

ONTARIO
SUPERIOR COURT OF JUSTICE

HD/kp

B E T W E E N:

NELSON BARBADOS GROUP LTD.

Plaintiff

- and -

RICHARD IVAN COX, GERARD COX, ALAN COX, PHILIP VERNON NICHOLLS, ERIC ASHBY BENTHAM DEANE, OWEN BASIL KEITH DEANE, MARJORIE ILMA KNOX, DAVID SIMMONS, ELNETH KENTISH, GLYNE BANNISTER, GLYNE B. BANNISTER, PHILIP GRAVES, a.k.a. PHILIP GREAVES, GITTENS CLYDE TURNEY, R.G. MANDEVILLE & CO., COTTLE, CATFORD & CO., KEBLE WORRELL LTD., ERIC IAIN STEWART DEANE, ESTATE OF COLIN DEANE, LEE DEANE, ERRIE DEANE, KEITH DEANE, MALCOLM DEANE, LIONEL NURSE, LEONARD NURSE, EDWARD BAYLEY, FRANCIS DEHER, DAVID SHOREY, OWEN SEYMOUR ARTHUR, MARK CUMMINS, GRAHAM BROWN, BRIAN EDWARD TURNER, G.S. BROWN ASSOCIATES LIMITED, GOLF BARBADOES INC., KINGSLAND ESTATES LIMITED, CLASSIC INVESTMENTS LIMITED, THORNBROOK INTERNATIONAL CONSULTANTS INC., THORNBROOK INTERNATIONAL INC., S.B.G. DEVELOPMENT CORPORATION, THE BARBADOS AGRICULTURAL CREDIT TRUST, HOENIX ARTISTS MANAGEMENT LIMITED, DAVID C. SHOREY AND COMPANY, C. SHOREY AND COMPANY LTD., FIRST CARIBBEAN INTERNATIONAL BANK (BARBADOS) LTD., PRICE WATERHOUSE COOPERS (BARBADOS), ATTORNEY GENERAL OF BARBADOS, THE COUNTRY OF BARBADOS, AND JOHN DOES 1-25, PHILIP GREAVES, ESTATE OF VIVIAN GORDON LEE DEANE, DAVID THOMPSON, EDMUND BAYLEY, PETER SIMMONS, G.S. BROWN & ASSOCIATES LTD., GBI GOLF (BARBADOS) INC., OWEN GORDON FINLAY DEANE, CLASSIC INVESTMENTS LIMITED and LIFE OF BARBADOS LIMITED c.o.b. as DAVID CARMICHAEL SHOREY, PRICEWATERHOUSECOOPERS EAST CARIBBEAN FIRM, VECO CORPORATION, COMMONWEALTH CONSTRUCTION CANADA LTD., AND COMMONWEALTH CONSTRUCTION, INC.

Defendants

This is the Continued Cross-Examination of K.
WILLIAM MCKENZIE on his Affidavits sworn the 2nd day of
October, 2009, the 26th day of November, 2009, the 7th day
of January, 2010, and the 23rd day of April, 2010, taken at
the offices of VICTORY VERBATIM REPORTING SERVICES, Suite
900, Ernst & Young Tower, Toronto-Dominion Centre, Toronto,
Ontario, on the 3rd day of May, 2010.

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1 K. WILLIAM MCKENZIE, resumed

2 CONTINUED CROSS-EXAMINATION BY MR. ROMAN :

3 1708. Q. Mr. McKenzie, before we proceed to
4 ask questions, I don't have any of the accounts of
5 yours beyond November 2008, which we got from Ms.
6 Duncan, so I would like to have copies of all of the
7 dockets and accounts that are missing from November
8 2008 until the conclusion of the case.

9 MR. KRAMER: As you know, Mr. Roman,
10 primarily, with the exception of one box of
11 documents, Mr. McKenzie doesn't have the
12 file, so you would have to get that from
13 the firm.

14 1709. MR. ROMAN: Well, they may be in his
15 computer because I understand from what Ms.
16 Duncan said was that Mr. McKenzie took his
17 electronic files home, so...

18 MR. KRAMER: Well, he has a response to
19 that, but do you have the accounts Mr.
20 Roman is speaking about in your personal
21 possession?

22 THE DEPONENT: No.

23 MR. KRAMER: He doesn't have them.

24 1710. MR. ROMAN: I don't understand why that
25 would be the case, because if you send

1 statements out to clients, the Law Society
2 and Revenue Canada would require you to
3 keep copies of it so they can audit you.

4 MR. KRAMER: Not the lawyer, the firm
5 would have to keep those copies.

6 1711. MR. ROMAN: Well, but I understand after
7 you left the firm, he was sending dockets
8 on his own and not through the firm, so the
9 firm would have what they had while he was
10 there, but they wouldn't have what he
11 billed after he left.

12 MR. KRAMER: I don't think he billed
13 anything after he left. Did you bill
14 anything after you left the firm?

15 THE DEPONENT: December 31st, 2009 I
16 left the firm, and hopefully the practice
17 of law.

18 1712. MR. ROMAN: But the last ones we have
19 are November 2008, so there is a big gap
20 there.

21 MR. KRAMER: Right, so between then and
22 when he left the firm, whatever was sent
23 out, the firm ought to have. Mr. McKenzie
24 says he doesn't have them.

25 1713. MR. ROMAN: They don't have them either.

1 MR. KRAMER: Well, that is a mystery,
2 but if he just says he doesn't have them,
3 he doesn't have them. What more would you
4 like us to do?

5 1714. MR. ROMAN: Well, I guess I would just
6 like to have an undertaking that he will
7 look for them in his own personal
8 computer...

9 MR. KRAMER: Well, is there any doubt?
10 Do you have to look for them? Do you have
11 any reason to think you have them
12 somewhere?

13 THE DEPONENT: I don't think I can look
14 any more places than I have looked, having
15 already heard this story.

16 1715. MR. ROMAN: All right, what about the
17 box of documents that you mentioned that
18 you did have? Is there something in there
19 that would deal with this?

20 MR. KRAMER: I am not exactly sure. The
21 box is now in my possession.

22 1716. MR. ROMAN: All right.

23 MR. KRAMER: It was delivered to me. I
24 intend to bring it probably tomorrow
25 because I wasn't able to fully understand

1 what is in there, and if it is in there, it
2 is in there, but other than that box, Mr.
3 McKenzie says he has nothing.

4

5 BY MR. ROMAN:

6 1717. Q. All right. Now, Mr. McKenzie, I am
7 going to ask you to go by memory then, whether the
8 following individuals or companies paid any of your
9 invoices, and by yours I would mean the ones you
10 sent out through your law firm. Allarco.

11 A. On this litigation?

12 1718. Q. Yes.

13 A. No.

14 1719. Q. Previous litigation?

15 MR. KRAMER: Well, what do you mean
16 previous litigation? We are talking about
17 the Nelson Barbados lawsuit, right?

18

19 BY MR. ROMAN:

20 1720. Q. Yes, but the dockets and the work on
21 it started in 2005, according to the dockets. So
22 when we say "this litigation" I mean before the
23 claim was filed, but when you started working on the
24 file.

25 A. Allarco?

1 1721. Q. Yes.

2 A. Have nothing whatsoever to do with
3 this. I can say I issued a Statement of Claim for
4 Allarco in a matter of...a broadcasting matter. Has
5 nothing whatsoever to do with this, period.

6 1722. Q. Okay, would your answer be the same
7 for Allarcom, which is another...

8 A. Ditto.

9 1723. Q. Ditto. What about...

10 MR. SILVER: Allarcom?

11 1724. MR. ROMAN: Yes.

12

13 BY MR. ROMAN:

14 1725. Q. What about Charles Allard, Junior?

15 A. Same answer.

16 1726. Q. Catherine Roozen?

17 A. I am not sure who she is, but...so
18 no.

19 1727. Q. That answers it, all right. Do you
20 have any accounts or bills that you can locate that
21 were billed either to Peter Allard or Peterco
22 Holdings that we don't already have through Ms.
23 Duncan?

24 A. I think my lawyer, Mr. Kramer,
25 already dealt with that. I got nothing.

1 1728. Q. You got nothing else, okay. Now, do
2 you recall the statement...

3 A. Except what is in the box, which he
4 is going to go through.

5 1729. Q. We will find out about that. Okay,
6 do you recall the Statement of Claim you filed in
7 this matter, Mr. McKenzie, and in particular, in
8 paragraph 61 and 62, there were allegations of
9 conspiracy.

10 MR. KRAMER: Is it an exhibit to the
11 affidavit he filed? I am just looking for
12 the right place to find it.

13 1730. MR. ROMAN: I don't know.

14 MR. KRAMER: Do you have a loose one?

15 MS. ZEMEL: Do you want to go off the
16 record and we will look for something?

17 MR. KRAMER: Is it simple just to hand
18 it over to him to read?

19 1731. MR. ROMAN: I have a copy here, but I
20 was going to look at it myself, but that is
21 okay. I will give it to you. It page 63,
22 paragraph 61, and 62.

23 MS. ZEMEL: Sorry to interrupt, but just
24 to be clear, there are a few versions of
25 the amended Statement of Claim. This is

1 just one of them. I am not sure if this is
2 the final one because it was amended a few
3 times.

4 MR. KRAMER: Okay, well, which is the
5 one...that is the one you want him to look
6 at?

7 MS. ZEMEL: Yes.

8 MR. KRAMER: All right, so you have it
9 there?

10 THE DEPONENT: No, I don't have it. I
11 have brought a list of the pleadings, which
12 is the only way I can keep track of where
13 the dates are.

14 1732. MR. ROMAN: I don't think he really
15 needs to look at it because he does recall
16 that the whole case was about an allegation
17 of conspiracy.

18 THE DEPONENT: There was a conspiracy
19 allegation.

20 1733. MR. ROMAN: That is right.

21 MR. KRAMER: All right. Well, if you
22 can answer the question, have a look at
23 that. I guess we haven't got to the
24 question yet.

25

1 BY MR. ROMAN:

2 1734. Q. Right, and it was alleged that:
3 "...The defendants or various of them
4 created or fabricated sham transactions
5 which they knew could not close or which
6 they were not prepared to close for the
7 purpose of shutting out the possibility
8 that other investors would become involved
9 in Kingsland or purchase or develop lands
10 of Kingsland..."

11 And that was read straight from the Statement of
12 Claim.

13 Now, my question is this, Mr. McKenzie.
14 You recall from who the defendants were that they
15 included my clients, but a lot of other people,
16 including the Chief Justice of Barbados and the
17 Prime Minister of Barbados and the Government of
18 Barbados. Now, before you filed that claim, what
19 inquiries did you make or what inquiries did you
20 conduct to satisfy yourself that Iain Deane and the
21 Estate of Colin Deane had engaged in this alleged
22 conspiracy?

23 A. I don't recall the specifics. I
24 read a lot of documents, and I will tell you that if
25 you start the trial tomorrow, I could prove this

1 case. The documents are out there, with discovery.
2 I have always maintained that.

3 1735. Q. So do you know whether my client,
4 Iain Deane, has ever met the Prime Minister of
5 Barbados?

6 A. I don't know.

7 1736. Q. Did whoever was instructing you tell
8 you that my client had ever met the Prime Minister
9 of Barbados?

10 A. There is an order in this case that
11 says we are not allowed to do discoveries, and I
12 think that stops us all, including you...and with
13 the greatest respect to Mr. Kramer, he can't
14 possibly know everything in this case because it is
15 so deep, but you guys sought an order that I was not
16 allowed to ask any questions regarding the...what
17 would be called discovery.

18 1737. Q. That is not the answer to the
19 question.

20 A. Excuse me, I am just going to say...
21 so I don't think you can ever ask me that, but the
22 answer is if you want to start and give me full
23 discovery of your client, I can prove the case.
24 That is all I can tell you.

25 1738. Q. You believe you can prove the case,

1 but that wasn't the question.

2 A. No litigator...my opinion is I can
3 prove the case. That is the opinion...

4 1739. Q. That wasn't my question. My
5 question was did you know whether my client, Iain
6 Deane, had ever met the Prime Minister of Barbados?

7 A. I can't recall.

8 MR. KRAMER: He said no. He answered
9 that question. No, you said that you have
10 no information.

11 THE DEPONENT: I don't know. I don't.

12

13 BY MR. ROMAN:

14 1740. Q. Do you know whether he ever met the
15 Chief Justice of Barbados?

16 A. I cannot recall whether he did or
17 whether I knew he did at the time.

18 1741. Q. Do you know whether they ever
19 corresponded with each other?

20 A. Same answer.

21 1742. Q. Sorry?

22 A. I said same answer.

23 1743. Q. Same answer, okay. Now, you also
24 made allegations of breach of fiduciary duty in your
25 amended Statement of Claim, and I am just wondering

1 what fiduciary duties you think my client owed to
2 Nelson Barbados?

3 A. I think it is the same answer.

4 1744. Q. Which is that you don't know.

5 A. Let me have a full discovery, and I
6 will prove this case.

7 1745. Q. That is another way of saying you
8 don't know because you haven't had a full discovery?

9 A. I wasn't...I had an opinion that I
10 could prove this case, Mr. Roman.

11 1746. Q. You are making a forecast about your
12 litigation abilities, but you are not really
13 answering my question.

14 A. Well, I do litigation, so...

15 1747. Q. Now, did you directly or indirectly
16 receive any compensation or consideration for this
17 case apart from what was paid to Crawford McKenzie?

18 A. To me, you mean?

19 1748. Q. To you.

20 A. My fees were what I got paid.

21 1749. Q. But were any of those fees paid to
22 you personally and not paid to Crawford McKenzie?

23 A. I am not sure I understand your
24 question. The firm bills and then we share the
25 profits at the end of the year, or whatever...

1 1750. Q. That is how firms normally operate.

2 A. Well, that is how it went, to the
3 best of my recollection.

4 1751. Q. So you are saying that you didn't
5 send any accounts of your own, other than through
6 the firm?

7 A. I have no recollection of sending
8 any...I mean, they take care of the accounting.

9 1752. Q. What I am getting at, though, is
10 that it is quite possible for someone to receive
11 consideration not through the firm, but through
12 other means, either on...

13 A. Everything I got paid was legal
14 fees.

15 1753. Q. And that all went into the firm?

16 A. To the best of my recollection, as I
17 said, that is how I do things, which is through the
18 firm, yes.

19 1754. Q. Did any member of your family
20 receive any consideration outside of through the
21 Crawford McKenzie billing?

22 A. Same answer.

23 MR. SILVER: What does that mean?

24 1755. MR. ROMAN: Sorry?

25 MR. SILVER: What does "same answer"

1 mean? Same answer as what? Did members of
2 your family receive compensation outside of
3 the Crawford McKenzie billing?

4 THE DEPONENT: Can you read back my
5 answer before? I think...

6 MR. KRAMER: Just stop for a second.
7 Let's go off the record here for a second.

8

9 --- DISCUSSION OFF THE RECORD

10

11 MR. KRAMER: So I think we are at the
12 point where let's assume that Andy adopts
13 that question. Does that make sense? He
14 wants a specific answer to whether or not
15 members of your family received
16 compensation other than that the...you
17 know, shown as a disbursement on the
18 accounts, right?

19 1756. MR. ROMAN: Fees is what...

20 THE DEPONENT: I think that is the same
21 answer. Not to...

22

23 BY MR. ROMAN:

24 1757. Q. The answer is no?

25 A. Not to my recollection.

1 1758. Q. I am upset with an answer like, "Not
2 to my recollection," because it doesn't...it is not
3 a yes or a no.

4 A. Well, have you got all the accounts
5 here? In a couple of hours I will read them and...

6 MR. KRAMER: Well, do you know, Bill?
7 Just tell him...

8 1759. MR. ROMAN: It is outside of the...

9 THE DEPONENT: I don't think so. I
10 can't imagine, to say the truth, but I am
11 kind of going...they do the accounting, not
12 me.

