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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 22, 2004 AT THE CITY OF OTTAWA

\*\*\*\*\*

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

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APPEARANCES:

M. Bernstein  
T. Shaw

Counsel for the Crown

P. Schabas  
T. Wong

Counsel for the Accused

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CRIMINAL CODE.**

WEDNESDAY, SEPTEMBER 22, 2004

U P O N   R E S U M I N G :

(10:00 a.m.)

COURT REGISTRAR: Ontario Court of Justice is now in session. Please be seated.

THE COURT: Good morning.

MR. SCHABAS: Good morning.

THE COURT: Mr. Bernstein, before Mr. Schreiber comes back, I think you were going to respond to Mr. Schabas's objection and you wanted...

MR. BERNSTEIN: Yes, I was. So Mr. Schreiber, can you...

THE COURT: ...Mr. Schreiber out of the courtroom. We'll call you back in a moment. I thought he wouldn't be called in.

MR. BERNSTEIN: As I recall Mr. Schabas's objection, it related to why we were going through this diary, which is from 1991. And I indicated that I would be pleased to enlighten the court, and I will enlighten the court.

As Your Honour knows -- because Your Honour has seen some evidence of this already, you

will see more now. In fact, I'll pull the documents up on the screen.

From January 1991 through to February, March, April, and into later during the year, there exists an ongoing -- I don't know if "dispute" is the right word, but there are ongoing discussions between MBB, Frank Moores, and in my submission -- and I hope there is some evidence of this -- Mr. Schreiber, respecting the amount of the commissions paid and owed on the helicopter deal, and who got what. And there is an attempt to settle the account or the accounts as between MBB and Moores and Schreiber.

I'll show you one letter that relates to this, Your Honour, and I'm sure you will recall this letter. It's Document 17058. Document 17058.

Okay. We have here a letter sent by Frank Moores -- and I believe Mr. Moores may have testified to this -- to Mr. Schreiber, dated January 9, 1991, which says, "Please find enclosed the original document received from Kurt," which we'll go to in a second," and also, figures obtained from government regarding expenditures to MBB, and 3) some calculations I have made which by definition have to be approximate."

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So let's look at the enclosed documents here. Okay. So this, I believe, is the information received... Okay. This is the third document referred to, and it's information obtained by Mr. Moores or by GCI from the government respecting the payment of the helicopters and parts and other things over various periods of time as they're delivered.

Let's go to the next page here, and the next page, and the next, and okay, so that's one of the enclosed documents. Again, it sets out the costs and what was paid and when it was delivered, which is, of course, relevant to the issue of what was owed in terms of commissions. The commissions were paid 8 percent on green helicopters, 15 percent or so on other spare parts and things, and they need to know when the helicopters were delivered, how much they were charged for them, when the parts and other things were delivered, and how much was paid for those.

So, we have that document. Now, that document itself is, again, dated -- let's go back to the beginning. It's dated January 4, 1991, and is attached to a letter sent to Schreiber, dated later in January 1991.

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(Continued...)

The other attached document is -- and I'm sure you will recall this document. It is in Frank Moores' handwriting. Mr. Moores has testified at some length to it, and I characterize it as his internal figurings respecting the commissions owed by MBB on the helicopter deal, when they were paid, who they were paid to, what deductions were made from the payments, because remember, they deducted the \$6,000 that went monthly to GCI, and Mr. Moores testified at some length about this document. Let's go to the next page here. It is, as we see, it continues on where -- you see the 641,000? That's the money that goes into Schreiber's Swiss bank account and there's some reconciliation. All right? Continue, please. That, again, is sent to Schreiber as part of this package in January.

Let's go to the last document referred to. This is again an important document, and this is a document that Kurt Pfleiderer is referred to as something received -- or sent by Kurt, and it's an MBB generated document, which is sent to, apparently, to Moores and Moores sends it on to Schreiber. I believe that -- let me just check on this. Was a copy sent directly to Schreiber? It's the Crown's position that a copy of this was sent by Pfleiderer directly to Schreiber, but I showed



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Mr. Schreiber this document earlier in the month and he had no particular recollection of it. But in any event, this is an MBB generated document, which again is a break down of the cost of the helicopters and the commissions owed. Let's just scan quickly through it.

All right. So these are received in January, and if we go to the calendar, low and behold, we see there's a reference in January to contact between -- well, between Frank and Mr. Schreiber. There's a reference in January to -- there's even a reference to the Coast Guard in this calendar. That's GoTo Page 24 of the calendar. Okay. If you look up in the top righthand corner, there's a reference MBB. It looks like to me the word Coast Guard there. January '91.

Now, this dispute continues for some time, and we have the evidence of Mr. Moores in respect of this, and so, the question is -- to get to the point, why am I showing Mr. Schreiber his diary from 1991? Why am I doing it in this order? I'm doing it in this order because I anticipate if I just showed him these documents he would, given his demeanor and attitude towards the Crown, likely say to me "I don't remember." I'd show the documents to

him and he would likely say, "They don't refresh my memory." However, if I show him the diary first and it's in his writing, and it's referable to names like Pfleiderer and Moores, MBB, and he recognizes that -- and indeed he's given evidence that these entries reflect contact. He's also mentioned the dispute, commission dispute, and then having done this, I show him the docs, I'm hoping to get a more forthright answer out of him. And quite frankly, I hoped to have boxed him in to giving a more forthright answer, so that's why I'm doing this and that's why I'm doing it in the order I'm doing it in. I say "boxed him in" in the nicest and most respectful of ways.

The relevance of this contact is, in my submission, it would seem to correspond in time with this commissioned dispute and resolution, and that's important because documents are generated in this dispute, which in a summary fashion collect up what was paid and why. And these documents are in the possession of Moores. Hopefully, we can prove Eurocopter and Schreiber.

Remember, the figures here correspond to the terms of the IAL MBB agreement, in the sense that the IAL MBB agreement, amongst other things, says that commissions will be paid on

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8 percent for green helicopters, on 15 percent for other things, and we see in these reconciliation documents which are proof of payment that the figures determining the amount of commissions correspond to the terms of the IAL agreement with MBB. And in my respectful submission, that is also relevant to prove it's evidence which you will, in the end -- we'd ask in the end you consider in assessing whether to admit the IAL MBB agreement, which remains an issue which we're going to have to litigate soon. When I say that, what I mean to be saying is here we have evidence of acts taken in furtherance of the agreement by material parties. Payments in accordance with the terms of the agreement. So that's -- that's one reason. The other reason is we have continuing contact with Pfleiderer and Pluckthun. Mr. Schreiber has been, to date, somewhat frugal in his recollection of these contacts and I'm using this diary to assist in refreshing his recollection, and otherwise proving what, at least in 1991, was a lot of contact with MBB and Pluckthun and Pfleiderer.

Indeed, if you look at this calendar for the year and you look at all the people he had contact with and you compare it to the amount of contact he had with Pfleiderer and

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Pluckthun, the contact with Pfleiderer and Pluckthun was quantitatively significant.

Thank you, Your Honour.

THE COURT: All right. Mr. Schabas.

MR. SCHABAS: Your Honour, I'm sure my friends means to use the word "frugal" in the nicest and most respectful of ways, too, but I don't think that's a fair characterization of Mr. Schreiber's evidence, certainly with respect to the evidence of his contact with Mr. Pluckthun. He's described as a good friend. But my objection arose -- and Your Honour, you may recall I began to object when we went to the diary and Mr. Bernstein and I went back to the courtroom and had a little whisper. And he told me that this related to the dispute that Moores gave evidence on, and I said okay, and we went ahead with that, but it didn't take long for Mr. Schreiber yesterday in going through the diary to make reference to the fact that there was a dispute, and that he recalled there was a dispute. I think he said he made reference to it twice, without prompting.

When he went to the diary, when they went to GoTo Page 50, Mr. Schreiber said, yes, there was a dispute about the commissions to be paid to GCI and Pluckthun was asked to discuss it with Mr. Pelossi. And then, later -- this was

all at the end of the day yesterday. He said he recalled that Pluckthun and Pelossi had discussed that something was wrong with the agreement and the commissions. And so, this went on, and in my submission, if this is being taken to him to refresh his memory about contact, well, his memory has been refreshed and it's time for Mr. Bernstein to ask him of what he knows about those disputes as opposed to us going through the diary and giving me information about where I should eat in Pontressina. That's my point.

In my submission, in this context it does become again repetitive at the very least for Mr. Bernstein to go to a number of these things to find out whether there is a checkmark or a zero next to it. What he is getting at is what the memory has been refreshed to and he should get to the point. He's his witness. And in my submission, we could be here forever.

As Mr. Bernstein says, he wants to box his own witness in, in the nicest of ways. He should ask Mr. Schreiber for the evidence.

THE COURT: Then, there is the point made by Mr. Bernstein that the second purpose is to assist in relation to his recollection about contacts with Pluckthun. If I recall, his

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(Continued...)

original answer was that he had relatively few contacts with Pluckthun. I don't recall the exact answer, but I think in response to Mr. Bernstein's question, it was "Yeah, I met him a couple of times." Now, it appears as if this demonstrates a significant amount of contact well beyond "met him a couple of times." And so, to that extent it appears to me to be relevant. How much more have you got?

MR. BERNSTEIN: Not too much, Your Honour. I got the...

THE COURT: Do you want to refer him to...

MR. BERNSTEIN: I have a few more January dates here. I just have a few more that includes some of the things I've just showed you, this reference here, the Coast Guard and...

THE COURT: Well, I'm hesitant at this point to say, "Well, look, you've asked him enough questions about that. You've refreshed his memory sufficiently, now go onto the direct questioning." If we haven't got much further to go, I think having gone some distance along this route -- and Mr. Bernstein is essentially asking me to allow him to complete the trip -- and if there's not much more to go, I'm hesitant to say no, you can't now. Thank you. We'll recall the witness.

MR. BERNSTEIN: Thank you.

THE COURT: Good morning, sir.

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SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

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

Q. Let's go to page 62 of Document 14346. Mr. Schreiber, I believe we were looking at this page of your diary, which is a page from March 24, 1991. And I believe I had directed your attention to an entry Pelossi W.G. Pluckthun. Do you see that there?

A. Yeah.

Q. The W.G. is German for what?

A. [German]...what means regarding.

Q. Regarding. Like Re or something?

A. Yeah.

Q. Okay. What can you tell us about that?

A. I think I told you already. I think during that days was a dispute between Mr. Moores and MBB that something with the commission was not right. At least, this is what I -- what I remind when I see this -- these two names together at that time.

Q. There's an entry just under it. It may have something to do with this. It may have nothing to do with this. It says Max?

A. Yes.

Q. Do you see that?

A. Nothing to do with it.

Q. Is -- Max didn't work for MBB?

A. No.

Q. Okay. Because there is a Maximillion that's come up. It's not him, eh?

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A. Maximillion? No. This is -- but to -- to -- to serve you, it's Max Strauss.

Q. Oh, that's Franz Joseph's son?

A. Yes.

Q. Let's go to the next page, which is GoTo Page 63, which is the next day. March 25. And again, there's a reference this time in the top lefthand corner.

A. Yeah.

Q. The same thing: Pelossi WG Pluckthun.

A. Though that means that I did not reach him. Pluckthun, when it seems to be the same thing on this day.

Q. Let's go to page 64, which is March 27, and again there's on this page, GoTo Page 64, two references to Pluckthun and Pelossi, and I'd just like to ask you about them. The first references will start with the column farthest to the left. It seems to say -- well, you tell me what it says.

A. Pluckthun after the 11<sup>th</sup> of April, Ramsey, and it looks to me that Pluckthun or Ramsey Whithers intended to meet or would talk.

Q. Okay. Now, Ramsay Whithers worked where?

A. GCI.

Q. Before he worked for GCI, where did he work?

A. I don't know. With the government, somehow.

Q. Did he have a high job or a low job in the government?



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(Continued...)

A. No, I think he was -- he was the general or use to be a general, and was a deputy minister or something.

Q. All right. There's next a reference to number -- there's a number sign, Pelossi, Pluckthun, and it looks like a question mark.

A. Yeah. It seems to be the same thing, that unsuccessful -- unsuccessfully tried to get Pluckthun.

Q. And then, at eight o'clock there's another reference Pelossi.

A. Same thing.

Q. Okay. When you say the same thing, are we talking about the dispute or the Ramsey Whithers thing?

A. I have no idea. Pelossi and Pluckthun. Could be. No, I think Pelossi had nothing -- no, maybe. I don't know. I don't know at what time Ramsey Whither took over the business more or less from GCI, though it could be both.

Q. All right. There seems to be a lot of contact or attempted contact in these last weeks of March here.

A. Oh, yeah. I mean, it's known when -- when Mr. Moores has to receive some money somewhere, it doesn't come, he can be pretty busy on you. This is what I assumed what happened.

Q. All right. Let's go to page 73. I just direct your attention to the far righthand corner. I see the word "Pelossi". Can you tell me what other words are written there?

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(Continued...)

A. It says, "Pelossi, honest [ph] means everything. Okay. Pluckthun." Though that means the two must have connected.

Q. Let's go to page 74, which is a reference to April 17. And it says here -- let's blow that up a bit for those. First of all, there seems to be a reference to "Tel P-E-L" something?

A. What?

MR. SCHABAS: Why don't you ask him?

THE COURT: What is that, sir, do you know?

THE WITNESS: What?

THE COURT: The first words there that you see.

THE WITNESS: It's a name.

MR. BERNSTEIN: Q. Who?

A. Dr. Phals.

Q. Who's Dr. Phals?

A. The Deputy Minister of Defence in Germany.

Q. Okay. Let's go to the other column, the April 17<sup>th</sup>. There's a reference, let's just go down the page a bit. There's a reference there to tell Frank. Okay. First of all, can you read that to us? This is April 17<sup>th</sup>. Can you blow it up a bit there, Staff Sergeant?

A. You see...

Q. Okay. Do you see that there?

A. Yeah. So what do you want to know?

Q. I want you to just help us with your writing to start off with. Can you just read it to us?

A. Yeah. Which one?

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(Continued...)

Q. Tell Frank. Here, I'll point it out to you.

A. That means call Frank Moores regarding Pluckthun.

Q. All right. And the rest of the line, what does that say?

A. Unfortunately, I can't -- can't read that anymore. The first means agreement.

Q. All right. We'll blow it up a bit.

A. But the second word, I don't know what that means. I can't even read the last one. I feel sorry that I...

Q. Just take a minute. How about that last word, the one that seems to start with an H.

A. Yeah. I don't know what it is. I have no idea. I have no idea, Mr. Bernstein.

Q. All right. The "Tel Frank W.G. Pluckthun" is a reference to what?

A. I don't know. I called him. Because Pluckthun, I think Pluckthun gave me an answer or that he wanted to come or meet with him or whatever, because you see there it's the sixth agreement, so it has to do something with the agreement, though. And since Mr. Pluckthun was with MBB, it may be related to the agreement. But I -- but I -- under no circumstances I can tell you what the rest means.

Q. The date was April 17<sup>th</sup>?

A. Um-hmm.

Q. Let's GoTo Page 102.

A. Yes.

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(Continued...)

Q. Okay. I direct your attention to an entry here for June 10<sup>th</sup>. Well, can you read it to us there?

A. You mean the second word?

Q. Yes.

A. Pluckthun with a question mark.

Q. "Tel Pluckthun" and question mark.

A. That could be that he has called.

Q. And then there's a reference there at nine. Do you see that reference there?

A. Yeah. Yes.

Q. Let's scroll down.

A. Yes.

Q. It looks like...

A. Pelossi.

Q. Yeah.

A. Yeah. I think this has something to do with -- with a doctor for throat, nose, and ears.

Q. What's the name under it, Baldo?

A. Yes.

Q. Let's go to page 28. We're going back in time.

A. Um-hmm.

Q. January 14, 1991.

A. Yes.

Q. And we have a reference here, it says -- well, do you see that in the middle?

A. Yes.

Q. First of all, what does it say? This is January 1991, January 14<sup>th</sup>.

A. It says, "Frank."

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(Continued...)

Q. And that's a reference to who?

A. And then, I don't know what the next is.

Q. Let's blow it up just...

A. Port MBB.

Q. Is "port" a German word?

A. No. It's harbor, but I don't know what -  
- maybe it's something in discussion with the offshore  
activities in Newfoundland or what. I have no idea.

Q. This Fred there...

A. Yeah.

Q. ...does that have anything to do with...

A. No.

Q. What is -- just that word that starts  
with an M...

A. Merkur.

Q. So, you've got a note here "Frank 4 MBB?"  
and then Merkur, right?

A. Yeah.

Q. And then, what's the next word?

A. Tel Helen Harris. Call Helen Harris.

Q. No, the Fred there or...

A. Yeah.

Q. Who's the Fred?

A. Fred, I -- I guess it is Fred Doucet.

Q. What's Fred Doucet got to do with Merkur?

A. Oh, he -- I think he went to do the  
consulting work with them.

Q. And what was your involvement with Fred  
Doucet and Merkur and his consulting work?

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(Continued...)

A. I recall nothing. I recall only vaguely that he asked for some connections or what, regarding real estate or whatever. That's all I recall.

Q. Fred Doucet was the one who worked for GCI or the...

A. No, Fed Doucet had his own company, or another company. I'm not sure.

Q. Before he had his company, he worked where?

A. We discussed this before. He was the Chief of Staff in the PMO for Brian Mulroney.

Q. Okay. What can you tell us about his consulting for Merkur?

A. I don't know.

THE COURT: Where are we going with this, Mr. Bernstein?

MR. BERNSTEIN: I just wanted to ask a general question. Well, nowhere, in view of the answer, I guess.

THE COURT: Let's move on.

MR. BERNSTEIN: Q. You can't recall anything else?

A. No.

Q. All right. The last page, GoTo Page 24.

A. I don't know which one is 24.

Q. Okay. It's both pages. The 24 -- GoTo Page 24 is just a reference to the electronic image of the document, but I'd like to direct your attention to January 7.

A. Okay.

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(Continued...)

Q. First of all, there's -- I see in the category for 15...

A. Yes.

Q. ...a reference. Well, there's a word. A few words, and one of the words is MBB. Do you see that there?

A. Yes.

Q. Okay. I want to blow that bit up a bit. And if you could, first, just tell us what you've written there.

A. Nancy letter MBB DHL. DHL is, I think, a courier service. And Nancy, this is secretary from Mr. Moores, so she must have written a letter to MBB. Or something like that.

Q. It's some letter that starts with P or a B. Do you see that after "Nancy" and before "MBB"?

A. B means *brief*. It's letter.

Q. Oh, "brief" is "letter" in German?

A. Yeah.

Q. All right. And if we go to the next column, January 7<sup>th</sup>...

A. Yes.

Q. ...the second entry around eight or nine. Let's just blow it up.

A. Can you blow that up?

Q. First of all, can you just read it to me? Let's blow it up just a little more.

A. MBB Dasch..... It says MBB Dasch...

Q. That's German for?

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(Continued...)

A. A name. It may be that by that time already DASA Daimler-Benz has taken over MBB, and Mr. Dasch was the top man from Daimler-Benz... For DASA.

Q. DASA is what?

A. Daimler-Benz. I don't even know what the second word means. Aerospace. Short words for the company which took over MBB.

Q. Okay. And the main -- and the top man there was who?

A. Mr. Dasch.

Q. Mr. Dasch.

A. Yes.

Q. And when you say the top man, how top?

A. Well, he was a special man from the Mercedes Daimler Group, and then he was appointed by Mr. Schrempp who is the CEO and President from Daimler Benz to hold the special position on his behalf to control the whole marketing and sales activities from MBB.

Q. Did you have dealings with Mr. Dasch?

A. I don't recall dealings, but he's a friend of mine.

Q. What else have you written here?

A. Then it says Coast Guard leasing.

Q. What about the word after Dasch or whatever?

A. I assume it means *Hali* and that means, could be helicopter.

Q. And the W-G is re *hali*?

A. Yeah.



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(Continued...)

Q. And then there's the word -- what's the next word?

A. Coast Guard leasing.

Q. Leasing?

A. Yes.

Q. All right. And then, what else is written there?

A. DeHavilland. GCI and unions.

Q. And what's the last word mean?

A. Unions?

Q. Yeah.

A. You know what a union is.

Q. Labour unions?

A. Yeah.

Q. This is January 7, 1991.

A. Um-hmm.

Q. What do you recall about this, sir?

A. Nothing. I can only guess.

Q. I don't want you to guess. Does it assist in refreshing memory about anything?

A. No. There were general questions about -- to lease helicopters more. There were -- this is involved DeHavilland. The unions, I assumed their questions, what the union's position would be if MBB would try to buy DeHavilland or what could be a whole scale of things, but I really don't know.

MR. BERNSTEIN: Okay. Can this diary be entered as the next exhibit in these proceedings, Your Honour? This is Document 14346.

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(Continued...)

MR. SCHABAS: Your Honour, I suppose to the extent we've been taken to certain passages, Mr. Schreiber has identified it as his diary, but I mean I understood this is -- we went to this for a specific purpose and I assume we may get there, but I don't know what it adds at this stage or if it is to be admitted it should only be admitted insofar as there's been -- we've gone to relevant passages. I don't know what else is in the diary.

THE COURT: Absolutely. I mean we've gone to pages. We're not going to snip out just that little part and say that is the only part that is going in. It's a document offered by the gentleman. Obviously, it's going in in relation to matters which are relevant to this case. Other matters that have not been referred to are of no evidentiary value and I don't think Mr. Bernstein attempts to make it relevant for other purposes.

MR. BERNSTEIN: Yes. 14346.

THE COURT: Yes. Next exhibit.

EXHIBIT No. 1-14346: Document 14346. Diary of Mr. Schreiber.

MR. BERNSTEIN: Q. I'd like you, sir, to take a look at a letter. That is Document 17058.

MR. BERNSTEIN: Can I just have the court's indulgence for a moment?

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MR. BERNSTEIN: Q. I want you to look at this document, and before you say no, I want you to...

MR. SCHABAS: Your Honour, the...

THE COURT: No, Mr. Bernstein.

MR. BERNSTEIN: Q. Yes, Your Honour. I want to just direct your attention to the bottom lefthand corner of the document, okay?

A. Yes.

Q. And there is a notation there FDM slash -- let's blow it up. And O apostrophe N, do you see that there?

A. Yes.

Q. And then there's the word "enclosures." Okay. Mr. Moores's secretary at the time was who?

A. Hmm?

Q. Who was Mr. Moores's secretary at the time?

A. Nancy.

Q. Do you recall Nancy's last name?

A. No.

Q. Does the name O'Neil ring a bell at all?

A. No, I -- I think I never knew her last name. Everybody called her Nancy. Nancy was a laughing face. Perhaps you know that, so....

Q. Was what?

A. Nancy was a laughing face. A very popular song from Frank Sinatra. He sang it when Regan was elected.

Q. Okay. Thank you. Okay. Now, I'm going to ask you whether you recall receiving this letter but

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before you answer, I want to pull up on the screen your diary, which is part of the last exhibit, 14346, GoTo Page 24. Okay. This is your diary for January 7, 1991. All right?

A. Yes.

Q. And I want to blow up, if you can, Staff Sergeant, the entry for Nancy there.

A. Nancy letter MBB.

Q. Yeah. No, no. Here. You've told us about that this morning.

A. Yeah.

Q. It's, I think you said Nancy was Mr. Moores's secretary...

A. Yeah.

Q. ...and "brief" means letter... Brief means...

A. DHL means...

Q. Courier.

A. Courier.

Q. Okay. So we have this entry in January 7, 1991, a letter from Moores's secretary Nancy, couriered -- or courier DHL, and then we have a letter dated January 9, 1991, from Mr. Moores and GCI to you...

A. Yes.

Q. ...respecting certain things. All right?

A. Yeah. I'm going to surprise you. I recall the letter.

Q. I'm surprised.

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A. Only to -- I do it only that you are not right, because you said no at the beginning, I would say no. I say yes.

Q. So if I said "No" would you say "yes"?

A. Yeah, sure.

Q. Okay. All right. So, you recall receiving the letter?

A. Yes.

Q. And you recall receiving the enclosures?

A. Yes.

Q. Okay. Now....

A. Hand-written by Mr. Moore's figures.

Q. Right.

A. Sure.

Q. Okay. So...

A. I told -- I told you when I recall something, I have a pretty good memory. And I will tell you when I recall. I have no reason not to tell you.

Q. All right. So, I'd like you to take a look at GoTo Page.... You made reference there, sir, to some handwriting.

A. Yeah.

Q. Is this...

A. Yeah. It's the same thing. One look is enough.

Q. Okay. This is Mr. Moores's writing?

A. Yes.

Q. Okay. Take a minute, all right, please, and just refresh yourself with this letter. Just look at it. It's a page or two. Okay?

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MR. SCHABAS: Your Honour, if he's going to refresh himself, perhaps he should refresh himself on the whole letter, the enclosures. It's 19 pages as opposed to... I mean if one was not doing this electronically, you'd put the letter and the attachments in front of the witness and you'd have a chance to see it.

MR. BERNSTEIN: I was going to get there. I was just going to do it in stages, but whatever pleases the court is fine with me.

THE COURT: Just show him the documents sequentially one page after the other. You tell us when you want us to flip pages or the Staff Sergeant to flip pages for you.

MR. BERNSTEIN: Q. So we'll start at the beginning and we'll just flip the pages, okay, and.... All right. Well, we should flip.... Okay. There's a reference here to an original document received from Kurt, "figures obtained from government regarding expenditures to MBB and some calculations I have made which by definition have to be approximate." So, we'll show you the enclosures, which aren't in the order of the letter. Okay. Let's just...

A. So this is a translation or what?

Q. No. This is...

A. No. This must be -- the other one was hand-written and this is this document I've never seen.

MR. BERNSTEIN: Okay. Can I just have a minute, and can I just address the court in the absence of the witness or...

THE COURT: Mr. Schreiber, would you leave the courtroom? We'll call you back.

THE WITNESS: Well, I could make it so easy for you. This is a dispute that Moores has with Pluckthun. I packed the whole together, sent it to Pelossi and to Pluckthun and the rest you see it a couple of months later in the diary. It's all the same thing. Very easy.

MR. BERNSTEIN: All right.

...[WITNESS EXITS].

MR. BERNSTEIN: Maybe Mr. Schreiber should testify from the well rather than the box. Your Honour, the reason I went about it the way I did was because I would -- I anticipated something like this happening where he, 1) he identifies the letter. He says, "Well, I -- I remember the hand-written letter from Moores." I go to that, but I was mindful that the answer to other parts of this enclosure may not be the same, so I approached it one bit at a time, deliberately. And I -- so I just wanted to say that. It wasn't that I was trying to be difficult in the way I was doing it. I had something which he did admit. I was then going to take him to something which we'll see whether he admit it or not, and you know, this may ultimately be an issue, because

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we have here a situation where he admits receiving it. He admits a part of it, but may or may not admit other parts of it. I just wanted to explain.

THE COURT: Well, I don't see anything wrong. He says, "I remember that letter." So you give it to him in -- in the normal course if this was a paper court, you'd give him the document, tell him to look through it, and then question him about specifics in that document. All that we've -- that Mr. Schabas was asking him was to just show him the document, not comment on it, just show it to him, then you can direct his mind to specific aspects of it. His only request was that you show him the document, not just little parts of it here and there. That's fair.

MR. BERNSTEIN: Yes.

THE COURT: And if you want to refer to specific aspects of it, then you're free to do so. It will be a lot simpler in this case if we just printed it out and gave it to him.

MR. BERNSTEIN: Yes. I was thinking, actually, that's what we should have done here. If it's okay, can we do that.

THE COURT: Sure.

MR. BERNSTEIN: Okay. Will it take long?

THE COURT: It's 19 pages long. Why don't we just take our morning break right now, print it out, and during the break give it to



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Mr. Schreiber and then we'll go to the parts that you want to draw his attention to.

MR. BERNSTEIN: Thank you, Your Honour.

THE COURT: All right.

COURT REGISTRAR: Court is now in recess.

R E C E S S (11:10 p.m.)

U P O N R E S U M I N G: (12:00 p.m.)

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

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

THE COURT: Now, Mr. Schreiber has had an opportunity of looking at this document?

THE WITNESS: Yes.

THE COURT: Mr. Bernstein?

MR. BERNSTEIN: Thank you.

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

Q. All right, Mr. Schreiber, you've had an opportunity of reviewing the hard copy of the document and that's Document 17058, which includes a variety of attachments. Okay? You've advised us that you recall receiving the covering letter, and you've indicated to us that you recall receiving an enclosure which is some hand-

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written notes of Mr. Moores, entitled Points re original document, and it is at GoTo Page...

THE COURT: Eight.

MR. BERNSTEIN: Eight and nine of the document.

MR. BERNSTEIN: Q. Now, there are other parts of the document I'd now like to ask you about, whether you recall receiving with the covering letter, and in particular, the covering letter refers to some figures obtained from government regarding expenditures to MBB. Do you see that there in GoTo Page 2 of the document in a covering letter?

A. Yes. And this is the one I don't recall that I have seen that.

Q. Okay, and in that regard you've looked a -- it seems to be a typewritten memo dated January 4, 1991, to RW and FDM. Those are Frank Moores's initials, right?

A. Yes.

Q. RW or...

A. As I told you, I haven't seen this -- in my recollection, I haven't seen this, but when you ask me now, I think it's Ramsay Whithers.

Q. Okay. When you say you haven't seen this, which -- just so that we have it clear on the record, which...

A. I recall -- I recall this document. This one.

Q. All right.

A. And I recall, especially, this one.

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MR. SCHABAS: Sorry. Can you just tell us what they are as we go.

THE COURT: Tell us what that is, Mr. Bernstein.

THE WITNESS: The handwriting, Mr. Schabas...

THE COURT: Mr. Bernstein, just tell us what the witness has identified.

THE WITNESS: ...the handwriting one.

MR. BERNSTEIN: And the other one but not the first one.

THE WITNESS: And this one.

THE COURT: Well, what's the other one? I just want Mr. Bernstein to put it on the record.

MR. BERNSTEIN: Yes. The witness has identified GoTo Page 8 and 9 of the document, and the -- okay. Just to be clear about this, GoTo Page 8, 9, 10, and 11 of the document as something he recognizes, which he's referred to as Mr. Moores's notes.

THE WITNESS: Yes.

MR. BERNSTEIN: He's also identified as recognizing something that I, I guess, have referred to as the other document and for the record, that is a document entitled, International Aircraft Leasing Commission Fee breakdown...

THE WITNESS: Yes.

MR. BERNSTEIN: And it is go to...

MR. BERNSTEIN: Q. That's a yes?

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(Continued...)

A. Yes.

Q. And that's in the document at GoTo Page 12, 13, 14, 15, 16, 17, 18, 19. He does not recognize as having or cannot recall having received a document entitled -- well, dated January 4, 1991, to RW, FDM from DH, Subject: MBB Helicopter Canada, which is part of this document at GoTo Page 4, GoTo Page 5, and 6 and 7. GoTo Page 4 and 5, seems to me to be the same page reproduced twice. All right. Okay. All right.

Mr. Schreiber, you receive -- what you recall receiving -- in connection with this document, Document 17058, and Mr. Schreiber, in your own words can you tell us what you recall happened or the discussions which preceded this receipt, and then what -- what followed?

A. Well, this deals all with the -- what I told you earlier, that there was a dispute between MBB and GCI about the commissions, and this was sent to me, and I was -- I recall it because I was pretty angry about it. What the hell, I'm not your bookkeeper or what. So I sent it to Pelossi and told him that he is the one responsible for this and he should report to Mr. Moores what it's all about, and Mr. Pluckthun, and that, because I even refused to go through it because I was not interested.

Q. Who do you recall talking to about...

A. Well, I think to Mr. Moores, and I think to Mr. Pelossi.

Q. With respect to your conversations with Mr. Moores...

A. Yes.

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Q. ...tell me what you recall him saying and you saying or...

A. Well...

Q. ...the gist of the conversation.

A. ...I don't recall the conversation but I -- I know exactly that I was angry that I -- he sent me this stuff. I said "What do you want me to be, your bookkeeper or what? What can I say to this? I've not the smallest clue. Send it where it is supposed to be. Send it to MBB and figure it out with Pelossi and that's it. It's your business, not mine."

Q. Nevertheless, he sends it to you.

A. Yeah.

Q. And...

A. And it didn't make sense to me, because I was not involved, as I told you before, in the negotiation. I was not involved in the daily business with him, and on top of this whether you can understand this, I was not even interested. It's their business, and if I would have to get something, fine. If I would have a problem, I would ask.

Q. You receive it and then what do you do with it?

A. My recollection is that I gave it to Pelossi and told him to go to Pluckthun and speak about him and leave me alone with this. I had enough work to do. I was not looking for a job.

Q. Was -- I assume Pelossi was out of jail at this time.

A. Hmm?

Q. Pelossi was out of jail at this time?

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A. Yeah. This was '91.

Q. Yes. Why do you -- why Pelossi? Was it sent to Pelossi?

A. Because Pelossi handled this for GCI.

Q. All right. And let's go to the portion of the document, which is....

MR. BERNSTEIN: Your Honour, could I just have the court's indulgence for a moment? Okay. This document has already been entered as an exhibit in these proceedings.

MR. SCHABAS: Some of it has.

MR. BERNSTEIN: Actually, portions of this document have been entered as an exhibit in these proceedings. Portions have... I stand corrected, but I understand that GoTo Page -- let's just go through it, Staff Sergeant.

GoTo Page 2 has been entered as an exhibit. I just want to get this right, so can I just have a second and the officer will tell me.

Okay. I understand and I'm advised by Superintendent Matthews that the exhibit has been entered as an exhibit, save and except GoTo pages 4 and 5. Save and except -- save and except GoTo pages 4, 5, and 6 and 7. So let's pull up GoTo pages 4...

MR. SCHABAS: Actually, that's not our recollection, Your Honour.

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MR. BERNSTEIN: No, that's not my recollection either.

MR. SCHABAS: If it helps my friend. Our recollection is that this was put to Mr. Moores and he could identify the document and it was made an exhibit other than pages 12 to 19, which he did not identify. That was on October the 9<sup>th</sup>, 2003.

MR. BERNSTEIN: So let's go to pages 12 to 19.

THE COURT: That's the one that the witness said he also recognized.

MR. BERNSTEIN: Yes.

MR. SCHABAS: Right.

MR. BERNSTEIN: So I'd ask that that part of the exhibit be entered as an exhibit in these proceedings.

THE COURT: Next exhibit. And indeed, that makes the entire document an exhibit.

MR. BERNSTEIN: An exhibit.

EXHIBIT No. 1-17058: Document 17058. Covering letter and attachments, GoTo Pages 12-19.

MR. BERNSTEIN: Let's go to Document 13730. No, not that one. I'm sorry. I got the wrong number here. Document 13717.

MR. BERNSTEIN: Q. Okay. Just to be clear here, you received -- the date of the letter that we've just

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looked at and which has been entered as an exhibit, the letter from Mr. Moores to yourself is dated January 9, 1991.

Okay, Mr. Schreiber. And I'd now like to show you a document, which has a fax transmission slip on it. And the fax transmission slip is dated January 23, 1991, so it's dated some days later. All right? Yes. This is Document 13717, GoTo Page 2. And I want to direct your -- direct your attention to the telex Telefax stamp at the top of the page -- and Mr. Translator, can you translate the telefax stamp there?

INTERPRETER: It's addressed to Karlheinz Schreiber from G. Pelossi, date 23-01-91. Number of pages 7.

MR. BERNSTEIN: Q. Okay. And if we see how many pages in this document, if we just go through the number of pages there, well.... All right? All right. Okay. So, I now want you to look at your diary again for the same date, January 23<sup>rd</sup>, 1991. Okay. So we're there. January 23<sup>rd</sup>, 1991. We've reviewed these entries. There's a reference there. Tele...

A. Yes.

Q. Pfleiderer. Tell me what that is. The first entrance is "tele." Do you see that there?

A. Yeah. This has something to do with Pelossi.

Q. No. The first entry, it says tel...

A. Pichler. Pichler?

Q. Who is he?

A. Mr. Pichler is somebody else. Nothing to do with MBB.



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Q. All right. So then we have a reference here, Tele Pelossi?

A. Yes. That has something to do with Thailand. It has nothing to do with MBB.

Q. And then it says, "Sandra" or something. What's the next entry there?

A. Sanden means sent.

Q. Send Pelossi M-B -- it say M-B Frank.

A. No, it looks like I have sent something from -- regarding MBB and Mr. Moores to Pelossi, or I intended to do that.

Q. Right. Okay. So this is dated January 23<sup>rd</sup>, 1991, these diary entries, okay?

A. Yeah.

Q. We have here a -- it says "sender Pelossi, M-B Frank.

A. Yes.

Q. We have here a fax sent by Pelossi to you...

A. Yes.

Q. ...on January twenty...

A. Which? This is what you say. I haven't seen that.

MR. SCHABAS: Your Honour, just a minute. Just a minute. My friend is leading him. I haven't objected to taking him to the diary and showing the document, but it is a form of leading, and now he's stating to him "We have a fax that's sent to him." On it's face, there's an indicator of that. I acknowledge

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that, but my friend should not be stating things as if they're conclusions and if they're -- as if they're proven facts until they're proven facts. I use the words facts as F-A-C-T-S, not F-A-X. He's leading and he should, you know, the ordinary way to have proceeded in this would be to put the letter in front of him that's on the lefthand side, Document 13717, which he's done, and ask him if he recognizes it or if he received it. And we shouldn't even be going to the diaries. He can go to the diaries later, perhaps as a form of refreshing his memory. And I hadn't objected until now, but if he's now going to do this and then present these statements as if they're proven facts, I object to this form of questioning.

THE COURT: Well, I agree, and perhaps you might be more careful with your statements as opposed to the questions, but you can simply refer the witness to the document on the left, and it speaks for itself.

MR. BERNSTEIN: Yes, Your Honour. And I'm sorry, that's all I meant to do. I didn't mean to say it's been sent. I only meant to say the telefax German translation says what the translator said it said. Okay?

MR. BERNSTEIN: Q. So, we have there this fax, which has the telefax stamp on it sent by Pelossi to you. We have these entries in your diary. My question -- we

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have a document here that says: reference Consulting Agreement, Dear Mr. Pelossi, from Pluckthun. My question to you is, do you recall receiving this facsimile?

A. No.

Q. Do you recall receiving it's attachments?

A. No. I don't know what the attachments are.

THE COURT: Well, show him the attachments.

MR. BERNSTEIN: Certainly. Can I just take a minute and look at the attachments?

MR. SCHABAS: Well, can't the witness see the attachments?

MR. BERNSTEIN: Can I just look at it? Let Mr. Pelossi look at the attachment.

MR. SCHABAS: Mr. Schreiber, actually.

MR. BERNSTEIN: Mr. Schreiber.

THE WITNESS: Yeah. We went to this before. What do you want to know?

MR. BERNSTEIN: Q. Anything you can tell me about it, but the question I had asked was...

