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J	Document 37913, BBC letter, and translation of letter.	11
1-15451	Document 15451, GoTo Page 3. IAL letter to Mr. Schreiber, dated January 10, 1986.	16
1-13736	Document 13736. Proxy.	48

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Counsel Notified: October 15, 2004



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ANY METHOD PURSUANT TO SECTION 539(1)(b) OF THE CRIMINAL CODE.

Court File No. 02-20068

SUPERIOR 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

TESTIMONY OF KARLHEINZ SCHREIBER

\*\*\*\*\*

BEFORE THE HONOURABLE MR. SENIOR JUSTICE P. R. BELANGER  
ON SEPTEMBER 14, 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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THURSDAY, SEPTEMBER 14, 2004

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

(10:30 a.m.)

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

THE COURT: Good morning. Are you ready to  
continue?

MR. BERNSTEIN: Good morning, Your Honour.

THE COURT: Mr. Bernstein?

MR. BERNSTEIN: Good morning.

THE COURT: Good morning.

MR. BERNSTEIN: Mr. Schreiber.

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

THE WITNESS: Good morning, Your Honour.

THE COURT: Good morning.

EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

Q. Mr. Schreiber, I'd like you to think back  
to December of 1985. December of 1985. The end of 1985.  
Do you recall around that time learning of an intention by  
the Canadian government to order 12 BO-105 CBS Helicopters,  
manufactured by MBB?

A. No.

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Q. Would looking at some document assist in refreshing your memory?

A. Sure.

Q. I'd like to show first, Mr. Schabas, and then you, a document.

MR. BERNSTEIN: Perhaps we can show -- well, Mr. Schabas can look at the printed document number provided to him this morning.

THE COURT: Not on my data bank?

MR. BERNSTEIN: It's -- the translation is not on your databank, Your Honour. I can hand up a translation.

THE COURT: Is it the original?

MR. SCHABAS: You might want to call up the original for Mr. Schreiber in German.

THE COURT: It's not on here?

MR. BERNSTEIN: No. It was just translated last night by the translator.

MR. SCHABAS: I don't object to it being put to the witness, Your Honour.

MR. BERNSTEIN: Okay.

MR. BERNSTEIN: Q. So, let's then show Mr. Schreiber first the German, which is Document 15460. 15460, GoTo Page 2. Okay? This is a letter written on Bayerische Bitumen-Chemie letterhead?

A. Yes. I see it, yeah.

Q. Dated December 18, 1985, and please take a minute and read the letter and then GoTo Page 3, which is the second page of the letter. I, respectively, direct your attention, once you've reviewed the letter, to the

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signature at the bottom of that, but let Mr. Schreiber read...

A. Yes.

Q. ...the first page of the letter.

A. I see that.

Q. Okay. Let's just read the second page to this letter, GoTo Page 3 of Document 15460.

THE COURT: When I call up 15460 I get some other document. I'm probably making a mistake here somewhere, but...

MR. BERNSTEIN: 15460?

THE COURT: Yes. 15460.

MR. BERNSTEIN: It's a German letter.

THE COURT: Could the officer come and tell me what I'm doing wrong here? I'm sorry.

THE WITNESS: Yes.

MR. BERNSTEIN: Just one minute.

THE COURT: Okay. So what you're pulling up here isn't there. Fine. Thank you. No, it's not on my database. Go ahead, please.

THE WITNESS: Could you go back with that page?

MR. BERNSTEIN: Go back to page 1 of the letter, which is GoTo Page 2 of the document.

THE WITNESS: Yes. Okay.

MR. BERNSTEIN: Q. Okay. Good.

A. Yes.

Q. So let's go back to page 3, which is the second -- GoTo Page 3, which is the second page of the letter. There is a signature over the words Karlheinz Schreiber. Do you see that there?

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(Continued...)

A. Yes.

Q. Is that your signature?

A. Yes.

Q. You wrote this letter?

A. Yes.

Q. Let's go to page 2. The letter is sent to the County and Municipal Savings Bank in Diesen, right?

A. Yes. Landsberg.

Q. I'm sorry. Landsberg?

A. Yes.

Q. So the town is Landsberg. The province is Diesen?

A. Yes. No. Two little towns and they are mentioned together.

Q. Okay. Is that near Kaufering?

A. Yes.

Q. Do you have an English copy of the letter, so we're all looking at the same thing? Do you have the translation? I don't think so. It's not on the screen.

MR. BERNSTEIN: I'd like to -- everyone else has it, Your Honour. I'd like to give the witness a copy of the translation. Is there any issue respecting the translation, Mr. Schabas?

MR. SCHABAS: Well, I only got it this morning. I haven't taken issue with translations for purposes of the Preliminary Inquiry, so I'm not in a position to take any issue with it right now.

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(Continued...)

MR. BERNSTEIN: The translation was done by the translator.

THE COURT: For the purposes of the Preliminary Hearing, and subject to further qualification...

MR. SCHABAS: That's fine.

THE COURT: ...we can go ahead and use it.

MR. SCHABAS: Yes.

MR. BERNSTEIN: Thank you.

THE COURT: Thank you.

MR. BERNSTEIN: Q. All right...

A. This is somehow corresponding letter to the one you showed me from IAL, I guess.

Q. Which one do you mean there?

A. Yesterday you showed me a letter from IAL to Bayerische Bitumen-Chemie.

Q. Right. That was Document 37913.

A. Yeah.

Q. Okay. So let's just spend a minute on this, then.

A. Yeah.

Q. All right. This bank, the County and Municipal Savings Bank...

A. Um-hmm.

Q. ...did -- and I'll call it BBC. I'm...

A. Yes. That's fine.

Q. ...I mean I'm referring to Bayerische Bitumen...

A. That's fine. Yeah, yeah. Yeah.

Q. Did it have accounts at the County and Municipal Savings Bank?

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A. Yes.

Q. Pardon me, sir?

A. Yes.

Q. Did it have loans?

A. Yes.

Q. The account that BBC had at the County and Municipal Savings Bank, was it the account number detailed on this letter, Account No. 350439?

A. I don't recall but I take it you're right.

Q. The first -- in the first paragraph of this letter, it says, "Please treat this letter as our application to extend a loan in the amount of \$1,510,000 DM, with a due date of December 30..."

A. To extend, yeah.

Q. "...31, 1985 with updated conditions until December 31, 1986."

A. Yes.

Q. Do you recall having, or BBC having that loan?

MR. SCHABAS: Your Honour, the witness was taken to this document to refresh his memory about something to do with the helicopters. He's been taken to it and now Mr. Bernstein is going to lead him through the document. It's his witness. He's asking leading questions repeatedly, and in my submission, he's now read it. He should ask him whether it refreshes his memory and what does he remember, as opposed to taking him by the nose throughout every sentence in a letter.

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THE COURT: Well, of course, this is his own letter.

MR. BERNSTEIN: I disagree with my friend's submission, Your Honour. In my respectful submission, this letter is -- once an appropriate evidentiary basis has been laid, which is to say the witness has identified the letter, there's no issue. There has been an evidentiary basis laid explaining who BBC is and now who the bank is and now the existence of a loan. In the context of that evidentiary basis, in my respectful submission, this letter is admissible as independent of the issue of refreshing one's memory. When I say inadmissible, independent of the issue of refreshing one's memory, it is admissible as an act of Mr. Schreiber's, and we need to distinguish between original evidence and hearsay evidence.

In my respectful submission, this letter is admissible as a piece of original evidence establishing what Mr. Schreiber said what the letter says he said to the bank at that time.

THE COURT: It's my view at this point, that the Crown can ask clarifying questions about this letter being an original document acknowledged by the witness as being his, without such questions being called leading questions, and I think the Crown can refer to particular parts of this letter and ask the



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witness questions about those parts, so long as the questions themselves, of course, are not leading.

MR. BERNSTEIN: Okay.

MR. BERNSTEIN: Q. So with respect to the first paragraph, there is a reference as we've indicated to an application to extend a loan in the amount of 1.50 million Deutschmarks from December 31, 1985 until December 31, 1986.

A. Well, I think the letter speaks for itself. It's all there.

Q. With respect to the second paragraph, it says, "We further request an additional loan in the amount of 800,000 Deutschmarks with an expiry date of March 31, 1986 to finance ongoing business operations." Do you see that there?

A. Yes.

Q. Do you recall that request?

A. No, I don't recall this request but I see that's a letter as exactly that I wrote, so I have no doubt that it was correct.

Q. Now, it says here "to finance ongoing business operations." Those would be whose business operations?

A. You see, when you have road construction or traffic safety programs that starts in January, we ...and then you work it all up perhaps until October/November. So you have to pre-finance it, more or less, the whole thing until you get your money back. And though, that means in spring you need an enormous amount of

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money to finance your contracts. This is what it's all about.

Q. And so whose contracts? Whose business?

A. Bavarian Bitumen Chemicals.

Q. Now, the next paragraph says "As we indicated in our conversation in your office on December 16<sup>th</sup>, 1985, it has now been confirmed that the Canadian Government has ordered 12 BO-105 CBS Helicopters manufactured by MBB at a price of 2.4 million Deutschmarks each. Six helicopters are already in the process of delivery and more will follow earlier in the New Year. This will generate commissions for us, totalling some 1.5 million Deutschmarks." Okay?

A. Yes.

Q. Why did you write that to the bank?

A. I think this is, as I said, a follow up from the letter we received from IAL, and this was to show to the bank from what sources we intend to repay the loans.

Q. When you say "we", who do you mean?

A. Bavarian Bitumen Chemicals. Bankers have the habit to ask, "Okay, you get a loan. How are you going to repay it and when?"

Q. So the anticipated source of repayment was what then, sir?

A. I can tell you, I think this was in the letter from IAL, which was sent to Bayerische Bitumen-Chemie.

Q. Okay. Would you like to take a look at it?

A. No, but....

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Q. So the source of the payment of the loan was what, sir?

A. It says here the commission payments received will be used to repay the request loan was 800,000. On the next page. This is why I say this is a letter that speaks very clearly for itself.

Q. These commissions were from what?

A. From several companies.

Q. Do you see in the third paragraph of the letter it says -- there's reference to the 12 BO-105 CBS helicopters manufactured by MBB?

A. Yes.

Q. To be purchased by the Canadian government. Do you see that?

A. Yes.

Q. And then it says this will generate commissions for us totalling some 1.5 million Deutschmarks.

A. Yes.

Q. Was that in part the source -- the anticipated source of repayment to the loan?

A. Yes.

Q. I just want to be clear. This letter is dated December 1985, right?

A. Uh-hmm.

Q. And you were telling us about how in a road construction and road safety you have to sort of loan money and then do the work and then repay it. So in Germany -- when in Canada work is done mostly in the summer, in Germany, when is the work done?

A. Yeah. Same. Summer.

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Q. So when do you start getting the financing in order?

A. The second part of the year.

Q. So this is written in December. That's the last part of the year, I guess.

A. Yeah. It's free financing for the next year.

Q. All right.

MR. BERNSTEIN: Could I just have the court's indulgence? I'd ask that this letter be entered as the next exhibit in these proceedings. This would be -- this would be document -- the German edition is Document 15460. It's electronically -- the translation has not been scanned in yet. We'll scan it in due course, but right now I'd ask that the hardcopy translation be entered, also as an exhibit and it is...

THE COURT: What's the number or the letter, Madam Clerk, the designator? Where are we up to?

COURT REGISTRAR: I believe we're up to J.

THE COURT: Exhibit J.

MR. BERNSTEIN: So the translation is Exhibit J and I think Mr. Schreiber has got the one -- the copy with the certified stamp on it. I'll just make that an exhibit. Thank you.

EXHIBIT J: Doc 15460 and Document 37913  
Translation of letter. - Produced and marked.

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MR. BERNSTEIN: Just before I continue, I've been reminded by the Superintendent that we haven't yet exhibited the other letter, which Mr. Schreiber referred to in part this morning from yesterday afternoon which is Exhibit -- the English edition of it is Exhibit -- well, it's Document No. 37913. The German original is Document 15451. This is the IAL letter to Mr. Schreiber, dated January 10, 1986.

THE COURT: From Pelossi? Is that the letter?

MR. BERNSTEIN: Yes.

THE COURT: To Schrieber?

MR. BERNSTEIN: Yes.

THE WITNESS: To BBC.

MR. BERNSTEIN: Yes. That's right. To BBC, Attention: Mr. Schreiber.

THE COURT: And what was that letter used for? Was it strictly to refresh memory or -- I can't recall the evidence, specifically...

MR. BERNSTEIN: It was used to refresh his memory and then there was some explanation -- and Mr. Schreiber articulated an understanding at the end of the day yesterday in the context of that letter. So, I recognize its evidentiary value may be the subject of submissions at a later point in time. It has been referred to and certainly from the Crown's point of view, it may -- we may argue somewhere down the line that it has some

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evidentiary value. I just want to keep track of it, so it doesn't get lost.

THE COURT: Mr. Schabas?

MR. SCHABAS: Your Honour, my notes show that it was put to Mr. Schreiber and he doesn't recall the letter. It was put to him in order to refresh his memory as to whether he was aware of an arrangement whereby MBB Canada sold helicopters to the Coast Guard in the 1980s. So, he has no recollection of it, he can't identify it in any manner. In my submission, it was used to refresh his memory. It's not something like the letter that's just been shown to him where he acknowledges it's his signature and he's adopted it.

THE COURT: Is there an allegation that this letter was seized at a particular location?

MR. BERNSTEIN: Yes. It comes from Mr. Schreiber's offices in Kaufering via the German prosecutors' office and to us pursuant to a Mutual Legal Assistance request. Now, there is some issue as to whether my friends have made an admission respecting that. They have not -- we continued to discuss the matter, but I had been advised by the police, that's where it comes from.

THE COURT: Are we any further along that road? We discussed it yesterday.

MR. SCHABAS: We don't have an indication, Your Honour, that we made an admission with respect to every document that it comes from

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wherever they say it comes from. I've reviewed the transcript and the correspondence. So we are not prepared to admit that. We've admitted sort of many documents with respect to...

THE COURT: But this one you say has clearly not been admitted in this general blanket admission?

MR. SCHABAS: No.

THE COURT: That is your recollection?

MR. SCHABAS: That's our recollection.

MR. SHAW: Our position is that on the record it was stated that the item code reflected the -- that the item code reflected the location from where it was seized or taken and there's no dispute until Mr. Schabas has made these objections as to the item code being accurate. I'm not sure if this is an appropriate time, but I can at a break, print out the passage of the transcript I'm referring to and I have a passage where that point directly comes up, and I have another passage with respect to a document for which there is no admission, where again there was no dispute with respect to the location code being accurate or coming from that location. So, we obviously have a disagreement. We'll have to argue that point, but we've been operating under the assumption that the item codes were admitted in the way that we brought you to them yesterday.

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(Continued...)

They've been very clearly indicated to the defence, and we have what we took to be an admission. In fact, I take you to some later point to the portion of the transcript, the court confirmed that with Mr. Schabas, so I don't know whether we're going to have this argument now or later, but Mr. Bernstein is suggesting we proceed.

THE COURT: On a very, very limited basis, I'd be prepared to let it in to evidence and that is -- and the limitation is the following. It is to be determined at a later time that there was or was not an admission in relation to this particular document. If it turns out that there was, then it can go in; if it turns out that there wasn't, then it should not go in. If it was used only for the purpose of refreshing memory, then it obviously is not of evidentiary value. It's purpose is only to refresh memory. If, on the other hand, it turns out that there was an agreement that this should go in as evidence seized by or properly received by Canadian authorities under the *Mutual Legal Assistance Treaty*, then it will become an exhibit at that time. But, if it just simply to facilitate the process, for that very, very limited purpose I'm prepared to have it identified as an exhibit, but it has no value at the moment until such time as this issue is clarified.



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(Continued...)

MR. SCHABAS: That's fine, Your Honour. I'll be obliged to my friend if he can show me those references. We conducted our own review last night, and that is not my understanding. I know that there was some discussion -- and we don't have to get into it now. There was some discussion about item codes, which dealt with -- and it's in the court record. I think it's Exhibit C as to the 3 digit reference that something came from a letter of request, but beyond that I'm concerned that if this is my friend's position that, effectively, there has been admission of authenticity on everything, if that's their -- if that's their position, and that certainly is not my position, but I'll review it with Mr. Shaw.

MR. SHAW: I'm hoping we can work this out. This seems to be a very clerical and technical issue here, and I'm hoping we could work it out. Thank you.

MR. BERNSTEIN: Well...

THE COURT: Well, for the moment...

MR. BERNSTEIN: ...we -- okay.

THE COURT: For the moment, I'll make it Exhibit 1-15451, GoTo Page 3 -- was that it? Subject to the qualification we've discussed.

EXHIBIT No. 1-15451: Document 15451, GoTo Page 3. IAL letter to Mr. Schreiber, dated January 10, 1986.

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(Continued...)

MR. BERNSTEIN: Can I have the court's indulgence for a moment? I just want -- the officer's told me something. I just want to check the source of the last -- the last non-controversial exhibit.

Your Honour, I stand corrected. The last exhibit, the letter from IAL, Pelossi to Schreiber, was not obtained by the police from Mr. Schreiber's offices. It was in Kaufering. It was obtained by...

MR. SCHABAS: Somewhere else, I gather.

MR. BERNSTEIN: From -- yes.

MR. SCHABAS: Well, then let's get the witness here and...

MR. BERNSTEIN: What?

MR. SCHABAS: Well, I'm just concerned about the extent to which we're now going to hear some evidence, unsworn evidence, with the witness in the room and so on.

THE COURT: Anyways, it wasn't obtained from this location. Was it obtained from a location in relation to which there is some form of agreement between counsel?

MR. SCHABAS: I don't think so.

THE COURT: No?

MR. BERNSTEIN: Well -- no. Well...

MR. SCHABAS: Are you talking about 15451?

MR. BERNSTEIN: Yes.

MR. SCHABAS: Okay. Well, just one second.

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MR. BERNSTEIN: No, wait. We're talking about 279...

MR. SCHABAS: 27913.

MR. BERNSTEIN: We're talking about 37913.

THE COURT: I'm sorry. I thought you were talking about 15451. Let me just have a look at it. Give the number again, sorry?

MR. BERNSTEIN: Okay. All right. I'm sorry. The German -- those are the same documents. The German edition is 15451.

THE COURT: Yes.

MR. BERNSTEIN: The English translation 37913.

THE COURT: Okay. We're all in agreement?

MR. SCHABAS: I've got the document up on my screen, yes.

MR. BERNSTEIN: Q. Now, Mr. Schreiber, do you recall...

THE COURT: All right. Just so we're clear. All right, now, subject to the qualifications and the comments I've made, 1-15451 GoTo Page 3 is one exhibit. 1-37913 is the next exhibit. That's the English translation. Go ahead, please, Mr. Bernstein.

MR. SCHABAS: I'm sorry, Your Honour.

Mr. Bernstein is saying it didn't come from him. Well, why don't we deal with it...

THE COURT: Subject...

MR. SCHABAS: Right.

THE COURT: It's only admissible in relation to the existence of an agreement between

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counsel, whatever that may be. I don't know what it is.

MR. SCHABAS: Understood. Okay.

MR. BERNSTEIN: I'll just -- I'll whisper in his ear.

MR. BERNSTEIN: Q. Just one additional question, Mr. Schreiber. This letter, 15460, the letter you write to the bank, okay?

A. Um-hmm.

Q. In response to the question I asked you earlier this morning, you indicated that this -- the contents of this letter were in part related to the contents of the -- in partly related to the letter that we looked at yesterday -- yesterday afternoon -- which just for the record...

A. Yeah. Because...

Q. ...is 37913.

A. 'Cause that -- that bothered me yesterday. I think I told you that I hadn't seen that letter, and so the information must have come from Mr. Pelossi verbally, because, first, my recollection when you said the date, the date was after this letter. When I had the information before, the second the other letter when I said -- I think I recall, I told you yesterday, that I hadn't seen that letter, that I didn't recall it. And -- and then you said it was obtained in my -- in my home.

First of all, it would have never been in my home. It would have been in my office.

Number two, when you say today, it was not from my office, then it could only be from Mr. Pelossi and why is this of importance? In the -- in other documents,

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in other files, I have quite a few documents Mr. Pelossi produced, also including things from MBB. For example -- which nobody ever saw, except him. I just want you to be aware of this, and my suspicion is now that this document -- you're referring to the letter he had -- might be one of those documents he produced and nobody saw it, except him.

Q. And you say this document you're referring to, 37913, this letter dated January 10<sup>th</sup>, 1986 from IAL to you?

A. If you show it to me, yeah. If you show it to me then I can...

Q. Okay. Well, let's pull it up on the screen.

A. That's the one.

Q. This letter that's up on the screen is 37913.

A. Yes.

Q. Okay?

A. My question is only is this the one where you said yesterday it was obtained in my office or my home? Is this the one?

Q. I'm not sure, but if I did, just forget that.

A. No, then we are -- then we are on the same wave length again, because...

Q. Just that letter.

A. Okay.

Q. Do you recall -- do you have any recollection of providing a copy of this letter? This is the 37913 -- that's 37913. This letter from Pelossi, IAL, to you.

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A. Yeah.

Q. Dated January 10<sup>th</sup>, 1986.

MR. SCHABAS: Your Honour, he said he doesn't remember the letter, so how could he remember anything else about it?

MR. BERNSTEIN: Well, he may have -- well, he may not -- he may not remember the contents but he may -- let me just ask the question before my friend...

THE COURT: Don't answer the question, sir. Just listen to the question.

MR. BERNSTEIN: Q. Do you have any recollection either in January or at some later point, providing the bank -- and when I say "the bank" I mean the Savings Bank in Landsberg, with a copy of the letter you received from Pelossi and IAL, dated January 10, 1986. Do you recall either providing yourself or asking somebody to provide the letter on your behalf?

THE COURT: Don't answer that, sir, just for the moment. Just remember the question.

MR. SCHABAS: I mean, this is Mr. Bernstein's own witness. The witness has said he doesn't remember this letter at all. So to go on and ask him further questions is really kind of a form of cross-examination, if you will. I mean it's just an unnecessary question.

THE COURT: The answer yesterday was "I don't recall that letter." Is that still your answer today?

THE WITNESS: Yeah.

THE COURT: If he doesn't recall the letter,  
he doesn't recall the letter.

MR. BERNSTEIN: Fine. I'll move on.

MR. BERNSTEIN: Q. Do you know a man named  
Lohmann, L-O-H-M-A-N-N?

A. Lohmann?

Q. Lohmann. Rainer Lohmann.

A. Could it be he worked with MBB?

Q. It could be.

A. Yeah.

Q. Just -- okay. So, just take a minute and  
collect your thoughts. And what can you recall...

A. I think he worked for Mr. Pfleiderer.

Q. Do you recall offhand the kind of work he  
would do for Mr. Pfleiderer, just in a general way?

A. No. He assisted him. I saw him as his  
assistant but I don't know what work he did.

MR. BERNSTEIN: Your Honour, before we  
proceed, I just need to talk to Ms. Christie  
for a minute. If I could just have a minute  
or two, 'cause I just want to talk to her  
before the next thing. Or more particularly  
Mr. Shaw...

THE COURT: Do you want me to take a break?

MR. BERNSTEIN: It's only...

THE COURT: Well, what we could do is take --  
although I know we started at ten-thirty, we  
could take the morning break and then go  
straight on until a quarter to one or  
whatever.

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MR. BERNSTEIN: Your Honour, I don't anticipate this is going to take more than two minutes.

THE COURT: Okay, well, go ahead, then. Go ahead. We won't formally break, is that what you're telling us?

MR. BERNSTEIN: Yes. If we could just -- if I could just....

[PAUSE]

MR. BERNSTEIN: Thank you. Thank you.

MR. BERNSTEIN: Q. Mr. Schreiber, I never -- I should have asked this question a moment ago. I'll just ask it now. Did you get the loan? Did BBC get the loan, the loan extension and the additional money?

A. I have no idea, but I assume.

Q. All right. I'm wondering if you can take a look at a document that has been, I believe entered as an exhibit in these proceedings, and it's Exhibit No. 1-3367. 3367. And this has been exhibited, or is an exhibit in these proceedings.

MR. BERNSTEIN: Mr. Schabas?

MR. SCHABAS: Well, Your Honour, I guess it's an exhibit. I'm not sure for what purpose my friend is putting it to him. It doesn't seem to follow -- I don't know. I guess we have to see where he goes. Mr. Bernstein is mindful...

THE COURT: Well, what's the questioning about?



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MR. BERNSTEIN: I'd like to show him the document and ask him if he ever got a copy of it and is familiar with its contents. Or recalls getting a copy of it.

MR. BERNSTEIN: Q. All right.

Mr. Schreiber, could you take a look at this letter? This is a letter from Mr. Grant to Mr. Pfleiderer at MBB. It's dated January 9, 1986. So, the last exhibit, your letter to the bank, was dated December 1985, and here we have a letter dated January 9, 1986, a few weeks later. My question to you is, do you recall ever getting a copy of this letter?

A. No. I am hundred percent sure I never saw that letter.

Q. In the Exhibit.... In Exhibit 15451, Exhibit 15451.... I'm sorry. I'm sorry, it's not that. In Exhibit 15460, 15460, there is in this letter -- this is the letter from you to the bank dated December 18<sup>th</sup>, 1985, reference to anticipated commissions in connection with Canadian government's ordering of 12 BO-105 CBS helicopters manufactured by MBB. Right? Were those -- were some of those anticipated commissions ultimately received?

A. Please?

Q. Were some of those anticipated commissions received?

A. Yes.

Q. Do you recall how much?

A. No.

Q. Would some documents assist in refreshing your memory?

A. Yes.

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MR. BERNSTEIN: I'm wondering if we can go to -- first Mr. Schabas -- Document 13730. 13730 GoTo Page 6.

MR. SCHABAS: Well, Your Honour, I suppose for the purpose of putting it to the witness to refresh his memory, I can't object.

MR. BERNSTEIN: Q. Okay. We have here...

MR. SCHABAS: I note that it's six pages long. Perhaps the witness could have an opportunity to review all six pages.

MR. BERNSTEIN: Yes. So, let's show it to him in the order in which the order -- the order of the document. The first page is a fax transmittal slip -- submission slip. This has already been entered as an exhibit in these proceedings. We've heard a fair amount of evidence about it.

THE COURT: 13730?

MR. SCHABAS: It's not, according to our records, Your Honour.

THE COURT: I don't recall.

MR. BERNSTEIN: Okay. The exhibited copy is, according to my notes, Document 17058 GoTo Page 12 to 19. And I believe it was put in through Mr. Moores. Without the fax cover sheet.

MR. SCHABAS: Your Honour, our understanding is that the longer document was put to Mr. Moores and certain pages were made exhibits, which he could identify, and these pages he could not. And therefore, they were

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not made an exhibit. Pages 12 to 19 of Document 17058.

MR. BERNSTEIN: Okay. Well, we'll sort it out. Okay.

MR. BERNSTEIN: Q. Have you...

MR. SCHABAS: Sorry. Are we going back to -- which document?

MR. BERNSTEIN: Document 13730, GoTo Page 6. GoTo Page 2, 3, 4, and 5.

MR. BERNSTEIN: Q. Okay, have you had an opportunity of looking there?

A. Yes.

Q. Okay. Have you looked at all the pages? No? So, please look. There's GoTo Page 6, GoTo Page 2, GoTo Page 3, GoTo Page 4, and GoTo Page 5. Are you...

A. No. That's only one page. Another one is coming here. Yeah.

Q. Okay.

A. I've never seen this document.

Q. Well, just one minute okay?

A. In my recollection.

Q. We'll go through it one at a time. Let's look at the GoTo Page 6, which is the first page of the document. We're talking about Document 13730, GoTo Page 6, right?

A. Yeah.

Q. This seems to be a fax cover sheet from Mr. Pfleiderer, dated November 21, 1986 to you. Do you see that there?

A. Yes, I see it.

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Q. Do you recall receiving this document?

A. No.

Q. Okay. Let's go to page 2. Its entitled, "International Aircraft Leasing Commission Fee Breakdown." Do you see that there?

A. Yes.

Q. My question to you was, do you recall the amount of commissions received? Do you remember that question?

A. Yes.

Q. Okay. And in the context of that question, I'd like you to look at GoTo Page 2 of this document, and in particular, the breakdown on the first part. The first half of the page. There's some information respecting Standard H/C. There's a price in Canadian dollars: \$14,297,400. And then halfway down the page there's a reference to "commission fee 8%", and then another figure, \$1,043,165. Do you see that there?

A. Yes.

Q. And then there is information respecting a further deduction for the Coast Guard of -- and then there's the figure 360,000, and then there is a figure \$683,155. Do you see that there?

A. Yes.

Q. And then, if we just continue on to the next page, GoTo Page 3, we see that there's information respecting options and a term, "Commission Fee 8%", and the figure 224,653. Do you see that there? And then if we go to 3 Avionics at the bottom half of GoTo Page 3, we see another figure beside "Commission Fee 8%". It's 145,911. Do you see that there?

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A. Yes.

Q. And then, if we go to page 4, we have another category of "Basic hardware 15%" and a commission fee of \$2,491. Right?

A. [No response].

Q. And then lastly, at the bottom half of GoTo Page 4, and "Aircraft spares 15% commission fee" 211,773. Do you see that there?

A. Yes.

Q. And then, if we go to page 5, which is the last page of the document, we have the commission fees which referred to here, we've just reviewed 1, 2, 3, 4, and 5. Those are the commission fees for the standard helicopters optionals, avionics, basic hardware and aircraft spares. There's a figure there of \$1,122,072.

A. I don't have that here.

Q. Okay. Right. In the middle. In the sort of middle righthand...

A. 1-1, yeah.

Q. All right. So if you add up the information under the various...

A. Oh, yeah.

Q. ...commission fees...

A. Um-hmm.

Q. ...we have a figure here of \$1,122,072. Do you see that there?

A. Yes.

Q. Okay. And then, we have a first -- do you see under -- down -- halfway down the page, it says "first rate of commission fee 68%?"

A. Yes.

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Q. Do you see that there? And we get a figure of 767,283. Right?

A. Yes.

Q. And then there is an entry that says GCI monthly payments, 21 times 6,000 -- \$126,000, right?

A. Yes.

Q. And then, this document seems to deduct \$126,000 from the \$767,283 and gets a figure at the bottom of the document of \$641,283. Do you see that there?

A. Yes.

Q. Now, does this review refresh your memory in connection with my question, which was: Approximately how much was received as commissions in connection with the acquisition of these?

A. I recall only the...

Q. Helicopters.

A. From this document, I recall only the -- the similar number from the 600,000, approximately, which was sent from MBB to my account in Zurich when Pelossi could take it from IAL. The rest, I have no recollection ever seeing this document.

Q. So you do have -- you refer to your account. Or that's the Swiss...

A. The...

Q. ...bank account..

A. Rubric IAL in Zurich.

Q. And let's just go back to that account, the bank statement we were looking at before, and let's put this on half the screen, GoTo Page 5, and on the other half of the screen let's pull up the bank account statements.

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THE COURT: Well, perhaps while that's being done we'll take our forenoon break, and we'll start with that immediately after the break.

COURT REGISTRAR: All rise, please. Court is in recess.

R E C E S S (11:30 p.m.)

U P O N R E S U M I N G: (11:57 p.m.)

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

THE COURT: Okay. Away we go.

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

Q. Mr. Schreiber, when we last broke, I had asked the Staff Sergeant to pull two documents up onto the screen, and he has completed that task. The document occupying the lefthand portion of the screen is Document No. 13730, which is GoTo Page 5 of that document. And on the righthand side of the screen is 6560, GoTo Page 2. All right? The document on the lefthand side of the screen, 13730, is commission break down. And the one on the righthand side of the screen is a Swiss Bank Corporation bank account.

All right. So, we've identified them. Now, you made a comment in response to a question I asked earlier about the figures, and that was the total figure,

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the final figure on the bottom of GoTo Page 5 of Document 13730, the figure of 641,283 as being a figure deposited into your bank account. I just wanted to...

MR. SCHABAS: Sorry, Your Honour.

THE COURT: No.

MR. BERNSTEIN: I'm sorry.

MR. SCHABAS: That's not -- that's not the evidence.

THE COURT: He doesn't remember that document, except with that small qualifier, but just be careful about what it is that you say he said...

MR. BERNSTEIN: Okay.

THE COURT: ...in relation to the first document.

MR. BERNSTEIN: Okay.

MR. BERNSTEIN: Q. Just, let's look at the first entry on the bank statement, GoTo Page 2.

A. Yeah.

Q. Let's blow it up. All right. You'll have to let go of the mouse. Let's blow up the first entry. There's a deposit there of 641,283. Do you see that there?

A. Yes.

MR. SCHABAS: Your Honour, I'm going to object to this. We've been over this document. There is this number on these two things. My friend has asked him questions. He took him to the other document, Document 137301, to see if it refreshed his memory. It did, to a limited extent. We've already been to this document. I submit he's engaging in a form of leading,



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trying to get some kind of admission that the two are the same. They are, obviously, the same number. The court can draw it's own inferences, but my friend, I submit is simply -- it's his own witness and he's leading him in the hopes to get something more from him by using documents to lead him.

THE COURT: I haven't heard the question to begin with. Mr. Bernstein has shown him these two documents, and I'd like to hear his question now that he's shown him the two. Hence, to the extent, I suppose that Mr. Bernstein is going into some considerable detail to point out specifics in relation to these documents, but that's not so much leading as pointing certain areas out. Let's hear the question and then I'll hear from you again, Mr. Schabas.

MR. BERNSTEIN: Thank you, Your Honour.

MR. BERNSTEIN: Q. I just draw your attention to that figure there. And let's look at the figure on the bottom of GoTo Page 5. My question to you is, first of all, are these figures the same?

THE COURT: Well, they are. You don't have to ask the question. They are.

MR. BERNSTEIN: Q. All right. They are. And my next question is, does looking at these two documents together in context assist in refreshing your recollection as to the amount of commissions paid?

A. I think I answered this already. This number, the 600,000 roughly, was the one I recalled, which

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was the first payment from MBB to the account from which I made available for IAL to transfer the money. So, when I look at that number on this account, which you have shown me before from the 31<sup>st</sup> of December 1986, and you ask me whether there is anything on the other document which is similar [sic], I guess the number 641,000. But that's the only thing I -- which tells me something from this document.

Q. My question was, does this -- looking at these two documents in context...

A. Yeah.

Q. ...refresh your memory as to the amount of the commissions paid?

A. Yeah. I think a hundred -- the 641,000. Yes.

Q. Let's go back to GoTo Page 6 of the document, Document 13730. Just solo screen for that. I'd like to direct your attention to the telephone number on this fax transmission slip, at the top of the page. The top of the page under the words "telefax" "telecopy" -- "telecopy" in another language. Do you see that number up there?

A. Yes.

Q. Is that number familiar to you?

A. Yes.

Q. How so?

A. This is the telefax number from BBC.

Q. So it's BBC's telefax number?

A. Yes.

Q. Would this be BBC's telefax number...

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(Continued...)

MR. SCHABAS: Well, why don't you ask him where?

MR. BERNSTEIN: Q. Where?

A. In Kaufering. But I am still telling you I have no recollection with this document or the contents.

MR. BERNSTEIN: Well, Your Honour, I'd ask that this document be entered as the next exhibit in these proceedings. We can, at this time, make submissions respecting its evidentiary value or we can do it at another time. I appreciate -- and I wouldn't be surprised if Mr. Schabas had submissions to make respecting it. We can do that now or we can...

THE COURT: Well, is this part of these documents that came from the German prosecutor?

MR. BERNSTEIN: This...

THE COURT: About and in relation to which there's been some discrepancy between your respective recollections, or does this come from another source?

MR. BERNSTEIN: This comes from the same source, and in that regard the officer has blown the item code up on the screen: 218.

THE COURT: Well, it just seems to me we can go some considerable time admitting documents which might turn out to be inadmissible, and maybe we'd best have this out all at once. Otherwise, it's going to get -- I thought maybe one or two documents we could leave up

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in the air. This document, I think we -- or at least my position is, is not admissible because it has been used only to refresh memory. If it's to be admitted for another purpose, ought there not be an evidentiary basis laid on the one hand for admission or on the other that we -- that I can come to, the conclusion that Mr. Schabas has agreed that they should go in under another heading. Perhaps it's best to discuss this now.

MR. BERNSTEIN: Well, it may very well be, Your Honour. I am hoping that we can actually avoid making submissions on it. I say that because we are -- there are many documents in this case and a variety of admissions have been made and I know that Mr. Wong and Mr. Shaw are reviewing their notes in good faith to assess exactly what -- what has and what hasn't been admitted. Independent of what has been admitted to date, I understand that there have been discussions this morning between Mr. Shaw and Mr. Schabas and Mr. Wong about just seeing what Eurocopter's ultimate position is on these documents, whatever the admissions may say, to the extent there is some ambiguity in the admissions, there have been discussions in good faith which Eurocopter is considering their position on respecting clearing up or firming up this particular area. It is a preliminary inquiry.

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(Continued...)

In the absence of affirming up one way or the other on these admissions, it remains open to the Crown at a later time and place to lead evidence...

THE COURT: Sure.

MR. BERNSTEIN: ...as to the source of these documents. So in that case, these documents would, in my respectful submission, be admitted subject to further identification, and it may very well be -- I'm in Your Honour's hands. It may very well be best in the circumstances to simply admit them, subject to further identification.

If that further identification is by way of admission, fine. If it's by way of further evidence, Your Honour, will consider that evidence, and if it doesn't -- if there is no further evidence, then Your Honour will -- will keep a clear record of these exhibits and they won't be considered by Your Honour.

THE COURT: Mr. Schabas, what do you say?

MR. SCHABAS: Well, I think that may make some sense, Your Honour. If I might just have a moment though, to.... Your Honour, I'm prepared -- I can't object to it being made as an exhibit for identification, but I -- and I am having discussions and we are reviewing some more things. Mr. Shaw and I had another chat just at the break, and I want to review some things further, but I can tell you with

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(Continued...)

respect to this particular document, though, my friends are not even asserting that this comes from Mr. Schreiber, this copy. It doesn't, on their records. To the extent we get passed the 218 item code, which is what I -- which is the only thing I turned my mind to, frankly, a long time ago on this, which is that it comes from a letter of request. But this one, if you go behind all of that, it doesn't even come from Mr. Schreiber.

So I don't know what evidentiary value it can be. It was just simply put to him for the purpose of refreshing his memory and they've obtained some evidence as a result of that. So, I don't know why or for what purpose it would be made.

THE COURT: Well, just rather than put questions to me or to Mr. Bernstein, just tell me if you object. I won't make it an exhibit. It can be made an exhibit at a later time when it's properly proven.

MR. SCHABAS: Right. I am objecting to it being made a proper exhibit at this time.

THE COURT: For that matter, we could make every exhibit on the data bank...

MR. SCHABAS: Sure.

THE COURT: ...exhibits subject to further identification.

MR. SCHABAS: Yes.

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THE COURT: I think that confuses the issue, Mr. Bernstein, rather than clarify it. So, at this point in time, I won't -- in view of Mr. Schabas's position -- and you can attempt to prove it at another time in the proper way.

MR. BERNSTEIN: Q. I believe you mentioned the name of Riemerschmitt before. What was Mr. Riemerschmitt or what is his first name?

A. Heinrich.

Q. Heinrich. You told us about certain business dealings you had with Mr. Riemerschmitt?

A. Yes.

Q. Did you -- I want you to think back to 1986. All right?

A. Um-hmm.

Q. In 1986, did you, or a company under your control or in which you had a direct or indirect interest in, owe Mr. Riemerschmitt, or a company under his control or one which he had a direct or indirect interest in, money?

A. No.

Q. Did Mr. Riemerschmitt act for people in 1986?

A. Act for people?

Q. Yeah.

MR. SCHABAS: Your Honour, why doesn't he ask him what he did?

THE WITNESS: He's a friend of mine.

MR. BERNSTEIN: Q. Did you have business dealings with him?

MR. SCHABAS: Yes.

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(Continued...)

THE WITNESS: Not -- yeah, but years, years before. He produces liquor and fruit juice, and my shopping centres and grocery stores or supermarket bought material from him.

MR. BERNSTEIN: Q. Okay. What kind of business did he have?

A. In my shopping centres, I had -- we -- we call it different than you do it here. It's like a huge department store.

Q. And what was the nature of your business with him?

A. He produced all kinds of liquor and fruit juice and vinegar and whatever. I bought it from him.

Q. Do you recall loaning money from him?

THE COURT: Borrowing or loaning?

MR. BERNSTEIN: Q. Borrowing money.

A. Yes.

Q. Okay. All right. I'm wondering if you can take a look at Document 13682. This is a translation. The German letter is at 13683. We'll wait for the translation.

MR. SCHABAS: Your Honour, I don't know for what purpose he is putting it to him. He's asked him whether he recalled borrowing money from him. He said yes. I don't know why we're now going to this document. Ordinarily, we'd take him to a document if he says he doesn't remember and asks him if it is going to assist him in refreshing his memory. So I am conscious of Your Honour's admonition last week to Mr. Bernstein that we shouldn't go to



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documents and start asking him about them. We should ask the witness for his evidence and not get a stimulus. So I don't know why we're going to it.

THE COURT: Mr. Bernstein, do you want your answer to be outside the hearing of the witness?

MR. BERNSTEIN: I can ask a few more questions before we get to this document.

THE COURT: Fine.

MR. BERNSTEIN: Q. You told us about your business dealings and about loaning and borrowing money. All right? You're shaking your head in the affirmative, right?

A. Well, I would love to see -- I would love to -- I would love to see that you present the letter. I'm very interested to see that letter.

Q. What letter is that?

A. No. I -- you come up this letter. I'd like to see it.

Q. No, you tell me what you're referring...

A. No. No, no. I know exactly what's coming and I'd love to see it.

Q. Well, tell me what you think is coming. Mr. Schreiber, tell me what you think is coming?

A. I think there is a letter from IAL guaranteeing from IAL, guaranteeing a loan I received from the Riemerschmitts. And if that is the case, I would even ask Mr. Schabas not to discuss this anymore, and put the letter up. He would understand in a minute why.

Q. Okay. Put the letter up.

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MR. SCHABAS: No objection, Your Honour.

MR. BERNSTEIN: Q. Let's start with the German and then we'll go...

A. Give me the German, yeah.

Q. This is a letter from IAL...

A. Yes.

Q. ...dated March 17, 1986.

A. Yes.

Q. To Heinrich Riemerschmitt and Frau Renate Riemerschmitt.

A. Yes.

Q. Can you spend a minute just looking at it?

A. There's no need. I know it.

Q. Okay. It's good to see, but let's look at the English translation.

A. Yes.

Q. Mr. Schreiber, you're obviously familiar with this letter?

A. Oh, very much.

Q. Okay. And tell me about this?

A. With the permission of my lawyer....

Mrs. Christie, is this a moment I can speak about this?

MS. CHRISTIE: Well, that's in the hands of His Honour.

THE WITNESS: Okay. I apologize. I didn't -- I don't -- as I told you, I'm the first time in my life a witness.

MS. CHRISTIE: I mean, unless he's suggesting, Your Honour, that he wants to speak to me in private, other than that...

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(Continued...)

THE WITNESS: No. There is no need. The other letter and the documents you showed me which came, as you think, because there was a fax number of my company came from MBB to me, I have my doubts. I think the German authorities, or wherever you got it from, is from Mr. Pelossi. I had more than one of these things.

This letter is the following. It's a fax from my lawyer, Eddie Greenspan. We have this letter from the German authorities, also the proof for loan, Riemerschmitts, and the assignment of commissions from MBB. What we also have is the copy of the testimony from Mrs. Riemerschmitt to this agreement, and I...

MR. BERNSTEIN: Q. Okay. All right.

A. And I would recommend you get that, because we have a situation which we have more than once Mrs. Riemerschmitt testified...

Q. All right. Wait, wait, wait, wait. I don't want you to tell me what Ms. Riemerschmitt testified to in another proceeding. I just want to ask -- and I don't want you to tell me what's in Mr. Greenspan's file. I just want you to tell me what you know about this document or knew about this document at the time in 1986 or in...

A. Nothing.

Q. ...the 1990s.

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A. Nothing. It's forged. Nobody knows about it. This is why I'm saying this Mrs. Riemerschmitt never saw it and MBB never saw it.

Q. Well, just wait...

MR. SCHABAS: Well, he's trying to answer the question, Your Honour.

MR. BERNSTEIN: Well...

MR. SCHABAS: He asked him about it and Mr. Bernstein seems to be stopping him. He doesn't like the answers. It's his witness. He asked him a question. He put a document in front of him. The witness should be entitled to explain it.

MR. BERNSTEIN: And I don't think -- and I objected or I asked the witness to stop because the witness is about to give or tell the court what someone else said about this document or this transaction. Let me finish.

MR. SCHABAS: It wouldn't be the first time.

MR. BERNSTEIN: Which he apparently learned decades later, and in circumstances where he says he was not aware of it at the time, now how my friend says that's admissible, I'd love to hear.

THE COURT: Just tell us what you know, sir, without this document without referring to what other people may have told you or may have said about this document. I take it you have just said it's a forged document.

THE WITNESS: The document was in the files and there is the testimony in front of the

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German authorities where Mrs. Riemerschmitt testified she never saw it.

MR. BERNSTEIN: There's all sorts of testimony...

MR. SCHABAS: Well, just a minute.

THE COURT: Please, please, please. I really don't want to know about what happened before the German authorities. I want you to tell me what you know about this document, not what other people may have said about it.

THE WITNESS: That's the only story about it, the one I told.

THE COURT: Well, tell us now. Don't...

THE WITNESS: I haven't seen the document.

THE COURT: It's right before you, sir.

THE WITNESS: Hmm?

THE COURT: The document that you're looking at there.

THE WITNESS: I've never seen it.

THE COURT: You've never seen it?

THE WITNESS: Until it -- until it showed up from the German authorities.

THE COURT: Okay. Thank you.

MR. BERNSTEIN: Q. Okay. Do you know a woman named Myriam Clara?

A. Yes.

Q. How do you know Myriam Clara?

A. I told you a couple of days ago that she is the secretary from Mr. Pelossi who had the proxy and dealt with MBB on the first payment when Pelossi was in custody.

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Q. You said he had a proxy?

A. Yes.

Q. What do you mean by that?

A. This -- his secretary got the proxy to advise MBB to send this money to my account with the Rubric IAL.

Q. What's a proxy?

A. Hmm?

Q. What's a proxy?

A. A proxy was authorization from IAL that she could act on behalf of Mr. Pelossi.

Q. And Mr. Pelossi's position at IAL at the time of this proxy was what?

A. He was what he always was, the president.

Q. This proxy came from where?

A. From him.

Q. So Pelossi gave Clara authority to act?

A. Yes.

THE COURT: How is Clara spelled?

MR. BERNSTEIN: C-L-A-R-A?

THE WITNESS: Yeah.

MR. BERNSTEIN: Q. Did you ever see any....  
Well, do you recall seeing that proxy or that authority?

A. Yes.

MR. BERNSTEIN: I'm wondering if we can take -- well, first we can show Mr. Schabas Document 13735.

MR. SCHABAS: Your Honour, I don't know where my friend is going with this. He was asking him about a proxy. This looks like a direction. I suppose he could put it in front

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of him and ask him if he recognizes the document, but it seems to not follow directly from the last question.

THE COURT: Is it your intention to put the proxy to this witness?

MR. BERNSTEIN: I'm not sure what he meant by a proxy, and I wanted to show him this document.

THE COURT: Well, he told you it was an authorization to do things on behalf of IAL from Pelossi.

MR. BERNSTEIN: I don't -- I don't have a proxy.

THE COURT: I'm telling you to put it to him. I'm just asking if that's what you want to do. You say you don't have one and you're not going to do that. You're going on to something else.

MR. BERNSTEIN: Okay. Let's look at -- show Mr. Schabas Document 13736.

MR. SCHABAS: It looks like it follows from the last question, Your Honour. I can't object to that.

MR. BERNSTEIN: I thank Mr. Schabas for his assistance.

MR. BERNSTEIN: Q. Okay. So, we have here a proxy, and this is Document 13736. From IAL. Are you familiar with the signature?

A. Yes. It's exactly the document I referred to.

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Q. And it says, "I, Giorgio Pelossi, has the director of the company, authorize Ms. Myriam Clara"...amongst other things... "...to inform the company that all transfers of funds regarding the Representative Agreement, dated 18<sup>th</sup> March 1985 should be transferred to the Swiss Bank Corporation." Do you see that there?

A. Yes.

Q. And you're familiar with this proxy?

A. Yes. I told you the first day in this examination.

Q. And the reference to -- it says here "regarding the Representative Agreement, dated March 18<sup>th</sup>, 1985." Do you see that there?

A. Yes.

Q. That's a reference to what?

A. I don't know. It's says to Representation Agreement.

Q. It says Representative Agreement, dated March...

A. Yeah.

Q. ...18<sup>th</sup>, 1985.

A. Yeah, but I don't know what agreement that is.

Q. Well, you've advised us that...

MR. SCHABAS: I'm sorry, is he cross-examining?

THE COURT: What's your next question? Don't answer until after I've heard the question.

MR. BERNSTEIN: I'm just going to leave it for a minute. Okay, Your Honour? Can this



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proxy be entered as the next exhibit in these proceedings?

THE COURT: Exhibit 1-13736.

EXHIBIT No. 1-13736: Document 13736. Proxy.

MR. BERNSTEIN: In connection with that document, I'd like to show the witness Document 13735. First, to Mr. Schabas.

MR. BERNSTEIN: Q. In connection with what you've told us about the use of your account, 18679, I'm wondering if you can take a look at this document. Then, my question is simply, were you provided with a copy or was the bank provided with a copy of this document, which you later saw or were you otherwise aware of it's contents?

A. I don't recall that I saw this document, but obviously this was Mrs. Myriam or Clara, whoever it is, did in accordance with the proxy. That's the same thing.

Q. So, you're not familiar with this document, you said?

A. No.

MR. BERNSTEIN: Okay. Can we pull up on Mr. Schabas' screen Document 17084? Document 17084. Okay. The translation is Document 13725. Document 13725. Do you have the translation?

MR. SCHABAS: Well, Your Honour, I don't know. I mean this is something from a later period. I don't know where my friend is going with this, and why he can't start by asking him questions and then, if necessary,

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refreshing his memory or putting something to him?

MR. BERNSTEIN: It's not my intention to refresh the witness's memory. This is a document, which on its face seems to have been sent by Mr. Schreiber to Mr. Pelossi, respecting enclosing MBB contracts to the attention of Mr. Lohmann. I want to ask this witness about it. I don't want to refresh his memory. So can we first pull up on the screen a German one?

MR. BERNSTEIN: Q. So do we have Document 17084 on your screen? You've looked at that, right?

MR. SCHABAS: Sorry. Sorry. Mr. Bernstein, we were just looking at another copy of this that has a stamp on it.

MR. BERNSTEIN: Right.

MR. SCHABAS: Which document was that that we were looking at?

MR. BERNSTEIN: The copy that you were looking at before was -- well, the Staff Sergeant pulled up the wrong document. The copy that we're looking at now is Document 17084.

MR. SCHABAS: Well, could you tell me which one we were -- that was just there?

MR. BERNSTEIN: Well, sure, but first of all, I want you to...

MR. SCHABAS: Well, I just...

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MR. BERNSTEIN: Look at the source for this one.

MR. SCHABAS: I'd just like to know -- just give me a minute.

MR. BERNSTEIN: And the other copy was Document 13726 that had the stamp on it.

MR. SCHABAS: Thank you.

THE COURT: Does that satisfy you? I see that they are two separate documents...

MR. SCHABAS: Yes. Yes.

THE COURT: ...one with a stamp and one without. I really don't know what this is about.

MR. SCHABAS: Yeah. I just wanted to understand. I just couldn't follow. Thank you.

THE COURT: All right.

MR. BERNSTEIN: I wanted to show the witness the one from item code 218. 218.

THE COURT: He's looking at it.

THE WITNESS: Yeah.

THE COURT: That's fine.

MR. BERNSTEIN: Q. Okay.

A. Yeah.

Q. Could we go to the translation, which is part of Document 13725, GoTo Page 2. We have here a -- the original is a fax transmittal slip from you to Giorgio Pelossi and it's dated...

A. No. It's not from me.

Q. Okay. Let me just identify the document. Let's go back to the German.

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A. Yeah, okay.

Q. Okay. And maybe the -- I see at the top of the document it says "Absender" and then it says Karlheinz Schreiber. Do you see?

A. Yes.

Q. What does "absender" mean?

INTERPRETER: Sender.

THE WITNESS: Sender.

MR. BERNSTEIN: All right.

INTERPRETER: Or "from".

MR. BERNSTEIN: Q. And there is, then, a -- there's a little telephone. It says F-S, and it says "Herrn Giorgio Pelossi."

A. Yes.

Q. Do you see that there?

A. Yeah.

Q. And then there is some writing typed...

A. Yes.

Q. ...on this fax transmittal slip.

A. Yes.

Q. And can that writing be translated? Or we have a translation of it. Let's just go to the translation of that writing. Okay. We can do the splits... Okay. The writing says -- and we'll just -- we see it here. Let's blow up what the typing is, in English, please. "Please find...

THE COURT: Sign.

MR. SCHABAS: Please sign.

THE WITNESS: Sign.

MR. BERNSTEIN: Q. I'm sorry.

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THE WITNESS: "Sign the enclosed MBB contract and send it to MBB, Attention Mr. Lohmann."

MR. BERNSTEIN: Q. So we have here a fax transmittal slip, which on it's face says it's from you to Mr. Pelossi...

A. Yes.

Q. ...and it says on it's face, "Please sign the enclosed MBB contracts and send it to MBB, Attention Mr. Lohmann."

A. Yes.

Q. And it's dated July 3<sup>rd</sup>, 1987.

A. Yes.

Q. Okay?

THE COURT: July the 3<sup>rd</sup>. Yes.

MR. BERNSTEIN: 3<sup>rd</sup>, 1987.

MR. BERNSTEIN: Q. And do you see on...

A. I see...

Q. Okay. On the bottom...

A. It's different up there.

Q. Okay. If we go to the German copy on the bottom...

A. Go to the German copy. Can I make it short for you?

Q. Sure.

A. It's a short letter. A fax perhaps, which was sent to Mr. Pelossi on the 3<sup>rd</sup> of July, '87, and it tells him, "Please sign the attached MBB contracts for agreement and send them to Mr. Lohmann. Signed by Mrs. Calp." My secretary. I have not the smallest clue what agreement this might have been. Could have been what

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country ever, but for sure 1987, I'm not aware of any agreements regarding Canada or MBB or what.

Q. Well, I'll ask you about that, but before we get to that, you say it's signed by Mrs. Calp?

A. Yeah.

Q. Where do you see that?

A. At that time, her name was Druber, because she became later on Mrs. Calp, and this is what she put here....[undecipherable].

MR. SCHABAS: I'm sorry. I don't know what he's pointing to.

MR. BERNSTEIN: Well, I'll get to it.

MR. SCHABAS: Well, just...

THE COURT: Well, is...

MR. BERNSTEIN: Q. You're pointing to something at the bottom of the page.

A. Lefthand side.

Q. On the lefthand side. Let's blow that up. Okay? Let's blow it right up. Let's blow it up even more. Okay. Now, you say Missus -- is it missus or miss?

A. Missus.

Q. Mrs. Calp's name...

A. At that time, it was...

Q. Druber or something?

A. Druber, yeah.

Q. Druber. Okay. And I see what looks in this -- we're looking at -- where a blown up image of the writing here at the bottom...

A. Yeah.

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Q. ...of the righthand -- the bottom of the righthand -- the bottom of the lefthand side of the page. There's a slash and it looks like a D after the slash.

A. Yes.

Q. Right? Okay. But what -- there seems to be an S, a C, an H, an E, and then...

MR. SCHABAS: Sorry. Why don't you ask him what it is?

MR. BERNSTEIN: Q. A squiggle before the slash. What -- what is...

A. I think that she marked there short for Schreiber, dash, Druber.

THE COURT: All right. I'll interrupt you there and we'll start again at two o'clock this afternoon.

MR. BERNSTEIN: Thank you.

COURT REGISTRAR: All rise, please. Court is in recess until two.

R E C E S S

(12:45 p.m.)

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

(2:07 p.m.)

COURT REGISTRAR: Order, all rise, please. Court is now reconvened. Please be seated.

THE COURT: Okay. Mr. Bernstein.

MR. BERNSTEIN: Good afternoon, Your Honour.

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SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

Q. Mr. Pelossi, when we broke we were looking.... Sorry.

THE COURT: I don't think we've got him here. Maybe later.

THE WITNESS: You're in love with him.

MR. BERNSTEIN: Q. Pardon?

A. He must be in love with him, I said.

Q. Mr. Schreiber, we were looking at this document, which is Document No. 17084, which is on it's face a fax transmission slip, which says from you to Mr. Pelossi. And we were looking at some handwriting in the bottom lefthand corner which you've advised the D was who?

A. Oh, Druber.

Q. And what did Frau Druber do?

A. She was my secretary and assistant and interpreter.

Q. Where?

A. In Kaufering with BBC.

THE COURT: You said she was secretary, assistant, and you added something?

THE WITNESS: Interpreter.

THE COURT: Interpreter. Okay.

THE WITNESS: A very nice woman.

MR. BERNSTEIN: Q. So I just want to return this document to normal form. And I note that it's....

A. Yeah.



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Q. ...dated July 3<sup>rd</sup>, 1987.

A. Yes.

Q. Do you see that there?

A. Um-hmm.

Q. Okay. I'd like to leave this document for a moment and I'd like to go to Document 13726. Document 13726. Actually, pull up that document in German, and Document 13726. Both on the screen.

So, on one hand let's have Document 17084 and on the other hand on the screen, let's have Document 13726. So that's Document 17084. It's on the lefthand -- now, on the right. No, that's -- excuse me. That's Document 13726, and it's on the righthand part of the screen, and on the lefthand side of the screen is the document we're just looking at, which is 17084. Okay?

A. Yeah.

Q. All right. There is one of these documents -- Document 13726 has a stamp on it, otherwise they seem to be the same, right?

A. Yes.

Q. Okay. The stamp has been translated in the translation, which is Document 13725.

MR. BERNSTEIN: Okay. I'm going to ask the Staff Sergeant if he can bring up three documents on this thing? No? Okay. Lose the one on the left and just bring up the translation to 13726, which is -- the translation is 13725.

MR. BERNSTEIN: Q. Okay. We see the translation for the stamp, it says "Stamp" Italian language July 8, 1987, processed.

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A. Stamp.

Q. Okay. Okay, the -- and the...

THE COURT: Is there any issue with that? I know the Mr. Interpreter is a German/English translator, but I take it the word "processed" is it "evasu"? E-V-A-S-O?

MR. BERNSTEIN: My friend has admitted the translation.

THE COURT: That's not a problem? Okay.

MR. SCHABAS: No, it's not a problem for the prelim.

THE COURT: That's fine.

MR. BERNSTEIN: Q. So we have a fax transmission slip which says from you to Mr. Pelossi, and then we have another copy of it that has this Italian stamp on it "processed July 8, 1987", right?

A. Um-hmm.

Q. Mr. Pelossi lived where?

A. Lugano.

Q. What language do they speak in Lugano?

A. Italian.

Q. And so, let's go back to Document 17084. The translation is fine. Anyways, so we have this fax transmission slip. It's from, it says you, to Mr. Pelossi and it says "Please sign the enclosed MBB contracts and send to MBB Attention Mr. Lohmann."

The next question I'd like to ask you is, do you recall instructing Mr. Pelossi to do this, to sign the enclosed MBB contracts and send them to MBB Attention Mr. Lohmann?

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(Continued...)

A. Well, I think I told my secretary to do that, but it depends what agreement this is. I have no idea what agreement we are talking about.

Q. Well, you say you told your secretary. You seemed to have told your secretary to do that.

A. Yeah, but...

Q. What agreements?

A. I don't know.

MR. BERNSTEIN: Well, let's look at -- let's show Mr. Schabas Document 13727.

MR. BERNSTEIN: Q. So you say -- let's show Mr. Schabas Document 13727, okay, and while Mr. Schabas is looking at that document, I'd like to ask you...

MR. SCHABAS: Well, could you just hold on? I want to be able to listen as well, so...

MR. BERNSTEIN: Is Mr. Schabas done?

MR. SCHABAS: I've looked at the document, yeah.

MR. BERNSTEIN: Okay.

MR. BERNSTEIN: Q. You said in response to a question I just asked you that you told your secretary to do it, depends on what...

MR. SCHABAS: No. He didn't say that.

THE COURT: You asked what agreements and he said, "I don't know."

MR. BERNSTEIN: Q. What agreement you're talking about. I believe you said you instructed your secretary to do that.

