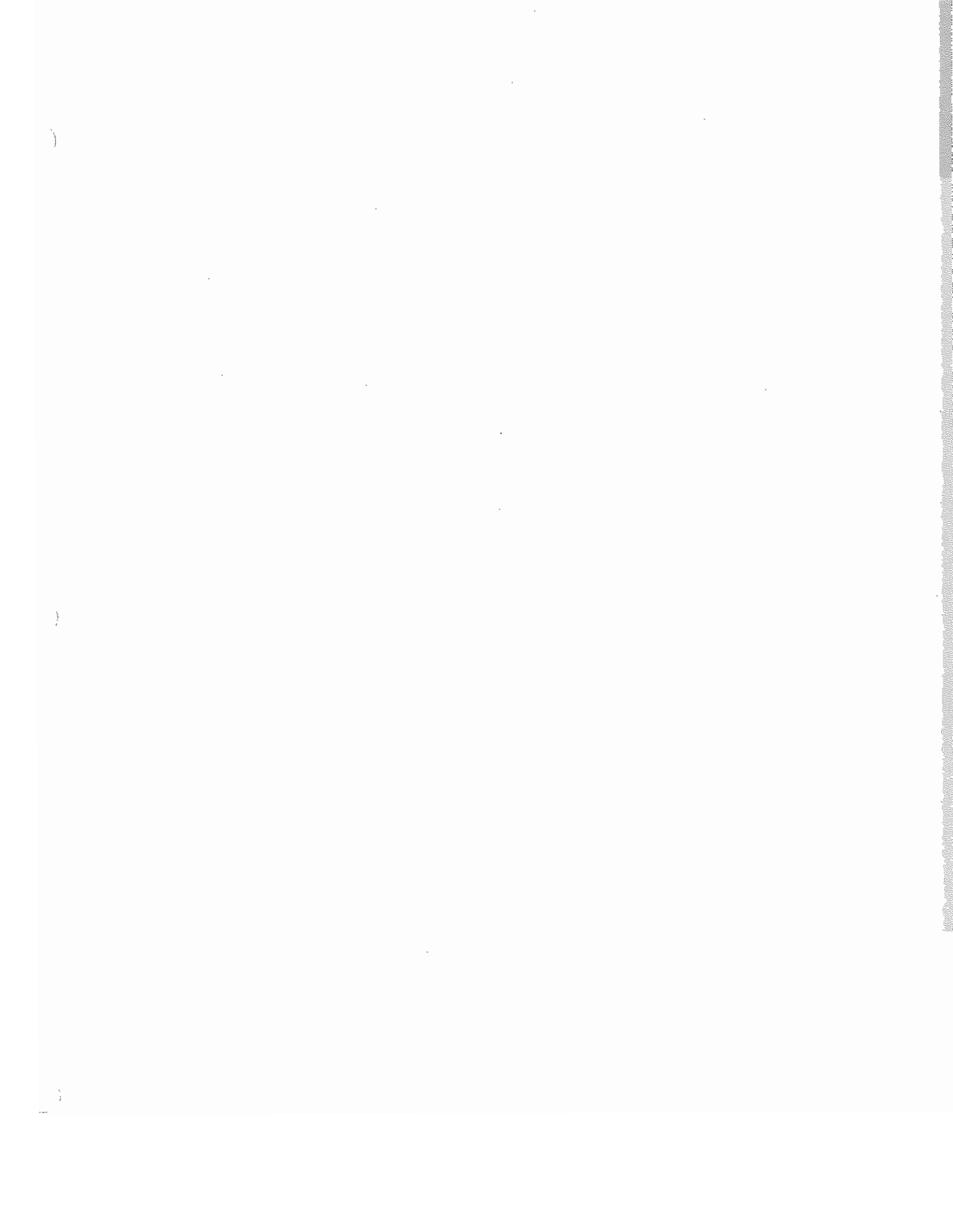


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Court File No. 02-10911

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

VERSUS

MBB HELICOPTER CANADA
(c.o.b. as Eurocopter Canada Limited)
KURT PFLEIDERER AND HEINZ PLUCKTHUN

PRELIMINARY HEARING

FURTHER EVIDENCE

TESTIMONY OF KARLHEINZ SCHREIBER

BEFORE THE HONOURABLE MR. SENIOR JUSTICE P. R. BELANGER
ON SEPTEMBER 8, 2004 AT THE CITY OF OTTAWA

CHARGE(S): Section 380(1)(a) CCC - Fraud Over \$5,000

APPEARANCES:

M. Bernstein
T. Shaw

Counsel for the Crown

P. Schabas
T. Wong

Counsel for the Accused

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WEDNESDAY, SEPTEMBER 8, 2004

U P O N R E S U M I N G:

(10:35 a.m.)

MR. BERNSTEIN: Good morning, Your Honour.

THE COURT: Good morning.

MR. BERNSTEIN: I'm sorry for the delay in starting. There were a few matters which Mr. Schabas and I discussed. Thank you.

THE COURT: Are we ready to proceed then this morning?

MR. BERNSTEIN: Yes, Your Honour.

MR. WHITE: Mr. Schreiber -- good morning, Your Honour. My name is White, initial T.

THE COURT: Mr. White, yes.

MR. WHITE: Mr. Schreiber is present pursuant to the subpoena. I wanted to indicate on the record, firstly, that on behalf of Mr. Schreiber...

....DISCUSSIONS REQUESTING TO SEAL TRANSCRIPT

....SUBMISSIONS ON SEALING BY MR. SHAW.

R E C E S S

(12:30 p.m.)

U P O N R E S U M I N G :

(2:05 p.m.)

MR. BERNSTEIN: Good afternoon, Your Honour.
The Crown calls Karlheinz Schreiber.
Mr. Schreiber.

COURT REGISTRAR: First, we'll just take the
German interpreter to be sworn in.

MR. BERNSTEIN: As Mr. Shaw indicated to the
court yesterday, we have been advised by
Mr. Greenspan that Mr. Schreiber requests a
German interpreter.

THE COURT: Yes. Thank you.

MR. LAWYER3: Your Honour, just so we're
clear, it's not that he necessary needs one
for every word or for every sentence. He
certainly is capable of speaking English and
understanding English. There are some words
that may give him difficulty, so it's not
necessarily that everything be translated.

THE COURT: Thank you, Mr. White. The
Interpreter will be sworn.

COURT REGISTRAR: Thank you. Does the
Interpreter take a religious oath?

INTERPRETER: Indeed.

ADAMS, PAUL SIMON: INTERPRETER SWORN ENGLISH/German

THE COURT: Madam Monitor, I think Madam Clerk told me you had some concern about the location of the Interpreter so as not to interfere with recording process?

COURT REPORTER: Oh, just so...

THE COURT: Do you wish to have him...

COURT REPORTER: Just so that he's close enough when he does speak that I get him on record as well as the witness.

THE COURT: All right. Well, you tell us if there is a problem...

COURT REPORTER: Thank you.

THE COURT: ...and then we'll adjust it, accordingly.

COURT REPORTER: Thank you, Your Honour.

THE COURT: Thank you.

COURT REGISTRAR: And just perhaps when you are interpreting if you could stand next to the witness, so that it can be monitored -- can be picked up on the record. Thank you. You can just stand in the middle, please. And would you like to take a religious oath?

MR. SCHREIBER: Yes.

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SCHREIBER, KARLHEINZ: SWORN

EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

- Q. Mr. Schreiber, how old are you?
A. 70.
Q. When were you born?
A. 1934.
Q. Where were you born?
A. In Peterstorf.
Q. Where is Peterstorf?
A. In Germany.
Q. What state in Germany is Peterstorf?
A. What state? You mean province?
Q. Province.
A. Thüringen.
Q. What part of Germany is Thüringen in?
A. Around the middle of Germany.
Q. What is your full name?
A. Karlheinz Friedrich Hermann.
Q. As a child, where did you grow up?
A. In the Harz mountains in Hohegeiß
Q. Where is that?
A. Also in the middle of Germany.
Q. Is it in the Province of Thüringen?
A. No. It is Niedersachsen.
Q. Excuse me?
A. Niedersachsen.
Q. How far is that from Thüringen?
A. Oh, the border is very close.

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Q. Did you attend a secondary school?

A. Yes.

Q. Where?

A. In Heurguies.

Q. What kind of school was it?

A. ..[German word]

INTERPRETER: It was a basic -- it would be called a secondary modern school or -- because of the structure of the education system, it is not the school that would normally go up to university level.

THE COURT: Well, thank you, Mr. Interpreter, but obviously that wasn't an answer that Mr. Schreiber gave. That's your understanding?

INTERPRETER: Yes. I beg your pardon, sir. I was trying to explain that if one said a high school, it perhaps had other connotations within the Canadian system.

THE WITNESS: [German] May I just go and get a piece of paper out of my purse, because the other questions you will ask, I need the dates?

MR. BERNSTEIN: Sure.

MR. BERNSTEIN: Q. You've just pulled a piece of paper or some paper from your purse. Can I ask you what you have there, sir?

A. Yeah. This is where I went to school.

Q. We have a document. Mr. Schreiber has just handed me a document which appears to be a part of a Curricula Vitae in Germany, so I'm going to give it to -- back to Mr. Schreiber.

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A. Yeah.

Q. So, where then, did you -- my question was: What kind of secondary school or high school did you go to?

A. This, I don't know, I think you would say an elementary school where you start at the beginning from six to ten.

INTERPRETER: Yes.

MR. BERNSTEIN: Q. Did you graduate?

A. From then I changed to another school.

Q. What kind of school was the other school?

A. This was called *Hauptschule*.

Q. What does that mean?

A. Something that doesn't exist today anymore. It was during the Nazi Reich.

COURT REPORTER: Could I get the spelling of that word, please?

THE WITNESS: *Haupt - H-A-U-P-T-S-C-H-U-L-E*.

COURT REPORTER: Thank you.

MR. BERNSTEIN: Q. What kind of school was it?

A. Like a middle school.

INTERPRETER: It was a school that spanned the middle years of what would be in Canada, high school.

MR. BERNSTEIN: Q. When you -- did you complete that school?

A. No. This was from 1944 to 1945 when the war came to an end.

Q. When the war came to an end, did you continue your schooling?

A. Yes, but not...

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Q. Where did you go?

A. ...at the same place anymore.

Q. Where did you go?

A. The other one was in Beneckenstein.

Q. Where is that?

A. It's about 5 km away from the place where
I lived.

Q. What kind of school was that?

A. That was the *Hauptschule*.

Q. Did you complete that school?

A. No. As I said, the war came to an end.

Then I went from 1946 to 1950 to what you say, middle
school?

INTERPRETER: Yes. A junior high school.

MR. BERNSTEIN: Q. After 1950, did you
continue your schooling?

A. Yes.

Q. Where?

A. That was first in Hohegeiß at my place and
then the higher classes from 1950 to '51. It was in
Braunlage.

Q. Where is that?

A. In the Harz mountains.

Q. What kind of school did you attend there?

A. The same school, but higher classes.

Q. That would be a middle school?

INTERPRETER: I think that will probably be
high school.

MR. BERNSTEIN: What we -- what in Canada
would be...

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MR. BERNSTEIN: Q. This school you're referring to, would it be what in Canada we would refer to as secondary school or high school?

A. I don't know what's the difference.

INTERPRETER: Secondary school, I think is the most appropriate.

THE COURT: Mr. Bernstein, Mr. Interpreter, I know is trying to be helpful but he's not the witness.

MR. BERNSTEIN: I asked...

THE COURT: So I'll ask you, please, Mr. Adams, to be -- to simply translate unless the parties agree that you ought to be giving some expertise in relation to the school system. I don't mean to be disrespectful in saying that. That's the procedure.

MR. BERNSTEIN: Q. What did you study there?

A. School.

Q. Did you study a particular trade or just...

A. No.

Q. ...general studies?

A. No, that was just school.

Q. Did you complete that school?

A. Yes.

Q. Where did you attend next?

A. In -- this is Braunlage.

Q. After that, where did you attend?

A. After that, I went to another school, which was a special school for business people in Braunschweig.

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Q. What was the name of that school?

A. Kammers Kaufmännische Privatschule.

Q. Where is Braunschweig?

A. Braunschweig is in the middle of Germany.

Q. What kind of school was it?

A. A special school for business people.

Q. What did you study there?

A. It's a private school of business.

Q. What kind of courses did you take?

A. General business and whatever is necessary from bookkeeping to whatever you -- was requested.

Q. What was necessary? What courses did you take? Bookkeeping?

A. Language and psychology, and all kinds of stuff. I don't recall anymore what it all was.

Q. So, how long did you attend there?

A. This went on for one year.

Q. How old were you when you attended that school?

A. I ended this in 1952.

Q. So you were how old?

A. '34, '46, 16 -- 18.

Q. Did you receive any kind of certificates or licences or the like when you completed that school?

A. Yeah.

Q. What did you receive?

A. You get the certificate that you attended at the school and that you did the courses there.

Q. Did you attend any form of post-secondary school or college or university?

A. No.

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Q. Do you have any -- when did you move to Bavaria?

A. Oh, that was much later. Before this, I -- I learned my profession in a company between 1952 and 1955.

Q. So you graduated from this business school in what year?

A. In 1952.

Q. You moved to Bavaria when?

A. Oh, that was in 1956.

Q. Between 1952 and 1956, what did you do, if anything, for a living?

A. Well, I had to get my education as a businessman.

Q. What courses did you take, then, between 1952 and 1956?

A. Oh, that were courses related to my profession. I better explain it to you. You go to a company and you are there for three years, and you learn a profession, and my profession was interior design, interior decorating. That was my job, and you have to be there for three years. And besides your practical work, you have school.

Q. So, it is a form of apprenticeship?

A. What do you mean? You see, let me explain it this way.

Q. Well, no. I asked the question. It is a form of apprenticeship?

MR. BERNSTEIN: Can we get that translated?

THE WITNESS: Yeah. This is how it starts.

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MR. BERNSTEIN: Q. So you finished business school in 1952 and you went to work as an interior decorator, as an interior designer for a company, right?

A. No. I went there to study to -- let me explain to you. When -- when you become a Blacksmith or what, I don't know how it is here.

Q. Just explain it to me.

A. You go to a company and you are a student in that profession.

Q. What company did you go to?

A. And this was the number one in Braunschweig. Witting, A.F. Witting.

Q. What kind of company was that?

A. This was a huge store for fashion and carpets, rugs, fabrics, all you need to decorate the house.

Q. How long did you stay there?

A. Three years. From 1952 to '55.

Q. What did you do during that time?

A. I worked there as a student the first year, a student the second year, and then you have to go to the government, and they put you under an examination. And when you -- when you make it there, you get your certificate and that's your profession. And that's my profession.

Q. What -- what did you study at that company?

A. Businessman. I'm a businessman.

Q. What did you study at that company?

A. It's a company. I became a sales -- a salesperson for interior material.

Q. You received a certificate from the government at the end of this?

A. Yes.

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Q. That certificate was for what?

A. That shows that you have the permission for a profession, which you need if you want to open a store or if you want to hire students or if you want to do something. It's like a certificate for a profession.

Q. What kind of profession?

A. Businessman, in the retail business for interior decoration and whatever it needs.

Q. You say you received that certificate, approximately, in 1955?

A. Yes. After three years.

Q. What did you do once you received that certificate?

A. Then, I was not a student anymore. I was an employer from the company.

Q. What did you do as an employee for that company?

A. I was the salesperson in that store.

Q. I'm sorry, where was that store again?

A. Witting. It was interior design, interior decoration. So this was my job to decorate homes from other people.

Q. How long did you work for this company as an interior decorating salesperson?

A. I was there until 1956.

THE COURT: You're on your feet, Mr. Schabas?

MR. SCHABAS: Yes, Your Honour. I appreciate that one has to do some introductions with a witness, but I just wondering what relevance all of this has that deals with matters that occurred 30 years before things which are in

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issue in this case, and 50 years ago. Are we going to hear the entire life of Mr. Schreiber? Surely, that's not relevant to this case and to his testimony. I question the -- we've had an awful lot of detail in this case, and we could be here for an awfully long time hearing about this, and I would ask that you direct Mr. Bernstein to get to the point.

THE COURT: Mr. Bernstein, you're response?

MR. BERNSTEIN: I'm also continually [sic] mindful of Mr. Schabas's admonishments about leading, and again, the police have not taken a statement from Mr. Schreiber, but I would like to proceed expeditiously.

THE COURT: Well, so would I. What's your response to his objection?

MR. BERNSTEIN: Well...

THE COURT: What's the relevance of all of this? I mean, it may be relevant in a general or in a specific way, but as he says, we could then get into Mr. Schreiber's hobbies and...

MR. BERNSTEIN: I wasn't planning on doing that...

THE COURT: ...that kind of thing. I, as well, fail to see the immediate relevance of very detailed questioning in relation to his childhood, for example, and things of this nature. If we could move on to the important parts?

MR. BERNSTEIN: Yes, Your Honour.

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MR. BERNSTEIN: Q. Where did you work after you completed your employment with this interior decorating company?

MR. SCHABAS: Well...

THE WITNESS: Then, I went to Munich.

THE COURT: I think there's some biographical interest here, again, and so long as Mr. Bernstein moves fairly quickly, Mr. Schabas. Go ahead, sir. You went to Munich, you were saying?

THE WITNESS: To Munich.

THE COURT: Yes.

MR. BERNSTEIN: Q. That's in Bavaria?

A. Yes.

Q. What did you do there?

A. And since interior decorating was my job, I was especially interested in antique rugs, and Persian rugs, and carpets and Gobelins and stuff like that. And I found one of the few which were left as experts, because most of these people were killed from the Nazis because they were a Jew, and I learned my profession there and then became an expert for Oriental rugs.

Q. How long did you work in the Oriental rug business for?

A. Oh, in different -- in different companies and ways until -- yeah, more or less until 1967 or so.

Q. Would this be as an employee or as an owner of a company?

A. I was an employer, I was a manager, I was a general manager, and then I started different business.

Q. When did you start your own businesses?

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A. I started own business in 1965.

Q. This would be an antique or Oriental carpet business?

A. No. At that time it was, you would call it, perhaps, like a department store. We call it shopping centre in a special way, and this is where I -- it was a very special time in Germany where the price fixing system played a huge role. With the support of the unions, I killed the price fixing system in Germany in three years.

Q. Your running of a store ended around when?

A. Please?

Q. When did you stop running the store?

A. In 1967 when my partner and friend passed away by an accident.

Q. What did you do next?

A. I took over Bavarian Bitumen Chemicals.

Q. What kind of company was that?

A. That was a company for road construction. And traffic safety products. Specialized in prominent road marking.

MR. SCHABAS: I'm sorry, I couldn't hear you.

THE COURT: Just repeat your last sentence, sir. We just didn't hear you.

THE WITNESS: Specialized in prominent road marking.

MR. BERNSTEIN: Q. How did you become involved in this company?

A. In which one?

Q. In this company?

A. A friend of mine who owned this company was also a shareholder in my company, and when he passed

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away by a car accident, he left the company, his wife and a child. And I had to make a decision because I was financially involved in that company, as well, but I -- whether I would continue with the retail business or whether I would go through road construction and traffic safety. So, I liked this business better because in the other field, my job was more or less done, and I became a shareholder in that company, and later took it over.

Q. What was his friend's name?

A. Heinrich. Fred Heinrich.

Q. When did this happen?

MR. SCHABAS: Well, Your Honour...

THE WITNESS: In 1967.

THE COURT: Yes, sir.

MR. SCHABAS: Is all of this detail from 1967? I guess, I mean, we've advanced another decade but we're...

THE COURT: We've done so fairly quickly. We've heard this name before, I believe...

MR. BERNSTEIN: This name will...

THE COURT: Bavarian Bitumen Chemicals, and so I think we're getting into an area which has some relevance.

MR. BERNSTEIN: And as my friend knows, Bitumen is a company, which ultimately received commission money from MBB.

MR. SCHABAS: Well...

THE COURT: Let's not waste anymore time, Mr. Schabas...

MR. SCHABAS: ...who is giving the testimony now, Mr. Bernstein?

MR. BERNSTEIN: I think that was...

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THE COURT: Thank you. Go ahead,
Mr. Bernstein.

MR. BERNSTEIN: I was just explaining the
relevance of the...

THE COURT: Go ahead, Mr. Bernstein. Please.

MR. BERNSTEIN: Q. When did you become
involved in Bitumen?

A. 1967.

Q. Where was Bitumen's offices?

A. In Kaufering.

Q. Kaufering is in what province in Germany?

A. In Bavaria. In Bavaria.

Q. How far is Kaufering from Munich?

A. Thirty kilometre [sic], approximately.

Q. How much did you pay for Bitumen? When
you first became involved in this company, did you
invest in it?

A. Yeah. It was about out of business with
-- it was my friend, in the neighbourhood of about
\$350,000.

Q. \$350,000 what?

A. D-marks?

Q. Deutschmarks?

A. Yes.

Q. Okay. I believe you've advised us that
Bitumen's business involved road markings?

A. Yes.

Q. And when you say "road markings" what do
you mean?

A. Prominent road marking. You have
...cutters. You cut off the street and you put this
special thermal plastic in it so that, say, the

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difference to paint, that will stay for two or three or five years.

Q. So this is a way of painting lines on the road?

A. Yes.

Q. Was Bitumen involved in any kind of other business besides road marking?

A. Yeah. Road construction.

Q. What do you mean by construction?

A. To build roads with the -- we have two -- you have two different companies, what was Bituleit and the other one was Bavarian Bitumen Chemicals.

Q. So you had a company called, Bavarian Bitumen Chemicals?

A. Yes. That's the small -- that's the head office, the holding, and below that you have two companies, one for road marking and traffic safety products and another one for road construction.

Q. The other -- so we'll call Bitumen Bavarian -- we'll called it BBC, all right? Bitumen?

A. Later on the name was changed when the companies were merged.

Q. And the other...

A. BBC, it's a short name for Bavarian Bitumen Chemicals.

Q. Okay. So, we have BBC and you say there was another company called, Bituleit?

A. Bituleit. And the other one was...

Q. How do you spell that?

MR. SCHABAS: Your Honour, I'm going to ask again. I mean, he's just said -- the witness has just said that names changed. I mean,

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we're talking about questions from 1967. The events in question that my client is charged with, relate to matters that occurred almost two decades later. Things have changed, and I -- I submit that this is -- there's no utility to this. We should get on to the decade.

THE COURT: Let's find out. Sir, I'd ask you to leave the courtroom for a moment. Just step outside, because I'll want to talk to the lawyers about where they want your evidence to go. It's difficult for me to make any judgment about where Mr. Bernstein is going without hearing from him. We'll call you back in just a moment, sir.

THE WITNESS: Okay.

...WITNESS EXITS.

(3:00 p.m.)

THE COURT: All right. Tell me what your plan is, Mr. Bernstein, so we can understand the relevance of your questions. I hesitate to interrupt you continuously, on the other hand, it would be of great value to me if you would explain where it is you're going...

MR. BERNSTEIN: Certainly.

THE COURT: ...and what the relevance of your questioning is.

MR. BERNSTEIN: Certainly, Your Honour. It is simply my intention on identifying Mr. Schreiber's background and identifying a variety of companies which you will hear about

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later. In this regard, Your Honour, I ask the court for some consideration in allowing me to lay a proper evidentiary background to what is an extremely complicated matter which extends over decades. I do this not to harp on irrelevant background information, but to lay a proper clear foundation for transactions which occurred later. To do this, I need to do a number of things. The first thing is to identify Mr. Schreiber's background experience, education, and training. We have here a man who was apparently -- well, was hired by a large multinational company, MBB, to assist in the selling of sophisticated helicopters to the Canadian Government. His background, experience, and knowledge is material to that inquiry and issue. The question is: Why did MBB hire Karlheinz Schreiber? Was it because he was an expert helicopter engineer or was it -- what was it for?

In my respectful submission, his background and education was elicited not simply as background information, but as relevant information respecting Mr. Schreiber's credentials to do what he did or did not do. So, that's why I spent some time on his background. With respect to these asphalt companies, Your Honour, will hear as Mr. Schreiber's evidence unfolds that he -- I anticipate you will hear that he created a

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variety of companies, many, many companies, and that these companies were related to each other, associated with each other, and through which some of these companies funds -- which my friend is not prepared to admit -- flowed through and into. I am simply trying to identify the list of companies. I am starting at the beginning.

I anticipate that Your Honour will hear that Mr. Schreiber moved to Canada and that, initially, when he arrived in Canada he started out in the road marking and road construction or asphalt business. You will hear evidence of his involvement in that business in Alberta, and also in that business in Germany.

You will hear of his involvement in the Canadian part of -- or I'll call it sister of these German companies -- plays a direct role in the flow of funds and in transactions and matters before this court, including matters which Your Honour has already heard about through Mr. Moores and others.

So, I -- why I ask about his asphalt business in Germany is because I understand he initially comes to Canada to establish a sister asphalt and road marking business, and that that business, or at least it's named that company, is later used as a vehicle for a

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variety of things which touch directly on the charges before the court.

THE COURT: Mr. Schabas?

MR. SCHABAS: Your Honour, Mr. Wong just reminded me that Frank Moores testified, who it's alleged received funds. I don't think we spent more than ten minutes or so on his background, and he's older than Mr. Schreiber. This is not an Examination for Discovery. This is not a fishing expedition. My friend has called a witness who he has reason to believe has relevant evidence, and he should get to that relevant evidence that relates to the charge against my client, and in my submission to canvass with him an entire history which he knows full well there have been books written about Mr. Schreiber. I'm sure my friend has read *The Last Amigo* which tells all about his background and coming to Canada, and so on. He knows which companies he wants to get at, and try to adduce evidence about, and what happened in the 1980s with respect to them and he should -- he should get to that.

THE COURT: Well, are you saying that Bavarian Bitumen Chemicals is not relevant to this process?

MR. SCHABAS: It may not be. In my submission...

THE COURT: Well, it is or it isn't.

MR. SCHABAS: I submit it isn't, because what -- what my client is charged with relates --

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relates to whether -- whether somebody paid a commission, as I understand the theory of the Crown's case. And as I understand the theory of the Crown's case, they are going to say that there was a commission that was paid by MBB, the German company, to Mr. Schreiber for something. Well, why doesn't he ask him about that? Why doesn't he ask him whether he did work for MBB, if that's what he wants to ask him? Why doesn't he ask him whether a payment was made? That would be relevant, but to lay the groundwork for some complicated -- as he says, very complex web of corporations and so on, which presumably may deal with if the money was paid -- if there was money paid for something, it's then dealing with what Mr. Schreiber did with it. Well, I don't concede the relevance of that. What does that have to do with the charge against my client?

THE COURT: I don't know.

MR. SCHABAS: No, and neither do I, and that's why I raise all of this because in my submission he's on a complete fishing expedition and if we don't get him to get to the point, we will spend -- we will be subjected to a -- as Mr. Bernstein can do well, a very detailed and probing Examination for Discovery, and I submit that that should not be tolerated in this court where we should get to the point of the relevance. He's called a witness. He knows what's relevant,

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which is what I've just outlined and we should get to it.

THE COURT: Is your allegation, Mr. Bernstein, that in attempting to demonstrate that commissions were paid, the flow of funds from one corporate entity or from one individual to another is relevant to the determination of actual payment?

MR. BERNSTEIN: Not only is it relevant, and it is absolutely central to the Crown's allegation in this case. Remember, the issue here is the commission and in all the circumstances, the dishonest nature of that commission. The issue in these proceedings is the -- and Your Honour has to, at the end of the day, consider the relationship between MBB and Mr. Schreiber in all the circumstances which include the flow of funds from MBB to Schreiber, and Your Honour will need to consider in all the circumstances whether that arrangement and the flow of funds in connection with that arrangement was dishonest. The setting up of an elaborate web of corporations to hide the flow of funds is compelling evidence, an indicia of dishonesty -- dishonesty in connection with the funds and in connection with the nature of that relationship. MBB pays the money -- some of it directly to Schreiber, some of it to IAL. It may go -- and we'll deal with this all in

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due course, but it goes from IAL to a variety of other companies, and that flow of funds being...

THE COURT: Remind me what IAL was again?

MR. BERNSTEIN: International Aircraft Leasing.

THE COURT: All right.

MR. BERNSTEIN: And the flow of funds from one company to another company to another company to another company for no apparent economic purpose, is an indicia of fraud. That's what this case is, in part, about. I can understand why my friend objects to it. It's compelling evidence of fraud in this case.

Now, my friend may say, "Well, that's what Mr. Schreiber did with the money after MBB gave it to him." Well, my friend has not admitted that MBB gave him the money. So I stand before you this afternoon, my friend not having admitted that the commissions have been even paid or have paid to -- has not admitted the allegations respecting the payment of commissions and now he objects to evidence in the beginning which we'll relate to and establish who they were paid to. How directly they were paid to, what artifices were used to hide the payment, which again is compelling evidence of a fraud -- what happened to the money and where it ultimately ended up, which

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again is profoundly cogent evidence of a dishonest purpose *ab initio*.

Now, the evidence as it relates to Mr. Schreiber on this issue is capable at the end of the day of being evidence directly admissible against MBB. I say that because, one, we have Mr. Wittholz who himself views the arrangement as being corrupt and dishonest, who is the president of MCL, and we may also have evidence from Mr. Schreiber that other people at MBB, in particularly Mr. Pfleiderer and Mr. Pluckthun, knew that this arrangement was corrupt and dishonest, and that they participated within it.

So, Your Honour knows now that payments were not made directly to Mr. Schreiber but were made to a variety of, what I submit, are corporate edifices. We have some evidence from Frank Moores on this point, and this is why we're going to call Mr. Schreiber, to find out who MBB paid, why they paid this shell company rather than this shell company and what happened to the money, what discussions there were as to who was going to be paid and why and how and where.

In my respectful submission, Your Honour, knows that these payments were made to Swiss

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Bank accounts to companies who can run or are controlled in Liechtenstein. I'm just trying now to lay a proper evidentiary basis, so that this evidence can unfold in an ordered fashion.

The nature of the relationship between Mr. Schreiber and MBB, the nature of the relationship between MBB and companies controlled directly and indirectly by Mr. Schreiber, the relationship between those companies and other individuals, a flow of funds from MBB to these companies and their ultimate destination is what this case is, in part, about.

THE COURT: All right. Yes, any final words?

MR. SCHABAS: Yes, Your Honour. I mean my friend's submission is all about actions by Mr. Schreiber with his companies. He's not charged. It's about -- and then he relates it back to MBB, and he's made a lot of statements about payments about which I submit there is no evidence in the record about a lot of this.

THE COURT: Well, I presume it will come, too.

MR. SCHABAS: Well, it may or may not be, but that's why we should get to the point so we know what is relevant. But my client is MCL, a Canadian company. What Mr. Wittholz said was he was concerned about Article 22. Not about some theory about how much anybody did or didn't do if a commission was paid, and

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certainly not about and what this case is not about is what anybody down the road did or didn't do with the money.

I submit, if Mr. Schreiber was charged with some fraud or some receipt of something, which he is not, then that might be relevant, some indicia of conduct by him, but he's not charged. MBB is not charged. This is so far removed from the theory of the case, and I submit it's a fishing expedition. We must be mindful of that. We've heard a lot about Mr. Schreiber here. There are a lot of questions that have arisen over many years on this matter, but my friends have chosen not to charge Mr. Schreiber with anything, and they should not be allowed to turn this Preliminary Inquiry into a fishing expedition against Mr. Schreiber. I submit that that's a real concern here. Why are we getting into all of this stuff that is two, three, four times removed and possibly 10 times removed from a charge against a Canadian company that somehow it is somehow...

THE COURT: I take it the Canadian company is directly related to the German company and is not far removed from it. I take it the two individuals named, Mr. Pfleiderer and Mr. Pluckthun, were not distantly related to MBB. I don't see how you can possibly make an argument that this is 10 times removed from the issues before the court. Thank you,

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Mr. Schabas.

I'm satisfied that the Crown makes, at this point in time, a cogent demonstration of the direction in which the case is headed. Obviously, I'm not in a position to appreciate the entirety of the case at this point. It's impossible for me. That's not my function. However, he does demonstrate to me that there is a framework and a skeleton upon which to erect a structure which aims at the ultimate issue in this case. I'm not prepared to restrict him except by saying that, obviously, if he ventures into areas which are of minor relevance, bearing in mind that this is a Preliminary Hearing and not a trial, that it may be possible to move quickly. In that respect, if Mr. Bernstein wishes to lead, we can hear from you again, Mr. Schabas. It may very well be that you're quite prepared in the interest of expediency to have Mr. Bernstein lead us through the less controversial aspects of this historical background which, so far, he has made appear to be relevant to me.

Recall the witness, please, Madam Clerk.

MR. BERNSTEIN: Thank you, Your Honour.

Mr. Schreiber.

...WITNESS ENTERS.

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THE COURT: Please return to the witness box,
sir.

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EXAMINATION IN-CHIEF BY MR. BERNSTEIN: (Continued...)

Q. Mr. Schreiber, you mentioned a company called Bituleit, B-I-T-U-L-E-I-T?

A. Yes.

Q. Bituleit was in the road construction business?

A. No. Bituleit was in the traffic safety business.

Q. And Bitumen was in the road construction business?

A. Yes. The short name for this was Babic, B-A-B-I-C.

Q. Who were the managers of these companies?

A. Well, the mother company, Bavarian Bitumen Chemicals, I was the manager and when this company first made up, I had different people working there.

Q. Do you know a gentleman named, Birkner?

A. Birkner was an employee, yeah.

Q. What did he do at these companies?

A. He was responsible, you would say like a CFO.

Q. Who were the listed shareholders of these companies?

MR. WHITE: Well, Your Honour, I'm going to object.

THE COURT: I'm not giving you the right to object, sir. Be seated, Mr. White. I'm

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sorry. The witness can refuse to answer if he wishes. He can then ask for the right to consult with you but I'm not giving you standing to start objecting. Absolutely, not. Go ahead, please.

THE WITNESS: I was the shareholder.

MR. BERNSTEIN: Q. Who were the listed shareholders. Pardon?

A. Finally, I was the shareholder. I had other shareholders in the interim period but they were old and they left the company and I was finally the sole owner of all the companies.

Q. When would that have been around?

A. I really don't recall 100 percent. Late '70s perhaps. Early '80s. hard to say. Because I had one shareholder left.

Q. What was that person's name?

A. Hmm? Zechner. Zechner.

COURT REPORTER: Could you spell that name, please?

THE WITNESS: Z-E-C-H-N-E-R.

COURT REPORTER: Thank you.

MR. BERNSTEIN: Q. Were these companies involved in providing services to the Bavarian Government?

A. Yes, also.

Q. How did you go about landing contracts with the Bavarian Government to do road marking or road construction?

A. Well...

MR. SCHABAS: Your Honour...

THE WITNESS: ...by tenders.

THE COURT: Yes, Mr. Schabas?

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MR. SCHABAS: Again, I'm objecting to the relevance of this. I mean we're talking about a different kind of business, a different government. I mean, I appeal to you to ask Mr. Bernstein to get to the point. What does how this company carried on the road marking business with a customer, the Bavarian Government, which for all we know may involve -- well, it certainly on the face of it seems completely removed from this case and in fact may raise issues, I just note in passing, about other aspects of the business. It may not be appropriate to even just be bringing out in this. I submit we're just on some kind of a discovery.

THE COURT: Mr. Bernstein, what's the relevance of this...

MR. BERNSTEIN: The relevance...

THE COURT: ...client list that this company had in the '60s with...

MR. BERNSTEIN: It's the '70s. Your Honour, it relates to this witness's knowledge, generally, of the government procurement process, albeit, in Germany but that's what it relates to.

THE COURT: That doesn't appear relevant to me. Move on, please.

MR. BERNSTEIN: Q. Were you involved in politics in Germany?

A. Yes.

Q. Okay. When...

MR. SCHABAS: Well...

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MR. BERNSTEIN: Okay. My friend can -- I'd like to hear my friend's objection to this.

MR. SCHABAS: Well, I don't know what in the world the relevance is of his involvement in politics in Germany.

MR. BERNSTEIN: Okay. I'd like to...

MR. SCHABAS: What does that have to do with the case?

MR. BERNSTEIN: I'd like the witness to be excused, and I'd be delighted to explain what it has to do. If necessary, Your Honour.

THE COURT: Thank you. Would you mind, sir? Maybe you're going to have to take a lot of walks this afternoon, but we'll have to stand outside again, please. Thank you.

THE WITNESS: I was a judge for nine years, you know that?

...WITNESS EXITS.

(3:10 p.m.)

THE COURT: Yes, Mr. Bernstein.

MR. BERNSTEIN: Thank you. Your Honour, I anticipate the evidence will reveal that Mr. Schreiber was involved in politics in Bavaria and, in particular, conservative politics in Bavaria. That he befriended and assisted Franz-Joseph Strauss whom I believe you may have heard mention of at these proceedings in connection with his rise to power in Bavaria.

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I anticipate the evidence will reveal that Franz-Joseph Strauss was at one point in time the Defence Minister for West Germany and later became the First Minister or Premier of Bavaria.

He was, also, at a material time a member of the Board of Directors of MBB, which was in part owned by the Bavarian State government. So here you have a man who was previously the Defence Minister and the Premier of the Bavarian State which is in large portion an owner of MBB.

It is the Crown's position that MBB was the controlling mind of MCL, and that MBB controlled MCL in part through Pluckthun and Pfleiderer. I anticipate you will hear evidence that Franz-Joseph Strauss was a very powerful person in Bavaria, and within the halls of power at MBB.

I anticipate the evidence will reveal that when Mr. Schreiber moved to Alberta, he was involved in a number of joint investments with Franz-Joseph Strauss and family members of Mr. Strauss in Alberta. He also participated and was a shareholder with Mr. Strauss or family members in a number of Alberta companies. These would be companies owned in part by Schreiber, in part by Strauss or a family member. These investments did not fair

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well, and as a result of these investments, the result of Schreiber placing Strauss's money in investments that did not pan out in Alberta. Strauss incurred a significant loss.

I anticipate you will hear evidence that at a material time, Mr. Schreiber becomes an agent for MBB. So we have Strauss exercising influence over MBB, as the Premier of Bavaria, who is a large shareholder in MBB and as a board member of MBB, we have Schreiber become agent for MBB in Canada and we have Strauss and Schreiber involved in failed business dealings in Alberta.

We also have later on -- you'll recall from the evidence of Frank Moores -- when money flows from MBB to Schreiber to Moores, and we have the evidence of Mr. Moores going and withdrawing large sums of cash from a Swiss bank account, we then have -- Your Honour will recall I took Mr. Moores through his Amex or his expense accounts. We have lunches with Mr. Schreiber and Mr. Strauss. Or Strauss. A person named Strauss, coincidental in time with the payments from MBB to Schreiber or Schreiber related companies and the movement of funds onto Moores and then, boom, it's withdrawal by Moores in cash and then we have meetings with -- well, there's this expense information which suggests meetings

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coincidental with Schreiber and then with Strauss.

So, Schreiber's relationship with Strauss is central to a variety of issues. Remember, the test of relevance is, does the evidence make an inference more likely than not?

One issue before this court is how is it that Mr. Schreiber, an interior decorator who moves into the road marking business, is hired by Mr. Schabas's client to market extremely sophisticated helicopters with no training, no background in helicopters at all? Indeed, when I asked about his knowledge of the tendering process, generally, my friend objected and said that's irrelevant. Well, in my submission, this man is hired to, apparently, facilitate government contracts and has no apparent background or experience in this. Nevertheless, he's hired and nevertheless, it's the Crown's position that these commissions are paid. The Crown will at the end of the day -- depending on Mr. Schreiber's evidence -- and remember, the Crown has never interviewed Mr. Schreiber. Mr. Schreiber has refused to -- pardon?
UNIDENTIFIED SPEAKER: Nonsense.
MR. BERNSTEIN: Has refused to allow the police to take a statement, and the Crown will not interview Mr. Schreiber until the police

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have taken a proper statement.

Notwithstanding requests by the police, Mr. Schreiber declined to be interviewed by the police. In these circumstances, in my respectful submission, the relationship between Strauss -- the Strauss family and Strauss related companies, and Schreiber, is essential and material to an understanding of the relationship between MBB and Schreiber, whether or not that relationship was a legitimate one or otherwise.

THE COURT: All right. Is that it?

Mr. Schabas, what's the problem with that?

MR. SCHABAS: Well, Your Honour, the question that I...

THE COURT: With that picture.

MR. SCHABAS: First of all, the question that I objected to was "Were you involved in politics?"

THE COURT: Yes. That was your objection.

MR. SCHABAS: That was where I rose, and I think from what Mr. Bernstein says, we're going to hear an awful lot about Mr. Strauss, who was on the board of MBB, in which he says was the company that hired in some way Mr. Schreiber, and I am mindful of the comment Your Honour just made, but MBB is not my client here.

THE COURT: I understand that.

MR. SCHABAS: The Canadian company is. And in my submission, we're going to have a long lengthy fishing expedition about his

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relationship with Mr. Strauss as opposed to getting to the point, if there is a point to this, because my friend is making a lot of statements as if they are proven fact that he could get to the point much more quickly as he did with Mr. Moores, rather than having what I think we're going to wind up in is a very long thing. We'll probably get to know all of Mr. Strauss's children and his wife and everybody else and...

THE COURT: Well, we're not there, yet. We're just talking about -- let's not dramatise, Mr. Schabas. We're talking about his involvement in politics and I take it the very next question was going to be directed -- was going in the direction of Mr. Strauss. Now, I take it you are not taking issue with the fact that Mr. Strauss had an important connection with MBB Germany. If you say, "No. That's not true at all. It can't be proven. It never existed," then, perhaps we're into a different ballpark.

MR. SCHABAS: I'm not saying that, Your Honour.

THE COURT: All right.

MR. SCHABAS: But I am saying, though, that all of this evidence once again gets into something about a relationship that he has with an individual, and allegations of flow of funds that goes way beyond what this case is about, which is simply whether a commission was paid. This is not a Section 121 case

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about secret commissions. We don't have to get into all sorts of issues about that, and yet, I submit that that seems to be where the examination may well be heading. I submit that we should be mindful of that, and Mr. Bernstein should be directed to get to the point because I fear we will be here, and not because of my objections but...

THE COURT: Well, we've been here for a good part of the afternoon on your objections. So far, I see a valid and legitimate area for inquiry in terms of direct questioning of this particular witness. Relevance again is not crystal clear to me. It can't be. I haven't heard all of the evidence yet, and I don't have possession of the case in the manner in which you do. But, however, the objection, essentially being, "Were you involved in politics?" and I presume you're getting to Strauss immediately?

MR. BERNSTEIN: Yes.

THE COURT: And that seems to me as a legitimate area and inquiry, and ought to be pursued. Go ahead.

MR. WHITE: If that's Your Honour's ruling, I'm going to ask for a few minutes to speak to Mr. Greenspan and Mr. Schreiber about whether he's prepared to answer those types of questions and what steps we have to take. Perhaps we could take the morning recess. It's now 3:10.

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THE COURT: Well, we normally take the
afternoon recess.

MR. WHITE: Right. The afternoon recess.

THE COURT: All right.

COURT REGISTRAR: All rise, please.

THE COURT: We'll take a few minutes.

R E C E S S

(3:10 p.m.)

U P O N R E S U M I N G :

(3:35 p.m.)

COURT REGISTRAR: Court is now reconvened.
Please be seated.

THE COURT: Mr. White?

MR. WHITE: Yes, Your Honour. I thank you
for that opportunity to make a couple of
comments. This is exactly why our office made
our application despite the fact that the
Crown said this was not going to happen. In
my respectful submission, this line of
questioning is well beyond the scope of this
Preliminary Inquiry as to whether or not -- is
Mr. Schreiber involved with MBB Canada?
That's the starting point, in my respectful
submission. Is he involved in MBB? My friend
talks about these wild allegations that he
makes on the record when a witness is
excluded. Ask the questions that are relevant
and go back if you need answers flushed out,
but in my respectful submission this is
offensive to Mr. Schreiber, it's unfair to

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him, it invades his right to privacy, it goes into third party records and third party transactions that have nothing to do with this transaction, this one count information dealing with MBB Canada Limited now known as Eurocopter.

In my respectful submission, because it may be tangentially relevant to a theory in the air that my friend has and has never told anyone about, does not make it relevant to this Preliminary Inquiry. And in my respectful submission, it is unfair to Mr. Schreiber given the charge that he faces in Germany. Now, I understand my friend -- I don't know if they filed both letters, but as I indicated to Your Honour, we requested what areas they wanted to know. We requested what questions they would want to ask of Mr. Schreiber in order to expedite matters and to save time and expense and we were told that the same request was put to the RCMP when they were investigating Mr. Schreiber. When the RCMP was investigating Mr. Schreiber as to whether or not he wanted to make a statement with respect to the investigation of Mr. Schreiber as a possible accused, as a possible co-conspirator, and no statement was given at that time by Mr. Schreiber and Your Honour knows why, and why his rights to remain silent.

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Now, my friend has Mr. Schreiber on the stand and thinks this is an opportunity for a fishing expedition. Let's find out all about Mr. Schreiber, all of his businesses, his political affiliations, his contacts, his businesses, because somehow that's relevant to whether or not a Canadian company partially owned by a German company entered into a contract with the Canadian government when it hasn't been established, and I'm sure if my friend asks Mr. Schreiber, it won't be established as to whether or not he was even involved in that transaction, even involved with MBB Canada. But my friend can say I'm starting backwards. I'm starting backwards, Your Honour, and I'm assuming on a wild theory that I've developed in my mind...

MR. BERNSTEIN: I object!

MR. WHITE: This is...

MR. BERNSTEIN: I object to my friend's reference to the Crown's theory as a wild theory. That's an intemperate...

MR. WHITE: Some of it's pretty wild.

MR. BERNSTEIN: It is an intemperate thing to say.

THE COURT: Thank you. Well, listen...

MR. WHITE: Well, the Crown wrote me back -- wrote Mr. Greenspan back and said, "With respect to your request for what questions would be asked of him, I understand from the RCMP that in the past you have made similar offer to them. They rejected your proposal.

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Your offer remains unacceptable. Indeed, in my view, in all the circumstances what you suggest is not appropriate and is contrary to the public interest." Ask for a CV. If you want to get into his background, we provide a CV. Narrow the issues. But my friend is on a fishing expedition to try and show now that Mr. Schreiber has political connections or political affiliations that has anything to do with this without asking the questions. Ask about MBB Germany. Ask about MBB Canada. Ask for his credentials as to why he was retained to do anything for MBB or whether or not he was retained to do anything for MBB. Ask about the Canadian company. Those may be relevant questions tangentially, but to go backwards and go through every business that Mr. Schreiber is involved in a, you know 50 year business career, is unfair. It violates all of the third-party record application case law. It talks about a witness's right to privacy and a witness not being put on trial. Under the guise of getting background information when Your Honour is not in a position to understand it? Ask the questions as to why we're here. Ask the questions about bank accounts, about companies, about his involvement in commissions. Get those answers. That's what matters. Not a whole fishing expedition as to his life to say what, he's involved in so many things that he's the

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type of person, is totally unfair in my respectful submission.

THE COURT: Mr. White, I'll say this to you once and I won't repeat it. You are not a party to these proceedings. You are counsel for this witness.

MR. WHITE: I appreciate that.

THE COURT: I will no longer hear from you. And indeed, if you persist in, for example, as you had previously making objections, I will ask you to leave the counsel table and simply to remain in the body of the court.

I have made rulings, and the ruling was a ruling in response to Mr. Schabas's objection. I am not going to revisit that ruling on any basis at this point in time, but I will not hear from you again unless it is in very special circumstances or unless you take steps in the judicial fashion to have me -- to force me to hear from you.

Now, I say that to you very respectfully, Mr. White. I understand that you have a job to do. The Crown has a job to do, and Mr. Schabas and their associates have jobs to do. I want to get through this Preliminary Hearing. We are wasting more time on objections and we are simply not getting anywhere. I have made a judicial determination that the Crown may pursue this particular line of inquiry, with admonitions,

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that it must not stray from what at this point in time appears to me to be relevant. But I will not turn this Preliminary Hearing into anything but that. And at this point, sir, I thank you for your comments and I invite, if you feel that I am acting improperly at this Preliminary Hearing, to take those steps that are available to you to prevent me from doing that or going further in any particular way. But at this point, sir, I think I've extended quite a bit of courtesy to you and I thank you for your instructive comments, but I will from now on hear from Mr. Schabas, Mr. Wong, Mr. Shaw, Mr. Bernstein, and I will make rulings based on their objections. Thank you, sir.

MR. BERNSTEIN: Thank you. Mr. Schreiber.

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

EXAMINATION IN-CHIEF BY MR. BERNSTEIN: (Continued...)

Q. Mr. Schreiber, were you involved in politics in Germany?

A. Please?

Q. Were you involved in politics in Germany?

A. The question is, what do you mean? Was a party member or...?

Q. Were you interested in politics?

A. Yes.

Q. Do you know a man named Franz-Joseph -- or did you know a man name Franz-Joseph Strauss?

A. Yes.

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Q. How did you come to meet him?

A. I think it was on a party event.

Q. Tell us about that event.

A. Well, it was a reception for

the...[German] How can I explain that?

INTERPRETER: The economic committee of the
union party.

MR. BERNSTEIN: Q. This would be the CSU?

INTERPRETER: Yes.

THE WITNESS: Yes.

MR. BERNSTEIN: Q. That's the Christian...

A. Socialist..

Q. ...Socialist Union?

A. Yes.

Q. That is a party in Bavaria?

A. Yes.

Q. Mr. Strauss was involved in that party?

A. He was the chairman.

Q. When was this?

A. I don't recall exactly, but it must have
been in the late '60s, early '70s.

Q. Mr. Strauss has died?

A. Please?

Q. Mr. Strauss has died?

A. Yes.

Q. I understand that Mr. Strauss was a
former minister president of the German State of Bavaria?

A. He was the Premier, yes.

Q. He was also a former German Minister of
Defence.

A. Yes.

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Q. And he was head of the Christian Social Union?

A. Yes. And he was the Minister of Finance.

Q. This would be during what time period?

A. Before he became Premier of Bavaria. It must have been in the '70s and '60s. He was one of the founders of the Christian Social Union.

Q. That would have been in the '60s?

A. Yes, and after the war. From after the war.

Q. He then participated in federal German politics?

A. Yes.

Q. And was amongst other things, the Minister of Defence?

A. Yes.

Q. That would have been in the '60s?

A. Yes.

Q. He then returned to Bavaria and became the Premier of Bavaria and the head of the CSU in Bavaria?

A. No. He was always the head of the CSU, even when he was the minister.

Q. So when does he become the Premier of Bavaria?

A. I think in the late '70s, early '80s.

Q. He remains the Premier of Bavaria until when, sir?

A. Until he died.

Q. When was that?

A. '88.

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Q. Now, I understand that Franz-Joseph Strauss was a board member of MBB from 1984 to his death in 1988?

MR. SCHABAS: Well, Your Honour, I'm going to object to the leading.

MR. BERNSTEIN: Okay. I just -- that's fine.

MR. BERNSTEIN: Q. Are you familiar with a company in Germany called MBB?

A. Yes.

Q. Was Mr. Strauss involved with MBB?

A. Yes.

Q. In what way?

A. First, the free state of Bavaria was a shareholder of MBB. Second, I am not sure whether he was a member of the board, but I think so.

Q. He was also the Premier of Bavaria at the time?

A. Yes.

Q. I understand Mr. Franz-Joseph Strauss had two sons: One named Max and one named Franz George?

A. Yes.

Q. He was married and his wife's name was Mary-Ann.

A. Yes.

Q. When did you move to Canada?

A. I came first to Canada on request of the Saskatchewan government in the '70s.

Q. Was this in connection with your construction and road marking business?

A. Yes.

Q. Did you come for a visit first or pick up and move?

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A. Well, there were all these straight missions from Canada, from the provinces, and I was invited due to all the positions that I had at that time in Germany, and request for investment came always up, and my business friends were associated already with the people in Saskatchewan, and this is how I came first to do a company together with a friend from Austria in Saskatchewan.

Q. This would have been when?

A. As I said, in the early '70s I would say.

Q. Between the early '70s as you say, and say, 1978, how much of your time did you spend in Canada?

A. It's hard to say. We build the factory. I was back and forth. At the beginning, perhaps three or four months.

Q. In Canada?

A. Yeah.

Q. And you would spend the rest of the time in Germany?

A. Yes.

THE COURT: Is that three or four months a year, Mr. Schreiber?

THE WITNESS: Yes.

THE COURT: Is that what you're saying?

THE WITNESS: Yes.

THE COURT: Thank you.

MR. BERNSTEIN: Q. So you'd spend about three or four months in Canada pursuing business interests and the rest of the time in Germany?

A. And other countries.

Q. Did you continue to operate Bitucan in Germany?

A. No.

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Q. Not Bitucan. Bitumen?

A. Yes.

Q. Did you establish a residence in Canada?

A. Yes.

Q. What part of Canada?

A. In Calgary. First in Edmonton and then in
Calgary.

Q. I understand that in September of 1978
you became a landed immigrant in Canada?

A. I don't recall but when you say so, it
may be right.

Q. In 1978, what was your business in
Canada?

THE COURT: In 1978?

MR. BERNSTEIN: Yes.

THE COURT: Okay.

MR. BERNSTEIN: When he became a landed
immigrant.

THE WITNESS: Well, as far as I recall, I --
we moved from Saskatchewan and built another
factory of road marking, and road marking
production on request of the Alberta
Government.

MR. BERNSTEIN: Q. Where was this?

A. In Calgary.

Q. What was the name of that enterprise?

A. MLE Industries.

Q. MLE Industries?

A. Yes.

Q. When did this company get going?

A. I really don't recall. In the '70s.

Q. It was a road marking company?

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A. Yes.

Q. Did you have any Canadian partners?

A. Yes.

Q. What were their names?

A. Irving Satov.

Q. Did Mr. Birkner help you with the management of this company, MLE?

A. Mr. Birkner was my employee in Germany, though, and amongst many others, he helped. Sure.

Q. Do you know a gentleman named Georgio Pelossi?

A. Yes.

Q. When did you first meet Mr. Pelossi?

A. Late '60s early '90s -- early '70s.

Q. Where did Mr. Pelossi live?

A. Lugano.

Q. What did Mr. Pelossi do for a living?

THE COURT: Lived where, I'm sorry? I didn't hear the answer.

MR. BERNSTEIN: Lugano. Lugano is in Switzerland.

THE WITNESS: Mr. Pelossi was an employee for an accounting company and trust company. Something like Fiducarrio [ph] or some Italian name. And he was involved in a company called Unilite, which was incorporated from a German road marking company, which I took over, and so I came in contact with Mr. Pelossi.

MR. BERNSTEIN: Q. Did Mr. Pelossi work with you at one point?

A. He worked at this company as, you would say, a chartered accountant. He was requested on each

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Swiss company called, Controstellar [ph], picked by Mr. Pagani, the head of the Unilite Company, and this was his job.

Q. Did Mr. Pelossi do other accounting or other work for you?

A. Well, later on, he worked in this field of road marking companies.

Q. Which...

A. And we had...

Q. Which road...

A. Hmm?

Q. Which road marking companies are we talking about here?

A. Well, one was MLE in Canada.

Q. All right.

A. One was Unilite France.

Q. That's in France?

A. Another one in Sweden. Maybe, I'm not sure whether he worked with the Austrian company as well. Yeah.

Q. What kind of work did Mr. Pelossi do for you on MLE's behalf?

A. On MLE? I think it was Unilite, as far as I recall. Unilite Switzerland was involved in MLE as a shareholder, and Pelossi looked at the accounting and the finances of that.

Q. Did he help you with some of your other companies?

A. I don't know what you mean other companies.

Q. Did he do work for you in connection with some of your other companies?

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A. Yeah, he worked for a while with Bavarian Bitumen Chemicals.

Q. And other companies?

A. Any other companies of mine? I don't recall anything else.

Q. How about Bitucan?

A. Maybe that he worked together with accountant in Calgary, Mr. Elsner. That could be.

Q. Are you familiar with a company called ABS?

A. Yes.

Q. Were you involved with ABS?

A. Yes.

Q. In what way?

A. Yes. Now, I understand. ABS was a company involved in real estate business.

Q. Where?

A. In Calgary.

Q. How were you involved in that company?

A. Bitucan was the main shareholder from ABS.

Q. How were you involved in Bitucan?

A. I'm was the main shareholder in the Bitucan.

Q. Pelossi helped you with ABS and Bitucan's work?

A. Yes.

Q. Do you know a man named Bill Dickie?

A. Yes.

Q. Did you work with Mr. Dickie?

A. Yes.

Q. Did you work with Mr. Dickie on MLE?

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A. Yes.

Q. What did Mr. Dickie do in connection with MLE?

A. As far as I recall, he used to be the president.

Q. Do you know what Mr. Dickie did for living before he came to work for MLE?

A. Yes. He used to be the Minister for -- for Mines and Minerals.

Q. Where?

A. In Alberta.

Q. How long did Mr. Dickie work for you at MLE?

A. I cannot tell you. That's three years or four years. I don't know.

Q. Approximately, from when to when?

A. I have no idea.

Q. What decade?

A. Shortly after the beginning. I really don't know when I finished with him.

Q. You've mentioned ABS and I believe you mentioned it as being a real estate company of some sort.

A. Yes.

Q. Correct me if I'm wrong, sir. I believe you've advised us that Bitucan was the owner of ABS and you were the sole shareholder of Bitucan?

A. No. But Bitucan owned ABS only in partial.

Q. Who else owned ABS?

A. Oh, there were other shareholders. There's the Frick family. This is where Mr. Pelossi came from. This is how that real estate thing started.

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Q. The Frick family were Germans? Residents in Germany?

A. Yeah, they were but I think they moved into Switzerland.

Q. Were you involved in real estate in Alberta?

A. Yes.

Q. In the late '70s and...

A. Yes.

Q. Through what companies?

A. ABS.

Q. This involvement involved the acquisition, the purchase of real estate?

A. Yes.

Q. Whose money was used by ABS to purchase this real estate?

A. The Frick family has already real estate there.

MR. SCHABAS: I'm sorry. I can't hear.

THE WITNESS: In Calgary. And then, intended to increase the real estate business in Alberta and they provided the funds.

MR. BERNSTEIN: Q. Were all of your real estate investments in Alberta in the '70s, ones which involved only the Frick family?

A. Yeah, I think so.

Q. Do you know a man named Reimerschmid?

A. Reimerschmid. Yes.

Q. How do you know him?

A. He's an old friend of mine.

Q. Was he at all involved in these real estate investments?

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A. Yes.

Q. In what way?

A. He became an investor and shareholder.

Q. Of what?

THE COURT: He became a what, sir, I'm sorry?

THE WITNESS: A shareholder.

THE COURT: Shareholder.

THE WITNESS: In one of the companies being involved in real estate business.

MR. BERNSTEIN: Q. In Alberta in the '70s?

A. Yes.

Q. So it wasn't the Fricks, it was Reimerschmid, also?

A. Yes.

Q. Was anyone in the Strauss family involved in these real estate investments?

A. Yes. The shareholders became involved because Mrs. Frick did not fulfil her obligations in financing because she had the bankruptcy in Zurich, and so other people became involved.

Q. Who?

A. The Bayerische Landesbank, for example.

Q. Who else?

COURT REPORTER: Could you spell that?

THE COURT: Would you repeat that slowly, sir, so it can be written?

THE WITNESS: The Landesbank. Bank.

COURT REPORTER: The Landesbank.

THE WITNESS: Yes.

THE COURT: All right.

THE WITNESS: Reimerschmid.

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MR. BERNSTEIN: Q. We were talking about the Strausses.

A. The Strauss family, yes.

Q. That's Franz-Joseph Strauss?

A. I'm not sure. I think it was his wife.

Q. How about the kids?

A. The children? I am not sure of whether they were at the beginning or whether they became later on shareholders after their mother passed away.

Q. Do you know someone named Herman Pry?

A. Yes.

Q. Who's Herman Pry?

A. Another friend of mine in....

Q. Did he get involved in...

A. Yes.

Q. ...this real estate?

A. Yes.

Q. How did the Strauss family come to be involved in your real estate investments?

A. Well, I think they learned about Alberta through -- through the people from the Alberta Government which were in Munich and met with Strauss. And they also learned from me that I was involved with the Frick family and the Landesbank. Yeah, that was the -- and Dr. Danika who was a close friend of Mr. Pry.