A. My secretary...

THE COURT: Well, you said "Do you recall receiving this fax?" Then you said -- he said, "No," and then you asked him if he recalls seeing the attachments and he said, "I haven't seen them." So, he obviously can't respond. He hasn't seen them, and so, the question, I would think, to the witness -- I don't want to do your job for you -- is, having seen the attachments...

MR. BERNSTEIN: Q. Have you seen the attachments?

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(Continued...)

A. Which one?

Q. I ask you to look at some images on the screen. Once we've finished that, I'll ask you whether you have seen these attachments.

A. Excuse me, sir. This is a complete different document. This is from '88 and which you are referring to here is from '91 until now. You are mixing the document and ask me the same question, so I don't know what to do with it.

Q. Go back to the original first page.

A. To this one.

Q. All right. It says -- you see, let's just -- Mr. Translator, can you read the German for the line here?

MR. SCHABAS: Which line, Mr. Bernstein?

MR. BERNSTEIN: It's in the middle there. We'll blow it up.

MR. SCHABAS: Okay. Well, just for the record, we should know it's right under the words "FL-9490 Vaduz", is that right?

INTERPRETER: Yes. The top line is -- the small word immediately to the left, I -- I can't read, but the next one is file number or file name, and "prepared by" and then that appears to be repeated, but the little word, what appears to be a four-letter word to the left of that, I'm afraid I can't read it.

MR. BERNSTEIN: All right. And the other numbers and words on that line is...

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INTERPRETER: There is a telephone number you can see is in -- in the -- the central box after the file names, it's telephone and then there is fax as in telefax, and then telex and I have difficulty reading the...

THE WITNESS: That's a place. Ottobrun.

INTERPRETER: It's Ottobrun, yes. Yes. Right.

MR. BERNSTEIN: And under Ottobrun is what?

INTERPRETER: Is the date.

MR. BERNSTEIN: And that date, that is the 24<sup>th</sup> of March 1988.

MR. BERNSTEIN: Q. You say the documents are dated 1988, right?

A. Yeah.

Q. Okay. Including this document, right?

A. Yes.

Q. And the telefax -- the telefax stamp on the top of the document is dated...

A. '91.

Q. Let's blow it up.

A. '91.

Q. '91. What?

A. It's confusing. I don't know what that is.

Q. It's a stamp. It's a...

A. But this document must have been sitting there for three or four years or what, and then it was sent to me. On top of this in my diary, it says I have sent something to Pelossi, not received something. This doesn't fit at all, and I don't recall this damn document.

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Q. Okay.

A. But that's not surprising by the way. I have seen quite a few documents where Mr. Pelossi told he has sent it to me and put stamps on it and I never see it further.

Q. Okay. I want to change the topic. Okay? And I want to go.... I want to go back to the Swiss bank account. Okay? And in particular, the two payments and payment orders from the Swiss bank account to Mr. Moores: one in the amount of 260,641 and the other one was in the amount of \$149,000. Do you remember we talked about them at the beginning of your examination?

A. Yes.

Q. Okay. And just -- I'll just pull up the document just so that we have a document to look at when I ask you the questions, and the -- no, the payment. It's Document 173 --- it's Exhibit 17333. Okay?

A. Yeah.

Q. All right. What do you understand Mr. Moores did with this money?

A. It's none of my business.

MR. SCHABAS: Your Honour, just a moment. I'm going to object for the record. We've been over this many times in my submission.

MR. BERNSTEIN: I've never asked this question. I've saved it. I've saved this line of questioning to -- to this point.

MR. SCHABAS: When I say that we've been over this, I've made submissions in the past about the fact that this is a case about -- where

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there's an allegation of a commission that's been paid and...

MR. BERNSTEIN: Well, if my friend is going to make submissions, maybe they should be made in the absence of the witness.

... [WITNESS EXITS]

MR. SCHABAS: Oh, sorry, I thought Mr. Bernstein had left for a moment, but he's sitting behind me. Your Honour, in my submission it's irrelevant. The evidence that the Crown has presented in this case is that their -- their theory of this case is that a commission was paid. It was paid into a certain bank account and then this deals with payments beyond that, and in my submission that's irrelevant. This is not a case about what recipients of the funds might, you know, about tracing the money to other people -- my friend can't say there's some.... It's beyond the scope of the case. It's that simple. I've said this before in other context, and not in the context of this one, and so I object to it. I also object to the phrasing of the question. I mean, what do you understand Mr. Moores did with the money as opposed to: Do you know what he did? I mean, again, you know, there's so many areas here where we get into realms of speculation.

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THE COURT: All right. I agree with that last one. That struck me as being inappropriate as opposed to "what you know".

MR. SCHABAS: We should be getting the witness's direct knowledge and not necessarily what somebody else may have told him, but you have my -- assuming it's relevant, which is my basic...

THE COURT: The question is one of relevance, and Mr. Bernstein, let's hear from you again. I think I know what you're going to say but go ahead and say it, briefly.

MR. BERNSTEIN: Okay. With respect to the suggestion on how to better word the question, I recognize the question could have been worded better, and we'll try to word it better.

What I'm interested in inquiring into here is what he was told or what he was led to believe happened to the money, and the basis of that belief.

There's two issues: One is what actually happened to the money, but there is also another issue and that issue relates to what he was led to believe or thought happened to the money.



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(Continued...)

These two issues are both relevant to an argument, which I am sure, Your Honour, I must have made four or five times in various ways in various stages to Your Honour. Do you want me to make it again? It relates to -- it's the argument that I've made before respecting this is evidence as to the nature of the transaction. The issue here is whether the transaction, which is material to the charge, was a fraudulent transaction. What happened to these funds is, depending on the answer, may be relevant to a proper characterization and understanding of the nature and the transaction.

I say that in the sense that if the money was used to -- well, we have evidence here that MBB paid NA's. Mr. Schreiber said half a dozen time he's paid -- MBB paid NA's in connection with this matter, and if these funds ended up in the -- or he believed or understood that these funds or parts of these funds ended up in the hands of a group of people, which would include a variety of people, recipients of NA's, then that's material to -- very material to this matter, and relates directly to the acts of MBB.

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(Continued...)

Mr. Schreiber has testified about -- and I'm not going to repeat it -- and he said a variety of different things, but he's talked about NA's and *schmiergeldt*; he's talked about NA's and MBB; he's talked about NA's MBB and IAL; he's talked about this account and it's use by IAL, and I'm now tracking the funds. They come -- they go from a Lichtenstein bank account which is the subject of secrecy laws -- no. I'm sorry. They go from MBB in Germany to a Swiss bank account under, well, Mr. Schreiber's Swiss bank account which is the subject of secrecy laws, and they are then, we know from Mr. Moores' evidence, drawn in cash or coins and notes, in large sums, which is evidence relevant to the nature of the transaction.

So, I am not saying it as well as maybe I've said it on previous days, Your Honour, but in my respectful submission, what ultimately happened to these funds and indeed what Mr. Schreiber thought ultimately happened to these funds, is evidence which is material to a consideration of whether the commissions, the transaction, generally, was a fraudulent one, a dishonest one, one cloaked in secrecy, one devoid of economic regularity or of a limited economic regularity. Mr. Shaw has one additional submission to make.

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(Continued...)

MR. SHAW: The Preliminary Hearing, as Your Honour knows, serves a number of functions and it is also possible -- and I'm referring to s. 548. I'll just read out 548.1(a).

"Order to stand trial or discharge --  
When all the evidence has been taken by  
the justice, he shall,

(a) if in his opinion there is  
sufficient evidence to put the  
accused on trial for the offence  
charged or..."

-- and this is what I'm emphasizing

"...any other indictable offence in  
respect of the same transaction, order  
the accused to stand trial."

And so, these questions, if that is a  
statutory function of this court, these  
questions have at least a potential.

THE COURT: All right. Have you advised  
Mr. Schabas of the other indictable offences  
you're considering asking me to commit the  
accused on?

MR. SHAW: Well, we don't yet know what may  
be revealed with respect to the answers that  
will be given.

THE COURT: Well, in fairness to him, you  
have to tell him what it is that you're going  
to be seeking committal on and if you're just  
speculating, then that's pure fishing.

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(Continued...)

Clearly, you know the theory of your case, and it is also *juris prudencia constant*. It's been repeated many times in jurisprudence that if you're going to be seeking committal for something else, in fairness, you have to advise defence of your intention to do so and not take him by surprise at the end of the case and say, "Oh, by the way, we're asking for committal on this, that, and the other thing," in circumstances where he's not been given an opportunity to cross-examine in anticipation of that request. And so, that is why I ask you, Mr. Shaw, have you advised Mr. Schabas of other charges in relation to which you will be seeking committal so that he can prepare accordingly? And I take it your answer is no?

MR. SHAW: We have no evidence of it yet, with respect to that. I simply raise this as a function, but...

MR. BERNSTEIN: The point and -- Your Honour, the point is that when...

THE COURT: It's a discretionary matter in the presiding justice at the Preliminary whether or not he will commit. I'm not obliged to do so, but -- and I could tell you that in fairness I wouldn't, unless there has been notice to Mr. Schabas.

MR. BERNSTEIN: No, and I'm not asking you today to, Your Honour. What I'm...

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(Continued...)

THE COURT: Well, no, but you're the ones that are -- you're raising it.

MR. BERNSTEIN: Well, I raise it because my friend is on a constant basis trying to characterize this case as what he thinks it is and what he views it as being from the defence point of view, which is not -- notwithstanding my opening, notwithstanding my submissions in response to dozens objections, what the Crown has ever characterized their case to be. My friend may wish this case to end at a certain point in time, but that has never been the position of the Crown. It is the position of the Crown...

THE COURT: You don't wish it to end? You don't wish it to end?

MR. BERNSTEIN: No.

THE COURT: I understand.

MR. BERNSTEIN: No. No, I'm sorry.

THE COURT: I don't think -- I don't think this is getting us anywhere.

MR. BERNSTEIN: My point...

THE COURT: There is an objection and I will deal with it.

MR. BERNSTEIN: All right. And the point with this transaction is -- I guess we're just focusing on the word transaction, but I'm not asking that there be a committal on anything other than what's before you now.

THE COURT: Thank you.

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Ruling - Belanger, J.

R U L I N G

BELANGER, J. (OCJ): (Orally)

The objection is two-fold: One relates to materiality and the other one relates to hearsay.

The witness, I am satisfied, can be asked for the reasons advanced now and previously by Mr. Bernstein, as to his knowledge in relation to the destination of the funds. However, it is improper to ask him what other people may have told him about the destination of these funds. He may be asked, in my view, what his belief was as to where the funds were going, but that stands for no higher purpose than telling us what was in Schreiber's mind. However, to put the question in the manner in which it is put, that is, what other people told him about the destination of the funds, is inappropriate.

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The first question, in any event, ought to be what his knowledge is. He may be asked about his belief, but then that will provide us with nothing more than what Mr. Schreiber believed, and it will be evidence of his belief and nothing more. We will start with that at two o'clock this afternoon.

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THE HONOURABLE P. R. BELANGER  
ONTARIO COURT SENIOUR JUSTICE

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(Continued...)

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

R E C E S S

(11:45 p.m.)

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

(2:09 p.m.)

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

THE COURT: Mr. Bernstein, I've reconsidered  
somewhat my decision just before lunch. In my  
view, again, I don't think there is anything  
wrong asking Mr. Schreiber about his  
knowledge, but his belief, quite frankly, I  
don't think it advances anything. It would be  
largely based on speculation and hearsay or  
guesswork, and in those circumstances it  
appears to me that Mr. Schabas's objection is  
well-founded. You are free to ask him about  
his knowledge and the basis of that knowledge,  
but it has to be restricted to knowledge in my  
view, otherwise it is of no value to the  
court, or at least none that I can see.  
All right? Go ahead, please.



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(Continued...)

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

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

Q. Okay. When we last broke we were looking at this payment order. Okay. We have this payment order here, and you've told us about this. I just want to ask you. Do you know what happened to this money, this \$260,641, after you gave it to Mr. Moores?

A. No.

MR. BERNSTEIN: Your Honour.... I'm sorry, Your Honour. Could I just have a minute...

THE COURT: Sure.

MR. BERNSTEIN: ...in the absence of the witness?

THE COURT: Mr. Schreiber, would you step outside again, please?

... [WITNESS EXITS]

MR. BERNSTEIN: Your Honour, in the absence of the witness, I just wanted some clarification of your remarks at the commencement.

I understood Your Honour to say that I could ask about his knowledge but not his belief.

THE COURT: Well...

MR. BERNSTEIN: And I'll explain my, sort of, need for clarity. I respectfully submit -- and I do want to make -- I have had an opportunity to consider this over the lunch

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also, Your Honour, and I think the first thing we need to do is actually look at the charge.

Mr. Schabas has stood up on at least two dozen occasions and said this case is about certain things, but if we actually look at the offence in the charging of documents...

THE COURT: Can I see the information, Madam Clerk?

MR. BERNSTEIN: ...it says, "by deceit, falsehood, or other fraudulent means, defraud Her Majesty the Queen in Right of Canada as represented by the Minister of Supply and Services now known as Public Works and Government Services, of property, money, or valuable security of a value exceeding \$5,000 in relation to the purchase and sale of helicopters and/or helicopter avionics, optional equipment, spare parts and tools..." between certain dates.

So it's a fraud in relation to the purchase and sale of the helicopters and the helicopter parts. The issue in these proceedings is in part, was the government defrauded in relation to this sale?

Now, in my submission, any evidence of dishonesty in relation to the purchase and sale of the helicopters is a matter which this court will in the normal course consider, and

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(Continued...)

the payment of prohibited commissions is clearly something that the court will consider, but in my submission there is no basis to say that all that is relevant. I have submitted in the past and you have held that the method and means which these commissions were paid was also relevant.

The charge says "in relation to the purchase and sale of helicopters" and I recognize and submit that the defendant's warranty that commissions were not paid is relevant, but equally relevant is other steps taken by them to hide and obscure the payment of these commissions. These are related complimentary but separate acts of dishonesty. One is the warranty. One is the -- we'll argue whether it's a positive act or material non-disclosure or whatever, but the warranty and the other series of acts are acts taken to secrete the actual payments of the commissions. On the one hand, there's a representation as to a state of affairs, and on the other hand there are acts taken to hide the true state of affairs. These are separate but complimentary acts of dishonesty. These acts of concealment are, in my respectful submission, independently material pieces of evidence on the charge of fraud.

THE COURT: And so far, I fully agree.

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(Continued...)

MR. BERNSTEIN: Okay. Now, one of the issues which this court will have to decide -- hopefully soon -- is an issue respecting -- it's just one of the issues. If the true state of affairs had been known, would the government have acted as it did? And the true state of affairs is not just the payment of a commission in circumstances where it was prohibited. The true state of affairs is the payment of commissions in circumstances where we say it's prohibited, but also, again, the steps taken to obscure and hide those payments, the use of Lichtenstein nominee companies, paying the commissions offshore through Swiss banks with secrecy laws, in our submission, the creation of an almost but not quite impenetrable maze to hide and obscure these commissions.

Remember, MBB is a signatory to the Sales Representation Agreement. There exists some cogent evidence that MBB is aware of the use of IAL as a nominee; is aware of the payment of these commissions in Switzerland and the like.

The other relevant part of this, in my respectful submission, is that we have argued and Your Honour has ruled in the Crown's favour before that the ultimate recipient of the commission is a material circumstance,

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(Continued...)

also. The charge is fraud in connection with the purchase and sale of these helicopters or the part of this allegation relate to the payment of prohibited commissions, but it doesn't end there. The ultimate -- not only is the mean by which the commissions were paid but also the ultimate recipient of the commissions may very well be a profoundly material piece of evidence available to the Crown, if we can find out, on the issue of fraud.

The reason why I say that is this: There has been no issue today that it's appropriate to ask these witnesses who got the commissions up to -- and we put it into the Swiss bank accounts. We put some of it into Mr. Moores's hands. We put other pieces of it into Bitucan or whatever. I don't -- I'm -- I recognize my friend may not accept that submission but there is a variety of pieces of evidence as to what happened and who were the ultimate recipients of these funds.

Maybe I've spoken too soon. We don't know if they are the ultimate recipients of these funds or whether there is, simply another step along the road to secret and hide the ultimate recipient of the funds, whether they are an act or another act or fraudulent artifice or whether they are the people who get the honey

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(Continued...)

pot in the end. That is something which is material.

THE COURT: So far I'm entirely with you.

MR. BERNSTEIN: The issue becomes -- I can -- and I hope these explanations will be of assistance to Mr. Schabas also in understanding at least the Crown's tentative view of things at two-thirty today. If -- and I -- I don't know the answers to the questions I'm asking Mr. Schreiber, but if for example, hypothetically Mr. Schreiber was to say, with respect to a particular sum that the recipient -- that "I gave it to Frank Moores, and I understand Frank Moores gave it to Kurt Pfleiderer or half to Kurt Pfleiderer. \$10,000 to Kurt Pfleiderer," or whatever. No one would argue that the receipt of the money by Mr. Pfleiderer was not material and relevant on the charge of fraud in connection with these helicopters. Indeed, the use of Mr. Moores and Mr. Schreiber and IAL would be evidence of or artifices -- okay, so in my respectful submission, that's an example that clearly no one, I wouldn't think, would argue that the ultimate recipient is not material and relevant.

In another way, what if the ultimate recipient was a public servant and some member of the Department of Supply and Services which is a more simple or straight forward example, if

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(Continued...)

the charge was fraud on the government in connection with the payment of commissions -- in part, the payment of commissions, and the evidence revealed that funds were paid offshore to a parent, to a Swiss bank account in a Lichtenstein company, handled by a few people and ultimately ended up in the hands of a public servant who was involved in the procurement process, I can't believe we would be arguing that the evidence respecting the ultimate recipient of those funds was material to the issue of fraud.

My friend has submitted on many occasions it doesn't matter what happened to the money. In my submission, it does.

Now, the issue then becomes Mr. Schreiber's belief and/or knowledge, and the hearsay component to that. I recognize that there is a hearsay component to it. Of course, my submission is simply that it may not necessarily be appropriate in all circumstances to jump to an overly broad conclusion respecting what might seem to me, initially, hearsay pieces of evidence. The reason why I say that is, what if -- there are a variety of issues, as Your Honour has pointed out. The question is knowledge. But also, the question is the basis of his knowledge. If he's not directly involved...

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(Continued...)

THE COURT: But he tells you he has no knowledge.

MR. BERNSTEIN: Well...

THE COURT: Well, it may be totally false.

MR. BERNSTEIN: But what if he says...

THE COURT: But I don't -- it's your witness.

MR. BERNSTEIN: Well, what if he says, "Kurt Pfleiderer told me that this, this and this happened to the money."? It would be clearly admissible even if it was hearsay. What if -- what if he says Frank Moores told him that his deal with Pfleiderer was to use it to pay Mr. X but he pocketed the money and he didn't pay Mr. X? Again, there may very well be circumstances where that type of information is relevant, and that would be circumstances where he does not necessarily have first-hand knowledge respecting the ultimate recipient.

There may be circumstances where he has knowledge, and as a result of that knowledge, does or does not do things which are relevant and material to his involvement in these matters. And again, it would only be admissible for that limited purpose, but nevertheless to the extent that it informs an act of his or an act of Mr. Moores or an act of Mr. Pfleiderer or anyone at MBB, it may be relevant or material to the extent that -- and I'm only guessing or speculating because my knowledge of his answers is no better than...



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(Continued...)

THE COURT: Well...

MR. BERNSTEIN: It's not very good at all.  
What if it causes him to instruct Pelossi?  
Now, that's...

THE COURT: Well, I have no problem with  
belief being admissible or evidence of belief  
being admissible if it relates to an  
explanation of subsequent actions.

MR. BERNSTEIN: Yes.

THE COURT: In that circumstance, the evidence  
is admissible not to prove the truth of it but  
to explain why a witness, for example, took  
subsequent steps in furtherance of something  
or other, but I haven't heard from you that  
this evidence is relevant to that. What  
you're telling me is that what we want to hear  
is evidence about the ultimate recipient.

Well, let's hear that evidence, but it has to  
be admissible evidence. It can't be his  
speculation, his guess, his belief, his  
construct, essentially, because that's not  
evidence of truth at all.

MR. BERNSTEIN: I understand it and I'm...

THE COURT: There's a difference between that  
scenario and the one which I've just mentioned  
as a precursor to understand subsequent  
action, to set the stage for narrative  
purposes I did this because I believe that  
such and such had occurred and that explains  
why I did such and so. We hear of that every

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(Continued...)

day in court. An officer receives information that there's been an accident somewhere. It doesn't mean an accident occurred, but it explains why he went to a particular location, and indeed may explain his actions at that location. But you haven't framed it in that way. This is not evidence that you are seeking to explain Mr. Schreiber's subsequent actions. You lead it as evidence of what happened to the money, and in that sense it is not admissible evidence. The rules don't change because we're on a Prelim as opposed to a trial. It still is not admissible evidence. The objection is well-founded if it's framed in the manner in which you frame it.

MR. BERNSTEIN: I assume if he talked to Pfleiderer about the -- like, Pfleiderer's statement respecting what happened to the money is a declaration against interest against Pfleiderer, and would be admissible against Pfleiderer and would it arguably be admissible against the defendant corporation, but apart from...

THE COURT: I don't think we're there, Mr. Bernstein.

MR. BERNSTEIN: Okay.

THE COURT: I really don't. Unless you have a further basis to explain to me why this is material and relevant, his guesses, as evidence that there were payments to other people...

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MR. BERNSTEIN: And I'm not -- Your Honour, just to be clear. Just to be clear with my position, I asked the question and I don't know the answer if he may have direct knowledge as to the recipient of the payment in which case that would be admissible as proof of the ultimate recipient or he may have talked to Moores about it or someone else like Pfleiderer about it, in which case that -- those statements may have some use as original evidence.

I agree, just his guesswork is irrelevant, but if he knows certain things from the recipient of it, Moores, the person who got it, or the operating minds of the company, then that may very well be another set of circumstances.

THE COURT: Well, then what's wrong with the bare question -- and I'll ask Mr. Schabas -- "Were you told where the money went? Then stop there and then we can..."

MR. BERNSTEIN: Exactly.

THE COURT: ...hear further submissions. And if he says, "I don't know but I was told," then I can perhaps hear from you further. I don't think that that bare question in and of itself is particularly objectionable, so long as we don't go further along that road without further submissions.

MR. BERNSTEIN: And that would be -- I'm sorry it took me so long as it sometimes does to get

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(Continued...)

to the point, but that would be the question I sort of wanted to ask and I wanted to raise it with Your Honour.

We've got to take it one step at a time, but if the answer is "I didn't talk to anybody about it," then that's it.

THE COURT: That door is closed.

MR. SCHABAS: I don't have any submission, Your Honour, on that.

THE COURT: All right. Recall the witness.

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

MR. SCHABAS: Your Honour, I know and I'm sure my friend will be careful, but we should just perhaps get -- make sure that Mr. Schreiber just answers the initial question first.

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

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

Q. I'm going to ask the question, and then don't answer it, and we'll see what Mr. Schreiber and His Honour.... Okay. We were talking about this payment that's up on the screen here to Mr. Moores in the amount of \$260,641. Right?

A. Yes.

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(Continued...)

Q. Okay. And my question to you is, were you told what happened to this money?

THE COURT: At this point, sir, just answer yes or no, if you can.

THE WITNESS: No.

THE COURT: By anyone? Were you told by anyone?

THE WITNESS: About this particular amount?

THE COURT: Where this went to?

THE WITNESS: No.

THE COURT: No. Thank you.

MR. BERNSTEIN: Okay.

MR. BERNSTEIN: Q. Okay. I'd like to just take you to another document. I think this relates -- I think it's Document 17341. It's just the document in respect of the other sum of money we talked about: \$149,000 which you provide Mr. Moores. The German.

A. Yes. It looks familiar to me.

Q. Okay. Do you know what Mr. Moores did with this amount of money?

A. No, and I have a problem with your question because you have all the bank documents, not me. You should know where the money went. I wonder why you ask me. I have never seen these bank accounts, but you got them all from Switzerland so you should know where the money went. I just give you a reminder.

Q. I want to know if you know where the money went.

A. No, I was not his bookkeeper.

Q. Were you told or did you talk to anyone about where the money went?

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 (Continued...)

A. You want me -- you want to ask me what I think what he did with the money?

Q. No. I want you to be -- just listen to the question.

THE COURT: Answer yes or no, sir.

MR. BERNSTEIN: Q. Did you talk to anybody or were you told where the money went? And you can start by just answering -- I know this is a little unusual, but answer yes or no and then we'll take it from there. The question was, did you talk to anyone or were you told in writing or otherwise where the money went?

A. About principle -- typical amounts or special amounts, no.

Q. What do you mean by the phrase there typical or special amounts?

A. No, this is -- this is -- this is one special amount, but the total was more than that.

Q. When you say a special amount, what do you mean?

A. I mean it's one amount.

THE COURT: You mean a specific amount, sir? Is that what the expression is that you wish to use? I'm sorry if I'm leading the witness, but I think...

THE WITNESS: You're right. Thank you, sir. Specific amount.

MR. BERNSTEIN: Q. Was there discussion about -- a general discussion?

A. Not discussion but I had a -- I had a certain understanding what he would do with the money, yes.

Q. That understanding was based on what?

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A. What Mr. Moores told me and what I knew.

Q. So we'll start with what Mr. Moores told you?

A. Well, GCI had four or five shareholders and he had to share the money with them. This is -- and I think this is -- for me, it was pretty logical, because he was not the sole owner from GCI.

Q. You said based on what Mr. Moores told you and what you knew, so it covered what Mr. Moores told you, and I just want to finish up what you knew, and again, I -- I'll ask in terms of what you knew the basis of your knowledge first. Okay?

A. The basis of...

Q. So you say, "Look, I know this because Moores told me, and I know it because I knew some other things." What other things?

A. Yeah. For me, it's very simple, my knowledge. When GCI has an agreement and has several shareholder, then the money GCI receives wherever belongs to the shareholder and I did not think that Mr. Moores would betray the other shareholders, so I think that's a very normal understanding.

Q. I'm sorry. Just -- okay. Okay. With respect to these two amounts, the 200,000 and the 149 -- it's not 200. It's 206 -- I just want to get the exact figure here. \$260,641. Okay? Those two amounts. Right? And the 149 -- let's just bring both payment orders up on the screen. There's one up there already, which is Document 17341 and the other one is...

A. Yeah. We -- we discussed this in length before.

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Q. I know. I just have one other question.

A. Um-hmm.

Q. Maybe I'm being a little hopeful there. You've told us you've given -- you gave this money to Mr. Moores. My question to you is these two sums...

A. Hmm?

Q. These two sums, all right?

A. The documents show that it went to his account and that was -- and that I ordered that it goes to his account, so it should be there, and again, you should know it.

Q. Right. I just wanted to ask you, why did you give him this money?

A. I think this was the money which came from -- this money came from IAL regarding his contract with MBB.

Q. There's one other sum I'd like to ask you about and that is -- all right. It's Document 17332, Goto Page 3. 17332, Goto Page 3. This was 500,000 Deutschmarks.

A. Yes.

Q. All right.

THE COURT: What was a Deutschmark worth, roughly, sir, around that time? Just for my own...

MR. INTERPRETER: About 80 cents.

MR. BERNSTEIN: If it please the court, it was -- there's some documents I think that are before the court. It was 300...

THE COURT: I know there are, it's just to refresh my memory.

MR. BERNSTEIN: It was \$341,763.50 Cdn.

THE COURT: Right.



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MR. BERNSTEIN: Which cranked out as \$500,000 Deutschmarks with a -- minus an \$8.40 fee.

THE COURT: About 75 cents on the dollar, that kind of thing. Okay. That's fine.

MR. BERNSTEIN: Q. Now, you've told us about this and I don't want to go back and cover the ground I've already covered. I've just got a few questions along the lines that I've asked before. Do you know what happened to this money? This \$500,000 -- no, 500,000 Deutschmarks which was removed from the Swiss bank account on your instruction?

A. Do I exactly know?

Q. Well, tell me what you know.

MR. SCHABAS: Your Honour, sorry. I'm just -- perhaps the witness should step out for a moment.

THE COURT: Mr. Schreiber, I'll ask you to take another walk outside, please. Just look at the exercise you're getting. It's fantastic.

MR. BERNSTEIN: Yes. It's good exercise.

THE WITNESS: I like your sense of humor, sir.

...[WITNESS EXITS]

THE COURT: Yes, Mr. Schabas.

MR. SCHABAS: Yes, Your Honour. On September 10<sup>th</sup>, Mr. Schreiber was taken to this document and he explained what happened to this money.

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(Continued...)

MR. BERNSTEIN: He said it gave it to  
Mr. Pagani.

MR. SCHABAS: Right.

MR. BERNSTEIN: My question was what did it  
happen -- my question was -- I meant to ask  
what he knows about what happened after, if  
that's...

THE COURT: Well, that's not what your  
question was.

MR. SCHABAS: Well, that's not what he asked.

MR. BERNSTEIN: Well, I'm sorry.

MR. SCHABAS: I mean, we've been over this  
ground, and it's unfair for my friend to ask  
him the questions that we just gave evidence  
on at length on September 10<sup>th</sup>. He should be  
more specific if that's where...

MR. BERNSTEIN: Well, my position is Pagani is  
a...

THE COURT: All right. It's simple,  
gentlemen. It's quite simple. Actually, you  
can simply say to the witness: You told us on  
a previous occasion the money was given to  
Pagani. Do you have any knowledge of what  
happened after it went to Pagani?

MR. BERNSTEIN: That's fine.

MR. SCHABAS: All right. Thank you, Your  
Honour.

MR. BERNSTEIN: I just, before Mr. Schreiber  
comes back and while it's fresh in my mind, my  
first submission on my application on

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(Continued...)

hostility will be Mr. Schreiber never said I had a good sense of humor.

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

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

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

Q. Okay. With respect to this \$500,000 Deutschmark, do you recall -- and correct me if I'm wrong, but I recall you saying that you made this transfer on or at the request of Mr. Pagani.

A. Yes.

Q. My question is, do you know what happened to the money after that?

A. You see, I am cautioned today for get -- exactly knowing. I know this was -- this was -- the way I look at this, the client waits in Room 70, and Karlheinz Schreiber, too. I met with Pagani, I know that. And I don't know whether I took that day money from him with me to Germany or not. That's my problem with it, because the client who waited in 70 was me. With Pagani. 70 is the room where you sit in the bank, a private room where you do the business. So what this was for sure was a bank certified cheque. So and again, it should be in files.

Q. Okay. So, I wasn't sure exactly or I'm not sure I understand what you just said. You said you're not sure whether you took the money to Germany?

A. Yeah. Could be.

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(Continued...)

Q. Did you take money to Germany from this account?

A. Once in a while, yes.

Q. What did you do with that money?

A. Oh, I brought it home or -- yeah, put it in my account.

Q. You use it...

A. Oh, I handed it over to Mr. Pagani or he paid it and deposited it into other accounts. Could be, or I don't know.

Q. Well, who...

A. But you're asking me now about something ...what I did with what money somewhere. Though we have here -- how do you say, a specific thing? Now, you're asking me in general what I did with monies from this account. How would I know? How could I answer such a question?

Q. I'm just trying to figure who, whether you know, and this may be simpler than.... Look, do you know who in the end had the beneficial use of this money?

A. Could be me. Could be donations to my party in Germany. Could be a thousand things. How do I know?

Q. If it was donations to your party in Germany, it would go to you and then you would make the donation.

A. Sure. But when you take an amount away and you put it in the account and you pay it from there, how do you know what you pay out of what funds where? I'm sure you don't know this about your own account. Now, how could I know after 20 years? I mean...

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(Continued...)

Q. Maybe...

A. I have a problem with your question.

That's the point.

Q. Do you -- well, let me ask you this. Maybe this would be an easier question for you, because I think I understand your answer. Who had the right of disposal over this money?

A. Mr. Pagani.

Q. And who was the client?

A. You asked me that before. There are several people and he never told me. I can guess but I don't know.

Q. So when you say it could have been you, you could have kept it, you could have made a donation with it...

A. Sure.

Q. ...why do you say that?

A. Because I -- I -- I did a lot of things like this.

Q. Okay. Just hold off on the answer to this question, because I'm pretty sure Mr. Schabas will object. Apart from a political donation for which you received a receipt, did you directly or indirectly provide any elected Canadian officials with money between 1984 and 1989? I'll say the question again.

A. Again.

Q. Apart from a political donation, which -- I don't want to know about that. Apart from a political donation, which you received a receipt, did you directly or indirectly provide any elected Canadian official with money between 1984 and 1989?

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(Continued...)

MR. SCHABAS: Your Honour...

MR. BERNSTEIN: So, just hold off...

THE WITNESS: 1989?

MR. BERNSTEIN: '89.

MR. SCHABAS: Don't answer the question yet, Mr. Schreiber. In my submission, this is just a bald question in the air, Your Honour, which is not -- which I would submit is not relevant. We've been around this with respect to certain amounts. He's been asking him questions, and he's been getting the answers, and now he's just asking a bald question unrelated to anything.

THE COURT: Do you want to respond in the absence of the witness?

MR. BERNSTEIN: Sure.

THE COURT: Thank you. Again, please, sir, will you step outside while we hear the justification for that question.

... [WITNESS EXITS].

MR. SCHABAS: Your Honour, just one other point that I wanted to make, which is the time period that Mr. Bernstein -- I mean I make this as an alternative, but the time period goes back to 1984. I note that the information itself says that the offence occurred only starting in 1985. I mean I only make that as a subsidiary submission to my

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(Continued...)

general objection that this is just a bald question. This is not a case about secret commissions and bribes being paid to public officials, and this is just a fishing expedition. He's not linking this to anything now.

MR. BERNSTEIN: All right. I'll answer in the following way. First of all, Mr. Schreiber just said that the money gets co-mingled, and that he can't say which dollar went where, so in that circumstance if my friend was to submit -- and he doesn't seem to have submitted that while he said any of -- did any of the MBB money get -- did it make its way into any Canadian officials hands?

Mr. Schreiber has said quite properly, it all gets co-mingled and he can't say which dollar winds up where. Now...

THE COURT: Well, to make it relevant, and that's the basis -- we'll come to the date in a minute, but if the question was "Did you directly or indirectly provide any Canadian official with money, elected official, in relation to the helicopter contract..."

MR. BERNSTEIN: Or MBB.

THE COURT: ...or MBB or something like that, at least that would make it particular.

MR. BERNSTEIN: And...

THE COURT: And I would hear from Mr. Schabas again, but if the question was phrased in that way, it would take it from the general to the

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particular and would, obviously, relate to this case, it would seem to me. On the question of date, well, shouldn't it be between...

MR. BERNSTEIN: I'll try to pick an appropriate date.

THE COURT: If it was the first of January '85 as opposed -- because that's the way your information is...

MR. BERNSTEIN: Yes.

THE COURT: ...is phrased. I'm sorry.

MR. BERNSTEIN: Your Honour, I obviously spent a minute or two thinking about this question. I wrote it down before I asked it, and the issue that came to my mind in connection with the formulation mentioned was this. We've heard that Mr. Schreiber was involved with a number of public officials in connection with three deals. The Bear Head/Thyssen deal, the MBB deal, and we've heard a bit about Airbus and his dealings with Airbus and Thibreau [ph]. And to sort of arbitrarily say -- break it, and say that this dollar, while it may have come out of a co-mingled account, was given to this public official for Airbus and not for MBB or for Thyssen and not for MBB, when the evidence reveals that these were -- not only was the money co-mingled but the dealings were in large measure co-mingled. These were three rocks Mr. Schreiber had on the go, or irons in the fire at the same time, and in my



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respectful submission, if the donation -- logic would seem to support a conclusion that if it was made, if money was provided, it would be provided and wouldn't -- and it wouldn't necessarily have to have a particular string, an MBB string or a Thyssen string, or an Airbus string attached to it.

THE COURT: Well, it's got to have an MBB string for us to be concerned about it.

MR. BERNSTEIN: No, it'd be all three. It wouldn't be -- well, my point -- my point is it wouldn't necessarily just have to be an MBB string. It would, in the normal course, be.... Say there was a useful contribution made, it wouldn't -- it would be made in connection with, or in relation to, his dealings generally on the go at the time, including MBB, but not necessarily exclusively.

THE COURT: So why not ask him then if he made any payment with an elected Canadian official which related in whole or in part to MBB, and I think in that way you avoid a major part of Mr. Schabas's objection, subject to what he'll say to me in a moment, but just simply the broad question, I agree with him is bald and I want it related in whole or in any part to the Canadian Coast Guard and MBB and MCL. However you want to frame it, I think you'll need...

MR. BERNSTEIN: In whole or in part is...

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THE COURT: In whole or in part, even in a small way, relate it. I think this way you cover it -- Mr. Schabas, anything wrong with asking him in that context?

MR. SCHABAS: No, Your Honour.

THE COURT: All right. And you will rephrase it on begin on January 1<sup>st</sup>, 1985, unless you think it's relevant to go before that.

MR. BERNSTEIN: Okay. Before Mr. Schreiber comes back, I have -- I'll just review some other similar questions I was intending on asking him. I will conduct myself accordingly, but I do want to give Your Honour and Mr. Schabas a heads up.

I would ask a similar question in connection with German officials, and I'll ask similar questions in connection with -- just to make sure I don't miss anything -- staff members or public officials. Here, I'll give you the -- companies or intermediaries for the benefit of any of these people. I'd sort of ask him whether he assisted somebody else directly or indirectly in providing sums to any of these people, as he may not have done it directly. He may have got somebody else to do it for him. And I'll ask a similar question in connection with MBB or anyone at MBB.

THE COURT: So long as it relates to MBB, MCL, the Canadian Coast Guard contract and helicopters. We'll deal with the questions as

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they come up, but in a general way if it's related to this contract, it appears to me to be relevant.

MR. SCHABAS: Your Honour, I mean I should -- I am not disagreeing with you. My position is, of course, in light of the rulings you've made about the entitlement to go into these areas as he's already attempted to do. I would ask -- so I just want to make that clear that that is part of what is causing me not to make a vigorous objection. I've made objections in the past. I would ask that the question be focused on -- and I think Mr. Bernstein is going to attempt to do this, but maybe we should have this out so that there is a time period here that is an appropriate time period to be asking about this.

The charge date is January 1, '85. The contract is not until June, July '86, and indeed to the extent that he's identifying these payments, those don't occur until the fall of '86. I'm just concerned about the scope of that, of what I would still submit is a fishing expedition, and Mr. Bernstein, frankly -- well, I don't know. He hasn't said here whether he has any particular basis for asking these questions other than that he'd like to know. I don't know if he knows what the answer would be or not. I certainly don't.

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(Continued...)

THE COURT: Well, I don't know of any rule that stipulates that...

MR. SCHABAS: No.

THE COURT: ...no question can be asked unless he already knows the answer. I mean I know that's good advocacy...

MR. SCHABAS: No, and I'm not -- I'm not suggesting that.

