE PURPOSE OF THIS LETTER, RIGHT?
27 A. I SEEM TO REMEMBER THAT'S WHAT IT WAS FOR. YES.
28 Q. THIS LETTER TAKES PLACE SOMETHING LIKE TWO WEEKS

SUE HERFURTH, CSR #9645

1672

- 1 BEFORE YOUR FRIDAY, OCTOBER 6 MEETING WITH THE MAYOR OF
2 SAN JOSE, RIGHT?
3 A. SOMETHING LIKE THAT.
4 Q. SO WHEN YOU HAD THIS MEETING THAT FRIDAY ON OCTOBER
5 6, 2000 WITH THE MAYOR OF SAN JOSE AND HE TOLD YOU THAT HE
6 REALLY WANTED CWS TO BE A TEAMSTERS' SHOP, DO YOU REMEMBER
7 THAT DISCUSSION?
8 A. YES.
9 Q. OKAY. AND YOU TOLD THE MAYOR THAT THAT WOULD COST
10 MORE MONEY, NORCAL WOULD HAVE TO BE MADE WHOLE. AND THE
11 MAYOR RESPONDED, YOU MAKE IT HAPPEN, WE'LL MAKE YOU WHOLE.
12 DO YOU RECALL THAT?
13 A. NOT QUITE IN THOSE WORDS.
14 Q. HOW DO YOU RECALL THAT CONVERSATION GOING?
15 A. SOMETHING ALONG THE LINE OF THAT IF YOU HAVE THE
16 WORKERS AT CWS BE REPRESENTED BY THE TEAMSTERS, I WILL MAKE
17 MY BEST EFFORTS TO MAKE IT WHOLE.
18 Q. I THINK YOU TOLD US THAT YOU FELT YOU WERE BEING
19 PRESSURED TO GET CWS TO SWITCH FROM LONGSHOREMEN TO
20 TEAMSTERS, CORRECT?
21 A. YES, I BELIEVE SO.
22 Q. DID YOU SEEK LEGAL ADVICE AFTER THAT MEETING WITH
23 THE MAYOR ABOUT THAT MEETING?

- 24 A. I THINK SO, BUT I DON' T RECALL.
- 25 Q. THE FOLLOWING MONDAY YOU ENTERED INTO THIS ADDENDUM
- 26 WITH CWS OBLIGATING NORCAL TO PAY AN ESTIMATED TWO MILLION A
- 27 YEAR --
- 28 A. I APOLOGIZE, I MISSED SOME OF WHAT YOU SAID.

SUE HERFURTH, CSR #9645

1673

- 1 Q. THE FOLLOWING MONDAY, OCTOBER 9, 2000, YOU ENTERED
- 2 INTO THIS ADDENDUM TO YOUR CONTRACT WITH CWS OBLIGATING
- 3 NORCAL TO PAY THE ADDITIONAL COSTS OF CWS USING THE
- 4 TEAMSTERS, CORRECT?
- 5 A. I BELIEVE THAT' S THE CASE, YES.
- 6 Q. DID YOU SEEK LEGAL ADVICE ABOUT WHETHER OR NOT TO
- 7 ENTER INTO THAT ADDENDUM OR THE WORDING OF THAT ADDENDUM?
- 8 A. I BELIEVE SO, BUT I REALLY DON' T REMEMBER.
- 9 Q. YOU' RE SAYING THAT YOU BELIEVE YOU DID?
- 10 A. I THINK I DID, BUT I DON' T REMEMBER.
- 11 Q. WHO WAS YOUR LAWYER AT THAT TIME?
- 12 A. UH -- IT WOULD HAVE BEEN THE HOWARD RICE LAW FIRM.
- 13 Q. WHO AT HOWARD RICE WERE YOU DEALING WITH?
- 14 A. (NO RESPONSE.)
- 15 Q. WAS IT TODD THOMPSON?
- 16 A. I BELIEVE ON THIS MATTER IT WOULD HAVE BEEN,
- 17 PRIMARILY WOULD HAVE BEEN TODD THOMPSON. IT COULD HAVE BEEN
- 18 ANOTHER LAWYER.
- 19 Q. SO LET ME SHOW YOU THIS MEMORANDUM WHICH HAS BEEN
- 20 MARKED AS EXHIBIT 72. THIS IS A MEMORANDUM PREPARED BY TODD
- 21 THOMPSON.

22 LET ME DIRECT YOUR ATTENTION TO PAGE THREE OF THIS
23 MEMORANDUM, THE THIRD FULL PARAGRAPH OF WHICH READS:
24 SO FAR AS I KNOW, NO ATTORNEYS REPRESENTING
25 NORCAL WERE INVOLVED IN THE PROCESS LEADING TO THE
26 ADDENDUM. I WAS NOT AWARE OF THE ADDENDUM UNTIL
27 TWO YEARS LATER, AND I WAS AS CLOSE TO THE
28 SITUATION THAN ANYONE HERE.

SUE HERFURTH, CSR #9645

1674

1 IS MR. THOMPSON WRONG ABOUT THAT?

2 A. I HAVE THIS LAWYER OUTSIDE THAT SUGGESTED TO ME IF
3 YOU ASKED ANY QUESTIONS ABOUT COMMUNICATIONS WITH MY LAWYER,
4 I NEED TO GO TALK TO HIM.

5 Q. SURE, GO AHEAD.

6 (WHEREUPON, THE WITNESS LEFT THE COURTROOM.)

7 MR. FINKELSTEIN: DO YOU REMEMBER THE QUESTION?

8 THE WITNESS: NO, I DON'T.

9 MR. FINKELSTEIN: OKAY. I'M NOT ASKING YOU ABOUT
10 WHAT COMMUNICATIONS YOU MAY HAVE HAD WITH MR. THOMPSON. I'M
11 ASKING YOU, YOU'VE TOLD US YOU WEREN'T SURE WHETHER OR NOT
12 YOU HAD SOUGHT LEGAL ADVICE CONCERNING THE ADDENDUM.

13 I'M POINTING OUT A STATEMENT BY MR. THOMPSON IN
14 THIS MEMO THAT SUGGESTS YOU DID NOT. I'M ASKING YOU WHETHER
15 OR NOT THAT STATEMENT IS WRONG OR NOT, AND THE STATEMENT
16 READS:

17 SO FAR AS I KNOW, NO ATTORNEYS REPRESENTING
18 NORCAL WERE INVOLVED IN THE PROCESS LEADING TO THE
19 ADDENDUM.

20 BY MR. FINKELSTEIN:

21 Q. SO WHEN MR. THOMPSON WROTE THAT, DO YOU BELIEVE HE
22 WAS INACCURATE?

23 A. I JUST DON'T REMEMBER IF WE TALKED TO HIM OR
24 ANYBODY ELSE OR NOT.

25 Q. YOU DON'T REMEMBER ONE WAY OR THE OTHER?

26 A. NO, I DON'T.

27 Q. AND LOOKING AT THIS DOESN'T REFRESH YOUR
28 RECOLLECTION?

SUE HERFURTH, CSR #9645

1675

1 A. WELL, I WOULD TRUST HIS MEMORY OVER MINE, BUT I
2 JUST DON'T KNOW.

3 Q. WELL, LET ME ASK YOU THIS, THEN: WHAT REASON WOULD
4 THERE BE IN NOT SEEKING LEGAL ADVICE BEFORE ENTERING INTO AN
5 ADDENDUM THAT YOU BELIEVED AS OF OCTOBER 9 COULD COST NORCAL
6 AS MUCH AS TWO MILLION A YEAR FOR FIVE YEARS? DID YOU HAVE
7 ANY REASON FOR NOT SEEKING LEGAL ADVICE?