Q. How did you come to -- how did one of your companies come to invest the Strauss's money in real estate in Alberta?

A. Strauss -- the Strauss family, amongst others, invested money in one of the real estate companies.

Q. How did that come about?

A. They transferred the funds.

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Q. Why you? Not -- why you? Why did they transfer the funds to you?

A. Not to me.

Q. To a company that you were involved in.

A. The company.

Q. How did you come to enter into this investing arrangement with them?

A. This was very simple. The Frick family had problems in Calgary with property, which we could fix, and then they intended to invest again, and they did. And Erwin -- now, what was his name? I think about now. I forget his name now. The -- the real estate developer from Alberta was involved in MLE and he convinced, yeah, the brother from Mrs. Frick at the beginning, to do real estate business.

Q. Who convinced the Strausses in these real estate investments through you or through your company?

A. I -- I think it was...

MR. SCHABAS: Your Honour...

THE WITNESS: ...Dr. Danika and that came from -- from...

MR. SCHABAS: Sorry.

THE WITNESS: ...Mr. Pry.

THE COURT: I just wanted him to finish the answer. Yes.

MR. SCHABAS: I'm aware that -- in addition to my original concern which I will not belabour of just how far afield we're getting. I mean he's asking about what was in the mind of somebody else, and whether he even knows, and his answers are somewhat speculative, "I think it was somebody". I just, you know, if

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Mr. Bernstein wants to know what was in the mind of the members of the Strauss family, I don't know whether the sons or daughters are still alive but they asked Mr. Schreiber of that and he's giving speculative answers. I just question the utility of this side entirely from how far away we are from the action.

THE COURT: Are we straying away from the line that we're...

MR. BERNSTEIN: Your Honour, I apologize if my question wasn't as good as it could have been. The point I was just trying to make was not what was in the Strauss' mind but just how factually the Strausses came to invest with Mr. Schreiber.

MR. SCHABAS: He's answered that.

MR. BERNSTEIN: We've heard that Mr. Schreiber met Mr. Strauss at a reception. That's all we've heard, and I just sort of wanted to know how it was that they came to invest with him.

THE COURT: Do you understand the question, Mr. Schreiber?

THE WITNESS: Yes.

THE COURT: Let me say this to you, Mr. Schreiber, if I may at this point. I haven't said this to you before. I assume that you've been counselled by your lawyer. If you find any particular question put to you at any time to be one that you have difficulty answering because you find it embarrassing or

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you find it irrelevant, you may appeal to me and say, "Look, I don't know if I should answer this," or "I'd like to speak to my lawyer." So far, I don't think the questioning has been anything of an embarrassment to you. I don't think. It may or may not. You tell me, but if you've at any point in time find that the questions put to you are questions that you have some objection to answering, nothing prevents you from raising that with me and requesting, for example, that you be allowed an opportunity to speak to your lawyer. I just want you to know that that's a bit of the ground rules under which we're operating at this point.

THE WITNESS: Your Honour, it is not embarrassing to me at the moment. I find it rather irrelevant, because if this continues with all the people involved and all the Canadian trade commissions and missions and meetings with Strauss family and Bavarian politicians and German politicians, they came here and became honoured Indian Chiefs, and the other ones came over. When we continue this, I can't forget my business, and we are here the next six weeks with you.

THE COURT: All right. I understand that. that will be the subject, sir, of objections or further rulings. At this point in time, I'm not prepared to stop Mr. Bernstein, because he has, at least on an interim basis,

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convinced me about the potential relevance of some of the questions he's asking.

THE COURT: However, I simply wanted you to be aware that if you have a moral or a legal or an ethical, or a personal reason to wish not to answer, then you can explain that to the court, or seek the advice of counsel. I just wanted you to understand that, but at this point I think I'll let Mr. Bernstein continue. I'll ask him -- let him ask his question again, framed in the manner in which he did. He wants to know how you became the person, I suppose, that the Strauss family resorted in relation to their investments in Canada...

MR. BERNSTEIN: Thank you.

THE COURT: ...apart from this one meeting at a cocktail party. Perhaps you may wish to phrase it more elegantly than that.

MR. BERNSTEIN: No. That's -- thank you.

THE WITNESS: Thank you very much, sir.

MR. BERNSTEIN: Q. I just ask that you answer the question as His Honour has framed it?

A. I can -- I can say it my way perhaps. Very simple. This was not a question whether the Strausses discussed something with me. It was a huge movement between Alberta politicians and Bavarian politicians and for that were many, many reasons. Alberta was known as the oil province. This was after Leduc. Everybody invested. Huge amount of German companies were there, and the Alberta government, headed by Mr. Lougheed, was the one who came into the trade mission to Germany, invited me in my

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position, and from then on there was a constant -- there was a constant, what can I say, movement between these two governments. Bavaria and Alberta have a lot in common: Mountains, tourism, very rich, beautiful, so...

Q. The question -- thank you, sir. The question was: What did you do that caused them to resort to you rather than some other equally talented person?

A. In principal -- in principal, I did nothing. In principal, I was only there because the Frick family wanted me, since I had some property in Calgary, wanted me to do real estate business with him -- and then and Irving Satov, and I agreed to do it.

Q. So now, the Frick family, I don't know whether you're aware, were the main owner of Daimler-Benz, a very attractive family. Now, at the Landesbank you had Herman Pry. So it was attractive for the people to invest in Canada. If I would not have been the guy, they would have chosen somebody else.

Q. Were you friendly with Mr. Strauss at the time?

A. Yeah. 100 percent. I liked him. I liked him a lot and I still like him. I regret deeply that he died so early.

Q. Was this the first business you did with them?

A. Well, you see I haven't even done business with him. It was his wife. His wife has sold property in Germany and tried to invest, and I became a Strauss fan because when he was the Minister of Defence, he was the first man who forced it through that... got weapons to defend Israel. I liked the man for that. He was a man with guts, and brilliant, and unbelievably

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intelligent. I admire intelligent people. Even today and being 70 years old. I can't -- I can't stand dummies. I have to tell you that.

Q. Which corporate vehicles were these investments made through? The Strauss investments.

A. The Strauss investment, you see, why -- why the Frick family has chosen me somehow is in this date, or I think it's still the same -- I found this out later. A European, so ever, could own property in -- inside cities but not outside the city boundaries.

Q. This is in Alberta?

A. In Alberta. And there was this huge rumour in Alberta, but everybody knew. Oh, there's a huge, how you call this -- annexation? Is that the right word?

Q. Right.

A. So when everybody was interested, went around to...to do anything. They were -- they had to be...

Q. That's a speculation.

A. A Canadian -- a Canadian majority content which I delivered and this -- this is why Dickie and all develop people were involved. Mr. Dickie was recommended by the government of Alberta I should put him in my business because of some blimp business. Everybody wanted to have some blimps, and the helium from Saskatchewan and transport out of the muskeg, oil and gas. I was involved in a thousand things and even with MBB in that days.

Q. Good. And I'll ask you about them, but just to finish with this. My question was: Which corporate vehicles did the Strauss' investments in real estate with you occur through? Like, MLE, ABS?

A. I don't know. I think that one, it was called FMS, which was their family company and through that

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company they would -- they had their investment in other real estate companies. They had different pieces of real estate were in different companies and they were several.

Q. Okay. That was -- excuse me, F?

A. FMS.

Q. FMS.

A. I know this because it was Franz-Joseph, Mary-Ann and S. Strauss.

Q. Franz-Joseph and Mary-Ann. The husband and the wife.

A. Yes.

Q. Were you involved in FMS?

A. It could be that I was one of the directors, also. I was more or less involved in each of the companies.

Q. And this real estate involved the acquisition of property beyond the city limits of Edmonton in anticipation of the expansion of the boundary, right?

A. Yeah. There was -- there was other properties in the city of Edson and so which were in the city boundaries. There was land -- land in Newfoundland with... Oh, no. All kinds of real estate.

Q. Were all of these investments profitable?

A. No.

Q. You mentioned a Frick bankruptcy?

A. Yes. Kitchen company in Zurich, and we found out that she ran out of funds and their brother asked us -- asked me whether I could find other investors, and this is when it started that other people came aboard, otherwise the Fricks, at the beginning, were not even -- not even the intention to have anybody else around.

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Q. So you were -- you were out to find other investors and you found the Strausses amongst others.

A. No, there were lots of investors there that wanted to -- to be part of this. I mean, I think it doesn't take a lot of fantasy when you think about. You have a company that the Strauss family is involved, the Frick family involved, the Bayerische Landesbank involved, and the Reimerschmid was the president of the Chamber of Commerce. I mean, this was the absolute elite of Bavaria.

Q. Okay, and forgive me for the pronunciation of Bunderschmid [ph] Bank?

A. Bayerische Landesbank. That was the huge bank partly owned -- half owned by the Bavarian Government.

Q. It was involved in the investment?

A. Sure, and they had huge real estate business in Canada before. This is one of their subsidiaries.

Q. Now, you say that these investments were not entirely successful. There were losses, right?

A. Yes. Well, there came the recession and -- and the brother from Mrs. Frick got cancer and passed away, and his -- one of the lawyers had other interests and even though that the -- the subsidiary from Bayerische Landesbank recommended badly to invest the rest of the money -- it was only 3 million left or what -- there was a fight between Mr. Strauss and the president of the Bayerische Landesbank. He wanted to get an extension for his job and Strauss disagreed, and though the Bayerische Landesbank did not continue to finance him, and on the other hand you had the recession, so what could I do?

Q. So in the end...

A. But this was not my responsibility.

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Q. In the end, the investments went bad?

A. Yes.

Q. And the money was lost?

A. Yes. The farmers -- the farmers in Alberta got a substantial amount of money because Mr. Dickey had arranged a so-called Agreements for Sale, so the farmers took the money and everybody was happy in Alberta. The poor guys were the Germans.

Q. How much did your German investors lose, approximately?

A. I don't know off hand. Perhaps 3 million or so.

Q. Pardon me?

A. Perhaps 3 million or so. I can't -- I can't really tell you. Because this was not only big money involved, there was smaller money involved as well.

Q. This is Deutschmarks or dollars?

A. Deutschmarks.

Q. Deutschmarks...

A. Deutschmark.

Q. How much did the Strauss family lose?

A. Approximately, 2 million.

MR. BERNSTEIN: I want to just spend a moment on some documents, if I might, Your Honour. I'm wondering if we can take a look at Document 6215 GoTo Page 7.

MR. BERNSTEIN: Q. We have here an Alberta Consumer and Corporate Affairs document.

A. Yes.

Q. And the Particles of Continuance Respecting Bitucan Holdings. Do you see that there?

A. Yes. Yes.

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Q. It indicates that Bitucan was incorporated in December of 1977 at Calgary. Do you see that there?

A. Yes.

Q. Do you see a signature at the bottom of the page there?

A. It's my signature.

Q. Okay. You're signing as the president and chairman of Bitucan, right?

A. Yes.

Q. Bitucan was your company. You were the president, chairman, and sole shareholder?

A. I'm not -- I'm not sure. It could be that Mr. Dickie later on became involved as president and I stood as the chairman.

Q. That would have been in 19 -- well, later on. When would that have been?

A. Your Honour, I really don't know what this is all about.

Q. I can -- I can get -- I can refresh his memory with a document on that. But, as far as it's incorporation, you were the president and chairman in 1977 and we see this particular document is signed in 1983 and you remained the president and chairman in 1983, right?

A. Could be.

Q. Is that your signature?

A. Yes. But this is another -- oh, I thought -- it's the same. Yeah, it's me.

Q. And the title beside the signature is what?

A. I can't read it. I think it says here.... You must go up.

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Q. Okay.

A. No, it's black.

Q. You see there...

A. President -- president and chairman.

Q. Right. And the date?

A. The date, I can't read it. It's black.

It's black here. October '82 or so, would it be?

Q. March 31st, 1983?

A. No. I see only October...

THE COURT: Where do you see that? .

MR. BERNSTEIN: Q. We have two dates on the document here.

A. Yeah.

Q. Do you see this date here...

A. Yes.

Q. ...in the typing, it's October 27, 1982.

Correct?

A. Yes.

Q. And we have a date up here, and correct me if I'm wrong, sir.

A. Oh, yeah. I see the handwriting. Yeah.
Okay.

Q. And it says, March 31st, 1983.

A. Yes.

Q. Right? So, as of March 31st, 1983, you're the chairman and president of Bitucan?

THE COURT: Put those as questions, would you please, Mr. Bernstein?

MR. BERNSTEIN: Yes. I'm sorry.

MR. BERNSTEIN: Q. Were you the chairman and president of Bitucan?

A. I think so when I see this.

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Q. Let's go to page 4 of Document 6215.

This is...

MR. SCHABAS: Your Honour, it might be helpful if the witness could see -- I mean, this is the danger of using images if we know what the balance of the document is. It might assist.

MR. BERNSTEIN: Sure. Sure. Can we just show the witness the entire document?

THE COURT: Well, just watch your screen, sir, and the officer there will scroll through the entire document. If you want him to slow down, ask him, and he'll do that. We're trying to do everything electronically, but that sometimes presents difficulties.

MR. BERNSTEIN: Q. The next document. So this is a search which has been done recently. It's been done in -- where is that? Let's go back to the first page. No, we can stay here. This is a corporate search which was done in 1999. We see that at the front...

A. Yes.

Q. ...the first line of GoTo Page 3. Date of search, 1999/02/22. Okay?

A. Um-hmm.

Q. And as of 1999, Bitucan was an active company. It's -- do you see that there?

A. Yeah.

Q. If we go to page 4, as of 1999, the directors are Gordon Livingston and a Karlheinz Schreiber. Do you see that there?

A. Yes.

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Q. Okay. You were a director of Bitucan as of 1999?

A. I'm somehow surprised. I don't -- I really don't recall if I was still there.

Q. As of 1999, the shareholders of Bitucan was a company called, Merkur Handles?

A. Yeah. Merkur Handles...

Q. Are you familiar with that company?

A. Yes.

Q. Who owns that company?

A. It belongs to a group in Switzerland and in Liechtenstein.

Q. Who?

A. Kensington Group.

Q. Pardon me?

A. The Kensington Group.

Q. I'm sorry?

A. The Kensing -- I guess now. That Merkur belongs there.

Q. The Kensington Group?

A. Could be, yeah.

MR. SCHABAS: Well, he's guessing. I mean, Mr. Bernstein should ask him questions and if we can answer, he can answer. If he can't, he can't.

MR. BERNSTEIN: Q. Merkur acquires...

THE COURT: I agree. I agree.

MR. SCHABAS: Your Honour, I'm just concerned about the leading and...

MR. BERNSTEIN: I won't lead.

MR. SCHABAS: ...what we're doing here. I -- you know my point.

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MR. BERNSTEIN: I think I can help out here.
The only point -- I'll go on. The only point
I want to make is...

MR. BERNSTEIN: Q. You see at the bottom of
this page it says, "Subsidiary corporations, HLP Holdings,
MLE Industries, and ABS Investments." Do you see that
there?

A. Yeah, but I don't know that that means.

Q. Was ABS Investments and/or MLE Industries
associated or a subsidiary corporation to Bitucan when you
were involved in Bitucan?

A. Yes. Yes.

Q. In what way?

A. I think if Bitucan owned them in part,
Bitucan was -- Bitucan was the holding company.

Q. All right. Let's take a look at....

Okay.

MR. BERNSTEIN: Can I just have the court's
indulgence? All right. I'm wondering if we
can take a look at document -- well, before we
do that, perhaps this corporate search can be
entered as the next exhibit in these
proceedings, Your Honour.

THE COURT: Well...

MR. SCHABAS: I think we've...

THE COURT: There must be...

MR. SCHABAS: I mean it's a government record
and there was an admission on this. There is
an entire document. I mean, so it goes in
and...

THE COURT: Was there an admission to this
particular document?

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ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

VERSUS

MBB HELICOPTER Canada
(c.o.b. as Eurocopter Canada Limited)
AND
KURT PFLEIDERER AND HEINZ PLUCKTHUN

PRELIMINARY HEARING

FURTHER EVIDENCE

KARLHEINZ SCHREIBER

BEFORE THE HONOURABLE MR. SENIOR JUSTICE P. R. BELANGER
ON SEPTEMBER 9, 2004 AT THE CITY OF OTTAWA

CHARGE(S): Section 380(1)(a) CCC - Fraud Over \$5,000

APPEARANCES:

M. Bernstein
T. Shaw

Counsel for the Crown

P. Schabas
T. Wong

Counsel for the Accused

**INFORMATION CONTAINED HEREIN IS PROHIBITED FROM
PUBLICATION OF ANY METHOD PURSUANT TO SECTION 539(1)(b) OF THE
CRIMINAL CODE.**

WEDNESDAY, SEPTEMBER 9, 2004

U P O N R E S U M I N G:

(10:35 a.m.)

THE COURT: Good morning. It's a beautiful Ottawa morning. On the issue that we were left with yesterday afternoon, Mr. White, is there a claim for privilege in relation to that document?

MR. BERNSTEIN: Well, I can say, Your Honour, with respect to Document 3304, the Crown does not intend upon relying on it and I'm prepared to just proceed.

THE COURT: So that's that, Mr. White, I take it?

MR. WHITE: Yes. There is a claim of privilege. Mr. Hladun has been Mr. Schreiber's lawyer since the 1970s and still is today.

THE COURT: Fine. Thank you. You're prepared to proceed, Mr. Bernstein?

MR. BERNSTEIN: Yes, Your Honour. I do not accept the claim of privilege, but as I say, I do not intend on relying on it. I'd just like to move on.

THE COURT: That's fine. Mr. Schreiber, then, would you come forward please, and come back to the witness box?

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(Continued...)

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

THE WITNESS: Good morning, Your Honour.

THE COURT: Good morning.

EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

Q. Mr. Schreiber when we broke yesterday we were talking about Bitucan. I believe we reviewed an Alberta corporate record document reflecting that Bitucan was incorporated in 1977; do you recall that?

A. Yeah.

Q. You testified that you were the Chairman and President of Bitucan and the sole shareholder?

A. I'm not sure that I said this because at one time Mr. Dickie was the president and I was the chairman, and I have to correct two things I said yesterday.

Q. Please.

A. When you asked me about Bitucan and you asked me about other companies Mr. Pelossi has worked with me or for me. I -- you know that I had to think about it for a moment, and I have to correct it. He did not work for me with ABS. He worked on ABS for Mrs. Frick and her brother Karl... He worked with me on MLE where he was involved and where one of his companies where he was working this was a shareholder, but he did not work for me at ABS. And I'm pretty sure he was not even working for me on Bitucan. It was Mr. Dickie and Mr. Elzner.

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(Continued...)

A. I know -- I know -- I know the -- I know the principal of the transfer, I know that.

Q. And this document reflects that transfer?

A. Yeah.

Q. So as of November 1994, you transferred your shares, your ownership shares...

A. Yes.

Q. ...in Bitucan to a company called Merkur Handels.

A. Yes.

Q. If we continue just on the document for a moment, under the heading, "Consent," it says, "I, Karlheinz Schreiber, of Kaufering, Germany, being the registered shareholder of 2000 Class A voting shares of Bitucan, and having read this Transfer Notice of mine, hereby agree to the said transfer." Do you see that there?

A. Yeah.

Q. Okay. So, would it be fair to say that in a manner consistent with this Transfer Notice on the date specified in the notice, you transferred your ownership in Bitucan?

A. It looks so, yes.

MR. BERNSTEIN: I'd ask that this document, Document 14635 be entered as the next exhibit in these proceedings.

MR. SCHABAS: It's been identified. I don't know what 1994 has to do with anything. It's outside the dates of the charge. Now, we're getting past, long past the events in issue as opposed to being long before them.

MR. BERNSTEIN: My point here, Your Honour, was there was some issue yesterday as to when

Mr. Schreiber sold his interest in Bitucan? This document reflects that sale. So we now have evidence before the court as to when Bitucan was acquired and the material times in which he exercised ownership over the company.

THE COURT: I think that's fine. Next exhibit.

EXHIBIT No. 1-14635: Document 14635. Transfer Notice.

MR. BERNSTEIN: Thank you. Let's take a look at Document 14636.

MR. BERNSTEIN: Q. We have here a Resolution of the Directors of Bitucan Holdings Ltd., also dated November 9th, 1994. And this document has a signature under the -- above the heading, Karlheinz Schreiber, at the bottom of the page. Do you see that there, sir?

A. Yeah.

Q. Is that your signature?

A. Yeah. It looks that way.

Q. Okay. This document, this Resolution of the Directors says, amongst other things, "...it appearing that Karlheinz Schreiber desires to transfer all of his shareholdings in the corporation and documentation entitled, Transfer Notice, and consent duly executed by the transfer as been presented to the directors." There is then a resolution of the directors affecting the transfer, and the document at the end goes on to say, "We, the undersigned being all the directors of the corporation as evidenced by our signatures hereunder, hereby consent and

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approve and adopt the foregoing resolutions." Do you see that there?

A. Yes.

Q. So you were at this time all of the directors of Bitucan?

A. Well, when my lawyer prepared it this way, I think so, yeah. Mr. Dickie has -- had gone before, I guess.

Q. As of this time, you're all the directors?

A. Yes.

MR. BERNSTEIN: I'd ask that this document be entered as the next exhibit in these proceedings, Exhibit 14636.

THE COURT: It's the next exhibit.

EXHIBIT No. 1-14636: Document 14636.

Resolution of Directors, November 9, 1994.

MR. BERNSTEIN: Q. Now, Merkur Handels, the company which acquires Bitucan, you indicated yesterday was owned by the Kensington Group. Do you recall that there?

A. Yes. This was my recollection.

Q. Merkur was a company registered in what country?

A. Either in Switzerland or in Liechtenstein.

Q. Who owns the Kensington Group?

A. It's represented by Mr. Pagani. The rest, I don't know.

Q. When you say represented by Mr. Pagani, what do you mean by the term "represented"?

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(Continued...)

A. The documents show that he, by holding the shares and the certificate, that he is the owner. Or representing owners, which I don't know.

Q. You don't know what?

A. I don't know who he was representing or what he's doing.

Q. You sold Bitucan to Merkur?

A. Yes.

Q. In connection with that sale, did you ask who the owners of Merkur or Kensington were?

MR. SCHABAS: Your Honour...

THE COURT: That would be hearsay, in any event.

MR. BERNSTEIN: Okay. Excuse me?

THE COURT: That would be hearsay, his answer, would it not?

MR. BERNSTEIN: No. Whether he asked.

THE COURT: Whatever -- well, not whether he asked. If he says yes -- if all you want is a yes or no, that's fine.

MR. BERNSTEIN: No. No, of course -- whether he asked.

THE WITNESS: Whether I did what?

MR. BERNSTEIN: Q. You asked who owned the company which bought Bitucan?

A. I haven't got that right. You said I asked -- whether I asked...

Q. No. Did you ask?

A. Did I ask? No.

MR. SCHABAS: My concern is we're getting -- not only is it leading to hearsay as you've rightly identified but we're sort of into a

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(Continued...)

form of cross-examination. He says he doesn't know, and we should move on.

THE COURT: Well, we've gone as far as we can.

MR. SCHABAS: That's right.

THE COURT: I don't disagree with that.

MR. BERNSTEIN: Q. In connection with this sale, who did you deal with?

A. I have no recollection. It might have been Dr. Wullschleger. I am not sure that Mr. Pelossi was still around in that company at that time. When was it, '94? It must have been Mr. Wullschleger, yes.

Q. What did Mr. Wullschleger do for a living?

A. Wullschleger is the -- how you call this? The partner from Dr. Pagani.

Q. Doctor...

THE COURT: I'm sorry, I didn't hear the answer.

MR. BERNSTEIN: The partner of Dr. Pagani.

THE WITNESS: Pagani.

MR. BERNSTEIN: Q. What did Mr. Wullschleger and Mr. Pagani do for a living?

A. Oh, they have insurance companies. They have consulting companies. They have trust companies. They manage hospitals. A lot of things. Mr. Vokeshalger is also the counsel for Finland.

Q. Did Mr. Pelossi work with them at one point?

A. Yes. As I told you yesterday, Dr. Pagani brought him in -- in the -- to the road marking business, Unilite.

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Q. Did Mr. Pagani do the same kind of work, Mr. Pelossi did?

A. No.

MR. SCHABAS: Your Honour?

THE COURT: Yes.

MR. SCHABAS: He's given his answer as to what he knows that Mr. Pagani did and I'm concerned that this is -- I mean, where is this all leading? What's the relevance of what all these different people and different businesses they were in? What possible relevance can this have to our case?

MR. BERNSTEIN: Well, with respect...

THE COURT: There's the question. What's your answer?

MR. BERNSTEIN: My friend has had disclosure for years. My friend knows that Georgio Pelossi is very, very involved in this case and in IAL and the provision of commissions from MBB to IAL and to Mr. Schreiber.

Mr. Pelossi leaves his offices at one point, and I understand Mr. Pagani takes off where Mr. Pelossi left off in one form or another, and that's why I'm asking these questions.

Your Honour, when my friend stands up and says, "What is the relevance of questions of who takes over for Mr. Pelossi?" I'd ask him to remember that MBB pays -- enters into a Sales...

MR. SCHABAS: Well, is this? evidence?

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(Continued...)

MR. BERNSTEIN: ...Representation Agreement with IAL which he disputes.

THE COURT: Say that again. I'm sorry. I was interrupted. It's difficult, gentlemen, for me to attempt to follow what is, essentially, a relatively involved corporate relationship if there are interruptions. Start again, please. Just say what you've just said again, I've lost my train of thought.

MR. BERNSTEIN: My friend has not made any sort of admission at all respecting the IAL Sales Representation Agreement between MBB and IAL under which or in connection with the commissions in issue were paid. Not only the commissions in issue were paid but a contract which represents or reflects the contingent fee or brokerage or commission arrangements.

We have heard evidence respecting that Sales Representation Agreement from Mr. Wittholz, from Mr. Moores, and you have seen and considered the Sales Representation Agreement. There may have been other evidence respecting the Sales Representation Agreement from other witnesses.

We have put off the issue of the admissibility of that piece of evidence until at least after Mr. Schreiber's evidence, and it is anticipated, and we've discussed it Your Honour, that there will be argument as to the

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(Continued...)

admissibility of the Sales Representation Agreement once Mr. Schreiber has completed his evidence.

The Sales Representation Agreement is signed by Mr. Pelossi. Okay? And you've seen it. There -- and his relationship -- and I don't-- I'm going to be a little circumspect with Mr. Schreiber in the box, Your Honour, but I'm laying the foundation here to something which will be the subject of some litigation later on. I'm not surprised by my friend's objection. He contests its admissibility, but certainly I'm entitled to lay a proper foundation and I'm attempting to do this.

THE COURT: Okay. Mr. Schabas?

MR. SCHABAS: Your Honour, my friend talks like the case has been proven, but it hasn't and there are rules about how to prove the case, and if we're getting -- I'm inclined to say, why doesn't he call Mr. Pelossi?

THE COURT: Well, he's telling us how he's going to go about proving it, and he may call Pelossi, I don't know, but this is the witness in the box now...

MR. SCHABAS: Right.

THE COURT: ...who knows something I gather about these relationships and I can't say that that's irrelevant.

MR. SCHABAS: No, but what I asked -- what I objected to was he was asking questions about all the other businesses these people were in,

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(Continued...)

different people like Mr. Pagani and Mister -- I can't pronounce the name. I think it's Vokeshlager [sic]. And Mr. Pelossi. All these different things that are of, to me, to my mind, have absolutely no relevance.

THE COURT: Well, I can't...

MR. SCHABAS: And how does Mr. Schreiber know?

THE COURT: ...yet say that. That's the problem. Well, maybe he doesn't and, of course, that's why you'll be entitled to cross-examine him and...

MR. SCHABAS: I mean it may all be hearsay, too.

THE COURT: ...to find out what the source of his knowledge it. This is, as I say, it's convoluted matter, and I can't at this point -- I know less about this case, obviously. Infinitely less than you do, but at this point I'm not prepared to cut off Mr. Bernstein and say this is utterly relevant. There appears to be on the basis of what Mr. Bernstein tells me, some connection between the events that we're talking about back in the '80s and '90s, and the ultimate issue before the court, and yours is a general kind of objection which I'm not at this point prepared to entertain. I'll allow Mr. Bernstein to continue, again reminding Mr. Bernstein that we're concerned here with a particular issue and we're not involved, obviously, with too much historical background, so long as it's germane and...

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(Continued...)

MR. BERNSTEIN: Yes.

THE COURT: ...apparently relevant. I'm going to allow him to continue, Mr. Schabas.

MR. BERNSTEIN: Thank you, Your Honour.

THE COURT: I...

MR. SCHABAS: I just...

THE COURT: I understand your comments, but...

MR. SCHABAS: ...make one other comment.

THE COURT: Yes.

MR. SCHABAS: ...which is -- and I think we have to be concerned about whether questions are adducing hearsay. We just don't know, and that's, I think, an issue that Mr. Bernstein and the -- we should all be mindful of.

THE COURT: All right. And Mr. Schreiber can tell us if what he's going to tell is something he knows of his own knowledge or if it's something he has heard and then we'll determine whether the evidence is admissible. It may very well be that at the end of the exercise, after cross-examination, that much of this is hearsay. That's why we have cross-examination, and that's why we have a person sitting in this chair to make rulings on what's admissible and what's not.

At this point, I don't have a sufficient background to be able to make final determinations. Go ahead, please, Mr. Bernstein.

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(Continued...)

MR. BERNSTEIN: Q. Did Mr. Pagani do the same kind of work as Mr. Pelossi?

A. I don't think so.

Q. Why do you say that?

A. Because Pagani and Wullschleger were always involved. Pelossi was an employee in one of the companies.

Q. I'm sorry. I didn't hear that. Can you speak up?

A. Please?

Q. Can you speak up, please?

A. Mr. Pelossi was an employee in companies from -- where Mr. Pagani and Wullschleger were working on. He was not -- he did not the same work.

Q. What kind of work did Pelossi do?

A. As I told you, Pelossi was mainly involved in the road marking business, and also for the Frick family in the real estate business.

Q. How much did Merkur pay for Bitucan?

A. Who?

Q. How much did Merkur pay for Bitucan?

A. I don't know, but I think it's 2000 or what -- what you say here. I don't know.

Q. You were the sole shareholder of Bitucan.

A. Bitucan had substantial loans from Merkur and I think that was -- that they took over. Finally the company, with all the real estate, I was not interested in anymore.

Q. You said Bitucan had substantial loans from...?

A. As far as I recall, from Merkur.

Q. When were these loans advanced?

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(Continued...)

A. Oh, this was at the beginning many years ago when the road marking business started, this came money from the Frick family, and so.... As far as I recall. Look, this is how many years this is ago? 30 or 40 years. I really don't care that much about it.

Q. So to the best of your recollection, Bitucan received \$2,000 or so for...

A. I, honestly, I don't know. For me, it was a finished chapter. I gave it to Merkur. Bitucan, as far as I recall, owed. I had to get money. I gave it to them. I was -- I got rid of that stuff and that was it. There was some real estate left and, as I say, our business owned. They finance it and, therefore, I had no interest in it at all anymore.

Q. You spoke yesterday about MLE.

A. Yes.

Q. And I just wanted to ask you to look at a document and it is Document 21283, GoTo Page 26. Document 21283, GoTo Page 26. This is not a very good image, Your Honour, and we do have paper copies.

A. This is -- I cannot read this at all.

Q. We'll get you a piece of paper to read, okay?

MR. SCHABAS: Your Honour, maybe they could print out the whole document. I don't know.

THE COURT: It's 106 pages long.

MR. SCHABAS: As opposed to just taking an isolated page.

THE COURT: I don't know what this is. It's 106 pages long.

MR. BERNSTEIN: It's -- we're just going to

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(Continued...)

-- there's a number of documents at this document. The actual letter, which we'll get a hard copy of for the court and everyone. It's two pages.

THE COURT: What is 21283?

MR. BERNSTEIN: It's a letter written by...

THE COURT: No. That's that page, but what's the entire thing? What is it? Is just a compendium of pages or what? What does it purport to be?

MR. BERNSTEIN: My personal focus had been on two letters, which are four pages of the bigger document. I have to ask the officer what's in the rest of the document.

THE COURT: Oh, okay.

MR. BERNSTEIN: I've been advised by the superintendent that the entire document consists of Mr. Schreiber's Canadian Immigration file, and this is two pieces of correspondence from various sources to Canada Immigration. This will only take a minute.

I have a hard copy which I think would be easier to read, Mr. Schreiber. This is a letter...

THE COURT: Just hold on a minute,

Mr. Bernstein. You're on your feet, sir?

MR. SCHABAS: Well, Your Honour, I think that in fairness, the witness -- I mean this is from a particular file. It seems to come from Mr. Schreiber's own Citizenship file.

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(Continued...)

MR. BERNSTEIN: No. It comes from the Canadian government's file.

MR. SCHABAS: About Mr. Schreiber.

MR. BERNSTEIN: Right.

MR. SCHABAS: But presumably he may have privacy interests in. We don't know. I don't know how it was obtained by the RCMP, but I think Mr. Schreiber should be given the opportunity to review the document, and not just two pages out of it, and what the context is for this. He hasn't seen any of this and it's just -- I mean we have this problem sometimes where we go to a document and then we get just get one page on the screen. We had only one page of a letter on the screen yesterday at the end of the day, and to be fair to the witness he should be given an opportunity to see what the context is, and he may have his own concerns about what this is doing in the hands of the RCMP and the Crown, and on a court computer.

I don't know. He's not my client. I'm concerned about the relevance of this. I'm concerned about where this is all going, and I'm concerned about fairness.

THE COURT: Well, you're always concerned about where this is all going.

MR. SCHABAS: I'm concerned about the fairness of the evidence, too.

THE COURT: No. Well, fair enough, but the proposal by Mr. Schabas is that you produce this document to the witness. Do you have a

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(Continued...)

problem doing that? To allow him to see either in electronic or paper form?

MR. BERNSTEIN: No, I've no.... It's -- no.

THE COURT: It may not be of weight or substance, but I understand Mr. Schabas says because these are Immigration documents, there may be a privacy interest of some sort. I don't know what it is. It could be. Still, it's not an unreasonable suggestion. Could you have him look at -- produce the document and have him look at it?

MR. BERNSTEIN: Yes. I don't think I can do that instantan -- I can produce this...

THE COURT: No, but you can print in the computer file...

MR. BERNSTEIN: Yes.

THE COURT: ...within fairly short order. Let's...

MR. BERNSTEIN: Okay. Your Honour, I've been advised by Staff Sergeant Alexander that the file is -- was microfiched and our electronic images are not great. He can look now at the electronic images. If, for the actual hard copy.... A sort of hard copy of the microfiche is at the offices. The staff sergeant can go get it right away, but we could have the images...

THE COURT: Well, let's start with the images. Mr. White may wish to be of assistance to his client in that respect. We'll take a break for that purpose. All right.

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(Continued...)

COURT REGISTRAR: All rise, please.

THE COURT: Thank you.

R E C E S S (11:05 a.m.)

U P O N R E S U M I N G: (11:45 a.m.)

COURT REGISTRAR: Court is now reconvened.
Please be seated.

THE COURT: All right. Where are we,
gentlemen?

MR. WHITE: Your Honour, I've taken the
opportunity to look at 106 pages. 75 percent
of it is illegible, but what causes me the
most concern is that this is a confidential
record of Mr. Schreiber in an application,
over years, to Canada for landed immigration
and for citizenship. I don't know how it was
obtained. I don't know how it was filed in
court or disclosed to...

THE COURT: It hasn't been filed in court, I
don't think.

MR. WHITE: I'm sorry. I thought Your Honour
had it on your computer.

THE COURT: Well, it's there but only for
practical purposes.

MR. WHITE: Not filed as an exhibit.

THE COURT: No, it's not been filed as an
exhibit.

MR. WHITE: But it was still handed over to
Your Honour and still handed over in

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(Continued...)

disclosure, this third party record, without any notice to Mr. Schreiber.

THE COURT: It hasn't been given to me. It's on -- do you understand the way we're working.

MR. WHITE: Yeah, I...

THE COURT: All of this stuff is electronically digitized and we're making them exhibits as -- but I do not see -- I've made a deliberate effort not to look at any of the materials until and unless they are being brought up in court.

MR. WHITE: It's still been disclosed to the defence.

THE COURT: Well, sure it has. Yes, I presume so.

MR. WHITE: And again, the Crown has refused to even advise us or Mr. Schreiber as to what documents they intend to rely on or what documents they have in their possession.

In my respectful submission, pursuant to O'Connor, the Crown is required to make a third party records application to give notice to Mr. Schreiber, to give notice to the Government of Canada that they intend to rely upon any documents in his personal file. It contains income tax statements, personal statements about his wife, his family, his children, corporate documents, letters back and forth between Mr. Schreiber, a report -- reports and things from what we can tell and what we can read, these are clearly

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(Continued...)

confidential records kept by Canada with an expectation of privacy that the Crown has always known that they intended -- and I'll say this -- to cross examine Mr. Schreiber on. And no other purpose.

My friend, I anticipate, based on the small amount of information he has given me, is going to make the argument that it's relevant as to whether or not Mr. Schreiber was a consultant to MBB Germany, because there is mention of it in one of these confidential documents.

In my respectful submission, Mr. Schreiber should be asked whether or not he was a consultant for MBB Germany and he can be asked questions about that, but there's no reason for his private records to be introduced, and if my friend wants to rely on them for any purpose, in my respectful submission, I am entitled to notice, pursuant to the Ontario Court of Justice Rules, and written notice and with a detailed description as to why any of these records, even a word in these records is relevant to these proceedings, and that's my position. And I have no choice but to make this because I'm being ambushed. I don't know anything about this. Mr. Schreiber has never known anything about this. These documents are from more than 20 years ago. I don't know where my friend is going with it.

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(Continued...)

MR. BERNSTEIN: Your Honour, Mr. Shaw will...

THE COURT: Mr. Shaw?

MR. BERNSTEIN: ...respond.

MR. SCHABAS: Your Honour, if I might just make a couple of comments as well just before Mr. Shaw replies. I share -- I concur with the submissions of Mr. White. I would also just note that my objection originally arose simply because we were going to a isolated page. And what we learn when we look at the document is that the GoTo Page 26 was a copy of something that was attached to a letter that Mr. Schreiber had written. I'm not asking you to do this, but if you go back to pages 16 to 19, there's a letter which Mr. Schreiber writes to the Citizenship people. It contains a lot of information, a lot of personal information. At the end it says, "and I attach the following things." That would have put it in context.

Mr. Bernstein, I understand, is intending to go to that letter next and ask him whether he's a consultant to MBB Germany, because he says it in the letter. I mean, that's the way -- if he's even entitled to use this document, in my submission, that's the fair way to do it. Tell the witness who hasn't seen things before, what the nature of the documents are, what the context is so that he can be fairly asked. And we'd move along a lot faster, if he wanted to ask him certain questions rather

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(Continued...)

than coming in a very round about and, I submit, unfair way of taking various things out of context, but I just wanted to make that point as well, before Mr. Shaw were to rise.

MR. SHAW: Let me take that point first.

The nature of taking -- the reason you take a witness to the context of it, is where they have compiled a file and there are various things that they may want to relate to. This is a file that compiled -- the whole document compiled by a third party. I understand that Mr. Schreiber has had an opportunity to look at the context of this, and the simplest way, in my submission, to deal with this is to look at the two letters that we're proposing to take Mr. Schreiber to and to see them for what they are. And we dispute that there is a privacy interest, given the nature of what's going on and the nature of the contents. And we also dispute our obligation to give notice under *O'Connor*. If you read *O'Connor*, you'll see that documents in possession of the Crown have to be disclosed. This is not like the statutory complainants' records provisions which operates in a different fashion, but the nature of the common law *O'Connor* test is that documents -- that was a dispute in the Supreme Court of Canada -- the documents in the Crown's possession must be disclosed. And we have done so, and Mr. White now raises this issue. Rather than deal with it in the abstract, the first step is to consider in my

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submission the two documents. And if we could go to -- yes. No. We're just going to hand up more legible hard copies of the first letter, which I'm going to call 21283 GoTo Page 26 and 27.

MR. SCHABAS: Sorry, do you have a copy for me? I don't have a hard copy.

MR. SHAW: Yes. Actually, I'm going to -- we'll deal with -- we'll deal with both. Hand both up. The other one. The first citation I gave is a letter dated September 22nd, 1981, and the second citation is going to be the same document, No. 21283 GoTo Page 16-19.

Let me do them chronologically. Let me take you to the letter of July 28th, '81. And you'll see that the first paragraphs are instructive. They are to the Secretary of State, Port of Canadian Citizenship. So on their face they purport to be submissions to a court and the second paragraph, "In order to answer your possible inquiry regarding my permanent residence status in Canada, I would like to acquaint you with my background here in Canada." And so this is a submission on its face to a court respecting a benefit that Mr. Schreiber wishes to receive, namely his permanent residence status. In my submission, it is no different than any other submission that might be made to the court or for a benefit. It is not in any way shape or form, the type of privacy one might recognise

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between a lawyers and a client -- between a counsellor and a complainant. It is of a totally different order.

It is Mr. Schreiber, from reading it, putting his best foot forward in terms of him being an eligible and worthy permanent resident. And he is successful on these submissions. And in writing the government he must well have expected that his claims would have been verified, and tested, and subject to review. Inevitably, that review would have implied contacting other people about it, and disclosing to them whether Mr. Schreiber had a particular business, whether he arrived at a particular time.

That first letter, as you can see, is about a number of Canadian activities that he had, about his financial situation in the vaguest of terms in terms of opening up a private bank, and it appears to be an active advocacy in exchange for, as I stated, an increase in immigration status.

The interest that we have in this document, and it's relevance when you're balancing whatever privacy interest might even attach to this document, if you go to the second page of that letter of July 28th, 1981, you'll see in the biggest paragraph on the page, the last two lines, "I, furthermore, have been acting

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(Continued...)

as a consultant to the MBB concern in Germany, which is active in the following fields." And one of them you'll see, after rapid transit systems, it is helicopters.

All of these are his status in Canada and they are supportive of his increased status.

If I can take you now to the next letter, which is September 22nd, 1981. Rather than being a third party record, this is like the other one; a record to a third party, respecting holdings in various companies, companies which we have already seen are a matter of public record and for which Mr. Schreiber, without raising privacy concerns, has already testified as to his ownership and involvement, and the other people that were involved in it.

It appears to be a continuation or a greater detail of the list of companies that were at the last page of the first letter.

Now, on the issue of this novel proposition that these submissions to gain the benefit of an increased immigration status are somehow private, despite being subject to verification, despite being put to a third party, the Immigration Department or the court, with whom I know of no evidence of

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Mr. Schreiber's privacy or private relationship or privileged relationship with them.

The best analogy to that situation I can find on the short notice that we had is the case of Smith, and if I could just have the case of Smith distributed to the court...

THE COURT: Just before we go into that, is it the Crown's intention to refer to this particular file limited to the production of the letters of September 22nd and July 28...

MR. SHAW: Yes.

THE COURT: Is it limited to that?

MR. SHAW: Yes.

THE COURT: It is not your intention to make the entire file an exhibit?

MR. SHAW: That is correct, in the same manner that -- the batching of these records, how they are grouped together as a big document of like 25 letters or of 25 documents as one letter, is in some ways an arbitrary decision that is maybe the result of the way they are microfilmed, but as we have in the past, we've identified other exhibits as simply being the exhibit with the GoTo pages, and it's only these limited GoTo pages that are at issues.

I am disputing whether Mr. White has shown even a *prima facie* case for us to go into some sort *O'Connor* inquiry, but I can indicate that

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these records were received pursuant -- if we were to get into evidence, it would be our submission that these records were received pursuant to an access to information request made by the RCMP, and you'll know that under the *Privacy Act* in Section 8, there are explicit exemptions dealing with law enforcement access to immigration records, and those are typically the ones that are relied upon in order for this grant of access.

THE COURT: These were not obtained via search warrant?

MR. SHAW: That's correct. They did not fall within the class of documents that might have heightened expectation whereby a search warrant was the only method of giving them. They were available to the police through access to information channels.

The case of *Smith*. My friend has accused me of throwing something at him. I placed it on his desk and I apologize if it alarmed him.

Smith is an interesting case in that if you go -- it's a Federal Court of Appeal case and the endorsement of the Supreme Court of Canada, and what transpired in this particular case was individuals were entering the country after vacationing abroad and had to fill in a disembarkation -- like the standard immigration form for disembarkation. It turned out that those forms were being --- the

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information on those forms were being transmitted from Customs and Immigration to the Employment Commission - Uninsurance [sic] Employment Commission. And the person who was subsequently denied insurance because they had been vacationing complained that their privacy had been infringed. The court concluded in relation to this entry that there was not a reasonable expectation of privacy that took place in entering the country. I am simply asking the court to analogize this to a lowered expectation of privacy when someone asked Canada for landed immigrant status and expects verifications to take place thereafter, *Smith* is the same sort of thing. Someone enters the country, they make a comment as to where they've been and that's used for another purpose.

If you go to the Supreme Court of Canada decision, which is at the second page of what I've handed up, you'll see that

"As in *Plant*...there was no violation of s. 8 of the Canadian Charter of Rights and Freedoms...of this case. We conclude that the appellant cannot be said to have held a reasonable expectation of privacy in relation to the disclosed portion of the...Customs information which outweighed the Canada Unemployment Insurance Commission's interest in ensuring compliance with self-reporting obligations of the Unemployment Insurance benefit program."

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I think that is indicative of a parallel situation whereby someone is submitting, albeit a more involved sense for an increased immigration status, and that is simply what the two letters we're referring to are.

Now, if my friend has satisfied you that there is some *prima facie* concern, we'd obviously have to embark upon what *O'Connor* contemplates, which is a evidentiary hearing. But, in my submission, the nature of these two letters, which is all that we're seeking to make exhibits, is such that there can't reasonably be an expectation of privacy attaching to them.

THE COURT: Okay. Mr. Smith. Mr. White.
I'm sorry.

MR. WHITE: Well, Your Honour, I'm ambushed. The Crown talks about in the limited time to prepare. I assume limited time means years, because clearly you've had these documents for quite a while. And my friend is 100 percent wrong, and I know that as a fact when it comes to the -- what he calls access to information, which is actually the *Privacy Act*. In order to get any documents controlled by the Government of Canada, one has to make application under the *Privacy Act*, Access to Information, and notice is required to any party that may be affected, especially Mr. Schreiber. The *Smith* case, the *Smith* in Canada, is a case dealing with Immigration

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(Continued...)

Canada or Unemployment Insurance with respect to Application forms made in that context.

It's not a question of taking them from that context, which is Immigration, the Government of Canada, and attempting to use them by the Crown to cross-examine a Crown witness.

THE COURT: Well, where is this cross-examination business coming from?

MR. WHITE: There hasn't been anything but a leading question with respect to these.

THE COURT: Well, but this is examination in-chief and there's been no cross-examination.

MR. WHITE: Oh, I understand what it's supposed to be.

THE COURT: Let's not use too much rhetoric. The cross-examination of this witness is not permitted.

MR. WHITE: How the RCMP gets it, if they're claiming that this was through the *Privacy Act*, Access to Information, there...

THE COURT: So is it your position there's been a breach of the *Privacy Act*?

MR. WHITE: Well, I don't know, because -- no, no. I'm not suggesting that, because the police do not have to get a search warrant if it's for police purposes, investigative purposes, because the Act says that the police can get access to these materials pursuant -- instead of a search warrant, so it's equivalent to a search warrant.

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I'm not taking issue on how they got access to them. It's whether or not they can be shown to anyone in the world, and secondly, whether or not they can be produced in court. Whether they can be filed, used in any way in a court proceeding, that's where *O'Connor* takes place. *O'Connor* says if it's a third party record that's going to be used in any proceeding, the record holders and the persons whose records they are, have an absolute right to notice of it, that there's going to be an application made to use certain records. Then, that gives the third party, like Mr. Schreiber, opportunity to review the records -- and again, I haven't reviewed the records, because 75 percent of them are illegible. I take issue. My friend may be an expert on this. He may have seen the original file. This is a Canada Immigration file.

THE COURT: But have you -- have you seen...

MR. WHITE: It starts off with an application...

THE COURT: Have you seen these two documents? And these, I'm assured, are the only two documents on which they wish to rely.

MR. WHITE: One of them is a letter from Karlheinz Schreiber and one of them is a letter from William Dickey.

THE COURT: Yeah. From Dickey. Yeah. Have you seen those?

MR. WHITE: I've now seen them, yes.

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(Continued...)

THE COURT: All right. He's not -- the affirmation to me is that they're not going to rely on the entire file, only these two documents. Okay? So...

MR. WHITE: Well, let's narrow the focus. So, the police can kick in a door, take everything out of your house and say, "We're only going to rely on this," and that makes it okay. Or a third party record -- school records are third party records. They're confidential. And so the police seize that in a lawful way or otherwise, and they only want to rely on one piece of information on it. It doesn't mean that Mr. Schreiber and the Government of Canada Immigration is not entitled to Notice. It doesn't mean that we're not entitled to have a hearing.

THE COURT: All right. You're saying entitled to Notice, but not pursuant to the *Privacy Act* but only under *O'Connor*.

MR. WHITE: Right.

THE COURT: I just want to understand your argument.

MR. WHITE: Well, I don't know. I don't have the *Privacy Act* with me. I don't know what -- my friend referred to the section where police have special powers. It's equivalent to a search warrant. Police officers can get whatever they want without having to get a search warrant, without having to show grounds or without having to show cause. They can go on a fishing expedition. And that may be the

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point under the section, but like, I understand my friend is standing up right now, Your Honour, and telling me -- sorry, telling Your Honour that they got it pursuant to the Act is the first I've ever heard of it. The absolute first. I've ever been notified of it. I want to consider my position with respect to whether or not I can make an application for judicial review to quash that decision, challenge the constitutionality of this Act.

Mr. Schreiber is a Crown witness and he hasn't been shown any documents to refresh his memory, which is, in my respectful submission, standard and he's now being ambushed with private documents that he hasn't seen in 30 years, and after he's given evidence about similar.... Mr. Schreiber is asked benign questions in background, what companies are you involved in in Canada? Who -- do you know this? Do you know that? Now, these documents are being presented. I don't know for what purpose but we're entitled to notice. We're entitled to a hearing. We're entitled to consider our remedies and to protect Mr. Schreiber's rights. These are documents that are relevant for what purpose, first of all. That will be my second objection. How, the Canadian Immigration records of Mr. Schreiber who, as Your Honour says, is not being cross-examined by the Crown, is not being set up by the Crown -- is simply being

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examined in-chief, how are they relevant to whether or not Eurocopter a Canadian company, MBB Canada Limited, entered into a contract with the Coast Guard? I don't know. But it's far afield and it's a set up, in my respectful submission.

THE COURT: It's not far afield at all. Listen, Mr. White, your use of...

MR. WHITE: Canada Immigration?

THE COURT: Your use of hyperbole is amazing. You're talking about ambush, set-up, cross-examination. None of this is being, at the present time, contemplated.

MR. WHITE: It's been done, Your Honour.

THE COURT: There is a very narrow issue there that arises, and it is clear and crystal clear to me that one of the issues, or at least the central issue, and the central purpose for the production of these documents is involved in a determination of some form of agency relationship between MBB and Mr. Schreiber. Boy, that sounds awfully simple to me, and to go from there and to talk about remoteness, to talk about ambush, to talk about set-ups and cross-examination, your language simply does not, in my view, reflect the reality of the situation I'm dealing with.

MR. WHITE: I apologize for the language. Then, why doesn't the Crown ask Mr. Schreiber what his relationship is with MBB Germany, what his relationship, if any, is with MBB Canada. Ask those questions. Why are we going

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into confidential records without Notice? I won't say anything further. My position that we're entitled to Notice. These are third party records. We should have been given Notice in writing and we're entitled to a hearing to determine whether or not any of these records should have been obtained -- any of these records can be used. And we're not into a balancing interest, yet. Balancing the privacy interest. It seems to me that, you know, we only want it for this limited purpose and, therefore, balancing Mr. Schreiber's privacy interests with the type of document. We're not even there, yet. We're not balancing interest. We're not even in a hearing, yet.

MR. SCHABAS: Your Honour, if I might just provide you with a little bit of information, as well. In the disclosure we've received, it's never been indicated to us when or where or how this particular Document No. 21283 was obtained, so we've heard it for the first time, too, from Mr. Shaw that it's through an ATI request. Our quick review, at least, of the database in the few minutes since he said this, we don't see any copy disclosed to us of any access to information request on this, and I'm not aware -- I acknowledge that I wouldn't mind having another look at the *Access to Information Act*. There are actually two acts. There's the *Access to Information Act* and the *Privacy Act*. And I've litigated many

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issues under those statutes provincially and federally. I'm not aware of a provision in that act that carves out some exception for the RCMP to not comply with it and not provide Notice. So, it raises a concern from the defence standpoint, too, that we are now being told it's an Access to Information matter, and yet we don't have disclosure of the request. I think the court should be aware of that, too.

MR. SHAW: Mr. Schabas has made some comments about disclosure. I just want one second, because I think...

MR. SCHABAS: If you can point to me, let me know. I just don't know. We have a lot of documents and it's hard to find things.

MR. SHAW: I understand.

MR. SCHABAS: But it's not in the item code for this document.

MR. SHAW: The provision of the *Privacy Act* is at Section 8(2)(e).

MR. SCHABAS: Do you have a copy?

MR. SHAW: And it says -- I don't have an additional copy of the Act for my friend, I'm afraid. It says,

"Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed

(e) to an investigative body specified in the regulations, on the written request of the body, for the purpose of enforcing any law of Canada or a province or carrying out

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a lawful investigation, if the request specifies the purpose and describes the information to be disclosed"

MR. SCHABAS: Well, again, that's helpful but I'd like to look at the whole context of the Act because these provisions, both Acts, there are two different Acts. They are intertwined. They provide for various notice requirements to any third party and...

MR. SHAW: I'm not aware of any of those notice requirements with respect to the police request.

MR. SCHABAS: I'm not either. I just want to take a look at them, because in general, these things do apply.

MR. SHAW: This was disclosed in 3.0...

THE COURT: What was disclosed?

MR. SHAW: I'm sorry. The request.

MR. SCHABAS: Of course, we got the request. What document number?

MR. SHAW: I'm going to give that to you. Which is the 20th of April of 2003, and the document number.... We're just....

MR. WHITE: Well, while we're waiting, Your Honour -- just for the record -- perhaps I should note that we've now spent more than an hour and a half because of this, simply because the Crown Attorney refused yesterday and the day before to even tell me what documents they were going to show, let alone...

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MR. SHAW: Let me -- let me...

THE COURT: Hold off...

MR. WHITE: ...let me read them overnight.

MR. SHAW: Let me just deal with the
document.

THE COURT: Please! Please!

MR. SHAW: I have the document number here.

THE COURT: Please! Please, gentlemen.

MR. SHAW: Sorry. I'm sorry.

THE COURT: You're not doing me a favour or
yourselves if you keep interrupting each
other.

MR. SHAW: I'm sorry.

THE COURT: Because then I'm going to have to
ask Mr. White to start over again. So hold on
for just a minute and we'll do things in
series. Go ahead, Mr. White.

MR. WHITE: If the Crown had only given me
these documents or a heads-up yesterday or the
day before, a month before, a year before, we
could resolve these issues. As I said to Your
Honour, I'm not counsel of record for
Mr. Schreiber. I don't know this case as
intimately as Mr. Greenspan does. I'm at a
loss. I'm in an awkward position, and so my
friend -- I'm not accusing of taking advantage
of it, but I can see no reason as a matter of
fairness, why a Crown witness wouldn't be
given the documents to look at to refresh
their memory before being examined, or as a
courtesy, counsel be given a heads-up "By the
way, Todd, we have his Immigration file. We

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want to rely only on two things. Let's talk about it." Even as a matter of courtesy, because if we could view these documents before, we could expedite all of this. We are forced into a position out of just common sense for Mr. Schreiber to spend 40 minutes looking at a computer screen at illegible documents. If this had have been done properly and as a courtesy, we could have avoided all this but it's now been how many hours now?

MR. BERNSTEIN: I'd just like to respond briefly to that, Your Honour.

THE COURT: Yes.

MR. BERNSTEIN: And it may, ultimately, be necessary to lead evidence on this, but as you know, this investigation has gone on for some time. And during the course of the investigation, the police informally, and I think formally, asked Mr. Schreiber through counsel if he would kindly submit to an interview.

THE COURT: In the circumstances, though, I understand from Mr. White where he was potentially a person facing some jeopardy arising out of these circumstances. And in those circumstances, I presume counsel would have said, "No, don't talk to the police."

MR. BERNSTEIN: I'm sorry, Your Honour. It was -- I'm sorry. Forgive me, Your Honour. It was -- I understand and have been advised by the superintendent that that was before charges, but also after charges, after the

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charges were laid against Eurocopter and he was not charged. On the advice of counsel Mr. Schreiber declined, as is his right, of course, to submit or attend at that interview. That's a decision he made and a decision which we respected. I just wanted to...

THE COURT: Thank you. Mr. Shaw, you were going to say something?

MR. SHAW: Yes, I have, and I'm sorry for the belabouring of it, but the document that Mr. Schabas, I think, will find helpful is Document 24298. I'm pretty certain it wouldn't be on the court database, but it is a disclosed document and it was disclosed in 2003. As a general proposition, witnesses are not entitled to disclosure and particularly witnesses in my submission who have shown some -- have been offered an opportunity as Mr. Bernstein set out, to give a proper statement and have declined appropriately, as may be their right to give that, particularly where there is an obvious...

THE COURT: Well, at the point where that occurred, was this witness assured that he was merely being interviewed as a witness and not in any way as a potential accused person? So, it's a nice statement to make, but my understanding at least so far is that that was certainly not elucidated and made clear at the point in time when the invitation was extended. I may wrong, I may right. I don't know.

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MR. SHAW: The relationship that Mr. Schreiber has had is a complicated matter with respect to this investigation and there have been, in fact, a letter to Mr. Schreiber with respect to his status from the Commissioner, a letter -- unusual letter in terms of indicating that the investigation was not being continued against him, and I don't want to get into that but the central point I'm trying to make is that there is, obviously, a fair amount of tension between the witness's position and the Crown's position. There has not been a declaration of hostility or adversity, but in that context, the thought of the Crown is entitled not to disclose to a witness who has taken such a contrary position, not to disclose to them the in-chief and the documents they propose to put to them.

If I could put all these submissions aside, if I could just come back to the narrow point, in our submission there is no basis to conclude the documents submitted to the court of Canadian Citizenship that were subject to verification to obtain a benefit, the same way as a tender might be submitted to a government department to obtain a benefit through a contract, but those are subject to any privacy concerns.

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Given that that's all we're seeking to achieve, is to put in these two letters which Mr. Schreiber's submission on his behalf for his Immigration status, we should just simply proceed. There is no *prima facie* case in which to enter into a reasonable expectation of privacy inquiry under O'Connor. Thank you.

THE COURT: Okay. Mr. Schabas, do you want time to review the Act on this question of disclosure, whether or not you were provided with disclosure of these materials and the materials which subsume their retention?

MR. SCHABAS: My friend has identified a document which seems to deal with this request. I note that it was, at the time, the purpose was to investigate Mr. Schreiber for a potential fraud or a breach of Section 121 of the *Criminal Code*. If I might just have a moment?

I'm mindful of the fact that this is a Preliminary Inquiry and Your Honour has limited jurisdiction in that case, so I -- my complaint was I didn't relate it to disclosure. I see that they provided me with something which they tell me is the request. I'll take them at their word on that. I think we can deal with that at a later date, so you're really left with...

THE COURT: NO, but do you want to look at the materials or at least advise yourself in relation to the law and to your position so

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that at the very least in cross-examination or in objections to questions you can be prepared to focus and to create a record that is of assistance to you in relation to an eventual trial if one occurs?

MR. SCHABAS: I would like to have a little time, Your Honour. Yes.

THE COURT: I'm just -- and practically speaking...

MR. SCHABAS: Yes, I would.

THE COURT: ...I'm looking at the clock. It's twelve-thirty and I will -- do you have anything further to say on the *O'Connor* issue? I take it that your objection is that you've not been provided with proper notice under *O'Connor* and I want to have a look at *O'Connor* again. Is there anything further you want to add...