THE COURT: That's good advocacy perhaps, but it's not a rule.

MR. BERNSTEIN: It's a little tough with Mr. Schreiber.

MR. SCHABAS: Well...

THE COURT: In any event, what we'll do I think is we'll deal with -- if there are any specific questions to which you take umbrage, we'll deal with it when that question is asked.

MR. BERNSTEIN: I can tell Mister -- okay. We'll just deal with it one at a time.

MR. SCHABAS: I mean, what are we going to do about the date?

MR. BERNSTEIN: I'm going to move it from '85 to '89 for now. And I'm going to say, just so we're clear: "Apart from a political donation for which you received, did you directly or indirectly provide any elected Canadian official with money between '85 and '89 which in whole or in part even in a little way related to MBB?"

THE COURT: I can live with that question.

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MR. SCHABAS: That's a long question.

THE COURT: All right.

MR. SCHABAS: I can hear him saying that. In my submission, it would be better limited to at least the date of the contract for the Coast Guard. That's my submission, but I'm in your hands. I mean, he's still going back a year and a half before the Coast Guard contract was entered into if he's starting in January 1, 1985.

THE COURT: Indeed, the information goes to '93 if...

MR. SCHABAS: Right. There's that end, too.

MR. BERNSTEIN: And I may -- well, we'll see how this goes, but -- and what the answers are. Your Honour, there is also the possibility that there was the provision of funds was delayed, that there may have been an understanding that things would be done later on.

THE COURT: Well, so long as it's after '85 it could be at any time.

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

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

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EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

Q. All right. Mr. Schreiber, this is a bit of a long question, so I'll give it to you. I do everything slowly; I'll do this slowly. All right? A part -- apart from a political donation which you received a receipt. So, apart from a political donation for which you received a receipt, did you directly or indirectly provide any elected Canadian official with money between 1985 and 1989 which related in whole or in part, even a little bit, to MBB?

A. No.

Q. Apart from a political donation for which you received a receipt, did you directly or indirectly provide any staff member, any member of a elected public official staff, with money between 1989 -- no, excuse me. Between 1985 and 1989, which in whole or in part, even a little bit in part, related to MBB?

A. No.

Q. Did you directly or indirectly provide any company or intermediary with money between 1985 and 1989 which in whole or in part, even a little bit, related to MBB which was ultimately for the benefit of a Canadian public official or a member of their staff?

A. No.

Q. Did you directly or indirectly assist Frank Moores or any other person or company or trust or any other entity in providing these people, elected officials, Canadian elected officials, members of their staff, or companies or intermediaries for their benefit, with money between 1985 and 1989 which related in whole or in part, even just a bit with MBB?

A. No.

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Q. Did you ever tell anyone that you had done this?

MR. SCHABAS: Sorry, Your Honour. He's answered the questions that we discussed.

THE COURT: All right. This is another question.

MR. SCHABAS: And I would say how is this question relevant?

THE WITNESS: Again?

MR. BERNSTEIN: Q. Pardon?

A. Again. I don't recall the question anymore.

Q. Okay.

THE COURT: Well...

MR. BERNSTEIN: Q. Do you recall ever telling anyone that you had done this? And when I say "done this" I mean provided any money in whole or in part, even a little bit...

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

MR. BERNSTEIN: Yes.

MR. BERNSTEIN: Q. To a Canadian official or a member of their staff or any company or intermediary on their behalf or for their benefit with money between 1985 and 1989? Did you...

THE COURT: Don't answer, sir.

MR. SCHABAS: Don't answer the question.

THE COURT: I just want...

MR. BERNSTEIN: Q. Did you tell anyone that you had or that you were going to?

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(Continued...)

MR. SCHABAS: Your Honour, I think I can only assume that this was something that would raise Section 9 of the *Canadian Evidence Act*. The procedure for that is well-known and is set out, and my friend should follow that procedure.

THE COURT: Well, not necessarily. It might be part of a Section 9(2) Application.

MR. SCHABAS: Right.

THE COURT: It might be the precursor to a Section 9(2) Application, depending on the answer. It might have nothing to do with Section 9. I don't know where you're going but are you...

MR. BERNSTEIN: I just want to know if he's ever told anyone that he did any of this.

MR. SCHABAS: And it...

MR. BERNSTEIN: Or intended on doing this.

MR. SCHABAS: He -- it's his witness. He's got his answer. If he's now going to ask him...

MR. BERNSTEIN: I haven't got an answer to this question.

MR. SCHABAS: Well, he got answers to the factual questions that Your Honour allowed him to ask and he's going to get an answer that is either consistent or inconsistent with...

THE COURT: All right. If the answer is no, that's the end of it, right? We agree?

MR. SCHABAS: Right, but...



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THE COURT: And if the answer is yes, then it...

MR. SCHABAS: Then he should have started with the procedure, in my submission, under 9(2). He should tell -- tell the court, I presume in the absence of the witness, what it is that he wishes to do.

THE COURT: Well, we'll wait -- let's wait and hear his answer and then we'll see whether we're going to Section 9.

MR. SCHABAS: And...

THE COURT: I don't think that you can compartmentalize it and say, well, this question can only be asked in the context of Section 9. I'm going to...

MR. SCHABAS: Well, I have your ruling. In my submission...

THE COURT: I'm going to allow it, Mr. Schabas, but if it continues then you may be right. We'll see. Let's hear the answer.

THE WITNESS: I don't recall something like that.

MR. BERNSTEIN: Q. To your knowledge, did any of your clients provide any elected official, Canadian elected official with money between '85, 1985 and 1989, apart from a political donation for which a receipt was obtained, with money which in whole or in part even a little bit related to MBB?

MR. SCHABAS: And Your Honour, Mr. Bernstein has asked him questions about what he did, and when he now frames it as "to your knowledge"

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presumably that comes from what somebody may have told him.

THE COURT: Not necessarily.

MR. SCHABAS: Well...

THE COURT: Not necessarily.

MR. SCHABAS: ...or from some other document.

MR. BERNSTEIN: Okay. Just one second. If my friend is going to continue with these objections, I really insist in view of Mr. Schreiber's last answer...

THE COURT: I don't agree with your categorization. I mean, the question "to your knowledge" might be a situation where Mr. Schreiber was there and saw it done, and then therefore it would be to his knowledge. And that question is okay, but again, Mr. Schreiber understands when we say "to your knowledge" is it something that you know personally, sir?

THE WITNESS: Yeah. I understand.

THE COURT: And in that sense...

THE WITNESS: And there's no...

THE COURT: ...as long as he understands that it has to do with his knowledge, not with what someone else may have told him, at least at this point.

MR. SCHABAS: And then, let me make one other point, Your Honour...

THE COURT: Yes.

MR. SCHABAS: ...which is to submit that this question is irrelevant in the sense that this

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(Continued...)

isn't about him. This is what somebody else -- and I mean, as Mr. Wong tells me, what if he was Mr. Schreiber's client? What if somebody else -- I mean, what relevance is there to that?

THE COURT: Because it relates to MBB.

MR. BERNSTEIN: In whole or in part just a little bit.

MR. SCHABAS: But it may relate to MBB...

THE COURT: MBB and then the helicopters.

MR. SCHABAS: Or well, we don't know. It may relate to something completely different and it may be something completely different than what this case is about. We're getting far -- we're getting removed from -- he was able to ask Mr. Schreiber a series of questions about whether he did something directly or indirectly and then to just simply say "Did any client do anything with respect to MBB?" in my submission is getting beyond the scope of this. That's my submission.

THE COURT: Mr. Schabas, I don't agree with you, and again, I think the question, if properly phrased -- and again, I ask Mr. Schreiber to be conscious of the limitation in those questions; that is, it is limited to your knowledge, sir. You understand that?

THE WITNESS: Yes.

THE COURT: All right.

MR. BERNSTEIN: Q. The answer is yes?

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(Continued...)

A. The answer is no. Yes was for...

THE COURT: We understand.

THE WITNESS: ...the objection.

THE COURT: Tell me when you move onto another subject, Mr. Bernstein.

MR. BERNSTEIN: Q. Did you ever ask anyone...

A. Please?

Q. Did you ever ask anyone either directly or indirectly to provide elected Canadian officials or members of their staff or companies or intermediates for their benefit with money between 1985 and 1989, which in whole or in part doesn't have to be the only reason, just part, a bit of the reason related to MBB?

A. No.

MR. BERNSTEIN: This would be an appropriate time, Your Honour.

THE COURT: Thank you. We'll take our afternoon break at this point.

COURT REGISTRAR: All rise, please. This court is now in recess.

R E C E S S

(3:23 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

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(Continued...)

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

Q. Mr. Schreiber?

A. Yes.

Q. Did you directly or indirectly provide any family members of elected officials with any money between 1985 and 1989 which in whole or in part, even a little bit, related to MBB?

A. No.

Q. Did you directly or indirectly provide any companies or intermediaries with money between 1985 and 1989 which in whole or in part, even a little bit, related to MBB for the benefit of any family members of elected Canadian officials?

A. No.

Q. Did you directly or indirectly provide any un-elected public officials? And by that I mean, public servants, bureaucrats, Canadian public servants, Canadian bureaucrats, with money between 1985 and 1989 which in whole or in part even a little bit related to MBB?

A. No.

Q. Did you provide directly or indirectly any companies or any intermediaries with money between 1985 and 1989 which was for the benefit of public officials, which in whole or in part related to MBB?

A. No.

Q. Did you directly or indirectly assist Frank Moores or any other person or company or trust or any other entity in providing Canadian public servants with money

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(Continued...)

between 1985 and 1989 which related in whole or in part even a little bit to MBB?

A. No.

Q. Did you ever tell anyone that you had done this or intended on doing it?

A. I don't recall such nonsense.

Q. Did you ever ask anyone to provide money to Canadian public officials, members of their staff, members of their families or companies or intermediaries for their benefit with money between 1985 and 1989 which in whole or in part, even a little bit, related to MBB?

A. No.

Q. Do you consider yourself a generous person?

A. Yes, you could say so.

Q. Did you.... Were any elected or un-elected Canadian public officials between 1985 and 1989, the beneficiaries of your generosity...

MR. SCHABAS: Your Honour...

THE WITNESS: Now, you have to ask...

MR. SCHABAS: Just a minute, sir.

THE WITNESS: ...if it related to MBB, otherwise I can't...

MR. BERNSTEIN: Otherwise, the...

THE WITNESS: I cannot answer this question.

MR. SCHABAS: I think the witness has a good point. I mean, he's been asked, I mean, what -- this could mean any number of things.

THE COURT: It's too broad a question. I agree. It depends on what you define as being generosity.

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THE WITNESS: Well, I can give you an example.

THE COURT: Anywhere from offering a cigar, to paying a meal to something, obviously, much more substantial. As framed, it's much too broad. The point that to some extent bothers me, I suppose more than anything else, Mr. Bernstein, is that we could go on forever with all the permutations and combinations. I mean, if for example all the questions you had asked, if you had said money or gift over \$100 or other valuable consideration or something like that, but now I suppose you could start all over again with this long litany of questions -- and it could be done more compendiously, I would have thought.

MR. BERNSTEIN: Okay.

THE COURT: And then, as I say, "gift" is too broad. If you want to specify a gift of a value in excess of, for example, or something like that.

MR. BERNSTEIN: I'll ask the question in a more compendious way.

MR. BERNSTEIN: Q. Did you directly or indirectly, provide any public officials or their family members or companies which they were involved in, or through the company, with a gift over \$100 between '85 and '89...

THE COURT: In relation to MBB?

MR. BERNSTEIN: Well, I'm going to ask a slightly different question.

MR. BERNSTEIN: Q. In order to help MBB?

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A. No. I would love to say something to this, Your Honour. My wife and I quite often met young Canadians in St. Tropez, in Munich, in Germany, and quite often these kids have the Maple Leaf on their rock-sack. And we saw them walking around, and I have children of my own, yes, and we said, "Hey, where are you from?" "From Canada. We are from Canada. May we write you?" We bought some little things, these guys in St. Tropez, the poor buggers had no place to sleep, so we arranged for them to come to our place. So if you would not add MBB or directly these things, how the hell do I know who these children were? You know what I'm saying? If I wanted to give an honest answer, I wouldn't know. Could have been -- could have been the child from -- from official or a bureaucrat or whatever, and I wouldn't even know. So when you -- you -- if you don't relate this exactly to MBB, I cannot handle these questions, because as you said, generosity, yes. We are known for this, especially my wife. She -- she cannot walk around somebody, she likes to do something.

THE COURT: I take it, sir, that your answer then in relation to Mr. Bernstein's question is that you didn't knowingly...

THE WITNESS: No. no.

THE COURT: ...and you could have accidentally, I suppose. That could happen.

THE WITNESS: Yeah, but I wanted to be sure that I say nothing wrong here as a witness.

THE COURT: No, I -- I understand what you're saying, and I presume Mr. Bernstein meant in relation to any of the questions he's put to you, had you knowingly either made payments or



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gifts to the people he's mentioned in relation to MBB.

THE WITNESS: Yes. That's correct.

THE COURT: Obviously, it's knowing. If you didn't know it, then you didn't know.

MR. BERNSTEIN: Q. Did you ever knowingly ask anyone else to do it for you?

A. No.

Q. All right.

THE COURT: I wish I met you in St. Tropez when I was going there.

THE WITNESS: Oh, it's a wonderful story. Sorry, I cannot say it. Everybody would love it. These two kids were just unbelievable.

THE COURT: This may not be the place. Thank you, anyway.

THE WITNESS: One can really fall in love with the Maple Leaf, sir. I never thought this.

MR. BERNSTEIN: Q. Okay. Let me ask you, did you directly or indirectly provide any elected German official with money between 1985 and 1989. I'll ask that question again, and be a little more specific. Did you ever directly or indirectly provide any elected Bavarian official with money between 1985 and 1989?

MR. SCHABAS: Well...

THE COURT: Well, you're going...

MR. SCHABAS: Your Honour, the question was much more specific before.

MR. BERNSTEIN: Q. Which in whole or in part, even a little bit, related to MBB?

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(Continued...)

A. No.

Q. You paused some time before answering.

A. Yes. The explanation is very simple.

For sure I have donated in that time, money and services to the party, but I cannot say today out of my memory when or what. So, when I received money from MBB for the service as you know, for example, with Bitucan or whatsoever, how can I -- how can I say what coin or what bill of money belongs to what? I mean it is impossible. When you look at Bitucan, for example, I give you an example how I see this, and Bitucan received money. And in the Bitucan company, the Strauss family was involved. Now, Bitucan received money related to MBB, so from there it went from Bitucan for services for business where -- from the activities from the country -- company, in total, the Strauss family could have benefited.

Q. How would the Strauss family have benefited?

A. Because they were -- were shareholders in one of the companies which were managed by Bitucan. So I just wanted to show you how dangerous these questions are, and I claim once in a while I was born ugly, not stupid, so I don't want to put myself here in the position to even come close to committing perjury even by accident.

Q. Well, I'll ask you the question. Did any of your companies, which received MBB monies -- monies, you know, which originally related to MBB business, okay? Provide money to any Bavarian officials?

A. Well, this -- this question again is dangerous when -- when you don't relate this to the helicopter deal. There could be other business I had with MBB and, yes, maybe from there went money to the CSU. MBB had

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(Continued...)

the division, Mr. Bernstein, with a manager, and his manager is the sister of Premier Stoiba, who is today the Premier of Bavaria. And you know what her job was? What the division was? Donation? She did nothing than giving donations. So, I can -- I can answer your question and trying to be fair and honest only when you relate it directly to MBB and the helicopter deal and whether there was anything with it. If that is not the case, I simply cannot -- cannot answer the question. It will be no.

MR. BERNSTEIN: Okay. Your Honour, I'd like to make a submission in the absence of the witness.

THE COURT: All right. Again, sir.

... [WITNESS EXITS]

MR. BERNSTEIN: Your Honour, the concern -- and it's becoming very, in my submission, apparent from the witness's answers that when he says -- when he interprets which related to the MBB deal, he's taking that to mean one of one or two things. In the context of his last answer, he took it to mean that the money, the species came directly from MBB. He said, "How can I -- money goes from MBB into Bitucan, and then from Bitucan money goes out to the Strauss', and how can I say?" The point is, he doesn't have to say and it doesn't have to be money in species. It would seem to be that he's interpreted "related" to mean that if

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(Continued...)

there was a *quid pro quo*, a direct tracking of the dollars through MBB out to wherever and then back to wherever and then to, ultimately, whoever.

I had understood that the question, not sort of.... I had under -- I was tempting him. Maybe I'll just ask some other questions about this, but I had understood the point of inquiry not to require a direct tracking of funds but simply that funds were provided from whatever source in...

THE COURT: What was the purpose of your referral to MBB, then?

MR. BERNSTEIN: He's interpreted a referral to MBB to mean that the money came from MBB. He said that in response to his last question.

THE COURT: Well, what was your question?

MR. BERNSTEIN: What?

THE COURT: What was your question?

MR. BERNSTEIN: My question was just, no, I just want to know if money -- if Bitucan -- for example, if Bitucan does MBB work and receives MBB funds. And it goes into the big pool of money, which is Bitucan, and from that pool of money, funds go to the CSU or to German officials, then he's interpreting that... He's interpreting that -- I just -- I became concerned, Your Honour, because I think he's interpreting the "related" to mean there's a *quid pro quo*. That's just my

concern with this in that as it doesn't have to -- in my submission, it doesn't have to be a *quid pro quo*.

THE COURT: Then why refer to MBB at all?

MR. BERNSTEIN: Because you ruled I was required to, and that's the problem. This is the problem that we are now finding ourselves in, in the sense that it's -- for example, to speak in the colloquial, if Mr. Schreiber *schmiers* or *greases* somebody, that person's greased for MBB purposes, for Airbus purposes, and for whatever other business Mr. Schreiber has with that person, and to sort of break it down, "Oh, I was greased for MBB but not..." for example, some German official gets a chunk of cash, that money doesn't -- that, that -- and in connection with his dealings with Schreiber at the time, and in my respectful submission, it doesn't matter whether it -- and it doesn't -- I don't have to prove that there's a direct *quid pro quo* between that chunk of cash and MBB.

What I have to prove is that there's a relationship between Schreiber, who represents amongst other things, MBB at the time, and that money and that person.

So, in my submission, if Schreiber gives -- Schreiber who does represent M-B -- is a representative, an agent of MBB at the time,

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(Continued...)

gives a government -- a German government official, or public official, funds, then I should be allowed to just ask the question, did he get money?

THE COURT: Well, who cares if he gave public officials in Germany money? I'm sorry, I guess I'm missing the point. What are they going to do?

MR. BERNSTEIN: Who cares? I care. And I submit the Federal Government would care. If they know...

THE COURT: No, no, but what would they then do as a -- in consideration of having received the money?

MR. BERNSTEIN: They gave him the contract...

THE COURT: The German...

MR. BERNSTEIN: ...and they paid the commissions.

THE COURT: The Germans gave him the contract?

MR. BERNSTEIN: Okay. The evidence in this proceeding is that Franz Joseph Strauss controlled the Bavarian government, which was the major shareholder at the time in MBB. And that Franz Joseph Strauss instructed Pfleiderer to deal with Schreiber, and Franz Joseph Strauss who was, at the time, the Chairman or the president of the CSU party, was also the Premier of Bavaria, was also on the Board of Directors of MBB and was, in

Mr. Schreiber's view, a dominant person in Bavaria at the time.

The evidence before you reveals that he's the one who makes Schreiber the MBB agent. And he's the one who, apparently, instructs Pfleiderer to retain and deal with Schreiber. And Schreiber then instructs -- Schreiber then suggests that Pfleiderer at MBB deal with Moores, and we have this Sales Representation Agreement between IAL and MBB in which and in connection with and in relation to which apart from it, commissions are generated. Okay. If some of that money goes back to the CSU or German elected officials, the very people who retained Schreiber and who may have been involved in creating the understanding -- well, they were involved and Mr. Schreiber has testified that they were involved in creating the understanding that he would be rewarded for success. For success. And they get a kickback. The money is kicked back to them.

Well, that's exactly where Article 22 is there to avoid. Article 22 represents a prophylactic measure, the purpose of which is to avoid the payment of commissions so that this mischief and other monkey business doesn't happen, and the -- so when one says "Who cares?".... If the ultimate recipient of some of this commission money is people in the

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(Continued...)

Bavarian government which own or are a large shareholder of MBB, or for that matter, I don't know, executives at MBB, well, that is -- that's material evidence of the unholy nature of the understanding and the arrangement.

So that's my answer to that question, but with respect to the general question, in my submission, if he's the agent of MBB, then accepting that it's -- I ought not -- I should be allowed to ask the question without limiting it to a *quid pro quo*. That, you know, that *schmiergeldt* was provided or whatever, funds were advanced in connection with MBB. It's enough to say that he was the agent of MBB given the relationship between MBB, Strauss, the CSU, and himself, that funds were provided to whoever from a company involved with MBB.

And Mr. Shaw tells me quite properly, that Mr. Schreiber ought not to be insulated from providing a forthright answer because he's not kept the trust ledger of whether the *schmiergeldt* has been assigned in connection with the MBB deal or the Airbus deal or the Thyssen deal. If the person who he is dealing with on all these things receives monies, then in my submission, that's enough respecting



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(Continued...)

admissibility, and ultimately it -- of course it's a matter of weight.

These things are, inevitably in the normal course, pooled. And suitcases full of money don't normally come with thank you notes from MBB or something like that.

Mr. Schreiber is an interesting fellow who provided -- did certain things, and my concern is again tying this exclusively to MBB. Where we have the situation where the money, amongst other places, comes from MBB and then ends up, apparently, in donations of one sort or another or in funds to Strauss as shareholders of -- shareholders of Bitucan, which is itself pretty cogent evidence of fraud.

Here you have a Premier of Bavaria involved on one hand as the director of MBB, letting a -- reaching an understanding with Schreiber, and on the same hand being involved in a company who is the recipient of commission monies from MBB. That in itself is a set of circumstances that's compelling evidence of dishonesty, and but then, to take that money out of Bitucan, which Mr. Schreiber admits Mr. Strauss has an interest in, of sorts, and put it into other elected officials hands in Germany or -- and in my submission, I should be able to do that without, sort of, requiring a *quid pro quo*,

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(Continued...)

just because by nature the funds are pooled,

THE COURT: All right. Mr. Schabas.

MR. SCHABAS: Well, Your Honour, I didn't think and it didn't cross my mind that Mr. Schreiber was misunderstanding the question. He was certainly answering carefully, and he said so, making the point that he has donated time, money, services to the party, and in fact, you've heard evidence from him about NA's and Mr. Bernstein put to him about the legality of NA's and their deductibility and so on in Germany. It's a little perhaps different in some respects from the system here, but in other respects it's actually not. I mean, people make donations to parties. It's a tax deduction.

And in my submission, Your Honour, it's really -- he's really trying to revisit the earlier argument we had, and Your Honour's earlier ruling, which was to prevent this from just being a bald, wild open inquiry into any dealings he had with anybody who may be associated with the government. And so, Your Honour said have a reference to MBB in whole or in part or even a little bit, and he's asked lots of questions about that, and I submit there's no indication that Mr. Schreiber is misunderstanding the questions or is in any way not providing the answers that -- Mr. Bernstein might not like

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(Continued...)

the answers but they're the answers that the witness is giving. It's his witness and to now permit him to do what he seeks to be doing is to just turn this into a wide open inquiry and a fishing expedition, which I submit does not really necessarily bear relevance to -- well, it certainly doesn't -- it certainly goes beyond relevance to this case, and there's even a real question when he keeps talking about badges of fraud, as to whether that really is a badge of fraud in the context of Germany. And that may be, ultimately, something for final argument as well.

But I mean I was surprised when he stopped and said he doesn't think the witness is doing this, and as I listened to him, I submit he's really trying to revisit the ruling to allow -- to be allowed to go into a wide open inquiry. I submit that it should be confined as Your Honour has confined it.

THE COURT: Well, you do have the answer, Mr. Bernstein, that his companies or himself made gifts of time, money and services, at least to the party. What do you next propose to ask him?

MR. BERNSTEIN: Probably, how much, and unrelated to MBB, how much and what kind? These are companies which received MBB dollars pooled with other dollars. I could --

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(Continued...)

Mr. Shaw gave me a good idea. I could probably ask the question. I could ask him about whether funds were advanced from bank accounts which included MBB monies. I wanted to just ask the general question. He says he has made donations or services. I just wanted to ask him the general question, what donations and services?

THE COURT: I really have some significant difficulty seeing the relevance. I can certainly understand the relevance of asking him: Did you pay any money to any Canadian officials so that they would choose MBB, and the MBB product? There is a Canadian Government here which is allegedly the defrauded party. But you did ask him a lengthy series of questions about the destination of the funds that were received. He says he didn't know. The fact that he may have made donations to the party so that he would be chosen as agent in Canada, and even if it were established that some of the money went to Strauss so that he would be their representative in Canada, is not necessarily wrong, depending on the laws of the company we're talking about.

I have difficulty understanding why, assuming that his companies in general have made or he had made donations to, in large amounts, to

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(Continued...)

Strauss. I suppose I come back down to the original question of "So what?"

MR. BERNSTEIN: Your Honour, it's our intention, and mine and Mr. Shaw's intention and I'm sure Mr. Schabas's intention at the appropriate time, to sort out what and to make submissions respecting what inferences can be drawn from the evidence, and what is evidence of fraud, what's evidence of dishonesty, what isn't evidence of fraud and dishonesty. And my position is, if he's kicking back money to a member of the Board of Directors of MBB, that's not good, and that is relevant and that is material on a charge of fraud, whereas a result of that or in connection or in relation to that, he's acting as an agent, directly or indirectly, is in violation of a term of the contract.

From the Canadian Government's point of view, I'm sure they would have much preferred to have paid \$100 -- \$1 million less for these helicopters, which is the price of these commissions.

THE COURT: Of course, they didn't pay the million dollars, right? Well, I'm in a bit of a quandary understanding the relevance, I grant you that, gentlemen. If you want to ask him how much money he contributed to the party to which Strauss belonged at a particular time, I, with reticence allow you to ask that

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(Continued...)

question or kind of question, but at this point in time it may become clear to me later and that's my -- one of the reasons for my reticence.

MR. BERNSTEIN: Yes, Your Honour.

THE COURT: I'll allow you to ask that question in relatively brief form. I don't want an -- he has admitted, essentially, that his companies gave contributions. I'll allow you to pursue that to some extent but not *ad infinitum* and because the other thing is, I take it, you just don't know the answers. You're hoping to strike gold perhaps and...

MR. BERNSTEIN: Well, when I read in these newspaper articles and magazines references to Mr. Schreiber paying very large sums of money in unusual circumstances, and I mean by that like cash to party officials, but the source of my information is, as I say, the popular media. You've seen some of those articles yourself before.

THE COURT: Only the ones that we've seen in court.

MR. BERNSTEIN: Well, there's one that I think that was used to refresh his memory that speaks about...

THE COURT: Were they made exhibits? I don't believe so. Well, then I haven't read them.

MR. BERNSTEIN: No, no, no, Your Honour. This is -- this was in -- there were certain articles I drew the court's attention to that

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(Continued...)

were used to refresh the witness's memory respecting NA's and other things, and that was what I was -- I think that's what I was referring to.

THE COURT: That's what I'm referring to, yes.

MR. BERNSTEIN: Yes. Not anything else.

Okay. That's fine. Thank you, Your Honour.

THE COURT: All right. Recall the witness.

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

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

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

Q. Mr. Schreiber, just one question. You mentioned contributions. How much did you contribute directly or indirectly or assist in contributing to the party, as you refer to it, between 1985 and 1989? This is...

A. In Germany?

Q. Yeah.

A. I have no idea.

Q. Can you take a moment, and to the best of your recollection give us your best recollection as to how much?

A. No way, because different companies which belonged to me could have done this. It would be all in the bookkeeping also, so...

Q. Through all the companies. A total.

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A. Mr. Bernstein, it would be pure guessing.  
I have no idea.

Q. Can we -- just can you give us some sense? Are you talking a large sum of money? a little sum of money?

A. Depends. In one year when an election is, it is more. When Mr. Strauss intended to become the Chancellor of Germany, it was much more. So it depends, and then -- then you have so many levels. They come from -- the head of it they come from the *wirtschaftsbeirial*, they come from the city, they come from the -- from the constituency office. I mean, and then the MPs, the..[German]..there's no way I can tell you. No way.

Q. Would this be more than a million marks?

A. No.

Q. Per year or, from '85 to '89, during that chunk of time.

A. It's four years.

Q. Four years. Would it be...

A. I have no idea.

Q. Would it be more than a million marks?

A. No. On top of this, I know that who examined my bookkeeper, Mr. Birkner, on this question in Augsburg. I saw this once and my lawyer told me about it, so he answered all these questions. You should have them. He knew much better than I do, because he handled it.

Q. And when you say "you", you don't mean me?

A. No, I mean the RCMP or the Crown was over there. I saw the...

Q. Not the Crown.



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(Continued...)

A. I saw the -- excuse me. I saw the...

Q. The police go to these fancy places.

A. Maybe Mr. Matthews or Mr. Alexander, I don't know who was ever -- they asked Mr. Birkner about what -- how much did you donate, and Birkner told them.

Q. All right. All right. Did you recall providing any funds directly or indirectly or assisting Frank Moores or anyone else in providing any funds directly or indirectly...

A. To?

Q. To anyone at MBB between '85 and '89?

A. In Germany?

Q. Yeah.

A. No. Why would he do that?

Q. What?

A. Why would he do that? He got money from them. Not the other way around.

Q. Did you provide any funds directly or indirectly to any Canadian elected officials after 1989?

MR. SCHABAS: Your Honour, is this again...

MR. BERNSTEIN: Q. Which related to, directly or indirectly, in part or in whole, in any way, to MBB?

MR. SCHABAS: Is there a time frame on this? 'Til what 'til when?

THE COURT: Until yesterday, I guess.

THE WITNESS: MBB or the helicopter deal?

MR. BERNSTEIN: Q. MBB.

A. No.

Q. You took some time before you answered that question.

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(Continued...)

MR. SCHABAS: I'm not sure that that's very...

THE WITNESS: Yeah, but you see this is...

MR. SCHABAS: This is not a cross-examination.  
I don't think that is a fair characterization.

THE WITNESS: ...very complicated what you  
ask.

MR. BERNSTEIN: Q. What?

A. I mean, it's very complicated what you  
ask.

Q. Why is it complicated?

A. MBB, you have to think about was there  
anything with MBB after that, related to what, and why I  
would send somebody in Canada participate. It makes no sense  
at all. The whole question makes no sense to me. Excuse me.

Q. Have you hired any elected Canadian  
officials who during -- who were part of the government in  
1985 to 1989, have you subsequently hired...

MR. SCHABAS: Your Honour....

MR. BERNSTEIN: Q. ...and retained...

THE WITNESS: In that years? In that years?

MR. SCHABAS: Just a minute.

THE COURT: Hold on. Yes, sir.

MR. SCHABAS: This is a wide open question.  
We've been around this. I object to the  
nature of the question.

MR. BERNSTEIN: Okay. The question...

THE COURT: What is the full question?

MR. BERNSTEIN: The question was: Have you  
subsequently hired any elected government  
officials who were part of the government,  
elected government officials who were part of

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(Continued...)

the government between '85 and '89? So, during '85 and '89, these people would be elected MPs or ministers or whatever, and subsequently have you hired him?

THE WITNESS: After '89, you say...

THE COURT: I'll allow the question.

MR. BERNSTEIN: Q. All right. So after '89...

A. You said after '89.

Q. Yeah.

A. I wonder why don't you simply say whether Brian Mulroney was engaged and hired by me after he was the Prime Minister of Canada. The whole world knows it. Why do you go around? Just simply ask straightforward questions and I'll give it to you.

Q. He won't let me.

A. I have no problems with that. The whole world knows that.

Q. So tell me. Tell us.

A. Yes.

Q. Tell us how this came about?

A. Number one, what has it to do with MBB and the helicopters? Number two, this is a fishing trip, in my opinion, based on the whole thing around was Mulroney bribed by Schrieber, or whatever, and did he ever get money? And the whole world knows, yes, he received funds from me.

Q. How much?

THE COURT: Well, what's the relevance of that?

THE WITNESS: I mean this really, but I expected to be here.

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(Continued...)

MR. BERNSTEIN: Well, Your Honour, the...

THE COURT: What I'm going to do, sir,  
Mr. Schreiber, because of the time, I'll tell  
you you're no longer required today, because I  
want to hear from counsel, and so you don't --  
you can go home or to your hotel, sorry. We  
won't be recalling you this afternoon, so be  
here, would you, tomorrow morning at ten  
o'clock and I'll hear what...

THE WITNESS: Okay. Thank you, sir, very  
much.

... [WITNESS EXITS]

MR. BERNSTEIN: Your Honour, I'd....

THE COURT: Yes.

MR. BERNSTEIN: I'd like it, if I was -- if it  
is appropriate and the court allows any  
further questions, one of the next questions  
would be: Does this relate in any way directly  
or indirectly to MBB? If the answer is no,  
then that's that. But this is a different  
period of time and a different thing in the  
sense of it's hiring somebody and obtaining  
somebody. It's after the time period I  
covered. Mr. Schabas insisted or he thought  
it best and we proceeded on the basis of  
drawing a line in terms of the time period in  
mid 1989, and you say, well, what's the  
difference what was done after 1989. The

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question is asked and the purpose is to simply explore whether there was any understanding reached during the material time which was implemented after the material time. In terms of elected public officials, was there some understanding reached during the time period to do something after the time period?

THE COURT: Why can't you ask him that question?

MR. BERNSTEIN: I'd like to cross-examine this witness and I'd...

THE COURT: Sure. I'm sure that you would, but you can't.

MR. BERNSTEIN: I know, and how I ask the questions is informed by the general rules respecting the examination in-chief. I would like to ask that exact question. Was there some of -- did you have any understanding with elected public officials which are reached during the time period...

THE COURT: So...

MR. BERNSTEIN: ...which contemplated the provision of funds or hiring or retention of the provision of services after the time period, and which directly or indirectly in part related to MBB or were as a result of MBB, or were for MBB's benefit?

THE COURT: Well, there -- there we are. We're there and that's probably a question I could understand as opposed to simply, did

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(Continued...)

Mr. Mulroney work for you in 1994 or after '89? Because that question relates to nothing, whereas the question you've just proposed follows logically from the other questions you asked. We can start with that tomorrow morning.

MR. BERNSTEIN: Thank you, Your Honour.

THE COURT: Subject, Mr. Schabas, if you have further objections that arise out of the manner in which I...

MR. SCHABAS: Yes, thank you, Your Honour.

THE COURT: ...I've suggested to Mr. Bernstein might wish to put questions to the witness.

MR. SCHABAS: Thank you, Your Honour.

THE COURT: But we'll hear from you tomorrow morning if there's something you want to say. Thank you, gentleman. We'll see you tomorrow morning at ten o'clock.

COURT REGISTRAR: All rise, please.

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 Helicopters et al. in the Ontario Court of Justice held at Ottawa, Ontario taken from Recording No. 362, 363 which has been certified in Form 1.

November 9, 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>In-chief</u>	<u>Cr-</u> <u>Exam.</u>	<u>Re-</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>
1-14346	Document 14346. Diary of Mr. Schreiber. 22
1-17058	Document 17058. Covering letter and attachments, GoTo Pages 12-19. 35

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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

AND

SUBMISSIONS ON APPLICATION FOR HOSTILE WITNESS

\*\*\*\*\*

BEFORE THE HONOURABLE MR. SENIOR JUSTICE P. R. BELANGER  
ON SEPTEMBER 23, 2004 AT THE CITY OF OTTAWA

\*\*\*\*\*

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

\*\*\*\*\*

APPEARANCES:

M. Bernstein  
T. Shaw

Counsel for the Crown

P. Schabas  
T. Wong

Counsel for the Accused

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CRIMINAL CODE.**

THURSDAY, SEPTEMBER 23, 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.

MR. SCHABAS: Good morning.

MR. BERNSTEIN: Good morning, Your Honour.

THE COURT: Good morning, Your Honour.

MR. SCHABAS: Your Honour, I think you left the ball in my court as to whether I had any further comments, and I would just simply say that, obviously, in light of your rulings and the way in which you suggested the question be framed, I have nothing further to add to what I've said before.

THE COURT: Thank you, Mr. Schabas.

MR. BERNSTEIN: Your Honour, maybe the best way of.... Could I just have the court's indulgence for a moment? Perhaps I could just ask Madam Reporter to play the question -- the approved question -- back so that we have it as it should be. It was a bit of a long question. I didn't write it down. Maybe I can... I think I can -- I think I can do it without the assistance of the court reporter.

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SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

Q. Mr. Schreiber, did you have any understanding with elected public officials in Canada or members of their staff or families, or other intermediaries, reached during the time period -- reached during 1984 or 1985 to 1989, which contemplated the provision of funds or being hired or retained after that period? Which in one way or another, even a little bit, related directly or indirectly to MBB?

THE COURT: Do you understand the question, sir? I know it's a long one and it's convoluted.

THE WITNESS: Yeah.

THE COURT: Do you want it repeated?

MR. BERNSTEIN: Q. I'll do it again in stages, okay, with the court's...

A. We discussed this yesterday. As related to the helicopters or to MBB is a different...

Q. To MBB?

A. Not that I recall.

Q. Why do you draw the distinction between MBB and the helicopters?

A. Because I am focused on what I am here for on the helicopter stuff, so if I would have discussed with, let's say, with Dr. Horner or somebody -- laser techniques on a -- on a -- what can I say, acupuncture or

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things like this. I mean, I have a problem when you say MBB, because MBB is a monster. I don't know.

Q. Did you -- we were going to break the question down for you. Did you understand it the way it was set out for you, or would it be of assistance to break it down?

A. Well, try.

Q. Pardon me?

A. Why would -- why wouldn't you try?

Q. Did you have an under -- did you reach an understanding between '85 and '89 with any Canadian public official or their family or their staff or any kind of agent or intermediary acting on their behalf?

A. Understanding in what, please?

THE COURT: He'll tell you in a minute.

MR. BERNSTEIN: Q. An under...

A. Yeah. What understand?

Q. What?

A. What do you mean with understanding?

Q. Well, what do you -- you used the word yourself. What -- you mean, what does the understanding relate to or what do I mean by the word "understanding"?

A. Yeah. I have to ask here Mr. Adam what means understanding. Okay. I got it. Some kind of agreement or something like that. When you say to me what an understanding is, English is not my mother language. It could be have I discussed with somebody about something, and did we have the same understanding on something. Could be...

Q. That's what I want to know.

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A. ...religion or -- or whatever. So this is why -- this is why I wonder what the question is when you say...

Q. Well, I just -- I don't want to get all formal here about agreements or -- I just want to know if you discussed with any public officials or their families or staff directly or indirectly during -- between '85 and '89, the provision of funds, or maybe hiring them later on after they left public life?