8 A. NOT THAT I REMEMBER.

9 Q. NOW, WITH REGARD TO THE WORDING OF THE ADDENDUM,
10 DID YOU SUGGEST OR PROPOSE ANY OF THE WORDING FOR THE
11 ADDENDUM?

12 A. I DON'T HAVE ANY RECOLLECTION.

13 Q. YOU HAVE NO RECOLLECTION ONE WAY OR THE OTHER?

14 A. NO, I DON'T.

15 Q. HAS ANYTHING HAPPENED SINCE YOUR LAST TESTIMONY
16 BEFORE THE GRAND JURY TO AFFECT YOUR RECOLLECTION IN THIS
17 MATTER?

18 A. WELL, NOT THAT I KNOW OF.

19 MR. FINKELSTEIN: OKAY. LET ME MARK AS 117 A
20 TWO-PAGE DOCUMENT, APPEARS TO BE AN E-MAIL CHAIN. THE END
21 OF THE CHAIN APPEARS TO BE A E-MAIL FROM MICHAEL SANGIACOMO
22 TO PAUL ROTTENBERG DATED OCTOBER 9, 2000, 4:58 P.M. IT
23 MAKES REFERENCE TO AN EARLIER E-MAIL OF THAT SAME DATE AT
24 2:27 P.M.

25 THE FOREPERSON: SO MARKED.

26 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
27 JURY EXHIBIT 117.)
28 BY MR. FINKELSTEIN:

SUE HERFURTH, CSR #9645

1676

1 Q. TAKE A LOOK AT EXHIBIT 117 AND TELL US WHETHER OR
2 NOT YOU RECOGNIZE THIS E-MAIL.

3 A. I'M SORRY. AGAIN, YOUR QUESTION WAS --

4 Q. DO YOU RECOGNIZE THE E-MAIL?

5 A. VAGUELY.

6 Q. IS THIS AN E-MAIL THAT YOU SENT TO MR. ROTTENBERG
7 IN RESPONSE TO AN E-MAIL HE SENT YOU THAT SAME DAY ON
8 OCTOBER 9 SUGGESTING THE WORDING OF THE ADDENDUM?

9 A. IT APPEARS TO BE, BUT, YOU KNOW, I DON'T SEE ANY OF
10 THE USUAL E-MAIL IDENTIFIERS. I'M JUST NOT SURE.

11 Q. WHAT KIND OF E-MAIL IDENTIFIERS ARE YOU TALKING
12 ABOUT?

13 A. USUALLY WHEN I'VE SEEN E-MAILS THEY WOULD HAVE MY
14 E-MAIL ADDRESS AT NORCALWASTE.COM, AND NONE OF THAT IS ON
15 HERE.

16 Q. YOU UNDERSTAND --
17 A. I'M SORRY. IT IS THERE, DOWN UNDER ORIGINAL
18 MESSAGE. IT APPEARS IT DID COME FROM MY E-MAIL.
19 Q. SO, LOOKING AT THIS E-MAIL, IN THIS E-MAIL YOU --
20 FIRST OF ALL, THE EARLIER E-MAIL, WHICH IS THE BEGINNING OF
21 THE CHAIN, APPARENTLY, HAS A DRAFT OF THE OCTOBER 9
22 ADDENDUM, CORRECT?
23 A. YES.
24 Q. AND IN THIS DRAFT, APPARENTLY THAT MR. ROTTENBERG
25 SENT TO YOU FOR YOUR REVIEW, CORRECT?
26 A. APPARENTLY SO, YES.
27 Q. IN THE DRAFT, THE WORDING IS, "THE PARTIES HAVE
28 LEARNED THAT THE CITY OF SAN JOSE AND/OR ONE OR MORE UNION

SUE HERFURTH, CSR #9645

1677

1 LOCALS IN SAN JOSE MAY REQUIRE," ET CETERA, CORRECT?
2 A. THAT'S WHAT IT SAYS.
3 Q. YEAH. NOW, YOU SENT BACK IN RESPONSE TO THIS
4 E-MAIL A REWORDING OF THAT ADDENDUM AGREEMENT, CORRECT?
5 A. I THINK SO.
6 MR. FINKELSTEIN: LET ME MARK AS EXHIBIT 118 AN
7 E-MAIL ALSO DATED OCTOBER 9, 2000, FROM MIKE SANGIACOMO TO
8 PAUL ROTTENBERG, AND I UNDERSTAND IT'S 4:33 P.M.
9 THE FOREPERSON: SO MARKED.
10 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
11 JURY EXHIBIT GRAND JURY 118.)
12 BY MR. FINKELSTEIN:
13 Q. NOW, IN EXHIBIT 118, THIS IS YOUR E-MAIL REPLYING

14 TO THE EARLIER E-MAIL WITH YOUR REVISIONS TO THE ADDENDUM,
15 CORRECT?

16 A. IT LOOKS LIKE IT, YES.

17 Q. IN THIS REVISION THAT YOU HAVE SENT BACK TO
18 MR. ROTTENBERG, THE REFERENCE ABOUT THE PARTIES HAVING
19 LEARNED FROM ONE OR MORE LOCAL UNIONS HAS BEEN REMOVED,
20 CORRECT?

21 A. IT APPEARS TO BE.

22 Q. SO WHY DID YOU TAKE OUT THAT REFERENCE IN YOUR
23 VERSION OF THE ADDENDUM?

24 A. I'M NOT REMEMBERING ANY OF THESE CHAINS OF EVENTS
25 AS I'M SITTING HERE TODAY.

26 Q. OKAY. SO YOU HAVE NO RECOLLECTION WHATSOEVER AS TO
27 WHY YOU THOUGHT IT WOULD BE BETTER TO REMOVE THE REFERENCE
28 TO THE UNIONS IN THE ADDENDUM, IS THAT WHAT YOU'RE SAYING?

SUE HERFURTH, CSR #9645

1678

1 A. I DON'T REMEMBER BEING INVOLVED IN WRITING THIS
2 DOCUMENT AND EDITING IT AND WHO DID WHAT TO IT. I JUST
3 DON'T RECALL.

4 Q. DO YOU AGREE THAT'S WHAT THE SERIES OF E-MAIL
5 SUGGEST DID HAPPEN, THAT YOU RECEIVED A DRAFT FROM
6 MR. ROTTENBERG OF THE OCTOBER 9 ADDENDUM, MADE SOME CHANGES
7 AND SENT BACK THE DRAFT, AND THAT'S HOW THE ADDENDUM WAS PUT
8 TOGETHER?