13

14 BY MR. ROMAN:

15 1760. Q. All right. Mr. McKenzie, when you
16 started this case, and as you progressed through it,
17 you must have noticed that there were certain
18 difficulties with it, and I am just wondering if it
19 ever occurred to you that cost might be sought
20 against you personally?

21 A. I am only answering the last part
22 because I don't agree with the first part. Of
23 course there were difficulties with it, Mr. Roman.
24 It is litigation, and especially this case was a
25 difficult case, yes, and cost against me personally,

1 not under the laws as I understand them.

2 1761. Q. So you didn't understand when you
3 started this case or as it progressed that costs
4 might be sought against you personally, or that
5 there was a risk of that?

6 A. Didn't I just answer it? I think I
7 know the law generally, and I think no. I never
8 even got close to...what is a good word...hitting
9 the tests, in my opinion.

10 1762. Q. All right. I am wondering if you
11 had any discussions with Mr. Allard or with any
12 members of the Knox family that if costs were
13 awarded against you, they would give you some sort
14 of indemnity or make you whole?

15 A. I don't recall such a conversation.

16 1763. Q. Did you ask for any indemnity from
17 Mr. Allard in the event that you needed it?

18 A. The costs were always paid when they
19 were assessed, so the best of my recollection is
20 that was always my expectation. If costs were
21 awarded in this case, they would be paid.

22 1764. Q. And if costs...

23 A. That was my opinion on the day I got
24 served with a motion record nailing...after me. As
25 a matter of fact, when you guys served and did all

1 that nasty stuff to me in front of Justice
2 Shaughnessy right at the end of January, it was the
3 same problem, wasn't it? I mean, you know, you were
4 coming after me, so it was like...at the end of it,
5 even though I knew what the end would be, that I
6 didn't do whatever you accused me of, if costs had
7 been awarded by Justice Brown, they would have been
8 paid, not out of my pocket, believe me.

9 1765. Q. No, but if the costs are awarded
10 against you personally, did you make any arrangement
11 with Mr. Allard or do you have any agreement or
12 understanding that he would pay the costs even if
13 they were awarded against you personally?

14 A. I can't recall a specific agreement,
15 other than what I have just told you.

16 1766. Q. But would there be an understanding,
17 then? Because if you say that you understood that
18 the costs would be paid, then presumably that might
19 cover, regardless of whom they were awarded against,
20 the costs would be paid?

21 A. If we had had the hearing that you
22 guys insisted go ahead on August 21st and the costs
23 had been awarded, I am quite convinced they would
24 have been paid. All of the nonsense since then, it
25 is a whole different ball game probably, but you

1 have to talk to everybody. I am not an expert on
2 how this all works.

3 1767. Q. Well, my concern is that is if you
4 don't have the money to pay the costs and if you
5 have an expectation that Mr. Allard will pay the
6 costs, will he pay the costs if they are awarded
7 against you, or will he only pay them if they are
8 awarded against him?

9 A. I am not going to argue with you.

10 1768. Q. I am asking a question. I am not
11 arguing.

12 MR. KRAMER: Well, would you know the
13 answer to that question?

14 THE DEPONENT: I don't even know what
15 the question was.

16 MR. KRAMER: He wants to know if...does
17 Allard...well, you seem to be asking
18 whether or not you have a deal with Allard
19 that he pay them even if you got stung with
20 the costs and Allard didn't, something like
21 that.

22
23 BY MR. ROMAN:

24 1769. Q. That is right.

25 A. On August 21st...

1 MR. KRAMER: Just describe your
2 agreement...

3 THE DEPONENT: I am just saying...

4 MR. KRAMER: ...if there is one about
5 paying the costs.

6 THE DEPONENT: I am just saying there
7 was no doubt in my mind on August 21st that
8 between Nelson Barbados and Mr. Allard,
9 whatever costs were assessed against
10 whoever they were assessed against, because
11 they would have been joint, I suppose,
12 would have been paid. Since then the thing
13 has taken on a life of its own. I can't
14 say any more than...I am saying that is the
15 best of my knowledge.

16
17 BY MR. ROMAN:

18 1770. Q. Well, has Mr. Allard told you now
19 that he won't pay?

20 A. Not to my recollection. I can't
21 take a position on what he won't do and won't do. I
22 mean, I am off the case completely as of last
23 August, so they got lawyers...as I was saying to Mr.
24 Silver the other day, we got about a dozen lawyers
25 we had last August, thanks to you guys taking this

1 pot shot at me.

2 1771. Q. Well, have you asked Mr. Allard to
3 pay?

4 A. What?

5 1772. Q. The costs that arose out of the
6 Nelson Barbados action? If you had, we wouldn't be
7 here.

8 A. I am not going to change my answer.
9 If they had been assessed on August 21st, they would
10 have been paid. What has happened since has become
11 insane. That is all I can say.

12 1773. Q. I am just asking...

13 A. That is my opinion and the answer is
14 I don't know.

15 1774. Q. No, I asked you whether you asked
16 Mr. Allard to pay since August 21st and whether he
17 has refused, if you asked him?

18 A. I have no recollection of asking him
19 and we haven't had a number yet, so...

20 1775. Q. Sorry?

21 A. What was the number on August 21st?
22 Anybody know?

23 1776. Q. I don't remember, but...

24 A. Exactly.

25 1777. Q. ...we had a number that was pretty

1 close...we were pretty close to it. I mean, plus or
2 minus a couple thousand dollars, we had an estimate
3 of what it was going to be.

4 A. No, reasonable costs I don't think
5 would have been a problem.

6 1778. Q. All right.

7 A. Then.

8 1779. Q. Let's go to Phoenix Artists for a
9 moment. You named them as a defendant to the
10 action. Why?

11 A. There is evidence in the file with
12 their name on it. I don't recall what it is right
13 now.

14 1780. Q. How do they tie to any of the
15 allegations in the Statement of Claim?

16 A. I just said I don't remember what it
17 is right now.

18 1781. Q. They were an artists' representative
19 that Mr. Deane used to...as a mailing address while
20 he was travelling because he is an actor. That is
21 the only connection they have with him. You named
22 them as a defendant, as a co-conspirator. Tell me
23 why.

24 A. It is a funny thing, after reading
25 the transcript from last time when Mr. Silver gave

1 that kind of evidence and now you are giving
2 evidence. That is nice. I am glad that is your
3 opinion, and if you would like to...

4 1782. Q. That is on the record.

5 A. ...back it up, I will say this to
6 Mr. Silver: I am still waiting for an affidavit so
7 somebody can cross-examine you guys, because I don't
8 buy that, what you just said, as being necessarily
9 true. And by the way, I will remind you your
10 client...well, we will get there...on the record,
11 made a falsehood that has never been corrected. So
12 whether his credibility is even close to being
13 acceptable, and then he has done all that stuff on
14 the blog, threatening people and attacking people...

15 1783. Q. Mr. McKenzie, you are making
16 speeches.

17 A. Just a second. I am not finished
18 yet.

19 1784. Q. You are not answering my question.

20 A. I am not finished yet.

21 1785. Q. You are making a speech. I think
22 you are finished.

23 A. With your firm...I just got that
24 letter and I checked it out. Your firm has been
25 threatening people.

1 1786. Q. That is not true.

2 A. Excuse me?

3 1787. Q. That is not true.

4 A. Excuse me? There is evidence, and I
5 double checked it. There is evidence that your firm
6 sent, and Mark Raymond, a lawyer in Miami, has said
7 your firm did it to Keltruth, not Iain Deane, and
8 then there is all that Barbados Underground
9 evidence, which I have seen snippets of over the
10 years, and it is coming from you or your firm. It
11 is scary stuff. People are threatening to kill
12 people.

13 1788. Q. Mr. McKenzie, you tried that with
14 Justice Shaughnessy before and got nowhere. You are
15 not going to get any further with me than you did
16 with him on that.

17 A. Well, perhaps you need to be
18 examined, then, and I am saying Mr. Raymond will...

19 1789. Q. Mr. McKenzie, are you threatening?

20 A. You are giving evidence and I am
21 saying...

22 1790. Q. I am not giving evidence. I am
23 telling you what is on the record.

24 MR. KRAMER: Let's get back to the
25 examination. Why don't you ask another

1 question?

2

3 BY MR. ROMAN:

4 1791. Q. I would like to do that. Jessica
5 Duncan gave us Exhibit A to her affidavit, and that
6 exhibit...

7 MR. KRAMER: Do you want us to pull it
8 up?

9

10 BY MR. ROMAN:

11 1792. Q. Yes, we can go to that. That
12 exhibit contains various docket entries. Am I right
13 that on those you are listed as lawyer number 4?

14 A. That is me.

15 1793. Q. And these are dockets that were
16 billed to your client in this matter, right?

17 MR. KRAMER: This is Exhibit A. It is
18 what she called the docket.

19 THE DEPONENT: The dockets eventually
20 turn into a bill.

21

22 BY MR. ROMAN:

23 1794. Q. That is right.

24 A. That is fair.

25 1795. Q. And you were paid for your time on

1 But anyway, if you can show me why that has
2 some connection with this...

3 1801. MR. ROMAN: Well, let's look at your
4 affidavit, then, because...

5 MR. KRAMER: The original affidavit?

6 1802. MR. ROMAN: Yes. Paragraph 140.

7 MR. KRAMER: Okay, this is the:
8 "...I am not the author of the material
9 which criticized Ms. Zemel..."

10 1803. MR. ROMAN: Yes, and then in the last
11 paragraph he says:

12 "...I have not participated in any blog or
13 public postings with respect to this
14 litigation and have no responsibility for
15 or control over others who have..."

16 Now, I have prepared a table of docket
17 entries that you made, Mr. McKenzie, which
18 appear in her affidavit, and all of these
19 entries include dockets referring to
20 blogging. For example, "Blogging, engaged
21 in blogging," and so on, and I am going to
22 give you this and have...do you have
23 another copy?

24 MS. ZEMEL: For the record, that is one
25 copy that we would like to ask you to

1 review and ensure it for accuracy, because
2 it basically is copies directly from all
3 the entries we have found that relate to
4 the blogs or blogging, and if you can do
5 that, and then we can mark it as an
6 exhibit. If you want to do it for
7 identification, that is fine. I didn't
8 make another copy until we actually mark
9 it, so once we mark it we can make copies.

10 MR. KRAMER: Let me understand if I have
11 got this right. You went through Exhibit A
12 from Ms...

13 MS. ZEMEL: And B.

14 MR. KRAMER: Okay, and B from Ms.
15 Duncan's affidavit and you have listed out
16 certain entries which you have reproduced
17 on this piece of paper?

18 MS. ZEMEL: Exactly.

19 MR. KRAMER: And you want us to go
20 through it and make sure you did it right?

21 MS. ZEMEL: No. We are going to be
22 asking you questions on it, so...

23 MR. KRAMER: But you did this for
24 convenience, just so we wouldn't have so...

25 MS. ZEMEL: For convenience, exactly.

1 If, for some reason, later on you determine
2 that there are some errors you can advise
3 us, but otherwise let's assume...or for
4 this purposes, assume that it is correct,
5 and only because...

6 MR. KRAMER: Well, here is my
7 suggestion...

8 MS. ZEMEL: ...we don't want to start
9 going through each and every one of them
10 because this will take a long, long time,
11 okay? We can start going to each page, but
12 it will take a long time.

13 MR. KRAMER: That is fair. I appreciate
14 that that would be an aid to the
15 questioning.

16 MS. ZEMEL: Yes.

17 MR. KRAMER: We are not going to go
18 confirm that you have typed it properly...

19 MS. ZEMEL: No, no...

20 MR. KRAMER: Please let me respond...but
21 we are happy to use your outline here to
22 help with the questions and if there is any
23 concern about any one, we can always go to
24 the page and find it. So I don't think
25 this is a...let's mark it as Exhibit A for

1 identification and ask whatever you want.

2 1804. MR. ROMAN: That is right.

3 MR. KRAMER: And that will be easier
4 than going through 200 pages. We can go
5 through 20 pages. That is fine.

6 MS. ZEMEL: Thank you, Mr. Kramer.

7 MR. SILVER: Let's mark it as Exhibit E
8 for identification. We should carry on the
9 numbers.

10 MR. KRAMER: Yes, that is fine, and we
11 will call that...it is a sublisting of
12 certain docket entries that you made, which
13 you say are...do you say these are all of
14 the ones that reference blogging?

15 MS. ZEMEL: That we have been able to
16 locate. We could have missed a couple.

17 MR. KRAMER: Okay, the only criteria you
18 used is if it referenced blogging, as best
19 you could, you put it on your list?

20 MS. ZEMEL: No, just to be accurate, it
21 reference "blogs" or "blogging" or "the
22 blog"...

23 MR. KRAMER: Okay, derivation of the
24 word "blog"?

25 1805. MR. ROMAN: Right.

1 MS. ZEMEL: Exactly.

2 MR. KRAMER: That is fine.

3 MR. SILVER: Does it have just
4 McKenzie's time or...

5 MS. ZEMEL: No, it is pretty much just
6 McKenzie and some entries by Sunny Ware.

7 MR. KRAMER: But it is any entry on the
8 docket, Exhibits A or B, which references
9 the word "blog" or a derivation thereof,
10 and it is your attempt to simply come up...
11 to lift those entries out of the larger
12 selection. That is fine.

13 MR. SILVER: But I have got to figure
14 out if that is right, because Sunny Ware
15 has a lot of blog entries too. Are they
16 all picked up...

17 MS. ZEMEL: Yes.

18 MR. KRAMER: Ms. Zemel seems to say it
19 is...no matter who was the timekeeper.

20 MS. ZEMEL: Exactly.

21 MR. KRAMER: All right, so we will...

22 MS. ZEMEL: Exhibit E for
23 identification.

24

1 --- EXHIBIT E: Sublisting of docketed made by Ms.
2 Zemel referencing the word "blog"
3 and its derivations
4

5 THE DEPONENT: I still need this.

6 MR. KRAMER: That is fine. So I can put
7 this exhibit aside and we will use your
8 sheet there.

9 MR. SILVER: Jeff, maybe we can go off
10 because I don't want to clutter the record.

11 MR. KRAMER: Sure.
12

13 --- DISCUSSION OFF THE RECORD
14

15 1806. MR. ROMAN: Just have a look at the
16 bottom page because it is the aggregate
17 that is more important than the...

18 MR. KRAMER: So it is totalled at the
19 bottom?

20 1807. MR. ROMAN: Yes. It is totalled at the
21 bottom and that is what is important.

22 MR. KRAMER: So after you lifted all
23 these entries onto this summary sheet, you
24 then totalled up what those particular
25 entries totalled. I see.

1 1808. MR. ROMAN: Correct. That is what is
2 important.

3 MR. KRAMER: All right, so this is your
4 calculation of that.

5 1809. MR. ROMAN: That is right.

6 MR. KRAMER: So you want him to look at
7 it, you have a question about that...

8 1810. MR. ROMAN: Yes.

9 MR. KRAMER: ...or you just want him to
10 look at it?

11 1811. MR. ROMAN: Yes. I want him to look at
12 it, then I want to ask him some questions
13 about it.

14 MR. KRAMER: Okay. Well, there you are.
15 According to this Exhibit E between October
16 19th, 2005 and October 9th, 2008, so I
17 guess it is three years...or is it four
18 years? It is four years, right? No, three
19 years, the total is 922.6 hours and
20 \$393,074. That is what he wants you to
21 look at.

22 1812. MR. ROMAN: And there are 470 entries.

23 MR. KRAMER: And there are 470 entries.
24 So what is the question?

25

1 BY MR. ROMAN:

2 1813. Q. So that was what was charged, and
3 that was what was paid to the clients. Now, my
4 question is how do you reconcile these dockets with
5 what you state in paragraph 140 of your affidavit,
6 that you were not involved in this in any way?