A. No.

Q. Now, I've asked you a number of questions and, for example, I -- I asked you a question which was, for example, apart from a political donation for which you received a receipt, did you directly or indirectly provide any elected Canadian public official with money between '85 and '89 which whole or in part, even a little bit, related to MBB? I asked you questions like that yesterday.

A. Yes.

Q. And I wanted to ask you -- you gave me answers.

A. Yes.

Q. And I wanted to ask you what you understood with the word "related to MBB." In answering those questions when I put to you "which related to MBB" what did you take that to mean?

A. Well, I understood that you were asking me whether, anyway, I provided whatever you said related to business MBB might be interested in, to help to support this by -- by -- by donating or giving something or



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promising something. This is what I understood. And the answer is no.

Q. So just, when you say "related to MBB business" what did you take that to mean?

A. Well, I spoke -- we speak about the helicopter.

Q. What about other MBB business?

A. I had no other MBB business in Canada.

MR. BERNSTEIN: All right. Your Honour....

MR. BERNSTEIN: Q. I just want to ask you about a place. Not the Caviar King -- though Mr. Schabas may ask you in cross-examination.

I'd like to ask you about a place called 27 Raiffensenster [sic].

COURT REPORTER: Would you spell that, please?

INTERPRETER: May I?

MR. BERNSTEIN: Yes.

INTERPRETER: Raiffeisenstrasse.

THE WITNESS: Yes.

THE COURT: You'll have to spell that for us. Would you spell it, please?

THE WITNESS: Raiffeisenstrasse.

Raiffeisenstrasse was the guy [ph], the name of a bank.

INTERPRETER: R-A-I-F-...

THE COURT: I'm sorry? R-A-I?

INTERPRETER: R-A-I...

THE COURT: Yes.

INTERPRETER: ...-F-F-E-I-S-E-N-S-T-R-A-double S-E. And the number is 27.

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MR. BERNSTEIN: Q. Are you familiar with that?

A. Sure. It's my -- it's my place where my office is and my home.

Q. What kind of place is it? Is it -- describe what kind of place it is. You said it's your office, your home...

THE COURT: This is in Kaufering?

THE WITNESS: Yes. It looks like...

THE COURT: Yes.

THE WITNESS: ...a campus, like a fortress with walls and fences, and two and a half acre property. This was all very complicated because we had the terrorists and we are supposed to protect our clients and our -- our guests and our politicians. This was all done for that purpose. Especially -- specially designed.

MR. BERNSTEIN: Q. So, the building itself, does it look like a house?

A. Yes.

Q. Does it look...

A. Like three -- like -- like three buildings with guesthouse with office. Yeah. All of this, and my private apartment, everything.

Q. And you say you had fences and things to guard against...

A. Sure. Like most of them, when the politicians came to me to see me and we discussed, they came with their bodyguards most of the time with three or

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four cars. And they jumped out and protected the people, and the people disappeared. Even the building was designed that way.

Q. Why did you...

A. We...

Q. Why...

A. We lived in a different world,

Mr. Bernstein. Every time some -- somebody shot, and the industry managers, by law, were ordered to have bullet proof glass on their windows, and so, because the target were the industrialists, mainly, more than the politicians.

Q. Okay. As far as the politicians are concerned...

A. Yes.

Q. ...and why did you build -- design your house to meet their needs?

A. Because they were my guests.

Q. How often to justify this expense?

A. Oh, oh, constantly.

Q. All right. Your private apartment, how many rooms were they?

MR. SCHABAS: Your Honour, is this relevant to get into the...?

THE WITNESS: I don't know what this has to do with all this?

THE COURT: How does this matter, Mr. Bernstein?

MR. BERNSTEIN: I'd like to explain but I need to do that in the absence of the witness.

THE COURT: Well....

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....WITNESS EXITS. (10:20 a.m.)

THE COURT: Yes, Mr. Bernstein.

MR. BERNSTEIN: Your Honour, I would have thought this would have been very clear to Mr. Schabas. He's contested the admissibility of the documents obtained from Kaufering. We mentioned on a number of occasions the doctrine of documents in possession. We've started our application to admit these documents and I'm laying an appropriate evidentiary foundation for the admission of those documents. I've got to ask a few questions about exactly what Kaufering was. Are we talking about what -- what exactly are we talking about?

THE COURT: Well, yeah, but why do we need to get into the protection and all of this stuff?

MR. BERNSTEIN: About what?

THE COURT: Protection, protective devices, or glass. I mean, you might as well ask him how many bathrooms, but I mean...

MR. BERNSTEIN: Well, I gotta...

THE COURT: He says "I live there and it's my office." What more do you need?

MR. BERNSTEIN: Well, if my friend is prepared to concede that these documents.... Well, I need to -- maybe I don't, in view of Your Honour's comments, but the purpose of the

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question was just so we got some sense of what kind of place it was. Are we talking about a house and an office or two, or are we talking about some massive storage facility? And it's the former rather than latter.

THE COURT: Well, what is your evidence -- what is your anticipation the evidence will be as to where the documents were seized?

MR. BERNSTEIN: They were, as I understand that -- well, Mr. Shaw has a better understanding.

MR. SHAW: I understand that they were seized from his offices and the purpose of the inquiry is simply to establish with respect to his possession of it whether his offices were large or small in relation to the residence. We anticipate that this is not a large office tower and that he will testify that the office spaces were actually quite restricted which would support our argument respecting him having the documents in this possession and that being of some evidentiary value to the court. That's what we would anticipate. That there would be in relation to the residence, it would be a relatively small part with a relatively small number of people, if any, working there on a fulltime basis.

THE COURT: Well, let's...

MR. SHAW: And that would contrast to a large building with many employees and for which one

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would draw a very weak inference with respect to documents found there, and the person's knowledge of it.

THE COURT: There is that answer.

MR. SCHABAS: Your Honour, perhaps I should raise this now because my friend says it's a documents in possession point that they are pursuing. Mr. Schreiber is a witness. He is not the accused. He has been asked about documents. He doesn't remember them. They now, I suppose want to -- well, there may be a number of reasons why they are -- I don't want to anticipate all of my friend's different theories, so there may be a number of reasons why they want to try to establish that certain documents were in possession, one of which I would submit is really a way of undermining their own witness's credibility perhaps, to say -- a number of documents have been put in front of him. He says he doesn't remember them. He has given his evidence about that, and my friend has indicated he intends -- I believe he still intends to bring a motion to have him declared hostile, though, he hasn't done that.

And so, as I see it at least at this stage, the document of possession doctrine which really is a doctrine to attach to an accused, not to your own witness, can only be at least

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at this stage something that they're doing, in effect, as a kind of a form of cross-examination of undermining their own witness's evidence. I submit, for that purpose, it's not appropriate.

If they want to seek to declare him hostile and then put things to him, and they have evidence that they can prove -- and, of course, they have to get through the certificate process, and I'm sure you'll hear some more from Mr. Shaw about that shortly as to what efforts they've made in the last couple of days on that, but that would be something to put to him if they were entitled to cross-exam him, but not simply to put it in and say, "There!"

Now, there may be some other reason. There's been some reference a long time ago in this case to this being something that would also be in pursuit of it being admissible under the co-conspirators exception of the hearsay rule. If that's the case, we should hear about that.

You have some submissions that we made in writing after Mr. Verhey's evidence about that, which included our position that that is not a basis to admit hearsay evidence at a Preliminary Inquiry. And so, I raise a wider

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concern here as to where we're going with this, and for what purpose, and if there's any proper purpose at a Preliminary Inquiry, and when the Crown is still examining their own witness in-chief, to be getting into this area.

THE COURT: Well, you state this obvious purpose of this is to undermine one's own witness. Not necessarily. A witness may very well say -- a witness whose interest is exactly in sync with the party who is calling that witness, and will say, "Look, I just don't remember my possession of a particular document."

MR. SCHABAS: Right. And he said that.

THE COURT: But that doesn't mean to say that "they were never in my possession and if they were seized at my residence then I suppose the court can consider that to be a document about which I have no memory, but it was found in my premises and I don't dispute that." And this would come from a witness whose evidence, as I say, is entirely in sync with the party calling that witness's case. It doesn't, of necessity, lead us to a hostile witness situation, or it is not necessarily a matter of undermining one's own witness, but merely adducing evidence to show that documents were found in his home. From whatever flows...

MR. SCHABAS: But for what purpose?



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THE COURT: ...from that is something that the trier of fact has to be seized with. I am really...

MR. SCHABAS: That's right. The trier of fact at a trial. I mean that's why we refer to...

THE COURT: Well, I say trier of fact at a trial. A trier of the issues germane to the Preliminary Hearing, is the same thing.

MR. SCHABAS: Well, with respect -- and I don't know if we have to get into it now, but there are a number of cases make it clear that the admissibility of something under the co-conspirator's exception of the hearsay rule is not something, a basis for admission of evidence at a Preliminary Inquiry. And so, I submit I -- what is the purpose? He said he doesn't remember stuff. Of what evidentiary value is it for them to put something to him and say, well, maybe this was found there and he says, "Well, maybe it was," and then so what?

THE COURT: Well, he's not denying it. He's not denying it. He just says in relation to some of these documents, he's simply saying "I don't remember."

MR. SCHABAS: Exactly.

THE COURT: It's not as if he was saying, "Oh, no! I never had possession."

MR. SCHABAS: No, no. I agree.

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THE COURT: And then, it's simply another way of proving something that this witness can't prove because he has no memory. I don't understand your objection, Mr. Schabas, quite frankly. I think it's a perfectly appropriate way of proceeding and I can't agree that this is -- that this line of inquiry is irrelevant.

MR. SCHABAS: Well, I don't know for what purpose the Crown is doing it and we may have to revisit this at a certain point, Your Honour.

THE COURT: It may all come together at one point or another.

MR. SCHABAS: Right.

THE COURT: I'm hesitant to say, "No, Mr. Bernstein, you can't go there." I don't know on what basis I could make a decision of that nature and wish to be, not necessarily upheld, because evidentiary issues at a Preliminary Hearing are normally not appealable, but I...

MR. SCHABAS: Well, I've raised...

THE COURT: ...I think I would be in error...

MR. SCHABAS: I've raised a concern.

THE COURT: Well, you raise a concern. I'm not dealing with an objection here so much as a concern. There's not much I can do with that. I'll allow Mr. Bernstein to continue without necessity of further...

MR. BERNSTEIN: Thank you, Your Honour.

THE COURT: ...justification.

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MR. BERNSTEIN: I'll shorten it up. I won't ask about the bowling alley.

THE COURT: No bowling alley or bathrooms. And just while we're at it, I don't know whether it's always necessary to exclude the witness. It's an inconvenience to him, obviously, and a bother and it takes up more time. Nothing was said here, which at least in my view couldn't have been said in the presence of the witness "It's simply documents in possession, Your Honour" and that's the end of that.

MR. BERNSTEIN: Yes, Your Honour.

THE COURT: Okay.

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

EXAMINATION IN-CHIEF BY MR. BERNSTEIN:

Q. I had just asked how many rooms were in your private apartment, sir?

A. I have no idea, but it's approximately 1800 square meter.

Q. How many rooms in the office part?

A. Well, in this house where my private office is, and then there's another building where the road construction and all the things was placed, so how many rooms? Well, perhaps, six or seven.

THE COURT: I don't think the Crown will hold you, sir, to specific figures. I think the Crown is attempting to determine who owns the

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place and who has access to it and that kind of thing.

MR. BERNSTEIN: Q. You mentioned your private offices. How much there?

A. One, two, three -- four or five, perhaps.

Q. How many people worked in your private offices -- in the private office part, besides yourself, of course?

A. One.

Q. Who was that?

A. My secretary.

Q. Miss -- Miss -- I think we heard her name. Miss...

A. In the meantime her name is Calp [ph].

Q. And her name before was?

A. Ruber. But she worked in both places.

Q. Your private offices were where in...

A. In one of the buildings.

Q. In the -- which, in the building with your home? In what building?

A. Yes. In the first floor with my home.

Q. So, we have a building, and on the first floor are your private offices and on the second floor is your private apartment?

A. Yes.

Q. And you mentioned your road construction?

A. Yes.

Q. Okay. Where was that?

A. The next building. It's like a compound. Three buildings and walls around. If you would tell me

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directly what you want, it might be much easier. Just come up with straight questions. Tell me what you want to hear or what you want to know. I've become so jealous with you, you have no idea. The amount of time you can use your job, I mean, if I would do that in my business, I would be bankrupt the first week. I'm here to help you. I'm your witness, so ask directly what you want to know. I'll tell you if I can.

Q. Did your offices -- Mr. Schreiber, your offices, have an archives or an area to store documents?

A. Yes. There's office building -- yeah, there's an archive.

Q. Where was that?

A. At the second floor from the office building.

Q. Where is the office building?

A. Next two -- there are two buildings, I told you.

THE COURT: Two or three, sir?

THE WITNESS: Two. Two buildings, and the third one, another one the garages and stuff like this.

MR. BERNSTEIN: Q. And...

A. Housekeeping and whatever.

Q. How many people worked in the office building you've just referred to? Just the office part of it. In addition to yourself and Miss Ruber. [ph]

A. Oh, I -- I was not there that often. Five or six. Look, there were other offices directly at the production plant, so I don't know how you want to put

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this. And I still cannot figure out what you want to know from me or not.

MR. BERNSTEIN: Your Honour, I would at this time like to renew an Application I had made earlier in the week, and with the leave of the court I stood down until now. As part of that Application, Your Honour will recall Mr. Shaw started but did not complete certain submissions respecting documents obtained from Germany. And as part of my Application, and a renewed Application, and as part of the Preliminary Inquiry proper, I would at this time like to ask Mr. Shaw -- with leave of the court -- to pursue that now. We are at, in my submission, the appropriate juncture. And I understand we have newer and better certificates.

THE COURT: What do you want me to say?

MR. BERNSTEIN: So, I'd ask that Mr. Schreiber be excused, or he can -- well, I just -- I just wanted to say that's where we're at, so I anticipate -- well, I'll just turn the lectern over to Mr. Shaw.

THE COURT: All right. You would like the witness excluded during this proceeding?

MR. SHAW: Yes, sir.

THE COURT: Thank you.

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....WITNESS EXITS.

(10:40 a.m.)

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APPLICATION TO DECLARE HOSTILE WITNESS

MR. SHAW: Your Honour, when we last broke, I indicated that we would be retrieving for you the originals from which the bound set of documents I put before the court were drawn and you will recall....

THE COURT: Well, let's -- if you don't mind, Mr. Shaw, tell me what it is that we're doing just so it's on the record.

MR. SHAW: Yes, of course. My intention is to prove by way of certificate, pursuant to the *Mutual Legal Assistance Act*, that the number of documents that were put to Mr. Schreiber, and a number of other documents, were found by German authorities in the archives of his office building in Kaufering. And in his office. And the...

THE COURT: This is in the context of an Application to have the witness declared hostile.

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MR. SHAW: That is correct.

THE COURT: That's what I wanted you to say.

MR. SHAW: There are two weeks, but the most immediate use to show that notwithstanding the witness's denials or lack of knowledge respecting certain documents, they were in fact found in his possession in a fairly restricted business environment, with only five or six employees, and that would serve to support an argument of hostility.

They may also, if admitted of having come from that particular sub-location in Germany, if I could call it that, they would also perhaps allow the court to draw whatever inferences that documents in possession allows one to draw, but I don't need to make those submissions today. I am precursor, simply, to Mr. Bernstein's Application for hostility, which in part rests on his lack of knowledge and documents we want to show were in the possession of his businesses, as he's described them in his testimony.

To do that task, I'd like to first offer to the court the originals of material which I've shown to Mr. Schabas that were received from Germany and which, in my submission, will allay some of the court's concerns respecting the relationship between the certificate and the underlying document.



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You will recall that I handed up in perhaps a misguided attempt to be helpful, documents where I collated the exterior certificate to the underlying document, and in particular, to take one example, there was a certificate respecting MBB, Dornier Korrespondenz. And the court has some concern because the documents I was collating that certificate with, did not involve MBB, Dornier Korrespondenz in the sense that the court understand that phrase to mean. The effort of collation that I engaged in, I think created some confusion and I think the confusion can be readily resolved by having the originals, which I have here, presented to the court. I've shown them to Mr. Schabas. He's had an opportunity to inspect them.

The first is a two-holed binder marked 24 on the spine, and I'll show the court -- if I could just approach.

MR. BERNSTEIN: Yes, please.

MR. SHAW: It's a physical act I have to accomplish here. The binder has at its back, the certificate in question, and the court can see on the last page -- I've opened this binder to the last page. It's composed of a series of off-white pages and green interceding documents -- tabs, I would call them. And the last page contains a certificate

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bearing a seal and a string. And the document...

MR. SCHABAS: Could I just see that certificate?

MR. BERNSTEIN: Yeah. Please. Yeah.

MR. SCHABAS: Your Honour, I don't want to crowd around you but.... Okay. All right.

MR. BERNSTEIN: I'd like the record to reflect that both Mr. Schabas and Mr. Shaw are in the witness box; a place neither one would like to be.

MR. SHAW: And the back of the seal has got strings attached to it, and the binder has two holes, but the pages are punched with four holes, and what transpired is the officer has received the document with the strings through the two holes so that the seal and the strings bound the entire bundle. And in order to scan them, they severed the string and stamped the pages with the scanned numbers that are familiar to the court when the documents show up on the screen. These are the OTT/SDC/CCS sequential stamping.

THE COURT: Is that controversial what Mr. Shaw has just said? In other words...

MR. SCHABAS: No. He's explained it to me...

THE COURT: ...he's not giving evidence.

MR. SCHABAS: I know, but I mean...

THE COURT: And he's telling us the string was severed, and if that's not controversial,

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that's fine. Otherwise, I suppose somebody is going to have to tell us that that was so.

MR. SCHABAS: No. Mr. Shaw explained this to me with an officer present and I accept that. There's no need to -- the extent you would otherwise need to call an officer to say that, that's fine.

THE COURT: That's fine.

MR. SCHABAS: Although, that is not the -- that's the certificate we had trouble with before. I gather Mr. Shaw has got some new certificates and I think that's...

THE COURT: But no, I was just concentrating on the breaking of the seal, so to speak.

MR. SCHABAS: Right.

THE COURT: And if that's not controversial, that's fine.

MR. SHAW: The breaking of the seal for one volume was done by Staff Sergeant Nick Alexander and Corporal Nagody, N-A-G-O-D-Y, did the other breaking in the other volume.

I recall the court having difficulty with respect to the notation here, which is A1/29. MBB, Dornier, D-O-R-N-I-E-R, Korrespondenz, spelled in German with a K and a Z at the end.  
THE COURT: While we're doing that, could you bring up the English translation of that on the screen?

MR. SHAW: I think it's 17119. And I think some of the mystery of that notation in

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comparison to the documents underneath can be dispelled on this certification in that if you look at the first tab which was placed there by the German authorities, it says A1/29, which is the notation appearing on the top line of the certificate. There are other notations but that's the top one. If you were to turn to documents we're not seeking to rely on in this case, in relation to this, you would see that the first is a cover sheet with an indication of Dornier on the middle of it. This is page 1. The second page is, corresponds to Mr. Schreiber from Dornier. And the third page describes a Memorandum for Record, Subject: Canadian Coast Guard enhance light utility helicopter. The helicopters that we have otherwise shown are in relation to MBB.

So, it appears that the certificate, in my submission, is a reference to the top document or set of documents in the bundle.

THE COURT: To all of the documents or just the first one?

MR. SHAW: The first two relate to MBB and Dornier, and there are a series of others that relate to other topics, but in my submission, from the logical inference to be drawn from the way the matter is bound is that the certificate described, as one might, the top document in a pile. But it's very clear by

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the attachment of strings and the way that it was done, that it was meant to refer to the whole bundle, and the bundle simply described as the first page as one might describe the first page of a lengthy document, or the like. I think that there is an important, in my submission, lesson in that other countries do things sometimes a bit differently or very differently. When you're dealing with American or British documents, I suspect that one would see something more akin to what we're used to, which is the certificate on top instead of the last page, and a type of description that might itemize the contents rather than referring to the first page in the bundle. That is with respect to this bundle of documents, and I'll break down in further detail which attached to that.

The second is another binder of the same type with two holes, and on the spine it has a number 7 on it. I say in advance that the description is not -- the explanation for the description is not quite as straight forward as from the last binder, but it's similar in nature.

If I open the binder, there's an inserted tab. There's one single tab here on a piece of cardboard like paper marked A7/91, and then if one were to look at the first series of

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documents, at page 1, there's a facsimile transmittal sheet from the desk of Erika Lutz. And there is on page 2, on Mr. Schreiber's letterhead, something going to Ms. Erika Lutz. And if one were to look at the last page -- and here, unfortunately, the binding has been broken, I understand, in transport. I'll flip delicately to the last page and it describes -- if you could bring up the translation of this one, and I'll take you to the number.

If I were to flip to the last page, the certificate again with a bound string which previously bound the whole bundle with the two extra holes in the pages, you see it would describe A7/91, ABS Erika, and then a notation we've had translated as "telephone directory Schreiber." And the first interceding tab, or the only tab in this volume is marked A7/91, and the first few documents do relate to faxes that appear to -- telefaxes that appear to have been sent or direct from and to Ms. Lutz, though, I admit there are a great number of other documents in the bundle.

That's the status of the original certificate, and my submission with respect to those -- and I'm going to be supplementing them with other materials, but my submission with respect to those is that we are dealing quite obviously with a different legal system, but one which

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when one looks at the original documents, does make some sense. They appear in particular with respect to the first binder marked 24 that I pointed out to the court, they appear to relate to the top documents and to be bound together. In my submission, that's a logical way in which to bear -- to give a description. It's maybe not the way that one is use to in these courts, but part of the difficulties of Mutual Legal Assistance is having different legal systems not collide, but actually work together. And that requires the court to make some reasonable inferences on the face of the documents. Indeed, in my submission, that's why if you look at the *Mutual Legal Assistance Act* provisions, they are very strong provisions and they do pursue the accuracy of what is contained therein. The status of the certificate provision is Section 38, and it states that,

"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..."

THE COURT: Just give me a moment, please, as I retrieve the legislation. Do you recall where we put that, Madam Clerk? Is it in one of these binders, do you know?

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MR. SHAW: I've got this -- this is not -- this is not one that was needed for correction, but there was -- out of the commercial text, that provision was accurately reflected.

THE COURT: Here it is.

MR. SHAW: And there was inaccuracy we determined with respect to another provision but not with respect to 38.

THE COURT: I'm sorry. Say that again, please, Mr. Shaw?

MR. SHAW: There was an issue -- I'm handing you the commercial copy of the legislation.

THE COURT: Oh, yeah.

MR. SHAW: And the court will recall that there was an issue with respect to the wording of a section -- another section of it, and I provided the court with a printer copy of that other section, but Section 38 is accurate in the commercial version that I handed to the court.

THE COURT: I don't see a Section 38 in what you've just given me.

MR. SHAW: No. I'm sorry. The -- I didn't give you that section again because it's accurately reflected in what you just found. The other document you found. Yes, that's right.

THE COURT: That's the right version?

MR. SHAW: Yes. That's right. Yes. That's the version of 38.



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THE COURT: Okay.

MR. SHAW: It's the wrong version of 37 or 36.

MR. SCHABAS: So Mr. Greenspan got that one right, did he?

MR. SHAW: Yes. That is correct. 50/50 so far. The Section 38 states the truth therein, and I draw some support from the invitation in 36(2) to draw reasonable inferences from the form or content of the record in assessing probative value. So, there is elsewhere in the legislation invitation to look at the form and content of the certificate. I hope that I've done so with respect to both of the original certifications, and though we've got different material for you today, in my submission, when you look at them not as I collated them but as they actually exist, it's clear that the German authorities intended to give a location which is specified for which we are attempting to rely on, and in describing the bundle, have chosen to describe a very lengthy series of documents something relating to the first few documents in the pile, and not something that would cause one to doubt the validity of the certificate, and especially of the location from which they came.

Now, the additional issue that I intended to put before the court, and I gave to

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Mr. Schabas, related to an exchange of faxes between the RCMP and the prosecutor's office in Augsburg, A-U-G-S-B-U-R-G, in Bavaria. And they were a direct result of the court's concern respecting the existing certificates, the court not having, unfortunately, had the benefit of seeing the way the originals were found out.

What has transpired and been disclosed to Mr. Schabas, was...

THE COURT: This is a very recent exchange?

MR. SHAW: Yes. It was a very recent exchange, and it was rendered more difficult by the six-hour time difference, which means there's a very small overlap.

THE COURT: Yes.

MR. SHAW: But be that as it may, there was a sending of a telefax on the 20<sup>th</sup> of this month, indicating this issue that had arisen in our court and suggesting in draft language something that might well satisfy the court's concern respecting the itemization of the documents, and render it in a more, if I could call it, Canadian friendly way and something the court is more useful with. And there were, accordingly, prepared and under seal documents by the Augsburg prosecutor that were faxed to us and received the morning of yesterday, and just to give the court a bit of background, I've had discussions with

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Mr. Schabas about this. There was a subsequent request that -- that documents that were concerned by the new certificates also be faxed back, as it were.

THE COURT: Be...?

MR. SHAW: Faxed back. So, there was an initial sending of the original certificates and the particular documents the RCMP were concerned about with suggested draft language. There was a fax back from Germany with new certificates and a subsequent fax from Germany with those new certificates accompanying the material which was to be certified.

To elucidate that further, I think I should not talk in the abstract, but hand up to the court a telefax received.

MR. SCHABAS: Sorry, Mr. Shaw, did you just give him the package...

MR. SHAW: Yes. I've given him the -- there is the -- just to be clear, this is an 8½ x 11 package. It's clamped together, the first cover being telefaxed to Royal Canadian Mounted Police, Superintendent A.K. Matthews. Urgent. It indicates at the top, S:1/119. If you count them, there are a number of pages that are sequentially numbered as a result of the fax transmission.

THE COURT: One to 19 -- 1 to 119. Yeah. Right at the top right.

MR. SCHABAS: Oh, I see, yes.

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MR. SHAW: And I'm actually going to use that as a form of index to take the court through the bundles. And what was...

THE COURT: Does this purport to be...

MR. SHAW: Yes.

THE COURT: ...file A -- or file -- sorry, binder 24 or binder 7?

MR. SHAW: I'm going to get into that and where each binder comes from. It is those portions of binder 24 and binder 27 that we wish to rely on.

THE COURT: 7 or 27?

MR. SHAW: Sorry. 24 and 7.

THE COURT: 24 and 7. All right.

MR. SHAW: I'll go back to the...

THE COURT: So it's not a reproduction of the entire 24?

MR. SHAW: No. No. It was an attempt to slim down the number of documents to those we were seeking to introduce and to itemize them. But it is not a reproduction of binder 7 or 24. Though, I could engage in the exercise of relating the back of each page of this binder, but I'll save you that process and if I could just go through, then, the itemization that's contained in these certificates and to indicate to the court that there are a number of documents or attachments -- a total of 21 -- which in my submission are now clearly described in the new certificates and that they -- any confusion that might have arisen

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has been expunged by the issuance of these new certificates.

THE COURT: All right. Well, these are -- I suppose there's the technical issue. These are not certificates, but they're copies of certificates.

MR. SHAW: That is correct. They are a facsimile copy. We hope in a matter of days to have...

THE COURT: To get the originals.

MR. SHAW: ...the originals with the white and blue strings attached to them, but we attempted to have a reliable transmission. Indeed, the effort of having the Germans fax back the documents which we were seeking certification on, was with a view to giving the court some assurance of the continuity here.

What's changed in relation to the certificates -- and you can see them if you flick to pages 2, 3 and 4. That's the first certificate. Is that that first certificate speaks of the archives of Mr. Schreiber's place in Kaufering in the office building -- and I'll get to the translation.

One of the original certificates, both in the office in the office building, and we have here -- I don't think it's particularly material -- we have here the certificate

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speaking of the archives of that building at the same address. So, at the number 27 on that German street.

The first certificate, the translation of the first new certificate, can be found at page 5 of 119. These were the translations provided. The English versions provided to us by the Augsburg prosecutor's office, though it's the Germans that bear the original seal.

You'll see that the first refers to a one hand-written ledger of eight pages marked, Bitucan Holdings.

MR. SCHABAS: What page are you on?

MR. SHAW: I'm on page 5 of 119.

THE COURT: Um-hmm.

MR. SHAW: And it specifies that the original documents or records were taken and retained in conformity to the laws of the Federal Public of Germany and under the authority of a search warrant. These copies of documents or records have been provided pursuant to the Canadian Letters Rogatory [ph] of July 14, 2000, to the Federal Republic of Germany. And then, this certification is with respect of the material described above, with the exception of the alpha numeric stamp applied to each page, which is headed OTT/SDC/CCS, followed by a number. And that's -- I think it's probably -- I don't know what it is, but

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in order to ensure the continuity, given that we were operating by fax they've sent back the versions that have the stamp on them, but they have specified at the top of the certification the agreement of the copies with the originals.

If you want to look at, in terms of the key, if you want to look at the hand-written ledgers, they're at page 18 and 119. There's the exchange of faxes. You'll see from 18 to 26 of 119, the hand-written ledgers.

THE COURT: The bottom line is, if these were the originals...

MR. SHAW: Yes.

THE COURT: ...you would now no longer be relying on those two big binders, but rather on this material.

MR. SHAW: That's correct. I'm not opposed to redundancy, so that I think that I can advance -- both sets are not contradictory but I can advance that both sets, the...

THE COURT: There's nothing new. Whatever we've got here...

MR. SHAW: That's correct. Yes, yes.

THE COURT: ...is in binder 24 or 7 and we have your representation to the court as an officer of the court to that affect.

MR. SHAW: I did not want to foreclose, and I'm perhaps being overly cautious, but I did not want to -- if there was some problem in

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the couriered transmission of the original, I didn't want to preclude to ever relying on what I think are quite good and valid original certifications, but I'll leave that aside.

THE COURT: And we have your statement to the court that as far as you know these will be here by air courier within a few days.

MR. SHAW: My hope is that they'll be arriving shortly and...

THE COURT: All right.

MR. SHAW: ...the Germans sent us the -- originally, just the certificates and we made it clear that we wanted everything, so I anticipate that they'll be here very shortly.

Mr. Schreiber mentioned DHL. I don't know which courier company they'll be using, but certainly there will be an effort made to get them here as soon as possible.

THE COURT: Sure.

MR. SHAW: And to have Mr. Schabas, if he wishes, to inspect them. The significance of the recitals at the bottom was an effort to look at -- if you look at Section 36(2), and I invite you in this context, now, to look at the official version of the Act.

THE COURT: Sorry, show me again?

MR. SHAW: The regnal version.

THE COURT: Yeah.

MR. SHAW: I'm sorry.



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THE COURT: I haven't heard that word in a long time, the regnal version.

MR. SHAW: Mr. Schabas is mentioning a strict proof that puts one through one's paces, and I'm happy to provide the official version of it. And you'll see in terms of not the admissibility which is where we're at, but in terms of the probative value, we're looking at a record or a copy of the record,

"and the trier of fact may examine the record or copy received evidence orally or by...certificate...or statement is made in conforming with the laws that apply to a state or entity, including evidence as the circumstance 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..."

And so in my submission, there is an effort both to indicate that this package was received pursuant to the *Mutual Legal Assistance Act* and to the legal German origin of the power under which these were confiscated from Mr. Schreiber's office building.

The next bundle is a bit more complicated, only that there has more volume. And if you turn to page 3 of 119, you'll see the German itemization. I will simply point out to the court that here in this certificate, the previous certificate -- and this was for

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binder 24, which is the MBB, Dornier  
Korrespondenz, identified certificate.

There was an indication in that certificate  
that it was from the office of Mr. Schreiber  
in his office building and, again, I say not  
inconsistent and it doesn't matter for our  
purposes. There's a reference to these  
documents being found in the archives of his  
office building in Kaufering. And there is,  
if you go to the English version of that  
certificate, which is page 5. I'm sorry.  
Which is page 6 of 119...

THE COURT: Six and seven.

MR. SHAW: Six and seven. You'll see the  
itemization.

THE COURT: And the statement of confiscation  
and the location of that confiscation.

MR. SHAW: That's correct. And again, the  
same recital with respect to the continuity of  
the stamp. And with respect, there is also  
provided by the German authorities, a English  
version or an English translation of it -- of  
the certification that was provided. I will  
tell the court I've had occasion to make more  
interesting submissions on other things  
before, but there are a number of  
typographical errors, perhaps, because of the  
speed with which we had to operate. On  
occasion, sometimes the date, for example,  
1985 will come out at 1085, and one might feel

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one's been on this case since 1085, but it's clear from the context that the reference in the English version should be to 1985, and not to 1085. There is one -- in the German version there is one, I submit, clerical issue and that's with respect to, if you go to page 4, Item 17, you'll see a description of a document from 01-08-86.

THE COURT: It says '84 on the English one.

MR. SHAW: It says '84 on the English. And if there were any doubt as to what was being described, if you were to go in the bundle that I've handed to you, at 107 -- page 107 to 119, one would see the, if I could call it the tab...

THE COURT: It's 84.

MR. SHAW: It refers to '84 and then the actual document says '84. I'm not going to belabour any further typographical errors in the English version. That was the one, the German one which was detected. And then, it's simply a question of going through each of the itemized -- for this certificate -- each of the itemized 21 documents, and giving you the corresponding references to each. I'm happy to speak to that. I am happy at some later point to have a hand-written version of it to give the court the key, but in my submission, they are each matched up with the descriptions given in a Maple Leaf kind of way, in the way

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that court would be expected if this were from a common law country and certified.

The only other point I'll make -- and it is maybe an obvious one -- is that there is a presumption in international affairs that foreign states are acting in good faith in what they are doing, and there is nothing that contradicts in a substantive way or undermines the initial certifications which look -- now that you've had occasion to look at the originals and in my submission are quite logical, this is a compliment to that and there, in my submission, should be no issue as to our compliance with the provisions of the *Act*.

The only other difficulty that one might have is with respect to the notice section. There is a notification section in the *Act* specifying a seven-day notice period with respect to the certificates. That's not an issue with respect to the old certificates, because they were part of the original court database, but in my submission it should not be an issue for this court.

THE COURT: Is that a notice provision that can be waived or is it...

MR. SHAW: Yes, it is. And if you go to -- I'd invite you to go to the commercial version

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of the Act, and you'll see "unless the court decides otherwise".

THE COURT: Okay. So there, it's a discretion.

MR. SHAW: It is a discretionary guideline and there is certainly, given the original certificates, in my submission there couldn't be any doubt with respect to the nature of what we are trying to do here. I will add -- and I just need to find one document here.

With respect to the underlying documents, in our position we have met with the statutory presumption of a seven-day notice for almost all of them in the chart that I handed up. This was the list and Notice of Intention No. 3 Chart. There are a few which, upon us discovering Mr. Schabas's position with respect to whether the item code beyond 3 digits was admitted, were provided to Mr. Schabas very late on the evening or the night of the 15<sup>th</sup>, and so we would be on the statute a couple of days out with respect to those few documents. I'm not sure if notice is an issue for my friend. I'm happy if it is, to go through this court, those he's had for over a year, those he's had beyond the seven days, and those where we might be a day or two off.

MR. SCHABAS: It's necessary.

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THE COURT: We'll deal with that by way of reply, if necessary, and I hear Mr. Schabas saying it's not necessary.

MR. SHAW: So, subject to any reply, those would be my submissions respecting the adducing of these. The important part when you look at the Act is that it's very permissive, that it's designed to overcome, in my submission, technical objections that the issue of what you should later make of them is an issue of probative weight which is provided for by the Act under 36(2) and our issue here is they're admissibility with respect to the location from which they are seized, and they are from the office building at number 27 in Germany. So, those would be my submissions.

I thank you for your indulgence on a topic where I did not get off on a particularly clean start, and which is not inherently a fascinating one, but thank you very much.

THE COURT: Well, let's get an oxygen fix and I'll hear from you after we've all done that. Thank you.

COURT REGISTRAR: All rise, please. This court is in recess.

R E C E S S

(3:10 p.m.)

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

(3:35 p.m.)

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

THE COURT: Okay, Mr. Schabas.

MR. SCHABAS: Yes, Your Honour. I appreciate the thoroughness with which Mr. Shaw has gone through this before the break, and I do not intend to make any further submissions with respect to the adequacy of the certificates. As I said, I'm not taking issue with the notice, and so to the extent that that makes the documents not inadmissible, which is all that statute provides for, at this stage I don't take issue with that.

There is, of course, still the whole issue of the admissibility of it and so on, and -- I'm mindful of the fact that we're still in effect in kind of a *voir dire* motion which is all we're dealing with at this stage, but I do not take any further issue with the certificates.

THE COURT: Well, there is the technical difficulty, at least in relation to the second part of Mr. Shaw's argument that the certificate isn't here but...

MR. SCHABAS: Right, and I accept his undertaking.

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THE COURT: ...the estoppel will be fed soon,  
I presume.

MR. SCHABAS: I'm sure my friends know all  
about the courier systems between Canada and  
Germany, and I'm sure it's coming soon. And  
so I don't take issue with the fact that it's  
a copy nor, as I said, with the notice.

MR. SHAW: Your Honour, if I might then, if  
we could attribute for the record exhibit  
letters to the papers, and I'm going to ask  
that that be marked as the next exhibit.

THE COURT: The faxed certificates will be  
the next letter.

COURT REGISTRAR: Of the letters?

MR. SHAW: Yes.

THE COURT: G?

COURT REGISTRAR: J. Sorry, K.

THE COURT: K.

EXHIBIT K: Faxed certificates.

- Produced and marked.

MR. SHAW: And then, I ask that a Leitz --  
that's L-E-I-T-Z -- binder 24 on the spine,  
containing documents and a certificate be the  
next lettered exhibit.

THE COURT: L.

EXHIBIT L: Leitz binder 24 with attached  
documents and certificate. - Produced and  
marked.



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MR. SCHABAS: I'm sorry, is that -- I'm questioning the -- I am questioning the need to do that. I take it from my friend that many of the documents in the two binders are not documents that are at all relevant for the motion.

MR. SHAW: They're being put in with respect to the nature of the certifications that were opposed to then, and we're seeking to rely on for documents in possession of the documents that are part of the last exhibit, Exhibit L.

MR. SCHABAS: Exhibit K.

THE COURT: K.

MR. SHAW: Exhibit K. I'm sorry, Exhibit K. But in my view...

THE COURT: So you don't need -- in other words, you're telling Mr. Schabas he needs not worry about materials in Exhibit L if they were not in Exhibit K.

MR. SCHABAS: Right, and therefore...

THE COURT: They're in K then, only to the extent -- no documents in what's going to be made the next exhibit are going to be relied on which are not already in K.

MR. SCHABAS: Right, and so I just -- it's just a redundancy. I know my friend likes redundancy, so...

MR. SHAW: Except to the extent that documents in these exhibits may otherwise have proven through an admission or through them being put to a witness.

MR. SCHABAS: No.