9 A. PROBABLY, BUT I JUST DON'T REMEMBER.

10 Q. LET ME TRY THIS: YOU NOTICE THESE DOCUMENTS ALL
11 HAVE A NORCAL BATES STAMP ON THE BOTTOM?

12 A. OKAY.

13 Q. ARE YOU SUGGESTING THAT THIS IS SOMEHOW FALSE OR
14 FABRICATED EVIDENCE OR NOT CORRECT SOMEHOW?

15 A. NO. I JUST DON'T HAVE A MEMORY OF IT.

16 Q. YOU'RE NOT DENYING THAT HAPPENED, YOU JUST DON'T
17 RECALL?

18 A. I DON'T REMEMBER IT.

19 Q. AND DO YOU AGREE THAT THIS SERIES OF E-MAILS
20 SUGGESTS THAT WHAT HAPPENED IS MR. ROTTENBERG DRAFTED UP A
21 VERSION OF THE ADDENDUM, YOU REVIEWED IT, MADE SOME CHANGES,
22 SENT IT BACK, AND THAT'S WHAT BECAME THE OCTOBER 9 ADDENDUM
23 THAT WAS SIGNED? THAT'S WHAT THE E-MAIL SUGGESTS.

24 A. SAY THAT ONE MORE TIME?

25 Q. DO YOU AGREE THAT THIS SERIES OF E-MAILS SUGGESTS
26 THAT MR. ROTTENBERG PREPARED A DRAFT OF THE OCTOBER 9
27 ADDENDUM FOR YOUR REVIEW, YOU REVIEWED IT, MADE SOME CHANGES
28 TO IT, AND THEN SIGNED IT AND SENT IT BACK TO MR. DUONG FOR

SUE HERFURTH, CSR #9645

1679

1 HIS SIGNATURE?

2 A. SOMETHING LIKE THAT HAPPENED, YES.

3 MR. FINKELSTEIN: OKAY. NOW, LET ME MARK AS
4 EXHIBIT 119 A PAGE FROM MR. BILL JONES' DATEBOOK FOR
5 SEPTEMBER, THE WEEK OF SEPTEMBER 29, 2000 TO OCTOBER 12,
6 2000.

7 THE FOREPERSON: SO MARKED.

8 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
9 JURY EXHIBIT 119.)

10 BY MR. FINKELSTEIN:

11 Q. LET ME DIRECT YOUR ATTENTION TO THIS ENTRY ON WHAT
12 APPEARS TO BE A PAGE FROM MR. JONES' S DATEBOOK.

13 FIRST, IF YOU LOOK AT MONDAY, OCTOBER 9, 2000,
14 THAT ENTRY, IT REFLECTS A PREP FOR TUESDAY IN SAN FRANCISCO
15 WITH MIKE S. AND JOHN N. AND RICH L. , AND THAT WOULD BE
16 FROM 9:00 A.M. TO 2:00 P.M. DO YOU SEE THAT ENTRY?

17 A. YES, I DO.

18 Q. DO YOU RECALL A PREP MEETING AT NORCAL' S OFFICES ON
19 THE DAY BEFORE THE TUESDAY, OCTOBER 10 SAN JOSE CITY COUNCIL
20 VOTE ON YOUR PROPOSAL?

21 A. I DON' T REMEMBER IT.

22 Q. YOU HAVE NO RECOLLECTION OF SUCH A MEETING?

23 A. I DON' T REMEMBER A MEETING. IT COULD HAVE, BUT I
24 DON' T REMEMBER.

25 Q. IT WAS YOUR PRACTICE IN SEEKING PUBLIC CONTRACTS
26 THAT REQUIRED COUNCIL VOTES TO HAVE MEETINGS BEFORE THE VOTE
27 WITH THE PERSONS INVOLVED IN THE PROPOSAL TO MAKE SURE
28 NORCAL PUT ITS BEST FACE FORWARD AT THE COUNCIL MEETING?

SUE HERFURTH, CSR #9645

1680

1 A. YOU SAID WAS IT OUR PRACTICE?

2 Q. YES. THE CONTRACT WITH THE CITY OF SAN JOSE, THAT
3 WAS NOT THE FIRST TIME NORCAL SAW OR RECEIVED A CONTRACT
4 FROM A GOVERNMENTAL AGENCY, WAS IT?

5 A. NOT THE FIRST TIME, NO.

6 Q. THAT' S BASICALLY A BIG PART OF YOUR BUSINESS,
7 DEPENDS ON GETTING CONTRACTS FROM THE CITY OR COUNTY

- 8 GOVERNMENTS OR OTHER GOVERNMENTAL AGENCIES, CORRECT?
- 9 A. YES.
- 10 Q. IN ORDER TO GET CONTRACTS, TYPICALLY, YOU HAVE TO
- 11 MAKE PRESENTATIONS, RIGHT?
- 12 A. VARIOUS PEOPLE WOULD, YES.
- 13 Q. YOU ATTENDED THE MEETING ON TUESDAY, OCTOBER 10,
- 14 RIGHT?
- 15 A. THAT'S THE CITY COUNCIL MEETING?
- 16 Q. YES.
- 17 A. YES, I BELIEVE SO.
- 18 Q. OTHER REPRESENTATIVES FROM NORCAL ATTENDED?
- 19 A. I BELIEVE -- I'M SURE THERE WAS SOME OTHERS, YES.
- 20 Q. WOULD IT BE UNUSUAL FOR THERE TO BE A MEETING OF
- 21 THE NORCAL PEOPLE IN ADVANCE OF A PRESENTATION TO THE
- 22 GOVERNMENT TO COORDINATE THE PRESENTATION?
- 23 A. IT VERY LIKELY WOULD HAPPEN. THERE WEREN'T THAT
- 24 MANY OF THESE THAT I PARTICIPATED IN.
- 25 Q. IF THERE WEREN'T THAT MANY, WOULDN'T YOU EXPECT
- 26 HAVING ONE IN THIS CASE, AS THIS DATEBOOK SUGGESTS, WOULD BE
- 27 SOMETHING YOU WOULD BE MORE LIKELY TO REMEMBER?
- 28 A. I DON'T KNOW THAT I REMEMBER A PREPARATION MEETING

SUE HERFURTH, CSR #9645

1681

- 1 MORE THAN ANY OTHER MEETING I'VE HAD.
- 2 Q. SO YOUR TESTIMONY IS YOU HAVE NO RECOLLECTION OF
- 3 SUCH A MEETING TAKING PLACE?
- 4 A. I DON'T RECALL IT.
- 5 Q. ARE YOU DENYING THAT IT HAPPENED, OR SIMPLY SAYING