MR. WHITE: Oh, no.

THE COURT: ...before I come to a decision? In any event, I'll hear from you all further at two o'clock this afternoon.

MR. BERNSTEIN: Thank you, Your Honour.

COURT REGISTRAR: All rise, please..

R E C E S S

(12:28 p.m.)

U P O N R E S U M I N G :

(2:00 p.m.)

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COURT REGISTRAR: Court is now reconvened.
Please be seated.

THE COURT: Okay. Let me just deal with the matter raised with Mr. Smith [sic], first, if I might. You have comments to make about something else or...?

MR. SCHABAS: Oh, I'm sorry. The *Smith* case.

THE COURT: Mr. White, I'm sorry. I don't know why I keep saying Smith. It's Smith -- I know why. It's because I see a case before me that says *Smith v Canada*.

Upon reflection about Mr. Smith's [sic] comments to me this morning about an entitlement to Notice under *O'Connor* in respect of materials otherwise legally obtained by the Crown and the necessity of entering upon an *O'Connor* proceeding, to me is not the law. *O'Connor*, if you'll recall, dealt with the obtaining of third party records not in possession of the Crown and then the necessity because of privacy interests of Notice to the person to whom the records are related, it does not stand for the proposition that every case where the Crown has obtained legally through search warrant, or here through the *Privacy of Information Act*, the documents to which a privacy interest may be attached, but the Crown must in those circumstances, always, if it chooses in one way or another to make use of those documents,

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give notice to the person to whom those documents relate; and therefore, quite simply if there is no issue that the documents were legally obtained and if they are relevant, obviously then, the Crown may put those documents to proper use.

This leads me into my second observation here, and that is the manner in which the Crown is producing these documents. It appears to me -- and I think this was mentioned either by Mr. Schabas or by Mr. White -- that to simply put a document authored by a witness in front of him in advance of having put any questions to that witness in relation to the matters which are the subject matter of the documents, is an improper way of examining ones own witness. Certainly, documents can be put to a witness for the purpose, for example, of refreshing memory in the appropriate circumstances -- or, if we were involved in a Section 9(2) or a 9(1) proceeding under the Canada Evidence Act. But simply to put a document before a witness and to say -- and then to refer the witness to certain parts of that document *simpliciter* is, in my view, an inappropriate fashion of proceeding to the examination in-chief of one's own witness.

Here, I am told, for example, that there is -- the specific purpose to establish a form of relationship between the parent company, the

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accused, and the witness in the witness box, well, I agree with those of you -- and I can't remember which -- said, well, ask the question and then we go from there, and therefore, those comments were addressed, Mr. Bernstein, to you.

Now, you were on your feet, Mr. Schabas, before we commenced.

MR. SCHABAS: Yes, Your Honour. Thank you. I had an opportunity to look at the *Privacy Act*. And I do have concerns about the legality in which this has been obtained, and therefore, to that extent as well, the admissibility of it and I think that may play back into the concerns that Mr. White has with respect to his client on the issue of Notice.

If I can pass you a copy of the portions of the *Privacy Act*...

MR. SHAW: Thank you.

MR. SCHABAS: The *Privacy Act* is sort of the one side of the coin of the Access to Information legislation. I just note by noting Section 2, which sets out the purpose of the Act, which is to protect the privacy of individuals with respect to personal information about themselves. And personal information is defined extremely broadly. Of course, this is personal information that is before you, that the Crown is presenting.

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(Continued...)

The Crown, Mr. Shaw, directed you to Section 8. If I can take you to Section 7 and 8, which is under the heading, Protection of Personal Information. Section 7, first of all, provides a mandatory provision that a government institution shall not, without the consent of the individual to whom it relates, be used except for the purpose for which it was obtained or compiled, or for a purpose for which it may be disclosed under section 8(2).

8(1), again, provides that personal information shall not, without the consent of an individual be disclosed except in accordance with this section.

Then Mr. Shaw took you to 8(2)(e). I think we should read 8(2)(e) in its entirety;

"Subject to any other Act of Parliament, personal information under the control of a government institution **may** be disclosed (e) to an investigative body specified in the regulations..."

That includes the RCMP. I've looked at that.

"...on the written request of the body, for the purpose of enforcing any law of Canada or a province or carrying out a lawful investigation, if the request specifies the purpose and describes the information to be disclosed."

So, the request must specify the purpose of it and describe the information, and it is to an investigative body. That's what they can do.

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They can get it disclosed to an investigative body for a specific purpose that's outlined in the request. The purpose is presumably to assist the investigative body in it's investigation. It doesn't provide that then they can use it for whatever purpose or file it in court, because again, the purpose of the *Privacy Act* is to protect privacy. If it's going to an investigative body, they're investigating somebody for a specific purpose, it still doesn't take them out of the general common law protections of privacy.

The RCMP gathers information. They're required to keep it confidential. If and when they may eventually come to a court and want to tender it, that may raise other issues. I submit that that may raise other issues, of course, that relate to *O'Connor* and third party notice.

My friend, Mr. Shaw, has also taken me and directed me to the actual request, and I know it's not on your computer, but it's in the database. I was told it was Document 24298. And there was request made by an RCMP officers in July, 1998, saying that the branch -- they wrote to someone. I'll read to you from the document. The RCMP wrote and said, "This branch is assisting our A-Division Commercial Crime Section who are investigating Mr. Friederich Hermann Schreiber born 19..."

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It has no birth date. So, it doesn't say Karlheinz Schreiber, but it's born 1934. We know who this is. "...for a fraud upon the government." "We are investigating Mr. Schreiber for a fraud upon the government, pursuant to Section 121(1) of the Criminal Code of Canada."

Just pausing there, the purpose for which they obtain this, was to investigate Mr. Schreiber. I don't know if they are still investigating him, but this case is not about an investigation on Mr. Schreiber. It's about something different.

Secondly, they go on to say that the investigators are requesting a certified true copy of Mr. Schreiber's citizenship application and certificate of Canadian citizenship to further their investigation.

Now, we're being taken to various letters. I'm not going to argue that this is or isn't part of the Application, but that there may be an open issue, too, as to just how much was sent to the RCMP and what they are now purporting to rely on. I make that because we've been given -- we've been directed to 106 pages of microfilm which seems to be an entire file, and appears to go well beyond the one or two page application for citizenship that presumably was originally sought.

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I come back to my first point. They got this for a specific purpose which they described and for which it was released on a discretionary basis, because 8(2) of the *Privacy Act* is discretionary. Citizenship doesn't have to give it to them, but they can and they rely on the representation as to what that specific purpose is. I submit they cannot then go beyond that and start using it for other purposes. If they do...

THE COURT: Well, assuming for -- assuming, for the sake of argument -- and I'm not deciding that in any way -- but that these materials were illegally obtained, whose rights are being infringed here? Not your client. They may. It may, theoretically. We may say that Mr. Schreiber's rights are being infringed, but how does it affect your client's rights?

MR. SCHABAS: Well, my client has been charged with an offence for which they're purported to lead evidence that they've obtained illegally.

THE COURT: Yes.

MR. SCHABAS: And I submit that that's...

THE COURT: What's the principle? Illegally obtained evidence, apart from the Charter, is always admissible under the common law.

MR. SCHABAS: Right. I appreciate that.

THE COURT: And so, if we are talking about Charter interests, are we in the proper forum,

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(Continued...)

number one, and number two, if we are talking about Charter rights, which are your client's Charter rights?

MR. SCHABAS: Well, let me just say this, that if there is illegality and there's discretion in determining admissibility, especially when the probative value may be low with the relevance, it may be minimal, and I submit that illegality in which this has been obtained, if we find that it was illegally either obtained or is now being used for an illegal purpose affects your discretion as to whether it should be admitted.

THE COURT: It's not being used for an illegal purpose.

MR. SCHABAS: Well...

THE COURT: It's being used -- it's something -- it is your argument. Again, I'm not deciding this issue. I'm just saying that evidence obtained illegally for a valid purpose doesn't change the fact that the evidence is obtained illegally, but the relevance of the illegality relates to the rights of the individual, not your client in this case.

MR. SCHABAS: My concern, Your Honour, is that there...

THE COURT: And the other part of that -- I'm sorry, Mr. Schabas. The other part of that is I cannot agree with your categorization that this is a matter of minimal probative value. It seems to me that we are talking about --

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from what I understand of the case -- something rather central to the issues which we are litigating, and that is the relationship between this witness and the mother company of the accused before the court. And so, to say that that is of minimal probative value, I would have difficulty sustaining as a valid categorization. Now, I'm sorry, I interrupted you.

MR. SCHABAS: Let me just deal with that point first for a moment, and I have Your Honour's point. I don't want to belabour it, but as you said in your opening remarks, the proper way to examine a witness is to ask him questions and if they need to they can -- and you may have to proceed under Section 9 of the Evidence Act and they can put a document to him.

As we understand it, there are these two letters that for some reason Mr. Bernstein wants to put to him to help establish the fact which he may get out of the witness in any event. They contain a lot of other information which is completely irrelevant, and the document itself may be utterly unnecessary for the purpose of proving this case, because the witness may admit it, in any event.

THE COURT: That's what I began by saying.

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MR. SCHABAS: Okay. And so, let me just come back to the other point -- and maybe I'm not articulating it in the best way.

On it's face, they made a request and they got certain documents for a certain purpose. They are now, in this court, going beyond that. They may have obtained this information legally. Let me put it that way. They may have, but if they did, it still doesn't entitle them to then use it having obtained it legally for that narrow purpose, and that's what I submit the *Privacy Act* says. You must specifically say what purpose you're using it for because we value the right of privacy, and they are now turning around -- and so, it does affect your discretion and your ability to determine the admissibility of something when they are using a document for a purpose inconsistent with the legal basis upon which they obtain...

THE COURT: I'm sorry. You're saying that now they have turn to around and make a new application once the purpose changes and it turns out that in the letter the person says, "Oh, and by the way, I murdered A, B, and C last year," that you have to -- even though you have the document and the admission, go back to the people who run this Act, and say, well, now we want to use it for a different purpose because he's admitted committing three major crimes?

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MR. SCHABAS: Well, that's an extreme example, Your Honour, but I would submit that that's the purpose of...

THE COURT: Same principle, though.

MR. SCHABAS: That's the purpose and those are the principles that underlie the *Privacy Act*. Because it's a discretionary role, and the whole purpose of the *Privacy Act* is to protect as much as possible, personal information. And so, yes, if a law enforcement authority is going to use Section 8(2)(e) and they want it for a specific purpose and then they -- it's kind of like, you know, you get something under -- deemed undertaking rule or a disclosure rule. You can't use it for other purposes. You've gotta use it for that particular case.

THE COURT: Well, no. Let me give you another analogy. If you have a search warrant and the search warrant is for cocaine and in the process of searching for cocaine you find a dead body in the house, are you saying that you have to get a second search warrant to go back for the body?

MR. SCHABAS: No. That's a different -- that's a very different...

THE COURT: If the original purpose is legitimate, I mean.

MR. SCHABAS: But we're not under search warrant legislation. We're under information that is controlled by government institutions over which people have a reasonable

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expectation of privacy. There are other situations where the RCMP might want to get a search warrant on a government body. On another body of the government, or of a provincial government, or municipal government. They didn't do that here. They went under Section 8(2)(e). That's what they're saying they did, and that's how they got this and they have to be limited to that. And yes, they may either have to go back. I submit they would have to go back and ask for it to be disclosed for another purpose, and -- and this comes back to Mr. White's concern, is that they should then give notice to the third party, because that's the other point about the *Privacy Act* is letting somebody know that you are invading their privacy, you're getting documents over which they have an expectation of privacy. I submit they've done neither here.

THE COURT: There's no requirement, though, is there in the *Privacy Act* for Notice under...

MR. SCHABAS: Not 8(2)(e).

THE COURT: ...8(2)(e)? No?

MR. SCHABAS: But that's not what this is. We're not in 8(2)(e). We're in a public courtroom making something -- it's gone beyond the confidential investigation of the RCMP that has to keep its things confidential for a specific purpose, a specific investigation.

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They are now taking it out of that and they are putting it into the public realm.

Indeed, this, with all these documents will be made exhibits. They will be accessible to the public, to the Press, to foreign states.

These are all -- and yet, it was obtained for a specific narrow purpose under the *Privacy Act* and not for this purpose. They then used that to get to a state which I submit, if Your Honour permits it, because it's up to Your Honour on this. It's not a matter that I'm saying they've obtained it illegally. I'm saying they are now using it illegally, if you admit it. I think that's very different from the -- the notion that illegally obtained evidence can be admitted. This is different. They are not trying to break the law by putting it before you and making it an exhibit. I think I've articulated it right.

THE COURT: I take it that there is no jurisprudence that you wish to refer me to in relation to the argument that you advance.

MR. SCHABAS: Well, in the hour we had we couldn't find a case on point. There's very little jurisprudence that even mentions 8(2)(e), but you know, the case law that deals with Access to Information and Privacy is replete with references to the importance of protecting privacy and the reasonable expectation of privacy, and that any exceptions to that must be limited and

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specific, and the language that I've taken you to is all consistent with that.

THE COURT: Thank you. Crown?

MR. SCHABAS: If I may just have a moment?

Your Honour, I don't have it with me but

Mr. Wong reminds me that, what we call the PIPEDA legislation, the personal information and protection of electronic data, in terms of another federal *Privacy Act* makes clear that if you obtain information for one particular purpose under that legislation and then you want to use it for a different purpose, you have to go back. And so that's yet another indication of the importance that parliament places on protection of privacy.

THE COURT: But that's a provision of that legislation.

MR. SCHABAS: Right.

THE COURT: Do you not -- the normal rules of interpretation if the government chose not to put that in this Act [ph] have deliberately chosen to act in that particular fashion?

MR. SCHABAS: I submit that it did by being very narrow in Section 8(2)(e) in making sure that the request specifies the purpose for which you are requesting it.

THE COURT: No, but there is no equivalent provision to that mentioned by Mr. Wong that in any event it has to be used only for that purpose. There's no equivalent in the *Privacy Act*?

MR. SCHABAS: Not that I'm aware of...

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(Continued...)

THE COURT: All right.

MR. SCHABAS: ...but I would submit that...

THE COURT: By analogy.

MR. SCHABAS: ...it underlies the purpose of all of this legislation in the importance of privacy, which is also a constitutional value, as well. It's under Section 7, and the case law, under privacy law is replete, too, with the fact that we are dealing with the constitutional value and so the law must be interpreted, consistent with that value.

THE COURT: Yes. Mr. Shaw.

MR. SHAW: A point about the -- I won't reiterate the comments that have been raised with respect to Mr. Schabas's standings to argue this. This is...

THE COURT: I'm sorry, Mister? Whose standing?

MR. SHAW: Mr. Schabas' standing to argue that there has been some breach of...

THE COURT: Oh, okay.

MR. SHAW: ...Mr. Schreiber's *Privacy Act* interests. And that this is the forum in which those need to be litigated, particularly given the nature of a Preliminary Inquiry where it seems that one of the operating principles are *Charter* values.

What I would like -- so I'm not going to belabour those points, but what I do want to take the court to is the *Privacy Act* sections that my friend took you to. I think you'll

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see quite eloquently by the way the sections are worded and set out, that there is no restriction on the face of the *Act* on the acquiring for one purpose and it's usage for another, particularly another related purpose. And if you go to -- I just -- all I want to take you to is Section 8(2), which is at FED-4 is the page number given.

You'll see that the lead in, the part of that subsection says,

"Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed."

It's about the giving of information, not about it's later usage. It doesn't say "may be used" it says "disclosed". It's about an initial turn over.

There are provisions under Section 8(2) that do talk about disclosure for a particular purpose, and they are quite, in my submission, much different than the way that (e) is phrased. If you look at (a), (b), and (c), you'll see that there is a heading with respect to certain purposes that are set out here. Then, there is also the mention of the wording "purpose" in (e). But it is for the purpose of carrying out a lawful investigation. "...if the request specifies the purpose and describes the information to

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(Continued...)

be disclosed." The purpose has got to be a reference back to the lawful investigation, not to the purpose of ultimate usage.

I'm making a distinction here between, in my submission, the purpose to which it will ultimately be put, and the purpose of including it within a lawful investigation. In other words, the section asks for purpose in connection with the lawful investigation. It doesn't then re-require the purpose for the ultimate usage to be given. And that makes perfect sense because you've got a section that starts with the word "disclosure" the giving over to the police. If it's concerned about privacy, in my submission, that privacy is, in large measure, vacated when it's turned over to the investigating authorities. It would be unusual -- Your Honour has raised a number of circumstances where the police have this for the purpose of a lawful investigation, but because of a shift in focus, they've all of a sudden lost access or usage to it. And think of the legislative absurdity. They'd have to go back and say, well, "Can you disclose it to us?" The answer is, well, on the face of the legislation it's already been disclosed.

My friends have criticized some of the hypotheticals as being extreme, but let me put one to the court. If you went in and you were

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investigating someone for possession of marijuana and you'd seized the marijuana, and it turned out that there was also a charge of trafficking, you could obviously use it for the trafficking purpose.

If you went into a house to seize marijuana for a possession charge against X, and it turns out when you get the marijuana that it actually relates to maybe a possession charge against X, but a trafficking charge against Y, it's clear again under class search and seizure law that that's not an improper usage. It would take much clearer legislation here to truncate the ability of the police taking lawfully under this section to truncate their use of that material.

There is a lead case on the issue of purpose within the *Privacy Act*. I'll hand to Mr. White and to Mr. Schabas the *Privacy Act* Reference case. This case is parallel to the *Smith* case I raised with you earlier. Ms. Smith was upset about using her immigration landing card for the purpose of disentiing her from having unemployment benefits, so there was a change in purpose. They obviously took it to make sure that the person could lawfully enter the country, and they used it for an entirely different purpose. And so she brought a complaint, which is the *Smith* case. Parallel to that on

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the same scenario, the Commissioner of Privacy brought an application which wound it's way up to the Supreme Court of Canada and was rendered the same day. And that's the *Privacy Act* case, and the Supreme Court simply endorses the judgment below, which I'm going to take you to. The point I'm going to make is this clearly sets out that, as a general principle, the *Privacy Act* does not prohibit information taken for one purpose for being used for another purpose. You would apply that, in my submission to 8(2)(e). If you go to page 2 of the larger decision...

THE COURT: This is Mr. Justice Décar's decision.

MR. SHAW: That's correct. I'm just going to take you to...

THE COURT: Well, there's no page 2, in fact. It's...

MR. SHAW: There should be a page...

THE COURT: There's a second page but is there a page 4? Is that the one you're referring to?

MR. SHAW: Thank you. If you keep turning...

THE COURT: Yes.

MR. SHAW: ...there will be the Federal Court of Canada Court of Appeal decision.

THE COURT: Um-hmm.

MR. SHAW: And it will say at the top, page 1.

THE COURT: Yes.

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MR. SHAW: And then, if you turn it over,
that would be page 2.

THE COURT: Oh, that's the two you're
referring to.

MR. SHAW: That's the page 2...

THE COURT: Okay. Fine.

MR. SHAW: ...amongst several that I'm
referring to.

THE COURT: All right. There's a little
reference to page 84. Do you see it? On the
right there?

THE COURT: Where? Show me.

MR. SHAW: Just on the right margin, there's
a little gap.

THE COURT: Oh, yes, yes. I see it.

MR. SHAW: I'm just going to read the
headnote. It's the easiest way of
apprehending the case.

"The argument that the Privacy Act
requires that personal information be
disclosed only for the purpose for which
it was collected or for a use consistent
with that purpose was without merit.
The requirement that a government
institution such as the Commission
collect personal information intended to
be used for an administrative purpose
directly from the individual to whom it
relates was not absolute. In a self-
reporting scheme..."

And I submit that the immigration submission
-- the submission to the Court of Citizenship
that Mr. Schreiber made is similar."

"In a self-reporting scheme such as
employment insurance, the Commission must

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be able to collect information from an outside source when a claimant fails to voluntarily report it. Second, the wide range of the exceptions permitted under...8(2),"

The wide range of exceptions under 8(2),

"...unquestionably attests to the intention of Parliament to allow disclosure of personal information to persons who have no connection whatsoever with the disclosing institution [or] for purposes other than those for which the information was collected."

The Supreme Court has adopted with respect to 8(2), not the narrow interpretation that Mr. Schabas has just urged upon you, but has adopted, actually, a wide one, and it says 8(2) "unquestionably attests to the intention of Parliament to allow disclosure of personal information to persons who have no connection," and then "for purposes other than those for which the information was collected."

So we have, in this situation, under 8(2)(e), it was collected for the purpose of a lawful investigation. We are here as a result of a lengthy RCMP investigation and Mr. Schabas disputes, well, it's not for this investigative purpose. It's for a purpose now connected with -- with another investigation. And in our submission, if getting into 8(2) is not meant to be restrictive, you can't then read in a subsequent restriction in 8(2)(e).

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To phrase it more clearly, if 8(2) is to be interpreted broadly, there's no reason not to interpret 8(2)(e) in subsection equally broadly.

In the following paragraph in the headnote,

"The Privacy Act clearly contemplates, and distinguishes between, the collection of information, which can only be for purposes related to the activity of the institution -- in this case..."

And then, I'll skip through the passage.

"...and the disclosure of information, which, in most cases, is for purposes other than those for which it was collected and for purposes related to the activity of the requesting institution."

Without belaboring what I think is as clear a statutory interpretation as you can get, I'd also refer you to page 9 of that same decision. This is the -- if you're looking for the fuller version of what it is in the headnote, it would be around page 9, paragraph 16, 17, and 18.

You have to remember the particular context of what's going on in the *Privacy Act* case and in the *Smith* case. They are taking information that was collected for one purpose. They enter into the country, and using it in a pecuniary fashion against the claimant to deny them the benefit -- a very serious thing to do. Even in those circumstances, they find

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(Continued...)

there's no violation of the *Privacy Act*. Even in circumstances where the individual is going to be materially harmed by the change in purpose, they find that there's nothing wrong. Here, we're in a much more modest level. We are at simply the act of asking questions to a witness to elicit evidence in the context where that witness has protections against subsequent use in the context of a Preliminary Hearing where there is a publication ban and in the context of documents which on their face appear to be submissions to a Court of Citizenship to obtain a government benefit in the form of increased immigration status.

So, in our submission, there's nothing unlawful that's gone on here. We've disclosed to Mr. Schabas a long time ago, the request and it's nature, and we should really be able to proceed on what in my submission are fairly straight forward points that relate to specifically, as my colleagues have already stated, to the role of Mr. Schreiber in MBB and then from there whatever conclusions you draw about what separation may exist between and MCL.

Those are my submissions on the *Privacy Act*. Thank you.

THE COURT: Thank you very much. Any reply?

MR. SCHABAS: Yes, Your Honour. Just to come back to simple statutory interpretation, my

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(Continued...)

friend makes the point that there's a distinction between disclosure and use, and I think that means -- that's why I took you, initially, to Section 7 of the Act. That's the one that deals with use, and that section says you can use it -- or you cannot use it without the consent, except for the purpose for which it was obtained and compiled. Initially, it was contained and compiled by Citizenship for a Citizenship purpose; or (b) "for the purpose for which the information may be disclosed to the institution under subsection 8(2)." Let me read that again, 7(b): "for the purpose for which the information may be disclosed to the institution under subsection 8(2)."

So it says you can use it for that purpose of which it was disclosed, under 8(2). And 8(2)(e), we have that purpose. It was for the purpose -- it was disclosed to the RCMP for the purpose of an investigation of Mr. Schreiber, and they can use it for that purpose only. That's the simple and plain reading of this legislation. The case that my friend took you to doesn't depart from that.

The purpose is highly relevant. All of this is replete with references, the Act, and Section 7 and 8, even 8(a) -- again, which is a broader one "for the purpose for which the

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information was obtained or compiled...or for a use consistent with that purpose."

This was obtained and compiled for citizenship reasons and it was disclosed for the purpose of investigating Mr. Schreiber, and that's the use that they can put it to. And in my submission, to now use it for an investigation Restraining Order a prosecution of my client, is a vastly different purpose. It's just clearly inconsistent with the Act.

THE COURT: All right. Thank you. Anybody else want to say anything?

MR. WHITE: I'd like to cut to the chase, Your Honour, with respect to this, and I appreciate Your Honour's comments when you first sat on the bench, and that was the point that I tried to make earlier. But if Your Honour takes a look at that page 2 of that letter, which is what the Crown says is the relevant portion. I've been acting as a consultant to the MLB, MBB concern in Germany which is active in the following fields. Your Honour has made your ruling, but if you take a look at the sentence above that -- and I won't read it onto the record because I have privacy concerns. I have confidentiality concerns for my client, and this is a document, a private document that contains other information that is not relevant to these proceedings, is highly private, and is compelled by the admissibility of this.

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Now, that I've looked at the materials, there was an application for citizenship and then a hearing, and he was required to give certain information pursuant to a court hearing. That's why Your Honour can see that it's addressed to the court of Canadian Citizenship. So he's required, as a matter of law, he's required by request of a Canadian court to disclose information. And that's all fine and dandy, but it cannot be used for any other purpose and filed at a Preliminary Inquiry as if it's evidence. It's an awful lot of evidence that has nothing to do with this case.

I can see my friend wanting to cross-examine -- and understand, I expect that when he asks: Did you work for MBB Germany? the answer is going to be yes. How long did you -- and you can get all the information from the witness. The only relevant...

THE COURT: I agree with you, and that's why I made my initial comments. Yes, and I think -- quite frankly I think you're right, and I'll hear from Mr. Bernstein or Mr. Shaw in a moment about the first point which I raised in relation to the manner in which this document, these documents found themselves before the witness.

MR. WHITE: My only point is I don't think they should be filed.

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(Continued...)

THE COURT: However, on the narrow issue of -- that's raised by Mr. Schabas -- I'm sorry, you hadn't finished.

MR. WHITE: No, I'm finished.

THE COURT: I, as well, and I think I've stated it and it's been reiterated by Mr. Shaw, have some difficulty understanding why, assuming there was a breach of Mr. Schreiber's rights, how that would somehow inure to the benefit of the accused before the court, and I won't belabour that. I agree with the Crown's submissions and I repeat what I've said, initially.

MR. WHITE: It is Mr. Schreiber's rights that we're...

THE COURT: Right. Right. And so...

MR. WHITE: We weren't told about it until...

THE COURT: ...if the objection comes from Mr. Schabas and is directed, it relates to his client's rights, I have difficulty accepting that it somehow inures to the accused's benefit before the court. And I'll continue in relation to that. I'm sorry, do you have something you want to add? You're on your fee.

MR. WHITE: I agree with you, Your Honour, and it's clearly Mr. Schreiber's rights. It's my submission that his rights were violated. He has a right to privacy. If he -- and again, Your Honour gave the example of, if they do a search of Mr. Schreiber investigating him for a murder and they get this record and it says, "I killed him and I

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(Continued...)

liked it," well, that purpose is because they're now going to prosecute it and attempt to use it against the accused.

Here, what we have is you do the -- Mr. Schreiber's file and they're attempting to get evidence against Mr. Schreiber who is a mere witness, who is a mere complainant. And I hasten to say, if this had have been a woman in the stand who was a complainant, this would be shut down in my respectful view, because we have a very different situation under the Criminal Code, but Notice is required. And at a bear minimum, whether it be under the statute for a sexual assault charge, but no notice. Mr. Schreiber has rights that in my respectful submission have been violated if you take a look at the purpose and the sections of the *Privacy Act*. And Your Honour is saying, you know, and that's the Catch 22 that I'm in. Your Honour, is saying, well, they're not Mr. Schabas's client's right because Mr. Schreiber is not Eurocopter or MBB Canada Limited. The forum is for Mr. Schreiber. It's Mr. Schreiber's rights that are being affected, and I have no standing. I have no standing before Your Honour and I've not had an opportunity because of lack of notice to take any steps, because I've only learned about it on my feet.

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R U L I N G

BELANGER, J. (OCJ):

I go back to the original statement that I made in relation to in favour of whom a breach and the consequences of that breach inures. It does not, in my view, as I have said -- and I won't reiterate that -- inure to the benefit of MCL.

Now, in relation to the issues raised by both counsel, I note to begin with that this particular documentation made to a public official in Canada was not made to, for example, a private practitioner of medicine, a psychiatrist, a CAS worker, a probation officer, but made publicly and without claim of privilege to a secretary of state. It contains on its face -- and I say on its face -- materials which do not appear to me to relate to the most fundamental of privacy concerns. In other words, they do not relate

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to and they do not refer to existence of a criminal record, to admission of immorality, to private and personal -- sometimes even embarrassing personal medical conditions -- or anything of that nature. Rather, the documents are a forthright statement of the writer, and the writer's occupation in this country at a particular time in the early '80s when he was applying for Canadian citizenship.

In other words, there is nothing in there that inherently would shock the public, knowing that this kind of information can be released and might result in great embarrassment. By saying that, I am not saying that there is no privacy interest. There may be a privacy interest but I suppose what I am saying fundamentally is that there are gradations of privacy interests. There are levels. And the situation is obviously quite different, if we are dealing with a sexual assault victim's relationship -- private relationship with her psychiatrist, and a declaration of fact about perfectly legitimate activities in this

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country for the purposes of rounding out a file. There is a sea of difference between the two. Again, I am not deciding that no privacy interest attaches to that, but certainly the privacy interest is lessened by its nature -- and I've read the documents.

When we look at the legislation in particular, my view of the *Privacy Act* as it is framed is that the language relates to the conditions precedent to the obtention of evidence, but that there are no restrictive words in the statute which apply to the purpose to which the information is put.

Indeed, it would sound to me contrary to common sense to simply say once you have obtained the information, regardless of how important the information turns out to be in a slightly different context or with a different object or purpose, then you are debarred completely from using it. However, you may apply again and make that same application. It seems to me that common sense would dictate

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that this is a bit of waste of paper if a slightly or a markedly different purpose occurs, so long as the conditions precedent to the obtention of the information are satisfied.

It seems to me that we are dealing with a bit of a distinction without a difference if the purpose has changed. I repeat the analogies which I have made to search warrants and obtaining of evidence in that fashion either with or without the search warrant in circumstances where the purpose of entry, for example, or the purpose of arrest and detention has changed. To do so, I think would saddle the Crown with an interpretation which does an injustice of the plain wording of the *Privacy Act*, and so, I cannot accept Mr. Schabas' contention and indeed adopt as mine the interpretation of the legislation, buttressed by the *Smith* case, submitted by the Crown Attorney, and the reference to the *Privacy Act* filed before the court.

//
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In relation to Mr. Schreiber's privacy interests and those privacy interests only, it appears to me that if a case is made out that the materials sought to be admitted is relevant to the prosecution of this case -- and so far it appears to me that it is -- then requirement of Notice to which Mr. White refers is unnecessary, and indeed would be a hindrance. That does not mean to say that in examining its own witness, the Crown should not deal fairly with that witness and produce, if it can, documentation that it intends to put to the witness in preparing that witness for Preliminary Hearing or trial. However, there may be circumstances here, and I am not making any decision in relation to those circumstances which, at least in its own view, the Crown thought made it difficult for that normal interviewing to occur.

That being said, I am going to have Mr. Schreiber recalled, but I want you to be mindful of the comments that I've made about

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-- and there has been a rather uniform pattern so far at this Preliminary Inquiry of simply dumping documents before a witness before the normal questioning process is entered into, and that that indeed is a form of leading, and perhaps even a form of cross-examination which is not allowed, except in special circumstances, when one's own witness is being examined.

(Approved and signed September 30, 2004
THE HONOURABLE P. R. BELANGER
ONTARIO COURT SENIOR JUSTICE

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(Continued...)

THE COURT: Mr. Schreiber, would you return,
please.

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

MR. BERNSTEIN: Your Honour, I'm mindful of
your ruling and I'm going to ask some
preparatory questions before, using the
document if necessary to refresh the witness's
memory, if necessary.

THE COURT: Thank you very much.

EXAMINATION IN-CHIEF BY MR. SCHREIBER:

Q. Mr. Schreiber, you've mentioned the
company MLE. And I believe you referred to it as your
company.

A. Yes.

Q. I want to ask you who owned MLE? Who were
the shareholders of MLE?

A. I can only guess, but I think it was
Bitucan because the companies were all under one holding.
So as far as I recall.

Q. Would you be assisted by a document
prepared at the time on the question of who were the
shareholders of MLE?

A. Yes.

Q. So perhaps I can show you a document,
which is Document No. 21283, GoTo Page 26 and 27. It's a

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letter to Canadian Immigration Centre, Immigration Act, September 22nd, 1981, from Mr. Dickie who you've mentioned. Mr. Dickie. And it says, amongst other things, "We act for Karlheinz Schreiber. We also act for a number of companies in which he is associated. The following is the company structure of three of those companies." I direct your attention to the information on the second page, which is GoTo Page 27, respecting MLE. Okay?

A. Um-hmm.

Q. Can you take a look at that information, please, and in particular, the information under the heading, Issue Capital?

A. Bitucan Holdings. 38. Mr. Dickie. That seems to be correct.

Q. So this refreshes our memory as to who...

A. Yes.

Q. ...the shareholders were of MLE?

A. Yes.

Q. And this letter accords with your recollection now?

A. Yes. It was -- I think when it was incorporated, this was only Bitucan, but later on they came, the shareholders. You have there Merkur and Mr. Dickie. That's correct.

MR. BERNSTEIN: Your Honour, I'm in your hand as to how -- I want to do this as required. I can ask some more questions and get the oral evidence out or the documents contain some information. However the court...

THE COURT: Well, in the normal course when a witness refers to materials to refresh his memory, they don't become the evidence.

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(Continued...)

However, because he's referred to it in bulk and said at least in relation to MLE Industries Limited. That's my recollection. And for that purpose, I think that that document can be filed as an exhibit.

MR. BERNSTEIN: Thank you.

EXHIBIT No. 1-21283: Document 21283. Letter to Canada Immigration, dated September 22, 1981.

MR. BERNSTEIN: Q. With respect to Merkur industries holding 38,000 shares of MLE, do you see that there?

A. Yes.

Q. Okay. How much did Merkur pay for those shares?

A. I have no idea.

Q. Who did you negotiate with at Merkur to sell those shares?

A. I don't know since your question says the shares, which shares?

Q. The Merkur Industries owns 38,000 shares of MLE.

A. Yes.

Q. How did they come to acquire those shares?

A. Well, they must have paid for it.

Q. Who paid for it?

A. Merkur must have paid for it. Merkur was a shareholder financing quite heavily in MLE.

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(Continued...)

Q. Who represented Merkur? What person represented...

A. I think Georgio Pelossi.

Q. What did you understand Mr. Pelossi's position at Merkur was?

A. I can only guess. Maybe he was the general manager.

MR. SCHABAS: Well, Your Honour...

MR. BERNSTEIN: Q. I don't want you...

MR. SCHABAS: Then stop him, Mr. Bernstein...

MR. BERNSTEIN: Well...

MR. SCHABAS: ...if he's going to guess. I don't want guessing...

THE COURT: Gentlemen, don't argue amongst yourselves, please. You were about to...

MR. BERNSTEIN: I'm sorry.

THE COURT: ...let that go. We don't want you to guess.

MR. BERNSTEIN: I don't want you to guess.

THE COURT: We want you to tell us what you know, and I can understand the time is such that you may have forgotten, sir.

MR. BERNSTEIN: Q. Just tell us what you know, what you can recall.

A. I don't know.

Q. I asked you a question or two respecting who the officers were and directors of Bitucan, and in response to those questions you've indicated you weren't entirely sure when or if Mr. Dickey was an officer or a director. Do you recall that?

A. Yes. Yes.

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(Continued...)

Q. Would this same document assist in refreshing your memory...

A. Yes.

Q. ...on that? Can you take a look at it, in particular the information under the heading, Bitucan Holdings? Does that help you with your memory?

A. Yeah, this was '81. That's the beginning, yeah.

Q. All right. So, what do you presently recall then?

A. Well, that has later on changed, is my recollection.

Q. Okay.

A. So this was at the beginning.

Q. At the beginning, what?

A. It was -- you mean shareholding or what?

Q. No. Let's start with officers.

A. The officer is Karlheinz Schreiber.

Q. He was the president.

A. Mrs. Rauscher and...

Q. Who is Mrs. Rauscher?

A. She was my fiancée at that time.

COURT REPORTER: Could you spell the last name, please?

THE WITNESS: Please?

COURT REPORTER: Could you spell the last name, please?

THE WITNESS: R-A-U-S-C-H-E-R.

COURT REPORTER: Thank you.

MR. BERNSTEIN: Q. You're married, right?

A. No.

Q. Well, no, you're married now?

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A. I'm married, yes.

Q. But not to this girl?

A. No. I was married in '85 with somebody else.

Q. Okay. So, continue. Those are the officers, the directors, there?

A. Yes. Don Seretsky [ph], I don't know even who that is.

Q. He's the treasurer?

A. Yeah. Maybe from the chartered accountant company, but I don't recall.

Q. What's that company? The chartered -- whatever you said.

INTERPRETER: The chartered accountant.

MR. BERNSTEIN: Oh, the chartered accountant company.

MR. BERNSTEIN: Q. Which chartered accountant company?

A. I don't know.

MR. SCHABAS: Your Honour, he said he didn't recall anything about it so...

MR. BERNSTEIN: Okay. That's fine.

THE COURT: Okay. He doesn't remember. That's the end of it.

MR. BERNSTEIN: And...

COURT REPORTER: I'm sorry, was there a name of the company that...

MR. BERNSTEIN: He said the chartered accountant company.

MR. BERNSTEIN: Q. Is that...?

A. Yeah. I've got the smallest memory to this name. I can only -- as I've said, I can only guess.

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(Continued...)

Q. And the directors?

A. Mary-Ann Dickie and Karlheinz Schreiber.

Q. The shareholders?

A. Karlheinz Schreiber and Mrs. Rauscher.

Q. Did Mrs. Rauscher keep her shares, or something else?

A. No. Later on, she -- she gave it back.

Q. To who?

A. In my -- in my -- in my recollection. To me.

MR. BERNSTEIN: Okay. I want to be clear. The only part of this -- my colleagues want me to make it really clear, the only part of this that's an exhibit are the GoTo pages and that's GoTo Page 26 and 27.

MR. BERNSTEIN: Q. Now, with respect to MLE, I'm wondering if you'd move from the 1980s to 1999. Okay? Was your interest in MLE sold around that time, 1999?

MR. SCHABAS: Your Honour, I'm just going to object to the relevance. I don't know why we're into 1999.

MR. BERNSTEIN: It's the same point, Your Honour. I just want to establish how long his ownership lasted for.

MR. SCHABAS: Well, why?

MR. BERNSTEIN: When it began, when it...

THE COURT: Well, why not? I mean, is it very controversial, Mr. Schabas? I mean, it gives the court a picture of how long this gentleman was associated with a company. I mean, I don't see this as being in any way critical.

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MR. SCHABAS: Well, neither do I, Your Honour. You know, there's a lot of things that aren't, in my submission, aren't critical...

THE COURT: Of course. Of course.

MR. SCHABAS: ...and we're just straying so far afield. What matters is what happened in the 1980's.

MR. BERNSTEIN: Well, with respect, I have to establish how long he controlled the company.

THE COURT: Go ahead. I'm not concerned about that.

MR. BERNSTEIN: Q. It was sold in -- was there a sale?

A. I have no idea.

Q. When did you sell your interest in MLE?

A. I don't know.

Q. Okay. I'm wondering if we can take a look at Document 1516, GoTo Page 12. And I'm going to...

MR. SCHABAS: Your Honour, can I suggest another way rather than getting into all of these documents? I mean, he says he doesn't know, but presumably, as Mr. Bernstein said the purpose is to show that he owned it for a long time. He might ask him without having to lead him through documents to say, well, maybe he can narrow it down to a period of years, or something, whether it was in the '80s or the '90s and then we can move forward.

MR. BERNSTEIN: Well, with respect, he doesn't know. I'm now going to refresh his

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(Continued...)

memory from a document which should refresh his memory.

THE COURT: Gentlemen, this is getting awfully picky. Go ahead.

MR. BERNSTEIN: Let's go to page -- okay, let's go to page 11 so we know what document we're looking at, and I only identify it for the purposes of the record. This is an Alberta Corporation Corporate Registration document, respecting MLE Industries. And if we go to the next page, GoTo Page 12, we see as of -- go back to page 11, "As of 1999," that's at the beginning of the date of the search at the top of GoTo Page 11 of the document.

MR. BERNSTEIN: Q. Now, let's GoTo Page 12. We see that the listed directors include Mr. Schreiber and the shareholders are listed as Bitucan. Do you see that there?

A. Yeah, yeah.

Q. Does that assist in refreshing your memory as to your involvement?

A. It surprises me, really. I forgot completely the name, Lavold [ph].

Q. Were you still involved in 1999?

A. I'm not aware of this.

Q. And if...

A. I'm not sure that MLE exists at that time.

Q. All right. Let's go to the next page.

A. What year is this year? It shows no year.

Q. It's a search for 1999.

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A. Hang on. Hang on.

Q. And under the heading...

A. I have no....

Q. Okay. Just one second. Under the heading here for, I think this is shareholders and shareholders are listed as of 1999 as Merkur and Max Strauss of Germany.

A. No, I say I see no year, but you told me at what year this would have been.

Q. The year of it, is the time of the search that's at GoTo Page 11. And we'll go back to GoTo Page 11. You see at the top of the document "date of search"?

A. '99, yes. Yeah.

Q. 1999, 02-22

A. Okay. Yeah.

Q. So as of 1999...

A. Um-hmm.

Q. ...you continue to be director but the shareholders are...

THE COURT: Let's not make statements.

MR. SCHABAS: Well, that's not quite right, Your Honour.

THE COURT: Let's not make statements, please.

MR. BERNSTEIN: Well, okay. I'm sorry.

THE COURT: Ask him if this refreshes his memory as to...

MR. BERNSTEIN: Q. Does this assist you in refreshing your memory as to when you sold your interest in MLE and who acquired it?

MR. SCHABAS: Your Honour, I think, I've looked at the document that...

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(Continued...)

THE WITNESS: It doesn't show it.

MR. SCHABAS: Just a minute, Mr. Schreiber. He's told Mr. Schreiber the date of the search but the document discloses when the last time something was filed. I mean, it's a different year. It shows things that were struck in certain years. The status of the entity. And Mr. Schreiber is not being provided with the benefit of that information, and frankly, he's being -- I submit he's being misled by this and the statements that have just been asked in a leading way by Mr. Bernstein.

THE COURT: I agree, Mr. Bernstein. You may have to prove this in some other way. Is there not an admission in relation to this document? I thought there was. I'm probably mistaken but...

MR. SCHABAS: It probably is.

THE COURT: Yesterday, I think we looked at a similar document and there was an admission of truth and authenticity. Has it been admitted?

MR. SCHABAS: I think it has been.

THE COURT: Well, if it has been why are we going through...

MR. SCHABAS: It speaks for itself.

THE COURT: Why are we going through this?

MR. BERNSTEIN: Okay. I'll move on. Okay. There's another admission which would cause me to move forward.

MR. BERNSTEIN: Q. You spoke of a bank called -- and I'm not going to pronounce this properly -- the Landesmerbank [sic]?

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(Continued...)

A. Bayerische Landesbank.

Q. Was...

COURT REPORTER: Can you spell that for me,
please?

THE WITNESS: Bayerische. B-A...

THE COURT: Can you write it? Is it easier
for you to write it out? It's just for the
record.

THE WITNESS: Perhaps you can do it.
Bayerische Landesbank.

MR. BERNSTEIN: Q. Who did you deal with at
that bank in connection with the investments you spoke of
yesterday?

A. With the president and the general
manager from the subsidiary.

Q. I'm sorry, his name was what, sir?

A. Which name?

Q. What were these peoples' names?

A. The first one is Dr. Huber.

Q. He was the president?

A. Yes.

COURT REPORTER: Do you have the spelling of
that one also?

INTERPRETER: I'll give it to you.

MR. BERNSTEIN: Q. What was the general
manager or the other person's name?

A. Schrier.

Q. Was Dr. Huber involved in politics before
going to the bank?

A. Yes.

Q. What -- in what way?

A. He was -- he was the Minister of Finance.

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(Continued...)

Q. Where?

A. Bavaria.

Q. Were the bank's investments successful?

A. No. The bank wasn't the same category.

Q. As who?

A. As all the other shareholders.

Q. All right. I want you to think back to 1981. July of 1981. Okay? Were you at that time acting as a consultant for MBB?

A. You say in 1981?

Q. July of 1981.

A. Possible.

Q. Would it assist in refreshing your memory to look at a letter written by you to the Secretary of State Court of Canadian Citizenship?

~~THE COURT:~~ ^{MR. SCHABAS} Your Honour, I know where Mr. Bernstein is going. We all know where he's going. Does it have to be focused to 1981? He's given an answer. He can just ask another general question; otherwise, I fear we're going to get into a whole issue of the use of this document that we've all seen, which contains so much other information, and he's gotta -- he's got a "possibly" answer. Why doesn't he ask him about 1981, and we can get through this.

THE COURT: Well, he's asking him about 1981, I thought, in July and whether he was a consultant for MBB, and would the document help him in refreshing his memory about that. I see nothing wrong with that Mr. Schabas.

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(Continued...)

MR. SCHABAS: Again, Your Honour, it's 1981. Whether he was a consultant then, what's the -- again, the relevance is in relation to what was going on in the time of the -- at the time of the alleged offence, and I submit that this is -- it's kind of a fishing expedition. We're going to go month by month and find out when he was or wasn't a consultant for somebody that's not related to the specific time of the offence. I'm concerned about the nature of the examination turning into a fishing expedition and trying to ask him about one specific date and then putting more and more documents to him and getting all sorts of information that's unnecessary.

THE COURT: We'll deal with the more and more documents when we come to the more and more documents, Mr. Schabas. I think the question was perfectly proper.

MR. BERNSTEIN: Thank you.

MR. BERNSTEIN: Q. Okay. I'd like you to take a look at Document 21283 GoTo Page 16 through to 19, okay? And I'll give you a hard copy of this. I'd like to direct your attention if I might, sir, to the second page of what is a letter from you to the Secretary of State, dated July of 1981. Are you on the second page there, sir?

A. Yes.

Q. And in particular, I'd like to direct your attention to the middle part of the second paragraph of the second page, okay?

A. Yes.

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(Continued...)

Q. There's a reference there to "I, furthermore, have been acting as a consultant to the MBB concern in Germany." Do you see that there?

A. Yes.

Q. Does that assist in refreshing your memory as to whether or on -- in connection with the question?

A. Yes.

THE COURT: It does?

THE WITNESS: Yes.

THE COURT: And so, your answer, sir, when the Crown put it to you was "Possibly." Do you wish to qualify your answer now? The question was, "Were you at that time acting as a consultant for MBB?"

THE WITNESS: The answer is yes, that this was all framed in the activities between the Alberta and the Bavarian government.

MR. CROWN: Q. Tell us what steps you took to become a consultant for MBB? What was the first step you took to become a consultant for MBB? The first step.

A. I don't -- I don't recall.

Q. What was the second step you took to become a consultant at MBB?

A. I don't know.

THE COURT: Surely, you can question differently, Mr. Bernstein.

THE COURT: We may get to step 66 and he still won't recall.

MR. BERNSTEIN: Q. Who do you recall speaking to in connection with you becoming a consultant for MBB at this time?

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(Continued...)

A. At this time, I don't recall. It was much earlier the request from the Premier to help wherever possible to sell MBB products, but this was not specifically related to MBB Helicopters. So what?

Q. So you spoke here of a request earlier from the Premier?

A. Yes.

Q. When was that request?

A. I have no idea.

Q. How much earlier?

A. In the '70s. Some -- somewhere in the '70s.

Q. In the mid-seventies or late '70s?

A. I can't tell you.

Q. You speak of a request from the Premier. What Premier?

A. Of Bavaria.

Q. What was that man's name?

A. Mr. Strauss.

Q. What did Mr. Strauss say to you at that time?

A. Due to my contacts worldwide to transportation, whenever something comes up for MBB, to help to sell Bavarian products.

Q. Did you ask for this or did he...

A. I was asked.

Q. Pardon?

A. I was asked.

Q. Would this be before or after you first came to Canada?

A. I can't -- I can't tell. It might be earlier.

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(Continued...)

Q. Before you came to...

A. Yeah.

Q. Did you talk to anyone else about this besides Franz Joseph Strauss around this time, at the beginning?

A. Yeah. There was a gentleman with MBB but I don't recall his name anymore.

Q. This is in the beginning?

A. Yes.

Q. In the '70s?

A. Yeah.

Q. Do you recall that person's position at MBB?

A. He was in the sales organization.

Q. Do you recall any aspects of your conversation or conversations with him....

A. It was only to say whenever -- whenever a contract for MBB could be obtained, wherever -- whatever, but when I would become aware of an interest in products, which could be sold by MBB. Jobs is what politicians want, Mr. Bernstein, and jobs come from contracts. Everywhere in the world.

Q. Do you recall speaking to anyone else at MBB besides this gentleman whose name you can't recall?

A. Later, I spoke to Mr. Pfleiderer.

Q. Before you met Mr. Pfleiderer.

A. Yeah. Mr. Hort.

Q. Mr. Hort?

A. Well, I'm not even sure. Look, there were many people in a huge company, and I was together with all of them. I really can't tell you.

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(Continued...)

THE COURT: You mentioned a name, sir. Just for the record, was it Holt?

MR. BERNSTEIN: Hort.

THE WITNESS: Yeah, Hort, but I think this was already later after an accident from another president...

THE COURT: I just want it to be properly recorded, sir. That's my only interest.

THE WITNESS: H-U-E-R -- H-O-R-T.

THE COURT: H-O-R-T. Okay, thank you. Do you want us to take a break?

THE WITNESS: Hmm?

THE COURT: Do you want us to take a break now? It's three-twenty. We've been going since two-o'clock.

THE WITNESS: Oh, it's up -- I could go...

THE COURT: Gentlemen, what's your preference. Usually we go at this time and take ten minutes.

MR. SCHABAS: They shut down the coffee at three-thirty, Your Honour.

THE COURT: Well, exactly. Thank you. We'll take a few minutes.

COURT REGISTRAR: All rise, please.

R E C E S S (3:45 p.m.)

U P O N R E S U M I N G: (3:50 p.m.)

COURT REGISTRAR: Court is now reconvened.
Please be seated.

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

Q. Mr. Schreiber, you mentioned a man named Hort.

A. Yes.

Q. What did Mr. Hort do for a living?

A. He was for a while the President from MBB.

Q. Was he...

A. That's what I assume.

MR. SCHABAS: I beg your pardon?

THE COURT: "That's what I assume"?

THE WITNESS: I think so. I think so.

THE COURT: Oh, "I think so."

MR. BERNSTEIN: Q. Was he involved in the CSU?

A. Yes.

Q. In what way?

THE COURT: Refresh my memory. What's CSU?

MR. BERNSTEIN: Christian...

THE COURT: Oh, the party.

MR. BERNSTEIN: ...Socialist Union.

THE COURT: Yes, yes, yes. I'm sorry. Yes, go ahead.

THE WITNESS: I don't know. I only knew he was a member.

MR. BERNSTEIN: Q. You've mentioned Mr. Strauss. Did you talk to any other Bavarian politicians about becoming a consultant for MBB in the beginning?

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(Continued...)

A. I don't know.

Q. Did you talk to any other -- excuse me.

Did you talk to any family members of Bavarian politicians in the beginning about becoming a consultant for MBB?

A. No. I was not running around and broadcasting what I was doing when other people asked me to do something.

Q. Did you talk to any staff members of politicians about becoming a consultant for MBB?

A. As I told you, I told nobody when I become something or don't become something. I'm not an informant or....

Q. Did you talk to any bureaucrats about becoming a consultant for MBB?

A. No.

Q. Did you or any company which you had an interest in pay any money to anyone in connection with you becoming a consulting for MBB? Did you or any company which you had an interest in pay any money directly or indirectly in connection with you becoming a consultant for MBB?

A. I told you that I was asked from Mr. Strauss and to ask me whether I paid something to become something is an insult. I paid never anything to become something. I got paid.

Q. Did you make any donations in connection with becoming a consultant for MBB?

A. No.

Q. What were the financial arrangements in the beginning of this consultancy?

A. None.

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Q. Well, you said that you would get paid, so what were the financial arrangements?

A. So, I was asked whether I would work for them and if a project would be successful, then I would get something and there was no need to discuss this further.

Q. Who did you have that discussion with?

A. With Mr. Strauss.

Q. Had you ever worked for a helicopter company before?

A. No.

Q. Had you ever worked for a rapid transit system company before?

A. No, there is no other one.

Q. Have you ever worked for a company involved in laser beam technology?

A. No. There is only one.

Q. Have you ever worked for a company that made medical laser beam instruments for brain operations and acupuncture?

A. No. There was only one.

Q. Which one was that?

A. MBB.

Q. Did you have any background in helicopters?

A. No.

Q. Did you have any background in rapid transit systems?

A. No.

Q. Any background in laser beam technology or instruments?

A. No.

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(Continued...)

Q. Had you studied from an academic point of view, rapid transit systems?

A. No.

Q. Helicopters?

A. No.

Q. Laser beam technology?

A. No.

Q. Did you ever...

A. Why do you ask -- you ask me all this about my education before.

Q. Did you -- I think I forgot to ask you.

A. Okay.

Q. Did you have a background in helicopters?

A. No.

Q. What skills then did you have which you believe made you marketable to MBB?

A. I think I'm pretty clever.

Q. When you first became a consultant for MBB, did you enjoy or receive any training?

A. No.

Q. What then, in your mind, were you hired to do?

A. To sell products.

Q. To who?

A. To ever -- to whomever I know who might be a potential client.

Q. This consultancy work which you've spoken about, how did you in the beginning structure it? Was it done through your name or through a company? How did you structure it?

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(Continued...)

A. It -- it started with road safety products and road construction. From there, I got all my international connections.

Q. I'm sorry. I'll ask the question again. The MBB consultancy work...

A. Yeah.

Q. ...did you do it in your own name or through a company? How did you, in the beginning, structure that work?

A. I structured nothing at all.

Q. Did someone structure it for you?

A. No.

Q. It was unstructured?

A. I do a job and give -- and send the bill.

Q. How would the bill be determined?

A. Hmm?

Q. How would the bill be determined?

A. Well, my -- my company would have sent a bill and that's it for consulting work.

Q. Which company?

A. BB -- BBC, Bavarian Bitumen Chemicals.

Q. How would you determine the amount of the bill?

A. I would negotiate or people would tell me how much I'm going to get.

Q. Who would tell you that?

A. The client.

Q. Before you landed this consultancy work with MBB, had you ever sold a helicopter?

A. No.

Q. Had you ever sold a laser beam?

A. No.

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(Continued...)

Q. A rapid transit system?

A. No. I told you already there was nobody else around. You asked the same question.

Q. Well, there are rapid transit systems in other countries...

MR. SCHABAS: Well...

THE COURT: What's the relevance, Mr. Bernstein, of laser beams and rapid transit systems? These are the first time that I hear -- helicopters, obviously, is something we're interested in, but laser beams and rapid transit systems?

MR. BERNSTEIN: Okay. I think can move on.

THE COURT: Okay. Thank you.

MR. BERNSTEIN: Yes, I can.

MR. BERNSTEIN: Q. In the beginning, what steps did you take to sell MBB products?

A. None.

Q. You mentioned Alberta.

A. Yes.

Q. At some point in time, did you try to sell MBB products in Alberta?

A. Yes.

Q. Around what time would that have been?

A. The '70s.

Q. Who did you try to sell MBB products to?

A. To the government from Alberta.

Q. That would be the provincial government...

A. Sure.

Q. ...in Alberta? What kind of products did you try to sell them?

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A. I think we discussed the rapid transit system, perhaps helicopters, aircrafts, whatever you want out of the kitchen from MBB.

Q. What aircraft did MBB sell or manufacture?

A. MBB was the main shareholder from the German side for Airbus Industries.

Q. So, tell us about that.

MR. SCHABAS: Your Honour....

THE WITNESS: I'm not here to tell stories. Ask me your questions.

THE COURT: Just a moment. That's too general a question. Yes, sir.

MR. SCHABAS: I'm just again objecting to the relevance of what we're talking about. What this case is about is helicopters. I mean I appreciate Mr. Bernstein will say he's got to do some background, but do we need to start hearing about steps he did or didn't take to sell Airbus airplanes? That's not related to this charge. It's a charge against a helicopter company.

MR. BERNSTEIN: Well, I'm not sure I agree with that submission. There may be aspects, which are relevant which we can deal with at an appropriate time, Your Honour.

THE COURT: Well, it's not sufficient, Mr. Bernstein, simply to tell me that there may be aspects. That sounds awfully like vocabulary the complete angler might use, but the...

MR. BERNSTEIN: But the reason I was reserved in my comment was not -- was simply because I

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can't ask a more specific question, and in the event that later on something becomes relevant, I'd be delighted to...

THE COURT: I mean, I am concerned as well with finding out about MBB Helicopters and the Coast Guard, right?

MR. BERNSTEIN: Yes. Okay.

THE COURT: Laser beams or laser products, I don't know. Anyways, go ahead. Be more specific.

MR. BERNSTEIN: Q. Tell us about the steps which you took to try to sell MBB helicopters in Alberta in the '70s?

A. I took no steps. This was initiated between the two governments, and when then the Canadian people from the government came to Germany, I looked after them. I went with them to MBB.

Q. Which people were they?

A. For example, the Minister of Transport, the Deputy Minister of Transport. I don't know how many ministers was there, but they were constantly coming and going between Bavarian government and Alberta government.

Q. These people's names were what, the Deputy Ministers or the Ministers you've mentioned?

A. For example, Ronny MacFarland, Jack Kyle, Horst Schmidt. I don't know, maybe I can get you the whole dictionary from the Alberta government. Everybody was traveling. They were constantly on the road to find investment for Canada.

Q. I meant the German government.

A. Yeah. From the German government?

Q. Yes.

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(Continued...)

A. Well, Dr. Huber, Minister of Finance, the Minister of Economy and Trade, Mr. Allmond [ph]. I don't know how many other officials from the ministries.

Q. So this Dr. Huber...

A. Yes.

Q. ...he would come over?

A. Sure. States visit. States visit. And became one of our Indian Chiefs. It was a wonderful party.

Q. He was involved in this MBB Helicopter sales...

A. Oh, not only that. He was the Minister of Finance and he was the Chairman of MBB.

Q. Did you have a private business arrangement with Dr. Huber?

A. No. He was my friend.

Q. Are you familiar with a company called Millar, SA. M-I-L-L-A-R?

A. Sure.

Q. What was Millar?

A. The Swiss company.

Q. Pardon me?

A. The Swiss company.

Q. Who were the owners of Millar?

A. I was the shareholder and it was mainly Dr. Myer.

Q. Was Dr. Ludwig Huber involved in Millar?

A. Not to my knowledge.

Q. Okay. I'm wondering if you can take a look at Document 13456. Document 13456, and let's just call it up on my screen to ensure it's the right document.

MR. SCHABAS: Your Honour, I'm just wondering...

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THE COURT: Just before it's brought up on the witness's screen, I take it you'd like us to see it before the witness does?

MR. SCHABAS: Yes. Again, I'm objecting to this on the basis of relevance. This is something you can see from what's on your screen, Your Honour, that this seems to deal with a company other than MBB. I don't know where Mr. Bernstein is going with this but I submit at this stage we're going down a road that relates to my last objection, too, about airplanes, and we're going down a road that is -- that we shouldn't have to go down and is unrelated to the facts of the charge against my client, a Canadian helicopter company.

THE COURT: Do you want the witness excluded while you respond?

MR. BERNSTEIN: Yes, I would.

THE COURT: I wonder, sir, would you step out of the courtroom again, please, while...

THE WITNESS: Yeah.

THE COURT: ...I hear the lawyers out.

THE WITNESS: Yeah. They go for fishing trip.

...WITNESS EXITS.

(4:10 p.m.)

THE COURT: Just before you get into the bulk of it, this particular document in our view purports to be what, Mr. Bernstein?

MR. BERNSTEIN: A Sales Representation Agreement between...

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THE COURT: Airbus and Millar, right? Is it Millar or Milliar?