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MR. SHAW: But my intention in filing these two binders is, if they were in another court at another time...

THE COURT: Yes.

MR. SHAW: ...any dispute as to what I referred the court to in the nature of the earlier certificates, I would like to have the record reflecting that. That's sufficient on the record for why I'm making them.

I make the Leitz binder number 24...

THE COURT: And then you can also say that you're getting rid of it and we're taking custody of it. It makes your physical job easier.

MR. SCHABAS: There is, actually, a physical file building up in the court.

MR. SHAW: It has been much reduced from what it would be had we proceeded on paper, but...

THE COURT: And so the next is Leitz...

MR. SHAW: Number seven.

THE COURT: ...seven. Exhibit M.

MR. SHAW: With German certificate and attached documents.

THE COURT: All right.

EXHIBIT M: Leitz binder No. 7., with German certificate and attached document.

- Produced and marked.

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MR. SHAW: Your Honour, with respect to the nature of those documents, there is an immediate intention in Mr. Bernstein's submissions to reply upon them with respect to the hostility argument as evidence that these documents, despite varying degrees of testimony about them, were in Mr. Schreiber's possession. I don't wish to preclude arguing documents in possession withstanding of that at some later date. And I think that's the debate that Mr. Schabas is referring to us having later on. But I have established that they are in possession. What the legal significance of that may be, will be for another day, but I don't want to -- I want to be very clear Mr. Schabas, we may well...

THE COURT: You'll be moving later on to have the documents, which were received in evidence for *voir dire* purposes, admitted at large.

MR. SHAW: That's correct, and I'll have to -- we'll cite whatever cases are available on documents in possession, and have that argument then.

THE COURT: All right, but we are still at this moment in the hostile witness application.

MR. SHAW: That's correct, and I thank you for your time.

THE COURT: Just tell me, give me a bit of a road map. What evidence do you intend calling, if any, at this point, on this

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Application, just so I know where you're going. Or are you simply going to say you've got it all?

MR. SHAW: The evidence that we'll be relying on for hostility is the evidence that's arisen through Mr. Schreiber's testimony, and the additional proof of possession of those documents.

THE COURT: All right. That's the evidence you'll be relying on?

MR. SHAW: Yes. That's correct.

THE COURT: Okay. No further extraneous evidence being called on this issue?

MR. BERNSTEIN: Nothing that is not otherwise before the court or which has been otherwise drawn to Mr. Schreiber's attention in efforts to refresh his memory for things like that.

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MR. BERNSTEIN: Your Honour, this is an Application by the Crown to declare Karlheinz Schreiber hostile at common law and to afford the Crown an opportunity to cross-examine Mr. Schreiber.

I say at the outset, it is not my intention to conduct a lengthy cross-examination in the event that this application meets with your favour.

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What I seek here is an opportunity to, in the circumstances of this case and in all the circumstances of the witness, I seek an opportunity to cross-examine Mr. Schreiber for a short time. I do this in order to see if a greater level of forthrightness and clarity can be achieved respecting a few topics: In particular, his role with MBB, his relationship with IAL, his dealings with Kurt Pfleiderer and Mr. Moores, and his involvement in IAL Sales Representation Agreement and amendments, where the money went and why.

Mr. Schreiber is, in my respectful submission, a challenging witness. This has been, for me, an interesting and challenging examination. Mr. Schreiber is under an Order of the Superior Court extraditing him to Germany. If returned to Germany, and if -- well, if Mr. Schreiber is returned to Germany and if in the end there is a committal for trial at the conclusion of this Preliminary Inquiry, Mr. Schreiber's examination may -- and I use the word "may" -- be tendered pursuant to Section 715(1) of the *Criminal Code*, which I know Your Honour is familiar with.

It says,

"Where, at the trial of an accused, a person whose evidence was given at a previous trial on the same charge, or whose evidence was given in the investigation of the charge against the

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accused or on the Preliminary Inquiry into the charge, refuses to be sworn or to give evidence, or if the facts are proved on oath from which it can be inferred reasonably that the person is

(d) absent from Canada,

and where it is proved that the evidence was taken in the presence of the accused, it may be admitted as evidence in the proceedings without further proof, unless the accused proves that the accused did not have full opportunity to cross-examine the witness.

It may, in the event of a committal, be used pursuant to Section 715 at a future trial. I don't know what the future holds but I am mindful of the possibility and that possibility informs, in part, this Application.

Your Honour has heard some evidence of the difficulties which the Crown has experienced; difficulties from the Crown's point of view, the exertion of rights by Mr. Schreiber -- but nevertheless, Your Honour has heard about the proceedings which preceded Mr. Schreiber's attendance in this court, the Motion to Quash, the appeal. I do not know what the future holds in respect of his further attendance in a witness box in this case in Canada.

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In my respectful submission, I have taken Mr. Schreiber's examination as far as I can through the order in which I have asked the questions, and through attempts to refresh Mr. Schreiber's memory from documents, which on their face seem to have been authored by him or addressed to him or received from him or to which reference to conduct which he seemed to have been involved in, is referred to.

I am now asking the court to let me complete this examination, and see if I can take it just a bit further. What I'm looking for here is a little leeway to see if a short cross-examination can wrap up a few of the matters which I've asked about.

Before I go into the law and review with you the law in this area, and some of the relevant circumstances which will necessarily inform a consideration of the issue by yourself, I'd like to say two things. Firstly, I recognise that what I seek is a matter of degree, that this is not necessarily a black and white issue. There does exist authority in the court to allow an examiner leeway in the manner in which he forms and articulates questions given the nature of the witness and all the circumstances. Secondly, I do not now intend nor do I anticipate you would let

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me become Mr. Hyde. This is not a situation of where I'm seeking to go from Dr. Jekyll to Mr. Hyde. I recognise that this is a matter of degree and I'm asking for some leeway to cross-examination for a short period of time in connection with a few particular items to see if I can move the search for the evidence in this matter forward.

Thirdly, I recognise that, ultimately, Your Honour, that this is a judgment call; a judgment call which you will be required to make, and I am confident that Your Honour is in a really good position to make that call.

You are a senior, experienced trial judge, who has over the months had the opportunity to preside over this lengthy Preliminary Inquiry. You have seen and considered the demeanour of the other witnesses called at this Preliminary Inquiry. You have seen and considered their recollection of events which admittedly were some time ago.

Included in your consideration of these witnesses, have been witness who, objectively speaking, it could reasonably be said their interests were not entirely aligned with the Crown. For example, Mr. Moores, you've seen him and you've also had an opportunity over the past few weeks to consider and assess Mr. Schreiber's evidence.



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I recognise that in large measure your decision on this application will be based on your assessment of Mr. Schreiber's attitude and demeanour.

The law in this area is, in my submission, neither complicated nor new. As I say, in large measure, on an application for hostility at common law, the matter boils down to the presiding justice's assessment of the demeanour of the witness the application relates to.

Just to be clear about this, I am not seeking to cross-examine Mr. Schreiber pursuant to Section 9(2) of the *Canada Evidence Act*. I am not seeking a ruling pursuant to Section 9(1) of the *Canada Evidence Act* to have Mr. Schreiber declared adverse. I'm seeking a ruling at common law to have him declared hostile which would afford the Crown the right to cross-examine at large, subject to any practical limitations the court may impose on that right.

I would like to -- to the extent that it may assist the court -- provide the court and my friends with some jurisprudence and information.

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The first thing I'd like to hand up is just an excerpt from Mr. Levy's book. As I say, the law in this area is not particularly complicated or new. In fact, it's quite old and it is simply -- and I submit, accurately summarized by Mr. Earl Levy, in his book *Examination of Witnesses in Criminal Cases*. I just direct your attention to paragraph 15.

In the first paragraph under the heading, The Hostile Witness, Mr. Levy notes that,

"When counsel calls a witness he or she normally does so expecting the witness to advance his or her case in some fashion. A problem occurs when the witness gives unfavourable testimony or does not come up to proof with respect to anticipated favourable testimony for the side which calls the witness."

There are a number of options to deal with such witness. He then deals with the one of interest to me today: The Common Law Hostile Witness. He says,

"By virtue of the common law, if the examiner-in-chief can convince the trial judge to declare the witness hostile, the questioner may conduct a cross-examination at large with all of the rules of cross-examination applying. The procedure has nothing to do with section 9 of the *Canada Evidence Act*. It is significant to note that counsel does not have to be concerned with a prior inconsistent statement when there is an application to declare the witness hostile at common law."

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I have made that submission. I make it again. I am not seeking to base this application entirely on some prior inconsistent statement. Mr. Levy then goes on to...

THE COURT: I'm sorry. Did you say in whole or in part or not at all?

MR. BERNSTEIN: Well, my approach is informed by the law, and as you will see, when we get to the test here, the test is really one based on an assessment of the witnesses responsiveness and demeanour...

THE COURT: No, I'm sorry. I thought that you were saying that that's what you were going to be relying on in addition to some prior inconsistent statements.

MR. BERNSTEIN: Yes, and what I intend to do is to ask Your Honour to consider and rely on all his evidence and all his responses to all his questions in assessing whether or not he can properly be considered hostile. As part of that assessment, I ask the court to consider his approach towards prior statements he, apparently, may have made. But not, by any stretch of the imagination, do I limit this application to that. Indeed, it is a consideration but it is just one of what would be many considerations.

It is something you should consider but it's not like 9(1) or 9(2), which is based entirely on the existence of prior inconsistent statements. Hostility of common law is based

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on something different, and in assessment of hostility one can consider prior inconsistent statements, but one should and can consider other things like an inability to recall, an animus towards the examining party, a predisposition towards the defendant, and a variety of other relevant circumstances.

With respect to the test, Mr. Levy says Who then is a hostile witness? And he says,

"At common law a witness is hostile when he shows from the manner in which he gives his evidence-in-chief that he is not giving the evidence fairly and is not desirous of telling the truth because of a hostile animus toward the prosecution. The trial judge will observe the witness' demeanour, attitude and the substance of his or her evidence. However, it is unusual to find a witness who overtly displays animosity toward the party calling him or her."

Though, this might be one of those rare occasions where indeed that has happened.

"Indeed, a clever witness who attempts to veer from the truth, will normally hide any such overt animosity."

We, of course, have Mr. Schreiber's own admission to being clever.

The next bit of information I would draw to the court's attention is an article by Mr. Henry Bull. Bull is a famous Crown Attorney. I provide my friend and the court

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with this article -- it's an article from the 1960's -- only because it represents a good example. I submit, a useful example of -- a review of the law in this area, and also, the circumstances which would, in the normal course, give rise to the situation I find myself in today.

I will mention that when we review these cases, an issue develops. I will get this out right now. That was an issue in the '60s and continued to be an issue into the '70s and you'll see this in the jurisprudence. It's not really an issue these days. The issue is the relationship between the word "hostile" which was the word used at common law, and the word "adverse" which is the word used in Section 9(1) of the *Canada Evidence Act*. The jurisprudence which we will be reviewing presently, spends a significant period of time with some difficulty dealing with the issue of whether hostile is a different word than adverse and whether to access the Section 9(1) of the *Canada Evidence Act* one has to -- there has to be a conclusion of hostility or whether adverse is good enough. Now, that's what many of these deal with. That's not the issue I'm dealing with here.

I accept I have to satisfy you that Mr. Schreiber is hostile, which is the higher test, and I am viewing it in common law. But,

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just in reviewing this material, one will see reference to this and I just wanted to point out that.

I direct the court's attention to page 386 of Mr. Bull's article. I'm not going to read extensively from it, but at page 386 and onto page 387, Mr. Bull engages a consideration of the rationale behind the rule, which is dated, and where the notion of impeaching or challenging ones own witness's credibility developed and came into play. The point I sort of wish to make, simply, is as Mr. Bull points out in page 386, the last paragraph in the middle,

"Often a party must call, with relation to some specific fact, a witness whose general character for credibility is negligible but whose testimony as to the specific fact in the particular circumstances of the case could be accepted and acted upon by the court without any guarantee as to his credibility in other areas. Frequent examples of this are found in trials where the Crown must perforce call disreputable persons as witnesses -- accomplices, thieves, liars -- either to unfold the narrative, to testify to a particular fact otherwise unprovable or to discharge the moral obligation which is upon the Crown to call all the evidence no matter how it may tell."

At page 389 of the decision, Mr. Bull reviews the seminal case in this area, *Greenough v Eccles*, which is a decision from (1859). This has to do with the definition of adverse

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versus hostile, "...in which the term  
"adverse" as used in the statute was said to  
mean "hostile"..."

And then the definition of "hostile" is

"For a witness to bear a hostile *animus*  
to the party calling him and so not to  
give his evidence fairly and with a  
desire to tell the truth to the court;  
and that he is not adverse in the  
statutory sense..."

by simply testimony which contradicts his  
proof.

I'd also like to draw the court's attention to  
page 309, the second paragraph where Mr. Bull  
says in the middle of the paragraph,

"A court will not likely be misled by the  
witness who is openly hostile and  
antagonistic. His evidence is suspect  
even without the cross-examination to  
which he will undoubtedly be subjected by  
the party calling him. On the other hand,  
the truly adverse witness who is most  
inimical to the party calling him is the  
person who successfully conceals his  
adverseness and his bias in favour of the  
other side. It is he who, for an ulterior  
motive, while blandly exuding good will,  
fairness and desire to co-operate, is  
secretly undermining the truth to the  
detriment not only of the case of the  
party calling him..."

And I stress this,

"...but of the whole administration of  
justice."

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This application about, in part, my obligations as a Crown to call all the evidence no matter how it may tell. There is an element of -- well, I rely on the statement,

"...undermining the truth to the detriment not only of the case of the party calling him but of the whole administration of justice. No artificial and baseless rule should frustrate his exposure."

I anticipate my friend will say, "Well, Mr. Schreiber is the Crown's witness and he called him, and these are the rule." The rules exist as a means to achieve justice, as a means to ensure that evidence is obtained, that forthright truthful answers are elicited, and where the rules -- and this is why we have the rule against hostile that allows in certain circumstances a declaration of hostility, because the courts recognise that in the normal course, rules respecting examination in-chief will only take a party so far, and in certain circumstances, the administration of justice requires that those rules be relaxed so that the matter proceed further.

The leading on this area is -- and I'm sure Your Honour is familiar with it -- *Wawanesa Mutual Insurance v Hanes*. *Wawanesa* is not an easy case to understand sometimes. I'm just going to stick with Mr. Bull's article. He summarizes *Wawanesa*. We have *Wawanesa* there



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but the article is helpful in just walking through what is otherwise not the easiest judgment to read sometimes.

In any event, the majority of the court was composed of Chief Justice Porter and Justice MacKay, and there was dissent. The majority held -- and this is reproduced at page 390 of Mr. Bull's article. Again, a lot of this has to do with whether adverse is a different word than hostile. The court says,

"...the word "adverse" as used in s. 24 is not limited to "hostile" but that to the extent that it did mean "hostile"..."

And I rely on this for the definition of "hostility":

"...it meant hostility of mind and not just of manner -- the adverse may also mean opposed in interest or unfavourable in the sense of opposite in position."

At page 390, Mr. Bull notes, referring to *Wawanesa*,

"The majority went on to hold that a prior inconsistent statement may be considered as evidence of adverdness [sic]..."

Adverseness?

THE COURT: Adverseness.

MR. BERNSTEIN: "...or hostility and the trial court is not limited only to a consideration of demeanour and manner in the witness box."

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So I actually rely on an inverse of that, that in my respectful submission, as we'll see, the law respecting hostility is in large measure a broader test. One can consider prior inconsistent statements, but one's not limited to prior inconsistent statements in an assessment of that, and that's reflected in the *Wawanesa* judgment and it's referred to in Mr. Bull's article at page 392 and 393.

I will just point it out to you, Your Honour, and I won't read it to you. If we go to MacKay J. A., and go through a number of steps, and they're reproduced at 392 onto page 393. The point I draw the attention to is 2.

"Whether a witness is hostile in mind is a question of fact. To determine this collateral issue a trial judge should hear all and any evidence relevant to that issue. The fact that a witness has made a previous contradictory statement is relevant, admissible and most cogent evidence on that issue, and that evidence alone may be accepted by a judge as sufficient proof of the hostility of the witness irrespective of the demeanour and manner of the witness in the witness box. It is also open to a trial judge to rule that witness is hostile solely by reason of his manner of giving evidence and demeanour in the witness box."

Roach, J. A. -- and this is reproduced at page 393 -- goes on to say at the bottom of the page, in his dissenting judgment followed the line in *Greenough* and said,

"the adverse meant hostile and the test of hostility was through observation of his

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generate attitude and demeanour on the witness stand and the substance of his evidence."

There doesn't seem to have been a difference in terms of the assessment and law informing hostility. There was a difference in a court respecting whether adverse and hostility meant the same thing, which is not something I need to worry about.

The other case that I'd just like to briefly draw the court's attention to is in a case book, which I think we handed up earlier.

There are some cases in here which I guess were prepared by Mr. Shaw in advance of Mr. Schreiber's examination. They relate to 9(2) and 9(1) and procedures respecting 9(1) and 9(2) but they're not germane to my argument today. The case -- I would like to draw the court's attention to two cases. One is, first of all, *Coffin*. Now, *Coffin* is reproduced at Tab 2 of the case book. *Coffin* is a very famous case, again, an older case. I simply direct your attention to page 22, which is part of the decision of Justice Kellock. In particular, the third paragraph.

Now, often in appearing before the courts where people may object to my leading questions, I draw the court's attention to the submission that the court does have authority

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to allow an examiner in certain circumstances some leeway to ask leading questions, short of a finding of hostility, and I'm sometimes asked, "Well, where is the authority for that proposition?" The authority is Justice Kellock's judgment in *Coffin* and I just direct it to your attention -- your attention to it, Your Honour.

He says,

"It is quite true that the initial answers made by the witness as to these three matters were not "accepted" by counsel for the Crown but while, as a general rule, a party may not either in direct or re-examination put leading questions, the court has a discretion, not open to review, to relax it whenever it is considered necessary in the interests of justice as a learned trial Judge appears to have considered was the situation in the case at bar.:

The more modern statement of the law respecting hostility is contained in Justice Martins' decision in *Cassibo*, which is reproduced at Tab3 of the casebook, and I direct the court to it. I'm not going to spend a considerable amount of time on it. I do direct the court's attention to pages 514 where Justice Martin analyses *Wawanesa*, which was reversed but not on this point, by the Supreme Court of Canada.

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In *Cassibo*, Mr. Justice Martin analyzes *Wawanesa*. Analyzes the law defining adversity and the law defining hostility. And I just leave page 514 onto 516 with the court for their consideration.

The other case I would like to draw the court's attention to now, act in which I think is the last -- second last case, so which should draw the court's attention to -- is the Supreme Court of Canada's judgment in *Cotroni*.  
THE COURT: I don't think *Cotroni* is in a tab.

MR. BERNSTEIN: No. *Wolf* is in the tab but *Cotroni* is going to be a handout.

THE COURT: I have it.

MR. BERNSTEIN: Okay. Do you have, Mr. Schabas?

MR. SCHABAS: Yes, I've got it. You've given me two copies, actually.

MR. BERNSTEIN: Okay. Thank you. You can give one to Mr. Wong or Ms. Christie.

*Cotroni* is, again, a very famous case involving, I think, the late Mr. Cotroni. Mr. Cotroni was called to testify before the Quebec Police Commission and his memory was very bad. It's captured in the headnote.

"The appellant was a witness before the Quebec Police Commission inquiry in organized crime. Following several days of testimony he was called upon to 'show why...[he should not] be found guilty of

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contempt of the Commissioners by reason of his evasive replies to numerous questions'. After hearing counsel for the appellant and refusing to hear witnesses where the appellant wished to call to clarify some of his answers the appellant was found in contempt and sentenced to one year imprisonment. In their decision after quoting several extracts of the appellant's testimony the commissioners stated: 'Clearly, this examination of these rambling observations is not exhaustive: it would be tedious to point out all the...'

I rely on this sentence:

" '...it would be tedious to point out all the contradictions, the answers that were sometimes deliberately obscure and often ambiguous or simply unintelligible. We have therefore analyzed your testimony as a whole, observed your attitude, your behaviour and the way in which you avoided giving an actual or reasonably probable meaning to the words used by you. We are convinced beyond the shadow of a doubt that you decided to give testimony that was deliberately incomprehensible, rambling, vague, nebulous and amounting to a barely concealed refusal to testify.'"

The case represents an analysis of whether on the basis of that, this sort of obscure, rambling, unresponsive, evasive responses one could be held in contempt. In that regard, on page 5, Justice Pigeon refers to another Supreme Court of Canada case called, *Wolf*, which is reproduced at Tab 1 of the casebook, and comments as follows. Referring to *Wolf* page 5 of *Cotroni*.

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THE COURT: Are you going to be spending some more considerable time on *Cotroni*? I just note the time and it's past quarter to...

MR. BERNSTEIN: I'm going to be a little more time on my submission.

THE COURT: Let's -- let's break now and we'll start again at two o'clock this afternoon.

MR. SCHABAS: Your Honour, just before we rise, I just want to remind the court. I know, I think we all recall that we were going to rise early today.

THE COURT: Oh, today was the day.

MR. SCHABAS: Yes. I just wanted to remind you. I'm glad I did.

THE COURT: That's fine. You tell me what time you want to rise.

MR. BERNSTEIN: Mr. Schabas, I do recall and...

THE COURT: I recall it now that you've said so. I just...

MR. BERNSTEIN: Can we come back a little earlier from lunch?

MR. SCHABAS: Sure. If that -- well, it's up to...

THE COURT: Well, I have a problem. A personal problem that I have.

MR. BERNSTEIN: Okay. I just...

THE COURT: It's not a huge commitment but a commitment I made to see somebody at a quarter to two, so we'll have to start at two, and then we'll go to...

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MR. BERNSTEIN: Okay.

MR. SCHABAS: 'Til around three, three-fifteen at the latest, Your Honour, is really my...

THE COURT: Well, and we're not sitting tomorrow, right?

MR. SCHABAS: No, we're not.

THE COURT: So that's fine with me unless...

MR. SCHABAS: Thank you.

MR. BERNSTEIN: Okay.

THE COURT: ...there are very strong objections.

MR. BERNSTEIN: No. Thank you.

THE COURT: So, we'll see you at two o'clock.

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

R E C E S S

(3:10 p.m.)

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

(3:35 p.m.)

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

MR. BERNSTEIN: Good afternoon, Your Honour.

THE COURT: Mr. Bernstein.

MR. BERNSTEIN: When we broke, I was making a few submissions in connection with the Supreme Court of Canada's judgment in *Cotroni*. I'd like to continue with that.



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In particular, in *Cotroni*, reference is made by Justice Pigeon at page 5, the second paragraph from the bottom of the page to another Supreme Court of Canada case, the case of *Wolf*. *Wolf* is independently reproduced in the Crown's casebook at Tab 1. I do not now intend to take the court to the actual *Wolf* decision. Instead, I rely in part on Justice Pigeon's summary of *Wolf* and its application in *Cotroni*. Both cases stand in substance for the same proposition. And with respect to *Wolf*, Justice Pigeon said,

"*Wolf v The Queen*...should be mentioned in this regard. This Court affirmed a conviction for perjury made under the following circumstances. The accused had, been assaulted and had signed a statement naming his assailants. Called as a witness at their preliminary inquiry he admitted that he knew them but stated that he remembered nothing. He remembered being in the hospital and being treated for his injuries but said he did not remember how he had received them. At the hearing of the appeal; the falsity of the testimony thus given was not disputed. Only the intent to mislead the Court by giving it was discussed. This Court unanimously rejected the submission that...;

... the failure to give any affirmative response by asserting a want of recollection of events, which the accused had described in out of Court oral and written statements, cannot involve an intent to mislead the Court when there was no other evidence to give concreteness to the lapse of memory."

That's the proposition I rely on.

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Part of my Application in this matter will be based on a request by you to consider Mr. Schreiber's recollection, or lack of recollection in connection with a variety of matters which I will deal with later. I rely on *Cotroni* and *Wolf* in support of the proposition that that lack of recollection, even in the absence of other evidence, may itself be cogent evidence of hostility. Indeed, *Wolf* and *Cotroni* stand for the proposition that it can be cogent evidence of perjury which is a much higher standard.

THE COURT: But in *Wolf*, I gather the accused had -- and I'm using the words here "described in and out of court oral and written statements".

MR. BERNSTEIN: Right.

THE COURT: In other words, there had been positive statements as to the existence of a set of facts which were then conveniently forgotten.

MR. BERNSTEIN: Exactly, and the context -- this will arise in my view as some of the circumstances, Your Honour, but where it will arise in part is in relation to his lack of recollection of documents which were addressed to him, and/or which he otherwise received; indeed, on an occasion a lack of recollection of documents which on it's face he seems to have offered.

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THE COURT: In *Wolf*, Mr. Bernstein, how recent were the events which the accused had forgotten?

MR. BERNSTEIN: I...

THE COURT: It may not be a fair question, but...

MR. BERNSTEIN: I'll get back to you on that one.

THE COURT: It may not be in the case, but...

MR. BERNSTEIN: I'll have Mr. Shaw look for the answer.

THE COURT: ...one gets the impression that he was giving evidence at a Preliminary Hearing in relation to events that were relatively current.

MR. BERNSTEIN: And this will be an issue. I recognise for Your Honour's consideration is Mr. Schreiber's lack of recollection a result of the passage of time or as a result of something else, a desire not to be forthright in connection with his answers.

THE COURT: And I'll be asking you how I decide that. In any event, go ahead.

MR. BERNSTEIN: I will, in part, attempt to assist you in that. My point now is simply to draw to your attention that the law says that a lack of recollection may, in other circumstances, independent of any other evidence of proof as to the reason for the lack of recollection is open, capable of constituting evidence of perjury, which requires a much higher level -- an intent, a

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deliberate, a specific intention to mislead the court.

The court goes on to say,

"Cases in the Courts of the United States make a clear distinction between contempt of Court by false testimony and contempt by evasive answers. In the latter case it is generally accepted that the evasive testimony is sufficient by itself to support a conviction."

Then, referring to a case in the America, *United States v. Appel*, the court goes on to say,

"[2] The rule, I think, ought to be this: If the witness' conduct shows beyond any doubt whatever that he is..."

And when I say "beyond any doubt", remember they're talking about a conviction for perjury or contempt here.

THE COURT: You're not asserting that that is the standard...

MR. BERNSTEIN: No. No.

THE COURT: ...on an application such as the one you're making?

MR. BERNSTEIN: Right.

"...whatever that he is refusing to tell what he knows, he is in contempt of court. That conduct is, of course, beyond question when he flatly refused to answer, but it may appear in other ways. A court, like any one else who is in earnest, ought not to be put off by transparent sham, and the mere fact that the witness gives some answer cannot be an absolute test. For instance, if could not be enough for a witness to say that he did not remember

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where he had slept the night before, if he was sane and sober, or that he could not tell whether he had been married more than a week. If a court is to have any power at all to compel an answer, it must surely have power to compel an answer which is not even to fob off inquiry."

In part, that will be what part -- one of the issues Your Honour will be required to consider is his motive or the reasons behind his profound lack of recollection in connection with what I submit are certain particular things. I'll leave the law for now, Your Honour, and move on to certain submissions respecting the things to be considered. In substance and in short, Your Honour, I'd ask that you consider all the circumstances.

In the unique circumstances of this particular case, I submit all the circumstances include certain circumstances which precede his actual testimony. I submit in the unique circumstances of this particular case, some consideration can be given to steps taken by him to quash his subpoena. I accept that it is entirely appropriate for him to assert these rights, but I also submit that when one is assessing Mr. Schreiber's subjective demeanour, it is appropriate, indeed necessary, to recognise that he subjectively views, or viewed, before the commencement of his testimony he subjectively viewed that his answers would prejudice him. And in order to

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avoid that, he brought a Motion which would have precluded his testimony.

While Justice Morin has upheld the subpoena...

THE COURT: You have provided me with a copy of Justice Morin's...

MR. BERNSTEIN: Yes, and I was going to bring you to that now. While Justice Morin has upheld the subpoena, Mr. Schreiber remained profoundly concerned about the use of his testimony to incriminate him elsewhere. In connection with those concerned, he's launched an appeal to the Court of Appeal and Mr. White appeared before you at the commencement of his testimony and brought a variety of additional applications. In my respectful submission...

THE COURT: I don't mean to interrupt you, unduly. He brought an application for me to seal. You say a variety...

MR. BERNSTEIN: I'm actually going to go through them in...

THE COURT: You will? Okay. That's fine.

MR. BERNSTEIN: ...order. My point here, before I actually go through them, is that I'd ask Your Honour consider these actions, generally, which is to say that they represent a subjective view that his answers will cause him harm, which is material evidence of his animus or lack of neutrality with the Crown.

I also ask that you consider these concerns with particular reference to the parts of his

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testimony which he was most forgetful about. In my respectful submission, we'll go in part to this now and we'll follow up with it later, but if you actually look at what he told Justice Morin might incriminate him, and you look at what he was most forgetful about before you, in connection with questions I asked him, there is a profound commonality in the topics. That is material to your assessment of his true motive in connection with his want of recollection.

Now, to make the point, I'd first like to direct your attention to Justice Morin's judgment which is....

THE COURT: You've provided me a copy of that...

MR. BERNSTEIN: Yes.

THE COURT: ...or Mr. White did.

MR. BERNSTEIN: No, it's okay. I've got it right here. It's at Tab D, and I'm going to spend a minute with this. Volume 1 of a rather large group of volumes, which formed a record called the Respondent's Application Record Request for Adjournment by Karlheinz Schreiber. So this is a bunch of blue books Mr. Shaw handed up when we first started to go here.

THE COURT: I have it. Thank you.

MR. BERNSTEIN: All right. Okay. So Justice Morin's judgment is at Tab F. No, Tab D. D. Tab D, as in...

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THE COURT: Delta.

MR. BERNSTEIN: Delta. Okay. I'd like to begin with Tab C, and at Tab C of Volume 1 of the Application Record is Mr. Schreiber's Factum before Justice Morin in the Superior Court.

I leave the Factum with you for your consideration, Your Honour, and I'll simply at this time direct your attention to some parts of it. In the Factum, as part of their argument before Justice Morin, the counsel for Mr. Schreiber take the position that there was an overlap in the allegations he faced in Germany, or the charges he faced in Germany, and the areas the Crown wished to examine him on. It was in connection with these overlapping areas that the concerns respecting incrimination were obviously most acute or would be realised. In that regard, I direct the court's attention to paragraph 3 of their Factum where Mr. Schreiber sets out the essence of the Crown's allegation against Eurocopter. Paragraph 3.

If we look at the second and third and fourth bullet points we see this is Schreiber's characterisation of Eurocopter's allegation.

THE COURT: Of the Crown's allegation.

MR. BERNSTEIN: Yes. The Crown's allegations against Eurocopter.



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"Eurocopter's German parent company, MBB, entered into a contract with a Liechtenstein company, International Aircraft Leasing, wherein MBB agreed to paid commissions to IAL for sales of helicopters and related equipment to the Canadian government.

The Applicant is the beneficial owner of IAL."

I don't recall that being exactly my position but that's what Mr. Schreiber says my position is. Then Mr. Schreiber goes on to say,

"Commission payments in the amount of \$888,011 were paid directly to the Applicant or to IAL, of which \$409,640 was subsequently transferred to Frank Moores."

Mr. Schreiber, in articulating the Crown's position, makes reference to IAL, Schreiber's relationship with IAL, Moores' relationship with IAL, IAL's relationship with MBB, the existence of a contract between IAL and MBB, the payment of commissions and the flow of funds. These are the exact areas where Mr. Schreiber's recollection before you is most, most profoundly scanty.

In my respectful submission, that is not a coincidence. That is a result of a deliberate desire to avoid incrimination.

If we go to paragraph 4 of the Appellant's Factum, there is reference to a part of my opening before you, Your Honour, and the

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anticipated evidence -- or at least what I intended to ask Mr. Schreiber and Mr. Moore's. And again,

"They will be asked about the Sales Representation Agreement and funds they received under it or in connection with it and the purchase and sale of the 12 BO 105 helicopters. They will be asked what he did for the million dollars or so advanced in connection with this transaction. They will be asked about meetings..."

...which they had with Pluckthun Pfleiderer, Wittholz, Grant, and other people.

Now, if we could next turn to paragraph 9 of the Applicant's Factum, we see there an articulation by Mr. Schreiber of the overlap, and when I say the overlap, they're making -- in the process of making an argument here that he ought not to have to testify because what he's going to say in connection with Eurocopter will be used against him in his Germany prosecution because, factually, what's relevant in Eurocopter -- the questions the Crown is going to ask him in Eurocopter, relate directly to what he's charged with in Germany.

In that regard, at paragraph 9, it is Schreiber's position that,

"There is a substantial factual overlap between the issues in *Eurocopter* and the German charges against the Applicant. This can be seen in that:

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2. The applicant is charged in Germany with tax evasion in connection with Thyssen's Canadian dealings, an issue that has already been raised with the witness Frank Moores.

3. The German charges are founded on allegations that the Applicant had beneficial control of IAL and of certain bank accounts, issues which are also raised by the allegations in this case. The German case against the Applicant on these issues is weak.

4. The Applicant is charged in Germany with fraud on the government of Saudi Arabia, an allegation that closely parallels the allegations in this case."

If we, actually, turn to the Extradition Brief filed against Mr. Schreiber in the Superior Court in Toronto, which has been reproduced as part of the Respondent's Application Record on Mr. Schreiber's Application for an Adjournment before you, Volume 4.

We turn to....

THE COURT: This is a different book?

MR. BERNSTEIN: Yes. It's Volume 4. At page 61. The numbering for this volume is in the top corner -- top righthand corner.

THE COURT: Okay.

MR. BERNSTEIN: We see at -- the 61 is actually missing, but page 60 -- well, the number 61 is missing.

THE COURT: I'm with you.

MR. BERNSTEIN: You got it. Okay. That's the beginning of the record of the case on the

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extradition, and I just draw your attention to page 18 to 24 of the actual record. And there is their information -- if we go to page 18, on the "Unreported commissions from the sale of helicopters to the Canadian Coast Guard." That's at page 18 of the record, which I'm not -- the numbering of the pages in the Motion Record -- in the...

THE COURT: I'm with you. Unreported commissions.

MR. BERNSTEIN: Yes. And it goes from page 18, which is at the bottom, through to page 24. I am not going to read it to you here, Your Honour. I'll leave it with you. I do, however, submit that when one reviews the record, it is very telling. What it shows is, when one considers what's happened here over the past few weeks, that what Mr. Schreiber is most forgetful about are things which relate directly to the allegations he faces in Germany. That, in my submission, is not a coincidence. It's not a result of the passage of time. It's a result of a conscious desire to avoid.... Well, he's concerned about incriminating himself.

That concern was expressed by Mr. White directly before you. And in connection with that, at the outset of these proceedings, Mr. White asked that the matter be adjourned to the end of the Crown, and maybe the

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defence's case. He was unsuccessful in that application.

He sought to have Mr. Schreiber's testimony, the tapes and transcripts sealed until the appeal was heard. He also submitted that Mr. Schreiber objects to testifying on matters which pertain to the German case. In my submission, he was most forgetful when it came to testifying on matters pertaining to the German case. And Mr. White, on Mr. Schreiber's behalf, also objected to the use -- well, he expressed concerns respecting the use and derivate use of Mr. Schreiber's testimony. He asked the court to narrow the scope of the Crown's examination to matters relating directly to Eurocopter. Again, it's pretty -- that is the circumstance you need to consider. He referred to -- well, when I began my questioning, Mr. White objected to the line of questions, and indeed, Your Honour, I'm sure Your Honour continues to have a recollection of Mr. White's objections, and I'll leave them with you.

THE COURT: I don't know if that could be attributed directly to Mr. Schreiber. It was Mr. White's objection.

MR. BERNSTEIN: Yes.

THE COURT: And I didn't hear Mr. Schreiber asking him to object. It was perhaps zealousness on Mr. White's part.

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MR. BERNSTEIN: And I don't ask that you look at this in isolation. I ask that you look at it as one circumstance in a sea of circumstances, and I will make a submission in ten minutes or so that you also should look at the way Mr. Schreiber walks away from his submissions of his lawyers when it suits his fancy, as with respect to Mr. Leisner, but and -- but for this point, well, I'm not asking you to visit the tenor of Mr. White's submission on Mr. Schreiber. I am asking you to consider Mr. Schreiber's position, and in that regard Mr. White characterized the Crown's theory in an unflattering way.

Mr. White also took issue with the Crown's failure to provide Mr. Schreiber with written -- the questions in written, or the documents prior to his testimony, and referred to that in an unflattering tone.

Your Honour, I'll leave these opening or these circumstances which pre-date his testimony, and move directly to his testimony.

In connection with his testimony, I'd ask that you consider his demeanour generally, and with respect to his demeanour, generally, I will in large measure leave it to you.

I do not intend now to go through each comment. I'm confident that my -- well, I'm

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not sure my submissions or comments on it are necessary. I will, however, ask you to consider Mr. Schreiber's demeanour towards me, personally. When I say personally, I don't mean me as a person, but towards the examiner, the Crown, the prosecution. I ask that you consider his demeanour toward the defence, generally, and I'd ask that you consider his demeanour or his attitude towards his lawyers.

With respect to Mr. Schreiber's demeanour towards the defence, it of course is trite to say that he was involved in and benefited with his dealings with MBB, the parent of the defendant. He testified at some length on September 21<sup>st</sup> that he was a great admirer of Franz Joseph Strauss who he described as the leader within MBB, again the parent of the defendant.

In the context of answering about IAL being used as a vehicle for MBB's funds, on September 14<sup>th</sup>, before he answered the question, apologized to Mr. Schabas and said, "He loves MBB."

THE COURT: I take it that's a textual quote?

MR. BERNSTEIN: Yes. That's -- yes, he said...

THE COURT: Thank you. I just don't happen to recall.

MR. BERNSTEIN: No. He said, "I love MBB."

THE COURT: Okay.

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MR. BERNSTEIN: With respect to his demeanour towards the prosecution, I ask Your Honour to consider the many occasions where Mr. Schreiber in one way or another suggested or infer or otherwise said things which could only reasonably lead to a conclusion that he thought I was wasting his time. There are many examples of that.

There was one this morning where I think he came out and, basically, said if I ran -- well, "If I ran my business the way you run yours, I'd be bankrupt," which is not a very nice thing to say, but in any event, it is indicative of his general attitude towards this case.

There were other examples of this. He has repeatedly objected to answering questions and has said to me I should read the book, *The Last Amigo*, it includes everything we are doing here.

In response to a question respecting Mr. Moores' bank account, the Swiss Bank Account 34107, he said -- Mr. Moores -- again said, "This bank account had been in the nature of papers for years and what's the..." and I -- I -- he said, "What's the secret?" and then -- well, he said, "...with the damn thing?"