- 6 I DON' T REMEMBER WHETHER IT HAPPENED OR NOT?
- 7 A. I SAID I DON' T REMEMBER IT HAPPENING; I DON' T
- 8 REMEMBER THE MEETING.
- 9 Q. IN YOUR MIND DOES THAT MEAN IT DIDN' T HAPPEN, OR
- 10 IT' S SIMPLY THAT YOU DON' T REMEMBER WHETHER IT HAPPENED?
- 11 A. IT MEANS I DON' T REMEMBER.
- 12 Q. WELL, WHEN YOU SAY YOU DON' T REMEMBER, THERE' S
- 13 SEVERAL POSSIBILITIES FOR THAT ANSWER. ONE COULD BE, TO MY
- 14 RECOLLECTION IT DID NOT HAPPEN; IS THAT WHAT YOU' RE SAYING?
- 15 OR ARE YOU SAYING, I CAN' T REMEMBER ONE WAY OR THE OTHER
- 16 WHETHER IT HAPPENED?
- 17 A. I DON' T RECALL IF THERE WAS A MEETING LIKE THAT I
- 18 ATTENDED.
- 19 Q. OR NOT?
- 20 A. OR NOT.
- 21 Q. DID BILL JONES EVER RAISE FUNDS FOR MAYOR GONZALES
- 22 TO YOUR KNOWLEDGE, CAMPAIGN FUNDS, CONTRIBUTIONS?
- 23 A. DID HE RAISE FUNDS?
- 24 Q. DID HE SOLICIT CONTRIBUTIONS ON BEHALF OF MAYOR
- 25 GONZALES?
- 26 A. UH -- OF OTHERS, I' M NOT SURE. I BELIEVE HE ASKED
- 27 ME FOR A CONTRIBUTION AT ONE POINT IN TIME.
- 28 Q. ON ONE OCCASION OR MORE THAN ONE OCCASION?

SUE HERFURTH, CSR #9645

1682

- 1 A. I CAN ONLY THINK OF ONE.
- 2 Q. WHEN WAS THAT?
- 3 A. I DON' T KNOW.

4 MR. FINKELSTEIN: I AM GOING TO MARK AS EXHIBIT
5 120 A MEMORANDUM FROM BILL JONES TO MIKE SANGIACOMO, ARCHIE
6 HUMPHREY, MARK LOMELE, AND GEORGE MCGRATH DATED JANUARY 23,
7 2002, SUBJECT, JANUARY 28 FUNDRAISER.
8 THE FOREPERSON: SO MARKED.
9 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
10 JURY EXHIBIT 120.)
11 BY MR. FINKELSTEIN:
12 Q. HAVE YOU SEEN THIS MEMO BEFORE?
13 A. I THINK SO.
14 Q. AND IS THIS A MEMO YOU RECEIVED FROM BILL JONES ON
15 OR ABOUT JANUARY 23 OF 2002?
16 A. THAT'S WHAT IT SAYS, YES.
17 Q. DO YOU HAVE ANY REASON TO BELIEVE THE DATE IS NOT
18 ACCURATE?
19 A. NO.
20 Q. AND IN THIS MEMO, DOES MR. JONES SOLICIT
21 CONTRIBUTIONS ON BEHALF OF MAYOR GONZALES FROM YOU AND
22 OTHERS AT NORCAL IS?
23 A. YES, HE IS, OR DID.
24 Q. AND DID YOU MAKE A CONTRIBUTION IN RESPONSE TO THIS
25 MEMO?
26 A. I'M SORRY? DID I MAKE --
27 Q. DID YOU MAKE A CONTRIBUTION IN RESPONSE TO THE
28 MEMO?

SUE HERFURTH, CSR #9645

1683

1 A. I BELIEVE I DID.

2 Q. OKAY.

3 MR. FINKELSTEIN: I'M GOING TO MARK AS EXHIBIT 121
4 A MAY 26, 2004 LETTER FROM JOE GUERRA TO MIKE SANGIACOMO.

5 THE FOREPERSON: SO MARKED.

6 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
7 JURY EXHIBIT 121.)

8 BY MR. FINKELSTEIN:

9 Q. WOULD YOU LOOK AT THIS NEXT EXHIBIT, 121, AND TELL
10 US WHETHER OR NOT YOU'VE SEEN THIS DOCUMENT BEFORE?

11 A. I'M PRETTY SURE I REMEMBER THIS ONE.

12 Q. OKAY. AND DID YOU ASK MR. GUERRA TO PROVIDE YOU
13 WITH A LETTER LIKE THIS?

14 A. WELL, I ASKED HIM FOR A LETTER CONFIRMING THAT WE
15 WERE GOING TO GET PAID, AND THIS IS WHAT I GOT.

16 Q. WHY DID YOU ASK HIM FOR THAT LETTER?

17 A. SO I COULD CONFIRM TO OUR COMPANY THAT WE WERE
18 GOING TO GET REIMBURSED FROM THE CITY OF SAN JOSE FOR THE
19 LABOR COSTS.

20 Q. TO CONFIRM IT TO YOUR COMPANY OR TO CONFIRM IT TO
21 YOUR COMPANY'S AUDITORS?

22 A. UH --

23 Q. OR BOTH?

24 A. I THINK AT THIS TIME, BASED ON THE DATE, IT WOULD
25 HAVE BEEN TO THE COMPANY, THE AUDIT WOULD OCCUR LATER IN THE
26 YEAR.

27 Q. NOW, IN THIS LETTER MR. GUERRA MAKES REFERENCE TO
28 UNFORESEEN LABOR COSTS. DO YOU SEE THAT?

SUE HERFURTH, CSR #9645

1 A. I SEE THAT.

2 Q. DO YOU KNOW WHAT HE' S TALKING ABOUT WHEN HE MAKES
3 REFERENCE TO UNFORESEEN LABOR COSTS?

4 A. WHAT I THINK HE' S TALKING ABOUT, WHICH IS -- I' M
5 HOPING THAT' S WHAT HE THOUGHT IT WAS -- WAS THE EXTRA COST
6 THAT CWS AND THAT, THEREFORE, NORCAL WERE BY HAVING THE
7 WORKERS AT CWS' S FACILITY BE REPRESENTED BY THE TEAMSTERS.

8 Q. YES. AND IN WHAT SENSE ARE THOSE COSTS UNFORESEEN?

9 A. I GUESS THEY WEREN' T FORESEEN IN NORCAL' S ORIGINAL
10 BID.

11 Q. BUT THEY WERE FORESEEN TO HIM ON OCTOBER 6, 2000,
12 WERE THEY NOT, WHEN HE HEARD THE MAYOR ASK YOU YOU TO GET
13 CWS TO SWITCH TO THE TEAMSTERS, YOU TOLD THE MAYOR THAT
14 NORCAL WOULD HAVE TO BE MADE WHOLE, AND THE MAYOR AGREED TO
15 DO THAT, CORRECT?

16 A. AND THE MAYOR INDICATED HE WOULD MAKE HIS BEST
17 EFFORTS TO MAKE US WHOLE.

18 Q. AS OF OCTOBER 6 -- AND MR. GUERRA WAS PRESENT, WAS
19 HE NOT?

20 A. MR. GUERRA WAS PRESENT AT THE MEETINGS.

21 Q. SO APPARENTLY AFTER OCTOBER 6 OF 2000 THIS ISSUE
22 WAS NOT UNFORESEEN BY MR. GUERRA, WAS IT?

23 A. I DON' T KNOW HOW TO INTERPRET WHAT HE WAS THINKING.

24 Q. I' M ASKING YOU WHAT YOU' RE THINKING. DO YOU
25 BELIEVE IT' S ACCURATE TO CHARACTERIZE THE ADDITIONAL LABOR
26 COSTS AS UNFORESEEN?