A. I assume, from the document.

Q. But you don't know which agreement?

A. No.

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Q. Okay. What agreements did you have with MBB at the time?

A. I don't know.

Q. What?

A. I don't know.

Q. Well, let's -- maybe we can -- would looking at some documents refresh your memory?

A. Yes. Sure.

Q. Sure? Okay. Let's take a look at Document 13727. Okay. The date on the fax transmission slip we just looked at, Document 17084, was July 3<sup>rd</sup>, 1987.

A. Yes.

Q. And we see here a document which is dated July 8<sup>th</sup>, 1987 and it's printed on it, Amendment No. 1, Agreement MBB/IAL. It's to Mr. Lohmann, MBB Munich, and it's from a company called FMT. Are you familiar with the company called FMT?

A. Yeah. It's one of Mr. Pelossi's companies.

Q. There's a few boxes x'd off here in this document and one of the boxed x'd off is in the righthand corner in the middle of the document. Let's just blow it up. It's a multilingual document. Just blow this up. It says "For signature", and then there's another X and it says "please return." And then there is beside that 1-EX. Do you see that there?

A. Yes.

Q. Okay. And I'd also like you to look at what the -- the attachment to that document 13727 is Document -- attached to it was Document 13728, which we'll show Mr. Schabas first.

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MR. SCHABAS: Sorry, Your Honour. My friend says it's attached. That's the first I've ever heard of that and I don't know whether he's giving...

MR. BERNSTEIN: What? Okay. Mr. Schabas, you need to look at the serial...

MR. SCHABAS: Just a minute.

MR. BERNSTEIN: ...numbers and the stamps on the documents. And that -- I don't say it's attached. The document says it is attached. And I understood there was a concession respecting these numbers. So...

MR. SCHABAS: Well, just give me a minute, Mr. Bernstein.

MR. BERNSTEIN: Sure.

MR. SCHABAS: I'm not giving any...

MR. BERNSTEIN: Just so that I can help, do you see how this stamp on this document, the last three numbers are 427? Do you see there, 427? And if we go to the previous document, we see the numbers are 426.

MR. SCHABAS: Um-hmm. Well, Your Honour, I don't see how that proves that something is attached.

MR. BERNSTEIN: Okay. Well, we'll bring you...

MR. SCHABAS: It's not how it's been -- the description on the next one, too. My friend has given me a lot of information, but in all the information I have....

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(Continued...)

MR. BERNSTEIN: Well, I invite you to look at the originals, Mr. Schabas. Can I continue my examination, please?

THE COURT: Well, let's see if we can get this resolved quickly.

MR. SCHABAS: Well, it's very nice for him to invite me to look at originals, Your Honour, and we've been cooperative for a year or so on electronic disclosure, and so on, which is not without its challenges and not without its frailties, and one of the things my friends do when they give me electronic disclosure -- and I think Your Honour is aware of it -- is we do get fields and their document descriptions and so on, but I don't have anywhere in all of the fields and details they've given me, any indication that it's attached. And so, while I appreciate my friend's offer, if he's going to stand up and suddenly say something is attached when he's never told me that before and we've been proceeding on the basis of electronic disclosure, I'm a little bit surprised and I'm surprised that he would just say it that way, too, when he knows he's never told me that before. Because we have Doc descriptions of every document. It doesn't contain it, and he's just led him with something and...

THE COURT: Can you proceed to questioning the witness without using the word "attached"?

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(Continued...)

If you can't, then let's get this resolved one way or the other.

MR. BERNSTEIN: Okay. Well, there has been a disclosure respecting the Doc description. I'll bring the Doc description, which has been disclosed to Mr. Schabas, for that document. So it says this was disclosed when? In 2002. The Doc description was disclosed in 2002 and it says, as reflected on your screen: Fax note to Mr. Lohmann from FMT Pelossi, requesting signature in return of the Amendment No. 1 Agreement, MBB/IAL. It relates to Exhibit 21803425. And the other documents, the carbon-less copy, and the sequential numbering of the documents, it's the next page. You have the fax transmission slip and then you have the first page of the agreement. And I'm not -- my friend -- Your Honour, I'll just prove this. If necessary, I'll just prove it. My friend says he's cooperative. If this is a big issue, well, we'll just prove it. I thought he had made a concession respecting it. The information disclosed is that it is the next document. It was obtained from the same source and I wish to continue.

In the end, Your Honour will draw whatever inferences from the evidence he's...

THE COURT: Well, I can't draw any inference at the moment that it was attached. I mean

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you can say a lot of things about how this has been presented, but short of an admission that it was attached, you can prove that it was attached.

MR. BERNSTEIN: Well, I can proceed...

THE COURT: I'm not going to draw any inference that it was at this point in time.

MR. BERNSTEIN: I'm sorry. I can proceed without the necessity of proving that it was attached. It's on it's face, I submit, relates directly to it both in terms of the content of the information on the fax transmission slip when compared with the document, and the timing of the two documents, and the actions taken in connection with the second document. That's good enough for me. I'm prepared to just proceed.

THE COURT: Good.

MR. BERNSTEIN: Okay. We have here a -- this fax transmission slip. It's Document No. 13727. Okay?

MR. BERNSTEIN: Q. So we have this fax transmission slip from FMT, Pelossi's company to Mr. Lohmann, requesting a signature and a return. And there's a reference on the document to Amendment No. 1, Agreement MBB/IAL July 7<sup>th</sup>, 1987. Okay?

If we go to the next serial page, the next document, which is Document 13728, we have a document entitled, "Amendment No. 1 to Sales Representation Agreement between MBB and IAL." Do you see that there?



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MR. BERNSTEIN: Okay. Mr. Schabas will look at it and then you'll see it.

MR. LAWYER: Yes, I've seen it.

MR. BERNSTEIN: Okay. Let Mr. Schreiber look at it.

MR. BERNSTEIN: Q. Okay. I'd like you to review this document, Mr. Schreiber. It's -- you're looking at GoTo Page 2, and let's go forward. There's an amendment to two articles, Article 2 Compensation. It says, "The commission fee due in accordance with Articles 2.8 and/or 2.9 and/or 2.10 shall be calculated in full recognition of the retainer fee paid to Government Consultants International for its consulting services to MBB, and Article 6 Terms and Termination, 6.1, shall now be read. The life of this agreement ends on March 18<sup>th</sup>, 1989, and may be extended by the parties for any period to be agreed." This is dated.... Okay. Do you see Mr. Pelossi's signature there?

A. Yes.

Q. And my question to you is this. You indicated that you instructed your secretary respecting an MBB agreement. We asked you which agreement, and you said you didn't know. We've now shown you a fax transmission slip from Pelossi to MBB, which follows chronologically on your fax. And we've shown you an agreement which is an amending agreement to a Sales Representation Agreement between MBB and IAL, which again is July 1987. So, does this assist in refreshing your memory?

A. No.

Q. Have you seen this agreement? Let's go to page 2.

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(Continued...)

A. Not to my recollection.

Q. Were you familiar with it's terms at the time?

A. No.

Q. Were you familiar with IAL at the time?

A. Please?

Q. Were you familiar with IAL at the time?

A. Sure.

Q. Were you familiar with GCI at the time?

A. Yes.

Q. Were you aware of an understanding, a relationship, or agreement between IAL and GCI?

A. Yes.

Q. So, let's go to the terms -- this Article 2, the commission fee due in accordance with Article 2.8 and/or 2.9 and/or 2.10 shall be calculated in full recognition of the retainer fee paid to GCI. Were you familiar with that being part of their arrangement? IAL's arrangement with MBB. I mean GCI's -- IAL's arrangement with G -- IAL's arrangement with MBB?

A. Yes. I'm aware of that. Mr. Moores told me.

Q. The Article 6 here extends this agreement to March 1989. Do you see that there?

A. Yes.

Q. Were you aware...

A. 1989? Oh, yeah. I see.

Q. Yeah. Yeah. Were you aware that IAL's arrangement with MBB was in place until -- on or around March 1989?

A. No. If you want, I explain it to you.

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(Continued...)

Q. Okay.

A. The agreement between MBB -- the agreement was between MBB and GCI. In part of this agreement between MBB and GCI, was an arrangement where I recommended IAL to GCI. So number 1 is, I wonder why Mr. Lohmann has sent this to me. It could be that I should -- that he would have asked me to discuss this with Mr. Moores. Could be that I have been in Canada at the time when this thing came, and I said on the phone, "Yes, this is okay," or whatever, because I could not make this decision because the agreement in total was between GCI and MBB. So this is the explanation.

Q. The fax transmission slip, which is Exhibit 17084...

A. Um-hmm.

Q. Let's pull that up.

MR. SCHABAS: A fax transmission slip.

MR. BERNSTEIN: Q. Is to -- the name is Pelossi -- Schreiber to Pelossi.

A. Yes.

Q. I'd ask that this be entered as an exhibit in these proceedings, Your Honour. This is document 17084.

THE COURT: I wonder what heading is this to be made an exhibit? In that he says that he gave instructions or something like that?

MR. BERNSTEIN: Yes. He gave instructions.

THE COURT: Mr. Schabas.

MR. SCHABAS: Your Honour, he said he must have given instructions but he said that he didn't see it. I'm just looking at my notes

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from just before lunch on this. He said, "It's not from me," and then explained what he understood from the initials on it. I submit...

THE COURT: Well, he says, "It was signed by my secretary..."

MR. SCHABAS: ...he's not able to identify it.

THE COURT: ...and he's identified the secretary's signature, so it should be made an exhibit.

MR. SCHABAS: All right. Well, I'll have, obviously, submissions about the weight that anyone can give...

THE COURT: It may have no weight.

MR. SCHABAS: ...to it. No weight.

THE COURT: But I'm just saying, he has referred to it. He's identified the signature and people on it.

MR. SCHABAS: Right. Thank you.

MR. BERNSTEIN: Q. Okay. I'd like to take a look -- I'd like to ask you a few more questions about IAL's relationship with GCI -- IAL's relationship with GCI, okay? And your knowledge of it. What then, did you understand that relationship to be in October of 1985?

A. Between whom?

Q. IAL and GCI.

A. I recommended GCI -- I recommended IAL to GCI.

Q. Why did you do that?

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A. MBB intended to pay the success fee in Europe and the question was where and to whom I was asked. I recommended IAL.

Q. Who at MBB did you deal with on this?

A. Just MBB. Nobody.

Q. You said MBB recommended -- or I'll just...

A. No. I recommended IAL to Mr. Moores.

Q. Okay. When you say MBB -- I just want to be careful and just use your words. Okay? So, you say MBB intended to pay the success fee in Europe and the question was where and to whom I was asked, and I recommended IAL.

A. It was a question from Mr. Moores, yeah.

Q. So you spoke to Moores about MBB's intention to pay this success fee?

A. No. Mr. Moores told me about MBB's intention.

Q. So, can you just explain what he told you and what you recommended and why you recommended it, okay?

A. That a success fee should be paid in Europe and IAL was known by MBB because IAL was more or less incorporated...

MR. SCHABAS: Sorry, Your Honour. Just before we go any further, I mean we're hearing what he is saying Mr. Moores's said to him. It's hearsay. Mr. Moores's has already been called as a witness in this proceeding.

MR. BERNSTEIN: Okay. Wait. I don't -- like, I want to be very careful that my friend does not inadvertently telegraph things in connection with his objections. So if my

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friend is going to make a big objection here, I'd ask that the witness be excluded, and I'd ask that in the future, if my friend intends to make these submissions, that the witness be excluded when he does so.

MR. SCHABAS: Fine, Your Honour. Let's have him step out of the room. I don't think I've been guilty in the past of saying anything in the presence of witnesses that I shouldn't have.

THE COURT: It's evidence that Moores told him that, and if it goes -- if it doesn't go beyond that, that doesn't make it true.

MR. SCHABAS: No, that's -- that's...

THE COURT: Is that your point?

MR. SCHABAS: Well...

THE COURT: Or do you think that the Crown is leading it for another purpose?

MR. SCHABAS: I -- I believe he may be.

THE COURT: And how could that be?

MR. SCHABAS: That he's leading it for another purpose?

THE COURT: No, no. How...

MR. BERNSTEIN: How could that possibly be?

THE COURT: ...could it be that that would be admissible?

MR. SCHABAS: I'm sorry?

THE COURT: How could it be that that would be admissible?

MR. SCHABAS: Right.

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THE COURT: I don't disagree with you if that's your point.

MR. SCHABAS: Yes. Exactly.

THE COURT: Nevertheless, it is evidence of what Moores told him.

MR. SCHABAS: Correct.

THE COURT: It doesn't make it true but it's evidence of what Moores told him. And that may be relevant to his understanding.

MR. BERNSTEIN: And it's also what he did and what he didn't do and what followed from that.

THE COURT: It may. That's right, but it certainly doesn't make what Moores told him true. If that's your point, I don't think we need to ask Mr. Schreiber to leave the courtroom. If that's your point.

MR. SCHABAS: For now, that's fine, Your Honour.

THE COURT: All right.

MR. BERNSTEIN: Can I have the question and the beginning of the answer read back?

[PLAYBACK]

MR. BERNSTEIN: Q. Please continue.

A. Success fee should be paid in Europe.

And I recommended IAL. And Mr. Moores knew Mr. Pelossi that Pelossi was in Ottawa, and Mr. Pelossi was very familiar with the proceedings because IAL was more or less set up on the request of people from the Bavarian government at the beginning to serve the requests or needs or demands from

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other clients throughout the world. I think the first -- the first country was, when it started, was Mexico. That was the intention. Mr. Pelossi came up with that there might be a possibility, so his financial connections to finance leasing of aircrafts or helicopters, or whatever, this is how it started. So the vehicle was there. Was nothing special done for this purpose, and it was -- yeah, for me, it was more or less logical to use it. I recommended to GCI is what I did.

Q. This was...

A. As I did with many others.

Q. This success fee was in connection with what?

A. Please?

Q. The success fee was in connection with what?

A. With the contract. At least, this was my understanding what Mr. Moores told me from the contract he had with MBB.

Q. For what?

A. For whatever MBB would sell to Canada would be under that agreement.

Q. Okay. So, you've used the word Pelossi in the context of IAL. Right?

A. Yes.

Q. Who did you understand owned IAL?

A. We discussed this before. It's no secret. It's a company called Kensington.

Q. Who directly or indirectly owned Kensington?

A. It's only known through Mr. Pagani.



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Q. IAL was a company registered where?

A. In Liechtenstein.

Q. And forgive me, Mr. Schreiber if I'm not up on my international business, but is -- there are certain attributes in an International business sense to Liechtenstein companies that make them attractive?

A. Yes. The country more or less, as far as I can see, lives from trust business. So, these huge trust companies, they have hundreds and thousands of companies from around the world. For many purposes. And foundations that deals quite often with marriages or heritage or even that people want to stay *anonym* in their business or what, what request ever, and let me say it this way. This is perhaps the like [sic] which is around or this case is where -- I'm not saying this in a mean way where people like you never will understand what it is. When you deal on an international frame, the client tells you quite often what the client wants. And when you come to different countries, they are not saying, "Oh, it's so nice that you come, and what are the rules in Canada?" The rules should apply here. Not they tell you their rules apply. And this is very well known in Canada. And then the whole thing becomes very complicated when Crown corporations are involved, government-owned companies. Then you never can trust any labels at all anymore.

Take, for example, the sponsorship scandal here or take the thing with the atomic company in Canada, or take DeHavilland. Though you have to make a decision. You want to do the business? You accept the rules from the game or you don't make the business. And that means, if you don't make the business you don't have jobs. I mean,

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if you ask me personal, I'm -- I'm free to tell you this. I find it quite often perverse. These politicians, they meet and they speak about anti-corruption, fights, and what all they should do, and at the same time they give the managers from their -- their own companies orders to obtain contracts. And they have a law. And the law allows the deduction of grease money, bribe money, whatever you want. Just for one purpose: jobs. And I found it quite often very bizarre, in many ways, how countries and governments act, but we are not going to change it and we are not going to change it in my opinion in this courtroom. This is the point.

Q. You used the word "grease money". Is there a German term for that?

A. Yeah. It's called, you know, as I said there is a law, and it's a law that leads from the tax law. It defines what all kinds of money is deductible. So in that, they call it in Germany *schmiergeld* and that means you massage a deal or whatsoever. So whatever the German language could give to make it clear what is allowed to be deducted, this is what it says. And there is even a formula -- perhaps you have this document. If not, I would recommend that you get one. They are even bluntly saying, well, we know this is unethical and shouldn't be, but we don't care because everybody is doing it and our industry has to survive. For the managers of the industry, quite often a terrible situation, and then enormous pressure, because if you have no success, you get fired. Simple like that.

Q. You used the word "grease money" or *schmiergeld*.

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A. Yes.

Q. *Schmiergeld* is German for grease money?

A. Yes.

Q. And is there another term? Are you familiar with the term NA?

A. That is -- NA is held for -- helpful donations. It's called helpful donations. And if you want to talk about this, this goes, well, you have a consultant and the consultant goes to fund raising dinners or he serves parties or he invites people or, I mean, this term was more or less invented by the government itself. And this -- I mean when then there are certain rules and ten years later they come and tell you where you cheated with or this is fraud on the government. I have a case in Switzerland where now the Swiss Government refuse to give anything to the Germans, and say "You must be insane. Ten years ago you permitted the deductions from 200 million, and now you tell us you want from us documents, because it's fraud. How could you be defrauded when you permitted it?"

Mr. Bernstein, I expected that anybody in the room not be -- hasn't been in this spot, would ever understand. It's bizarre.

Q. All right. Help me understand. You spoke about -- in the beginning of your answer, you spoke about the instructions from the client.

A. Yes.

Q. Do you recall using that...

A. Yes.

Q. ...term?

A. Yes.

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Q. And are you familiar with the term called middleman, acting as a middleman?

A. Yeah, I know that.

Q. What do you understand the role of a middleman to be?

A. Well, this is exactly more or less what Pelossi did. He's doing this through all his Liechtenstein companies with their trust companies. Clients order, or have their own companies or foundations or it was -- it doesn't even mean that they have to own any companies or what, because these people acted -- it's their profession. More or less, this is all what they're doing. And after the years, we have seen from the Press where this could quite often go. A lot of blackmail and killings and everything is involved in this. This is a terrible, terrible field of work.

Q. Okay. When I asked you the general question about the attributes of a Liechtenstein company...

A. Yes.

Q. ...do you remember that? You mentioned -- you used the word -- and forgive me. I can never pronounce this. Animinity [sic]?

A. NA?

Q. Anam -- anamin... I'm not.

A. Anonymity? Anonymity?

Q. Yes.

A. To be anonym?

Q. Yes. You used that word, right?

A. So that people -- you disappear. You are not there. If you...

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Q. And is that one of the sort of attributes  
or...

A. Yeah, sure. Anonym. It just means...

INTERPRETER: It's anonymous.

THE WITNESS: Anonymous.

MR. BERNSTEIN: Anonymous.

THE WITNESS: You see, I mean somehow -- perhaps I shouldn't do this, but somehow you challenge me, right? I will say this. And I'm -- I'm mad about this whole case around me, and you -- you can imagine why. What I never understood in this case -- and I say it bluntly here to this court. Imagine here is a company called MBB. Partly government owned. The Minister of Finance from the Free State of Bavaria is the Chairman from MBB. The premier is the member of the board. Now, come all these friendly Canadians. Now, they are in the business. And now, this Minister of Finance allows the deduction of helpful donations or commissions towards Canada. Step 1 looks to me perverse.

Number 2 -- and here it gets, for me as a businessman -- and keep in mind I'm saying this not without being proud. I was a judge on things like this for nine years. How in the name of the law, can you allow the deduction of helpful donation, grease money, bribe -- whatever you want -- when you sell material from MBB Germany to MBB Canada with

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the same members of the board? To whom are you going to bribe or to corrupt or to grease? Yourself? You put it from one pocket in the other. I think it's absolute, that whole thing with MBB here in my opinion, is completely insane. And I don't know what they have done, but I know one thing. When finally, in my opinion, a tax audit would be done -- think about it. The tax auditor would immediately say what are you talking.... You deduct here -- you deduct here grease money or a helpful donation when you sell material from one of your companies to another one. It looks to me you don't function properly. Do you want to make a fool out of me; would be my reaction.

And I, quite frankly, think that this is somehow happened. Then the guys in Munich tried to cover up with something else where they proved in a certain way it was business abroad. This is what I really think about this case.

You are very well aware there was a request from the RCMP whether I would talk to them. It was lately when this thing with Mr. Mulroney was happening, and I said no, on the recommendation of my lawyer. But I had several very, very nice objective and friendly

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talks with the Superintendent and with  
Mister...

Q. Alexander.

A. I -- I told them bluntly what I think,  
and when they reported to you, then you know exactly this  
is what I say today, I told them already. I don't  
understand what this damn thing is, because it has no base  
for tax deduction in Germany, but it was given. And later  
on...

Q. What was given?

A. Huh?

Q. What was given?

A. The deduction. The tax deduction in  
Germany.

Q. Because?

A. Of -- of the commissions paid to IAL. I  
make -- I say it again. The Chairman of MBB is the  
Bavarian Minister of Finance. And his ministry allows  
deduction, tax-wise deduction from this deal, and the  
business MBB has is sell business -- sell parts from  
Germany to their own company in Canada. Now, you tell me  
where that makes sense. I don't know. As for today, I  
don't know what that is.

Q. The tax deduction you're referring to is  
a tax deduction for -- your deducting what?

A. For the money that was paid to IAL. MBB  
in Munich deducted this from their tax. So now it's easy to  
understand, but the first tax audit is, they will say what  
is it? You deducted here a million? What for is it? Mr.  
Bernstein....

Q. Are NA's deductible?

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A. Huh?

Q. Were NA's deductible?

A. Sure.

Q. Were *schmiergeld* deductible?

A. Yes. This is what I saw. This is the law in Germany. It was the law. So the government itself invented this whole frame for this, but the point I make -- and I want you to understand this. If MBB would have sold helicopters, or whatever, to a client in Canada. Let's say to the one, the company in Newfoundland, then that money would have been deductible the right way because it was the Canadian client. But what they did, they did not sell anything to a Canadian client. They send parts to their own company. Now, I ask you, you are the tax auditor and you ask me what it is? I say, "Oh, I sold parts from one company which belongs to us here and to another company that belongs to us here, and therefore, I need a tax deduction for helpful donations."

I mean, the tax -- the taxman, he must have thought "Tell me what is it? Are you insane? Are you out of your mind? What are you telling me here? This is not deductible. Do you understand?" And something went there on which I cannot explain, but I told you I am prepared to cooperate to look at this, but I cannot tell you what nonsense this is. I honestly cannot tell you, and I wonder what the outcome of this whole case will be one day.

I hope I could at least a little bit give you an understanding how I look at this thing and how I see it.

Q. I see, and what I'd like to do is just -- I'm sorry. I'm a plodding person by nature.

A. Yeah.



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Q. I just want to go through it in a little more detail...

A. Sure.

Q. ...and just so you can explain.

A. I have no problems with it.

Q. So, you indicated in connection with the Liechtenstein companies...

A. Um-hmm.

Q. ...okay, and IAL is a Liechtenstein company.

A. Yes.

Q. Then one of the reasons for incorporating in Liechtenstein is for -- I can't -- having anonymous...

A. Yes.

Q. Who would be anonymous?

A. Whoever it would be. This could be -- take all the nations around the world, or the governments, or private people. There is no -- there is no restriction or limit. On top of this, as long as you keep the money in this company, you pay no tax in Liechtenstein.

Q. Okay. So, but there has to -- so who -- when I -- like when I ask who is anonymous, is it -- there has to be some name in -- not everything is anonymous?

A. Yes. Could be a company. Could be a company. Could be private people. Whoever.

Q. Do you have to disclose the owners? Can the owners stay anonymous?

A. No. They have what they call foundations and there is no way to go through, so this is the same when you go up the -- the hierarchy to -- to what's the name? Kensington. I got -- I got so angry on this, especially

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when Pelossi stole money from my clients there. And I sued. And I tell you, it went to any and every corner. I have even a judgment on it. The previous prosecutor... Pelossi in jail, testified under oath that I have nothing to do with Kensington, but that they have a trust agreement. But it doesn't help me. The damn story is still on.

Q. And so, just with respect to Liechtenstein companies, can you keep the ownership of the company? How do you prove ownership of a Liechtenstein company?

A. Yeah, you can have documents, but let me -- let me tell you something else. The Liechtenstein company and the ownership of this Liechtenstein company means really nothing, because this is the body IAL is like a trustee. So now, how can it be an ownership from one person related to the business when this company has four, five, six, seven different clients? You know what I mean? So the company acts as a trustee on behalf of a client.

Q. I see. And can the client remain anonymous?

A. Sure. Maybe he doesn't show up because IAL shows up.

Q. So, the company acts on behalf of the client?

A. Yes. As a trustee.

Q. The trustee -- so Pelossi he's, you said, the president but he's acting as a trustee?

A. Yeah. The problem with him is that he never -- and I have to -- I have to disclose this. I didn't know this all from the beginning because he was

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within the company in.. [German]..and this is a very well-known company, and today it's Ernst Raduk [ph] Young. I mean a really solid company. He never got the trustee patent. For that, you need a certain certificate which he never got, so therefore, I think he worked or cooperated with professional trust companies such as the.. [German]..the name of Mr. Frick. When you are in Liechtenstein it's like in Switzerland, you have always to have content. You have people from there which run the show and so, he was more or less with these people under the umbrella of that trust company.

Q. Okay. So these Liechtenstein companies, IAL for example, acted in connection with a trustee like Mr. Frick?

A. Yes.

Q. Mr. Frick is a Liechtenstein citizen.

A. Yes.

Q. And is...

A. He's the Chairman of the trustee organization, by the way.

Q. Is there a requirement that there be one person from Liechtenstein?

A. Yes. Yes. Always. It doesn't go without it. For that, I made a little joke. A little boy was in school -- it's a real story. And the teacher complained because the little boy didn't work in his lessons, and she said, "Look, you have to learn and one day you want to have a profession and you must know something," and he said, "Now, why would I do this? I've become a Liechtenstein trustee anyhow." They live from that.

Q. And what are they selling?

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A. Huh?

Q. What are these Liechtenstein trustees selling?

A. What are they selling?

Q. What...

A. Service.

Q. And the service is what?

A. Service. Trust service. Trust service.

Q. Fine. So, when you first start dealing with IAL, okay, and -- how did you come -- how did that come about?

A. You will agree or understand that I will not -- that I cannot say names here. That would be unfair and I don't want to have law suits on my neck. The foreign country wants to do business and here, in this case, it was -- I can say the country. Mexico. And the request once was, "We need a trustee. We want to get paid there and there." You have to provide that service. I mean this is so -- Mr. Bernstein, this is so common like you would go to the market and buy bananas or what. You have to provide that service.

Q. All right. So how did you provide this service?

A. So then, we asked Mr. Pelossi who was dealing with us, as well, as other business, and we knew this is profession. We knew many, many, many clients he was working with. We said "Look, can you organize such a vehicle, which can be used for this purpose?" This is what MBB or the German company in that day -- at that time it was three German companies need. So -- and then, the other question was can be also financed through this vehicle and

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then was the question, we are who -- who could finance and how would it work? So, this is where then his ideas -- this is where it comes along.

Also, when it goes later to Merkur, financing is the background but there is so much money in Switzerland from around the world and they try to use it to finance all kinds of things, so that's part of the game.

Q. And IAL is then used as a vehicle for...

A. For -- for the clients to provide service. Assume you are from a little -- a little country, you are...or whatever, and you say, "Look, I want to buy stuff but I don't want to show it here."

Q. All right.

A. My brother shouldn't know or the king shouldn't know, or whatever.

Q. Right.

A. So make sure I get my commission, but I need the vehicle. So he gets the vehicle. He gets Mr. Pelossi with one of his companies, and then the company collects the money and pays him, and so nobody has anything to do with that.

Q. So what's the relationship between the vehicle and the commission?

A. The vehicle and the commission?

Q. Yeah.

A. The commission is paid for the client to the vehicle.

Q. And that's so -- why is that?

A. This is why I tried to -- to bring it to your attention to make it clear there was a deal between GCI and MBB. And part of this deal was that in the case of

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success, something extra should be paid abroad. So that's it. I didn't care about this. Not at all.

Q. And then, so it's paid abroad through...

A. Could have been to another company in Switzerland or in Germany or whatsoever, though the question was who was going to pay what? I recommended IAL.

Q. So IAL is the vehicle for these commissions?

A. Yeah.

Q. The MBB commissions?

A. Yes. And this is, as you see, then they go into an agreement. The problem in this is also when you make deals like this, somehow you have to secure your deal. So how are you going to do an agreement? Handshake deal? 20 million? 10 million? 50 million? And then somebody disappears, so what are you going to do? So, there has to be somebody who is doing an agreement, and this is what IAL did with MBB.

Q. And...

A. The point...

Q. I see.

A. The point -- the point which troubles me, and I come back and not emphasizing [ph] this, but allow me to say this. If the judge is the first to say who are the parties that taking this. What is time limitation and what is covered from the agreement there? So, assume if whatever MBB would sell to Canada was under this agreement -- and this is somehow, somehow funny [ph] already. Assume there would be a huge volume of goods being sold from MBB in Munich to their own company in Canada, that would have been covered by this agreement. And one should ask why?

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The same people do business between their two companies, why would there be anything?

Now, if the company in Canada which has different ownership -- by the way it says Canadian content. I learned this in the meantime. If they would have done business without touching MBB, which could be absolutely normal, they could source in United States or in China. It's very common today. And they would have sold hundred thousands of helicopters, GCI would not have received one nickel, because they had no agreement with the Canadian company. They had an agreement with the German company. Do you understand what I say when I -- this is why I said at the beginning, when you take a piece of paper and put the parties on, here is MBB in Germany and here is MBB there, and there is Coast Guard or other clients. And here is MBB in Germany doing a deal with GCI and doing a deal with IAL. So this -- this are different parties, and this is why I say that whole thing is insane. Mr. Schabas may forgive me but this is what I see. And I'm not against MBB. I love the company. But the deal is insane. In my opinion.

Q. Why the payments abroad?

A. I have no idea. They must have reasons.

Q. Pardon me?

A. They must have had reasons.

Q. I'm sorry.

A. But you see, this is also this when you look at this tax wise. I don't know whether you are aware of this, Mr. Pelossi testified in Augsburg in the case where ... taxes around me. None of these companies was every incorporated to evade tax. Each company had a

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special purpose. So if -- if you -- if you would be involved in an IAL business, then you would receive from IAL a hundred thousand dollar, and you would declare it in your tax -- how do you call this?

INTERPRETER: Return.

THE WITNESS: Tax return. What's wrong with that? It's not forbidden to get money from a company in Liechtenstein. So, but this is -- most of the time, it's not the main case.

It's more that people don't want to show up.

MR. BERNSTEIN: Q. I just want, sir, to ask a question or two about these terms, and the -- a few terms. First of all, *schmiergelder*. All right? Which is grease money.

THE COURT: Spell that for me again, please?

INTERPRETER: S-C-H-M-I-E-R-G-E-L-D.

THE COURT: Sorry. S-C-H-M...

INTERPRETER: M-I-E-R-G-E-L-D.

THE WITNESS: Let me explain what it is and it's easy to understand.

MR. BERNSTEIN: Q. Okay. All right.

A. You have an engine, and to make the engine running smooth, you put oil or fat...

INTERPRETER: Or grease.

THE WITNESS: ...or grease in it, so it goes smooth.

MR. BERNSTEIN: Q. And in the context of the buying and selling goods...

A. Yeah.

Q. ...between organizations, what does *schmiergelder* do? Explain to me how this works?



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A. I give -- I give you -- I give you a perfect example. When you come to the Middle East and you want to do business, the first thing is that the government, the king, or whoever, appoints a sponsor. Otherwise, you cannot do business there. The sponsor is there to tell you I get out of this whatever it is here, so and so much. This is *schmiergeld*. To make it happen. Quite often, when you take, for example, a Middle East company, they -- they are very proud and they say, "Look, you -- you make the deal. You get this business. The guy needs money." It's perhaps a brother, a cousin, or whatever. "You get this deal." So he becomes very proud and he works, and he is a successful businessman. The main reason is that he has to get the commission, and the king or, whoever, more or less tells him how much has to be put on top. So that means they pay more than the goods would normally cost and there are very spectacular things like this happened. Quite often, they have other purposes for it. So this is how that works.

Q. So, this is, at the time -- at the time that we're talking about here, the '80s and '90s...

A. Yeah.

Q. ...was the payment of *schmiergeld* tax deductible -- no. The payment of *schmiergeld* abroad, tax deductible...

A. Yes.

Q. ...in Germany?

A. Yes.

Q. So you could pay a *schmiergeld* to somebody...

A. Yeah.

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Q. ...and deduct it from your taxes...

A. Yeah. The government pushed you, invited you, recommended "Do whatever you can to get contracts. Contracts mean jobs."

Q. Is there a difference between an NA and *schmiergeld*? Or is it the same?

A. No. NA is more or less the -- the headline of this ...neust hubgaubin, helpful donations. Huh? And below this is all this. They invent all kinds of names for that.

Q. Is it -- okay. I have to ask you, you'll explain to me, is *schmiergeld* and an NA the same...

A. The same, yeah.

Q. ...or it's different?

A. Under the category of helpful donations, that if the part of how it goes with the tax, helpful donations. And below is all this stuff.

Q. And were NA's at the time -- NA's paid abroad...

A. Yes.

Q. ...by German companies deductible?

A. Yes. If you don't have it, I would be happy to give you that German law in writing. When you read it, you ask, well, how would these governments are?

I'm not shy to say things like this, because I've really enough from his bullshit how these managers are misused from the governments, and years later they kick them then somewhere else. I mean it is totally unfair.

THE COURT: Are we going to be going much further? There have been no objections. A lot of this obviously maybe something within this gentleman's

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(Continued...)

knowledge; some of it may be the kind of evidence we would hear from an expert. I've said nothing. I could have said that in French, we use the expression "*pot du vin*" which means wine pot, which probably means the same thing as well, but....

THE WITNESS: What did -- what it mean?

THE COURT: *Pot du vin*. Wine pot.

THE WITNESS: Wine pot.

THE COURT: Same thing as grease money. But this is all very interesting.

MR. BERNSTEIN: Yes, it is. I'd like to follow up on it and bring it in a more focused way if I could, Your Honour.

MR. BERNSTEIN: Q. Let's talk about MBB, all right, Mr. Schreiber?

A. Yes.

MR. SCHABAS: Your Honour, would this be an appropriate time for a break? I don't mean to interrupt my friend.

THE COURT: It's a good time for a break. Thank you.

MR. SCHABAS: Thank you.

COURT REGISTRAR: All rise, please. Court is in recess.

R E C E S S

(3:20 p.m.)

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

(3:40 p.m.)

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COURT REGISTRAR: Order, all rise. Court is  
now reconvened. Please be seated.

THE COURT: Yes, go ahead.

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

Q. Mr. Schreiber, I'd like to...

A. Thank you so much.

Q. I'd like to just ask you some follow up  
on IAL, okay? The question I'd like to ask you is what did  
you understand the economic reason for engaging IAL to be?

A. I have no idea.

Q. Would some documents assist in refreshing  
your memory?

A. Yeah.

MR. BERNSTEIN: Let's, Mr. Schabas, look at  
31864.

MR. SCHABAS: Sorry, Your Honour. It's going  
to take me a minute. It's a 74 page document.

MR. BERNSTEIN: GoTo Page 8. GoTo Page 8 and  
9.

THE COURT: This appears to be the very  
answer that you're seeking from the witness  
from what I'm looking at. I don't know, and  
perhaps there are no objections. In other  
words, this is not evidence or a factual  
little bite or bit, it seems to me.

MR. BERNSTEIN: Well, it wouldn't -- the only  
aspects of this which to draw, to ask the  
witness to refresh his memory from.

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(Continued...)

THE COURT: Well, anyways, I don't -- I'm not counsel here and I shouldn't assume that role, obviously.

MR. SCHABAS: Your Honour, he was asked, as I recall...

THE COURT: What was the economic reason for hiring IAL? And he said, "I don't know."

MR. SCHABAS: His answer was he had no idea.

MR. BERNSTEIN: I thought he said, "I don't know," Your Honour. In any event, I asked him if documents would assist in refreshing his memory, and he said yes.

MR. SCHABAS: Yes, and I mean concern -- well, maybe...

THE COURT: Again, that may be, but it's not any document that you can use to refresh memory. As I said before, I think earlier on this week or last week, this could be a memorandum between the two Crown counsel outlining a particular theory, and you could put that to the witness and say, "Does that refresh your memory?" I think that probably goes much beyond what *Fliss* ever intended. Still, I don't want to be counsel here and if there is no objection then that's fine. If there is, we'll deal with it.

MR. SCHABAS: No, I -- I am objecting, Your Honour. I think maybe -- I'm concerned about making any submissions in the presence of the witness.

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MR. BERNSTEIN: Okay. I think the witness should be excluded.

THE COURT: Yes, thank you. Would you step outside, please, Mr. Schreiber. Thank you very much.

...[WITNESS EXITS]

MR. SCHABAS: Your Honour, I'm just...

THE COURT: Just before I hear from you, what is it that you wish to put to the witness in general generic terms? It's a document that seems to be coming from the Munich Tax Court.

MR. BERNSTEIN: This document, as I understand it, is a translation of Mr. Schreiber's tax lawyer's submissions to the Munich Tax Court, dated May 22<sup>nd</sup>, 2000. And August 4, 2000 in respect of tax proceedings against Mr. Schreiber at that time. Indeed, Mr. Schreiber's referred in a general way to tax matters in Munich.

Now, these are -- this is, admittedly, a very interesting issue.

THE COURT: Okay. Now, again, sorry, a technical point. I go from page 4 of 74 to 5 of 74. Five is page 2 and it seems to be following on from a sentence that began on page 1, whatever that may be. It just seems to be standing out there. I'm just trying to follow through in this particular document. I

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(Continued...)

don't see a page one, do you? On page 1 here, that is 4 of 74, I see references to the subject matter. Then, I go to the very next page and it seems to be the continuation of a sentence which began somewhere else. Do you see what I mean or...?

MR. SCHABAS: Yes, I do. Yes. No, you're right. I have the same problem.

THE COURT: Okay. Fine. I thought it was just me but it's not just me. It's you as well.

MR. BERNSTEIN: Okay. So, first of all, if you'd like we'll go to the original.

THE COURT: In German?

MR. BERNSTEIN: The -- in German.

THE COURT: That won't help me very much, but there must be a preceding page to the translation.

MR. BERNSTEIN: Your Honour, the pages as I understand it, are in proper order. The German original is consistent and corresponds with the English translation. There isn't a missing page, and I think the translator may be able to assist in following the German sentences which flow into each other from the first page onto the second page.

THE COURT: Bring up the original document on our screen, would you? All right.

INTERPRETER: May I go in the witness box, Your Honour?

THE COURT: Yes. Thank you.

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(Continued...)

INTERPRETER: The grammatical structure...

THE COURT: Yes.

INTERPRETER: ...I think is what leads to it, because it begins with "in -- in the financial matter of Karlheinz Schreiber versus the Tax Office Landsberg." "In -- in the matter of" and then the next -- the next sentence or the beginning of the next page begins with the verb "we..."

THE COURT: "We are expanding..."

INTERPRETER: "...expand. We are expanding."

THE COURT: So there isn't anything missing.

INTERPRETER: No, sir.

THE COURT: It just appears that way.

INTERPRETER: Yeah.

THE COURT: Right. And so, what you propose then to produce to the witness is a letter from his lawyers to the tax office at Landsberg, right?

MR. BERNSTEIN: A written submission not made on his behalf by his lawyer to the Munich Tax Court. The appellant isn't his lawyer. The appellant is Mr. Schreiber. The person referred to and whose conduct is being characterized and whose transactions are being explained, is not Mr. Leisner, Mr. Schreiber's lawyer. It's Mr. Schreiber. So, what I'm trying to do or I ask the court to afford me the opportunity to do, is in the beginning to refresh the witness's memory respecting the question asked, with submissions his lawyer



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(Continued...)

prepared relative to his conduct on his behalf to a court.

Well, I'll begin with a refreshing of memory. As a matter of law, in my respectful submission, it's open to this witness during the course of questions to adopt. If he was shown this document and said, "Yeah, I read that. that's exactly what happened..."

THE COURT: All right.

MR. BERNSTEIN: ...then that's admissible evidence, and I don't know...

THE COURT: Is there any issue that the lawyers for Heinzkarl [sic] Schreiber were Haarmann, Hemmelrath & Partner, and made this submission to the Tax Court? Is that controversial? That hasn't been proved, it's just Mr. Bernstein saying it's so at this point, but that may be or may have been the subject of an admission.

MR. SCHABAS: I don't know, Your Honour. It's not been the subject of an admission. I don't even have any information as to where they got any of this. But I mean, I just -- I'm not necessarily disagreeing with him, but I don't have any evidence or basis to know this.

THE COURT: Well, was this disclosed, number one, to defence?

MR. BERNSTEIN: Of course. Of course.

MR. SCHABAS: The document was disclosed.

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THE COURT: All right.

MR. BERNSTEIN: Mr. Schabas knows Mr. Leisner. Mr. Leisner...

MR. SCHABAS: I do not. I've never met Mr. Leisner in my life.

MR. BERNSTEIN: Well, knows of Mr. Leisner. Mr. Leisner testified on behalf of Mr. Schreiber before Justice Morin on the fifth floor. Mr. Leisner has also testified before Justice Watt in Toronto on behalf of Mr. Schreiber.

THE COURT: That may be...

MR. SCHABAS: I'm not there.

THE COURT: ...but I don't know that. Number one, refer to the question I'm asking, please. Is it controversial that this letter from Haarmann, Hemmelrath & Partner was delivered to the tax office? For all I know, it never was. And for all I know -- and I'm just saying this is a court and there are evidentiary rules. They don't change from preliminary hearing to trial. Is it not contentious that this was a document prepared by Mr. Schreiber's lawyers and given to the tax court, as opposed to being a draft, for example.

MR. BERNSTEIN: We've received this document pursuant to a formal diplomatic Mutual Legal Assistance request, a letter of request, and have received this document back pursuant to Mutual Legal Assistance jurisprudence, and in

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(Continued...)

that regard, I direct -- perhaps we can direct the court's attention to document -- what's the name of... Page 3 of the document, which is GoTo Page 3 of the document, there is a letter that is translation of a letter to Peter Henschel who is an RCMP officers respecting the Letters Rogatory from Canada. That's the Mutual Legal Assistance request and the transmittal of documents. It's from the public prosecutor, Frau Paschel, which -- and it says in the letter, "I've enclosed the briefs, dated 2000-05-22 and 2000-08-04, which the defence attorney's for the accused Schreiber, filed in the Munich Tax Court with respect to the tax proceedings against Schreiber.

THE COURT: Is there any issue but that is an authentic letter? I mean, again, it's to dot I's and cross T's. It says signature illegible and stuff like that. I presume that that's the letter that accompanied some materials from the tax office, without getting into a big evidentiary mish-mash here about how you go about proving foreign government's actions in relation to the *Mutual Legal Assistance Treaty*.

Is there any issue that these are documents transmitted by the public prosecutor at Augsburg, pursuant to the Treaty and that

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(Continued...)

these are documents -- and that this letter says what it means?

MR. SCHABAS: Well, I guess I have no basis to cast any doubt on that, Your Honour. I mean, that's as far as I can put it. So, I mean my friend has been able to put other documents to Mr. Schreiber that he hasn't been able to prove, for whatever purpose, but it does sort of still leave us with the big question of what is this material and what use can or should be made of it?

THE COURT: I presume there it's not particularly controversial. At least it doesn't appear to me to be. That this is a representation of Schreiber's behalf to the Tax Court.

MR. SCHABAS: On it's face, that's what it appears to be. Yes, indeed.

THE COURT: This is what it appears to be on it's face, now. And these people are making, on his behalf, certain representation about -- and we go to page 8. Economic reasons for expanding IAL, ATG, and Kensington. Or for -- is that -- engaging, not expanding.

MR. SCHABAS: Engaging, yes.

THE COURT: I'm sorry. And if there is no issue or no general issue that this appears to be something they did for him, representations made, is there any difficulty in saying, "Were the representations made on your behalf and what do they mean?"

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(Continued...)

The only problem I have is that very often lawyers will make expansive and extensive representations on behalf of a client, and in many respects the client can't even read and write. I mean....

MR. SCHABAS: Well, that's my -- I mean that's part of the concern I have, Your Honour. I suppose some of this could be asked of Mr. Schreiber, if you were to permit this being put in front of him to help him refresh his memory, but you're right, it's a concern that we're not dealing with a document what Mr. Schreiber himself wrote, necessarily. It doesn't appear to have been one. It seems to be an argument that a lawyer has made.

So, I mean I'm in Your Honour's hands as to that. This is getting further afield than putting documents in front of the witness to refresh his memory which are his own documents.

THE COURT: Well, we -- if we begin with the assumption, with the original question as an appropriate one: What was the economic reason for hiring IAL? This is an answer made about this question on his behalf.

MR. SCHABAS: Well, let me come back to that, too, with the question, because we are getting far afield and Mr. Schreiber commented just before the break. We've had a lot of -- we

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(Continued...)

just had a long soliloquy almost by Mr. Schreiber on NA's and *schmiergeld* and so on, but we're now being asked by him what he understood the economic reason for somebody else -- the question doesn't say, at least my note of it doesn't -- somebody else engaging IAL to be, and how useful or probative is that? His answer is "I have no idea". If my friend's theory that it's MBB, that he wants to know what the economic reason for why MBB engaged IAL, if that's what he's seeking to prove, then he shouldn't be getting it through this witness's hearsay or what his lawyer might have represented in something else. He should be getting it from some other sources.

Your Honour has the admissible evidence on the point. So, I think we're getting far afield now that we're getting into this witness's lawyer's tax arguments as a way of refreshing his memory about some understanding, or he may or may not have had about why somebody else acted the way they did.

MR. BERNSTEIN: Okay. There is -- and the...

MR. SCHABAS: Sorry. And Ms Christie has just reminded me, too, because of course she is here on behalf of Mr. Schreiber that there would be issues with respect to whether this was done on Mr. Schreiber's instructions and what information he gave or didn't give to his lawyers. There is a real concern here, and I

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(Continued...)

mean she can speak to this if she wishes about issues of privilege and communications, because that's inevitably what -- well, not inevitable but it's quite -- it's obviously a concern that we must all have, that if I ask Mr. Schreiber some questions about this, we're suddenly going to be opening up a door that can't be opened.

THE COURT: I'm just reading through for a moment, gentlemen.

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RULING

BELANGER, J. (OCJ): (Orally)

Well, it appears to me that this a lengthy legal submission to a court which is a mixture of fact and legal argument being advanced by a law firm which represents the person before the court who is a witness in these proceedings. I am quite concerned about the leading aspect of the manner in which Crown wishes to use this document, that is, in producing to the witness an extensive legal argument advanced by his lawyers.

At this point, it would appear to me -- particularly in view of the fact that he has denied knowledge of any economic reasons for hiring IAL, at least in the manner in which this question was put -- that this will amount to, essentially, furnishing the witness with the answer in the guise of refreshing memory. It appears to me that this goes well beyond what is normally permitted in order to refresh



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memory and the type of situation that was discussed in *Regina v Fliss*.

My ruling is that you will not produce this document to this witness in this fashion. At the very least, at this point, a significant basis for asking him to refer to this document has not been established. Simply to say, Would it refresh your memory to look at this particular document? seems to me to be fraught with potential difficulty and risk to the evidentiary principle that leading questions should not be asked in examination in-chief. That is my ruling. Thank you.

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THE HONOURABLE P. R. BELANGER  
ONTARIO COURT SENIOR JUSTICE

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(Continued...)

THE COURT: Thank you. Mr. Interpreter, you can return.

COURT REGISTRAR: Mr. Schreiber, please enter courtroom number eight.

MR. BERNSTEIN: Just before Mr. Schreiber returns, I'm mindful of your ruling, Your Honour. I raise this with you in advance. We will have to deal with it on a case-by-case basis, but this document does deal directly with the Coast Guard contract, parts of it, in a succinct factual manner, and in that regard, I direct your attention to portions of the document, which...

MR. SCHABAS: Well, Your Honour.

MR. BERNSTEIN: I just -- please, I am in the middle of a sentence. And portions of the documents which -- GoTo Page 13. If you GoTo Page 2. 12. GoTo Page 12 of the document, there's a heading, Activity by the Appellant for IAL. So, the document begins with a general discussion of the economic reason for IAL, and then continues on at GoTo Page 12 with specific information respecting the position of Mr. Schreiber respecting the activity by him for IAL, and then continues on page -- GoTo Page 13 with a particular heading that says, Negotiations for the sale of helicopters to the Canadian Coast Guard. And at the end of that paragraph, says, "Rather, the fragmentary description in the

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(Continued...)

investigation report of the course of business confirms that the appellant always only received from IAL the commission share due to him whereas the, as a rule, much larger share of the inflows to IAL in each case flowed to third parties as bribes."

That's under the heading, Negotiations for the sale of helicopters to the Canadian Coast Guard.

It may be necessary somewhere down the line once we have some general evidence on NA's and *Schmiergeld*, the role of IAL, some general evidence on companies, and I just want to be clear that I have not elicited that evidence up in the air. It was my intention now to proceed with a line of questions which brought that evidence down directly into the Coast Guard transaction and MBB and the commissions which form the basis of this Preliminary Inquiry. I am mindful of the need to ask appropriate questions but I would be grateful before -- this is a unique document. This is a submission of counsel, but a submission of counsel on behalf of a witness, and I simply draw to the court that I may, as we progress through this, with leave of the court and at the appropriate time, wished to try again, unless Your Honour's ruling prohibits it. I didn't think so but to -- and in an

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(Continued...)

appropriate way and at appropriate time refresh the witness's memory from this document and other similar documents. If I'm unsuccessful in that, I may -- well...

THE COURT: What is to prevent you from putting the document in as original evidence?

MR. BERNSTEIN: This is my point. The concern about refreshing memory ought not to blind me to other relevant rules of evidence which inform admissibility. We're sort of getting into a system here which I've tried to resist this week where everything becomes an issue of refreshing memory. Some of these documents may be relevant on their own, and may be admissible.

THE COURT: I don't take issue with that at all, but you see we start off with you showing or wanting to show to the witness a 70 some page -- 74 page document that to begin with I know nothing about. Now, I'm finding out as we continue our discussions what this is -- finding out what this is about. And it may very well be that this is admissible for a number of ways for a number of purposes. It may be. I'm not saying it is. I'm not saying it's not. My only concern at this point is what you can refresh a witness's memory with. And if it's a long argumentative pleading, is that an appropriate way of refreshing memory as opposed to giving a witness an answer and saying look isn't this the answer that you

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(Continued...)

ought to be giving? That's my fundamental concern. I'm not at this point, discussing anything else except the issue of appropriate refreshing of memory.

It may very well be that you can refer to the document and use it to refresh memory. There is further questioning, if the document purports to advance certain facts as opposed to opinions.

It's just that it is a lengthy -- to use Mister -- on one view, it can be considered a lengthy diatribe or a lengthy submission to a court, which is argumentative as opposed to being factual.

MR. BERNSTEIN: I understand Your Honour.

THE COURT: It's not prepared by this witness. It's prepared by his lawyer. It really gives me some intellectual difficulties at this point. In any event, it might be best if you went back a bit with this witness and -- and asked him to begin with, whether he was a participant in these proceedings, and show him the document in general terms to see if he is in any way familiar with its contents. It may be that he will tell you that he doesn't know what his lawyer has prepared for the court. On the other hand, he may tell you that he cooperated very closely with his lawyers in the preparation of this particular

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(Continued...)

document. That may take us some distance down the road in a determination of whether it is appropriate that he should refresh his memory, particularly from those aspects of the document which are argumentative as opposed to being factual assertions.

MR. BERNSTEIN: Yes. Thank you.

THE COURT: Fine.

MR. BERNSTEIN: And I will proceed in that fashion. Thank you.

THE COURT: Thank you. I don't have any problem with you referring to the document globally because it obviously it was prepared and it appears to have been prepared for the witness. Because it was divulged, I don't think we're into any solicitor/client privilege. This is a submission made to a court, and I don't see how privilege can be attached to that.

MR. BERNSTEIN: I'll be careful not to -- I'm mindful of the -- and Mr. Shaw reminds me about the solicitor/client issue looms and I'd be careful to avoid it.

Your Honour, I was just going to start with just some general introductory questions respecting his lawyer and this tax business.

THE COURT: That's fine. That, I think, would go some distance to making me feel a bit more comfortable about the situation we find ourselves in at this point.

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SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

Q. Mr. Schreiber, do you know a gentleman named Jan Olaf Leisner?

A. Yes.

Q. How do you know Mr. Leisner?

A. He's one of my lawyers.

Q. Where is he a lawyer?

A. In Munich.

Q. Has Mr. Leisner testified on your behalf in Canada?

MR. SCHABAS: What's the relevance of that?

MR. BERNSTEIN: It was just an introductory question.

THE COURT: Move along.

THE WITNESS: Yes.

MR. BERNSTEIN: Q. How long has Mr. Leisner been your lawyer?

A. I guess since probably 1978 or so.

Q. Are you familiar with the firm called, Haarman, Hemmelrath and Partner?

A. Yes.

Q. Haarman, Hemmelrath and Partner.

A. Yes. This is the company Mr. Leisner worked for.

Q. I want you to think back to May of 2000. May of 2000. Were you involved in a tax dispute in Munich with the tax office of Landsberg around that time?

A. Yes.

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(Continued...)

Q. Did Mr. Leisner act for you in connection with that dispute?

A. Yes.

Q. I'm wondering if you can go to page.... Go to Document 31864. Okay? And I'll just call that up on the page. GoTo Page 34. So, it's document 31864, GoTo Page 34. This seems to be the first page of a submission...

MR. SCHABAS: Your Honour?

MR. BERNSTEIN: Well...

MR. SCHABAS: He hasn't even asked him if he's familiar with or recollects the submission or anything like that. He's leading him.

MR. BERNSTEIN: I just was trying to identify the document.

THE COURT: Well, I think that, in fairness, Mr. Bernstein can -- again, if he's just describing the document, very general, and tell him what he thinks that looks like, he can then ask the witness whether or not he agrees with that. I mean, otherwise, I suppose we can print out the document, show it to Mr. Schreiber and ask him what he thinks it is, but I don't know if that's truly necessary for this process. I'm going to allow you to ask the question in the manner in which you phrased it.

MR. BERNSTEIN: Q. I just wanted to describe what the document seems to be. It seem to be some written submission, from Haarmann, Hemmelrath and Partner to the



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(Continued...)

Munich Tax Court in May of 2000 in the matter of the tax dispute between Karlheinz Schreiber and the tax office of Landsberg.

Can you take a minute, and I ask you first is my general characterisation of the document consistent with your accord, and then I'll ask you whether you have familiarity with the document, and also, some of the contents of the document.

Okay? So, I know it's a little difficult with the screen here, because you can't actually pick up the document and leaf through the pages. It's one of the less advantages of the screen, but I want you to -- my first question is simply have I -- is my characterization of what this document is, consistent with your accord?

A. What I see here, yes.

Q. Okay. My next question then is, are you familiar with the document? And just take a minute. Just ask the officer if he'll change the pages for you. Just take a -- take a minute.

A. What -- what do you want to know?

Q. I just want to know -- the first question, I just want to know whether you're familiar with the document.

A. Not really.

Q. What do you mean by that? Have you...

A. Well, there is so much work the lawyers are doing over there, so I'm not familiar to this documents.

Q. Well, just so that I understand, is your answer you're not familiar with it at all or...

A. I'm familiar with the case.

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Q. ...you just have a little familiarity?

A. I am familiar with the case...

Q. Yes.

A. ...what they are doing, but not with this document.

Q. So are you familiar with what they -- you say what they're doing?

A. Yes.

MR. SCHABAS: Your Honour, this is cross-examination. It's turning into cross-examination. He said he's not familiar with the document. He's given his explanation. It's not for Mr. Bernstein to start asking leading questions to try and probe this. Mr. Schreiber is his witness.

THE COURT: He said he was familiar with not the document but with the facts, right?

THE WITNESS: Yes.

MR. BERNSTEIN: Q. Okay. And what did you understand the dispute to be in the Munich Tax Court?

A. Well, the whole tax evasion situation, which is over there. The allegations of tax evasion.

Q. Now, was IAL part of this tax dispute?

A. Could be. I don't know whether this is around this case.

Q. Would looking at some documents relative to the dispute assist in refreshing your memory about IAL's role in the dispute?

MR. SCHABAS: Your Honour, I'm concerned about where this is going. This is to -- this was originally brought up to see whether this

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(Continued...)

could be used to refresh his memory, and I submit we're going into completely different areas with respect to this witness. I'm just -- I'm concerned about we're getting far away from what the questioning -- the relevant questioning of this witness with respect to the charge that's before the court as opposed to perhaps getting into other matters that may be of interest to my friend, but aren't relevant -- specifically relevant to this case or for the purpose for which we went to this document.

THE COURT: Well, I presume that this whole issue of IAL and receipt of funds by IAL is relevant to the general issue before the court.

MR. SCHABAS: Relevant to the general issue before -- it may be relevant to the general issue of the charge that's before the court, but what goes on in -- what's relevant to his -- whatever this tax dispute is, that may or may not be still going on. We don't know. Whatever that is, is how is that helpful or of assistance to the issue before this court? And I just submit that I think in my submission we are getting far afield from the relevant questioning of this witness that's relevant to this charge, because instead, we seem to be going down a road of wanting to get into what's relevant to some other matter and where that all leads.

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(Continued...)

THE COURT: Well, it may be relevant to another matter. It may be, apparently, relevant to us. I take it the general allegation is that your client or the head office in Munich paid certain sums to this witness in contravention of an agreement with the Canadian government, and if there is an acknowledgement through this particular proceeding of certain sums having been received and undeclared, it seems to me that that's directly relevant to the issues that concern us. It may take us some distance, I suppose, from what happened in Canada. But still, I can't say that it's irrelevant. I mean it's...

MR. SCHABAS: Then, I would say, Your Honour, why doesn't he ask those questions that are to the point about the case before the court as opposed to getting into asking the witness about what's relevant in his tax disputes in Germany. It's his witness. He should be asking him direct questions about the case. And if he gets an answer that the witness doesn't remember, that he can try to refresh his memory, if he gets an answer that he doesn't like or wants to try to impeach him on or something, then he's got his procedures under the *Evidence Act*, but he should be asking direct questions of the witness that are relevant to the case, and not coming at it in a very, very indirect way to get into all

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sorts of matters that are irrelevant to our case, which is what's relevant in a case in another continent.

THE COURT: Fortunately, other continents are quite relevant to this case. I don't see that the manner in which Mr. Bernstein has proceeded so far is objectionable. Go ahead.

MR. BERNSTEIN: Q. The question, I believe, was...

THE COURT: Well, was IAL part of this tax dispute?

MR. BERNSTEIN: Q. Was IAL part of this tax dispute?

THE COURT: And the answer was "could be. I don't know." And then...

MR. BERNSTEIN: Q. Would looking at tax -- or documents filed in the tax dispute assist you with that answer?

A. Sure.

Q. Okay. Let's then look at this document, which is 31864, and can you look at GoTo Page 8? And I don't want you to just look at all of it, I just want you to look at the information under the heading b).

A. Yeah. This is English.

Q. Would you like to look at the German one?

A. Yes.

Q. Okay. The German document is the same document number, but GoTo Page 39. It just goes onto GoTo Page 9.

A. Yes.

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Q. GoTo Page 9? Or, I'm sorry, let's go to page 40. 39 to 40. Just, I'd be grateful if you read to just the first paragraph.

A. Yeah. It deals somehow with the situation I described earlier to you.

Q. Okay. So IAL is involved in the Munich tax dispute...

THE COURT: That was the original question to you, sir. Was IAL...

THE WITNESS: Yes.

THE COURT: ...part of the original tax dispute?

THE WITNESS: Yes.

THE COURT: Looking at the document has refreshed your memory?

THE WITNESS: Yes.

THE COURT: Can you answer yes or no?

THE WITNESS: Yes.

THE COURT: And your answer is yes.

THE WITNESS: Yes.

THE COURT: Thank you.

MR. BERNSTEIN: Q. And now you say that there is reference here to things you were talking about earlier, right?

A. Yes.

Q. Okay. And when you say that, what are you referring to? What's referenced here to what you were talking about?

A. No, no. It works with helpful donations and stuff. They are telling more or less the same thing here.

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(Continued...)