7 MR. KRAMER: Well, his affidavit says
8 what it says, which is exactly that.

9 THE DEPONENT: My affidavit is accurate.

10

11 BY MR. ROMAN:

12 1814. Q. Well, it may be accurate because you
13 say you have no control over others who have done
14 this, but let me follow up with a question, then.

15 A. Okay. I would...

16 MR. KRAMER: Let him ask his question.

17 THE DEPONENT: No, go ahead. I am just
18 kind of going...I am just reading it. Go
19 ahead.

20

21 BY MR. ROMAN:

22 1815. Q. When you say, "I have not
23 participated in any blog," that may be accurate if
24 you have not yourself posted something on a blog,
25 but most of the dockets talk about blogging and

1 Nathan. Now, am I right that Nathan is a sort of
2 code name or trade name for Donald Best?

3 A. Correct.

4 1816. Q. And he had a company called NIS.
5 What was NIS?

6 A. Nathan is a code word for a project,
7 perhaps, and NIS would have been one of the
8 participants in the project.

9 1817. Q. Which project is that?

10 A. Well, this particular part of the
11 project, because I think you are focusing on this,
12 was...I am trying to get the...I think it was
13 researching, reviewing and...what is a good word...
14 customizing, by which I mean...I am trying to
15 narrow it down so that it would be simple for me to
16 understand...educating, anti-virusing. There was
17 lots of attacks, vandalizing. Protecting,
18 firewalling. It goes on and on and on and on. In
19 other words, unfortunately for this case, the
20 internet became a nuisance and got out of control.
21 My reaction to it was to give it to people who could
22 handle it and give me the short story, which is...

23 1818. Q. So when you say...

24 A. I couldn't even handle that, by the
25 way, but...

1 1819. Q. When you say, "I have not
2 participated in any blog," you are not saying that
3 Mr. Best is not participating in any blog?

4 A. What I am saying is, to the best of
5 my recollection, I haven't gone on a blog in...what
6 do you call it...chatted or commented or stuck my
7 nose into other people's business that has to do
8 with this lawsuit. You know, it is like...and there
9 is a big continuum of time here also. Things have
10 changed. I view it in periods of time, but I was
11 assessing...my job was, you know, trying to separate
12 the wheat from the chaff and they were out there,
13 thank God, helping me or it would have been 10,000
14 hours, I am sure.

15 1820. Q. But there were public postings on
16 the issue and you say you didn't participate, but do
17 you know whether...

18 A. Just a second...I am sorry...

19 1821. Q. It says here there were public
20 postings. That is what it says.

21 A. No, what I am saying is...

22 1822. Q. So my question to you is do you know
23 whether Mr. Best participated in public postings?

24 A. I don't know what he specifically
25 did. In other words, he did 1,000,000 things. He

1 and a lot of other people made my life easy. I
2 would say, "What do you know? Oh, shit," or,
3 "Ignore, I don't care." You know, they would, like,
4 send me something and I would go, "Totally
5 irrelevant. Delete it. Get it out of my face."

6 1823. Q. Do you know whether he himself
7 posted anything on a blog?

8 A. I do not know what he did, except
9 for what he summarized for me.

10 1824. Q. Did he tell you whether or not he
11 posted anything on a blog?

12 A. I don't recall him ever telling me
13 he posted anything on a blog.

14 1825. Q. Well, his wife was also paid a fair
15 amount of money for internet services. Do you know
16 whether she posted anything on a blog?

17 A. Same answer. I mean, I can't...

18 1826. Q. The answer is you don't know?

19 A. Well, I don't have any recollection
20 or don't know that they were posting on blogs. That
21 is the best I can do for you.

22 1827. Q. Now, when you say in these dockets
23 that you were engaging in blogging, which is a verb,
24 what activity is that?

25 A. If I had to do it all over again, I

1 would have put "internetting", but...

2 MR. KRAMER: Well, does it say "engage
3 in blogging"?

4 THE DEPONENT: Well, no, it says...

5 MR. KRAMER: Hold on a second. Let me
6 get my objection...

7 1828. MR. ROMAN: It says "blogging".

8 MR. KRAMER: Okay. Well, I think your
9 question said "engaged in blogging", which
10 is not exactly...

11 1829. MR. ROMAN: In some of the entries it
12 does say "engaged in blogging".

13 MR. KRAMER: All right, do you accept
14 that or do you want us to make sure that
15 that is...

16 THE DEPONENT: I won't...blogging, from
17 my point of view, was...it is like
18 Twittering or something. It is like paying
19 attention to this enormous volume of
20 chatter, which as I said before, ended up
21 being a hell of a lot of threats from your
22 client or somebody...

23

24 BY MR. ROMAN:

25 1830. Q. I know you have said that.

1 A. No, I am saying recently I have come
2 across proof of this, Mr. Roman, in a very...

3 1831. Q. You have a letter...

4 A. Excuse me for a moment...

5 1832. Q. ...from an American attorney, which
6 looks like...

7 A. Just excuse me...

8 1833. Q. ...your style of writing, Mr.
9 McKenzie.

10 A. Why are you interrupting me, okay?
11 I have just come across...

12 1834. Q. Because you aren't answering the
13 questions.

14 A. ...a lot of information that is very
15 scary about your law firm and your client doing some
16 very nasty things over the internet. I am going to
17 tell you that right now. It is...

18 1835. Q. You keep telling me that, but I am
19 cross-examining you.

20 A. Well, that is fine.

21 1836. Q. You are not here to make speeches,
22 you are here to answer questions.

23 MR. KRAMER: Let's just let back to the
24 questioning. Maybe you could restate your
25 question, Mr. Roman?

1 1837. MR. ROMAN: How much...\$322,000 have
2 been spent on this?

3 MR. KRAMER: Perhaps you could remind us
4 what your question was and maybe we can get
5 back...

6 1838. MR. ROMAN: I don't remember now.

7 MR. KRAMER: So then ask a new one. Let
8 him ask his question.

9

10 BY MR. ROMAN:

11 1839. Q. All right, I have another question
12 to ask you about. The sole issue in this case
13 before Justice Shaughnessy was whether the Ontario
14 court had jurisdiction over your claim, right? That
15 is what we spent all this time litigating over.

16 A. A long and circuitous route that was
17 the original motion...

18 1840. Q. That was the issue that Nelson
19 Barbados had to face in court?

20 A. Ultimately.

21 1841. Q. Now, could you tell me how the 922
22 hours are relevant to answering that question in
23 court?

24 MR. KRAMER: Hold on a second.

25

1 BY MR. ROMAN:

2 1842. Q. What is the connection between all
3 the internet blogging and the issue that Justice
4 Shaughnessy and the lawyers had to deal with?

5 A. I am going to sort of give you a
6 quick overview because it is...and I don't even know
7 if it is relevant, but we started a lawsuit which
8 required a lot of research. A lot of stuff comes
9 from the internet to give you information, so that
10 is part 1, I guess. Also investments and the
11 dynamic of Barbados, which was what the original
12 thing was about before the litigation started. Then
13 the litigation started. We got to August...sorry, I
14 have just forgotten the year. August 10th...

15 MR. KRAMER: You mean when the lawsuit
16 was started?

17 THE DEPONENT: There was a motion to
18 amend the pleadings to add a number of
19 parties. Some of that included information
20 that had come to us by research on the
21 internet, so that falls under the rubric of
22 blogging to me. And then on August 10th we
23 got into this mess where I was threatened,
24 all sorts of things were happening on the
25 internet.

1 We hired Mr. Bell and somebody else,
2 who were security consultants, who did all
3 sort of research and gave us pros and cons
4 and up and downs, all of which required
5 more blogging. I think Mr. Bell's report
6 is loaded with information that was off the
7 internet. Then John Knox had to get into
8 it because his mother got threatened.

9
10 BY MR. ROMAN:

11 1843. Q. Mr. McKenzie, let me move on to my
12 next question.

13 A. Sorry, I want to answer your
14 question and I am just...the reason I am taking some
15 time, Mr. Roman, is I am very bad with dates and I
16 know I have a pleadings list here. And August 10th,
17 '07 motion record, right. We added Veco and
18 Commonwealth, and that was a whole side issue. I
19 mean, a lot of that information came from...it was
20 Alaska and all that, and a lot of that research was
21 done on the internet, so that is part of the
22 blogging, I gather. And then...I am looking for the
23 date of John Knox...

24 1844. Q. Mr. McKenzie, you are also taking up
25 a lot of time in a limited time cross-examination...

1 A. Well, I am sorry.

2 1845. Q. ...answering things I haven't asked
3 you.

4 A. No, the thing is...I am sorry, I am
5 trying to answer your question about blogging. If
6 you are going to leave it, I will leave it, but I am
7 saying in...here it is. We then, because of all
8 this side stuff with threats all over the map, we
9 discovered that threats had been sent on the
10 internet from Barbados to Mrs. Knox, who by then was
11 found to be cooperating. You might remember that
12 they had said John Knox was going to lose his job
13 because he was cooperating with this lawsuit, and
14 then...

15 1846. Q. None of these people...

16 A. Just a minute.

17 1847. Q. ...are parties in the Nelson
18 Barbados lawsuit, Mr. McKenzie.

19 A. No, just a minute now. Mrs. Knox
20 got threatened. I had to bring a motion to get the
21 cable and wireless in Barbados to cough up and tell
22 me who was threatening these people. I mean, it was
23 pretty bad. It was all...going to the police. I
24 had been threatened. We had to go to the police.
25 It was a total mess, all unnecessary by the way.

1 MR. SILVER: Well, how did you make
2 out...

3 THE DEPONENT: Just a minute now, and I
4 am going from recollection. I think the
5 ruling was the judge did not have
6 jurisdiction to allow me...I don't mean me,
7 but the plaintiff...to do this in Barbados,
8 but he encouraged us to hire somebody in
9 Barbados to do it, so then we ran around.
10 We went again with experts, experts,
11 experts, all the IP addresses were produced
12 with all the threats to kill and maim this
13 poor old lady. It went to...

14

15 BY MR. ROMAN:

16 1848. Q. This poor old lady wasn't Nelson
17 Barbados, Mr...

18 A. No, but she was a witness in my
19 case, and I am freaking out by now. I am going,
20 "What is going on here? This is a simple case. I
21 have got some affidavit evidence and they are
22 threatening my witnesses, for crying out loud."

23 1849. Q. At that point...

24 A. Just a minute.

25 1850. Q. ...you didn't have jurisdiction.

1 A. I am not finished yet. We went to
2 Barbados some how and got a motion started down
3 there to get this information, who was threatening
4 my witness, threatening me, blah, blah, with a ton
5 of IP addresses which had been culled by the experts
6 who know this stuff inside out. I shouldn't say
7 inside out; they know...

8 1851. Q. Mr. McKenzie, I would like to ask my
9 next question. You are making a lot of speeches.
10 It is not useful to me.

11 A. Well, you know what? I just want to
12 finish this topic because...

13 1852. Q. Perhaps you can take the whole hour
14 with answering the question, but I would like to ask
15 you another question.

16 A. Well, Mr. Roman, I don't want to be
17 argumentative here.

18 MR. KRAMER: Try to wrap it up. You are
19 entitled to finish your answer, but he...

20 THE DEPONENT: I am not going to finish
21 my answer, but this is what the blogging
22 was, totally unnecessary threats via the
23 internet by people that turn out to be on
24 your side of the table, okay, as it is
25 turns out now, and I am saying...

1 BY MR. ROMAN:

2 1853. Q. Let me ask you another question.

3 A. It was awful. It was expensive. It
4 was scary for people and it was unnecessary.

5 1854. Q. You have said that many times today.

6 A. You asked what I was doing blogging.
7 Believe me, if I never saw a blog again or whatever
8 they do...

9 1855. Q. They seem very profitable, Mr.
10 McKenzie. I want to ask you a question about
11 Kathleen Davis now.

12 A. For you? Because try having your
13 family threatened, pal, okay?

14 MR. KRAMER: Let's just wait for his
15 next question.

16 THE DEPONENT: Well, I am just saying...
17 call the cops and tell them about this.

18 1856. MR. ROMAN: We have an Exhibit D that
19 was filed earlier on the examination of
20 Jessica Duncan, and it was a table that
21 showed payments made to Kathleen Davis,
22 right?

23 MR. KRAMER: Okay, hold on. Are we
24 looking at the right thing here?

25 1857. MR. ROMAN: Yes.

1 MR. KRAMER: So this is the same type
2 thing, things you have pulled off the
3 docket?

4 1858. MR. ROMAN: That is right.

5 MR. KRAMER: And it is disbursement
6 payments to Kathleen Davis?

7 1859. MR. ROMAN: That is right.

8 MR. KRAMER: Okay, so that is what this
9 is, and what is the question? Go ahead.
10

11 BY MR. ROMAN:

12 1860. Q. Now, Mr. McKenzie, you know that
13 Kathleen Davis was the author of the Keltruth blog,
14 right?

15 A. You told me, but I think you are
16 right.

17 1861. Q. Well, you have a letter that you
18 filed with the motion record that was a letter
19 addressed to our firm from her where she says that
20 she is the author of the Keltruth blog?

21 A. Yes, but I am saying before that it
22 was you that knew that before I knew it, I think.

23 1862. Q. Okay, we both know it now.

24 A. You have admitted that to me. Okay,
25 go ahead.

1 1863. Q. Now, you, through your firm, paid
2 Kathleen Davis web hosting costs for hosting the
3 Keltruth blog, right, and there was a total of
4 \$3,000?

5 A. I don't quibble that monies were
6 paid through our firm. That is correct.

7 1864. Q. Do you know what it costs normally
8 to host a blog or an internet site?

9 A. That is out of my league. That is
10 for sure.

11 1865. Q. You can get them for 30 or 40
12 dollars.

13 A. Not this kind.

14 1866. Q. Not this kind?

15 A. No.

16 1867. Q. Can you explain to me what is
17 special about this kind?

18 A. Yes. The Keltruth blog...this is
19 reported...probably third-hand information, but it
20 was explained to me the Keltruth website, this is
21 back in 2004/2005, when your firm was attacking
22 it...

23 1868. Q. No, this goes right up to January
24 2009, Mr. McKenzie.

25 A. Hear me out, okay? I am just

1 telling you...I am novice at this stuff and I
2 learned...okay, your firm was attacking it and then
3 other people were attacking it. There were viruses
4 and all this and I said, "Look, what does it
5 take"...or it was recommended to me and I said,
6 "Okay, do it." "What does it take to"...I am not
7 sure whether to fireproof it or make it so...

8 1869. Q. Firewall it?

9 A. ...that they can't keep crashing it,
10 number one, and also that whoever is doing these
11 nasty things to it, you can identify. There is...I
12 called it fingerprints, but ISP address...IP
13 address. In other words, there is ways they can...
14 these guys, because there was a ton of them, can set
15 it up in such a way not only to protect it from all
16 the viruses, but also to identify the people that go
17 there, which is how they found your firm was doing
18 it and your client and Barbados Underground.

19 1870. Q. Mr. McKenzie, we are talking about a
20 period from the 21st of November, 2007 to the 12th
21 of January, 2009, okay?

22 A. Yes, so my recollection...

23 1871. Q. And during that...let me ask the
24 question. During that time, you paid \$3,000 to
25 Kathleen Davis or your client did, and I am just

1 wondering what that was for because her blog was one
2 that was something that anybody could contribute to
3 or put time or space on, but mostly it was critical
4 of the government of Barbados, the Chief Justice of
5 Barbados and to some degree, our client. So why was
6 your client paying Kathleen Davis this hosting cost
7 or having her paying her own costs if that is what
8 she wanted to do?

9 A. I will stop you again and say I
10 don't agree with anything you just said by putting
11 in evidence here, but just...I am saying it had
12 been...okay, how about this...trashed and attacked
13 ad nauseam, or too much. It was brought to my
14 attention. Now, I would like to know which file
15 this was, because I am guessing this is 543. This
16 is Mr. Allard's cash flow. In other words, because
17 some of his money didn't go...there was a lot of
18 projects in BMC543, and Kathy Davis, who was a nice
19 lady in Miami, was running the blog or website or
20 whatever you call them because again...internet,
21 okay? And it was...it keeps getting badgered and
22 punished and threatened. The experts said, "You
23 have got to do this. You have got to do it this
24 way." I don't know the particulars. "You set it up
25 properly, and it won't get...we will know who did it

1 and we will also know that it can't be"...