27 A. WELL, TECHNICALLY, AT ONE POINT THEY WERE.

28 Q. WHAT POINT IS THAT?

1 A. WHEN NORCAL PLACED ITS BID.

2 Q. AND AFTER OCTOBER 6, 2000, WOULD YOU CHARACTERIZE
3 THE COSTS AS UNFORESEEN?

4 A. AT THAT POINT, NO.

5 Q. AND I TAKE IT OCTOBER 6, 2000 IS TWO YEARS BEFORE
6 2004, OR A YEAR AND A HALF BEFORE 2004, CORRECT?

7 A. I MISSED THE DATES.

8 Q. OKAY. YOU JUST TOLD US YOU WERE NOT, YOU WOULD NOT
9 CHARACTERIZE THE COSTS AS UNFORESEEN AFTER OCTOBER 6, 2000,
10 CORRECT?

11 A. CORRECT.

12 Q. SO THEY WOULD NOT HAVE BEEN UNFORESEEN IN MAY 2004,
13 THE DATE OF THIS LETTER, CORRECT?

14 A. YEAH -- I DON'T KNOW HOW HE INTENDED TO MEAN IT --

15 Q. I'M SAYING YOUR CHARACTERIZATION, SIR, YOU WOULD
16 NOT CHARACTERIZE THE COSTS AS UNFORESEEN AS OF MAY OF 2004,
17 WOULD YOU?

18 A. WELL, IN RELATION TO MY ORIGINAL BID, YES.

19 Q. BUT NOT AFTER OCTOBER 6, 2000, CORRECT?

20 A. NOT AFTER -- NO, NOT AFTER THAT.

21 Q. AS A MATTER OF FACT, IN THE FIRST HALF OF 2003,
22 DIDN'T MR. GUERRA WORK ON GETTING A RATE INCREASE, A GARBAGE
23 RATE INCREASE TO PAY FOR THESE LABOR COSTS?

24 A. AGAIN, I'M NOT SURE. I DON'T RECALL THE TIME FRAME
25 ON WHEN THE RATE INCREASE WAS GRANTED.

26 Q. LET ME SEE IF I CAN HELP ORIENT YOU. THE CONTRACT
27 WAS AWARDED IN 2000, SIGNED IN MARCH OF 2001, THE OPERATIVE
28 STARTING DATE WAS JULY 1, 2002. THE AMENDMENT TO THE

1 CONTRACT WAS FIRST VOTED ON IN SEPTEMBER OF 2004, AND THE
2 GARBAGE RATES WERE INCREASED IN 2003 WITH TWO SUCCESSIVE
3 NINE PERCENT RATE HIKES. DO YOU RECALL THOSE EVENTS?

4 A. MOST OF THEM, BUT SOMEWHAT VAGUELY.

5 Q. SO WASN' T MR. GUERRA WORKING TO GET THE CITY TO
6 RAISE ITS GARBAGE RATES TO PAY FOR THESE UNFORESEEN LABOR
7 COSTS IN 2003?

8 A. I BELIEVE HE WAS.

9 Q. SO WOULD IT BE ACCURATE, WOULD YOU SAY THAT LETTER
10 IS ACCURATE WHEN HE CHARACTERIZES LABOR COSTS AS UNFORESEEN?
11 I' M ASKING WHAT YOU THINK.

12 A. IT' S ALL A MATTER OF HIS REFERENCE POINT AS TO WHEN
13 HE THOUGHT THEY WERE UNFORESEEN.

14 Q. WELL, FIRST OF ALL, THE LETTER SAYS IT WAS
15 HAND-DELIVERED, CORRECT?

16 A. YES.

17 Q. DO YOU RECALL HOW YOU RECEIVED IT?

18 A. YES.

19 Q. HOW?

20 A. HE HANDED IT TO ME IN HIS OFFICE.

21 Q. AT CITY HALL?

22 A. I GUESS THAT WAS CITY HALL.

23 Q. AND WHO ELSE WAS PRESENT FOR, TO WITNESS THAT?

24 A. I WOULD HAVE TO GUESS. I DON' T REMEMBER.

25 Q. DID YOU GO ALONE?

26 A. I DON' T BELIEVE SO.

27 Q. WHO DID YOU GO WITH?

28 A. I DON'T RECALL WHO WAS AT THE MEETING.

SUE HERFURTH, CSR #9645

1687

1 Q. WAS THE MAYOR THERE?

2 A. I DON'T BELIEVE SO, NO.

3 Q. WAS ARCHIE HUMPHREY THERE?

4 A. POSSIBLY, BUT I DON'T REMEMBER.

5 Q. JOHN NICOLETTI, WAS HE THERE?

6 A. AGAIN, I DON'T RECALL.

7 Q. LET ME SHOW YOU WHAT HAS BEEN MARKED AS EXHIBIT 39.

8 I THINK WE'VE LOOKED AT THIS BEFORE.

9 THIS IS A LETTER FROM JOHN NICOLETTI TO THE CITY
10 MANAGER, DEL BORGS DORF, FORMALLY REQUESTING AN AMENDMENT TO
11 THE NORCAL AGREEMENT TO COVER THESE EXTRA LABOR COSTS,
12 CORRECT?

13 A. I NEED A MOMENT TO READ IT.

14 Q. GO AHEAD.

15 A. I BELIEVE THAT'S WHAT IT IS, YES.

16 Q. OKAY. AND DID YOU REVIEW THIS LETTER BEFORE

17 JOHN NICOLETTI SENT IT OUT TO THE CITY MANAGER?

18 A. I THINK SO.

19 Q. THIS WAS AN IMPORTANT LETTER FOR YOUR COMPANY, WAS
20 IT NOT?

21 A. WELL, IT WAS IMPORTANT THAT WE GET THE INCREASE IN
22 THE CONTRACT AMOUNT.

23 Q. THERE WAS \$11,000,000 RIDING ON IT, WASN'T THERE?

24 A. APPROXIMATELY.

25 Q. AND DID YOU, YOU KNOW WHO ACTUALLY WROTE THE LETTER

26 FOR NORCAL?

27 A. NO, I DON' T REMEMBER.

28 Q. DID ANYONE ELSE REVIEW THE LETTER BESIDES YOU AND

SUE HERFURTH, CSR #9645

1688

1 JOHN NICOLETTI ?

2 A. PROBABLY, BUT I DON' T KNOW.

3 Q. NOW, WHAT WAS YOUR REASON IN REVIEWING THE LETTER?

4 A. IF I DID, IT WOULD HAVE BEEN CIRCULATED AMONG THOSE
5 OF US THAT WERE INTERESTED IN WHAT WAS GOING ON HERE.

6 Q. WELL, IT WASN' T JUST A MATTER OF CURIOSITY, YOU
7 WANTED TO ACCOMPLISH SOMETHING WITH THIS LETTER, CORRECT?

8 A. YES.

9 Q. YOU WERE SEEKING AN AMENDMENT FROM THE CITY THAT
10 WOULD RESULT IN ADDITIONAL 11-AND-A-QUARTER MILLION DOLLARS
11 MONEY FROM THE CITY AND NORCAL, CORRECT?