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He on a regular basis, when asked details, in a dismissive fashion said things to the effect of "It is useless to ask me. I have no recollection of these details." In that context, in a somewhat condescending tone, said he was dealing with \$27 million and what did he care about these scraps of change. Those are my words, not his words.

Also, he, in a similar vein and tone, when asked questions which were held to be admissible, gave answers in which he said the question or the answer was unimportant. If we did a word check of his testimony when it's finally transcribed, on the word unimportant, I'm sure it would pop up on a number of occasions, and this is not one isolated thing. It is a repeated continuing course of conduct.

THE COURT: Will it be possible for you to refer to lines in the transcript? I realize the transcripts aren't prepared yet, but I mean I, at one stage or another may have one way or another to refer to what you're saying and to refer to specific answers rather than just doing so generically. Out of a concern to be careful, and...

MR. BERNSTEIN: Yes.

THE COURT: ...about how I render that decision. I know these transcripts have not been produced, but if you could at the very least refer to the date, you have someone assisting you?

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MR. BERNSTEIN: Yes, I could...

THE COURT: When a particular answer was given at an approximate time, at least it will facilitate my inquiry into the...

MR. BERNSTEIN: Yes. And I can do that. I can give you some information right now. With respect to -- I asked him on the 9<sup>th</sup> of September what skills made him marketable. His answer was, "I think I'm pretty clever." On the 9<sup>th</sup> of September he was asked in connection with being excused for an objection by the court, he said -- well, I guess while in the box or walking out of the box, he said to me to bring the book of *Last Amigo*. It includes everything we're doing here.

On September 10<sup>th</sup>, he is asked about bank account 34107 and answers "Mr. Moores, for years in every major paper. What's the secret with the damn thing?"

On September 10<sup>th</sup>, he said, "Do you recall providing funds? [sic] -- I asked whether he recalled providing funds to Mr. Moores in 1987. His answer was, "It's possible, Mr. Bernstein. Let's get one thing clear. I don't recall. I need something to refer to. This was unimportant. You wouldn't believe it."

On September 13<sup>th</sup>, he's asked about whether Bitucan received transfer of funds in October

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1988. He says, "I don't know. Between '87-93 my..." He makes this reference, I'm sure Your Honour will remember: His companies received \$27 million in consulting fees, "and I have no recollection of such small payments. It is useless to ask me. I have any -- to ask me if I have any recollection of a transfer."

On September 13, I've asked him which company he was acting for, and he says, "I don't know which company," which company he was active for. He was active for many companies. "I said it just so you understand I have no recollection."

With respect, on September 10<sup>th</sup> -- and I think he said this again yesterday. He, on at least two occasions, I have a note of it -- he may have said it more. He makes -- he repeatedly said things along the lines of when I asked him questions that he lived at -- he and I lived in different worlds. And that...

THE COURT: Do you take issue with that?

MR. BERNSTEIN: No, but even truthful things can be said with animus, Your Honour, and I don't think he was simply providing a forthright statement. I think it was a comment, a dismissive comment in connection with my -- what he considered to be my pedestrian inquiries. He said, on September 10<sup>th</sup>, referring to him being with a high level delegation from Germany and Canadian

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delegates, how people were coming from all over the world and contacting him. He was referring to premiers, and he said "I have a different life than you do, Mr. Bernstein."

With respect, I'd also ask that Your Honour consider his continuing assessment of the relevance of the Crown's questions. And notwithstanding direction to answer by the court, Mr. Schreiber repeatedly questioned the relevance of my questions, and related them back to his view of the scope of the case.

In my submission, that is indicative of a continuing concern to limit the inquiry, a continuing concern respecting incrimination and it is not, in my submission, appropriate for a witness to do this, and indeed, Your Honour on occasion had to remind him to answer the question.

Now, there were a variety of examples of this. I'll just give you a few. On September 9<sup>th</sup>, he was asked about Mr. Wolf's involvement -- not the Wolf from the Supreme Court of Canada case. At least, I don't think so. Mr. Wolf's involvement in bringing Mr. Schreiber and Mr. Moores together, and he twice commented on the relevance of that.

On September 13<sup>th</sup>, he was asked about the provisions of funds in September 1990 to

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Moore, and his response was he had difficulty with this question and Your Honour had to instruct him to answer.

On September 13<sup>th</sup>, he was asked about MBB funds to IAL, and he wondered what this had to do with MBB.

On September 15<sup>th</sup>, he was asked about his role in relation to MBB. What was his role about -- what was his role in relation to MBB, and he, at least in response to one question, said why -- he inquired why he was being asked that.

He was asked on September 21<sup>st</sup> about a series of questions respecting the souring of his relationship with Mr. Pelossi and in connection with those questions, one of his responses was "What does this have to do with things?"

I'd ask that you consider this, Your Honour: He purported on a regular basis to direct the Crown as to how to ask my questions and how to discover things. And he would often do this while leaving the stand, and he often did this with a wave of his hand.

On September 9<sup>th</sup>, he was asked a question respecting Mr. Wolf, introducing him to

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Mr. Moores and he said, "Why not read the book *Last Amigo?*"

On September 13<sup>th</sup>, he was asked about the 500,000 -- no. Asked about \$50,000 to Bitucan. This is one of -- there were two \$50,000 payments from IAL's bank account in Vaduz to Bitucan, and his response was "Don't ask me. Ask Pelossi and Stevie Cameron."

On September 22<sup>nd</sup>...

THE COURT: Just hold on. Just a minute. I'm just trying to follow you.

MR. BERNSTEIN: Okay.

THE COURT: Yes.

MR. BERNSTEIN: On September 22<sup>nd</sup>, he was asked about the \$149,000 payment which goes to Moores from the Swiss Bank Account. And his response is -- he has a problem with the question, and his response is, "I should know where the money is."

Now, these are just examples of what was a repetitive course of conduct. The problem is -- I don't know if it's a good or bad problem, Your Honour, but the problem I face is that there are so many examples of this kind of conduct that I just don't want any -- I'd asked the court not to become numb to it. After a while, it's numbing, but hostile relationships are often numbing. It doesn't make it right, or appropriate.

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Another final example in this category is that yesterday, in an express example of contrariness, he stated he was recalling a letter simply to contradict me. This was an important admission by Mr. Schreiber. He admitted receiving the letter Frank Moores' secretary sent him with Mr. Moores' in writing -- well, his accounting of the commissions on the helicopter deal. And he said he recalled it because I thought he wouldn't recall it. It's almost that he did it -- he almost recalled it out of spite. I'm grateful that he actually recalled it. I suspect, though, that he may have recalled -- may be able to recall a lot more. My point is simply that his comment in connection with this letter demonstrates hostility.

I'd like to move on to another topic in his testimony, and that topic relates to what I will characterise as shifting testimony.

On occasion, the elucidation of evidence from Mr. Schreiber on points -- some points one would have thought would have been incontrovertible -- was like pulling teeth. And it was often the case during the course of his examination, he would start with admitting nothing, then admitting a little bit, then admitting a little more, then being refreshed with documents and a little -- admitting a

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little more. And then, later on, giving an answer, which was a challenge to understand in the context of his earlier testimony.

I could go through a variety of examples of this, but I'm mindful of the time and I'll just give you a few, Your Honour.

One area of shifting testimony related to his role with MBB or his association with MBB. He has provided inconsistent evid [ph] -- well, evidence. I'll leave it to Your Honour to characterise it. But he starts with not being able to recall the initial steps of becoming a consultant for MBB, but then recalls a request from Strauss to consult for MBB.

On the scope of his role, at first he says that all he -- and this was on September 10<sup>th</sup>. On September 9<sup>th</sup>, he says he structured nothing. On September 10<sup>th</sup>...

THE COURT: I'm sorry. Say that again. I just didn't hear you.

MR. BERNSTEIN: On September 9<sup>th</sup>...

THE COURT: Yes.

MR. BERNSTEIN: ...he says he structured nothing. On September 10<sup>th</sup>, he says all he did was introduce people. And on September 10<sup>th</sup>, he says he just helped when he could. Later on, on September 10<sup>th</sup>, he recalls that he was involved in persuading to buy helicopters from MBB. And that, in general, he would become



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aware of his client's products to be sold and what politicians wanted.

Also, he then recalls providing banking services. He starts off with he structured nothing, then all he did was introduce people and help out, then he, later on he recalls persuading to buy helicopters, and then later on he recalls providing banking services, making IAL available, personally, because Pelossi was in jail and receiving calls to transfer money to GCI.

These enhanced recollections were only the result of a continuing inquiry and the use of documents to refresh memory.

He, later in his testimony on September 20<sup>th</sup>, recalls being a courier with documents, and these are documents when he's required to give an explanation why Frank Moores' documents are going from him to MBB, he says he's acting as a courier.

On the 20<sup>th</sup>, he says nevertheless he didn't really look at them that closely.

On the 21<sup>st</sup>, he recalls discussions about working towards lifting export restrictions and seeking the assistance of Sinclair Stevens to the benefit of MBB. This is on the 22<sup>nd</sup>.

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On the 22<sup>nd</sup> -- no, that was on the 21<sup>st</sup>. Sorry,  
Your Honour. On the 21<sup>st</sup>.

On the 22<sup>nd</sup>, he also admits in par, though we'd  
have to look at the transcript of exactly what  
he said, but he seemed to admit that perhaps  
or possibly he could have obtained the benefit  
of that \$500,000 in Deutschmarks he gives  
Pagani and that money, or maybe that money  
made -- some of it made it's way into the  
coffers of the party in Germany.

He, also, as a result of continuing inquiries,  
eventually admits that part of his job was to  
provide *schmiergelder*, albeit, not the main  
role. This is just one example of an area  
where it is, in my respectful submission,  
clear from the questioning that he is not  
interested in being forthright in his answers.

Another area that is his involvement in the  
financial details. Again, this is an area of  
direct overlap or part direct overlap with the  
German charges. And if you recall in  
September 20<sup>th</sup>, at first, he said there were no  
financial arrangements respecting the  
consulting. It was simply, if he was  
successful, he would get -- on a basis of an  
understanding and a handshake he would get a  
success fee if they were successful. But when  
further asked about the financial details, and  
his understanding of them in relation to the

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payment of the \$500,000 to Mr. Pagani, he does ultimately admit that one. He took the money and handed it to Pagani, and he explained that Pagani wanted it and was the boss. He admitted that he ordered that these funds be withdrawn and produced in a cheque for Pagani.

Yesterday, he gives a slightly different version of events and says that he could have taken the money from Switzerland to Germany in relation to this transaction, that he could have used the money once in a while or handed it to Pagani. When asked who had the beneficial use of this money, this \$500,000, he says it could have been him.... Even though Pagani had the right of disposal over it.

Also, yesterday, it appears that despite earlier disavowals about his level of involvement, he admits being involved and asked to become involved by the parties to the commission. That's Moores, Pelossi, and Pluckthun to resolve the commission dispute, if I can call it that, in connection with the payment of funds. But even then, in that context, he also says when he testifies that he was not interested in doing this. He asked Pelossi to deal with it, and he suggested he's not a bookkeeper.

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I make these submissions, Your Honour, in support of the general proposition, and my request that in assessing this evolving testimony, the court recognized the limited tools I had available. Maybe you recognized my limited abilities with what is available -- no, that you recognise the limited tools available to me in examination in-chief to elicit this evidence. And recognise that these tools are not sufficient to elicit the whole, whole truth.

Okay. There are two -- I could go through a few other areas of examples of evolving testimony. I'll just leave with you two quick areas. I won't go through them in detail. I've gone through them before. And then I'd just like to deal with the German documents.

Another area is the role of IAL and his role with IAL, which relates directly to matters which involve themselves in German charges, and in my respectful submission, his testimony connection with this topic is indicative of a lack of recall and of an evolving recollection.

Just to speed my submissions up, Your Honour, I'm just going to characterise his evidence. In my respectful submission, in the beginning, he minimizes and distances himself from IAL, and from Pelossi.

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As the evidence develops, he admits to having a much closer working relationship with Pelossi, as reflected in documents, and admits a much closer relationship with IAL. He admits acting on occasion for IAL in various ways. He admits instructing Pelossi who is supposed to be an independent trustee. I use that word with great emphasis on "supposed to". He admits instructing him. He admits putting MBB in contact with IAL and putting Moores in contact with IAL. He admits IAL being used as a vehicle to provide N-A's and he admits the use of his Swiss bank account as a bank account for IAL.

Now, that Swiss bank account, if we look at the opening account documents, the only person whose got authority over that bank account is him and his wife. Mr. Schabas and his wife. On it's face -- and indeed, he admits ultimately it's his personal bank account. When asked why IAL is using his bank account, he gives an answer, which I'll just leave with you: "Mr. Pelossi is in jail and they needed a bank account." I submit there were other bank accounts in Zurich IAL could have availed themselves of and that his answer is indicative of two things: an animus towards the Crown and also a desire not to incriminate himself. His answer has the affect of minimizing his involvement and control over

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IAL, which he needs to do because in the German case -- as I understand it and as reflected in the extradition record -- the money which goes to IAL, it is the position of the German prosecutors that the money which goes to IAL was his money and he should have paid taxes on it and declared it and he evaded the payment of taxes. So, he's got a problem acknowledging that that's his money.

With respect to the questions who controls IAL, we have another example of a developing answer, and at various stages in his examination, he said Pelossi exercised some control over it. Pagani exercised some control over it. He's referred to IAL and Kensington Anstalt, notwithstanding asking him on a few occasions "Who owned Kensington Anstalt?" I don't recall getting any kind of responsive to that. He has referred to...

THE COURT: I thought he did in relation to Kensington.

MR. BERNSTEIN: Who owned...

THE COURT: Yeah, Kensington.

MR. BERNSTEIN: Oh, Kensington Group. Yeah, I'm sorry. Who owned the Kensington Group? I don't know. He mentioned a Mexican person but he didn't really want to talk about that Mexican person.

THE COURT: Wasn't there a family of some sort? I'm sorry, my memory is probably deficient.

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MR. BERNSTEIN: I'll leave that one with you. He refers to ownership or control of IAL and talks about clients. He also gives evidence upon which an inference could be drawn that Frank Moores exercised some control or some interest in IAL, in the sense that he says he hooked Mr. Moores up with IAL as a vehicle for the receipt of funds from MBB. And again, he hooks MBB up with IAL in the same fashion. So, we have -- I'm seeking a limited right to cross-examine so that I can enhance the clarity of this particular topic.

All right. The last area I wish to cover is simply...

THE COURT: I'm just, I'm looking at the clock here and I'm conscious of Mr. Schabas's -- do you have a plane at a particular time?

MR. SCHABAS: It's -- yes, I do. It's at five. I've got to get back to my hotel and then, but you know, we can go another -- I'm sure Mr. Bernstein is only going to be about five or ten minutes.

MR. BERNSTEIN: Yeah. I'm just going to do the German documents.

MR. SCHABAS: Right.

THE COURT: Okay. I'm just telling you I'm conscious of it.

MR. SCHABAS: Thank you very much. Thank you.

MR. BERNSTEIN: Okay. The other area I'd like to deal with is the German documents. We have

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here in these documents -- with the exception of the one that he admitted yesterday when I said to him that he wouldn't recall, he recalled -- a series of documents which relate directly to matters which form, in part, the subject matter of the German charges, and which are material to proceedings before Your Honour. In connection with each of these documents, he had -- with the exception of one series of documents -- very little or no particular recollection. Now, I don't want to overstate it. His recollections respecting these documents were, as indicated in his evidence, and they varied. But in large measure, in my submission, what we had here was a situation where, in substance, what was happening is this. Mr. Schreiber came to this court with a message. You would say certain speaking points. On various occasions during the course of his testimony, he articulated these speaking points, sometimes without prompting, and if one compares these speaking points with certain things he said in the Press which we've seen -- and I'm referring to what was shown in court to refresh his memory -- there was a similarity in this. He had a position. He had certain speaking points. He had certain things he wanted to say.

Apart from -- not entirely apart, but there were other things he, in my respectful submission, was not particularly interested in



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discussing for reasons respecting matters in Germany. In connection with matters which related in part to that, he consistently had no recollection at all. And when I say that, we almost got into a mantra where he -- I'd ask him a question. He would say, "I have no recollection." I'd asked him whether a document would assist in refreshing his memory. If the document had his signature on it or his writing on it, which would be very difficult to get out from under, he would admit it. Otherwise, he would simply not admit receiving things which we'd proven were sent to him in Kaufering.

In my respectful submission, his failure to recall the receipt of this large bit of documentary evidence, we're not talking one or two documents here. We're talking a continuing series of important correspondence sent to his attention respecting the subject matter of these charges or which was sent to him for his action. He simply can't recall. He recalls if it's in his writing he -- it's difficult to walk away from it, he does recall. If it's not in his writing, he in large measure doesn't recall.

One of the things Your Honour will have to assess in the context of all the circumstances, is the motive for that failure to recollect. Is it the passage of time or is

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it, in part, a desire or a hostility, animus, or a desire not to incriminate himself?

With respect to the documents, we can just quickly run through them.

MR. SCHABAS: If it helps, Your Honour, we've been through it and our notes show that with respect to all but a couple of them, he doesn't remember. The answer was he had no recollection.

MR. BERNSTEIN: Right. That's my point.

MR. SCHABAS: Yeah. I'm just trying to...

MR. BERNSTEIN: And I'm saying it's not a genuine failure to recollect. It's a *Cotroni* like failure to recollect. I'm not saying it's as bad as *Cotroni*. I'm just saying it's of that ilk, in part. The issue is not -- is Mr. Schreiber -- is his answers, you know, do they amount to -- the only issue is, is it evidence of hostility, and with respect to the German documents, we have, first, the ledger.

The ledger is Document 14551. Document 14551. You will recall it. This is prepared by his bookkeeper, Ms. Lutz, in Alberta. It was obtained by the German prosecutor's office from his offices' archives in Kaufering, and it reflects, amongst other things, the receipt of funds -- there are two amounts, right? There's one for 49,990. So just pull that up on the screen there. You can see Your Honour, and you see it there, Your Honour.

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THE COURT: Gentlemen, I hear what you're saying through the.... It's obviously you're not completely finished, yet.

MR. SCHABAS: No.

THE COURT: I'm concerned about Mr. Schabas's schedule. He's going to be some time. We're not going to hear from him today, obviously. I looked at next week's schedule. We've only got two days, I think? The 27<sup>th</sup> and 28<sup>th</sup>. I'm concerned about being able to give you a decision after hearing Mr. Schabas and immediately giving you a decision. This is something important and I want to be fairly careful about it. I'll want to review, I would think, some of the transcripts which is -- I don't know. Madam Monitor, where are we in terms of the transcripts? How many days behind are you at this point?

COURT REPORTER: Including today...

THE COURT: Yeah. What's the last transcript?

COURT REPORTER: ...about nine or ten, but I've got some of them in draft format.

COURT REPORTER: So...

THE COURT: When am I or are we going to have transcripts brought up to date, including today?

COURT REPORTER: Well, I'm hoping by Monday to have at least two or three more done, but if you know...

THE COURT: My first priority is going to be the transcript of Mr. Bernstein's submissions

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to me. I'm a pretty good note taker, but still I think I'd prefer seeing his submissions and then we'll want to hear Mr. Schabas, and I may want a transcript of that. That will be priority number one for me. And then, the evidence we've heard. We're off for the week of the 27<sup>th</sup> and we start again on the 4<sup>th</sup> of October. At the very least, I'd like to be able to give you a decision certainly no later than the 4<sup>th</sup> of October, but I'm just having at this stage, some concerns that as of say noon on the 27<sup>th</sup>, I'll be in the position to say "I'm going to give you a decision tomorrow morning." I may be able to but I mean I don't know. I haven't heard from Mr. Schabas.

MR. BERNSTEIN: Sure.

THE COURT: So being realistic, I would at this point, ask you to consider how we could usefully use Tuesday the 28<sup>th</sup> if I'm still pondering the issue before us. Other than by making -- perhaps with some other evidence of some sort, and then giving me five or six days to produce a decision for you on the 4<sup>th</sup>. I see that as the most likely scenario.

THE COURT: I understand, Your Honour. I know Mr. Schabas has got to run, but if it please the court, I could talk to Mr. Schabas or Mr. Wong, and we could probably reach an understanding on calling -- like holding Mr. Schreiber down and calling other evidence...

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THE COURT: I just wouldn't want to lose the...

MR. BERNSTEIN: Either would we.

THE COURT: Let's say, for example, the afternoon on the 27<sup>th</sup> and the day of the 28<sup>th</sup>...

MR. BERNSTEIN: Right.

THE COURT: ...as I'm cogitating, so...

MR. BERNSTEIN: So, what we could do is we could hold Mr. Schreiber down. There is some other Crown evidence, which -- Mr. Hession, and there's some documentary evidence we intend tendering, and Mr. Schabas intends to make submissions on, and even if we finish the Crown's case with the exception of this, I could talk to Mr. Schabas and Mr. Wong about -- I know that they intend to call some defence witnesses in and if it please the court, I can -- do you want me to ...

THE COURT: Have you worked out this issue with Mr. Boucher, the Federal Crown? Are you still talking?

MR. WONG: Yes, I have spoken to Mr. Boucher and we have now decided to not call the two Department of Justice lawyers.

THE COURT: Okay. Thank you. Well, we'll call it a day at this point.

MR. BERNSTEIN: I think we can work it -- if Your Honour, like...

MR. SCHABAS: This is helpful to know. I mean, the fact that Your Honour is telling us we should try to figure out how to make use of a day and a half next week, and I'm sure we

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can. Mr. Bernstein has told me, I know of at least two witnesses which I think would probably take that time as long as they get people's schedules and...

THE COURT: And to make things easier for you, I have no sentences on the 27<sup>th</sup> through to 28 and I'm quite happy to start at nine-thirty both those days to move things along.

MR. BERNSTEIN: Your Honour, I know Mr. Schabas has to run, could I just have a minute?

THE COURT: Sure.

MR. BERNSTEIN: Okay. Could I just have a minute, Your Honour?

THE COURT: Madam Clerk?

MR. SCHABAS: Your Honour, we've had a big discussion and I think we can...

THE COURT: Work something out?

MR. SCHABAS: We'll do our best. It looks like we can use some, if not all of that time...

THE COURT: Great.

MR. SCHABAS: ...next Monday and Tuesday.

THE COURT: Okay. Well, then...

MR. SCHABAS: Then we'll adjourn to nine-thirty.

THE COURT: ...let's rise then at this point then if you would and we'll see each other -- is nine-thirty okay on Monday?

MR. SCHABAS: Yes, that's fine. And thank you, Your Honour, for accommodating me this afternoon.

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THE COURT: Okay. Nine-thirty Monday morning, this courtroom.

MR. BERNSTEIN: Thank you.

THE COURT: And we'll start again at that time.

MS. CHRISTIE: Just for clarity, Your Honour, could I ask then when Mr. Schreiber is going to come back?

THE COURT: Well, we're not -- I think, safely, no need to have him here next week. Right? If we're going to be doing something else then, but -- and I would suggest to you that he should be advised that he is likely required to be back here on Monday the 4<sup>th</sup> of October.

MS. CHRISTIE: Monday, the 4<sup>th</sup>.

THE COURT: But I leave that to you people, but from my perspective I don't see that he's going to be required before them, but I leave the ultimate decision in that respect to the prosecutor.

MR. BERNSTEIN: Your Honour, could I just ask Mr. Schreiber to attend and have him formally remanded to that Monday, just to play it safe?

THE COURT: Thank you. Why don't you be on your way...

MR. SCHABAS: I hope you don't mind, Your Honour, if I start to pack up.

THE COURT: ...Mr. Wong and...

MR. SCHABAS: Thank you.

THE COURT: Is that okay the 4<sup>th</sup> of October, Mr. Bernstein?

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MR. BERNSTEIN: Yes.

THE COURT: You don't require him for other purposes.

MS. CHRISTIE: Sorry, Your Honour. I caught him sleeping.

THE COURT: That's fine. Now, Mr. Schreiber, we're not going to require you until the 4<sup>th</sup> of October. We're not going to require you next week. At ten o'clock in the morning on Monday the 4<sup>th</sup> of October.

MR. SCHREIBER: Fourth of October, Your Honour?

THE COURT: Fourth of October.

MR. SCHREIBER: Okay. Thank you.

THE COURT: Okay. So you are ordered to re-attend this court at ten o'clock that morning in this courtroom.

MR. SCHREIBER: Okay.

MR. BERNSTEIN: Thank you, Your Honour.

COURT REGISTRAR: All rise, please.

COURT ADJOURNS



R v. MBB Helicopter Canada et al.  
CERTIFICATION

FORM 2  
CERTIFICATION OF TRANSCRIPT (SUBSECTION 5(2))  
Evidence Act

I, we Tracy A. Lanctin, certify that this document is a true and accurate transcript of the recording of R. v. MBB Helicopter Canada et al in the Ontario Court of Justice held at Ottawa, Ontario taken from Recording No. 364, 365, which has been certified in Form 1.

September 26, 2004

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CERTIFIED VERBATIM REPORTER

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<u>WITNESSES:</u>	<u>Exam.</u> <u>In-chief</u>	<u>Cr-</u> <u>Exam.</u>	<u>Re-</u> <u>Exam.</u>
SCHREIBER, Karlheinz	2	(cont'd...)	

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L      Leitz binder 24 with German certificate and attached document.	44
M      Leitz binder 7 with German certificate and attached documents.	46

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Transcript Ordered: September 23, 2004

Transcript Completed: September 26, 2004

Counsel Notified: September 27, 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 NOVEMBER 24, 2004 AT THE CITY OF OTTAWA

\*\*\*\*\*

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

\*\*\*\*\*

APPEARANCES:

M. Bernstein  
T. Shaw

Counsel for the Crown

P. Schabas  
T. Wong

Counsel for the Accused

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

Wednesday,  
November 24, 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.

THE COURT: Good morning.

MR. SCHABAS: Good morning, Your Honour.

COURT REGISTRAR: Please be seated.

MR. BERNSTEIN: Good morning, Your Honour.

THE COURT: Good morning, Mr. Bernstein.

Gentlemen, the first order of business I guess is to ask you whether you've received my decision in relation to Mr. Schreiber.

MR. BERNSTEIN: I have, Your Honour and...

MR. SCHABAS: Yes, I have too, Your Honour.

THE COURT: All of you have. All right. And so, I don't propose reading it out. I'm simply going to hand it up to Madam Clerk, and ask her to append it to the materials before the court.

COURT REGISTRAR: Thank you.

THE COURT: And where do you propose we go this morning? You're here Mr. Dunn?

MR. DUNN: Good morning, Your Honour. I'm here on behalf of Mr. Greenspon.

THE COURT: Yes.

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MR. DUNN: ...and Mr. Schreiber.

THE COURT: Yes.

MR. DUNN: He's asked me just to indicate for the record that -- I believe he's been in conversation both orally and written with Mr. Bernstein concerning an important engagement that Mr. Schreiber has in Toronto tomorrow, and I believe there's an agreement that if it...

MR. BERNSTEIN: No, there's no agreement. No, there's no agreement. And if you read the correspondence, you'd know that.

MR. DUNN: I have a copy of it here, Your Honour.

MR. BERNSTEIN: Well, just...

THE COURT: Anyways, gentlemen, do you want time to discuss this among yourselves before we start?

MR. BERNSTEIN: No, Your Honour. I -- I don't. I -- no, I object to -- to -- I'm sorry, sir, your name?

MR. DUNN: Dunn.

MR. BERNSTEIN: Mr. Dunn -- what I anticipate his comments will be and if I could just take a minute with Mr. Dunn, we may be able to resolve it. Okay? And I mean a minute, like, it shouldn't take more than 30 seconds.

THE COURT: Go ahead.

MR. BERNSTEIN: Okay?

THE COURT: Perhaps gentlemen, you ought to just go outside and we'll wait for you. Just

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go outside the doors there. I don't want to overhear your conversation, and I'm overhearing it. So, please, if you don't mind, just step outside.

MR. DUNN: Thank you, Your Honour.

THE COURT: Just step outside. Thank you.

[PAUSE]

THE COURT: Just while we're waiting, is it likely we are going to be needing to refer to transcripts today? We've left our cart upstairs and I didn't have it brought down by Madam Clerk, yet. This might be an opportune time to get it if you think we're going to be doing that.

MR. SCHABAS: I don't expect to, Your Honour.

[PAUSE]

MR. DUNN: Thank you, Your Honour. I would indicate to the court that in the correspondence I received, Mr. Schreiber has an important meeting in Toronto on Thursday afternoon and is more than willing to return on Friday if the testimony has not been completed by that time.

THE COURT: Thank you. In any event this is...

MR. BERNSTEIN: I'd understood the meeting...

THE COURT: ...this is where we're at. I don't know if the Crown had concluded Mr. Schreiber's examination in-chief. I have ruled that

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Mr. Schreiber should not be treated as a hostile witness, and in those circumstances, the Crown may wish to examine him further. What is your intention this morning, Mr. Bernstein?

MR. BERNSTEIN: Your Honour, my intention this morning is in light of Your Honour's ruling to conduct what I hope to be a reasonably short completion of my examination in-chief. I mentioned that to Mr. Schabas and he's aware of it. I don't anticipate that it will take that long, but of course, it's often difficult to assess. I anticipate we'll be done today. Given what I...

THE COURT: That you'll be done or that Mister -- that we'll be done, including Mr. Schabas' examination. You're saying you'll be done today?

MR. BERNSTEIN: And I understand that Mister -- on the basis of my -- and Mr. Schabas can, of course, speak for himself, but on the basis of Mister -- of my examination to date, that I covered the areas so well he doesn't intend on asking any questions. I'm just -- I'm kidding. Not about that he doesn't intend on asking any questions.

THE COURT: All right. Well, I just want to estimate time here.



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MR. SCHABAS: That's right, Your Honour.  
Subject to what Mr. Bernstein asks today, I'm hopeful that Mr. Schreiber will be able to leave by the end of the day.

THE COURT: All right. Well, that might solve all of Mr. Schreiber's problems.

MR. SCHABAS: Right.

THE COURT: In any event, I take it Mr. Dunn that he would be available in the morning tomorrow?

MR. DUNN: Yes.

THE COURT: And then he would again be available on Friday, should we need...

MR. DUNN: That's correct.

THE COURT: ...to go that route. I'm going to simply say at this point, subject to counsel's further submissions, that I'll do what I can to accommodate, Mr. Schreiber, bearing in mind that he has been in the witness box for some considerable period of time. And I, at this point, don't anticipate problems, Mr. Dunn, but we'll have to play it by ear.

MR. DUNN: Thank you for the time, Your Honour.

THE COURT: All right.

MR. BERNSTEIN: Mr. Schreiber.

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SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

THE WITNESS: Good morning, Your Honour.

THE COURT: Good morning, Mr. Schreiber. I remind you, sir, that you're still under oath.

THE WITNESS: Yes.

THE COURT: Thank you.

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

Q. I have a few additional questions for you, Mr. Schreiber, and they continue along the line of my questions when we completed your testimony last time.

Sir, did you provide any funds directly or indirectly to any public servant, to any bureaucrats after 1989, which related directly or indirectly in whole or in part, in any way, to MBB?

A. Not to my recollection. May I add something, Mr. Bernstein?

Q. Yes.

A. When we started the testimony the first day, I told you -- not an apology, but that English is not my mother language and that I will try to do my best to answer your questions directly but that Mr. Adam is here in case something is not understood right. That doesn't mean that I can always express what you say between the words or what it means in a different language. I say this for one reason: At no time -- at no time to this testimony, and not today, I intended to disrespect your position. And if you had such feeling, I would apologize. It was not my intention. I came here to be a witness. You called me. I am here to help you to find the truth, and whatever I can do

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to do so of my recollection, I will do that. You should be aware of that.

THE COURT: Bearing in mind those comments, Mr. Schreiber, if there is anything about any of the questions that Mr. Bernstein puts to you that you don't quite grasp or understand, please don't hesitate to have recourse to the interpreter who will translate the question for you.

THE WITNESS: May I add something, sir? You know, when I say something in a straightforward way like we speak in Bavaria, it may be in a different language, that it has a different feeling between the words. I cannot explain it better to you. I have this with my friends with whom are together for 20 years once in a while. There was nothing special. And then they ask in the meantime, is it clear that you mean this and this directly, because if you say something like this in here, we could understand it this way if this is what you mean?

So I do want to ask you to go to that process, but I want you to be aware, if there is something where you think I could mean it different, ask. It's not -- it's not an excuse. It's a fact.

MR. BERNSTEIN: Q. Well, sir, you're under oath.

A. Yes.

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Q. We're relying on your sworn testimony here and as His Honour says, if there is anything that you don't understand, please make recourse to the translator and if you want any question that I ask explained or words that I've used explained to you, please do that. Indeed, you've done that in the past.

A. Yes.

Q. And continue to do so.

A. So, but -- but I wanted to say it's not the direct word. It is quite often what is in between sentences and words and meanings. This is what I wanted to bring to your attention, just again. And that you know what my intentions are. I respect your job. It may be a surprise to you, I like you somehow though, but....

Q. I bet you say that to all the prosecutors.

A. I have to tell you, unfortunately, I have not too many of them around but my friends, the previous Minister of Justice, the previous Solicitor General, and Supreme Court judge, they may.

THE COURT: Let's move on, Mr. Bernstein. Thank you, sir.

MR. BERNSTEIN: Okay.

MR. BERNSTEIN: Q. Did you provide any elected public officials with any funds between 1985 and 1993, which related to a company you and Frank Moores worked for?

MR. SCHABAS: Your Honour, we went through this in some detail in the past about limiting questions to the relationship with MBB. I submit Mr. Bernstein is attempting to expand that. I do recall we had some submissions

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about the question that Mr. Bernstein asked a few minutes ago, and Your Honour had directed him as to who that question should be focussed. But this, I submit is attempting to go beyond the scope of that ruling or direction.

MR. BERNSTEIN: Your Honour...

THE COURT: I don't quite understand. The question is not repetitious. I don't have -- that's why I asked about the transcripts a little while ago. I take it you're not taking the position that this is a repetitious question, that it is a reiteration of the same thing.

What is it, specifically, that is the source of your concern? Is it the time frame? Is it the individuals? I don't know.

~~MR. BERNSTEIN:~~ <sup>SCHABAS</sup> It's not the -- it's not limited to MBB. Mr. Bernstein, you may recall, and as I recall, to the best of my recollection over a couple of months ago, wanted to ask Mr. Schreiber wide open questions about payments or alleged payments that Mr. Schreiber might have made to people, and we had submissions on that, and in order to ensure that we remained within the scope of relevance of this inquiry, which deals with MCL, the questions as to any payments were to relate to MBB, and be in relation to MBB.

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Mr. Schreiber, we've heard was a busy person. He did lots of other things. And that's not what this inquiry is about. This inquiry, as Your Honour has made the point recently in the ruling, is about this charge, and I submit that -- and I don't have the references at my fingertips. I didn't expect we'd have to get into this, but in effect this question that he's now asking is going beyond what Your Honour had ruled the question should be limited to.

THE COURT: Your question relates to payments to whom?

MR. BERNSTEIN: Public officials between '85 and '93, which -- and that related to part of the question is a company you and Frank Moores were working for. And it's not MBB, it's...

THE COURT: Sorry. By -- payments to public officials by a company?

MR. BERNSTEIN: No. Did you provide any elected public officials with any funds between '85 and '93, which related to a company -- a company you and Frank Moores were working for?

And so, the relational aspect of the question is not MBB, it's a company Frank Moores and Mr. Schreiber worked for. And my submission in response to that is, Your Honour has heard evidence of the relationship between Frank Moores and Mr. Schreiber, and the payment -- the understanding that had been reached between

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them in respect of MBB. The creation of the Swiss -- well, the use of the Swiss bank accounts. The use of IAL. Mr. Moores' relationship with IAL and Mr. Schreiber's relationship with IAL, and the deposit and withdrawal of funds out of the Swiss bank account in favour of Mr. Moores. So the relational...

THE COURT: What company...

MR. BERNSTEIN: ...aspect of it is Moores and Schreiber, not -- and the company both of them worked for, not MBB.

THE COURT: What would that company be?

MR. BERNSTEIN: Pardon me?

THE COURT: What would that company be? We've heard...

MR. BERNSTEIN: GCI would be -- it could be GCI. It could be...

THE COURT: Is there any evidence that Mr. Schreiber worked for GCI?

MR. BERNSTEIN: There's evidence of a financial relationship between Moores, GCI, and Schreiber, yes. Indeed, MBB pays a monthly retainer to GCI which is set off against amounts owing as between Moores and Mr. Schreiber in connection with the MBB deal.

THE COURT: Why don't you start by asking Mr. Schreiber if at any time he and Mr. Moores worked for the same company?

MR. BERNSTEIN: The question was "worked with". No, the question was "worked for". And when I

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say "for", I don't mean in an employment relationship.

THE COURT: Well, then you have to be quite clear. "Working for" means an employer-employee relationship or something like it. Maybe an agency relationship. That kind of thing. And sir, answer this for me, if you would, Mr. Schreiber, did you and Mr. Moores ever -- I'm using Mr. Bernstein's expression -- work for the same company?

THE WITNESS: I have a problem with that question. I really don't know what you honestly mean. When you speak about MBB, there was an agreement between MBB and Mr. Moores.

MR. BERNSTEIN: Q. I'm not talking about that.

A. Included two -- two different payments, one to, which went in retainer and one, which went to IAL. That's it. When you refer to that money? No.

THE COURT: He's saying apart -- apart from MBB, did you and Mr. Moores ever work for, during this particular time period '85 to '93, a company?

THE WITNESS: Yes.

THE COURT: Which was that?

THE WITNESS: I was the chairman for Thyssen Bear Head Industries, and Mr. Moores supported my activities in that field. But this has nothing to do with MBB in total.

THE COURT: But, did he work for Thyssen?

THE WITNESS: Hmm?



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THE COURT: Did he work for Thyssen?

THE WITNESS: Yes, he was engaged and worked for -- supported the Thyssen activities, yes, through GCI.

THE COURT: All right. Now...

MR. BERNSTEIN: Q. Did you...

THE COURT: I'm going to allow Mr. Bernstein to continue some distance in this direction, Mr. Schabas.

MR. BERNSTEIN: Q. Did you provide any elected public officials with any funds between '85 and '93, which related in whole or in part to Thyssen?

MR. SCHABAS: Sorry, Your Honour. If I might just a moment, and I don't mean to in any way be disrespectful of your earlier comment. We did go through this on September 22 and 23, and you may recall that Mr. Bernstein actually got into a bit of a mantra where he would ask, "Did you have any understanding with elected public officials in Canada or members of their staff and families or other intermediaries reached during the time period, which contemplated the provisions of funds or being hired to or retained after that period which in any way or another, even a little bit, related to MBB?"

I think Your Honour will recall that question, and Mr. Bernstein would use that phrase. And that arose from the concern that the question -- and Your Honour in fact helped

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Mr. Bernstein develop that question, that it not go into extraneous matters, and in my submission, this is doing indirectly what Your Honour specifically ruled before the Preliminary Inquiry is not to become, which is a fishing expedition into other matters.