2 1872. Q. We are talking about paying her
3 bills, Mr. McKenzie, nothing technical. I am just
4 asking why you paid her bills? Why can't she pay
5 her own bills?

6 A. No, Mr. Allard paid her bills.

7 1873. Q. You paid them on behalf of Mr.
8 Allard.

9 A. Well, I agree with you the money
10 came into our firm and I authorized, at his urging,
11 all of these technical guys because it is quite a
12 foreign land, ISPs and IPs and webs and all that. I
13 said, "Just get it done." In other words, I don't
14 know exactly what they did, but I said, "This is
15 ridiculous. Get it done, tidy it up," which they
16 did, and that is what I can tell you.

17 1874. Q. So you paid her bills because you
18 wanted to get it done?

19 A. It was...something had...well, I was
20 interested in knowing, as I keep saying to you, to
21 capture some of the information about who were
22 sending these awful things to these people, my
23 witnesses.

24 1875. Q. Well, Mr. McKenzie, you said in your
25 paragraph 137 of your affidavit...why don't we look

1 at that? You say:

2 "...I have no interest in and do not follow
3 these or any other blogs..."

4 A. Yes, on October 2nd I was well out
5 of it. That is for sure. I mean...

6 1876. Q. So you are saying that was true
7 until some time, but not on October 2nd?

8 A. Well, I got kicked off the case in
9 August.

10 1877. Q. All right, then if I change your
11 tense, would you then say that you had an interest
12 in, but by October 2nd no longer followed, those
13 blogs?

14 A. I have never had a...wait a minute.

15 1878. Q. You charged a lot of time...

16 A. No, interest...okay, that is a bad
17 word. I was paying attention to the information
18 that came to me which was culled from the internet.
19 That is fair. "Interest" as in ownership, as in
20 setting them up and all that stuff, no, not at all.

21 1879. Q. But what...

22 A. Just a minute.

23 1880. Q. Okay.

24 A. Okay, no way, and did not follow?

25 Well, as I said, I get...it was like when you get

1 the clipping service from the newspapers all over
2 the world. I read what I had to read or people
3 would call me and say, "This happened." I go,
4 "Okay," but in that way, as a litigator or a
5 commander of information, I paid attention, but I am
6 not...

7 1881. Q. Well, let me just confirm. We are
8 not talking about the internet in general, which is
9 a vast place. We are talking about the Keltruth
10 blog, and the Barbados Free Press, which is the
11 other blog, that dealt with these issues, all right?
12 We are not talking about doing a Google search on,
13 you know, where to locate the courthouse or
14 something.

15 A. I would include that in blogging.
16 In other words, if I need to locate something on the
17 internet, I would...that is how...like, blogging
18 means to me that, as I say, mind numbing, getting on
19 the internet or reading all that junk that was sent
20 to me, culling it, stuff like that.

21 1882. Q. Let's go to...

22 A. Just a second now. Two internet
23 blogs...what was the names you used?

24 1883. Q. Keltruth, which you know.

25 A. Yes.

1 1884. Q. And the other one, Barbados Free
2 Press, which...these were the two that dealt with
3 Ms. Zemel and her particular circumstances.

4 A. Barbados Underground is the other
5 blog.

6 1885. Q. I am sorry.

7 A. As I saw it, Barbados Underground
8 was firing one way and Keltruth was firing the other
9 way. The only difference was Keltruth...you knew
10 who they were. They had laws of the United States,
11 which they had to stay within. That was my view.
12 Barbados Underground got out of control.

13 1886. Q. That was a different blog. My
14 information is that there was the Barbados Free
15 Press. They all have the name "Barbados" in front,
16 but they are different blogs.

17 A. Well, the two Barbados internet
18 blogs I am talking about here are Keltruth and
19 Barbados Underground.

20 1887. Q. Did you have any involvement with
21 the Barbados Free Press, you or Mr. Best?

22 A. I can't speak for Mr. Best, and I am
23 sure I read, over time, something from every
24 Barbados blog on the planet, and then some, you
25 know, as I said, culled or summarized for me. I

1 don't imagine I could...

2 1888. Q. Now, let me just read to you two
3 paragraphs from your affidavit, 139 and 140. 139
4 says:

5 "...Miller Thomson LLP acts for the
6 defendant, Iain Deane. Certain information
7 was posted on the Keltruth blog which was
8 critical of a lawyer at Miller Thomson
9 called Maanit Zemel. I am not the author
10 of the material which criticized Ms. Zemel,
11 and I did not provide the author with any
12 of the information or any of the documents
13 which formed the basis of the critical
14 comments.

15 I have never posted any confidential
16 information or documents about this
17 litigation on any blog or website, nor to
18 my knowledge have I provided any
19 confidential information or documents to
20 any other person with the intention that
21 they would be publicly posted. In fact, I
22 have no knowledge about how any documents
23 or information ended up being publicly
24 posted. I have not participated in any
25 blog or public postings with respect to

1 this litigation and have no responsibility
2 or for control over others who have..."

3 Now, just taking one piece of that, the critical
4 comments about Ms. Zemel, what knowledge,
5 information or belief do you have with respect to
6 those and how they might have been posted?

7 A. Sorry, which question do you want me
8 to answer?

9 1889. Q. The critical comments that were made
10 of Ms. Zemel on those blogs, on the Keltruth blog...

11 A. Okay, do you have a copy of it,
12 because it is a long time since I read it. I think
13 it was in your motion record or we debated it last
14 time.

15 1890. Q. What it said basically is that Ms.
16 Zemel lied to the court. That was the key point.

17 A. I am just saying I would agree that
18 whatever it was, it was critical of Ms. Zemel, yes.

19 1891. Q. And you know now, because Ms. Davis
20 has written a letter that you have seen, that says
21 that she posted it?

22 A. That is what she says.

23 1892. Q. That is what she says.

24 A. That is what the letter says.

25 1893. Q. Now, let's assume that that is true,

1 because that is quite an important admission for her
2 to have made, and one that obviously wasn't in her
3 best interest to make. So let me ask you some
4 questions about that on the assumption that what she
5 says is correct, okay? What is your knowledge or
6 information or belief as to how she got the
7 information that she posted on those blogs?

8 A. First of all, I am not going to
9 assume anything.

10 1894. Q. All right.

11 A. So my understanding is, last time I
12 checked, you haven't sued her or her blog for
13 defamation as you threatened to or your partner
14 threatened to.

15 1895. Q. We haven't yet, no.

16 A. Okay, so let's not assume anything.
17 Go ahead, ask your question, please.

18 1896. Q. I just did, and I will ask it again.

19 A. Say it again. I missed it.

20 1897. Q. What is your knowledge, information
21 or belief as to how she got the information she did,
22 because one of the things she posted there was a
23 transcript of the cross-examination of Iain Deane,
24 which had not yet been filed in a court anywhere.

25 A. You are making another assumption,

1 which...

2 1898. Q. No, that is what...

3 A. You are giving evidence now, because
4 I can tell you...that is my evidence, 139. I am
5 going...is that what you are saying? I mean, you
6 haven't sued them. You haven't substantiated
7 anything you are telling me and you are coming to
8 give evidence here? I can't deal with that. It is
9 the same with Mr. Silver.

10 1899. Q. I am just asking where she got the
11 information, where she got the transcript, if you
12 have any knowledge.

13 A. I...

14 1900. Q. All of the other lawyers in the case
15 have said...and you can see in our motion materials.
16 There is affidavit evidence to that effect...that it
17 wasn't they who sent the information to Kathleen
18 Davis. They don't even know where to reach her.

19 A. I don't agree with you.

20 1901. Q. Well, that is what they said. You
21 disagree with that?

22 A. I disagree that they...with your
23 assertion that they have all said these things and
24 you believe it to be true. That is all very nice
25 and you are welcome to that opinion, but I am not

1 accepting any of what you are saying. You are
2 assuming things and you know, as I said, put some
3 evidence on. I am sounding like a lawyer now,
4 sorry. The witness says show me.

5 1902. Q. Well, it is in the motion material.
6 I don't happen to have it in front of me, but...

7 MS. ZEMEL: Just answer the question,
8 Mr. McKenzie.

9

10 BY MR. ROMAN:

11 1903. Q. Do you have any knowledge as to
12 where she got it from?

13 A. Got what?

14 1904. Q. Got that transcript of Iain Deane's
15 cross-examination, which was not filed in the court,
16 and of which there were a limited number of copies?

17 A. I don't have knowledge of what she
18 has got, so we can start right there.

19 1905. Q. Sorry. When she wrote her blog, she
20 put a link to a transcript of the cross-examination
21 you did of Iain Deane, so if somebody clicked on
22 that link, they would see the transcript of the
23 cross-examination of Iain Deane.

24 A. Okay.

25 1906. Q. That cross-examination you never

1 filed in the court at the time, so I am asking you
2 how did she get that?

3 A. I think you said about four things
4 in there that either I don't agree with, or I have
5 no recollection of.

6 1907. Q. How do you think she got it? You
7 are not going to answer the question?

8 A. I cannot allow you to tell me all
9 this evidence. I am saying...okay, show it to me.
10 Show me...anyway, I am not going to tell you how to
11 run your cross-examination.

12 1908. Q. How do you think she...

13 A. None of your assumptions are
14 anything I accept.

15 1909. Q. It doesn't take an assumption to ask
16 you the question how do you think she got it?

17 A. Anyway, it is all res judicata. As
18 a matter of fact, aren't these questions you should
19 ask before you argued before Justice Brown? Like,
20 you have had your shot at this.

21 1910. Q. We are now talking about the cost
22 side, Mr. McKenzie.

23 A. Right. Well, my answer is...hasn't
24 changed, and I am saying you can't relitigate this,
25 can you?

1 1911. Q. So you refuse to answer the
2 question? That is fine.

3 A. Yes, I keep forgetting Mr. Kramer
4 has no knowledge of any of this. This is res
5 judicata, Mr. Roman. /R

6 1912. Q. Okay, that is your position and that
7 is why you are not answering the question.

8 MS. ZEMEL: Could I just follow up on
9 that? Did you have any discussions with
10 Ms. Duncan before cross-examination about
11 this issue, Mr. McKenzie? Are you ignoring
12 me, Mr. McKenzie?

13 MR. KRAMER: As far as I know, there has
14 been no communication at all between
15 McKenzie and Duncan.

16 THE DEPONENT: For a long time.

17 MS. ZEMEL: Okay, so when Ms. Duncan
18 this morning took the position that it is
19 also res judicata, that is just a
20 coincidence?

21 THE DEPONENT: I just argued a case
22 where I lost on the issue of res judicata
23 and as a matter of fact, I thought it was a
24 better one than this one, and I lost. So
25 that is only my opinion as a lawyer. I am

1 stepping on Mr. Kramer's ground here, but
2 he doesn't have the file.

3 MR. SILVER: I don't want to interrupt,
4 but he is giving his own refusal. The
5 question is...

6 MR. KRAMER: He is not...

7 MR. SILVER: No, he is.

8 MS. ZEMEL: He is not answering the
9 question.

10 MR. SILVER: Let me put this on the
11 record...

12 MR. KRAMER: Sure.

13 MR. SILVER: ...because I am going to be
14 relying upon that last answer. He was
15 asked 18 times, "What information,
16 knowledge or belief do you have as to how
17 Kathy Davis got this information to put on
18 her website, the Keltruth blog, in
19 particular, the transcript of Iain Deane?"
20 And your client has done everything he can
21 to avoid answering that question
22 culminating with taking a legal position
23 that it is res judicata. I am asking you,
24 as his counsel, to reconsider that position
25 and instruct your client to answer the

1 simple question. It doesn't require any
2 assumptions or any underlying facts. Does
3 he know, and if so, tell us, or have
4 information, how Kathy Davis got the
5 transcript to put it on her blog?

6 MR. KRAMER: Lorne, it is not my job to
7 instruct the witness to answer. You didn't
8 hear a refusal coming from me.

9 MR. SILVER: I know I didn't.

10 MR. KRAMER: So there you go.

11 1913. MR. ROMAN: I have a follow-up question
12 to ask.

13 MR. SILVER: So we are left with he is
14 not answering because it is res judicata, a
15 position that he takes himself?

16 MR. KRAMER: The transcript speaks for
17 itself. I am not telling you what it says.
18 I didn't object to the question.

19

20 BY MR. ROMAN:

21 1914. Q. Okay, I have a further question, Mr.
22 McKenzie. In addition to the transcript that I just
23 asked you about, which was one particular question,
24 in that same Keltruth blog there was a detailed
25 narration of a discussion that you and Ms. Zemel

1 had, and only the two of you were present during
2 that discussion. Can you explain to me how it is
3 that Kathleen Davis got a summary of that
4 discussion?

5 A. I don't agree with your assumptions.

6 1915. Q. The blog that she wrote summarizing
7 that discussion is in my motion materials. We have
8 got it.

9 MR. KRAMER: Well, I think he has got a
10 valid point. There is nothing about that
11 in his affidavit. You are not putting that
12 to him. You are putting to him a series of
13 assertions. He says he doesn't accept
14 them, so it is a proper objection. If you
15 want to ask that question, you have got to
16 show it to him.

17 1916. MR. ROMAN: Do you have it in front of
18 you?

19 THE DEPONENT: I just want to put on the
20 record that in this case I sort of
21 exonerate Mr. Kramer because he has not yet
22 received this darn file about all this, and
23 so I am having to put stuff on the record
24 which are legal conclusions, but it is not
25 fair to Mr. Kramer to blame him.

1 MR. SILVER: It doesn't seem like he
2 needs your protection.

3 THE DEPONENT: Well, I have a lawyer. I
4 have a lawyer for a reason, but in this
5 area, he has not been briefed,
6 unfortunately.

7 MR. SILVER: With the greatest of
8 respect, it seems like you are trying to
9 protect yourself.

10 THE DEPONENT: Anyway, next question.

11 MR. KRAMER: You are asking a particular
12 question. I think he is within his rights
13 to say, "Show me that that is the case."

14 1917. MR. ROMAN: We are looking for it right
15 now.

16 MR. KRAMER: And if you can show it to
17 him, maybe he will...

18 MS. ZEMEL: Can we go off the record for
19 a second? I can find it. Don't waste the
20 reporter's time. It will take me about
21 five minutes to find it.

22 MR. KRAMER: Well, why don't you ask him
23 another question...

24 1918. MR. ROMAN: Let's go on. Where is the
25 other table?

1 MS. ZEMEL: I just gave it to you. Does
2 he have a copy of this?

3 MS. ZEMEL: No.

4 MR. KRAMER: Maybe we should go off the
5 record for a second.

6

7 --- DISCUSSION OFF THE RECORD

8

9 1919. MR. ROMAN: This is a table I am showing
10 you, which we are going to mark as an
11 exhibit. It is called table of dockets
12 that refer to Kathy Davis from Exhibits A
13 and B to Jessica Duncan's affidavit. So
14 what we have done is the same exercise. We
15 have gone through it, and it shows that
16 between April 20, 2006 and June 10, 2008,
17 there were a number of dockets referring to
18 exchanges of e-mails with William McKenzie,
19 Peter Allard, blogging and Kathy Davis,
20 connecting them all together. This is not
21 as huge a number of hours as before, but
22 there is eight entries.

23 MR. KRAMER: So this has not previously
24 been marked as an exhibit?

25 1920. MR. ROMAN: That is right.

1 MR. KRAMER: Okay.

2 1921. MR. ROMAN: That will be Exhibit F, I
3 guess.

4 MR. KRAMER: Right, and what are you
5 asking about this?

6 1922. MR. ROMAN: I want to ask him a question
7 about that.