12 A. CORRECT.

13 Q. SO YOU WERE TRYING TO ACCOMPLISH A RESULT BY THIS
14 LETTER, RIGHT?

15 A. YES.

16 Q. SO YOU CIRCULATED OR REVIEWED IT FOR THE PURPOSE OF
17 MAKING THE BEST POSSIBLE CASE YOU COULD TO GET THE CITY TO
18 PAY THIS MONEY, RIGHT?

19 A. I MISSED THE QUESTION.

20 Q. THE REASON IT WAS REVIEWED BY YOU AND CIRCULATED
21 WAS TO MAKE THE BEST POSSIBLE CASE FOR AN AMENDMENT TO THE
22 CONTRACT AND FOR SEEKING ADDITIONAL MONEY FROM THE CITY,
23 RIGHT?

- 24 A. PROBABLY FAIR, YES.
25 Q. I ' M SORRY?
26 A. THAT ' S PROBABLY FAIR, YES.
27 Q. NOW, IN THE LETTER, IN THE SECOND PARAGRAPH THE
28 LETTER STATES:

SUE HERFURTH, CSR #9645

1689

- 1 THIS SIGNIFICANT WAGE DISCREPANCY, ALONG WITH
2 THE POSSIBILITY THAT THE SAN JOSE WORKERS MIGHT
3 LOSE THEIR JOBS, PROMPTED THE MAYOR' S OFFICE TO
4 URGE NORCAL TO EXPLORE AN ARRANGEMENT WITH CWS
5 THAT WOULD ALLOW CWS TO RETAIN EXISTING WORKERS AT
6 THE HIGHER TEAMSTERS WAGE SCALE.
7 DO YOU SEE THAT SENTENCE?
8 A. YES.
9 Q. WHAT DOES THAT REFER TO, WHAT EVENT IN HISTORY DOES
10 THAT REFER TO?
11 A. IN MY MIND, THAT ' S THE MEETING WITH THE MAYOR ON
12 OCTOBER 6.
13 Q. AND AT THAT MEETING ON OCTOBER 6, DID THE MAYOR SAY
14 ANYTHING ABOUT WAGE DISCREPANCIES, WORKERS LOSING JOBS?
15 A. I KNOW THE SUBJECTS WERE DISCUSSED.
16 Q. WHAT DID HE SAY?
17 A. WHAT DID --
18 Q. WHAT DID THE MAYOR SAY ABOUT THAT?
19 A. THE MAYOR WANTED FIRST TO SEE THAT RECYCLING
20 WORKERS WHO WERE CURRENTLY EMPLOYED AT ANOTHER COMPANY WOULD
21 BE RETAINED BY CWS.

22 Q. THAT WAS ALREADY IN THE REQUEST FOR PROPOSALS,
23 RIGHT, WORKER RETENTION WAS ALREADY IN THE RFP?

24 A. I DON'T KNOW THAT IT RELATED TO THE RECYCLE PLUS
25 WORKERS. I BELIEVE THAT WAS RELATED TO COLLECTION WORKERS.

26 Q. YOU'RE SUGGESTING THAT THE RFP DID NOT REQUIRE THE
27 RETENTION OF RECYCLE PLUS WORKERS?

28 A. I DON'T RECALL THAT WAS A REQUIREMENT.

SUE HERFURTH, CSR #9645

1690

1 Q. OKAY. AND WHAT DID THE MAYOR SAY ABOUT HIGHER
2 TEAMSTER WAGE SCALE?

3 A. WHAT DID HE SAY? HE SAID TO US THAT IF WE WOULD
4 CAUSE CWS TO USE TEAMSTERS IN THEIR FACILITY, THAT HE WOULD
5 MAKE HIS BEST EFFORT TO MAKE US WHOLE ON THAT ADDITIONAL
6 COST.

7 Q. WHY WOULD THERE BE AN ADDITIONAL COST FOR SWITCHING
8 FROM LONGSHOREMEN TO TEAMSTERS, IN YOUR MIND?

9 A. THE ADDITIONAL COST CAME FROM VERY DIFFERENT
10 CONTRACTUAL TERMS BETWEEN THE LONGSHOREMEN FOR THE
11 RELATIONSHIP THEY PREVIOUSLY HAD WITH CWS AND THE TEAMSTERS
12 AT THE EXISTING FACILITY IN SAN JOSE PRIOR TO US GETTING IN
13 CONTRACT.

14 Q. DID YOU BELIEVE THAT THERE WAS ANY LEGAL
15 REQUIREMENT THAT A NEW EMPLOYER HIRING DISPLACED WORKERS HAD
16 TO BE BOUND BY THE OLD EMPLOYER'S COLLECTIVE BARGAINING
17 AGREEMENT?

18 A. UH -- TYPICALLY -- I DON'T KNOW IF IT'S LAW OR NOT.

19 Q. DID YOU BELIEVE THERE WAS SOME REQUIREMENT IN THE

20 REQUEST FOR PROPOSAL THAT MANDATED THAT, THAT THE NEW
21 EMPLOYER PAY NO LESS THAN THE EXISTING WAGES AND BENEFITS
22 PAID BY THE OLD EMPLOYER?

23 A. ONLY AS I RECALL AS IT RELATES TO THE COLLECTION,
24 THE DRIVERS WHO PICKED UP GARBAGE AND RECYCLABLES.

25 Q. SO THAT DIDN'T APPLY TO THE RECYCLING WORKERS,
26 CORRECT?

27 A. NOT IN MY RECOLLECTION, NO. THE RECYCLING SORTERS.

28 Q. SO WHY DID YOU THINK THAT IF CWS SWITCHED TO THE

SUE HERFURTH, CSR #9645

1691

1 TEAMSTERS UNION FOR RECYCLING SORTERS, THEY WOULD
2 AUTOMATICALLY PAY NO LESS THAN THE EXISTING WAGES AND
3 BENEFITS?

4 A. WHAT -- WOULD YOU REPEAT THE QUESTION?

5 Q. SURE. WHY DID YOU THINK THAT IF CWS SWITCHED FROM
6 LONGSHOREMEN TO TEAMSTERS, THAT WOULD MEAN THAT THEY WOULD
7 HAVE TO PAY NO LESS THAN THE EXISTING WAGES AND BENEFITS
8 PAID TO THE RECYCLING SORTERS?

9 A. TO SEE THAT THEY WOULD BE BOUND, THEY WOULD ENTER
10 INTO AN AGREEMENT WITH THE TEAMSTERS. MY EXPERIENCE WITH
11 UNIONS, THEY NEVER STEP BACKWARDS IN THEIR DEMANDS.