Q. And can you, just for the record, just point out what you mean there when you say that?

A. Well, when I look at this paragraph here...

Q. Which paragraph? Can we do it with the English one or...?

THE COURT: I'm really concerned about this. We're going to end up with the witness reading what it says in this particular opinion.

MR. BERNSTEIN: In my submission, the witness was just about to adopt a paragraph and if he had adopted that paragraph, that paragraph would be admissible on its own as evidence in this proceedings. Your Honour, I'd be pleased to make submissions on the admissibility of that -- indeed, in writing if necessary, but if he does adopt the paragraph in these circumstances...

THE COURT: Why don't you give him the whole document and say, "Do you adopt it?" on that reasoning and then you can file it?

MR. BERNSTEIN: I wasn't -- I just -- he -- I...

THE COURT: Let him read the whole thing.

MR. BERNSTEIN: I didn't bring this up. The witness brought it up and in the course of refreshing his memory, he says it -- he first -- well, I don't have to review the evidence. He first provided evidence which indicated that his memory was indeed revived and then he went on to say that it was more or less the

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same as what he had said, and I asked him where and what, and he was about to point to a paragraph.

In my respectful submission, he should be allowed to identify what paragraphs and what he's talking about there without reading it out. We have the document, and we can argue about whether it's an adoption, and the evidentiary value of it at some other -- at an appropriate time, but in my submission, the question is a proper one. And is...

THE COURT: Okay. What is your question?

MR. BERNSTEIN: Well, I think my question was: Which paragraphs were you referring to when you said what you said?

THE COURT: Go ahead and answer that.

THE WITNESS: Well, it's more or less the whole page deals with helpful donations. What I described to you that is, more or less, based on the law for helpful donations in Germany.

MR. BERNSTEIN: Q. And it's consistent with your view?

MR. SCHABAS: Well, Your Honour, now we're asking him basically to adopt the whole page, the whole paragraph of a submission by his lawyer. He's given evidence on this. To ask him that, it's a leading -- it's framed as a leading question and that's consistent with



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(Continued...)

your view, yes or no. It's like -- it's putting words in the witness's mouth.

MR. BERNSTEIN: I wasn't attempting to lead the witness and I'm not going to lead the witness. I had understood there's a number of that -- what he -- his answer be, and I just want it clarified whether what he was saying in connection with the last answer was in substance an adoption of this section.

THE COURT: All right. Another concern I have is that we're not really being fair to the witness in that you've produced this document to him. We're asking him to read it very quickly, and to say does this accord, generally speaking, with your view? Bearing in mind the time, in my submission -- my submission. My suggestion to you is that you give the witness the document and give him an opportunity to read it through as being a document prepared for him by his lawyers, and because I just don't think that -- I mean I'm having enough trouble reading it and understanding it and I'm sure he must as well.

MR. BERNSTEIN: Your Honour...

THE COURT: He can characterise it in a general way. What's wrong with giving him the document and saying, "Tomorrow, we'll be asking you questions about this document?"

MR. BERNSTEIN: I think that's a great idea, and with leave of the court, that's what I propose doing. I propose printing out a copy

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of this document, giving Mr. Schreiber it and telling him now that...

THE COURT: And through counsel, you might ask counsel to assist and in telling him what specific parts you wish to question him about to give him an opportunity to digest what's there and to be able to make meaningful responses to your questions.

MR. BERNSTEIN: I think that...

THE COURT: Now...

MR. BERNSTEIN: I'd be pleased to do that and I think that's the way to go.

THE COURT: There is a lingering concern that I still have about refreshing the witness's memory in this particular fashion. However, this is a document, which appears at least on its face to be -- to have been prepared on his instructions and on his behalf. And so, if that is the situation and if that is how it's properly categorized, he should have an opportunity to review it.

Mr. Schabas, any final comments before we adjourn for the day?

MR. SCHABAS: No, Your Honour.

THE COURT: We'll start tomorrow morning, then.

MR. BERNSTEIN: Thank you, Your Honour.

THE COURT: I'm sorry, I can't start you earlier than ten. I have another sentencing matter tomorrow morning. We'll rise now and

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(Continued...)

I'm sure Madam that you'll be -- you may be consulting with the Crown Attorney and with your client in relation to those specific parts that he ought to be concentrating on.

MS. CHRISTIE: Certainly.

THE COURT: All right. Thank you.

COURT REGISTRAR: All rise, please. Court is adjourned.

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 Helicopter Canada et al in the Ontario Court of Justice held at Ottawa, Ontario taken from Recording No. 355, 356, 357, which has been certified in Form 1.

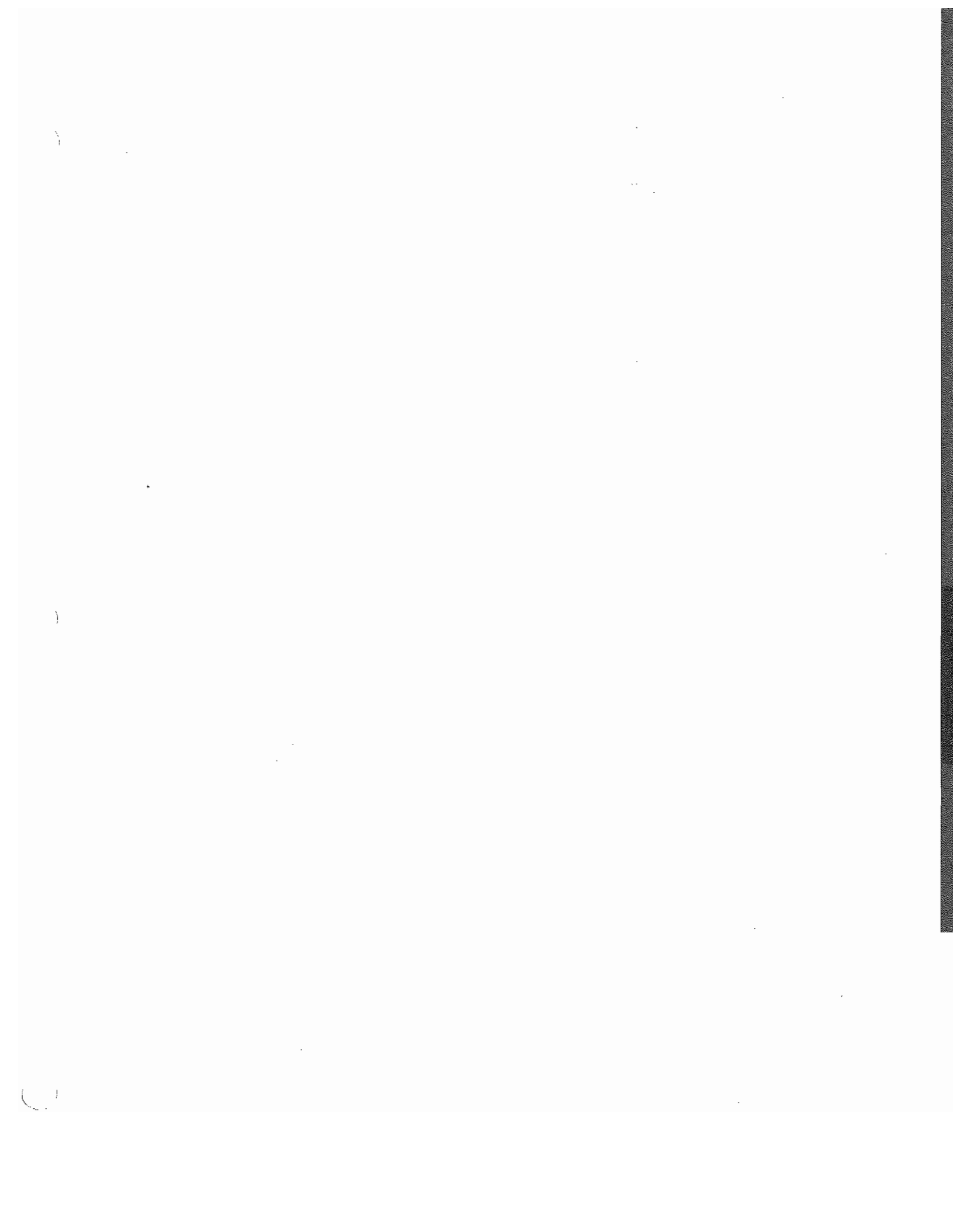
October 14, 2004

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Court File No. 02-20068

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 15, 2004 AT THE CITY OF OTTAWA

\*\*\*\*\*

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

\*\*\*\*\*

APPEARANCES:

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T. Shaw

Counsel for the Crown

P. Schabas  
T. Wong

Counsel for the Accused

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WEDNESDAY, SEPTEMBER 15, 2004

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

(10:10 a.m.)

COURT REGISTRAR: The Ontario Court of Justice is now in session. Please be seated.

THE COURT: Good morning.

MR. SCHABAS: Good morning.

MR. BERNSTEIN: Yes, good morning, Your Honour.

THE COURT: Are you ready to go, Mr. Bernstein?

MR. BERNSTEIN: I am, Your Honour. Thank you.

THE COURT: Thank you. Mr. Schreiber.

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

THE WITNESS: Good morning, Your Honour.

THE COURT: Good morning.

THE WITNESS: Thank you, ma'am.

EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

Q. Mr. Schreiber, when we last broke we were looking at document 28.... 31864. And...

MR. SCHABAS: Can you give me that number again, Mr. Bernstein?



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MR. BERNSTEIN: 31864.

MR. BERNSTEIN: Q. This was a tax submission in both German and English translation. And at the end of yesterday, copies of it -- portions of it were printed off and your attention was directed to specific portions of the document, which I understand you reviewed last night.

A. Yes.

Q. Is that so?

A. Yes.

Q. Now, yesterday afternoon when I asked you about this document, and I asked questions which related to whether this document refreshed your memory in certain respects, you answered -- you said that the document referenced things that you had talked about earlier, and in response to another question, you said it said more or less the same thing, and I asked you to point out what you meant by that and what particular paragraphs you were referring to. And we then, on the court's suggestion, broke so that you could review it?

A. Yes.

Q. So I'll ask the question again. Can you point out which paragraphs you meant when you said it?

A. Let's go to the.... It was here, this b) where -- where you read in this document. As I said yesterday, more or less what I said about the legal situation from grease money and bribe money and commissions and all this stuff.

Q. And when you say b), I just want to make sure everyone knows which b) we're talking about, okay?

A. Yes.

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Q. So we'll just go to page 8 of the document, Document 31864.

This is the English version there. There is a b) in connection with a portion of the submissions, which is entitled Economic Reasons Engaging I.A.L., A.T.G. and Kensington Anstalt.

A. Now, you speak about the page 8, or what?

Q. No, no. It's -- no, it's...

A. Oh, yeah. I see it here.

Q. It's page 8 in the...

A. Yeah, yeah. Yeah, yeah. No, no. It's b) here, yeah.

Q. ...in the electronic document.

A. You're right. Yes. Yes, yes. Yes, yes.

Q. It's page 5 in the English translation.

A. Yes.

Q. That is the portion of the document under the heading, Economic reasons for engaging I. A. L., et cetera, b)...

A. Yes.

Q. ...which extends from Goto Page 8 on to Goto Page 9 what you're referring to here?

A. Yes. Okay. These are the views of my lawyer. I did not discuss this document with him before it was released. I am not even sure whether I ever saw it, but when I look at it, it somehow mirrors what I told you earlier about the situation from tax deductions, and so on, that related to grease money and things like that.

There is one point I found in the document where the translation, in my opinion is inaccurate, and when they speak here about bribe, and the same thing here where my lawyer, where my lawyer speaks about *schmiergeld*.

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There is a very clear differentiation between commission, bribes, and *schmiergeld* under the German law, so Mr. Adam may explain this to you that even in the law it is mentioned that it is different. I'll give you an example, you go to -- bribe would be, under the law when you go to an official and you ask him to do something illegal, this would be bribe. *Schmiergeld* means you hire, for example, a lobbyist or as a sponsor or whatever it is, and what do these people? They try to entertain the client, they give donations, run fund raising dinners, they sponsor for kindergarten or whatever you want. This is how you maintain the landscape to -- to get the relation, and to get friendly influence that you can obtain agreements. So this is a different world and this is what I wanted to mention to that translation you have, and it simply speaks about bribe. It's incorrect.

Q. Okay. So, can you point out what sentences or paragraphs you're referring to there?

A. Yeah, I took -- it is -- it is in general, but I took it -- the first time it is here. Yes. Oh, let me see. I think it's the first one under b).. Yeah. It starts with exactly with what we discussed here in b). Do you see?

Q. Okay. Just show us.

A. There is a sentence without.... Could you go ahead a little bit further with the document? Oh, let me see. Go back. I think it was already there. A little bit further. Oh yeah. On the bottom, you see?

Q. Okay. Read it out.

A. "Without the payment of bribes, it was impossible to obtain large industry orders especially in certain States."

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Q. And...

A. And so -- what my lawyer -- my lawyer said here is, without payments of *schmiergeld* -- means grease money -- and then it continues the way you have it, but here is this huge difference between bribe and *schmiergeld*.

Q. Okay. So your concern is with the translation of the word *schmiergeld*?

A. Yes.

Q. Okay. And if we go to the -- let's just see in the German submission what the word is for that sentence "without payment of bribes". Okay?

A. Yeah. This is same why I say when you go to the German side, it shows you...

Q. Okay. We'll put them up side-by-side.

A. Yeah.

Q. Okay?

A. Yeah, here you have it. Here you have it with little pointers. Can you see it? It's on English on the bottom and now in the middle where the little point is. In the German.

Q. So, in English it's the last point. It says without the payment of bribes?

A. Yes, bribes.

Q. And when...

A. And when you look here, you read "*ohne die zahlung von schmiergeld*", you see?

Q. You're referring to the first sentence in the German edition?

A. Yes.

Q. *Die schmiergeld*.

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A. Yes. If it would be bribe there would read the word *bestechung*.

COURT REPORTER: *Bestechung?*

INTERPRETER: *Bestechung*.

Q. Okay. Let's -- just so we're perfectly clear here, do you have it in.... I have a highlighter, all right, and you have a German copy there?

A. Yeah.

Q. Can you just highlight the German word here? And it's a green highlighter.

A. You have one copy of your own there I can -- can I keep that?

Q. If you want -- oh, you want to keep this?

A. Yeah.

Q. Okay. So, I'll...

A. Well, if you just -- can put this one page out or....

Q. All right. I'll print out that one page for you right now.

A. Yeah.

Q. The German one. We'll actually print out the two pages that are on the screen, the one English one and the one German one, and you'll highlight the words in both.

A. Yeah. Okay.

MR. SCHABAS: Your Honour, I apologize. I think I missed something. The translator gave another word for the word bribe. Is that -- did I miss that? I just had trouble hearing the exchange. Maybe he didn't say anything. Did you?

THE COURT: I'm sorry.

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MR. BERNSTEIN: I didn't hear the translator speak.

THE COURT: What's the word for bribe, Mr. Interpreter?

INTERPRETER: The word for bribe is *bestechung*, Your Honour.

THE COURT: Could you just write that out for me on a piece of paper?

INTERPRETER: Yes. May I pass it to you?

THE COURT: Yes.

THE WITNESS: ...the other page.

THE COURT: Thank you. I just want to write it down in my notebook here. Thank you, sir.

MR. BERNSTEIN: Q. Here's the German one. We'll print out the English one. I'm presenting you with the two pages that are on the screen: one English, one German, and I ask you, sir, just with that green highlighter to highlight the sentences or words which you take issue with and which you've explained why.

Now, are there any other corrections or concerns that you'd like to express?

A. I haven't -- I haven't read the whole thing.

Q. No, just -- just with the...

A. I just looked at this part but...

Q. ... b). Just with this b) part.

A. ...this was the one that jumped to my -- if Mr. Adam would be looking at it, he may see more problems with translation but I can't tell you.

Q. Apart from this one -- I'm only dealing with the b) part?

A. Yes.

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Q. And apart from this issue which we've highlighted, which you've drawn to our attention, as far as the b) part of these tax submissions are concerned, is there any other aspect of concern to you?

A. No. I don't think so.

Q. Do you otherwise, apart from this correction adopt, it?

A. No. I cannot adopt this document but there are many wordings and things when I wouldn't have said the way he said it.

Q. Okay. In the b) part. Just in the b) part.

A. Let me see.

MR. SCHABAS: Your Honour, the witness has given evidence on this topic. He's now been asked to look at this. And, I mean, to ask the witness whether he adopts it, has a certain legal significance, as well as factual significance. I mean, we went to this document for purposes of refreshing his memory. In my submission, given that it's not his, it's not a fair question to ask the witness.

THE COURT: Well, it's not his. It's done on his behalf by his...

MR. SCHABAS: Right.

THE COURT: ...lawyers and...

MR. SCHABAS: But he...

THE COURT: He can either adopt it or not. I don't see anything wrong with that.

MR. SCHABAS: Well, in my submission it's a matter where we've heard evidence from the

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witness. He's testified as to it, and to ask him this type of question is not fair to the witness, and I submit is not helpful and not really for the purpose for which -- whatever the purpose is, that we're getting into all of this.

THE COURT: Well, how is it unfair to the witness? If he feels he can't adopt it, all he has to do is say so.

MR. SCHABAS: Just a moment.

THE COURT: I don't see where the unfairness lies.

MR. SCHABAS: I mean, part of my concern is what is it that he's being asked to adopt? Is he being asked to adopt facts? Is he being asked to adopt argument? If he's being asked to adopt facts, then the question is does he have a recollection, a present recollection or is this just a stimulus that he's now adopting?

In my submission, that does go to both the fairness of the question and to the admissibility of the evidence.

THE COURT: Well, I'm sorry. I don't agree with you, Mr. Schabas. If the witness has any reservations about any part -- and I address these comments to you, Mr. Schreiber.

THE WITNESS: Yes.

THE COURT: If any part of that paragraph that you feel that you don't agree with, that it doesn't represent your view, that it



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doesn't represent your recollection, please feel free to say so.

THE WITNESS: No. As I said, I cannot adopt this because I was not involved in this and the matter which this paragraph is dealing with, is three or four different projects with complete different -- what can I say, situations, so this -- if you would take this, for example, would say this fits especially for MBB or Eurocopter, that wouldn't fit but because there is other stuff, like Saudis, or whatever, involved in the principal discussions he had on this. This is why I cannot adopt this document.

MR. BERNSTEIN: Q. As far as -- first of all, I'm not talking about the document. I'm just talking about the portion...

THE COURT: And he has said, "Paragraph b), I can't adopt it." He specifically referred to it.

MR. BERNSTEIN: Q. Okay. Which parts of it -- just the b) part -- can you not adopt as it relates to MBB?

MR. SCHABAS: Well, Your Honour, he was asked if he can adopt it, and he can't.

THE WITNESS: Oh, no. I can't do that.

THE COURT: He says, "I can't do that."

MR. BERNSTEIN: Q. You can't do that?

A. I simply can't do this. I don't -- look, this is the principle on the tax deduction from my lawyer on the whole case, so I can't simply take that out.

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Q. I'm wondering if you can look at GoTo Page.... Well, GoTo Page 12?

A. Which one? In English?

Q. Yes.

A. Yes.

Q. You see that there is a part there that say b) "Activity" by the applicant [sic] for IAL?

A. Yes.

Q. Do you see that?

THE COURT: By the appellant. Yes.

MR. BERNSTEIN: Q. Do you see that at the bottom of the page?

A. Again, what do you say? Which part are you referring to?

Q. Can I -- if you give me the document, I'll show it to you. It's page 9 of the actual document and the translation of the document. It's the part that has been highlighted in the document?

A. Well, that's not 12.

Q. No, no. It's 12 in our electronic image.

A. Oh, I see.

Q. Okay. It's nine in the actual document. There's a highlighted part in the actual document which you've just given to me, which you were given last night and which I understand you reviewed. And it's entitled, b) "Activity" by the appellant for IAL. And if we go to page ten of the document, which is at GoTo Page 13 of the electronic image, there's -- it continues on page 13 and there is another heading, and the heading is, aa) Negotiations for the sale of helicopters to the Canadian Coast Guard. Do you see that there?

A. Yes.

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Q. And in your copy, the part which says, "'Activity' by the appellant for AIL" has been highlighted, and all of page 10 in the actual document, which is page 13 in the electronic image, up to but not including the heading, "Negotiations for the sale of "Airbus" airplanes" has been highlighted also, right?

A. Yes.

Q. Do you see that here?

A. Um-hmm.

Q. I'll give this back to you. Now, I direct you're attention specifically to the part here, which is heading, aa) Negotiations for the sales of helicopters to the Canadian Coast Guard.

A. Yes.

Q. Do you see that there?

A. Yes.

Q. Have you had an opportunity to review that part last night?

A. Yes.

MR. SCHABAS: Your Honour I'm hesitating and waiting for my moment to stand up, but is my friend going to lead him through a document?

THE COURT: He's showing him a particular part that he wishes him to concentrate on and we haven't heard his question, yet.

MR. SCHABAS: No, we haven't.

THE WITNESS: Again, I cannot adopt this. This is what my lawyer took from the documents, or what you heard from the -- from the files in Augsburg. This is not what I told him. He refers here to the statements of investigating reports, page 6 and 8,

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regarding the negotiations of the sale of Messerschmitt-Bolkow helicopters, so I had the nothing -- not the smallest thing to do with.

MR. BERNSTEIN: Q. With what?

A. Hmm?

Q. With what?

A. On any dealings between MBB and Coast Guard, I was never anywhere part of it. So I don't know what they are discussing there. You see this is -- when you look at this, it's really nonsense when he says here, "The fact that the appellant, i.e. Bayerische Bitumen Chemie...was entitled to earn commissions for arranging the deal..." It's bullshit. Excuse me.

Q. What makes you say that?

A. Because I haven't arranged for any deals between MBB and -- and the Coast Guard. I introduced Mr. Pfleiderer to Mr. Moores, GCI, and from GCI, whatever they earned they shared with Bitucan or with Bayerische Bitumen Chemie, and so this has nothing to do with that other deal, though. This is completely wrong what he says here, in my opinion.

Q. What other parts of this are completely wrong?

MR. SCHABAS: Your Honour, I'm going to object to the relevance of that. He has given his answer that's relevant to this case. He's not adopting it. I mean, that document, in my submission, has no evidentiary value.

THE COURT: I suppose you can go at it line by line. If I let you go down this particular avenue, Mr. Bernstein, and say, "Well, what do you agree here in relation to this line and

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that line?" I'd much rather you put questions to this witness so we can understand what this is all about, but we're getting very far afield.

MR. BERNSTEIN: Yes.

MR. BERNSTEIN: Q. Do you recall... Do you recall meeting with Superintendent Matthews in January of 2002?

A. I don't know when it was, but when you tell me the place, I may recall.

Q. The Weston Hotel in Ottawa?

A. Yes. I think I met with him twice.

Q. Do you recall giving the Superintendent an article at that time?

A. An article? No.

Q. Do you recall giving him something, some papers?

A. No. Mr. Bernstein, my long-term recollection is much better than my short-term. I mean, tell me just what it is and I'll say yes or no. It's normally not complicated.

Q. Would looking at some documents assist in refreshing your memory?

A. Sure.

Q. Okay. So...

A. If you just would tell me, I would know perhaps.

MR. COUNSEL: Okay. Let's look at Document 28698. Go to page 8. Can you put it up on the big screen?

THE WITNESS: Yes.

MR. BERNSTEIN: Q. You said yes.

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A. Yes.

Q. Yes?

A. I know what it is.

Q. Tell me what it is.

A. I gave it this morning to Mr. Adam. This is the -- about the German law. The tax deduction for *provisionen* or the commissions, grease money, and bribe money. This is exactly what I spoke yesterday about it, and this is more or less the same area my lawyer is referring to in his world, and in his views, so this is why I said yesterday, yes, the principal is the same what I discussed and what he is referring to.

Q. So first my question -- and forgive me, I just want to go through it, logically?

A. Sure.

Q. Do you recall -- you recall this article?

A. Yes.

Q. You've read this article?

A. Yes.

Q. Do you recall giving Superintendent Matthews a copy of it?

A. I don't recall it but when he says he got it from me, it's for sure right, 'cause I can think that I gave it to him. Especially, when you read the first part, is what exactly what I yesterday in length was referring to when I said this is -- the government take a very strange position in this.

Q. When you say "read the first part", the first part of what?

A. Of this here.

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Q. Okay. Well, we have a -- can we look at the English one so we can...

A. Yeah. Okay.

THE COURT: Where are we going with this?

MR. BERNSTEIN: Well, I'd like the witness to be excluded.

THE COURT: Would you step out for the moment, Mr. Schreiber, please.

...[WITNESS EXITS]

THE COURT: Where's the translation? It's the same document?

MR. BERNSTEIN: Yes. Go to Page 2. The first part of the document is the first page there.

THE COURT: All right. Yes.

MR. BERNSTEIN: And in terms of where we are going with this, I anticipate the evidence will be that Mr. Schreiber provided a copy of this article to the Superintendent during the course of the investigation.

THE COURT: This is an article in what?

MR. BERNSTEIN: It's an article, a tax article.

THE COURT: Is it in a newspaper? Is it in a compendium of tax cases somewhere?

MR. COUNSEL: Perhaps the translator can assist. There's a reference to the journal at the top right-hand corner of the first page.

INTERPRETER: It's from a professional magazine.

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THE COURT: It's a professional journal of some sort on taxes.

INTERPRETER: The title translates -- the title of the magazine is "Corporate Advisor."

THE COURT: So he gave a copy of this article to Superintendent Matthews.

MR. BERNSTEIN: Right.

THE COURT: All right. Okay.

MR. BERNSTEIN: And the article deals with this. One can see a number of things and in particular, the legality, at least, at the time in Germany for the payment of secret commissions, bribes, and commissions to companies outside of Germany and the tax deductibility of those payments. There is also discussion of the economic utility and the need in a competitive international environment to pay these kinds of payments.

My purpose here is to ask the witness to confirm that he gave it and then ask him why. I'm not going to cross-examine him and I think that's -- it's a somewhat unusual thing for Mr. Schreiber to have done, and I wanted to ask him why he gave the officer this article.

THE COURT: And why should I care about why he gave it to him?

MR. BERNSTEIN: Well, I anticipate -- you should care about it because it's a piece of evidence which is material and relevant to the issue of the nature of the payments and transfers of funds in issue. The commissions.



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Mr. Schreiber is a challenging witness, Your Honour, and he gives his evidence in his own unique way but at the end of the day, Mr. Schreiber has said all sorts of things respecting his understanding of the nature of the commissions paid by MBB to various people in connection with the Coast Guard deal. Now, I don't ask that you consider Mr. Schreiber's evidence alone. I ask that you consider it in the context of all the other evidence Your Honour has heard over the past year, and in particular, Mr. Wittholz's evidence respecting -- and his concerns, and his articulated concerns to Mr. Pfleiderer and Mr. Pluckthun respecting the nature of these commissions. Mr. Grant's concerns respecting the nature of the commissions and other evidence which you've heard from other witnesses on this topic.

Mr. Schreiber has testified respecting the nature of these commissions and he then gives the officer, the investigating officer, an article in circumstances where when -- in my submission, when one considers the totality of his evidence and then this act, the act of giving the officer an article that talks about the deductibility of secret commissions, commission and bribes, that's a piece of evidence respecting his understanding. It's a piece of evidence.

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THE COURT: Why do I care about his understanding?

MR. BERNSTEIN: You care about his understanding because his account received the funds. The funds from MBB were in large measure deposited into his Swiss bank account and from there they go to Mr. Moores and, elsewhere, so you care about what he thinks because the funds are MBB. In my submission, MBB pays him. The evidence before you today is that the funds -- \$640,000 dollars of them, anyways, is sent directly from MBB to Karlheinz Schreiber's bank account. And from there, we have Mr. Moores withdrawing large sums of cash and other transfers to other places. So, that's why you care. He is the recipient...

THE COURT: So, why not ask him...

MR. BERNSTEIN: ...of the commissions.

THE COURT: ...why he got the money? He'll tell you.

MR. BERNSTEIN: Pardon?

THE COURT: I presume he'll tell you why or has told you why, but to show him an article that he is purported to have given to the officer and his motivation for showing the article, I don't think that gets us anywhere.

MR. BERNSTEIN: Just so that we're clear here, in my respectful submission, it represents an act and sometimes acts speak louder and clearer than words.

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THE COURT: He says he doesn't -- in any event, he says he doesn't recall giving it to him. He has said that, has he not?

MR. BERNSTEIN: Well, I would submit his answer is a little more...

MR. SCHABAS: He did say that.

THE COURT: Well, if he says "I don't recall, but if you tell me I did, then I must have," then how can you possibly ask him, "Well, why did you give it to him," if he doesn't recall giving it to him? Then you can only get into the hypothetical and say, "Well, if you had given it to him, why would you have given it to him?" I mean at this point...

MR. BERNSTEIN: Okay.

THE COURT: ....he has told you "I don't recall giving him this particular article." So why are we going into it? I mean I understand what you've just told me, but...

MR. COUNSEL: Well, to me it's like -- it's like if you are charged with being an accessory to a murder and you give the investigating officer an article on how to bury bodies...

THE COURT: Yeah.

MR. BERNSTEIN: ...that that might be a relevant...

THE COURT: Okay. If you admit that you gave him a copy of an article on how to bury bodies, but he says, "I don't remember if I gave him the article or not." If he says, "If you tell me I did, fine, then I did, but I

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don't remember." If I'm misstating the evidence, tell me.

MR. BERNSTEIN: I had understood his note we have of his evidence was, he said, "I don't recall. If the officer says I gave it to him, then I think I gave it to him," was -- so it was equivocal -- maybe what I should do is just explore in greater detail exactly the quality of his recollection and if Your Honour's right -- if he doesn't recall giving it to him, then that's the end of it as it relates to Mr. Schreiber.

Mr. Schreiber has a tendency of initially not recalling things and then when his memory is plumbed a little deeper, recollections appear.

THE COURT: Okay, and if I recall the sequence, Mr. Bernstein -- I'm really trying to be fair to you here. He says, "I don't recall giving him papers." Then you said, "Would looking at a document refresh your memory?" And he said, "Yeah, sure," or something like that. Then he said, again, after you had shown him that, he didn't recall giving Matthews a copy. That, at least, is my recollection of his evidence. Am I right or wrong here? We can play back the tape, if you wish. And I sympathize with your plight when you say that you have a special witness but he is your witness.

MR. BERNSTEIN: Well we can....

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THE COURT: Anyways, if -- if it's -- I'll allow him to be recalled for the very narrow purpose of clarifying in a non-leading way his recollection about giving Matthews a copy, and we'll go from there.

MR. BERNSTEIN: Your Honour, also, I don't want to spend all morning on this, but technically speaking, even if he didn't recall it, I could bring a 9(2) Application respecting the statements surrounding the giving of this article to the officer, and if I could then prove the article was indeed given to him, I could cross-examine him on the statements he made, surrounding the giving of the article to the officers. So, under 9(2).

THE COURT: Well, then let's do a 9(2).

MR. COUNSEL: But I would prefer not to sort of spend too much time on this. Your Honour has a discretion in the context of a witness of this nature, to allow the Crown some leeway in the manner in which the Crown poses questions. That it's not just a black and white rule that one can never lead. It is a compendium, given the nature of the case, the nature of the evidence, and the nature of the witness.

THE COURT: Well, that may be but I don't think we've gotten there, yet. In any event, I've told you. If you want to recall the witness and explore in a non-leading way his recollection as to whether or not he gave Officer Matthews a copy for that limited

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purpose, at this point, I will allow you to do that.

THE COURT: Thank you, Your Honour.

THE COURT: If he says "I don't remember," let's move on.

COURT REGISTRAR: Mr. Schreiber, please enter courtroom number 8. Mr. Schreiber, courtroom 8, please. Mr. Schreiber, please enter courtroom number 8.

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

Q. Mr. Schreiber, I'll just ask you with respect to this article, if we can...

A. Yeah.

Q. Is the German edition up on your screen? That's GoTo Page 8 of the document. My question to you, sir, is -- I just want to be clear on your recollection. I want you to think about it, take a moment if necessary. Do you recall giving a copy of this article to Superintendent Matthews?

A. No, I don't recall it, but when Superintendent Matthews said he got it from me, then that's for sure right because I have all the confidence that Mr. Matthews tells the truth. And when I look at the left-hand side, these marks are typical for things I am doing.

Q. What do you mean by that?

A. You see here on the left-hand side there are marks, the first three paragraphs?

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Q. Right.

A. This is -- this is from me. The document is from me.

Q. When you say these are marks from what you were doing, what do you mean by that?

A. I marked it here, like highlighting. I just want to go over it. I marked this here for him to read.

Q. So...?

A. This is just when I mark something like this, I want to draw the attention from somebody to certain places, and this other one, two, three, four. You see it?

Q. So these markings, these are your markings?

A. Yes. Typical. I do this quite often.

Q. Why did you mark those paragraphs?

MR. SCHABAS: He just said that, Your Honour?

THE WITNESS: When I gave it to Superintendent Matthews, when I marked this, I wanted him to read that.

MR. BERNSTEIN: Q. Do you recall now giving it to him?

A. No, but when I gave it to him that was for sure the reason. The point is, do I recall that I handed it over to him, no. Could it be possible? Yes. When I marked this, why I did it, I wanted him to read it.

Q. My question is: Why did you mark those paragraphs?

MR. SCHABAS: He's answered that twice now.

THE WITNESS: Because it shows...

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MR. SCHABAS: Just a minute. He's answered it -- he said it twice, at least, the explanation for that.

THE COURT: Because you wanted him -- you would have wanted him to read those paragraphs?

THE WITNESS: Yes. Or whoever read this. I highlighted it because it is exactly, Your Honour, what I explained the day before to Mr. Bernstein, and why I am so angry about this situation, and I shared my views with Mr. Matthews on that. You see, all the affairs which took place -- and this is why I am not only -- I am really mad and angry about this.

MR. SCHABAS: Well, Your Honour, we're getting far afield again. I thought the purpose...

THE COURT: I want to hear the rest of this. Thank you, Mr. Schabas.

MR. SCHABAS: Okay.

THE WITNESS: It is that all this -- the whole affair could not take place if the government -- and here, especially the Bavarian Government -- and I told you that the Minister of Finance used to be the Chairman of MBB -- would allow these deductions. So, my understanding is that MBB did not pay this money. Only a small part of it. It is a German tax payer and the German tax department in Bavaria, because when you pay between 50, 60, and 75 percent taxes, right, so for MBB whether they pay tax or they're allowed to



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deduct this, make no difference, right? So this is what I don't like -- honestly don't like on these governments because it's so completely unfair, they discuss even at the beginning that ethically it's wrong because it contradicts our discussions to fight corruption in underdeveloped countries and at the same time, they allow the deduction and makes the deals happen.

I mean, you know that other spectacular case, where it allowed a deduction of 200 million. God knows that this has nothing do with a small commission, and I -- to go further in this, I may have discussed this with Mr. Matthews as well -- if I now would have said, "Oh, yeah. I received this money," and I bribed Canadians, under that law I would not even be obligated to say the names. It would be fine and we would have no extradition case. Do you see how ironic this is?

So since I did not bribe Canadians, I have an extradition case. And this is all why I am so -- you know what I mean, mad on this whole thing because it's especially Bavaria, and it's a government-owned company.

And this is why I cautioned the Premier more than ten times, "If you touch this, it's a mess. It is the shit in your own face," and this for sure is what I discussed with

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Mr. Matthews when I gave him this document.

MR. BERNSTEIN: Q. So can we -- just because our German isn't good, can we like pull up the English version and that [sic] correspond to the paragraphs you've highlighted or marked, so just so we know what paragraphs.

THE COURT: I understand your concern, Mr. Schabas. I think the witness did, in a sense open a door. Quite frankly, I don't think anything is going to come of this one way or the other. I'll allow the Crown to explore a little further. This is someone else's article that may reflect his understanding. It may not.

MR. BERNSTEIN: I just wanted to...

THE COURT: It may have some value. I don't think you ought to be going very much longer along this particular line. It's certainly not assisting me very much.

MR. BERNSTEIN: I'm not, Your Honour. I just wanted to be clear on what the paragraphs....

MR. BERNSTEIN: Q. So, which paragraphs have you marked?

A. Yeah. This is the -- the general -- you, or from the German government regarding the tax deduction of this kind of money.

Q. So it's the first three paragraphs on the English version?

A. Yes, and the other one comes up on the -- on the right-hand side.

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Q. There's another one. The other one -- the other -- there's three paragraphs, the first three paragraphs, then there is another one?

A. Left side. When you move the document a little bit to the left you find another one on the first part of the right side.

Q. Okay. Just move the German one to the left.

A. From the German. Do you see that?

Q. All right. So that is which paragraph on the English one?

A. Yeah. And this -- this is the whole thing Mr. Leisner is referring to in his views and I did in mine.

Q. Okay.

A. So, and this is why I prefer with my views and not the views of my lawyer, especially when I did not discuss with him the document in details.

Q. All right. So, it's just the first three paragraphs....

MR. BERNSTEIN: ....and, Your Honour I'd ask that this document be entered as the next exhibit in these proceedings, the German and English versions are part of the same document. That's document...

THE COURT: Subject to further evidence, ie. the officer's recollection of having received the document for whatever evidentiary value this has, it will be made Exhibit 1 dash...

MR. BERNSTEIN: 28698. 28698.

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EXHIBIT No. 1-28698: Document 28698, Goto Page  
2. Tax legislation: Re Tax Deductibility of  
Commissions, Secret Commissions and Bribes.  
And German at Goto Page 8.

MR. BERNSTEIN: Q. All right. Let's go onto  
another topic. What were your -- what were some of your  
roles in the MBB deal? Your roles.

MR. SCHABAS: Your Honour, I thought the  
witness just explained that by saying his role  
simply was an introduction. He had no role.

THE COURT: Let's not tell the witness..

MR. BERNSTEIN: Let's not telegraph things to  
the witness, Mr. Schabas. Please!

MR. SCHABAS: I apologize.

THE COURT: In view of that, I'll allow the  
Crown to continue. I really think that if  
you're going to make that form of submission,  
it ought to be outside the witness's hearing.

MR. SCHABAS: Well, I apologize, Your Honour.

THE COURT: I want the Crown to explore this  
in detail. I think this is important and this  
indeed is what, to some extent, the court  
wants to hear about so, I'll allow  
Mr. Bernstein to continue.

MR. BERNSTEIN: Q. Mr. Schreiber, what  
were some of our roles in the MBB deal?

THE COURT: Well, indeed, I'd like to know all  
of his roles, not just some of them.

MR. BERNSTEIN: Q. What were your roles in  
the MBB deal?

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A. Now, I have to ask which deals or deal are you referring to? The one which is the case here or what?

Q. What were your roles in the MBB deal in Canada?

A. I recall Mr. Bernstein that we discussed this in length at the beginning of this examination. You want to repeat this or why are you asking?

THE COURT: Repeat it if you must, sir, and tell us what you perceive to be all of your roles in relation to that deal?

THE WITNESS: Well, it was to support business from MBB, a company which was mainly through the free State of Bavaria. It started in Alberta. We went through this in all details, up to the moment when I introduced Mr. Pfleiderer to Mr. Moores. And recommended, also, for services for Mr. Moores, GCI.

MR. BERNSTEIN: Q. Do you recall other roles?

A. Please?

Q. Do you recall other roles?

A. Other roles?

Q. Playing other roles.

A. I cannot think of other roles than supporting the activities from MBB.

Q. Would reviewing documents assist you in your recollection?

A. Sure.

Q. All right.

MR. BERNSTEIN: Okay. Your Honour, this would be an appropriate time to -- and I

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respectfully ask that Mr. Schreiber just be accused for a moment -- and I sort of raise something that I anticipate my friend may take a position on...

THE COURT: All right. Again, Mr. Schreiber, would you step outside the courtroom, please, and you will be called.

....[WITNESS EXITS]

(11:06 a.m.)

MR. BERNSTEIN: Your Honour I just want to -- I anticipate that Mr. Schabas may take a position on this and I wanted to do this -- it would be my intention now to play for the witness an -- when I say play I mean there is a videotape of an interview Mr. Leisner gave to the Fifth Estate in which, amongst -- the interviewer was Linden McIntyre. The Fifth Estate. I understand the Fifth Estate show was broadcasted in March 14<sup>th</sup>, 2001, a transcript of the...

THE COURT: Leisner, again, was...?

MR. BERNSTEIN: Is Mr. Schreiber's lawyer.

THE COURT: His lawyer.

MR. BERNSTEIN: German lawyer.

THE COURT: All right.

MR. BERNSTEIN: And amongst other things, and just the portion that I wanted to play was the following.

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Mr. McIntyre says, "Can you explain how you know it from Mr. Schreiber's point of view just what his role was in MBB deal? And Mr. Leisner says, "Mr. Schreiber's main role was to protect recipients of the lubrication money."

Linden McIntyre says....

THE COURT: Hold on. Hold on. Was to protect the recipients...

MR. BERNSTEIN: Of the lubrication money. I can bring the transcript up on the screen. The interviewer then says, "The people who got the *schmiergelder*?" Mr. Leisner says, "That's correct."

Linden McIntyre says, "And explain how he provided that protection"

Remember, the original question was: "What was his main role in the MBB deal?"

MR. SCHABAS: Mr. Bernstein, do you have a document number for this? Oh, I'm sorry, you've got it on that screen. Okay.

MR. BERNSTEIN: 22711, Goto Page 14. Okay. So where's -- let's call up.... Are we there? The bottom of 14.

Leisner: "Mr. Schreiber's position is in the tax case...." So let's go to 15, please.

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Okay. I'll just continue. Mr. Leisner says, "Mr. Schreiber protected them by making every payment anonymous." And then.... I'm sorry. I'll go back. So there's that. He says that.

There is also, just while we're here, Your Honour, and I can cover the same thing at the same time. I will also ask Mr. Schreiber, who did he act for in connection with MBB deals in Canada or did he act as a middleman in any MBB deals in Canada? And I don't know what

Mr. Schreiber's answer would be, but if he needs his memory refreshed we have also at page 14 here.... 16. He says,

"Mr. Schreiber's position in the tax case is that he was a middle man...

MR. SCHABAS: Sorry, what page are you on?

MR. BERNSTEIN: 14, I thought.

MR. SCHABAS: I thought you said 16.

MR. BERNSTEIN: 14. I'm at the bottom of the page.

"Mr. Schreiber's position in the tax case is that he was a middleman. He acted on behalf of decision makers who received money from German companies who were interested in different investments...for example Canada or wherever."

He is then asked and later on, "and that is a fairly conventional process in European business, that people like Mr. Schreiber



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facilitate between the companies that want to sell, and the buyers who want to buy."

And the response, I understand, is "You can't call it conventional, but it's unnecessary for those people who receive the money, because they want to stay unknown."

The interviewer says, "The decision makers."  
Mr. Leisner says, "The decision makers."

And he's asked, "And when you use the phrase decision makers, are we talking about Canadian decision makers?"

Mr. Leisner says, "In the certain MBB deal, we were talking about...we are talking about Canadian decision makers, yeah."

So, those are the two parts of this video which I may want to refresh Mr. Schreiber's memory from. I would like to refresh -- I would now like to refresh his memory in connection with the question of what were his roles. And in the event that it later on becomes necessary to refresh his memory in connection with who he acted for, I would like to refresh his memory. Again, this may refresh his memory, it may not refresh his memory, but his lawyer said these things acting on his behalf and Mister...

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THE COURT: What, he's acting on his behalf in this interview?

MR. BERNSTEIN: Yes.

THE COURT: Or is he just being interviewed at large? I don't know.

MR. SCHABAS: He's in the stairway.

MR. BERNSTEIN: He's in the stairwell of a German courthouse, I understand, and indeed -- well, Mr. Leisner was, well, cross-examined on this before Justice Morin.

In any event, I wanted to raise this. Mr. Shaw has some jurisprudence which would authorize the use of a videotape in lieu of a document or...

THE COURT: Well, I mean, again, if you go back to *Fliss* and look at Justice Majors' comments that you can refresh your memory from a song, or refreshes your memory, I think he says, or something along that line.

MR. BERNSTEIN: We can add to *Fliss* KGB. KGB actually says, expressly, that you can refresh your memory from the videotape.

THE COURT: All right. Mr. Schabas, that's what he wants to do.

MR. SCHABAS: Well, Your Honour, I guess I have a couple of comments. One is I'd like to review the transcript of this broadcast. I wasn't aware that this was going to come up, so I haven't had a chance to look at it other than the small portions that Mr. Bernstein

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has just taken to, because I'm concerned about context.

MR. BERNSTEIN: I plan on playing the tape, not showing him the transcript.

MR. SCHABAS: Well, that's fine. I'd just like to look at it.

THE COURT: But you have a transcript?

MR. BERNSTEIN: It's been disclosed. It's...

MR. SCHABAS: Yes.

THE COURT: There is a transcript. That's all I want to know.

MR. SCHABAS: There is a transcript, yes, and it's on the screen, but I mean, we've only seen a little bit of the transcript. It's a 16-page transcript.

THE COURT: Okay. Well, rather than having you continue, why don't I let you do that.

MR. SCHABAS: Okay.

THE COURT: We'll take a break and then you can make your full submissions to me having had the benefit of looking at them.

MR. SCHABAS: Great. Thank you, Your Honour.

THE COURT: All right. Thank you.

MR. BERNSTEIN: All rise, please.

R E C E S S

(11:16 a.m.)

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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: Yes, Mr. Schabas.

MR. SCHABAS: Yes, Your Honour. Thank you for giving me the moments to look at this transcript. Your Honour, my friend asked him what roles or whether he recalled playing other roles in the support of the MBB business? And he explained what his role was and said he couldn't think of any others, and he's now -- as Mr. Bernstein has explained it, he wants to take him to statements that his lawyer made about being a middleman.

Now, in my submission, that's a little different than the question he asked.

THE COURT: Well, there was -- you neglected the next question which was "Would viewing documents assist you?"

MR. SCHABAS: Well, sure. Sure, that's right.

THE COURT: Yeah.

MR. SCHABAS: And he said, "Sure." But it's in the context of the question which is, What role did you play with respect to MBB? As Mr. Schreiber said, "My role was to support the business of MBB." In my submission, it's a good thing we're doing this in the absence of the witness. When we go to this Fifth

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Estate show -- and I'll come back to the point that it's, of course, his layer seemingly being ambushed in a courthouse stairway. Nevertheless, what this is about isn't about necessarily anything to do with dealings Mr. Schreiber had with MBB, but dealings with other people in some role as a middleman or other people down the chain. In my submission, that's really a different topic. It's something that Mr. Bernstein has asked him previously about and spent a lot of time on, talking to him about the Swiss bank accounts and Mr. Pelossi and Mr. Moores, and I don't know whether he has -- I guess he wants to go over that again. Because that seems to be what Mr. Leisner's comments are relating to. So in my submission, I submit that leaving aside another point that I'll get to in the moment about the propriety of using this in accordance with *Fliss*, that this isn't really -- this is -- this is to open up a new area.

...[TAPE MALFUNCTION]

THE COURT: The document is...

COURT REPORTER: We are back on record now,  
Your Honour.

THE COURT: ...22711. Is that right?

MR. SCHABAS: It is 2-2-7...

MR. BERNSTEIN: 2-2-7-1-1.

MR. SCHABAS: ...1-1.

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MR. BERNSTEIN: Goto Page...

THE COURT: Yeah, but I'm not getting 22711 on my computer.

MR. BERNSTEIN: Your Honour, you don't have it on your data.

THE COURT: Well, I want to be able to look at it.

MR. BERNSTEIN: Okay. So let's bring it up on the screen and let's take -- let's go to the appropriate part.

MR. SCHABAS: As I understand it, Your Honour...

THE COURT: But there is reference to MBB, though. It's not just in general, is it not?

MR. BERNSTEIN: Yes. It says, "Can you explain as you know it from Mr. Schreiber's point of view just what his role was in the MBB deal?"

Mr. Schreiber's main role was to protect the recipient's of the lubrication money.

Is it up on the screen?

THE COURT: No. It's just that I thought that you said, "Well, it dealt with other things in general, but it does deal with MBB."

MR. SCHABAS: Well, it does and it doesn't. I mean, I submit the question was directed towards "What role did you play in the MBB deal?" And Mr. Schreiber answered -- his answer demonstrated his understanding of the question was directed towards brokering the deal with MBB. Working with MBB. That's the

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question. The statement by Mr. Leisner is all about something that is beyond that, and so in my submission, it is opening the door to another area and I would submit that Mr. Bernstein should -- if he's entitled to it -- because we've been over this ground a lot about what role after this money was allegedly paid by MBB, that went through his account which Mr. Schreiber said, "Money went through my account," say well what role -- you know, why did it go -- why isn't he asking him, "Why did it go through your account?" Well, he's asked that. He's given some answers about that. If he wants to explore that, he should do that, but to take him, I submit to that area by using this under the guise of refreshing memory is quite different. I think the witness is -- he's really asking a different question than what the witness has understood. So I submit that on that basis alone, it's really not refreshing his memory about the specific question.

My second point is that there are limits to *Fliss*. In my submission, Your Honour has to exercise discretion as to the appropriateness of what should or shouldn't be put to the witness, and indeed, in one of the earlier submissions, I believe...

THE COURT: Well, I had problems yesterday when a question was put to the witness and, indeed, when we went through the usual

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process, the document that was purportedly being used to refresh memory, gave the exact answer, and it was right there up on the screen. That gave me concerns, because I think it went probably too far.

MR. SCHABAS: Right. And I think, Your Honour, mused at one point about concerns about putting, for example, lawyers letters, different positions they may take, strategies they may take in saying something or doing something, and the appropriateness and fairness of doing something like that -- you do have to exercise some discretion, and in my submission, this as we see it, at least on the transcript, is in the context again, it's his lawyer simply saying something. We have no idea whether he was authorized to say it or whether it was adopted or approved by Mr. Schreiber. Mr. Bernstein said it was. There's no evidence of that. I mean it's clear in the context he's in a stairwell being, presumably -- you know, Mr. McIntyre has grabbed him in a stairwell of a courthouse, or somewhere, to ask him a question. And so, in my submission, it does raise questions as to whether this is an appropriate document at all to be putting to him, given the context of it. He's a tax lawyer and he's asking -- he's answering questions about -- in the context, presumably, of him being his tax lawyer and indeed he even



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says in one of his answers "for purposes of the tax case." I'm just trying to find that.

I mean, the clip says, "Mr. Schreiber's position in the tax case is that he was a middleman." I submit we are into an area that is fraught with problems insofar as it can be used for purposes of refreshing memory, because of the context and who is speaking it, and so on.

Finally, Your Honour, I wish to make the submission as to the relevance of this. Once again, we are a long way removed from Messrschmitt Canada Limited, MCL. We're getting further and further removed from a payment, or an alleged payment by MBB, that goes to Schreiber. And then my friend wants to talk about, well, where does it go from there. And that's two or three steps removed from, as I understand it, what this charge is about, which relates to whether there is some fraud committed by a Canadian company about which I don't think we've even heard MCL mentioned for quite some time in this case.

This is not, I submit, a -- well, it's not like what's happening over at Old City Hall in this city, like the Royal Inquiry into trying to trace ultimately where something went or who ultimately ended up with something. It's about a company that contracted with the Coast

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Guard that's located in Fort Erie. So I have  
concerns about the relevance as well.

Those are my submissions.

THE COURT: Thank you very much.

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RULING

BELANGER, J. (OCJ): (Orally)

I have no qualms about relevance, certainly not as delicate about relevance as Mr. Schabas here is. We are dealing with the parent company of the wholly-owned subsidiary in Canada. We are dealing with payments made by that company to Mr. Schreiber. These payments are very closely related, if not the identical subject matter of the fraud mentioned in the information. So relevance, I have no problems with. The manner in which this is presented, ie. Mr. Leisner being hijacked by Mr. McIntyre in a corridor, I do not think those circumstances are particularly relevant to the issue of whether or not memory can be refreshed, unless of course we were dealing with materials obtained in circumstances where people's rights were flagrantly breached or

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things of that nature. Here, the circumstances, while they may have taken a lawyer by surprise, I do not think get us anywhere. The question is, may he refresh his memory from something, which has the potential to jog his memory.

Again, *Fliss* is broader than I thought the law was, but the Supreme Court says that you can -- what the object of the exercise is here, is not to make evidence out of materials which would not otherwise be admissible, but rather to see whether these materials jog a witness's memory. I think to make a distinction between showing a tape, for example, in these circumstances, and showing a document to the witnesses, a distinction without a huge amount of difference, again all of this may go to weight. The manner in which this is done may be very relevant to weight. It can be put on a witness's evidence but for the purposes of admissibility and propriety in terms of procedure, I am going to allow the Crown to continue and show the witness the tape, again,

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on the understanding that the question to be asked of the witness is a limited one. I think Mr. Bernstein quite understands that.

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THE HONOURABLE P. R. BELANGER  
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THE COURT: Recall the witness.

MR. BERNSTEIN: Yes, sir. Thank you.  
Mr. Schreiber.

THE COURT: Just to refresh my memory, we're not sitting this afternoon, right?

MR. BERNSTEIN: Yes, Your Honour. I'm in Your Honour's hands as to how late you want to go.

THE COURT: Well, the usual time I would think. We have staff that...

MR. BERNSTEIN: Thank you, Your Honour

THE COURT: ...are entitled to the usual breaks. I don't mind if we go 15 minutes more but...

MR. BERNSTEIN: Sure.

THE COURT: How long is this videotape?

MR. BERNSTEIN: Just a few minutes. Not even a few minutes.

THE COURT: I'll ask you to begin with, to tell Mr. Schreiber what it is that you propose to show him so he knows and he has an idea as to what it is that he's going to be watching.

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

Q. Mr. Schreiber, I propose playing for you an excerpt from a Fifth Estate show first broadcast, I understand, on March 14<sup>th</sup>, 2001, during which Mr. Leisner is interviewed, is asked questions by Linden McIntyre and provides answers. I do this in the context of my question,

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What roles.... What were your roles in the MBB deal in Canada. I just want you to, first off, watch and listen to the tape, and my question to you is, does having watched and listened to the tape, and thought about it, refresh your memory in connection with that question? Can you see it okay?

A. Yeah.

MR. SCHABAS: Mr. Bernstein, could you move aside so...

MR. BERNSTEIN: All right. I don't want...

....[PLAYBACK OF VIDEOTAPE STARTS]

THE WITNESS: Can you make it a little bit louder?

THE COURT: Louder. Just come back, and restart it.

MR. BERNSTEIN: Let's just go back and we'll get the volume a little better.

THE COURT: Bring it right back.

MR. BERNSTEIN: It certainly doesn't look like a hijacking.

OFFICER: I'm just going to put it right where it's supposed to be, sir.

MR. BERNSTEIN: All right. Okay. No.

OFFICER: It's a little further. I know, sir.

MR. BERNSTEIN: More?

ASSISTANT OFFICER: Yes, sir.

MR. BERNSTEIN: All right.

ASSISTANT OFFICER: Right from there, we'll get it.

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[PLAYBACK OF VIDEOTAPE]

MR. BERNSTEIN: Q. You know the gentleman on the tape there?

A. Yes.

Q. Who is it?

A. He's one of my lawyers.

Q. His name was?

A. Mr. Leisner.

Q. Okay. Does listening to that interview assist in refreshing your memory respecting the question, what were your roles in the MBB deal -- in the MBB transactions in Canada?

A. I recall this tape because it was the first time in his life he was on television, and he spoke about my role in principal that had nothing to do only with MBB. And this is as we discussed before, one part of that is to have foreign trustees or companies between -- between the buying side, let me say it this way, and the producing side.

Q. So, Mr. Leisner said on the tape, "Mr. Schabas's main role was to protect the recipients of lubrication money." Do you recall him saying that?

A. I don't even know what lubrication money is. I wonder if...

Q. *Schmiergelder*?

A. Grease -- grease money, yes.

Q. To protect -- the main role was to protect the recipients of *schmiergelder*?



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A. No. This is -- this is nonsense. This was not my main role. This was part of my job, not my main role. I don't know where he got that from.

Q. He -- he was asked, "Can you explain as you know it Mr. Schreiber's..."

THE COURT: Hold on! Hold on!

MR. SCHABAS: Sorry.

THE COURT: No, no. You're going well beyond what you're supposed to be doing.

MR. BERNSTEIN: No. I -- I -- just....

MR. BERNSTEIN: Q. And if -- so as.... You say that this was not your main role but part of your job?

A. Yes.

Q. Can you elaborate on that, please?

A. I -- I introduced people to Mr. Pelossi, for example. As I told you yesterday, part of my job, yes.

Q. And in connection -- just one other area I want to deal with. Did you act as a middleman in any of MBB's deals in Canada?

A. What is a middleman? I introduced Mr. Pfleiderer to Mr. Moores. And from there were the arrangements, so if this is the role of the middleman to put people together, yes, I'm a middleman. I never thought about this. It's not very common in Germany.

Q. So, in connection with the MBB deal, who did you act...

A. Hmm?

Q. In connection...

MR. SCHABAS: Your Honour, I mean the question has been asked so many times. He's answered it so many times. He's asked what his role was and over and over again.

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MR. BERNSTEIN: Q. Who did you act for?

THE COURT: Well, I'll allow this one question and then we'll see where this is going.

THE WITNESS: For MBB and for GCI.

MR. BERNSTEIN: Q. In the tape, Mr. Leisner says that Mr. Schreiber's position in the tax case is that he was a middleman. He acted on behalf of decision makers who received money from Canadian companies who were interested in different investments, for example, in Canada or whatever. And he -- he later says the decision -- he's asked who these decision makers are, and he says, "In the certain MBB deal, we were talking about...we were talking about Canadian decision makers, yeah." Okay.

Now, does that statement refresh your memory in connection with the question "Who were you acting for on the MBB deal?"

A. Yeah, I said it already. On one hand for MBB and the other hand for GCI. Let me tell you something. Mr. Samson, Professor Samson, and Mikhael [ph]...and the top people of Germany are my lawyers. At that time, Mr. Leisner was a junior lawyer but working on the file. I recall that I have asked him "Where did you get all this knowledge from?" He said, "Well, I just took it from the documents," because I haven't discussed anything like this with him.

Q. Does the reference to.... I'll ask the question. Did you have....

MR. BERNSTEIN: Can I just have the court's indulgence, Your Honour?

MR. BERNSTEIN: Q. Does the tape and the reference to decision makers -- Canadian decision makers -- and the reference to anonymity in connection with the

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receipt of *schmiergelder* assist in refreshing your memory on the question who else you may have acted for or in connection with?

MR. SCHABAS: Your Honour, I'm going to object. He's asked this question several different ways. He's gotten the answer and he's asking, virtually, identical questions of what he asked before, which again dealt with Canadian decision makers and whether it refreshed his memory. He asked a question before about whether this generally refreshed his memory. He's asked him this question many times and he's got his answer. I submit it's becoming quite repetitive and Your Honour has to...

THE COURT: He's watched the tape, Mr. Bernstein, and he has given you his answer, and I suppose you can go on *ad eternam* in relation to every specific aspect or every sentence, but we have his answer.

MR. BERNSTEIN: Yes.

THE COURT: We'll leave it at that and go on to something else, please.

MR. BERNSTEIN: Yes, sir.

MR. BERNSTEIN: Q. I'd like to change the topic a bit, okay? And I want to draw your attention back to what we were talking about earlier in the afternoon yesterday, and in particular -- and I'm -- I don't want my friend -- well, my friend can object if he likes, but I'm just trying to set the -- put things in context in terms of where I'm going to be going now and, remember, we showed

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you a fax transmission slip which was -- on it's face it said from you to Mr. Pelossi and it was signed by your secretary...

A. Yes.

Q. ...and it seemed to have a scribble that seemed to be your name. And do you recall I asked you about that, and then there was -- then, after that fax transmission slip, I asked you about an amended or an amendment to a sales representation agreement between IAL and MBB. And you provided evidence in connection with certain aspects of that. So, I'm -- we're going to pursue that topic a bit, or a similar topic. And that agreement was an amendment and the facsimile was dated July 1987. The agreement -- just for the record, the facsimile was Document 17084, and the amended agreement was Document 13728. In any event, the fax was dated July 1987. The amending agreement was dated.... Well, there's a signature for, also, July 1987 and if we just pull up Document 13728. Just the first page of it. I'm just trying to set the time here. Do you see it says, the first line it says.... You see the -- this is GoTo Page 2, it says Amendment No. 1 to Sales Representation Agreement, dated February 19<sup>th</sup>, 1985. Do you see that there?

A. Um-hmm. Um-hmm.

Q. Okay. So I want you to think about February 19, 1985. Do you recall receiving a copy of an IAL agreement with MBB in 1985?