THE COURT: What's the relevance of Thyssen, Mr. Bernstein? Do you want the witness excluded? Because I think we're getting rather far afield. So long as it related to MBB, I suppose, but Thyssen industries? Where is that leading us?

MR. BERNSTEIN: Your Honour, it's relevant for a variety of reasons. Firstly, one of the material issues in these proceedings is what Mr. Schreiber did for the money. And what Mr. Schreiber -- one of the relevant issues, as I say, what he did for the money. And we've been through this and I won't repeat it, but of course, if Mr. Schreiber used some of the money or some of the money was provided to public officials or public servants or whatever, that is material, and Your Honour has ruled that that is material to...

THE COURT: Well, I have no -- I have no problem with that, so long as it relates to MBB.

THE WITNESS: In Canada you mean, okay?

MR. BERNSTEIN: Yes. Is relevant for the determination of what he did for the money, which is to say what he did with the money is

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relevant to the question of what he did for the money and is generally relevant in terms of the nature of the arrangement. Now, it is also relevant to the issue of why he was retained, what he was hired to do?

Now, Mr. Schabas has made reference to questions and submissions which were made earlier in these proceedings respecting whether the questions which related to whether funds were advanced in relation to MBB. In my respectful submission, I've asked those questions and Your Honour has allowed me to ask those questions, and now the issue is, well, how is this relevant, which is a question of -- which comes at it from a slightly different perspective. It's as in relation to Thyssen. And as I previously made submissions, and as Your Honour has part recognized, Mr. Schreiber, it may not be entirely appropriate to break these three business initiatives down into three completely isolated independent enterprises -- and when I say these three business initiatives, I mean Thyssen, MBB, and to some extent Airbus, but for the purposes of my question, I'm simply referring to Thyssen and MBB.

The reason why I say it may not be entirely appropriate to break them down into independent things is because they occurred at the same

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time, involved the same -- in part the same people.

Indeed, Mr. Schreiber has testified that in addition to working with Mr. Moores on MBB, he worked with Mr. Moores on Thyssen. IAL was also involved in Thyssen, and indeed, the funds advanced pursuant to the Sales Representation Agreement in MBB were in part deposited by MBB into Mr. Schreiber's Swiss bank account, which he says he made available to IAL, at the same time as funds were advanced by Thyssen in a similar fashion and were pooled in that bank account. Your Honour will recall the evidence of Mr. Moores on this point where we actually go through the various deposits and withdrawals and there are MBB withdrawals, there are Thyssen -- there are MBB deposits, there are Thyssen deposits, and then ultimately there are withdrawals.

So, you have a commonality in IAL, you have a commonality in Mr. Schreiber and Mr. Moores, and the money, the actual MBB funds are pooled with the Thyssen funds. So there is an interrelationship in time, in character, and in events and indeed in funds, pooling.

In my respectful submission, the other important point I wish to make is while I accept that there needs to be -- the questions

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need to be relevant and I must meet the relevance test -- and in my submission, in connection with this particular question, given my previous submissions, I have met the relevance test but I -- I submit that Your Honour has not yet ruled -- and if I'm wrong, please, you know, I stand corrected and will act accordingly, Your Honour, but in my respectful submission, Your Honour has not yet ruled that I'm absolutely unequivocally limited only to questions which might otherwise be relevant if I add the phrase "in relation to in whole or in part by MBB."

The reason why I -- I submit Your Honour has -- I don't recall, Your Honour, absolutely limiting you to that, but in my respectful submission, on that point, I'd ask that Your Honour consider this. And that is, if indeed as Mr. Schabas submits the questions necessarily are exclusively limited and must contain a phrase "in whole or in part to MBB" or something like that, directly related one way or another to MBB, then in my submission, we have delegated to the witness a responsibility which actually rests with Your Honour at a Preliminary Inquiry, and ultimately to the trier of fact at a trial in determining what relates to what.

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Mr. Schreiber may say the payments do not relate directly or indirectly to MBB, but in large measure that his opinion or characterization of a series of very complicated events, and notwithstanding Mr. Schreiber's conclusion that a particular payment may not relate in full or in part to MBB, it would still, as a matter of law, be open to a trier of fact -- and in this case, Your Honour -- to determine that indeed the payment was indeed as a matter of fact related to MBB even if Mr. Schreiber said it wasn't.

I say that because it would be -- it could be open to a trier of fact to conclude notwithstanding Mr. Schreiber's denial that having regard to the amount of the payment, the manner of the payment, its timing, vis-à-vis a variety of other relevant facts. Its relationship to other material events and other material parties that indeed was related, notwithstanding Mr. Schreiber's...

THE COURT: Well, that's covered by...

MR. BERNSTEIN: ...denial.

THE COURT: That's covered by your question to Mr. Schreiber when we're talking about MBB, which is the fraud that occupies us, whether there were any payments made to elected officials, et cetera, or functionaries directly or indirectly. And what you are attempting to

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do in my view is simply asking the same question but in another way.

You have your answer in relation to the indirect provision of funds, with a negation -- with a negative answer, and it seems to me you're simply asking the same question again. You're saying, "Well, yes. Now, perhaps -- we don't know this, but through the instrumentality of the Thyssen arrangements, the -- somehow MBB interests were being looked after. Well, that is covered by the expression indirectly in all of your previous questions, and I just want Mr. Schreiber to understand that. And so, in that sense, it seems to me to be a reiteration of the same question.

The issue that occupies me is a determination of whether there was a fraud by MBB through its subsidiary against the Canadian government.

Now, it seems to me that what you may be trying to do, as well, in an indirect way, is attempting to elicit similar fact evidence about what this gentleman may have done in relation to other corporate interests. And if that is so, then there is a procedure to be followed. Certainly, it is preceded by a statement that you seek the introduction of similar facts evidence. If that is not the situation we're labouring under, it appears to

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me that this is a reiteration as I've said, of the same question in just a different way, and we're splitting the hair in -- in so many parts that it really does not advance the purpose of this inquiry.

MR. BERNSTEIN: I understand. Your Honour, okay, can I just make three quick points, and I'll move on. Just so that -- I understand Your Honour's position. I just wanted to make sure the court understands my submission, and I'll move on.

In substance, it has three aspects to it. The first aspect is that in limiting the question in whole or in part, we delegated the responsibility of assessing whether it's related or not to the witness, and in my submission, it's something for the court. I'll give an example.

If funds come out of the Swiss bank account where MBB money is pooled with Thyssen money, and they go to a -- this is just a completely hypothetical. They go to a public -- either a public official or a public servant.

Mr. Schreiber may say, "No, that doesn't relate to MBB. That relates to Thyssen." Unless we can ask the question whether funds actually went, and then ask the question what it relates to and why you say it relates to Thyssen and not MBB, then we don't have the evidentiary



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basis to determine whether indeed it relates to one or the other, because we don't know why he says it relates to one or the other, 'cause we don't know whether it's in a payment. So unless we ask whether there was a payment, and why you say it relates to one or the other, we don't have -- the trier of fact doesn't have the evidentiary basis to assess whether independently a jury properly instructed could conclude that indeed it relates in part with MBB, because the evidence has never been elicited. That's my point number one.

My second point is, in my respectful submission, to ask the question "Is it related?" deals with something from the present into the future, which is to say it's relevant to the issue of whether the funds were advanced to, in part, be provided to public officials or private officials -- or public servants.

There is another issue, and the issue is it could very well be that Mr. Schreiber was hired, because to use his terminology, the *schmiergeldt* had already been provided, though to use his terminology, the wheels had already been greased.

For example, if the wheels had already been greased in connection with Thyssen deal or some other deal, then it may very well be that

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Mr. Schreiber was retained and hired and what he actually did was for something not that he was going to do, but for something which he had already done, that Mr. Schreiber's cache was that he already had -- or he had or represented himself to have people already in his pocket. And it -- to use his terms, the -- the greasing, the *schmiergelding* of these people had already happened in connection with another deal. That fact may still be material to why indeed he was retained and what indeed he did for the money, especially when it was done in the context of the same group of actors, and the same bank accounts or similar related bank accounts and the same use of IAL.

The third point was just -- and on this point.... Just to quote from -- what am I quoting from? A German.... My submission is simply that it may very well be that a dependency is created and the asset in part that's brought to the table is a pre-existing dependency as compared to the -- and it may very well be that these questions relate to that continuing dependency.

On the point of relevance, it is, of course, trite to recognize and acknowledge that the test for relevance is indeed a lower one, and as I understand the law on this, of course, trite law, that the first issue is what is

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material, what is the issue? And then the issues are straightforward. And the second question, the test of relevancy is, does the evidence make a proposition the Crown -- a relevant proposition more likely than not?

I appreciate what Your Honour has said, and those are my submissions in connection with the question.

Your Honour, I've obviously had some time to draft some questions since last time we were here and there were some other questions that relate to MBB that I was intending on asking, but which relate to MBB but are drafted in a slightly different way than the formulation of...

THE COURT: All right. We'll just to go back to the issue that we embarked on. What concerns me, I suppose in a sense, is the collateral aspect of what it is that you seek to do and you -- this is your own witness, of course, and the witness has, essentially, closed the door in relation to a particular avenue of inquiry by saying, indirectly, no, I never provided any funds or any company I was associated with, provided funds to this list of individuals, and that it seems to me that by doing what it is that you propose to do, that you are collaterally attacking your witness's own assertion. Rather -- and I understand what you

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say when you say, well, we want the courts to make the decision, not the witness. And that certainly affects the trier of fact at a trial, that at this point it appears to me that the answer has been given and you may -- the Crown may be unsatisfied with that answer, but what you propose at this point is a -- is a collateral approach to undo the witness's previous assertion.

It seems to me that you're bound by that assertion and that you have to live with it.

In any event, there is remoteness to the theory that you advance which is quite some distance removed to MCL's actions in relation to this particular contract.

I've said, I think, in my ruling, that I'm satisfied -- subject to further submission -- there seems to be an abundance of evidence that there was a -- that there were commissions paid and that these commissions were concealed and secret. And so, that being said, it doesn't appear to me that this particular form of questioning advances the Crown's purpose nor does it assist the court in coming to a decision as to whether or not there ought to be committal. And so, for that reason I'll ask you to move on, Mr. Bernstein.

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MR. BERNSTEIN: Okay. Your Honour, it may very well be that your ruling either directly or indirectly will form a variety of additional questions I'm about to ask, and Your Honour I -- I want to complete this in as expeditious a way as I can...

THE COURT: Sure.

MR. BERNSTEIN: ...and indeed I respect and I think I understand Your Honour's ruling. In the circumstances, Your Honour, what I would propose to do is simply -- because they are different and they approach it in a slightly different way -- and I have arguments to make in support of each of them.

THE COURT: How many are there?

MR. BERNSTEIN: There are not that many.

MR. SCHABAS: How many?

MR. BERNSTEIN: But what I would propose to do is simply ask the question and then you can say -- it will become clear to me the full -- the full impact of -- they are slightly different. I have approached this in a different way. All right.

MR. BERNSTEIN: Q. The next question I'd ask is, have you ever directly or indirectly provided money whose original source was bank account 18679 -- which is the Swiss bank account we've heard about -- to a Canadian elected official or a former Canadian elected official?

So the tie in the relationship is the money comes out of Swiss bank account 18679, which is the account MBB's funds are deposited into. It is the account which

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Mr. Schreiber says he lent to IAL or -- and that's...

THE COURT: But you're not limiting it with the usual qualifier in relation to MBB. That related directly or indirectly to MBB.

MR. BERNSTEIN: That's right. The tie in is the account is -- the account from which the funds were sourced was the account from which MBB deposited its money into, which is an account in the name of Schreiber but which Mr. Schreiber says he was used as a facility by IAL.

And in my respectful submission, this question is also in addition to other arguments I've made respecting it's relevance, is relevant to the issue of Mr. Schreiber's relationship and control over IAL.

THE COURT: And it's also not limited in time, Mr. Bernstein.

MR. BERNSTEIN: Between '85 and '93.

THE COURT: Mr. Schabas?

MR. SCHABAS: Well, Your Honour, in my submission it falls into exactly the same category. He's asked the witness the question previously, many times, and many different ways whether payments related even a little bit, indirectly or directly to MBB. And he's got his answer. And he's now coming at something different, which is -- he's coming -- he's trying to do it differently. He's trying, in my submission -- I think Your Honour put it

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well when you -- I'm not sure if you said it was a form of cross-examination but in my submission this is a form of cross-examination.

The Crown doesn't like the answer they got from their own witness and so Mr. Bernstein is proposing to work around it and get into extraneous areas that have only the purpose of trying to undermine the witness's previous answer. I submit it should not be allowed to do that.

As well, Your Honour, it -- and I think you eluded to this, too, but it relates to the point you made in the ruling that you provided us with over the weekend, which is that this is a fishing expedition. This is a fishing expedition about other things. They're getting into extraneous areas about potentially -- Mr. Bernstein simply asserted that payments may have been made or were made relating to, for example, Thyssen. So, they're into a fishing expedition, and to see what? To see where money -- if money was paid and where it went afterwards, when he's already asked that question relating to MBB.

I submit the same ruling that Your Honour just made should apply to this question.

THE COURT: Mr. Bernstein, I have no problem with the question so long as it's limited to

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MBB or MCL directly or indirectly, but to go beyond that, I believe, is not appropriate. You may have asked that question, and I quite frankly don't recall the last time in this way. If you want to limit it to MBB, MCL, or things we're talking about, that's fine, but I don't recall, quite frankly. I can't comment. If you asked the question specifically relating to account 186719...

MR. BERNSTEIN: I think -- I'll check with -- I think I have in substance, if it's limited to MBB in whole or in part in any way, I've in substance answered -- asked -- asked the question which would cover that. Have I? I may not have covered it all the way to '93. I may have stopped at '89.

MR. BERNSTEIN: Q. So, have you directly or indirectly provided money whose original source was bank account 18679, to a Canadian elected official or a former Canadian elected official between '85 and '93, which in whole or in part directly or indirectly in any way related to MBB?

MR. SCHABAS: Sorry, Your Honour. The question has been expanded to a former Canadian elected official.

THE COURT: That was the original question.

MR. BERNSTEIN: Yes.

MR. SCHABAS: Sorry.

THE COURT: I think the question is properly put. I'm willing to let Mr. Bernstein put it. Do you understand the question, sir?



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THE WITNESS: Yeah, but the more this discussion goes on, the more I am confused. What I'm able, when you say directly or indirectly, and I tried to explain this to you. From 1985 on, I was the chairman for Thyssen company, which has in other companies in Canada more than 3,000 jobs. Big companies. And I am -- my job was to establish in Nova Scotia a new factory. All this was based and this should come out very clearly on a discussion between the previous minister of economy and trade, Canada, Sinclair Stevens and Mr. Strauss, and the -- the Bavarian Premier. And also, Mister -- I think his name was McPhail. He's an ambassador, asking for investment in Canada, and I told you before, this was very normal and I attended many meetings and I had the same dealings with Mr. Bourassa or with Mr. Lougheed or others. So many nonsense must be broadcasted in the meantime, that my problem was that I never spoke to the media and this is why I became mysterious. My lawyer said don't speak to them. This is why I'm a mysterious guy.

For me, it's all very simple. I was from 1985 on, engaged from Thyssen to do that job. And I did it with the greatest pleasure, and if I could have done the project I would be happy. It's a \$360 billion event, and if you would

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give me the project tomorrow, I would start it right away again.

So, it's not that Mr. Schreiber did anything. The governments decided. If you want -- today, when I looked at the whole thing, I'm a victim between these politicians on the left and on the right, and you may be the same without knowing.

Then I got a letter from the RCMP after eight years, intensive investigation. There's no wrong-doing regarding me. There's only one thing on MBB.

Now, you have the bank accounts and everything you got. The last time you asked me what did Mr. Moores do with his money, and I told you I'm not his bookkeeper and I don't hold his purse. Now, I tell you the same thing. It is right what you say, and I see where the problem is for you, but we have the same problem. If money was sent from IAL through that account, through the -- through the Frankfurt account for Mr. Moores, it could very well be that at the same time -- and this came to my mind during this discussion with His Lordship here this morning. It could very well be that at the same time, money came from different sides. I don't recall this, but

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theoretically it could be and you would know if it is in the -- in the bank accounts.

Now, for the German -- to make this very clear, for the German law, what the Bavarians did with the Minister of Finance, it was called for help for donations. It was only necessary that it goes to somebody outside the country. In this case, to make it very clear to you again, it was an agreement between MBB in Germany and GCI, Mr. Moores.

The job I did in this was I introduced MBB to Mr. Moores, and we discussed this in length. So then, the income was shared from the retainer with Bitucan and Mr. Moores. Now, you saw very well that the questions on figures regarding IAL came from Mr. Moores to me. Not from me to Mr. Moores. So Mr. Moores had a very clear deal with MBB, and I have no doubt that Mr. Moores had no problem to -- to -- to say to you the same thing. But now, given the fact in his account is money from Thyssen from MBB or even from Reimerschmid or God knows from whom. And now, this money goes to GCI out of Mr. Frank Moores account in Switzerland. How would you or I or anybody else on earth know what he did with that money? On the dollar bills was not the name MBB or Thyssen? It goes to an account. Yes,

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MBB or Thyssen? It goes to an account. Yes,

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I agree with you. But nobody can give that answer.

But on top of this, that is a Canadian side and I had nothing to do with this. The RCMP very much examined my previous general manager, Mr. Birkner, and all these questions MBB and what -- what donations gave Mr. Schreiber, you have it in length, and I come to another point today with that.

THE COURT: Mr. Schreiber, your answer is not entirely responsive to Mr. Bernstein's question. It's not a trick question and it doesn't require an answer in relation to things that you don't know about.

THE WITNESS: Yes.

THE COURT: Mr. Bernstein is not asking you about what Mr. Moores may have done with the money. He's asking you: Did you knowingly directly or indirectly provide money to an elected official during this particular time period or a former official out of Account 186719 that was in any way related to MBB or MCL directly or indirectly? I know it's a long question, but...

THE WITNESS: Yeah.

THE COURT: ...essentially, we're asking about your knowledge and what you did. Not about what anybody did. I said "we're".

Mr. Bernstein is asking you that question.

It's not a trick question. It's a

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straightforward question, and it relates to your knowledge of things. If you don't know what other people did, that's fine. You're not expected to know, but do you have any knowledge of any payment that you made directly or indirectly...

THE WITNESS: I apologize, Your Honour. Your right. I just tried to help.

THE COURT: Yes.

THE WITNESS: You are right. No. The answer is no.

MR. BERNSTEIN: Q. And have you ever given an elected government official or a former elected government official, who was a member of cabinet, at the time the helicopter contract was entered into, July -- June of 1986, cash over \$5,000?

MR. SCHABAS: Sorry, Your Honour. If that's the end of the question, I would submit that that's not focused enough based on our previous exchanges, since it's not limited in time and it's not -- there's no reference to MBB in it at all.

MR. BERNSTEIN: Well, the reference to MBB is -- the question elicits -- the question elicits a response which relates to individuals who were in cabinet at the time the MBB contract was let. Whether he directly or indirectly had given any of those individuals cash of over \$5,000...

THE COURT: When? When?

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MR. BERNSTEIN: Okay. I'll start with, while in office. While in office.

THE COURT: Well, while in office, what, in 1999 or....?

MR. BERNSTEIN: If I can just...

THE COURT: It's not likely the same people...

MR. SCHABAS: You might as well be asking him if he just ever gave anybody money.

THE COURT: No, well...

MR. BERNSTEIN: No, but between...

MR. SCHABAS: That's the question.

MR. BERNSTEIN: While in office between '85 and '93, the end of '93...

MR. SCHABAS: And Your Honour, my submission is...

THE COURT: Well, he hasn't -- have you finished? I'm sorry.

MR. SCHABAS: Sorry.

THE COURT: All right. Related to MBB. I mean...

MR. SCHABAS: Well, the relationship...

THE COURT: ...otherwise it's wide open. Sure, maybe he did, but what's the relevance of that?

MR. BERNSTEIN: The relevance -- if he's given a member -- someone who was a member of cabinet, cash over \$5,000 while in office, and that this person was in cabinet when the MBB contract was led, in my respectful submission that's a relevant question.

THE COURT: Okay.

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MR. BERNSTEIN: And I don't -- and for, you know, I -- I -- that's a very, very relevant question. Indeed...

THE COURT: Okay. I'm tempted to that view, but I'll hear from you, Mr. Schabas.

MR. SCHABAS: Well, Your Honour, in my submission it's been asked and answered. He has asked repeatedly whether Mr. Schreiber has made any payments to elected or formally elected officials, any money related to MBB. And now, Mr. Bernstein is simply saying, "Well, let's find out about anything else." And in my submission it's exactly the same problem as exists with the other questions. He's asked the questions. He's got the answer. He's had the answer given repeatedly, and in my submission it's just -- he's either trying to undermine his witness, cross-examine his witness, or go on a fishing expedition to look for something else.

THE COURT: Yes. All right. Show me the question. Show me the answer.

MR. SCHABAS: Well...

THE COURT: Easy for me say, harder for you to find. Let's -- let's go to that question. You say the question has been asked before.

MR. SCHABAS: Well, for example, the last question that Mr. Schreiber was asked, did you knowingly directly or indirectly provide money that was in any way related to MBB to an elected or former elected official who was in

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any way related to MBB during that time to an elected or former elected official? And the time period of the last question...

THE COURT: The same time period.

MR. SCHABAS: Right. And Mr. Schreiber said no.

MR. BERNSTEIN: This is a different question.

MR. SCHABAS: No, it's not.

THE COURT: Well, the other one was "whose source was 186719."

MR. SCHABAS: Right. And -- and previous questions.... Well, I'd like to take a moment, if I need to, to find those questions because we would -- there were numerous questions that were given on September the 24<sup>th</sup>.

THE COURT: Sure there were, yeah. And I'm just asking you -- I'm not challenging you, Mr. Schabas.

MR. SCHABAS: Yes.

THE COURT: I'm just saying, "Refresh my memory as to what those questions were."

MR. SCHABAS: All right.

THE COURT: I don't have my transcripts here. They're still upstairs.

MR. SCHABAS: We can pull them up, Your Honour, but it might take a couple of minutes.

THE COURT: Well, this would be a good time for the forenoon break in any event, gentlemen, and we'll start again after the break. Thank you.

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



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R E C E S S

(11:20 a.m.)

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

(11:54 a.m.)

COURT REGISTRAR: Court is now reconvened.

Please be seated.

THE COURT: Okay.

MR. BERNSTEIN: Yes, Your Honour, we've reviewed the transcripts from when Mr. Bernstein asked the questions that talked about payments which related even a little bit to MBB, and they are largely on September 22<sup>nd</sup>, beginning -- at least in the electronic version...

THE COURT: See if you can pull that out, Madam Clerk. It's at the right-hand side of the cart there. 22<sup>nd</sup> of September.

MR. SCHABAS: Right, and...

THE COURT: They may not be in chronological order because I played with them this week.

MR. SCHABAS: The ones I'll take you to are September 22<sup>nd</sup> and 23<sup>rd</sup>. And...

THE COURT: Okay.

MR. SCHABAS: Now, we're going to run into a problem because I think my page numbers -- because I've got the electronic version -- do not correspond with the page numbers on the hard copy.

MS. LYTWYN: No, they should be.

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MR. SCHABAS: Should they?

MS. LYTWYN: Yeah.

MR. SCHABAS: At least that's been my experience from time to time in the past, but if you go to page 85...

THE COURT: On the 23<sup>rd</sup>...

MR. SCHABAS: On the 22<sup>nd</sup>. And let's see if... if that begins with a statement from "THE COURT."

THE COURT: The answer is yes?

MR. SCHABAS: And the answer is yes. Great.

THE COURT: Yes. We're on the same page.

MR. SCHABAS: Okay. Now, we're on the same page, so far anyway, literally. Towards the bottom of the page, you'll see Mr. Bernstein asks a question which is the type of question we saw or we'll recall him asking repeatedly in various forms about: Did any of your clients provide any elected official, Canadian elected official with money between '85, '85 and '89, apart from a donation, with money which in whole or in part even a little bit related to MBB?

And Mr. Bernstein asked similar questions of that sort over the next -- there was submissions on that one, and then when we get to page '88, we see Mr. Bernstein asks a series of questions. '88 and '89, all of these questions relating to, for example on page 89, "did you directly or indirectly provide any

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family members of elected officials with any money between '85 and '89?

THE COURT: Well, my understanding is that Mr. Bernstein wants to expand that question to include '93 and wants it unrelated to MBB...

MR. SCHABAS: Yes.

THE COURT: ...just at large.

MR. SCHABAS: Yes.

THE COURT: Is that -- am I misstating it?

MR. SCHABAS: No. That's right, Your Honour. And I don't want to go through all of these, but if we go to page 110 of that transcript, you'll see that Mr. Bernstein about line 15 of that page, it begins with a question, "Have you hired any elected Canadian officials who -- who were part of the government in '85 to '89. Were part of the government in '85 to '89, so that links us back to what he's now asking, which is to direct it back to people who were MPs at the time, whether he'd hired them.

And then you'll see at the bottom of page 110 and 111 when he asked that question, there's been an exchange about -- with Mr. Schreiber about Mulroney. In my submission, he's getting -- he's getting now more directed to people who are members of the government from '85 to '89.

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And then, if we go to September 23<sup>rd</sup>, we see him asking that. Specifically, the very first question of the day: Did you have any understanding whether elected public officials in Canada or members of their staff or families or other intermediaries reached during the time period, reached during '84 or '85 to '89, which contemplated the provision of funds or being hired or retained after that period?

So, it's the provisions of funds or being hired or retained after that period, which in one way or another, even a little bit, related directly or indirectly to MBB.

So, in my submission, Your Honour, he had already asked Mr. Schreiber questions about related to people who are members of the government, members of the cabinet, during the time period of the MBB contract, and he's simply trying to ask the question in a different way this time, because he didn't like the answer.

In my submission, for all the same reasons that I have asserted or submitted previously, I submit that he shouldn't be permitted to pursue this line of questioning.

THE COURT: All right. Mr. Bernstein, I'll make a comment and then I'll ask for yours, please. If you want to -- I wish you had done it the

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first time, but you didn't, but if you want to expand the period to '93, I have no problem with that. But I want it related to MBB or I'd like it related to MBB. Otherwise, we're just opening up a field of inquiry, which in my view is too broad.

So, if you want to put the question again to Mr. Schreiber, and this time expand the period from '84 to '93, so long as it is qualified to relate directly or indirectly to MBB, I'll let you put it, but if we go beyond that and simply make it a wide open question, I have great difficulty understanding how that is of assistance. I invite your comments.

MR. BERNSTEIN: In my respectful submission, the question as posed, which has as its route the provision of funds to a public official while in office who was part of the cabinet when the helicopter contract was led, is on its face a relevant question, which on its face as a matter of law and logic is sufficiently related without adding the words related in whole or in part to MBB.

I don't want to repeat -- I won't repeat my submission, but it relates to the dilemma we're having here, which is in my submission, the issue of what's related to what is really a legal issue to be determined by the trier of

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fact on the evidence and the available inferences, and we've sort of -- and not in these circumstances be necessarily delegated to the witness. In my submission, whether -- because it is in office, and it's the very person, the very group of people who let the helicopter contract. And that is sufficient -- those markers are sufficient markers to meet the test for materiality and relevance without adding the terms related in whole or in part to MBB. The "related in whole or in part to MBB" is satisfied by limiting the question to cabinet ministers in office. No. To public officials in office and by further limiting the question to a smaller set of people, people who were in cabinet when the contract was let.

I hope I've persuaded you, but....

THE COURT: Well, it'd be nice and it'd be interesting to know the answer but it is for general interest and perhaps for another investigation, but we're dealing here with not an unsophisticated witness and a witness as I've indicated who in my last ruling, who understands quite clearly the meaning of perjury and who is mindful that he does not want to perjure himself even accidentally. Think of the question as put, and is limited to directly or indirectly MBB. It achieves the Crown's purpose. The witness is warned of the -- as I say, this is not an unsophisticated

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witness -- the purport of those words, and if he chooses to answer in a particular way, he does so deliberately in knowing what the consequences are. I don't think it advances the Crown's case to inquire into other payments to elected officials who are in office in relation to matters unconnected to MBB. It is true that the tribunal may have to live with the answer, but then that's the way it always is, and to make it as broad as you propose to make it, Mr. Bernstein, I think is asking too much of the court, and I ask you to limit it.

I'll allow you to ask the question. Limit it to MBB, but I'll allow you to expand the time period to '93 if that's what you wish to do.

MR. BERNSTEIN: I understand, Your Honour.

SCHREIBER, KARLHEINZ: PREVIOUSLY SWORN

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

Q. I then ask you, sir, did you provide any elected officials who were members of the cabinet at the time the MBB contract was let, in June of '86, between 1985 and 1993, while in office, directly or indirectly any funds which related in whole in part in even a small way, to MBB?

A. No.

Q. Did you provide any members and any former elected officials who were members of the cabinet when the

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helicopter contract was agreed to, which is to say in June of 1986, with funds either directly or indirectly which were in whole or in part related to MBB, after they left office?

So the question is, did you give funds either directly or indirectly to any former politicians after they left office who were part of cabinet when the helicopter deal was agreed to, which is June of 1986, after they left office, which in whole or in part, directly or indirectly related in any way to MBB?

A. No.

Q. Did you provide.... Okay.

MR. BERNSTEIN: Okay. Your Honour, in view of your ruling, I have a series of questions which I'd ask which are similar to questions previously asked in accordance with your ruling, but in a sort of more ordered way cover the period from '90 to '93. So, they are in accordance with your rulings, as I understand it, but they deal with this second period, '90 to '93. All right? And I'll just -- I think I can anticipate the answers, but I'll just sort of run through the questions and I'll do that now.

MR. BERNSTEIN: Q. Did you directly or indirectly provide any company or intermediary with money between 1990 and 1993 which in whole or in part even a little bit related to MBB which was ultimately for the benefit of an elected Canadian official or public servant or any official staff member or any member of their family?



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A. No. On top of this, I don't even know whether there was business with MBB between 1990-93. I have no recollection. I told you I was not involved in that deal, but if there have been any payments, I don't recall. I thought it was 1986 was when we started out.

Q. Did you directly or indirectly ask or assist Frank Moores to your knowledge or any other person or company or trust or any other entity in providing elected Canadian officials, public servants, members of their staff or families or companies, or intermediaries for their benefit with money between 1990 and 1993 which related in whole or in part, even just a bit with MBB?

A. No.

Q. To your knowledge, did any of your clients provide any elected Canadian officials, public servants, members of their staff or families, or companies, or intermediaries for their benefit with money between 1990 and 1993 apart from a political donation for which a receipt was obtained with money which in whole or in part, even a little bit, related to MBB?

A. When you speak about my clients, to whom are you referring?

Q. Any of your clients.

A. I have a problem with that question. What does other people to do with MBB?

Q. Can you give me an answer, please?

A. Well, the answer is...

THE COURT: We're not asking you to speculate, sir, or tell us something that you don't know, but to your knowledge...

THE WITNESS: No.

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THE COURT: ....did you ask...

THE WITNESS: No.

MR. BERNSTEIN: Q. Did you ever tell anyone that you had done this?

A. I don't recall it. Why would I?

Q. Did you directly or indirectly provide any elected public officials or public servants or their families members or companies or their political parties with gifts over \$100 between 1990 and 1993 in order to assist MBB?

A. You mean in Canada?

Q. In Canada.

A. No.

MR. SCHABAS: Your Honour, we're getting a little far afield now in my submission. Gifts long after the event. In my submission, how far does this have to go on with these questions?

THE COURT: I'll let you ask this question, Mr. Bernstein, and then I'll address how many more you're going to be asking. I was of the...

MR. BERNSTEIN: I've only got two more.

THE COURT: Gifts over \$100.

THE WITNESS: No.

MR. BERNSTEIN: Q. Did you directly or indirectly provide any elected German official or public servant or their family members or companies in which they were involved in or their political parties with money between 1990 and 1993? All right. I'm going to rephrase that question.

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MR. SCHABAS: Okay. Then, I'll sit down.

MR. BERNSTEIN: Q. Did you directly -- I'll try again. Did you directly or indirectly provide any elected government officials or public servants who were involved in MBB or their family members or companies that they were involved in or their political parties with money between 1990 and 1993?

MR. BERNSTEIN: Now, Your Honour has proved that question in substance for the period '85 to '89, and indeed Mr. Schreiber has provided -- has answered it yes, and sort of given a -- some detailed answer to it. I can take you to the transcript of that, Your Honour, if you'd like and it's at...

THE WITNESS: As I recall, I think you asked me that, and I said it could be.

MR. BERNSTEIN: Q. Well, you gave -- not just "could be", you gave a lengthy answer, Your Honour, and that's at page 94 and following of September 22<sup>nd</sup>, and it's -- the answer is, you know, quite detailed and is in the affirmative.

THE COURT: Where is the question?

MR. BERNSTEIN: The question is at -- I assume it's at 93. The question is, "Let me ask you, did you directly or indirectly provide any elected German official with money..."

THE COURT: That wasn't the question you've just asked. You said "any elected government official, public official." You didn't say MBB -- a German in your second question. When you

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said, "I'm going to rephrase it," you rephrased it. I thought you left out "German officials".

MR. BERNSTEIN: No, I thought I put in German officials.

THE COURT: No. You did the first time, but you didn't the second time.

MR. BERNSTEIN: All right. I'm sorry, Your Honour. I meant to do the exact opposite. I thought I had left it out the first time and put it in the second time. So, I'll just ask the question again, all right?

THE COURT: Would you, please? Thank you.

MR. BERNSTEIN: Q. Did you directly or indirectly provide any elected German officials or public servants involved in MBB or their family members or companies in which they were involved in or their political parties with money between 1990 and 1993, which is in substance, Your Honour, the same...

THE COURT: German. German official.

MR. BERNSTEIN: German.

THE COURT: Yeah.

MR. BERNSTEIN: German.

THE COURT: So the same question, but you're going from '89 to '93, now.

MR. BERNSTEIN: Yes.

MR. SCHABAS: Your Honour, could I just have a moment?

THE COURT: Yes.

MR. SCHABAS: Well, Your Honour, I -- I don't know whether we got into this at all from my quick glance of those pages of the transcript,

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it doesn't appear that the submissions were made as to what the relevance was of...

MR. BERNSTEIN: Yes, there was.

MR. SCHABAS: Well...

MR. BERNSTEIN: Yes, there was.

MR. SCHABAS: Okay. Well, if you'd like to direct me to it, Mr. Bernstein. Don't get snappy, let's just find it. I'm flying a bit here and we're trying to find it. But my concern, Your Honour, is getting awfully far afield when we're talking about Germany and what relevance that could have to this case.

THE COURT: That's fine. But we've been through this before and we've been through it in relation to a particular time period, '85 to '89. Mr. Bernstein tells me he's only got two questions to go. This is the penultimate. There'll be a last one and then that'll be the end of it.

MR. SCHABAS: All right. Well, you have my point.

THE COURT: So, it's the same question except it's for '89 to '93, and I'm not going to revisit whatever the argument may have been in that transcript.

MR. SCHABAS: My only -- I don't recall. If it was argued and Your Honour made a ruling, that's fine. I don't recall that there was one. I could be mistaken.

THE COURT: Well, there was a lot of -- there was a lot of discussion, but I'm going to let

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Mr. Bernstein go ahead. Put the question.  
You've put the question. Can you give us the  
answer, sir? Do you want it put to you again?

MR. BERNSTEIN: Q. Do you want me to do it  
again?

A. Yes.

Q. Okay. It'd be my pleasure. Do you  
directly -- did you directly or indirectly provide any  
elected German -- German officials, elected German  
officials, or German public servants involved in MBB or  
their family members or companies which they were involved  
with, with money between 1990 and 1993, or their political  
parties.

A. Related to MBB?

Q. No.

MR. SCHABAS: Yes.

MR. BERNSTEIN: Q. No. The question I asked  
was: Did you directly or indirectly provide any elected  
German official or public servant involved in MBB or their  
family members or companies in which they were involved in,  
or their political parties with money between 1990 and  
1993?

THE COURT: I just take it Mr. Strauss that he  
was still alive then. I don't recall.

MR. BERNSTEIN: That was the -- the answer  
last time related to Bitucan, related to  
Strauss, related to Strauss's sons...

THE WITNESS: Yes, and I said -- I said, yes,  
in that time frame.

MR. BERNSTEIN: ...related to CSU.

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THE WITNESS: In this time frame, I -- I have a problem to answer your question.

MR. SCHABAS: Just a minute. Your Honour, the questions before all had to relate to MBB. I mean we've heard the question asked a whole bunch of different ways.

THE COURT: Well, they're people -- they are MBB people. That's what he's saying, people who were...

MR. SCHABAS: Well, he's asking about payments...

THE COURT: ...who were involved with MBB.

MR. SCHABAS: ...payments to public officials...

THE COURT: Who were involved with MBB.

MR. SCHABAS: ...who were involved or that.... And my submission is that the payments should relate in some way to MBB.

THE COURT: To the helicopters.

MR. SCHABAS: Yes. And to the helicopters.

THE COURT: Well...

MR. SCHABAS: And that's not so narrow here...

THE COURT: No.

MR. SCHABAS: ...the question he just asked, and the question that was asked before, Your Honour, we didn't get into it but Your Honour directed him to make it more specific on September 22<sup>nd</sup>, so that it would relate to MBB and MBB products. And Mr. Bernstein is going beyond that. This is on...

MR. BERNSTEIN: Well, the discussion follows...

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MR. SCHABAS: There is an exchange right up to page 104 with Your Honour saying that...

MR. BERNSTEIN: No.

~~MR. SCHABAS~~  
~~THE COURT:~~ ...expressing concerns about the relevance, if it didn't relate to choosing an MBB product, for example.

THE COURT: I'm going to allow the question. You said, "I have problems with that question," and you were going to expand on that.

THE WITNESS: Yes. I -- I try to explain it. When you speak about somehow related to MBB, MBB was government owned and had, at different times, different board members, and consequently different family members. So when you speak about the time frame in the '90s and about MBB members, there might be so many people I had business deals with. Even so they were with MBB or like the Strauss family or the -- what's the name. Strobel family. The guy who was the Minister of Finance and the Chairman of the Board who allowed the helpful donations. This could well be, but if you ask me where, how much, or what do you exactly recall? The answer is no.

I know that there is something -- as I told you, when you ask me about '86 to '80-99, but for sure I have -- I have given donations to the party in that time frame you are asking now, but was that related to MBB? I cannot see that. Why would...



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MR. BERNSTEIN: Q. The question was, were they given to these people who were involved in MBB?

A. Yeah. This is what I tried to bring to your attention. You may have an army around this, because they have changed. They go in and out, one in a board or members or different employees. How then do I know? This could -- I could have had many business deals or invitations or donations or whatever, with people related to MBB. Endless, perhaps. Yes.

THE COURT: All right. So you may have.