12 Q. YOU THOUGHT AS A PRACTICAL MATTER IF THEY WERE
13 FORCED TO NEGOTIATE WITH THE TEAMSTERS, CWS WOULD HAVE TO
14 PAY NO LESS THAN THE EXISTING WAGES AND BENEFITS?

15 A. NO LESS THAN, YES.

16 Q. YOU GO ON TO SAY SAME PARAGRAPH -- NOT YOU, THIS
17 LETTER SAYS, WHICH YOU REVIEWED:

18 NORCAL IS ADVISED THAT THE CITY WOULD NOT
19 WANT A ROCK-BOTTOM PRICE FOR ITS NEW COLLECTION
20 CONTRACT IF DOING SO REQUIRED DISPLACING EXISTING
21 RECYCLING FACILITY WORKERS OR FORCING THESE
22 WORKERS TO ACCEPT LOWER PAY.

23 WHO TOLD YOU THAT FROM THE CITY?

24 A. I BELIEVE THAT WAS A, THE GIST OF WHAT THE MAYOR
25 WAS TELLING US AT THAT MEETING ON OCTOBER 6.

26 Q. WELL, LET ME PUT IT TO YOU MORE DIRECTLY,
27 MR. SANGIACOMO. IN THIS LETTER, IS NORCAL TRYING TO PUT A
28 BETTER FACE ON WHAT HAPPENED IN THE MEETING WITH THE MAYOR

SUE HERFURTH, CSR #9645

1692

1 ON OCTOBER 6, 2000, THAN WHAT ACTUALLY HAPPENED?

2 A. I DON'T THINK SO.

3 Q. SO IT'S YOUR TESTIMONY THIS AFTERNOON THAT THE
4 MAYOR AT THIS OCTOBER 6, 2000 MEETING MADE A COMMENT TO YOU
5 THAT THE CITY DIDN'T WANT A ROCK-BOTTOM PRICE FOR ITS NEW
6 COLLECTION CONTRACT IF DOING SO REQUIRED DISPLACING EXISTING
7 RECYCLING WORKERS; IS THAT YOUR TESTIMONY?

8 A. I DON'T THINK HE USED THOSE WORDS, BUT THAT WAS THE
9 GIST OF WHAT HE SAID.

10 Q. WHAT, TO THE BEST OF YOUR RECOLLECTION, WERE THE
11 WORDS THE MAYOR USED ON OCTOBER 6, 2000?

12 A. SOMETHING ALONG THE LINE HE WANTED US TO, HE WANTED
13 THE FACILITY TO BE REPRESENTED BY THE TEAMSTERS
14 RECOGNIZING -- HE RECOGNIZED AFTER WE DISCUSSED IT THAT
15 THERE WOULD BE AN ADDITIONAL COST TO US, TO CWS FOR USING

16 TEAMSTERS VERSUS LONGSHOREMEN, AND HE INDICATED HE WOULD USE
17 HIS BEST EFFORTS TO MAKE US WHOLE.

18 Q. AND YOU TOLD US IN THE PAST YOU FELT YOU WERE BEING
19 PRESSURED BY THE MAYOR, CORRECT?

20 A. YES.

21 Q. WHAT WAS IT ABOUT THAT THAT CAUSED YOU TO FEEL YOU
22 WERE BEING PRESSURED?

23 A. WELL, YOU DON' T OFTEN IN MY EXPERIENCE GET BROUGHT
24 INTO A MAYOR' S OFFICE WITH REPRESENTATIVES FROM A LABOR
25 UNION AND TOLD, I WANT YOU TO USE THIS UNION. THAT HAPPENED
26 BECAUSE HE WANTED SOMETHING TO OCCUR.

27 Q. WHEN YOU SAY THAT HAPPENED, DO YOU MEAN THE SWITCH
28 HAPPENED BECAUSE OF WHAT THE MAYOR SAID?

SUE HERFURTH, CSR #9645

1693

1 A. (NO RESPONSE.)

2 Q. WHAT IS IT THAT HAPPENED BECAUSE HE WANTED
3 SOMETHING TO OCCUR?

4 A. CWS AGREED TO HAVE TEAMSTERS REPRESENT THEIR
5 WORKFORCE. WE AGREED TO GO ALONG WITH THAT AND TO AGREE TO
6 PAY HIGHER WAGES AND BENEFITS AND SUBSIDIZE CWS AS LONG AS
7 THE MAYOR COMMITTED TO US THAT HE WOULD MAKE HIS BEST
8 EFFORTS TO TRY AND MAKE US WHOLE.

9 MR. FINKELSTEIN: OKAY. LET ME MARK AS MY NEXT
10 EXHIBIT A FOUR-PAGE DOCUMENT. IT HAS A KPMG LOGO ON THE
11 TOP, AND IT' S LABELED "SIGNIFICANT ISSUE ACCOUNTING FOR THE
12 CWS CONTRACT. "

13 THE FOREPERSON: SO MARKED.

14 (AN EXHIBIT WAS MARKED FOR IDENTIFICATION AS GRAND
15 JURY EXHIBIT 122.)

16 BY MR. FINKELSTEIN:

17 Q. I UNDERSTAND YOU'RE NOT THE AUTHOR OF THE DOCUMENT;
18 YOU MAY NEVER HAVE SEEN THE DOCUMENT BEFORE. IF YOU WANT TO
19 READ THE DOCUMENT YOU MAY DO SO, BUT I HAVE SOME QUESTIONS
20 FOR YOU.

21 A. THIS IS ONE OF THE CIRCUMSTANCES WHERE THE LAWYER
22 ASKED ME TO TALK TO HIM BEFORE ANSWERING QUESTIONS.

23 Q. SURE. GO AHEAD.

24 (WHEREUPON, THE WITNESS LEFT THE COURTROOM.)

25 MR. FINKELSTEIN: I DON'T THINK THERE'S A QUESTION
26 BEFORE YOU YET.

27 THE WITNESS: I DON'T REMEMBER ONE.

28 BY MR. FINKELSTEIN:

SUE HERFURTH, CSR #9645

1694

1 Q. LET ME DIRECT YOUR ATTENTION TO THE SECOND PAGE OF
2 THE DOCUMENT. IT HAS A BATES NUMBER KPMG000143 AT THE
3 BOTTOM. THE INTERNAL NUMBER APPEARS TO BE PAGE 21, ITEM
4 FOUR. THE HEADING IS, "COLLECTABILITY IS REASONABLY
5 ASSURED."

6 DO YOU SEE THAT?

7 A. I SEE IT.

8 Q. LET ME REPRESENT TO YOU WE RECEIVED THESE DOCUMENTS
9 FROM NORCAL'S AUDITORS, KPMG. THEY APPEAR TO BE AUDIT
10 NOTES.

11 I THINK THE LAST TIME YOU TESTIFIED YOU TOLD US
Page 161

12 THAT THE MONEY THAT NORCAL EXPECTED TO RECEIVE FROM THE CITY
13 OF SAN JOSE TO REIMBURSE NORCAL FOR THE EXTRA MONEY IT WAS
14 PAYING CWS FOR EXTRA LABOR COSTS WAS CARRIED AS A
15 RECEIVABLE, CORRECT?