MR. BERNSTEIN: Well, it -- this.... Your Honour, given the time, I'd rather -- we've spent a fair amount of time arguing about things. What I'd like to do is simply recall the witness and continue and...

THE COURT: Without reference to this document?

THE WITNESS: Yes.

THE COURT: Okay. Please, Madam Clerk...

MR. BERNSTEIN: For now. We've spent a significant period of time on objections...

COURT REGISTRAR: Mr. Schreiber, please enter courtroom number eight. Mr. Schreiber, courtroom eight, please.

THE COURT: Well, let's forget the why and let's get on with what we have to do.

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

THE COURT: Look upon this, Mr. Schreiber, as healthful exercise. I wish I could walk out and walk back in...

THE WITNESS: Same here.

THE COURT: ...but I've got to stay here. Yes, go ahead, please, Mr. Bernstein.

EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

Q. So, with respect to MBB and Alberta, were you successful in selling any helicopters there?

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A. I did not intend to sell helicopters. MBB people did.

Q. So what then were you intending on doing as a consultant at this time?

MR. SCHABAS: Your Honour, we've been over this many times. He was asked to look for opportunities. The witness has given his answer.

THE COURT: Perhaps a more pertinent question might be: To your knowledge, did MBB sell helicopters to Alberta? To your knowledge.

THE WITNESS: No.

THE COURT: Okay.

MR. BERNSTEIN: Q. Do you know a man named Frank Moores?

A. Yes.

Q. When did you first meet Mr. Frank Moores?

A. I don't recall anymore. Late '70s perhaps.

Q. You recall the event or circumstances surrounding your first meeting with Mr. Moores?

A. Yes.

Q. What was that?

A. I was introduced to him through a man with the name Walter Wolf.

COURT REPORTER: I'm sorry?

THE WITNESS: Walter Wolf.

COURT REPORTER: Thank you.

MR. BERNSTEIN: Q. So Mr. Wolf introduced you?

A. Yes.

Q. On what occasion?

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(Continued...)

A. On a visit.

Q. A visit -- tell us about the visit?

A. In Canada.

Q. Tell us about the introduction?

A. I came to Canada and Mr. Wolfe introduced me to Frank Moores.

Q. How did you know Mr. Wolfe?

A. Through Mr. Strauss.

Q. What did Mr. Strauss tell you about Mr. Moores? No, Mr. Wolfe. I'm sorry. I just --you know...

MR. SCHABAS: Your Honour, if there...

MR. BERNSTEIN: Just -- just, please. I had asked the question. Just, please. I just....

MR. BERNSTEIN: Q. You say that you knew Mr. Wolfe through Mr. Strauss?

A. Yes.

Q. Why was it that Mr. Wolfe introduced you to Mr. Moores? How did that come about?

A. He wanted me to get to know Mr. Moores.

Q. What did Mr. Wolfe say to you about Mr. Moores?

A. Mr. Moores is...

MR. SCHABAS: And here, Your Honour, is there a purpose to the hearsay?

THE COURT: Well, it's not hearsay per se.

MR. SCHABAS: Well, I don't know for what purpose it's going in. If it's going in for the truth of something about Mr. Moores, then it is hearsay I submit, respectfully, and I just don't -- we don't know, but it's -- it's -- we're hearing -- he's now asking the

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witness to tell us what somebody else said about somebody for some purpose.

MR. BERNSTEIN: I would be delighted to respond to that objection.

THE COURT: Go ahead, please.

MR. BERNSTEIN: With a response?

THE COURT: Yes. Yes.

MR. BERNSTEIN: I'd ask Mr. Schreiber be excused.

THE COURT: One more walk, Mr. Schreiber. thank you.

THE WITNESS: Hmm? May I have a recommendation to the court?

THE COURT: Yes.

THE WITNESS: If you would allow, Mr. Bernstein -- or I could do it for you -- to bring you a book on the police informant, Stevie Cameron, *The Last Amigo*. He would read every detail on Milliar, Mr. Moores, and whatever was discussed here.

THE COURT: Thank you. I'm actually reading *War and Peace* right now. It's going to take less time I think than this case.

MR. SCHABAS: It's a better book.

THE COURT: I am really reading *War and Peace*. Go ahead, Mr. Bernstein.

MR. BERNSTEIN: The central aspect of the evidence in this case is the relationship between Mr. Schreiber and Mr. Moores. Your Honour has heard evidence on this point already, in part from Mr. Grant and Mr. Wittholz, and Mr. Moores himself.

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We have a business relationship between these two people and it is the Crown's position that they, or companies controlled by them, were paid over a million dollars in what was a transaction fraught with dishonesty.

It is the Crown's position that it is anything but clear what exactly Mr. Moores and Mr. Schreiber did for this million dollars? And indeed, Your Honour has heard evidence from Mr. Wittholz and Mr. Grant and others of their concerns respecting this arrangement and these people.

THE COURT: Well, I'm just a little concerned about your categorization as...

MR. BERNSTEIN: Okay.

THE COURT: ...these were transaction fraught with dishonesty. I'm not -- certainly, that is an assertion on your part, eventually, that may have something to do with a decision I may have to make, but I think we've got to be careful in that what may be contractual breach translates into dishonesty by this particular witness who may not have been acting dishonestly, having no privity of contract, obviously, with MBB or with the Canadian government. In any event, leaving that aside, what specific question did you wish to put to the witness?

MR. BERNSTEIN: And just, okay, I'll leave that aside but...

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THE COURT: What's the question that you...

MR. BERNSTEIN: The question was, what did Mr. Wolfe tell Mr. Schreiber about Mr. Moores. It's -- and the objection. It's not being tendered for a hearsay purpose. It's being tendered as a piece of original evidence which is material to Mr. Schreiber's state of mind in connection with steps he took, steps Mr. Moores took, and the development of the relationship between Moores and Schreiber, which is a relationship of some pertinence to this Preliminary Inquiry. Not to put too fine a point on, what the question was, what did he know about Moores before he met him? Now, I asked Moores...

THE COURT: Well, that's fine. That's fine. What's your response to that? It seems to make some basic sense to me, so long as it's not being advanced for the truth about Mr. Moores, but to Schreiber's state of mind and understanding of the person with which he was about to deal.

MR. SCHABAS: Your Honour, if my friend had asked him "What did you know about Mr. Moores? I wouldn't have objected, but if he's asking what did somebody tell you about and doesn't want to tell us why, you know, what it's going to and now he's saying it's a piece of original evidence what Mr. Wolf has said.... He can ask him what did he know and I'm sure he's going to ask him about his first hand knowledge and dealings with Mr. Moores, and it

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(Continued...)

won't be hearsay. That's the way to ask the questions. I objected because he asked specifically for hearsay.

MR. BERNSTEIN: Well, with respect, when I ask a question the way I've asked it, Mr. Schabas objects that it's hearsay. If I asked it the way he suggested I ask it, he'd object "we don't know the source of the information," so....

THE COURT: I'm going to let you put that question to the witness, circumscribed as I've put it by the caveat that it's obviously not being admitted for the truth of its contents...

MR. BERNSTEIN: Absolutely.

THE COURT: But it relates to Mr. Schreiber's state of mind and understanding of...

MR. BERNSTEIN: Thank you, Your Honour. I'll just get Mr. Schreiber.

THE COURT: Just before the witness comes in, just to confirm my understanding of our schedule next week, gentlemen, am I correct that we're not sitting on the 15th and 16th? Is that the way we planned the week?

MR. SCHABAS: My understanding was that we were sitting the morning of the 15th, Your Honour.

THE COURT: Is that it?

MR. SCHABAS: And then we're not sitting the balance of the week.

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THE COURT: Yeah. I see I'm in another court on Friday, so we sit the morning of the 15th, and everybody is...

MR. BERNSTEIN: Yes.

MR. SCHABAS: It's Monday, Tuesday, Wednesday morning.

THE COURT: ...here Monday, Tuesday and half of Wednesday?

MR. SCHABAS: Right.

THE COURT: Okay. Thank you.

MR. SCHABAS: And actually, I wouldn't mind if perhaps at the end of the day we could just canvass the schedule. I think there's some confusion amongst...

THE COURT: Sure.

MR. SCHABAS: ...the counsel and the officers and so on about the schedule for the rest of the month.

THE COURT: That's fine.

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

Q. Mr. Schreiber, what did Mr. Wolf tell you about Mr. Moores?

MR. SCHABAS: No, what did he...

THE WITNESS: Mr. Moores?

MR. SCHABAS: Sorry. I thought the question was going to be framed differently, Your Honour.

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THE COURT: No. I think that's all right, again, with the usual qualifications and limitations. Go ahead.

THE WITNESS: Mr. Moores used to be the Premier of Newfoundland, that he -- I think he was the president of the Conservative Party, and that he has interesting business somewhere in Newfoundland or whatever.

MR. BERNSTEIN: Q. What did Mr. Wolf do for a living?

A. As far as I know, he had a huge company for oil -- offshore oil rig maintenance, and he was pretty popular in Canada. I guess, he has car racing company or whatever in... I didn't know him that well. I just met him two or three times.

Q. This meeting, was it a dinner? a lunch? What were the circumstances surrounding the introduction?

A. I don't recall. It might have been a lunch.

Q. Tell us what you recall of the meeting. What was discussed?

A. Well, it was, as far as I recall, politics.

Q. Was there any political event on the horizon or had just happened?

A. At that time, I don't know. I think Walter Wolf was somehow involved with campaigning in favour of Mr. Mulroney, also.

Q. So was this meeting a political meeting or a business meeting? Or both?

A. Well, it was a first introduction.

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(Continued...)

Mr. Moores was a conservative and Mr. Strauss is a conservative, and I was a conservative, and so I got to know him, and we exchanged thoughts.

Q. On what?

A. On politics. And also on a project he had in Newfoundland.

Q. Do you recall the name of that project?

A. Yes. Port Atlantis.

Q. What was -- excuse me. I'll ask a better question. Were you involved in Project Atlantis?

A. Yes. Later on.

Q. So...

A. How could I when I saw him the first time and he spoke about the project.

Q. So, he spoke about the project?

A. Yes.

Q. What did he tell you about the project?

A. That he has a project in Newfoundland, together with Lavelin.

Q. With who?

A. With Lavelin.

Q. That's Lavelin?

A. Yes.

Q. Did he try to interest you in the project?

A. Please?

Q. Did he try to interest you in the project?

A. Yes.

Q. In what way?

A. Oh, whether we might be interested to invest.

Q. Who is we?

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A. He knew from the business in Alberta. The Frick family and Strauss and everybody.

Q. What was the project about?

A. To build a harbor.

Q. Where?

A. Newfoundland.

Q. Can you be a little more specific? Where in Newfoundland?

A. A maintenance harbor for offshore oil rigs.

Q. In any particular part of Newfoundland?

A. Yes. St. Robert's Bay.

COURT REPORTER: I beg your pardon?

THE WITNESS: St. Robert's Bay...

COURT REPORTER: Thank you.

THE WITNESS: ...as far as I recall.

MR. BERNSTEIN: Q. Did you consider Mr. Moores' request?

A. I don't know whether I did this at that time.

Q. Later, did you consider?

A. Later. Yeah.

Q. Did you talk to Mr. Strauss about it?

A. Yes.

Q. What came of those discussions?

A. Finally -- finally, ABS and the Strauss family invested in the project.

Q. How much did ABS and the Strauss family invest in Mr. Moores's Project Atlantis?

A. Your Honour, I have really a problem with this questions, because I cannot see what this has anything

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to do with MBB or helicopters whether the Strauss family invested in an oil harbor in Newfoundland.

THE COURT: I'm the one, sir, I suppose that has to determine relevance, and since you raise it...

THE WITNESS: But you told me I should tell you.

THE COURT: And since you raise it, I'll ask Mr. Bernstein to explain to us how this relates to the matter before the court. Does it have a connection?

MR. BERNSTEIN: Well, there -- there is -- one, the relationship between Mr. Moores, Mr. Schreiber and Mr. Strauss. You will recall during Mr. Moores's evidence, he provides details respecting his -- well, I -- respecting the receipt of certain payments from Mr. Schreiber in Switzerland, and you will recall evidence respecting his withdrawal of large sums of money in cash and you'll recall evidence of his travel expenses which indicate visits coincidental in time with those withdrawals of cash from people in -- well, I think including Mr. Strauss and other people in Germany and Switzerland.

This relates to the foundation of the relationship between Mr. Schreiber and Mr. Moores and also the relationship between Mr. Moores and Mr. Strauss and Mr. Schreiber.

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(Continued...)

THE COURT: All right. Well, you've established that there was a relationship. Do we need to go deeper than that?

MR. BERNSTEIN: There's also -- well, I feel a little uncomfortable discussing -- I don't want Mr. Schreiber to leave again, but there's also the business of a loan between Moores and Mr. Schreiber. I have to be careful...

THE COURT: Okay. Well, I think what we'll do is...

MR. BERNSTEIN: ...it a loan. There was this million dollars.

THE COURT: ...this at this point. Before -- we'll call it a day for Mr. Schreiber today, and then you can make these submissions to me either now or at ten o'clock tomorrow morning. We won't recall Mr. Schreiber today and then we can discuss scheduling. So then, you can elucidate for my purposes. So thank you, Mr. Schreiber. That will be all for today. We'll see you at ten o'clock tomorrow morning.

THE WITNESS: Yup. Thank you.

THE COURT: Okay.

...WITNESS EXITS.

MR. BERNSTEIN: Your Honour.... Before Mr. Schreiber leaves -- Mr. Schreiber? I was just wondering things. We've made...

THE COURT: Mr. Schreiber?

MR. SCHABAS: Mr. Schreiber?

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THE COURT: Just hold on just one minute, sir.

MR. BERNSTEIN: Your Honour, we've made some progress today, this afternoon, but...

THE COURT: We're at page 2 of *War and Peace*. We've gone from page 1. No, I'm being facetious. Go ahead.

MR. BERNSTEIN: No, that's all right. And we're keen to battle on, Your Honour. In any event, I was wondering if we could start -- if it would be possible to start a little early?

THE COURT: Unfortunately, I have a sentencing matter which is going to take some time tomorrow morning. I wish I could but this is a sentencing matter after a contested trial, and I expect *vive voce* evidence at nine o'clock. I'd like to accommodate you, but I'm afraid I can't. Things will get a little bit better, I think, as we progress through the next two or three weeks, but I had a lot of hold over stuff from the summer for sentencing purposes...

MR. BERNSTEIN: Yes. Thank you.

THE COURT: ...as you can understand. So I'm afraid that I'd be doing an injustice to the other people if we...

MR. BERNSTEIN: Thank you, Your Honour.

THE COURT: As I say, it's not a minor matter. So, thank you, Mr. Schreiber. Ten o'clock.

MR. BERNSTEIN: Then could we make the submissions now then on this point?

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THE COURT: Sure. Yes. That's why I'm asking.

MR. BERNSTEIN: Just so that we can start...

THE COURT: Yes.

MR. BERNSTEIN: ...in the morning. First of all, I just wanted to ask, I did not want to spend a lot of time asking questions in this area, but I did want to ask what the nature of the investment was and how much was invested and how much, if anything, was gained or lost from the investment. The reason in part, I want to ask that is, I respectfully submit, it's relevant. It may very well -- I submit it is *prima facie* relevant, first, in explaining the nature of the relationship between Mr. Schreiber and Mr. Moores, which was a close relationship; one which involved both a political part to it and a business part to it.

It's also important from my point of view, to lead evidence to establish Strauss's -- we have established and Your Honour has allowed questions establishing the business relationship between Strauss and Mr. Schreiber independent of MBB. Now, we have evidence that Strauss requested him at the same time to act for MBB, and I will make submissions on the nature and appropriateness of that at a later point in time, but you do have one of a personal business relationship between Strauss and Mr. Schreiber, a political *ad idem*, a

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relationship between Strauss and Schreiber on MBB and now, you have perhaps a business relationship between Schreiber and Moores and between Schreiber, Moores, and Strauss. And then again, we will have this commercial relationship between Strauss -- no, between Strauss, Moores and Schreiber relative to MBB.

So you have both personal dealings of a private nature and then you have Strauss as the Premier of Bavaria and as a director of MBB providing this consultancy to Schreiber. MBB is a partly owned company, as Mr. Wittholz has testified, by the Government of Bavaria. So this relates to the relationship between Schreiber and Moores, firstly, because Schreiber is the means -- or one of his companies is the means by which the Strauss' make the investment and it also relates to the relationship between Moores, Schreiber, and Strauss. And I just wanted to ask one or two questions, they being: What was the investment? How much? What happened?

It is, in my respectful submission, relevant to a variety of questions beyond simply what was the nature of the relationship. It may be relevant to the question why does MBB hire -- and I say this with respect, a person with a background in the sale of Oriental carpets and road marking to market sophisticated equipment

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-- very, very sophisticated equipment. A man with no background whatsoever in this kind of work. That is material.

Now, my friend may say, or Mr. White would say before, well, that's MBB and not MCL. We've heard days of evidence from Mr. Wittholz, from other board directors of MCL, from Mr. Grant of this sort of domination of MCL by MBB, and in the end we'll argue that issue, but MBB is in the Crown's position, the operating mind of MCL. And if Strauss is as it would seem to be, a dominant person in MBB, then the relationship between the operating mind of MBB and Moores and Schreiber is material and relevant to a central issue, that being the operating mind or who controlled MCL, and the nature of that.

If Strauss is part of the control of MBB, and then his relationship and his previous business dealings with Moores and Schreiber is relevant.

The other part I mention is, as we've heard Mr. Moores testify on a number of payments are made by Schreiber to Moores, which we'll review tomorrow. Moores is advised by Schreiber that this money is from MBB and relates directly to the commissions agreement, the sales representation understanding between the parties, the conduct, which is itself

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material directly to Article 22 of the Contract.

THE COURT: Well, that, I mean we're all fundamentally interested in, I think.

MR. BERNSTEIN: And...

THE COURT: Well, let's put it this way. You propose tomorrow to limit in relation to this Newfoundland project, the harbor maintenance project, to -- if I understand you, to what was generally the nature of the investment, how much was it and what happened to it. That's it. And then you're going to move onto something else.

MR. BERNSTEIN: Yes. I'm going to move on to something else.

THE COURT: Well, it may be of marginal relevance. It may not. I think I'm going to -- so long as we don't go beyond those parameters, I don't have a huge amount of difficulty with that, subject, Mr. Schabas, to what you will now say.

MR. SCHABAS: Yes, thank you, Your Honour. As this arose, I was trying to show some restraint in my objections, and Mr. Schreiber did it for me. He is now getting into being asked about personal business dealings that are unrelated to anything we heard be asked of Mr. Moores, who apparently was involved in this. I'm just looking back at Mr. Bernstein's opening statement. The directing minds were Mr. Pfleiderer and

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Mr. Pluckthun. We're now hearing a whole different sort of expansive sweep of information about how it maybe is MBB or it's Mr. Strauss. I mean, Mr. Moores was asked, without objection, a lot of questions about meetings he had Schreiber that related to MBB and helicopters and that they had a relationship. That's already before you. He was asked in that way. They didn't get into details. I don't recall. I may be wrong. It was a long time ago. I don't recall Project Atlantis coming up or things like that. And I submit that -- they didn't do it with Mr. Moores, so why are they doing all this with Mr. Schreiber to establish, yes, there was a close relationship the two of them had? We've heard this. Why are we getting into all these tangential issues? As Mr. Bernstein has just said, you heard from Mr. Moores about evidence of money going in and out of the Swiss bank account. You heard from Mr. Moores about his meetings with Schreiber and meetings on helicopters. Now, let's hear from Mr. Schreiber about that. But why are we getting into all these other issues? It clearly causes the witness concern. We're getting very far afield into personal matters and he's -- there's whole new expansion of this case, it seems, to some different kind of directing minds and so on, that I submit -- which he says may be relevant. And I emphasize that. He says it may be relevant to

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a variety of questions. Well, let's get to the point and then see what Mr. Schreiber says. And if he's got to then go back, if it turns out that he may feel that Mr. Schreiber is contradicting something earlier, then he'll have to deal with that, but it's his witness and he should present the case as it's framed, not in some other way that I submit does -- and we've said this many times -- does smack of some kind of a fishing expedition.

THE COURT: Well, I agree that there is an element of the tangential to the questioning. It appears to be off center in relation to the central subject, however, I cannot say categorically at this point that it has no relationship to the relationship between Moores and Schreiber and to the extent that we don't proceed too far afield and limit the questioning tomorrow morning in rather strict fashion to the question of the nature of the investment, its quantum and what happened to it, and it doesn't go much beyond that. I'm going to give the Crown a bit of latitude. Thank you.

MR. BERNSTEIN: Thank you, sir.

THE COURT: Now, you wished, Mr. Schabas, to speak about scheduling, and tell me what it is that you...

MR. SCHABAS: Well, actually, I think we'd like to know what Your Honour thinks the schedule is. There was some difference of

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views as to what we'd actually scheduled for this month, and I just thought I should raise it. I...

THE COURT: Okay. Next week -- let me just go through it, then.

MR. SCHABAS: I think I know what it is.

THE COURT: Next week, we've got Monday, Tuesday, Wednesday morning, and then we're off because of either Rosh Hashanah or other reasons.

MR. BERNSTEIN: Right.

THE COURT: And then Friday, I can't recall, but I have other matters scheduled. Then, the week following, I have us sitting together on Monday, Tuesday, Wednesday, Thursday, but not Friday.

MR. BERNSTEIN: That's right. Excuse me. Yom Kippur, which is on my...

THE COURT: That's on the 24th.

MR. BERNSTEIN: A Jewish holiday for me is on Friday.

THE COURT: The 24th, but I was thinking about the 15th.

MR. BERNSTEIN: Oh, the 15th is...

THE COURT: Rosh Hashanah begins at sundown?

MR. BERNSTEIN: Yes.

THE COURT: Is that right?

MR. BERNSTEIN: Exactly, and I would be grateful if I could get home by...

THE COURT: Yes, and that's why I think we went until noon, but I think we've got next week. We're *ad idem* on next week?

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MR. BERNSTEIN: The 23rd.... Yom Kipper is accurate. My day of atonement is, actually, the 25th and Mr. Schabas has been kind enough to give me the entire 24th to get home by sundown. Now, I'd be pleased to -- we could do some work in the morning. I only have to be home by sundown. This was an indulgence to me, Your Honour, by Mr. Schabas and I'm grateful.

THE COURT: I think we'll leave the 24th as is. After we've done four straight days, I could be cutting off the 23rd in the afternoon. It's the opening of the court's ceremony in Ottawa, but I propose to skip that so as to give you the entire day. And so, I think we'll leave the 24th blank, if you don't mind. Then going on, on the 27th and 28th I have us together?

MR. BERNSTEIN: Yes.

THE COURT: But only those two days that week? Is that correct? Then, I think I've got you down for the entire week of the 4th of October without exception. All right? And that's it.

MR. SCHABAS: Your Honour, if I could just -- that accords with me almost completely. The only thing that I had down was that the 23rd, I had been under the impression was also for a half day, but I mean I have...

THE COURT: Well, I've got you for all day.

MR. SCHABAS: Do you?

THE COURT: I'll leave that to you. I don't care.

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MR. BERNSTEIN: Yom Kipper is not until Saturday, so...

MR. SCHABAS: I don't know, but I had it down that we were leaving because I've got something -- I made a commitment that night.

THE COURT: Well, give her a call.

MR. SCHABAS: Yes. Thank you, Your Honour.

THE COURT: Your wife. Your wife or your daughter. I don't know.

MR. SCHABAS: I keep trying. It wasn't my -- I didn't -- I didn't say this charge should be in Ottawa.

THE COURT: I don't -- if you gentlemen want to come to an agreement about the 23rd and do only the morning, I'm not going to stand in your way, but again...

MR. SCHABAS: If there's anyway I could get the five o'clock flight, I'd be very popular.

THE COURT: All right. So, I'll note: 5 p.m. plane for Mr. Schabas. Okay. And apart from that, I think that's all the scheduled time we've got. All right?

MR. SCHABAS: Thank you.

MR. BERNSTEIN: Thank you, Your Honour.

THE COURT: We'll start at ten tomorrow morning.

MR. BERNSTEIN: Thank you.

THE COURT: Madam Clerk, we have a sentencing at nine o'clock.

COURT REGISTRAR: All rise, please. Court is adjourned.

COURT ADOURNS

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CERTIFICATION

FORM 2
CERTIFICATION OF TRANSCRIPT (SUBSECTION 5(2))
Evidence Act

I, we Tracy A. Lanctin, certify that this document is a true and accurate transcript of the recording of R. v. MBB Helicopters et al. in the Ontario Court of Justice held at Ottawa, Ontario taken from Recording No. 350, 351 which has been certified in Form 1.

September 27, 2004 _____

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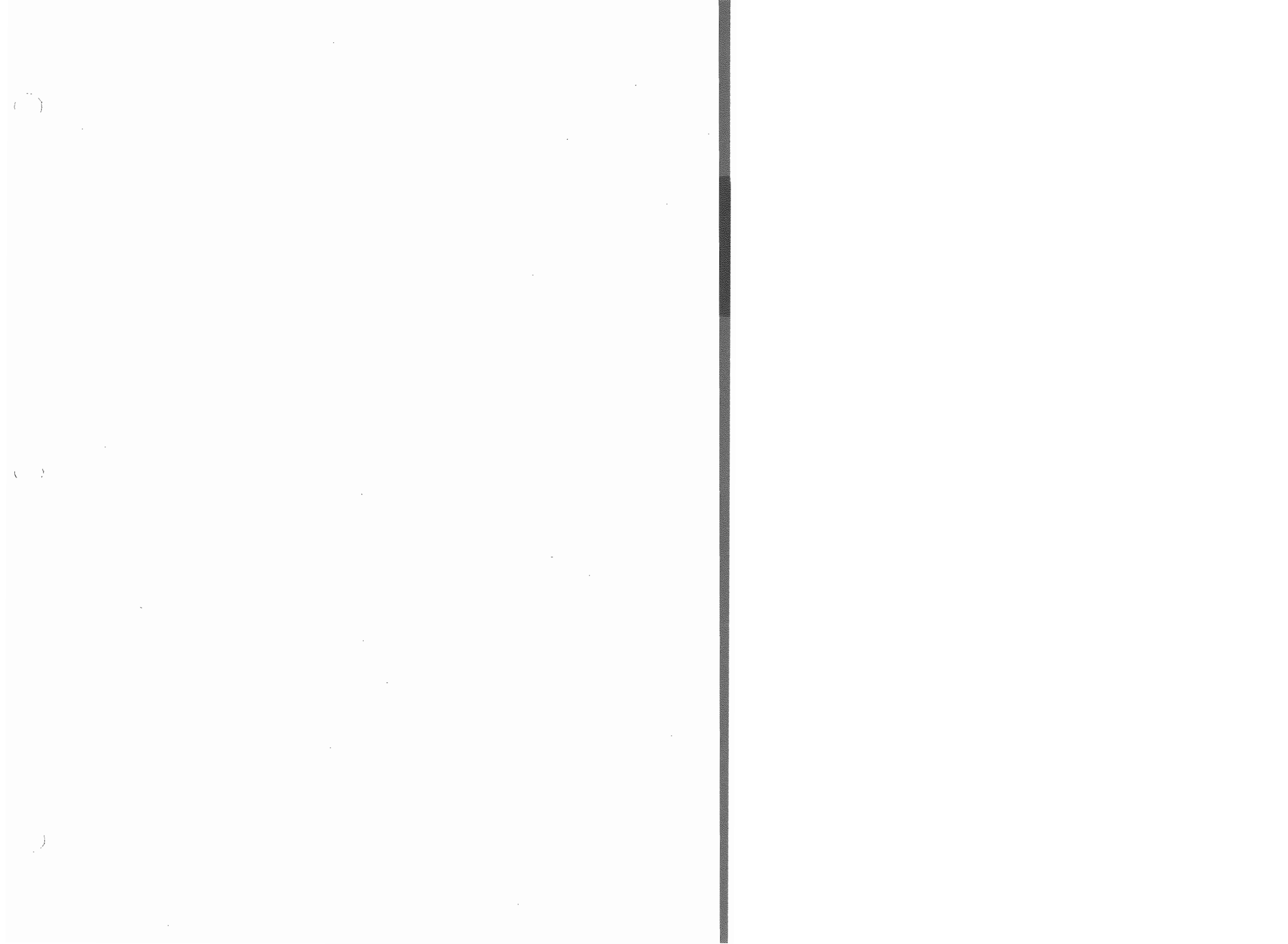
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ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

VERSUS

MBB HELICOPTER CANADA LIMITED
(c.o.b. as Eurocopter Canada Limited)
AND
KURT PFLEIDERER AND HEINZ PLUCKTHUN

PRELIMINARY HEARING

FURTHER EVIDENCE

KARLHEINZ SCHREIBER

BEFORE THE HONOURABLE MR. SENIOR JUSTICE P. R. BELANGER
ON SEPTEMBER 10, 2004 AT THE CITY OF OTTAWA

CHARGE(S): Section 380(1)(a) CCC - Fraud Over \$5,000

APPEARANCES:

M. Bernstein
T. Shaw

Counsel for the Crown

P. Schabas
T. Wong

Counsel for the Accused

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CRIMINAL CODE.**

THURSDAY, SEPTEMBER 10, 2004

U P O N R E S U M I N G :

(10:10 a.m.)

COURT REGISTRAR: Court is now reconvened.
Please be seated.

THE COURT: Good morning. Are you prepared
to proceed now, Mr. Bernstein?

MR. BERNSTEIN: Yes.

THE COURT: Mr. Schreiber, would you return to
the witness box, please.

MS. CHRISTIE: Your Honour, I don't mean to
interrupt your proceedings, but just in case
you're wondering who is sitting at counsel
table this morning, I am Vanessa Christie and
I am with Mr. Greenspan's office. Mr. White
has gone back. And I know what my role is
here, my limited role, and I'm just sitting
and typing and watching.

THE COURT: Thank you. Welcome, Ms. Christie.
Thank you.

MS. CHRISTIE: Thank you.

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

THE WITNESS: Good morning, Your Honour.

THE COURT: Good morning.

EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

Q. Good morning. Mr. Schreiber, when we last broke yesterday, I asked you -- and I will ask you again -- how much the Strauss' invested in Project Atlantis?

A. Again, in what?

Q. In Project Atlantis.

A. I don't know. The total -- the total from -- the total, as much as I recall, was about 400,000 and they may have had a part out of between 100 or 200,000.

Q. What happened to that investment?

A. Still there.

THE COURT: I'm sorry, I didn't hear the answer.

THE WITNESS: It's still there.

THE COURT: It's still there.

MR. BERNSTEIN: Q. Where is there?

A. In Newfoundland, the property.

Q. Just so that I understand, so the Strauss' continued to have an interest in a property, part of the Project Atlantis in Newfoundland?

A. Yes. As far as I know.

Q. Was Project Atlantis brought to completion?

A. Nothing. Sitting there.

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(Continued...)

Q. What is sitting there?

A. Land.

Q. Are you familiar with a company called NBM Landholdings Limited?

A. Yes.

Q. What did you understand NBM Landholdings to be?

A. I think that is the company in which the property in Newfoundland is.

Q. Was held?

A. Yeah.

Q. Mr. Moores had an interest, to your knowledge, in that company?

A. No.

Q. The Strauss'?

A. Yes.

Q. Did you have any other business dealings with Mr. Moores in the beginning? You told us about Project Atlantis. Were there any other, at the start, business dealings between you and Mr. Moores?

A. Yeah, the question, what is business dealings? I introduced people to him, and that's it.

Q. Would these introductions be of a commercial nature or a political nature or a social nature?

A. Could be all of it.

Q. As far as the commercial introductions are concerned, around what time are we talking about here?

A. Yeah, I would say the late '70s, early '80s.

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(Continued...)

Q. What kinds of people are -- who...

A. Well, for example, the Riemerschmids, they produced fruit juice and wanted to sell it in Canada, from what I recall.

Q. Why did you introduce them to him?

A. Because he had a lobby company here and the business company and was able to put them in contact with the right people. Maybe not -- not even at that time. I'm not even sure on this anymore whether they had already. This was first with Alta Nova and then GCI or what -- look, I was not that much interested in that.

Q. Before Alta Nova. Before Alta Nova...

A. Could be.

Q. ...before GCI.

A. Could be. Yeah, could be.

Q. Where, before Alta Nova and before GCI, did Mr. Moores live?

A. In Montreal. No. Yeah, I think in Montreal and in Newfoundland.

Q. And while he was living in Montreal and Newfoundland, did you make commercial introductions to Mr. Moores?

A. Yeah. I think Mr. Riemerschmid, yeah.

Q. To your knowledge, did anything come of it?

A. Please?

Q. To your knowledge, did anything come of these introductions?

A. I don't recall.

Q. Did you develop an association or friendship with Mr. Moores?

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(Continued...)

A. Yes.

Q. Were you involved in politics with him?

A. This is now a question for me hard to answer because I don't understand what you understand to have an involvement in politics. Perhaps you could be more precise what you mean by that.

Q. I'll try. You've indicated that Mr. Moores was, amongst other things, the President of the Progressive Conservative Party at the time.

A. As much as I recall, yes.

Q. Were you a member of the Progressive Conservative Party?

A. Not at that time.

Q. You've indicated earlier that you met him -- and correct me if I'm wrong -- around the time of a leadership campaign in the Conservative Party?

A. Yes.

Q. Who won that leadership campaign?

A. I think -- I think Joe Clark.

Q. After that campaign did you -- there was another leadership campaign later.

A. Maybe.

Q. Well, there was a change in the leadership of the Conservative Party, right?

A. Yes.

Q. Who became the new leader?

A. At that time? I think Brian Mulroney.

Q. To the best of your recollection, when did that change happen? When did Mr. Mulroney become the leader of the Conservative Party?

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(Continued...)

A. Well, it must have been before '83 now. I think the Conservatives took over in '83.

Q. So, did you support a particular candidate in the leadership campaign which -- in the leadership race, which resulted in Mr. Mulroney's election as the President of the Conservative Party?

MR. SCHABAS: Sorry, just before you...

THE COURT: Don't answer yet.

MR. SCHABAS: Your Honour, where are we going with this? Mr. Moores wasn't asked about any of this, and I just don't know what the possible relevance of this is.

MR. BERNSTEIN: Well, I actually think Mr. Moores was asked about this, in part.

MR. SCHABAS: We're getting into politics...

THE COURT: Well, what concerns me, I think particularly, is the relative confidentiality of one's political affiliations, particularly when we get into questions, for example, of voting and things of that nature. I'm not phrasing it very well, but we are getting I think some distance away, as Mr. Schabas points out, from the subject matter, and when we get into this gentleman's political orientation, I don't know how very far that gets us in terms of the specifics of his involvement and activities. We are treading perhaps on aspects of someone's behaviour, which might be considered of a confidential nature.

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(Continued...)

Now, I understand that you are responding, Mr. Bernstein, to Mr. Schreibers request of you to be more specific in terms of what politics meant, but I'm just a little uncomfortable.

MR. BERNSTEIN: I'm sorry, Your Honour. It's not my intention to delve in great detail into this, but Mr. Moores did testify that, in connection with his initial meeting -- meetings or the development of the relationship with Mr. Schreiber that -- well, that he -- that Mr. Schreiber claimed that he supported Mulroney's leadership bid.

THE COURT: Um-hmm.

MR. BERNSTEIN: And he claimed he had made a donation to Mr. Mulroney's campaign and this is, in my submission, material to -- it's directly material and relevant to what Mr. Moores and Mr. Schreiber were employed to do, and what skills and relationships and contacts they brought to the floor, and which MCL or MBB hired him to employ. It was these relationships. It was -- this is exactly -- it was these relationships, it was these contacts, it was this association, which may have been what MBB paid for, and indeed what Article 22 is designed to avoid and protect against.

THE COURT: All right. Go ahead for the time being and we'll deal with further objections as they arise.

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MR. BERNSTEIN: Q. Did you support a particular candidate?

A. Yes. At the first -- at the first convention, I was approached by Mr. Wolf, and my company donated, I think, 25 or \$30,000.

Q. To who?

A. I gave it to Mr. Wolf. Unfortunately, I learned later on it never showed up in the books from the Conservative Party. This happens quite often.

Q. That things don't show up in the books?

A. Yeah. They disappear.

Q. I see you're smiling, sir?

A. Yes. You think you donate to a party and the money disappears. It happens -- it happened several times. Not only to me.

Q. Okay. Who did you understand this donation was made in favour of?

A. I donated this for the leadership campaign of Mr. Mulroney.

Q. And just to be clear, was this the leadership campaign which resulted in Mr. Clark's election?

A. Yes. Yes.

Q. Did you support Mr. Mulroney's leadership bid, the second one, that one in which he ultimately won? }

A. No.

Q. The funds, which were donated in connection with the first leadership bid, you indicated came from your company?

A. Yes.

Q. Which company?

A. I think it was MLE.

y

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(Continued...)

Q. What was the source of that money?

A. Hmm?

Q. How was that -- what was the source of that money?

MR. SCHABAS: Well, again, you know...

THE WITNESS: Company's money.

MR. SCHABAS: Wait a minute. Your Honour, it's one thing to ask him some questions as we discussed at the last objection, and just to get into going beyond that and where the money came from and, you know, where he took the money from. If he made a donation, he made a donation. I thought that's what Mr. Bernstein wanted to adduce. That's what he -- Mr. Wong has found the reference to the transcript. I think Mr. Moores was asked two questions on this issue, about the Mulroney's leadership campaign and whether he knew whether Schreiber supported it and then he moved on. But this is now becoming a fishing expedition and is something that I submit has no relevance.

THE COURT: Is it not sufficient for your purposes to know that the funds came from MLE?

MR. BERNSTEIN: I'll move on.

THE COURT: Thank you.

MR. BERNSTEIN: I'll move on in order to continue my examination, but I do not accept my friend's position at all.

MR. BERNSTEIN: Q. Now, with respect to the time period between the first leadership campaign and the

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second leadership campaign, did you meet Mr. Moores periodically?

A. I lived in Alberta. I haven't seen him that often.

Q. You saw him sometimes?

MR. SCHABAS: Well...

THE WITNESS: Maybe. I'm not -- I'm not usre. Yeah, maybe.

MR. BERNSTEIN: Q. And you've indicated some contact in terms of commercial introductions. Was there any other kind of contact?

A. No. Private, yeah.

Q. Pardon me?

A. Perhaps private. If I -- if I had to go for business purposes to Montreal and he was around, I would have met him for a drink or so.

Q. Okay. Now, apart from a donation MLE's behalf in connection with the first leadership campaign, did you participate at all in any way in the second leadership campaign, the one which resulted in Mr. Mulroney...

A. No.

Q. In no way?

A. Not to my recollection.

Q. Did any companies in which you had an interest, participate?

A. No.

Q. Did you attend the convention?

A. No.

Q. Do you know Mr. Mulroney?

A. Yes.

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(Continued...)

Q. When did you meet Mr. Mulroney?

MR. SCHABAS: Your Honour, I'm going to -- why are we getting into his relationship with Mr. Mulroney? We've already had a discussion to justify getting into his relationship with Frank Moores.

THE COURT: Our concern is about his relationship with Mr. Moores, Mr. Bernstein?

MR. BERNSTEIN: He tells -- Mr. Moores testified that Mr. Schreiber claimed that he supported the Mulroney leadership bid and that he knew Mulroney. I can understand why my friend does not want to hear this evidence, but in my respectful submission, this is directly relevant and material to this fraud case. My friend says: Where does it matter where the money came from or where it went? That's what -- this is a fraud case. How the -- where the money was generated? Where it went? Where it came from? Why it was sent to where it was and for what purpose, is what in part this case is about. What Mr. Moores and Mr. Schreiber did for the money, given their contacts, relationships, and the like, with people in government is also very important and relevant to this case. That's why I asked the question.

THE COURT: Well, we know that he knew Mulroney. Do we need more than that? And if we do, why is it important?

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(Continued...)

MR. BERNSTEIN: It's -- I'd be pleased to answer the question but I'd like to do so in the absence of the witness.

THE COURT: Okay. A constitutional exercise for you, Mr. Schreiber.

...WITNESS EXITS.

(10:30 a.m.)

MR. BERNSTEIN: The clause in issue -- or one of them -- Article 22 says, amongst other things, that -- its entitled, "No Bribe, etc..." The contractor warrants that it has not employed any person to solicit or secure the contract or upon an agreement for a commission, percentage, brokerage, or contingent fee."

Mr. Schreiber is a -- I say this with respect -- in the asphalt business with no previous experience whatsoever in the selling of helicopters or anything of this nature. Indeed, there's no evidence that he had any knowledge whatsoever of the procurement process. My friend objected to that question as being irrelevant. Nevertheless, he's hired by a multinational company to -- to do what we will -- to do things which Your Honour has heard a bit about and which, inevitably, we will hear more about through Mr. Schreiber.

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(Continued...)

What Your Honour has, however, heard so far is Mr. Moores and to a lesser extent, Mr. Schreiber's attendance at certain meetings involving ministers and deputy ministers and dinners, and the like. In my respect -- when we ask Mr. Moores what he was retained to do -- and I'm summarizing or characterizing his evidence -- it was to give his background, and obviously his background in conservative politics and in government to open doors. One opens those doors on the basis of friendships and relationships and ties, including political ties.

There was a change of government. The conservative government became the governing power and Mr. Moores, on his own evidence, sets up shop as a consultant or lobbyist in Ottawa, to facilitate contacts with government officials.

Article 22, in part, exists as a prophylactic prohibition against inappropriate contacts with government officials?

Mr. Schreiber has testified to his contact with conservative government officials, first in Germany, and now conservative -- we're hearing a bit about conservative officials in Canada.

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(Continued...)

He tells Moores that -- well, I anticipate we will -- we heard a bit of evidence. We'll hear more evidence that they are both interested -- and these are my words -- in the Conservative Party and conservative politics, that he tells Moores that he knows and has supported the Prime Minister. He will ask him what he tells Mr. Pfleiderer and Mr. Pluckthun or Mr. Strauss about his contacts in Canada. In my respectful submission, he is the one who brings Pfleiderer to Moores on Moores's evidence. Why Pfleiderer approaches him or Pfleiderer's relationship with him, in my respectful submission, would seem likely to have been based on 1) his tie to the Strauss family in Germany and then his tie to the new Conservative government in Canada. When I say his "tie" I say it in the most general of senses.

This is what I am attempting to elicit evidence of, the relationship. He goes -- they say, well, why does it matter whether he knows or how well he knows Mr. Mulroney? Well, if he goes to Mr. Pfleiderer and says to Mr. Pfleiderer, "I'm friendly with the new Prime Minister. I supported his leadership campaigns. I'm friendly with the President of the Conservative Party of Canada. I can get -- I can do these things. I can get these doors open, then that may explain why they

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hired him. Indeed, he may have said other things to Mr. Pfleiderer.

THE COURT: Well, he may but are you -- is it your theory that that is what occurred and that -- based on investigation or are you nearly at this point in an exploratory exercise to determine whether or not this occurred?

MR. BERNSTEIN: We know that Mr. Strauss -- we know that Mr. Schreiber had an important relationship with Mr. Strauss. We know from Mr. Moores -- and Mr. Moores caché -- what Mr. Moores was selling through Alta Nova and through GCI was his contacts and associations. Indeed, in his ability to understand government -- and I think the term is "open doors".

We know of Schreiber's relationship with Strauss. We know of Moores' relationship in Canada, and we are now learning about Schreiber's own relationship in "opening doors" in Canada. These are things which we know -- well, we know about Strauss -- Schreiber's relationship with Strauss. We know about his relationship with Moores and we know about Moores's relationship with the new -- with the governing party and the government. That's all presently known.

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I'll give you an example, Your Honour. If we go to Document 16759... Can we pull Document 16759 up on the screen?

Okay. We have here a letter from Pfleiderer to head office. This is Pfleiderer writing to his bosses. He says in the first paragraph:

"MBB's Activity in Canada.

Cooperation with members of the new Canadian government was very close even before they were elected and contributed *inter alia* to winning the Canadian helicopter bid. Mr. K.H. Schreiber and, for the client, Frank D. Moores, the former premier of Nova Scotia, looked after the activities.

Talks with the Minister of Regional Expansion, Sinclair Stevens, and the Minister of Defence, Robert Coates, were arranged through these contacts."

It says Pfleiderer is reporting to his bosses that through contacts with Schreiber and Moores -- Schreiber and Moores were assisted in facilitating the Canadian helicopter contract through contacts with the new Canadian government. They go on to specifically enumerate,

"Talks with the Minister of Regional Expansion, Sinclair Stevens, and the Minister of Defence, Robert Coates, were arranged through these contacts..."

Schreiber and Moores -- at least Pfleiderer is telling his bosses -- arranged meetings with Sinclair Stevens and Robert Coates,

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"...and were to deal primarily with opportunities for MBB to become further involved in Canada in the aerospace and defence Industry.

These talks were to be held prior to the cabinet meeting concerning these matters and will therefore be held on November 8, 9, and 10."

My friend says what does this got to do with anything? This has got a lot to do with the case and the true nature of the relationship between MBB, MCL, Schreiber and Moores. And Pfleiderer is a co-defendant, a controlling mind on both MCL, on the Crown's theory, and an important executive in MBB is saying that there agents, Schreiber and Moores, arranged this.

There is another one, a document...

THE COURT: At this point, that's fine.

Mr. Schabas, Mr. Bernstein paints a fairly compelling picture in my view of the relevance of this particular questioning, but I'll hear from you further if you don't think so.

MR. SCHABAS: Your Honour, I submit that he has not made this relevant. What he also knows and what the prosecution has taken the position, as long ago as when Superintendent Matthews swore an information to obtain a search warrant is that there's no evidence that Mr. Mulroney is implicated in anything. He had even received a letter more recently,

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along with Mr. Schreiber, from the Commissioner of the RCMP saying there is no suggestion of any prosecution of him. Mr. Moores hasn't been prosecuted for anything. He ran a legal lobbying business. If my friend is prosecuting a case that deals with bribes of the government, well, that's not this case.

THE COURT: Well, no. No, no.

MR. SCHABAS: And yet...

THE COURT: Quite clearly not. Quite a few individuals have been mentioned who had a direct association with the corporate entities who are before the court and may -- and I take it that on one view -- and I'm not saying that this is the view that I ought to take, but on the one view people might say Moores or Schreiber, having no privity of contract with the government, did nothing wrong. I'm just saying on one view. That doesn't mean to say that their involvement is not crucial to the actions of MCL and MBB, and just because they haven't been charged, and indeed even if they were guilty of absolutely no criminal or even civil misconduct, that doesn't mean to say that their role in the development of the situation with which we are ultimately involved is not important, and as with Mr. Mulroney, he was obviously the head of cabinet for which these ministers, Sinclair Stevens and Robert Coates were working, and so

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it's not as if we're talking about the current Pope at the time. We're talking about someone who is an integral part of the organic structure within which these events occur. At least, that's my view of it at this point.

MR. SCHABAS: Your Honour, I can say that we've got almost 40,000 documents disclosed to us. There's not a shred of evidence that Mr. Mulroney is implicated in anything.

THE COURT: Maybe not.

MR. SCHABAS: And there is not a shred of evidence that I can see that suggests that bribes were paid to anybody in the government. This case is about a relationship on my friend's theory between Mr. Schreiber and Mr. Moores and my client, and to get into all sorts of other things about, well, how close a relationship did he have with this person or that person in the government, and in my submission it's really irrelevant.

THE COURT: Well, is it not relevant to any submissions that Schreiber or Moores may have made to head office about their relationship with Canadian government officials in order for them to agree to provide them for compensation based on their knowledge of the workings of government? It has nothing to do with Mr. Mulroney's guilt or innocence of anything at all, but rather any representations that may have been made to headquarters of MBB.

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MR. SCHABAS: Then they should ask him about that, Your Honour. With respect, why doesn't he ask him what representations Mr. Schreiber made to Mr. Pfleiderer or Mr. Pluckthun or Mr. Strauss about his knowledge?

MR. BERNSTEIN: I will. I promise. I will...

THE COURT: I think we're going there. At this point I...

MR. SCHABAS: But he's coming at it in a different way and we may -- you know, he may -- that's great, he promises to do that, but in the meantime he's going to go on a long unnecessary fishing expedition about other contacts. The relevant thing is what's his relationship and what's he telling MBB? If that's on that theory of the case, I accept that, but why go to all these other things? Are we going to go through the list of cabinet? Why go to Mr. Mulroney? There's nothing in here about that either. To me, it's irrelevant. It's very interesting, but it's irrelevant.

THE COURT: Out of an abundance of caution and bearing in mind if this evidence is elicited, sought and obtained, it is not likely to be of a particularly inflammatory nature, and risking irrelevance and balancing that off against relevance, and the necessity to give the court a better understanding of the background, I am going to allow Mr. Bernstein to continue. Recall the witness, please.

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And in that sense, Mr. Bernstein, I don't think we need to go at great, great lengths to...

MR. BERNSTEIN: I understand.

THE COURT: ...dot every "I" and cross every "T" and obtain every little bit of evidence relating to this particular avenue of questioning, *insufficiente*.

MR. BERNSTEIN: Yes.

THE COURT: It's broadly outlined.

MR. BERNSTEIN: Yes.

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

Q. Do you know Mr. Mulroney?

A. Yes.

Q. When did you meet him?

A. It's hard to say. Somewhere late '70s.

Q. How would you describe your -- did you have some sort of relationship with him?

A. Well, I saw him the first time.

Q. Did you see him, periodically, over the years?

A. Not that much until the late '80s I would say.

Q. Between the late '70s and the late '80s, would your contact with him be social?

A. Yes.

Q. Any other kind of contact?

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A. No. He used to be the President of Iron Ore, as you may know.

Q. What does him being the President of Iron Ore have to do with the nature of your contact with him?

A. This was the profession when I met him and this is what I learned he was doing. And also, that he had a law firm, too. And that he is a potential candidate for Canada for the Conservative Party.

Q. When he became the head of the Conservative Party and the Prime Minister, did you have any continuing contact with him?

A. Please? Again?

Q. When he became the head of the Conservative Party and the Prime Minister, did you have any contact with him?

A. Maybe I've seen him once. The Prime Minister? I think he was first in opposition, wasn't he?

Q. Either, well, in opposition or....

A. I think I saw him once when he was in opposition. At least, as much as I recall.

Q. What kind of contact was that?

A. Well, we met at the Ritz Carleton and had a drink. Ritz Carleton Hotel in Montreal.

Q. Did you have any contact with him while he was Prime Minister? Personal contact.

A. When you say personal contact, it means from your sight, I saw him or what? What is personal contact?

Q. You saw him or spoke to him on the phone.

A. No, not that often. No.

Q. So is that not that often or no never?

A. I -- I don't -- I mean you speak about the time frame and that makes it difficult for me. I tried to be correct in my answer as you may understand, so to have a memory back 20 years where I had the telephone call with him in 1979 or in August or September, I can't tell you that. I recall I met him at the Ritz Carleton for one or two or three times when I was in Montreal. That's it.

Q. And would these have been when he was the Prime Minister or before?

A. No. Before. I did not meet him private anywhere when he was Prime Minister.

Q. You don't recall meeting him when he was Prime Minister?

A. When you say private, I understand his home or outside the government. No. Not once.

Q. Did you meet him elsewhere while he was...

MR. SCHABAS: Your Honour, it's my friend's witness. He's got his answer. The last question started with a "did you", but many of these questions, I mean, he's leading him. It's his own witness.

THE COURT: He said, "Did you meet him in private?" and now he's asking him if he met him in other context, I take it.

MR. BERNSTEIN: Q. Did you meet him in any other context while he was Prime Minister?

A. Yes. I had breakfast with him.

Q. What kind of meeting was that?

A. Regarding the Bear Head Project, together with Mr. MacKay.

COURT REPORTER: Sorry, I didn't hear that?

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THE WITNESS: MacKay.

THE COURT: Which project, sir? I'm sorry.

THE WITNESS: Bear Head.

THE COURT: Bear Head.

THE WITNESS: That was main objective in
Canada.

MR. BERNSTEIN: Q. Who were you acting for
in connection with Bear Head Project?

A. I was the chairman from Thyssen Bear Head
Industries.

Q. Thyssen is a...

A. Huge German company 180,000 employees.
3,500, approximately, in Canada.

Q. And in the most general of terms, what was
the Bear Head Project?

A. The Bear Head Project was a project which
would be established at the Straight of Canso near
Hawkesbury on the request of the Canadian Government under
Sinclair Stevens and Bob Brown after the water plant and
the gulf refinery was shut down, to bring business to --
and employment to a pretty starving area.

Q. The area was where?

A. Straight of Canso.

Q. Okay. That's in Nova Scotia?

A. Nova Scotia.

Q. Cape Breton.

A. Cape Breton.

Q. The plan was to build what there?

A. A factory for light armored vehicles,
peacekeeping equipment and environment protection

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equipment. At the beginning, it might have been more later on.

Q. Did that plan ever come to fruition?

A. Yes. We worked -- we worked on this for about 10 years.

Q. But nothing -- there is no plant?

A. There's no plant, no. We lost, finally, through all the craziness I was involved in, perhaps.

Q. Apart from this breakfast meeting, was there any other contact?

A. Yes. I saw him once in the lobby from the house or in his office, or with -- with the same -- with the same matter.

Q. When you say the same matter?

A. The Project of Bear Head Industries.

Q. Did you have dealings -- any contact with him on behalf of MBB?

A. No. Not to my recollection.

Q. Did you ever talk to him about helicopters?

A. No.

Q. You've mentioned meeting with Mr. Coates?

A. Yes.

Q. I assume you knew Mr. Coates or know Mr. Coates?

A. Oh, yes. I've known him for a long time.

Q. Mr. Coates was a, formerly, a Minister of National Defence in the Canadian Government?

A. Yes.

Q. When did you first meet Mr. Coates?

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A. When he used to be the chairman of the Conservative Party. There were strong ties between the German conservatives and the Canadian conservatives.

Q. In what way?

A. Well, they visited each other. For example, Mr. Stauffenberg -- Count Stauffenberg. You may have heard the name. His father was the one who tried to kill Hitler. A close friend of mine.

Q. So tell me about this sort of contact?

A. Well, this is how conservatives meet. You travel and you see your guys.

Q. Well, tell me. I don't know. Tell me.

A. Like -- like you see your friend when you are...or when you are with...you meet your -- you meet your friends.

Q. Okay. So...

A. They come to Germany and you come to Canada or wherever in the world.

Q. Okay. So, how does Mr. Coates fit into that?

A. Please?

Q. How does Mr. Coates fit into that?

A. What do you mean?

Q. How did he fit into this? I asked you how...

A. Oh, yeah. He was -- he was the president of the Conservative Party. And then one, whether it was -- I don't even recall whether it was Mr. Stauffenberg or whoever. I saw him, briefly, when he was in opposition.

Q. This would have been around when?

A. Late '70s, also.

Q. Do you become friendly with Mr. Coates?

A. Oh, yeah. He was a great humorous guy. I like -- I like him a lot. Still I do.

Q. And did you have any business dealings with Mr. Coates before he became the minister?

A. No.

Q. Do you know Mr. Sinclair Stevens?

A. Yes.

Q. How did you come -- or tell me about your first meeting with him?

A. Well, I think it -- it dealt with the Bear Head Project because Mr. Stevens was very much involved in this and, so I saw him and together with Bob Brown, the Deputy Minister who, by the way, later on became the President from Canadair and Bombardier and did nothing understand from aircrafts and locomotives. Allow me to say that.

Q. Pardon? I didn't hear the last little -- what did you say?

A. I said, "Allow me to say that" that a manager does not consequently has to be an engineer to understand each of other equipment, as you asked me yesterday.

Q. He also became the -- he was involved in Air Canada?

A. Who?

Q. Air Canada?

A. Who?

Q. Mr. Brown.

A. No, he became the President of Canadair.

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THE COURT: We're just having a general conversation about matters that don't...

THE WITNESS: That produced aircrafts and the German defence ministry bought them.

MR. BERNSTEIN: Q. Right.

A. The Challenger.

Q. Okay. So with respect to Mr. Sinclair, you first met him in what context?

A. I think I met him at his office with Mr. Moores, perhaps.

Q. This would have been once he was in government?

A. Yes, and he was the minister, yes.

Q. And do you run into him or have been introduced to him...

A. Oh, no. We had -- we had the official meeting with him.

Q. Before then, had you met him or been introduced to him...

A. No.

Q. ...in a...

A. No.

Q. ...conservative...

A. No, no.

Q. ...circle? No?

A. No.

Q. And who introduced you to him?

A. I think Mr. Moores, as far as I recall.

Q. This would have been in the context of what?

A. With Bear Head Industries.

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Q. Mr. Sinclair's job at the time was what?

A. I think he was the Minister of Economy and Trade. You know, this name has always changed. I think, finally, it was DRIE.

Q. Okay. Do you know a gentleman named Elmer MacKay?

A. Sure.

Q. When did you meet Mr. MacKay?

A. I think around the same time when I saw Mr. Coates the first time.

Q. It would have been when?

A. Also in the late '70s or so.

Q. Did you meet them or were you with them during the first leadership campaign you spoke...

A. Oh, no.

Q. No?

A. No.

Q. With Coates?

A. You mean where the first meeting with him took place?

Q. No. Did you have contact with him during the first leadership campaign?

A. That would have been long before he was the minister.

Q. Yes.

A. Could be that I have met him with Walter Wolf, because these were all his friends.

Q. And...

A. But I don't recall.

Q. Do you recall meeting Coates during this leadership campaign?

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A. No.

Q. You can't recall?

A. No.

Q. I'm wondering if we can take a look at Document 15874. Document 15874. And before we -- we'll just take some care in pulling it up here.

THE COURT: Is this a document that's previously been made an exhibit?

MR. BERNSTEIN: Previously -- no.

MR. SCHABAS: Could we not put it on the witness screen until we can take a look at it.

THE COURT: Yes. Thank you. That was going to be my request. 15874, right? Don't put it on -- okay. That's fine. Thank you.

MR. BERNSTEIN: My intention here is to simply to refresh the witness's memory, Your Honour, as it relates to the second paragraph of this letter.

THE COURT: Yes. Mr. Schabas...

MR. SCHABAS: Well, Your Honour.

THE COURT: ...this is a letter, apparently, authored by Mr. Schreiber.

MR. SCHABAS: That's fine, but I wonder of the utility of refreshing his memory about whether he met somebody about 30 years ago or almost 30 years ago, many, many years before the issues that are in this case. I just submit, we're getting so far afield if we're going to get into trying to explore the poor witness's memory about when he may have first met somebody, and now he's going to refresh his

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memory by showing him a letter that was written 16 years ago about an event that occurred, I think at least 10 years before that. It's tapping my memory to remember when Joe Clark became the leader of the Conservative Party. It was a long time ago.

THE COURT: This letter, obviously, is authored some ten years after the event we've just been talking about. What is it to refresh his memory in relation to?

MR. BERNSTEIN: On his dealings with Mr. Coates in connection with the first leadership convention.

THE COURT: But this is long after that, isn't it? Is there mention in there of...

MR. BERNSTEIN: Yes. It says it brought back good memories of our dear -- it says, "An unexpected highlight to the day was our chance meeting of the Prime Minister Mulroney."

THE COURT: I see, okay.

MR. BERNSTEIN: "This really struck a sentimental cord because it was with you, Cliff," -- you, Mr. Coates -- "...Cliff and Steven that I first came to know Brian in our," -- "in our efforts leading up to the 19..."

THE COURT: All right. All right.

MR. BERNSTEIN: 19...

THE COURT: I don't want you to read it to the witness. I was debating whether you should have the witness refer to it, but you've

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referred me to a part that may assist the witness in refreshing his memory about his initial relationship to the individual, and so I will allow you to show it to him.

MR. BERNSTEIN: Thank you.

MR. BERNSTEIN: Q. Mr. Schreiber, I'm wondering if you can take a look at a letter, which is dated April 22, 1988, from, apparently, you to Mr. Coates. Perhaps we can go to the Goto Page 4. Goto Page 4 of the document. Do you see the signature on the bottom of the page there? Is that your signature, sir?

A. Yes.

Q. Okay. Let's go to page 3 of the document, and this seems to be a letter written in April of 1988.

A. Yes.

Q. I asked you whether you recall dealing with Mr. Coates in connection with the first leadership convention.

A. Yes.

Q. And in that regard, I direct your attention to the second paragraph in the letter and ask you, with respect, does that refresh your memory as to whether or not you had contact with Mr. Coates at that time?