8 MR. KRAMER: Do you want him to review
9 it first for you?

10 1923. MR. ROMAN: Yes, take a quick look.

11 MR. KRAMER: Okay.

12

13 BY MR. ROMAN:

14 1924. Q. So given the level of communication
15 during this case, Mr. McKenzie, between yourself and
16 Kathy Davis on the subject of blogging, how do you
17 reconcile that information with your paragraphs 139
18 and 140 of your affidavit?

19 MR. KRAMER: Didn't you already ask that
20 question generally with respect to all of
21 the blogging entries?

22 1925. MR. ROMAN: I did with respect to
23 blogging, but this is specific to Kathy
24 Davis, who is the author of the
25 particularly offensive blog in this case.

1 THE DEPONENT: In this exhibit...what is
2 it, 2?

3 1926. MR. ROMAN: F.

4 THE DEPONENT: Can you show me where it
5 says I did something with Kathy Davis on
6 blogging? I don't see it, but I am
7 probably missing it, but...

8

9 BY MR. ROMAN:

10 1927. Q. It doesn't say that you did anything
11 with Kathy Davis. It says that you and your firm
12 had communications with her and she was the author
13 of the blog.

14 MR. KRAMER: Well, hold on a second. It
15 doesn't say that either. I think Kathy
16 Davis' name is only on a couple of these.

17 MS. ZEMEL: If I can be of assistance,
18 please? Why don't we save some time and I
19 will be of assistance. I will read them
20 out that way, and if you want, I can take
21 you to the actual entries, but for
22 example...I am going to actually cross one
23 out because that was an error, but I will
24 take you...

25 THE DEPONENT: Sorry, which one are you

1 crossing off that was an error?

2 1928. MR. ROMAN: The first one, right?

3 MS. ZEMEL: Okay, I will just show you.

4 We might, just for...if we want to be

5 specific, we can take you to the actual

6 entry, but for example, there is an entry

7 here, this one, on June 1, 2006 by Mr.

8 McKenzie and it says:

9 "...Meet with JG, JK and Kathy..."

10 There is another one...

11 MR. KRAMER: Okay, maybe take it one at

12 a time.

13 MS. ZEMEL: Yes, why not?

14 MR. KRAMER: How do you know that Kathy

15 is Kathy Davis?

16 MS. ZEMEL: Well, that would be the next

17 question. Is Kathy a reference to Kathy

18 Davis?

19 THE DEPONENT: I asked the question

20 which one did you cross off because it was

21 an error...

22 1929. MR. ROMAN: The very first one.

23 THE DEPONENT: That will eliminate one,

24 okay. So we are going to the second one on

25 this page?

1 1930.

MR. ROMAN: Yes.

2 MR. KRAMER: So the first question is is
3 the Kathy in this docket entry Kathy Davis,
4 to your knowledge?

5 THE DEPONENT: I am pretty sure it would
6 be, yes.

7 MR. KRAMER: Okay, so what is the
8 question? It doesn't say anything about
9 blogging there.

10 MS. ZEMEL: That wasn't the question.

11 MR. KRAMER: So what is the question?
12 We have identified one docket entry which
13 has the name Kathy. The witness has said
14 he thinks the Kathy is Kathy Davis, so what
15 is the question?

16 MS. ZEMEL: Well, I will go through all
17 the docket entries instead of just one.
18 Let me do this. It will be faster. Okay,
19 so there is another entry by Stacey Ball on
20 October 19th, 2007.

21 THE DEPONENT: Sorry, I am just going to
22 stop you there because I don't want to go
23 too fast. Can I find the entry that
24 corresponds...

25 MS. ZEMEL: Sure, we can do that.

1 THE DEPONENT: ...with June 1st, 2006?

2 It is just...it might refresh my memory,
3 rather than...

4 MS. ZEMEL: Well, it is just that that
5 would take up the time that we have, but I
6 am going to...we can do that if that is
7 what the witness would like.

8 THE DEPONENT: I understand, but the
9 surrounding things sometimes helps you...

10 MR. KRAMER: June 1st, 2006?

11 MS. ZEMEL: Yes, June 1st, 2006.

12 THE DEPONENT: I have to tell you my
13 memory is sometimes...

14 MS. ZEMEL: And we can be clear about
15 that. I will tell you the exact number of
16 the entry. It is in Exhibit A...

17 MR. KRAMER: We got it here.

18 MS. ZEMEL: And it says:

19 "...E-mails to SM, PM, JK, AS. Meet with
20 JG, JK and Kathy..."

21 And then there is...the next entry would be
22 on October 19th, 2007. I am just going
23 chronologically right now.

24 THE DEPONENT: Sorry, on June 1st,
25 2006...did I answer your question?

1 MS. ZEMEL: Well, we are going to get to
2 the question, but let's first make sure
3 that we have all these entries. So October
4 19, 2007.

5 THE DEPONENT: Can you do them one at a
6 time, please? I am just kind of going...

7 MR. KRAMER: Okay, October 19, 2007.

8 MS. ZEMEL: I am going to find the entry
9 and I am going to give you the number of
10 the entry so that way...

11 MR. KRAMER: No, I got it. October 19,
12 2007.

13 MS. ZEMEL: Actually, hang on one
14 second. Sorry, it is not October 19. It
15 is October 20th, 2007. I apologize.

16 MR. KRAMER: October 20.

17 MS. ZEMEL: The entry is 566742.

18 MR. KRAMER: Got it, okay.

19 MS. ZEMEL: There is a few others.

20 MR. KRAMER: It says:
21 "...Blogging, e-mails from DK, KD, Nathan
22 re Keltruth issues..."

23 MS. ZEMEL: Okay, that is another one.
24 The next one...

25 MR. KRAMER: Hold on a second. Do we

1 know that the KD is Kathy Davis, because
2 that is what this is all about?

3 MS. ZEMEL: Is it Kathy Davis?

4 1931. MR. ROMAN: That is the way it is
5 normally...

6 MR. KRAMER: I know. Well, so is it...

7 MS. ZEMEL: Well, that is the evidence
8 he gave under oath in his previous
9 examination.

10 MR. KRAMER: Okay.

11 THE DEPONENT: I am pretty sure that is
12 KD, Kathy Davis, yes.

13 MS. ZEMEL: Okay, if you go down further
14 that same page on October 22nd, 2007, there
15 is an entry by Stacey Ball and at the end
16 of it it says:

17 "...Preparation of e-mail to ID, KD re
18 Keltruth..."

19 Do you know who ID is?

20 THE DEPONENT: My best guess is it is
21 Iain Deane, which is Kathy Deane's...no,
22 that can't be right. Davis. Ian Davis,
23 Kathy Davis.

24 MS. ZEMEL: And who is Ian Davis?

25 THE DEPONENT: Her husband.

1 MS. ZEMEL: Okay, and the next one would
2 be on...I have November 27, 2007.

3 MR. KRAMER: November 27...

4 MS. ZEMEL: A few pages down there, yes,
5 you will find it.

6 MR. KRAMER: All right, November 27.

7 MS. ZEMEL: Let me just make sure I can
8 find it.

9 MR. KRAMER: "...Review of e-mails
10 November 9 to 26. KWM, AS..."

11 MS. ZEMEL: No, that is not it, sorry.
12 It might not be the right...that entry
13 could be from Exhibit B, actually. Let's
14 go to Exhibit B. I apologize. These are
15 just for our purposes. They are not...

16 MR. KRAMER: I thought we were going to
17 mark that as an exhibit.

18 MS. ZEMEL: No, this is not for marking
19 as an exhibit, and I apologize for that.
20 Let's go ahead to Exhibit B. November 27,
21 2007.

22 THE DEPONENT: I am sorry, you are
23 switching files here?

24 MS. ZEMEL: We are going now to...

25 MR. KRAMER: We are switching files.

1 THE DEPONENT: I am just trying to get
2 my head around it.

3 MR. KRAMER: So November 27, 2007?

4 MS. ZEMEL: Yes, here we are, and the
5 entry at Exhibit B would be number 569917.
6 Do you see that, Mr. Kramer?

7 MR. KRAMER: Yes.

8 MS. ZEMEL: And the entry is from Mr.
9 McKenzie. It says:

10 "...Prepare and meet with JG, JK, KD, recap
11 call with JAD..."

12 Is that correct? And then there is another
13 one on the same exhibit on March 12th,
14 2008.

15 MR. KRAMER: March 12, 2008.

16 MS. ZEMEL: Unfortunately my copies are
17 not very good, so it is hard to find,
18 but...

19 MR. KRAMER: I got it.

20 MS. ZEMEL: You found it? Have you
21 found it, because I haven't found it.

22 MR. KRAMER: Well, I have got March
23 12th, 2008. I don't see Kathy Davis on any
24 of those entries.

25 MS. ZEMEL: So again, that might be

1 incorrect. It is hard to keep track of all
2 of these, but I will get back to...

3 MR. SILVER: Could it be back in the
4 other one?

5 MS. ZEMEL: It could be in Exhibit A,
6 yes. It could be in Exhibit A. That is
7 possible. So let's look at the Exhibit A,
8 March 12, 2008. Thank you, Mr. Silver.
9 Actually, let's go to May...March 8, 2008,
10 sorry.

11 MR. KRAMER: March 8?

12 MS. ZEMEL: I am still looking. March
13 12th...

14 MR. KRAMER: I don't see anything with
15 Kathy Davis' name or initials.

16 MS. ZEMEL: Yes, there we go. March 12,
17 2008, entry number 579068. See that?

18 MR. KRAMER: Yes.

19 MS. ZEMEL: Entry by Sunny Ware, and
20 that is your assistant, Mr. McKenzie? That
21 was your assistant?

22 THE DEPONENT: Sunny Ware worked for me,
23 yes.

24 MS. ZEMEL: It says:

25 "...Review of e-mails between JG, JK,

1 KD..."

2 Do you see that?

3 THE DEPONENT: I see that.

4 MS. ZEMEL: And we have an entry on

5 April 13th, 2008, entry number 581496:

6 "...Call with Nathan and meeting with JK,

7 JG, KD, N. Blogging..."

8 Who is "N"?

9 THE DEPONENT: Let me see that, sorry.

10 Sorry, it doesn't ring a bell.

11 MS. ZEMEL: Okay. Well, this is just

12 some. There are plenty others, but I am

13 just giving you a...

14 1932. MR. ROMAN: Overview.

15 MS. ZEMEL: Yes, an example. That is

16 why I don't want to mark this as an

17 exhibit, because these are just examples

18 for the purposes of Mr. Roman's questions.

19 THE DEPONENT: I thought it was an

20 exhibit.

21 MS. ZEMEL: No, this one isn't. The

22 others are.

23 1933. MR. ROMAN: We are not going to make

24 that one an exhibit.

25 THE DEPONENT: Wait a minute. Can you

1 just give me back what you just put away?

2 MS. ZEMEL: These are notes just for our
3 purposes. They are not meant...

4 THE DEPONENT: But there was something
5 you crossed off and I wanted to read it to
6 myself.

7 MR. KRAMER: Let him read it.

8 MS. ZEMEL: Mr. McKenzie...no, it is not
9 for him to read.

10

11 BY MR. ROMAN:

12 1934. Q. Mr. McKenzie, you asked me earlier
13 to refer you to a document, or you didn't, sorry. I
14 am referring you now to the motion record of the
15 defendants, Eric Iain Stewart Deane and the Estate
16 of Colin Deane, and this is dated February 2, 2009,
17 and in that there is the affidavit of Tarsem
18 Basraon, who was a student in our law firm, and
19 Exhibit E to his affidavit is an article from the
20 Barbados Free Press. And it says in there, and I
21 will quote you and then I will let you see this.
22 Under the heading "Maanit Zemel lied" it says:

23 "...To compound her lies and unethical
24 behaviour, on December 8, 2008, when the
25 plaintiff's lawyer, McKenzie, was

1 explaining to the judge about how Zemel
2 said her client, Iain Deane, had not
3 received the specific legal document that
4 was posted by BWWR, Zemel unethically
5 remained quiet and did not correct her
6 error with the court. Right away after
7 leaving the hearing, she told McKenzie
8 about the error..."

9 Now, you and Ms. Zemel did have a discussion. It
10 wasn't leaving the court because this wasn't before
11 the court; it was an examination or a cross-
12 examination on an affidavit before Victory Verbatim
13 or someone like that, but she did tell you about the
14 error shortly afterwards, and I am wondering how
15 this blog knew about that discussion between the two
16 of you.

17 MR. KRAMER: Do you have any information
18 about that?

19 THE DEPONENT: You made about 25
20 assumptions there.

21
22 BY MR. ROMAN:

23 1935. Q. Well, have a look at it if you like.

24 MR. KRAMER: He is asking you whether
25 you have any information about this comment

1 which turned up the blogs. Do you know
2 anything about it or not?

3 THE DEPONENT: I am just going to take a
4 minute to read the whole thing...

5 MR. KRAMER: Sure.

6 THE DEPONENT: ...because I haven't read
7 it in a long time. Okay, I do remember...I
8 am just reading the blog. This is a
9 printout from an internet site, I gather.

10 Okay, Ms. Zemel did, during the cross-
11 examination, repeatedly say her client had
12 never received something and he adopted...

13 MR. KRAMER: He just wants to know if
14 you know anything about how this
15 information got on the blog. That is the
16 question.

17 THE DEPONENT: I am trying...I am going
18 to work my way through it because I am
19 going...

20 MR. SILVER: I know, but do it to
21 yourself. You don't have to read it out
22 loud for you to review it.

23 THE DEPONENT: I want to keep doing it,
24 thank you. Sorry, I have lost...

25 MR. KRAMER: The question was do you

1 know how this information ended up on this
2 blog. That is all he wants to know.

3 1936. MR. ROMAN: Particularly the
4 information...

5 THE DEPONENT: I understand.

6 1937. MR. ROMAN: ...about the discussions
7 between...

8 MR. KRAMER: Yes.

9 THE DEPONENT: I understand, and I am
10 saying I am reconstructing it here. I
11 haven't seen it since...ever, or you know,
12 when I first saw it. Okay, so that
13 transcript was the core of the problem.

14

15 BY MR. ROMAN:

16 1938. Q. Was one of piece of it.

17 A. That this information was put on the
18 record by Ms. Zemel that was false, or an error. I
19 am not saying it was...and her client adopted it and
20 it was wrong. Okay, I got it. Cross-examining
21 November 3rd, I got that. Okay, so it is correct
22 that Ms. Zemel was in error during the transcript
23 and it is correct that I never heard that there was
24 an error until after the court argument, which I
25 don't recall exactly, but Ms. Zemel came to me and

1 explained, for the first time, that she had made an
2 error and I said, "Well, you should do something
3 about it because you are a lawyer and go talk to
4 your superior, Mr. Roman. He is very wise. He has
5 a way to fix it." And my recollection is she sort
6 of kept raising her voice and following me to the
7 elevator until the doors closed.

8 1939. Q. That is not the answer to the
9 question.

10 A. No, just a minute now. Now, I am
11 just saying...so your question now...I mean, that is
12 the framework for this thing. Now, tell me what
13 your question is again. I see the part you are...

14 1940. Q. Mr. Kramer just put it to you a
15 moment ago.

16 A. No, go ahead. You go ahead and
17 remind me.

18 1941. Q. Same question.

19 A. Go ahead.

20 1942. Q. How do you think they got that
21 information when the discussion was between the two
22 of you?

23 A. What I just told you? In other
24 words, that story that I just told you?

25 1943. Q. What story was that?

1 A. Well, that she came and confessed
2 her error and I said, "You better do something about
3 it."

4 1944. Q. And that ended up in the blog. How
5 did that end up in the blog?