A. You mean this one here?

Q. No, another one.

A. No.

Q. Okay. Would looking at documents assist?

A. Yes.

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MR. BERNSTEIN: Okay. In that regard, I'm wondering if we can go to 17086. 17086. Okay. Mr. Schabas first, I guess. I direct Mr. Schabas's attention to the item code on this document.

MR. SCHABAS: The item code tells me it comes from Germany.

MR. BERNSTEIN: The item code also tells you it comes from Mr. Schreiber's offices in Kaufering. The item code contains these numbers here. But in any event, we'll argue about that...

THE COURT: Are there other pages to this thing? Does it stop at page -- what we're looking at now?

MR. SCHABAS: It seems to be just page 2 of 2, Your Honour.

MR. BERNSTEIN: There -- this the fax -- well, there are.... There's this document. There are other relative or relevant or related documents which we'll get to...

THE COURT: No, but this isn't a mistake. It's only -- that's it.

MR. BERNSTEIN: Yes.

THE COURT: There's no other pages to this.

MR. BERNSTEIN: No.

THE COURT: All right.

MR. BERNSTEIN: That's right. Okay. Perhaps I can begin by just having the translator translate the document for us.

INTERPRETER: To Mr. Pfleiderer. Sent by

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Mr. Schreiber. MBB GCI Agreement dated 23 July 1985. MBB IAL Agreement dated 19 February 1985. And the date at the bottom is 16 October 1985. The initials, presumably, of the sender and the typist S-C-H-R- and D-R-.

MR. BERNSTEIN: Q. Thank you. Does this document assist in refreshing your memory in connection with the question "Were you aware or did you have a copy of an IAL MBB agreement in 1985?"

A. This does not tell me only that Mr. Drubar, again, you see the same like the other document sent something to Mr. Pfleiderer on my behalf. I don't recall an agreement between IAL and MBB being at my place in Germany, because it wouldn't make sense. You see, the person Mr. Moores dealt with was Mr. Pelossi. You saw this in where Mr. Moores had his travel expenses, that he went with him for dinner or lunch; that he went with him to the bank and opened the accounts. From the moment on that Mr. Pelossi was introduced to Mr. Moores, IAL, that was his job. I recall vaguely that I once in a while took documents from Canada to Germany.

THE COURT: I'm sorry, sir. I'll just ask you to repeat that. I just didn't hear it. "I recall vaguely," what?

THE WITNESS: That I once in a while took documents from Canada -- let's say from GCI in other -- other purposes where -- and then sent them out. They were not made from Canada. I just took them with me. So if you would show me this document, what you are referring to here, it may -- may tell me something. So far, I know only that here is an agreement.

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You see what it says? MBB GCI and MBB IAL.  
So, I assume that these documents or this  
document was signed by Mr. Moores, or what.  
And I probably took it to Germany and sent it  
out to Mr. Pfleiderer.

MR. BERNSTEIN: Q. So...

A. But I wonder whether -- whether this  
document was really -- or this documents were really in my  
possession in Kaufering. I doubt that.

Q. Let's take a look at another document.

A. Sure.

Q. Document 16... 16...

MR. BERNSTEIN: Your Honour, we've got  
multiple copies of this document. Not the one  
I'm about to show. Can I just have a minute?  
I just want to make sure I show the right one.  
Document 16787. Document 16787. GoTo Page 2.

MR. SCHABAS: Your Honour, I don't object to  
it being put on the screen.

THE COURT: Thank you.

MR. BERNSTEIN: Q. The...

A. Yes.

Q. The date -- let's just -- I'm sorry.  
Forgive me. The date on that document we just looked at  
was -- that's Document 17086 -- was.... Okay. There's a  
reference to an agreement, February 19, 1985. All right?

A. Yeah.

Q. And then, if we look at this document...

A. Um-hmm.

Q. ...Document 16787, we see it's an  
agreement dated the same day, February 19<sup>th</sup>, 1985, between  
MBB and IAL.

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A. Yes.

Q. Okay. Now, I want you to take a minute. This agreement is a bit lengthy. I want you to just take a minute, review the document, and my question is are you familiar with this Sales Representation Agreement February 19<sup>th</sup>, 1985. I don't want you to jump to any conclusions, just the officer will take you through the various pages. Okay?

A. Yeah.

MR. BERNSTEIN: Staff Sergeant.

THE WITNESS: Yes.

MR. BERNSTEIN: Q. You see there -- take a minute on that page.

A. Well, I don't recall that I saw this document, but it's possible. Perhaps you can move them and show me the other pages.

Q. Sure.

A. There are perhaps more.

Q. Take your time.

A. Yeah, go ahead. Yes, go ahead. Yes, go ahead. Yeah, go ahead. Yes. Yes. Yes. Yes. Yes. Yes. Yes. Yes. Yes. Yes. There it is. You have a question. The agreement looks to me like a standard agreement from MBB which I might have seen in other cases. It looks familiar to me. The question I feel -- is this agreement signed by IAL or not?

Q. I think we can answer that question.

A. I seen -- because I see no signature.

Q. We'll answer that question for you right now.

MR. CROWN: Let's go to Document 13741. Go to the signature page. Put it on



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Mr. Schreiber's screen, please.

MR. CROWN: Q. Is that of assistance to you, sir?

A. Hmm? My question is, Mr. Bernstein, when both -- when these agreements were signed from both parties, how come that I send it to Mr. Pfleiderer? That's strange. If it was not, then perhaps I brought it from -- it doesn't make sense to me. Do you understand what I'm saying? That was a cover letter. Two agreements sent to Mr. Pfleiderer. So one is here with a signature from Mr. Pelossi when it was on, but when you look at that other -- go back to other agreement, please, for a second. What you showed me before. The page you showed me before.

Q. Which page?

A. The same page you showed me before.

Q. Okay. So we're going to look at the...

A. No. No.

Q. I just...

A. That was not the same page.

Q. Okay. We'll find the right page. Just give us a minute. We're going to go back to Document...

A. The one with the...

Q. All right.

A. That right there.

Q. 16787. The signature page.

A. Could you put the other one with it, for me?

Q. Sure.

A. Half and half.

Q. That's my job.

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A. No, the last page, Mr. Alexander. Only the last page is with the signatures. Yeah. So you see the difference here? It's not the same document.

Q. Right. Well, when you say it's not the same document...

A. Absolutely not the same document, Mr. Bernstein. On the left side you have IAL stem just below the line.

Q. Right.

A. And then it's free.

Q. Right.

A. And on the other one, you see under the line where the date is, you see no stem but you see it on the bottom. So I assume that this document, which was sent out, the first one was not signed. And this one was signed, and this is a complete different page.

Q. When you say a different page, is the information on that page different?

A. Yeah, sure.

Q. Well...

A. One was signed, the other one was not and the other -- other marks here on it. It's a different document.

Q. Okay. Just to follow up on that, are any of the words, apart from the signatures different on the page?

A. I can see that on this page, but I wonder what -- what the document was which was in my possession and was sent -- was sent to Mr. Pfleiderer. So this -- this is what I couldn't get by -- this document would have sent from my secretary to Mr. Pfleiderer. I can't understand. I still can't. You see what I'm saying? If I

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would have brought it from Canada, then you have the other document, because you referred to two documents. It's right to say it's representation document. When we have a look at this, we have -- we should see was that signed by Mr. Moores and Mr. Pfleiderer at that time, if Alta Nova that would be one thing, then I could have brought this and sent it to Mr. Pfleiderer, but then it would make no sense why is the signature on. With one exception, that Mr. Pfleiderer has given both documents to Mr. Moores, and Mister -- both gave them both to me. One with -- both with a signature from Mr. Pfleiderer, one with a signature from Mr. Moores, and one missing from Mr. Pelossi. That would make sense. Otherwise, it doesn't make sense, but these two are not the same documents.

If you would show me the other agreement, we may find what the situation is.

Q. Which -- oh, you want to look at the IAL agreement? A copy of the IAL...

A. No. We spoke of...

Q. Sure.

A. When you go back to the letter, there were two agreements.

Q. No. I mean a copy.... Forgive me, a copy of the GCI agreement.

A. Yes.

Q. Okay. Just give me a minute, all right?

A. No problem.

Q. And I just want to, for the record, identify what documents we have upon the screen. I just have to do this so we have a record of his, Mr. Schabas, and we'll know later what we're talking about.

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A. Mr. Bernstein, it's your job what you do, and I assist. So, I have no problem with it.

Q. Okay.

A. Just wanted to make it clear what he's talking about.

Q. All right. So the documents up on the screen now on the right-hand side is the signature page, GoTo Page 19 of Document 13741. And on the left-hand side of the screen is GoTo Page 19 of Document 16787. So we got that cleared away.

Now, just give me a minute and we'll see if we can...

THE COURT: Well, have you got much longer on this particular topic, because it's ten to one.

MR. BERNSTEIN: If this is a convenient time, Your Honour...

THE COURT: Again, if there are going to be one or two more pertinent questions and then we're going on to something else, that's fine but...

MR. BERNSTEIN: I'll be...

THE COURT: I don't mind waiting, but if you're going to be some significant time still, we might as well adjourn now until Monday, the 20<sup>th</sup> in courtroom 8 at ten o'clock. And I ask Mr. Schreiber to be here at that time. I've asked Madam Clerk to ensure that the courtroom wasn't utilized, so I don't think you have to worry about your equipment. I think...

MR. BERNSTEIN: Thank you, Your Honour.

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THE COURT: ...it will be reserved for our purposes and not used for any other purpose until we return here on Monday. Thank you then everybody, and we'll see you Monday the 20<sup>th</sup> at ten o'clock.

MR. BERNSTEIN: Thank you, Your Honour.

COURT REGISTRAR: All rise, please.

Court is adjourned.

COURT ADJOURNS

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CERTIFICATION

CERTIFICATION:

THIS IS TO CERTIFY THAT  
the foregoing is a true and  
accurate transcription of my  
stenographic recordings to  
the best of my skill and ability.

---

TRACY LANCTIN  
CERTIFIED VERBATIM REPORTER

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ONTARIO COURT OF JUSTICE

T A B L E O F C O N T E N T S

	Exam.	Cr-	Re-
<u>WITNESSES:</u>	<u>In-chief</u>	<u>Exam.</u>	<u>Exam.</u>
SCHREIBER, Karlheinz	4	(Cont'd...)	

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E X H I B I T S

<u>EXHIBIT NUMBER:</u>		<u>Entered in on page</u>
1-28698	Document 28698, Goto Page 2. Tax legislation: Re Tax Deductibility of Commissions, Secret Commissions and Bribes. And German at Goto Page 8.	29

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Transcript Ordered: September 23, 2004  
Transcript Completed: October 9, 2004  
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Court File No. 02-20068

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

\*\*\*\*\*

BEFORE THE HONOURABLE MR. SENIOR JUSTICE P. R. BELANGER  
ON SEPTEMBER 20, 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  
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CRIMINAL CODE.**

MONDAY, SEPTEMBER 20, 2004

U P O N   R E S U M I N G :

(10:00 a.m.)

COURT REGISTRAR:    The Ontario Court of  
Justice is now in session.    Please be seated.

THE COURT:    Good morning.

MR. SCHABAS:    Good morning.

MR. BERNSTEIN:    Good morning, Your Honour.  
Your Honour, Mr. Boucher is here with the  
Federal Department of Justice, and I  
understand he would briefly like to address  
the court.

THE COURT:    Mr. Boucher.

MR. BOUCHER:    Yes. Thank you.    Good morning,  
Your Honour.    I would like the court to grant  
us the permission to intervene in this matter  
for the following reason.    We have received  
two subpoena's addressing two former -- one  
former senior Crown counsel and another Crown  
counsel from the Department of Justice which  
are from Edmonton, the Alberta Province.

Now, the subpoenas, on their face there is a  
problem with them, and the court will notice  
rapidly that they were issued on the 30<sup>th</sup> of

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August, requesting an attendance on the 12<sup>th</sup> of January. Another problem with...

THE COURT: I'm sorry. Let me just follow you. The 12<sup>th</sup> of January, 2004.

MR. BOUCHER: Yes.

THE COURT: Okay. It's not 2005.

MR. BOUCHER: Another problem with these is that I have advised my colleague -- these are subpoenas that are from the defence counsel so that they could examine under 541(5) of the Criminal Code, following the evidence of the prosecution in these case, these two counsel. There is also -- I have advised the defence that these Crown counsel are from the exterior of this province and that the travel expenses should be covered. I have not heard from defence counsel on that.

Finally, and the main issue is that we stand on and we do advance that these witnesses have no material evidence to give in this matter.

Now, to resolve that problem, there are two avenues possible to the Crown. The first avenue would be to seek a motion -- to start a motion to quash these subpoenas in the Superior Court on the basis that these witnesses have no material evidence to give in this matter. Now, to start such a motion might result most likely in delaying this preliminary inquiry, and that could be for

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quite some time, also. Before taking this avenue, we would like to suggest another path to solve this problem.

Once subpoenas are issued, and at the time that these witnesses are requested to attend, if they are absent from the courtroom, then the court has to embark on an inquiry under 705 of the Criminal Code, and see if a bench warrant should be issued against these witnesses.

Now, to arrive at the conclusion of issuing a bench warrant, the court must be satisfied first that the subpoena has been regularly served, and on that, we do admit that we accepted the service on behalf of the counsels named on the subpoenas. But also, before issuing such a warrant, the court has to be satisfied that these persons are likely to give material evidence. That would be the same debate that we would have in Superior Court.

This alternative would avoid unnecessary delays and would be much more efficient and expedient in the completion of this Preliminary Inquiry. What we are canvassing with the court this morning, is basically this. Is once the Crown completes its evidence, if the defence still desire the

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attendance of these witnesses, then we would request the court embark on such a hearing -- on a 705 hearing, and we would like at that point -- if the court agrees with the defence that there is material evidence to give by these witnesses, we would ask the court then not to issue bench warrants and maybe taking them under advisement so that a delay would be, according to the Crown, to get these witnesses present. That being said, I may advise the court right away that I have reached Mr. Shaw and I have talked with Mr. Shaw. Mr. Shaw will be back in the country on the 28<sup>th</sup> of September, which is next Tuesday. I have yet heard -- I have sent e-mails and personal calls to Ms. Hutton, and leaving my home phone number, my cell phone number, my work number, my e-mail address, and I have not heard from Ms. Hutton. Ms. Hutton is retired from the department, and for the moment we are still trying to facilitate the situation of the defence here, trying to find where Ms. Hutton would be.

That being said, what we would like to hear from the court this morning is the point of view of the court that if after hearing such a matter, if the court would come to the conclusion that there is material evidence by these witnesses to be given, we would like at that point, if the court agrees, the court

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would just permit us then to bring these witnesses and that avenue would not stall the Preliminary Inquiry for undetermined delays at the moment, without getting -- having to go to the Superior Court.

So this alternative would and should be more expedient in the completion of the Preliminary Inquiry. All of this is respectfully submitted.

THE COURT: Well, it just appears to me on the face of it that, in any event, the issue is moot. The subpoenas are, on their face, invalid. Mister....

MR. BOUCHER: But that -- the thing is, that could be resolved tomorrow morning by issuing new subpoenas.

THE COURT: Well, yes.

MR. BOUCHER: The money could be resolved tomorrow morning by issuing cheques. That would still leave us at the point of there is no material evidence to give.

THE COURT: Well, yes. Is this a matter of your interest?

MR. WONG: I do have a brief reply to that. I first contacted my friend Mr. Boucher back in the middle of August and had a brief conversation with him about needing Ms. Hutton and Mr. Shaw for the Prelim for dates scheduled in September, and certainly, when I served the subpoenas to these two witnesses,

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through Mr. Boucher, I provided a covering letter which set out the dates for the Prelim. So, to the extent that there is an error and certainly if I've missed it, it was an oversight on my part, I can remedy that.

THE COURT: Well, you're going to have re-serve.

MR. WONG: Yes. But, the two main points that I have to raise -- I spoke to my friend Mr. Boucher this morning and advised him that we were considering the issue of whether we were going to call these two witnesses at the Prelim. Mr. Schabas and I wanted to give it some more thought tonight, and I told Mr. Boucher that we would be able to advise him of our position, I told him tomorrow morning.

THE COURT: Have you had conversations with each other?

MR. BOUCHER: Yes. I have talked with Mister -- I even advised Mr. Wong of my disposition that I would forward to the court on last Thursday.

MR. WONG: Yes. As for the position on how to proceed, my position is that if these are validly obtained subpoenas issued by a justice of the peace, my friend has his remedies...

THE COURT: It has to be by a judge, does it not?



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MR. BOUCHER: No. Yes, it would be by a judge because they are out of province witnesses.

THE COURT: Yes. Did a judge sign these?

MR. WONG: This was a justice of the peace.

THE COURT: Probably not good for that purpose as well.

MR. WONG: At any rate...

THE COURT: This is an out-of-province subpoena.

MR. WONG: Yes.

THE COURT: So it has to be issued by a judge. In any event, leaving that aside for the moment....

MR. BOUCHER: The point I make is that there is a remedy available to my friend for setting aside subpoenas. It's an Application to Quash, and I simply don't think it's valid to make a collateral attack on subpoenas by simply saying, "Well, I'm not going to show up even though I have a validly served subpoena." I'm going to argue that there should be a bench warrant issued for their arrest.

THE COURT: Well, he can do that. I mean, I'd still have jurisdiction in relation to a witness who has not appeared. My jurisdiction is in determining whether or not the material witness warrant should issue, and I can't simply -- without considering the matters that Mr. Boucher mentions -- willy-nilly issue a subpoena.

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MR. WONG: Yes.

THE COURT: I have to be satisfied before I issue a material witness warrant that the -- and that's because the wording of the Code requires that I be satisfied that he or she has material evidence to give.

MR. WONG: Right.

THE COURT: And so, you're right, and Mr. Boucher acknowledges that he can attack it directly by going to the Superior Court. He's saying that's going to take time. I really can't make any comment on how much time that would take, but I have no idea.

MR. BOUCHER: I have no idea of what the -- it's just before embark -- and that would be taking these subpoenas out of this court, and this court could not complete the Preliminary Inquiry before this decision is taken in Superior Court. And this decision by Superior Court could be appealed, also, and what the solution I'm handing to the court, if the court could agree that upon being satisfied by the defence, it would not issue a bench warrant right away. It would take it under advisement. Then, we would stay here -- and the same debate. The debate has to be taken here also at the issuance of the bench warrant. So, if we could just agree that this debate could be taken here, then we would solve the delay problem.

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THE COURT: Number one, I can't tell you where to go in relation to quashing the subpoena. You know that you have an avenue in Superior Court regardless of whether or not it delays proceedings here. But I simply reiterate that it just seems to me that without consent to get into an argument on this issue in advance and in anticipation, while it may be the more convenient way to go, if defence don't agree then we have to wait until the witnesses actually don't show up.

THE COURT: In any event, all of this is to some extent moot. The subpoenas are invalid on their face. They appear to have been signed by a justice of the peace and not a judge, which makes them *prime facie* process -- they simply are invalid on their face. In addition, of course, they refer to a date that has long gone.

In any event, Mr. Wong says that you want to talk about it some more, so I'll let you talk about it and we can perhaps revisit it tomorrow, and we will see what your positions are at that time. It would be premature at this point without hearing what Mr. Wong's position is in respect of the procedure that you suggest. It would be premature to engage into an academic exercise at this point. So, let's just stand this down. You can have a talk and we'll...

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(Continued...)

MR. SCHABAS: Thank you, Your Honour.

THE COURT: ...go ahead this morning.

MR. BOUCHER: Thank you, Your Honour.

THE COURT: Thank you. I'll return the subpoena. Do you want these? Are these -- these are just copies?

MR. BOUCHER: These are copies.

THE COURT: I'll keep them, then. All right. Thank you. Okay, Mr. Bernstein.

MR. BERNSTEIN: Good morning, Your Honour.

THE COURT: You're prepared to continue?

MR. BERNSTEIN: Yes.

THE COURT: Mr. Schreiber.

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

THE WITNESS: Good morning, Your Honour.

THE COURT: Good morning, sir.

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

Q. Good morning, Mr. Schreiber.

A. Good morning, Mr. Bernstein.

Q. When we last broke last week, we were looking at two Sales Representation Agreements, and you wanted to and were in the process of comparing the signature pages on those...

A. Thank you.

Q. ...agreements. Do you recall that?

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(Continued...)

A. Yes.

Q. Okay. So, just to put things in context, I'd like to start where we finished off...

A. Yes.

Q. ...because I wasn't exactly sure what you were getting at, but you can now explain.

A. Yes.

Q. All right? So, let's call those documents up. They are on the righthand side of the screen. Document 16787. 16787. And on the lefthand side of the screen, Document 13741. 13741. I made a mistake.

THE COURT: The reverse.

MR. BERNSTEIN: Q. 13741 is on the righthand side of the screen now, and 16787 is on the lefthand side of the screen. Okay? So, those are the documents. Now, I just -- well, just let's stop and look at the first page. They look the same, don't they?

A. Yes.

Q. Okay. And there's writing and initials on both of them?

A. Yes.

Q. It looks the same?

A. Yes. Only another number on the 419, and on the lefthand side it's missing.

Q. Right. It's missing where?

A. This number, 419.

Q. Right.

A. Though it seems to be a different document.

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(Continued...)

Q. But the date, there's a date written in and an initial beside the date, February 18<sup>th</sup>. Do you see that there?

A. Yes.

Q. Does that look the same to you?

A. Yes.

Q. Okay. Let's go to the signature page on both these documents. The signature...

A. Hang on. Could you go back please?

Q. Sure. So, we're at GoTo Page 2 of Document 16787 and...

A. So that...

Q. ...GoTo Page 2 of Document 13741.

A. The difference is here, sir, excuse me. The difference is here, another one. Here, another number on the lefthand -- on the left document on top. In the middle. Do you see that?

Q. Yes, I do.

A. Okay. And 1034 and 85, that is missing here.

Q. Right.

A. And another one is missing the 419 and there is something else, so it seems -- to me it seems to be that these are two different documents, for what reason ever. But to contest what they...

Q. They are two different documents.

A. Huh?

Q. They are two different documents.

A. Yeah.

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(Continued...)

Q. We're looking at them. So, let's go to the signature page, and that's GoTo Page 19 of Document 16787, and GoTo Page 19 of Document 13741. Okay?

A. Yes.

Q. Are you there? Now.... Okay. Now, you wanted to point something out to us in connection with these signatures. Right?

A. I did, yeah.

Q. Okay. And can you just refresh my memory on that?

A. Well, I looked at the two documents. I said to you that this document seemed to be two different documents. One, it has different numbers on top. The other one has it on the bottom, and the other one has the IAL with the signature on the line below, and the other one had it on top, so these are two different documents. I don't know why but they are, in my opinion.

Q. Okay. Now, let's go back to... I think it's Document -- it's Exhibit 17084. 17084. All right. Actually.... Let's go to document -- Exhibit 17086, actually. The next document. 17086.

MR. SCHABAS: Just a moment.

MR. BERNSTEIN: Q. And let's blow up that a bit. Do you recall looking at this document last week and we went through the translation of it and you provided certain answers in connection with the notations for MBB, IAL, *verteung*, which is agreement, right?

A. Yes.

Q. Do you recall that?

A. Yes.

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(Continued...)

Q. And do you recall giving an answer in connection with the questions I was asking you, which related to the MBB GCI agreement? Do you see that reference there?

A. Yes.

Q. Okay. Just to put this in context, you've indicated this is a fax transmittal slip from you to Mr. Pfleiderer, and then the document was translated and just so we can have the translation again, Mr. Translator, just start with *vertrag*...

INTERPRETER: Yes. It's a sentence to Mr. Pfleiderer von -- by Mr. Schreiber and *vertrag* is the contract MBB GCI, dated 23 July 1985, Contract MBB IAL dated 19 February 1985.

MR. BERNSTEIN: Okay. And then the date on the document is...?

INTERPRETER: Is 16 October, 1985.

MR. BERNSTEIN: Q. Do you recall in connection with certain questions about this document and the MBB IAL document, and in particular whether you recall being in possession of the agreement. You mentioned, well, we should look at the MBB GCI agreement or reference to that.

A. This is what I was asking for when we left, yeah.

Q. Yeah. I'm just trying to set this in context.

A. Yeah. You're right.

Q. Okay. In that regard, sir, I'm wondering if you can take a look at... Just keep the date in mind. October 16<sup>th</sup>, 1985. Okay?

A. Yeah.



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(Continued...)

Q. I'm wondering if you can take a look at Document 170887. No. That's 17087. 17087.

MR. SCHABAS: Your Honour, I have no objection to that going to the witness.

MR. BERNSTEIN: Q. Okay. We have here a letter addressed to you at the Chateau Laurier Hotel in Ottawa, dated September 25, 1985. Okay? This is a few days before October 16<sup>th</sup>, 1985, and it seems to have been sent under the name of Frank Moores, Chairman. But it seems to be signed by somebody else. Do you see that there?

A. Yeah. Yeah.

Q. The letter says, "I enclose the signed contract for MBB which I ask that you will give to Kurt Pfleiderer. I have made some minor changes from their proposed contract to satisfy Canadian laws and to meet with operating policy of Government Consultants International Inc. These changes occur in Articles 2.3, 3, 5.1, 5.3, 6.1. I trust the principals of MBB will find this acceptable."

MR. SCHABAS: I note, Your Honour, it's marked 2 of 10 pages. I don't know whether Mr. Bernstein is intending to have the witness see all 10 pages.

MR. BERNSTEIN: Okay.

MR. BERNSTEIN: Q. Would you like to look at the other pages, then?

A. I asked yesterday, or the last day, only for the agreement because I wanted to find out whether the agreement was signed or not, but I take it from this letter the other agreement was signed. Though, I found exactly what

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(Continued...)

I expected. Because if it would not be signed, that would not have made any sense to me.

MR. BERNSTEIN: Can I just have the court's indulgence for a minute, Your Honour?

MR. BERNSTEIN: Q. Okay. So, with respect to the rest of this document, let's look at the rest of this document. We have here a Consultancy Agreement...

A. Yes.

Q. ...between MBB and GCI...

A. Yes.

Q. ...which is what's referred to in the covering letter, and let's just go through...

MR. SCHABAS: Sorry, is Mr. Bernstein leading him through this, Your Honour? I'm just -- shouldn't the witness look at it?

THE COURT: Let's...

MR. BERNSTEIN: Sure.

THE COURT: Let's start with that. Have a look at it. It says, Consultancy Agreement between those two parties.

MR. BERNSTEIN: Is there some issue that this is what this document is?

THE COURT: What is that document, sir, that you can tell us, looking at?

THE WITNESS: Yes. Consulting Agreement between MBB and Government Consulting International. The way it looks.

THE COURT: Do you want to have a look at the whole document? Just scroll through it.

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(Continued...)

THE WITNESS: Well, I think we had this but... Yeah. Okay. Go ahead. Um-hmm. Okay.

MR. BERNSTEIN: Q. Let's go back to the...

THE COURT: He hasn't seen the whole document.

MR. BERNSTEIN: I'm sorry. Forgive me.

THE WITNESS: I just would like to see these -- the last page with the signature. This has no signature. Now, this one has a signature.

MR. BERNSTEIN: Q. And somebody is signing on behalf of who?

A. Yeah.

Q. Who?

A. Government Consulting International.

Q. Are you familiar with that signature?

A. I think it's Greg Alford.

Q. Okay. All right. Let's go back to the first page of the document.

A. Yes.

Q. It says, this document is entitled September -- or is dated September 25, 1985.

A. Yes.

Q. Do you see that there? I want you to keep that date in mind. Okay?

A. Yes.

Q. So let's go back to the fax transmission slip we were looking at before that has the IAL agreement on it, or reference to it, also. Let's put them both up on the screen. That's Document -- Exhibit 17086. There we go. So on the lefthand side of the page, we have Exhibit 17086,

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(Continued...)

which is the fax transmission slip we've been looking at, and on the righthand side of the page we have GoTo Page 2 of Document 17087. Do you see that there?

A. Yes.

Q. And let's go to page 3 of Document 17087. Do you see the date on the top of the page there?

A. Yes.

Q. That's what date?

A. 23<sup>rd</sup> of July.

Q. Right.

A. '85.

Q. And if we go to the fax transmission slip again, we see the date referable to the *vertrag* MBB GCI is what date?

A. 16<sup>th</sup> of October, 1985.

Q. The date under *vertrag* MBB GCI?

A. Oh, 23<sup>rd</sup> of 07, 1985.

Q. And the -- the *von* (*check*) means what?

A. 19<sup>th</sup> of February.

Q. No, no.

INTERPRETER: No. It means -- it just "of".

MR. BERNSTEIN: Q. So just to translate that again there? *Vertrag* MBB GCI *von*...

INTERPRETER: Yeah. Dated. It's the date of the contract.

MR. BERNSTEIN: Okay.

INTERPRETER: Dated 23 July 1985.

MR. BERNSTEIN: Q. And the date on the Consultancy Agreement is the same date. Right?

A. Yes.

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(Continued...)

Q. Okay. So, let's go back to GoTo Page 2 of Document -- GoTo Page 2. My question to you is, sir, do you recall receiving this letter? This letter at GoTo Page 2 of Document 17087, with the accompanying GCI MBB Consultancy Agreement?

A. No. Let's clarify this. You -- you ask me whether I recall this document. The answer is no.

Q. Does looking at this letter written to you...

A. Um-hmm.

Q. ...and the agreement, assist in refreshing your memory?

A. I can only assume what happened, what I thought from the beginning why I asked for the second agreement. And I told you that quite often I took documents from GCI to Germany, or the other way around. So this makes it clear why I haven't seen the agreement. I must have received the two documents, gave them to my secretary without seeing this, and told her what to do with it. So, otherwise it doesn't make sense.

Q. The two documents you were referring to were what documents?

A. Yeah.

Q. Let's go back to the...

A. One is from IAL and the other one is from GCI.

Q. Let's go to the fax transmission....  
The two documents you are referring to are which ones, sir?

A. These two documents were sent to Mr. Pfeleiderer. When I look this up, this is pretty funny.

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K. Schreiber - In-ch.  
(Continued...)

The one is from the 23<sup>rd</sup> of July. And the letter from Mr. Alford is from 25<sup>th</sup> of September. The other agreement is from the 19<sup>th</sup> of February, although how much longer this must have sit somewhere, but for sure, as far as this looks, I received this in September. And at the 16<sup>th</sup> of October, my secretary sent it out. So, approximately, 10 days later. Maybe, I was longer in -- I was longer in Canada and perhaps I went back at the 15<sup>th</sup> of October or whatever, but this is only guessing. But it makes sense to me that I handed this document on the request of GCI to my secretary, and she sent it out.

Q. Why was Mr. Moores or GCI asking you to forward documents to MBB and Kurt Pfleiderer?

A. Well, it would be very simple. When I am in -- in Canada and I go back and forth and they take -- they give me their mail and I take it to Germany and send it out as you see it here. It's easier. Faster. Nothing special. It happened a thousand times, perhaps.

Q. Why -- I don't understand. You say it's easier. How is it easier?

A. Well, when I am there in the office and they give it to me and I take it with me when I -- let's say I fly next day, I take it with me, put it to my secretary and she sends it out. For them, it's easy.

Q. How is that easier than simply sending it by courier?

A. Well, then you must ask Mr. Moores. Perhaps he wanted to save money. Not me.

Q. You say it's faster. How is it faster?

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(Continued...)

A. Than a courier? But we are guessing now, discussing courier services. I am the wrong person to ask. I have no idea.

Q. You said...

A. When a business partner or friend asks you, "Could you take this with you to another country, to Germany," or whatever, why wouldn't I do it? Perhaps it was packed with -- with a dozen other documents or items. I don't know. But it's nothing unusual in this...

Q. You said it was faster. How is it faster? What did you mean by faster? How is it faster?

A. Well, when I go -- when I go to Germany and it would send it out next day, it's probably faster. But this is funny anyhow when you look at the dates from the agreements. One is from the 23<sup>rd</sup> of July, the other one is from February. It makes no sense to me at all. So the one must have been sitting somewhere. It was eight months.

Q. You see in the letter the last line, it says, "I trust the principals of MBB will find this acceptable."? This seems to be a reference to some changes in certain terms of the agreement. Do you see that there?

A. Yeah, but it may be strange to you but I was not interested in all this. Neither in the agreements nor the other stuff. This was GCI stuff. I would have had a lot to do to look at other people's agreements.

Q. Can you help me with -- and maybe you can't, maybe you can -- why Mr. Moores or Mr. Alford is saying to you that he trusts the principals of MBB will find this acceptable?

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MR. SCHABAS: Sorry. I object to that, Your Honour. Mr. Moores has been called and he's being asked to speculate about what someone else or why someone may have said something.

THE COURT: Well, ask him what he knows not what he speculates. Do you know why...

THE WITNESS: I know nothing about it, and I didn't care. I didn't even think about it, for sure. It was not my business.

MR. BERNSTEIN: Q. Let's go to page 5 of Document 17087. GoTo Page 5 Document 17087. Are you there? There's a reference in this agreement to -- and I'm referring to Article 2.1. "For the performance of this agreement, MBB will pay GCI a monthly retainer of \$6,000 Canadian, commencing on January 1, 1985." Do you see that there?

A. Yes.

Q. Now, all right. You're familiar with that monthly fee?

MR. SCHABAS: Sorry, Your Honour. In my submission, what Mr. Bernstein has done is, in fact, he's leading the witness. I mean the witness should be asked does he know this document? Is he familiar with it? Has he seen it before? I mean, to take him then to the document and just ask him if he's familiar with it is, in my submission, we're getting back to this issue of leading the witness with something. Why doesn't he ask him whether he's familiar with arrangements between MBB and GCI?



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THE COURT: Well, on this general issue, from an evidentiary perspective, there's nothing wrong with an examiner leading the witness. They lead all the time. It's the leading question which is the problem. It is one which suggests an answer or which in some way cross-examines. Now, I don't disagree with you that he may have missed a step here. You've shown a witness this document. This contract. You might start with his general familiarity with the contract...

MR. BERNSTEIN: Yes, Your Honour.

THE COURT: ...if any, and then take him to the particular.... I don't see anything wrong with that suggestion.

MR. BERNSTEIN: Yes, Your Honour.

MR. BERNSTEIN: Q. So, you have reviewed this. This is the same document we've just looked at, you've just reviewed, and I'll ask a general question. Are you familiar with this agreement?

A. Not with the agreement, but with the monthly payment.

Q. How are you familiar with the monthly payment?

A. Because Mr. Moores told me.

Q. What did Mr. Moores tell you?

A. That he received the retainer. And we discussed this before on one of the days when I testified here when you asked me whether I knew about the retainer and

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whether I knew that Bitucan received 3,000 a month. We had this all before.

Q. Right.

A. Yeah.

Q. So when you say...

A. Same thing.

Q. ...it's none of your business, was it a little bit of your business? You're getting \$3,000 of...

MR. SCHABAS: Sorry. Now, he's cross-examining.

THE COURT: That's perhaps going a little too far, Mr. Bernstein. And in any event, the answer is hearsay. It's Moores telling him. He's given his answer that he's not familiar with the contract, but he knows what Moores told him.

MR. BERNSTEIN: Q. Let's go to page -- the last page of the document. I think it's GoTo Page 9. Okay. In particular, I would like to respectfully direct your attention to Article 6.1.

A. Yeah.

Q. Were you at this time familiar with that miscellaneous statement or term?

A. I must really say, I'm -- I'm very surprised. I can tell you honestly, sir, I have never seen this but it confirms now that the two agreements somehow belong together, which were given to me. I never thought that this was mentioned in the agreement here, but here you have it.

Q. You're referring to what, sir?

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A. The first party. The parties are aware of International Aircraft Leasing Vaduz Liechtenstein being MBB's sales representatives for MBB Helicopters BO-105 BK-117 in Canada. I mean if I would -- if I would have recalled the, having seen the agreement -- this agreement with Frank -- with GCI, it's signed by Greg Alford, it would have been easier for me to put the two agreements together which were sent out from my secretary. There you have it. There's nothing more you need, in my opinion.

Q. So, you do now...

A. Yeah, 100 percent.

Q. ...recall. All right.

A. From the document. What sounds strange to do -- and allow me to add this, is that I don't look at all these documents from other people. I'm simply not interested. I'm late in reading it.

MR. BERNSTEIN: Can I just have the court's indulgence? Can we call up Document 17 -- excuse me. Before I go there, can the last document, which is the letter from Moores and Alford to Mr. Schreiber with the attached Sales Representation Agreement between GCI MBB -- and I'm referring here to Document 17087 GoTo Page 2 to GoTo Page 1110, be entered as the next exhibit in these proceedings.

MR. SCHABAS: Your Honour, in my submission, the witness has no recollection of this.

MR. BERNSTEIN: I'd be pleased to make submissions if required, Your Honour, but I'd like to do so in the absence of the witness.

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(Continued...)

THE COURT: Okay. Would you step outside?

THE WITNESS: Hmm?

THE COURT: Would you step outside, please.

THE WITNESS: Yeah, yeah.

...[WITNESS EXITS]

MR. BERNSTEIN: Your Honour, in my respectful submission, the Crown has laid an appropriate evidentiary basis for the admission of these documents. One needs, in my respectful submission, to distinguish between admissibility and the weight or impact or what inferences can be drawn from the witnesses testimony respecting documents. He said in the end that he recalls receiving the -- actually, receiving both these documents. In the end, his last answer was "100 percent." And so, the documents have some evidentiary value in that the Crown has proven that they were in Mr. Schreiber's possession at a material time.

Inferences can be drawn from his possession of those documents whether or not he categorically admits knowledge of the terms of the agreement. His mere possession of the documents is evidence from which appropriate inferences can be drawn at the appropriate

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time. At a Preliminary Inquiry, it is of course, trite to say that all inferences favorable to the Crown should be drawn from the evidence as it exists. So in my respectful submission, this witness has acknowledged being in possession of the Sales Representation Agreement; it formed part of a package which included on its face a covering letter addressed to him. The dates are consistent and line up, and quite frankly, I know my friend objected but I'm not at all sure on what basis he objects to the admissibility of these documents. There will be, likely, additional evidence in connection with where this document was obtained by the Crown. This is one of the Kaufering documents. I understand that this document was obtained from his offices in Kaufering. It was provided by the prosecutor's office in Augsburg to the RCMP, pursuant to a Mutual Legal Assistance request and there may ultimately be some additional evidence on that point, if we're not able to resolve this item code issue.

But, as things stand now, Your Honour, in my respectful submission, it's admissible. He has, in the end, admitted being in possession of it, and instructing his secretary to send it to Pfleiderer.

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(Continued...)

THE COURT: Well, I think you've stated very highly, he says when asked, "Do you recall receiving the letter?" and he said, "No," categorically. And then looking at it, he says, "Well, then I -- clearly, I must have, looking at them, received these two documents and gave them to my secretary." That doesn't -- it's speculation on his part.

MR. BERNSTEIN: And then, in the end when he looks at the final term of the agreement, the...

THE COURT: Then he said, "I've never seen it before but now it all makes sense to me," he says.

MR. BERNSTEIN: Well, Your Honour, it may -- we may be and very soon moving towards an application involving a characterization of this witness's evidence and an application by the Crown to -- well, to...

THE COURT: Well, if you tell me that it's subject to further -- you're asking that it be identified at this point as a document in relation to which the witness's main comments that he didn't remember, and that -- with the further qualification that he speculates about it, that's as high as it stands. I don't mind making it an exhibit so long as we all understand that further identification is coming and that his reference to it was strictly in the speculative. It doesn't --

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just because I'm admitting it as an exhibit,  
doesn't make it -- doesn't give it  
particularly significant evidentiary value...

MR. BERNSTEIN: My point is just...

THE COURT: ...but with those comments in  
mind, I don't see the harm in admitting the  
document, subject to further identification,  
and subject to the qualifications made by the  
witness.

MR. BERNSTEIN: Thank you, Your Honour. My  
point is just, in my respectful submission,  
though Mr. Shaw tells me there will be more  
evidence on this point, there does exist an  
evidentiary basis upon which an inference can  
be drawn that he was in possession of this  
document, and at a Preliminary Inquiry, that  
inference has to be drawn. Admittedly, he's  
less than perfectly clear about this, but he  
does at one point say 100 percent he does  
recall.

THE COURT: Well, the best evidence is,  
obviously, going to be your evidence that it  
was found in his business premises...

MR. BERNSTEIN: Yes, I agree.

THE COURT: ...and to that extent it ought to  
be...

MR. BERNSTEIN: And I'm advised that will be  
coming.

THE COURT: Subject to further  
identification, they'll be made exhibits.

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Exhibit 1-17087. Do you want anything else made an exhibit? It's 17087 at this portion, right?

MR. BERNSTEIN: Yes. Well, I guess, Your Honour, it'd ask -- well, no. That's all I want.

EXHIBIT No. 1-17087: Document 17087. GoTo Page 2-1110. Letter from Moores and Alford, to Schreiber, and attached Sales Representation Agreement.

MR. BERNSTEIN: Q. Mr. Schreiber, do you know a man named Lohmann? Lohmann?

A. You asked me that before. Yes.

Q. I'm sorry. You're right. You mentioned that he worked for MBB.

A. Yes

Q. Do you recall talking or communicating in some fashion with him about the MBB GCI Consultancy Agreement?

A. No.

Q. Would looking at some documents assist in refreshing your...

A. Yes.

Q. Let's go to Document 17071. 17071. GoTo Page 2 of Document 17071. We're going to show it to Mr. Schabas first. Okay?



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MR. BERNSTEIN: Mr. Translator, we may need some translation assistance here, so.... Not yet, but if you want to familiarize yourself with the document.

MR. SCHABAS: I have no problem with it being put to the witness, Your Honour.

MR. BERNSTEIN: Let's put it up on the monitor, and I'm referring to GoTo Page 2 of Document 17071. We have here -- well, some of this is in English and some of it's in German, so I'd ask -- just so that those who aren't fluent in German can understand what we're talking about here, if the translator could help.

INTERPRETER: At the top of the page it begins "Fax to" and then you have the "Bayerische Bitumen-Chemie" addressed to Mr. Schreiber, and "Attachment: Consultancy Agreement MBB - GCI (7 pages)"

MR. BERNSTEIN: Okay. Where is that?

INTERPRETER: This is -- do you see it says "Anlage" ...

MR. BERNSTEIN: Um-hmm.

INTERPRETER: "Anlag" is "Attachment". The line below that is "Comment: The following changes are necessary from our perspective." And then, down just above the signature block, "I would be grateful if you would read through the attachments and get back to me."

MR. BERNSTEIN: It's signed by who?

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INTERPRETER: It is signed by Lohmann.

R. Lohmann.

MR. BERNSTEIN: And where it says *Mit  
freund...*

INTERPRETER: *Mit freundlichen Grüßen*, that  
just means "Yours sincerely".

MR. BERNSTEIN: Okay. And it says MBB-LV?

INTERPRETER: Correct. There's no indication  
what the LV would...

MR. BERNSTEIN: We have a different  
translator who has helped us with that code.

INTERPRETER: Okay.

MR. BERNSTEIN: Thank you.

MR. BERNSTEIN: Q. Now, I want you to think  
about this letter, which seems to be a letter from Lohmann to  
you?

A. Yes.

Q. Referencing attaching a GCI-MBB  
Consultancy Agreement and making reference to some suggested  
changes. Okay, and this is dated January 23<sup>rd</sup>, 1986, right?

A. Yes.

Q. Think about this letter and let's GoTo  
Page 3 of the document. We have the Consultancy Agreement.

A. Um-hmm.

Q. I just want you to go through...

A. Could you -- could you go, please, for a  
moment?

Q. ...again.

A. Yeah, and now the other one.

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Q. Just go through the Consultancy Agreement, sir.

A. Yeah. Okay. Yes.

Q. Next page.

A. Um-hmm.

MR. SCHABAS: Excuse me.

MR. BERNSTEIN: Bless you, Mr. Schabas.

THE WITNESS: Yes.

MR. BERNSTEIN: Q. Next page.

A. Yes.

Q. Here we have the 6.1. It seems to be in substance, another copy of the Sales Representation Agreement we just looked at, which was Exhibit 17087.

A. 20<sup>th</sup> of August.

MR. SCHABAS: I'm sorry, Your Honour. My friend keeps calling it the Sales Representation Agreement. I think it's called the Consultancy Agreement.

MR. BERNSTEIN: Sorry. I have Sales Representation Agreement on my mind. I thank you, Mr. Schabas, for the correction.

MR. BERNSTEIN: Q. This Consultancy Agreement. So, you have this letter from Lohmann to you.

A. Yes.

Q. Let's go back, and which refers to changes to Article 2.3, and if we go to 2.3 of the contract.... Page...

A. Yes.

Q. Article 2.3 That's the submission of monthly invoices. Remember?

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A. Yes.

Q. And then Lohmann's letter also refers to Article 3. GCI will not be active for any other company which might be a competitor. And if we go to Article 3 there, we see that term, right?

A. Yes.

Q. Okay. Now, having looked at this letter, which is addressed to you, and this Sales Representation Agreement...

MR. SCHABAS: Consultancy Agreement.

MR. BERNSTEIN: Sorry.

MR. BERNSTEIN: Q. This Consultancy Agreement. Does this, Mr. Schreiber, assist in refreshing your memory on and in connection with the question: Do you recall receiving this Consultancy Agreement and...

A. Unfortunately, not. No.

MR. SCHABAS: Sorry. That wasn't the question. The question was whether he recalled communicating with Mr. Lohmann.

MR. BERNSTEIN: Q. Do you recall communicating with Mr. Lohmann about these topics?

A. No.

Q. Do you recall receiving this letter with the attached -- not Sales Representation Agreement -- Consultancy Agreement?

A. No.

Q. I want you to think really hard. Can you...

A. Yeah, I mean, I...

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Q. Would looking at other documents on this topic assist in refreshing your memory?

A. How can I say that in advance?

Q. Let's go to Document 17060, GoTo Page 2. Document 17060, GoTo Page 2. And let's go to page 3. Okay. Let's go back to 2. All right. Do you recall we looked at this document earlier?

MR. SCHABAS: We did?

MR. BERNSTEIN: Well, yes. It's already been shown to the witness.

MR. SCHABAS: I don't recall that, Your Honour.

MR. BERNSTEIN: I'm sorry. My examination wasn't more interesting, Mr. Schabas, but I recall it.

MR. SCHABAS: Well, just one second. We try to keep track, Your Honour, of all the documents that have been referred to and that's not -- neither familiar to us nor in our...

THE COURT: I must say -- but don't read anything into that -- I have no recollection but that may only be because I've forgotten.

MR. BERNSTEIN: Okay. Let's look at 17061.

MR. SCHABAS: Yes. Our records show that it was put before him on September the 13<sup>th</sup>.

MR. BERNSTEIN: Okay.

MR. SCHABAS: So...

MR. BERNSTEIN: Thank you. Okay.

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MR. SCHABAS: ...aside from the fact that we're covering the same ground, I don't object to it being put to him.

MR. BERNSTEIN: No, I'm just -- we have -- my point here is we have this refreshing document number one, which on it's face seems to be a letter from Lohmann to Mr. Schreiber respecting these monthly payments of invoices and invoicing for the monthly retainer. We have a term of the contract and now we have this letter -- this letter or this facsimile letter from Mr. Alford. Let's pull it up on the screen. Which is addressed to Mr. Schreiber, and it says, "Would it be possible for you to raise this matter with Kurt?" Don't you, Mr. Schabas, remember said "Kurt who?" Remember this was the....

THE WITNESS: Yeah, you showed me this before.

MR. BERNSTEIN: Q. And then advised whether we would still -- whether we should still respond in writing as they requested.

A. Yes.

Q. And if we go to the GoTo Page 3, we see this is the -- these are monthly invoices.

MR. SCHABAS: Oh, there's an invoice.

MR. BERNSTEIN: Q. So, does looking at these three documents, all two of which are addressed to you, assist in refreshing your memory as to whether you received Lohmann's letter with the attached Consultancy Agreement?

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(Continued...)

A. No, Mr. Bernstein.

Q. Let's go back to Lohmann's letter and that's -- do you recall interceding or speaking to Kurt about these invoices?

A. No.

MR. BERNSTEIN: The Lohmann letter, please, which is document... The Lohmann letter.

MR. BERNSTEIN: Q. Can you help us at all from your perspective as to why Mr. Lohmann for MBB is writing to you respecting the terms of MBB's Consultancy Agreement with GCI?

A. I really don't know why he has sent me this. You see it's an agreement between GCI and MBB, though. I'm not the director or anything from GCI. I really have my problems with this. Perhaps he sent it because he thought I'm in constant contact with Mr. Moores and it would mean there might be, but I have no idea why. And it tells me, really, nothing.

Q. Did you participate in discussions about this agreement...

A. Not -- not that I recall.

MR. SCHABAS: I'm sorry, Your Honour. He's asking the same question over and over again. This all comes back to does he recall communicating with Mr. Moores about the agreement. He said, "No," and now my friend has just said, "Do you recall participating in discussions?" It's the same question.

THE COURT: In any event, we have his answer and we've just about run out of this.

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(Continued...)

MR. BERNSTEIN: Yes. Your Honour, with respect to this document, I'd ask that it be admitted. Subject to further identification, I understand from Mr. Shaw that this is also a document we obtained in the same fashion as the previous document.

THE COURT: Well, only for that purpose. Exhibit 1-1706 -- sorry. 17071. Is that the one?

MR. BERNSTEIN: Yes.

EXHIBIT No. 1-17071: Document 17071.  
Letter from Mr. Lohmann, dated January 23, 1986.

MR. BERNSTEIN: Q. Let's go back to Document 17086. Document 17086.

A. Yes.

Q. Okay. Now, we started off with this document this morning and we're back to it. My question was -- just to put this in context -- we've looked at certain Sales Representation Agreements. You said, "Well, I'd..."

A. Yeah.

Q. ...like to look at the MBB-GCI Agreement." We've looked at them. Certain -- you gave certain answers in response to certain questions and my question now is -- back with the MBB-IAL agreement, do you recall obtaining it and sending it along?

A. Whether I recall that?



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(Continued...)

Q. Yeah.

A. No. Let's make this clear. This can all be, and I don't doubt it that my secretary send it out, but when you ask me whether I'm aware of it, the answer is no. I may remind you this is, I don't know, 20 years ago. How do I know a single document from that time or letter from my secretary?

THE COURT: Good time for the morning break, gentlemen?

MR. BERNSTEIN: Yes. Certainly.

THE COURT: It's 25 after eleven. Thank you. We'll take a few minutes, Madam Clerk. Thank you.

COURT REGISTRAR: All rise, please. Court is now in recess.

R E C E S S

(11:25 a.m.)

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

(11:50 p.m.)

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

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

Q. Okay. Let's take a look at Document 13741. 13741. This is the sales -- one of the copies of the

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Sales Representation Agreements which we've been looking at.  
Okay?

A. Yes.

Q. I want you to review this. This is somewhat of a lengthy document. I want you to take a minute and review it. My question is are you or were at the time familiar with any of its terms specifically or generally? Okay? Now, just take a look at the document and take your time.

A. Well, you asked me this before.

MR. SCHABAS: Yes, Your Honour. We're just checking our notes and he was asked about whether he knew this document on the last day, and he gave an answer, and...

THE COURT: This was on the last day, you say?

MR. SCHABAS: Yes. On the 15<sup>th</sup>.

MR. BERNSTEIN: I haven't gone through this document in detail yet, Your Honour. So, maybe my friend can refresh my memory about -- the question was to review the document, which I don't think he's done yet, and the question was, "Is he familiar, generally or specifically, with the terms?" I don't think I've ever asked him to review this document or in the context of that question.

MR. SCHABAS: That may be, Your Honour, but it's a little unusual that you then go through something that he says he can't identify and

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doesn't recognize as opposed to asking the witness what his evidence might be.

MR. BERNSTEIN: If my friend is going to make these objections, I really insist that it be done in the absence of the witness.

THE COURT: I'm sorry, I have no recollection of -- this is 13741 -- of questions to this witness.

MR. SCHABAS: It was done in the context of referring him to another copy of it, which is Document 16787, and he was asked to review the document, which he did.

THE COURT: And he says, "I don't recall having seen it, but it's possible."

MR. SCHABAS: Right.

THE COURT: And would you...

MR. SCHABAS: Then he asked to be shown some of the other pages...

THE COURT: He says "It looks familiar to me."

MR. SCHABAS: ...of the standard agreement. He says it looks like a standard agreement from which I may have seen in other cases.

THE COURT: Well, I -- I'm going to allow the Crown to continue.

MR. BERNSTEIN: Q. Please look at the document.

A. Yeah.

THE COURT: I believe he's looked at it, Mr. Bernstein.

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MR. BERNSTEIN: Q. Okay? All right. You were asked generally about another copy of this, and I'd like to just go through this in a little more detail now.

THE COURT: No, the question was...

MR. BERNSTEIN: What? The question...

THE COURT: There was a question put to the witness.

MR. BERNSTEIN: Yes.

THE COURT: Are you familiar with any of it's terms, specifically or generally? That's the question to you, Mr. Schreiber.

THE WITNESS: Your Honour, I think I was asked this question before. I said it looks to me like general agreement from MBB, and I may have seen a form like this before, but I have no recollection on this agreement.

MR. BERNSTEIN: Q. You said before it looks like a standard agreement. What did you mean by "it looks like a standard agreement"?

A. Well, MBB and other companies, they have certain forms of agreements and they are, more or less, always the same.

Q. What part of them is more or less always the same?

A. Well, they identify the parties and then they say what the conditions are. There's a lot of -- like when you have little writing in another contract, whatever. This is the thing I never read, especially when I have nothing to do with it, and if I have something to do with this, my lawyer reads it. Not me.

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Q. Which parts of this were standard?

A. I can't say this just when I look at this.

Q. Let's just go to the first page and we'll just go through it and you'll tell me what you mean.

A. Sure. The parties, for example, that's standard for sure. And the name of the agreement is a standard.

Q. How about the first article, Article 1? Are you -- I direct your attention to the scope and limitations. It says under paragraph 1.1 "MBB, hereby appoints the representative as its sales representative for the twin engine multi-purpose BO-105 and BK-117 helicopters developed and manufactured by MBB." And then there's a reference to optional equipment and ground support equipment and other things. Do you see that in...

A. Yes.

Q. ...Article 1.1?

A. Yes.

Q. Okay. Do you have any familiarity with that term, with the term what's written in 1.1?

A. It shows two products: The BO 105 and BK 117. That's two products MBB has produced, in my recollection.

Q. And do you have any familiarity with the appointment of IAL as representative in connection with those two products?

A. I know that they are in agreement for helicopters, so I assume it is.

Q. When you say...

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(Continued...)

A. But I have no -- since I haven't -- since I was not involved in this agreement, I really don't know, Mr. Bernstein.

Q. So we'll just go through it one step at a time. My question was, familiarity with the actual words, the terms 1.1. Okay? Now, let's put that aside, okay? You say you knew, you were familiar, you were aware of -- and it was just your last answer. I want to put it to you fairly. You say I know that there was an agreement for helicopters. Tell me about that. I'm not saying that you know it from this agreement. You say you know about the agreement from helicopters. What do you recall knowing?

A. What Mr. Moores told me.

Q. What did he tell you?

A. That he has...

MR. SCHABAS: Well, Your Honour, again it's hearsay.

MR. BERNSTEIN: Wait a -- wait! Okay. If my friend is going to make an objection, I'd ask the witness be excused, and given Your Honour's rulings on this point, for my friend to stand up in the context of this question and make an objection which he has made unsuccessfully in the context of the same type of question...

THE COURT: He can tell us what Moores told him. It doesn't make it true. We're talking about his understanding of what this contract was about. He may be completely wrong, and what Moores told him may be completely wrong,

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but this goes to what he understood the agreement to be. There's nothing wrong with that.

THE WITNESS: Now, what's the question?

MR. BERNSTEIN: Q. The question is what did Moores tell you about this MBB agreement for helicopters?

A. That he signed an agreement with GCI. And then was the question with the -- with the retainer of 6,000? And since I introduced Pfleiderer to him, Bitucan was entitled to get 3,000 from this.

Q. And let's take a look at Document 15460. Document 15460. Do you remember we looked at this letter yesterday?

A. Yes.

Q. Not yesterday. Last week, and this is a letter which you admitted writing...

A. Yes.

Q. ...to the bank?

A. Yes.

Q. And you were asked a variety of questions respecting the third paragraph?

A. Yes.

Q. Of the letter which...

A. Yes.

Q. All right. So, if we go the English translation of it, which is GoTo Page....

MR. BERNSTEIN: Okay. Your Honour, the English translation is in a paper copy.

THE COURT: Is that made an exhibit?

MR. BERNSTEIN: Yes.

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THE COURT: Number? Letter?

MR. BERNSTEIN: It would probably have been the last exhibit.

COURT REGISTRAR: J.

THE COURT: J.

MR. BERNSTEIN: September 14<sup>th</sup>.

THE WITNESS: Yes. We went through this.

THE COURT: There's your exhibit.

MR. SCHABAS: Sorry, Your Honour. Can I just take a look. I don't have our copy with us. Thank you. Yes.

MR. BERNSTEIN: In any event, so do we have our copy of the English translation? Okay.

MR. BERNSTEIN: Q. I'll read the paragraph out here. Do you recall this is a letter which you wrote to the bank in Landsberg? The County and Municipal Savings Bank and you didn't -- admitted writing and saying, "As we indicated in our conversation in your offices on December 16, 1985, it has now been confirmed that the Canadian government has ordered 12 BO-105 CBS helicopters, manufactured by MBB at a price of 2.4 million DM each. Six helicopters are already in the process of delivery and more will follow earlier this -- in the new year. This will generate commissions for us totalling some 1.5 million DM."

A. Yes.

Q. Do you recall that?

A. And we went through this before a couple of days ago.

Q. So my question is, how does that statement by you to the bank...



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A. Yes.

Q. ...relate to your discussions with  
Moores...

A. This comes -- this information came from  
Mr. Pelossi and it's wrong.

Q. What?

A. Later we found out it's wrong.

Q. What's wrong?

A. The amount, I mean. As far as I recall  
it.

Q. Okay. Well, tell me what inquiries you  
made that caused you to come to the conclusion that the  
amount was wrong? First of all, who did you speak to about  
it?

A. You showed me a letter from Mr. Pelossi  
on this from IAL.

Q. My question was -- you said the amount  
was wrong, and my question to you is "Who did you speak to..."

A. I cannot -- I cannot...

Q. Listen to the question, sir. Who did you  
speak to that caused you to come to that conclusion?

A. When I looked just now? The fact is that  
Bavarian Bitmen Chemicals never received 1.5 million. This  
is what I mean.

Q. Who did you speak to, which caused you to  
learn that this was wrong?

A. I spoke to nobody. I looked at this now.

Q. Now, you say -- what? You make reference  
to a document from Pelossi.

A. Yes.

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Q. Let's take a look at that document. I think it's document 15451. The translation is 37913. Okay. This letter says,

"The price amounts to about 2.4 million DM, which comes to a total of 28.8 million. According to the contract, a commission of 8 % is to be paid to us on this amount, which equals about 2.3 million. As per the agreement with us, you will receive 50% of this amount, which comes to about 1.15 million DM. In accordance with the agreement with MBB, the commission will be paid to you following receipt by us. The same applies for the initial provision of spare parts. For this, we will receive a commission of 15%, 50% of which is for you."

It's written by Pelossi to you. right?

A. Um-hmm.

Q. You were referring to that letter in your answer?

A. Yeah, I saw this.

Q. Do you recall now receiving this letter?

A. I don't recall receiving this letter, but this is more or less what it is here in this letter. I assume that this was verbal information I received. And as per agreement with us, there was no agreement between Bavarian Bitumen-Chemicals and IAL. Not at all.

Q. Let's look at... Let's take a look at 24869.

A. And this is later than the other one.

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(Continued...)

Q. 24869. So you recall...

A. You showed me this before.

Q. Right, and this again refers to  
8 percent. 8 percent commissions and other things.

A. And I told you, as far as I recall, the  
only thing I recall is the amount from 640,000. This tells  
me something. The rest, nothing. And by the way, here you  
see commission fee in total, 1.122. This is why I say this  
other amount is wrong.

Q. So it's 1 point...

A. When it is here -- when it's here from  
MBB it says 1.122.

Q. Not 1.5.

A. Hmm? Yeah.

Q. So that's what you mean when you say  
it's...

A. Yeah.

Q. ...say it's wrong. Right?

A. Yes.

Q. All right. Let's just -- Okay. This 8  
percent, 8 percent commission. Step away from the documents.  
I'm just asking you, this 8 percent, does it ring a bell at  
all?

A. No.

Q. Let's take a look at Article 2.14 of the  
Agreement. Article 2.14. And that's GoTo Page.... It's  
agreement -- the agreement is -- it's -- let's look at 13741,  
Article 2.14.