A. Yeah. I recall this now. It was a meeting with Steven Roman. I had business with him. Yeah.

Q. So, when you say yes, what are you saying yes to?

A. I recall that I met with Cliff Raymond, with Steven Roman.

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Q. No. Do you recall dealing or being involved with Cliff and Steven and Mr. Coates in efforts leading up to the 1976 Leadership Convention?

A. I assume from this letter that this was discussed with Steven Roman. He was a very strong conservative; Dennison Mines. Yeah, could be.

Q. So with respect to Mr. MacKay, your -- tell me what if any dealings you had with him before the Conservatives in early 1980's.

A. With who?

Q. Mr. Mackay.

A. No.

Q. No dealings?

A. No.

Q. So you first met him when he was the minister?

A. No.

Q. When then?

A. When he was in opposition. Approximately, the same time when I met Mr. Coates.

Q. Who introduced you to Mr. MacKay? Or how were you -- how did you come to meet him?

A. I think it was in the coffee shop in the parliament building and they were all in one table at the same time.

Q. Who is they?

A. Mr. MacKay and Mr. Coates and quite a few others from the conservatives and German conservatives.

Q. And German conservatives were there, also.

A. I think it was with Mr. Stauffenberg, yeah.

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(Continued...)

Q. How did you come to sit down at that table?

A. Well, the people from Germany knew the guys from Canada.

Q. So you were with the people from Germany?

A. Yeah. Yes. I think it was -- I think it was Count Stauffenberg as far as I recall.

Q. All right. Do you know a gentleman named Kurt Pfeleiderer?

A. Yes.

Q. How did you come to meet him?

A. I met him, as far as I recall, at MBB when I had visitors from Canada. From Alberta.

Q. This would be...

A. As far as I recall, yeah. I'm not sure whether I met him before. It could be even before that.

Q. So let's just deal first with this meeting that you recall. Okay? This would be MBB Germany or...

A. MBB Germany.

Q. ...Fort Erie?

A. Hmm?

Q. Or Fort Erie.

A. Oh, I've never seen Fort Erie after today. MBB Germany.

Q. Where is that?

A. Hmm?

Q. Where is that?

A. In Munich. Close to Munich.

Q. What's the actual town?

A. Ottobrun.

Q. That is in Bavaria?

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A. Yes.

Q. You say you met him. Was it in his office or somewhere else?

A. Could be in a reception room or it could have been even earlier on the -- on the convention from the party or something like that, where I was the economical and financial advisory board from the party. Maybe I have seen him there the first time. But you see, this goes back then to the -- probably to the early '70s or late '60s. I mean, I think I have a pretty good memory but it's not that good.

Q. This board you referred to of the parties...

A. Yeah.

Q. ...what kind of board was it?

A. An advisory board of the party.

Q. Were you on it?

A. Yes.

Q. How long were you on this board for?

A. I would say from the late '60s, early '70s until now.

Q. You say the party. Which party are you referring to?

A. This social union.

Q. How did you get on that board?

THE COURT: Can we get back to Mr. Pfleiderer.

THE WITNESS: I was invited to participate.

MR. BERNSTEIN: Q. Now, you say Mr. Pfleiderer was on this board?

A. No.

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Q. He may have been at a meeting of the board?

A. No.

Q. So....

A. But there were conventions and receptions and maybe he has been around there. Could even be that another industrialist is a friend to introduce me to him. I'm not sure that anymore.

Q. So, let's go back to this meeting that we've been talking about. When would that have been around?

A. You mean the delegation from Alberta?

Q. Yes.

A. I think the late '70s or in the '70s somehow.

Q. Do you recall...

A. As far as I recall. Maybe, let me think about -- maybe, yeah, mid '70s, late '70s I would say.

Q. Who arranged this meeting?

A. The Bavarian government.

Q. Who in the Bavarian government?

A. The Minister of Trade, the Minister of Finance. Mr. Jaumann, Mr. Huber. Everybody was involved.

Q. What was the purpose of this meeting?

A. Well, it was an invitation. I'm not sure. Could be that the German delegation from the Bavarian government was first in Alberta and this was there with... to Germany. Maybe that was the case.

Q. What was the purpose of the meeting?

A. Well, to -- to get to know industry in Bavaria. They were looking for investment, like every -- like every province does. It goes from Bourassa to

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(Continued...)

Mr. Blakey, to Mr. Lloyd. I know all of them. They all...

Q. What did you tell Mr. Pfleiderer about yourself and your role here?

A. Oh, my role was pretty much known to everybody around?

Q. What makes you say that?

A. I'm a -- I was a known person in Bavaria -- a business man with business all over the world in connections all over the world -- and I saw them frequently.

Q. As far as your role with MBB, this meeting with Pfleiderer, what did you tell him?

A. What I told him? About what? I was not at a meeting with Pfleiderer. It was members of the board from the company.

Q. So actually, it was a meeting which -- well, I'll -- if you say it was a meeting with members of the board.

A. Sure.

Q. This would be members of the board of MBB?

A. Yeah. Pfleiderer gives them a tour, a ride on a helicopter all over the Alps and so, so this was his division. So he was part of one -- one is laser, one is airspace, one God knows what.

Q. So the meeting was involved a delegation from Alberta...

A. Yes.

Q. ...and yourself?

A. Yes.

Q. That's on, I'll say the Canadian side.

A. Yes.

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(Continued...)

Q. Okay. On the German side who was there?

A. Yes. And keeping mind, Dr. Huber used to be the chairman of the -- of MBB, and Mr. Strauss was a member and the Bavarian Government was the main shareholder. This was very clear what it was all about.

Q. So at this meeting, who was on the German side?

A. Hmm?

Q. Who was on the meeting from...

A. Well, there was many meetings. Not only with MBB. There were meetings with Krauss-Maffei, with Semens, with Akfar, with Audi. They traveled all the Bavarian companies.

Q. But let's just stick with MBB for now.

A. Yes.

Q. Okay. Who was at the meeting -- the MBB meeting on the German side?

A. Well, I don't -- I really don't recall. There were so many changes. I think Vogel was in -- it might have been Hort or -- I don't even -- I don't even know the names from these people.

Q. Were they senior executives from MBB?

A. What?

Q. Senior executives from MBB?

A. For sure. They would have said "Hello" when the Prime Minister shows up with guests.

Q. The Prime Minister...

A. Sure.

Q. ...was there?

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(Continued...)

A. When I say Prime Minister, the Premier in Bavaria would be Prime Minister. The minister, president, the premier.

Q. Was he...

A. Sure. He was there, too.

Q. So Franz Josef Strauss was there.

A. Also, one day, but I cannot say whether it's this day or the other day. I cannot tell you.

Q. So Franz Josef Strauss was there.

A. Yes, and Mr. Huber. I think everybody saw them in these days. Either at MBB or at his home. Everybody was involved.

Q. And...

A. It was a government affair.

Q. And Mr. Pfleiderer -- okay. Let me ask you this question. What -- why were you there?

A. I was there because I had the contacts in Alberta with my company, and I knew Mr. Horner, all the people, and I had my investment there. And so now comes the question, there was this delegation from Mr. Lougheed and many, many people of his cabinet to Germany where I was invited, and I was invited and asked by all these government officials -- including especially, Horst Schmidt, a Bavarian who used to be a minister in Alberta -- to try to help Alberta to find investment, which I did.

Q. You mentioned the name Horner?

A. Sure.

Q. Who is that?

A. Dr. Hugh Horner. He used to be the Deputy Premier of Alberta and Minister of Transport.

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(Continued...)

THE COURT: Mr. Bernstein, I think we'll take our morning break at this point...

MR. BERNSTEIN: Thank you.

THE COURT: ...for ten minutes or so. Thank you.

COURT REGISTRAR: All rise, please. This court is in recess.

R E C E S S

(11:25 a.m.)

U P O N R E S U M I N G:

(11:45 a.m.)

COURT REGISTRAR: Court is now reconvened.
Please be seated.

MR. BERNSTEIN: Mr. Schreiber.

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

Q. Mr. Schreiber, you were telling us about this meeting in Ottobrun?

A. What in?

Q. In Ottobrun.

A. Ottobrun?

Q. Yeah. And I had asked you a number of questions about who was on the German side. I'd like to just continue with my questions. Who arranged the meeting from the Canadian side?

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(Continued...)

A. I would say the invitation went to Dr. Horner and then his ministry would have arranged the German. I think, probably, Mr. Rolly MacFarland, Allen Scirocco, and Ken Kowalski.

Q. Those people worked where?

A. They were the assistants -- Ken Kowalski is still with the government and he is the -- assistant to Dr. Horner.

Q. Why were you there?

A. Well, I had -- I had all my business with road construction and road safety programs with the Alberta government with Rolly MacFarland. He was my direct partner to speak about. On the invitation from Mr. Lloyd, I built a factory in Calgary.

Q. But did MBB make roads?

A. No.

Q. They made helicopters?

A. Yes.

Q. And why were you...

A. And trains and all kinds of other products.

Q. Laser beams?

A. Yeah. Oh, if you would have been there, Dr. Horner might have given you a treatment with laser acupuncture. This is what he did, sir. Because he's medicine doctor.

Q. So, what was your job or your function? Why were you at the MBB meetings?

MR. SCHABAS: That's about the fifth time he's asked that, Your Honour.

MR. BERNSTEIN: Well, I'm...

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(Continued...)

MR. SCHABAS: He's given answers to this and my friend -- does he want to cross-examine him?

THE COURT: Well, there have been general answers. I think he's seeking a more specific answer. It may...

THE WITNESS: I was with them at all the -- at all the companies in Germany. I was a good host.

MR. BERNSTEIN: Q. You were the host?

A. I was a good host whenever people came from Canada and they new that I am in Calgary and I have friends in Calgary. They came and saw me from all over the place.

Q. That's very nice, but this meeting was in Germany.

A. Yes.

Q. Why were you at the meeting in Germany?

A. Because my friend and business partners, and whatever you want, my contacts from Alberta came, and when they came to Alberta -- to Germany, and they go back and I got back and I may do a follow up with them and help them to get investors. That's what it's all about. This was a request from the government. I did the same for Mr. Bourassa, for Mr. Blakely, for John Buchanan, to all these premiers, Mr. Bernstein. I have a different life than you may think about.

Q. So it was at the request of who?

A. What of who?

Q. You said it was at the request...

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(Continued...)

A. Well, the whole thing was at the beginning started already -- with the government, it was Mr. Strauss, it was Jaumann, it was Mr. Huber, and clearly, Karlheinz Schreiber. When you go back and forth make sure Bavarian interests are looked after in, now, your Canadian friends. Alberta is very similar to Bavaria, you know. Bavaria was the same thing. It was more or less agriculture, and Strauss converted it to a high tech company with no pollution -- country with no pollution problems. I am very proud of all of this. And in Alberta, the government was sitting there with \$30 billion from the Heritage Trust Fund waiting for investment. I mean, when you are a businessman and a country comes with money not asking for loans all the time, you're very happy to find such a client.

Q. And your arrangement with MBB at the time was what?

A. Nothing. Helping them. Like I did with all the other companies.

Q. How did you help?

A. Well, if ever I would have heard that somebody needs something -- look, when you look at helicopters, first of all. What are the helicopters for? You -- you buy them to rescue people in the mountains, skiers. You buy them for, say, Coast Guard or other people. And by the way, what you might have known, Mr. Moores is on Board of the largest helicopter company in the world. So, I mean if he could have persuaded his company to buy a couple of hundred helicopters from -- from MBB, that would have been great. I would have loved it a lot. I can tell you that.

Q. It would have been a big commission.

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(Continued...)

A. Also. Sure.

MR. SCHABAS: Well, Your Honour...

THE WITNESS: Also. Sure.

MR. SCHABAS: It's his witness. He's not to lead...

THE WITNESS: Just to give you...

MR. SCHABAS: Just a minute, Mr. Schreiber. He said there was no arrangement and Mr. Bernstein is just leading him. He's treating him like he's not his own witness.

THE COURT: That question -- that statement was inappropriate. Go on to something else, please.

MR. BERNSTEIN: Q. Okay. So with respect to this meeting in Ottobrun, right?

A. Hmm?

Q. The meeting we were talking about in Ottobrun at MBB, what was discussed?

A. Oh, the company made a presentation for the delegation to buy for their product.

Q. Who made that presentation?

A. All the people from different divisions in the company who always is responsible. I mean everybody has his own resort.

Q. Now, were -- you've indicated to us yesterday, I believe, that you had a consultancy arrangement with MBB, right?

A. In which respect? General or specific? The general understanding was very simple. I help them wherever I can, and when something comes up, I get

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compensated, whatever, but we talk about it then. It's a handshake.

Q. So what skill did you have or you believed you had which were marketable to MBB and which you employed at this meeting?

MR. SCHABAS: Your Honour, he's asked him before about what skills he thought he had and to MBB. That was the question that was specifically asked yesterday.

THE COURT: At this meeting?

MR. SCHABAS: Well, I submit it's just another way of asking the question again. It's the same thing. He's at the meeting. We've been -- we've spent many, many minutes asking about a meeting that as far as anybody knows, occurred sometime in the late 70s.

Mr. Schreiber has explained why he was there. I submit it's become repetitive. It just is indicative of what may be becoming abusive examination.

THE COURT: I wish we would move on, Mr. Bernstein. It's slow, it's laborious. This is a Preliminary Hearing. It's not a trial. It's.... I really would like us to get to the point and move along.

MR. BERNSTEIN: Q. At this time, who did you report to at MBB?

A. It would depend who was responsible.

Q. In the helicopter part of the business.

A. Mr. Pfleiderer. He's the father of the helicopter. He developed them after the war.

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Q. Did anything come of this meeting in Ottobrun with the Alberta delegation?

A. Oh, yeah. We went -- Mr. Pfleiderer and both -- Mr. Steinberg and Mr. Frostroff from MBB, they all went to Alberta and had negotiations with different departments. I mentioned this already to you the day before. There was a question whether we would be at the train there or whether acupuncture would be something for the hospitals, or perhaps helicopters for the mountain rescue people, or whatever. Could be. But look, this -- when the people were there and went to their meetings, most of the time I did not attend. I made introductions and left. I had other things to do. It was not my job to discuss technical things. Imagine all the companies I represented, if I would have been an expert in all of that, I would have been a universe monster. I mean I haven't seen a guy like that in my life.

Q. Did MBB sell any helicopters in Alberta as a result of this meeting?

A. Unfortunately, not. I think there were two divisions: One was Foster Steinberg for the military side, and he negotiated or discussed with the forces which had the place in Alberta. I was never part of that. Mr. Pfleiderer, as far as I know, spoke with the transport people about it, because they are involved in the rescue things and direct cost, and whatsoever. MBB had a special helicopter for that purpose: The BO 105, a wonderful helicopter. Imagine, you can fly loopings with that thing.

Q. Were there any sales?

A. Not to my recollection as far as I was aware.

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(Continued...)

Q. Apart from this meeting that we've talked about, what else did you do for MBB before 1982?

A. Oh, I -- I introduced them to other places in the world and they introduced me to other -- I mean when MBB people found an opportunity for my company, then they told me. This is the taking and giving. This is international business.

Q. So, what...

A. It could have been in Thailand, in Saudi, in Russia -- God knows where, Mr. Bernstein. I have so many activities. I cannot tell you all this, otherwise we have to sit back and I tell you a story for the next three days.

Q. My question was, as far as helicopters in MBB was concerned...

A. No, I saw...

Q. ...before 1982 -- let me just finish my question. As far as helicopters and MBB was concerned, what did you do on their behalf before 1982? Apart from what you told us.

A. Oh, I attended meetings regarding helicopters in Thailand, for example.

Q. Would Mr. Pfleiderer be at those meetings?

A. No. I was alone with another representative.

MR. SCHABAS: Are we now going to get into other countries?

THE COURT: Well, maybe so. I mean if you're going to object to every single question that's being put by Mr. Bernstein, I mean this would go on forever. I take it there was a

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general question about Thailand. I don't expect counsel to go on at great length about Thailand. I mean...

MR. SCHABAS: Well, I hope not, Your Honour. I'm trying not to object to every question, but when he starts getting into something that is just completely removed from our continent or even the European continent, I feel I have to, because I don't know, Mr. Bernstein does tend go into things in detail unless there's an objection.

MR. BERNSTEIN: Well, with respect, the purpose of the question was not related to Thailand. It related to his dealings with Mr. Pfleiderer.

MR. SCHABAS: Well, then why don't you ask him...

MR. BERNSTEIN: I did ask him.

MR. BERNSTEIN: Q. You had dealings with Mr. Pfleiderer?

A. No.

Q. No. The Thailand didn't...

A. No. Maybe they did later on get their own representatives down there. Could be.

Q. Did you have any other dealings with Mr. Pfleiderer apart from what you told us before 1982?

A. No. Not that I recall.

Q. MBB -- I do think this is a controversial issue. MBB established itself in Canada.

A. Yes.

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Q. That occurred March of 1984. More or less completed.

A. I have no idea.

Q. Did you participate in the establishment of MBB subsidiary in Canada?

A. No.

Q. Did you talk to Mr. Pfleiderer about it?

A. When?

Q. Before March 1984.

A. I think the first time I became aware of it was when Sinclair Stevens was in Munich, and discussed all the projects with Strauss: This was a helicopter company; it was Bear Head Industries; it was whether we would buy DeHavilland. It was -- maybe at that time, yeah.

Q. When would that have been?

A. Perhaps '84, '80 -- around '85. '84. '84-85. No, '85, I think.

Q. Well, was this before the plant was up and running, or after?

A. I thought you already asked. I've not the smallest clue when they built the plant, when it was. I've not the smallest clue. The next thing I heard about it was when I was in Ottawa, by chance that there was an opening of the plant, and that Mr. Brown would go there. This was all what I heard. You have to understand one thing, whether you like it or not. I was not involved in this and interested in this very much. I had the Bear Head Project, the 360 -- \$360 billion project market. This was my main goal and this is what I got paid for from Thyssen. This was all besides. This was no of importance to me.

Q. This meeting with Mr. Stevens...

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(Continued...)

A. Yes.

Q. ...in Munich.

A. Yes.

Q. It was before or after the opening of the plant in Fort Erie?

A. It had to be before.

Q. Okay. I'm just trying to figure out when in time it was.

A. Okay.

Q. And you were at that meeting?

A. Yes. In partial.

Q. Mr. Strauss was there?

A. Yeah. There were several meetings.

Mr. Stevens, I saw him in the hotel. I saw him with MBB and I saw him in Mr. Strauss's home.

Q. Was Mr. Pfleiderer there?

A. I would think when -- when -- when it was with MBB, I can't imagine that he was there but I have no clear recollection of that.

Q. What were you told then about the establishment of MBB subsidiary?

A. I was told nothing. I heard it only from the discussion.

Q. What do you recall of the discussion?

A. That they discussed all these projects. I think Strauss told me that they -- what's all on in Canada and what they are doing. There was agenda to discuss with Sinclair Stevens, but I wasn't even aware of this. I was -- what can I say? As I've told you, I've never see this thing and I never saw the people, I don't know what.

Q. Do you know Mr. Wittholz?

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A. Yes, I met him one or two times.

Q. When did you first meet Mr. Wittholz?

A. I am not sure whether it was somewhere by chance in an airport or whether it was in a visit in Ottawa, I can't tell you.

Q. I'm sorry. I didn't ask where. I asked when.

A. I don't know.

Q. Well, approximately, when? Before the plant was established? Before the plant opening...

A. No.

Q. ...or after?

A. No. No.

Q. After the plant...

A. Must been after. Because I -- I was mainly involved in business in Ottawa not before '85. End of '85-86.

Q. So you told us about your business in Alberta and now you mention, you said that you're mainly involved in business in Ottawa.

A. Yes.

Q. I'd like to ask you about that change.

A. About what?

Q. About the change.

A. Yeah. There would be established an office for Bear Head Industries and that was my place where -- where I worked.

Q. When did that happen?

A. '86, perhaps. '87. I can't tell you. My agreement with MBB is from '85 to -- maybe Thyssen is from

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'85. This is what I recalled. October '85. So, it must have been '86 or '87 or something.

Q. Now, there was a change in government in this country in the fall of 1984. Do you recall that?

A. Yes, but I was not around, so....

Q. Where were you?

A. I received a call in St. Tropez that the conservatives had won the election, or Scirocco.

Q. From who?

A. Mr. Scirocco. He was a parliamentarian, the head of the NATO Commission, and later on he became the president of the liquor Board in Alberta, and he was then also a member of the Board in one of my companies.

Q. Okay. Now, are were living at the time in Calgary, right?

A. Calgary, yeah

Q. Did you move to Ottawa?

A. Yes.

Q. When did you move to Ottawa? I don't mean your business. I mean you?

A. Oh, I -- I kept that place and I went back and forth for quite a while.

Q. When did you first get a place -- sorry. I can ask that question in a better way.

A. First, I rented the place.

Q. Exactly. You begin to spend more time in Ottawa.

A. Yeah.

Q. When does that start?

A. As I said, '86-87 I would say. In my recollection.

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(Continued...)

Q. And you begin by staying in hotels?

A. Yes.

Q. And then you rent a place?

A. No. I was first at the hotel, the Delta, because it was very convenient because we had -- in the office towers where our office is. Later, I had a place at Minto and then I bought the home in Rockliffe.

Q. Why the new focus on Ottawa?

A. Because, the government was there and the deal with Bear Head was purely government business with...and the government and the Minister of Defence.

Q. Who was who?

A. Hmm?

Q. That man's name was?

A. At the beginning, Mr. Coates and Mr. Erik -- I think it was Erik Knudson. There are too many ministers of defence. I've never seen a country with so many ministers, and in Ottawa. I think they had eight.

Q. Is that in your view good or bad?

MR. SCHABAS: Well...

MR. BERNSTEIN: All right.

THE WITNESS: Lousy.

MR. BERNSTEIN: All right. Sorry.

MR. BERNSTEIN: Q. What about your business interests in Alberta, who tended to them?

A. What?

Q. You told us your focus moved to Ottawa.

A. Yes.

Q. And you spent more time in Ottawa.

A. Yes.

Q. So who looked after things in Alberta?

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A. Well, I cannot -- cannot figure out this in a precise timeframe but because I sold them MLE, otherwise Mr. Bickey or Dickey, and other people would have been there in the real estate, but perhaps...

Q. How successful was your road marking and asphalt business at this time? When the government changed?

A. Well, it was -- it was not -- it was not that successful. It was still in the riding and I had another friend from Germany, a competitor from Hamburg and we agreed then that it's better when one company is doing the whole business. So I sold it to him, and because I had this other big project to do which was of more interest to me.

Q. When would...

A. And also in Germany. I never ran a day-to-day business on this road marking or road construction.

Q. When did the sale happen?

A. I don't know. I don't recall.

Q. Well, was it before or after the change in government?

A. Hmm.

Q. Was it before or after the change in government?

A. I have no idea.

Q. So in the fall of 1983, what line of work were you in?

A. I had business in Germany. I had business in Canada. Road construction, road marking, real estate, whatever. Name it. I don't recall what all I did.

Q. You've indicated road marking.

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A. Yes.

Q. Real estate?

A. Yes. Road construction.

Q. What else?

A. Consulting business. Consulting the government, setting up foundations in Costa Rica. All kinds of things.

Q. When you say consulting with the government, what do you mean?

A. These were a lot of foreign aid programs for example. I give you an -- I give you an idea. I was the representative for the government of Costa Rica, or Canada and for Germany to try to put deals together for the country. Financed by Foreign Aid. For example, this Lavalin, or whatever. So we see Madam -- what's her name? Monique Vezina. Yeah. With this deal, produces tracks and sells it to Costa Rica, financed from Canada. The German's sell locomotives, financed from German Foreign Aid.

Now, this has to be put together and then it works too. There is a Minister of Foreign Aid in Germany and then, of course, there are the minister in Costa Rica who immediately I got from Franz Josef Strauss to help to get it done.

Q. How did you align the work -- land the work from Canada? How did you get this job to act for Canada?

A. From Costa Rica. I had all this Canadian delegation there and I had my diplomatic passport and whatever you want.

Q. You had a diplomatic passport?

A. Yes.

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(Continued...)

Q. For...

A. Yeah, and the credentials to increase the trade balance between Canada and Costa Rica and with Germany. And that's a special reason because the Nicaragua crisis was on, and I was heavily involved in that.

Q. In the Nicaragua crisis?

A. Yeah, but I'm not going to go into that.

Q. Okay. And I'm not actually going to ask you about it.

A. But I can tell you that Oscar Arias finally got the Nobel Prize for the work we did, and I'm very proud of that.

THE COURT: Can we move on, please?

MR. BERNSTEIN: Yes.

MR. BERNSTEIN: Q. You mentioned Mr. Moores.

A. Yes.

Q. Can you tell us what you know about how Frank Moores came to act for MBB?

A. Well, Mr. Pfleiderer asked me one day that he would be interested to speak to people in Ottawa -- I think to the Minister of Defence -- and that they were looking for somebody representing their interests and whether we could coordinate that, because by that time I was heavily involved in a special project around DeHavilland where I used to be a consultant under President Bannock. And so -- and he asked me about Frank Moores because there was a book on the market about the most successful lobbyist in Canada, and Frank Moores was at that time a member of the Board of Mercedes Daimler Benz. MBB and Daimler Benz are very close, so the question was do I

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know Moores? Yes, I know him. So I recommended him to GCI.

By that time, it was not GCI. It was Moores and Alta Nova. I think the company started that way. So he came to Canada and he saw Moores and he saw Coates, and that was it.

Q. So this conversation you told us about, did it happen in person or on the telephone?

A. Mr. Pfleiderer?

Q. Yes.

A. I can't say. Could be the one or the other.

Q. Now, you told us in part what Mr. Pfleiderer said to you.

A. Yeah.

Q. Can you tell us what you told Pfleiderer?

A. Well, I told you already that Pfleiderer and all the other people from MBB were involved with me for a long time in Alberta, and now it moves to -- to Ottawa to the Minister of Defence or -- there was nothing to tell.

Q. Did you discuss Mr. Moores's background?

A. Yeah, I'm sure I did.

Q. In what way?

A. That he was -- used to be the Premier of Newfoundland and that he is a hell of a humorous guy.

Q. He's what?

A. A very humorous guy.

Q. Was there any -- you've made reference to a book. Who raised the issue of the book?

A. Mr. Pfleiderer.

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Q. What do you recall Mr. Pfleiderer saying to you about this book?

A. That there is a book on the market about Mr. Moores. I haven't read it. I haven't seen it. And on top of this, I didn't care.

Q. But what did he tell you about the book?

A. That there -- that Mister -- that the name Moores is mentioned as the most successful lobbyist. I think it came from, by the way, from Mercedes Benz, as I told you, because Moores was on the Board there.

Q. Did you discuss Mr. Moores's background in the Conservative Party?

A. I don't recall. I don't think so. I might -- I might have told him on one occasion, but when that was, I cannot tell you. For sure when they -- when they met here with -- as I told you, Mr. Coates was the president of the Conservative Party then and Mr. Moores was a conservative, the president of Conservative Party. I knew -- don't know who else was the president of the Conservative Party but there were conservatives and they discussed.

Q. Now, you told us about a little meeting or some sit down at a restaurant or the cafeteria on Parliament Hill with the German delegation and a Canadian delegation. Did that -- I'll call it a sit down. Did it happen before or after this call you told us about?

A. Oh, no. This was long before, because this was when the conservatives were in opposition. I told you that.

Q. So, Pfleiderer already knew the background.

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A. Of what?

THE COURT: Don't ask this witness about what he already knew.

MR. BERNSTEIN: No. I won't ask this question.

MR. BERNSTEIN: Q. So this sit down was from before, right?

A. Yes.

Q. Pfleiderer comes to Canada?

A. Yes.

Q. Do you meet him or talk to him when he arrives?

A. When he was in Canada?

Q. Yeah.

A. Sure.

Q. During this visit?

A. Sure.

Q. Okay.

A. Let me -- let me -- let me be careful now. I say "sure," but I'm not that sure anymore. I think he was two or three times here and I may mix up the meetings. It could be, it could be not.

Q. Well, I'd like to just go through them as best we can. Okay? Pfleiderer...

A. For sure he came...

Q. Pfleiderer meets Moores, right?

A. Yes. That's it.

Q. And do you recall whether you were -- well, were you aware that he was planning on coming and meeting Moores?

A. I'm not sure. It could be that he went to the States and then hopped over to Ottawa and met Moores,

or whether I was around when he came the first time, I can't really -- I can't really say this anymore.

Q. What kind of business was Moores in at the time?

A. He opened this Alta Nova and the -- and the follow one was company called, GCI, Government Consulting International. And that means he represented companies. And you know, this is something you don't have this in Germany this way. I think you would call it a lobby, lobby company or lobbyist company or something.

Q. This would have been in the fall of '84 into the beginning of 1985 that these companies...

A. I don't recall. It must have been after the conservatives came to power. I mean, otherwise, he would not have been there.

Q. Why do you say...

A. In my opinion.

Q. Why do you say that?

A. Because he lived in -- he lived in Montreal, and as far as I know, in Newfoundland and then I think he rented an apartment in Ottawa...

Q. When you say "must have been after the conservatives came to power" what did you mean by that?

A. That I don't recall what years stand before he was the premier in Newfoundland. I don't -- I don't know when he stopped that work there. Yeah, it must have been the late '70s. Perhaps, he was already there and I may not recall it. For sure, I had nothing to do with Alta Nova.

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Q. Now, at the beginning of the relationship between MBB, yourself, and Mr. Moores, did you talk to Moores about MBB and Pfleiderer?

A. For sure.

Q. Tell me about those discussions, the beginning discussions.

A. Well, I would have -- for sure, this is not more than logic.

Q. I know but unless you tell me, we don't know.

A. I don't recall but I assume that I said, "Look, Pfleiderer, the guy from MBB, is looking for a representative and he is interested to meet the minister of defence, and I have told him he should contact you." That is a normal introduction.

THE COURT: I don't want you to speculate so much, sir, as to tell us what your memory is of these events...

THE WITNESS: All right. Thank you.

THE COURT: ...the ones that he is questioning you about. If you don't know, you don't know.

THE WITNESS: Yeah.

THE COURT: If you do, then tell us, please.

THE WITNESS: Okay.

MR. BERNSTEIN: Can I just have a minute, Your Honour.

MR. BERNSTEIN: Q. So, Moores begins to represent MBB.

A. I don't know.

MR. SCHABAS: Well, Your Honour, shouldn't he wait -- I mean, shouldn't he ask him those

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questions? I mean he's now leading him. It's not necessarily an issue of dispute, but I don't think my friend should be leading him.

MR. BERNSTEIN: He said he...

THE COURT: Put your questions as questions, please, sir.

MR. BERNSTEIN: Well, excuse me, Your Honour?

THE COURT: Put them as questions. For example, you could say, "Well, it's my understanding that at this point such is such was the situation. Do you agree or disagree? Or something like that, even though that might be to some extent leading to the extent that it relies on evidence previously given as permissible, but rather than make statements, in view of Mr. Schabas's concern about the leading nature of your questions, put them as questions if you would.

MR. BERNSTEIN: Yes. Just one minute, Your Honour.

MR. BERNSTEIN: Q. Does a relationship develop between Moores or Alta Nova and Pfleiderer?

A. Hmm?

Q. I'll start.... Does Pfleiderer meet...

THE COURT: Well, let's go back to the original question -- it's a perfectly good question -- and see what he answers. He just didn't understand your question, I think.

MR. BERNSTEIN: Q. All right. Does a relationship develop between Pfleiderer and Moores?

A. As far as I recall, yes.

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Q. As far as you recall, are there meetings with ministers?

A. Hmm?

Q. Are there meetings with ministers? As far as you recall, are there meetings with ministers?

A. Yes. I was aware that he was with Mr. Coates, and I think he -- well, now, it's again was it this meeting or another one or the next one. He went several times here and for sure with Sinclair Stevens.

Q. Do you recall negotiations with Mr. Moores and yourself and Mr. Stevens concerning MBB Aerospace activities in Canada?

A. Mr. Moores, Mr. Stevens and I?

Q. Concerning MBB Aerospace activities in Canada.

A. Yeah, I think it -- around DeHavilland, yes.

Q. Do you recall the -- do you recall -- do you recall these discussions including....

MR. SCHABAS: Well, Your Honour, why doesn't he ask him to elaborate on the discussion rather than leading him.

THE COURT: What the discussions were about.

MR. BERNSTEIN: Q. Do you recall what these discussions -- well, no. I wasn't -- okay. Do you recall what these discussions were about?

A. Which one.

Q. The ones you just referred to.

A. No, I can only guess. There were only two projects in the air, what he wanted. I don't know what was discussed.

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Q. Okay. I'd like to show you a letter.

MR. SCHABAS: Just put it up on our screen first, please.

MR. BERNSTEIN: Document No. 21059. This is a letter from Mr. Pfleiderer...

MR. SCHABAS: Just a minute, Mr. Bernstein.

MR. BERNSTEIN: Well, it's up on your screen, so the first thing...

THE COURT: Well, just a moment, please. Just a moment. I'd like to bring it up on my screen as well.

MR. BERNSTEIN: This is Document No. 21059.

THE COURT: Just give me a moment. Yes, Mr. Schabas.

MR. SCHABAS: Well, Your Honour, I'm mindful of your comment yesterday of what's gone for much of this Preliminary Inquiry with Mr. Bernstein putting letters in front of his own witnesses and then asking them if they agree with things. He's asked the witness questions about his recollection of things, and he's frankly acknowledged that he doesn't have much recollection and would be guessing about things. It's not surprising. In my submission, I don't know -- it would seem to me he's going to do that for the same purpose here. It's not a letter to or from, Mr. Schreiber. There's not even a -- I don't know to what purpose he would be putting it to him, other than to lead him.

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MR. BERNSTEIN: I don't intend to lead the witness on this. I intend to refresh the witness's memory, if it assists in refreshing his memory, in a manner consistent with Your Honour's view as expressed in a similar topic yesterday.

THE COURT: Well, the witness was refreshing his memory, obviously, yesterday, by a letter which he was the author. Here we have a letter from one individual to another which refers to certain activities involving Mr. Schreiber. Is he allowed to refresh his memory? I know we've had a previous discussion about *R. v. Fliss* and things of that nature, and what you can refresh your memory from. I'm just wondering about the legitimacy at this point in time with refreshing memory from someone else's memorandum in relation to which he is neither the addressee or writer.

MR. BERNSTEIN: That is the issue, Your Honour. We have had discussions about *Fliss* before and in my respectful submission, I handed up a copy of *Fliss*, and in my respectful submission, on the basis of *Fliss*, a decision of the Supreme Court of Canada, a refreshing of a witness's memory along the lines of that which is proposed here now, accepting that the document is not a document which this witness either authored or received, but is a document which on its face refers to a conduct which -- at least the

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document says on its face he participated in. In my submission, *Fliss* is authority; a Supreme Court of Canada authority for the appropriateness of what is proposed.

In that regard, I respectfully draw your attention to paragraph 45 of *Fliss*.

THE COURT: I've read it. Well, we've had this out before, Mr. Schabas.

MR. SCHABAS: Well, Your Honour, I guess I have two comments on this. One is, we don't know what this document is. It's not an exhibit. It's not been identified by anyone, and the same thing I gather came up -- and Mr. Wong tells me that this was something that may have been put to Mr. Moores, and he couldn't identify it. It wasn't made an exhibit in these proceedings, and more to the point, Your Honour, Mr. Schreiber gets mentioned in the first sentence of the letter and never again. And then it's a bunch of things that Mr. Pfleiderer seems to be choosing to tell the recipient of the letter. So it's not even referencing specific things that may or may not have been said in Mr. Schreiber's presence at all. And he's been asked. He's been asked for than once about these conversations and what he recollects, and he's given his answer. I submit that this document -- especially being unidentified and clearly on its face nothing

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-- a document that he had nothing to do with nor is it purporting to summarize or in any way -- in any way summarize what went on in Mr. Schreiber's presence would be of no -- it's not an appropriate thing to try to refresh his memory on. He's trying to lead...

MR. BERNSTEIN: Your Honour, I had asked him...

MR. SCHABAS: ...him onto new topics.

MR. BERNSTEIN: No, no. I asked the witness, does he recall, and I asked the court and Mr. Schabas to take note of the first sentence of this letter. I've asked the witness whether he recalls participating in negotiations with Mr. Moores and Mr. Sinclair...

THE COURT: Stevens.

MR. BERNSTEIN: ...Stevens concerning -- and I -- the exact -- used the words "concerning the MBB aerospace activities in Canada." That's what I want to refresh the memory on.

MR. SCHABAS: And he's given his answers as to what he recalls and what continues.

MR. BERNSTEIN: He said he couldn't recall.

THE COURT: That's right. And what this letter goes on is Mr. Pfleiderer's own representations. It's not referring to anything that was discussed by Mr. Schreiber, other than in the first sentence. This is something new.

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If you go to the second paragraph, this is what Mr. Pfleiderer would like to talk to people about. It's not necessarily anything that Mr. Schreiber was involved in or mentioned.

THE COURT: Mr. Shaw advised me that this is a bit of *déjà vu* and the court allowed. We've had this argument in connection with Mr. Moores and the court allowed me to put...

THE COURT: What was it that was produced to Moores?

MR. SHAW: If I could -- if I could assist, this is document 21059, and in the transcript of October 8 of the examination, this document was put to Mr. Moores and he was asked to comment on it at page -- starting at page 61, and subsequent of that. And I know there had been -- and we'd already litigated *Fliss* on the ability to use hearsay and other documents and a song or anything that will trigger memory. I'm not quite sure what sequence that took place, but this exact page, the Goto Page 2, was put in, at least a couple of pages of transcript, 61 and 62 of Mr. Moores commenting upon. I'm happy to read those out and I'm sure Madam Reporter would be happy to provide them to the court.

THE COURT: So it was this very document that was put to Moores.

MR. SHAW: This exact same document, yes.

THE COURT: And...

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MR. SHAW: And that's page 61, 62, and 63 of October 8.

THE COURT: For the sake of consistency, I'm going to allow this to be put to the witness, but it may not have a great deal of weight in view of the manner in which his memory is refreshed.

MR. SCHABAS: Your Honour, could I just have a moment to look at the transcript, because I'm not seeing the argument at all.

MR. SHAW: I can indicate I wasn't sure what the sequence was. I know *Fliss* was raised. I also know that this document was put without objection to Mr. Moores.

THE COURT: I'm sorry. I'm not understanding. Are you saying that this was the subject of the debate we had about *Fliss* or...

MR. SHAW: I'm trying to locate that. I can't see it right around this particular topic, but I can indicate to the court that this document was put to him and...

THE COURT: Why don't I break now -- it's twenty to one -- and you can have a look at it and we can elucidate that before I -- I'm sorry, I began making my final ruling perhaps without complete knowledge of the circumstances which led to this exchange previously. I'll hear from you again at two o'clock this afternoon.

MR. SHAW: Thank you.

MR. BERNSTEIN: Thank you, Your Honour.

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(Continued...)

COURT REGISTRAR: Court is in recess.

R E C E S S

(11:45 a.m.)

U P O N R E S U M I N G:

(2:15 p.m.)

COURT REGISTRAR: Court is now reconvened.

Please be seated.

THE COURT: Good afternoon.

MR. SHAW: Your Honour, if I might address the court, it was a wise move to enable us to look at the transcript on this particular issue. I can put it in a nutshell. This specific document was put without objection to Mr. Moores and he was asked a number of questions upon it. Two documents later there was an objection to another memo being put to Mr. Moores about a meeting, a memo not by Mr. Moores, and it was on that document that the argument of *Fliss* was made and the ruling was that we could continue, and then Mr. Bernstein was then enabled to ask further questions.

Just to put this in context, if you look at the screen -- Madam Reporter suggested instead of printing it up we could do it electronically, and so I'm happy to oblige. I think it was an excellent suggestion. If you look, you'll see there -- this is a question

-- the transcript of October 8, 2003, the examination of Mr. Frank Moores, and the question is by Mr. Bernstein:

"QUESTION: All right. I'm wondering if we can take a look at a few documents, sir. And in particular, Document 21059. That's..."

And then he gives it again, "Yeah. I see..." I'm not going to read it out but I'll just have the officer scroll through the sequence of questioning. When Your Honour is ready, I'll continue.

THE COURT: Go ahead. Okay. Continue. Yes. Okay. Go ahead.

MR. SHAW: Then we're back at the same document, and then if you just scroll down a bit further; Staff Sergeant, you'll see that's the end of the -- keep going. That's the end of the questioning on that document, and then you're onto another document. And then, the objection is made in relation to -- and the officer can just search for this -- in relation to that document number. Sorry. Document 20839.

To put you in context, I've asked the officer to also be able to show us that particular document. Goto Page 13 was the issue. This was an internal government memo that

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(Continued...)

Mr. Moores is obviously not an author of.

There is an objection by Mr. Schabas...

MR. SCHABAS: Your Honour, I'm cautioned the witness is here and he's looking at all of this and I'm not sure that that's appropriate.

MR. BERNSTEIN: I'm sorry. We'll put it back. We'll put back on the other screen. That's fine.

MR. SCHABAS: I'm not sure anything turns on it but I mean the whole point is he is now doing this in front of the witness and I think...

THE COURT: Okay. It's been cut off. He understands what you're saying and he's done it.

MR. SHAW: I thank Mr. Schabas for that reminder and if I could just get it enlarged so that you can see better. That was the subject of the objection and your ruling on that was in light of *Fliss*. And the passage that was read to you by Mr. Bernstein was at paragraph 45 of *Fliss*, which had been brought to your attention, which allows even hearsay or totally inadmissible evidence to be used to refresh. And your ruling...

THE COURT: I can recall my ruling and I recall my reticence and...

MR. SHAW: I think there was an expression of surprise by those in the courtroom that the law had evolved at this point, but there was no doubt that even on that memo there was, in

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light of *Fliss* -- I have your ruling up on the screen. In light of *Fliss* there was an ability to use the document in that way.

So this document was put to another witness without objection on a document that may even have been more remote. There was a ruling in light of *Fliss* in our favour, and in our submission the objection should be rejected and we should be able to in the same way put this to Mr. Schreiber.

THE COURT: I suppose, before I hear from you Mr. Schabas, my general concern is that that statement in *Fliss* is so broad that one could put anything to a witness, right?

MR. SHAW: And the rationale behind that is because what the...

THE COURT: It's not being made an exhibit. It's the witness's memory that's important but...

MR. SHAW: Exactly.

THE COURT: ...assuming that -- and this may be an extreme example -- that you put before the witness a memorandum of yourself to Mr. Bernstein, saying, "We expect the witness to say such and so, because our understanding is that such and so happened at a particular time and that this was the sequence of events, and we're going to put that to the witness," and if it jogs his memory, then so be it. It's not the document. It's the -- and so, if

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we take it literally, Justice Major's statement, then that is perfectly permissible. I have real concerns about that, because in my respectful submission some circumstances it may amount to the most blatant form of leading of witnesses.

MR. SHAW: Your Honour, I'm happy that we're not in that situation, but I will say that the case of *Fliss* itself arose in extreme circumstances. In *Fliss*, the trial judge excluded intercepted tapes on the basis of an improper authorization. The officer testified, refreshing himself from notes made from that excluded intercept. So, it was an extreme case in that particular case but we are, thankfully, not anywhere near that level.

THE COURT: But these were notes -- this was what, a typewritten or a transcript of a videotape?

MR. SHAW: It was an transcript of an intercept.

THE COURT: Of an intercept. In which the officer was a participant. Was that intercept proven?

MR. SHAW: Sorry?

THE COURT: Was the intercept proven? Was there...

MR. SHAW: The intercept was excluded.

THE COURT: I understand that...

MR. SHAW: The tapes were excluded as an...

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THE COURT: The tape was excluded but was the maker of the tape in court to authenticate the tape? You see, this is another problem I have is authentication. You're just producing a letter. That letter has never been made an exhibit. I have no reason to doubt that the people to whom it was intended and the writer were real people, but nobody has authenticated or identified the document. It's just something you've pulled out of your bag. I am just wondering if we are going to argue by analogy, if in *Fliss* someone proved in an evidentiary way, the original transcript and tape.

MR. SHAW: I accept Your Honour's concern. My understanding is that there is no dispute that this is the document at the Preliminary Hearing, but that this is the document that it is. It's not a fabrication or a falsehood or an inaccurate image of the document that it is.

THE COURT: No. It just hasn't been proved at all, I take it.

MR. SHAW: It hasn't been proved but one does not expect an item that refreshes memory to be proven. The point of refreshing memory is to avoid having to prove an externality to the process. The point of refreshing memory is to get this witness to be able to recall things already in their mind, and so the issue proving the external refreshing source is not

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a concern and indeed the court says the stimulus may be largely inaccurate in fact, and that may be put to them. So, we're not on an obligation obviously to prove inaccurate things, and yet, those can still be used to refresh memories.

I think there's a more immediate point here which is Mr. Schabas was aware of it all the time. He's not an individual who hesitates making objections. That document was put to Mr. Moores who, vis-à-vis, the document is in the same status of Mr. Schreiber, not an author of it, and there was questioning upon it. It creates an unfortunate dichotomy of if Mr. Schabas without objection allows the one witness to consider it with respect to refreshing memory and the second witness...

THE COURT: Oh, I would find...

MR. SHAW: ...doesn't.

THE COURT: ...that argument not to be convincing. If something through inadvertence goes in, and then the lawyer determines that he ought to have objected, and then objects, I don't think he can be estopped from doing so because he didn't do it the first time.

That's not the issue here, I don't think, and I wouldn't put any weight on that aspect of it. All right. Thank you.

MR. SHAW: Thank you.

THE COURT: Mr. Schabas?

MR. SCHABAS: Yes, Your Honour, I don't have a lot to add in light of Your Honour's comments. I think one of the fundamental distinctions here and which was one I made before lunch is that this document doesn't even relate or provide details of what was discussed and what they are trying to have him recollect. So, it is just simply a form of leading. They're just taking something and trying to put some topics together. He was asked whether he recalls the discussions and he said yes, and he said they were around DeHavilland. And now, they want to put something that somebody else, apparently, has written in which they are raising some questions with Mr. Stevens. The letter that they wish to put in front of him, doesn't say: "I refer to the discussions with Mr. Schreiber and Mr. Moores at which you discussed the following topics." It just doesn't say that. That was the distinction, too, and Your Honour is quite right with your reticence and you've seen, of course, your ruling, too, so -- as I read it over lunch as well. What was allowed to happen in light of Your Honour's ruling was Mr. Moores was shown Minutes of Meeting at which he was present. It's a fundamental difference.

I submit we are down a very slippery slope, if we can just put in something else where

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somebody else raises some other topics.

That's my submission.

THE COURT: Thank you. Well, I don't think that there is a fundamental difference between what we're dealing with now and what we were dealing with, previously. This is someone's report relating to a meeting at which Mr. Moores was present and -- hold on. Maybe I'm overstating it.

This isn't -- no, I'm sorry. I take this back. I should have re-read it. This refers to not a meeting, I take it, Mr. Shaw. It's referring to general negotiations, right? Does it refer to a specific...

MR. SHAW: Your Honour, I'm sorry to belabor the point. The point is not that...

THE COURT: Am I reading the wrong document here? I'm sorry. I'm looking at...

MR. SHAW: It should be a document with all small letters. There's no capitals because it's a telefax.

THE COURT: Yes, yes. Yes, yes. That's the one, okay.

MR. SHAW: And the point is not that we're seeking to salvage what's in the letter or that the letter needs to be proof of a particular thing. The point is simply to refresh the witness's memory with respect to his involvement in a particular endeavor. And it may or may not succeed in refreshing his

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memory, and if it doesn't then it's not
admissible for any purpose but it's not --
it's just for the purpose of refreshing
memory.

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RULING

BELANGER, J. (OCJ): (Orally)

I do find a significant difference between this document and the one we dealt with previously. The one we dealt with previously involved a recording in minute form of discussions which had occurred and where the witness was physically present, and it was to refresh his memory as to what was actually said at the meeting.

This letter is a general letter referring to negotiations between the addressee and Mr. Moores and the witness. It goes on to discuss a variety of other subjects and if it were only to refresh the witness's memory as to whether or not negotiations occurred, I think I might be tempted to say *Fliss* applies.

My concern here is, as I mentioned this to counsel before, that there is a significant aspect of the production of this document to

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the witness which may be construed as leading the witness -- this is a Crown witness -- into giving evidence about certain things. I do not know whether the Crown intends to or not, but seemingly it appears to me to be giving the witness answers or attempting to orient his answers in a particular way.

In other words, if the document is being produced, only for the purpose of confirming negotiations, then I do not see the necessity of putting the entire document to the witness to begin with -- only the first three lines are sufficient. To go further, in my view, would be leading the witness here, and I do see a fundamental difference between this document and the situation that prevailed when Mr. Moores was in the box.

If you want to refer to the address, or if you want to refer to the beginning of the letter and you want to show the witness only lines one, two, and three, to that extent I

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would have no objections, but I am sufficiently concerned with the remainder of the content of the letter that I will not allow you to show the witness anything more than what I have indicated. That is my ruling.

THE HONOURABLE P.R. BELANGER
ONTARIO COURT SENIOR JUSTICE

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MR. BERNSTEIN: Thank you, Your Honour. I think from a technical point of view, we'll see if we can on the screen...

THE COURT: Well, you can just put it on paper maybe, and blank out the rest or something like that.

MR. BERNSTEIN: I think the officer has done it. I think we can actually do it electronically, if it please the court.

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

EXAMINATION IN-CHIEF BY MR. BERNSTEIN: (Continues...)

MR. BERNSTEIN: Q. Okay. Mr. Schreiber, can you just look away from the screen for a second. Don't peek. All right. Okay.

THE COURT: Are you satisfied with that Mr. Schabas?

MR. SCHABAS: That's fine, Your Honour.

MR. BERNSTEIN: Thank you, Staff Sergeant.

MR. BERNSTEIN: Q. We have here in part a telex to Mr. Stevens.

MR. BERNSTEIN: Just a point of clarification, Your Honour. Forgive me if you've made this clear and I've forgotten. Is it okay to tell the witness who wrote the letter?

THE COURT: Yes, yes.

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MR. BERNSTEIN: Q. A telex from Mr. Stevens. Excuse me. To Mr. Stevens from Mr. Pfleiderer, dated October 15th, 1984. I direct your attention, sir, to the three lines under the heading "Dear Sir". Do you see that there? This is a telex.... I asked you earlier whether you recall at this time participating in negotiations with Mr. Frank Moores and Mr. Stevens concerning the MBB aerospace activities in Canada, and you couldn't remember. Does this assist in refreshing your memory?

MR. SCHABAS: That's not quite right, Your Honour. That is not an accurate description of what Mr. Schreiber said before lunch. He did recall something and he recalled one specific topic. I'm not even sure why we had to go to this.

THE COURT: Well, his answer was yes, around DeHavilland, I believe.

MR. SCHABAS: Right.

THE COURT: Was that his answer?

MR. SCHABAS: That's right. That's exactly right.

THE COURT: That was his answer.

MR. BERNSTEIN: Q. Well, okay.

A. Well, to make it...

THE COURT: Yes, sir. Go ahead.

THE WITNESS: To make it simple. I don't recall any special meeting with Sinclair Stevens, Frank Moores, and myself negotiating anything on behalf of MBB. I don't. I don't know what he means with

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this. If he means this is -- that this goes back to the meeting in Munich or what, but this is the 15th of October, 1984.

Well, and as I said earlier, the only thing I recall where I was involved was the DeHavilland thing in MBB, and that was a very special and very exciting project which I didn't mind but I don't know what else he's discussing here.

MR. BERNSTEIN: Q. Okay. I'd like to change the topic and I'd like to move from 1984 forward in time a bit, okay? Okay. I want you to think now about 1986, okay? 1986.

A. Okay.

Q. Did you cause money to be transferred to Mr. Moores or someone affiliated with Mr. Moores in 1986?

A. You should be more specific because I could have transferred money for him for a dozen different purposes, so what are you asking for?

Q. I'm asking you, did you cause money to be transferred to Mr. Moores in 1986?

A. And I ask you again, if you have anything specific in mind on money? I could have transferred money to him in different ways, yeah, could be. For personal purposes, or what are you asking?

Q. I'm just asking the question and then I'll ask another question. Did you cause money to be transferred to Mr. Moores in 1986?

A. Well, if you speak about this case, then the answer is yes.

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Q. Can you recall offhand all the particular details surrounding all of that activity?

MR. SCHABAS: Your Honour, I'm not sure that's a fair question to ask someone in a direct or a cross-examination. I think if Mr. Bernstein wants to ask him what he remembers, he should do it that way. But to say "Can you remember it?" and he says yes or he says no, I mean how is that a helpful question. It's not a fair question to ask any witness.

THE COURT: I suppose it is an extremely broad question and the answer is simply no. I mean, I'm sure that at the remove of some 20 years, the witness can say "No, I can't remember all of the details." It doesn't advance...

MR. BERNSTEIN: Well, with respect, I find myself in a situation where we're in a situation now where Mr. Schabas basically objects to every question I ask, and they started off as being objections on the basis of leading. I've been asked to be very careful and to properly refresh the memory. When I try to do that, Mr. Schabas stands up and objects that they are too broad. I am asking a question. I anticipate the answer will be, "No, I can't remember all the exact details," and then I will proceed...

MR. SCHABAS: Well, then why ask him?

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THE COURT: Well, if that's what you anticipate, why don't you say, "Can you remember any?" "Can you tell us any of the details you remember?"

MR. BERNSTEIN: Well, I...

THE COURT: That's fair. I mean, but otherwise, it's a useless question, I suppose, because it's so broad that the answer must necessarily be no.

MR. BERNSTEIN: And I can then move on to refreshing the witness's memory.

THE COURT: Not necessarily.

MR. BERNSTEIN: Not necessarily. Depending on the answer.

THE COURT: Well, let's just narrow it down slightly, Mr. Bernstein. Ask him if he remembers any of the details and what those details were, but to ask him what all of the details were, I don't think any -- I couldn't answer all of the details of what I did this morning. All of them in every detail. And that's the way you put your question. I think that's the purport of the objection.

MR. BERNSTEIN: All right. And I will do this. I will ask another question, but with respect Your Honour, I would be -- it would be my intention to proceed in an orderly fashion through this particular area to assist the court and so that there be a clear record of the witness's evidence. So,

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rather than collecting up details out of order, I'd like to proceed one step at a time through this.

THE COURT: I've made a suggestion to you about what your first step should be. I don't disagree that the first question is one which no normal human being could possibly answer, but let's not waste anymore time.

MR. BERNSTEIN: Q. Do you recall details respecting a transfer in February 1986?

A. No.

Q. Do you recall traveling with Mr. Moores to Europe in 1986?

A. No. Travelling to Europe, no.

Q. Do you recall...

THE COURT: Did you traveling in or traveling to?

MR. BERNSTEIN: I meant to say in. I may have said to, so...

THE COURT: I wrote "in" so I just want to be sure we're all on the same...

MR. BERNSTEIN: Yes.

THE COURT: Do you recall traveling in Europe in 1986 with Mr. Moores?

THE WITNESS: Could be.

MR. BERNSTEIN: Q. Do you recall being in Zurich with Mr. Moores in the beginning of 1986?

A. I cannot say now whether it was in the beginning of 1986, but yes, I met Mr. Moores in Zurich.

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Q. Do you recall the first of those meetings?

A. What please?

Q. The first of those meetings.

MR. SCHABAS: That suggests there was more than one. He could have asked him if there was more than one. I mean...

THE WITNESS: I don't know.

MR. BERNSTEIN: I'm wonder -- well, I was going to have another... I'd like this document pulled up on a screen other than the witness's if that's possible. Document 6325, Goto Page 33/45. 43. 33 to start off with.

All right. Does Your Honour have that document up on your screen?

THE COURT: Yes, I see it.

MR. BERNSTEIN: This is an exhibit. An exhibit put in through Mr. Moores. Your Honour may recall the examination as it relates to this exhibit, and the information on here.

THE COURT: Did that arise out of Moores' evidence or out of his accountant's?

MR. BERNSTEIN: Moores' evidence. And his accountant's, but it was put in through Moores and Moores testified in respect of it. It represents certain calculations respecting travel expenses incurred by Mr. Moores, and Mr. Moores testified at some length in connection with the visits and

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activities which these travel expenses relate to. I, specifically, would like to refresh this witness's memory in respect of the entry on this page of February 3, 4, Zurich.

MR. BERNSTEIN: Q. Do you see that there?

THE COURT: To me, this is more *Fliss* like if I can use that colloquial.

MR. SCHABAS: It may be, Your Honour, except Mr. Wong and I are just trying to recall the nature of Mr. Moores' own evidence on some of this. As I recall -- I'm not sure whether Mr. Moores -- I just don't know.

Mr. Bernstein tells me Mr. Moores was taken to this particular passage.

MR. BERNSTEIN: Maybe Mr. Schabas can refresh his memory from the transcript.

MR. SCHABAS: Thank you for that suggestion, Mr. Bernstein. I can do without it. Your Honour, could I just have a moment?

THE COURT: Sure.

MR. SCHABAS: We're just checking something. Your Honour, Mr. Wong advises me that, actually, the pages from this document that have been exhibited were made as a hard copy exhibit.

MR. BERNSTEIN: Both. Both.

MR. SCHABAS: Which pages?

MR. BERNSTEIN: Well, both.

MR. SCHABAS: Just a moment.

MR. BERNSTEIN: Your Honour, while

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Mr. Schabas is finding that, amongst other places, the transcript of Mr. Moores's evidence respecting this is...

MR. SHAW: Your Honour, if you could go to the transcript of October 9th, at page 69 and, Mr. Bernstein says,

"QUESTION: And if we go to Tab 10, and in particular we go to page 33 of Document 6325...and could I have a paper copy...

ANSWER: Thanks."

And I'm going to page 33, which is up on the monitor, right -- and you can see if we just scan down the document a bit, and we see on October -- let's pull up the bank statement. I think we were operating two documents in parallel. I'm sorry.

MR. SCHABAS: No. The bottom of the page deals with October.

MR. SHAW: Yeah. There's a reference to Zurich and dinner with the -- I don't want to give the witness more than would be on...

THE COURT: No.

MR. SHAW: ...the screen, but and lunch with -- I'll just read it out if there's no objection.

MR. SCHABAS: Just a moment.

THE COURT: Well, just hold on. Just hold on a minute. If there is a paper exhibit -- can you find it Madam Clerk? Do you know -- do you know what the letter is or number?

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MR. SHAW: It would be in a tabbed exhibit. There was a hard copy. It's a thick tabbed...

MR. SCHABAS: In ours, for some reason it says 16325-B, I believe.

MR. SHAW: We had an electronic and an accompanied paper exhibit. The paper exhibit became Exhibit B.

THE COURT: Tracy, give it to counsel and they'll find it for you. Not Tracy. I'm sorry. Lindsay.

MR. SCHABAS: So, Your Honour, it has been made an exhibit and I thank my friend for drawing my attention to the specific passage. I take Your Honour's point, it is perhaps more *Fliss* like, or less un-*Fliss* like than the last one which you excluded. However, I'm mindful of the fact, Your Honour, that this is a document by somebody else simply referring to -- as I recall Mr. Moores' evidence -- his attempt to reconstruct events 15 years or more after they took place without any supporting documents of his own. So, it's a very questionable utility on it's own. So that's my point.

THE COURT: I think that goes to weight more than process. I'll allow the document...

MR. BERNSTEIN: Thank you, Your Honour.

THE COURT: ...to be shown to the witness.

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MR. BERNSTEIN: Can we put this up on Mr. Schreiber's screen.

MR. BERNSTEIN: Q. Mr. Schreiber, we have here a document which reflects travel expense information relating to Mr. Moores's travels in 1986. Okay?

A. Yes.

Q. And I direct your attention to...

MR. SCHABAS: Your Honour, I think Mr. Schreiber should be told the nature of this document.

THE COURT: I have no problem with that. I think Mr. Bernstein can do that. That's not a problem, is it, Mr. Bernstein?

MR. BERNSTEIN: No. Fine.

MR. BERNSTEIN: Q. Okay. This is a report drafted by Mr. Moores's accountant on...

A. Um-hmm.

THE COURT: I said nothing.