6 A. Was that information that she had
7 made an error and I thought she should correct it,
8 was...number 1, there was a letter I wrote to Ms.
9 Zemel, to my recollection, saying I just got back
10 from...I said, "Fix it," and then I went off on
11 holiday. My recollection, I would have to check the
12 file, but I got back and I said, "You haven't fixed
13 it," or something like that, right? That letter
14 would have...in other words, it got out there. It
15 is like we sent everything to everybody.

16 1945. Q. Where is out there?

17 A. Well, no, I am just saying my...the
18 best evidence I can give you is letters in my file
19 that are relevant to these things get e-mailed, you
20 know, sent by carrier pigeon or whatever, to
21 everybody, and they are all over Barbados the next
22 morning because I often see them on Barbados
23 Underground. In other words, it is unbelievable.
24 There is a like a main line to this thing and people
25 are castigating me for my...so I am just saying...I

1 am postulating now that that engendered discussion
2 with my clients, "What was this all about?"

3 1946. Q. Would this letter have been copied
4 to Alair Shepherd?

5 A. I would not be surprised. In other
6 words, when we send things out, they go to various
7 people and Mr. Shepherd was the lawyer for on of the
8 defendants, Ms...

9 1947. Q. He is not a Canadian lawyer.

10 A. Just a second. He was the lawyer
11 for one of the defendants, Marjorie Knox, so...

12 1948. Q. In Barbados.

13 A. ...it is reasonable to assume he got
14 it, yes. Do I...I don't do all these things, I am
15 just saying they are sort of remote controlled. You
16 know, they go out to various people, yes.
17 Absolutely.

18 1949. Q. Is it fair to say that you copied
19 people other than your client, then?

20 A. I imagine a letter like that went to
21 every lawyer and ever person involved in this thing
22 because it is a generic letter to counsel. We have
23 kind of had a protocol...

24 1950. Q. But when you say every lawyer...

25 A. Give me a second.

1 1951. Q. ...involved in this, you are not
2 just referring to the lawyers for the defendants in
3 this matter, but any lawyer that you might have
4 circulated it to?

5 A. Well, there is probably a...what do
6 you call them...a group...

7 1952. Q. Copy list?

8 A. ...that get every fax, every...you
9 know the way people reply all and it goes all
10 over...and I am just saying Barbados especially, if
11 one thing goes to Barbados, it seems to me everybody
12 in Barbados has got a copy of it five minutes later.

13 1953. Q. There were no Barbadian lawyers in
14 this case, Mr. McKenzie. We know who all the
15 lawyers were here.

16 A. Are you kidding? There is a ton of
17 Barbados lawyers in this case, plus Mr. Silver has
18 been involved in this case for Barbados since 2005,
19 plus you have been involved in this case since 2004,
20 or the issues behind this case. I am saying gosh
21 knows...how this propagates through the internet is
22 like viral to me. I have never understood how it
23 gets out so fast. I mean, I will write a letter and
24 somebody will call me and say, "Do you know you have
25 been quoted on Barbados Underground?" I said, "I

1 just sent it out yesterday," or something like that.
2 So my answer is I don't...if your question is how do
3 I know where it went and how it got out there, it
4 went viral, by the sounds of it.

5 1954. Q. And that is the best answer you can
6 give us?

7 A. Well, that is the best answer I can
8 give you.

9 1955. Q. All right. Let me take that back
10 because that is our original of the record.

11 A. I am not finished reading. All
12 right, go ahead.

13 MR. KRAMER: All right, it is 4:26, Mr.
14 Roman. How much longer do you expect to
15 be, since we are already almost 50 percent
16 beyond the time that the court allocated
17 you?

18 MS. ZEMEL: We have a few more questions
19 regarding the previous affidavit, but
20 regarding anything else...

21 1956. MR. ROMAN: I am going to wait until the
22 other lawyers are finished cross-examining
23 before I ask my questions on his new
24 affidavit. This is on the first affidavit,
25 so I won't be doing that today, but I just

1 had one final question, Mr. McKenzie, and
2 it is to ask you to undertake to ask and
3 advise whether certain individuals wrote
4 the blogs about Ms. Zemel or provided the
5 information that resulted in the blogs
6 being posted that are in this motion
7 record, okay?

8 MR. KRAMER: You are going to give us a
9 list of names and you are asking us to
10 undertake to go contact all these people
11 and ask them...

12 1957. MR. ROMAN: There isn't a long list,
13 but...

14 MR. KRAMER: And ask them what?

15 1958. MR. ROMAN: And ask them whether they
16 provided the documents that resulted in the
17 blogs, the transcript and Mr. McKenzie's
18 letter.

19 MR. KRAMER: I don't think that is a
20 proper question. /R

21 1959. MR. ROMAN: You don't, okay.

22 MR. KRAMER: You are examining him on
23 the part of his affidavit where he said he
24 didn't do any blogging.

25 1960. MR. ROMAN: And he said he had no

1 control over the people who did. I would
2 assume that he had control over Sunny Ware.

3 MR. KRAMER: Well, if it is Sunny Ware,
4 that might be...

5 1961. MR. ROMAN: It is Sunny Ware.

6 MS. ZEMEL: Let him ask the question.

7 MR. KRAMER: All right.

8 1962. MR. ROMAN: So let's ask the question.
9 Would you inquire of Sunny Ware...

10 MR. KRAMER: Don't answer until we hear
11 the whole question. Is it sort of one
12 question with a number of people?

13 1963. MR. ROMAN: Three or four people.

14 MR. KRAMER: Yes, so give us the...all
15 right, so we have got the question now. Do
16 they know how this information about Ms.
17 Zemel got on the blog? Is that the
18 question?

19 1964. MR. ROMAN: Or whether they put it there
20 or made it available to Kathleen Davis.

21 MR. KRAMER: And you want us to ask
22 Sunny Ware and who else?

23 1965. MR. ROMAN: Sunny Ware, Stacey Ball,
24 Marc Lemieux and Donald Best.

25 MR. KRAMER: Well, certainly we can't

1 ask Stacey Ball. She is an employee of
2 another party with whom we have a list.
3 You will have to take that up with Mr.
4 Epstein.

5 1966. MR. ROMAN: All right.

6 MR. KRAMER: I know Mr. McKenzie has no
7 knowledge of the whereabouts of Mr. Best,
8 isn't that right?

9 THE DEPONENT: Right.

10 MR. KRAMER: So we can't ask him. So
11 the only two other people are Ms. Ware and
12 Ms. Ball, who are former employees of the
13 firm, right?

14 MS. ZEMEL: No, Marc Lemieux.

15 1967. MR. ROMAN: Marc Lemieux.

16 MR. KRAMER: What did I say?

17 THE DEPONENT: I don't think he was
18 working.

19 MR. KRAMER: All right, but I will take
20 that under advisement. Frankly, I think
21 those inquiries ought to be made through
22 Mr. Epstein. They are former employees of
23 his client, but we will take that under
24 advisement.

U/A

25 1968. MR. ROMAN: All right.

1 MR. KRAMER: Okay.
2 1969. MR. ROMAN: That is all I had.
3 MR. KRAMER: Do you want to start? Does
4 anybody need a break before we go on?
5 MS. ZEMEL: Can we take five minutes,
6 please?
7 MR. KRAMER: Sure.

8

9 --- A BRIEF RECESS

10

11 K. WILLIAM MCKENZIE, resumed

12 CONTINUED CROSS-EXAMINATION BY MR. SILVER :

13 1970. Q. Mr. McKenzie, you continue to be
14 under oath?

15 A. Correct.

16 1971. Q. And I am going to try and ask you
17 specific questions that elicit specific answers, and
18 I would ask that you just answer the questions that
19 I ask, okay?

20 MR. KRAMER: Well, let's get going.

21 THE DEPONENT: Let's hear them.

22

23 BY MR. SILVER:

24 1972. Q. When was the last time you spoke to
25 Peter Allard?

1 A. I can't remember.

2 1973. Q. Give me a range. Was it in the last
3 week? When you say you can't remember, you say you
4 can't remember specifically, because I could start
5 the other way with a question like...

6 A. Bear with me. I am just trying to
7 go...I am not here to play games and neither are
8 you. I am going...

9 1974. Q. Good. When did you last speak to
10 Allard.

11 A. Within the last...this year. 2010,
12 to the best of my recollection.

13 1975. Q. How many times did you speak to him
14 this year?

15 A. I can't remember.

16 1976. Q. More than once?

17 A. Probably, yes.

18 1977. Q. And do you have a recollection of
19 speaking to him since February 24th, when the costs
20 submission aborted?

21 A. I don't have a recollection.

22 1978. Q. You don't have a recollection, so
23 you didn't speak to him since February 24th? That
24 is a question.

25 A. Well, I don't want to argue with

1 you. I don't remember.

2 1979. Q. Well, we went through this on
3 February 8th when I cross-examined, and I need to
4 know what "I don't remember" means. Does that mean
5 you have a clear recollection that you didn't speak
6 to him since February 24th, or you have an imprecise
7 recollection as to whether or not you spoke to him
8 since February 24th?

9 A. I don't remember when I spoke with
10 him is the best I can do.

11 1980. Q. I know, but is there a record that
12 you could you check? Were you in the same city as
13 him in 2010 at any time? That is another way of
14 asking.

15 A. Not to my knowledge.

16 1981. Q. So you haven't met with him in
17 person in 2010?

18 A. I don't think so.

19 1982. Q. So it would have been by telephone
20 that you spoke to him in 2010?

21 A. Possibly.

22 1983. Q. And that would have been by a long
23 distance telephone call?

24 A. If I spoke with him by telephone, it
25 would have been long distance, yes.

1 straight. What records do you have that
2 record your long distance calls in 2010
3 that you could check? Do you have any such
4 records?

5 THE DEPONENT: The only records I could
6 check would be my cell phone. Any other
7 way I communicate with him, I don't think
8 there are records. You know, Skype.

9

10 BY MR. SILVER:

11 1990. Q. How else do you communicate with
12 him?

13 A. We went through this all in the
14 last...Skype is my favourite way to communicate
15 with...

16 MR. KRAMER: So he is asking you, then,
17 to check your cell phone records for 2010,
18 all right? Are you going to do that?

19 THE DEPONENT: To see if my memory is
20 refreshed, yes.

21 MR. KRAMER: So we will give you an
22 undertaking, and if you can find entries in
23 your cell phone records in 2010 of calls
24 with Allard, you will redact them out of
25 the records and give them to me and I will

1 give them to Mr. Silver.

U/T

2

3 BY MR. SILVER:

4 1991. Q. What number do you call when you
5 want to speak to Mr. Allard? Does he have a cell
6 phone number and can you provide it to me, please?

7 A. I don't know that he has a cell
8 phone.

9 1992. Q. What number do you call when you
10 call him long distance?

11 A. I don't know exactly.

12 1993. Q. Do you have a contact for him in
13 your computer or...like, if you wanted to reach him
14 today, what would you do?

15 A. I don't imagine I could, but I am
16 just saying I must have a number. Yes, and I am
17 not...somewhere. It is like, if I wanted to contact
18 him today, I would go look up something and call...

19 1994. Q. What would you look up?

20 A. ...and maybe...I have a scribbled...
21 I think Skype has the number in it, which is a Skype
22 number that you call. That is my recollection.

23 1995. Q. I am talking about other than Skype.
24 The number you have for Skype is a Skype number or
25 is...

1 A. No.

2 1996. Q. You do it through a phone number?

3 A. Yes, you can...there is voice over
4 internet protocol, I think that is what it is
5 called, which you are interacting with the other
6 guy's computer.

7 1997. Q. Okay, I don't want to know about
8 that.

9 A. And then there is...

10 1998. Q. Can you just provide the number at
11 which you contact Mr. Allard when you contact him
12 through Skype?

13 A. Well, that is what I was trying to
14 say. That is where I would find the number of a
15 phone number, you see. Skype can also call a phone
16 number.

17 1999. Q. Sir, will you provide the number
18 that you contact Mr. Allard when you contact him by
19 Skype?

20 A. Yes.

U/T

21 2000. Q. Will you also provide the phone
22 number that you call when you contact him by cell
23 phone? They may be the same, I don't know, but I
24 will take both undertakings.

25 A. I will take that under advisement.

U/A

1 MR. KRAMER: Well, do you have the
2 number? Do you have a cell phone number or
3 an office number for Mr. Allard?

4 THE DEPONENT: I have a number.

5 MR. KRAMER: All right.

6 THE DEPONENT: I don't know if it is a
7 cell phone. I mean, I have just said I
8 have a number to call.

9 MR. KRAMER: All right. Well, Mr.
10 McKenzie will dig out whatever number he
11 has for Mr. Allard and we will give it to
12 you.

13 THE DEPONENT: Yes.

14 2001. MR. SILVER: But Mr. Kramer, you haven't
15 been involved quite as long, and I have
16 learned through 28 years of practice and
17 more recently through the last three or
18 four years of this file, that I need to ask
19 specific questions and ask specific
20 undertakings.

21 MR. KRAMER: That is fine. That is
22 perfectly fine.

23 THE DEPONENT: You don't look at that
24 old.

25 2002. MR. SILVER: Well, I feel it. The

1 specific undertakings I am looking for are
2 to provide the number that Mr. McKenzie
3 would use to contact Allard when he is
4 using Skype. I got that undertaking. And
5 then I asked to provide the number that Mr.
6 McKenzie uses when he contacts Mr. Allard
7 by phone and for some reason, I got an
8 under advisement on that.

9 THE DEPONENT: Well, I have to tell you
10 one thing, that I keep forgetting and I
11 have to remind myself, is as I said before,
12 I find that every time there is something
13 that goes public, it is on the internet
14 very quickly and awful things happen to
15 people. So if we could have a protocol
16 here where I give something to you, Mr.
17 Silver, that I trust it won't get out viral
18 like that because I worry about these
19 things, the same way my cell phone number,
20 I don't want anybody...you can have it any
21 time you want. You can have it, but it has
22 been really bad.

23
24 BY MR. SILVER:

25 2003. Q. All I can do is tell you that there

1 is a deemed undertaking and we will abide by it,
2 which means we can't and won't use this information
3 for any other purpose other than the purposes of
4 this litigation, and that is the best you are going
5 to get. So do I have an undertaking, an under
6 advisement or a refusal on my question to provide
7 the number that you use to contact Mr. Allard when
8 you are contacting him by phone?

9 A. If you will add one more thing, that
10 it won't end up being used by those people that are
11 threatening people and doing nasty things...

12 2004. Q. I can't give you any guarantee in
13 that respect. I know nothing. All I can do is tell
14 you that my clients and I have always and will
15 continue to abide by every obligation set out in the
16 Rules.

17 A. You know, there is something on the
18 internet that I was told about that looks like it
19 came from your firm. It was planted, and I am
20 saying....

21 2005. MR. SILVER: Mr. Kramer, can you assist,
22 please? I am looking for an undertaking...

23 MR. KRAMER: I can't assist.

24 2006. MR. SILVER: No, then give a refusal.

25 MR. KRAMER: I am not giving a refusal.

1 2007. MR. SILVER: I am looking for an
2 undertaking, an under advisement or a
3 refusal. I think those are the only three
4 options.

5 MR. KRAMER: They are, and you are
6 getting no objection from me and the
7 witness is going to either say...look, the
8 gentleman is a lawyer. He doesn't need me
9 to tell him what an undertaking is. You
10 have asked the question. I see nothing
11 wrong with the question and either he is
12 going to answer it or he is not.

13 THE DEPONENT: I will answer it...
14

15 BY MR. SILVER:

16 2008. Q. Okay, so I will direct it to you,
17 Mr. McKenzie.

18 A. I will answer it subject to...

19 2009. Q. An undertaking...

20 A. ...protection.

21 2010. Q. ...under advisement or a refusal?

22 A. As I said, I am going...I am sorry
23 to say this, that unless there is protection, I will
24 give it to Mr. Kramer and he can go to court, but I
25 am not...I am just saying...

1 delivery...

2 THE DEPONENT: That works perfectly for
3 me. That is all I am worried about, is I
4 don't want to be the author of...

5 2014. MR. SILVER: I am not agreeing that in
6 order to get this...