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MR. SCHABAS: Which article, Mr. Bernstein?

MR. BERNSTEIN: 2 point one -- 2.14. That's  
GoTo Page 5. No. GoTo Page 8.

MR. BERNSTEIN: Q. And I just direct your  
attention to Article 2.14, which says the Commission Fee due  
in accordance with Article 2.8 and/or 2.9 and/or 2.10 shall  
be calculated in full recognition of the retainer fee paid to  
Alta Nova for it's consulting services to MBB," and then  
on...

A. What's the question?

Q. Does this -- are you familiar at all with  
the content of this term? The deduction of the retaining --  
just the -- just -- no. Are you familiar with the content of  
this term?

A. No.

Q. I just want to be clear on this. You  
spoke earlier about an understanding with a success fee, and  
a reduction of the commission from the -- no. A reduction of  
the commission from -- a reduction of the success fee by the  
amount of the retainer?

A. Yes. This was in that other document.

Q. Okay. So have you changed your view on  
that? On your...

A. No. You asked me whether I -- what I  
know about this document, this clause. My answer is nothing.  
When you ask me whether I saw this earlier that it was  
deducted, yes, I saw it on the document.

Q. Okay. But your earlier answer respecting  
your understanding of the success fee and the reduction of  
the retainer...

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(Continued...)

A. I recall no...

MR. SCHABAS: Sorry, Your Honour.

THE WITNESS: ...no discussion of this at all.

MR. SCHABAS: Just a minute. I object to the question. It's a leading question. He's cross-examining the witness. The witness gave his answer in the context of another document. He's given his answer now and my friend is cross-examining him on it.

THE COURT: He has his answer, in any event.

MR. BERNSTEIN: I'm wondering if we can take a look at Document 16759. Document 16759.

MR. SCHABAS: If I could just have a moment, Your Honour.

MR. BERNSTEIN: The translation is at GoTo Page 4.

THE WITNESS: I touched the mouse and it...

MR. SCHABAS: Your Honour, it's been disclosed. There's no question about that. I don't know where this is going and I'm just mindful of and concerned about putting a document in front of somebody as a form of leading.

THE COURT: We've been through that before.

MR. BERNSTEIN: This is -- I just want to show him the document and I'll ask a question.

MR. BERNSTEIN: Q. This is a document which is from Mr. Pfeleiderer.

A. Yes.

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(Continued...)

Q. To a number of people at MBB and we've gone through the designations on the page there.

MR. SCHABAS: Well...

MR. BERNSTEIN: I'm not going to go through them with him. I just want to ask him a question.

MR. BERNSTEIN: Q. The first paragraph of this document says -- referring -- it's dated -- it's dated November 1984 in the first paragraph of the letter -- do we have the English, the translation? Let's go to the translation, which is at GoTo Page 4. The first paragraph of the letter says,

"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."

Do you see that there?

A. Yes.

Q. Can you help us...

A. Can I see the German again? Yes.

Q. I know that this is not a letter addressed on its face to you. Can you assist the court from your perspective with respect to this reference to you and Mr. Moores looking after the activities, after the sentence "contributed *inter alia* to winning the Canadian helicopter bid"?

THE COURT: Well...

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MR. SCHABAS: Your Honour...

THE COURT: Why don't you ask him what his activities were rather than asking him to comment about a statement in a document which -- in relation to which he is neither addressee nor originator.

MR. BERNSTEIN: Q. What were your activities? You've told us about some of them.

A. Yes. I told you about DeHavilland. That was my main activities. In that and others in Canada, but not to MBB.

THE COURT: Well, tell us about the Canadian helicopter bid, sir, and what your activities were?

THE WITNESS: Other than I -- other than I introduced Mr. Pfleiderer to Mr. Moores, nothing.

MR. BERNSTEIN: Q. Well, you've already told us about IAL and it...

A. Hmm?

MR. SCHABAS: Well, Your Honour. Is -- he's cross-examining his witness? He's given the same answer repeatedly.

MR. BERNSTEIN: Well, I'm laying the evidentiary foundation for that, sir.

MR. SCHABAS: Well, you can't do that by cross-examining, with respect. We've been over this ground many, many times. I've lost count how many times since we've asked him what he did.

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MR. BERNSTEIN: Let's go to document...

THE COURT: I don't disagree with the submission made by...

MR. BERNSTEIN: Let's go to...

THE COURT: ...counsel.

MR. BERNSTEIN: ...Document 17089. Right? And the German is at GoTo Page 2, and the English translation starts at -- what? The translation is 17090. So the German document is 17089 and the translation is 17090. This is a letter -- okay. This is obtained from Kaufering. Mr. Schreiber's offices. And we will prove that as part that -- independently and as part of a larger application. Okay? So, Mr. Schabas?

MR. SCHABAS: Yes. I have no problem with it being put to him, Your Honour. But again, we're dealing with the same issue that he's putting something in front of him from somebody else, an MBB document, and asking questions about it, and I think my friend really should ask him the questions first before putting the document to him.

MR. BERNSTEIN: Well, I'm putting a document which I've indicated it's the Crown's intention to prove was obtain from -- in his possession. I want to ask him about it.

THE COURT: Well, you can ask him, I suppose, subject to your approving, that if it was in possession and why it was in his possession,



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(Continued...)

and stuff like that. You could seize stuff at my residence if -- we referred to *War and Peace* the other day -- and asked me what that was all about and I couldn't tell you, but still it is my possession.

MR. BERNSTEIN: Well, yes, but there is the Supreme Court of Canada case called *Caccamo* which says that -- which establishes a legal doctrine of documents in possession.

THE COURT: Yes.

MR. BERNSTEIN: And at the appropriate time in the appropriate way, Your Honour, we will make submissions that certain inferences can be drawn from the fact of possession. And indeed, at a Preliminary Inquiry, as I understand it, the law requires you to draw those inferences and precludes you from drawing any other inferences. And so...

THE COURT: No, no. I fully and completely disagree with you.

MR. BERNSTEIN: Well...

THE COURT: To the extent -- you state -- you state the proposition much too broadly, Mr. Bernstein. That is not the law in relation to Preliminary Hearings.

MR. BERNSTEIN: And I don't -- and, Your Honour, I understand the law to be that the Crown's case is to be taken at its highest.

THE COURT: Yes. I have no problem with that.

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MR. BERNSTEIN: And in Mr. Justice Morden, in his sitting in the Supreme Court of Ontario in the *Dredging [ph]* case, says that inferences favorable to the Crown should be drawn in the Crown's favour at a Preliminary Inquiry.

THE COURT: That depends on the nature of the evidence.

MR. BERNSTEIN: Of course, but my point here is just -- Your Honour, Mr. Schreiber may say "I don't recall this document," and there may be certain inferences which can be drawn from that answer.

THE COURT: All right. Well, rather than going on *ad infinitum* about what he may or may not say, what is the first question you wish to put him? I take it we have your undertaking to begin with -- the Crown's undertaking -- that there will be formal proof that these documents were found where they say would be found, and I'm proceeding on that basis. Otherwise, I'm going to tell you to prove that first, but assuming I have your undertaking that there will be proof of that, I wouldn't want to be unfair to the witness to make an assertion to him that will never be proven. That would be unfair.

MR. BERNSTEIN: Well, Your Honour, I'd like to make submissions on this in the absence of the witness. I'm sorry.

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THE COURT: All right. Would you step outside then, Mr. Schreiber, please, for the moment?

.... [WITNESS EXITS]

THE COURT: Now, what's wrong with my seeking your assurance that you will be making proof of something that you say you will be making proof of? You say you will be calling evidence?

MR. BERNSTEIN: I'd just like to sort of deal with this, Your Honour. And in my respectful submission, the Crown finds itself in the unenviable position of having to prove something which we thought there was an admission in connection with. And, I now find myself in the propounding unenviable situation a year into the Preliminary Inquiry being -- showing a witness documents which I had understood that the defence had admitted came from where we say they came from. Now, that's a pretty standard type of admission at a Preliminary Inquiry that the defence accepts for the purpose of the Preliminary Inquiry that the documents came....

THE COURT: Yes, fine, but did they make that admission?

MR. BERNSTEIN: Well...

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THE COURT: I mean, what's fair at a Prelim and what's normally done is irrelevant to me at the moment. Was there an admission or were you under the misapprehension that there was one.

MR. BERNSTEIN: And that's right, so there either was -- when Your Honour asks me will I prove it, I'm only going to prove it assuming that there hasn't been an admission, but assuming that there hasn't been an admission then the issue becomes -- well, I simply find myself in the unenviable situation of putting documents to a witness which I am led to believe were obtained from him, and having him adopt a position respecting these documents.

THE COURT: I have no problem with you doing that, I'm just saying, can I have your undertaking that you're going to be proving it? Either by admission or by *vive voce* evidence. One or the other -- one or t'other. If you say yes, that's fine; if you say no, then hold on.

MR. BERNSTEIN: No. Well, what I'd like to -- I'll just be careful about what I say. And Mr. Shaw will be handling this part of the proof, so Mr. Shaw...

THE COURT: Well, let's hear from Mr. Shaw then...

MR. SHAW: I intend to continue to canvass with Mr. Schabas what exactly he meant by continuity when we discussed it if he didn't

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mean continuity, but as a fail safe to those discussions, we intend to prove the location by certificate as provided for in the applicable legislation.

THE COURT: And so, you're undertaking to make proof of the origin of the documents, right?

MR. SHAW: With respect to the documents from Kaufering, yes. We made a list to my friend, and a list to those certificates and we intend to go through them.

THE COURT: You intend to make proof of that either by admission or by -- by formal proof. When I say *vive voce*, I'm sorry, I'm probably -- there are exceptions to proving documents.

MR. SHAW: I very much hope that these -- my friend did not admit that these came from some field or in a milk carton found under a park bench in Germany. I very much hope that we can reasonably discuss this.

THE COURT: Well, shouldn't we get this out of the way now, and because we're wasting time on it, and I'd just like the assurance before assertions are made to a witness, that it will either be admitted or it will be proven. I'm not saying you're going to be successful on the proof, but I'm saying at least you're saying to me that you will attempt...

MR. SHAW: We will attempt to prove it, yes.

THE COURT: ...to prove it.

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MR. SHAW: We will attempt to prove the origin of the document.

THE COURT: And you have some reasonable expectation that that attempt will be successful. Right?

MR. SHAW: I do very much believe so, yes.

THE COURT: Right. All right.

MR. SHAW: It's a fairly mechanical exercise.

THE COURT: Fine. And I don't -- I'm not here to put spokes in anybody's wheels. I'm just attempting to be a neutral arbiter in relation to this situation. Wouldn't it be better to -- and I thought we were having this out last week or sometime previously with Mr. Schabas that this was going to be worked out.

MR. SCHABAS: Yes, Your Honour, and Mr. Shaw and I have had discussions, and we've gone over transcripts and looked at correspondence and there were certain admissions made but in my or our review of it, we did not go so far as to make an admission that all documents came from the specific locations that my friends are asserting. It's not without -- it lacks some clarity. I acknowledge that.

MR. SHAW: Well, Mr. Schabas could simply provide the clarity, like, rather than saying it lacks clarity.

MR. SCHABAS: Well, to the extent that one could infer that I admitted that the locations specified in the item codes are accurate, in

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my submission that was in the context of what's in -- I think it's Exhibit C, which is a three digit item code. Yes, they got it from -- through a letter of request, but I did not go on and make admissions that things came from every different location within Germany. I can see that I made that -- I admitted that much a year ago, but I did not admit beyond that. As I said repeatedly, I was trying to be very careful about the admissions I was making. I admitted a lot of documents for their authenticity only as opposed to that they were proof of whatever they said. We got into some discussion about what that meant, and in that context there was some discussion about whether I admitted that in one case, that a certain document came from MBB and I made a specific admission in that one case that it did. I was very explicit on that, so I'm not prepared at this time unless -- unless there's a finding that I made an admission that goes much further. I'm not prepared at this time to admit that things came -- that things that may have come into the RCMP's possession through a letter of request from Germany came from specific locations within Germany.

THE COURT: All right. Well, that's clear enough, so you're going to have to prove it.

MR. SHAW: Or...

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THE COURT: I'm not going to be the arbiter of what the agreement was.

MR. SHAW: ...convince you that there was...

MR. SCHABAS: Right.

MR. SHAW: No, I understand. Or convince you that there was an admission, but we'll do either way.

THE COURT: Well, even if you could convince me that there was an admission.

MR. SHAW: Yes.

THE COURT: If the admission is withdrawn, I don't see that that admission forever binds the defence, and I would be loathed to say there was an admission in relation to what is a morass of documentary material, and to hold someone to that admission when the admission was not made to the court, but is a private agreement between the parties, I'm not going to be the arbiter of that. I'm just telling you. I'm simply going to ask in those circumstances, absent the admission -- it's too bad. If you need time and if you need adjournments for that purpose, it's perfectly understandable because of the misunderstanding, but you're going to have to prove it.

MR. SHAW: Well, there is a Criminal Code provision respecting admissions and we were...

THE COURT: I'm aware of it.

MR. SHAW: ...operating under that...



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THE COURT: I'm aware of that, but I haven't received any admissions. I haven't been provided with admissions. I want a clear, unequivocal admission, and in the absence of that in relation to a point that's important that needs to be proven, you're going to have to prove it.

MR. SHAW: Thank you.

MR. BERNSTEIN: Your Honour, I'd like at this time to move to have Mr. Schreiber declared hostile, and to afford me an opportunity to cross-examine Mr. Schreiber on a variety of points following your judgment in the event that we succeed in that application.

At the first part of the *voir dire* to be held in connection with this application, the Crown intends on proving that certain documents which have been an issue, remain to some extent apparently an issue at this Preliminary Inquiry. In particular, I'll call them the Kaufering documents, were obtained pursuant to a mutual legal assistance request by the RCMP from the German government who in turn obtained them from Mr. Schreiber's offices.

I use the term "offices" in a general sense. There will be evidence on this. So, the reason for leading this evidence is, in my respectful submission, self-evident. We have a situation where, notwithstanding the receipt

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of a variety of different pieces of correspondence and documents, which are material to these proceedings, Mr. Schreiber has no recollection.

Now, the application, the evidence that Your Honour will hear on this *voir dire* will not be limited to simply this, Mr. Schreiber's -- Your Honour, the Crown will in the end ask Your Honour to consider Mr. Schreiber's demeanor, his lack of recollection, his impartiality as between the Crown and the defendants and a variety of other things. But one of the things we will ask the court to consider is simply his failure to recall important pieces of evidence in the context of where the documents on their face say he received them, or say he sent them. And which were found, indeed, at his offices.

And so, the first thing we'd like to do is prove that. While we prove it as part of an application to have Mr. Schreiber declared hostile or adverse, we'd also ask -- and we'll see what Mr. Schabas' view of this is, that this evidence be considered on the Preliminary Inquiry proper, which is to say...

THE COURT: You can make an application at the conclusion of the proceeding for that purpose.

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MR. BERNSTEIN: Mr. Shaw will be handling this part of the matter, the leading of the Kaufering evidence, if I can call it that.

THE COURT: Just so we're quite clear, under what Section of the Canada Evidence Act are you bringing your application?

MR. SHAW: We're proceeding under the *Mutual Legal Assistance Act*...

THE COURT: No, no.

MR. SHAW: I'm sorry.

THE COURT: This is an application to have the...

MR. SHAW: Oh, I'm sorry.

THE COURT: ...witness declared adverse.

MR. BERNSTEIN: No, I'm...

THE COURT: This is an application under which section of the *Canada Evidence Act*?

MR. BERNSTEIN: Under the common law. Under the common law, it's an application to have Mr. Schreiber declared hostile.

THE COURT: Not an application under the *Canada Evidence Act*?

MR. BERNSTEIN: No. The law under Section 9(1) of the *Canada Evidence Act* may very well inform an appreciation of this issue, but technically speaking, the application is of hostility under the common law to allow the Crown to cross-exam this witness in all the circumstances of this very, very unusual examination to date.

THE COURT: Thank you.

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MR. BERNSTEIN: So, I guess we can begin with the...

THE COURT: We'll begin at two o'clock...

MR. BERNSTEIN: ...*Mutual Legal Assistance Act*.

THE COURT: We'll begin at two o'clock this afternoon. Okay?

MR. BERNSTEIN: All rise, please.

THE COURT: Any comments before we break, Mr. Schabas?

MR. SCHABAS: No, Your Honour.

THE COURT: I take it this doesn't take you by surprise. Thank you. Two o'clock.

COURT REGISTRAR: Court is now in recess.

R E C E S S

(12:45 p.m.)

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

(2:00 p.m.)

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

MR. BERNSTEIN: Your Honour, good afternoon. Your Honour, I've had an opportunity over the luncheon break to consider the Crown's position respecting Mr. Schreiber's testimony, and our intention to apply to have Mr. Schreiber considered hostile. And after some reflection and an opportunity to review my notes, I've come to the conclusion, Your Honour, that it would be better if I asked

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questions in a few other areas before I brought my application. The reason why I say that is, I think that the court would have a slightly better evidentiary basis to assess and determine that issue. I don't -- there are just a few other areas, which his answers would be relevant to, so if it's...

THE COURT: It's your case, Mr. Bernstein. Whatever you wish.

MR. BERNSTEIN: But we have reached a sort of point in the proceedings where I think it was sort of clear -- certainly, to me -- that the Kaufering documents and their admissibility was becoming an issue and needed to be addressed. I understand that Mr. Shaw is prepared, if the court wishes, to begin to address the issue of the admissibility of those documents so that we can proceed in a more orderly fashion with the remainder of Mr. Schreiber's examination, and this issue won't just continually rear its head.

So, if the court wishes, we can and are prepared to begin to deal with that now.

THE COURT: All right. Do you want the witness -- do you need Mr. Schreiber today or is it likely he's going to -- is this going to occupy us for the rest of the day? Just out of...

MR. BERNSTEIN: I'm in Mr. Shaw's long hands.

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MR. SHAW: I don't -- I don't -- I don't know. I would ask that Mr. Schreiber remain for the day...

THE COURT: All right.

MR. SHAW: ...depending on how we advance. Your Honour, I'd propose -- I'm going to hand up a number of items that we've exhibits, and I propose that they be made exhibits on the *voir dire* as to the... Sorry. As to -- as to -- proposed they be made exhibits in this process respecting the origin of the documents by certificate.

To do that, I'm going to hand to my friend two volumes into the court. Two volumes.

THE COURT: Just so you know where I'm at, I think I've done one case in the last 15 years involving -- and that was 15 years ago. It was just when that legislation I think.... so, I assume I know nothing or very little about the legislation involving the mutual legal assistance treaty. It had to do with a -- I remember a driver's license from California or something like that. In any event....

MR. SHAW: And I don't mean to preclude you using other elements of your judicial chest in terms of business records and necessity and reliability but I do want to make a primary argument with respect to the operation of the act.

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THE COURT: Yeah.

MR. SHAW: And I want to just -- because I think it's important for the context to understand where we're coming from. I want to just return and I've heard, obviously, what the court said earlier before the break to this issue of the item codes, and I would like to -- just so the court has the context, indicate why we are taken aback by, quite frankly, what we see as a change in position. I'm not going to belabor it, but I do want the court to understand where we're coming from and why, in particular, we're now proceeding in this matter at this stage.

I'd like to start with bringing up on the screen, Document 36776, a letter to -- a letter to Mr. Schabas, dated...

THE COURT: Could I just ask you to be -- sorry. There's a document that needs my immediate attention, and I.... Sorry. Go ahead, please.

MR. SHAW: This is a letter to Mr. Schabas, and it explained the manner in which -- it won't be on your data base because it's part of the exchange between counsel. We put it on the court database those documents which would indicate to Eurocopter we might well be producing in the course of the Preliminary Hearing. We did not, of course, intend to produce this one, but have to now. )

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If you go to -- I'll just let you look at the...

THE COURT: You're going to have blow it up a bit. I'm sorry.

MR. SHAW: We're going to blow it up, yeah.

THE COURT: That's fine. What do you refer me to, specifically?

MR. SHAW: I would like to -- I won't belabor it, but this is a detailed sort of report as to how things are being disclosed through SuperTEXT. And there is an initial explanation at Goto Page 5, which we'll take you to. At the paragraph, "For the purpose of background knowledge, the following information regarding our exhibit handling system will be helpful."

If we go to page 6. When exhibits are seized in relation to a file and an exhibit number is assigned, all exhibits for that file will bear that exhibit number. As exhibits are seized, they are assigned item numbers. An item number could be assigned to all the materials seized from a particular site or to a specific location within that site.

The word "location" in our respectful submission is important. The signing of item numbers is left to the discretion of the investigator that they are effectively



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utilized in a chronological manner. The investigator may also sign sub-locators within each item number.

Finally, each page will generally be assigned a special page number within each item number. We refer to this as the RCMP page serial number. All this information is captured on an Exhibit Report, which provides an inventory of the materials seized.

A total of three different exhibit numbers were used in this file. That sounds a bit abstract, but it's an indication that the item code is a detailed listing of locations and sub-locations. To make it particular to this particular batch of documents from Germany, we're going to take you to -- again on our database -- Document 22170.

I can indicate to you that this was disclosed in that stage 2. I'll just get you the date for that. It's December 20<sup>th</sup>, 2002, the day of the letter, and you can see here how under Item No. there is a breakdown, 218, being the general German code, if I can refer to that. And then you'll see there is a second series of digits, a 0-1, a 0-2, and the like, and then by way of a further breakdown there are page numbers which are assigned to it. And if I could just scroll down, you'll see a number

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of documents are turned over by Mr. Pelossi, and you'll see there is a diary of Mr. Schreiber and a telephone directory. If you go onto the next page -- sorry, next two pages. Goto Page 4 of that document. There is again a further break down, giving the locations where each matter was seized from. So, with respect to the diary you can see "located in Schrieber's residence". And then again, the Kaufering address that Mr. Schreiber has already testified to 0-7, 0-8 again, 0-9. As well, specifying the Kaufering address.

Now, when we filed Exhibit C, which I asked Madam Registrar to provide to me.... There was a breakdown given -- and I'll just hand it up to the court -- for the first three digits, and that was in a very particular context, and there was a transcript of that, the introduction respecting Exhibit C. If I could just read out the passage that I intend to rely on -- I'm just trying to locate an easy copy for the court.

THE COURT: My transcripts are all upstairs.

MR. SHAW: I have here -- and this is the transcript -- there are two transcripts for that day, which is September 9<sup>th</sup>, 2003, and this is the first. The second is the beginning of Mr. Wittholz's evidence. I'll just hand that up.

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You'll see the paragraph starting, "Amongst the fields the court has..." -- and this is important with respect to the topic I'm just going to start.

"There is an item code in the fields on the tab marked Exhibit, in the form that the court has. And because there is an admission as to where the documents come from, it is necessary to decode the numeric Item Code and relate it back to a particular location. Accordingly, Exhibit C."

I take it from my friend's current position that was that with respect to, notwithstanding, being given down the five digit breakdown and notwithstanding the disclosure letter to him relating to the further breakdown of the code, that he is now taking the position that he was limited by Exhibit C, and has only admitted that they are in terms of -- in terms of them having come from Germany.

I say again -- this is at page 18 now.

"Secondly, continuity of the exhibits: By that, we mean from the seized location through to the public screen in this courtroom is not an issue, and as set out in the seized location field found in the

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C.B. scanned documents form under the exhibit tab. That field is an accurate representation of where the item was taken from as further specified by the Item Code field, the key to which has been made Exhibit C."

So it's very clear, in my submission, just with respect to where we are today that Exhibit C was meant to be a key and that they had further elaboration with respect to the further breakdown. The only other passage -- I don't want to belabor what counsel said to each other because, apparently, in the circumstances we are in now we have some different footing, but with respect to the transcript of September 16<sup>th</sup> -- and this is a very short passage. I'll just read it out.

THE COURT: What page, sorry?

MR. SHAW: It's September 16<sup>th</sup>. This is another day. I don't have a ready copy to hand up to the court.

THE COURT: Oh, it's another one. All right. Thank you.

MR. SHAW: I'm sorry. It's at page 3. You may recall that there was a very detailed admission with respect to copies, and the passage after this detailed admission with respect to copies is made, I then say

"That is the extent of the admission that

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Mr. Schabas is prepared to make, respecting copies. Nothing in what I've just said out alters the existing admission that Mr. Schabas has made with respect to all documents being properly scanned and accurately scanned, and the locations as specified in the item codes, being accurate for the purpose of this Preliminary Hearing.

THE COURT: Do you agree with all that so far, Mr. Schabas?

MR. SCHABAS: Yes, I do, Your Honour, and just with the caveat that these admissions are being made solely for the purpose of this Preliminary Inquiry...

THE COURT: Absolutely.

MR. SCHABAS: ...and for no other purpose."

We find it, at this side of the room, curious that these are properly scanned and accurately scanned and, yet, at the same time their point of origin is no longer part of a continuity admission. We had always understood continuity means just that, that they mean from where they come from to where they arrive, but if Mr. Schabas wishes to continue to object as I understand he is with respect, is a fairly mechanical task, we're prepared to do so. The first avenue to do that is the *Mutual Legal Assistance in Criminal Matters*

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Act. I'm going to hand up a copy of the provisions I wish to take the court to.

MR. SCHABAS: I'm sorry, what did you pass up?

MR. SHAW: I passed up a copy of the *Mutual Legal Assistance Act*, and the part that refers to the admissibility of foreign documents.

MR. SCHABAS: Sections 36 to 39?

MR. SHAW: That's correct.

THE COURT: Does Tremere's have -- do you know...

MR. SHAW: Tremere's does not have it. You have to go to...

THE COURT: Go to Martin's?

MR. SHAW: *Martin's Related Criminal Statutes...*

THE COURT: Related statutes. Yes.

MR. SHAW: And that's from whence that copy comes. You'll see here that the issue of certification is dealt with and you'll see in Section 36,

"36(1) In a proceeding with respect to which Parliament has jurisdiction, a record or a copy of the record and any affidavit, certificate or other statement pertaining to the record made by a person who has custody or knowledge of the record, sent to the Minister by a state or entity in accordance with a Canadian request, is not inadmissible in evidence by reason only that a statement contained in the record, copy, affidavit, certificate or other statement is hearsay or a statement of opinion."

So, a liberal opening to the provision where there is a certificate respecting a particular

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response to a *Mutual Legal Assistance* request and I understood before the break that Mr. Schabas now admits -- I don't think we're going to get a change in that -- that these were received from Germany pursuant to a request. And that even if the certificate were hearsay or opinion, it would not render the document inadmissible.

Now, apart from the issue of admissibility, the probative value, which is the second step in assessing any particular piece of evidence is found in 36(2),

"For the purpose of determining the probative value of a record or a copy of a record admitted in evidence under this Act, the trier of fact may examine the record or copy, receive evidence orally or by affidavit, or by a certificate or other statement pertaining to the record in which a person attests that the certificate or statement is made in conformity with the laws that apply to a state or entity, whether or not the certificate or statement is in the form of an affidavit attested to before an official of the state or entity, including evidence as to the circumstances in which the information contained in the record or copy was written, stored or reproduced, and draw any reasonable inference from the form or content of the record or copy."

THE COURT: Are we reading from the same photocopy? Maybe I just missed...

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MR. SHAW: I should have -- 36(2)?

THE COURT: Yeah.

MR. SHAW: I've got the...

THE COURT: Are you...

MR. SHAW: I have it on my screen. I'm sorry.  
Is there a difference in language?

THE COURT: Well, would you read it again,  
please? I'm sorry, I thought -- I'm probably  
wrong, but just read it for me again. For the  
purpose of...

MR. SHAW: I'm happy to. The version I have  
and will determine what the --

"For the purpose of determining the  
probative value of a record or a copy of a  
record admitted in evidence under this  
Act, the trier of fact may examine the  
record or copy, receive evidence orally or  
by affidavit, or by a certificate..."

Am I still with the court?

THE COURT: Yes, go ahead. Keep going.

MR. SHAW: "...or other statement pertaining  
to the record in which a person attests that  
the certificate or statement is made in  
conformity with the laws that apply to a state  
or entity, whether or not the certificate..."

THE COURT: It's the "whether or not". I don't  
have that.

MR. SHAW: I'm sorry.

MR. SCHABAS: I don't have that either.

THE COURT: That's where...

MR. SHAW: That's where we part company.



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THE COURT: You threw me as I was trying to find the "Whether or not". So, we're obviously not on the same page.

MR. SHAW: I'm sorry. I have.... Maybe I would be assisted just by retrieving the old-fashioned copies.

THE COURT: I've just put a dot there where you start your "whether or not".

MR. SHAW: Yes. Thank you. Thank you.

THE COURT: Mr. Schabas, have you got the "whether or...?"

MR. SCHABAS: I've got the "including". I don't have this version either. I've got Martin's Criminal Statutes '03-04. There may be some more recent version.

MR. SHAW: These are all the annotations that I have. I will -- I will -- for the purpose of now, I will continue on with the language you have in here, and I'll endeavour to mark the discrepancy later.

THE COURT: Are you saying that yours is more up to date than this one?

MR. SHAW: It gives the same actual date -- same change that you have, so I don't understand the discrepancy and I'm going to -- I'll endeavour to clarify that for you, but "including evidence as to the circumstances in which the information contained in the record or copy was written, stored or reproduced, and draw any reasonable inference from the form or content of the record...".

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When in doubt, we'll rely on the Queen's Printer's version.

"...including evidence as to the circumstances in which the information contained in the record or copy was written, stored or reproduced, and draw any reasonable inference from the form or content of the record or copy."

There was a further paragraph relating to foreign things that tracks the language in 36(1) relating to a thing made by a person or state or entity.

"...a person in a state or entity as to the identity and possession of the thing from the time it was obtained until its sending to a competent authority in Canada by the state or entity in accordance with a Canadian request, are not inadmissible in evidence by reason only that the affidavit, certificate or other statement contains hearsay or a statement of opinion."

So in terms of a thing being within the foreign state, it is possible to rely on hearsay or opinion evidence....

THE COURT: It's a bit of a convoluted way of saying something, but I suppose that the purpose for that is to be able to say, "Well, they may be inadmissible for some other reason, but they're not inadmissible by reason of this particular..."

MR. SHAW: Of hearsay, and so -- and so it's no objection to say well, what's on the face -- in my submission what's in the face of the

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certificate as to the origin in the foreign country is hearsay. It's not inadmissible.

There is a testing of probative weight in 36(2), but is not inadmissible by virtue of...

THE COURT: That...

MR. SHAW: ...those two provisions: 36(1) and 37. And then there is a presumption of authenticity in the absence of evidence to the contrary in 38(1).

"An affidavit, certificate or other statement mentioned in section 36 or 37 is, in the absence of evidence to the contrary, proof of the statements contained therein without proof of the signature or official character of the person appearing to have signed the affidavit, certificate or other statement."

And so, the way the legislation is structured, it says it is not admissible because it's hearsay as to where it came from within the foreign country and as to how it was stored or retrieved. And then there is a presumption absent evidence to the contrary, under section 38.

There are other cases that stand for this proposition, but one I'm particularly familiar with is the case of the *Russian Federation & Pokidyshev*, which Mr. Bernstein and I argued in another life. It relates to the proper interpretation to be given to the act.

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There was an issue in that case -- just to give you the background -- with respect to the nature of the administrative arrangement between Canada and Russia with respect to the seizure of documents that may not have been relevant in the Canadian sense. And the court, in looking at the statutory scheme says, well, what is the purpose?

If you go to page 5 of the printout, Your Honour, "The arguments advanced on appeal," this is paragraph 14,

"...turn largely on the interpretation of various sections of the Act. The process of statutory interpretation requires that the court look to the words of the statute, the scheme of the statute as a whole, and the purpose and intention of Parliament when it passed the Act:..."

Then it cites *Gladue*.

[15] The purpose of this Act is clear. By 1988, when the Act was proclaimed, international crime had become, a major problem. Criminals, especially sophisticated ones, used the limits imposed on police and prosecutors by national borders to facilitate their criminal schemes and avoid detection."

Then there are a number of cases cited.

"In 1988, Canada had international obligations under various treaties and conventions to assist other states in the

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investigation and detection of crime, but had no domestic legislation in place to provide the necessary assistance and cooperation. The Act filled that void and must be read with that purpose..."

And so, this is a technical argument with respect to certifications, but based on a very broad provision and one that has to be interpreted so as to fill voids so we're not left with a technical problem with respect to admissions by way of certificate. Certainly, the scheme is aimed at facilitating that.

Now, I did want to give the court -- I'm going to take you to these certificates, but I did want to give the court some context of Mr. Schabas's interests and notice of them, and I wanted to, in particular, hand up -- this is in the context of debating what would be admitted and what would be in the court database respecting documents we were going to be producing, which narrowed it down, I think, to the 725 or some odd that we did. I'm going to add -- I've got a copy for my friends, his letter of August 11<sup>th</sup>, 2003.

THE COURT: Yes, go ahead, Mr. Shaw.

MR. SHAW: Thank you. Your Honour, I just want to close the loop so to speak, and apologize to the court for not providing the Queen's Printer version as one always should, and I'm going to walk over to my friend and

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just show him Volume 1 of 1999 Statutes of Canada, Regulated -- being 47 and 48 Elizabeth II'd, and show him within Chapter 18 of that Act whether or not the certificate...

MR. SCHABAS: Just so we can agree on this, at least, Your Honour...

THE COURT: The "whether" is in.

MR. SHAW: We're happy to have a representative of Mr. Greenspan's firm who I'm sure will be able to bring this to the editor's attention.

MR. SCHABAS: I mean, far be it for me to dispute what that says. It changes a number of words on that latter part of the section, but...

MR. SHAW: I'm going to -- I'll provide copies...

MR. SCHABAS: Great.

THE COURT: For the moment, I don't need to see that. I've got enough stuff on my desk.

MR. SHAW: Returning to the August 11<sup>th</sup> letter, you'll see there is a question for Mr. Schabas respecting at page 3 of that letter, the certificates of authenticity. I take you from our database to document -- there's a request to Document 37633.

If you go to the -- you'll see, I'll just let you read through that. That's an explanation with respect to the pairing up of the certificates and the documents that are at

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issue. If you turn the page, I'll be taking you -- with one exception I'll come back to, but I'll be taking you in particular to these certificates, 14 -- if you go to page 2 or 3 of that list -- 14633. And if you go to the bottom of that same column, Certificate 17119.

THE COURT: Where do you read that from? Oh, okay. I see.

MR. SHAW: At the -- at the very end.

THE COURT: The very first one. 17119.

MR. SHAW: Thank you. Now, to facilitate the task at hand, I have prepared -- in relation to the two volumes I want to go to next -- a listing of pairings and descriptions. In keeping in mind the provisions, I wanted to take the court to the tabs and to look at them both where there is an English translation and a German version, to look at them both so the court can see how they've been pared up, and they match up with the item code key that you were previously brought to in Document 22170.

I am going to -- just for the purposes of avoiding a translation issue at the outset -- go to Tab 2 of German Document No. 3 Vol. 1.

THE COURT: Tab 3?

MR. SHAW: Sorry. Tab 2. And you'll see and I'll explain -- there are actually two Tab 2s. There is one behind the other, and one will be the German and the second will be the translation, which is often attached to the

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German. And you'll see, if you go to just under Tab 2 there's a header page, called SuperTEXT, and then the second page you'll see a court -- like a seal. And I'll get to the mention of the court official, but there is a seal posed and in German a reference number at the top. To simplify everyone's life, you can then flip to the second Tab 2, which is the English.... This -- back in September of last year, I believe, this was part of the court database and so you can, actually.... It's in the court database that we've been functioning on since September of last year. If you were to type into your machine that number, which is Number 14633, you would get the English version of it, which is a certification and an agreement of these copies with the originals from -- and you'll then see A/7-91, ABS Erika. You've heard the name Erika before respecting Erika Lutz, Mr. Schreiber's secretary. Telephone directory Schreiber, confiscated on the date as given, '95-10-05. In the archives of Schreiber's office building in Kaufering. K-A-U-F-E-R-I-N-G. And then, Raiffeisenstr, R-A-I-F-F-E-I-S-E-N-S-T-R -- I sense the translator in the background wincing, but I did my best. 27. Is hereby certified. There is a notation respecting the public prosecutor's office in Augsburg and the date, and then it is signed by the court assistant who is described as a clerk of the court.



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Then you can see a sealing that attends upon that certification. This is in relation to -- if you go back to the first tab, to -- in relation to the accounting that Ms. Lutz and it relates to the payment of \$50,000 in October and -- sorry, May and October 1988. Two \$50,000 payments from IAL to Bitucan. I want to bring so you can see just what's the precise wording on the certificate -- sorry, in the schedule. You'll see that there is an initial....

I don't want to repeat the evidence that we've had, but there are two \$50,000 transfers that are set out, and the point of my submissions are with respect to this being in the possession of Mr. Schreiber in Kaufering. And you'll see the first one, which is actually \$49,990....

THE COURT: I see them both.

MR. SHAW: Yes, you see them both. I'm not going to belabor those two \$49,990 transfers to Switzerland is the notation, and they are present there.

Respecting Tab 3, you'll see the certificate. It's the same certificate respecting this document and if you go to Tab 4, it's got the -- sorry. I'm sorry.

THE COURT: The other tab...

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MR. SHAW: A copy of Tab 3 is up here. If you go to Tab 3. Thank you. Tab 3. In the first Tab 3, you'll see the initial German certificate with a seal and then you'll see an invoice. Sorry, it's taken so long to bring you to it. You'll see an invoice for GCI. This is the first Tab 3, and this is a Bitucan invoice. Sorry. November 8.

THE COURT: In the first Tab 3 I have the translation and in the second Tab 3 I have...

MR. SHAW: Right. You should have a cheque.

THE COURT: I don't, actually.

MR. SHAW: If I might approach?

THE COURT: Yes, please. That's the English.

MR. SHAW: That's right.

THE COURT: But there's no equivalent to...

MR. SHAW: Well, we don't need the -- the document seized was in English.

THE COURT: Oh, okay. Fine.

MR. SHAW: I'll clarify it. There will be documents that are in English that will not have translations. Some German documents which won't have English translations. There's a.... That's why I have to take you, in the absence of an admission, through each of these documents, and the significant portion with respect of my submissions is that these are, again, on the face of the certificate from ABS Erika, telephone directory Schreiber, confiscated on 1995-10-05

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in the archives of Schreiber's office building, Kaufering.

THE COURT: Does this purport to be a cheque that was negotiated? Because I see you've just given me the front of the cheque, or at least the...

MR. SHAW: That was what was remitted to us by the German authorities.

THE COURT: We don't know whether this is a negotiated cheque or not. It's just a cheque.

MR. SHAW: I have a cheque to...

THE COURT: Frank Moores.

MR. SHAW: And the document speaks for itself but there is this cheque respecting services rendered by Moores on your behalf. Bitucan, you know the association of that company with Mr. Schreiber and it's made its way across the Atlantic, and on the face of the certificate was seized in his offices for a total of \$90,000.

THE COURT: Well, I repeat my question. Is it the...

MR. SHAW: Yes.

THE COURT: Am I supposed to be looking -- what am I supposed to be looking at that for? For the invoice wording or for the cheque? Is it relevant to ask if that is a cheque that was never negotiated, because we don't have the back of the cheque? That may be some...

MR. SHAW: Well, it's the purpose of showing that Mr. Schreiber in Germany has kept a

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record of these cheques and for demonstrating that he has in his possession a document indicating payment between Mr. Moores and his company, Bitucan. I'm hopeful that we will make, ultimately, further submissions but the first step is to get them into Mr. Schreiber's hands, and that is why I'm here. Now...

THE COURT: My only reason for commenting is that it doesn't appear to be completed. The German authorities send only a copy of one side of the cheque when the other might -- might be very relevant.

MR. SHAW: I'm not sure they had -- I'm not sure that they had both sides. I can only attest that this is, from the face of the certificate, an accurate version of what they have.

THE COURT: For what it's worth. For what it's worth.

MR. SHAW: Now, respecting Tab 4 -- I'm sorry. I should specify, with respect to Tab 2, the underlying document was 14551, and that's in the court database. Then with respect to Tab 3, the underlying document is 14555.

THE COURT: Which is not an exhibit, yet?

MR. SHAW: That's correct. I'm trying to proceed in a systematic way. There may be documents that Mr. Schreiber has already been referred to but I'd like to in an order, get them all in with respect to them coming from

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Kaufering. And then, we could hopscotch amongst those that have been put to the witness already, but I wanted to free up the court from the technical issues respecting origin and certificates and then be able to proceed with respect to these documents.

Now, if I could go now to Tab 4 -- if you go to the first Tab 4 it will have the German certificate. It's the same one. The original is Document 14632 on your machine and the translation is 14633. You will see with respect to this cheque, the same invoicing style that we had respecting the Bitucan matter. This is a bill to Bitucan and a payment on the face of the cheque or a cheque issued respecting Government Consultants International in the amount of a quarter million dollars. We rely, in terms of location, if you go -- now, bear with me -- to the second Tab 4, again showing a relationship -- a very important significant financial relationship, notwithstanding Mr. Schreiber's testimony of lack of knowledge or being a mere courier pigeon. You have a significant amount of funds transacting here and the certificate at the second Tab 4 is that these documents were confiscated in 1995-10-05 in the archives of Schreiber's office building in Kaufering.

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The underlying document in Tab 4 is 14599 and the certificate numbers are 14632 and 14633. If I could go to Tab 5.... I have an unfortunate clerical gap between my Tab 5 and my Tab 6, but I'm sorry, if I take you to -- here we go. I've got it here. Under the first Tab 5 you'll see the certificate. The second Tab 5 will give you the English translation which is, again, from Mr. Schreiber's office building, and this is a document underlying Tab 5. The underlying document is 17058, and it's a fax on GCI letterhead addressed to Mr. Schreiber, which confirms the initial \$126,000 as paid to GCI/Bitucan.

Again, it will, ultimately, be our submission this document being found in Mr. Schreiber's business premises in his possession, that this is a far more detailed an account than one would have, again, for the mere function of introducing two people to one another, to providing a ready bank account to anonymize money and to operating as a courier for documents between Canada and Germany.

THE COURT: Just to make sure I'm with you, the documents in question are...

MR. SHAW: We've put it up on the screen to assist...

THE COURT: Yeah. And then go on just a little further to the next page. I just want to make

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sure my pages are the same as yours. Keep on going. Yes. All right. I'm with you.

MR. SHAW: Now, if I can leave Volume 1 and move onto Volume 2 -- German documents No. 3, Volume 2, and move onto the first Tab 6.

THE COURT: Are you going to go through all these tabs? Is that your intention?

MR. SHAW: Well, my understanding is that Mr. Schabas disputed the evidence and I'm going to prove certificate by certificate, document by document, their origin in Kaufering. I've provided the pairing -- we've provided this pairing in 2002. I provided again to Mr. Schabas last week when this issue of admissions came up and I've not heard, including before the break, any other matter, so I'm somewhat laborious but I'm content to do it. I think that the legislation permits it and I continue with Tab 6.

Tab 6 relates to underline Document 17059, which is in the court database. And the first Tab 6 has the German certificate from the court official...

THE COURT: 15059? Relates to it...

MR. SHAW: Sorry. Yes. 17059.

THE COURT: 1-7-0?

MR. SHAW: 17059.

THE COURT: I'm sorry. Did you tell me that this was -- yes, it is summarized here, is it not?

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MR. SHAW: That's correct. Yes. That's the list that I'm following through on.

THE COURT: All right. And then, yes, there is no use in my writing this down. You've written it all down for us. That's fine. Okay. I'm starting to follow you.

Mr. Schabas?

MR. SHAW: I'm starting to get into my rhythm, too.

MR. SCHABAS: Yes, and I'm conscious of the time it may take to simply take us through every one of these, Your Honour. I guess my difficulty, Your Honour, from what I'm hearing so far -- and maybe I should just -- I don't mean to interrupt my friend but if it will make things go faster so we can get to the point, the -- the certificates, you'll notice in the first volume, the first four tabs, simply refer to something from ABK or Erika. ABS Erika telephone directory. Schreiber's telephone directory. That's how it's translated. *Telefonverzeichnis Schreiber*. And yet, we've got the same certificate being used for four different tabs.

Now, would this certificate suggest that we're talking about a telephone directory? There's something that looks like a calendar at Tab 1 and it's got some telephone numbers at the beginning of it. Something that looks to us at Tab 1 of Volume 1, like a telephone



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directory, but we're into a lot of other stuff. The rest of Tab 1 looks like a calendar of some kind. Tab 2 is something quite different than a telephone directory. It's some kind of a ledger sheet that was put to the witness once before. Tab 3...

THE COURT: Hold on. Don't go to three yet...

MR. SCHABAS: I'm sorry, I'm going too fast.

THE COURT: ...so I can just follow you.

MR. SCHABAS: So...

THE COURT: It keeps on saying "telephone directory Schreiber." Is that what Schreiber -- is that what you're saying?

MR. SCHABAS: Yes, it does. That's right. The first four tabs, and the only thing that looks like a telephone directory...

THE COURT: Is in Tab 1.

MR. SCHABAS: Looks like it, is that. Is the first several pages of Tab 1.

MR. SHAW: Well, I'm content to bring in the originals and we concede the documents to which -- I'm not relying on the descriptions -- we concede to which these documents attach, and we can do it in bundles that way. We've offered Mr. Schabas the ability to inspect originals, which he has somewhat taken us up on. I'm content with respect to those.

THE COURT: Well, no, but you do agree with the point he makes that it seems to be referring to a directory, but if it's not a directory, it's something else in each case.

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MR. SHAW: Well, I understand that. I also understand that the certificates apply to bundles of documents respecting which there is a specific location. But with respect to those documents, I'm quite happy to have the officer bring in the originals to see the manner in which they were bound or certified, and to call evidence respecting that, but I take my friend's point with respect to document descriptions, I'm relying here with respect to the -- with respect to the locations. It may well be that the 87 or the top notation is a binder notation, but I'm content to bring those documents in and proceed in that fashion for any particular document that he disputes with respect to that.

MR. SCHABAS: Your Honour, I mean my friend is tendering these certificates. The certificate is just proof of what it says, without further proof. That's all it is. I mean what it says is a telephone directory and that that was seized in archives. That's all it says and, subsequently, went into something else that just says something about MBB Dornier Korrespondenz. We see the same certificate then being used for many other things.

THE COURT: You're referring to which tab, sorry?

MR. SCHABAS: When we get to Tab 5, which is where we got into -- I guess it begins at Tab

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5 and it looks like Tab 6 and following, relates to something else, but it looks like it's the same certificate used over and over and again.

MR. SHAW: It is the same certificate used over and over again.

MR. SCHABAS: We don't know -- I mean, surely, if the certificate is to be admitted to at least not make inadmissible a document, the certificate should specify what these documents are, and that's -- I'm reminded and Mr. Wong reminds me that's -- I'm sure he wrote the letter -- why we asked for that in August 2003. There was one of many, many letters that were flying back and forth at that time because I got about -- we got about 20,000 documents in that month. But, I just raise this rather than having Mr. Shaw go through each one of these, I can look through them. We can all look through them and see what they are, but I submit there's a problem on the face of these certificates as to how they properly identify any of these documents other than perhaps a few pages of the telephone records, but even then we're jumping to a kind of a conclusion that it's a telephone record. Well, it looks like it.

MR. SHAW: Maybe I can help the court, Your Honour.

THE COURT: If, you know, the one case like I said that I had, when we wanted to get a

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California driver's licence, if the certificate said -- had annexed a California driver's licence but had said this is a copy of Ronald Regan's, when he was governor, marriage certificate, it's got to be certifying something.

MR. SHAW: I'm appreciative of my friend's detailed scrutiny of this, and what I'd like to do is have the officer's bring in the documents that they received and to put to the court the breakdown...

THE COURT: I presume the copy -- the originals are going to be the same as the copies. I don't think that's the issue.

MR. SHAW: Well, I think that you may -- you may discover -- and I'll put the -- you may discover that there is a particular binding that refers to a bundle of documents. And I've put to the court as a -- again, you've raised the issue of the hypothetical driver's license and it's referring to some other document. It may well be that in a particular bound series, they've chosen to classify them in a particular way, maybe referring to the lead off document or to a bundle, which they seized in a particular location.

THE COURT: Anyways, you're saying it'd be useful to look at that?

MR. SHAW: It would be helpful, and I'd like to bring up Document 12462, which is the key given to us from the German authorities.

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You'll see the file number at the top, and the manner in which they were bound together or grouped together by order, and it may assist the court in understanding what happened to have those documents here.

The point I'm making is that the location -- if I can show that the certificate whatever the heading or banner or title on the spine of the binder might be, if the certificate is attached to a series of documents taken from a particular location, the certification is satisfactory with respect to that bundle of documents. I could just indicate to the court the way in which they were processed electronically.

You'll understand the significance of the item code punching. You'll see on the search screen on the left, you'll see just in terms of sequential numbering of all the items in that bundle of documents and the page serial coding starting at 01 and going by item code and by location. So that the next two digits is 218-01 on the key that Eurocopter was given, and if you'd go down through the whole listing of them, you'll then get the certification as part of that bundle. I -- in my submission, I don't take where a certificate has been attached to a series of documents. We're told that they are copied

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from the originals and seized from a particular location, that the act of bundling itself is indicative of what the certification attaches to.

Anyone may have given it a different heading. Schrieber may have called -- I'm speaking sort of hypothetically -- that Schrieber might have called that bundle his dog's breakfast and it turns out to be a whole series of certificates and not material to the seized location, which is the central argument here.

THE COURT: It would have been so simple to say all of the documents attached hereto were seized from Schrieber's office and these are certified to be copies of the originals. Here you go, you make of it what you will.

MR. SHAW: Well, we...

THE COURT: The problem is that they seemed to have wanted to particularize and what it says in the certificate isn't there.

MR. SHAW: All right. Well, let me just leave -- as you know, we are in a particular circumstance here with respect to admissions that we did not expect to be in. I'll just leave -- I understand what the court is saying respecting those initial documents, but I do, with respect to the next series of certifications, take the court's attention to the fact that they are -- the description is that they relate to MBB correspondence and

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that -- with respect to that certification in my view, it encapsulates the nature what we're getting at. So it's our argument...

THE COURT: So would you -- Mr. Schabas -- I understand your point but for the court's purposes and all of our purposes, would you mark off those in the certified document summary which you think are problematical and we can deal with those by way of exception, on the assumption that the remainder will fall into place.

MR. SHAW: I understand that the notion of the telephone directory description, being somehow limited of what applied to 01 through to 05, I'm now moving onto items which I think are properly described on the face of the certificate respecting correspondence relating to MBB.

THE COURT: 01 is all right, I take it? That looks to be a telephone directory, right?

MR. SHAW: That's correct.

THE COURT: Yes, so that one is right.

MR. SHAW: And the only issue -- the reason I didn't bring you to 01 off the top was...

THE COURT: It's two, three, four and five.

MR. SHAW: ...that I didn't have a translation of the certificate that goes with it, but it -- but with respect to the other -- and I'm going through in this level of detail then. Then, with respect to the other telephone directories, I am going to attempt

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to address via the Atlantic, the court's concerns. But I'd like to move on to Tab 6.

In our submission, it is clear that on the face of that description, we have correspondence that does relate to MBB. If I could get back into my rhythm respecting the first Tab 6, this is now in Volume 2, in relation to now document -- the underlined document would be 17059. You'll see the German language certificate -- and if I just get you to pick -- peek, sorry, to the second Tab 6, you'll see the English version of the certification.

THE COURT: Yeah.

MR. SHAW: It says: Agreement of these copies from the original from A1-29 MBB Dornier Korrespondenz confiscated on 1995 October 5 in the office of Karlheinz Schreiber in the office building at Kaufering." Then, again, the Public Prosecutor's Office 2001, with the appropriate seal and signed by a court assistant, Clerk of the Court.

If I could take you now back to the first Tab 6, this is a corporate matter. You will see that there is a cover sheet from GCI, and on the second page is correspondence about MBB. You'll see on the second page, "As I informed you via fax on August 9, we have received our invoices returned from MBB. I plan to send



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them in July and in August to Kurt." There is an issue about Kurt respecting that he assist in having them paid, "and also to advise us on the procedure for the future."

THE COURT: What's the reference to MBB, Dornier Korrespondenz? What's the reference to Dornier referring to?

MR. SHAW: Dornier, as I understand it, is another aeronautics company, but I don't want to speak out of my hat.

THE COURT: Well, okay, where is the MBB Dornier Korrespondenz? Isn't that what 6 is referring to?

MR. SHAW: I understood it to be MBB and Dornier Korrespondenz and we're advancing the correspondence that relates to MBB. It may or may not be Dornier...

THE COURT: I'm sorry, it...

MR. SHAW: I understand.

THE COURT: ...looks to me -- it looks to me like it's GCI Schrieber correspondence, not MBB Dornier. Am I misreading something?

MR. SHAW: It is correspondence about MBB. On the face of the document respecting GCI, it is respecting subject MBB, and then if you turn further along after the letter itself, you'll go to -- you'll see an MBB bill.

THE COURT: Okay, but where in there is there any reference to Dornier?

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MR. SHAW: There is no reference to Dornier. I am relying, Your Honour, with respect -- on it respecting MBB...

THE COURT: I know. I know.

MR. SHAW: ...correspondence.

THE COURT: But listen, Mr. Shaw.

MR. SHAW: Yes.

THE COURT: I am, in my simplistic way, looking at this...

MR. SHAW: Yes.

THE COURT: ...and it looks like this is referring to -- it looks like it's referring to...

MR. SHAW: Yes.

THE COURT: ...correspondence between MBB and Dornier, and this is not -- and I'm sure there is reference to MBB. Again, it is very, very general. But because of this Dornier thing in there, I'm led to believe that this may not be the documents that you're talking about in the certificate.

MR. SHAW: Your Honour, one of the downsides of electronic disclosure is that it chops things up, and I appreciate the court's reading of the face of the certificate. In my submission, it's important not to place too much emphasis on the description to the detriment of the location, which is actually what we are seeking, but I think that physically I need to present to my friends and perhaps even to the court, the physical items.

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THE COURT: You see, again, if you'll go to eight...

MR. SHAW: Yes.

THE COURT: ...and I'll be asking...

MR. SHAW: Yes.

THE COURT: ...you to go through them. Again, number eight speaks of MBB Dornier correspondence.

MR. SHAW: They will now...

THE COURT: Eight appears to be...

MR. SHAW: Yes. They're all under the same certificate from then on in.

THE COURT: Yeah.

MR. SHAW: So if the court takes a narrow view that the certificate would only...

THE COURT: I just want to take a fair view.

MR. SHAW: No, I want to be...

THE COURT: I take a fair view.

MR. SHAW: I want to help the court.

THE COURT: A narrow, wide -- I want to take a fair view of it. Let -- let me give you a few minutes to go through that stuff and make further -- it's the time for our break...

MR. SHAW: No, I understand that, sir, and I also understand that we'd obviously taken a different reading of MBB, comma, Dornier. You've taken it MBB to and from Dornier and I've taken it to be MBB and Dornier correspondence. I'm taking it as MBB correspondence.

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THE COURT: I'm just saying where is the Dornier stuff? If your interpretation is right, there should be some Dornier material in there. Let me leave that comment where it stands. We'll take a break. I think this is a bit of a stultifying exercise for everybody.

MR. SHAW: It's not terribly interesting, no.

MR. SCHABAS: Your Honour, I've just been asked by Ms. Christie whether her client can leave for the day?

MR. LAWYER3: I don't want to interfere in the proceedings, Your Honour, but if it's...

THE COURT: I can't see it being a realistic possibility that he's going to be recalled this afternoon, the way we're going.

Mr. Bernstein, do you want him sticking around? It doesn't appear to me likely that we will...

MR. SHAW: One thing we could do is we could look at this paperwork and then we could -- I'll let my friend speak with respect to the rest of the afternoon.

MR. BERNSTEIN: I'm always ready to ask questions, Your Honour, but I'm in the court's hands. If -- if -- can I just have a minute?

THE COURT: Why don't we take our break? Tell me where you're at when we come back...

MR. BERNSTEIN: Thanks, Your Honour.

MR. SHAW: Thank you.

THE COURT: ...and then we'll tell you...

MR. SHAW: Thank you.

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THE COURT: ...what the score is.

MR. LAWYER3: Thank you, Your Honour.

THE COURT: Okay?

COURT REGISTRAR: All rise, please. Court is  
in recess.

R E C E S S

(3:20 p.m.)

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

(3:45 p.m.)

THE COURT: Who is not here?

COURT REGISTRAR: The reporter. Ms. Lanctin.  
I'll just....

MR. SCHABAS: Mr. Bernstein just went out and  
asked for a moment.

THE COURT: Oh, it's Mr. Bernstein. I was  
just trying to eliminate the...

MR. SCHABAS: Also, the court reporter.

THE COURT: And the court reporter. Okay.  
Fine. Well, we need her.

MR. SCHABAS: That's for sure.

COURT REPORTER: Excuse me, Your Honour.

THE COURT: Mr. Shaw.

MR. SHAW: Your Honour, we would like to make  
use of the court time given the witness being  
here, and we don't want to get caught up on  
-- I mean in a neutral sense a punctilio of  
the certificates at this stage. We are going  
to make further inquiries with respect to the  
document descriptions given, if I can even

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call them that. And we will be examining the physical -- what was physically sent and the way it was bound from Germany, and we will be doing that in the course of tomorrow with a view to revisiting the issue of the certifications either later on Tuesday or Wednesday. I don't want to belabor the point.

There are three in the bundle that I've handed up to the court. There are three distinct certificates that are at issue, and my hope is to resolve that issue through an inquiry of the German authorities forthwith, taking into account that there are six hours...

THE COURT: There may in fact be quite a number, if in every one of them the only reference is to "MBB Dornier Korrespondenz", we come back to the original point I was making. It says certified true copy and it could on that certain interpretation be looked at as something like this. Certified true copy of birth certificate of Trevor Shaw and you open it up and it's not that, it's his marriage certificate and, therefore, it no longer -- the certification is no longer valid and...

MR. SHAW: But you could also have a situation where you had a birth certificate in the file, but when the police went to seize the file the file was entitled certificate and it had an immunization record of it, and I

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think it would be natural for a certifier looking at the bundle of documents to certify with a hole through it, and a string through it, as what we can get into later on, but to say -- this is a copy and the description is the description that was provided, for instance, by the person from whom it is seized. And it says, birth certificate, it punches through and seals off the birth certificate, the school records, the immunization record.

THE COURT: But then there would be an explanation. In any event, we'll leave that aside.

MR. SHAW: I understand and I also -- the court takes a different view what MBB -- or different initial possible interpretation what MBB, comma, Dornier Korrespondenz means and our hope is to clarify this without taking up more of your time. But, just so I'm clear, Mr. Schabas, as I understand it, is disputing whether these documents came from Kaufering or just that the description is incorrect.

MR. SCHABAS: I'm disputing everything, Your Honour. I mean it's the Crown's onus to establish this, whatever it is they seek to establish. Now, my friend said that there were three...

MR. BERNSTEIN: Well, just I'd like to object to that. That's not the law anymore in a Preliminary Inquiry. The onus is on the

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defendant to articulate what is at issue. The law has been...

THE COURT: Well, no, no, but this Preliminary Hearing started long, long before these changes, Mr. Bernstein, surely. Are we under the new legislation now in terms of Preliminary Inquiry that commenced years...

MR. BERNSTEIN: Yes, we are, Your Honour.

THE COURT: ...or at least a year before under a different set of rules?

MR. BERNSTEIN: Your Honour, we are under the new legislation. There are particular provisions which apply directly to this and...

THE COURT: Well, what was defence supposed to do the minute legislation was passed, send you out a brand new set of notices saying, well, now, we require you to prove this, prove that, regardless of what was done the year before for an entire year? Indeed, probably two years or three years. I don't know how long Mr. Schabas has been on this file, and these proceedings have been ongoing. In a case of this nature? In any event, let's not argue that.

At this point, there is a statutory exemption and I agree that its terms are broad, but that doesn't allow the Crown to willy-nilly ignore the statutory requirements of proof, whether at the Preliminary Hearing or at a trial. The rules have not changed. Leave that aside for



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the moment. We can discuss that later. What do you want to do now?

MR. SHAW: Just so -- I want my position to be clear. These certificates, notwithstanding their description, is not drawn from the air. They were provided and bound in a particular fashion by those authorities, and I appreciate that on an electronic version or re-print of it, it's difficult to see, but we'll have to get into that at a later date. I understand Mr. Bernstein is prepared now with respect to resuming, and I'll accede the floor to him.

THE COURT: Thank you.

MR. BERNSTEIN: Yes.

THE COURT: Madam Clerk, I'll return Exhibit F to you.