MR. BERNSTEIN: Q. On Mr. Moores's instructions from information received from Mr. Moores and from and/or his secretary.

A. Um-hmm.

Q. Which was prepared in connection with a voluntary submission to Revenue Canada.

A. Um-hmm.

Q. It details certain travel and travel expenses. Okay? I direct...

A. Yes.

Q. ...your attention to the entry for February 3-4 Zurich. This is -- the page is relative to

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1986. And there is information here respecting a lunch with two -- with -- well, you see there?

A. I see. Yeah. Yeah, yeah. Yeah, yeah.

Q. You see it's a brunch.

A. Yeah, yeah. Yeah. Nothing wrong with that.

Q. And it says dinner there.

A. Yeah.

Q. Does that refresh your memory...

A. Yes. I met with Mr. Moores and with Mr. Pelossi in Zurich, and I see now I met with him in Essen. That's correct, too. I met with him in Vienna at the Opera Ball, that's true. I met with the Riemerschmids and him. That's true. That's it. Yes.

Q. Okay. Well, I don't want to lead but I'll just try to do this expeditiously. Does this document accord with your recollection as to who you met with as reflected on the document?

A. Yes.

Q. So, including Riemerschmid...

A. Yes.

Q. ...Strauss' and all the names there?

A. Yeah.

Q. On the dates and in the places...

A. Yeah, but I didn't know the time anymore but that these events took place. If you would have asked me, I would have told you.

Q. So, I'll ask you now about the meeting in Zurich. Okay?

A. Yeah.

Q. February 3 and 4.

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A. I cannot say whether it's February 3 or 4, but it was early in the year. I know that because it was cold and we were at Thyssen and visiting the factories and it was pretty cold. So, yeah. I do. And then I know Vienna, that's correct, because there was the Opera Ball.

COURT REPORTER: I didn't hear?

THE WITNESS: Opera ball.

MR. BERNSTEIN: Pardon me?

THE COURT: Opera.

MR. BERNSTEIN: Opera. Okay.

MR. BERNSTEIN: Q. Okay. This is 1986?

A. Yes.

Q. So let's begin with Zurich. How did you come to meet Mr. Moores and Mr. Pelossi in Zurich on the beginning of February?

A. Well, as far as I recall, Mr. Moores knew Mr. Pelossi already. They met in Ottawa, and then we met in Zurich. And I think the discussion was the service from IAL for Mr. Moores, and yeah, I think that's what it was. And at that time, as everybody knows from the paper, Mr. Moores opened bank accounts in the presence of Mr. Pelossi and myself.

Q. So, Mr. Moores opened bank accounts.

A. Yes.

Q. And you were there?

A. Yes.

Q. Do you recall the name of the bank?

A. I think the name has changed in the meantime. By that time, I think it was *schweizerischer bankverein*. Today it's UBS.

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THE COURT: Now, I know that you've got a special service going with Mr. Interpreter but that's way above my head. Can you write it out for me, Mr. Interpreter, so I can put it in my notes.

THE WITNESS: *Schweizerischer bankverein*.
Yeah.

THE COURT: Can you write it out for me?

THE WITNESS: Yeah.

INTERPRETER: Yes.

MR. BERNSTEIN: Q. Is it -- I don't -- Mr. Schabas will object if he finds this question leading, but is it also known as Swiss Bank Corp?

A. *Schweizerischer bankverein* is the correct name. How would you translate it in English.

INTERPRETER: That would be a normal translation of it, a Swiss Bank Corporation, yes.

MR. BERNSTEIN: Q. Okay. So, after the visit in Zurich, you're off to Essen and then to Vienna for the Opera?

A. Yeah.

Q. And then on the 9th to Munich?

A. Yes.

Q. Do you recall meeting with, or dining with Mr. Strauss in Munich?

A. Yeah, this could be possible. I'm looking a little bit because there was a luncheon and I wasn't -- I wasn't sure whether this -- but I'm a little bit -- yeah. Lunch Riemerschmid Schreiber. Dinner Strauss. I think it's the other way around.

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Q. You ate with the Strauss'?

A. Lunch with the Strauss and dinner with the Riemerschmids. But it could be both, but if it would be dinner then it should have been at my home. Though, I'm a little bit confused about this here.

Q. Okay.

THE COURT: You're only expected, sir, to tell us what you remember...

THE WITNESS: Yeah.

THE COURT: ...and if this assists you, fine. If it doesn't, that's fine, too. It's your memory that matters. Not the documents.

THE WITNESS: The -- the -- the meetings -- the meetings with these parties took place, Your Honour, but the details I don't.... I see that name is wrong here on the February 6th. This is why I was looking. It is not Barless, it is Bartels. It's a complete different name. The chairman from Thyssen.

MR. BERNSTEIN: Q. Okay. I'd like to ask you some questions about causing funds to be transferred to Mr. Moores in 1986. Okay?

A. Sure.

Q. And I'd like to see as best we can to proceed in an orderly fashion through this. Do you recall transferring money to Mr. Moores or causing money to be transferred in October or the fall of 1986?

A. Again, in 1986, money came from MBB which was to be a split, and if you refer to that, and this was in October, yes.

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MR. BERNSTEIN: Your Honour, I'm in your hands. I'm going to ask just a general question and we'll what Mr. Schabas's position is...

MR. BERNSTEIN: Q. ...but would looking at the banking records assist in refreshing your memory as to exactly when and how much?

A. Could be, if you have it.

Q. So, I'm wondering if we can take a look at 17333, I think. Document 17333.

A. Yeah. That's a payment.

Q. Just let me -- let me catch up to you, okay? First of all, we have here a payment order....

A. Yes.

Q. ...dated October 24, 1986.

A. Um-hmm.

Q. And it's on the, I'll call it the Swiss Bank Corporation in English.

A. Yes.

Q. There's a signature at the bottom right hand corner. Do you see that there?

A. Yes. Mine.

Q. This payment order -- well, this is a payment order?

A. Yes.

Q. So it instructs the bank to transfer \$260,641 from Account 186791 to Account 34107.

A. Correct.

Q. And whose accounts -- so, your instructing the bank to transfer money from 18679 to 34107 in the amount of \$260,641?

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A. Yes.

Q. And was Account 34107 an account which
Mr. Moores...

MR. SCHABAS: Well, why doesn't he ask...

THE COURT: Well...

MR. SCHABAS: Your Honour, really, that's
just the most outrageous leading.

THE COURT: Please, Mr. Bernstein. Ask him
what this account -- who belongs to it, if
he knows.

MR. BERNSTEIN: All right. You accept that
there has been evidence from Mr. Moores on
this and there's been an admission.

THE COURT: Well, there may be but...

MR. SCHABAS: Well, it doesn't matter,
Mr. Bernstein.

THE COURT: Please, please, please. I
understand your objection. Please ask direct
non-leading questions.

MR. SCHABAS: Your Honour, Mr. Bernstein
knows full well how to ask a proper non-
leading question. He's been practicing law
a lot longer than I have. I mean to do that
kind of thing, in my submission, is
absolutely outrageous.

MR. BERNSTEIN: Oh, please, Mr. Schabas.

THE COURT: Move along. Who does...

MR. BERNSTEIN: You say...

THE COURT: Who does -- to your knowledge,
sir, do you know who was the owner of
Account 34107?

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THE WITNESS: Mr. Moores.

THE COURT: Thank you.

MR. BERNSTEIN: Q. And...

A. It's for years in every -- in every major paper, I mean, so what's the secret with the damn thing? Excuse me.

THE COURT: We don't know that, sir. Officially, we don't, and the evidence has to be...

THE WITNESS: I apologize.

THE COURT: ...put into the record. All right.

THE WITNESS: But it was often in the paper. I saw it often and all the numbers were there.

THE COURT: Go ahead.

MR. BERNSTEIN: Q. All right. So, this sum is transferred to -- the sum on the document is transferred to Moores's account?

A. Yes. As far as I recall and as I learned.

Q. And as you instructed?

A. Yes.

Q. Now, just one second. Let's take a look at...

THE COURT: This the first time we see this document, right?

MR. BERNSTEIN: Yes.

THE COURT: Do you want to make it an exhibit?

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MR. BERNSTEIN: Yes. It has been admitted for the truth of it's authenticity.

THE COURT: Has it? Then that will be the next exhibit.

MR. BERNSTEIN: No, wait, wait. No. I stand corrected. I stand -- there was a chorus of "no's" from my side of the courtroom so I stand corrected.

THE COURT: In any event, is there any problem? It's his document. He's signed it.

MR. SCHABAS: He's identified.

THE COURT: He's identified it. It ought to be made an exhibit. Thank you.

EXHIBIT NO. 1-17333: Document 17333. Swiss Bank Corporation bank statement.

MR. BERNSTEIN: Q. Let's go to Document 6560. We see this is a bank statement respecting the Swiss Bank Corporation?

A. Yes.

Q. And the number at the top right-hand corner...

A. Yes.

Q. ...is the same account number as was on the previous exhibit. 18679. Do you see that there?

A. Yeah. I wasn't sure. The other one, I think was also number one, but in principle it's the same.

Q. And we see a reference here. There's the word -- forgive me for my poor German or Swiss. I'm not sure which language it is. Vergueteung.

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A. *Vergueteung*. At the beginning?

Q. Yes.

A. It's a deposit.

Q. And go down to the third entry?

A. Yes.

Q. Do you see this reference there to
260,641?

A. It's bad to read, but I think it's 260
and something like that, yeah.

Q. Okay. So that's...

A. 266-41 or something, yeah. Yes.

Q. What does *vergueteung* mean there?.

A. Hmm.

Q. What's that mean there?

THE COURT: Why don't we ask

Mr. Interpreter. He probably knows what the
word means. What's the translation of that
word, sir?

THE WITNESS: Which one? The second?

INTERPRETER: Forgive me, sir. I don't see
the...

THE COURT: Just come -- the first word on
that invoice. Ver..

THE WITNESS: Number 3 or number 2?

THE COURT: No, number one.

MR. BERNSTEIN: Three.

INTERPRETER: The first word is
vergueteung. It's at the top of the column.

THE COURT: Yes.

MR. BERNSTEIN: And the third word?

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INTERPRETER: The third word -- the third word down is the same word, *vergueteung*, which means deposit.

THE COURT: Thank you.

THE WITNESS: Yes.

MR. BERNSTEIN: Q. And what do the words on the other -- like, the first -- the first *vergueteung* -- and forgive me -- is in one column, and the second one, the third word is in another column. Do you see that there?

THE COURT: What are you referring to?

INTERPRETER: No, I only see the words all in one column.

MR. BERNSTEIN: Okay.

INTERPRETER: The first column of words on the left-hand side of the page.

MR. BERNSTEIN: Q. So this is a bank statement, sir?

A. Yes.

Q. Or this number...

THE COURT: All right.

MR. SCHABAS: Well, Your Honour...

THE COURT: Now, please. Please, please, please, please, please. The first question to this witness ought to have been: Do you recognize the document that you see on the screen and what, if you recognize it, is it? We've been just going backwards and backwards and backwards. That's the first question, and then we can go on and.... but, I mean, you've been asking questions:

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"Do you know this figure? Do you see it, 260...?" Well, I see it, too, but that doesn't get us anywhere. I take it the first question is: Do you recognize this document, sir? Is this a document that you're familiar with? And something along those lines. I don't want to do your job for you, obviously, but I mean if we proceed in seriatim and in logical order, it will be a lot simpler.

MR. BERNSTEIN: Thank you, Your Honour.

MR. BERNSTEIN: Q. Can you answer His Honour's question, please?

A. The first question is no.

Q. No, to what?

A. I don't recall that I saw this document, but I know this amount.

Q. So tell me about the amount.

A. This came in in '61, and I guess this is here 641. Is it up there?

Q. Right. What do you know about that amount?

A. This was what I had at the other account first as a *vergueteung* where the money came in. The next thing is a cheque. There was cheque... I don't know what that is.

Q. And for how -- what's that amount, just so that we know at the...

A. 341,000.

Q. And the next?

A. Then comes one *vergueteung*, 260,000.

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Q. And are you familiar with that amount now?

A. No. That's very strange. I don't know what this is. You see, this is a *vergueteung* here. This came in here. This, in my opinion, went out. But it says *vergueteung* again. I don't know what it means. Perhaps there was some.... I don't know.

Q. Okay. But what do you recall about...

A. The other document was easy for me to read. This one is a -- is a problem.

Q. Okay. So let's forget that document.

A. It looks to me like somebody bought Canada Treasurer Bills and the costs for it. I have no idea what it is.

Q. Thank you, sir. So, if we can return to the previous exhibit...

A. Um-hmm.

Q. ...you said you're familiar with the figure, of \$641,000.

A. No. I'm not familiar with the figure, but this was the account as I recall from Frank Moores and that money was sent to him. That's clear.

Q. Which money?

A. The 260,000. Of course, this is what it says.

MR. SCHABAS: Your Honour, this document was admitted. It's a bank document.

Mr. Schreiber said he's never seen this document before, and I don't know -- we're not getting any useful evidence at all out of him, because he hasn't seen it. Anything

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he says about this will be purely speculative. It's already an exhibit and I submit we're just -- we're wasting time by continuing to ask him questions about a document he's not familiar with.

THE COURT: Which document are you talking about? The one's that up on the screen at the moment?

MR. SCHABAS: No. The other one.

THE COURT: The other one. Yeah, well, he's moved on from there and he's talking about this one now, is he not? This payment order?

MR. SCHABAS: Yes. He's identified that and that's been made an exhibit, but...

THE COURT: Okay. So perhaps...

MR. SCHABAS: Right.

THE COURT: ...you can question him about that, what that sum represents or things of that nature. I don't know.

MR. BERNSTEIN: Q. The 260,641, what does that sum represent?

A. Hmm?

Q. The 260,641 that's -- you instructed to be provided to Mr. Moores?

A. Yes.

Q. That sum...

A. This is what I take from this document here..

Q. That sum represents what?

A. Hmm?

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Q. That sum represents what?

A. Must be an amount which has been exchanged perhaps from -- I'm not sure. Change perhaps from Swiss Franc to D-mark to Canadian dollar. I have no idea.

MR. BERNSTEIN: Could I have the court's indulgence?

THE COURT: A good time to take the afternoon break?

MR. BERNSTEIN: Yes, Your Honour.

COURT REGISTRAR: All rise, please.

R E C E S S

(3:16 p.m.)

U P O N R E S U M I N G :

(3:44 p.m.)

COURT REGISTRAR: Court is now reconvened. Please be seated.

THE COURT: Now, yes, go ahead, please.

MR. BERNSTEIN: Your Honour, there is just one matter I'd like to deal with at the outset. And it's a translation issue that relates to the bank statements.

THE COURT: Yes.

MR. BERNSTEIN: It may -- Your Honour, has seen many bank statements in this Preliminary Inquiry. You may see some more

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as we go along. Some of them are Swiss Bank Corporation statements and I just want to clarify what certain terms mean in the columns. And I'd like to do that now.

THE COURT: Okay. Can we do that in a neutral fashion by simply asking Mr. Interpreter to tell us or...

THE COURT: Well, it actually raises an interpretation issue.

THE COURT: Well, he's the most qualified, is he not, in the courtroom? No?

MR. BERNSTEIN: Yes. I just want us all to be clear on what the columns mean and what they say and what the terms relate to.

THE COURT: Perhaps what we might do with everybody's consent is -- hold on. Let me pull it up here.

MR. BERNSTEIN: We've actually had a translation different than what we thought it would be.

THE COURT: Let's ask the Interpreter for the formal translation as he understands it, of various terms, and then if you think that armed with that you ought to question the witness then we can deal with that, but at the moment -- do you have suggestions, Mr. Schabas on translation?

MR. SCHABAS: I concur with Your Honour's suggestion that we have the Interpreter do the translation.

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MR. BERNSTEIN: Well, some of it, the forms are in English. They are multi-lingual so...

THE COURT: Well, then you won't have to tell us...

MR. SCHABAS: Well, then we won't need it.

THE COURT: ...what that is, but...

MR. BERNSTEIN: Well, if says something inconsistent with what the English says on the form, I'd like to straighten it out. That's what I'm saying.

THE COURT: Okay. That's fine. Well, let's ask Mr. Interpreter to begin with and we'll go somewhere else from there.

MR. BERNSTEIN: So, just I'd like to go to a.... All right. I want to go to a clear version of the bank statement. Some are clearer than others. Okay? So, I'm going to go to Goto Page 48 of Document 6560, which is part of the statements we're looking at. The reason why I picked this one, is it's just a clear -- it's clear on the screen in the form. Okay?

INTERPRETER: May I look at the copy?

MR. BERNSTEIN: Sure. Okay. I'd like to just deal with the columns, okay? So, first of all, this is a unilingual -- excuse me. Multilingual document. It's in English and German amongst other languages, right? And I'd like to...

INTERPRETER: These are three languages in Switzerland...

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MR. BERNSTEIN: Okay. And I'd like to deal with the columns -- the first column to the far left, the -- let's blow it up so we can see it a lot more.

THE COURT: I don't think it gets any better. I can't see...

MR. BERNSTEIN: The date of entry.

INTERPRETER: Yes. Okay. The rest is not terribly legible but the...

MR. BERNSTEIN: The English.

INTERPRETER: ...English one is.

MR. BERNSTEIN: The next column I'll leave, and the next column it says in English, "Text".

INTERPRETER: Text. Yeah.

MR. BERNSTEIN: And then we'll go to the next column to the left which is -- it's in English. It says -- it's a debit column.

INTERPRETER: Um-hmm.

MR. BERNSTEIN: And the next column -- and in the German is what?

INTERPRETER: Yes. *Soll* is the normal word for debit.

MR. BERNSTEIN: Okay. And the next column is a credit. Okay. So then, let's go back to the entire document, and in the debit column -- well, I don't want to lead. I just want to get this...

THE COURT: Well, this is the Interpreter. It's not a question of leading or anything. We're just asking him what words are.

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MR. BERNSTEIN: Okay. The debit column involves deposits and the credit column involves withdrawals of one sort or other.

INTERPRETER: Um-hmm.

MR. SCHABAS: Well, that's -- you know, what are we doing, Your Honour?

THE COURT: Let's just ask him what the words are, please?

MR. BERNSTEIN: No. I'm sorry. Okay. I...

THE COURT: That's all he can -

Mr. Interpreter is only here to tell us what the English meaning is of a German word, or vice versa.

MR. BERNSTEIN: Okay. I'm sorry. It's the...

INTERPRETER: The debit would normally mean that that is money taken out of the account.

MR. SCHABAS: That's beyond his expertise.

THE COURT: Just tell us what the translation is, please, sir.

MR. SCHABAS: No offence, Mr. Interpreter.

THE COURT: That's all. You may know a lot more about this than we do but, for the moment, would you limit yourself to translation of words that will be put to you by Mr. Bernstein.

MR. BERNSTEIN: So, all right. All right. Just so that I'm clear, the debit -- if I could just have the court's and my friend's indulgence for a minute, this will become

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clear. This is -- Your Honour, the debit is out and the credit is in.

MR. SCHABAS: Well, Your Honour, this is for argument or something.

MR. BERNSTEIN: Well, no, no. No, no. I said...

MR. SCHABAS: I mean, let's...

MR. BERNSTEIN: I said -- Mr. Schabas, I'd be grateful...

THE COURT: We won't put any weight on that. I will...

MR. SCHABAS: No, but I just don't understand...

THE COURT: Have your conversation with the accountant for what it's worth.

THE WITNESS: But this is from 1995.

THE COURT: Don't worry about this, sir. Just for the moment, lean back and enjoy it. Go on. Go ahead, please.

MR. BERNSTEIN: Okay. Now, the next thing I'd like to deal with -- and this may be an issue. And this, I just wanted to set this up.

MR. BERNSTEIN: Q. Let's go to the bank statement we were looking at before with the word, ver...

INTERPRETER: *Vergueteung*.

MR. BERNSTEIN: *Vergueteung*. Now, you refer to that term as a deposit. Just I suggest to you a more accurate translation would be payment, not deposit.

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INTERPRETER: My understanding of the word *vergueteung* would be money coming into the account as opposed to...

MR. BERNSTEIN: Look, it's got...

MR. SCHABAS: Well...

MR. BERNSTEIN: Let me just finish. It has the figure for both money coming in and money going out. There is -- the text is *vergueteung* for both debits and credits on the account, and as a matter of translation we may have to have more evidence on this. I suggest that a proper term is payment, and whether it is in or out is defined by the credit and debit column.

MR. SCHABAS: Your Honour, I object to the way he is putting it. I mean it's one thing to ask the interpreter is there some other -- you know, to draw his attention to something and say is there some other way to do this, but for Mr. Bernstein to be, in effect, cross-examining him and suggesting something is most improper.

MR. BERNSTEIN: I'm not...

THE COURT: All right. Listen, I'm going to stop you there. Sir, Mr. Interpreter, are there possible different meanings to be attributed to the word *vergueteung*?

INTERPRETER: I would interpret *vergueteung*, sir, as a credit.

THE COURT: A credit?

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INTERPRETER: Yes. A deposit into the account.

THE COURT: A deposit into the account. That is your understanding of what the German word means...

THE WITNESS: Yeah. Yeah.

INTERPRETER: Yes, sir.

THE COURT: Thank you. That's fine, sir. You can return. And so, Mr. Bernstein, you may wish to call further evidence to show that that means something else, but we have what Mr. Interpreter tells us his understanding of that word is. If you wish, we can on Monday morning have somebody else here who may give us a different translation, or maybe even a dictionary, but for the moment, I think we can leave it there.

MR. BERNSTEIN: Well, we do have in the disclosure material, another translation of it, and I'll just draw it to the court's attention. It's been disclosed.

THE COURT: That doesn't mean it's right, though.

MR. BERNSTEIN: No, it doesn't. I'm just trying to -- it doesn't. I'm just trying to explain.

THE WITNESS: [German]

THE COURT: I don't know where this is all leading us, Mr. Bernstein. We can move on perhaps at this point and if you -- if this

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needs to be made an issue later on, there are other ways in which it can be made an issue.

MR. BERNSTEIN: Yes.

COURT REPORTER: Your Honour, I believe the witness said something in German. I'm not sure whether it should be on record or not.

THE COURT: I don't -- I think that was a comment to yourself, sir, is that correct?

THE WITNESS: Hmm?

THE COURT: I didn't hear it.

COURT REPORTER: I just wanted to know what -- I don't know whether it was meant to be on record or not.

THE WITNESS: No, no.

THE COURT: You didn't mean to make...

THE WITNESS: Your Honour, the interpreter is absolutely right. It's a deposit.

THE COURT: All right. That's fine, sir. Please, are we going back now to 6560?

MR. BERNSTEIN: Yes.

MR. BERNSTEIN: Q. With respect to this account -- and we are at the last exhibit, which is Document Number 17333. This payment order relates to accounts -- well, the number are 18679 and...

A. Yeah.

Q. And 18679.1.

A. Yeah.

Q. Do you see that there? Do you have -- were you involved in the opening of this account?

A. Whether I was involved in the opening?

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THE COURT: Which account are you talking about?

MR. BERNSTEIN: 18679.

THE COURT: Okay.

THE WITNESS: Sure. This is my account.

MR. BERNSTEIN: Q. Okay. Until you tell me, I don't know. Well...

A. Why would I say no? This is an old account of mine for many years which was never used until this money came.

Q. Thank you. Okay. Let's go to...

A. Could you go back with that for second?

Q. Go back...

A. With the document.

Q. Sure.

A. You see in English up there? "Please transfer to the debit of my account."

Q. Where are you pointing?

A. Right inside.

Q. Oh, the English. Yes.

A. Up there. "Please transfer to the debit of my account." So, this goes out of my account to somebody else. That is, when you look to other side, the second *vergueteung*. Right? It's a transfer of funds. It goes out of one account and goes into another account. *vergueteung*. He's hundred percent right. There is no need to make that complicated. It's very simple.

Q. So it's out of yours and into...

A. Yes.

Q. ...somebody else's?

A. Yes.

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Q. So...

A. And let me add one more sentence. This account whose named 18679 as you have it on the other document, is missing here. Rubric IAL.

Q. Let me -- okay. Just give me a minute.

A. Yeah.

Q. Did anyone else have signing authority in connection with this account?

A. To this account? At that time?

Q. At that time.

A. I'm not sure.

Q. Let's look at the -- would the bank opening documents assist you. The banking documents.

A. As I told you, this account was opened many years before, maybe in the 60s or so. I don't recall whether my son or my fiancée or anybody had the signing authorization. Nothing has changed. The account was not used. Only because Pelossi was in jail, the account was used to get the money and from MBB. That's the whole thing what the old account was for. To make it easy for you.

Q. And so, this was your account and you controlled it?

A. Yes.

Q. I'm wondering if we can look at.... Was.... Just, so.... I asked you earlier whether this document was familiar to you and you said, "No," that you'd never seen it before.

A. I don't recall that I have seen that as a bank document.

Q. With...

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A. But that's easy to understand. I never took bank documents away from the bank.

Q. Bank statements.

A. Yeah.

Q. Can you recall.... I'll just ask a translation question. This term here, the second entry...

A. Yeah.

Q. Do you see that there? It starts with check..

A. *Bestellung*. Yeah.

INTERPRETER: Yes. It means a cheque order.

MR. BERNSTEIN: Q. Okay. The entry date is October 24, 1986. Do you recall writing a cheque for 341,763.53?

A. It was no cheque I signed or I did. This is a bank cheque. A certified bank cheque. *Checkbestellung*, means you order a cheque from a bank.

Q. So, can you just walk me through this transaction?

A. Yeah. There is.... I wonder was this means 647 went out and then went in here, I guess. But his is -- this is Canadian dollars.

Q. I just want to...

A. And the *vergueteung*.

Q. ...focus on the 341,000. Maybe I can help you refresh your memory?

A. Let's take a look at document 17332,
GoTo Page 3.

Q. We have here a document, and the next page.

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A. Yeah.

Q. The next page. We have here a document....

A. Yes.

Q. ...which says amongst other things, your name?

A. Yes.

Q. And the account we've been talking about there, the...

A. Yes.

Q. ...number 1867...

A. Yes.

Q. Okay. And the date is October 24, 1986.

A. Yes. And it is exactly what I told you. There was a cheque ordered from the bank, and when you read this here, this is DM 500,000. So that was converted to Canadian dollars, I guess, or it was converted from Canadian dollars to D-mark. I don't recall what the exchange rate was then. Well, maybe it was from Can dollar to D-mark, and it says, Karlheinz Schreiber, and the client is waiting in Room 17.

Q. So, what happened?

A. Hmm?

Q. Can you explain?

A. Well, as far as I read this here, the bank has been out on my request a cheque. How would you say, a certified cheque from a bank, and that was given to a client waiting in Room 17. I think it was me.

Q. Okay. And the cheque was 500,000 Deutschmarks?

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A. Yeah. I think that was the conversion from the other amount, from Canadian dollar to D-mark.

Q. The 341,763.

A. Yeah. I think the Can dollar was higher at that time than the D-mark was.

Q. What did you do with this money?

A. Hmm?

Q. What did you do with this money?

A. This money?

Q. Yes.

A. I took it.

Q. And what did you do with it?

A. I handed it to Dr. Pagani.

Q. What did you tell Dr. Pagani to do with it?

A. Nothing. He wanted the cheque.

Q. Pardon me?

A. He wanted the cheque.

Q. Why did you give it to him?

A. Please.

Q. Why did you give it to him?

A. Because he was the boss. This account, I told you, was my account, and I gave it only for a while to IAL because Mr. Pelossi was in jail and could not take money. So, the people wanted the money. It's that simple.

Q. What did Mr. Pagani say to you which caused you to withdraw 500,000 Deutschmarks from this account and give it to him?

A. He was the boss from the company.

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Q. My question was, what did he say to you? What did he say to you, which caused...

A. But I should....

Q. ...you to withdraw 500,000 Deutschmarks from this account and give it to him?

A. He had the power to order that.

Q. My question was, what did he say to you?

A. That he wanted me to bring him a cheque for 500,000.

Q. I'd like to just move on. We may come back to this, but I'd like to just move on. Do you recall being in Europe with Mr. Moores at the time of this transfer of funds to Mr. Moores, this \$260,641 in October of 1986?

A. I don't know.

Q. Okay. Well, I'd like to see if I can refresh your memory. Let's take a look at Document 6325. GoTo Page 33. We've seen this document before. I think I'll try to speed it up here. This is the document you were looking at an hour or so ago...

A. Yes.

Q. ...of Mr. Moores' expenses. We see...

A. Yeah.

Q. I direct your attention to October, in particular...

A. Down here. October. Yeah. Yeah, okay. There's another date. I see this now, yeah.

Q. So, like the date that you...

A. Yeah. Yeah, yeah.

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Q. ...of the payment order was October 24, 1986. We see in October 28, there's information respecting Mr. Moores and other people, and then the 29th and 31st and November 1st, do you see that there?

A. Yes. Yes.

Q. Does that information assist in refreshing your memory?

A. Yes.

Q. Okay. And do you recall being with the people listed under trip number 2 at this page, page 33 of the document.

A. Well, I take it from here that...

MR. SCHABAS: Well, Your Honour, we should ask the witness what his recollection is. We don't want the stimulus. We want the recollection.

THE COURT: We're only asking you, sir...

MR. SCHABAS: And I think the witness should be told of that, too.

THE COURT: ...looking at that document...

THE WITNESS: Yes.

THE COURT: ...if it refreshes your memory as to who you were with at a particular time.

MR. BERNSTEIN: And I thought that's what I asked.

THE WITNESS: Your Honour, I must say definitely not, but when I see the date and the names, I know that there are certain events have taken place and...

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THE COURT: Well, that doesn't make it true, sir, and that's all that I'm saying and Mr. Schabas is saying.

THE WITNESS: Then the answer is...

THE COURT: The only question to you is this. Does, by looking at that, is your memory refreshed as to who you were with at a particular time? And it may not.

THE WITNESS: No.

THE COURT: But we...

THE WITNESS: If you ask me...

THE COURT: That doesn't make it -- what you see on the screen, doesn't, sir, of course, make it true. And that's not what we're concerned with, whether that's true or not, only whether it refreshes your memory presently as to who you were with at a particular time.

MR. BERNSTEIN: Q. It doesn't have to be the exact -- you may not recall the exact date, but around that time do you recall being with these people?

A. As much as I recall the first part, I have really no recollection to this part here.

Q. Well, I'm not sure. We'll just go through it one step at a time. When you say the first part, what part are you referring to?

A. From February.

Q. Okay.

A. There are two different things on that sheet, right?

Q. Yes.

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A. Two trips. I didn't even recognize this the first time. The first -- the first trip I recognize 100 percent. The second I definitely don't.

Q. Do you recall being with Mr. Moores around the time of this payment to him of \$260,000?

A. You mean in October, November?

Q. Yes.

A. If you ask me that, the answer is no. I have not recollection to this meeting with him. I went to the first one, but not to this one.

Q. Okay. Just so that I can go through each of these. So, is your answer for the entire, like, for October 28, 29, 31 and November 1, the whole thing or just some part of it?

A. I have no recollection when I look at this to this particular events. None. Unfortunately. Following the advice from His Honour here, that doesn't mean that I wouldn't say yes, this could have happened, but when you ask me whether I recall it when I look at this and have a vision, a memory, the answer is no.

Q. Do you recall being with Mr. Moores in Europe more than once in 1986?

A. No.

Q. No, what?

A. I don't recall that. I have a clear memory on the -- on the meeting with him at the beginning of the year and the Opera Ball and the event with the Thyssen, but I -- and the meeting in Zurich, but I have no recollection at all at this second meeting.

Q. That wasn't my question. My question was, do you recall -- please, listen to my question. Do

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you recall being in Europe with Mr. Moores in 1986 apart from the one time you told us about?

A. No. I have no recollection.

Q. Do you recall being in Europe in 1986 apart from this one time, with or without Mr. Moores?

A. I don't know.

Q. What don't you know?

A. I don't know whether I was in Europe at that time or not.

Q. At any time in 1986...

A. Sure.

Q. ...apart from the February meeting you've told us about?

A. Sure. I was always back and forth.

Q. Do you recall...

A. And around the world.

Q. You were back and forth. Do you recall being in Zurich?

A. No. Could be I've been many times in '86 in Zurich, could be, but when you ask me, do I recall from this what you show me, the answer is again, no.

Q. Okay. Just forget that document. All right? Just take it off the screen. I'm just asking you a question. Apart from the visit in February, which you told us about...

A. Yes.

Q. ...do you recall being in Zurich, apart from that, in 1986?

A. Oh, could be. Many times, perhaps.

Q. Do you recall being in Zurich in 1986 apart from the meeting you told us about?

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(Continued...)

A. No. Not particular.

Q. Where -- let's go to Exhibit --
document...

THE COURT: Are you tired, sir? If you
are, let me know, and...

THE WITNESS: No.

THE COURT: No, no, but I mean seriously...

THE WITNESS: I'm fine, sir. I'm really
fine.

THE COURT: ...it's -- I know it's 4:15. I
think we're all tired. It's been a long
week, but if you are, let me know and we can
perhaps adjourn early if that's necessary.
Thank you. Go ahead.

THE WITNESS: I would love to go through
with it, sir. As soon as possible.

MR. BERNSTEIN: Q. Okay. Let's go to
Document 17333. GoTo Page 2, which has been exhibited.
The last exhibit. Okay?

A. Yes.

Q. You've indicated you signed this
document.

A. Yes.

Q. It's dated October 24, 1986.

A. Yes.

Q. Does this refresh -- no. Where did you
sign this document?

A. In Zurich, and it's very clear that I
did this when this -- when this document is write at the
24th of October, 1986.

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(Continued...)

Q. So you signed this document in Zurich in October?

A. Yes.

Q. October 1986.

A. Yes.

Q. Did you visit Germany in 1986?

A. Sure.

Q. Once? twice? a bunch of times?

A. A bunch of times. Back and forth.

Q. Approximately. A bunch is how many?

A. Mr. Bernstein, my worst year was 176 days in an aircraft.

Q. In 1986?

A. No. In one year. I'm just telling you.

Q. How many days?

A. 176 days travelling.

Q. So...

A. I really have no recollection of this, but when you show me this document and you show me the other document, and I was in Zurich the 24th or whatever it was in 1986, it's obvious that I have been there, and then it makes sense that I have met Moores or whatever you have there. The question was whether I recall it from this one document or from this document. It shows I was there. So it answers your other question as well.

Q. Okay. In your travels to Europe, you would visit -- would you -- in your travels of Europe in 1986, would you visit the Strauss'?

A. Always, when I was in Germany.

Q. All right. Did you visit with Mr. Pfleiderer in 1986 when in Germany?

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A. I have no recollection, but it's possible.

Q. Do you recall causing other funds in 1986 to be transferred to Mr. Moores and Mr. Moores's account? We've covered one bit of money there. Do you recall other funds?

A. No.

Q. Would looking at the banking documents assist in refreshing your memory? You're nodding yes. The nods don't really come out very good on the transcript. Is that yes?

A. Please?

Q. Would looking at the banking documents help?

A. Could be.

Q. Let's look at Document 17340, GoTo Page 3. GoTo Page...

A. Could I see it in total?

Q. I'm sorry. Just take that off. Do you recall giving Mr. Moores any funds or causing funds to be provided to Mr. Moores to his account in 1987?

A. It's possible. Mr. Bernstein, let's get one thing clear. If I would ask you what you have done on transfers and little stuff somewhere amongst thousands of things you do in 1985, would you tell me you would recall? I can't. I need something which I can refer to. This was so unimportant this whole stuff for me, you wouldn't believe it.

Q. I think I have something for you to refer to, and that is Document 17340, GoTo Page 3.

A. Okay. Can I see it in total?

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(Continued...)

Q. Is that in German?

A. Yes.

Q. Okay.

MR. SCHABAS: So page 2, as well.

MR. BERNSTEIN: GoTo Page 3.

MR. BERNSTEIN: Q. There is a
translation...

A. Yes.

Q. ...at GoTo Page 2.

MR. SCHABAS: No.

THE WITNESS: Where would I see it?

MR. BERNSTEIN: No. All right.

MR. SCHABAS: He's asked to see the whole
document, Your Honour. There's another page
to the document.

THE WITNESS: Well, it's a letter from the
bank in Van Gallen, (check 17340) and books
to the Bank in Zurich [ph] and it says, "As
we discussed this morning, please transfer
from Account 186791, the amount of \$149,000
to the account 34107, Mr. Moores."

MR. BERNSTEIN: Q. Signed by you?

A. The -- the manager from the account is
Mr. Schnider. "Thank you very much. Karlheinz
Schreiber."

Q. Does that assist in refreshing your
memory?

A. Sure.

Q. Was -- did you instruct the bank to
transfer \$149,000...

A. Yes.

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(Continued...)

Q. ...as per this letter?

A. At the 3rd of November, 1987. Not '86.

Q. '87. I corrected myself, yes.

A. Okay. Good.

Q. So does this letter accord with your
recollection and instruction?

A. 100 percent.

Q. Pardon me?

A. 100 percent.

MR. BERNSTEIN: Perhaps this can be entered
as the next exhibit in these proceedings.

THE COURT: Exhibit 1-17340.

EXHIBIT No. 1-7340: Document 17340. A letter
from the bank.

MR. BERNSTEIN: Your Honour, just for your
information, there is -- Mr. Schreiber has
translated the document from German into
English. There is an English translation in
the database, and I'll just give you the
number, and it is 17341.

THE COURT: Okay. I'm sorry. 17...?

MR. BERNSTEIN: 341?

THE COURT: Any issue -- no issue taken
with the translation is there?

MR. SCHABAS: No. I would like -- that's
acknowledged for purposes of the Prelim.
I'm not taking issue.

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MR. BERNSTEIN: Q. Okay. This exhibit, can you help with the information on the top of the page there.

A. Which one?

Q. In the top righthand corner there.

A. You mean November?

Q. Well...

A. Or the next line.

Q. ...it says *schweiz*.

A. Hmm?

Q. I'll point to it.

A. You mean 9470.

THE COURT: Where it says *schweiz bankverein* or something like that.

MR. BERNSTEIN: Q. The name.

A. This here?

Q. Yes.

A. *Schweiz Bankverein*.

Q. Tell me what that is.

A. That's the same thing in Zurich. The same bank.

Q. Okay.

A. Bank operation.

Q. Do you recall where you were when you wrote this letter?

A. Sure. In Books [check].

Q. Where is Books?

A. Books is in Switzerland in the Rhine Valley and it's the same bank. They have an office there.

Q. How far is Books from Zurich?

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(Continued...)

A. Hour and a half.

Q. Do you recall what you were doing in Books?

A. No.

Q. I'm sorry. I don't know Switzerland very well. Is Books a commercial center? A resort?

A. Books is a little -- is a little city in the Rhine Valley, and when I got from perhaps from Kaufering to my factory in Lugano, then I pass it.

Q. Okay. So, you were in Switzerland?

A. Yes.

Q. Do you recall being with Mr. Moores around this time in Switzerland in November of 1987?

A. The other thing was 1986, right?

Q. Yes.

A. So, no, I don't recall that I was with him in 1987 in Switzerland.

Q. Okay. I'd like to show you Mr. Moores's expense accounts. The report that we've looked at, which is -- what's the number -- 6325 GoTo Page 35. We have here some information, Trip No. 1, October-November. This is for 1987, and it reflects some information respecting November 3 and Zurich, and November 7 and Zurich. No. November 7 in Munich. I want you to take a minute. I know it was a while ago. Just take a minute.

My question to you: Does these notes, this record, assist in refreshing your memory in connection with the question: Do you recall being with Mr. Moores in Switzerland in the fall of 1987?

A. May I ask you, sir, what this is?

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(Continued...)

Q. It is a report prepared by Mr. Moores's accountant on the basis of information received from Mr. Moores and his secretary, submitted to Revenue Canada. It includes a variety of things, including a list of his travels and expenses incurred.

A. I apologize, but I have -- I have really no recollection of this.

Q. Okay. What -- it's the Zurich part you don't recall or what part don't you recall?

A. No, I don't recall these events. I'm sorry.

Q. Did you travel in 1987 to Europe, frequently?

A. I'm sure, yeah.

Q. Was that the 187 [sic] days in the plane year or...?

A. Oh, no. It was earlier.

Q. How many days in a plane was 1987?

A. I have no idea. I've only said that was my worst year.

Q. Like, did you write it down or...

A. No. No. My secretary told me why I would have a room or I should ask Lufthansa to give me a bed in the airplane. So no, I'm sorry, I have no recollection to this.

Q. Would your travel to and from Canada and Europe in 1987 have been over 100 days?

A. I can't really say, sir.

Q. Well, give me in a general sense. Would there be many visits?

A. Yeah.

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(Continued...)

Q. And many would be...

A. But you see it's not -- when you say Europe, this is not only that I go to my place in Munich or Kaufering. I may have gone to other places in the world from here. Central America or Far East, or whatever, though. This is why I definitely cannot tell you.

Q. Would you visit...

A. I mean, when I look at this, and this is for Revenue Canada that Mr. Moores should have presented to Revenue Canada his airline tickets or whatever, and then this thing should be real, but yet, when he really flew to Munich on the 31st of October...

Q. I don't -- the issue is just does this help you, yes or no?

THE COURT: And we've been through that.

MR. BERNSTEIN: Yes. And that was my point in saying that.

THE COURT: Yes, yes.

THE WITNESS: No.

THE COURT: It does not.

MR. BERNSTEIN: So if the answer is no, it's no.

MR. BERNSTEIN: Q. Okay. Would you visit Zurich on occasion in 1987?

A. I'm convinced, yes.

Q. Would you visit the bank in Zurich?

A. Could very well be.

Q. That would be so in 1986 and '87?

A. '87, sure.

Q. Okay.

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THE COURT: Before you move on to another significant topic, Mr. Bernstein, let me know. That would probably be an appropriate time to break on this Friday afternoon. But if there is something you want to complete relating to this, go ahead.

MR. BERNSTEIN: Actually, I'm in Your Honour's hands. It's been a long week. I wanted to deal with one more banking document respecting this sum of money, but I can do it just as easily on Monday morning as now...

THE COURT: I'll leave it up to you.

MR. BERNSTEIN: I'm in Your Honour's...

THE COURT: I leave it up to you. All right. Well, let's -- you're nodding your head there, Mr. Schabas. I take it you're not in disagreement. Monday morning, I have no sentences at nine o'clock. If you gentlemen wish, I'm prepared to start earlier, if it's of value.

MR. BERNSTEIN: Thank you, Your Honour. That would be great.

THE COURT: How about we say nine-thirty. Or does that conflict with schedules.

MR. SCHABAS: No, that's fine, Your Honour. We can do that.

THE COURT: Okay. Let's adjourn then until -- you can be back here at nine-thirty Monday morning?

THE WITNESS: Yes.

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THE COURT: Is Mr. Greenspan going to be here Monday, do you think?

MS. CHRISTIE: I think it will be me, Your Honour, but I will confirm that. I think right now it's me.

THE COURT: Do you have any information -- and I just mean in the most general terms about Mr. Greenspan's health -- is it good?

MS. CHRISTIE: It's good to the point where he's fine, yes, but he's still at home.

THE COURT: But it hasn't -- no, it hasn't taken a turn for the worse or anything like that?

MS. CHRISTIE: No.

THE COURT: He's recuperating as expected.

MS. CHRISTIE: He is, and he's still at home. He's not back in the office.

THE COURT: That's good. Thank you very much. We'll all meet here then at nine-thirty on Monday next.

THE WITNESS: Thank you, sir.

THE COURT: Thank you.

COURT REGISTRAR: All rise, please. Court is now adjourned.

COURT ADJOURNS

R. v. MBB Helicopter Canada et al
CERTIFICATION

FORM 2

CERTIFICATION OF TRANSCRIPT (SUBSECTION 5(2))
Evidence Act

I, we Tracy A. Lanctin, certify that this document is a true and accurate transcript of the recording of R. v. MBB Helicopter Canada et al. in the Ontario Court of Justice held at Ottawa, Ontario taken from Recording No. 351, 352 which has been certified in Form 1.

October 5, 2004 _____

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Transcript Ordered: September 23, 2004
Transcript Completed: October 5, 2004
Counsel Notified: October 6, 2004

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Court File No. 02-20068

SUPERIOR COURT OF JUSTICE

HER MAJESTY THE QUEEN

VERSUS

MBB HELICOPTER CANADA LIMITED
(c.o.b. as Eurocopter Canada Limited)
AND
KURT PFLEIDERER AND HEINZ PLUCKTHUN

PRELIMINARY HEARING

FURTHER EVIDENCE

TESTIMONY OF KARLHEINZ SCHREIBER

BEFORE THE HONOURABLE MR. SENIOR JUSTICE P. R. BELANGER
ON SEPTEMBER 13, 2004 AT THE CITY OF OTTAWA

CHARGE(S) : Section 380(1) (a) CCC - Fraud Over \$5,000

APPEARANCES:

M. Bernstein
T. Shaw

Counsel for the Crown

P. Schabas
T. Wong

Counsel for the Accused

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CRIMINAL CODE.**

MONDAY, SEPTEMBER 13, 2004

U P O N R E S U M I N G :

(9:30 a.m.)

COURT REGISTRAR: The Ontario Court of
Justice is now in session. Please be seated.

THE COURT: Good morning.

MR. BERNSTEIN: Good morning Your Honour.

THE COURT: Mr. Bernstein, are you ready to
go.

MR. BERNSTEIN: Yes.

THE COURT: Thank you, sir. Would you come
back?

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

Q. Mr. Schreiber, when we last broke last
week, we were talking about what has now been marked
Exhibit 1-1730. Excuse me. 17341. The original is 17340
GoTo Page 3. Okay. This is the translation, and it's up on
the monitor now. Okay. And this instruction from you to
the bank relates as you've explained to us to a payment of
\$149,000 to Mr. Moores? Do you recall that?

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(Continued...)

A. I mean this is a translation I think you showed me the original document.

Q. We'll show you the original if you like.

A. Yeah. That's correct.

Q. Again, I'm just setting the context.

This relates to an instruction which you made to the bank to withdraw \$149,000 from your account and transferred to Mr. Moores?

A. The account was, to make this clear, was the account 18679, what is missing here is that it was called, Rubric IAL.

Q. So, this is instructions from you to transfer money to that?

A. Yes.

Q. And that money was indeed transferred?

A. Please?

Q. The money was transferred?

A. I think so, yes.

Q. And in that regard, if we can take a look at Document 5560, which is the bank statement, we see...

A. Yeah. You see that -- here you see that it is marked Rubric IAL, you see that on the right-hand side? On top? But I don't see the -- the amount here.

Q. Go to Page 5. And if we I direct you're attention to the bottom of the page?

A. Yes.

Q. The third entry from the bottom, do you see that 149,000?

A. It's hard to read but I can see it, yes.

Q. And that's...?

A. 5th November, or what is it?

Q. Right.

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(Continued...)

A. Yeah.

Q. A debit of 149,000 out of the account?

A. Yes.

Q. Now, you pointed out at the top of the page these banking statements. There's references to Rubric IAL?

A. Yes.

Q. Do you recall now, receiving these banking statements?

A. Please?

Q. Do you recall now receiving these banking statements?

A. No, but I see it here, and I may have seen it in the bank. I just told you that documents was never taken from the bank. They were deposited there.

Q. So then, you would -- would you have reviewed the bank statements at the bank?

A. From time to time.

Q. Including these statements?

A. I don't recall. Possibly.

Q. Well, you make reference to the Rubric IAL. The reason I ask this question is, do you have a present recollection of seeing these bank statements with the note, Rubric IAL?

A. No, sir. I saw only that on paper. You had the Rubric IAL on one statement, and on the other one it was missing, and I saw that. Keep in mind when the money was transferred, it was my account, which I then handed over the -- the -- somehow like a trust account to IAL, because Pelossi was in jail.

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(Continued...)

Q. Well, let's go to the bank opening documents for the account.

A. That was ten years earlier, or so.

Q. And in that regard, let's take a look at Document 6554. Go to -- 6543. GoTo Page 13.

MR. SCHABAS: Sorry, Your Honour. Just before we look at this maybe it could just be taken off the screen -- off the witness screen for a moment.

THE COURT: Please.

MR.SCHABAS: I'm just mindful of Your Honour's comments before about taking the witness to documents and then asking questions about those being a form of leading. I don't know what my friend is intending to do by going back to this but...

MR. BERNSTEIN: Okay.

MR.SCHABAS: It raises the same concern.

THE COURT: Have we been there before?

MR.SCHABAS: Yes.

MR. BERNSTEIN: Well, no. And I -- Your Honour?

THE COURT: You know you're using the expression "going back to this".

MR.SCHABAS: Sorry. We haven't been back to this one, actually.

THE COURT: No.

MR.SCHABAS: That's true.

THE COURT: Is that the document purportedly signed by this witness?

MR. BERNSTEIN: Yes. I'd like to -- if my friend is going to continue to object, I'd

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(Continued...)

like the witness excluded and I'd like to make submissions on this point. This is not a form of leading and this is not a form of hearsay. I'd like to just clarify this now. This is a document completed by the witness.

THE COURT: He's just asking that we look at it before it's shown to the witness and so that, you know, there is a proper interval within which to make objections. I don't see that there is anything wrong putting this document to this witness at this time, because I -- unless you have objections to it being shown to him, it appears to be a document signed by him.

MR.SCHABAS: Just for that purpose then...

THE COURT: But I have problem with what Mr. Schabas is suggesting. I don't think I need to hear from you. It's because some documents have in the past in this proceeding been shown to be dubious in terms of what Mr. Schabas raises now, and import the possibility of leading. It's not -- it's not a bad practice to show it to everybody first and then to the witness if there are no objections.

MR. BERNSTEIN: I don't, Your Honour, and in that regard, I will. So, Mr. Schabas has seen the document?

THE COURT: You can bring it up on the screen now, please.

MR. BERNSTEIN: It would be my intention now to also show the witness a translation. I

o

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(Continued...)

don't know if Mr. Schabas wants to see that first, also.

THE COURT: All right. Well, let's go to the original first and then we'll go to the translation.

MR. BERNSTEIN: Q. I note that there is a signature on the bottom of the page. Does that signature look familiar to you?

A. Yes.

Q. Who's signature is that?

A. It's my signature.

MR. BERNSTEIN: With leave of the court, Your Honour, I'd like to go to the translation if I could.

THE COURT: Um-hmm.

MR. BERNSTEIN: And the translation is at Document 37919. That's Document 37919. We can go to the big screen.

MR. BERNSTEIN: Q. All right. We have here a translation of a document. And this is a translation of the document we just looked at?

A. Hmm?

THE COURT: Is that a translation, sir, of the document we just looked at?

THE WITNESS: Yeah, it looks so. Yeah. Go further up. Yeah.

MR. BERNSTEIN: Q. Okay. So we have here an opening account document in connection with Account Number 18679?

A. Yes.

Q. The original of this document was signed by you?

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(Continued...)

A. Yes.

Q. And this relates -- it says here the account holder of Account Number 18679 is yourself?

A. Yes.

Q. Is that consistent with who the account holder was?

A. Yes. Yes.

Q. And if we look at the type of account and we see it says Account/Security Deposit, and then it says Account in Swiss Francs, and then an X with Security Deposit. Do you say that there?

A. Yeah.

Q. All right. Now, can you just move down the page a bit? We see that the account was opened quite some time ago, as you suggest...

A. Um-hmm.

Q. ...in Zurich on December 5th, 1973.

A. This account might have been opened already in the 60's but they changed numbers and systems from time to time, so this is why I said it was a very old account, was used in the early 60's, and then not again, though, the bank made changes on that.

Q. This account is the one we've been talking about?

A. Yes.

Q. And this is an opening account document...

A. Yes.

Q.respecting this account? Can we go back to the original, the German? There is something written diagonally across the page here.

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(Continued...)

A. That's exactly what I said. It says here this is replaced now with a new document from -- with a document from 1992.

Q. Okay. And if we go to the translation, we see that that's written on the top of the page, correct?

A. Yeah, that's correct.

Q. Let's go to -- well, let's -- let's have Mr. Schabas take a look at document 37918.

MR.SCHABAS: Is there an original? I assume we're just asking.

MR. BERNSTEIN: Yes. The original is at -- well, the original...

MR.SCHABAS: Your Honour, if it's a similar kind of document in which he wants the witness to identify, I have no problem with it.

MR. BERNSTEIN: Thank you.

THE COURT: Thank you.

MR. BERNSTEIN: All right. Let's show Mr. Schreiber the original, which is Exhibit -- or Document 6554 GoTo Page 2.

MR. BERNSTEIN: Q. You mentioned that the account document with looked at before had a reference to "replace with something" in 1992?

A. Yes.

Q. Okay. There's a signature at the bottom of this document, 6554 GoTo Page 2. Does that look familiar to you?

A. Yes.

Q. How so?

A. Hmm?

Q. Why does that signature look familiar to you?

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(Continued...)

A. Well, I know what it is. First of all, it's my signature.

Q. Okay.

A. ...obviously, and second, I know what it is.

Q. What is it?

A. It's a document from the bank speaking about accounts in different currencies, and also that the documents will be deposited at the bank.

Q. Let's just spend a minute and go through this document. First of all, let's go to the translation. That's document 37918. So, this again, as reflected in the top right-hand corner, relates to bank Account Number 18679? Right?

A. 18679. Yes.

Q. The account holder is listed as yourself, Mr. Friedrich...

A. Yes.

Q. ...M. Karlheinz Schreiber?

A. Yes.

Q. This is -- correct me if I'm wrong -- the document which replaces the document we just looked at?

A. Yes, it looks -- it looks that way.

Q. Well, we can bring it -- the dates correspond? Let's do a split screen and bring up the other document. So if we look at the document, which was the one we were looking at earlier, it says in German there across the page diagonally, replace with -- well, what does it say? Your German is better than mine.

A. There's a new document from the 19th of November '92. That may -- this may be the same, the right thing.

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(Continued...)

Q. The dates correspond, right?

A. Yeah.

Q. So let's go back to the translation of the document we've been looking at, 37918. Okay, and we see that we have account 18679. You are listed as the account holder...

A. Yes.

Q. And the date of this document is as reflected on the bottom of the page? November 19, 1992...

A. Yeah.

Q. ...and it's signed in Zurich, correct?

A. Um-hmm. Um-hmm.

Q. Okay. With respect to this particular account, in the middle of the document here it says, Account. And it lists three types: Account in Swiss Francs, current account in foreign currency, and security deposit. Do you see that there?

A. Yeah. What I'm wondering is, this is 1992, though, was this.... I thought it deals with the MBB thing. But in my recollection, there was nothing with MBB in 1992.

MR. BERNSTEIN: Let's go to document -- Mr. Schabas first -- 37917. 37917. Okay.
Mr. Schabas is nodding.

MR. BERNSTEIN: Q. Maybe Mr. Schreiber can look at Document 37917. Okay?

A. Yeah.

Q. And we'll look at the German version to start off with, which is 6554, GoTo Page 14. All right. Does this document look familiar to you, sir?

A. Yes.

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(Continued...)

Q. And I see a signature at the bottom of the page. Is that your signature?

A. Yes.

Q. Let's go to the front top of the document. This is a Power of Attorney document?

A. Yes.

Q. Executed by in favour of Frau...?

A. Rauscher.

Q. Rauscher?

A. Yes.

Q. In respect of this account, 18679?

A. Yes.

Q. Correct?

A. Yes.

Q. And it's dated, if we go to the bottom of the page, December 1975 in Zurich?

A. Yes.

Q. And the translation is for the benefit of us, at Document 37917. What was this document about?

A. That's a translation from the other one, I guess.

Q. And just in your own words, sir, explain what that Power of Attorney relates to?

A. Mr. Rauscher had the right to sign that account.

Q. Who was Ms. Rauscher?

A. My fiancée.

Q. Let's go to the original. There is some writing in the middle right-hand side of the document. There is a date, October 24, 1986, and then a signature beside it. Do you see that there?

A. Yes.

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(Continued...)

Q. Is one of the signatures, the signature to the left, yours?

A. Yes.

Q. What does that notation mean or relate to?

A. I have not the smallest idea.

Q. Would other documents assist in refreshing your recollection?

A. Because I cannot read what is written here above it.

Q. We can make it bigger.

A. I have no idea.

Q. Okay. Let's -- would looking at other documents assist in refreshing your memory? Okay. Let's just keep the date. Let's bring that document back and let's keep the date in mind.

A. Yeah, I see -- I see exactly why you're looking at this. Yeah.

Q. The date is October 24, 1986?

A. Yes.

MR. BERNSTEIN: Okay. I'd like to show Mr. Schabas Document 6554, GoTo Page 3. And the translation might be of greater assistance to Mr. Schabas. It's at 37916. Mr. Schabas?

MR. SCHABAS: Yes.

MR. BERNSTEIN: Q. Okay. Let's go to the original, the German copy, 6554 GoTo Page 3. We have here another Power of Attorney respecting this account. Account 18679. This one in favour of Barbara Schreiber, executed by yourself? Is that correct?

A. Yes.

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(Continued...)

Q. And your signature is on this document in the bottom right-hand corner?

A. Yes.

Q. And remember when I asked you to keep that date in mind...

A. Yeah.

Q. ...10th, 1986? This document is completed when, sir?

A. At the 24th of October, '86. I think now the other one was a cancellation for the Power of Attorney for my fiancée.

Q. That's right. So, you're replacing the Power of Attorney in favor of your fiancée on this account with your wife...

A. Exactly.

Q. ...as of October 24, 1986.

A. Yes.

Q. Okay. I'd like to show you just another document respecting this account executed in October 1986, but first, Mr. Schabas, the translation is at Document 37915.

MR. BERNSTEIN: Mr. Schabas?

MR.SCHABAS: This seems to be a blank form. Is there a.... If you're doing it for the same purpose to identify, that's fine.

THE COURT: It's a translation.

MR.SCHABAS: That's fine. Yes.

THE COURT: So the signature, it says, is illegible.

MR. BERNSTEIN: The original. The original. Give Mr. Schabas the original. Go to the next page.

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(Continued...)

MR. SCHABAS: Fine.

MR. BERNSTEIN: Let's take a look at the original, the German: 6554 GoTo Page 15.

MR. BERNSTEIN: Q. We have here a document in German. Let's stop there. And there is something written across the top or across the document, diagonally. Do you see that there, sir?

A. Yes.

Q. What does that German say?

A. To be replaced with the new one from the 9th-11th-92 but I've never seen this document?

Q. Well, let's look at the bottom of the page.

A. That's Lehrling.

Q. There's a signature at the bottom of the page.

A. Um-hmm.

Q. Bottom right-hand corner. Does that signature look familiar to you?

A. Yes.

Q. Whose signature is that?

A. That's my signature.

Q. And this is dated October 24...

A. Yes.

Q. ...1986.

A. This must have put this -- took one later on. This is why I didn't recall it.

Q. They must have put what on?

A. This hand-written.

THE COURT: The diagonal writing, sir...

THE WITNESS: Yeah.

THE COURT: ...on the original.

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(Continued...)

THE WITNESS: Because it says something up there, "Lehrling student". I've never seen a thing like this. GK3 [ph] Lehlring means student, so I don't -- this is why I have never seen that.

MR. BERNSTEIN: Q. Apart from the diagonal notation...

A. Yeah. It's okay.

Q. ...are you familiar with the document?

A. It's okay. Yeah.

Q. Okay. Let's go to the translation of this document which is 37915, and this relates to the account we've been talking about, 18679, and it says...

A. Yeah.

Q. ... "Declaration upon opening an account or a deposit, I, the undersigned declare herewith that, I act on our own account" and it's -- there's an X in the original, right? Do you see that there?

A. Yes. Yes.

Q. Let's go back to the original in German. Okay. There's an X beside "I act on..." -- well, let's pull both of them up, the English and the German. Okay?

Okay. So we see that the X for "I/we, the undersigned, declare herewith that I/we act on our own account..."

A. Yes.

Q. And there's an X beside that. But there's no X beside the other part which -- what's below which says, that "I/we, act for the account of the following persons..." names of firms. Right?

A. You mean the second part there?

Q. Yes.

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(Continued...)

A. Yeah.

Q. Let's just look at the original. There is no reference to IAL on this document or...

MR.SCHABAS: Your Honour, is he cross-examining the witness? It's his witness and the document is there. It's been referred to and he's now cross-examining.