7 MR. KRAMER: That is fine.

8 2015. MR. SILVER: ...you are entitled to a
9 protocol, but I understand.

10 THE DEPONENT: I understand, but that is
11 the only thing that is holding me back, is
12 safety and security and these people don't
13 need this.

14

15 BY MR. SILVER:

16 2016. Q. Mr. Allard has never been
17 threatened, to your knowledge?

18 A. Are you kidding? I listened to a
19 tape of the Prime Minister, a tape, okay, of the
20 Prime Minister, and letting him have it, okay, and
21 also Mr. Turney, your client, said he had better not
22 come back to Barbados or else, and that is in a
23 letter some place. I am saying it is in a letter so
24 it is hearsay, of course. There are various things,
25 and this isn't funny for these people, you know.

1 You know, you guys think...scoff at it. It is
2 outrageous what is going on.

3 2017. Q. We don't scoff at it, Mr. McKenzie,
4 and I don't want to get into a debate with you, but
5 in fairness to us, we tested whether or not these
6 were real threats and the court concluded that they
7 weren't, and you then appealed that decision and you
8 lost on a motion for leave to appeal. So all I can
9 say is that notwithstanding your view that they were
10 threats, they weren't shared by a court, a senior
11 judge of the Ontario Superior Court of Justice.

12 A. The court has not ruled on anything
13 except the fact that Peter Simmons, a powerful
14 person in Barbados, said that, "If McKenzie comes
15 here, he had better watch his back." That is the
16 only thing that has been ruled on.

17 2018. Q. The court ruled that that was not a
18 threat.

19 A. Since we are into it, okay, the
20 court ruled it was not a threat.

21 2019. Q. Right.

22 A. The police and other people I talked
23 to said, "You should worry about your safety and
24 your family," and you know, there is different
25 opinions and it is hard to sleep at night when you

1 are...

2 2020. Q. But things changed, Mr. McKenzie, of
3 course, since that time and you were worried about
4 it so much you went to Barbados for a week without
5 any apparent security and moved around freely and
6 Mr. Hansen put in an affidavit. Well, you know, we
7 are going to get into it...

8 A. Au contraire.

9 MR. KRAMER: I don't think that is what
10 the evidence was, Lorne, but this is
11 obviously irrelevant to the examination.

12 2021. MR. SILVER: Let's move on.

13 MR. KRAMER: Yes, let's move on.

14

15 BY MR. SILVER:

16 2022. Q. When was the last time you spoke to
17 Marjorie Ilma Knox?

18 A. I wished her happy birthday, so...

19 2023. Q. When was her birthday?

20 A. That is a good question. I mean, I
21 am just saying she is a nice lady. I can't
22 remember.

23 2024. Q. Did you speak to her in 2010?

24 A. I think so, yes. Yes, I did speak
25 to her in 2010.

1 2025. Q. Did you speak to her in the last
2 month?

3 A. I can't recall. March or April? I
4 can't recall.

5 2026. Q. When was the last time you saw her?

6 A. I can't recall, but it was in 2010
7 for sure.

8 2027. Q. She is living in Kathy Davis' house
9 now in Florida?

10 A. I understand that is right. I mean,
11 she is there, living...

12 2028. Q. Well, she is there.

13 A. To the best of my recollection.

14 2029. Q. You attached as Exhibit B to your
15 affidavit of April 23rd the complaint for
16 declaratory relief in Florida, right?

17 A. Can I see it?

18 2030. Q. It is in your affidavit.

19 A. Well, I don't have my affidavit.

20 Can I...

21 MR. KRAMER: We have got it right here.

22 THE DEPONENT: Yes, we have got it, but
23 that is the probate court lawsuit...yes,
24 okay.

25

1 BY MR. SILVER:

2 2031. Q. You are familiar with this?

3 A. I am familiar with this.

4 2032. Q. You helped draft it?

5 A. I don't think...

6 2033. Q. You don't think you helped draft it?

7 A. Florida lawsuit?

8 2034. Q. Yes, Florida lawsuit. I suggest you
9 helped draft this. What do you say about that?

10 A. I think it was drafted by the
11 Florida lawyers.

12 2035. Q. I know, and I suggest to you they
13 sent you a draft and you approved it before it got
14 issued.

15 A. I recall reviewing it.

16 2036. Q. Before it got issued?

17 A. I can't say that.

18 2037. Q. You can't say that? Who were you
19 acting for when you reviewed this?

20 A. Wait a minute. I don't recall
21 whether I saw it before or after it was issued, but
22 I have obviously read it.

23 2038. Q. Who were you acting for when it was
24 sent to you for review?

25 A. I am not acting for anybody. I

1 am...

2 2039. Q. So it was sent to you by Mr. Dribin
3 or Mr. Raymond?

4 A. Yes, their office, Broad and Cassel.

5 2040. Q. So why would they send it to you
6 either before it was issued or after if you weren't
7 acting for anybody?

8 A. I am a resource person and I am also
9 trying to keep track of the goings-on.

10 2041. Q. You are aware, sir, that paragraph
11 10 of this document says:

12 "...Kathleen is Marjorie's daughter.
13 Marjorie, who is elderly, moved to Miami-
14 Dade County, Florida, to live with
15 Kathleen..."

16 A. That is what it says.

17 2042. Q. Is that true, to your knowledge or
18 not?

19 A. I don't have a specific knowledge,
20 but it is reasonable. She is Marjorie's daughter,
21 and...

22 2043. Q. Sorry, I am just asking you whether
23 you know whether or not she moved to Miami to live
24 with Kathleen.

25 A. I can't be 100 percent sure that she

1 moved to Miami to live with Kathleen.

2 2044. Q. And you have a place in Florida?

3 A. I have a place I hang out in
4 Florida, you bet.

5 2045. Q. It is not something you own?

6 A. I don't own it.

7 2046. Q. Your wife owns it?

8 A. Come on...

9 MR. KRAMER: That is not a proper
10 question. /R

11

12 BY MR. SILVER:

13 2047. Q. But you are down there as much as
14 you can?

15 A. Well, it is starting to get nice
16 here, but but for this lawsuit, I would probably
17 still be there, yes.

18 2048. Q. All right, and you were down there
19 as much as you could through the winter?

20 A. Yes. Yes, I sure was.

21 2049. Q. And while you were down there...

22 A. Excuse me, it is about...we are
23 talking a long distance between Miami and where my
24 place is, which is...

25 2050. Q. How far is it?

1 A. I would say two or three-hour drive.

2 2051. Q. Where is your place?

3 MR. KRAMER: You don't have to answer
4 that if you don't want to.

5 THE DEPONENT: It is up north of Miami,
6 let's put it that way.

7

8 BY MR. SILVER:

9 2052. Q. Is it north of Fort Lauderdale?

10 A. Yes. Keep going.

11 2053. Q. Is it on the ocean?

12 A. Yes.

13 2054. Q. So what is the closest big city?

14 A. West Palm, probably.

15 2055. Q. West Palm. So you think it is two
16 or three hours from West Palm to Miami? I guess it
17 depends on the bike you are on? It is not by car,
18 right? I mean, we have all been down there. Even
19 I...

20 A. I am not going to debate it with
21 you. It is like the 401 double, triple, quadruple.

22 2056. Q. Right, so if we are talking about
23 distance from West Palm to Miami...

24 A. You know what? You don't want to
25 drive it.

1 2057. Q. You are talking generally about the
2 distance from West Palm to Miami?

3 A. Where is this going? I mean, I am
4 kind of going...what is it? A hundred miles?

5 2058. Q. I doubt it. So do you.

6 A. Well, I am guessing it is 100 miles,
7 but...

8 2059. Q. And while you were down in Florida
9 this winter did you have opportunity to see and meet
10 with Marjorie Ilma Knox?

11 A. I saw her, yes.

12 2060. Q. On more than one occasion?

13 A. I don't recall that it was more than
14 one occasion.

15 2061. Q. When you last saw Marjorie Ilma Knox
16 where were you? At Dribin's office?

17 A. I think in Broad and Cassel's
18 office, yes.

19 2062. Q. And what was the purpose of that
20 meeting?

21 A. Well, that is why I can't remember.
22 To, you know, review this probably.

23 2063. Q. To review this, being the complaint
24 for declaratory relief, the document that is Exhibit
25 B?

1 A. Well, there is a whole bunch of
2 stuff attached to it, but generally speaking, I am a
3 resource person to them.

4 2064. Q. And so I am going to come back to
5 this at the end of my cross-examination tomorrow, I
6 hope, but paragraph 41 of your affidavit, I was
7 interested in this wording that you used.

8 MR. KRAMER: Hold on a second. 41? We
9 got it.

10

11 BY MR. SILVER:

12 2065. Q. The second to last sentence of your
13 affidavit:

14 "...I had some notification of this [being
15 this indemnification issue] by word of
16 mouth and just recently was given a copy of
17 the claim issued in Miami, Florida, which
18 documents..."

19 That is a sentence you drafted, sir?

20 A. You know how it goes.

21 2066. Q. I know how it goes.

22 A. No, I am just saying...

23 2067. Q. That is a sentence you drafted?

24 MR. KRAMER: I am not sure that is a
25 proper question. It is a sworn affidavit.

1 The sentence is in there. He swore to the
2 truth of it. Who drafted it is probably...
3 well, is not relevant, but anyways, what is
4 your relevant question? /R

5

6 BY MR. SILVER:

7 2068. Q. My relevant question is you will
8 agree with me that the sentence as drafted disguises
9 your overall involvement in the complaint that is
10 attached at Exhibit B. Do you agree with that?

11 A. No.

12 2069. Q. Okay, we will come back to that. So
13 you last spoke to Marjorie Ilma Knox in 2010. You
14 can't recall any details, and that is the same for
15 Mr. Allard. You last spoke to him in 2010, but you
16 can't recall any details. Have I got that right so
17 far? That took 20 minutes, but I have got that
18 right?

19 MR. KRAMER: You all right, Bill?

20 THE DEPONENT: Yes. I am trying to go
21 through the calendar in my head...

22 2070. MR. SILVER: Good.

23 THE DEPONENT: ...and get it right, and
24 I am saying let's take them one at a time.
25 My recollection of my conversation with

1 Marjorie Knox...she is, like, 85 years old
2 or something. I have her a hug and said
3 happy birthday...
4

5 BY MR. SILVER:

6 2071. Q. I didn't ask you what you did.

7 A. ...or something. I am just
8 saying...

9 2072. Q. I am just asking when.

10 A. And I am just saying...when?

11 2073. Q. When.

12 A. I can't really recall that.

13 2074. Q. So all you have to say is, "Yes, you
14 summarized it right, Lorne." Let's move on. John
15 Knox.

16 A. Well, I am not...okay.

17 2075. Q. When was the last time you spoke
18 with John Knox?

19 A. Recently.

20 2076. Q. When is that?

21 A. Well, I am saying within the last..

22 2077. Q. Week?

23 A. Yes. Well, say 10 days.

24 2078. Q. And what did you speak to him about
25 in the last 10 days?

1 A. Our conversation, I think it was
2 back and forth about what I was talking to Mr. Roman
3 about and Barbados Underground and all of these
4 threats, and he has them...what is a good word...
5 catalogued...so remind me how this all fits
6 together...and so he comes...you know, we just talk
7 about, "So that happened and that happened and that
8 happened. Why do you think that"...and so that is
9 the kind of conversation and he will send me a
10 document on Skype, I will look at it, and go, "Okay,
11 I got it. Thank you." So our conversations are on
12 Skype.

13 2079. Q. What number do you use to contact
14 John Knox when you want to speak to him by Skype?

15 A. It is computer to computer.

16 2080. Q. I am not sure what that...does that
17 mean there is no phone number involved?

18 A. No.

19 2081. Q. So how do you...

20 A. It is voice over internet. I
21 believe it is the IP...how Skype works is...we have
22 been through this before. I sent you guys a memo
23 how it works.

24 2082. Q. Well, I don't remember. All I know
25 is that when you speak to Mr. Allard by Skype there

1 is a phone number involved, but that is not the case
2 with Mr. John Knox?

3 A. Briefly, okay...your kids
4 probably...

5 2083. Q. No, no, no, just answer my question.
6 Is there a phone number involved when you speak with
7 John Knox by Skype?

8 A. I just said I Skype him, which is
9 no, I don't call him on a phone.

10 2084. Q. I know.

11 A. I am on the computer and he is on
12 the computer on the other end and you can talk
13 through them.

14 2085. Q. But you told me that when you do
15 that with Allard, there is a phone number involved.
16 Is that not the case with John Knox?

17 A. It can go either way, and with
18 Allard too.

19 2086. Q. I mean with Allard. So when you
20 speak with Mr. Allard by Skype, is there a phone
21 number involved?

22 A. Skype can phone a phone. It could
23 call your cell phone here, and if...

24 2087. Q. Sir, stop. Stop. I am not asking
25 for an overview on Skype. I am asking you whether

1 when you contact Allard by Skype do you use a phone
2 number?

3 A. I already answered that.

4 2088. Q. And the answer was yes?

5 A. Well, I am going to stick with the
6 answer that I gave.

7 2089. Q. You don't remember what it was? You
8 need to read it back to remember what your answer
9 was?

10 A. If that works for you, that is fine.

11 2090. Q. It doesn't work for me. I remember
12 what your answer was.

13 A. Go ahead. Great.

14 2091. Q. When you speak to John Knox by Skype
15 do you use a phone number?

16 A. No.

17 2092. Q. How do you contact him by Skype? Is
18 there a computer number?

19 A. I put on my headphones, I boot up my
20 computer. I can see he is there. I go, "Can you
21 talk?" because there is a chat function.

22 2093. Q. I see. He has got to be online.

23 A. Just let me finish.

24 2094. Q. Yes.

25 A. So if I don't see him, great. Then

1 I might say, "Are you there?" He might say, "I am
2 busy." Done. He might say, "Yes, give me five
3 minutes," so then it is like...I guess he puts on
4 his headphones and we talk through the computer.

5 2095. Q. So I could log into Skype and see
6 whether John Knox was online? It is like the same
7 as iChat, for example, that my kids use?

8 A. Now you are getting out of my
9 territory. If he wanted you to. In other words, I
10 think there is...it is a very encrypted, private...
11 he is not going to let you just talk to him...

12 2096. Q. Perfect.

13 A. ...or contact him...

14 2097. Q. Good.

15 A. Just a second...that I know of, but
16 he might if he knew it was you.

17 2098. Q. Mr. McKenzie, Exhibit 5 was marked
18 on the cross-examination of Jessica Duncan, which is
19 the further further amended notice of motion, which
20 I think Mr. Ranking sent to Mr. Kramer. You are
21 familiar with that document? You have reviewed it?

22 A. No.

23 2099. Q. Did Mr. Kramer...are you aware of
24 it?

25 A. Well, unfortunately, I am about

1 10,000 documents behind you guys, but...anyway, what
2 is your question?

3 2100. Q. Are you aware of a further further
4 amended notice of motion?

5 A. I don't recall seeing it, but I have
6 read so much stuff in the last two weeks that
7 believe me, I have lost...

8 2101. MR. SILVER: Mr. Kramer, it was sent to
9 you, wasn't it?

10 MR. KRAMER: Yes, I got this.

11 THE DEPONENT: Okay, and if it was sent
12 to me, I either read it or it is still
13 sitting there in the binder.

14

15 BY MR. SILVER:

16 2102. Q. We can assume that it was sent to
17 you by Mr. Kramer.

18 A. Well, I won't argue. I mean, Mr.
19 Kramer has been very good about sending...or his
20 office. I don't think he does it, but they send
21 me...but I will tell you, it is a blizzard and I
22 don't think I...

23 2103. Q. So are you aware that the moving
24 defendants have amended the notice of motion to
25 include a cost award claim against Allard, Marjorie

1 Knox, John Knox, Jane Goddard and Kathy Davis?

2 A. Can you just show me the paragraph
3 here? Well, that is what it says. I mean, I should
4 read the whole thing:

5 "...Awarding costs of this action..."