MR. SCHABAS: Your Honour, could I just ask one question? Mr. Shaw said there were three certificates in issue. The document that we've been given...

MR. SHAW: I'm sorry, two. I meant two.

MR. SCHABAS: Okay. Thank you.

MR. SHAW: It's at 14 -- I'm sorry. The certificate is 14342 and then certificate...

MR. SCHABAS: Oh, I see.

MR. SHAW: ...14632.

MR. SCHABAS: Okay.

MR. SHAW: And then certificate 17118.

MR. SCHABAS: Thank you.

MR. BERNSTEIN: Your Honour, I'm sorry for this changing stream a bit today, but in the

circumstances, I would respectfully suggest that we proceed in the following fashion.

I understand it will take Mr. Shaw a little bit of time to sort out this and to provide the court and Mr. Schabas with the type of information we anticipate would be helpful. In the interim, so that we don't just stand down, I am prepared to continue my regular examination in-chief of Mr. Schreiber. It would be, in the normal course, my intention to put amongst other things -- amongst other things, documents to Mr. Schreiber which the Crown submits were obtained from Kaufering. Mr. Schreiber may recall these documents. He may not recall these documents. I recognize in the circumstances in the absence of identification of the document by Mr. Schreiber, it will, as we intend to do, and as we've started, be incumbent on the Crown to prove these another way. But, I would be prepared so that we can use the time effectively, Your Honour, to continue in these circumstances with Mr. Schreiber's examination. And the documents that fall into this category would be, I assume, subject to Mr. Schabas' comments and Mr. Schreiber's general recollection made an exhibit subject to further identification.

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As I say, it is the present intention of the Crown in the future to bring an application to have Mr. Schreiber declared hostile but there's a few areas which should be inquired into first. So, I can start -- I can continue with that now, Your Honour.

THE COURT: We'll deal with objections as they arise.

MR. SCHABAS: Your Honour, could I just suggest one thing? I certainly want to make use of the time. In light of the fact that this issue has come from time to time about where things are from, and so on, if we could proceed cautiously with respect to putting any documents to him, I'm sure my friend who is obviously mindful of the fact that this is not a cross-examination and there shouldn't be a suggestion that a document came from a certain location, if he puts a document in front of him, he should just in the usual course ask him -- once he's laid the basis for it -- ask him whether he's seen it and whether he's familiar with it rather than suggesting to him that, for example, according to -- according to the Crown's position, that it came from Mr. Schreiber's files. Mr. Schreiber may say "It looks like it comes from my files," I don't know, but it shouldn't be suggested to him in light of the issue of proof.

THE COURT: Thank you. Would you recall the witness?

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K. Schreiber - In-ch.  
(Continued...)

MR. BERNSTEIN: Yes.

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

Q. Mr. Schreiber, when we last broke, we were looking at -- and this is not a new document. This is the document we were looking at before we broke. Document 17089. That's the German edition. The translation is 17090.

A. Yes.

Q. Okay. I'm wondering if you can first take a look at the document and review it, please?

A. Yes.

Q. It three pages. It starts at Goto Page 2 and extends to Goto Page 4.

A. Yes.

Q. Do you recall...

A. Yes. Yes.

Q. Do you recall a visit by MBB Germany employees to Canada in November of 1984?

A. This is a meeting this letter is or this paper is confirming to?

Q. Yes. Well, there is a reference to it in this letter. My question to you is, do you recall...

A. I don't know the -- I don't know the date, but I know what meetings took place.

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K. Schreiber - In-ch.  
(Continued...)

Q. Can you be a little more -- can you elaborate a bit?

A. Well, there were quite a few meetings in my recollection. I wondered where things came to my attention that I found it somewhere else. One phrase here. So, I know there were meetings. Also, the meeting with -- which Minister Sinclair Stevens had in Germany, and meetings here, more than one, I understand, but I have also to say that I did not attend all these meetings. It was not my job.

Q. Did you attend some of them?

A. Yes. I recall that I -- I had one meeting, I recall, with -- where I introduced with Frank Moores together...

THE COURT: Excuse me. I'm sorry, sir. I just didn't hear you. You introduced?

THE WITNESS: Mr. Pfleiderer.

THE COURT: Pfleiderer.

THE WITNESS: Mr. Pfleiderer.

THE COURT: And Moores?

THE WITNESS: With Mr. Moores to Bob Coats.

THE COURT: And Mr. Coats.

MR. BERNSTEIN: Q. You also mentioned a meeting in the beginning of your testimony in the cafeteria on Parliament Hill or some eating place near or around Parliament Hill?

A. Yeah. That was before. That was when the -- the Conservatives were still in opposition.

Q. Okay. Once they became the government you were...

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K. Schreiber - In-ch.  
(Continued...)

A. This was an official visit to the Minister of Defence.

Q. Yes. And do you recall -- well, you mentioned a meeting with Bob Coats or you introduced...

A. Yes.

Q. ...who to who?

A. Keep in mind, I was constantly together with these people on the Bear Head Project, so this was nothing special for me, though, and yes, Mr. Pfleiderer was there and there were other people from -- from MBB as well. And I think one was Foster Steinberg, or a name like that. But this was nothing where I attended because this was normally stuff where I either went alone or with Mr. Moores.

Q. So you mentioned a meeting or you mentioned Mr. Stevens going to Germany?

A. Um-hmm.

Q. Was this meeting that you just referred to before or after Mr. Stevens went to Germany?

A. I think this was later. I think the meeting I referred to was perhaps early '85 or so when Sinclair Stevens was with Bob Brown and all these people in Germany and visited Mr. Strauss and then all the projects were discussed from Bear Head Industries to MBB to Airbus, whatever was....

Q. Were you there for part of those meetings?

A. Yes. I told you that before.

Q. Yes. I'm just -- now, you referred to his letter we've just been looking at and I think you mentioned that there was a phrase in the letter that caught your eye or you seem to recollect? There was something in the letter?

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K. Schreiber - In-ch.  
(Continued...)

A. Yeah. I found the whole story in the book *The Last Amigo* from Stevie Cameron.

Q. What caught your eye or what were you referring to there?

A. I was not -- I did not attend any meetings where Bob Coats has made a request that -- what is his name? It would be on the Board from this new company or what -- I was never aware of things like this.

Q. Show me what you're referring to in the letter. Just point out -- just read it out.

A. ...somebody else...

Q. All right. Just slow down. All right.

So...

A. Could you go further?

Q. Sure.

THE COURT: I'm concerned...

THE WITNESS: Yes. I saw it.

THE COURT: I'm concerned, I can tell you right away, Mr. Bernstein, about this manner in which you are proceeding. You've put a letter to the witness and I don't recall and you may refresh my memory, if it was predicated by a general question and this is a letter put to him to see whether it refreshes memory. Was that the way in which it was done?

MR. BERNSTEIN: Initially, yes.

THE COURT: All right. And then, what was the general question that you...

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K. Schreiber - In-ch.

(Continued...)

MR. BERNSTEIN: I asked him a question about whether he recalled meetings between people at MBB and government officials and he -- which is the subject matter of this letter and whether the letter refreshed his memory with respect to that, and I've just been asking follow-up questions on that.

THE COURT: Yeah. Just that you're now into the letter and asking him to comment about the letter. That's my concern.

MR. BERNSTEIN: I appreciate your concern, Your Honour. I was only doing it because he brought up something in the letter that he chuckled about, and I just wanted to know what phrase he was referring to there so that -- but if it please the court, I'd be prepared to move on without an answer to that question.

THE COURT: Again, whether the witness volunteers it or whether it is in response to a question, doesn't make it any more relevant or appropriate.

MR. BERNSTEIN: Yes. Okay.

MR. BERNSTEIN: Q. So, let's look at --

yes.

A. Is this the letter or report what you have here?

Q. Let's look at the German edition, which is Goto Page 5 of the same document.

A. I think this is an internal report to the officials or the board from MBB. This is not a letter.



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K. Schreiber - In-ch.

(Continued...)

Q. Do you recall ever being in possession of this report?

A. I thought about this but my memory doesn't tell me anything. I'm somewhat confused about this as I told you, because the whole story is in the book from Stevie Cameron.

Q. We'll put that aside. What's -- you're chuckling. What's so funny?

A. Yeah. If found so -- I found so many things that I didn't know about, so somehow it's surprising what's all going on. No, I am -- I am not aware that this. I've not the smallest recollection that this has been sent to me, and I see up here, "Confidential: Pfleiderer" though this is for sure something on the inside from MBB. This is nothing they send out at least to my knowledge.

Q. Do you know Mr. Shea?

A. Yes.

Q. How did you come to meet him?

A. I saw him once at a party with GCI. I think he was the shareholder from GCI.

Q. When would this have been?

A. No idea, Mr. Bernstein. I think it was a Christmas party, and GCI invited all these officials, and he was there as well. I think I saw him only once.

Q. What made you think he was -- how did you come to believe him to be a shareholder in GCI?

A. Well, I think somebody told me.

Q. Can you help us with who?

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(Continued...)

A. Perhaps somebody who introduced me to him. Could have been Gary Ouellette or Mr. Moores or Mr. Doucet. I don't know.

Q. You mentioned Gary Ouellette?

A. Yes.

Q. Who is he?

A. Also a shareholder from GCI.

Q. What did he do before he was a shareholder at GCI?

A. Lawyer.

Q. What?

A. A lawyer.

Q. Did he ever work in government?

A. I have no idea.

Q. You mentioned another name. Doucet?

A. Doucet.

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

A. He's a lawyer, too.

Q. Did he ever, to your knowledge, work in government before GCI?

A. No. You speak about his brother. This is Jerry -- Jerry Doucet. And his brother you are referring to used to be the, for a while -- chief of staff in the PMO is Fred Doucet. But Fred Doucet is not the shareholder to my -- my recollection to GCI. Gary Doucet.

Q. All right. Can you take a look at the last page of this memo? This would be Goto Page -- the English one. Goto Page 4. There's a list of proposals for proceeding. Do you see that?

A. Yes.

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Q. Do we have the German version, the last page?

A. Yes.

Q. Can we look at the English version of this? This would be Goto Page... Do you see the PS there?

A. Hmm?

Q. Do you see the PS there?

A. P-S?

Q. PS. The last paragraph in the letter.

A. No.

Q. Here.

A. Yes. Yeah.

Q. Okay. I'm wondering if you can just look at the information on proposal for proceeding and the PS. I'm just going to ask you a general question whether any of that information refreshes your memory respecting...

A. No. I'm -- I'm absolutely sure now that I haven't seen these documents because these names would have told me something.

Q. Pardon me?

A. These names would have told me something. I'm convinced that I -- in my -- in my recollection I never saw this document.

Q. You mentioned a visit by Mr. Stevens to Germany with, you mentioned Bob Brown.

A. I think so, yeah.

Q. Would that have been -- and I don't mean to lead. I'm just trying to figure out what year it would have been.

A. I think we spoke about this.

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Q. I just want to -- the year would have been...?

A. I have to guess. I think maybe '85. Yeah. Maybe, early in the year.

Q. When you say "we spoke about this" this was meetings that were at Ottobrun and elsewhere we spoke of during the beginning of your testimony?

A. Yes. See, let me -- let me make it -- let me try to make it simple for you. They came, it was more or less a shopping tour, initiated at the beginning by the Canadian Ambassador McPhail. And the question was what all can be done? So this was Bear Head, this was the DeHavilland Project. This was the question for Airbus manufacturing. It was a question for helicopters, I think Tornados. God knows what -- whatever they have. The Canadians were interested to find investment -- industrial investment, especially in the Strait of Canso region. This is what it was all about...

Q. I'm wondering if you can take a look at Document 17093. 17093. We'll show it to Mr. Schabas first. Goto Page 4. Okay. Go back to page 2. Sorry, Mr. Schabas. I just want to look at it myself.

MR. SCHABAS: Well, Your Honour, from my quick look, it looks like we're changing the subject. I submit that if we're changing the subject, questions should be asked before the witness is taken to a specific document. It's a different date.

THE COURT: Well, maybe so, but it's a document addressed to him. Is it not?

MR. SCHABAS: Yes, but...

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(Continued...)

THE COURT: What general question is he going to ask if he wants to find out if he's seen this document before?

MR. SCHABAS: Well, I'm concerned, Your Honour, that he's going to take him to a document and then, in effect, lead him through the document. That comes back to the point I submit Your Honour may have been getting at when you expressed some concern a few minutes ago, so what was the original question here? And...

MR. BERNSTEIN: It's a document addressed to him.

MR. SCHABAS: If this is for that same purpose -- I don't know. Is this for the same purpose of purporting to refresh his memory?

MR. BERNSTEIN: Is this an "I don't know" objection? I'm not exactly -- entirely sure the nature of the objection. I've asked him to take a look at a letter which is addressed to him and I want to ask him about the letter.

MR. SCHABAS: And I appreciate my friend's remark, but the point is we're all concerned about the fact that documents have been put in front of the witness and he's then been led by those documents. And so I ask if my friend is simply doing it to refresh his memory, he ought to ask him some questions and then see if his memory needs refreshing.

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THE COURT: He may not be asking him to refresh his memory, though.

MR. BERNSTEIN: I'm not...

THE COURT: That's the point, Mr. Schabas. It may be simply to see whether he has received this document. He is, purportedly, the destination and he may very well have seen it. What flows after that may be something else, but at the moment, I think he is being asked if he knows what the document -- if he's seen this document. It's addressed to him.

MR. BERNSTEIN: Q. Okay. Do you have the document up on your screen there? This is Document 17093.

A. No.

Q. Goto Page 2. Now, I'm wondering if you can take a look at this document, sir? It's addressed to -- well, perhaps we can have the translator -- most of it's in English, but it's the -- the addressee seems to be in German.

MR. INTERPRETER: It's addressed to Mr. Karlheinz Schreiber. *Lechstrauss* at 22 in Kaufering, and the subject is in English.

THE WITNESS: It's a circular letter.

MR. BERNSTEIN: Q. Okay. You're familiar with it, sir?

A. No, but...

THE COURT: Well, read -- show him the entire document, all the pages.

MR. BERNSTEIN: Q. Let's go to page 3.

A. Yeah.

Q. Go to page 4.

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(Continued...)

A. Could -- could -- could I see that letter again for a moment?

Q. Um-hmm.

A. Yeah.

Q. Okay. Let's go -- so my general -- or are you still looking at it? Okay? Done? Can we go to the first page of the letter, which is Goto Page 2 of the document? Okay. Thank you. Is this letter familiar to you?

A. This special letter? No.

Q. Do you recall receiving it?

A. No.

Q. So when you say it's a circular letter...

A. Yes.

Q. ...what made you say that?

A. You -- you can read it here. Circular letter number 284. This is a document or a letter or whatever you wanted to call, which the company sends out periodically to their clients or consultants or whatever.

Q. How do you know that?

A. Because this was a circular letter and it also shows an invitation to an air show.

Q. How do you know MBB would periodically send out these letters to their clients and consultants?

A. I've seen circular letters.

Q. From MBB?

A. Yes.

Q. On what?

A. Other events. New companies. Opening of the helicopter factory in Indonesia, or whatever. They informed the people.

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(Continued...)

Q. Why were you looking at these circular letters?

A. Hmm.

Q. Why were you looking at these circular letters?

A. Well, I don't know how often I looked at them. They also have a so-called house paper, like a -- like a newspaper or magazine, or like the companies, like Louis...or everybody is sending this stuff out.

THE COURT: As a matter of interest, Mr. Bernstein, is this...

THE WITNESS: No big interest to me.

THE COURT: I'm sorry, sir. Is this a letter where the signatures were in the original or was this merely a...

MR. BERNSTEIN: It's a skill-testing...

THE COURT: ...or were these photocopied signatures; if you know what I mean?

MR. BERNSTEIN: I'd have to -- I'd have to check. I can get you an answer, Your Honour, but I don't know off the top of my head. Does the Staff Sergeant know? I'd have to get you an answer to that one.

THE COURT: All right.

THE WITNESS: When you look at the two names at the second page...

MR. BERNSTEIN: Q. Yes.

A. I don't even know what they were responsible for. Allwardt or van Schierstädt, that would be the advertising division or something like that.



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Q. I'm sorry. I didn't hear your answer.

A. It could be the advertising division or something like this. Allwardt, I don't recall at all. Dr. von Schierstädt, the name is familiar to me.

Q. It is familiar?

A. Yes.

Q. In what way?

A. I don't know, but the name sounds to me even like an MBB guy. Von Schierstädt.

Q. Let's go to Document 1677, Goto Page 19, which is the Sales Representation Agreement. Not the Consultancy Agreement. 16787, Goto Page 19. Okay. This is the last page of one of the Sales Representation Agreements. And I just want you to -- I just direct your attention to the signature for MBB. There's two names there. I'm wondering if we can look at the second signature. We can just blow it up a bit. Okay. And let's look at the signature on this document, which is Document 17093 for Mr. Allwardt.

A. I see now, yeah. I couldn't even see it's Allwardt. Yeah.

Q. Let's blow it up. Let's blow Allwardt's up more. More. Okay. We've got two signatures. Does this assist in refreshing your memory, sir, as to who Mr. Allwardt was?

MR. SCHABAS: Your Honour...

THE WITNESS: Not at all.

MR. SCHABAS: This is, I submit, something that would be subject of perhaps expert evidence.

THE COURT: Well, it may and but...

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MR. SCHABAS: I don't want to say anything more...

THE COURT: ...but the answer, I think, is categorical and....

MR. BERNSTEIN: Q. All right. Let's go to page 4 of Document 17093. There's an organizational chart there that seems to be part of the circular. My question to you is, you said you haven't seen this. Have you -- did during the course of your dealings with MBB you received any organizational charts or organizational information like this?

A. No. We had two people I spoke to. One is Mr. Pfleiderer and the other one is Mr. Dorn. And later on came this guy, Von Yost.

Q. Do you know a man named Hans Vogel?

A. Herr Vogel? Sure. He -- Dr. Vogel was the, you would say the CEO or president from MBB. But he's not on here.

Q. Did you have...

A. But he is not on here.

Q. Pardon me?

A. But he is not on here.

Q. He...

A. He's not on this chart.

Q. No. I moved on.

A. Yeah.

Q. Did you ever meet Mr. Vogels?

A. Oh, yes.

Q. Why do you say "Oh, yes?" You're smiling. Why do you say, "Oh, yes," and smile?

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A. Well, I had a couple of fights with him.

Q. Who won?

A. Well, we had different opinions.

Q. Okay. What did you fight about?

A. For example, about DeHavilland.

Q. What else?

A. This was the one -- this is the one I recall and why I say that.

Q. Do you recall writing a letter to Mr. Vogels? Dr. Vogels?

A. This could very well be.

Q. Would a document assist in refreshing your memory?

A. Absolutely.

Q. Okay. Let's go to Document 17116 is the German edition. The translation is at Document 17115, Goto Page 5. Okay.

MR. SCHABAS: Looks like the original is at 17115 as well.

MR. BERNSTEIN: The German edition is at Goto Page 2 of 17115, and the English translation starts at Goto Page 4 of the same document, Document 17115. Okay.

MR. BERNSTEIN: Q. Did you have an opportunity to read the German edition?

A. I haven't seen it, yet.

Q. All right. Yes. Move the German edition... We have here a letter in German on Karlheinz Schreiber's stationary addressed to Dr. Vogels?

A. Yes.

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Q. Care of Messrschmitt-Bolkow-Blohm in  
Munich?

A. Yes.

Q. And seems to be dated May 31, 1985.

A. Yes.

Q. Let's go to page 3 of the document.  
There's a signature at the bottom of this letter above the  
words, Karlheinz Schreiber. Does that signature look  
familiar to you?

A. Yeah. It's my signature, but could you go  
back that I can read the letter?

Q. Sure.

A. Yeah. Go ahead.

Q. Okay. Do you recall writing...

A. Hold on.

Q. You have your hand up there.

THE COURT: Hold on. He hasn't finished  
reading it.

THE WITNESS: Yes.

MR. BERNSTEIN: Q. All right. Do you  
recall writing this letter?

A. Yes.

Q. All right.

A. More or less.

Q. Pardon?

A. More or less. Not every detail but...

Q. Can I direct your attention to the first  
paragraph? It says in the first line: "I refer to the  
discussions we conducted in Ottawa," and it's dated May 31,  
1985. What discussions were you referring to there?

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(Continued...)

A. I think this was the -- was the principle meeting on all the projects which were where MBB was involved and interested in.

Q. There's a reference -- I'm sorry.

A. I guess, but I think it was a meeting with the people from GCI.

Q. This was in Ottawa?

A. Yes.

Q. Sometime before May of '85?

A. Yes.

Q. You refer...

A. A lot of things happened in the spring of '85. I think Stevens was there. They came here, I think, back and forth.

Q. You say, "I refer to the discussions we conducted in Ottawa with our Canadian friends." Right?

A. Um-hmm.

Q. Who are you referring to there?

A. Oh, I think the people from GCI. Maybe they have met other -- other members from the government as well, but I don't recall.

Q. Okay, and you go on to say, "...and can tell you that the response to your visit and your remarks in Canada was extremely positive and friendly." On what basis do you tell him that? "...and can tell you that..."

A. Well, actually, this is all the people -- all the people we met and discussed with. There were no enemies around.

Q. And you're writing him, you say I can -- or "can tell you that the response to your visit"...

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(Continued...)

A. Yeah.

Q. "...and your remarks in Canada was extremely positive and friendly."

A. Yes.

Q. On what basis do you tell him that?

A. Well, when you have people like him, they like to make speeches, and you tell them he was great. So this was a question of courtesy. I wouldn't put too much into it.

Q. And these speeches, were they to Frank Moores or to somebody else?

A. Oh, could have -- could have been to -- I don't recall who else was around with him. He came and stood in the Chateau Laurier and the evening was a dinner and then he was a great -- great guy to tell his stories.

Q. Who was he telling these stories to, Mr. Moores or...

A. Sure. He was introduced to, I take it, Mr. Moores, and perhaps Gary Ouellette or...

Q. Any politicians or government people?

A. Yeah. Could -- could be. Could be, for example, Mr. MacKay. Could be Mr. Coats. All the people they contacted -- contacted and were interested in, but I cannot say for sure who of them attended.

Q. You say here in the second paragraph your newly-won friends in Canada. Who are you referring to here?

A. Oh, my God! Mr. Bernstein, look, this is 25 years ago. So perhaps it was Moores or it was Gary Ouellette. He was a very funny guy. I don't really know anymore.

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(Continued...)

Q. You go on to say, "...are extremely interested following up on these discussions with you and do not at all consider the opportunities for cooperating with your firm to be limited to the activities that have been addressed to date." Is that a reference...

A. Oh, yeah. I mean, when you look at, for example, Sinclair Stevens, or people were very much interested to get as much as possible from MBB to Canada as an investment, they were looking for new invest -- investment and jobs and MBB is, well, one of the top companies in Germany. You know that. If that would be not the case, that would be strange.

Q. It says in the next paragraph, "During our last dinner in Ottawa, it was already possible to discern which other areas of cooperation could also be of particular interest to you." What did you mean when you wrote that?

A. Well, as I told you, the whole...was discussed. They were in the rapid trains. They are in the magnetic levitation trains, they are in the Tornado. An enormous amount of business is there and we should not forget that the Germans buy the -- buy the Challenger and they buy the Drones and there's a lot of money that flows to Chilo and to Cold Lake, and so this is a corporation back and forth and MBB in the middle of it.

Q. It says, "It was already possible to discern which other areas of cooperation" Who did you discern this from? You say you were able to discern something from looking or talking or reading some -- from looking, or talking...

A. Could you show me the German letter?

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(Continued...)

Q. Yes. I didn't ask my question very well. I'll ask it clearer. You say, at least in English, you are able to discern a level of cooperation. Who did you speak to in order to be able to discern this?

A. I haven't seen this now what you mean "distern" [sic]. Could you go a little bit further?

Q. Sure. It's in the -- actually it's -- I'm sorry.

A. Now, I need...

Q. The paragraphs...

A. This is distern [sic]...

Q. The paragraphs in the....

A. I don't know that word what means "distern" [sic].

Q. Okay. I'm talking about the last sentence in the third paragraph.

A. And discern.

Q. Last sentence. It starts with *Bei*. B-E-I. Can we have a translation of the German or...

A. Yeah. It's --

MR. INTERPRETER: Yes.

THE WITNESS: I -- I really don't think -- I really don't recall anymore. There was so much or there was so many other things like aircrafts and God knows what. I really can't tell you.

MR. BERNSTEIN: Q. It says in the letter, "During our last dinner in Ottawa..." Do you see that there?

A. Yes.

Q. Were there more than one dinner?



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(Continued...)

A. No idea. Could very well be that I put this "our last dinner" that this was my last dinner with him.

Q. It wasn't your first, though.

MR. SCHABAS: Well...

THE WITNESS: Hmm?

MR. BERNSTEIN: Q. It was...

A. It could have been, I could have referred to my last dinner with him.

Q. Okay. Let's go onto the next paragraph. It says, "Following my return around June 18, 1985, I will take the liberty of calling you to arrange a time for a meeting and report to you about further particulars." Do you see that there?

A. Yeah. Okay.

Q. Why did you say that to him then?

A. Well, you see, I was -- I was traveling in three or four countries in they have interests everywhere.

Q. And why were you proposing to take the liberty of calling and reporting about further particulars?

A. Well, perhaps it was something with the -- with Central America I would assume, as I see here.

Q. I don't want you to guess.

A. Hmm?

Q. I don't want you to guess. I just...

A. No.

Q. Do you recall why?

A. How would I know? Mr. Bernstein, 1985...

Q. Did you call...

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(Continued...)

A. ...what would I know what I exactly wanted to discuss with him in such a letter out of five or six countries...

Q. Dr. Vogels, you said he was the CEO or...

A. No, he was the president of the company.

Q. It's a pretty high up the ladder.

A. No. He was the top guy.

Q. The top guy?

A. Yeah.

Q. So here you're writing to the top guy?

A. Yeah.

Q. You're going to say you're going to call  
and report?

A. Yeah. Yeah.

Q. In my...

A. Report?

Q. Report.

MR. SCHABAS: Your Honour, I'm objecting to the tone of the questions. I mean...

THE WITNESS: I mean, report...

MR. SCHABAS: ...these...

THE COURT: Hold on, sir, please.

MR. SCHABAS: The letters to be...

THE WITNESS: Report, I don't know whether -- whether the word...

MR. SCHABAS: Well, just a minute,  
Mr. Schreiber.

THE COURT: Mr. Schreiber, just hold on. I'm just listening to Mr. Schabas.

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(Continued...)

MR. SCHABAS: Mr. Schreiber is Mr. Bernstein's witness. This, I think stems from long ago asking him a question about what he may have done to assist MBB in Canada, and these documents, I believe are being put in to see if he can refresh his memory and he shouldn't be...

MR. BERNSTEIN: No, I'm not doing that.

MR. SCHABAS: Well, then...

THE COURT: Well, in any event, I think the neat answer to this is you asked him not to speculate and then because he was going to tell you he guessed what it was all about, but then he says, "Well, if you don't want me to speculate or guess, I don't know."

MR. BERNSTEIN: Okay.

THE COURT: And that's the end of the matter.

THE WITNESS: Exactly.

MR. BERNSTEIN: I'll move on.

MR. BERNSTEIN: Q. In the next paragraph it says, "May I say at this time that our efforts to relax the export restrictions in Canada or specific products in which you are interested have been extremely positive." Do you see that there?

A. Yes.

Q. What export restrictions are you referring to when you say "export restrictions in Canada for specific products in which you are interested have been extremely positive"? What export restrictions?

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(Continued...)

A. Well, the -- the Canadian export policy was changed. I don't know whether it was or not exactly at these days when Mr. Clark used to be the Minister of External Affairs, and the problem was what products such as peacekeeping equipment, or whatever, could be exported from Canada supporting an entire -- a domestic industry when the entire market is not big enough. I may remind you that Canada had another very attractive situation at this time. The US-Canadian defence production sharing agreement, where Canada had only up to then the opportunity to deliver parts, with one exception: the Movocar out of London, but the aim -- or my aim at least was to get systems for Canada and the Pentagon more or less agreed with my views. Though, that the business is really the system, because then you have the spare parts. You have the upgrading and all these things, which you don't have when you are only allowed to sell parts. So whatever parts then come from where or what, I can't tell you.

THE COURT: All right. Mr. Bernstein, I'm going to stop you at this point if you don't mind, and we'll go on tomorrow morning at ten o'clock.

MR. BERNSTEIN: Thank you, Your Honour.

THE COURT: Mr. Schreiber, we'll see you here tomorrow at ten. Madam Clerk, we have a sentencing matter at nine o'clock tomorrow morning.

THE WITNESS: Thank you.

THE COURT: Thank you.

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(Continued...)

COURT REGISTRAR: All rise, please. This  
court is 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 in the Ontario Court Justice held at Ottawa, Ontario taken from Recording No. 359, 360 which has been certified in Form 1.

October 28, 2004

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	114 (Cont'd...)		

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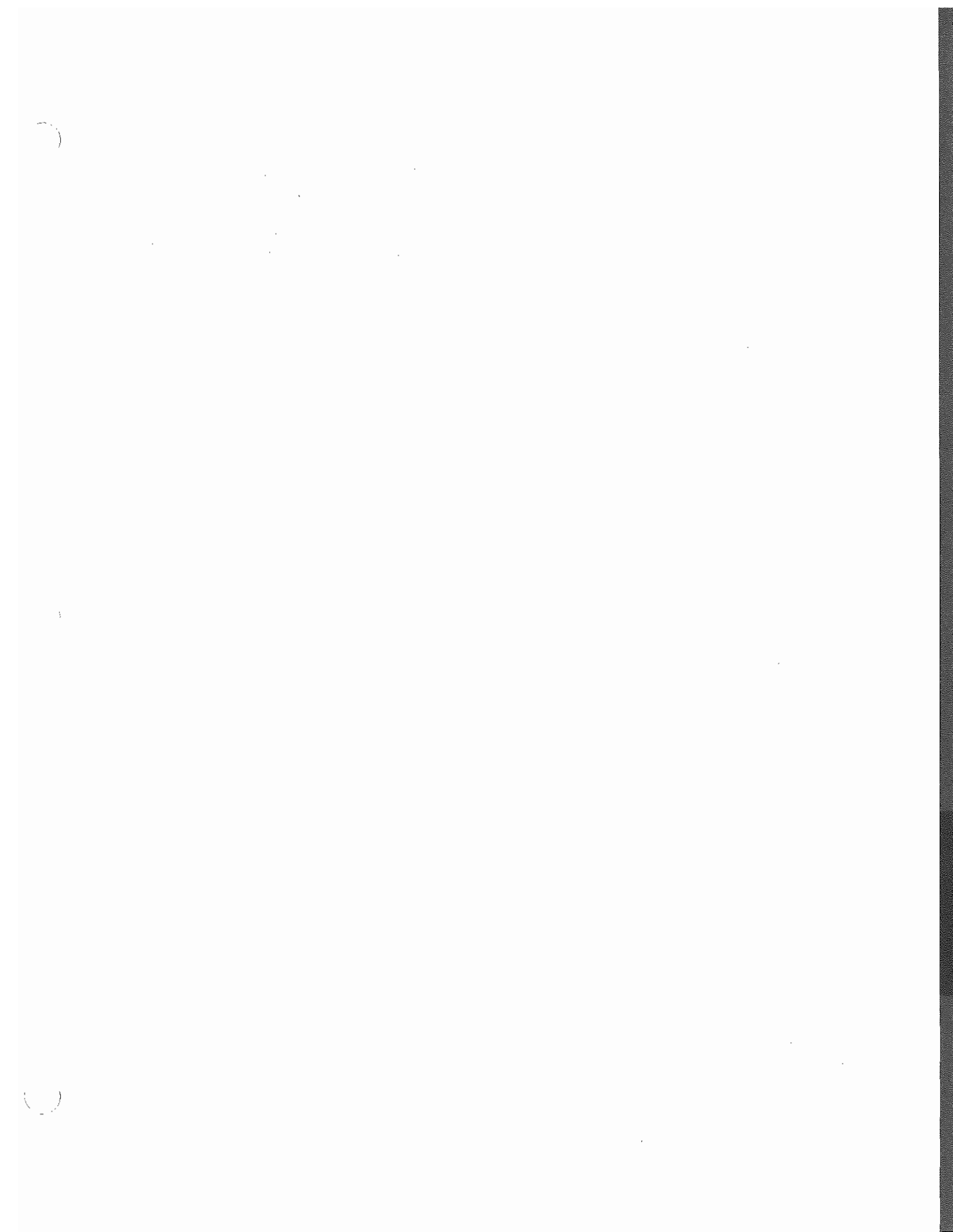
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1-17087	Document 17087. GoTo Page 2-1110. Letter from Moores and Alford, to Schreiber, and attached Sales Representation Agreement.	30
1-17071	Document 17071. Letter from Mr. Lohmann, dated January 23, 1986.	38

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Transcript Ordered: September 20, 2004

Transcript Completed: October 28, 2004

Counsel Notified: October 28, 2004





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Court File No. 02-20068

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

VERSUS

MBB HELICOPTER CANADA  
(c.o.b. as Eurocopter Canada Limited)

KURT PFLEIDERER AND HEINZ PLUCKTHUN

\*\*\*\*\*

FURTHER EVIDENCE

PRELIMINARY HEARING

\*\*\*\*\*

BEFORE THE HONOURABLE MR. SENIOR JUSTICE P. R. BELANGER  
ON SEPTEMBER 21, 2004 AT THE CITY OF OTTAWA

\*\*\*\*\*

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

\*\*\*\*\*

APPEARANCES:

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T. Shaw

Counsel for the Crown

P. Schabas  
T. Wong

Counsel for the Accused

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CODE.

TUESDAY, SEPTEMBER 21, 2004

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

(10:00 a.m.)

COURT REGISTRAR: Court is now reconvened.

Please be seated.

MR. BERNSTEIN: Good morning, Your Honour.

THE COURT: Good morning.

MR. BERNSTEIN: Mr. Schreiber.

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

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

Q. When we last broke we were looking at Document 1711 -- no. 17115. And I'd ask Staff Sergeant, if we can bring that document back up on the screen. This is the translation which is on the screen now. It's Goto Page 4 and 5. The German version of this letter is also in the database and it is Document 17116. No. I think we'll just stick with the English edition for now. In particular, sir, when we last broke, I had asked you some questions and you

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were providing answers in connection with the first sentence on or in the last paragraph, Goto Page 4 of Document 17115.

That sentence reads, "May I say at this time that our efforts to relax the export restrictions in Canada for specific products in which you are interested, have been extremely positive."

This is, of course, a letter which you've indicated you wrote to Dr. Vogels in May of 1985. You were telling us about the export restrictions.

A. Yes.

Q. And I'm wondering if we can just begin there. What restrictions are we talking about at the time?

A. Well, Canada had export restrictions in many ways, but we were very interested from the point of Bear Head Industries for the personal [ph] carriers for the infantry, and I don't know what else was on the list, but I can help you easily what this all was about. Since the government intended to establish industrial industry plans in Canada, so the question was then what was the market? What's the internal market to feed such a company with contracts, orders, and jobs? And if that is not sufficient, you look for export industries and this is especially important in each country around the world when you deal with the defence industry, because countries in the normal, want to have their own defence industry, and when they cannot afford to have one because the forces are too small, then they try to compensate this with exports of these products to keep their own defence industry alive. And this, of course, deals with other equipment as well. It depends what it is. I recall pretty -- pretty clearly that there was a discussion with Minister Stevens and that he was -- that he indicated that he would

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look into this and would help to find export markets for various products and that he would provide us with a list for the future what countries we could export and we were mainly looking for the NATO countries and the commonwealth countries with peacekeeping equipment and that, to make another story short, this went for quite a while. I cannot tell you how long. And finally, the Foreign Affairs under Joe Clark then agreed, together with DRIE, to put a new regulation on Canada's export policy, and this was achieved and this was the beginning of it.

Q. What did MBB assemble in Canada at the time, in May of 1985?

A. I have no idea.

Q. Did MBB have a subsidiary in Canada?

A. In '85? I'm not sure whether it was really already established. I -- I understand that this may look strange to you, but I'm telling you again I -- I'm only interested in things I do and I move. I am not a nosy guy. I'm not scouting around to -- to get the information on anything.

Q. I recall you telling us earlier that you attended an opening. Do you recall that?

A. I attended an opening? No, I was aware that there was an opening in Fort Erie. It was a day when I was in Ottawa and I learned that certain people I wanted to meet -- I think it was Bob Brown -- that he was not around because he went to an opening to Fort Erie for MBB. This is how I came aware of that.

Q. The sentence says, "May I say at this time our efforts have been extremely positive." What efforts --

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what were your efforts on MBB's behalf to relax the export restrictions in Canada?

A. Well, the discussions with the Minister and his people. To convince him. If he wants an industry, I mean you cannot bluntly send delegations and ambassador's around searching for industry to be established in Canada. Then you have to understand how you can find work for a plant and how you can -- can feed these companies and then either you have entire market or you have to find export business. And for that, you need the support from a government. All this business what I was in there, it was all related to governments. And the governments decided, and this was, as I told you, between Mr. Stevens and Mr. Strauss, and this is -- that's it. This is government to government. This is -- it's very normal the way it works here.

Q. You mentioned dealings with Mr. Stevens on this issue.

A. Yes.

Q. Tell me about them.

A. Well, discussions with Bob Brown, how can we find export? And I told you yesterday that we were very much interested to get a better business relation between Canada and United States through the Canadian defence production sharing agreement which was a real -- what can I say? Well, you have agreement for Canada but it was never filled with life. The Americans only owed parts from them, and I am pretty much aware of my discussions with the secretary of the state from the army in Spentagun [ph], and convinced him that Canada has to sell product. Not only as I told you yesterday, but you get the business from spare parts and from upgrading. And yeah, I was very proud he agreed. So

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there I was with another gentleman from the Canadian government. I think his name was.... Well, I don't -- I don't recall. I will -- when I find it, I'll tell you.

Q. You say you get the business from spare parts. What do you mean by that?

A. When you sell a product, for example, to United States, which we finally did with the Fox vehicles and general dynamics, you have not only the business by selling equipment, you sell also the spare parts, because you produce them. I mean, if something breaks, you have the business. If you have an upgrading, we have the business. I mean, this is -- when you look at the -- when you look at the huge helicopter deal which went through right now, it's a contract for approximately 3 billion. That's in -- in reality it's 9 billion, because a helicopter will be changed with parts in its lifetime at least two times.

Q. You say in a sense that the efforts have been extremely positive.

A. Yes.

Q. Why would you say that? What was...

A. Well...

Q. What was extremely positive about your efforts?

A. Yeah. Mr. -- Mr. Stevens agreed to support this heavily, because he understood without -- without conflict from foreign countries when the entire market is not big enough, and he doesn't support it if he's not going to get any industry to Canada. It's simple like that.

Q. Just one minute. Who at MBB asked you to work on relaxing the export restrictions in Canada?

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A. Nobody. Mr. Strauss did. Look, this is why -- why you are wondering if I'm so surprised that I don't -- that I did not speak to all these people. The man I reported to and the man behind the scenes, the powerful giant, was Mr. Strauss, so I was his man. Why would I care about what anybody else discusses? I had no time for that.

Q. I understand. If we go onto the next sentence, it says, "I will be able to provide a more detailed report following my return." Do you see that?

A. Yes.

Q. Okay. Did you provide a more detailed report following your return?

A. No. I think I haven't even met him.

Q. Did you provide any over...

A. No.

Q. ...the phone or otherwise?

A. No.

Q. Okay. Do you recall dealing with other people at MBB on this export....

A. No.

Q. Let me finish the....

A. I dealt with nobody.

Q. How do you know? I haven't finished the question, yet.

A. When you said an export, I know...

Q. Don't say no so fast.

A. Okay.

Q. Let me finish the question.

A. Okay.

Q. Do you recall dealing with someone else at MBB in connection with efforts to relax the export



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restrictions in Canada for specific products of interest to MBB?

A. No.

Q. Would looking at letters or documents perhaps assist in refreshing your recollection?

A. Sure.

MR. BERNSTEIN: Let's take a look at Document 17072. Document 17072. We have a German version of this and a translation, Your Honour. We'll show Mr. Schabas the translation first.

MR. SCHABAS: No problem, Your Honour.

MR. BERNSTEIN: Q. We'll show you the German version first. They're both Document 17072. The German version is Goto Page 3, the translation is Goto Page 2.

We seem to have here -- and I'm just identifying it for the record. It looks like a Telex.

A. Yes.

Q. It was a while ago. It seems on its face to be a Telex to you from Mr. Lohmann of MBB. Do you see that?

A. In what year was that? '95?

Q. 1985. 0-6.... June 26, 1985.

A. Well, I can -- I can read this here but...

Q. Okay. Take your time. This would have been....

A. Okay, yeah. I can -- I can see what it is.

Q. About a month after your letter to Dr. Vogels.

A. Yes.

Q. Okay. Great. Let's take a look at the English translation of it. Goto Page 2. We have here what

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appears to be a Telex from Mr. Lohmann to you, Mr. Karlheinz Schreiber. Subject: Situation regarding MCL export permit. Export licence granted Peru Dubai Saudi Arabia. Export licence rejected. Iraq. Export licence filed.

A. Yes.

Q. Pakistan, Chile, Egypt, and there's some other countries listed there.

A. Yeah.

Q. So, does this Telex -- well, first of all... Does this Telex from Mr. Lohmann to you respecting MCL export permits...

A. Yes.

Q. ...assist in refreshing your recollection in connection with the question: Did you deal with anyone else at MBB or MCL in connection with this expert licensing issue for relaxing export permits, or whatever?

A. Yeah, there's no...

THE COURT: Well, your question, in fairness, was in relation to export restrictions in Canada.

MR. BERNSTEIN: Yes.

THE WITNESS: No.

MR. BERNSTEIN: Q. Does it assist in refreshing your memory -- well, in connection with the question, were you involved in obtaining directly or indirectly, or providing advice in connection with obtaining MCL export permits?

A. No.

Q. Does this letter assist in refreshing -- or Telex assist in refreshing your memory on that?

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A. This Telex tells me only that Mr. Lohmann -- I take it that Mr. Pfleiderer, or whoever, told him this -- has sent me this information. That's all what I can take from this letter. Which is very simple. When they worked on the export permits to feed their company, which they established right now with -- with the Canadian grant, it's very normal that they don't want to have an industrial tombstone and another bankruptcy. They want business, so DRIE has moved and tried to help MBB in Canada to get -- to get orders. This is all what it's about. And what you saw in my letter, what Sinclair Stevens promised, this showed that he did something. And I -- I take it, if you want to know more about this, I recommend you ask Mr. Stevens or Mr. Brown. It must have been directly in it, but not me. I was not involved in this. There was no need, and I could have done nothing, but the question, can we get the permit, this was a discussion for sure, between DRIE and external affairs and as a result MBB or the company in Fort Erie got informed. This is where you can look at clients. This is where you would get the permit. And Mr. Lohmann, I take it, has sent a fax to me, or whatever this is, or a Telex in that days. To inform me about it. That's all.

Q. Do you recall receiving this?

A. No.

Q. Do you recall there being some issues about export licences to Iraq?

A. Hmm?

Q. Do you recall there being issues about relaxing export...

A. No.

Q. ...restrictions on Iraq?

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A. No.

Q. Or Saudi Arabia?

A. Yeah. On Saudi Arabia, I was aware of that.

Q. Tell me what you were aware of?

A. Well, Saudi Arabia tried to buy the armoured vehicles from Thyssen, and there was a restriction, as you know. Later on that was lifted and Clark agreed that we could sell this cause to the Saudis.

Q. Let's go back to Document 17115. The letter to Mr. Vogels. In particular, I'd like to go to the translation and I'd like to go to page 5, which is the second page of the letter. In the last paragraph of this letter, you write to Mr. Vogels and say, "Finally, I would like to make you aware of a very important point. By all means, also use the contact with GCI Frank Moores for other projects with which the Canadian government is connected so that there are no blunders as with the low-level air defence system."

My first question is, why did you say this to Mister -- or Dr. Vogels in May of 1985? Why did you say...

A. Well, I don't recall why I said this but when I look at this document today, I can -- I can think why when you have people involved in representing a company, and you change with the consultants or lobbyists or whatever it is, you start automatically a competition war among them, and that doesn't help.

Q. Why did you characterize the use of Frank Moores for other projects as a very important point? Why did you say a very important point?

A. Well, there was a book about the success and the power of GCI, which is known all over the place, and you had, as we said yesterday, Frank Moores, Gary Ouellette,

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Doucet, Francis Fox, and all these powerful people, although, I don't know what better you can find.

Q. What did you mean when you said "use the contact with GCI Frank Moores for other projects"?

A. What?

Q. Do you see where you say, "I would like to make you aware of a very important point. By all means, also use the contact with GCI Frank Moores for other projects? What did you mean by the phrase, "use the contact"?

MR. SCHABAS: Your Honour, I think he's really -- maybe I should say -- I want to be careful about what I say in the presence of the witness. I'm just mindful of the witnesses -- the original questions about when the document was put before the witness, and he's now being asked questions which....

THE COURT: It's an open-ended question.

MR. SCHABAS: Well, as I recall, he didn't.... Okay. I'm sorry, Your Honour. Mr. Wong has corrected me. I thought that this was put to him to refresh his memory.

THE COURT: No. Thank you. Go ahead, please. Can you answer the question, sir? Do you want it put to you again? What is meant by -- what did you mean by the expression, "Also, use the contact with GCI?"

THE WITNESS: Your Honour, to bring competition in the field of the consultants and lobbyists.

MR. BERNSTEIN: Q. There's a reference in this sentence to "There are no blunders... -- well, it's

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connected, "so that there are no blunders as with the low-level air defence system." What blunder was there with the, if any, with the low-level air defence system?

A. I don't recall exactly, but my memory tells me that there was a huge scandal when I got this right, with the low-level air defence system related to Oerlikon.

COURT REPORTER: Pardon?

THE WITNESS: Oerlikon. O-E-R-L-I-K-O-N. And the media was packed with this. I don't know whether you are aware of this, with land deals and God knows what. It was a real mess. And this is something you -- I don't know how much you are aware of this. When things like this are going on, thousand interests all around. It is like you are a big horse packed with horseflies. Everybody wants to get a piece out of this. You've got to be very careful otherwise you -- you stick in mud, immediately.

MR. BERNSTEIN: Q. You use the phrase "stick in mud". What...

A. A mess.

Q. How? In what...

A. A mess. I mean when -- when you recall what mess the Oerlikon scandal in Canada was, then there's nothing more I can tell you. If you don't know that, then there's no way I can describe it in a better way.

Q. What did you understand that scandal involved?

A. Well, it was all kind of illegalities and money waste, and I don't know what it all was.

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Q. All right. In the next sentence you say, "It is not only practical to make use of this contact," GCI Frank Moores "but for many reasons it is also expected by the other side." What were the many reasons it also was expected by the other side?

A. Well, I -- I -- my recollection is that Mr. Coats told me at one time that to make sure that there is no headache and problems. We should take the people which are trustworthy and are around, and he came up with all these names as I mentioned them before.

Q. Who?

A. Well, Frank Moores, Gary Ouellette, Fred Doucet, Gary Doucet, Francis Fox. They were all with GCI. This was a powerful organization from the Conservatives.

Q. So, Coats -- continue with what Coats said to you.

A. Yeah. So when we were there already the first time, it was -- and with Mr. Moores, it was -- for me it was a miracle. Coats use to be the president of the Conservatives. Moores use to be the Conservative. They were all together for all the times. This is a way they do business. But this has always a real -- a real background or whether one friend would like to do a favour to another friend in this profession. How do you know? You will never know. And I don't care, quite frankly.

Q. Will you tell us?

A. Hmm?

Q. Will you tell us?

A. I would tell you, but I don't care, because you see what can you do? The client tells you what you want. Mr. Bernstein, you have a different profession than I have.

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When you go out there you beg. You beg for a contract. This is what it is all about: Jobs for the politicians. It's a miracle. It's the formula for any political success. So whatever the client wants, you try to fulfil, and this is what exactly the position from IAL where I used Mr. Pelossi's services. There isn't -- for me, there is no miracle. This is my world.

MR. BERNSTEIN: Okay. Can this document be entered as the next exhibit in these proceedings?

THE COURT: This is what, 17115?

MR. BERNSTEIN: Yes.

THE COURT: Exhibit 1-17115.

MR. BERNSTEIN: And that's the German edition and the English is -- no, I'm sorry. The English is 17115. The German original is 17116.

THE COURT: Well, they're all together in 115, aren't they?

MR. BERNSTEIN: It often happens, Your Honour, where the translation and the German are one document and the actual German original is another document of the -- sequentially, are close by.

THE COURT: Well, it doesn't matter. It just -- we'll duplicate the German then, I guess. 115 and 116. Exhibits.

EXHIBIT No. 1-17115: Document 17115. Letter to Mr. Vogels. English translation.



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EXHIBIT No. 1-17116: Document 17116. Letter  
to Mr. Vogels. German language.

MR. BERNSTEIN: Q. Do you recall Mr. Vogels  
-- I believe you mentioned this yesterday, but I'll just ask  
a general question. Do you recall Mr. Vogels visiting Canada  
around this time in May, 1985, around there?

A. I don't know what month it was, but I  
know he was here.

Q. Do you recall seeing him when he visited?

A. Yeah, sure.

Q. Have you ever been to the Rideau Club?

A. To what?

Q. The Rideau Club. Have you ever been to  
the Rideau Club?

A. I think so, yeah.

Q. I'm not from Ottawa. What is the Rideau  
Club?

A. I recall -- some rooms somewhere in a  
highrise where Mr. Moores took me for lunch.

Q. Do you recall dining with Dr. Vogels  
during his, I'll say May 1985 visit?

A. At the Rideau?

Q. Yes.

A. I don't recall that, but it's possible.

Q. Okay. I'll show you a document. It may  
refresh your memory or it may not, but...

A. Okay.

Q. ...we'll just look. Okay? And this  
is.... Just while the Staff Sergeant is bringing this

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document up, do you recall who the Ambassador to Germany was at the time? From Germany?

A. The German Ambassador?

Q. Yes.

A. Mr. Soulieman? Dr. Soulieman?

Q. I don't know. Does the name Wolfgang Berenz....

A. Wolfgang Berenz. Yeah. I think he was there before Mr. Soulieman came.

MR. BERNSTEIN: Okay. Let's take a look at Document 1802. Document 1802. First to Mr. Schabas.

MR. SCHABAS: Yes, Your Honour. I remember this document.

THE COURT: Yes.

MR. SCHABAS: It can be put before him.

MR. BERNSTEIN: Q. We have here what looks like a seating plan for a luncheon given by Ambassador Wolfgang Berenz at the Rideau Club, May 10<sup>th</sup>, 1985. Does this sort of twig a recollection either as to the place or who had lunch or who you ate with?

A. No. I -- I see now that this was an invitation, as far as I can see it here, from the Ambassador, though this must have been another one than the one I recall, that I might have been there twice. And the people there, yeah, I recall a few of them.

Q. Which ones do you recall seeing during this visit? Not necessarily at this lunch but just during the visit in May of '85.

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A. No. I can only speak about this here. Maybe speak about the lunch. It's a different occasion, so for sure, Mr. McMillan.

Q. Who was Mr. McMillan?

A. I think he was the political advisor to the Prime Minister.

Q. Of what country?

A. Of Canada.

Q. All right.

A. And the host was Count Berenz, Dr. Vogels. Mr. Kempel, I don't know. Mr. Grant, I think worked with MBB. Mr. Pfleiderer, Mr. Moores.

Q. Have you met Mr. Grant?

A. Yeah.

Q. Tell me a bit about that? What did you understand Grant did?

A. That he worked for MBB.

Q. What did he do for MBB?

A. I have no idea.

Q. Where did he live? I don't mean the street. I mean what part of the country?

A. When -- when I recall right, I met him once in the street and we chatted. I think he was from Alberta.... It was more about Alberta and how he's doing here, so nothing specific. Then Graf Stauffenberg.

Q. All right. Have you met -- do you know Graf Von Stauffenberg?

A. Yes.

Q. Okay.

A. That's a relative to the Stauffenbergs which tried to kill Mr. Hitler.

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Q. I don't want to lead so I'll just ask the general question. When?

A. What when?

Q. I'm sorry.

A. That he tried to kill Hitler?

MR. BERNSTEIN: Your Honour, I'm sorry. I was just -- I was just...

THE WITNESS: I don't know when they tried but everybody knows that they tried.

Stauffenberg is a very well-known name.

MR. BERNSTEIN: Q. Indeed, Graf is German for what?

A. I don't know. Count?

INTERPRETER: Count.

MR. BERNSTEIN: Q. So it's Count Von Stauffenberg.

A. Yeah.

Q. He, I guess, was -- his family was once a member of the aristocracy in Germany?

A. Yes. And his brother is -- was -- was the chairman from the Committee for Foreign Affairs and was quite often in Canada... von Stauffenberg, and a good friend of mine. Hell of a nice person.

Q. And you say that -- I didn't hear that. He was or a relative of his was the...

A. No, the -- the son from the Count Stauffenberg who tried to kill Hitler is a very close friend of mine. But that is...

Q. Okay. I just want to keep the Von Stauffenberg's straight. Okay?

A. Yeah.

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Q. We have -- the father tried to kill  
Hitler?

A. Yes.

Q. And how many sons were there?

A. I think two.

Q. Okay. This one, Graf von Stauffenberg,  
the one who was with Vogels in May of 1985...

A. Yeah. I met only once or twice.

Q. ...what did he do for a living?

A. I think he worked with MBB.

Q. Okay. You mentioned another one who you  
were more friendly with?

A. Yes. He was in politics. Foreign  
Affairs.

Q. In Germany?

A. Yes.

Q. Federally or...

A. Federally.

Q. ...provincially?

A. Federally.

Q. Okay. Do you recall meeting or speaking  
or being with Mr. Moores during Dr. Vogels' visit in May of  
1985?

A. No. Not special. But there was for sure  
a meeting with him. This was the reason why they came.

Q. Do you know Helge Wittholz?

A. Yes.

Q. What did you understand Mr. Wittholz did  
for a living?

A. That he worked with MBB in Canada.

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Q. On occasion, did you -- not just this occasion but on other occasions, would you meet with Mr. Wittholz?

A. I recall only one time that I met him somewhere at an airport.

Q. There's a reference to a Dr. van Setton. Do you see that there?

A. Yeah. I don't know. The name sounds familiar to me. Also, like Dr. Forrestall, where I'm not -- I'm not sure whether -- whether this is Foster Steinberg or what, I'm not sure.

Q. Okay. All right. Did you know Dr. Vogels before this visit to Canada...

A. Yes.

Q. ...in May of 1985? Tell me about your relationship or what you knew of him before?

A. I met -- I met him at receptions or probably when a delegation from foreign clients came to -- to see MBB and he addressed them or said hello. I had no -- I had no real personal relationship with him. I thought he was pretty dumb.

Q. Pretty?

A. Dumb. This is why he finally lost his job.

Q. Why did you think he was pretty dumb?

A. Well, because Strauss was always pissed off with him and he wasted so much money for luxury events with his wife in Paris on business trips and stuff. He didn't like him. And I didn't like him because he messed it up with DeHavilland.

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Q. I want you and maybe the translator to help me with this. What does *sie* mean S-I-E in English?

A. What?

Q. Well, *sie* is German. I wanted to know what it meant in English.

INTERPRETER: It means "you".

MR. BERNSTEIN: Q. And what does *du* mean, D-U?

INTERPRETER: *Du* is the polite form. It's the equivalent in French of *vous* and *tu*.

MR. BERNSTEIN: Q. Okay. When you would speak to Vogels, would you use the *sie* or the *du*.

A. The *du*.

Q. Why not the *sie*? He's...

A. Well, we had an evening with Mr. Strauss and he offered me the *du* and his name was -- he had a nickname, was *pieps*. A *vogel* is a bird and it makes peeps. So this is why we called him *pieps*. And he was a *piep* in my opinion.

Q. All right. All right. So, when you say "he offered me the *du*" what do you mean by that?

A. Well, this is a great event, and even today in Germany everybody discussed Mr. Schreiber whom did you say *du*, whom did you say *sie*? It's not like here. You meet a guy and you say Frank. They work together perhaps for ten years and say Mr. So-and-So and Mr. Secretary, and Mr. Lieutenant. This is a different world.

Q. And I want you to help us understand it. Why did you resort to the familiar?

A. Well, when you are in North Germany, that is a huge event. In Bavaria, it is not. In Bavaria, they are

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very -- the mountain guys, we are very straight forward and very humorous and either you belong to the family or you don't. So, I could say it in drastic Bavarian words but I respect the court, and I'm not going to do it.

Q. So, what's pieps?

A. Pieps, it's like.... A peep. For a bird, and because his name was Vogel and Vogel means bird and we called him pieps.

INTERPRETER: It would be like saying "tweet".  
"Tweetie" in English.

THE WITNESS: Yeah. And he liked to be pieps so that he found it special.

MR. BERNSTEIN: Q. Did Wittholz call him  
Tweetie?

A. I've never seen with Mr. Wittholz with Mr. Vogels in a situation, and I'm for sure Mr. Wittholz could never say pieps to Mr. Vogel. He would have kicked him out of the company the same moment. It's a joke.

Q. All right.

A. Excuse me, but I have really to laugh about this. When you know who the characters are and you compare the two, this very, what can I say, self-convincing Mr. Vogel and Mr. Wittholz -- really, when you say this is, I cannot stay away from laughing. It's too funny.

Q. Okay. Okay. Let's go to the next page on this. GoTo Page 3. All right. I just want to ask you some general questions. There's a list of people here. Todd Siddon. Do you know him?

A. Yes.

Q. Would...

A. Yes.



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Q. Did you...

A. Yes.

Q. ...have dealings with Mr. Siddon at the  
time?

A. No, but I know them.

Q. Michael Forrestall.

A. Yes.

Q. Did you know him?

A. Yes. Vaguely.

Q. Frank Oberle?

A. Yeah. I know him close. He's a nice  
man. He's from Germany. He later became the Minister of  
Science and Technology and I worked with him together quite a  
while.

Q. Pat McAdam?

A. Yeah, I know him.

Q. What did Mr. McAdam do?

A. I have no idea. He was somewhere around  
with -- Mr. Moores introduced me to him so I had no special  
relationship or special notice about him.

Q. Michel Deschenes?

A. Not really.

MR. BERNSTEIN: All right. Perhaps this  
document can be entered as the next exhibit in  
these proceedings to be given the, whatever,  
evidentiary value it may have.

MR. SCHABAS: Your Honour, in my submission  
it has no evidentiary value. It was put to  
him to refresh his memory?

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THE COURT: If that's the purpose of having produced the document, the memory is the evidence, not the document.

MR. BERNSTEIN: Yes. Fine. I won't press it, Your Honour.

THE WITNESS: If you allow me to say this, it shows here only how much interest from both government sides were put on this to get industry. It's very normal. It's around the world everywhere the same to try to get the clients in.

MR. BERNSTEIN: Just one second. All right.

MR. BERNSTEIN: Q. Do you recall -- let me -- let me just ask you a general question. Do you -- and Kaufering.

A. Please?

Q. Your place in...

A. Kaufering.

Q. Kaufering.

A. Yes.

Q. Okay. Kaufering. Is it an urban area, a suburban area or a kind of country area? Your place in Kaufering?

A. It's short a kilometre away from Munich.

THE COURT: Could you refresh my memory on the spelling of -- is it K-A-U-....

THE WITNESS: K-A-U-F...

THE COURT: F-R-I-N-G.

THE WITNESS: ...E...

THE COURT: F-E?

THE WITNESS: And then R-I-N-G.

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THE COURT: R -- all right.

MR. BERNSTEIN: Q. Okay. Do you hunt?

A. Yes.

Q. Do you hunt -- I have a reason for asking these questions which will become apparent in a minute, Your Honour. Do you hunt near Kaufering?

A. Yes.

Q. Do you have a special place you like to hunt at?

A. Yes. It's my own private hunting area. It's 1500 hectares.

Q. So, I don't mean to lead, but that would be the country. That wouldn't be an urban area? You're not hunting...

A. Country.

Q. ...in the city?

A. It's still -- compared to Canada, it's still like you're hunting in a park.

Q. Okay. So open spaces are at a premium in Europe and Germany.

A. What do you mean by that?

Q. It's special.

A. Yes.

Q. So, your hunting reserve, is it Kaufering or somewhere else?

A. Close to Kaufering. 15 -- 15 minutes away.

Q. You've mentioned Count Von Stauffenberg.

A. Yes.

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(Continued...)

Q. Okay. Do you recall communicating either orally or in writing with Count Von Stauffenberg after Vogels visit or Stauffenberg's visit to Canada?