MR. BERNSTEIN: I can ask the question a little better.

MR. BERNSTEIN: Q. Is there any reference to IAL on this or any other document, opening account document, which we've looked at here?

A. No. This document shows whether this is for a person, the first paragraph. And the second is when you open an account for a company, that's a different ball game.

Q. Just -- let's look at the...

A. You see, that the domici [ph] company represented by me is controlled by one. This is when you open an account for a company.

Q. There is two X's. There's two empty boxes. One is the second empty boxes that "We, slash, we act for the account of the following person's name's firm?"

A. Yes. Yes.

MR.SCHABAS: Just a minute. Your Honour, he's given his answer. Mr. Bernstein wants to cross-examine him on this issue.

THE COURT: The document, I would think, speaks for itself. Does it not Mr. Bernstein?

MR. BERNSTEIN: Okay.

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(Continued...)

MR. BERNSTEIN: Q. Does the name IAL, or International Aircraft Leasing, appear on any of the opening account documents we've looked at this morning?

MR.SCHABAS: Well, again....

THE COURT: Well, that's a broader and appropriate question.

MR. BERNSTEIN: Okay.

THE COURT: Although, I admit that documents may speak for themselves, as well, but it's not an improper question.

MR. BERNSTEIN: Okay, Thank you. Your Honour, perhaps these opening account documents which have been admitted for the authenticity and truth of their contents, I understand -- I could be stand corrected -- can be entered as the next series of exhibits in this proceedings.

THE COURT: All right. They'll be made exhibits as they've been identified to the court in that order.

MR. BERNSTEIN: Just for the record, and so there is no confusion, the translation and the original will be the same exhibit.

THE COURT: In the manner in which you put them to the court.

MR. BERNSTEIN: I don't need to call the numbers out, do I?

THE COURT: They're already part of the record.

MR. BERNSTEIN: Thank you.

MR.SCHABAS: I take it we're just referring to the pages that we've been referring to.

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(Continued...)

MR. BERNSTEIN: Do you want me to call them out?

MR.SCHABAS: No, no. There's no need. The record reflects what pages we've seen. That's all.

MR. BERNSTEIN: Thank you.

EXHIBIT No. 1-6554: Document 6554, Goto Pages 2, 3, 13, 14, 22. Swiss Bank Account Opening Forms, which includes both German and English translation.

MR. BERNSTEIN: Q. Mr. Schreiber, I want you to think back to September 1990. September 1990, and I want to return to the topic which we've been speaking about before we went to these opening account documents. And that was Mr. Moores and moneys to Mr. Moores. So, I'd like you to think about September 1990. Did you have occasion to instruct or assist in providing money or funds to Mr. Moores in September of 1990?

A. That could very well be.

Q. Would some banking documents assist in refresh...?

A. In 1990.

Q. 1990. 1-9-9-0.

A. So, we again come back to complete different business.

MR.SCHABAS: That was my objection, too, Your Honour.

THE COURT: This is relevant, Mr. Bernstein?

MR. BERNSTEIN: Well, with respect,

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(Continued...)

Mr. Schreiber says it's a completely different business. I'd like to know what he means by that and what business it is part of and or it isn't part of.

THE COURT: Well, that may be but why is it relevant that we examine transfers from the witness to Moores in 1990? That's the basic question. It may be perfectly relevant, Mr. Bernstein, but we are dealing with offences that occur before then, I take it.

MR. BERNSTEIN: But there was reconciliations in accountings that when on long past this, Your Honour. Mr. Moores has testified to this transaction. I don't know how much we should go into in front of Mr. Schreiber, but Mr. Moores has testified to...

THE COURT: Well, I don't recall it, specifically. Mr. Schabas, apparently, thinks that this is objectionable. You'll have to tell me why you think it's appropriate and we'll have the witness leave the courtroom while you do that.

MR. BERNSTEIN: Sure.

THE COURT: Please, Mr. Schreiber, would you leave the courtroom for the moment and we'll call you back.

...WITNESS EXITS.

(10:15 a.m.)

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(Continued...)

THE COURT: Yes, sir.

MR. BERNSTEIN: Okay.

THE COURT: May I see the information,
Madam Clerk, please.

MR. BERNSTEIN: Your Honour, Mr. Moores testified to this. This relates to a payment from, or the transfer of funds out of this account in favor of Mr. Moores accounts, or account, in September of 1990 and, particularly, the sums involved where 210,000 and then later in February of 1992 there is a further movement of 127,000 and a further movement of a million dollars.

THE COURT: Well, simply this: Is it the Crown's position that these amounts related to the Coast Guard contract?

MR. BERNSTEIN: I do not believe so, but Mr. Schreiber is the best -- I was intending on asking Mr. Schreiber what they relate to.

THE COURT: Well...

MR. BERNSTEIN: And what they do relate to, Your Honour, is they relate to funds passing from Mr. Moores to -- excuse me, from Mr. Schreiber to Mr. Moores. I anticipate that the witness will indicate that they in one way or another relate to the Thyssen Bear Head arrangements which he'd spoken at some length about. Why they are important and why they are material to these proceedings is that they are part of a relationship between Schreiber and Moores, and Mr. Moores -- they

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(Continued...)

form part -- if we go to Mr. Moores's voluntary submission, they are referred to in there. They form part of that submission, and Mr. Moores testifies, I believe, about them. So to get to the point, they're relevant to a number of things.

The first thing they are relevant to is the nature of the relationship between Mr. Schreiber and Mr. Moores at the material time. Remember, this relationship extends -- isn't limited -- the offence not completed in 1986 but...

THE COURT: No. You're quite right. That's why I asked to look at the information.

MR. BERNSTEIN: Continues...

THE COURT: It's phrased, "as between January 1st, '85 to December 31st, '93."

MR. BERNSTEIN: Exactly. And indeed, the offence extends out over a significant period of time, and as Your Honour will recall there are over ten or so amendments to the contract that extend out over a period of time, and Mr. Melhuish has spoken about that as has Mr. Wittholz.

So what we have here is something that starts and continues, and the nature of Mr. Schreiber's relationship -- and in particular his financial relationship -- with Mr. Moores during the period -- during the time frame where the offence, is relevant for

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(Continued...)

a variety of reasons. It is the Crown's position that that relationship is not -- to use an extremely neutral term -- authorized by Article 22 of the contract, and the flow of funds from Schreiber to Moores. More importantly, the manner in which these funds flowed through Swiss bank accounts, cash withdrawals, and meetings, at least according to Mr. Moores, which followed those cash withdrawals, is relevant to an assessment of the nature of that relationship and of that bargain, that agency agreement.

One of the tell tale signs of a relationship.... Well...

THE COURT: I think you fleshed it out, have you not?

MR. BERNSTEIN: There is one other point and that is, simply, that the way they treat this money is also indicative and material to the nature of the relationship, because I anticipate Your Honour will hear some evidence where originally it's advanced and it's called a loan, then it's not called a loan, and that is material. It also is material because at the end of the day, as you've heard Mr. Moores and Mr. Schreiber engage in a reconciliation of amounts owing as between the two, and it's -- keep this in mind. I'm not suggesting that this money, or I don't believe this money came from MBB.

THE COURT: Okay. Mr. Schabas. Mr. Schabas?

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(Continued...)

MR.SCHABAS: Well, Your Honour, my friend started by frankly responding to your question about whether this transfer relates to the Coast Guard contract, and he said it doesn't. This is something between Moores and Schreiber, neither of whom are charged. I've not heard him say a word in his statement of this as to how this is relevant to what my client did or didn't do. It seems he wants to delve into other matters between those two individuals. We haven't heard a word about MCL, and the information may say something about going up to 1993, but the fact of the matter is that the helicopters were all delivered and paid for by, I think 1988, what is, I believe, the evidence from Mr. Wittholz and others. And in my submission he has not made out any basis for the relevance of getting into what Moores and Schreiber may have been doing one another on dif -- on other matters. On unrelated matters.

THE COURT: Thank you.

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Ruling - Belanger, J.

RULING

BELANGER, J. (OCJ): (Orally)

The Crown argues that this evidence is, while not related to the defendant, is important in order to determine the nature of the relationship and that the nature of the relationship between Moores and Schreiber at least at this time, may be indicative of the nature of the relationship between Moores and Schreiber at an earlier time, and to that extent, I am not able to say that this is irrelevant. It may be some distance from the issues that concern us, and I hope we get to those soon, but at the moment, I'm not going to preclude the Crown at this Preliminary Hearing from exploring this particular aspect, in that that relationship between these two individuals may be relevant to the nature of the relationships that prevailed between them at the material time; that is, the time.

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discussed in the information. I will allow the
Crown to continue.

THE HONOURABLE P.R. BELANGER
ONTARIO COURT SENIOR JUSTICE

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(Continued...)

THE COURT: Recall the witness, please.

COURT REGISTRAR: Mr. Schreiber? Is that his name?

MR. BERNSTEIN: Yes. I'd like to show Mr. Schabas Document 17156, GoTo Page 3.

MR. SCHABAS: I presume he's going to ask the witness to identify it.

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

Q. Okay. Can we pull up on the screen, Document 17156, GoTo Page 6? Sorry, GoTo Page 3. 17156 GoTo Page 3. Mr. Schreiber, we have here a document which has at it's top the account number 18679. Does this writing look to familiar to you, sir?

A. Yes.

Q. Is this your writing?

A. Yes. But again, it's a document from 1990.

Q. Right. Is this some form of instruction?

A. Please?

Q. Where's this document about?

A. Yes, it's an instruction but I still have a problem.

THE COURT: All right, sir. Well, we've had this out, and I've made a ruling that the

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Crown can examine you in relation to these documents, and so we're over that hurdle, and I would ask you, simply to respond to the question...

THE WITNESS: Where?

THE COURT: If you can, that Mr. Bernstein puts to you.

THE WITNESS: Yes. This is a transfer of two, as it looks here, a transfer of 210,000 Can. Dollar to the account of Mr. Moores.

MR. BERNSTEIN: Q. And Mr. Moores's account number is...?

A. 34107.

Q. This is an instruction in your handwriting to the Swiss Bank Corp?

A. Yeah, this must -- I think this is written by Mr. Strobel.

COURT REPORTER: Could I have that name again, please? Can I have that name again, please?

THE WITNESS: Strobel. S-T-R-O-B-E-L.

COURT REPORTER: Thank you.

MR. BERNSTEIN: Q. The writing on the document...

A. Yes.

Q. ...is that your writing?

A. No.

Q. No.

A. No.

Q. I'm sorry. I thought you said it was.

A. No.

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(Continued...)

THE COURT: That's the answer I'd heard, initially, sir, that that was your writing. I've noted it, but now you say that's not your writing.

THE WITNESS: This is not my writing, no.

THE COURT: All right.

MR. BERNSTEIN: Q. Do you recall making the transfer?

A. When I see this here, it's a document from the Swiss bank and it is signed by Mr. Strobel and he made the transfer.

Q. I'm not asking who signed it. I'm -- whose writing is it? Apart from...

A. I assume it's a writing from Mr. Strobel. It's for sure not my writing.

Q. Who had -- we've gone through the opening account documents.

A. Yes.

Q. Who had authority in connection with this account?

A. I have.

Q. Did you instruct this transfer?

A. This could be, because I see something on the left-hand side, which could mean by telephone.

Q. Where is that?

A. On the left-hand side.

Q. Where? Can you point to the words?

A. Yeah. G-M-T-E-L.

Q. Did anyone else have authority to....

A. No. Only through me.

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(Continued...)

Q. Okay. If we look at the bank statement for this time period, which I think is 6571...

A. Mr. Bernstein, let me -- let me make -- allow me to make it easy for you. Maybe I have given him instructions on the telephone...

Q. Okay.

A. ...and he did the form.

Q. All right.

A. And when I would have seen him the next time, he might have had this in his files and I signed it afterwards.

Q. Okay.

A. So that could be the explanation for this document.

Q. But you recall the transfer?

A. Sure.

Q. Okay. And one question. Let's go back to that document, what we were just looking at.

A. I wonder what you have in the translation when you have it.

Q. For this? I don't think we have a translation.

A. Okay, then. Then take it that this means, in my opinion it means telephone and that means that I told him the phone to do that transfer.

Q. If we go to the bank statement, 6571, this is the bank statement for this account.

MR. BERNSTEIN: I think -- Mr. Schabas, do you want -- it's just the bank. Do you want to take a look first?

MR. SCHABAS: What page are you going to?

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(Continued...)

MR. BERNSTEIN: This would be 6571, GoTo
Page 8.

MR. SCHABAS: Fine.

MR. BERNSTEIN: Q. Okay. Let's pull it
up on the court monitor.

A. Yes.

Q. We see on September 24, 1990...

A. September what?

Q. September 26, 1990, a withdrawal of
210,000?

A. Yes.

Q. All right. Would that be the sum?

A. How do I know? Could be. But for sure
you see Rubric IAL up there and you Frankfurt, right?

Q. Right. Okay. You would review these
statements? This statement? Did you review this
statement?

A. I'm a little bit.... Oh, yeah. This is
-- yes, this is correct.

Q. What's correct?

A. It's the -- it's the Rubric from that
account up there and it shows 210. I wonder what, on the
other side here to the tune of 251, I cannot see what
that means.

Q. It's a negative. What is this? It's
the balance?

A. Could be the balance, yeah. Maybe it's
the balance.

Q. It's the balance...

A. But you see you have a number there on
the -- which is 51058. Perhaps you have that on the

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other -- no. 49751. Perhaps you have that on that other document...

Q. All right. Let's look. Do you see that in the corner of the -- that number in the top right-hand corner or the middle right-hand corner?

A. I'm not sure what you are referring to now. There is a number, you see that 41391? Isn't that the same number?

Q. No. It's the same number as on the statement?

A. Yeah. So then, it's identified.

Q. Okay. All right.

MR. BERNSTEIN: Just, Your Honour, Mr. Schabas first. Can I show Mr. Schabas document 17156 Goto Page 2. Okay, Mr. Schabas, this -- Your Honour, I don't intend to show the witness this document. I simply draw it to Mr. Schabas's attention. It is a document, which has been admitted, and there are numbers on that document which correspond with numbers we've recently looked at. His Honour can see it here. It is admitted.

MR. WONG: 17156?

MR. SCHABAS: I don't believe -- it's not on my database as being admitted.

MR. BERNSTEIN: 17156.

MR. SCHABAS: No, no. It's not on any of ours.

MR. BERNSTEIN: All right. Let's move on. We'll sort it out.

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(Continued...)

MR.SCHABAS: Is that right, Staff Sergeant?
Thank you.

MR. BERNSTEIN: It's on my database. Okay.
Your Honour, there has been reference during
the course of the examination this morning
to some bank statements which Mr. Schreiber
has commented on. I don't know -- those
bank statements have been admitted for their
truth and authenticity and they are exhibits
in these proceedings. I'm not going to ask
that anything be done at this stage unless
Your Honour wishes me to or Mr. Schabas
does. They have been identified.

THE COURT: I have no wish for you to do
anything in particular. I leave this up to
you.

MR. BERNSTEIN: Okay.

MR.SCHABAS: Your Honour, I'm just going
to review that over the break. I didn't go
back and canvas those bank statements when
Mr. Bernstein referred to them.

THE COURT: I propose to break around,
what, eleven o'clock? Or would you want me
to break earlier?

MR. BERNSTEIN: No. I'm prepared to
proceed. It's something we can sort out.
It's not urgent.

MR.SCHABAS: I'm not sure that everything
was admitted, now that we've gone and
checked this one. I'm just looking at
6571...

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(Continued...)

THE COURT: Unless it's necessary to take the break now, as I say, I propose to take it around eleven o'clock.

MR. BERNSTEIN: We'll sort it out, whatever is, is. We've all got good records of what was admitted.

MR. BERNSTEIN: Q. Okay. This transfer, which we've just looked at, occurred in September of -- well, September 24, September 26, 1990. I'm wondering if you can recall being in Europe at that time, late September 1990?

A. Could be.

Q. I'm wondering if I can show you Mr. Moores's expense record, the same record we've been looking at...

A. Okay.

Q. ...and we looked at last week. And in that regard, let's go to page 6325 -- excuse me. Document 6325, Goto Page 38. So that's Exhibit 1-6325 GoTo Page 38. Okay? It's on everyone's screen? And I specifically direct you're attention to the entries under the heading, Trip No. 1, September 22-October 4 for September 27th, which is September 28th, and September 25. And that's September 1990. My question to you is...?

A. I feel sorry. I have no recollection of not one of these events.

Q. Well, do you recall meeting Mr. Frank Moores in Europe between 1986 and 1990?

A. This may sound strange to you. I definitely don't recall. Might be, might be not. You mean between '86 and '90?

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(Continued...)

Q. Yeah.

A. In four years?

Q. Yeah.

A. Oh, yeah, sure.

Q. Do you recall meeting with
Mr. Pfleiderer during that period of time, '86 to '90?

A. For sure.

Q. Do you recall meeting, periodically,
with Mr. Strauss?

A. Yes.

Q. Do you recall meeting Moores in
Switzerland during this time period?

A. No.

Q. Do you recall meeting him in Munich or
Germany?

A. Well, Munich or Germany is possible
because he showed up. When I say Zurich, I don't know,
because in my recollection he was in Zurich quite often
when I was not around.

Q. So, I'm just trying to delve your
recollection?

A. Yeah, yeah. It would be absolutely
only if I would say I recall any of these events.

Q. Do you recall meeting with Moores in
Germany between '86 and '90?

A. I don't recall it, but I take it,
because four years, this is much too long. I think he
was more often there than only once in four years.

Q. All right. Do you recall giving or
causing to be transferred other sums of money to
Mr. Moores in 1992?

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(Continued...)

A. No.

Q. Would banking records of your account, this account 18679, assist in refreshing your memory?

A. Sure.

MR. BERNSTEIN: Let's take a look document -- first Mr. Schabas. Document 17169, Goto Page 3. That's Document 17169, Goto Page 3.

MR. SCHABAS: Okay. Thank you.

MR. BERNSTEIN: Q. Mr. Schreiber, can you take a look at this document. My first question to you, sir, is -- after you've had a chance to familiarize yourself with it -- is whether you can help us with the signature on the bottom right-hand corner of the page?

A. It's my signature.

Q. All right. Is this your writing, the written information on this page, is it in your handwriting?

A. No. Only my signature. I mean, I take it always that the original are the same as it shows here, but if the original is the same, it shows here transfers from the account to others, with my signature.

Q. All right. And this relates to a request to transfer, first, \$127,000 to what we've known as Frank Moores's account...

A. Yes.

Q. ...account 34107, and that is on...

A. Yes?

Q. ...February 27, 1992?

A. Yes.

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(Continued...)

Q. And then, there is a further instruction to transfer a million dollars to Mr. Moores's account?

A. That's the way it looks, yes.

Q. The bottom. So we have one transfer of 127,000 and then of a million dollars, February 27, 1992, from the account 18679 to Mr. Moores's account. Right?

A. Yeah. I think it's from the Rubric Frankfurt, right?

Q. It says 18679. Do you see that there?

A. I wonder what this means here, P-0-4-1-3-9-1 Frankfurt. Do you see that?

Q. Do you recall authorizing these transfers?

A. Hmm?

Q. Do you recall authorizing these transfers?

A. But if you go -- if you go up and my signature is there, for sure.

Q. Is that your signature there?

A. Yes.

Q. The money was transferred as...

MR.SCHABAS: Your Honour, we...

THE COURT: Please, in question form to begin with.

MR. BERNSTEIN: Q. Was the money transferred?

THE COURT: That's fine.

MR.SCHABAS: I'd just ask -- I know Mr. Bernstein has been leading and I know we've got to get through this, but it would

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(Continued...)

be preferable if we got the witness's evidence. He's asking some leading questions and Mr. Schreiber is then asking questions.

MR. BERNSTEIN: I'm sorry. I can....

MR. BERNSTEIN: Q. Was the money transferred?

A. How do I know?

Q. Would the bank statements assist in refreshing your memory?

A. I mean, this is an order from the bank. I assume they transferred the funds, but how do I know?

Q. Was the money there after?

A. Yeah, but Mr. Bernstein, His Honour told me two days ago I should say what I know and I should not guess, so I try to -- I try to do exactly what I am supposed to do. This is the first time that I am a witness in my life, and so I have my problems with it.

Q. Let's look at the bank statement?

A. Yes.

Q. Okay? All right.

MR. BERNSTEIN: 6571. Mr. Schabas first.

GoTo Page 13. In the bottom quarter of the page, February 20...

MR. SCHABAS: Sorry, Your Honour. He might -- the witness might be asked if he identifies it. There's been no admission on this document.

MR. BERNSTEIN: Thank you, Mr. Schabas, but I just want to point out the entries for you. All right? So it's February 29.

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(Continued...)

There's the 127 and then the million is
March 12th. Do you see that there? Okay,
Mr. Schabas?

MR.SCHABAS: Yes, I see it. Thank you.

MR. BERNSTEIN: Let's show it to
Mr. Schreiber.

MR. BERNSTEIN: Q. This is a bank
statement?

MR.SCHABAS: Well, he is leading and it's
not admitted.

MR. BERNSTEIN: All right. I'm not....

MR. BERNSTEIN: Q. Does this document --
the type of document, I'll start with -- look familiar to
you?

A. Yes.

Q. In what way, sir?

A. It looks like a bank statement from the
bank.

Q. For what account?

A. 18679 Rubric IAL. Frankfurt.

Q. Is this the account we've been talking
about?

A. Yes.

Q. Well, I have to ask you. Until you say
yes or no, it's...

A. Okay.

Q. All right?

A. Yeah.

Q. Okay. And there is -- I direct your
attention to the bottom quarter of the page and in
particular under the entry...

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(Continued...)

A. 12th of March?

Q. No, no. Let's go -- you see there is one there for a withdrawal of 127,000? Do you see that there?

A. Yes.

Q. All right. And then there is another one, the 12th of March, for a million dollars?

A. Yes.

Q. Okay. My question was: Does that assist in refreshing your memory on my question "Was the money withdrawn and was the transaction completed?"

A. Well, when you have that other document and you have the same reference numbers there, it's obvious.

Q. Until you say it's obvious, it's not obvious. So, what's obvious?

A. I say, when you have this other document which I signed, and this is the same reference number you have here on the statement, then it's clear that that is the amount of money which was transferred.

MR. BERNSTEIN: Thank you. Perhaps this statement can be entered as the next exhibit in these proceedings?

MR. SCHABAS: Well, he hasn't -- what he said is -- he hasn't identified it. He hasn't said he's familiar with this document.

THE COURT: What is that document, Mr. Schreiber, to the best of your knowledge, that you see on the screen now?

THE WITNESS: It's a statement from the bank.

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(Continued...)

THE COURT: About what?

THE WITNESS: About an account.

THE COURT: About who's account?

THE WITNESS: My account.

THE COURT: All right. Thank you.

Next exhibit.

EXHIBIT NO. 1-6571: Document 6571, Goto
Page 13. Bank Statement.

MR. BERNSTEIN: And just to be neat on
Monday morning, can the written instructions
which we spoke about earlier, be entered as
an exhibit, Your Honour? Is it admitted?

THE COURT: It's 17169, Goto Page 3?

MR. BERNSTEIN: And 17 -- yes. And 17156.

THE COURT: Goto Page 2?

MR. BERNSTEIN: Yeah. That's the next
exhibit.

EXHIBIT NO. 1-17169: Document 17169, Goto
Page 3, written instructions.

EXHIBIT NO. 1-17156: Document 17156, Goto
Page 2.

MR. BERNSTEIN: Q. Do you recall being
with Mr. Moores in Switzerland around this time, February
and March of 1992?

A. No.

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(Continued...)

Q. Would Mr. Moores's expense information assist you in your recollection in that regard?

A. Not, really. But if you show me other events...

Q. Do you want to try or it's no?

A. Yeah. If -- if there are events where I may identify it from, I have no problems to do that.

Q. Would you like to try from Mr. Moores's expense records, or not?

A. Sure.

Q. Okay. So, we'll just try again. This is Document 6325, Goto Page 40, again a portion of Mr. Moores's expense report, and in particular for 1992. I direct your attention, with respect Mr. Schreiber, to the information under the heading, Trip No. 1, February 25, dash, March 1.

Can you look at the information there, and I ask you again, does this assist in refreshing your memory in connection with the question: Do you recall being with or meeting, dining, whatever, with...

A. No. Sorry.

Q. Well, let me ask -- with Mr. Moores? No? Yes?

A. Sorry. No.

Q. These transfers, the \$127,000, the \$1 million, the \$210,000, did they relate to MBB? I'm sorry. What did they relate to?

MR.SCHABAS: Why doesn't he ask what they relate to?

MR. BERNSTEIN: I was going to.

MR.SCHABAS: Well, you don't.

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(Continued...)

THE COURT: Well, and now you have. That's fine. Go ahead.

THE WITNESS: No.

MR. BERNSTEIN: Q. No. That was -- my question was what did they relate to?

A. Hmm?

Q. What did they relate to?

A. I don't recall. I can assume but I don't recall. But for sure at MBB, this is more than the whole business with MBB was. How could it be MBB helicopters?

Q. Just to be clear, my question was -- these transfers, 210,000, 127,000, and a million dollars.

A. Yes.

Q. My question was, what do these transfers relate to?

MR.SCHABAS: Well, Your Honour, he got his answer.

THE WITNESS: I don't know. I can assume, but I don't know.

MR. BERNSTEIN: Q. When you say you can assume what do you mean by that?

A. Yeah, that was...

MR.SCHABAS: Well, I don't think we want to guess, Your Honour, if that's what Mr. Bernstein is trying to get...

MR. BERNSTEIN: Your Honour, I'm just trying to explore what he means by the word "I can assume".

THE WITNESS: Well, there was lots of business...

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(Continued...)

THE COURT: Hold on.

THE WITNESS: ...with Mr. Moores. Not only MBB.

THE COURT: Hold on, sir. There is an objection to your assuming. Again, sir, I don't want you to be providing us with pure guesswork. If you have a good idea what it is it relates to, then even though you're not absolutely sure of that, you can go ahead and tell us, but if it's pure speculation, no. Qualify it one way or the other, if you would.

THE WITNESS: Then, it's no.

MR. BERNSTEIN: Q. Would looking at documents assist in refreshing your memory?

A. Depends.

MR. BERNSTEIN: Let Mr. Schabas first take a look at Document 6270.

MR. SCHABAS: I don't have a problem with him looking at it, Your Honour. I note we're now into 1995.

THE COURT: Go ahead, Mr. Bernstein.

MR. BERNSTEIN: Q. Okay. Thank you.

Let's put it up on the screen. We have here a letter, dated December 27, 1995, to Frank Moores. There's a signature at the bottom of the letter above the words "Karlheinz Schreiber". Does that signature look familiar to you?

A. Yes.

Q. Who's signature is that?

A. The one on the bottom?

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(Continued...)

Q. Yes.

A. It's my signature.

Q. This is your letter?

A. Yes.

Q. The Re caption is "loan in the amount of \$1 million Cdn., Project Thyssen Bear Head." Do you see that there?

A. Yes. Correct. Yes.

Q. And then it says in the first paragraph, "On March 12, 1992, Thyssen Industries, through myself, granted you a loan in the amount of \$1 million Cdn., at an interest rate of 4 percent p.a." Do you see that there?

A. Yes.

Q. Now, the time period, March '92, all right?

A. Yes.

Q. Is that around the time of the million dollar transfer we just looked at?

MR.SCHABAS: Why doesn't he ask him if it assists his recollection? That's the purpose of looking at it.

MR. BERNSTEIN: Well...

THE COURT: It's a simple question. It's the way to go....

MR. BERNSTEIN: Actually, to ask whether it assists in refreshing his memory? Actually, Your Honour.... I know Your Honour was normally planning on taking the break now, but if it pleases the court, then I'd ask that Mr. Schreiber be excused at this point.

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I'd actually like to make a submission on the use that can be made of this kind of document. Because, I submit it can be used for other things besides simply refreshing memory.

THE COURT: Oh, it probably can, yes. I would think so.

MR. BERNSTEIN: And I just want to stop this now. If my friend thinks I can only use letters written by Mr. Schreiber, which he identifies as having been written by Mr. Schreiber, as only refreshing...

MR. SCHABAS: I didn't say that.

THE COURT: No, no. But you said -- but you said, "Would looking at a document assist you in refreshing your memory?" and he said, "Maybe" and then you're showing him the document. I presume this is what we're doing right now.

MR. BERNSTEIN: Yes. You're right. Okay.

THE COURT: And so, it may be for other purposes admissible in another context, but...

MR. BERNSTEIN: Okay. Thank you. You're right, Your Honour.

THE COURT: ...this is what we're doing, right?

MR. BERNSTEIN: Yes. So, I can, with respect to that first paragraph....

MR. BERNSTEIN: Q. Mr. Schreiber, can you look at the first paragraph?

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(Continued...)

A. Yes.

Q. Does that first paragraph, and indeed the latter...

A. Yes.

Q. ...assist in refreshing your memory?

A. Yes.

Q. How so?

A. Well, it's a loan to Mister -- this deals with a loan to Mr. Moores.

Q. In connection with what?

A. With the Bear Head Project.

Q. The loan was from -- you say to Mr. Moores?

A. Yes.

Q. From who?

A. Through me, and the loan came, originally, from Thyssen.

Q. Why did you write this letter?

A. Well, to clarify the situation. This million -- by that time I thought had -- would have to be paid back to Thyssen as well.

Q. So you were writing for what purpose?

A. To ask him to let me know how he looks at the loan and how he is going to repay it.

Q. Why did Thyssen and you loan Mr. Moores a million dollars?

MR.SCHABAS: Well, it wasn't him. It was just through him.

THE COURT: With that qualifier, sir, can you answer the question?

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(Continued...)

THE WITNESS: You be on a totally different subject with other companies now, but it was so that there was a loan, and in the case of success, it would be seen as payment for success, and if the success would not be there, the money would have to be repaid. This is to help to finance a project, because when you look at Mr. Moores' bookkeeping from GCI, you will find no one -- no one bill from Thyssen, with one exception for a rented airplane for 10 years. GCI was financed on the Bear Head Project through IAS.

THE COURT: All right. We'll break now. Thank you, gentlemen, and we'll start again in a few minutes.

COURT REGISTRAR: All rise, please. This court is in recess.

R E C E S S

(11:05 a.m.)

U P O N R E S U M I N G:

(11:30 a.m.)

COURT REGISTRAR: The Ontario Court of Justice is now reconvened. Please be seated.

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THE COURT: Okay. Away we go.

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

Q. Were arrangements made for the repayment of this loan?

A. Until now, unfortunately not, because Mr. Moores claimed that his money was blocked.

MR. BERNSTEIN: Your Honour, I'd ask that this letter from Mr. Schreiber to Mr. Moores, dated December 27, 1995, Document 6-2-7...

THE COURT: 6270. Yes, next exhibit.

MR. BERNSTEIN: ...0, be the next exhibit, please. Goto Page 2.

EXHIBIT NO. 1-6270: Document 6270, Goto Page 2. Letter to Mr. Moores, dated December 27, 1995.

MR. BERNSTEIN: All right. Thank you.

MR. BERNSTEIN: Q. Was the loan ever forgiven?

A. From Thyssen to IAL, yes, as far as I recall.

Q. Would looking at documents assist in refreshing your memory.

MR. SCHABAS: Well, I thought he did have a memory.

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(Continued...)

MR.SCHABAS: He said as far as he recalled.

MR.SCHABAS: Well, that's the answer.

THE COURT: I suppose the answer is yes, for our purposes.

MR. BERNSTEIN: Q. Were documents executed in connection with that forgiveness?

A. I don't recall, but -- exactly, but could be.

MR. BERNSTEIN: I'm wondering if Mr. Schabas can take a look at -- or we can show Mr. Schabas Document 14981.

MR.SCHABAS: Well, Your Honour, presumably, Mr. Bernstein wants to put it to the witness to refresh his memory. I suppose for that purpose it can be done. I would note that we are now into 1995 and it was an hour ago that we were told by Mr. Bernstein that he wanted to review matters in the 1990's, which was presumably to lead somewhere, but we're not there yet. I suppose I just note that. I wonder how much more we're going to be dealing with this on, because I think we are getting far afield from the relevance to our case.

THE COURT: Well, I suppose, it could always be admitted that the content of this letter is true or reflects the agreement between the various parties and that's the end of that, but if it's not, it relates back to 1992, and relates to the ending of a particular relationship.

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MR. BERNSTEIN: Indeed. It relates to 1985.

THE COURT: He's the addressee and I suppose the letter could be put to him at this point.

MR. BERNSTEIN: Thank you.

MR. BERNSTEIN: Q. Mr. Schreiber, we have here a letter, and if you like I can show you the German letter.

A. Yes.

Q. Which is go to.... GoTo Page 3. And then, if we can take a look at the translation which is at GoTo Page 2, we have here a letter addressed to you from Mister...

MR.SCHABAS: Why don't we let the witness look at the original and...

THE WITNESS: Could you give me the German back?

MR. BERNSTEIN: Q. Sure. Goto Page 3.

A. Yes.

Q: This is on the letterhead of Wilfred Haastert?

A. Yes.

Q. What did Mr. Haastert do for a living at that time?

A. He was the Member of the Board from Thyssen Industries.

Q. Can we take a look at the English translation, which is Goto Page 2. The question was...

A. Yeah. Seems to be correct, the translation as far as I know or understand.

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 (Continued...)

Q. Okay. There is a reference -- I'll just follow up on the last question I asked, which was -- my question was: Were documents executed or prepared in connection with this forgiveness?

A. The one million? This is -- this is the document.

Q. Okay. The first paragraph of the letter refers to.... Well, the words are "Regrettably, note that the breakthrough originally hoped for has not been achieved."?

A. Yeah.

Q. From your point of view, that was a reference to what?

A. Bear Head Industries, to the project at Cape Breton.

Q. Which did not go forward?

A. Yes.

Q. This letter is dated May 1995? *

A. Yes.

Q. And then the second paragraph goes onto say, "I propose that you do what you can to see that all agreements made in this connection, this includes in particular the agreement with Bitucan Holdings Limited, dated October 1983, become invalid?"

A. 1983? No. 1985.

Q. '85, sorry. 1985 become invalid. What was that a reference to?

A. Bear Head Industries.

Q. It goes on to say, "As soon as we have received the relevant declarations from Bitucan Holdings Limited, IAL International Aircraft Leasing Limited,

Date

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(Continued...)

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into Feb 2004*

1995

Bayerische Bitumen-Chemie" et cetera, and yourself,
"...we are prepared to no longer prosecute the claim
against IAL International Aircraft Leasing Limited, with
respect to the loan valued at \$1 million Cdn."

Were the requisite declarations prepared?

A. I assume.

Q. And was then the loan forgiven?

A. Yes. At least as far as I know. Nobody
asked me for the payment. And I haven't heard anywhere
that IAL has been asked to repay it.

MR. BERNSTEIN: Perhaps this can be the next
exhibit in these proceedings, and that would
be Exhibit 14981.

THE COURT: Goto Pages 3 and 2. That's the
next exhibit.

EXHIBIT NO. 1-14981: Document 14981, Goto
Page 2, 3. A letter from W. Haastert.

MR. BERNSTEIN: And the original German
exhibit is number 14982.

MR. BERNSTEIN: Q. Do you write a letter
in response to Mr. Haastert's letter to you?

A. I don't recall.

Q. If we showed you a letter, would that
help your recollection?

A. Yes.

Q. Let's take a look at 14976. Haastert's
letter to you is dated May 2, 1995. Let Mr. Schreiber
look at it first.

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(Continued...)

MR.SCHABAS: Yes, I have no problem with that. I shouldn't say no problem, other than my general concern about where we are.

MR. BERNSTEIN: Q. Let's show

Mr. Schreiber first the German copy of this, and that is at Goto Page 4 and 5. Mr. Schreiber, take a look at Goto Page 4 at your leisure, and then we'll show you Goto Page 5. The question I'll ask you to begin with is: Are you familiar with the signature at the bottom of Goto Page 5?

A. Yeah. Show me the next page. Yes.

Q. Is that your signature?

A. It's my signature and my responding letter.

Q. From a review of this letter you don't seem very pleased.

A. No, I'm not. It's pretty much known, I think, this is a document from the files from the German authorities or from Stevie Cameron.

Q. I just direct you're attention to GoTo Page -- well, let's go to the English edition of it, which is Goto Page 2, and in particular I'd like to direct your attention to the second page. Well, first I'll identify the letter. We have here a letter from you to Mr. Haastert, dated May 24th, 1995, which as you say, follows up on the letter of Mr. Haastert since the...

A. Yes.

Q. And if we go to Page 3 of the document, which is the second page of the letter, I just want to direct you're attention to the second paragraph. It says, "As far as I'm concerned, you may assume that I did -- I

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(Continued...)

did not invest large sums of money or spend a lot of time and energy for ten years in order to leave quietly."

A. Yes.

Q. What sums of money are we talking about there?

A. What do you mean by that?

Q. You say in this letter "I did not invest large sums of money". My question is: What are you referring to there?

A. Yeah, I would still continue to fight for the project, which I did.

Q. My question was: What did you mean when you said "I did not invest large sums money...?"

A. My time and the money I spent from my side, for all the time I put up, to see it...

Q. Well, what large sum of money are you referring to there?

A. I don't know in particular. I paid everything myself.

Q. How much did you invest as of this time as writing that letter?

A. The expenses and the money I paid.

Q. What money are we taking about here?

MR.SCHABAS: Your Honour...

THE COURT: Are you able to quantify it, sir?

THE WITNESS: No.

MR.SCHABAS: We've moved afield from Moores and Schreiber now, and my friend is asking him about his own investments.

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(Continued...)

THE COURT: Well, we have his answer to begin with and I think we are getting very far afield, Mr. Bernstein. I don't know how this is going to be...

MR. BERNSTEIN: Okay. Your Honour...

THE COURT: ...of any assistance to me or to a trial court.

MR. BERNSTEIN: Your Honour, I would be pleased to explain what this relates to, because it actually relates directly to an issue which come up in a little while, but I can't explain in front of the witness.

THE COURT: All right. Well, that being so...

MR. BERNSTEIN: I'll move on.

THE COURT: ...you now have a answer...

MR. BERNSTEIN: Yeah.

THE COURT: ...that he cannot recall what sums of money -- he can't quantify it. Do we need to spend any further time on it?

MR. BERNSTEIN: No, I don't.

THE COURT: Okay. Let's move on.

MR. BERNSTEIN: Q. There's reference to discussions with the representatives of Bitucan holdings? Do you see that there in the letter?

A. Yes.

Q. Who where those discussions with?

A. I don't recall who then represented Bitucan, by that time, whether it was Mr. Livingston. I don't recall. It's '95.

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(Continued...)

Q. And you make reference to similar discussions with the representatives of the firm of IAL.

A. Yes.

Q. Who did you talk to?

A. Mr. Pagani.

MR. BERNSTEIN: Can we have that letter entered as an exhibit in these proceedings.

THE COURT: 1-14976.

EXHIBIT NO. 1- 14976: Document 14976.

Letter dated May 2, 1995.

MR. BERNSTEIN: Q. Are you sure it was Mr. Pagani.

MR. SCHABAS: Well, Your Honour!

THE COURT: Hold on! Hold on! No, no, no. It's your witness.

MR. BERNSTEIN: Q. Are you familiar with the man named Ed Frick?

A. Mr. Frick, yes.

Q. What did Mr. Frick do for a living?

A. Mr. Frick is a Member of the Board from IAL.

Q. Was he involved at all in the preparation of the declaration as referred to in these exhibits here?

A. I don't know.

Q. Would a document assist in refreshing your memory?

A. Yes.

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(Continued...)

Q. Could I have the court's indulgence for a minute? Mr. Schreiber, I'd like to show you a document, a letter dated May 29th, 1995, from IAL to, amongst other people, Mr. Haastert. A German letter. Okay. Does that look familiar to you at all?

A. Well, it doesn't look familiar to me, but I take it that Mr. Frick on behalf of IAL, wrote Mr. Haastert.

Q. Can we look at the translation, which is Goto Page 2?

A. Yeah.

Q. So just so I'm clear, are you familiar at all with this letter?

A. No.

MR. BERNSTEIN: Let's go first with Mr. Schabas to Document 14976.

THE COURT: Is this the last exhibit?

MR. BERNSTEIN: Yes.

MR. BERNSTEIN: Q. So I'd like to move on to another topic if I could, Mr. Schreiber. Last week and this morning, we reviewed certain payments from Account Number 18679 to Mr. Moores. In particular.... In particular, \$267,641, and another transfer of \$149,000. Do you recall that from last week?

A. No.

Q. No. Do you recall me asking you about those transfers last week?

A. No. You asked me so many questions about so many transfers, I don't know.

Q. If I showed you the payment orders, would that refresh your memory?

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(Continued...)

A. Sure. Sure.

Q. So, if we can call up on the screen the handwritten payment orders respecting the \$260,000 and \$149,000. Do you see that one which has been entered as an exhibit in these proceedings? It's Exhibit 17333?

A. Yes.

Q. That! Do you remember we were talking about that last week?

A. Yeah. Yes, yes. Now I know.

Q. So that's the...

A. Yeah, yeah. Okay.

Q. ...267,000 [sic].

A. Okay.

Q. The 260,000.

A. Yes.

Q. Okay. Now, there's 149,000?

A. I vaguely recall that you showed me that document. I don't remember that.

Q. It's exhibit... I think it's Exhibit 17341 Goto Page.... Well, 17340, Goto Page 3, and the translation is at 17341. Yes, put both of them up on the screen. That one and the one you just did before.

A. Yes, yes, I know it. Yeah, I recall. Yeah.

Q. Okay. So I'm talking about those two sums of money.

A. Yes.

Q. Now, in 1986, did you receive funds from MBB?

A. Yes. For IAL.

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(Continued...)

Q. Where these funds advanced to Account 18679?

A. Yes.

Q. I'd like to you think back to around October 1986?

A. Yes.

Q. Did you receive funds from MBB around that time?

A. Yes.

Q. Where these funds deposited into Account 18679?

A. Yes.

Q. Can you recall, approximately, how much money was advanced by MBB into 18679, at that time?

A. I think I recall it was around 600,000.

Q. Would a document help you with the exact amount?

A. Sure.

Q. Let's go to 6560, GoTo Page 2. 6560, Goto Page 2.

MR. BERNSTEIN: First, Mr. Schabas.

MR.SCHABAS: I have no objection to that being put in front of the witness, Your Honour.

THE COURT: Thank you.

MR. BERNSTEIN: Thank you.

MR. BERNSTEIN: Q. This is -- take a look at this document. We've looked at a number of these. It's a bank statement for account...

A. Yes. It's 18679 Rubric IAL.

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(Continued...)

Q. There is a figure there, a deposit in the amount of \$641,283. Do you see that there?

A. Yes.

Q. Does that assist in refreshing your memory as to...

A. Yes.

Q. ...the exact amount MBB...

A. No, it's not -- no, no.

MR.SCHABAS: Why doesn't he just ask him whether it assists refreshing his memory?

THE WITNESS: I cannot say exact amount but this is the amount I see, so....

MR. BERNSTEIN: Q. Okay. When you say this is...

A. I see now, so I know it was around 600,000 but I cannot recall whether this was the exact amount. I take it when I see it in the account.

Q. Okay. So this refresh -- okay, just so we're talking, you say this is the amount you see it in the account?

A. Yes.

Q. The amount of what? Just what amount...

A. This was the amount of money which came from MBB and was transferred to this account which I...

INTERPRETER: I made it available.

THE WITNESS: I made it available, because Mr. Pelossi was in jail and MBB wanted to transfer the money for GCI. That's what it was. This account was inactive for many, many years.

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(Continued...)

MR. BERNSTEIN: Q. I'm sorry. Can you just repeat your last answer?

THE COURT: The account was inactive for many, many, years.

MR. BERNSTEIN: I'm sorry, the one just about Mr. Pelossi being in jail.

THE WITNESS: Yes. Mr. Pelossi was in jail. The famous....arrested him and I received a call that MBB would like to transfer money, and that he doesn't know where to do it. So, and since this dealt with GCI, I made this old empty account available and I recall the situation for special reasons. The bank called MBB and asked them whether they think the account is right, where they sent the money and they intended to send the money back.

MR. BERNSTEIN: Q. Who called and said MBB is sending money?

A. The secretary for Mr. Pelossi.

Q. And what did that person say?

A. That MBB intended to send money and that they have no -- they have nobody there who can take it from IAL. This was for an interim solution, the money went to that account.

MR.SCHABAS: Your Honour, I take it this is just not being adduced for the truth of the contents, because we are hearing hearsay.

THE COURT: It's hearsay to the extent that we're -- the original information is hearsay, however, it's not hearsay if he

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(Continued...)

says he got the call. That part of it is, obviously, direct evidence.

MR. BERNSTEIN: Q. And where was Mr. Pelossi at this time?

A. In custody.

Q. What was his secretary's name?

A. I don't -- I recall only her first name: Carla. I don't know what her second name was.

Q. So, the money was transferred?

A. Finally, yes.

Q. The sum?

A. Yes.

Q. Does this sum refresh your memory as to the amount?

A. Yes, somehow.

Q. How about the date? It's October 23rd, 1986?

A. I don't know but that at that time there was money sent, so when this is the date there, I think it's right.

Q. Do you know a man Andre Strobel, S-T-R-O-B-E-L?

A. Yes.

Q. Who was Mr. Strobel?

A. Mr. Strobel was the bank manager.

Q. Where?

A. At the bank in Zurich.

Q. Which bank? There's a few banks in Zurich, eh?

A. Yes. *Schweizerischer Bankverein*. The one you have the document from here.

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(Continued...)

Q. The bank manager at the branch of the Swiss bank account 18679, was at?

A. Yeah.

Q. I want you to think back to July of 1987. We were previously talking about October 1986 and now we're going to move to July 1987. Were there advances of funds from MBB to this account, Account 18679?

A. I don't know but when Mr. Pelossi was out of the -- out of custody, by that time then the money would have gone IAL where it would gone anyhow. And if Pelossi would not have been in jail, this account would have never received the money from MBB.

Q. My question was: Do you recall in July 1987 funds being transferred from MBB to this account?

A. No. I don't recall that.

Q. Would looking at some banking documents assist in refreshing your memory? I'm wondering if we can take a look at...

THE COURT: What was your answer to that question?

THE WITNESS: Yes.

THE COURT: Yes. Thank you.

MR. BERNSTEIN: Okay. Could we show Mr. Schabas Document 17336?

MR. SCHABAS: Your Honour, I don't have a problem with him showing the document.

THE COURT: Thank you.

MR. BERNSTEIN: Q. I want you to think about July 1987. Can you take a look at this document?

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(Continued...)

This is a banking document respecting this account,
18679.

A. Yes. 347 Rubric IAL, is what you mean,
right?

Q. Okay. The translation -- well, the
German document is at Goto Page 3. The translation is at
Goto Page 2. This document seems to be a credit note in
which...

A. Looks like it's a payment came from MBB,
yes.

Q. To where?

A. To that account.

Q. 18679 from MBB in what amount?

A. 130,478.

Q. This would have been in July 23rd,
1987?

A. This is what this document shows here,
yeah.

Q. It's actually two dates on it. There's
the July 23rd, 1987, and there's the date beside the words
MBB, which is July 21, 1987. Do you see that at the
bottom right-hand corner?

A. Yes.

Q. Okay. Does this assist in refreshing
your memory respecting the receipt of funds from MBB into
this account?

A. Yes.

Q. Did MBB provide...

MR.SCHABAS: Well, Your Honour, why doesn't
he ask him how it assists in refreshing his
memory?

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(Continued...)

MR. BERNSTEIN: Q. Does this assist
your....

A. Okay, now what?

Q. Okay. I asked you if this assisted you
in refreshing your memory, right?

A. Yes.

Q. Now, the question is how did it assist
in refreshing your memory? What did it help you
remember?

A. It shows me that by that time money
came from MBB Munich to this account in Switzerland.

Q. In the amount...

A. As I said, 130,478, what this document
shows.

Q. All right.

MR. BERNSTEIN: Perhaps -- well, this has
already been admitted for the truth and
authenticity, Your Honour. I don't think we
have to do anything at this stage.

THE COURT: No.

MR. BERNSTEIN: I want you to.... I'd
actually like to show Mr. Schabas another
document, and this is Document 17337.
Document 17337.

MR. SCHABAS: Yes, Your Honour, it looks like
a similar type of document which I gather
we've admitted, so I don't have a problem
with him putting it to the witness.

THE COURT: Thank you.

MR. BERNSTEIN: Q. Let's take a look at
this Document 17337. We don't have an English edition to

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(Continued...)

it. We do? Okay. We do, actually, have an English edition. It's Document 17338.

A. Yes.

Q. Let's look at the English one. Does this document, this credit note, assist in refreshing your memory in connection with the question: Did MBB provide funds to this account in July 1987?

A. Well, when this is a bank account you show me, then yes.

Q. Does it assist in refreshing your recollection as to the amount?

A. No.

Q. The 160,000, does it generally ring a bell?

A. No.

Q. Okay. Just so that I'm clear, you can't recall the exact amount or you cannot recall anything about this payment?

A. No, I -- I -- I can't recall anything about it. You see this is an IAL affair and the money went through the account. So, this was in Zurich and I was in Munich or Canada or God knows what. This was not -- this was not of any importance to me at all, Mr. Bernstein. I mean I try to be cooperative with you because I don't care about this stuff, but I can only tell you what I know, and as I told you, this money came to this account only by accident.

Q. Was there a shortage of bank accounts in Zurich in 1986.

A. Please?

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MR.SCHABAS: Your Honour, sorry. Is this a cross-examination?

MR. BERNSTEIN: No. It wasn't a leading question.

MR.SCHABAS: Well, it sure sounds like it, with respect. The question should be open-ended. Why else would that question be asked if it wasn't a form of cross-examination?

THE COURT: I don't think it makes a huge amount of difference.

MR.SCHABAS: Well, Your Honour, he's asked him why the account was used. He's got his answer and now he is, in effect, the question is really directed towards a cross-examination of something else. I mean the other way -- a non-leading way to ask him would be, why wouldn't it go into another account? And Mr. Schreiber has explained why it went into this account, so it is he is simply trying to come at it another way for some reason, which is...

THE COURT: I think the court can draw its own conclusions, Mr. Bernstein, about that.

MR. BERNSTEIN: Yes, Your Honour.

THE COURT: I don't think this particular line of inquiry is particularly useful.

MR. BERNSTEIN: Yes, Your Honour.

THE COURT: It's evident.

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MR. BERNSTEIN: Yes, Your Honour.

THE COURT: It's evident that there must have been other ways.

MR. BERNSTEIN: Q. Have you been to Vaduz, Liechtenstein?

A. Yes.

Q. Why?

A. Oh, I have friends there, and I worked with companies there.

Q. Which companies?

A. For example, with IAL.

Q. Which other companies?

MR. SCHABAS: Well, Your Honour, are there others that Mr. Bernstein specifically wants to find out about, as opposed to asking Mr. Schreiber to tell us everything about his businesses?

THE COURT: I presume this is going somewhere?

MR. BERNSTEIN: I just don't want to suggest the answer, Your Honour.

MR. BERNSTEIN: Q. Which other companies?

A. I don't recall. There may be many other companies, but I don't recall.

Q. I want you to think back to May of 1988. May of 1988. Did Bitucan receive funds from IAL in May of 1988?

A. I don't recall but could well be.

Q. Would some banking documents assist in refreshing your memory?

A. Sure.

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MR. BERNSTEIN: First of all, let's show Mr. Schabas Document 37922. Document 37922.

MR.SCHABAS: Your Honour, I guess given the general proposition that one can be shown any kind of a document to refresh their memory, I can't object. I note it's not to or from the witness, and we're in 1988. I'm sure Mr. Bernstein will tell us it's relevant somehow. So I'm not objecting vigorously. I just question again where we're going with this.

THE COURT: Well, this is a transfer to a company in relation to which this gentleman has clear associations with. I think it's appropriate.

MR. BERNSTEIN: I would be to explain it's relevance, Your Honour, but I couldn't do it in front of the witness.

THE COURT: Go ahead.

MR. BERNSTEIN: Q. Okay. So we have here a document, which is a letter from Mr. Pelossi, IAL, to Private Trust Bank Corporation in Vaduz. Do you see that there?

A. Yes.

Q. Okay. If we look at the English edition...

A. Hmm?

Q. If we look at the English edition of the letter...

A. Yes.

Q. ...and that's Goto Page 2...

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A. Yes.

Q. There's a reference here to a transfer of funds to Bitucan in Calgary?

A. Yes.

Q. My question to you is, does that assist in refreshing your memory in connection with the question: Do you recall IAL providing Bitucan with funds in May of 1988?

A. I see that -- at least in this letter here, which is not my document, and I haven't seen it so far -- that on behalf of Merkur Handels [ph] industry, A G money was sent to Bitucan. Yeah.

THE COURT: I can see that as well, Mr. Schreiber. The question to you is does it in any way assist you in refreshing your memory in relation to the question that was originally put to you, if you recall IAL providing Bitucan with funds...

THE WITNESS: No.

THE COURT: ...in May of 1988?

THE WITNESS: No.

MR. BERNSTEIN: May I have the court's indulgence for just a minute.

MR. BERNSTEIN: Q. Do you know a woman named Erika Lutz?

A. Yes.

MR. BERNSTEIN: Actually, before I go there, just with respect to the last document we were looking at, it's Document No. 37922, Goto Page 2. The original is at Goto Page

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3. The original document is at Document 12801. Let's just go to it.

MR. BERNSTEIN: Q. I see this -- well, there is -- there is some form of signature above the name Georgio Pelossi, and this is dated May 11, 1988. Do you see that there?

THE COURT: We really don't...

THE WITNESS: What signature are you referring to?

THE COURT: We really don't have to go to 12801. It's right in 37922, isn't it? Yeah.

MR. BERNSTEIN: Yes, you're right.

THE COURT: In any event, sorry, go ahead.

MR. BERNSTEIN: Q. We see a signature above the name Georgio Pelossi, do you see that there?

A. The signature?

Q. Yeah.

A. I have to ask what signature do you mean? I have only on here.

Q. I'm pointing to...

A. Mr. Pelossi's signature.

Q. All right. Until you tell us, there's no evidence of that. I was -- was -- in May of '88, was Mr. Pelossi out of jail?

A. Hmm?

Q. Was Mr. Pelossi out of jail?

A. I assume. Oh, yeah, he was in jail '86, and I think he was for seven or eight months. Sure. If he would not have gone again, I don't know, but at this time I think he wasn't.

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Q. Okay. Let's go on to Erika Lutz. Where do you know Erika Lutz from?

A. Erika Lutz worked in an office in Calgary, and she assisted in our companies. I think she has German background. And the company she was working, this provided service for us and she looked into the management from Bitucan.

MR. SCHABAS: Sorry. I missed the end of that Mr. Schreiber. I just couldn't hear the last part of that answer.

THE WITNESS: She looked into management like a secretary or an assistant, whatever you want.

THE COURT: With Bitucan?

THE WITNESS: Yes.

THE COURT: Yeah.

MR. BERNSTEIN: Q. This was at a time when you continued to Bitucan?

A. Please?

Q. This was at a time when you continued to own Bitucan?

A. Yes. I think so.

Q. So, she worked for you?

A. For Bitucan, yeah.

Q. Okay.

A. Maybe also for MLE, I don't -- I don't recall if she provided service for the companies there.

Q. Now, I'd asked you earlier whether you had a recollection of IAL providing Bitucan with funds in May of '87.

A. And the answer is no.

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Q. Okay. Would looking at other documents assist in refreshing your memory?

A. Yes.

Q. Okay.

MR. BERNSTEIN: Let's show Mr. Schabas Document No. 3303, Goto Page 2. Is it German or English? So, for Mr. Schabas, the English, Goto Page 3.

MR. SCHABAS: I don't have a problem with it being put to the witness, Your Honour.

THE COURT: Thank you.

MR. BERNSTEIN: Q. Okay. Let's show it to Mr. Schreiber. Let's show him the German first. It seems to be a letter from Petrol Group of Companies. Are you familiar with that?

A. Yes.

Q. How are you familiar with that name?

A. Could you go back, please, for a second and show me the name? Petrol Group, yeah. And Konzepta yeah.

Q. What are those names?

A. Companies in Calgary, and I was involved with the Konzepta Group. There is this real estate and housing.

Q. This is a letter to Mr. Pelossio [sic].

A. Yes.

Q. Pelossi, from Ms. Lutz. And I'd like now to just direct -- if you could just spend a minute looking at it to familiarize yourself with it, and then I'd like to go to the English edition of it. Which is Goto Page -- and let's Goto Page 3. It's headed,

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Remittances from Switzerland to Bitucan. And then there is a reference in the second paragraph, "On May 16, Bitucan received an additional \$50,000 from Switzerland..." Do you see that there?

A. Yes.

Q. "...for which there is no Loan Agreement or invoice."

A. Yes.

Q. And then I direct your attention to the fourth paragraph, which says, "I have the Loan Agreement between Bitucan and Merkur. However, since I am not an Officer of Bitucan (except for Karlheinz there are no other Officers), I asked Karlheinz to advise whether his signature alone suffices so that I can return the Agreement. I have not...heard from him though."

A. Yes.

Q. Okay. My question to you is, does this letter assist in refreshing your recollection...

A. Yes.

Q. ...respecting the receipt of \$50,000 from IAL? The receipt by Bitucan of \$50,000 from IAL in May of 1987?

A. Mr. Bernstein, the first thing what I learned when I was in court was that you identify the parties. Bitucan did not receive any money from IAL as far as I can from this document. Bitucan received money from Merkur, though it looks to me there is one party, Bitucan dealing with Merkur, and another party called Merkur dealing with IAL. So this is different stuff.

Q. So explain it to me, please.

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A. Merkur, over the years, arranged for a lot of loans and financing for Bitucan and MLE, but the entire refinancing or agreement IAL had with somebody else, or Merkur had with somebody else, you have to ask Mr. Pelossi and not myself. I've never seen one document from IAL, even up to today. The only source who has this is Mr. Pelossi, Stevie Cameron, and whoever gets it from them. That's a fact.

Q. So Bitucan received money from who, then?

A. From Merkur. It's very clear. You can read this from the document.

Q. Why did Bitucan receive \$50,000 in May of 1987?

A. It's a loan from Merkur. I don't know why. Perhaps to run the business.

Q. What was the purpose of the loan?

A. To finance Bitucan. And MLE was financed heavily by Merkur before.

Q. Who negotiated on behalf of Bitucan?

A. Most of the time, myself.

Q. Who did you negotiate with from...

A. Mr. Pagani and then with Mr. Pelossi to do the work.

Q. What was this loan for?

A. I recall that Mr. Pelossi did financing business, and I know that he got financing from the Frick family or whatsoever, but you better ask him, not me.

Q. How does IAL fit into this?

A. Not at all.

Q. Well, Ms. Lutz writing to Mr. Pelossi.

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A. Yeah. But Mr. Pelossi was Merkur.
Merkur was the shareholder from MLE, from the beginning.
Mr. Pelossi was all over the place. But when you look at
the first document and at the second, it shows you
clearly even the letter directed to the bank that she
took letterhead from IAL and told the bank to send money
on behalf of Merkur.

Q. There is also a reference here to
receipt by Bitucan in January 13th of another \$50,000 from
Switzerland. Do you see that there?

A. Yeah. I told you there are many.
Merkur heavily financed Bitucan.

Q. Do you recall Bitucan receiving \$50,000
from Switzerland?

A. No.

Q. In January?

A. No.

Q. Does this letter assist in refreshing
your...

A. Well, the letter says this and I assume
it's right, but I don't recall that.

Q. Does the letter say the money is from
Merkur?

MR.SCHABAS: Well, Your Honour, the
letter...

THE WITNESS: Sure.

MR.SCHABAS: ...speaks for itself. And we
have the witness's understanding of -- he's
just stated what he assumes it to be. It's
just a letter. He doesn't -- it's not his
letter. He's drawing assumptions, and now

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Mr. Bernstein is cross-examining him on the assumptions or on the wording of the letter.

MR. BERNSTEIN: In the context of the admitted facts at this Preliminary Inquiry, Your Honour.