16 A. I BELIEVE THAT'S CORRECT, YES.

17 Q. YEAH. AND I GUESS THE AUDITORS HAD SOME QUESTIONS
18 ABOUT THAT, SO THEY LOOKED INTO THAT MATTER FURTHER, RIGHT?

19 A. I'M SURE THEY DID.

20 Q. OKAY. NOW, IN THIS NOTE IT MAKES REFERENCE TO SOME
21 INFORMATION THAT'S BASED ON A DISCUSSION WITH MIKE
22 SANGIACOMO; THAT WOULD BE YOU, RIGHT?

23 A. THAT'S ME.

24 Q. MARK LOMELE, NORCAL'S CFO, CORRECT?

25 A. MARK LOMELE IS NORCAL'S CFO.

26 Q. JON BRASLAW, NORCAL'S CONTROLLER?

27 A. JON IS CONTROLLER.

28 Q. AND IT'S THE SENTENCE THAT FOLLOWS THIS

SUE HERFURTH, CSR #9645

1695

1 PARENTHETICAL STATEMENT ABOUT DISCUSSIONS WITH YOURSELF AND
2 THOSE OTHER NORCAL EMPLOYEES. IT SAYS:

3 BASED ON DISCUSSIONS BETWEEN REPRESENTATIVES
4 FROM THE CITY AND NORCAL, THE FINANCIAL DIRECTOR
5 TO THE MAYOR FOR THE CITY OF SAN JOSE, THE MAYOR,
6 AND A REPRESENTATIVE OF THE CITY ATTORNEY'S
7 OFFICE, HAVE ALL AGREED THAT THE CITY WILL
8 COMPENSATE NORCAL FOR THE EXCESS COSTS OF USING
9 THE TEAMSTER'S UNION OVER THE ILWU.

10 DO YOU SEE THAT SENTENCE?
11 A. I HAVE BEEN ADVISED THAT IF YOU WANT TO ASK ME
12 QUESTIONS ABOUT COMMUNICATIONS WITH ATTORNEYS AND
13 ACCOUNTANTS, THAT I NEED TO TALK TO MY ATTORNEY ABOUT THEM,
14 THAT I'M NOT TO ANSWER.
15 Q. GO AHEAD.
16 A. I'M NOT TO ANSWER THEM.
17 Q. ARE YOU ASSERTING THE PRIVILEGE?
18 A. I BELIEVE THAT'S THE CASE, YES.
19 Q. I'M NOT TALKING ABOUT YOUR ATTORNEY, SIR. I'M
20 TALKING ABOUT THE SAN JOSE CITY ATTORNEY'S OFFICE.
21 A. AS I UNDERSTAND IT, THE PRIVILEGE COVERS
22 COMMUNICATIONS WITH OUR AUDITORS AS WELL, AND THIS IS A
23 COMMUNICATION WITH THE AUDITORS.
24 Q. YOU'RE ASSERTING AN AUDITOR PRIVILEGE FOR THIS
25 COMMUNICATION?
26 A. I WOULD ASK THAT IF YOU WANT ME TO ANSWER --
27 Q. I WOULD ASK -- NO, YOU'RE ON THE WITNESS STAND,
28 SIR. I WOULD ASK YOU STEP DOWN AND ASK YOUR ATTORNEY WHAT

SUE HERFURTH, CSR #9645

1696

1 PRIVILEGE YOU'RE ASSERTING.
2 A. MAY I SHOW HIM THIS DOCUMENT?
3 Q. NO. BUT YOU CAN LOOK AT IT AGAIN IF YOU WANT
4 TO -- WHY DON'T WE TAKE A FIVE-MINUTE BREAK.
5 THE FOREPERSON: LET'S RECESS FOR FIVE MINUTES.
6 (A BRIEF RECESS WAS TAKEN.)
7 MR. FINKELSTEIN: LADIES AND GENTLEMEN, ANOTHER

8 LEGAL ISSUE HAS COME UP; PLEASE DON'T BE CONCERNED ABOUT
9 THIS.

10 AND MR. SANGIACOMO, YOU'RE DIRECTED TO RETURN HERE
11 THIS THURSDAY, MAY 4TH, AT 10:00 A.M.

12 THE WITNESS: AT 10:00?

13 MR. FINKELSTEIN: AT 10:00 A.M., AND PLEASE
14 REMEMBER THE ADMONITION ABOUT CONFIDENTIALITY.

15 THE WITNESS: YES.

16 MR. FINKELSTEIN: THANK YOU VERY MUCH.

17 GIVEN THE LATENESS OF THE HOUR, I RECOMMEND THAT
18 WE ADJOURN UNTIL TOMORROW MORNING AT 10:00 A.M.

19 A JUROR: WHAT CAN YOU TELL US WHAT THIS IS --

20 MR. FINKELSTEIN: IT HAS TO DO WITH THE REFUSAL TO
21 ANSWER MY LAST QUESTION.

22 THE FOREPERSON: DO WE HAVE A CONFLICT WITH
23 MR. ARREOLA ON THURSDAY MORNING? YOU HAD DIRECTED HIM AS
24 WELL TO COME BACK.

25 MR. FINKELSTEIN: WELL, OBVIOUSLY, ONE OF THEM
26 WILL HAVE TO BE RESCHEDULED.

27 THE FOREPERSON: THE MESSAGE IS THAT WE SHOULD BE
28 HERE AT 10:00 O'CLOCK. COURT IS ON FOR TOMORROW AS WELL?

SUE HERFURTH, CSR #9645

1697

1 MR. FINKELSTEIN: YES, 10:00 A.M.

2 THE FOREPERSON: LET US RECESS FOR TODAY.

3 (COURT WAS ADJOURNED FOR THE DAY.)

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SUE HERFURTH, CSR #9645

1698

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I, SUE HERFURTH, DO HEREBY CERTIFY THAT THE FOREGOING IS A FULL, TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HAD IN THE WITHIN-ENTITLED ACTION HELD ON THE 20TH AND 26TH DAY OF APRIL AND THE 2ND DAY OF MAY, 2006.

THAT I REPORTED THE SAME IN STENOTYPE, BEING THE QUALIFIED AND ACTING OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SANTA CLARA, APPOINTED TO SAID COURT, AND THEREAFTER THE SAME WAS TRANSCRIBED BY COMPUTER UNDER MY DIRECTION AS HEREIN APPEARS.

I HAVE ADHERED TO CIVIL CODE OF PROCEDURE SECTION 237(1)(2), SIXTH DISTRICT COURT OF APPEAL MISCELLANEOUS ORDER 96-02, BY SEALING THROUGH REDACTION OF ALL REFERENCES, IF ANY, TO JUROR-IDENTIFYING INFORMATION, INCLUDING BUT NOT LIMITED TO NAMES, ADDRESSES AND TELEPHONE NUMBERS.

DATED THIS 29TH DAY OF JUNE, 2006.

SUE HERFURTH, C. S. R.
CERTIFICATE NO. 9645

SUE HERFURTH, CSR #9645