A. No.

Q. I'm sorry. I didn't hear.

A. No.

Q. Would a document assist in refreshing your memory?

A. Yes. But I think Stauffenberg wanted to ask me when we met and we chatted about hunting that he wanted to come to my hunting areas. We had quite huge parties. Just like in England with where you hunt and -- you have no idea what people all do just if they can go hunting.

Q. What do you mean by...

A. Well, it's very special. They -- they enjoy it a lot.

Q. So you said you can't believe what people will do to go hunting?

A. Yeah. They...

Q. What will people do to go hunting?

A. ...they -- they spoil you. They bring you gifts. They are excited. I mean...

Q. I'm wondering if we can take a look at Document 17101. Document 17101. The translation is GoTo Page 2 and the German is GoTo Page 3. So we'll start with the translation to Mr. Schabas.

MR. SCHABAS: Your Honour, I don't object to the document being put to the witness other than to query the relevance of all of this.

MR. BERNSTEIN: Just one second. I actually, I want to start with Document 17103 first.

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We'll sort of do them in chronological order. So, if we can just stand down Document 17101 and deal first with Document 17103.

MR. SCHABAS: I take the same position, Your Honour.

MR. BERNSTEIN: So, let's call it up on the screen. The GoTo Page for the German edition of this is 2 -- once Mr. Schreiber looks at that for a second and then we'll take it from there.

THE WITNESS: Yes.

MR. BERNSTEIN: Q. Okay. Can we go to the -- first of all, before we go to the English edition, I just want to deal with the signature. There's a signature above the words "Karlheinz Schreiber" on this document.

A. Yeah. That's me.

Q. Okay.

A. Yeah.

Q. We have here a letter on your letterhead signed by you, dated May 31, 1985 to Clemens Graf Von Stauffenberg...

A. Yes.

Q. ...care of Messrschmitt-Bolkow-Blohm, signed by you, right?

A. Yes.

Q. Do you recall writing this letter?

A. Yes.

Q. Okay. Let's go to the English edition of the letter, which is GoTo Page 2. The German edition of the letter is GoTo Page 3. Okay. The date is May 31, 1985, and the first line of the letter, "Dear Von Stauffenberg -- Dear

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Mr. Von Stauffenberg," is "During our stay together in Canada..." Does this assist in refreshing your memory as to when the meeting was?

A. Yeah. Hundred percent. We discussed hunting and they both were keen to get an invitation and this is what I did.

Q. And I'll leave the hunting, but I'll direct your attention to the last sentence in the letter, which says, "I will be back from a trip abroad around June 18<sup>th</sup>, and we'll try to call you then. On this occasion, I will then gladly inform you about further developments in Canada." Do you see that there?

A. Yes.

Q. Why did you say that to Mr. Von Stauffenberg?

A. I have no idea.

Q. Well, why do you write to Von Stauffenberg to invite Vogels and von Stauffenberg?

A. Because they both were keen and were together in Canada with me. Perhaps I invited Vogels and Vogels said "May Stauffenberg come as well," or it was the other way around. It was a huge prestige invitation for hunting, so what.

Q. Okay. Did you use your hunting reserve as a vehicle to pursue business opportunities?

A. Sure. Also. It was for fun. It was for relaxation. It was a job, because you are -- have a lot of work to do and I had my people working in the forest, watch the birds, feed the deers. It's not like in Canada. You have no -- you have no wolves, you have no Pumas, so you have to regulate the wildlife. It's pretty tough stuff and strong

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regulation, so yeah, that's one thing. The other thing is, yes, people like to hunt and I got the whole thing only at the beginning, because a friend of mine who was the reeve in that area, loved to hunt. And he said, "Look, we could get this hunting grounds. Why wouldn't you take it? It would be good for everything. I did it, so.... And just to answer your question. It's not only the hunting. It is a home. It is -- it is Christmas parties. It is -- it is sailing. It is summer vacation. It is winter vacation. It is skiing.

THE COURT: There are lodges there and things of that nature?

THE WITNESS: Huh?

THE COURT: A lodge or buildings...

THE WITNESS: Yes.

THE COURT: ...that kind of thing...

THE WITNESS: And you go and --

Mr. Bernstein, again, I am -- you may not believe this, but I am very much interested to assist you to clear up this thing, because at least the RCMP people know my personal views about the whole case -- so I'm very much interested to explain to you and give you an understanding what it is.

Whether you look at politics, whether you look at business, one thing is the most important thing. Personal good, personal relations. I can tell you the perfect example and you will know it. There would have no -- there would have never been a reunification of Germany in my opinion, if there would not have been

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extremely good personal relations between certain people. So, this is what -- when you are in the fields where I worked, mainly on -- on an understanding and on a job I did for Franz Josef Strauss for the Bavarian government and for Germany, and I tried to do the same for Canada. And I still tell you, I'm perhaps an idiot, if you would give me tomorrow the Bear Head Project I would start it right away. To have 2000 jobs in such an area where they turned the heavy water plant, the gulf refinery, where they spray 7 tons of sulphur every hour to the region -- it was a job. It was a wonderful job, and I worked ten years on this. Unfortunately, I -- I couldn't make it. So, but all this doesn't work without personal good relations. When you go somewhere or when I go somewhere, and the other person and I can't see any...never ever, I know I can forget it. Though what you try, you try to establish success for both sides. And I can tell you the politicians are very proud when they can open a new plant or when they can open a new road or harbour, and when they can show jobs, because this is where they get re-elected in their constituencies. And that is the only place where you have two organizations under one roof: the unions and the business people, because that's the moment where they both want the same. So that leads



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you, automatically, to the people from the opposition.

I know you are pointing all the time to the people here from the government I was dealing with. I tell you, in every committee, whatever, you have the opposition. You need them as well. Though, my relations are not related only to one party. It's related to the government. It's related to the opposition. Not to the extremists, and I can tell you in my home they were all wonderful and happy and pretty. And I tell you even more, democracy will not work without the government and the proper opposition. And we have seen this in this country when it was left after the Conservatives left government with one guy in opposition. So, you have to maintain this, and this is what I did and I did it with pleasure.

MR. BERNSTEIN: Q. How does hunting do this?

A. Well, people like to hunt and you have parties with it. You have group huntings, where you go for pheasant or hare or -- and that's -- that's a strong tradition with special rules and formalities and dresses, and so this is an event. This is culture. This is -- like when you look at England now, there's a big a discussion on the fox hunt, also. This is -- yeah, it's special.

Q. I ask -- do you bowl?

A. Huh?

Q. Do you bowl? Bowl.

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(Continued...)

A. Whether I bowl?

Q. Yeah.

A. Sure. I have a bowling alley in my home.

Very comfortable.

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

THE WITNESS: I only -- I only hope you will not refer to all the parties in my home, because then we are here for the next two years.

MR. BERNSTEIN: No, no.

MR. SCHABAS: I want to find out about his bowling scores.

MR. BERNSTEIN: I'll save that for cross-examination. Document 17103. GoTo Page 2 and 3. Is the letter from Mr. Schreiber to the Count. Count Von Stauffenberg. Okay?

EXHIBIT No. 1-17103: Document 17103. A letter to Mr. Von Stauffenberg.

MR. BERNSTEIN: Q. Do you recall receiving a letter back from Count Von Stauffenberg?

A. No.

Q. Would looking at a document assist in refreshing your memory?

A. Sure.

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(Continued...)

Q. Looking at a letter. Let's go to page 17101. 17101. GoTo Page 3 is the German edition. GoTo Page 2 is the English translation.

A. Here you have Piep Vogels. Yeah. Okay.

Q. So, let's look at the English translation, go -- well, GoTo Page -- GoTo Page 2. Do you recall receiving this letter?

A. No, but I take it I got it when I see it.

Q. And do you -- can you help us, and you may not. I'm just asking. Can you help us at all with the reference in this letter to -- I assume that in the near future we will again have an opportunity to talk about the Canadian market?

A. Yes. MBB opportunities or other in Canada, and I told you the project I liked the most is DeHavilland.

MR. SCHABAS: Your Honour, we have his answer, but Mr. Bernstein is asking him what somebody else needs. It's not a letter from Mr. Schreiber.

THE COURT: In any event, the letter is not recollected by the witness.

MR. SCHABAS: No.

MR. BERNSTEIN: Q. You mentioned to us that you know or met Mr. Jim Grant.

A. I said -- what do we understand to know. I met him one or two times.

Q. Do you recall writing to him?

A. Huh?

Q. Do you recall writing to him?

A. Whether I wrote to him?

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Q. Yeah.

A. I have no idea.

Q. Would looking at a document assist in refreshing your memory. Okay. Let's take a look first to Mr. Schabas, Document 17063, Document 17063.

MR. SCHABAS: No problem, Your Honour.

THE COURT: Thank you.

MR. BERNSTEIN: Q. We have here a letter to Mr. Grant. Best regards, you on your letterhead. I want you to look at this.

A. Yes. Yes.

Q. Okay. Do you -- well, the first question I want to ask you is, did you attend Expo '86?

A. In Vancouver?

Q. Yeah.

A. Yes.

Q. Do you recall requesting a lift or ride on an MBB helicopter?

A. No. Doesn't mean that it took place [sic], but I don't recall it.

Q. Okay. What can you recall about this letter?

A. I'm amazed. I have no recollection that I sent him this letter, and I take it from there that he has sent a Telefax to me with info. I have no idea. Canadian helicopter. Who puts this on here? I cannot read this.

Q. The writing isn't -- it seems to be Mr. Grant's. I'm not suggesting it's your writing.

A. Yeah. I have -- I have no recollection of this. My recollection of Expo is only to Mr. Oberle, because he played a key role there.

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THE COURT: Mr. who, sir?

THE WITNESS: Oberle.

MR. BERNSTEIN: What?

THE WITNESS: The Minister of Science and  
Technology.

MR. BERNSTEIN: Q. Do you recall receiving  
this letter back with the note on it on the bottom?

A. Not at all.

Q. Do you recall through '85 through the  
summer of '85 and into the fall of 1985, into the beginning  
of 1986, continuing to have contact with Count Von  
Stauffenberg?

A. No, but it's possible.

Q. Would looking at some documents assist in  
refreshing...

A. Always.

MR. BERNSTEIN: Let's go to Document 17099.  
The English version of the translation is at  
page GoTo 2, and the German is GoTo 3.

MR. SCHABAS: Your Honour, subject to again  
clearing the relevance of this, I don't have a  
problem with it being put to him.

THE COURT: Thank you.

MR. BERNSTEIN: Q. We have here a letter.  
Just take a look at the German one..

A. Yes.

Q. The first question is, I just direct your  
attention to the top of the document.

A. Yeah.

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Q. If we go to the German one, which is GoTo Page 3, we see in the letterhead, it says MBB and then it says Clemens Graf Von Stauffenberg.

A. Yeah.

Q. And then it's got a German word...

A. ...[German].

Q. And that means what to you?

INTERPRETER: Generally authorize to do all sorts of things for the company. It's...

THE WITNESS: ...[German].

MR. BERNSTEIN: Q. Can you translate what he just -- Mr. Schreiber just said?

MR. INTERPRETER: That it would come from below the rank at the top of the list. If you'd permit to see...

MR. BERNSTEIN: Sure.

MR. INTERPRETER: ...this unofficial...

THE WITNESS: Somewhat like a general proxy to do business for MBB or so.

MR. INTERPRETER: In commercial parlance, general representative is the word given.

It's also the word used for...[inaudible].

MR. BERNSTEIN: In our translation we have executive managers.

MR. INTERPRETER: That would be a generic title...

THE WITNESS: I have no idea.

MR. BERNSTEIN: Q. My question to you is, look at the German...

A. Yeah.

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(Continued...)

Q. ...and on the -- does that type of -- I can't pronounce it...

A. ...[German].

Q. Assist in refreshing your memory, generally, as to Clemens Von Stauffenberg's job at MBB?

A. No. I looked at him more like, what can you say, somebody around Dr. Vogel who was good for everything, in contacts or attending dinners or whatever you want to say. We call them breakfast directors.

Q. Breakfast directors?

A. Yeah. They attend parties and entertain people. This is all they are good for. All the good fundraising dinners.

Q. When you say good for fundraising dinners, what do you mean?

A. Well, this is a job from people which are in the promotion or, what would you say, advertising or marketing business in principle or in general.

Q. Who is raising funds?

A. Hmm?

Q. You said fundraising dinners.

A. Well, MBB would send in Germany to every party or foundation or what, they would send people.

Q. Okay. Let's take a look at the English version of this letter. 17099. Goto Page 2. There's a reference in the first paragraph to a beautiful -- "you gave me a beautiful calendar for New Year's."

A. Yes.

Q. Do you recall giving the Count...

A. Yes.

Q. ...a New Year's calendar?

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(Continued...)

A. Yes. Approximately, 500 people got every year a little Letts of London, a small calendar with their names imprinted, as a little gift from my company.

Q. Is this...

A. And they liked it. It was a nice calendar.

Q. Like, it's obviously not just a calendar you buy in a corner store.

A. No. We ordered it directly. We got it cheaper.

Q. Is this...

A. Letts of London. You don't know?

Q. I don't know.

A. It's a small calendar this size.

MR. INTERPRETER: It's...

MR. BERNSTEIN: Well, no, no, I...

MR. INTERPRETER: It is a pocket diary. A very nice, leather -- usually leather pocket diary.

THE WITNESS: No, it was not. We did not take leather. We did card.

MR. BERNSTEIN: Q. Okay. So, it's a fancy pocket diary?

A. I don't know whether it's fancy, but in England it's very common and in Germany. There's a very clever importer and he made a business, special business out of it.

Q. Okay.

A. It was special. I'm proud it was special. Otherwise, he wouldn't have recognized it.

Q. Okay. I know and I...

A. They would not have taken it.



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(Continued...)

Q. ...don't know what it is. I just want you to explain. Like, I don't know from this calendar...

A. Letts of London you should know, Mr. Bernstein. I mean...

Q. I know Grand & Toy.

A. Well, you may get it there.

THE COURT: He works for the Provincial Government. He wouldn't know.

THE WITNESS: He may -- he may get it at Grand & Toy, sir. If he just would ask.

THE COURT: Not real -- not real leather, though.

MR. BERNSTEIN: Q. So, it's kind of...

A. It's a nice little calendar, yeah, with lots of information.

Q. All right. And he was on the list of 500?

A. Yes. And that works very simple, too. You get all the business cards, you give it to your secretary who puts you on the list and though they send it out. Bingo.

Q. The second paragraph of the letter refers to being unable to meet as often as planned. Is that consistent...

A. Yeah. He -- maybe he wanted to meet me more often, but I want to get -- to get something clear on this miracle.

Q. Okay.

A. The giant and most powerful man in Bavaria and maybe in German politics was Mr. Strauss and I had his ear. Now, it is so easy to understand that people try and look to get a relationship to me or be friendly with me by thinking I -- I can help them. This is the whole secret of

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the whole thing. Karlheinz Schreiber would have been nothing -- more or less nothing on the international scenario without Mr. Strauss. I cannot think that Henry Kissinger and.. [undecipherable] ..and Napoleón Duarte, and whoever you want, would sit down with me, if not Mr. Strauss would be the schedule with them, would have reason for it. So, I mean...

Q. All right.

A. ...let's get things straight here.

Q. Okay. And so, you were unable to go hunting, but he still wanted a raincheque?

A. Yeah.

Q. Now, I'd like you to take a look at the third paragraph...

A. What is a raincheque?

Q. Well, let's look at the German...

MR. INTERPRETER: That he can come back later and ask...

THE WITNESS: Yeah, yeah. Okay. That's fine, yeah.

MR. BERNSTEIN: Q. It's in -- raincheque is in English in the German letter.

A. Well, raincheque, I don't know. But I think it. It's a nice word.

Q. There's a reference here to "I am still very concerned about the export licences for Iraq and Canada. Do you have anything new to report?"

A. Well, I don't know about this. You have seen the MBB has put the request for permission from Canada and as far as we saw it in the documents, obviously, Canada's government had prepared the list, and that's it. So, whether he wants to -- well, I can imagine that everybody in that

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case was keen perhaps to sell stuff to -- to Europe. The Americans were the number one and had the lead function in all this. I guess it was the times when -- was it when the war was on between Iran, also?

MR. INTERPRETER: Yes. With...[inaudible].

MR. BERNSTEIN: Q. All right. Just on this point here, he's expressing concern respecting the export licences and he's asking you if you have anything knew to report.

A. But I spoke to -- I spoke to nobody about this. I don't know why he -- why he sent this. Perhaps he thought since he requested it whether in the meantime it was a new development. Perhaps the MBB people, I can only guess, and perhaps they asked for it again or what. I don't know.

Q. Were the export -- you may know this or you may not know. Were export licences for Iraq ever relaxed?

A. Not in my presence, and I have no knowledge about it, and for sure it was not my job. Look -- when you look at -- when you look at these things in reality and you ask me, that would have -- would have meant that I would have to go to Mr. Stevens and say, "Look, we don't have it," or "May I go to Joe Clark?" Everybody knows Joe Clark was for sure not my friend, so why would he grant me or for MBB....

Q. I don't know. Why do you say he wasn't your friend?

A. No, I -- I have no good relationship with him.

Q. You say for sure everyone knows Joe Clark wasn't your friend.

A. No, because he was against -- he was against...

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(Continued...)

Q. Against...

A. ...all this -- this -- this thing with Bear Head Industries and -- I mean this is stuff -- I say this so bluntly because you could read it in these days all over the paper: Clark is against this. Clarke is against that, so....

Q. All right.

THE COURT: Shall we take our morning break at this point...

MR. BERNSTEIN: Sure. Thank you.

THE COURT: ...Mr. Bernstein? Thank you.

COURT REGISTRAR: All rise, please. Court is in recess.

R E C E S S

(11:21 a.m.)

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

(11:50 p.m.)

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

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

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

Q. Mr. Schreiber, I'm wondering if we can go to Document 6270. It's exhibit -- Exhibit 6270. I'm moving onto another topic. All right. We've spoke about this document. Yes. It is a letter which you wrote to Mr. Moores

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respecting a loan in the amount of a million dollars. I'm not going to repeat my questions. I just wanted to show you this, and I want to ask you a few new questions about this. All right? Now, who do you recall this loan, this million dollar loan being granted to?

MR. SCHABAS: Can I just have a moment, Your Honour? I'm concerned that we've been over this ground, Your Honour. There were a number of questions that were asked and answers were given about this letter and this loan back on -- I'm not sure which day. On the 13<sup>th</sup> of September.

THE COURT: Mr. Bernstein tells us he won't be covering old ground but he's going to have some questions about new things.

MR. SCHABAS: Well...

MR. BERNSTEIN: I'm doing this for a particular reason which will become apparent.

THE WITNESS: This is from 1995.

MR. SCHABAS: Well, I'm not sure that that very questions wasn't asked already.

THE COURT: I don't remember, but if it was, the surplusage won't, I think, have negative consequences for anyone.

THE WITNESS: I think from Thyssen to IAL.

MR. BERNSTEIN: Q. For the benefit of who?

A. IAL.

Q. Pardon me?

A. IAL and related to the Bear Head Project.

Q. But my question was, for the benefit of

who?

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(Continued...)

A. Well, Mr. Moores.

Q. If the loan is granted to IAL -- can you walk me through the transaction how it is for the benefit of Mr. Moores?

A. GCI worked for Thyssen for over ten years and never handed a bill, as I told you, with one exception for a rented bill, and so that was based on success. But my recollection is that Mr. Moores once claimed that he cannot finance everything in advance by himself and he should get at least a loan.

Q. Thank you. My question was, if the loan is granted to IAL, how is it for the benefit of Mr. Moores?

A. Because he received it from IAL.

Q. What did you understand Mr. Moores relationship to be with IAL?

A. Well, he got paid through -- through IAL. His relationship, I can't tell you. As a client to Mr. Pelossi.

Q. Who is a client?

A. Mr. Moores or GCI.

Q. Is a client of whose?

A. Of IAL. But I really wonder, Mr. Bernstein, maybe we discussed this MBB thing and this related to Bear Head Industries and it's 1995, so I have a problem with it.

Q. Do you recall Mr. Moores having another kind of relationship with IAL in addition to a client relationship?

A. No.

Q. Would looking at a document assist in refreshing your memory?

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(Continued...)

A. Yes.

Q. I'm wondering if you can take a look at...  
First to Mr. Schabas, Document 14709. That's 14709. Goto  
Page 3 and following, and in particular, I draw  
Mr. Schabas's attention to paragraph 2.3.

MR. SCHABAS: Yes. Thank you, Your Honour. I  
gather it's being put to him to try to refresh  
his memory.

COURT REPORTER: I'm sorry, Mr. Schabas, I  
didn't...

MR. SCHABAS: I gather it's being put to the  
witness to try to refresh his memory.

MR. BERNSTEIN: That's correct, Your Honour.  
Can we show Mr. Schreiber the original German?  
So that's Document 14709 Goto Page 7.

MR. BERNSTEIN: Q. And I'd ask Mr. Schreiber  
to just take a minute and review this document to the extent  
that it is of assistance to him, focussing in particular on  
paragraph 2.3.

A. 2.3.

Q. But look at -- just take your -- take your  
time to review the document.

A. I can't say. Like here is no to -- you  
should show me.

Q. All right. Well, it's...

A. Okay.

Q. We -- there's -- just take a minute.

A. Yes.

Q. All right. Let's go to the -- when you're  
done, let us know.

A. Yes.

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Q. Okay. Let's go to the English translation just so that we...

MR. SCHABAS: I think there's more, isn't there, Mr. Bernstein?

MR. BERNSTEIN: Pardon me?

MR. SCHABAS: Isn't there another page after that?

MR. BERNSTEIN: Sure. Sure, there's a few more -- there's actually a bunch more pages and I'm -- there's one more page. Not a bunch. One more. And I thank you, Mr. Schabas.

MR. BERNSTEIN: Q. Mr. Schreiber, let's look at the last page before we go anywhere.

A. Yes.

Q. Okay. Let's go to the English version which is Goto Page 3 of the same document, 14709, and following. And again, I am really -- just like to focus now on paragraph 2.3. Okay. Paragraph -- I just draw your attention to the first bit there. It says, "With respect to the loan granted to the domicile company International Aircraft Leasing, Vaduz, and the payments (beneficial expenditures) made to this company, Mr. Schreiber assumes that Mr. Frank Moores who is, in his estimation, one of the shareholders of IAL, received these funds and distributed them in Canada."

Does that -- okay, maybe I should put this in context. I'll go back. This -- do you know a man named Dr. Miese? M-I-E-S-E. Or have you met a Dr. Miese?

A. Doctor.

Q. A Mr. Miese.

A. Meek.



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Q. Miese. Let's go to Goto Page...

A. Oh, Dr. Miese.

Q. Yes.

A. He's from the German tax authorities, yes.

Q. He lives in Düsseldorf?

A. Yes.

Q. They were interested in this -- amongst other things, this loan?

A. Yes.

Q. Did you speak to Mr. Miese about it?

A. Yes. As -- as I can see it here.

Q. Okay. Now, my question to you is, does this paragraph 2.3, particularly the reference Mr. Schreiber assumes that Mr. Frank Moores who is in his estimation one of the shareholders of IAL, received these sums and distributed them...

A. There is a -- there is an error. It was beneficiaries but I don't know why they put shareholders.

Q. Well, this is my question.

A. Uh-hmm.

Q. I'll deal with two -- I've got two questions.

A. Yeah.

Q. Forgive me for being so methodical, it's just my nature.

A. No, no. Go ahead.

Q. All right? Some people are faster than others. With respect to the issue of shareholders, does this -- I ask you a question, do you recall Mr. Moores having any other relationship with IAL other than client? And then I

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say, well, maybe we look at a document to refresh your memory.

A. Yes.

Q. Does this refresh your memory....

A. Yeah.

Q. ...in connection with that question?

A. Yes. He was, in my opinion, a client and beneficiary but as far as I know, not the shareholder. I mean that must have then happened without telling me. He never told me that he was shareholder there.

Q. Okay. And then you say -- okay. There's the word up here and you made reference to it: Beneficial expenditures.

A. Yes.

Q. That's -- the German word for that is...

MR. INTERPRETER: ...

MR. BERNSTEIN: Which is NA's?

MR. INTERPRETER: Yeah.

MR. BERNSTEIN: Q. Okay. And just to move on, the last paragraph, do you recall entering into an understanding with Dr. Miese, or Mr. Miese, in connection with his inquiries?

A. Yes.

Q. And what do you recall that understanding to have been?

A. Could I see this in German. This...

Q. Sure.

A. ...looks strange.

Q. Sure. And just so we know what you're looking at...

A. It's strange.

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Q. Paragraph 2.3 of Document 14709.

A. This is the letter.

Q. We have up on the screen the German...

A. Yeah.

Q. ...of...

A. One moment. One moment.

Q. ...which is Goto Page 9. Just....

A. Can we go back to the English, then? This is wrong, the translation. This is why it's so confusing.

Q. Okay. So we'll just sort this out now.

A. "...the names of the final recipients of the beneficial...would be provided to the shareholder of IAL."

Q. All right.

A. That's wrong.

Q. So, what we'll do is we'll pull up on one side of the screen the English...

A. Uh-hmm.

Q. ...of paragraph 2.3...

A. Yes.

Q. ...and we'll pull up...

A. Yes.

Q. ...the German and you'll explain it to us, and we have the translator here to help us. Okay?

A. Yes.

Q. So, first of all -- all right. So, first of all, tell me what paragraph is wrong.

A. The last one. It's only, you have to put it on more. You see, Mr. Adam, what this say?

MR. BERNSTEIN: okay. Can you just translate what Mr. Schreiber just said?

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THE WITNESS: Would be provided to, means to the shareholders of IAL.

MR. BERNSTEIN: Well, can you just translate what he -- we've got to -- we have to...

MR. INTERPRETER: Okay. The...

MR. BERNSTEIN: Just translate what he just said to you.

MR. INTERPRETER: Well, he was just reading the...

MR. BERNSTEIN: Just translate what he just said.

MR. INTERPRETER: That he would be responsible for providing the names of the final recipients of the NA's to shareholders or otherwise participants of IAL and at the same time would have confirmed to him that none of these -- no amount of these payments, as it says in the English translation, would be returned to persons or companies in Germany that would be responsible for paying taxes.

MR. BERNSTEIN: Q. So your concern with the translation is what? Were you satisfied with Mr. Adam's translation?

A. That it says here "provided -- something provided to the shareholders of IAL" means that something is provided to them and that sentence is nowhere in the German. Here. Start here. "expenditures would be provided to the shareholders of IAL." [German discussion between Mr. Schreiber and Mr. Adams.]

MR. BERNSTEIN: Did you get this down, Mr. Schabas?

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MR. SCHABAS: I have no problem with this.

MR. BERNSTEIN: All right.

THE WITNESS: [German]...provided to the shareholder.

MR. INTERPRETER: The information. The names would be provided to...

THE WITNESS: Yeah, but not to...[German].

MR. BERNSTEIN: Excuse me, gentlemen.

MR. INTERPRETER: Sorry.

MR. BERNSTEIN: Q. Okay. I don't want to spend too much time on this. How can we -- just give us the best translation and tell us...

A. My understanding is that...

Q. ...Mr. Schreiber, tell us your concern.

A. My -- my understanding is the tax authorities wanted to obtain certain information and the translation says here that this information would be provided to the shareholders of IAL. This is ...

Q. What's your recollection? Remember, this is just to refresh your memory?

A. One thing is that this is nonsense.

MR. INTERPRETER: Yes, yes. Okay. I see. I now see what Mr. Schreiber is saying.

MR. BERNSTEIN: Okay.

THE WITNESS: The translation...

MR. INTERPRETER: The -- the -- the names of the -- it is a mistranslate -- the English is a mistranslation. What the German really says is that...

MR. BERNSTEIN: Could you read the whole paragraph?

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MR. INTERPRETER: Hmm?

MR. BERNSTEIN: Can you read the whole...

THE COURT: Well, let him continue. We're getting somewhere. Yes. What the German says...

MR. INTERPRETER: That Mr. Schreiber will be responsible for providing the names of the final recipients of the NA's from the shareholders of IAL.

THE WITNESS: Yeah.

MR. INTERPRETER: Yes. It's -- the -- the -- it's the NA's of the shareholders, not providing the information to the shareholders.

THE WITNESS: The tax authorities were interested in information. It's none of the business from the IAL shareholder. This makes no sense at all.

MR. BERNSTEIN: Q. All right. So your understanding -- my question was, does this -- I asked you, "Did you reach an understanding with the tax people?" and you said yes.

A. Yes. This is what they wanted for the future, yes.

Q. And what was your understanding?

A. The understanding was that in future payments whenever this is requested from the Thyssen company, the Thyssen company -- look, this -- this meeting was regarding a tax audit on Thyssen. It was Thyssen's responsibility to present information to the tax authorities. Since I was the chairman from Thyssen in Canada, I was involved in that process. And now we agreed, as we did at

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the beginning, when you look at the whole document what it is -- what it's all saying why the payment were -- payments were made and why the success payment was paid. That, in the future, also, one should present the names. I said this is what my understanding is and I brought this to the IAL company and Dr. Frick and Dr. Pagani and everybody wrote letter -- letters to the Revenue Germany authorities. They were interested in the information, and what this translation in English says that this information regarding the recipients should go to the shareholders of IAL. It's wrong -- the translation is wrong.

Q. Who -- the names were to go to who?

A. To the tax authorities.

Q. And these would be the names of who?

A. Yeah. Who -- who -- who...

Q. Whose names?

A. Who would receive money? And I said I assumed it's Mr. Moores, and later on Mr. Ouellette was responsible in all this. So, I don't know, because -- take all the shareholders from GCI. It was at least what I saw it would be, because this was agreed upon that there will be paid a success fee from Thyssen, but now we are in a complete different business, of course, which has completely nothing to do with MBB.

Q: So, but I just want clarification respecting the translation. Is it in the German of the last few sentences in paragraph 2.3, the words "shareholders of IAL"?

MR. INTERPRETER: Yes, Your Honour. The...

MR. BERNSTEIN: Can you tell me what context...

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MR. INTERPRETER: ...where -- where the -- the problem arises is the fourth line up, if you count the three words on the bottom as one line, you'll see it says *der Gesellschafter*. The first two words of the fourth line up from the bottom.

MR. BERNSTEIN: So, could we just read the sentence in English again?

MR. INTERPRETER: I'm afraid I'm going to have to -- it's a little grammatical twist.

MR. BERNSTEIN: All right.

MR. INTERPRETER: It turns on one letter or two letters. Where it says D-E-R, that is a genitive case. The translator has translated it as if it were D-E-N, which is the dative case which would also require that after the word *Gesellschafter*, there would be an N on that, too.

MR. BERNSTEIN: Great.

MR. INTERPRETER: So it is quite clearly a mistranslation. And it means in -- in the German it says, "It's the NA's of the..."

MR. BERNSTEIN: Of the who?

MR. INTERPRETER: Of the *gesselschafter*, the shareholders of IAL.

THE WITNESS: There's more.

MR. INTERPRETER: It's "the money of"

THE WITNESS: It is more. The main mistake is that the information should be provided to the tax authorities, and the translation says that the information should be provided to the



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IAL shareholders. It's two completely -- again, complete different parties.

THE COURT: It's a nonsense.

THE WITNESS: Huh?

THE COURT: It's a nonsense.

THE WITNESS: It's a nonsense, yeah.

MR. BERNSTEIN: Q. No, but my question was, these are the NA's of the shareholders of IAL?

MR. INTERPRETER: Correct.

MR. BERNSTEIN: Q. Was that the understanding?

A. The shareholders of -- the shareholders of IAL are pretty clear. It's a Kensington company, though that would be the answer and the end of the story. What they wanted to know is who are the beneficiaries, because this trust company, which Mr. Pelossi ran, and I explained it in length during all the days, was a trust company and they worked for certain clients. And there was an agreement with Thyssen and you see it in this whole document and you show it to the court. The court would have a very clear understanding. It was done in 1900 -- in 1985, or whatever, ten years before this that in the case of success, IAL would receive \$4 million. And this is what it's dealing with. This is part of this and this is explained in the other part of the page, which you have in your possession when you have this letter. It's a similar situation than you have it with -- with MBB. One thing is a retainer paid by Thyssen and the other thing is something in success fee. And it is very clear, you know that, that for 12 years GCI never rendered a bill to Thyssen and they worked for 12 years for Thyssen for ten years at least.

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So all that -- all that, again, were no secrets between the tax authorities at Thyssen and me. Not at all.

Q. All right. I want to leave this document. Document...

A. But again, Mr. Bernstein, I have a huge problem with this document. It's regarding Thyssen business ten years later from MBB and it has nothing to do with MBB at all.

Q. I'm just asking about the shareholders of IAL.

A. Okay.

Q. Okay. So that's just Document 14709, okay, but I'll just -- I'll leave it there and I'll move on. Do you know a man named Bruno Schirra? S-C-H-I-R-R-A?

A. Yeah. He was convicted for fraud and all kinds of other stuff, and truck business. He's a crazy journalist.

Q. He's a what?

A. A crazy journalist.

Q. Crazy?

A. Yeah. I think he's absolutely crazy as far as I learned it from his colleagues, and a close friend to Stevie Cameron.

Q. Are you familiar with a publication called *Die Ziet*?

A. Yes.

Q. That's D-I-E, new word, Z-E-I-T.

A. Yes.

Q. What kind of publication is *Die Zeit*.

A. *Die Zeit*. This is The Time [sic] and it comes once a week, I guess, and I granted him an interview

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only because one of the publishers is the previous chancellor, Helmut Schmidt, from the social democrats was a friend of mine and I thought he was a serious guy, otherwise I would not have even given him an interview.

Q. So *Die Zeit* is a...

A. German paper.

Q. ...a large weekly magazine or daily? Well, I should ask, first of all, does it have a wide circulation?

A. I cannot say. I'm not a reader of *Die Zeit*.

Q. Okay. You said it was like what?

A. I think it's a weekly paper, also.

Q. And I think you used the word *Time* or something?

A. *Die Zeit* is the translation from time. *Die Zeit* is "the time".

Q. Okay. All right. So that in English the word *Die Zeit*, which is the name of the magazine, is time.

A. The time.

Q. But it's not *Time Magazine* in Germany?

A. No. No, no, no.

Q. All right. Now, you say Mr. Schmidt was the publisher and you granted Mr. Schirra an interview?

A. Yes.

Q. Was that interview done in Europe or in Canada.

A. No. In Canada.

Q. In Ottawa or somewhere else?

A. In Ottawa.

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Q. I'm wondering if you can take a look at Document 34204. Document 34204, and in particular the German edition.

MR. BERNSTEIN: Well, we'll show Mr. Schabas the translation first, and Mr. Schabas -- I'm particularly interested in the second from last paragraph on page 3, the last paragraph on page 4, and the last two paragraphs on page 5.

THE COURT: That is not on my...

MR. BERNSTEIN: It's not in the database, Your Honour.

THE COURT: ...database?

MR. SCHABAS: So you said the last paragraph on -- the second last paragraph on Goto Page 3. Is that right?

MR. BERNSTEIN: No. I was -- I was... I mean it's several pages long, Your Honour. I just -- I'm trying to be quick here...

MR. BERNSTEIN: I -- let me see.

MR. SCHABAS: I expect I'll have some submissions to make.

MR. BERNSTEIN: No, just one sec. No. Go ahead. Just wait a second. The Staff Sergeant will find it for you. Okay. Mr. Schabas, the paragraph under the heading, "I'm proud to be an amigo."

MR. SCHABAS: Yes.

MR. BERNSTEIN: And on the next page -- and that's at GoTo Page 5 of the document, and then please go to the next page, GoTo Page 6 of the document, the last paragraph that says

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-- there's a quote. And it starts, "This Pelossi, for example," and there's a quote there. Right?

MR. SCHABAS: Yes.

MR. BERNSTEIN: And then the last, GoTo Page 7 of the document, the last two paragraphs. And again, there are quotes.

MR. SCHABAS: Well, Your Honour, I expect we're going to have to make some submissions on this and perhaps the witness is going to have to leave.

MR. BERNSTEIN: Sure.

THE COURT: Mr. Schreiber, would you mind, please?

THE WITNESS: Yeah.

.... [WITNESS EXITS]

MR. BERNSTEIN: Perhaps we could just -- Your Honour, you could pull up on Your Honour's screen the paragraphs we're talking about.

THE COURT: Well, I see them.

MR. BERNSTEIN: What?

THE COURT: I see them.

MR. BERNSTEIN: You have them? Okay. All right.

MR. SCHABAS: Has Your Honour seen it? Do you wish to...

THE COURT: Well, I'm sorry. I'm just looking at page 3 right now. We're at page 7

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of 13. That's the only thing that's up on my screen.

MR. BERNSTEIN: Well, the...

THE COURT: I'm not going to read the whole thing.

MR. BERNSTEIN: No.

MR. BERNSTEIN: Let me start by you telling me what you propose to do with this document, where specifically you wish to direct the witness's...

MR. BERNSTEIN: Okay.

THE COURT: ...attention, that kind of thing.

MR. BERNSTEIN: Yes, Your Honour. This is a news article...

THE COURT: What's the date on it?

MR. BERNSTEIN: It's dated...

THE COURT: 3<sup>rd</sup> of February. Is that right?

MR. BERNSTEIN: March...

THE COURT: March 2<sup>nd</sup>?

MR. BERNSTEIN: Yes.

THE COURT: 2000?

MR. BERNSTEIN: Yes. And it relates to an interview which Mr. Schreiber admittedly gave to Mr. Bruno Schirra, S-C-H-I-R-R-A, in Ottawa. And during the course of this interview, Mr. Schirra quotes Mr. Schreiber as saying certain things. So, and the use I intend to make of this document will ultimately be informed by Mr. Schreiber's answers to questions posed, but in terms of potential uses, in one sense I might use it to

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refresh his memory respecting certain topics. And in particular, under the heading "I'm proud to be an amigo," he speaks of his role. Now, he's...

THE COURT: I take it -- is it your intention to call this fellow, Schirra?

MR. BERNSTEIN: No. No.

THE COURT: All right.

MR. BERNSTEIN: Well, it's not my...

THE COURT: I'm just -- I'm just wondering...

MR. BERNSTEIN: Not my present...

THE COURT: You know, there's one issue, of course, and that is, was this said by Schreiber to begin with.

MR. BERNSTEIN: That's right. That's right.

THE COURT: Is that accurate?

MR. BERNSTEIN: That's right. And I should -- I'll deal with this. Thank you for drawing that to my attention. I jumped the gun. What I'd like to do is first -- the first step is as you say. Was it said? Now, if it was said -- if it wasn't said, well, if he's not prepared to admit that he said it, then I have a few options available. I can lead and go onto another matter or I can call Mr. Schirra, and there are -- the *Canada Evidence Act* Section 9 provides a certain procedure to deal with it, but I -- as part of that procedure, the first thing I have to do if he doesn't admit saying it, is prove it. But if he admits saying it, then -- and I -- he may very

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well admit saying it, then I intend to ask him about it. And so we have 1) refreshing memory, 2) in the event that he admits making the statement, I can ask him what he meant about it, why he said it, and in particular, the line there "Schreiber has become furious. He bitches and swears. He is never anything more than a gopher for Strauss." Mr. Strauss looms large in this. This relates directly to his role in this, in part, and I'd like to ask him what he meant when he said that.

Now, with respect to the next paragraph -- the next paragraph I wish to draw his attention to, and then we'll just go to page.... Okay. The next page, which is GoTo Page 6. The last paragraph on page 6. Another issue in this examination, and one which I intend in the next hour or so to spend some time on, is Pelossi's role and function, and his relationship with Pelossi. When I say his, Mr. Schreiber's relationship with Pelossi. And in this document, Mr. Schreiber is quoted as commenting on that. He says, "At one time..." -- well, this is what the article says. "At one time he was trustee of a few of his companies." So, we have a reference here to Pelossi, trustee, and interestingly enough, a reference to his companies, as I take it as being a reference to Schreiber's companies. Of course, we have...



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THE COURT: Well, I really don't know. That's your interpretation. I suppose probably the right one, but at one time he -- who is the "he"? Are you talking about Pelossi or are you talking about Schreiber? And a few -- and the "his".

MR. BERNSTEIN: It's a very -- I don't mean to rush Your Honour...

THE COURT: It may be clear when you read on.

MR. BERNSTEIN: ...if -- I sort of just ask that the court -- it -- I submit it's clear from the context of, I don't...

THE COURT: That Pelossi was trustee for Schreiber's company?

MR. BERNSTEIN: Well...

THE COURT: Is that your interpretation?

MR. BERNSTEIN: Well, we know. We have evidence that Pelossi is trustee for IAL. IAL plays a -- we've heard the name IAL in these proceedings, and Mr. Schreiber has testified about Pelossi and IAL and trustee. We have here a reference to trustee of a few of his companies...

THE COURT: That's the journalist's statement. That's not attributed to Schreiber.

INTERPRETER: May I make a comment, Your Honour?

THE COURT: Yes, sir.

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INTERPRETER: The -- the newspaper *Die Zeit* is at the absolute opposite end of the vertical spectrum to Mr. Schreiber's great man, Franz Josef Strauss, and the fact that the former Chancellor Schmidt is the editor of it, is a -- Mr. Schreiber said a reason why he gave an interview to it, but under normal circumstances *Die Zeit* spent many years attacking Franz Josef Strauss and everything that he stood for.

THE WITNESS: Yeah.

INTERPRETER: I think that perhaps, just -- just to give a little background to perhaps certain terms and phrases that would be acceptable to an entry of *Die Zeit*

THE COURT: Thank you, Mr. Adam.

MR. BERNSTEIN: So, my...

THE COURT: Well, just to come back, I'm just saying that this is not an attributed quote, you know, and so you want to refer to a particular portion?

MR. BERNSTEIN: Yeah, and I need to put this in context, Your Honour, because this is not -- there's a bunch of articles and what I want to do is important to me and I just want to lay it out and explain it to you.

There is an issue as to who controls IAL, who is really behind IAL and what IAL is really about. It's the Crown's position that Mr. Pelossi was a trustee and that

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Mr. Schreiber exercised a fair degree of control over the affairs of IAL. I understand Mr. Pagani is dead.

Now, there was a dispute which developed between Mr. Pelossi and Mr. Schreiber just at a material time, respecting the removal of funds from IAL Vaduz Lichtenstein bank account by Pelossi.

So we have Mr. Schreiber in this court saying, "Oh, Pelossi, IAL, I got nothing..." you know, he says whatever he says about IAL and Pelossi and Pagani, but I anticipate that you will hear evidence, I hope, through Mr. Schreiber that a dispute developed between Pelossi and Schreiber who were, before the development of this dispute, more friendly than after the dispute, in which it was alleged that Pelossi took without authority, funds from Schreiber, that he -- well, I approach this with some caution because I'm not entirely sure what Mr. Schreiber will say, but I anticipate there is information which leads us to believe that there was a dispute, and that funds were taken by Pelossi, and that Mr. Schreiber asserted an interest in those funds, either -- and I'll ask him -- either a personal interest in those funds or an interest on behalf of some clients or other people. But in any event, a dispute

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developed in which Pelossi takes monies and Schreiber asserts an interest in those monies.

Now, you say, well, what's important or of some interest to me is that I've been advised by the Superintendent the funds in issue were taken from IAL's account in Vaduz, Lichtenstein. And so, we have circumstances which I'd like to ask Mr. Schreiber about where, notwithstanding his evidence to date respecting his distance if any, from IAL, he -- when Pelossi who he says is the trustee and has authority in connection with IAL, takes the money. Schreiber says, "Oh, no, you can't do that. That money is mine," or he asserts an interest on behalf of someone else. The point being, this all is evidence respecting his interest and control of IAL and monies in the IAL Lichtenstein Vaduz bank account, which include -- as we know and as we've reviewed -- money from MBB which goes from MBB to the IAL Vaduz Lichtenstein bank account and then onto Bitucan. There were two sums, \$50,000 each, which we reviewed a week or two ago in the beginning of Mr. Schreiber's testimony which represent funds from MBB pursuant to the arrangement reached to IAL Vaduz Lichtenstein bank account, and then on -- it's the Crown's position -- to Bitucan or to other entities under the control of Mr. Schreiber.

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Indeed, I think yesterday when Mr. Shaw was reviewing the ledger from Ms. Lutz, there's an entry for 49,900 and some odd dollars. That's reference to one of the sums.

So, to return to why I'm dealing with this, it relates in part to the relationship between Pelossi and Schreiber respecting IAL and IAL's funds, and in this -- to return to this paragraph, this paragraph is a reference to some animosity between Pelossi and Schreiber where he -- Schreiber is quoted, referred to Mr. Pelossi as this Mafioso pig, who lays a complaint.

Now, there are...

THE COURT: I take it before you show this document to the witness, if we end up doing that, that you're going to be laying the ground work in questions to Schreiber about his relationship with Pelossi in the normal way. I mean you're not going to show him this first, are you?

MR. BERNSTEIN: If it please the court...

THE COURT: Well, it seems to me you're raising now a number of things which we haven't heard very much about, and that is this particular dispute between Pelossi and Schreiber. We haven't heard very much about that and he should be questioned about that, I think,

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before we use -- before you use the expedience of referring to this particular article.

MR. BERNSTEIN: Yes, Your Honour. It's not just this article. This article is, actually, not the best one at this point. There's another article that I'll just mention now that also deals with this, and it's from *Die Weltwoche* -- D-I-E W-E-L-T-W-O-C-H-E. It's February 2000. It's a Swiss publication and I'll just bring it up on the screen. It's Document 33057.

There's a picture of him there.

THE COURT: And you're saying that in that publication Schreiber was also quoted...

MR. BERNSTEIN: Yes.

THE COURT: Yeah, I see he was.

MR. BERNSTEIN: If we look at the bottom, he says... "You see, because my clients think I am only surrounded by charlatan accountants" -- Mr. Pelossi is an accountant -- "...first one confidence steals more than a million..." and so there's a reference to this dispute there.

And then more to the point, if we go to Goto Page 10, we see reference to Pelossi there. He managed the Lichtenstein company, IAL, and in this job included NA's, the so-called useful contributions. He also arranged for them but at no time was Mr. Pelossi to know the real internal workings.

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And then the next, "How did this occur?" He collected the money which was then deposited in an account over which I" -- that's Schreiber talking "...had right of disposal. On instructions from my client," that's Mr. Schreiber talking "...it was put into project routes. From there, it was then withdrawn. At no time did Pelossi have any idea of who, how or what."

So, there is, like, another reference and there is -- this is the sort of area, but Your Honour's point is well taken. I will hold this down and just ask about the dispute and we'll see where it goes from there.

THE COURT: Mr. Schabas, if you have comments, I'll hear them at two o'clock. We'll take our noon break now. 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:

(2:00 p.m.)

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

MR. BERNSTEIN: Good afternoon, Your Honour.

THE COURT: Good afternoon. Mr. Schabas.

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MR. SCHABAS: Yes, Your Honour. I'll be brief. In light of Your Honour's comments, I certainly don't think I need to address the issue of putting the articles before the witness at this time, and I take it that Mr. Bernstein has agreed to proceed in what I would submit would be the more appropriate way, but I do have a submission, Your Honour, with respect to the relevance of this.

Mr. Bernstein didn't say in his submissions when this disagreement or falling out, or whatever it was, occurred, between Mr. Pelossi and Mr. Schreiber. It was, though I understand it was long after the time period of the charge, and in my submission, Your Honour, we are getting very far from what is relevant to the charge before the court involving MCL and the allegation that it paid a commission. And now to get into, well, who or what was the controller behind an apparent recipient of the commission and where that money went and disputes between Schreiber and Pelossi years and years later, and what they said and what they said about each other, is two, three, fives times removed from what is relevant in my submission to this case.

I submit that he's coming at things yet another way. He's embarking, I submit, on a fishing expedition and perhaps he's embarking on some



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way, I don't know, to revisit the same issues with a view to getting something else, but he has his answers. We've been over the ground of the evidence that the Crown has taken you to dealing with money and money going through bank accounts, and to now embark on this new area that I submit is far removed is irrelevant, and we're reaching a stage I submit where, really, this is becoming on I think the 7<sup>th</sup> or 8<sup>th</sup> day of Mr. Schreiber's examination. Potentially, it's becoming -- it's reaching the stage where I submit it may becoming abusive, that this examination is going on so long and straying so far from the matters that you have to decide. Those are my submissions.

THE COURT: Well, are you saying the IAL-Schreiber relationship is irrelevant to the issues before the court?

MR. SCHABAS: Well, it's a very limited relevance, Your Honour, in my submission.

THE COURT: You see then, my difficulty is my inability to establish the exact degree of relevance, and if it has some relevance to the issues before the court, it appears to me that the material that we've seen so far, do speak of that relationship and -- and it may very well speak only to the relationship at the time of the articles, but then it may not. It may go back to describing his recollection of the relationship at the time which occupies us, and I'm loath at this point to say, well, it's

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irrelevant. The degree of relevance is always problematical, and my decision to declare it irrelevant or of such marginal relevance is to be of no value, and is a decision that I ought to be making only when fully armed with all of the evidence, and I at this point may very well end up saying -- well, I may not -- at the end of the entire exercise that this was truly irrelevant. I may say it was very relevant, but I can't judge that at this remove. That's my difficulty.

MR. SCHABAS: Yes, and I hear your point, Your Honour. I guess if I can just -- maybe just articulate it one other way, which is that if IAL is the alleged recipient of the commission and if my friends have led evidence of money going to IAL, what does it matter at the end of the day whether Pelossi or Schreiber was fighting about who is behind that and where money went after the fact. This charge isn't about that. It's about an allegation that a commission was paid, and in my submission, having regard to all the evidence and the fact that Mr. Schreiber has been asked at length already, albeit there have been frequent objections from me, but he's asked at length about those matters and about Mr. Pelossi and what his role was, and so on. It's to allow him to just go into this again in much more detail, is taking us far away from the nature of this charge, which is simply that a commission was

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paid, not that this -- this is not a case about a bribe. It's not a case about section 121 of the *Criminal Code* or where the money ultimately ended up down the road, because I gathered from Mr. Bernstein's submissions before lunch that he's going to get into that again about going onto Bitucan and all these other places.

THE COURT: The other problem I have, and of course Mr. Bernstein can speak for himself, but I'm led to understand that to some extent, in any event, this may be a precursor or at least foundational in relation to an application to have Schreiber declared hostile, and if that is so, then I obviously have to give Crown some wider margin of manoeuvre in relation to issues which are not unrelated to the case before the court. As I say, Mr. Bernstein can speak for himself in response to your contents after you've made them.

MR. SCHABAS: But in my submission, Your Honour, I mean one can't give him more latitude to develop an evidentiary basis to or a basis on which to bring an application that he's hostile. Either he is or he isn't. He should ask his relevant questions and then he has to make that basis, just because he's said he intended or intends to do this, doesn't mean that he should be allowed to stray into areas. It doesn't -- it doesn't open up the door to what would otherwise be irrelevant, because he says he might bring an application or he will

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bring an application that the witness be declared hostile. Those are my submissions.

THE COURT: Mr. Bernstein?

MR. BERNSTEIN: I should mention that I anticipate the evidence will reveal, and I again I use the word "anticipate" guardedly, because my level of expectation is not what it would be with most witnesses, but that I anticipate the evidence may reveal that part of the dispute arose as a result of a view Pelossi had that he was entitled to a percentage of the commissions, including the MBB commissions.

Now, I don't know whether Mr. Schreiber will -- I don't know what he's going to say, but that's what I understand at least one side of the dispute view was. So I make that comment in the context of this being long after the fact. This relates to a dispute which may have had at its genesis a disagreement respecting the divvying up of -- amongst other things, because it's not just limited to MBB, but amongst other things, portions of the MBB commissions. And as I say, the relevance relates to control over this curious entity, IAL, which is signatory to a Sales Representation Agreement with Mr. Schabas's client. So I...

MR. SCHABAS: Actually -- actually, my client before this court is MCL. That's the accused.

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THE COURT: Well, we'll hear about that theory, the general affect of the relationship on your client's status, but the point that Mr. Schabas makes that is of interest to me is the following.

The existence of this difference between Pelossi and Schreiber and the status of IAL, how is that relevant to whether or not the payment was made, a payment was made, either to IAL or to others. I mean isn't that what we're concerned about, the payment?

MR. BERNSTEIN: We are concerned in part about that, yes, but in my respectful submission, in assessing -- the issue is not was simply a payment made? The issue is, was a payment made and what were the circumstances surrounding the making of that payment? The charge is fraud, and what is relevant is evidence of fraud. The indicia of a fraudulent transaction could, at the end of the day, we'll likely submit -- badges of fraud are what, the fact the payment is made to a Lichtenstein company. We will rely on all the evidence surrounding IAL. Where it was incorporated? Difficulties in piercing the corporate veil respecting it. That is, will be in our submission, evidence -- indicia of fraud.

And when I say -- my point is this. The issue is was a payment made? Was a commission made?

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But it's also relevant, was it made in plain sight or was it made under other circumstances? Here, we have a very, very elaborate set of circumstances which we submit clearly establish the deceptive nature in which the payment was made and the attempts to obscure who it was made to and why it was made, what happened -- and what happened to the money which represented the payment. And the evidence which relates to who it was made to and what steps were made to obscure it, to secrete it, including Lichtenstein companies, Swiss bank accounts, cash withdrawals, this -- this evidence respecting ownership or trustees or clients, the lack of clarity on IAL, is all in my respectful submission, evidence respecting the fraudulent nature of the transaction, of the commission agreement, of the commission payments. It's evidence of deception. It's evidence of secretion. It's evidence of an attempt to obscure the true beneficiaries of the payment through an elaborate web of organizations which and entities which we submit have, as their purpose, a deliberate attempt to obscure the nature of the transaction. To hide it. And in terms of Pelossi and Schreiber, one of the issues is who is IAL? Who is the other party to the Sales Representation Agreement? But more to the point, who in reality controls IAL?

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It's my submission -- and it will be likely our submission, Your Honour, that IAL is a nominee. It represents a shield, an attempt to hide what was really going on. Ultimately, the issue -- it's important who owned it, but ultimately the issue here is who controlled it. When you -- when you walk up to IAL and you peek into IAL, who actually exercised control over it, and what happened to the money or its assets, which after it enters that abyss, and my friend may say, well, that's things that happened after MBB made the payments, but MBB, the controlling mind of Mr. Schabas's client, entered into an agreement with a ghost. The Sales Representation Agreement is with IAL and IAL is -- I say a ghost metaphorically. The fact that they enter into an agreement with a fraudulent artifice, well, an artifice designed to obscure the nature of the contract, is relevant to MBB's state of mind. And MBB's intention which is in turn relevant to the defendant's state of mind and the defendant's intention, because in my respectful submission, Pfleiderer, Pluckthun, Strauss, MBB, are the controlling minds of MCL. So this relates directly back to the nature of the deal which Mr. Schabas's client entered into here, and why article 22 exists and what it's there to protect against. It's

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there to protect against the payment of  
commissions, but it's there also to protect  
against the payment of commissions, which are  
hidden.

THE COURT: All right. Well, that's something  
we'll get into later on. Thank you,  
Mr. Bernstein.

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R U L I N G

BELANGER, J. (OCJ): (Orally)

Mr. Bernstein satisfies me of the potential relevance of the evidence and the manner in which he proposes to obtain it. I am not of Mr. Schabas's view that the examination of Mr. Schreiber is abusive or is verging on the abusive. It is lengthy no doubt. It is occasionally laborious. It is slow. That may arise out of the complexity of the situation, the age of the situation we are talking about, and the nature of the witness in the witness stand or the character of the witness. I am not making any prejudgments about his character. His predisposition is obviously one which we are aware of and when you put all of this together, maybe that accounts for, as I say, the laboriousness and the length of his examination. I think it is far from being an abusive examination. I think Mr. Bernstein and Mr. Shaw have been in their questioning of this particular witness, polite and considerate.

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That being said, I am satisfied at least on an interim basis at this point that there is apparent relevance to the ultimate issue being pursued, and I am not at this point in time going to foreclose the Crown's wish to continue examining in this particular direction.

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THE HONOURABLE P.R. BELANGER  
ONTARIO COURT SENIOR JUSTICE

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THE COURT: Are you prepared to continue your examination, subject to comments being made this morning?

MR. BERNSTEIN: Yes, Your Honour. Thank you.  
Mr. Shaw...

THE COURT: Recall -- recall the witness.

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

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

Q. Good afternoon.

A. Good afternoon.

Q. Mr. Schreiber, I'd like to ask you a few questions about Mr. Pelossi, and I'll just start with a general question. Did your relationship with Mr. Pelossi sour at one point in time?

A. Yes.

Q. And in your own words, can you tell us why and how that came about?

A. Well, one day the client claimed that his funds did not arrive and we found out that Mr. Pelossi had -- what can I say, 1.2 million or so, just went from the accounts.

Q. These were which accounts?

A. IAL.

Q. Who was the client?

A. Missing the money? A person which is not known, from Mexico.

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(Continued...)

Q. What was the person's name?

A. I'm not supposed to say that, because I knew all this from Mr. Pagani that it is a Mexican.

Q. What was the Mexican's name?

A. I don't know.

Q. You don't know or you won't say?

A. I don't know. Certain arrangements from political arena were made through Mr. Pagani and the treasurer from the CSU and I don't know -- do not know who was supported.

Q. Did you participate in those arrangements?

A. Please?

Q. Did you participate in those arrangements?

A. What do you mean by that?

Q. You say certain arrangements were made between the treasurer of the CSU.

A. Yeah. I quite often travelled with money from the party to other -- other conservative parties in the world. They were supported in their campaigns also, yes.

Q. What was the relationship between this client and IAL?

A. Well, I learned that he's a politician.

Q. But what was the relationship between the client and IAL?

A. He was supposed to receive money.

Q. Did you assist in taking steps to recover these funds?

A. Not me. That was a job from Mr. Pagani. I don't know what he did.

Q. What was Mr. Pelossi's job at the time?

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A. He -- he was the -- he ran IAL and he appeared at the -- the -- on behalf of Kensington as the owner.

Q. Was he really the owner?

A. Please?

Q. Was he really the owner?

A. The owner was Kensington. This is why today when this came up, that Frank Moores could be a shareholder from IAL. This is nonsense. Everybody knows Kensington owned 100 percent IAL.

Q. Who had signing authority and control over IAL's bank accounts at the time?

A. Only Mr. Pelossi, as far as I know.

Q. So, if Pelossi controls and has signing authority over the bank...

A. Yes.

Q. ...and he was the -- what did you refer to him as IAL?

A. He was together with Mr. Frick. They called it.. [German]...

Q. The what?

A. Just like directors.

Q. How was it -- if he is director of the company, you said he was a trustee. He had signing authority...

A. No. He was no trustee. The trust company was the trustee.

Q. He had signing authority in his trust company?

A. Yes.

Q. Pelossi's trust company?

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(Continued...)

A. Yes.

Q. He had signing authority over the accounts?

A. Yeah. This is what we -- we knew.

Q. How is it that it was said he had taken the money without authority?

A. Well, he was not entitled to put money in his own company, as he did.

Q. Which company did he put it into?

A. Erfel.

Q. Pardon?

A. Erfel. It was his own company, known as Erfel.

THE COURT: Would you spell that for me?

THE WITNESS: E-R-F-E-L.

THE COURT: Erfel.

MR. BERNSTEIN: Q. These accounts, the account the money came out of, okay, this is IAL's account?

A. Yes, but I ask myself again what this has all to do with MBB?

Q. It's IAL's account?

A. Yes.

Q. In Lichtenstein and Vaduz?

A. Yes. This all was in the '90s, as far as I recall. In '91. So I cannot see what...

THE COURT: Just so you understand, Mr. Schreiber, we've had this discussion with the lawyers and after hearing submissions, I have come to the conclusion that there is some relevance to the questions being asked...

THE WITNESS: Excuse me.

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THE COURT: ...so that you don't think that they're coming out of the blue.

THE WITNESS: Okay.

THE COURT: I have made that determination. That's my job.

THE WITNESS: That's your job.

THE COURT: And that's why Mr. Bernstein is asking -- is at liberty to ask you these questions.

THE WITNESS: I respect this.

MR. BERNSTEIN: Q. Did you make or were you involved in making a criminal complaint against Mr. Pelossi?

A. Yes. I made a criminal complaint against IAL.

Q. Can you elaborate?

A. And Mr. Pelossi, yes. I went to the police or to the prosecutors and dates and information or how you call this...

Q. In connection...

A. ...against IAL and Mr. Pelossi.

Q. ...with what?

A. With the disappearance from the money.

Q. And why did you do that?

A. Well, this is very simple. When you recommend a man to do business and clients go there, and then the money disappears, then you have a pretty difficult situation. Number one, the client may think is it true? Number two, how are you going to prove it? I had no chance then to sue him. Which I did. And then we found out what happened.