THE WITNESS: Yes.

THE COURT: All right. Next question.

MR. BERNSTEIN: Your Honour, forgive me. I've got two questions. I just remembered another question I wanted to ask.

THE COURT: Well, let's hear it.

MR. BERNSTEIN: Okay. It is not related to this topic, directly.

THE COURT: No, I'm not saying -- I'm not saying that you're limited to two questions and you're finished. I'm just saying along this particular line here.

MR. BERNSTEIN: Yes. Okay. That's right. I'll just ask this other question and then there's one little area we'll see -- I want to get into.

MR. BERNSTEIN: Q. How much money did you get from IAL? Not just on MBB. Ever.

A. I give -- I give from...

Q. No. Just so you understand. How much money in the whole thing from beginning to end did you get

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from IAL or companies which you were involved in, or whatever, get from IAL?

MR. SCHABAS: Well, Your Honour. I object. I mean this is just a fishing expedition. It's irrelevant. Where does this get the court? It doesn't advance the case.

THE COURT: I agree, Mr. Bernstein. If it relates to MBB, that's fine, but...

MR. BERNSTEIN: Okay. Your Honour, fine. I just simply submit in response to my friend's objection, that this question relates directly to the issue of Mr. Schreiber's relationship to IAL and his influence and control over IAL's affairs. It also is relevant to an understanding of IAL's true role in this matter. As we know from the evidence, IAL's involvement with -- with Mr. Schreiber was not limited simply to MBB, but...

THE COURT: What is it we don't know about IAL and MBB still that you would like to know?

MR. BERNSTEIN: Well, Mister -- it's the Crown's -- as reflected in the opening and during various submissions, the Crown will take a position in due course as to the role of IAL and it's relationship to Mr. Schreiber. And evidence of how much money he gets from IAL is relevant to that issue, to the extent -- but there is other evidence to this. A lot of other evidence. I just wanted to ask the question, Your Honour. I'll go on.

THE COURT: Move on, please.

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MR. BERNSTEIN: Okay.

MR. BERNSTEIN: Q. Okay. Your Honour, I'd be grateful if you'd turn to page 110 of the transcript on September 22<sup>nd</sup>, and at page 110.... Well, at 109, I asked the question.... I make the comment: You took some time before you answered that question. Mr. Schabas objects. And then I ask another...

MR. SCHABAS: Sorry, where are you?

MR. BERNSTEIN: I'm at 110 now. Mister...

THE COURT: What line? Line?

MR. BERNSTEIN: I'm at line 10. I then ask the question, "Have you hired any elected Canadian officials who during -- who were part of the government in 1985 to 1989, have you subsequently hired..." And then there's some commentary, and then I say, "The question was: Have you subsequently hired any elected government officials who were part of the government, elected government officials who were part of the government between '85 and '89? So, during '85 and '89, these people would be elected MPs or ministers or whatever, and subsequently... [sic] you hired him?" And you say, "I'll allow that question." So, it's an admissible question.

I then don't get a responsive answer to the question. I won't read the answer. I simply direct your attention to the answer which starts at line 11 and goes on to page 1 -- well, it goes on to page 112. And then it goes

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on to page 113, and again it's limited to the period of 1985 to 1989.

Well, Mr. Schreiber says -- I ask the question, which you say "I'll allow the question."

MR. SCHABAS: Where are you now, Mr. Bernstein?

MR. SCHABAS: I'm at 111. Mr. Schreiber says, "I wonder why don't you simply say whether Brian Mulroney was engaged and hired...me after he was the Prime Minister of Canada. The whole world knows it. Why do you go around? Just simply ask straightforward questions and I'll give it to you."

I say, well, "Tell us how this came about?" And then his answer is not responsive. So I'd like to ask the question and I'd like to elicit a responsive answer to that question, and I'd also like to ask it in the context of the period of '89 to '93.

THE COURT: So what is the question? Don't answer it Mr. Schreiber and...

MR. BERNSTEIN: The question is, "Have you subsequently hired any elected government officials who were part of the government -- elected government officials who were part of the government between '85 and '89. I'll make it '85 and '93. These people would have been elected MPs or ministers, or whatever, and subsequently you hired them.

THE COURT: Mr. Schabas?

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MR. SCHABAS: Well, Your Honour, he did ask that question. There was an interesting exchange. Even the court asked what the relevance of this was, and Mr. Schreiber, the witness, asked the same question, what's the relevance of it when he said it has nothing to do with MBB, and there was then an objection. The witness was excused and Mr. Bernstein then went on to say that his next question was going to be whether this was in any way connected with MBB. He did get an answer of a sort about Mr. Mulroney, and he's just trying to ask it again. But if he's going to ask it, I submit he should include: Was it related to MBB? Otherwise, we're into other areas. I mean, Mr. Schreiber is...

THE COURT: Maybe so, maybe not, but is this your only question?

MR. BERNSTEIN: I want...

THE COURT: If the answer, for the sake of argument, is yes and it was such and so, was that the end of it?

MR. BERNSTEIN: If he says yes and I'd ask him to tell us how that came about?

MR. SCHABAS: That could be the first of many questions if the answer is yes.

THE COURT: Yes.

MR. BERNSTEIN: Well, this topic.

THE COURT: Well, yes, but then what's the relevance of that? Does it relate in any way to MBB?

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THE COURT: We can go on forever. We can then -- you can then explore the relationship, if it was, for example, Mr. Mulroney, of his dealings with Mr. Mulroney and back and forth, and it -- I'm getting very close, I think, Mr. Bernstein, to telling you that I have some power to control the Preliminary Hearing, and it seems to me that we are going very, very, very slowly nowhere at this point in time. I take it it's not controversial from the answer that Mr. Schreiber hired Mr. Mulroney sometime in 1993. Okay. And then, so what?

MR. BERNSTEIN: Well, I take from your -- I'm listening, Your Honour, and I take...

THE COURT: I'm not being very eloquent. I'm just simply saying to you.

MR. BERNSTEIN: But your message is pretty clear.

THE COURT: Where does that get us at the Preliminary Hearing? Don't forget that the purpose of this hearing is to see whether or not there is some evidence upon which a reasonable jury might convict Mr. Schabas' client of fraud.

What the relationship between Mr. Mulroney and Mr. Schreiber was in 1993 really has very little to do with that issue in my view.

Now, you may say, "Yes, we have a particular theory about that. We've done our

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investigation and we have come to certain conclusions, and this is why we are pursuing this particular line. It's relevant in relation to this." I haven't heard that from you, yet. If you wish, I'll have the witness excused and you can outline it for me, but if I find that this doesn't advance the Preliminary Hearing, I may simply have to curtail your continued cross-examination, because I don't not find it at this point particularly instructive, but I may be completely wrong. I may have missed the point and I want to give you the opportunity to clarify it all for me. If the only answer you seek is the one that -- the original question you asked, I'll let that go, but anything further, you'll have to justify.

MR. BERNSTEIN: Okay. Well, I'll start with the question.

MR. BERNSTEIN: Q. Have you subsequently hired any elected government officials who were part of the government, elected government officials who were part of the government between '85 to '93, and you subsequently hired them?

A. No, not -- not between. In '93.

Q. In '93?

A. Yes.

Q. When in '93?

A. Oh, I think it was close to December or even -- maybe even '94.

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THE COURT: And who was that, sir? Who were they -- who were these people?

THE WITNESS: This was Mr. Mulroney.

THE COURT: Anybody else?

THE WITNESS: No. And he dealt with his position, to make it very simple for you, Mr. Bernstein, as a member of the board from Midland Archer Daniels.

MR. SCHABAS: I'm sorry. I couldn't here that answer.

THE WITNESS: Midland Archer Daniels. It's a huge American company dealing with food and agriculture products.

MR. BERNSTEIN: Q. Was there any discussions respecting this hiring before January of 1994?

A. No. And, yeah, in '93, perhaps. But I'm not too convinced whether that was -- this particular case, you asked me whether I did. I had many things in mind, and I told you, I wanted to hire Mr. Mulroney for Thyssen to be doing the same thing he's doing now, and it would have been a nice thing to have a previous Canadian Prime Minister on a peacekeeping track for Thyssen products. Again, as this government wanted the German companies to do. I would have been very happy if he would have done this. Unfortunately, we had no chance for that, but yes, and they told -- I was involved in the pasta business and enriched Durham semolina products and this is the moment when I spoke to him about Archer Daniels. And he provided me with some material on it.

Q. All right. I just want to understand...



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A. But they did not intend [ph] the helicopter and it has nothing to do with MBB.

MR. BERNSTEIN: Your Honour, I'm just going to ask -- I just wanted to get the time frame clear.

MR. BERNSTEIN: Q. These thoughts or this idea that you had, this plan, what time are we talking about?

A. After Mr. Mulroney has left government.

Q. After he had ceased -- after he had stepped down as the Prime Minister?

A. Yes. Yeah.

Q. Was it before or after the election of the fall of '93?

A. No, I don't -- I don't recall.

MR. SCHABAS: Your Honour, the witness has said it had nothing to do with helicopters and MBB, so we're into...

THE WITNESS: Not at all, no.

MR. SCHABAS: ...this area of...

THE WITNESS: But this is what he's all after all the time, so I give him -- I was pleased to give him the answer.

THE COURT: Just a moment. All right.

THE WITNESS: I apologize.

THE COURT: Okay. Let's go on to something else.

MR. BERNSTEIN: Okay. Your Honour, what I think I can do now is, if I can just say something, and just have a minute to see if I've completed everything. Okay, Your Honour?

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K. Schreiber - In-ch.

With respect to just saying something, Your Honour, it would be -- it would have been my intention to have pursued this and other related areas, but no, I understand Your Honour's view. I'm mindful of Your Honour's rulings and in the circumstances, in particular having regard to your rulings respecting "related in whole or in part to MBB" and Mr. Schreiber's statements on that topic.... Well, I think it'd be fair to...

THE COURT: Would you rather I hear from you at two o'clock, Mr. Bernstein? It's twenty to?

MR. BERNSTEIN: No, Your Honour. No, I think that your rulings would inform any other questions I might ask and related answers, and so I don't want to go -- I'm not going to ask questions which I know Your Honour's rulings either directly or indirectly would inform so. And in the circumstances, I think that that completes my examination of -- I don't know. Does Your Honour want to take the break now or...?

THE COURT: Well, if you've concluded your examination, I'll take my break now and we'll start with Mr. Schabas' cross-examination at two o'clock this afternoon.

MR. BERNSTEIN: Okay. Your Honour, I guess I'll just ask the officer if there's anything I've missed but...

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K. Schreiber - In-ch.

THE COURT: Well, if you find that there is something, you can raise it with me at two o'clock, otherwise we'll start with Mr. Schabas' cross-examination.

COURT REGISTRAR: All rise, please.

THE COURT: Okay. Two o'clock, Mr. Schreiber, please.

THE WITNESS: Yes.

THE COURT: Thank you.

COURT REGISTRAR: 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 :

(2:03 p.m.)

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

THE COURT: Mr. Bernstein?

MR. BERNSTEIN: In all of the circumstances, Your Honour, that completes my examination.

THE COURT: Thank you very much. Mr. Schabas, cross-examination of this witness?

MR. SCHABAS: Yes, Your Honour. I do not have any questions of Mr. Schreiber.

THE COURT: Mr. Schreiber, that's it. C'est tout.

THE WITNESS: Yeah, but...

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THE COURT: How do you say "that's all" in German?

THE WITNESS: *Das vaus* [ph].

THE COURT: *Das vaus* [ph].

THE WITNESS: But Your Honour, if you allow me to extend my politeness to Mr. Bernstein for one second. I brought something regarding my last testimony and I think it would be very valuable if he gets to know it.

MR. BERNSTEIN: If I what? What's that?

THE WITNESS: I have a couple of things I would like...

THE COURT: Do you want to do this off the record. It might be best if it was done off the record, sir.

COURT REPORTER: I'll just go off the record, Your Honour.

THE WITNESS: Okay.

....OFF RECORD COMMENTS.

THE COURT: So, if you have something to say to Mr. Bernstein, I'm concerned, sir, about anything you might say which in some way creates a difficulty at this Preliminary Hearing, so if there is something you want to say to Mr. Bernstein, I'll ask you to say it directly or through your counsel.

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THE WITNESS: It might be helpful to you, too, sir.

THE COURT: I'm sorry?

THE WITNESS: It might be helpful to you, too.

THE COURT: Well, I'm only helpful to the extent that counsel want me to be helpful, sir. So I'm going to ask you to defer and to proceed, if you have anything to say to Mr. Bernstein, to do it either through your counsel or directly to him, but we'd best -- we'd best stop things there. I thank you very much, Mr. Schreiber for your time, and...

THE WITNESS: Thank you so much, sir.

THE COURT: ...and your evidence at this Preliminary Hearing. Thank you. Good luck to you.

THE WITNESS: Thank you so much, sir.

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MR. BERNSTEIN: Your Honour, the next order of business is of a technical nature, and I don't anticipate it will take long.

The first bit of it relates to one document, which is Document 1234. Can Document 1234 be brought up on the screen, please? Your Honour, the first page of Document 1234 which is Goto Page 2 of a 14 page document, is presently on

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the screen and it is entitled, MBB Helicopter Canada Limited, audited financial statements, December 31, 1990.

I understand my friend is prepared at this time to admit this document in it's entirety, Document 1234 as an exhibit in these proceedings for the truth of it's contents, which is to say as part of a truth and authenticity admission.

MR. SCHABAS: That's correct, Your Honour. It seems to have been mis-described in the Doc description database. It, in fact, is not a draft. It is the audited financial statement. Unlike the other ones, we're admitting those.

THE COURT: Thank you. Next exhibit, then...

MR. BERNSTEIN: Thank you, Mr. Schabas.

THE COURT: ...1234.

EXHIBIT NO. 1-1234: MBB Helicopter Canada Limited, audited financial statements, December 31, 1990. 14 pgs.

MR. BERNSTEIN: That brings us to another housekeeping matter, and the last housekeeping matter I wish to deal with at this time. It relates to the documentary evidence in these proceedings.

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As we move towards submission, I know Mr. Schabas and I agree that it is appropriate to spend a moment talking about the documentary evidence in these proceedings, and when I say that, I mean that which has been tendered and which Your Honour will be relying on in the ultimate of assessment of the issue before you. I guess I can call it the record is the documentary part of the record. Okay?

Now, in September 9, 2003, during the commencement of these proceedings, Mr. Shaw reviewed with you a variety of things which related in one way or another to the documentary evidence, and the position counsel for Eurocopter took on the documentary evidence, and the admission of the documentary evidence to prove certain things.

Part of that discussion is located at pages 19 and 21 of the transcript of September 9.

THE COURT: Will I need to refer to it, Mr. Bernstein?

MR. BERNSTEIN: No. I just -- what I'm going to do -- I don't -- I've talked to Mr. Schabas about this. I don't think that there's any sort of -- any confusion as between the two of us. I'm simply going to, for the record, cite the transcripts where this discussion occurred and then just move on to the point, Your

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Honour. I don't think we have to look at it now. It's in, various places in the transcript, so I'll just give you some of the references. September 9, 2003. September 16, 2003.

MR. SCHABAS: Do you page...

MR. BERNSTEIN: Well, with respect to September 9, 2003, at pages 19 and 21, and elsewhere. And with respect to page -- with respect to page -- with respect to the transcript on September 16<sup>th</sup>, 2003, it would be at pages 2 and 3, and elsewhere. There was also a discussion on this topic. At least part of the topic on October 6<sup>th</sup>, 2004, and I know

Mr. Schabas has another reference which I think he wishes to bring to your attention.

MR. SCHABAS: Why don't I do that now, so you have them all together. September 11<sup>th</sup>, 2003 at page 131. There was a discussion and Your Honour made some helpful comments about, in particular what to do with documents where there'd been an admission as to authenticity only. And the record is what it is. We've made the admissions and I thought that that was particularly helpful discussion, because it was in the context of a document of which there was an admission only of authenticity.

MR. BERNSTEIN: So as part of the proceedings which occurred on September 9<sup>th</sup> and September 16<sup>th</sup>, 2003, certain exhibits were entered, and they concluded a chart which has been called



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Exhibit D in these proceedings. The chart is before the court, and as I say, it's been entered as an Exhibit? Is this Exhibit D?

THE COURT: Give that to me, Madam Clerk, would you please? Exhibit D. Thank you very much. Yes.

MR. BERNSTEIN: Exhibit D represents a list of a variety of documents which are in the court database or the database which has been used in these proceedings in part, and details the position Eurocopter took respecting the admissibility of the documents described in Exhibit D, as of September 2003.

Now, since that time, many of the documents referred to in Exhibit D have been entered by the court having regard to the evidence for a purpose beyond Eurocopter's initial September 2003 admission.

Documents where no admission has been made or where an admission only respecting authenticity has been initially made, have ultimately been entered by the court having regard to argument and evidence in these proceedings as exhibits for the truth of their contents, and been admitted for truth and authenticity. Those -- the record reflects those documents. And their admission and the number and the circumstances surrounding their admission and Your Honour's

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position or rulings respecting those documents, are reflected in the transcript which we have.

I am just going to -- we have the record, and the record speaks for itself. Subject to two things I'd like to deal with now. One thing I'd like to deal with now and another thing I just make a comment on.

There have been 71 documents which, in September 2003, Eurocopter admitted for the truth of their contents and their authenticity. And when I say truth of contents and authenticity, Mr. Shaw, in the transcript at pages 9 to 21 on September 9, 2003, sets out what is meant by the various admissions. He sets out what is meant by no admission. He sets out what is meant by no admission other than accuracy of the translation. He sets out what is meant by an admission respecting authenticity, and he also sets out what is meant by an admission respecting truth and authenticity. And unless Your Honour wishes, I just simply leave the transcript with you. It's set out.

There are 71 documents which fall into the category of documents, which in September 2003, Eurocopter made an admission, the highest admission, one of truth and authenticity, which have not been expressly referred to in these

proceedings since, to the extent that we've said, Your Honour, I'd ask that this be entered as an exhibit or whatever. And what I'd like to do respecting those 71 documents, is to bring them to Your Honour's attention. They are -- having regard to the record, already exhibits in these proceedings, but to the extent that they have not been the way other documents have been entered through a witness or referred to as a witness, or something like that, I'd simply like to identify them for the court now, so that we can be clear about them.

Now, this arose in October. At that time, it was thought best to provide Mr. Schabas with an opportunity to consider this list of 71. He'd done so and he's kindly written back to us in -- in October and said....

MR. SCHABAS: I have no difficulty with the list, Your Honour. I gather my friend wants to file a list.

THE COURT: Is it beyond this list?

MR. BERNSTEIN: No. If you look at the truth and authenticity column...

THE COURT: It's just a...

MR. BERNSTEIN: ...there's hundreds of documents.

THE COURT: ...summation.

MR. BERNSTEIN: Most of them, apart from the 71, have been referred to one way or another in the record and we're -- so the record speaks

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for itself and here we're just saying hello to these 71 documents.

MR. SCHABAS: Well, we said hello to them in Exhibit D, but we're going to say hello to them...

MR. BERNSTEIN: Yes.

MR. SCHABAS: ...in their own little group in what I gather my friends wants to make another exhibit. And I don't have a problem with that if he wants to file a list.

MR. BERNSTEIN: This is housekeeping.

MR. SCHABAS: That's fine.

THE COURT: All right.

MR. BERNSTEIN: This is housekeeping.

THE COURT: Fine. Thank you. That will be the next exhibit.

MR. BERNSTEIN: Okay. Yes. Here's a copy and I'd like to give the court a copy and I'd be grateful if...

THE COURT: What letter number are we up to, Madam Clerk?

COURT REGISTRAR: Exhibit P, Your Honour.

THE COURT: I'm sorry?

MR. BERNSTEIN: Exhibit P.

THE COURT: E?

COURT REGISTRAR: P.

THE COURT: P. P. Yeah. Exhibit P.

MR. SCHABAS: If only we were at Exhibit E, Your Honour.

THE COURT: Yes.

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EXHIBIT P: List of 71 documents. - Produced and marked.

MR. BERNSTEIN: I guess, notionally, that group becomes one dash exhibits. The other point...

THE COURT: All right. There's controversy there.

MR. BERNSTEIN: The other point I sort of wish to make is -- and I've talked to Mr. Schabas about this, and he in his transcript reference -- the transcript reference which he's brought to the court's attention reflects a discussion which occurred in court with Your Honour's comments on this topic.

As far as the other documents referred to in Exhibit D, and by that I mean the documents in Exhibit D, which are in the court database, which Eurocopter -- okay. Which have not otherwise -- which the court -- okay. Which the court has not otherwise admitted as exhibits, having regard to the evidence.

I'll do this again, Your Honour. Okay. You have the documents, which have been admitted for the truth of their contents at the outset. And you have a variety of other less substantial admissions. As far as the documents were admitted for the truth of their contents, they go in for -- they went in for

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the truth of their contents in the beginning. There was then another big series of documents, where the admission was something less, but the Crown proved it for the truth of their contents and authenticity and they went in.

Then there is the 71, which we've dealt with. Now, what remains on Exhibit D -- and correct me if I'm wrong, Mr. Schabas -- is a group of documents which Your Honour has not admitted for the truth of their contents or for a purpose expressly as reflected in the record, and which Mr. Schabas hasn't made an admission respecting truth or authenticity.

But which he has made some admission, some admission short of no admission because the first category is no admission. These would be admissions respecting -- well, they are category 2 and category 3. Category 2 and category 3 in Mr. Shaw's elucidations of September 9, 2003. By this, I mean an admission respecting authenticity, and admission respecting accuracy of the translation, though mostly authenticity here.

And by that, just maybe I'll spend a minute on that.

"The parties interpret authenticity in the following way. If the authenticity -- an example the parties have agreed upon illustrates how authenticity is defined.

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If the authenticity of a memorandum from A to B making assertion C is admitted, then there is an admission that the memorandum was authored by A who stated C, and that the memorandum was sent to and received by B. It is not an admission that C is true, just that assertion C has been made. To speak more generally of this category, we understand that there is admission of authenticity respecting the author of the document, it's sending, and that the facts stated in it were stated -- as well as being sent and received as I indicated in the example."

THE COURT: You're reading from the transcript?

MR. BERNSTEIN: Yes.

THE COURT: All right. Okay.

MR. BERNSTEIN: And this is Mr. Shaw talking. The "nec pus utra" -- he goes on. You may remember when he said that.

MR. SCHABAS: Let's leave that out. I read that, okay.

MR. BERNSTEIN: That's the next admission. So this category of documents in Category 2, I understand which is admission only, I think, respecting...

MR. SCHABAS: Translation.

MR. BERNSTEIN: ...the accuracy of the translation. I understand that counsel agree that these documents as reflected in Exhibit D are also admitted as exhibits in these proceedings to the extent of the admission. If Your Honour has caused them to be admitted for a greater purpose, then they're in for the

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greater purpose, but if they haven't been admitted for the greater purpose either as a result of an admission by Eurocopter or a decision by Your Honour, and they don't fall into the group of 71, then they are, nevertheless, before you, and have been admitted as evidence to the extent, and limited to the extent of the admission which is to say their evidentiary value and what use can be made is defined by Eurocopter's admission.

There may very well be occasion where there is some evidentiary value to the mere fact that the document was authentic and the admission, which is the authenticity admission, and that will be something which will be dealt with on -- if necessary -- during the course of the submissions. So....

MR. SCHABAS: Your Honour, I don't disagree with what Mr. Bernstein is saying. I would have just said, evidentiary value or use of any -- any use...

MR. BERNSTEIN: Yes.

MR. SCHABAS: And that's entirely up to you, and we've been over this ground.

THE COURT: If we're talking translation, I mean it's not of much value to me to say here's a document that's totally irrelevant. It's neither -- it's not admitted. It hasn't been admitted by me. It hasn't been admitted by you but it's an accurate translation. For all I



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know it's an accurate translation of a Deutschmark into English.

MR. SCHABAS: Right. And...

THE COURT: But it's...

MR. SCHABAS: And the mere fact on authenticity that something said something, that's admitted...

THE COURT: Well, that's something else.

MR. SCHABAS: But again, I would say what evidentiary value it has or use it has, I would have said if any, because it may depend -- I meant that's a decision for you to make whether...

THE COURT: That's slightly different as opposed to translation. If something is authentic, then while it may not prove content, it may be relevant to other matters like frame of mind or whatever.

MR. SCHABAS: Understood.

MR. BERNSTEIN: That's right.

THE COURT: All right.

MR. BERNSTEIN: Well, it may be relevant to the -- having regard to the nature of the admission.

THE COURT: I think we're all on the same wavelength.

MR. BERNSTEIN: Okay. Thank you, Your Honour. Well, Your Honour, with that the Crown completes and has completed and ends its case at this Preliminary Inquiry, Your Honour. Thank you very much.

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THE COURT: Thank you. Before I call upon, Mr. Schabas, gentlemen, refresh my memory, are there outstanding rulings that I have not made or that are left pending, or are you satisfied that nothing is left outstanding that was subject to a later ruling?

MR. BERNSTEIN: Not that I can recall at the present moment.

THE COURT: Well, there was -- the only reason I raise it is I think -- Madam Clerk, right on top there is one of the rulings I made in writing, I think, and I want to raise that with you before we -- I think that's it, yes. And it just strikes me that...

MR. BERNSTEIN: It's the co-conspirator's exception that...

THE COURT: Yes, and the fact remains that he is not, I say, yet given evidence and consequently not yet in a position to rule on admissibility based on the necessity component and a principled approach.... And there, I'm referring to this particular ruling. And does anything arise out of that that requires a decision on my part? That's what I'm asking, or are you satisfied that we need not -- that there needs be no further definitive rulings before I call upon Mr. Schabas?

MR. SCHABAS: I think that's right, Your Honour. No, Your Honour. On behalf of the

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defence, we submit that there's no further rulings that need to be made at this time.

THE COURT: That's your position as well, Mr. Bernstein?

MR. BERNSTEIN: Yes, Your Honour. And to the extent that you've heard more evidence since that ruling, if anything relates to it at all, it would strike me as being something -- I'm not sure anything does relate to it, but if anything does relate to it, given the additional evidence, it would strike me as being something that we do not wish to lead anymore evidence on at this time, and would be dealt with, if at all, as a matter of submission during submissions on the issue of...

THE COURT: I'm just saying there's nothing outstanding that requires a ruling before the case has been put to the defence.

MR. BERNSTEIN: Yes.

THE COURT: All right. I rely on your assertion, gentlemen, that that is so. The case is before me on the Crown side, Mr. Schabas. Do you wish to call evidence at this Preliminary Hearing?

MR. SCHABAS: Yes, we do, Your Honour.

THE COURT: Okay. And?

MR. SCHABAS: And, Your Honour, the witness we wish to call is Mr. Feigenwald, and you'll recall, Your Honour, there was some background

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to this. We have been, and I think it's appropriate to put this on the record...

THE COURT: Well, I -- I must say and I want this to be noted on the record. I have received correspondence...

MR. SCHABAS: Yes.

THE COURT: ...which appeared to be something that came to me from Mr. Bernstein with your permission and understanding.

MR. SCHABAS: Yes. That's right, Your Honour. As you know, I sent to you -- there's been correspondence. There have been e-mails which were appreciative and I think Mr. Bernstein and I are in agreement, that e-mail is very helpful in creating the form of a record.

THE COURT: I'm referring specifically to Mr. Bernstein's letter to me, dated November 22<sup>nd</sup> where he speaks about his communications with Mr. Ruby and says that -- I gather you know he's communicated with me and that it's not necessary, for example, for me to determine issues litigated before Justice Then. That's the letter I'm referring to.

MR. BERNSTEIN: Well, I haven't spoken to Mr. Ruby. Well, I know Mr. Ruby. I speak to him, periodically, but I think the letter, on this topic, I think Mr. Schabas is the one who has spoken to Mr. Ruby. I had spoken to Mr. Schabas.

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THE COURT: Well, I don't know, but I mean we're all on the same wave length are we, about this particular letter that I received from Mr. Bernstein dated November 22<sup>nd</sup>, a copy to Mr. Schabas.

MR. SCHABAS: I'm sorry, Your Honour. Thank you. I had been out of the office for a number of days, so I actually hadn't -- we did discuss the contents of this letter, and there were some...

THE COURT: I just want to put it on record I received it. That, this wasn't a unilateral communication between the Crown...

MR. SCHABAS: Yes.

THE COURT: ...and myself that was directed to me without your knowledge.

MR. SCHABAS: That's right, Your Honour. That's correct.

THE COURT: And I propose at this point, simply to file that.

MR. SCHABAS: All right.

THE COURT: The next exhibit: Q, I guess? I'll just keep this for the moment and I'll write a Q on it.

EXHIBIT Q: Letter dated November 22 from Mr. Bernstein. - Produced and marked.

THE COURT: Yes, go ahead, Mr. Schabas.

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MR. SCHABAS: So as Your Honour knows, there have been some witnesses that have been examined by the defence out of court. I think with the encouragement of the administrative justice here, which are not relevant to committal, one of the witnesses that the defence wishes to examine is Fraser Feigenwald.

There was a view shared by the Crown and the defence at one point, that Mr. Feigenwald would more appropriately be examined in a judicially supervised setting. We ran into difficulties due to the availability of Mr. Bayne, who is Mr. Feigenwald's counsel. There was the hope that he would have been examined in court in early October -- and Your Honour will recall that we were all before you and Mr. Bayne was unavailable and at that time there was an agreement that we would do him out-of-court.

When we did finally get to him in the examination room -- and this is disclosed, of course, in the materials that we've filed before you -- we ran into a difficulty and as Your Honour knows, although you didn't make any ruling, we had correspondence and communication with you to deal with the scheduling issue.

Mr. Bayne is, of course, not available until Friday and I would ask, simply, that the matter be put over to Friday.

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THE COURT: So we can start with Mr. Feigenwald on Friday.

MR. SCHABAS: We can.

THE COURT: We can. Good.

MR. SCHABAS: Our understanding -- and we've been in touch with Mr. Bayne. Mr. Feigenwald and Mr. Bayne has indicated that they will be here on Friday morning for his examination.

THE COURT: All right. And I've also, I think in the email indicated to you that the week of January 10<sup>th</sup>...

MR. SCHABAS: Yes.

THE COURT: ...was made available to us with much twisting of wrists. I can tell you that. I would have loved to have had an earlier date but in any event, is Mr. Bayne available the week of the 10<sup>th</sup> of January? Has anybody checked that?

MR. SCHABAS: No. That we don't know, because he's been out of -- Mr. Wong has left messages. He's out of the country. He's coming back tomorrow.

THE COURT: Well, okay. It's something I want you to raise with him...

MR. SCHABAS: Of course.

THE COURT: ...because at this point the other dates I suggested to you are still sort of on hold but they are in a very precarious position.

MR. SCHABAS: Right.

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THE COURT: It's something to be borne in mind and we can revisit that Friday morning when Mr. Bayne arrives.

MR. SCHABAS: Right.

THE COURT: And yes, sir.

MR. BERNSTEIN: Your Honour, on November 12<sup>th</sup>, 2004, the issue of additional dates was discussed during a telephone conference involving myself, Mr. Schabas, yourself and Mr. Bayne. Mr. Bayne's availability was canvassed.

THE COURT: He seemed to say that he had a fairly open calendar, I think, in the New Year, but we just didn't check those specific dates.

MR. BERNSTEIN: Yes. He wrote to us and, I think, told us to mark our calendars for the week of January 10<sup>th</sup>.

THE COURT: And you know, in fairness, I forgot completely to copy Mr. Bayne. I simply wrote Mr. Wong and yourself, Mr. Bernstein, and Mr. Shaw and I forgot Mr. Bayne.

MR. BERNSTEIN: Your Honour, you also in that telephone conference said I could if I wished, put my objections on the record, and I, with respect, Your Honour, would simply like to do that now. And I'll do it briefly, and I talked to Mr. Schabas about it, and I just would be grateful if the record could reflect that. I do object, and the reason why -- and I do not consent to Mr. Schabas' request that the matter



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be put over to Friday. I'll just briefly detail my reasons and we can leave it at that.

Tomorrow and Friday were set aside for submissions. On October 4, 2004, tomorrow and Friday were set aside for submissions on the issue of committal. Mr. Feigenwald had been scheduled to testify in court during the week of October 4. And October 4, Mr. Bayne, counsel for Mr. Feigenwald who is a defence witness, of course, appeared and advised the court that he was not available that week, the week of October 4<sup>th</sup> and that he wished to be there.

After discussions and reflection, Mr. Schabas advised the court that he -- well, I think he said "We've agreed that Fraser Feigenwald's testimony can be taken out of court." He also referred to a log jam respecting another witness who was Karl Gallant, and it was agreed that Mr. Gallant, another defence witness, could be dealt with out of court.

In the result, on October 6<sup>th</sup> about halfway through the day, the court adjourned and we did not use the October 7<sup>th</sup> and 8<sup>th</sup> which were dates which were available and had been scheduled for the Preliminary Inquiry, these being dates where it was envisioned that Mr. Feigenwald would have given his evidence.

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On November 4<sup>th</sup>, Mr. Feigenwald attended for his out-of-court examination, and an issue rose respecting a privilege, which informed one of the topics which Mr. Schabas wished to cover with Mr. Feigenwald, and which forms the basis of an application which I anticipate will be heard later. Perhaps, later. I know later...

THE COURT: Application, you mean in this proceeding or at an eventual trial if there was one?

MR. BERNSTEIN: No, it's an application which Mr. Schabas filed seeking the court's direction and is before this court, which -- I don't know what date it's returnable but it relates to Mr. Feigenwald's evidence.

As a result of the position adopted by the witness on the topic, on the advice of counsel, Mr. Feigenwald, at the out of court examination on November 4, 2004, declined to answer questions on matters which related to this claim of privilege and it's a CI privilege, a confidential informer privilege.

I asked Mr. Schabas at that time if he could ask questions on a number of other topics unrelated to this claim of privilege, which I anticipated that he would in the normal course cover with his witness, and that these topics represent -- I would anticipate represent the majority of his examination. If not, a large

portion of it. How much it will represent, I guess we'll see when Mr. Feigenwald is called, if called.

Mr. Schabas chose at the out of court proceedings not to ask questions on those other topics not directly related to the claim of privilege, and Mr. Feigenwald refusal to answer questions relative to that claim of privilege.

I understand -- I looked at the subpoena respecting Mr. Feigenwald, a most recent subpoena, and I understand it's returnable today. This is a subpoena issued at the request of Eurocopter.

And in a nutshell, my submission is if Eurocopter wishes to call evidence, it should call it. I understand that Eurocopter's position is that Mr. Feigenwald evidence should not commence until Friday because Mr. Bayne will be available, and as Your Honour knows -- and to some extent my objection is an objection rooted in part in consistency. The Crown has taken the position in the past that the unavailability of witness's counsel -- for example, in the case of Mr. Schreiber's counsel, is not an issue which should inform the order of witnesses or an adjournment.

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We have other topics, which can be covered, relative to Mr. Feigenwald evidence, and in my submission, the time which we have here this afternoon and tomorrow could be used for that purpose. And having regard to that, I don't consent to Mr. Schabas' request, and indeed I oppose his request, and I object.

Having said this.... I think I've said what I like to.

THE COURT: Well, Mr. Feigenwald is not here.

MR. SCHABAS: No, he's not, Your Honour. As I said, there's been discussion with his counsel about this. I don't know if Your Honour wishes me to respond to...

THE COURT: No, I understand Mr. Bernstein's position. My impression of it is it is more an objection for the record to show what the Crown's displeasure is in relation to the manner in which this has unfolded. The fact remains, I think -- two things I ought to mention. One is one of courtesy, and Mr. Bayne is one of Ottawa's leading counsel and a gentleman who has always been very attentive to his obligations to the court and has always been courteous to the court in relation to matters involving court scheduling, and I think some deference is due to Mr. Bayne in his expressed intention to be present during Mr. Feigenwald's examination.

I also understand, although I don't know this for sure, but that Mr. Feigenwald is a retired member of the Royal Canadian Mounted Police, and I think naturally some deference ought to be paid in respect to the position of that individual who comes before the court.

My only discretion today, if I, for example, entirely agreed with Mr. Bernstein, would be to say, well, I'm issuing what, a witness warrant for Mr. Feigenwald's arrest? And in view of the implied, I think, assurances given to Mr. Bayne, if not expressed assurances, I'd be very loathed to do that.

Now, I recognize we're going to lose a day tomorrow. In the normal course, in any event, I normally sit -- I try and I would love to be able to say I sit four days out of five and I can use that time to work on other things, which don't involve MBB, and so it would seem to me to be a bit high-handed at this point simply to say "No, we're proceeding and that's the end of it."

And the other matter that concerns me is the fact that these proceedings, out of court discoveries, which are a valuable method of expediting proceedings, were not, at least in the circumstances of this particular case, I think, judicially sanctioned in the sense that

I don't think I said, "Fine," and we said in court we'll do it this way. I'm sanctioning them. Away you go, and I'll make rulings." This perhaps was to accommodate the regional local administrative justice's expressed wishes. In any event, you agreed mutually that you would do that. I encourage that form of innovative attempt at reducing the length of courtroom proceedings, but at the end of it -- and you may correct me if I'm wrong -- I don't believe that this was a formally sanctioned proceeding that proceeded from my direction with your consent.

MR. SCHABAS: That's right, Your Honour.

THE COURT: And so, it also -- it puts me in a bit of a, I think, delicate position in terms of -- and I've indicated in the past that because of this difficulty that arose,

Mr. Feigenwald's evidence ought now be heard entirely in open court so that I can make rulings for his protection if necessary or for the better unfolding of the evidence in an orderly way. And so, I am not going to stand in the way of Mr. Schabas's request, that we go to Friday, and I note your objection,

Mr. Bernstein, for the record. It's a principled one and it's not unfounded, but this is a discretionary matter.

In any event, if you've looked at the weather forecast, you're not going -- you're likely not

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going anywhere tonight. I don't know what it's going to be like going back to Toronto. You won't be here anyways. Maybe, maybe not.

MR. SCHABAS: We're staying here.

THE COURT: I don't know.

MR. SCHABAS: All right.

THE COURT: So I'm going to put this matter over to ten o'clock Friday morning.

MR. SCHABAS: Thank you, Your Honour.

MR. BERNSTEIN: Thank you, Your Honour.

THE COURT: Thank you, and please speak to Mr. Bayne, if you would...

MR. SCHABAS: Yes, we will.

THE COURT: ...early Friday morning to ensure his presence and if that is problematical, let me know as soon as possible and I'll see what I can do.

MR. BERNSTEIN: Your Honour? I think we can go off the record?

THE COURT: Sure.

...OFF RECORD DISCUSSION.

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 Helicopters et al. in the Ontario Court of Justice held at Ottawa, Ontario taken from Recording No. 459 which has been certified in Form 1.

December 28, 2004 \_\_\_\_\_

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1-1234	MBB Helicopter Canada Limited, audited financial statements, December 31, 1990. 14 pgs.	66
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