6 2104. Q. Don't read it out loud, please. You
7 are cluttering up my record.

8 A. Okay, I will take your word for it.

9 2105. Q. Don't take my word. I am asking you
10 whether you are aware of something. How can you
11 take my word for it if...

12 A. I am going to read the whole
13 document, then, because I am saying I don't want to
14 fool around here. I am not going to read the whole
15 thing, but it looks like somebody is asking for
16 costs against those people.

17 2106. Q. Were you aware of it before I just
18 showed you this document?

19 A. I really don't recall seeing it
20 before this very minute.

21 2107. Q. Were you aware that the claims were
22 being made against Allard, whether you saw the
23 document or not?

24 A. I kind of followed along, presuming
25 that sooner or later somebody would make a claim

1 against Peter Allard.

2 2108. Q. Sir, I suggest to you that you know
3 that we are making a claim against Peter Allard.

4 A. I do now. I just read...

5 2109. Q. Before today.

6 A. It never surprised me that that was
7 going to happen, but I don't recall seeing this and
8 reading it.

9 2110. Q. I didn't ask that. I am asking you
10 whether you knew before today that a claim was being
11 made against Allard and the Knoxes.

12 A. I don't recall knowing before today
13 and seeing this document.

14 2111. Q. Have you discussed with Allard or
15 the Knoxes the fact that the defendants were adding
16 them in the requests for costs?

17 A. I don't think I spoke with Mr.
18 Allard, but Mr. Knox, upon a conversation, said, "A
19 big box of documents just arrived at our house." I
20 said, "Well, you got lawyers. Take them over."

21 2112. Q. So you spoke to Mr. Knox after
22 personal service of the box of documents was made on
23 him?

24 MR. KRAMER: Did this accompany a box of
25 documents?

1 but I do know...

2

3 BY MR. SILVER:

4 2118. Q. You don't disagree with it then,
5 either?

6 A. Well, how do you serve somebody in
7 Florida without a commission, with all due respect,
8 but I am saying...I am presuming that, okay, a
9 box...

10 2119. Q. Let me answer that.

11 A. Just a second.

12 2120. Q. You send a process server to the
13 house.

14 A. I am sorry, let me go back.

15 2121. Q. So don't go back. Just answer my
16 question. You spoke to John Knox after he received
17 these volumes of documents, correct?

18 A. He told me, "A lady just came," and
19 I think he said, "A box of documents," and I said,
20 "Take them to your lawyer."

21 2122. Q. But you had that discussion
22 obviously after he got the box of documents?

23 A. I guess, yes. It would be.

24 2123. Q. Right. So that wasn't 10 days ago,
25 sir, that was three days ago?

1 A. Was it?

2 MR. KRAMER: I think his evidence was
3 within the last 10 days.

4 THE DEPONENT: Well, I won't argue
5 with...

6

7 BY MR. SILVER:

8 2124. Q. Certainly three days is within the
9 last then.

10 A. I am just saying...okay, anyway,
11 whatever...

12 2125. Q. When was the last time you spoke
13 with Jane Goddard?

14 A. I can't recall, but...

15 2126. Q. Last couple of weeks?

16 A. ...March or April, something like
17 that.

18 2127. Q. And did you speak to her after
19 she...did you speak to her about being added as a
20 party responsible for the costs?

21 A. No. I mean, whether it is in the
22 last three days? Definitely I did not speak with
23 her in the last three days.

24 2128. Q. When was the last time you spoke...
25 so Jane Goddard within the last two or three weeks?

1 A. I can't recall specifically.

2 2129. Q. And we are going to get to it
3 tomorrow, but your docket seems to reflect a
4 continual flow of e-mails back and forth with Jane
5 Goddard and John Knox and, maybe to a lesser extent,
6 Kathy Davis. Are you still e-mailing them back and
7 forth? Do you still have regular e-mail
8 communications with Jane Goddard and John Knox, to
9 start with?

10 A. My answer would be I don't recall.
11 I don't think so, but we stopped somewhere when we
12 figured out that the people in Barbados were reading
13 their e-mails...or we surmised that. I can't prove
14 it obviously, but the coincidences, so it was just,
15 like, "Cut it out."

16 2130. Q. When was that?

17 A. Well, I don't remember.

18 2131. Q. H'm?

19 A. Go through the dockets and you will
20 see the...

21 2132. Q. Well, your dockets, I am going to
22 get to that, but as Mr. Roman pointed out, your
23 dockets end in November 2008. There is a whole year
24 missing, so we can't really look at your dockets to
25 get a recent indication of your e-mail

1 communications with them, unfortunately. So I am
2 asking you do you have regular e-mail communications
3 with them now?

4 A. My recollection is there was a
5 couple of incidents and Kathy Davis went to buy a
6 gun, she was so scared, and it was related to, "Oh,
7 my God"...I didn't mean that. In other words,
8 everybody involved was going...somebody was reading
9 our e-mails, but...so that is the best I can do for
10 you, but I am saying communication...

11 2133. Q. Have you figured out who was reading
12 your e-mails, because I can go to them and get them
13 and it might be easier than getting them from you.

14 A. Well, do you want to go there?

15 2134. Q. Well, do you know who was reading
16 your e-mails that caused you to cut off e-mail
17 communications with Goddard and Knox?

18 A. It was information that we had
19 shared that ended up on this blog, Barbados
20 Underground, that was used in their opinion, and it
21 looked like it to me, to go, you know, "Go over to
22 her house, which is here because she is doing
23 something tomorrow and harass her." I am not
24 quoting exactly, but it was like, "What the"...
25 like, add two and two equals four and say, "You know

1 what? Something is wrong. I feel responsible."
2 There must be a better way to do it than through
3 their...

4 2135. Q. And what was the better...

5 A. ...e-mail system, which goes through
6 the cable, I figured anyway, or the experts were all
7 telling me...said, "Look, e-mails aren't safe when
8 you are communicating in Barbados because you don't
9 know what they are doing there." So it was just
10 common sense, really.

11 2136. Q. Now we are in Barbados. I thought
12 this was cutting off...John Knox is in Miami.

13 A. He is.

14 2137. Q. Well, that is where he was served
15 three days ago.

16 A. Well, there you go.

17 2138. Q. You didn't know that? You didn't
18 know that he is sort of spending most of his time...

19 A. He did call me from Miami and
20 because a big box arrived, so...or he Skyped me, I
21 guess.

22 2139. Q. When was the last time you spoke to
23 Donald Best?

24 A. I am going to have to review my
25 transcript because I don't remember...whatever.

1 2140. Q. It was before February 8th?

2 A. When I was cross-examined last time
3 my memory was better than it is today about that,
4 so...

5 2141. Q. Have you talked to him since you
6 were cross-examined last time?

7 A. No.

8 2142. Q. What about Wanphen Panna?

9 A. No.

10 2143. Q. Am I right, sir, that in 2008 you
11 travelled to Thailand to visit Wanphen Panna's
12 ancestral home, you and Sunny Ware?

13 A. No. I travelled to Thailand.

14 2144. Q. Yes?

15 A. But ancestral home...

16 2145. Q. With Sunny Ware? Was Sunny Ware
17 with you?

18 A. I am not sure it was exactly the
19 same time.

20 2146. Q. Well, were you not with her at all
21 in Thailand?

22 A. No, I wasn't with her in Thailand.

23 2147. Q. Are there not pictures that were
24 circulated around your office that showed you and
25 Sunny Ware and Donald Best and Wanphen Panna all in

1 Thailand?

2 A. I was not in Thailand when Sunny
3 Ware was in Thailand.

4 2148. Q. What about somewhere else in the Far
5 East? Maybe I have got the country wrong.

6 A. You have got it wrong. Completely
7 wrong.

8 2149. Q. Are there pictures from your trip to
9 the Far East in '08?

10 MR. KRAMER: Well, I am not going to let
11 him answer that question. You can ask
12 him...you can ask for a picture of the four
13 of them. You can ask questions about
14 whether he has photographs of other people
15 who were germane to the lawsuit, but I
16 don't think you can ask him if he has
17 photographs generally about his trip to
18 Thailand.

19

20 BY MR. SILVER:

21 2150. Q. When was the last time...I will
22 withdraw the question. When was the last time you
23 spoke to Sunny Ware?

24 A. I spoke with her yesterday.

25 2151. Q. What about? Was it about this

1 lawsuit at all?

2 A. Well, we sort of have two
3 communications going on, but we did speak about this
4 lawsuit.

5 2152. Q. What did you say? What did you talk
6 about re this lawsuit?

7 A. Well, since she was...it was about
8 these suggestions that files were moved around or
9 gone missing or whatever, and I said, you know,
10 "What do you know?"

11 2153. Q. What did she say?

12 A. I think her recollection was about
13 the same as mine.

14 2154. Q. What is that? What is your
15 recollection?

16 A. Well, I will tell you the story, all
17 right? In 2009 I was done practising law in my
18 mind. Unfortunately, you don't get out as fast as
19 you think you might. I was not part of that law
20 firm anymore, other than as an attendee, and I paid
21 them some overhead money. And my goal by the end of
22 the year, and Sunny was also retiring, was, "We will
23 leave nothing behind." In other words, empty our
24 offices. My computer drive, sort of like a folder,
25 would be totally empty, and all our files would be

1 closed and passed on to other lawyers' people.

2 She was...well, if you are saddled with
3 that job, she had to interact with Jessica Duncan
4 and the partners and there were accounting
5 departments, you know, day in and day out getting it
6 done so that if we both left the beginning of
7 December, it was all done by then. So I said,
8 "Okay, remind me what is going on," because I am up
9 in the clouds most of the time, and she just
10 reminded me, and that is what the conversation was
11 about because it was...and I just wanted to
12 get...and I also talked to Marc Lemieux, who was
13 also in the same boat at the same time. It was a
14 bit of a melange at the time.

15 2155. Q. You spoke to Marc Lemieux yesterday?

16 A. Yes, I called them both.

17 2156. Q. And so the conversation yesterday
18 was about electronic files or physical files?

19 A. All of the above, yes.

20 2157. Q. Re electronic and physical files.

21 A. I just want to make a point, Mr.
22 Silver. I desperately need a break.

23 MR. KRAMER: That is fine.

24 THE DEPONENT: I don't mind taking it
25 and coming back. Finish your topic, I am

1 just saying I...

2 2158. MR. SILVER: We will finish the topic
3 and then we will break.

4 MR. KRAMER: You have got a minute or
5 two left. Why don't you just finish this
6 off and then...

7

8 BY MR. SILVER:

9 2159. Q. How did you contact Ware and Lemieux
10 yesterday? I may want to contact them. Did you
11 call Sunny Ware by telephone?

12 A. Yes, I...

13 2160. Q. What number did you reach her at?

14 A. I don't know what it is, but I can
15 get it for you, and the same with Marc Lemieux.
16 Both of them are...now...

17 MR. KRAMER: Well, Lemieux is a lawyer.
18 You can look him up in...

19 THE DEPONENT: I am just saying...but
20 the thing is, I might have pinged them. I
21 don't know if...you know, sort of, like,
22 text them. I don't really call people all
23 the time. I will just say, "Talk," or,
24 "Call me," or something...

25 2161. MR. SILVER: Can you undertake to

1 provide us with Sunny Ware or Marc
2 Lemieux's last known contact particulars?

3 MR. KRAMER: Well, presumably you have a
4 phone number for each of them? If not, I
5 am sure Mr. Epstein would have them.

6 THE DEPONENT: No, but I am saying
7 presumably. I mean, I am just going...but
8 we are not going to have them called by nut
9 cases and threatened, are we?

10 2162. MR. SILVER: Well, you know what...

11 MR. KRAMER: Anyways, Marc Lemieux's
12 phone number should...

13 2163. MR. SILVER: Unless you are putting me
14 in the group with the nut cases.

15 MR. KRAMER: Marc Lemieux is a
16 solicitor. You can find his number in five
17 minutes. You don't need our help, and we
18 will get a number for you for Sunny Ware. U/T

19 THE DEPONENT: Yes, but Mr. Silver, I
20 have faith in you, but I am going to tell
21 you it has been really bad, okay, and I
22 don't know...

23
24 BY MR. SILVER:

25 2164. Q. You can just imagine how my clients

1 feel.

2 A. Excuse me?

3 2165. Q. I said you can just imagine how my
4 clients feel, having been dragged into a totally
5 meritorious scam, sham of an action, that has been
6 going on now for three years. So if you and your
7 group feel hard done by, I just say you can just
8 imagine how my clients feel.

9 A. You are talking about my staff here.

10 2166. Q. I am talking about my clients. When
11 was the last time you spoke with Stacey Ball or had
12 any contact with her?

13 MR. KRAMER: Hold on. Are we going into
14 another topic now, because...

15 2167. MR. SILVER: No, this is the same topic.
16 It is the last name on my list.

17 MR. KRAMER: Let's get this done. Go
18 ahead.

19 2168. MR. SILVER: Thank you.

20 THE DEPONENT: Within the last 10 or 20
21 days, I think.

22

23 BY MR. SILVER:

24 2169. Q. And that was at the office? She is
25 still at the office, and that is where you contacted

1 her?

2 A. That is two different questions.
3 No, it was not at the...she is not allowed to talk
4 to me. However, I have a relationship with her
5 husband because of a philanthropic endeavour I am
6 involved in. He is an amputee runner and I sponsor
7 him, so when I call his house, she will pick up.
8 "Hey, how are you doing, Stace?" We worked together
9 for 15 or whatever years, and Rick and I then went
10 at it. When we went at it, I mean we have a lot to
11 talk about.

12 2170. Q. And Sunny Ware, Jessica Duncan said
13 that she has been your secretary for sort more than
14 25 years. Is that true?

15 A. I can't...I mean, a long time. She
16 was...both of them were long-time staff. Stacey and
17 Sunny and a couple of others there...

18 2171. Q. But I am just focusing on Sunny.

19 A. No, I understand.

20 2172. Q. Okay, so just answer my questions
21 and...

22 A. You know what? I am not good with
23 that kind of date, but a long time.

24 2173. Q. Well, Sunny Ware has worked with you
25 for some 25 years?

1 A. I don't know when she started,
2 but...

3 2174. Q. In the last 10 years she worked with
4 you?

5 A. For sure.

6 2175. Q. Right, and in the last 10 years that
7 she worked with you, did she work only with you or
8 did...like, in my office we now have shared
9 relationships.

10 A. Well, that is more like it. She
11 was...I parcelled out work. In other words, there
12 was stuff she didn't work on, there was stuff she
13 did work on. So in my head, "This file is yours,
14 this file is not yours," okay, and I am saying also
15 she was like...she is a resource person for all of
16 the other staff. They go to her, so I can't say
17 how...

18 2176. Q. Sorry to interrupt. Jessica Duncan
19 said she worked exclusively for you for many, many
20 years. Is that true? Sounds like she worked
21 exclusively for you and then she was a resource
22 person to others, like any senior assistant or
23 paralegal.

24 A. It is a shade of grey. I mean, if
25 it was...if I was there, I could commandeer her to

1 get off other stuff. If I wasn't there, you know...

2 2177. Q. She is free to...

3 A. If somebody came in and said, "Help

4 me do something. Help me incorporate a company.

5 Help me draft this," I would find out the next day

6 my job had not been done. You know how it works.

7 2178. Q. Principally she was your secretary?

8 A. Well, I have never...

9 2179. Q. Is that right?

10 A. I wasn't there very much, so...

11 2180. Q. H'm?

12 A. ...I mean, I am just saying...yes,

13 she is supposed to be principally my secretary, but

14 God bless her, she was sure helpful to other people

15 a lot.

16 2181. MR. SILVER: Okay, thank you, Mr.

17 McKenzie. We will reconvene at 10 a.m.

18 tomorrow morning.

19 THE DEPONENT: Thank you.

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