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Q. So the client here -- the client here was who? Your client here was who?

A. Please?

Q. Your client here was who?

A. My client?

Q. You said if you recommend clients...

A. In principle, take it. I recommended Mr. Pelossi and IAL to Mr. Moores, for example, or to others around the world doing business, you see. So now, I recommended him, right? So now the money doesn't come, so what are you going to say?

Q. Did Mr. Pelossi reciprocate with a criminal complaint?

A. What means reciprocate?

Q. Did he make criminal allegations against you?

A. Oh, no. When -- when -- when I went after him, he went to the German tax authorities and told all these stories which created the mess.

Q. Now...

A. Because there was a blackmail story on with the -- with the husband from the Swiss Minister of Justice, Mr. Kaupp, and when Pelossi just tried to -- to receive money, he was in problems. And the question was he wanted -- he was asking for four million, and we said, well, for what would you get four million?

Q. Why did he think he was entitled to four million?

A. I have no idea. He later on -- that was much later than his -- his lawyer came then with a bit of paper the so-called -- the champagnia [ph] paper from '76.



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(Continued...)

This dealt with all kinds of stuff from road marking companies and never materialized, and the whole thing, he finally had to confess never happened. So that was just, what can I say, a protection to try to go away with it.

Q. Was there -- at any point did Mr. Pelossi say that he was entitled to any of the commission monies?

A. Oh yeah, sure. He claimed that then later on.

Q. Tell me about that.

A. But you see, Mr. Bernstein, this can -- when we go in all this, this will be an endless story. We can hang around here for weeks. I make it very short for you.

Q. Give me the short version.

A. Mr. Pelossi claimed he was entitled to get money from Kensington because I'm the owner and I owe him money. When the prosecutor in Lichtenstein asked him, and the investigation judge, okay, you run Kensington and you run IAL, so did you show this liabilities in the financial statements which you audited? He had to confess "No." So he wanted to try to tell that he -- that he was entitled to substantial amounts of monies from the -- from the Kensington company, telling everybody the Kensington Company belongs to Mr. Schreiber as, therefore, I am entitled to this money and then he, by himself, never showed the liability in the financial statements. So either, as the auditor he gave wrong statements or he was not entitled to take any money.

Q. I believe you indicated that he expressed the position that he was entitled to some of the commissions?

A. Yeah, sure. Sure.

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Q. So what did you understand his position to be on that?

A. Please?

Q. What did you understand his position to be on that?

A. Nonsense. Just pure protection...

Q. What did he say?

A. ...to cover this event of blackmail to the industry. Very simple. You have this quite often in Switzerland that people like this try this.

Q. Okay. So whose clients were they, yours or his?

A. Yeah, his. I recommended them. It was his clients. If he would have been entitled to take anything at all, he could have just taken it, but he forged agreements which -- and put Mr. Frick in it. It was a huge mess which came out later on.

Q. You mentioned -- I just want to -- that on occasion you would carry IAL money around the world? I'll be a little more careful about exactly.... May I have just a minute?

You referred to certain arrangements and IAL money, and then said you quite often travelled with money of Conservative parties around the world. Do you recall that?

A. Yeah. Not only IAL, from the parties, from the Conservative parties to others, the support money, yeah.

Q. But with respect to IAL money...

A. Well, could be money which came through IAL. True. Yes.

Q. Would this include Canadian Conservative parties?

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(Continued...)

A. No.

Q. Did it include German Conservative parties?

A. Could be. Yes.

Q. Any party in particular?

A. Well, the Christian Democrats received money, and the Christian-Social Union received money. Public knowledge.

Q. This -- these...

A. But again, this is all stuff from '91 and '95, I think, to do with MBB.

Q. On whose behalf would you do this?

A. It depends. Clients.

Q. Who?

A. Different people.

Q. I'm asking about the German....

A. Well, no. That's what...

MR. SCHABAS: Your Honour...

THE COURT: Yes, we're getting very, very far afield.

MR. BERNSTEIN: All right, Your Honour. I'll go back to...

THE COURT: We're exploring the relationship between Mr. Schreiber and IAL here.

MR. BERNSTEIN: Yes, Your Honour.

THE COURT: That's why these questions are relevant.

MR. BERNSTEIN: Yes, Your Honour.

MR. BERNSTEIN: Q. With respect to the relationship between Mr. Pelossi and IAL, I'd like to return to that, if I could.

A. Uh-hmm.

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Q. Do you -- are you familiar with a publication called *Die Weltwoce*, D-I-E, new word, W-E-L-T-W-O-C-E?

A. I can't understand a word. No. No.

Q. Would looking at a document assist you?

A. Sure.

Q. Let's go to Document 33057, the German, please?

MR. SCHABAS: Your Honour, we're going to a document which contains statements made by.... If we're just going to this to establish that he may know this publication, I suppose it can refresh his memory. It may refresh his memory. Can we take it off the screen, please? Sorry. But beyond that, if my friend is intending to then take him through the contents of it, we're into a different use of it.

THE COURT: I don't disagree with you. He's asked the question and he said, "Look, in answering that question would looking at a document refresh your memory?" That's all we're dealing with.

MR. SCHABAS: That may be slightly premature, but I have a concern about the next question.

THE COURT: We'll get there when we get there.

MR. SCHABAS: I'm sure. Thank you.

MR. BERNSTEIN: Q. Okay. First of all, can we bring it across. There's a photograph of a smiling gentleman. Does that person look familiar to you?

A. Well, I'm not that good looking, otherwise I would say it's me.

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(Continued...)

THE COURT: So the question, sir, to you was, are you familiar with the publication called *Die Weltwoche*? or however you pronounce it.

THE WITNESS: I haven't seen this but I know the journalist.

MR. BERNSTEIN: Q. Who do you know?

A. Hmm?

Q. What's the journalist's name?

A. Burkhart List.

THE COURT: Just for my information, are you alleging that this is a paper publication or an on-line publication? Because it just says *Die...* How do you...

MR. INTERPRETER: *Die Weltwoche.*

THE COURT: *Die Weltwoche* online.

MR. BERNSTEIN: Yes. This is...

THE WITNESS: It's from the internet.

THE COURT: But there is the *Globe and Mail* newspaper and then there's the *Globe and Mail On-line*.

THE WITNESS: Yes.

THE COURT: That's what I'm asking...

THE WITNESS: And this is -- this is online. Yeah, yeah, you are right.

THE COURT: ...whether this is a paper publication that has an online site?

THE WITNESS: Yes.

MR. BERNSTEIN: Q. So, do you know Mr. List?

A. Yes.

Q. In what way or from what?

A. He was -- he was here with us.

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(Continued...)

Q. Pardon me?

A. He was here in Canada.

Q. He interviewed?

A. Yes.

THE COURT: Let's get back to the original question and get that cleared up, Mr. Bernstein.

MR. BERNSTEIN: Yes, Your Honour. I'm sorry.

MR. BERNSTEIN: Q. Okay. So, I'd just like to clarify this publication. Are you familiar with the publication?

A. Yeah. I see the headline. I know what it is.

Q. What do you understand it to be?

A. It's an article about the donation to Mr. Schauble... It's a German party donation scandal? I don't know...

THE COURT: But what is this *Die Weltwoche*? What is it?

THE WITNESS: It should be a paper in Switzerland. I have no -- I haven't seen this.

THE COURT: Do you know -- just tell us what you know. Do you know a paper called...

THE WITNESS: About this?

THE COURT: I just want to know -- I'm asking...

THE WITNESS: Nothing.

THE COURT: Do you know of a newspaper or of a publication of some sort called *Die Weltwoche*? Have you ever heard of it?

THE WITNESS: No, I didn't know that.

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MR. BERNSTEIN: Q. I'm sorry, you didn't know what?

A. No, I haven't -- I haven't seen this before.

THE COURT: We're not asking you, sir, to comment about the article. Not at all. We're only showing it to you...

THE WITNESS: Yes.

THE COURT: ...so that you can answer the question.

THE WITNESS: Yes.

THE COURT: Are you familiar with the publication called, *Die Weltwoche*?

THE WITNESS: No.

MR. BERNSTEIN: Q. Okay. You recall giving an interview to Mr. List, right?

A. Yes.

Q. Okay.

THE COURT: Now, would you take it off the screen...

MR. BERNSTEIN: Yes.

THE COURT: ...at this point, please?

MR. BERNSTEIN: Q. Can you tell me how that came about and who you understood Mr. List to be working for when he made the -- you gave the interview?

A. Oh, Mr. List was here several times in Canada. He is what you call a freelancer. I didn't know for whom he worked. He was mainly interested regarding things in Austria.

Q. And you recall giving an interview or talking to...

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A. Oh, yeah. I think I give -- I gave him more than one.

Q. When you say "more than one" do you like him or...?

A. He was a very nice -- he was an Austrian guy and he -- he was a very nice man.

Q. All right. Did you talk to him about Pelossi's role in IAL? Do you recall talking to him about that?

MR. SCHABAS: Your Honour, I'm going to object. If Mr. Bernstein has questions to ask the witness, he should ask them. He shouldn't ask -- start, in effect, asking him questions about what he told a journalist. If he wants to go to something Mr. Schreiber said on another occasion, there's a way to do that.

MR. BERNSTEIN: Well, in my respectful submission, Your Honour, I guess we could approach this some different ways, but one way to approach it would be to ask Mr. Schreiber whether he recalls saying certain things, and in that sense this would be something which, in my respectful submission, would be in substance a kin to a letter he wrote or a statement he made, and then I -- I submit I can ask him what he meant by it or -- and this witness not -- has answered questions like that before.

There also is, just as a matter of law...

THE WITNESS: I still have a problem, but I meant in 1993 or '94, but I meant...



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MR. BERNSTEIN: There is another legal aspect to this that Mr. Shaw has kindly agreed to just make the submissions on it, and there's another way of going about this, and -- Mr. Shaw?

MR. SHAW: Thank you. Your Honour, if I may? I just want to bring the court briefly to two cases: Samra...

THE COURT: Well, tell me what your proposition is to begin with and then....

MR. SHAW: The basic proposition is that there are -- the courts recognize that the person can be examined with respect to statements including media statements that they may have made, and they may well adopt that statement. They may well recognize that they've spoken to the interviewer, this has already taken place here, and they may well agree with the quote that is in there, or they may say -- they may make any number of comments associating or dissociating themselves with it, or explaining it. And that is permitted -- and a number of cases, the case of *Samra* shows that they don't have to -- in order for that to succeed or for further examinations to be able to take place on that, it doesn't have to be lock step [ph] even with the quotation. So there's any number of things that can happen. But certainly in examining a witness, one method -- entirely appropriate method to see if they'll adopt things. In fact, if you look at

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the recommendations on how to proceed, let's say in the 9(1) or 9(2) context, the first -- there's an option of a refreshing memory, and the next option would be to get the witness to adopt. And the common practice is to try both of those and only if you fail, to go into proving an inconsistency. So, as precursors to a more serious attack, there are recognized exemptions -- recognized manners of proceeding that involve putting things and seeing if they are adopted. Particularly, where there is an evidentiary foundation of the witness having recalling the interview to proceeding in that fashion, and my hope was, in showing you *Samra*, to show that the courts are fairly robust in allowing that type of thing to go on, and my intention in the case of *Streu*, S-T-R-E-U, was to simply outline why as the general principle, we allow the witnesses to adopt even hearsay segments.

MR. SCHABAS: I'm sorry, Your Honour, I'm not -- I haven't read *Samra*, so I'm not sure. I'm not in a position to respond. It is -- the statement precisely stands for, but...

THE COURT: Well, the general proposition. Why can't someone refresh his memory on the one hand from -- in relation to a particular matter by showing him what he is alleged to have said. Obviously, this is indeed preceded by an acknowledgement that he did indeed say what the reporter says he said, and giving the witness

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an opportunity to sometimes ensure that things weren't taken out of context, but what is wrong with the second arm of Mr. Shaw's proposition that a witness may adopt something, he said, at another time at another place as being his present view, memory, or position?

MR. SCHABAS: Well, I suppose the problem, Your Honour, is that it's one thing to ask a witness whether he wrote a letter or recognizes the letter, and even then we have a concern about it being a leading question, but to just take a witness by the nose by saying, "Well, we believe you may have said this to somebody on another occasion. Do you adopt that or not?" is a form of leading. We're getting far away from simply asking the witness for his best evidence. Now, he's -- this is my friend's witness and...

THE COURT: Well, the question -- clearly, the first question clearly ought to be -- and to this extent I don't disagree with you...

MR. SCHABAS: Right, and...

THE COURT: ...-- "Do you remember what you told the fellow?" You know, and then we go on from there.

MR. SCHABAS: But then he -- well, but -- but what topic are we on? I sort of come back to the first point...

THE COURT: Well, we're on a relationship between IAL, this witness, and Pelossi.

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MR. SCHABAS: And so, if Mr. Bernstein has more questions in that area, to explore that, but as opposed to is he -- is he getting into a form of cross-examination? Is he -- does he wish to bring a 9(2) application? We've got the witness's evidence. We're getting his evidence, and if there's a statement where he's said something different, then there's a procedure for following that. I'm just looking at the headnote of *Samra*.

THE COURT: Well, I think the procedure is probably right in the sense that you are arguing about, that he needs to explore this a bit. He can't just say, "Did you have a conversation with this guy about..." and then go right into it and say this is it, isn't it?

Now, Mr. Shaw would have me believe that he can do that, but that I have a little bit of difficulty with.

MR. SCHABAS: Right, because Mr. Schreiber is their witness. They're asking him for his best evidence. They're not -- and they're getting that. We have to assume they're getting that from the questions they're asking him, and then to take him to other statements has, in effect, become a form of cross-examination. They're unsatisfied with the answer, they don't like the answer, or they think it's not enough. Let's establish, does he need his memory refreshed? Is that what they're using it for?

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THE COURT: I just said that. I agree with you.

MR. SCHABAS: Right. But they're not, I submit. That's not why -- there's been no suggestion that that's why we're going to that.

THE COURT: Okay.

MR. SCHABAS: And I just note in the -- we just had *Samra* but it seems to be all in the context of a cross-examination, at least from all of the catch lines, that that seems to be the context in which this whole case was decided, not about an examination in-chief.

THE COURT: What I'm going to ask Mr. Bernstein to do is this. I'm going to ask him to explore, to the extent that he can, Mr. Schreiber's memory of what transpired between him and List and it may be at a particular point in time he may have to attempt to refresh Mr. Schreiber's memory, and then we'll get there when we get there.

I don't agree necessarily with Mr. Shaw that at this point he can simply say, "Here it is. Here is the whole thing. Do you adopt it or don't you?" I think you probably have to go the other route first. At least, that's my preference at this point.

MR. BERNSTEIN: Yes, sir. Okay.

MR. BERNSTEIN: Q. Do you recall what topics you talked to Mr. List about during your interviews with him?

A. No. Vaguely, but I saw it from headline, *Shäuble*. As I told you, there were several interviews. My

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real problem is to look at this and say what were my thoughts and whatever I meant in 1992 or 2000, or 2004, and how this can give an indication what I might have thought in 1986. It's above my head, so I tried to help you, but this is -- I don't know what to say.

Q. Do you understand -- do you recall talking about Mr. Pelossi with Mr. List?

A. Yes, sure. As far as I recall, List visited Pelossi several times.

Q. Do you...

A. He told me about that, I guess.

Q. Do you recall talking about Mr. Pelossi's role in IAL with Mr. List?

A. Could be. I don't recall but could be. If List would have asked me, I would have given him an answer.

Q. Would looking at a document assist in refreshing your memory?

A. Sure.

Q. Okay. Let's take a look at Document 33057.  
Goto Page 3. The first...

MR. BERNSTEIN: Mr. Schabas, would you like to see this first?

MR. SCHABAS: No. No, you can put it up. I've seen it.

THE COURT: I take it this has been disclosed previously?

MR. BERNSTEIN: Yes. Yes. Okay. Let's bring it up on the screen.

MR. BERNSTEIN: Q. And please take your time with this article, but I, in particular...

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THE COURT: This is not online? Is that correct?

MR. BERNSTEIN: No.

MR. BERNSTEIN: Q. In particular, I direct your attention to -- sorry. I'm going to need the translator to assist us with the heading.

THE COURT: Has this been translated?

MR. SCHABAS: Yes.

THE COURT: Would you, Officer, just scroll through the document for my benefit, just one page and then just keep on going? Yes, go ahead. I just want you to flip quickly through it just to get a sense of.... Yes. Thank you.

MR. BERNSTEIN: Okay. Can we just direct your attention to -- well, just, I'm not sure how to do this, but I want to direct the witness's attention to these paragraphs, and I don't know where they are in the German edition. Why don't you bring them up side-by-side Staff Sergeant, and the translator can look at them. All right.

MR. INTERPRETER: Go back one.

MR. BERNSTEIN: That one. Just the -- I'm just reading this into the record so we're clear. "Pelossi says he was involved in the Bear-Head project, the Airbus deal with Canada and a helicopter deal."

THE WITNESS: Uh-hmm.

MR. BERNSTEIN: And also the paragraph, "How did this..."

MR. SCHABAS: Sorry.

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THE COURT: This is not a question of you, sir.

MR. BERNSTEIN: How did this...

MR. SCHABAS: This actually starts before then.

THE COURT: Now, what specific question do you wish to put to Mr. Schreiber?

MR. BERNSTEIN: I asked Mr. Schreiber if he recalled talking to Mr. List about Mr. Pelossi's role in IAL...

THE COURT: Okay.

MR. BERNSTEIN: He indicated amongst other things that he thought a review of the document might assist in refreshing his memory.

THE COURT: So you want him to have a look at it so he can answer the question?

MR. BERNSTEIN: Yes.

THE COURT: All right.

MR. SCHABAS: Your Honour, I think he should be allowed to read the whole thing. There's more than just the one page.

MR. BERNSTEIN: I don't disagree either, I just wanted to focus on that, but it should be read in context and, absolutely.

MR. SCHABAS: Perhaps we can go back to the beginning of the document.

THE COURT: Would you like that document to be printed out and then you can read it at your leisure or take five minutes to read it?

THE WITNESS: No.



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THE COURT: Or is it sufficient to do it this way?

THE WITNESS: It depends, too, what Mr. Bernstein was to refer to. The whole thing -- what is the -- what is the special interest in the document?

THE COURT: You see, the question is, do you recall talking about Pelossi's...

THE WITNESS: Yes.

THE COURT: ...role in this interview?

THE WITNESS: Yes.

THE COURT: And he wants you to read that to see whether that refreshes your memory about that question.

THE WITNESS: Yeah, but I think there was a headline on that. Can you just go up with it? Go ahead. Go forward. Forward. Yes. This is exactly what I told you before. Mr. Pelossi was -- what his profession was and what his role was.

MR. BERNSTEIN: Q. So this is a...

MR. SCHABAS: Well...

MR. BERNSTEIN: Well, with respect, in an unprompted way, the witness adopted...

THE COURT: Okay. The answer was yes. What's your next question?

MR. BERNSTEIN: Q. So when you say this is exactly right, what are you referring to?

A. Well, I looked at this. Pelossi said this and this and this and this, and that he more or less ran

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that trust company, but he never knew the real -- the real things behind it, because it was none of his business.

Q. Who knew of the real internal workings?

A. Who was behind the interest in the...

Q. Who knew the...

A. ...and the clients, it was only to the group around Mr. Pagani, the people which were really heavily, heavily involved. Of course, I knew clients like Mr. Moores, for example.

Q. And it says, "He managed the Lichtenstein company, International Aircraft Leasing."

A. Uh-hmm.

Q. And it says "...and in this job concluded NA's, the so-called useful contributions."

A. Yes. This is what -- this is what IAL received from the companies.

Q. Do you see the next paragraph there entitled, "How did this occur?" Do you see that there?

A. Yes.

Q. In the first line it says, "He collected the money, which was then deposited in an account over which I had right of disposal." Do you see...

A. Yes. It says...

THE COURT: Well, hold on. He sees that there.

MR. BERNSTEIN: All right.

THE COURT: That doesn't mean he said it.

MR. BERNSTEIN: No. That's what I wanted to ask him.

MR. BERNSTEIN: Q. Do you recall saying this to Mr. List, what's under the heading "How did this occur?" Do you recall saying that to Mr. List?

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MR. SCHABAS: Your Honour, he's read the document. It appears to have refreshed his memory. In my submission, Mr. Bernstein should allow him to refresh his memory from it, and then ask him some questions about what his evidence is, as opposed to simply taking him through this document line by line and asking him whether he agrees with it or not?

THE COURT: Well, I want you to exhaust that, Mr. Bernstein, by questioning your client.

MR. BERNSTEIN: If we have to get into what Mr. Shaw was talking about later on, we may go there, but at this point in time, I don't think we're there, yet.

MR. BERNSTEIN: Okay.

MR. BERNSTEIN: Q. With respect to

Mr. Pelossi's role, do you recall who had a right of disposal over the account the monies were deposited into?

A. At IAL? Mr. Pelossi. I don't know whether Mr. Frick had also signing authorization for that.

Q. As far as the Swiss Bank Corporation accounts were concerned?

A. With the IAL Rubrics? That was the account which I controlled.

Q. The funds which were deposited into these accounts, the IAL account or your account...

A. Yeah, but this was -- yeah, I told you how it happened from the beginning. We discussed this in length with the Airbus stuff.

Q. That's right. I'm not -- I'm just, with respect to those accounts, were funds -- do you recall these

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funds deposited into these accounts being put into project groups?

A. Yes.

Q. On whose instructions was that done?

A. Mr. Pagani.

Q. Was it done on anyone else's instructions?

A. Well, the principle was clear though when you -- when you look at the -- when you look at the MBB thing, it was clear. The service to GCI, though, there was nothing else to do with -- you agree on this once and that's it.

Q. Who agrees?

A. Well, I recommended Mr. Moores to use for the payments IAL, the money he wanted to get from MBB, so we have -- I mean we discussed this only I don't know what I can -- what else I can tell you in that.

Q. Is Mr. Pagani alive or dead?

A. Mr. Pagani passed away in -- I don't even know when.

Q. Do you recall who Mr. Pagani took instructions from?

A. No.

Q. Would looking at an article assist in refreshing your memory on it?

A. I could guess, yeah.

Q. Okay. So, let's take a look at Document 33057. Okay? And in particular, I direct your attention to the sentence "He collected the money, which was then deposited in an account over which I had right of disposal. On instructions from my client, it was put into project groups."

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MR. SCHABAS: Mr. Bernstein, where are you reading from?

MR. BERNSTEIN: The second sentence there, Mr. Schabas.

MR. SCHABAS: Thank you.

MR. BERNSTEIN: Q. Do you see that there? It says, "On instructions of my client, it was put into project groups."?

A. Well, this was either Thyssen or MBB or name it. Whoever was involved in that.

Q. These were the clients?

A. Yes.

THE COURT: Well, what is the question?

THE WITNESS: On both sides.

THE COURT: What is the question? What is the question to the witness, please?

MR. BERNSTEIN: I just wanted to clarify who gave the instructions, Your Honour, and he's answered the question.

THE WITNESS: No, but the problem is that on different projects, you can have different arrangements. This is not one strict rule in the whole thing.

MR. BERNSTEIN: Q. Okay. With respect to this dispute that you had with Mr. Pelossi, whose customer's money was allegedly taken without authority?

MR. SCHABAS: That was asked already, Your Honour.

THE COURT: I thought we'd been there.

MR. BERNSTEIN: I don't want -- I can ask that question better, Your Honour.

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MR. BERNSTEIN: Q. I don't want to -- I'm not -- I'm saying whose client was it? Or customer.

A. Oh, this was -- this was -- I think it was a chequing information from funds which were -- only when I recall it right, were transferred from Airbus Industry and that did not fit with the account.

Q. So whose customer?

A. This was checked by -- this was checked by Dr. Danika.

Q. Who? Okay, who -- whose client was it?

A. Please?

Q. My question was, whose client? Or whose customer?

A. He was with Mr. Pagani.

Q. Okay. Would looking at a document assist you?

A. Sure.

Q. Do you recall who brought Mr. Pagani, the client or the customer?

A. Hmm?

Q. Who brought Mr. Pagani the client or the customer?

A. Well, this is one of the group who was all involved in this international scenario. This is one thing. This is behind the Kensington Group. This is, at least, my recollection. And the other one is the active companies on the outside, the industry companies which are bringing -- these are clients.

MR. BERNSTEIN: Let's take a look at Document 33057, and let's show Mr. Schabas the document first. It's the same one. It's actually

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another article, so let's go to page -- yeah, Goto Page 11 and, Mr. Schabas, I direct your attention to the information under the heading, "Please explain for us how it came to this disagreement and what are NA's."

THE WITNESS: Did you put this on for me or...?

MR. BERNSTEIN: Well, just wait for Mr. Schabas.

THE WITNESS: Oh, I see.

MR. SCHABAS: Your Honour, I'm not sure the witness has said he's forgotten anything. He's given an answer, so I'm not sure the purpose. I'm sorry, I should be standing up. As to why my friend is now proposing to take him to...

THE COURT: The question was -- just so I'm clear -- who brought Pagani the customer. Is that it?

MR. BERNSTEIN: Yes.

THE COURT: Can you answer that?

THE WITNESS: The clients of the industry, yes.

THE COURT: No, who -- the people who gave Pagani the customer were -- say again?

THE WITNESS: The industry.

THE COURT: The industry. Can you be more specific?

THE WITNESS: And these were the people I was working with.

MR. BERNSTEIN: That's what I'm trying to get at.

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MR. BERNSTEIN: Q. What was your role?

A. Well, my role was, as I explained to you now many times, to look to get the business moving and whatever was required had to be done, though this included the transfer of NA's through IAL. And this is why IAL was recommended.

Q. In that sense, were they your customers, your clients?

A. You mean the industry, working with me? Yes. Now, was -- but when you say "my clients" when you look at Thyssen, I was the chairman from Bear Head Industries and I got paid from that.

Q. With respect to the dispute with IAL and Pelossi, was an IOU or some kind of loan document, a promissory note, or something like that involved?

A. Nothing like that. I told you only earlier that he referred to something he -- he identified a little -- a drawing where in 1976 we were in an aircraft and he was interested to -- to establishing an empire on -- what's the name? Traffic safety programs. And most of this did never appear, and then the discussion was whether this Kensington Group with all these financing guys behind would be -- would buy Bavarian Bitumen Chemicals. The whole theoretical story he wanted to do, and if he would have come up and would have brought all that things, fine, then he would have been entitled to get something, but all this never happened and never heard about it, and this is why I told you there was never anything, as we learned from the court in Lichtenstein in the financial statements. So here, the man who is desperate for money and he is to receive millions of dollars out of an agreement, and doesn't even show it in the



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financial statements he audited. I mean this is insane. He's sick.

Q. All right.

A. You know that.

Q. I want to leave the topic.

A. Okay.

THE COURT: Well, now is a good time then to take our afternoon break. Thank you.

COURT REGISTRAR: All rise, please.

R E C E S S

(3:20 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: (Continued...)

Q. Mr. Schreiber...

THE COURT: Okay. Give him a chance to sit down. Okay.

MR. BERNSTEIN: Q. Okay. We looked at -- I asked you some questions about Mr. Grant and I asked you and kindly agreed to look at some documents that would assist in refreshing your memory respecting your dealings with Mr. Grant, and I should have shown you all of the documents, and I didn't. So, I just was wondering if I could show you a few more documents.

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My question is, do you remember sending these documents or receiving this document and do you recall the contents of the documents. They relate to Mr. Grant. Okay?

A. To Mister...?

Q. Mr. Grant.

A. Mr. Grant, yeah, okay.

Q. So, they are in one form or another Document 17063. So let's go to Document 17063, GoTo Page 9. I don't... No. GoTo Page 2. Now, we've looked at that one. That's the one you looked at but couldn't recall. All right? I just want to show you some other ones. Let's go to page...

A. Could you go back to that...

Q. Sure.

A. ...for a second, the other one? Yeah, okay, but this was the answer to a letter I think he has sent to me, right? Is that correct?

Q. Well, that's what we'll see.

A. Yeah. Okay.

Q. So let's go to page...

THE COURT: There are no more pages... It's only a two-page document.

THE WITNESS: This was regarding the show in Vancouver.

MR. BERNSTEIN: Q. All right. All right. So, I'm sorry, let's go to Document 17064. 17064. Okay? All right. Does this one ring any bells?

A. So far, nothing...

Q. All right.

A. Let's go to the next document.

Document...

THE COURT: Well, I'm sorry, what was that?

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THE WITNESS: No, there's nothing here.

THE COURT: He can't see it.

MR. BERNSTEIN: Oh, sorry.

THE COURT: It rings no bells at all.

MR. BERNSTEIN: A blank screen so to speak.

THE COURT: I could have told you that.

Let's have a look at this one.

MR. BERNSTEIN: Q. All right. I'm trying to go faster and I'm just going slower, so we'll just...

A. But that's somehow the same.

Q. All right. So you got the document now. It doesn't have the writing on it. I'm just going to -- it doesn't have the writing on it.

A. No.

Q. So, do you recall sending this to Mr. Grant?

A. No.

Q. All right. Let's go to 70065. Okay, we've got the same letter, but there is some -- oh, we don't. Mr. Schabas...

A. No, we had that before.

Q. It's a little different.

MR. BERNSTEIN: Mr. Schabas?

MR. SCHABAS: Yes, you can put it to him.

MR. BERNSTEIN: Q. We have -- the typed part is the same letter, but there's the writing on it which is...

MR. SCHABAS: No, it's not.

MR. BERNSTEIN: What?

THE WITNESS: It's another one.

MR. BERNSTEIN: No. It's another letter. I better just slow down.

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(Continued...)

MR. BERNSTEIN: Q. It's another letter, apparently, from you to Mr. Grant, dated July 9, 1986. And there's a reference here to arrangements for a helicopter trip on the 8<sup>th</sup>, 9<sup>th</sup>, or 10<sup>th</sup> of August. And then there is reference to Abbotsford Air Show. Does any of this ring a bell?

A. I'm really amazed. Not at all.

Q. Okay. Let's go to the next one. 17066, we have the same letter without the writing on it.

MR. BERNSTEIN: Mr. Schabas?

MR. SCHABAS: Well, I -- I mean...

MR. BERNSTEIN: Q. This is a letter, apparently, which on its face purports to be written by you to Mr. Grant. Does it assist in reviving your recollection?

A. Not at all.

Q. All right. 17067. This is a letter from you to Mr. Grant written the day before. There's a reference to...

THE COURT: He's not looking at it.

MR. SCHABAS: Yes, that's fine. He can put it to him.

MR. BERNSTEIN: Q. It's a reference to letting you know if MBB had some hotel rooms available and at which hotel. Do you remember trying to get a room in Vancouver during Expo '86?

A. Yeah. I recall this. I was there with other family.

Q. Do you recall writing this letter?

A. No.

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(Continued...)

Q. Next letter is 17068. All right. And it's a letter, again, from you to Mr. Grant. Do you have that there?

A. Now, I see something.

Q. There's a reference here to during the time, August 7 to 13...

A. This was July.

Q. ...I will be in Vancouver with some important friends.

THE COURT: I don't believe -- that's not coming up on my screen. That's not been scanned in? 17068 search, nothing comes up.

MR. BERNSTEIN: If I could have a moment, Your Honour. That -- this particular one isn't.

THE COURT: All right.

MR. BERNSTEIN: Q. Do you recall travelling with some important friends?

A. I had -- I had -- when I -- my recollection is, when I was in -- in Vancouver, I had the Riemerschmid couple with me, but -- with the president of the Chamber of Commerce and the head of the Commercial Judges, and many, many things. But I have not the smallest recollection to the whole topic here that I ever changed faxes with Gary. What is his name?

MR. BERNSTEIN: All right. Any more, Al? One more. 17069. It's the same letter without the notation. It's not on your database, Your Honour. Mr. Schabas?

MR. SCHABAS: Fine.

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MR. BERNSTEIN: Q. Does this, the last letter, the ninth letter, revive your memory?

A. No.

Q. Okay.

A. It troubles me really what -- I know a helicopter ride is not cheap. I mean....

Q. So what troubles you?

A. I could have never asked him to fly around the Riemerschmids on the expense from MBB Helicopter. It would cost a fortune. I wonder really what -- I've not the smallest clue anymore whatever...

Q. Okay. Let's move on to another topic.

A. Yeah.

Q. Yesterday, we looked at two documents, and Mr. Schabas pointed out that, actually, we had looked at one earlier and not another one earlier, and I just want to clarify that. And in that regard, I want you to take a look at Document 17061.

MR. SCHABAS: This was put to him on September 13th.

MR. BERNSTEIN: Mr. Schabas, this is just what I wanted to clarify. There was one that was put and one that wasn't. I just want to deal with this housekeeping. Okay. This one has been put to the witness? Right? Okay. So, let's go to the other one, right? Okay. Here we go. Let's look at Document 17060. 17060.

MR. SCHABAS: 6-0?

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MR. BERNSTEIN: Q. Yes. Okay. All right. We have here a fax transmission slip, dated August 23<sup>rd</sup>, 1988 to you. The firm is BBC. From Greg Alford of GCI.

A. Um-hmm.

Q. Is the fax number 011-498-191-7888 familiar to you?

A. Yes. This was my fax number.

Q. Where?

A. In Germany.

Q. And this fax, a fax transmission slip, relates to four pages, including the covering page, and on the fax transmission slip there's a note that says "Karlheinz: This is the letter written to Mr. Pfleiderer after our last MBB discussions in July. Sorry for not sending it sooner. Best regards, Greg." Okay.

A. I wonder what this means here. "Original to", what means this? Tammy Dool or...

Q. I'm sorry, sir. What?

A. Here in the last line you read, "Original to" and there you read something.

Q. Don't...

A. Dool?

Q. Don't worry about it. Okay. So that's at GoTo Page 2. And I'm going to ask you a question, but I want you to look at the material which apparently came with this fax transmission...

A. Um-hmm.

Q. ...slip first, and in that regard, let's go to page 3. We have here a letter from Mr. Moores, dated July 22<sup>nd</sup>, 1988 to Mr. Pfleiderer.

A. '88.

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Q. Right. And there is information respecting pending helicopter procurement program by the Coast Guard.

A. Um-hmm.

Q. Certain concerns.

A. Um-hmm. Go ahead.

Q. Which missed -- certain concerns of the Department of Supply and Services which Mr. Moores suggests Mr. Pfleiderer raise with his colleagues at MBB. Go to the next page.

A. Hang on.

Q. Certain other concerns respecting marketing of the BO 105-LS. And then if we go to the last page of the letter, which is GoTo Page 5, he, Mr. Moores concludes by saying, "In conclusion," to Mr. Pfleiderer "...I invite you to call me to discuss these issues further, because I feel they are vital to the success of MCL in the Coast Guard contract and also relevant to the MCL contractual agreements entered into with the Canadian Government to secure start-up grants and financial assistance."

My question to you, sir, is do you recall receiving this letter?

A. Not at all.

Q. Let me just finish before you say your answer. From Mr. Alford.

A. Not at all, Mr. Bernstein. I'm amazed about this letter, and I see it the first time in my life, I'm sure.

Q. Do you know Mr. Pluckthun?

A. Who?

Q. Mr. Pluckthun.



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A. Pluckthun, yes.

Q. How do you know him?

A. Oh, I met him a couple of times. He was -- I think he was in a position above Mr. Pfleiderer or so, or he was from the financing side. I'm not sure.

Q. Tell me about these occasions when you met Mr. Pluckthun?

A. I really can't tell you. It could have been at MBB. It could have been once here in Canada. I'm not sure. It had really nothing, not much to do with him. No. That's it.

Q. Tell me what you can recall?

A. Huh?

Q. Tell me what you can recall?

A. I just recall vaguely that I've met him, because the name Pluckthun is something, and I saw him perhaps two or three times. But I had nothing to do with him, really.

Q. Would looking at documents assist in refreshing your memory?

A. Sure.

Q. All right.

A. I think he was somehow from that administration. He was not from the technical or from sales department.

Q. Okay. I'm wondering if you can take a look at document 14346. Does the writing at GoTo Page 2 of this document look familiar to you? Oh, we haven't...

MR. SCHABAS: It's not there.

MR. BERNSTEIN: Let's bring it up on the screen.

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MR. BERNSTEIN: Q. Does the writing at GoTo Page 2 look familiar to you?

A. Yes. I think it's my writing.

Q. Okay. Now, I don't mean to lead but I -- I don't really think is too controversial, and this is a page from your...

A. Diary.

MR. SCHABAS: Why don't you ask him what it is?

THE COURT: Apparently, it is,

Mr. Bernstein.

MR. BERNSTEIN: Q. From your diary?

A. Yes.

Q. Okay. Is this one of the New Year's presents?

A. Please?

Q. Is this one of the New Year's presents?

A. No. This is a bigger one, but this you can buy from journalists around the world. They made a lot of money with this. It comes from the prosecutors in Augsburg.

Q. What does, this diary?

A. Oh, yeah.

Q. They gave it to you?

A. Sure. They give everything out. You could read this stuff in the papers earlier than you got it from the prosecutors.

Q. You mean, they got it from you?

A. Yes.

Q. Okay. They didn't give you a gift of this calendar?

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A. No, but the copies of this travelling the world, you have no idea how many journalists from around the world are calling and referring to my diaries. It's like a Bible for the -- for the -- for some journalists. It's pretty funny. It's '91, and the other one I think is '94.

Q. Okay. Well, I'm not a journalist...

A. No.

Q. ...but I am a prosecutor and I have a few questions for you.

A. Good.

Q. Okay. With respect to the -- there are two pages on the screen.

A. Yes.

Q. And we're at GoTo Page 2 here. The page to the left is...

A. Telephone numbers.

Q. ...telephone numbers.

A. Yeah.

Q. And let's go to page 9.

A. Yes.

Q. We have -- I direct your attention to the bottom lefthand corner.

A. Yes.

Q. There's the words "MBB Pluckthun" and a number.

A. Yeah, Pluckthun.

Q. Is that the Mr. Pluckthun we're talking about?

A. Yes. I see that.

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Q. And if we go to page 10 of your diary and we look at the bottom left -- bottom righthand page, the last entry, is the name...

A. That's Pfleiderer.

Q. ...Pfleiderer and a fax and a telephone number.

A. Yes.

Q. That's Kurt Pfleiderer's?

A. Yes.

Q. Now, do you recall having dealings with Mr. Pfleiderer?

A. Dealings?

MR. SCHABAS: Sorry, Your Honour. I thought we were going to this for the purpose of Mr. Pluckthun, whether this refreshed his memory.

THE COURT: Are we going to Pfleiderer, now?

MR. BERNSTEIN: Yeah.

THE COURT: We're not talking about...

MR. BERNSTEIN: We're going to go to Pluckthun and Pfleiderer.

THE COURT: All right. Sorry, your question is, "Do you remember having dealings...

MR. BERNSTEIN: Dealings with Pfleiderer.

THE COURT: ...with Pfleiderer?" Yes.

MR. BERNSTEIN: Your Honour, I do this simply to show the frequency of contact relative to Pfleiderer and Pluckthun.

MR. SCHABAS: Well, he didn't ask him questions about that of Mr. Pfleiderer. The

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only reason we went to the document was to see if he refreshed his memory about Mr. Pluckthun.

THE COURT: Well, this has nothing to do with that document, I would say.

MR. BERNSTEIN: I've moved on to something else. It's his diary. Okay.

MR. SCHABAS: Why don't we go to it, then?

MR. BERNSTEIN: If my friend has an objection, please object. I'm not sure I understand...

MR. SCHABAS: Well, I just wonder what we're spending time going to a diary for if it's to try to refresh his memory and then he moves on away from it. I guess it's been done, but it's, you know, I don't know why we -- we've gone through this exercise if he gets to it and then changes the subject.

THE COURT: It will all become clear I'm sure at one point or another.

MR. SCHABAS: I hope so.

MR. BERNSTEIN: Q. Okay. Let's go to page

10.

THE COURT: Well, we have a question outstanding. It's up in the air.

MR. BERNSTEIN: I'm sorry.

THE COURT: The question, sir, I think, was do you remember having dealings with Mr. Pfleiderer?

THE WITNESS: Yeah, when you mean business contacts...

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THE COURT: Yes.

THE WITNESS: ...in doing business with him,  
I told you all the days. Yes, sure.

THE COURT: Okay.

THE WITNESS: He was my -- as much as this  
dealt with helicopters and trains, he was  
travelling with me in Alberta. He was  
travelling with me in Mexico. He was  
travelling with me in other countries in the  
world. Yes. He was.

THE COURT: You had frequent contact?

THE WITNESS: Frequent, yeah, sir. And we  
were -- and we were also personal friends. He  
was in my home and on private occasions I was  
in his home. He's a very humorous guy and he  
is, as I told you, is the father of the  
helicopters. He is really the one who, after  
the war, built the first helicopters in  
Germany. A very nice man.

MR. BERNSTEIN: Q. Okay. All right. And in  
terms of you -- you can't recall off the top of your head,  
how much contact you had during the period of this diary?

A. In '91?

Q. Yeah.

A. Oh, I have no idea, but when we go back  
from -- to '85, make it simple for yourself. From '95 or  
'85, and whenever something came up where he thought I could  
help, keep in mind, this was an order from Mr. Strauss, then  
he would have called or I would have called him with this  
constantly.

Q. I understand.

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A. Yeah. And he is a friend. He is a friend. He is a hell of a good -- a nice guy.

Q. Okay.

A. Hardworking man.

Q. All right. Well, let me just ask you, if we go to page 10, at the top of the page I see there's a reference to Pagani, and in the middle of the page Pelossi. Do you see that?

A. You mean this here? This page I have on my screen?

Q. Yeah.

A. Yeah. Yes. They are all there.

Q. And...

A. All with Piep.

Q. And so the numbers beside Pelossi are what?

A. Pelossi? Maybe his home. His car for sure.

Q. Did -- there seems to be two entries for Pelossi.

A. Yeah. One is -- 8-2 is -- is close to my place in Pontressina in Summerdown. He has a place where he spends vacation.

Q. And you have -- there's a reference to Pagani. Do you see that there?

A. Yes.

Q. And the numbers beside Pagani, can you help us with that?

A. I don't recall. Maybe one is a secret number. The other one is from -- from his office.

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Q. There's an entry just above Mister -- or Pagani's entry.

A. That's a nice one.

Q. It says PMO.

A. That's a nice one. That's the PMO in Ottawa.

Q. What's the PMO in Ottawa?

A. Prime Minister's office.

Q. That's the number?

A. It's also -- yeah, I guess so. And it's there under PMO, I assume it was at that time the right number.

MR. SCHABAS: We're all going to make a note of that one.

THE COURT: Yeah, I'm sure it's changed.

THE WITNESS: Dr. Pirkl is the head of the Hanns Seidel Foundation. Aukner [ph] is my housekeeper. Mr. Fodds [ph] is...

MR. BERNSTEIN: Q. I'm sorry. With respect to the foundation, which one was that?

A. Dr. Pirkl.

Q. Pirkl. What kind of foundation was that?

A. Hanns Seidel Foundation. Each of the German parties have a foundation. The foundation go around the world and they have children's program, educations program, and what else? They also support the culture of Germany, and yeah, I was able to put one down in Costa Rica.

Q. Okay. Now, if we reviewed this, the diary, we see Mr. Pfleiderer's name periodically come up. And...

A. Yes.



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Q. ...I'll just -- I'm going to -- I'm just -- Mr. Schabas may object but I just want to do this quickly. I'm going to ask a general question and I'm going to ask you to go through the book, and I'll point some pages out. Okay? We see Mr. Pfleiderer's name come up periodically and we see Mr. Pluckthun's name come up, periodically, in the diary.

A. At what time?

Q. In -- in very -- periodically, in...

A. In 1991?

Q. Right.

A. For example, if we go to page 15 -- let's do it. If we go to page 15 we see Pfleiderer's name.

MR. SCHABAS: Your Honour, I'm going to object on the basis of relevance. I mean what -- what's -- why are we spending time on this which are just...

THE WITNESS: Well, that was at the year...

MR. SCHABAS: Just a minute, Mr. Schreiber.

THE COURT: Hold on, hold on, hold on. Just a minute, sir, please.

MR. SCHABAS: Spending time on isolated references to a person's name in diary in 1991. I submit...

MR. BERNSTEIN: I'd be delighted to tell -- to respond to that but I can't do so in the presence of the witness. There's a very good reason that's been disclosed to Mr. Schabas, and I'd be pleased to inform the court.

THE COURT: But before I send Mr. Schreiber on another of his errands, why don't you whisper

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it in his ear and maybe he'll understand and then his objection will be removed.

MR. BERNSTEIN: With leave of the court, I'll explain it to Mr. Schabas in the back.

THE COURT: Yes. Better have them walk out than you, again.

THE WITNESS: I like humorous judges, I can tell you. I enjoyed a few of your colleagues. I have no problems looking at that stuff.

THE COURT: Does that get you any further, Mr. Schabas?

MR. BERNSTEIN: He's not making an admission, but I think...

MR. SCHABAS: I'm not -- I'm not going to press the objection at this point. I have my concerns. Mr. Bernstein has reminded me that some issues that he tells me he's going to have been covered in other context, so...

THE COURT: All right. Thank you. Go ahead, then. You were referring to which page? 15?

MR. BERNSTEIN: Q. Okay. For example, GoTo Page 15. It's January...

A. You see what you have here. Let's make -- this would be a planning for the year. I would prefer if you would have the page from the day.

Q. Okay.

A. They tell us much more.

Q. Sure. January 12...

A. Yeah.

Q. ...which is at GoTo Page 15 of the document, it seems to say Pfleiderer.

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A. But Mr. Bernstein, this means nothing to me, but you show me the page from the day, then I can tell you.

Q. I'm showing...

A. No, this is the whole month. Each day has a page, you see? And at the beginning of the year, I could have put something in. You see here, Frankfurt. It's a planning, more or less, but if you show me the page I can tell you what that one says. Show me the page from 14 -- the 12<sup>th</sup>. I think it's the 12<sup>th</sup> of January. This is a magic book.

Q. Okay. Let's go to page 27, but first of all, let's look at January. The reference on GoTo Page 5, to Pfleiderer on January 12<sup>th</sup>, and now let's go to page 27, which is the page for January 12<sup>th</sup>, and there's also a reference to Pfleiderer. Do you see that there?

A. Yeah. Now, this is something very important.

Q. It is?

A. Yes. Very important. You should have seen the party, who was there. Packed with politicians from around the world, and even Prime Ministers. This was Pfleiderer's 60<sup>th</sup> birthday. Mr. Pfleiderer's 60<sup>th</sup> birthday. Can't you see it? 60 GB means birthday. I was invited to his birthday, and the nicest guy I met there was Mr. Habibi, the President from Indonesia. His children were raised in Mr. Pfleiderer's home.

Q. Okay. All right.

A. So you see what recollection I have to nice and important things.

Q. Let's go to page 131, which is August...

A. 131?

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(Continued...)

Q. ...6.

A. 7<sup>th</sup> of August in 1991. You mean, now on the lefthand side, Mr. Pfleiderer.

Q. There's another reference to Pfleiderer there?

A. Yes. Pfleiderer...[German] So it's all. I put this mainly when I tried to call somebody. I may have done it. I may not have done it.

Q. All right.

A. I cannot tell you that.

Q. Let's go to page 16.

A. 15, yes.

Q. 16. GoTo Page 16 for February 13.

There's -- it looks like a reference to Plucktun?

A. Pluckthun, yeah. Again, I would -- I would prefer to make it easier for you and get you really something, if it's available. There was another one, Plucktun up there, and I left out. Do you see that? But if you show me the page of the day...

Q. I will. I will.

A. ...we are much better off.

Q. Okay. Page 43. GoTo Page 43. February 13.

A. Yes.

Q. There's a reference there to Pluckthun MBB?

A. Yes.

Q. And then it says T-O-R?

A. MBB 2-0-1. Well, that looks like I've been with MBB at one o'clock at Gate No. 1 if I've done what is there in the book.

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Q. That would be a gate to what?

A. Gate to the facilities of MBB. You cannot just walk into MBB.

Q. So would this be reference to a visit?

A. I would think so, yeah. When it says Pluckthun MBB Gate 1, I assume, I met him there.

Q. Let's go to page 17. This would be April 3. There's a reference to Pluckthun.

A. That was '88 and '91, right?

Q. '91. April 3.

A. Yeah. Could you go to the page?

Q. All right. GoTo Page 67.

A. Yeah, and...? There's nothing from Pluckthun...

Q. No, but there is a reference to Greg Alford there? Do you see that there?

A. Greg Alford, yeah. Maybe I called him. Perhaps I called Mark Lalonde. Faulkner...I don't know who that is.

Q. Let's go to page 39. It's a reference to February 12 to Mr. Pfleiderer MBB, Pfleiderer MBB.

A. No. Where is that?

Q. I'm sorry. February...

A. Sixth?

Q. Twelfth. Well, it's on a page for February 6<sup>th</sup>. I'm sorry. I'm -- I made a mistake.

A. It's Pluckthun.

Q. It's page February...

A. The sixth.

Q. ...6, at twelve o'clock.

A. Yeah. It shows Pluckthun.

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Q. Right.

A. I -- I am unable to -- to take from my memory at what time Mr. Pfleiderer resigned or at what time Mr. Pluckthun took over that division, because if you don't see any references to Mr. Pfleiderer anymore, then it might be Mr. Pluckthun.

Q. What might be Mr. Pluckthun?

A. Who -- who was the one I talked to after Mr. Pfleiderer left his position, or retired. '91, could be. I'm not sure, but could be.

Q. It's...

A. Otherwise, I -- I don't know why.

Q. Let's go to page 49. February 25.

A. Yes.

Q. Just around noon there's a reference too -- it looks like, and tell me, Pfleiderer, and then there's some other words there. WG and some other words. Do you see that there?

A. Pfleiderer? No, I don't see Pfleiderer. Where do you see Pfleiderer?

Q. What? I'm sorry. Maybe it's Pluckthun, not Pfleiderer.

A. No, I didn't see.

Q. I'll point to what I'm referring to and you tell me what it says, okay?

A. Not Pfleiderer.

Q. Here.

A. It's Pluckthun.

Q. All right. And so what's the rest? What else does it say?

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A. Pluckthun. Pluckthun, regarding Canada  
March.

Q. Would that be Moores, or March?

A. It's March. März is March.

Q. And if we look at -- well, March is  
coming up. If we're in February 25<sup>th</sup>...

A. Yeah.

Q. ...March is the next week. Let's look at  
February 26<sup>th</sup>. There's another reference at seven o'clock to  
Pluckthun.

A. Where?

THE COURT: What page?

MR. SCHABAS: No.

MR. BERNSTEIN: February 26.

THE WITNESS: Yeah. At three o'clock. Well,  
I -- I cannot give you a clear answer on this  
but it could be that Pluckthun called and has  
asked me to call him back or something like  
that.

MR. BERNSTEIN: Q. What about the top of the  
page there?

A. The same thing.

Q. Yeah. Pluckthun?

A. Yeah.

Q. Go to page....

A. It -- I do this once in a while when I --  
when I need to call somebody back. I may have called him,  
and then I -- the secretary may have called me. He's there  
at three o'clock. Things like this could be an explanation  
for that page.

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Q. Let's go to the next page, GoTo Page 50,  
February 27<sup>th</sup>, eleven o'clock.

A. What is that now?

Q. It seems to say Pluckthun...

A. Pluckthun March. Yeah, it says...

Q. March.

A. Yeah, again.

Q. And then there's -- there's like a little  
number sign.

A. Yeah. That was -- that was not a number  
sign. This is the sign that I definitely should call him. I  
remember that means something was on in March. He wanted to  
talk to me and it looks to me that it did not -- that I did  
not get him.

Q. If we go to page 53...

A. That is the 28<sup>th</sup> of March.

Q. All right.

A. Pluckthun, Pelossi.

Q. All right.

A. Yeah.

Q. Yes. So we've got, this seems to be a  
time. So we got February 27<sup>th</sup>, at eleven o'clock we've got --  
it says Pluckthun March...

A. Yeah.

Q. ...and the call.

A. Yeah.

Q. And then if we...

MR. SCHABAS: Sorry, where are you,  
Mr. Bernstein? I'm lost.

MR. BERNSTEIN: I'm on February 27, GoTo Page  
50.



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MR. SCHABAS: Oh, I'm sorry. We don't have the right page on the screen. GoTo Page -- all right. Okay. Now, GoTo Page 50. Yeah.

MR. BERNSTEIN: Q. All right. And then if we go to the other side of 50, February 28<sup>th</sup>, we have an entry that says -- and tell me about that. Nine o'clock. It seems to say Pluckthun Pelossi.

A. Pluckthun Pelossi, yeah. I recall, vaguely, there was a dispute on the -- on the commissions which had to be paid to GCI, and Mr. Pelossi was asked to discuss this with Mr. Pluckthun. This is my recollection, because I know that there was a dispute.

Q. What do you recall now about that?

A. I recall... Where? Now, when you ask me what is there, I can -- I cannot say, but I know that Pluckthun and Pelossi had to discuss -- how would you call this -- a complaint from Mr. Moores that something was wrong with the agreement and the commissions, or what.

Q. March 5, we have GoTo Page 53.

A. Yeah. Perhaps I spoke to Pluckthun.

Q. Okay. Just one second. I want to maybe go back to page 50 for a minute.

A. Yeah.

MR. BERNSTEIN: Can I just ask the translator a question?

MR. BERNSTEIN: Q. Let me just go to page 50, and you see under the entry, Pluckthun Pelossi, there's another entry at ten o'clock on February 28<sup>th</sup>? Do you see that there? It says B-I-V-G and then there's a word...

A. B-I-W-G-B-R-N-D?

Q. Yeah.

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A. That means...

Q. Does that have anything to do with this?

A. Yes. B was Mr. Birkner and I had to talk to him about the Brand case.

Q. Does that have anything to do -- what's the Brand case?

A. Brand. Oh, this is a lady we worked with. It has nothing to do with MBB or anybody.

Q. Okay. All right. So, let's go to page 53, which is March 5<sup>th</sup>?

A. Yeah.

Q. We also have a reference to Pluckthun there.

A. Yes. I must have called him because I was in Switzerland, as I see.

Q. How can you tell that?

A. Because I have an appointment there with Glattfelder and on the Krohnen Stuble, I was for sure in Pontressina.

Q. Okay. Show me where -- how you -- what -- how you know you're in Switzerland?

A. Yeah. Krohnen Stuble is the name of a little restaurant in Pontressina, and this is a friend of mine.

Q. Okay. You're...

A. The King of Cavier. Glattfelder.

MR. SCHABAS: Sorry, what's he pointing to?

MR. BERNSTEIN: All right. He's pointing...

THE WITNESS: You see here Glattfelder, the 5<sup>th</sup>, I was at this place, at home.

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MR. BERNSTEIN: Q. Okay. So you're pointing to the bottom of the page, the March 5<sup>th</sup> page, GoTo Page 53, at -- beside the letter 19 there's ...

A. Yes.

Q. ....the reference to something

K-R-O-H-E-N.

A. Yes.

Q. And that's a restaurant in Switzerland.

A. And I also called the prosecutor, Kaupp in Augsburg, and discussed a couple of things with him.

Q. Okay.

A. Because -- because he was the one who was the Brand case and new what a crook Pelossi is.

Q. Okay. So, just for your information, Mr. Schabas, this is probably more important to you than to me, the Kind of Caviar references...

A. Glattfelder.

Q. ...is off to the left at the bottom.

MR. SCHABAS: Thank you. I've opened another file in my notebook and recorded it for my trip to Pontressina.

THE WITNESS: It was the name he was called.

MR. SCHABAS: Maybe we can all go there together when this case is over,

Mr. Bernstein.

THE WITNESS: He sells more caviar in St. Moritz than anybody else in Switzerland.

MR. BERNSTEIN: Q. Is this Zurich or Geneva?

A. Huh?

Q. Zurich or Geneva.

A. St. Moritz.

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Q. St. Moritz. The restaurant or the caviar?

A. No, he sells to -- he sells to the restaurants and to the...

Q. No, but that nice restaurant you went to, was it in Zurich or St. Moritz?

A. The Krohnen Stuble?

Q. Yeah.

A. No, that was -- that was in -- Krohnen Stuble, that was in Pontressina, close to St. Moritz.

Q. Okay. Let's go to -- well, the reference to Pluckthun, okay, so you say it seems to jog your memory of being in Switzerland, and then there's this reference to Pluckthun and there's a checkmark. Do you see that at the top of the page?

A. Where?

Q. March 5<sup>th</sup>, GoTo Page 53.

A. March 5<sup>th</sup>?

Q. The top lefthand corner.

A. Yeah. Pluckthun. That means that I spoke to him.

Q. All right. And if we go to March 15<sup>th</sup>, GoTo Page 57...

A. Pluckthun.

Q. What's the reference -- does the check mark mean something to you, sir?

A. I may have called him again...

Q. There's a reference...

A. ...or tried to reach him.

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Q. There's a reference there. It says -- two entries above, it says, "Tel Strobel." Do you see that there?

A. Tel what?

Q. T-E-L- dot Strobel.

A. Strobel. Tel Strobel? Call Strobel.

Q. Yeah. Who is Strobel?

A. My bank in Zurich.

Q. Okay. Let's go to page 58. And we have for March 18<sup>th</sup> at nine o'clock, is there a reference there that you can tell us about?

A. Pluckthun. There's a question mark. I don't know why. No. There is a zero. That means I tried to reach him and he was not available.

Q. Okay, and what makes -- like, what...

A. Because there's a zero.

Q. Just show me where the zero is. So a check means you got a hold of them and a zero means you didn't?

A. Yeah. A lot of the time...

Q. And that's...

A. I'm not very consistent with this stuff.

Q. But if we see a checkmark in your diary, does that, generally speaking, mean...

A. Yes.

Q. ...you connected with them?

A. Yes.

Q. And a zero means non-contact?

A. Yes.

MR. SCHABAS: I'm sorry, the zero is...

THE WITNESS: You see there, the zero.

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MR. BERNSTEIN: Q. So if we see lower, it says "Tel Dr. Druble [sic]?"

A. Buhle. It's a zero as well.

Q. That's right. So that would mean...

A. Yeah.

Q. Okay. And if we go to page 62, March 24<sup>th</sup>, we have an entry at the top right hand corner and it says -- well, let's...

A. Pelossi -- Pelossi regarding Pluckthun.

Q. That is a reference to what, sir?

A. Well, I may have called Pelossi and asked him whether he spoke to Pluckthun on behalf of Frank Moores, of the -- of the problems they had. I guess, but...

Q. These are what problems?

A. Hmm? I told you there was this dispute on commissions.

THE COURT: Yes, sir.

MR. SCHABAS: The witness is guessing.

Mr. Bernstein is just taking him through....

MR. BERNSTEIN: He's not guessing and...

THE COURT: Well, yes. He said he was guessing.

MR. SCHABAS: Yes, he did.

THE COURT: In any event, complete your objection.

MR. SCHABAS: My objection is to the relevance of this. We're simply taking him through various entries to say what's -- is there a question that Mr. Bernstein has for the witness that he's seeking to refresh his memory by taking him to this, otherwise we're

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just going from day-to-day and he's asking him, in effect, to speculate on what may or may not have happened. And in my submission, I submit it's not -- it's not helpful evidence for the court.

MR. BERNSTEIN: Okay. I'd -- I've -- I'd be, again, pleased to respond but I can't do so in the...

THE COURT: Rather than send Mr. Schreiber out, I'll hear what it is that you're delighted about tomorrow morning at ten o'clock -- delighted to tell us at least -- at ten o'clock and we'll see you hear, Mr. Schreiber, tomorrow morning at ten o'clock.

THE WITNESS: Yes.

THE COURT: Thank you very much.

COURT REGISTRAR: All rise, please. Court is adjourned.

COURT ADJOURNS

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CERTIFICATION

## FORM 2

## CERTIFICATION OF TRANSCRIPT (SUBSECTION 5(2))

Evidence Act

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November 8, 2004 \_\_\_\_\_

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ONTARIO COURT OF JUSTICE

T A B L E O F C O N T E N T S

<u>WITNESSES:</u>	<u>Exam.</u>	<u>Cr-</u>	<u>Re-</u>
	<u>In-chief</u>	<u>Exam.</u>	<u>Exam.</u>
SCHREIBER, Karlheinz		2 (Cont'd...)	

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E X H I B I T S

<u>EXHIBIT NUMBER:</u>		<u>Entered on Page</u>
1-17115	Document 17115. Letter to Mr. Vogels. English translation.	14
1-17116	Document 17116. Letter to Mr. Vogels. German language	15

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EXHIBIT NUMBER:

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1-17103      17103. A letter to Mr. Von Stauffenberg. 32

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