THE COURT: Well, I don't care what the admitted facts on the Prelim are. I want to know what this witness remembers,

Mr. Bernstein, and you can ask him what he remembers about certain things, if he remembers anything at all, but he's your witness and you have to proceed in the normal fashion. I think at this point, gentlemen, we've been going since nine-thirty this morning. We'll call a halt to proceedings, unless you have strong objections, and start again at 2:00. Okay. Thank you.

COURT REGISTRAR: All rise, please. Court is in recess.

R E C E S S

(12:45 p.m.)

U P O N R E S U M I N G :

(2:05 p.m.)

COURT REGISTRAR: The Ontario Court of Justice is now reconvened. Please be seated.

MR. BERNSTEIN: Good afternoon, Your Honour. Mr. Schreiber.

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SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

Q. Mr. Schreiber, when we last broke we were looking at Document 7412. Excuse me. It's Document 3303. 3303.

MR. BERNSTEIN: Okay, Your Honour, I've been advised by the Staff Sergeant that he needs to restart the computer system. 3303.

MR. BERNSTEIN: Q. This was the correspondence from Ms. Lutz to Mr. Pelossi. Do you remember that? We were just looking at it...

A. Yes, yes.

Q. I'm wondering now if I could ask you, you mentioned that Ms. Lutz handled -- I think your term was some aspect of the management of some of your companies.

A. Yes. She was involved. She was -- she spoke German and English.

Q. Did she also tend to some of the bookkeeping?

A. I don't think so. I think she really brought this all to the accountant, a chartered accountant.

Q. Would she keep some record of things, filing?

A. I have no idea.

Q. Would it be of assistance to you to look at some documents?

A. Sure.

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Q. Okay. Let's take a look at Document 1455. 14551. Goto Page 2. Then I'd like to go to page 6. All right. Well, show to Mr. Schabas Goto Page 6.

MR.SCHABAS: Your Honour, I don't -- I'm assuming this is somehow to refresh his memory. I don't recognize the handwriting, but I don't -- I guess I've got to give him some latitude to see where we're going.

MR. BERNSTEIN: Well, actually, I -- well, actually, Your Honour, as Mr. Schabas knows, because it's been disclosed to him, this document...

MR.SCHABAS: Well, just a minute. Are you going to give evidence, Mr. Bernstein, because there's a witness in the witness box.

MR. BERNSTEIN: No. I'm going to -- you said you didn't know but.... This is something which comes from...

MR.SCHABAS: Your Honour, why doesn't he show it to the witness and ask him what it is.

MR. BERNSTEIN: No, no, no.

MR.SCHABAS: I'm not objecting to it being put in front of the witness. Let's just move along with the examination.

MR. BERNSTEIN: I'm not trying -- I'm not -- I intend to put this to a use in addition to refreshing the witness's memory, given where the police got it from.

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THE COURT: Are you going to call the police?

MR.SCHABAS: Well, you'll have to establish that.

MR. BERNSTEIN: Pardon me?

THE COURT: Are you going to call the police?

MR. BERNSTEIN: No. My friend has made an admission as to the source of the document. It comes from Mr. Schreiber's Kaufering residence.

THE COURT: I don't know. What is the admission? Has there been an admission, Mr. Schabas, in relation to this document?

MR.SCHABAS: I don't see one.

MR. BERNSTEIN: Well, the source of this document is -- the first source of it is...

MR.SCHABAS: Well, maybe the witness can be excluded for a moment.

MR. BERNSTEIN: Yeah, maybe the witness can be excluded.

THE COURT: Would you mind stepping out, sir. Thank you.

...WITNESS EXITS.

(2:10 p.m.)

THE COURT: All right. If there is no admission as to source, then let's prove its source if you wish to put it to a use other

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than refreshing the witness's memory. It's as simple as that.

MR. BERNSTEIN: Okay. Your Honour, we can clarify this. I had understood that my friend had for the purposes of the Preliminary Inquiry, admitted the sources of the documents as disclosed to them by the police. If I am mistaken about that, we need to sort of sort through that, but that has been my operating assumption.

With respect to this document, it was -- and my friends know -- obtained from the German prosecutor's Office in Augsburg pursuant to a Mutual Legal Assistance request from Canada to Germany. There has also been disclosure of.... I just want to be -- just give me a minute. I'll explain. Okay. So, I'll walk everyone through this.

If we look at the document and we pull up the document that we were looking at here, we see that there's a stamp on the bottom left-hand corner of the document, which is a police stamp respecting the source of the document. Okay? Okay. The item code number is 218. That item code number relates to German LOR material. So, the item code 218 is the numeric designation for documents obtained pursuant to the Mutual

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Legal Assistance request from Germany.

Okay?

The next number is 07, and that 07 is a further particularization of the source of the document. Okay? And I'll call it the binder number.

If we go to Document No. 12461 -- and we'll call that up on the screen. Just remember 218-07. Then we go to Document 12402. Okay? We have.... We see for seven that it says A/-- A7/91. It says "ABS Erika" and then it gives the source as Kaufering.

MR.SCHABAS: What are you looking at, Mr. Bernstein?

MR. BERNSTEIN: Office Archives Kaufering. And also, if we go to the exhibit report, 22170. So, let's go to Document 22170. We have an RCMP Exhibit Report for 218, which is the item code. If we go to page 4, and we go 21807, which is the stamp on the document, we see the item pages 1-522. Documents from German binder A7/91, ABS Erika, located in archives office building in Kaufering on a particular street. That's Schreiber's address.

So, you know, I'm sorry I didn't explain this better, Your Honour, but it's actually pretty simple. There's a stamp on every

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document which tells people where the document comes from, and the quickest way of figuring that out is just going to the exhibit registry, which is the Exhibit Report which is there to determine this. And that's Document 22170. Find the appropriate item code and then find the appropriate sub-designation. I had understood that the admission relative to source related to that.

It's materiality is this. As Your Honour knows from the admissions in this case, these two \$50,000 sums are paid by MBB to a Liechtenstein bank account in IAL's name and then the money is transferred -- and this has all been admitted -- from IAL's bank account in Liechtenstein to Bitucan's bank accounts in Calgary. It's the Crown's position to the benefit of Mr. Schreiber, and there are admissions respecting that.

The point here is, if we look at these bookkeeping records in Mr. Schreiber's possession -- so we have something that may assist in refreshing his memory, but we also have a document which we will at the end of day argue is in possession of Mr. Schreiber and as a document in possession, it may very well be that we'll ask the court to draw an inference respecting knowledge.

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There are entries that coincide in time relative to both of these \$50,000 sums. So in Bitucan, Ms. Lutz's bookkeeping on behalf of Bitucan, there's \$50,000 entries respecting the receipt of these funds, though they are referable or the note on them relates to ATG and what, Merkur? And Merkur. So that's the point. So far...

THE COURT: That's all fine, but it's all predicated on Mr. Schabas's admission.

MR. BERNSTEIN: Which...

THE COURT: Well, otherwise, you're telling us how you run your bookkeeping system, but it's not evidence that it was seized in Schreiber's office or anything like that unless there's an admission to that.

MR. BERNSTEIN: That's right. It's all dependent upon an admission respecting the source of these documents. We had been operating under the assumption that there was such an admission, because to admit that it came from the German prosecutor's office is not an admission of any particular evidentiary value.

Well, I'm glad we clarified this because I had been operating under the assumption, as is often my experience, routinely the case in Preliminary Inquiries where the defendant, only for the purpose of the

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Preliminary Inquiry, admits the source of the document.

MR. SCHABAS: Your Honour, I'm just looking for some correspondence. I know we had...

THE COURT: Do you want me to give you five minutes so you can do that?

MR. SCHABAS: Yeah. I may need -- I'm not sure if I have it with me, but maybe I can speak to Mr. Shaw who may have access to it. I think -- there was some discussion to some degree about certain continuity, whether it approached the level of detail that I'm now being told it did, is a whole other issue, so I think we need a few minutes to clear this up.

THE COURT: Like the Spanish waiter used to say in *Fawlty Towers*, "I know nutting" okay? You, ladies and gentlemen, tell me and I'll -- we'll give you a few minutes to do that.

COURT REGISTRAR: All rise, please. Court is in recess.

R E C E S S

(2:20 p.m.)

U P O N R E S U M I N G:

(2:55 p.m.)

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COURT REGISTRAR: The Ontario Court of Justice is now reconvened. Please be seated.

MR. BERNSTEIN: Your Honour, Mr. Shaw and the officers on our side, and Mr. Schabas and Wong and the people assisting them, have looked to see if we can get an answer to this issue. We have not been able to find one quite yet, and I've spoken to Mr. Schabas, and we propose proceeding in the following way.

I understand that Mr. Schabas is content, subject to certain conditions, to allow me to put the document to Mr. Schreiber. We'll collect his evidence. We'll sort through our correspondence and see exactly what the nature of the admission was in this regard, and whether or not we can reach an understanding amongst ourselves, but in any event, the way I understand we will proceed is Mr. Schreiber will be asked the questions. It will be understood that further inquiries will be made respecting the nature of the existing admission. There may very well be discussions respecting additional admissions and/or the Crown may lead evidence on this point.

In any event, the additional evidentiary inferences which may be able to ultimately

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be drawn from the document will be something which we will determine in due course, and not now.

THE COURT: Thank you. Okay, Mr. Schabas, anything that you want to add?

MR.SCHABAS: I think that's right, Your Honour. None of us, unfortunately, have all the documents with us and are racking our brains as to what we did or didn't agree to a year ago. That's the challenge we have, and I think what I suggested was, well, let's just proceed. And if I made an admission which my friend wants to rely on, if we determine that, of course he'll be able to do that, but in the meantime I just said, well, let's just move on and do the best you can.

THE COURT: Subject to subsequent rulings there and depending on whether or not admissions are forthcoming, let's proceed.

MR. BERNSTEIN: Thank you. Thank you, Mr. Schabas. Thank you, Your Honour.

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

Q. Let's just then go to the document, which is 14551 and Goto Page 6. Let's pull it up on the screen there. Let's go to page 2, just so we see what the heading of the document is. Okay? This is a -- so I'm just...

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MR.SCHABAS: He should be asked if he recognizes it or...

MR. BERNSTEIN: Well, I just want to identify, in a most general way, what's on the screen.

MR. BERNSTEIN: Q. We have a ledger that says Bitucan Holdings, amongst other things, on it. There is also some writing at the bottom of the page there. Do you see that?

A. Yes.

Q. Now, does this ledger and/or the writing, look familiar to you?

A. No.

Q. I'm sorry. I'm not sure I understood your answer.

A. No.

Q. Is it the writing doesn't look familiar or the ledger doesn't look familiar?

A. The whole thing I've never seen.

Q. Let's go to page 8. 6, I'm sorry. Goto Page 6. And I direct your -- okay. I was asking you questions of whether you recalled the receipt of a sum of money by Bitucan from IAL in May of 1988?

MR.SCHABAS: Your Honour, I thought that we were going to refresh his memory as to whether Ms. Lutz did bookkeeping.

THE COURT: Well, so did I, but I thought now that we've expanded that somewhat, subject to subsequent rulings -- unless I misunderstood what you were saying -- there were two parts to this and....

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MR.SCHABAS: Right.

THE WITNESS: Well, I told you before, in my recollection Bitucan never received any money from IAL.

MR. BERNSTEIN: Q. Okay. Did Bitucan receive transfers of funds from Switzerland in May of 1988?

A. Could be.

Q. I'm wondering if you can take a look at Goto Page 6 of this document. In particular, the second from last entry.

A. Yeah.

Q. Does that assist in refreshing your memory in connection with the question, "Did Bitucan receive transfers from Switzerland in May of 1988?"

A. I have no idea. I don't even know from whom this document is.

Q. Okay. Just so I'm clear here, I'd like to split the screen. I'd like to split the -- the document that's on it now, half the screen, and I'd like to go back to Ms. Lutz's letter, February 2, 1989, which is Document 3303. The English.

A. Yes.

Q. And I direct your attention first to the second paragraph in Ms. Lutz's letter of February 2nd, 1989, the one that starts. The paragraph that starts on 16th May, Bitucan received. Do you see that there?

A. Yes.

Q. And then I want you next to look at the ledger for the same date, May 16, 1988. Do you see that entry there? Okay. Pull it over. Do you see again it

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says transfer from Switzerland? One says 49,990 and one says 50,000. Does looking at those two documents together assist you in refreshing your memory on whether Bitucan received the transfer from Switzerland in the amount of \$50,000 or \$49,990?

A. I cannot tell you, until -- I don't know what document it is you are showing me.

Q. I'm showing you two documents.

A. Yeah, one is from Mrs. Lutz and from whom is the other one?

Q. It's something we'll sort out later. I'm just asking you, if you look at that document, the ledger, and you look at Mrs. Lutz's document, looking at the two together, do they assist in refreshing your memory?

MR.SCHABAS: Just a minute, Your Honour. He's asked that a couple of times.

THE WITNESS: It doesn't make any sense to me.

MR.SCHABAS: And we have the two documents. They are what they are and -- it's Mr. Bernstein's witness.

THE COURT: Well, we haven't received a yes or no. We simply had some kind of general "I don't know where they're from." So, really, in a sense, I suppose the answer is non-responsive. I mean the answer is yes, no, or I don't know, or perhaps or something like that. I don't want to suggest answers to the witness but I don't...

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(Continued...)

MR.SCHABAS: I'm just concerned that by putting these documents in front of him we're leading -- we're leading to a stimulus rather than a memory and...

THE COURT: I'm conscious of that and I must say that I am to some extent concerned about it. It's not my function to measure weight at a Preliminary Hearing. If this was a trial and the evidence had been led in this particular fashion, I would, obviously have great concerns about the weight of that evidence. If not, it's admissibility per se.

In any event, sir, I think you've had this question about other documents put to you on a number of occasions without discussing the origin of the documents. Are you in a position to say whether or not, looking at these two in juxtaposition, allows you to -- refreshes your memory in relation to the question: Was there a transfer from Switzerland to Bitucan at a particular time?

THE WITNESS: Mr. Bernstein asked me whether from this letter where 50,000 should be transferred or discussed 50,000 and it refers here to 49,990, how can I say that these two documents prove that something happened? Here is a letter...

THE COURT: Not proved, sir. The question to you is not whether it proves anything...

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THE WITNESS: I've never seen...

THE COURT: ...because these documents don't, at this moment, prove anything at all. The only thing we're trying to ascertain, sir, is what your memory is of a transfer of funds from Switzerland to Canada?

THE WITNESS: None. None.

THE COURT: And does it help you in refreshing your memory and your answer is no.

THE WITNESS: None.

THE COURT: Thank you.

MR. BERNSTEIN: All right.

THE WITNESS: Your Honour?

THE COURT: Yes, sir.

THE WITNESS: Maybe this may help, that you don't think that I am not cooperating. Between 1988...

THE COURT: Sir -- sir, I'll stop you right there. I am making no such judgment.

THE WITNESS: Okay.

THE COURT: And I take your answers at face value. What weight I should put on your answers and what I should do about the credibility of your answers is something for much later on.

THE WITNESS: Yeah.

THE COURT: At this point in time, sir, as I'm saying, I make no free judgment whatsoever in relation to that, and I think

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that for the sake of simplicity, it's best that you simply answer the questions, and you have, and....

THE WITNESS: Yeah.

MR. BERNSTEIN: Q. I'd like you to -- we can finish with those documents. I'd like to ask you another question. In connection with that question, I'd like for you to think back to October of 1988. Okay? I've asked you some questions...

A. Yes.

Q. ...about May of 1988. I want to move forward to October of 1988. Did, in October of 1988, Bitucan receive a transfer of funds from Switzerland?

A. I don't ...

Q. In October of 1988?

A. I don't know.

Q. Pardon me?

A. I don't know. Mr. Bernstein, between 1987 and 1993, my company in Germany received 27 million, approximately, in consulting fees. Perhaps this gives you an understanding that I have not the smallest recollection of any small or whatever payments whatsoever. The only thing you can do with me when you show me documents, you ask me can this be right or do I have a recollection or I can do -- it is useless to ask me whether I have any recollection on any payments whatsoever. I want to be cooperative. I'm telling you this again.

Q. That \$27 million you refer to...

A. D-mark.

Q. Deutschmarks. \$27 million Deutschmarks.

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(Continued...)

A. Yes.

Q. Those funds were in connection with consulting...

MR.SCHABAS: Well, he's leading, Your Honour.

MR. BERNSTEIN: Q. ...on behalf of which company?

A. Bayerische Bitumen-Chemie.

THE COURT: Say again, sir?

THE WITNESS: Bavarian Bitumen Chemicals.

MR. BERNSTEIN: Q. Is that Bitucan?

A. No.

Q. Okay. I'm asking about Bitucan.

A. Bitucan is a company in Canada, and the money I'm referring to is the main company in Germany.

Q. This \$27 million -- or Deutschmarks.
Sorry.

A. D. Marks.

Q. Forgive me. Deutschmarks you referred to, was in connection with consulting on what?

A. Industrial projects all over.

Q. For which companies?

A. Maybe for Thyssen, for -- God knows. I don't know what companies. I was active for many companies. I have -- I have said this only that you understand that I have no recollection on some money which was sent somewhere, especially to a company I was not active involved every day, though. I can't tell you. And I want you to understand that this is the only reason why I'm saying this.

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(Continued...)

Q. Would reviewing some banking documents assist in refreshing your recollection respecting the transfer of funds to Bitucan in October of 1988? I think you nodded to the affirmative, but unless you tell us it doesn't go down on the record. Yes?

A. You mean the document you showed me?

Q. No. Some other banking documents.

A. No.

Q. Okay. I'll ask the question again. I've asked you about a transfer of funds to Bitucan from -- a transfer of funds from Bitucan in October, 1988. From Switzerland or from Liechtenstein, do you recall Bitucan getting \$50,000 more or less in October of 1988?

A. No.

Q. If we looked at some banking documents, might that assist in refreshing your recollection?

A. Sure.

Q. Okay. Let's take a look at 12784. First to Mr. Schabas and then.... Show Mr. Schabas the English one, which is 12785.

THE COURT: Problems, Mr. Schabas?

MR.SCHABAS: No. That's fine, Your Honour.

THE COURT: All right.

MR. BERNSTEIN: Q. Let's show Mr. Schreiber the German one first, and that's 12784. Mr. Schreiber, my question to you was: Do you recall Bitucan receiving \$50,000 in October of 1988? And you mentioned that it might assist if you can look at some banking documents. I'm showing you a payment order.

A. Yes.

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Q. An IAL payment order. Wherein IAL says...

A. No. Is this on behalf of ATG investments.

Q. My first question to you is, does this document -- this payment order...

A. Yes.

Q. ...between IAL and Bitucan assist in refreshing your recollection as to whether Bitucan received a payment in the amount of \$50,000 in October 1988?

A. Not at all. This is a document -- an entire of document from IAL and the bank in Liechtenstein, and I have not the smallest access to anything from that company.

Q. Does it assist in refreshing your memory as to the transaction?

A. Not at all. Not at all.

Q. I'm wondering if we can go -- look -- would looking at that ledger which you just looked at before, assist in refreshing your memory respecting Bitucan's receipt of funds in October 1988? Do you know that ledger, the written ledger we just looked at? It's Document 14551.

A. Written ledger.

Q. I'll put it up on the screen. Goto Page 2.

A. No.

Q. Okay. Do you see the entry for October 5, '88? That's 5-10-88, and there's a figure there 49,990.

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A. I can't see nothing, Mr. Bernstein.

Q. Okay. I'm sorry. I thought it was up on your screen.

A. It tells me nothing.

Q. It doesn't help you?

A. No. I don't even know from whom this document is? Is it from a bookkeeper or is it from Mrs. Lutz? From whom is it? I have no idea. Or from Mr. Pelossi? From whom is it?

Q. Let's look at the bottom of the page. Are you familiar with that signature on the bottom of the page?

A. No.

Q. Okay. Let's bring up the Lutz letter, which we looked at earlier. On a split screen, please.

A. It looks the same, so it should be Mrs. Lutz.

Q. Do you see that there?

A. Yeah. Then it might be something like a *Kassenbuch* or something from her?

Q. My question -- you're looking now on the left-hand side of the screen is Document 3303, and on the right-hand side of the screen is this ledger. I am -- there is signature on the end of both sides of the page, and my question to you is does that signature look familiar to you?

A. Yes. Since I can compare it now, yes.

Q. Whose signature is that?

A. Well, I don't have any recollection, but when I look at the letter who wrote it, I assume it was Mrs. Lutz.

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(Continued...)

Q. How long did Mrs. Lutz work for your group of companies?

A. I can't tell you.

Q. Approximately, how long?

A. Five years. Six years. Ten years. I don't know.

Q. So between five and ten years?

A. Could be.

Q. Maybe we could just get a translation. In the ledger above, apparently, Mrs. Lutz signature, there is some German writing there.

A. Yes.

Q. Can I have that translated?

A. Yes. Yes.

MR. BERNSTEIN: Mr. Translator, can you help us there?

MR. INTERPRETER: Yes, indeed. Thyssen is up to date with payments. GCI payments outstanding in July, August, and September at \$3-9,000.

THE WITNESS: Yeah.

MR. INTERPRETER: And the date is 24-10-88.

MR. BERNSTEIN: Q. Can you help us at all with what reference to GCI payments is outstanding at 3,000...

MR. SCHABAS: Well, Your Honour, is he -- something has been read to him. This form of -- I -- I just -- he's identified. He thinks an initial on it, which isn't him, and Mr. Bernstein is now saying: Now, can you help us with this? It's a form of

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leading. I just wonder how this is all relevant and I question the propriety of this type of questioning when he's leading him on the document that he doesn't know anything about.

THE COURT: Shouldn't you be calling the author of the document?

MR. BERNSTEIN: I'll stand down on this question, Your Honour, and move forward.

MR. BERNSTEIN: Q. Do you recall MBB providing funds to IAL through Vaduz? Bank accounts in Vaduz?

A. Yes.

Q. What can you tell me about that?

A. I can only say that all the payments which were to be transferred to IAL should have gone to account from IAL, and I told you earlier that only because Pelossi was in jail, my account was used. Otherwise, I would have been never one nickel from that money there.

Q. Did IAL have an account with Vaduz, Liechtenstein?

A. Yes. Because later on I received from that account, funds to the account in Zurich. So, from there I know they have an -- they have an account. Sure. Every company has an account.

Q. So you say later on, you received funds from that account, being an account in...

A. As far as I recall, yes.

Q. ...in Vaduz to your account in...

A. Yes.

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(Continued...)

Q. ...Switzerland?

A. Yes.

Q. Tell me about those funds?

A. What should I tell you?

Q. What did you receive from IAL's account
in Vaduz to your account in Switzerland?

A. I think all kinds of different funds. I
cannot tell you.

Q. You just said you received --
approximately, how much money...

A. Sure. I have no idea. Over the years,
I have no idea.

Q. A lot of money?

A. Yeah, I think. Substantial amounts.

Q. Millions?

A. Yes.

Q. Tens of millions?

A. Hmm?

Q. Tens of millions?

MR.SCHABAS: Your Honour, are we...

THE WITNESS: I don't know.

MR.SCHABAS: ...getting -- we're getting
pretty far afield from a case about a
commission payment -- one commission
payment.

MR. BERNSTEIN: Okay.

THE WITNESS: I'm still wondering what this
has to do with MBB but....

MR. BERNSTEIN: Q. So, to do with MBB, do
you recall -- and I asked this question. I just wasn't

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(Continued...)

clear about the answer. Do you recall MBB providing funds to IAL's bank account in Vaduz?

MR.SCHABAS: Look, he already asked that Your Honour.

THE COURT: The answer was yes.

MR. BERNSTEIN: Q. Yes. And do you recall how much, approximately?

A. No.

Q. Approximately?

A. No.

Q. Would looking at some banking documents assist in refreshing your memory?

A. Yes.

Q. Let's take a look at -- well, first, Mr. Schabas. Document 127293. 127293. And it's GoTo what?

MR.SCHABAS: You've given me 38,000, not 127,000 documents. Unless there's another 90,000 still to come.

THE COURT: 12 -- what's the number?

MR. BERNSTEIN: Sorry. 12793. 12793. I direct your attention -- I'm sorry.

Mr. Schabas.

MR.SCHABAS: That's fine. You can put it to him.

MR. BERNSTEIN: Q. Okay. Let's pull it up on the screen. I direct your attention to the entry for April 21, 1988. That's 21-04-88. About the middle of the document. The entry with the words [sic], Messerschmitt.

A. Yes.

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Q. Do you see that there?

A. Yes.

Q. Okay. Does that assist in refreshing your memory as to, approximately, how much MBB provided IAL in connection with their account in Vaduz, Liechtenstein?

A. Well, I've never seen this document, but when it's a document from IAL, and it shows a receipt of funds from Messerschmitt, and the document is correct, and this is what it says, yes.

Q. So, just the amount, \$116,250.

A. Yes. Tells me nothing.

Q. It doesn't ring a bell or assist you?

A. Not at all.

Q. The -- how about the next entry, which is the -- the next entry from the receipt of the money is a -- is a debit in favour of Bitucan Holdings, May 13th, 1988. \$50,000. Do you see that there?

A. Yes.

Q. Does that assist your recollection as to whether IAL provided Bitucan with any funds through this Vaduz account?

A. Again, I'm not aware that Bitucan ever received any funds from IAL. Only from Merkur.

Q. Are you familiar -- I believe you may have already answered this question, and I just ask it as a start -- a point of departure. Alta Nova. I believe you testified to knowing the name Alta Nova?

A. Yes.

Q. What did you understand Alta Nova to be?

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(Continued...)

A. Well, you asked me that question before.
It was a company from Mr. Moores in Ottawa.

Q. I don't mean to lead. It was a
consulting company?

A. Yes.

Q. And I believe that you mention -- and we
had talked about a company called GCI?

A. Yes.

Q. What did you understand GCI to be?

A. I think GCI was a follow up from Alta
Nova.

Q. Pardon me?

A. I think it was the follow up, or
replaced Alta Nova.

Q. It was a company in the same line of
work?

A. Yes. Government Consulting International
is the name.

Q. All right. Do you know a man named,
Greg Alford?

A. Yes.

Q. Have you had occasion to meet with
Mr. Alford over the years?

A. Yes.

Q. In Europe?

A. No. In Canada.

Q. What did you understand Mr. Alford did
for the...

A. When I got to know him, he worked for
GCI.

Q. Doing what?

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(Continued...)

A. Office work. Administration work.

Q. On behalf of who?

A. GCI.

Q. What did you understand his relationship to Mr. Moores to be?

A. Well, Mr. Alford's father passed away very early and Mr. Moores was, as far as I understood, a friend of his father, so he looked after Greg Alford.

Q. Who looked after who?

A. Mr. Moores after Greg Alford.

Q. Okay. Did GCI have a business arrangement with MBB, to your knowledge?

A. Yes.

Q. Did MBB provide funds, to your knowledge, to GCI in connection with that business arrangement?

A. Yes.

Q. Do you recall offhand whether there was a monthly payment?

A. Yes.

Q. What do you recall that monthly payment to be?

A. I think it was a retainer from -- I think it was, approximately, around 3,000 a month from GCI to Bitucan.

THE COURT: To Bitucan, sir?

THE WITNESS: Yes.

MR. BERNSTEIN: Q. So GCI paid Bitucan \$3,000 a month?

A. Yes.

Q. This was in connection with what?

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A. With MBB consulting work.

Q. What kind of consulting work?

A. Well, I was working very much on the so-called DeHavilland project.

Q. Was there other consulting...

THE COURT: I didn't hear the question, I'm sorry?

MR. BERNSTEIN: Q. Was there other consulting work?

A. Other what?

Q. Other consulting work.

A. For GCI?

Q. For -- between Bitucan and GCI relative to MBB.

A. Not that I recall. Maybe, but not that I recall.

Q. Documents may assist in refreshing your memory?

A. Yes.

Q. Okay. I'd like before we go there, I'd like to deal with this payment. You say GCI paid Bitucan \$3,000 a month.

A. Yes.

Q. In connection with MBB work?

A. Yes.

Q. Do you recall how much MBB paid GCI a month in connection with MBB work?

A. My recollection is -- at least as much as I learned from Mr. Moores -- that there is a monthly retainer for 6,000 and this was split between GCI and Bitucan because the work was somehow the same.

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Q. This arrangement was worked out between who?

A. Which arrangement?

Q. MBB would pay GCI \$6,000 and it would be split 50/50.

A. Oh, the situation was very simple. We discussed this before. I introduced Mr. Pfleiderer to Mr. Moores, GCI. GCI and MBB finally came to some kind of agreement. Mr. Moores informed me that he had an agreement with MBB in the neighbourhood of 6,000 a month, and that Bitucan is entitled to 50 percent of this, because the work I am doing for MBB.

Q. Your dealings were with Moores in connection with this arrangement?

A. Yeah. I had no -- I had no agreement with MBB at all in that respect.

Q. Do you recall offhand how much GCI paid Bitucan in connection with this arrangement?

A. No.

Q. Would documents assist in refreshing your memory on this point?

A. Could be.

MR. BERNSTEIN: Your Honour, I don't know if.... Your Honour, I would like to continue. Could I take a very short break for a moment, Your Honour? Just for like five minutes.

THE COURT: We'll take five minutes, Madam Clerk.

COURT REGISTRAR: All rise, please. Court is in recess.

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R E C E S S

(3:35 p.m.)

U P O N R E S U M I N G:

(3:50 p.m.)

COURT REGISTRAR: The Ontario Court of
Justice is now reconvened. Please be seated.

MR. BERNSTEIN: Thank you.

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

Q. Now, Mr. Schreiber, I just ask you some questions about how much Alta Nova and/or GCI provided to Bitucan during the material time, and I was wondering if some documents would assist you with the figures and the nature of the arrangements. You're nodding yes?

A. Hmm?

Q. You're nodding yes. If you don't say yes. Sometimes you just nod, so I can see you but...

A. It's okay with me.

Q. ...the Court Reporter won't get it on the transcript.

A. I thought you -- when you put -- when you put the document in front of me, I tell you what I see about it, and that's it.

Q. Right. Okay. I'd like to show you a document which seems to be a letter, which Mr. Alford wrote to you. And it is Document 17061.

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(Continued...)

MR. BERNSTEIN: Let's have Mr. Schabas take a look at it first.

MR.SCHABAS: I don't object to it being put before him, Your Honour.

THE COURT: Okay.

MR. BERNSTEIN: Q. Okay. We have here a letter.... A letter dated August 9, 1988 to yourself at BBC. We're looking at a fax transmission slip....

A. Right here.

Q. ...from Mr. Alford. Do you see that there?

A. Yes.

Q. And then there is some other information on the message at the bottom of the page. Okay?

A. Um-hmm.

Q. It says, "Dear Karlheinz, Please find attached a copy of a recent form letter received from MBB. Would it be possible for you to raise this matter with Kurt, and then advise whether we should still respond in writing as they requested? Best regards, Greg." And if we go to the next page, and then one more page, there's a form letter addressed to GCI from MBB. That says, "Please quote MBB P.O. number on your invoice and/or give us further information." Do you see that there?

A. Yes.

Q. Do you recall -- first of all, do you recall receiving this facsimile letter with the attached form letter from MBB to GCI? Do you recall receiving it from Mr. Alford?

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A. No. No, I don't recall that I saw this document.

Q. Do you recall speaking to Kurt --
Mr. Pfleiderer -- about...

MR.SCHABAS: Sorry, Your Honour. Is that --
is that who the Kurt is? Is that evidence
from Mr. Bernstein?

MR. BERNSTEIN: It's Kurt Douglas.

MR.SCHABAS: That's a K-I-R-K,
Mr. Bernstein.

MR. BERNSTEIN: Q. Do you recall speaking
to anyone at MBB payment of invoices and bills...

A. Not at all.

Q. ...between MBB and GCI?

A. Not at all. But, let me give you an
explanation. I told you that I traveled a lot. Could be
that my secretary has read this letter to me on the
phone, and I -- that I have told her "Call
Mr. Pfleiderer, ask him what is necessary, and go back to
Mr. Alford." I mean I'm not running around and doing
stuff like this. You do appreciate this, perhaps, or
perhaps Mr. Birkner or somebody might have been aware of
this, but I, myself, have never seen this thing in my
recollection.

MR. BERNSTEIN: Let's pull up on the screen
Document 17059. Document 17059. First to
Mr. Schabas. And the next page....

MR.SCHABAS: Sorry, there's seven pages, if
I can just have a moment.

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(Continued...)

MR. BERNSTEIN: That's right. And if you could just take a minute and go through the pages, Mr. Schabas.

MR.SCHABAS: I don't object to it being before the witness, Your Honour.

MR. BERNSTEIN: Q. Mr. Schreiber, I'm wondering if you can look at Document 17059, and let's just start at Goto Page 2. And when you looked at it enough, just tell us to move to the next page and we'll flip for it. Okay. So wait, you said go ahead? All right. So, now we're onto Goto Page 3. When you're done with Goto Page 3, just say the word and we'll go on to Goto Page 4 and following.

A. I don't recall this letter, but perhaps the next one what you have.

Q. All right. Let's go to page 4. Just say the word. Next document? Standard form similar to the other one?

A. Yeah. No, I've never seen this. In my recollection.

Q. Goto Page 6.

A. But as I said, this could have come from my office automatically to Mr. Pfleiderer.

Q. Goto Page 7.

A. This is a bill from GCI to MBB.

Q. Right. Goto Page 7. Okay. So....

A. Same. The same.

Q. After reviewing these documents, which is Document 17059, Goto Page 2 to 7, do these documents

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(Continued...)

-- a review of these documents assist in refreshing your memory as to whether or not you assisted GCI in sorting out this sort of billing issue.

A. No.

Q. No?

A. As I said to you, this could have been done from our administration guy, Mr. Birkner or somebody else. I never went in things like this.

Q. Do you recall for how long you received the 50 percent, the 3,000 of the 6,000, what period of time?

A. You mean Bitucan?

Q. Yeah, Bitucan.

A. No.

Q. Was it for a year, a year and a half, two years?

A. I honestly don't know.

Q. Was it for a long time, a short time?

A. Mr. Bernstein, there were others, like from Thyssen the same way. This is stuff that happened in Calgary in the office and there was Mr. Dickie, the President, running around with Mrs. Lutz or God knows who else, was involved in all the business dealings going there. This was not my business, so it's very normal that I don't know that.

MR. BERNSTEIN: Well, I'm wondering if we can take a look at Document 3280, Goto Page 2. Okay. First, to Mr. Schabas.

THE COURT: I'm not getting 328...

MR. BERNSTEIN: No, Your Honour. You don't have this document. I'm advised by Staff

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Sergeant Alexander that it's not in the court brief database, but it has been disclosed and we'll fix that up -- and if it's appropriate put it into the court brief database, depending on its status as soon as is appropriate.

MR.SCHABAS: Your Honour, I don't object to it being put before the witness.

MR. BERNSTEIN: Q. We have here an invoice from Bitucan Holdings of Calgary to Alta Nova Associates of Ottawa, Attention: Mr. Moores. Dated February 12, 1985. For consulting for that month. Do you see that? \$3,000? Right?

A. Yes.

Q. Is that consistent with your recollection of the amount of money Bitucan would receipt from Alta Nova or GCI as part of this arrangement with Mr. Moores involved [ph] with MBB? \$3,000?

A. It looks like an invoice from Bitucan.

Q. And the figures are consistent with your recollection?

A. Yeah.

Q. The date on this invoice is February 12, 1985. At least, at that time, you were receiving -- the Bitucan was receiving \$3,000, or at least billing for \$3,000 from Alta Nova.

A. From Mr. Moores, yeah. Okay.

Q. Is that consistent with your recollection?

A. Yes.

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(Continued...)

Q. I see that there's a stamp on this document and some writing on the stamp.

MR. BERNSTEIN: Mr. Translator, can you translate the writing on that stamp, please?

MR. INTERPRETER: Yes. It's -- short information is the -- at the top of the page -- "To:" and it looks "G. Pelossi", from -- it's hard to read. Willy Schreer? Or the R in the way makes it difficult to read that. And it says, "Please.." -- it's dated 14 February, 1985, and it says, "Please -- please return." And then, going down the lefthand column, "As discussed on the telephone," and the bit that's checked is "please note for your information."

MR. BERNSTEIN: Okay. And the Von -- Von means what?

MR. INTERPRETER: It's "from".

MR. BERNSTEIN: From.

MR. INTERPRETER: Yes.

MR. BERNSTEIN: Okay.

MR. BERNSTEIN: Q. Mr. Schreiber, did you send this invoice to Mr. Pelossi around February, 1985?

A. Not at all.

Q. Did you talk to Mr. Pelossi on the phone in February, 1985, about...

A. I have no recollection of this.

MR. BERNSTEIN: I'd ask that this document, this invoice, be entered as the next exhibit in these proceedings, Your Honour.

THE WITNESS: Um-hmm.

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(Continued...)

MR. BERNSTEIN: And I will make, if necessary, submissions, but they're probably best made in the absence of the witness.

THE COURT: Any -- there's an issue there, is there?

MR.SCHABAS: Well, I'm not sure that it's been identified, Your Honour, other than... I mean, the witness has no recollection of this, or having seen...

THE COURT: Well, he says it's consistent. Sorry, this is the one I haven't got, right?

MR.SCHABAS: Right.

MR. BERNSTEIN: I thought he said that this was consistent with his recollection, at least in relation to the billing and the time of the billing.

MR.SCHABAS: He said "It looks like an invoice from Bitucan, and the \$3,000 is consistent with his recollection. That's right. But, I mean there's more on the document and we have the evidence. So I'm not sure for what purpose. There is, obviously, some additional purpose for which has not been established or proven as to who put these other marks on it, or who sent it to who.

THE COURT: Yes, well, it's of evidentiary value to a reviewing court, for example, to the extent that the witness has testified, and only to the extent of the witness's evidence, but he has made some comments in

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relation to that document, and it ought to go in as an exhibit. 1-3280, Goto Page 2. But only for that limited purpose.

MR. BERNSTEIN: It may also have value having regard to where the police obtained it from but...

THE COURT: That's something that you'll to get into later on. I'm admitting it only because the witness has referred to it and made some comments in relation to it. It's only relevant in relation to those comments at this time.

MR. BERNSTEIN: But, Your Honour, I believe that the -- with respect to this particular document.... All right. We'll sort it out in due course. All right. Thank you.

MR. BERNSTEIN: Q. So you indicated that -- well, first of all, the exhibit number is, I guess 1-170 -- no. sorry.

THE COURT: Exhibit 1-3280.

MR. BERNSTEIN: Thank you, Your Honour.

THE COURT: Goto Page 2.

EXHIBIT NO. 1-3280: Document 3280, Goto Page 2. Invoice, dated Feb. 12, 1985.

MR. BERNSTEIN: Q. You mentioned the date, February 1985, is consistent with when you -- when Bitucan was billing Alta Nova in connection with this arrangement.

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A. Could you go down with this for a moment. Not the other direction..

THE COURT: Reduce the size of the document. It might be easier.

THE WITNESS: Okay. Good.

THE COURT: Does Mr. Schreiber have the capability of scrolling himself with his mouse? He does? Yes. You have a mouse in front of you, Mr. Schreiber. Whenever you wish to move up or down a document...

THE COURT: No, no. Not that button.

THE WITNESS: I got the wrong one.

THE COURT: You want the mouse. The mouse button. The mouse...

THE WITNESS: Oh, here. Yeah.

THE COURT: Maybe you're not familiar with...

THE WITNESS: I'm not good on this, so...

THE COURT: Yeah, okay. Fair enough. Fair enough. But I'm just saying, if you were, you could scroll...

THE WITNESS: Okay. Thank you so much.

MR. BERNSTEIN: Can we show Mr. Schabas, Document 14551. 14....

MR. BERNSTEIN: Q. Okay. Mr. Schreiber, we can't -- you have -- if you want us to let -- to -- when somebody handles the mouse, they have control. So when you have your hand on the mouse, the Officer is unable.

THE WITNESS: Identified a toy with...

THE COURT: How do you say mouse in German?

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MR. INTERPRETER: *Maus.*

THE WITNESS: *Maus.*

THE COURT: M-A-U-S, right? *Fledermaus.*

THE WITNESS: Okay. I got it.

THE COURT: All right. Okay. I'm with you.

Thank you.

THE WITNESS: . So we're on the two-way
information now.

MR. BERNSTEIN: That's right.

MR. BERNSTEIN: Q. All right. So
Document 14551. 14551. Goto Page 3, and I draw
Mr. Schreiber's attention to pages 5 to 9, but first to
Mr. Schabas.

MR. SCHABAS: Well, you put that in front of
him before. I don't have an objection to you
doing it again. Okay. This is -- okay.
Let's go to page 3. Okay. Let's go to page
3, okay?

MR. BERNSTEIN: Q. Now, my question was,
do you recall how much Bitucan received from GCI in
connection with these \$3,000 a month...

A. Yes.

Q. ...payments as part of the MBB
arrangements?

A. Yes.

Q. We see here there's a reference, August
'80. August 3, 1988. You see it says, "X GCI, June
payment, \$3,000."

A. Um-hmm.

Q. And that's in '88.

A. Yes.

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Q. Does that entry assist in refreshing your recollection as to -- over what period of time? We looked at a document from '85. Now, we're looking at a document from '88. As to what period of time Bitucan received these \$3,000 payments from GCI in connection with the MBB dealings?

A. You said the first was '85?

Q. Yeah. February '85, and here we're in August.

A. Now, we are in '88. '85, '86, '87, '88. Four years.

Q. Is that -- we'll look at some other documents, but is that consistent with your recollection, generally?

A. Let me see -- let me see, a year would be 36,000 times four, possibly.

Q. Thirty six times four is -- is what?

A. You see when this is the -- what we call the *Kassenbuch* from Mrs. Lutz, and you see here, I recall now the name from our chartered accountant, Buchanan Barry.

Q. Right.

A. And this must be a base for the bookkeeping, though when she has put this here and Mr. Elsner from Buchanan Barry would have controlled this, then I'm sure that the figures are correct. But, it doesn't mean that I have nothing to do with and never see this stuff, I mean...

Q. I just wanted to ask whether it assisted in refreshing your general recollection for how long these payments went on for.

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A. Well, this shows here GCI your payment, and I assume this -- out of the 3,000, if it -- it was not something else, then it must be from the MBB.

MR.SCHABAS: Your Honour, we're getting...

THE COURT: Well, again, sir, I want you to think about the question that's put to you. The question is not whether you think this is correct or anything like that. The only question to you is does this assist you in independently recollecting the period of time during which Bitucan received these \$3,000 per month payments. Does it allow you -- do bells go off in your head permitting you now to say "Ah, yes. Now, I remember." Does this assist you or does it not?

THE WITNESS: Sir, I really -- I honestly could not say I remember. I can only take it when I see it here that it might have been that way or is that way, but I cannot say that I recall...

THE COURT: It doesn't create, or at least resurrect a memory that you might have lost but have now regained? Is that what you're saying?

THE WITNESS: Of course, I was never in this...

MR. BERNSTEIN: Q. And with -- just to ask a follow up question to His Honour, is it you can't remember anything or you're not sure of the exact dates, and the exact amounts?

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A. Let me say it this way. If this -- if this would be accompanied by a bill or an invoice from Bitucan, then I could say, "Yes, this is what it is," because then I could show from the invoice what it was for and what it was done. So otherwise, I can't -- I have -- I can only guess because this document, itself, doesn't tell you more.

THE COURT: Sorry, Mr. Schabas. I interrupt you because I wanted to put the question to the witness, but have you something further?

MR.SCHABAS: Thank you, Your Honour. Your question anticipated my objection.

MR. BERNSTEIN: Let's take a look at Document 6441, Goto Page 3. First, to Mr. Schabas.

MR.SCHABAS: That's fine. You can put it to him.

MR. BERNSTEIN: Q. Okay. Mr. Schreiber, let's take a look at this. We have here what appears to be a bank statement...

A. Yes.

Q. ...for Bitucan Holdings in Calgary. Nova Scotia bank, and there's.... I'd like to draw your attention to the first deposit. It says \$3,000. Do you see that there?

A. Yes.

Q. This is a bank statement for the period from April 28th, 1989 to May 31, 1989. Do you see that there? That's at the top. Let's just blow that part up.

THE COURT: Can I ask a question that's of a technical nature? The documents that I've

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got on my computer, were they independently scanned? It just seems that what I see, no matter how I blow it up, is far from being a -- well, hold on. Just before I say that, I was going to say it's far from being this clear but I -- you're on page... You're on Goto Page...?

MR. BERNSTEIN: Three.

THE COURT: Three. I'm sorry. I take it all back. I was looking at the wrong document. That's why it didn't seem to be the same.

MR.SCHABAS: Goto Page 2 is fuzzier.

MR. BERNSTEIN: They must be Eurocopter's submissions.

THE COURT: Pardon my obtuseness here, but that's my fault, not yours. Go ahead.

MR. BERNSTEIN: Q. So, we have here a Bitucan bank statement from the Bank of Nova Scotia.

A. Yeah.

Q. And it's for April 28th, 1989, to May 31, 1989. And we see a deposit here at \$3,000. Do you see that there?

A. Yes.

Q. Now, does this bank statement of Bitucan's in Calgary assist you in your recollection of how long these \$3,000 per month payments went on for? This one we have to May of 1989. So...

A. No. May I ask you a question? Don't you have -- don't you have financial statements?

Q. Pardon me?

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(Continued...)

A. Don't you have financial statements where this would be all in for the company.

Q. Would they help?

A. Huh?

Q. Would they help?

A. No, but normally when you have a financial statement for a year, it should be shown and audited what -- what payments you received.

Q. Okay.

A. Might have been much easier than to have all these -- these single [ph] accounts.

Q. So these bank --- these bank statement...

A. I'm just asking. I mean...

THE COURT: I only have one concern. I don't know if it's anybody else's, but you've shown the witness '85 dates, I think, and then now this is 1989. But, I take it that you're not necessarily taking the position that these were made every month. We've -- it only relates to the time period. For all I know, we only receive -- Bitucan only received four payment of \$3,000. I just -- maybe that's not an issue.

MR. BERNSTEIN: It is my position...

THE COURT: Well, no, but you've taken like...

MR. BERNSTEIN: I'm not going to take -- given...

THE COURT: For -- and I think you're making it into an assumption or putting to the

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court or to the witness a representation that these were then received every month without interruption from '85 to '89. That may be the situation you're attempting to advance, but we haven't seen anything that shows that for a period of four years, it was there every month. We've only had, like, four little snap shots, if I can use that expression.

MR. BERNSTEIN: That's right, Your Honour. And it is, indeed -- it may very well, indeed, be my position that these -- that this \$6,000 was advanced to GCI every month and that \$3,000 was advanced by GCI to Bitucan every month, but it was not my intention to take Mr. Schreiber through documents respecting each month, given -- given the likely answer.

THE COURT: No, no. I take no issue with that. I'm just wondering what it is that you wish me to take away from that.

MR. BERNSTEIN: What I was trying to do by this was simply to see if Mr. Schreiber, who does have some recollection of when they begin, to see if he has some recollection of when they ended and then I'll ask him the general question, did they -- to the best of his recollection, continue more or less on a monthly basis. So, this doesn't help.

Let me try Document 6448, Goto Page 8.

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MR. BERNSTEIN: Q. You mention Bitucan's accounting firm in Canada was who?

A. Buchanan Barry.

Q. Okay. And we'll go to page 8. Is that page 8? Page 9. And in particular...

MR.SCHABAS: Which page do you want to go to?

MR. BERNSTEIN: ...Mr. Schabas, the second from last paragraph. The next document.

MR.SCHABAS: Page 9?

MR. BERNSTEIN: Yeah. Yes.

MR.SCHABAS: Well, Your Honour, again I -- I suppose it could be put to him for the purpose of seeing if it refreshes his memory.

THE COURT: I believe that's what Mr. Bernstein wanted to do.

MR. BERNSTEIN: Thank you, Mr. Schabas.

MR. BERNSTEIN: Q. Can we show Mr. Schreiber Document 6448, Goto Page 8, and then once he's had an opportunity to see it, we can go to page 9 for his review.

A. Yes.

Q. Okay. This firm -- this accounting firm...

A. Yeah.

Q. ...is this the one? They were Bitucan's accountants?

A. This is the one I -- you helped me to recall the name today with this.

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(Continued...)

Q. What was your accountant's name, or do you recall?

A. Please?

Q. What was Bitucan's accountant's name? Buchanan Barry or...?

A. Buchanan Barry, yeah. Mr. Elsner. I knew only Mr. Elsner. I didn't know the name of the company anymore.

Q. Elsner's name is E-L-S-N-E-R?

A. Elsner? E-L-S-N-E-R. Yeah. Karl.

Q. All right. Karl?

A. Um-hmm.

Q. Let's go to page 9. We have here a letter from K.H. Elsner, CA, to Albert Birkner in BBC in Kaufering?

A. Yeah, I see. Yeah.

Q. And Mr. Birkner was still working for you in 1990?

A. Yes.

Q. And I direct your attention to the second from last paragraph on this document. This is Goto Page 9 of Document 6448. It says, "September 1989 is the last month that Bitucan received consulting revenue from Government Consultants International." Does that assist in refreshing your recollection? Approximately. It doesn't have to be the exact month. Approximately, near the end of 1989 was when the \$3,000 a month stopped.

A. Yeah. It looked like Elsner wanted to know what the situation is on that.

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(Continued...)

Q. Does it assist in refreshing your memory as to approximately when the last monthly payments between GCI and Bitucan, these \$3,000 payments ended? Approximately, roughly, September 1989?

A. Well, when I see this letter, and who wrote it to whom, it looks to me okay. I have no problems with it.

Q. So then...

A. I don't recall the letter but when I read this and you ask me, this is -- this is what you think is right, yes.

Q. So it does refresh...

A. Yes.

Q. Approximately, the fall of 1989?

A. Yeah. It doesn't refresh anything, but it shows me when this letter is there and the people who sent it and who received it that this should be accurate.

Q. And these were monthly payments, \$3,000 a month?

A. Yes.

THE COURT: And to your knowledge, sir, were there interruptions during this particular period of time that Bitucan received the \$3,000 a month? Were there some months where the 3,000 was not received or was it always received every month? To your knowledge.

THE WITNESS: I don't think so, Your Honour, but then there would have been -- somebody would have asked for it and would have -- would...

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(Continued...)

THE COURT: Your understanding was that it was to be paid every month, is that what you're saying or...

THE WITNESS: Well, that was the -- that was the...

THE COURT: ...are you saying something else?

THE WITNESS: That was the agreement, and if GCI would not have paid, for sure the bookkeeping would have asked them to pay, as they do here.

MR. BERNSTEIN: Q. So then you don't recall any interruptions?

A. No.

Q. I'd like to go on to another topic, if I might. Are you aware of an arrangement whereby MBB Canada sold helicopters to the Coast Guard in the 1980's?

A. No.

Q. Would some documents assist in refreshing your memory?

A. Yes.

Q. I'd like to show you a document. I'll show you the German copy first. Well, actually, I'll show Mr. Schabas the English copy first. 37913. 37913.

MR.SCHABAS: I don't object to it being put to him, Your Honour.

MR. BERNSTEIN: Let's show Mr. Schreiber the English -- I mean the German version, and this is Document 15451.

MR. BERNSTEIN: Q. We have here a letter addressed to you from International Aircraft Leasing.

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(Continued...)

A. Yes.

Q. Let's look at the English one. I'm sorry. Could we go back to the German one? I'm just going to ask you, Mr. Schreiber, whether you recognize the signature beside or under or above "International Aircraft Leasing" at the bottom of the page, and I'm asking you to look now at Document 15451.

A. Disappeared.

Q. What?

A. Disappeared.

MR.SCHABAS: It's been taken away.

THE COURT: It's not on his screen.

MR. BERNSTEIN: Q. All right. There.

Okay, there we go.

A. Yes.

Q. Whose signature is that?

A. Mr. Pelossi.

Q. So let's go now to the English version of this letter, Document 37913. We have here a letter written by Mr. Pelossi...

A. Yes.

Q. ...of International Aircraft Leasing Limited, IAL...

A. Yes.

Q. ...to you, dated January 01, 1986.

MR. BERNSTEIN: Could I have the court's indulgence for a minute, Your Honour.

THE WITNESS: I see from whom it is to whom, but I don't recall that letter.

MR. BERNSTEIN: Q. Well, do you recall being advised that IAL, "We have obtained information

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from Messrschmitt-Bolkow-Blohm that a Canadian customer has ordered a fleet of 12 BO-105 helicopters. The final negotiations are currently taking place."? Do you recall being advised of that in January of 1986?

A. Yes. That could be.

Q. Do you recall being advised of that?

A. I don't recall, but could be.

Q. Do you recall being told the outstanding question is whether the first six helicopters will be delivered in the old fiscal year before March 31, 1986, or only as of April 1, 1986? Do you recall that issue?

A. No.

Q. Do you recall being told the unit price amounts to about 2.4 million Deutschmarks, which comes to a total of about 28.8 million Deutschmarks. Do you recall being told that?

A. No.

Q. Do you recall being told, "According to the contract, a commission of 8,000 is to be paid to us on this amount..."

A. Eight percent, you mean.

Q. Eight percent.

THE COURT: A commission of 8 percent.

THE WITNESS: Eight percent.

MR. BERNSTEIN: Q. "8% is to be paid to us on this amount, which equals about 2.3 million DM." Do you recall being told that?

A. No.

Q. Do you recall being told, "As per the agreement with us, you" -- you, Mr. Schreiber --

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(Continued...)

"...will receive 50% of this amount which comes to about 1.15 million DM."

MR.SCHABAS: Your Honour, if Mr. Bernstein is going to try to interpret the letter, the letter is addressed to a company, to the attention of Mr. Schreiber.

MR. BERNSTEIN: That's right.

MR.SCHABAS: He made a point of saying to him -- trying to say who the "you" was.

MR. BERNSTEIN: Right.

MR. BERNSTEIN: Q. Do you recall -- I stand corrected. Do you recall being told, "According to the contract, a commission of 8% is to be paid to us on this amount which equals about 2.3 million DM."? And then, "As per the agreement with us, you will receive 50% of this amount which comes to about 1.15 million DM." Do you recall that?

A. No. You know, my problem is when you say "with our agreement with us" I don't know to which agreement he is referring. Because there was -- there was no agreement between Bayerische Bitumen-Chemie and IAL in my recollection.

Q. Well, this reference to "As per the agreement with us, you will receive 50% of this amount, which comes to 1.15 million," do you recall....

A. Yeah, but I can only understand that he had an agreement with somebody else and that we are supposed to get 50% out of it, because Bavarian Bitumen Chemicals had no agreement with anybody.

Q. If the "you" was a reference to Karlheinz Schreiber, would it make a sense to you?

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(Continued...)

A. No. I think that the agreement is part of the agreement with GCI.

Q. Well, I don't want you to guess. I'm just asking you whether...

A. I'm saying there is no agreement between Bayerische Bitumen-Chemie and IAL and there is no agreement between Karlheinz Schreiber and IAL.

Q. Do you recall being told, "In accordance with the agreement with MBB, the commission will be paid to you following receipt by us?"

A. Hmm?

Q. Do you recall being told that?

A. Yes. I recall that -- that there would be something paid to us. Yes. That's okay, but the numbers again, I don't know.

Q. You say you recall being told something would be paid to us. Who is the "us" you're referring to there?

A. As he says here, to Bayerische Bitumen-Chemie.

Q. So you do recall there being an agreement where BBC would...

MR.SCHABAS: That's not what he said.

MR. BERNSTEIN: Q. ...receive some money?

A. No.

MR.SCHABAS: He didn't say he recalled an agreement.

THE COURT: He recalled, to use his words, Mr. Bernstein, "that something would be paid to us." I don't think he ever used the word agreement. Indeed, he says there was no

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agreement between Schreiber and IAL, and no agreement between BBC and IAL, to be exact.

THE WITNESS: This is the same with GCI and Bitucan. There was no agreement.

MR. BERNSTEIN: Q. Put the word "agreement" aside.

A. Yes.

Q. Okay. I just want to know why you understood that -- and I want to use your words exactly as they were. "Something would be paid to us."

A. My -- my recollection was very clear. There is a retainer, which was split, and there is also a success fee or commission, whatever, agreed upon whatever MBB is going to sell to Canada, because the agreement I'm informed about is an absolutely and sole agreement between MBB Munich and GCI.

So, to tell you what my understanding is, whatever MBB was selling to United -- to Canada, would apply to that agreement. If, for example, the Canadian company would sell [ph] somewhere else and buy nothing from MBB, and would sell helicopters to Coast Guard or to whomever, GCI would not have been entitled to one nickel at all. So again, we speak about the parties. My agreement or my understanding with MBB, with MBB Germany, what we do in Canada. So...

Q. Just tell me about that. Explain.

A. And that is, and -- there was -- I may be involved in a huge project I would have loved to do, that was around DeHallivand. Mainly.

Q. Your understanding with MBB Germany was what?

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(Continued...)

A. Yes.

Q. Just tell us.

A. Please?

Q. Please explain. Just explain it again to me, all right?

A. Whatever MBB would sell to Canada, whatever it was -- this is my understanding -- that would be covered by the agreement. MBB to Canada.

Q. When you say it would be covered by the agreement...

A. With -- with GCI.

Q. Okay. What do you mean? What would happen if MBB sold something to Canada?

A. If MBB sold something to Canada, GCI would be entitled to get the commission out of that, a success fee or whatever it was called. And that also the monthly retainer would be deducted from that. This is my information from Mr. Moores.

Q. And your understanding or how -- how would you get your money?

A. Well, I would get paid to Bitucan or to Bayerische Bitumen-Chemie or whatever I would decide.

Q. What would happen which would trigger you getting paid?

A. You see, if I would have had an agreement directly with MBB, MBB would have paid to Bavarian Bitumen Chemical and that would be it. Bingo. It makes no sense for me to make arrangement in Liechtenstein to bring money from Munich to Liechtenstein and from Liechtenstein then back to Munich to Kaufering. I mean, I was born ugly, not completely stupid. So this

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was clearly arrangements with GCI, and from there, the understanding was -- and this is what I read from this letter, that Pelossi's understanding was whatever GCI receives from MBB, paid to IAL. "Our party" means Bavarian Bitumen Chemicals in relation to the same arrangements with Bitucan. This is what I read from this letter, and this is what my recollection was.

Q. And so your end of it, is what? The BBC -- your end of it is what?

A. Please?

Q. Just finish it up. Your end of it is what?

A. BBC or if BBC would have made other decisions to pay, for sure, Bavarian Bitumen Chemicals was entitled.

THE COURT: For how much?

THE WITNESS: To 50 percent.

THE COURT: 50 percent.

THE WITNESS: Yeah.

THE COURT: Okay, gentlemen. Is this an appropriate time to take a break until tomorrow morning? Mr. Schabas?

MR. SCHABAS: That's fine, thank you.

MR. BERNSTEIN: Thank you, Your Honour.

THE COURT: We'll rise...

MR. BERNSTEIN: Are we going to start earlier or...

THE COURT: No. I'm sorry. I have two sentences at nine o'clock...

MR. BERNSTEIN: Thank you.

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(Continued...)

THE COURT: ...unfortunately, which occupy
me, and so we'll start again at ten o'clock
tomorrow morning.

COURT REGISTRAR: All rise, please. Court
is now closed.

COURT ADJOURNS

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CERTIFICATION

FORM 2

CERTIFICATION OF TRANSCRIPT (SUBSECTION 5(2))
Evidence Act

I, we Tracy A. Lanctin, certify that this document is a true and accurate transcript of the recording of R. v. MBB Helicopters et al. in the Ontario Court of Justice held at Ottawa, Ontario taken from Recording No. 353, 354 which has been certified in Form 1.

October 7, 2004 _____

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ONTARIO COURT OF JUSTICE

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|----------------------|-----------------|--------------|--------------|
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E X H I B I T S

| <u>EXHIBIT NUMBER:</u> | | <u>Entered on Page</u> |
|------------------------|--|------------------------|
| 1-6554 | Document 6554, Goto Pages 2, 3, 13, 14, Swiss Bank Account Opening Forms, which includes both German and English translation. | 18 |
| 1-6571 | Document 6571, Goto Page 13. 24 pgs. Bank Statement. | 40 |
| 1-17169 | Document 17169, Goto Page 3, Handwritten instructions. | 40 |
| 1-17156 | Document 17156, Goto Page 2. Swiss Bank debit, handwritten instructions. | 40 |

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